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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Judge

Opinion No. 5755

Stephany A. Connelly and James M. Connelly,……...…Respondents,

v.

The Main Street America Group, Old Dominion Insurance Company,
and Allstate Fire and Casualty Insurance Company, ……..…… ….. Petitioners.

JOINT APPENDIX

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2017-002234

APPEAL FROM RICHLAND COUNTY COURT OF COMMON PLEAS
Civil Action No. 2016-CP-40-5885
Jocelyn Newman, Circuit Court Judge

Stephany A. Connelly and James M. Connelly ..... Plaintiffs

v.

The Main Street America Group; Old Dominion Insurance Company; Allstate Fire and Casualty Insurance Company; Debbie Cohn; and Freya Trezona ..... Defendants

Of which, Allstate Fire and Casualty Insurance Company; The Main Street America Group; and Old Dominion Insurance Company are ..... Appellants

and

Of which, Stephany A. Connelly and James M. Connelly are ..... Respondents

---

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4005885

Stephany Connelly	**Main Street America Group**
James M Connelly	**Old Dominion Insurance Company**
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: _____	**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.

☐ **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 _____

2017 JUN -2 AM 10:52 RICHLAND COUNTY FILED JEANETTE W. McBRIDE C.C.P.

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:
Defendant's Motion to Dismiss is GRANTED by consent. Defendants Debbie Cohn and Freya Trozona are DISMISSED by consent. Motions for Summary Judgment filed by Plaintiffs (3/21/17), Defendants Main Street and Old Dominion (3/6/17) and Defendant Allstate (3/8/17) are taken UNDER ADVISEMENT.

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
		$
		$
		$
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.**

Circuit Court Judge Jocelyn Newman **Judge Code** 2757 **Date** May 17, 2017

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 2 day of June, 20 17 to attorneys of record or to parties (when appearing pro se) as follows:

John D. Kassel

Alfred Johnston Cox
Ashley Berry Stratton

Thomas Frank Dougall

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Stephany A. Connelly and James M. Connelly, Plaintiffs, v. The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trezona, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No.: 2016-CP-40-05885 **ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

2017 OCT -2 A 11:02

This matter comes before the Court upon Old Dominion Insurance Company and Main Street America Group's motion for summary judgment, filed on March 6, 2017;[1] Allstate Fire and Casualty Insurance Company's Motion for Summary Judgment and Memorandum in Support, filed on March 8, 2017; and Plaintiff's Notice of Motion and Motion for Summary Judgment, filed on March 21, 2017. A hearing was held on these motions at the Richland County Judicial Center on May 17, 2017.

For the reasons set forth below, Plaintiff's motion for summary judgment is GRANTED; and Defendants' motions for summary judgment are DENIED.

STIPULATED FACTS[2]

On February 24, 2015, Stephany Connelly was riding as a passenger in a Jeep Compass vehicle owned and operated by Freya Trezona ("Trezona"). Ms. Connelly was occupying the vehicle with Trezona's permission. The vehicle had uninsured ("UM") liability insurance

[1] These defendants filed no formal motion but only a document entitled "Old Dominion Insurance Company and Main Street America Group's Memorandum in Support of Motion for Summary Judgment," which the Court has accepted as their motion.
[2] The parties filed a written Joint Stipulation of Fact on January 31, 2017.

coverage under a policy issued by The Main Street America Group ("Main Street")/Old Dominion Insurance Company ("Old Dominion"). Ms. Connelly maintained a separate policy of UM coverage with Allstate Fire and Casualty Insurance Company ("Allstate") covering her private vehicle. Trezona negligently caused an automobile collision, resulting in injuries to Ms. Connelly.

At the time of the collision, Ms. Connelly and Trezona were co-employees, both working within the course and scope of their employment with Apple One Employment Agency. Ms. Connelly made a claim for, and received benefits under, the South Carolina Workers' Compensation Act. Ms. Connelly and James Connelly ("the Connellys") then made claims for damages under the Trezona liability policy. Main Street/Old Dominion denied coverage, relying on the Workers' Compensation Act's exclusive remedy provision which provided tort immunity to Trezona. Faced with an absence of liability coverage, the Connellys made claims for UM benefits under both the Main Street/Old Dominion and Allstate policies. Both carriers denied the UM claims.

SCOPE OF REVIEW

A suit for declaratory judgment is neither legal nor equitable per se; the nature of the suit, therefore, is determined by the underlying issue. *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2 781 (1991). The issue here involves the determination of UM coverage. Therefore, the action is at law. *Horry County v. Ins. Reserve Fund*, 344 S.C. 493, 54 S.E.2d 637 (Ct. App. 2001). The parties' Joint Stipulations of Fact leave only a question of law for the trial court. *WDW Props. v. City of Sumter*, 342 S.C. 6, 535 S.E.2d 631 (2000). Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the

moving party is entitled to judgment as a matter of law. *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011); *see also* Rule 56(c), SCRCP.

I. The Trezona Vehicle was an Uninsured Vehicle.

UM coverage is mandatory coverage in South Carolina. South Carolina Code §38-77-150(A) provides:

> No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, *undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle*, within limits which may be no less than the requirements of Section 38-77-140. (Emphasis added).

Before UM benefits become available, the at-fault motorist must be operating an uninsured vehicle. Main Street/Old Dominion and Allstate deny that the Trezona Jeep Compass vehicle was an uninsured motor vehicle. The definition of "uninsured motor vehicle" is controlled by statute. South Carolina Code §38-77-30(14) and its relevant subsection (b) provide that an uninsured motor vehicle means a motor vehicle as to which "...there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder..." Here, Main Street/Old Dominion provided liability coverage on the Trezona vehicle but denied coverage for the Connellys' claims, relying on the exclusivity provision of the Workers' Compensation Act with its grant of immunity to Trezona.

With denial of the claims, the Trezona vehicle's UM coverage became operable. The Trezona vehicle falls within the plain language of the statute because Main Street/Old Dominion successfully denied any liability coverage. A similar result was reached in *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 529 S.E.2d 280 (2000), where the Supreme Court found that the denial of liability coverage, due to vehicle being driven by a non-permissive driver, triggered the vehicle's

UM coverage. See also *Allstate Ins. Co. V. Wilson*, 259 S.C. 586, 593, 193 S.E.2d 527, 531 (1972) (appellant's uninsured motorist coverage became operative when respondent Allstate successfully denied liability for the other vehicle on ground that it was being driven without the consent of the insured).

The Defendants herein argue that Main Street/Old Dominion did not deny coverage but denied liability; thus the Trezona vehicle is an insured vehicle. This argument is foreclosed given both carriers' stipulation that Trezona was negligent and that her negligence was the cause of Ms. Connelly's injuries. Therefore, liability could not be denied only coverage. Moreover, both carriers cite to language in their respective policies defining an insured vehicle. According to Defendants the Trezona vehicle failed to meet the policy language definition of an uninsured vehicle. The Defendants made a coverage denial.

II. Ms. Connelly was "an Insured" Under Both Policies.

UM eligibility requires that Ms. Connelly be an insured under either policy. Ms. Connelly was occupying the Trezona vehicle as a passenger with permission of its owner. As such, she must be deemed an insured. An insured is defined by S.C. Code Ann. §38-77-30(7).

> "Insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above.

Main Street/Old Dominion stipulated that Ms. Connelly was an insured under their policy. Ms. Connelly was a named insured under the Allstate policy.

III. The South Carolina UM Statute Requires Only a Finding of Fault to Trigger Coverage.

A. The *Legally Entitled to Recover* Language of South Carolina Code § 38-77-150(A) is Ambiguous

The South Carolina UM statute provides that a UM policy must undertaking to pay the insured all sums which "he is legally entitled to recover" as damages from the owner or operator of an uninsured motor vehicle. S.C. CODE ANN. § 38-77-150(A).

The novel question presented by this case is whether an innocent, injured motor vehicle passenger is entitled to UM coverage where the at-fault driver is immune from suit pursuant to the South Carolina Workers' Compensation Act. In other words, in the context of the UM statute, the Court must determine whether Ms. Connelly legally entitled to recover damages. Clearly Main Street/Old Dominion and Allstate answer the question in the negative. Defendants argue that if Trezona is immune from suit then Ms. Connelly cannot be legally entitled to recover damages from her. Indeed, Ms. Connelly has stipulated that she cannot recover damages for her injuries from Ms. Trezona. However, if the meaning of the statute is ambiguous and simply means the insured must demonstrate fault on the part of the uninsured driver then the discussion is far from over. Review of decisions from other jurisdictions addressing similar language and coming to different interpretations suggest ambiguity of this statutory language.

First, the statutory language is not defined in the statute or in either insurance policy. Second, various courts have entertained different interpretations. For example, Defendants rely on several cases from distant jurisdictions interpreting the "legally entitled to recover language" as a fatal obstacle in a plaintiff's ability to collect UM benefits. See *Otterberg v. Farm Bureau Mut. Ins. Co.*, 696 N.W. 24 (Iowa 2005); *Wachtler v. State Farm Mut. Auto. Ins. Co.*, 835 So. 2d 23 (Miss. 2003); and *State Farm Mutual Auto. Ins. Co. v. Slusher*, 325 S.W.3d (Ky. 2010). By

contrast, other courts have interpreted the same or similar language in a broader vein. See, e.g., *Torres v. Kansas City Fire and Marine*, 1993 OK 32, 849 P.2d 407 (Sup Ct. 1993) (finding the "legally entitled to recover" language to mean the insured must simply establish fault on the part of the uninsured motorist). The lack of a statutory or policy definition for the phrase "legally entitled to recover" and the parties' conflicting interpretations provide evidence of the statute's ambiguity. *Jenkins v. City of Elkins*, 230 W.Va. 335, 345, 738 S.E.2d 1, 11 (2012).

The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E. 2d 457, 459 (2007). If the statute is ambiguous then courts must construe the terms of the statute. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). When interpreting the language of the UM statute the court must settle on a meaning that is consistent with the intent of the legislature. The UM statute is remedial in nature, enacted for the benefit of the injured persons, and is to be liberally construed so that the purpose intended may be accomplished. *Gunnels v. American Liberty Ins. Co.*, 251 S.C. 242, 247, 161 S.E.2d 822, 824 (1968).

Given the ambiguity of the statute, this Court must construe the language in a way that is consistent with the intent of the legislature. The purpose of the South Carolina Uninsured Motorist statute is to provide benefits to protect against the peril of injury or death by an uninsured motorist to an insured motorist, his family and the permissive users of his vehicle. *Ferguson v. State Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973). An uninsured motorist is a "financially unresponsive motorist." *O'Neill v. Smith*, 388 S.C. 246, 254, 695 S.E.2 531, 535 (2010). To an injured motorist, it makes no difference whether unresponsiveness is due to workers' compensation immunity or lack of insurance. In either instance, the availability of UM benefits furthers the protective goal of the legislature.

Interpreting the statute to require that plaintiffs first secure a judgment against the unresponsive driver undermines the legislative intent. Requiring simply a finding of fault against the unresponsive driver furthers the legislative intent. This Court is mindful of the lofty position our legislature has endowed UM coverage in our state. It is mandatory coverage. Attempts to restrict UM benefits are either void or themselves limited. See *Ferguson v. State Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973) (finding any limiting language in an insurance contract which had the effect of providing less protection than made obligatory by the statues is contrary to public policy and is of no force and effect); *Wright v. Smallwood*, 308 S.C. 471, 419 S.E.2d 219 (1992) (efforts to deny UM benefits given the exclusivity provision of the S.C. Workers' Compensation Act were rebuffed).

In order to effectuate the legislative intent of protecting motorists from unresponsive drivers this Court is bound to interpret the "legally entitled to recover" language as requiring simply a showing of fault by the unresponsive driver and the amount of resulting damages. As will be seen, cases from other jurisdictions endorse this view.

A formal judgment against an unresponsive motorist is not the only way to demonstrate fault and trigger UM coverage. In *Ferguson v. State Farm*, 261 S.C. 96, 198 S.E. 2d 522 (1973) a judgment was rendered against the uninsured driver. However, the court concluded liability under the UM coverage arose after the liability of the uninsured motorist *had been established.* (Emphasis added. 261 S.C. at 102, 198 S.E.2 at 525). There was no language to suggest procuring a judgment was the only way to establish liability. In *Otterbacher v. Snyder*, 2015 WL 4068204 (Ct. App.), the court concluded that until Otterbacher obtained a judgment or *otherwise establishes liability* against the person who collided with him in a motor vehicle wreck, Otterbacher could not pursue the other driver's liability coverage. See *Park v. Safeco Ins. Co. Of*

Am., 251 S.C. 410, 413, 162 S.E. 2d 709, 710 (1968) (no right to recover can accrue to plaintiff against the insurance company until and unless the insured driver becomes liable to pay). In this case, the fault requirement is satisfied as the parties stipulated that Trezona was at fault in causing the wreck and injuries to Ms. Connelly.

Defendants suggest that the Connellys cannot trigger UM coverage as result of the collision because they are not legally entitled to recover damages from Trezona. This argument falls away when interpreting the statute to simply mean demonstrating fault and resulting damages. But Defendants argue further that the Connellys cannot satisfy the UM statute which requires them to file suit against Trezona. However, the language of S.C. CODE ANN. § 38-77-150(B) does not address any requirement of filing suit against the at fault driver.

B. Numerous Jurisdictions Allow UM Coverage Despite an Immune Adverse Driver.

South Carolina courts have not directly addressed the questions whether an at-fault driver causing injury, who is immune from suit, can nonetheless trigger the "legally entitled to recover" language of the UM statue, resulting in UM coverage. However, numerous cases from other jurisdictions have answered this question. To promote the public policy of protecting motorists injured by uninsured drivers, these courts interpret the language as simply requiring a showing of fault by the adverse driver.

In *Borjas v. State Farm Mut. Auto. Ins. Co.*, 33 P.2d 1265 (Colorado Ct. App. 2001), an injured insured was allowed to collect her own UM coverage after being hit by a vehicle driven by a police officer, despite the officer being cloaked with immunity under the Colorado Governmental Immunity Act (CGIA). Colorado's UM statute provided coverage for persons who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. §10-4-

609(1)(a), C.R.S. 2000. State Farm argued that its UM coverage was not available because the injured plaintiff was not legally entitled to recover damages from the at-fault driver who was immune from liability under the CGIA. State Farm cited various cases denying UM coverage because of immunity. In rejecting State Farm's position, the court found such an interpretation was inconsistent with the public policy expressed by the legislature. "If we were to follow that line of cases, members of the public would be deprived of the opportunity to protect themselves from loss under the circumstances presented here, a result not intended by the General Assembly." *Borjas*, 33 P.3d at 1269. The court noted the policy underlying the statute was to compensate innocent drivers for injuries received at the hands of one from whom damages cannot be recovered, stating

> It is entirely consistent with this public policy to construe §10-4-609 to require that UM insurance coverage apply even though the tortfeasor is immune from liability under the CGIA. Negligent drivers and their employers who are immune from liability under the CGIA may not be financially irresponsible in the sense that they lack the ability to pay, but from the perspective of the injured innocent driver, the lack of legal responsibility has the same effect.

Id. at 1268.

Finally the *Borjas* court listed several other court decisions providing support for allowing UM coverage despite a claim of immunity. Giving a further rationale for its opinion, the Court relied on the reasoning expressed in the treatise 1 A. Widiss, *Uninsured and Underinsured Motorist Insurance* §7.14, at 388-90 (2d ed. 2001):

> 1) while tort immunity protects the torfeasor, it should have no effect on an insurance company providing first party UM insurance coverage; 2) it is consistent with the strong public policy of providing insurance coverage to protect drivers when no compensation is available from the negligent tortfeasor; 3) tort immunities are personal to the tortfeasor and therefore cannot be raised by an insurer; and finally, 4) the immune tortfeasor is unaffected by providing UM coverage, while at the same time,

> those disadvantaged by the immunity can protect themselves by purchasing UM insurance.

The court concluded that the phrase "legally entitled to recover damages" as used in the UM statute, simply meant that the insured injured motorist must be able to establish the fault of the uninsured motorist as the cause of her damages.

C. UM Coverage is Available Despite Worker's Compensation Immunity

While *Borjas* addressed the availability of UM coverage in the face of a governmental immunity, there is support for the same result applying where a workers' compensation immunity is in place. In *Barfield v. Barfield*, 742 P.2d 1107 (Oklahoma Sup. Ct. 1987), the widow of a deceased passenger killed by his at-fault co-employee driver was allowed to recover under her husband's UM policy despite receipt of workers' compensation benefits. The court found that tort immunity under the Workers' Compensation Act did not preclude recovery under one's own contract of insurance. Protection under a UM policy is a contractual right resting in the insured and co-existent with the protection under the workers' compensation act. A UM carrier does not stand in the tortfeasor's shoes and thus does not enjoy the benefits of the tortfeasor's immunity. The conditions for recovery under the UM policy can be satisfied even if the insured cannot prove all the elements of the tort against the uninsured driver.

Interpreting the Oklahoma UM statute, the court found the words "legally entitled to recover" simply meant the insured must establish fault on the part of the uninsured motorist which gave rise to damages and prove the extent of those damages. *Id.* at 1112. Recovery was based upon a contractual promise by the insurer to the insured to provide coverage in the event of injury or death resulting by fault of an uninsured motorist. "It would be manifestly unjust to permit the insurer to avoid its contractual duty as well as its statutorily imposed liability under 36

O.S. 1981 §3636, by its assertion of entitlement to third party tort immunity which would deny the insured's widow receipt of that for which the decedent has paid a premium." *Id.* at 1113.

The recovery of UM benefits is not limited to coverage paid for by the insured. UM benefits may also be sought even though the policy was procured and paid for by the employer. The Oklahoma Supreme Court found the estate of a fatally injured worker eligible for employer provided UM coverage even though a co-employee negligently caused the deadly wreck within the course and scope of employment. *Torres v. Kansas City Fire and Marine*, 849 P.2d 407 (Oklahoma Sup Ct. 1993). There, the decedent was a passenger in a company owned vehicle driven by a co-employee. The passenger's estate filed for and received workers' compensation benefits. The estate also brought an action against the carrier for the employer which had a UM endorsement on the vehicle. The UM carrier admitted the wreck was caused by the negligence of the co-employee driver. The carrier admitted the passenger was an insured under the policy by virtue of his occupancy in the vehicle. The trial court ruled as a matter of law recovery was proper under the UM endorsement and the matter of damages was tried to a jury. A jury verdict resulted for estate. The UM carrier appealed, arguing the UM endorsement was inapplicable because the negligent co-employee was immune from liability by virtue of the exclusivity provisions of the workers' compensation laws and thus the insured was not legally entitled to recover damages from the wrongdoer. Under the Oklahoma UM statute, the carrier was obligated only to provide coverage to an insured who is "legally entitled to recover damages" from the owners or operators of uninsured motor vehicles..." The Supreme Court of Oklahoma found the estate was entitled to benefits under the UM policy despite the co-employee negligent driver being immune from suit under the exclusivity provision of the state's workers' compensation act.

ROA Page 12

Relying on a previous decision, *Uptegraft v. Home Insurance Company*, 622 P.2d 681 (Oklahoma Sup. Ct. 1983), the court stated, "[W]e said the words legally entitled to recover simply mean that the insured must be able to establish fault on the part of the uninsured motorist which gives rise to damages and prove the extent of those damages." *Torres*, 849 P.2d at 410. The Court rejected the view the phrase required an insured to establish all the elements of a viable claim in tort.

The rationale for the court's decision was based upon contract interpretation aimed at effectuating the intention of the parties. The decedent was a passenger in the vehicle and thus an insured under the UM policy. The intention of the passenger, purchaser of the policy, and carrier, was for the insurance carrier to bear the loss for injury to an insured person uncompensated by an uninsured wrongdoer. Interpreting the phrase "legally entitled to recover damages" as simply requiring a showing of fault promotes the parties intention of providing coverage. To require more would result in the insured bearing the loss. Further, the court noted that UM benefits were recoverable despite the fact that the passenger did not pay any premiums for the UM coverage.

IV. UM Coverage Co-Exists with the Worker's Compensation Exclusive Remedy

To the extent that Defendants argue the Connellys' UM claim is precluded by the exclusivity provision of the Workers' Compensation Act, the argument lacks merit. First, the exclusivity provision of the Workers' Compensation Act does not bar UM claims. The exclusivity provision only bars tort actions. A UM claim is a contract action. *Wright v. Smallwood,* 308 S.C. 471, 419 S.E.2d 219 (Sup. Ct. 1992). Second, the Connellys have not sued (in tort or contract) Trezona or their mutual employer, Apple One. Thus, there is no breach of the exclusivity provision.

Third, the carefully balanced interests crafted by the Workers' Compensation Act are preserved despite allowance of UM benefits. Defendants cite *Machin v. Carus Corp*, 419 S.C. 527, 799 S.E.2d 468 (2017), to reiterate the underlying policy considerations of the statute: tort immunity for the employer while instituting a no fault scheme for work place injuries to insure swift and sure but limited compensation. Allowing UM coverage has no impact on the workers' compensation system. Trezona, Apple One and the workers' compensation carrier will be unaffected by the Connelly's receipt of UM benefits.[3]

Fourth, the Workers' Compensation Act anticipates recovery other than workers' compensation for workplace injuries. South Carolina Code §42-1-560 allows an injured plaintiff to seek an action for workplace injury against a third party despite receiving workers' compensation benefits. This is a recognition by the Legislature that workers' compensation benefits are limited in amount. They are designed to replace lost income and pay for medical expenses. Workers' compensation benefits, unlike tort damages, do not include loss of consortium, pain and suffering, emotional distress, loss of enjoyment of life or punitive damages. To suggest, as Defendants do, that workers' compensation will provide the Connellys with a remedy ignores the limited nature of that remedy. An insured is entitled to recover the same amount he would have recovered if the offending motorist had maintained liability insurance. *Ferguson v. State Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 101, 198 S.E.2d 522, 525 (1973).

Finally, Defendants' reliance on South Carolina Code §15-78-190 is misplaced. The South Carolina Tort Claims Act is the exclusive remedy to address injuries caused by tortious conduct of state actors. Defendants assert that §15-78-190 allows UM and underinsured benefits

[3] In situations where the employer provided the UM coverage, the UM carrier may be entitled to an offset for workers' compensation benefits provided. See *Sweetser v. S.C. Dept of Insurance Reserve Fund*, 390 S.C. 632, 703 S.E.2d 509 (Sup. Ct. 2010) and S.C. CODE ANN. §38-77-220.

if a tort claims remedy is inadequate. If the legislature wanted a similar provision in the Workers' Compensation Act, it could have inserted one. As discussed, the legislature did just that, including §42-1-560 in the Act.

CONCLUSION

The public policy expressed by the legislature in enacting the South Carolina Uninsured Motorist statute, §38-77-150, is to protect motorists harmed by uninsured drivers. Uninsured drivers can include those who are without liability coverage and financially irresponsible, as well as drivers cloaked with immunity from a tort suit. From the perspective of the injured motorist, the outcome from meeting either type of driver on the roadway is the same: no compensation. To effectuate the intent of the legislature this Court must interpret the critical language "legally entitled to recover" as simply a requirement to demonstrate fault. Such an interpretation protects a passenger occupying a vehicle with permission despite her driver being cloaked with workers' compensation immunity from a tort suit. At the same time, recovery of UM benefits does not frustrate the goals of the workers' compensation statutes. Moreover, allowing UM recovery meets the expectation of the parties and certainly allows those who paid for UM insurance premiums the benefit of their bargain.

IT IS THEREFORE ORDERED that Plaintiffs' Motion for Summary Judgment is GRANTED.

IT IS FURTHER ORDERED that Old Dominion Insurance Company and Main Street America Group's motion for summary judgment and Allstate Fire and Casualty Insurance Company's Motion for Summary Judgment are DENIED.

IT IS FURTHER ORDERED that Plaintiffs' cause of action for breach of contract is DISMISSED, as it has not been argued and is, therefore, deemed abandoned.

IT IS FURTHER ORDERED that this matter be scheduled for a trial on the issue of damages.

AND IT IS SO ORDERED.

The Honorable Jocelyn Newman

September 28, 2017
Columbia, South Carolina.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016- CP-40-05885

Stephany A. Connelly
James Connelly
PLAINTIFF(S)

The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Treona
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.

2017 OCT -2 AM 11:02

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)
		$
		$
		$

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.

Jocelyn Newman

Circuit Court Judge

2757
Judge Code

Sept. 27, 2017
Date

SCRCP Form 4C (02/2017)

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 2 day of Oct, 20 17 to attorneys of record or to parties (when appearing pro se) as follows:

John D. Kassel

Alfred Johnston Cox
Ashley Berry Stratton

Thomas Frank Dougall

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

Allstate.
You're in good hands.

Claim# 0396105223

To Whom It May Concern:

I, Olivia Leach, employee of Allstate Insurance Company Irving, Texas, do certify that the enclosed is a copy of policy and or declaration page for the above claim number, showing the coverages that were on the policy at the time of loss of 02/24/2015. The enclosed copy of policy and or declaration page was printed and mailed through Allstate's Output Processing Center.

Olivia Leach
Claim Support

State of Texas, County of Dallas

On this 8th day of December 2016, before me personally appeared Olivia Leach to me known to be the person who executed the foregoing instrument and acknowledged that he/she executed the same as a free act and deed.

PATRICIA TORRES
Notary Public, State of Texas
My Commission Expires
October 31, 2017

Patricia Torres
Notary Public

G52-3

Allstate.
You're in good hands.

Information as of July 29, 2014
Policyholder(s) Page **1** of 3
James M &/Or Stephany Connelly
Policy number
[redacted]

Your Allstate agency is
Giles Ins Agy
(803) 798-4600
[redacted]

Giles Ins Agy
3510 Bush River Rd
Columbia SC 29210

JAMES M &/OR STEPHANY
CONNELLY
[redacted]

You Can Continue Enjoying Great Savings and Safe Driving Rewards

Here's the Allstate® Your Choice Auto Insurance Renewal Offer

We're pleased to offer to renew your Allstate Fire and Casualty Insurance Company automobile policy with the Your Choice Auto Platinum Protection package for another six months, so you can continue enjoying extra savings and rewards, including*:

- Up to $500 off your collision coverage deductible
- With safe driving, a credit of up to 5% can be applied to your next renewal premium
- Enhanced accident forgiveness—Your rates won't go up just because of an accident

**This is a brief description and not part of any contract of insurance. Features are optional and subject to terms and conditions. Safe Driving Bonus is based on eligible premium for prior policy period.*

And remember that you're getting these features on top of Allstate's quality coverage and 24/7 claim service. You can also qualify for a premium discount at your next renewal by having your insurance payments automatically deducted from your bank account through the Allstate® Easy Pay Plan. Just contact your Allstate agent or representative, or log into your account at allstate.com to apply. If you're already enrolled in the Allstate® Easy Pay Plan the discount has been applied to your policy.

How to Contact Us

The Platinum Protection package is just one of many Your Choice Auto options available. If you have a question or would like additional information about the Platinum Protection package or any package options, please contact your Allstate representative at (803) 798-4600. The enclosed Checklist outlines several additional convenient contact options. It also outlines what's in this package and walks you through any "next steps" you

(continued)

Policy number: [redacted]
Policy effective date: September 1, 2014
Your Allstate agency is Giles Ins Agy
(803) 798-4600

may need to take. And for 24-hour-a-day, 7-day-a-week service and information, just call 1-800-ALLSTATE (1-800-255-7828).

We Appreciate Your Business

Thank you for choosing Allstate—where you get the peace of mind of knowing you, your family and your vehicle are protected by an established, experienced insurance provider offering service when and how you want it.

We appreciate the opportunity to help you protect what you have today and help prepare you for the future.

Sincerely,

Steven P. Sorenson
President, Allstate Fire and Casualty Insurance Company

RA732-2

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140730A003721
1100000A303721027SC000140730235246004038001008026667

Policy number: [redacted]
Policy effective date: September 1, 2014
Your Allstate agency is Giles Ins Agy
(803) 798-4600

Allstate.
You're in good hands.

Your Insurance Coverage Checklist

We're happy to have you as an Allstate customer! This checklist outlines what's in this package and provides answers to some basic questions, as well as any "next steps" you may need to take.

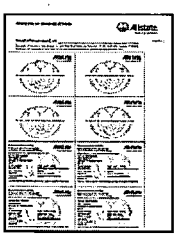
☐ **What's in this package?**
See the *guide to your welcome package* below for the documents that are included. ***Next steps:*** review your *Policy Declarations* to confirm you have the coverages, coverage limits, premiums and savings that you requested and expected. Read any *Endorsements* or *Important Notices* to learn about new policy changes, topics of special interest, as well as required communications. Keep all of these documents with your other important insurance papers.

☐ **Am I getting all the discounts I should?**
Confirm with your Allstate Agent that you're benefiting from all the discounts you're eligible to receive.

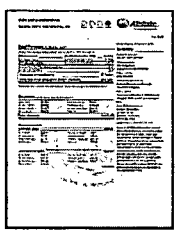
☐ **What about my bill?**
Unless you've already paid your premium in full, we'll send your bill separately. ***Next steps:*** please pay the minimum amount by the due date listed on it. You can also pay your bill online at allstate.com or by calling 1-800-ALLSTATE (1-800-255-7828). If you're enrolled in the Allstate® Easy Pay Plan, we'll send you a statement detailing your payment withdrawal schedule.

☐ **What if I have questions?**
You can either contact your Allstate Agent or call us 24/7 at 1-800-ALLSTATE (1-800-255-7828) with questions about your coverage, or to update your coverages, limits or deductibles. Or visit us online at allstate.com.

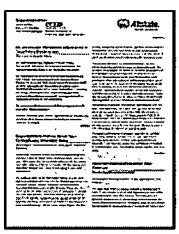
A guide to your renewal package



Proof of Insurance ID Cards
Your insurance cards are legally required, so please keep them in your vehicle at all times.



Policy Declarations*
The Policy Declarations lists policy details, such as your specific drivers, vehicles and coverages.



Important Notices
We use these notices to call attention to particularly important coverages, policy changes and discounts.

To make it easier to see where you may have gaps in your protection, we've highlighted any coverages you do not have in the Coverage Detail section in the enclosed Policy Declarations.

027 010 039
140730A003721
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Thank you for choosing Allstate

Allstate. You're in good hands.

Proof of Insurance Card

For your convenience, two insurance cards have been included for each vehicle. State law requires that one of these cards be kept in each vehicle. Please place them in your vehicles by the effective date.

IDSC

Allstate. You're in good hands.

Please use the printed Insurance Cards below.

Allstate. You're in good hands.

Please use the printed Insurance Cards below.

Allstate. You're in good hands.

Please use the printed Insurance Cards below.

Allstate. You're in good hands.

Please use the printed Insurance Cards below.

South Carolina Automobile Insurance Identification Card

Allstate. You're in good hands.

Allstate Fire and Casualty Insurance Company
James M &/Or Stephany Connelly
[redacted]

POLICY NUMBER [redacted]
EFFECTIVE DATE
09/01/14
EXPIRATION DATE
03/01/15

YEAR / MAKE / MODEL
2011 Cadillac Escalade
VEHICLE ID NUMBER [redacted]

This card must be carried in the vehicle at all times as evidence of insurance.

South Carolina Automobile Insurance Identification Card

Allstate. You're in good hands.

Allstate Fire and Casualty Insurance Company
James M &/Or Stephany Connelly
[redacted]

POLICY NUMBER [redacted]
EFFECTIVE DATE
09/01/14
EXPIRATION DATE
03/01/15

YEAR / MAKE / MODEL
2011 Cadillac Escalade
VEHICLE ID NUMBER [redacted]

This card must be carried in the vehicle at all times as evidence of insurance.

South Carolina Automobile Insurance Identification Card

Allstate. You're in good hands.

Allstate Fire and Casualty Insurance Company
James M &/Or Stephany Connelly
[redacted]

POLICY NUMBER [redacted]
EFFECTIVE DATE
09/01/14
EXPIRATION DATE
03/01/15

YEAR / MAKE / MODEL
2012 Acura Mdx
VEHICLE ID NUMBER [redacted]

This card must be carried in the vehicle at all times as evidence of insurance.

South Carolina Automobile Insurance Identification Card

Allstate. You're in good hands.

Allstate Fire and Casualty Insurance Company
James M &/Or Stephany Connelly
[redacted]

POLICY NUMBER [redacted]
EFFECTIVE DATE
09/01/14
EXPIRATION DATE
03/01/15

YEAR / MAKE / MODEL
2012 Acura Mdx
VEHICLE ID NUMBER [redacted]

This card must be carried in the vehicle at all times as evidence of insurance.

Policy number: [redacted]
Policy effective date: September 1, 2014
Your Allstate agency is Giles Ins Agy
(803) 798-4600

Please use the printed Insurance Cards below.

Please use the printed Insurance Cards below.

Please use the printed Insurance Cards below.

Please use the printed Insurance Cards below.

If you have an accident or loss:

- Get medical attention if needed.
- Notify the police immediately.
- Obtain names, addresses, phone numbers (work & home) and license plate numbers of all persons involved, including passengers and witnesses.
- Call 1-800-ALLSTATE (1-800-255-7828), logon to allstate.com or contact your agent or producer as soon as possible.
  Giles Ins Agy
  (803) 798-4600
  3510 Bush River Rd
  Columbia, SC 29210
- **The coverage provided by your policy meets South Carolina's minimum financial responsibility requirements.**

If you have an accident or loss:

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- Obtain names, addresses, phone numbers (work & home) and license plate numbers of all persons involved, including passengers and witnesses.
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  Giles Ins Agy
  (803) 798-4600
  3510 Bush River Rd
  Columbia, SC 29210
- **The coverage provided by your policy meets South Carolina's minimum financial responsibility requirements.**

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Renewal auto policy declarations

Platinum Gold Standard Value Plan

Allstate. You're in good hands.

Your policy effective date is September 1, 2014

Total Premium for the Policy Period

Please review your insured vehicles and verify their VINs are correct.

Vehicles covered	*Identification Number (VIN)*	*Premium*
2012 Acura Mdx	[redacted]	$326.67
2011 Cadillac Escalade		532.98
2014 Caliber		11.06
If you pay in installments*		**$870.71**
If you pay in full (includes FullPay® Discount)		**$817.17**

**If you pay less than the Pay in Full amount, you will be charged an installment fee(s).*

Discounts (included in your total premium)

Passive Restraint	**$2.67**	New Car	**$15.11**
Multiple Policy	**$35.23**	Prior Insurance Carrier	**$35.25**
Antilock Brakes	**$43.82**	Allstate Easy Pay Plan	**$20.74**
The Good Hands People® Program	**$42.76**	Good Payer	**$35.25**
Premier Plus	**$246.70**	Preferred Package	**$146.92**
Total discounts			**$624.45**

Discounts per vehicle

2012 Acura Mdx				**$241.64**
Passive Restraint	$1.36	Multiple Policy	$12.18	
Antilock Brakes	$18.75	The Good Hands People® Program	$14.81	
Premier Plus	$97.05	New Car	$15.11	
Prior Insurance Carrier	$12.20	Allstate Easy Pay Plan	$7.18	
Good Payer	$12.20	Preferred Package	$50.80	
2011 Cadillac Escalade				**$382.81**
Passive Restraint	$1.31	Multiple Policy	$23.05	
Antilock Brakes	$25.07	The Good Hands People® Program	$27.95	
Premier Plus	$149.65	Prior Insurance Carrier	$23.05	
Allstate Easy Pay Plan	$13.56	Good Payer	$23.05	
Preferred Package	$96.12			

Information as of July 29, 2014

Summary

Named Insured(s)
James M &/Or Stephany Connelly

Mailing address
[redacted]

Policy number
[redacted]

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 **September 1, 2014** through **March 1, 2015** at 12:01 a.m. standard time

Your Allstate agency is
Giles Ins Agy
3510 Bush River Rd
Columbia SC 29210
(803) 798-4600
[redacted]

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.

SC010RBD

Renewal auto policy declarations
Policy number: [redacted]
Policy effective date: September 1, 2014
Your Allstate agency is Giles Ins Agy
(803) 798-4600

Listed drivers on your policy

James Connelly
Stephany Connelly

Excluded drivers from your policy

None

Coverage detail for 2012 Acura Mdx

Coverage	*Limits*	*Deductible*	*Premium*
Automobile Liability Insurance			
Bodily Injury	$250,000 each person $500,000 each accident	Not applicable	$57.94
Property Damage	$100,000 each accident	Not applicable	$32.74
Uninsured Motorists Insurance			$19.60
Bodily Injury	$250,000 each person $500,000 each accident	Not applicable	
Property Damage	$100,000 each accident	$200	
Underinsured Motorists Insurance		Not applicable	$52.20
Bodily Injury	$100,000 each person $300,000 each accident		
Property Damage	$50,000 each accident		
Auto Collision Insurance	Actual cash value	$500	$73.39
(Safe Driving Deductible Reward - deductible reduction amount available is $200)			
Auto Comprehensive Insurance	Actual cash value	$250	$58.40
Towing and Labor Costs	$100 each disablement	Not applicable	$6.40
Rental Reimbursement	up to $30 per day for a maximum of 30 days	Not applicable	$16.90
New Car Expanded Protection		Not applicable	$5.93
Automobile Medical Payments	$1,000 each person	Not applicable	$3.17
Customizing Equipment - Collision	**Not purchased***		
Customizing Equipment - Comprehensive	**Not purchased***		
Sound System	**Not purchased***		

(continued)

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Renewal auto policy declarations
Policy number: [redacted]
Policy effective date: September 1, 2014
Your Allstate agency is Giles Ins Agy
(803) 798-4600

Allstate. You're in good hands.

Coverage	Limits	Deductible	Premium
Tape	**Not purchased***		
Total premium for 2012 Acura Mdx			**$326.67**

This coverage can provide you with valuable protection. Talk to your agent about the availability of this coverage and whether it meets your needs.

VIN [redacted]

Lienholder
American Honda Fin Corp (Retail)

Rating information
- Owns residence
- This vehicle is driven over 7,500 miles per year, 0-3 miles to work/school, married female age 35, good driver rate

Coverage detail for 2011 Cadillac Escalade

Coverage	Limits	Deductible	Premium
Automobile Liability Insurance			
Bodily Injury	$250,000 each person $500,000 each accident	Not applicable	$72.75
Property Damage	$100,000 each accident	Not applicable	$42.39
Uninsured Motorists Insurance			$19.60
Bodily Injury	$250,000 each person $500,000 each accident	Not applicable	
Property Damage	$100,000 each accident	$200	
Underinsured Motorists Insurance		Not applicable	$52.20
Bodily Injury	$100,000 each person $300,000 each accident		
Property Damage	$50,000 each accident		
Auto Collision Insurance	Actual cash value	$500	$110.43
(Safe Driving Deductible Reward - deductible reduction amount available is $200)			
Auto Comprehensive Insurance	Actual cash value	$250	$209.30
Towing and Labor Costs	$100 each disablement	Not applicable	$6.40
Rental Reimbursement	up to $30 per day for a maximum of 30 days	Not applicable	$16.90
New Car Expanded Protection	**Not purchased***		
Automobile Medical Payments	$1,000 each person	Not applicable	$3.01
Customizing Equipment - Collision	**Not purchased***		
Customizing Equipment - Comprehensive	**Not purchased***		
Sound System	**Not purchased***		

(continued)

SCOTORBD

Renewal auto policy declarations
Policy number: [redacted]
Policy effective date: September 1, 2014
Your Allstate agency is Giles Ins Agy
(803) 798-4600

Coverage	*Limits*	*Deductible*	*Premium*
Tape	**Not purchased***		
Total premium for 2011 Cadillac Escalade			**$532.98**

This coverage can provide you with valuable protection. Talk to your agent about the availability of this coverage and whether it meets your needs.

VIN [redacted]

Lienholder
Bank of America Na

Rating information
- Owns residence
- This vehicle is driven over 7,500 miles per year, 0-3 miles to work/school, married male age 34, good driver rate

Coverage detail for 2014 Caliber

Coverage	*Limits*	*Deductible*	*Premium*
Auto Collision Insurance	Actual cash value	$50	$8.40
(Safe Driving Deductible Reward - deductible reduction amount available is $200)			
Auto Comprehensive Insurance	Actual cash value	$50	$2.66
Total premium for 2014 Caliber			**$11.06**

VIN [redacted]

Rating information
- Owns residence
- This vehicle is used as a trailer

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 - AP4780-1
- Amendatory Endorsement - AP4838
- Dividend Provision - PDU79
- New Car Expanded Protection Endorsement - AU12876

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.

▶Your Platinum Protection package contains the following features:
- Accident Waiver Enhancement Plus feature
- Safe Driving Deductible Reward feature
- Safe Driving Bonus feature

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Renewal auto policy declarations
Policy number: [redacted]
Policy effective date: September 1, 2014
Your Allstate agency is Giles Ins Agy
(803) 798-4600

Allstate.
You're in good hands.

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

SCOTORBD

027 010 039
140730A003721
1100000A303721027SC000140730235246004038007008026668

Important notices

Policy number: [redacted]
Policy effective date: September 1, 2014
Your Allstate agency is Giles Ins Agy
(803) 798-4600

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.

X67094-1

We're Applying the Good Payer Discount to Your Policy

Congratulations! You've once again earned the Good Payer Discount by consistently paying your insurance premiums on time for the last twelve months. We have added this discount back to your policy as of renewal effective date shown on the enclosed Policy Declarations.

Hang on to the Good Payer Discount savings—consider the Allstate® Easy Pay Plan or pay-by-phone.

We want you to keep saving money with the Good Payer Discount, so we offer several ways to make bill paying easier. Why not apply for the Allstate® Easy Pay Plan, which allows us to deduct your insurance premiums each month from your checking account? You'll save on postage, and you'll have fewer checks to write.

You can also pay your premium over the phone with either a check or credit card—just call us toll-free at 1-800-ALLSTATE (1-800-255-7828). You'll be asked for your policy number when you pay by phone, so it's a good idea to have your policy documents in hand before you call.

A few reminders about how the Good Payer Discount works:

- You will continue to receive the discount if we do not send you a cancellation notice for non-payment of premium (the notice we send when we don't receive your payment on time). Again, we hope you'll consider the automatic bill payment plan we offer.
- If we send you a cancellation notice for non-payment of premium but you make a payment and your policy renews, the discount will be removed from your policy at the subsequent renewal. This change may cause your overall insurance premium to increase.
- If at any time this discount is removed from your policy, it will be added back to your policy at the next renewal if no cancellation notices for non-payment of premium have been sent to you within the most recent twelve-month period ending 34 days prior to your renewal effective date.

If you have any questions about this discount, or if you'd like more information about the different bill paying options available to you, please contact your Allstate representative. Or, call Allstate toll-free at 1-800-ALLSTATE (1-800-255-7828).

X68232


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Allstate Fire and Casualty Insurance Company Auto Policy

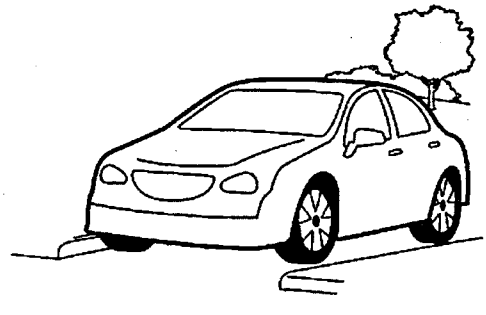
SOUTH CAROLINA

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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

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Claim Satisfaction Guarantee Amendatory Endorsement – AP4780-1

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, 2015 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.

Amendatory Endorsement – AP4838

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, vouchers, and gift cards, 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.

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.

New Car Expanded Protection Endorsement – AU12876

When **New Car Expanded Protection** is shown on **your** Policy Declarations, the following changes are made to the **Protection Against Loss To The Auto** section of **your** policy:

I. The following coverage is added:

New Car Expanded Protection
If **you** have both Auto Collision Insurance and Auto Comprehensive Insurance in effect under this policy at the time of loss to **your auto** and the loss is covered under either of those coverages, **we** will pay for loss to that **auto** as described in this endorsement if:

1. **your** Policy Declarations indicates that New Car Expanded Protection is in effect for that **auto**;
2. **you** are the original owner of that **auto**, or **you** lease that **auto**;
3. that **auto** was not previously titled; and
4. the loss occurs during a policy period that began any time during a calendar year in which that **auto** was two model years old or less.

New Car Expanded Protection does not automatically apply to any replacement **auto** or additional **auto you** acquire during the policy period.

A. **Repair Provision**
In the event of a covered loss, other than a total loss, due to physical damage to the **auto** to which New Car Expanded Protection applies, **we** will pay to repair that **auto**, without a deduction for depreciation. This Repair Provision does not apply to loss caused by fire, theft, larceny or flood.

The most **we** will pay to repair the **auto** will be the lesser of the following, reduced by any amount paid or payable under the Auto Collision Insurance or Auto Comprehensive Insurance of this policy and any deductible for which **you** are responsible under the Auto Collision Insurance or Auto Comprehensive Insurance of this policy:

1. 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
2. the actual cash value of the **auto** at the time of loss, which may include a deduction for depreciation.

We reserve the right to repair or replace the damaged property or part, or to pay for the loss in money.

If **we**, at **our** option, elect 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 from the loss and/or repair or replacement.

B. **Replacement Provision**
In the event of a covered total loss due to physical damage to the **auto** to which New Car Expanded Protection applies, **we** will pay to replace that **auto.** This Replacement Provision does not apply to loss caused by fire, theft, larceny or flood. This Replacement Provision does not apply to a leased vehicle.

The amount **we** will pay to replace the **auto** will not exceed the cost of a new **auto** of the same make and model with the same equipment or, if a new **auto** of the same make and model with the same equipment is not available, the cost of a new **auto** that is:
1. similar in size, class, body type and equipment; and
2. similar in price to the price **you** paid for the **auto** being replaced, as adjusted for inflation, but not to exceed an amount equal to 110% of the Manufacturer's Suggested Retail Price of the **auto** being replaced.

A new **auto** is one that has not been previously titled and is of the latest model year available at the time of the loss.

Any amounts payable under this Replacement Provision will be reduced by any amount paid or payable under the Auto Collision Insurance or Auto Comprehensive Insurance of this policy, any deductible for which **you** are responsible under the Auto Collision Insurance or Auto Comprehensive Insurance of this policy, and the dollar amount of unrepaired damage which occurred prior to the total loss of **your auto.**

C. **Loan or Lease Gap Provision**
In the event of a covered total loss due to physical damage to, or theft of, the **auto** to which New Car Expanded Protection applies, if the amount **you** owe at the time of loss under the terms of an auto loan or auto lease agreement to which that **auto** is subject exceeds the actual cash value of the **auto** at the time of the loss, then **we** will pay the difference between these amounts. This Loan or Lease Gap provision applies only to the original auto loan or auto lease written on **your auto. We** may pay **you** and the lienholder or lessor named on the Policy Declarations.

Any amounts payable under this Loan or Lease Gap Provision will be reduced by:
1. overdue loan or lease payments and the financial penalties associated with those overdue payments;
2. the transfer or rollover of a previous outstanding loan or lease balance from another vehicle to the original loan or lease for the **auto** described on the Policy Declarations;
3. the dollar amount of unrepaired damage which occurred prior to the total loss of **your auto**;
4. all refunds paid or payable to **you** as a result of the early termination of the auto loan or lease agreement or, to the extent financed, as a result of the early termination of any financed warranty or extended service agreement on **your auto**; and
5. any amount paid or payable under the Replacement Provision of this endorsement.

II. The following is added to the **If There Is Other Insurance** provision:

New Car Expanded Protection is excess over any other collectible insurance.

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.

Clough, Nancy

From: ClaimCenterAdmin@msagroup.com
Sent: Monday, September 14, 2015 2:54 PM
To: CertPolicyReq
Subject: Certified Policy Request

A Certified Policy is requested
Policy Number: [redacted]
Effective Date: 2014-03-09
Expiration Date: 2015-03-09
Date of Loss: 2015-02-24
Additional Instructions: null
Needed By: 2015-09-18
Return To: Steve Singleton - Richmond, VA

THE MAIN STREET AMERICA GROUP

NGM Insurance Company
Old Dominion Insurance Company
Main Street America Assurance Company
MSA Insurance Company
Information Systems and Services Corporation

Trusted Choice

September 16, 2015

TO WHOM IT MAY CONCERN:

This is to certify that the attached is a true and accurate copy of a Personal Auto policy issued to Debbie Cohn. This policy was issued under policy number [redacted] for the policy term 03/09/14 to 03/09/15.

Very truly yours,

Nancy Clough
Operations Supervisor
Integrated Customer Solutions
[redacted]

/a

enclosures

OLD DOMINION INSURANCE CO.
P.O. BOX 16100
JACKSONVILLE, FL, 32245-6100

RENEWAL EFFECTIVE 03/09/2014
PERSONAL AUTO POLICY
ACCOUNT NUMBER [redacted]
POLICY PERIOD: 12:01 AM STANDARD TIME
FROM 03/09/2014 TO 03/09/2015

POLICYHOLDER SINCE 03/09/2012

NAMED INSURED

DEBBIE COHN
[redacted]

AGENCY

390176003
VISTA INSURANCE GROUP
P O BOX 5837
COLUMBIA, SC 29250
803 - 726 - 0550

THIS IS NOT A BILL

Description of Auto(s) or Trailer(s)

AUTO	YEAR	TRADE NAME	MODEL	BODY TYPE	VEHICLE IDENTIFICATION NUMBER	ORIG. COST NEW	SYMBOLS LS1	LS2	PH1	PH2	RATING CLASS	SUB	TERR	USE	AT	PR
1	04	NISSA	PATHFI	4W	[redacted]		315	520	15	15				3	3	Y
2	12	JEEP	COMPAS	4W			300	490	14	14				1	2	Y

Coverage provided only where both Limit of Liability and Premium are shown.

PART	(REFER TO FORM PP-0001 FOR COVERAGE DEFINITIONS)	1-04 NISSA	2-12 JEEP
A	LIABILITY		
	$100,000 EACH PERSON $300,000 EACH ACCIDENT	$233.00	$234.00
	PROPERTY DAMAGE $50,000 EACH ACCIDENT	$152.00	$163.00
B	MEDICAL PAYMENTS		
	$5,000 EACH PERSON	$30.00	$23.00
C	UNINSURED MOTORISTS		
	$100,000 EACH PERSON $300,000 EACH ACCIDENT	$17.00	$17.00
	PROPERTY DAMAGE $50,000 SUBJECT TO $200 DEDUCTIBLE	$11.00	$11.00
	UNDERINSURED MOTORISTS		
	$100,000 EACH PERSON $300,000 EACH ACCIDENT	$47.00	$47.00
	PROPERTY DAMAGE $50,000 EACH ACCIDENT	$11.00	$11.00
	LIMITS MIGHT BE REDUCED BY POLICY PROVISIONS OR LAW		
D	DAMAGE TO YOUR AUTO		
	COLLISION LOSS		
	ACV** LESS $500 DEDUCTIBLE - STANDARD	$139.00	$248.00
	COMPREHENSIVE (EXCLUDING COLLISION)		
	ACV** LESS $500 DEDUCTIBLE	$110.00	$137.00
	TOWING AND LABOR - $75 PER DISABLEMENT	$8.00	$8.00
	TRANSPORTATION EXPENSES $30/$900	$8.00	$8.00
	TOTAL PREMIUM BY VEHICLE	$766.00	$907.00

The Auto(s) or Trailers(s) described in this policy is (are) principally garaged at the above address unless otherwise stated here.

Auto Any loss under Physical Damage is payable as interest may appear to the Named Insured and:
2 Ally Financial, P.O. Box 8132, Cockeysville, MD 21030

12 MONTHS PREMIUM $2,527.00

Endorsements made part of this policy at time of issue:
PP0001(06-98), 61-8643 (03-07), PP0488(05-13), PP0465 (06-98), PP1301(12-99), PP0302 (06-98), PP0303 (04-86), PP0341(11-96), 61-8599 (09-11)

NO	DRIVER NAME	LICENSE NUMBER	DOB			SX	MR	VR	SC	DT	GS	DD	MD
1	DEBBIE COHN	[redacted]	01	22	56	F	M	3	N	N	N	N	N
2	HARRY TREZONA		04	20	88	M	S	1	N	N	N	N	N

** ACTUAL CASH VALUE

61-7621 (01/10) SEE REVERSE FOR ADDITIONAL INFORMATION
DATE PROCESSED 02/04/2014

INSURED

COUNTERSIGNATURE:
PG 1/2

AB 39

9/17/2015 9:04:04 AM

OLD DOMINION INSURANCE CO.
P.O. BOX 16100
JACKSONVILLE, FL, 32245-6100

RENEWAL
PERSONAL AUTO POLICY
ACCOUNT NUMBER [redacted]
POLICY PERIOD: 12:01 AM STANDARD TIME
FROM 03/09/2014 TO 03/09/2015

EFFECTIVE 03/09/2014

POLICYHOLDER SINCE 03/09/2012

NAMED INSURED

DEBBIE COHN
[redacted]

AGENCY

390176003
VISTA INSURANCE GROUP
P O BOX 5837
COLUMBIA, SC 29250
803 - 726 - 0550

THIS IS NOT A BILL

Description of Auto(s) or Trailer(s)

AUTO	YEAR	TRADE NAME	MODEL	BODY TYPE	VEHICLE IDENTIFICATION NUMBER	ORIG. COST NEW	SYMBOLS LS1	LS2	PH1	PH2	RATING CLASS	SUB	TERR	USE	AT	PR
3	08	VOLKS	PASSAT	SW	[redacted]		285	485	15	15				3	3	Y

Coverage provided only where both Limit of Liability and Premium are shown.

PART (REFER TO FORM PP-0001 FOR COVERAGE DEFINITIONS)	3-08 VOLKS
A LIABILITY	
$100,000 EACH PERSON $300,000 EACH ACCIDENT	$244.00
PROPERTY DAMAGE $50,000 EACH ACCIDENT	$147.00
B MEDICAL PAYMENTS	
$5,000 EACH PERSON	$23.00
C UNINSURED MOTORISTS	
$100,000 EACH PERSON $300,000 EACH ACCIDENT	$17.00
PROPERTY DAMAGE $50,000 SUBJECT TO $200 DEDUCTIBLE	$11.00
UNDERINSURED MOTORISTS	
$100,000 EACH PERSON $300,000 EACH ACCIDENT	$47.00
PROPERTY DAMAGE $50,000 EACH ACCIDENT	$11.00
LIMITS MIGHT BE REDUCED BY POLICY PROVISIONS OR LAW	
D DAMAGE TO YOUR AUTO	
COLLISION LOSS	
ACV** LESS $500 DEDUCTIBLE - STANDARD	$205.00
COMPREHENSIVE (EXCLUDING COLLISION)	
ACV** LESS $500 DEDUCTIBLE	$133.00
TOWING AND LABOR - $75 PER DISABLEMENT	$8.00
TRANSPORTATION EXPENSES $30/$900	$8.00
TOTAL PREMIUM BY VEHICLE	$854.00

The Auto(s) or Trailers(s) described in this policy is (are) principally garaged at the above address unless otherwise stated here:

Auto Any loss under Physical Damage is payable as interest may appear to the Named Insured and:

12 MONTHS PREMIUM $2,527.00

Endorsements made part of this policy at time of issue:
PP0001(06-98), 61-8643 (03-07), PP0488(05-13), PP0465 (06-98), PP1301(12-99), PP0302 (06-98), PP0303 (04-86), PP0341(11-96), 61-8599 (09-11)

NO	DRIVER NAME	LICENSE NUMBER	DOB			SX	MR	VR	SC	DT	GS	DD	MD
1	DEBBIE COHN	[redacted]	01	22	56	F	M	3	N	N	N	N	N
2	HARRY TREZONA		04	20	88	M	S	1	N	N	N	N	N

** ACTUAL CASH VALUE

61-7621 (01/10) SEE REVERSE FOR ADDITIONAL INFORMATION
DATE PROCESSED 02/04/2014

INSURED

COUNTERSIGNATURE:
PG 2/2

AB 39

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LIBERALIZATION CLAUSE

"If the company revises this policy form with respect to policy provisions, endorsements or rules by which the insurance hereunder could be extended or broadened without additional premium charge, such insurance as is afforded hereunder shall be so extended or broadened effective immediately upon approval of such revision during the policy period by the appropriate insurance supervisory authority."

***LOSS PAYABLE CLAUSE PP 0305 (8/86) / AIP 1003 (8/86)**

Loss Payee:

Loss or damage under this policy shall be paid, as interest may appear, to you and the loss payee shown in the Declarations or in this endorsement. This insurance with respect to the interest of the loss payee, shall not become invalid because of your fraudulent acts or omissions unless the loss results from your conversion, secretion or embezzlement of "your covered auto." However, we reserve the right to cancel the policy as permitted by policy terms and the cancellation shall terminate this agreement as to the loss payee's interest. We will give the same advance notice of cancellation to the loss payee as we give to the named insured shown in the Declarations.
When we pay the loss payee we shall, to the extent of payment, be subrogated to the loss payee's rights of recovery.

OLD DOMINION INSURANCE COMPANY

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative. Old Dominion Insurance Company is a stock insurance company with headquarters located at:

4601 Touchton Road, East, Suite 3300
P.O. Box 16100
Jacksonville, FL 32245-6100
Telephone: (904) 642-3000

If you have questions about your policy, contact your agent at the address and phone number shown on the Declaration page. You may also contact the company at the address and phone number shown above.

Bruce R. Fox
Secretary

Gregg A. Effner
President

60-5231 (9/11)

WHEN THE FRONT OF THIS IS A RENEWAL OR AMENDED DECLARATION, YOUR POLICY HAS BEEN UPDATED TO SHOW CURRENT INFORMATION. IT SHOULD BE KEPT IN A SAFE PLACE ALONG WITH YOUR OTHER INSURANCE RECORDS.

THE APPROPRIATE POLICY PROVISIONS OR POLICY AGREEMENTS, ALONG WITH RELATED FORMS, CONTAINING AGREEMENTS AND CONDITIONS, WERE PREVIOUSLY ISSUED TO YOU. THOSE THAT HAVE NOT CHANGED AND STILL APPLY HAVE NOT BEEN INCLUDED AGAIN. WE ARE ENCLOSING ONLY THOSE FORMS THAT APPLY FOR THE FIRST TIME OR HAVE CHANGED DURING THE PAST POLICY TERM. IF, HOWEVER, YOU WOULD LIKE THE COMPLETE SET, PLEASE CONTACT YOUR AGENT.

THE ENDORSEMENTS APPEARING IN STATE COVERAGE PARTS AND THE FORMS SHOWN ON THE DECLARATIONS APPLY ONLY WHEN THE COVERAGES TO WHICH THEY PERTAIN ARE IDENTIFIED ON THE DECLARATION PAGE WITH A PREMIUM CHARGE OR THE ABBREVIATION "INCL".

IF YOUR POLICY IS BEING AMENDED THE REASON FOR THE CHANGE IS PRINTED ON THIS DECLARATION PAGE.

If you are billed directly by the company, your premium billing will be mailed to you in about two weeks. At that time, you will be offered the option of our convenient monthly installment plan or payment in full, whichever you choose.

SO. CAROLINA AUTOMOBILE INSURANCE IDENTIFICATION CARD
POLICY MEETS SC FINANCIAL RESPONSIBILITY REQUIREMENTS

COMPANY **40231** **OLD DOMINION INSURANCE CO.**
JACKSONVILLE, FL. 32245-6100

POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE
01G0167F	03/09/2014	03/09/2015

YEAR	MAKE/MODEL	VEHICLE IDENTIFICATION NUMBER
2004	NISSA PATHFI	[redacted]

AGENCY/COMPANY ISSUING CARD
VISTA INSURANCE GROUP
P O BOX 5837
COLUMBIA SC 29250
803 - 726 - 0550

INSURED

DEBBIE COHN
[redacted]

SEE IMPORTANT NOTICE ON REVERSE SIDE

SO. CAROLINA AUTOMOBILE INSURANCE IDENTIFICATION CARD
POLICY MEETS SC FINANCIAL RESPONSIBILITY REQUIREMENTS

COMPANY **40231** **OLD DOMINION INSURANCE CO.**
JACKSONVILLE, FL. 32245-6100

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VISTA INSURANCE GROUP
P O BOX 5837
COLUMBIA SC 29250
803 - 726 - 0550

INSURED

DEBBIE COHN
[redacted]

SEE IMPORTANT NOTICE ON REVERSE SIDE

THIS CARD MUST BE KEPT IN THE INSURED

VEHICLE AND PRESENTED UPON DEMAND

IN CASE OF ACCIDENT: Report all accidents to your Agent/Company as soon as possible. Obtain the following information:

1. Name and address of each driver, passenger and witness.
2. Name of Insurance Company and policy number for each vehicle involved.

To report a claim call: (877) 4CLAIMS or (877) 425-2467

ACORD 50 (1/83) ACORD CORPORATION 1983

THIS CARD MUST BE KEPT IN THE INSURED

VEHICLE AND PRESENTED UPON DEMAND

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ACORD 50 (1/83) ACORD CORPORATION 1983

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COMPANY **40231** **OLD DOMINION INSURANCE CO.**
JACKSONVILLE, FL. 32245-6100

POLICY NUMBER **01G0167F**
EFFECTIVE DATE **03/09/2014**
EXPIRATION DATE **03/09/2015**

YEAR **2012**
MAKE/MODEL **JEEP COMPAS**
VEHICLE IDENTIFICATION NUMBER [redacted]

803 - 726 - 0550

AGENCY/COMPANY ISSUING CARD
VISTA INSURANCE GROUP
P O BOX 5837
COLUMBIA SC 29250

INSURED

DEBBIE COHN
[redacted]

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POLICY MEETS SC FINANCIAL RESPONSIBILITY REQUIREMENTS

COMPANY **40231** **OLD DOMINION INSURANCE CO.**
JACKSONVILLE, FL. 32245-6100

POLICY NUMBER **01G0167F**
EFFECTIVE DATE **03/09/2014**
EXPIRATION DATE **03/09/2015**

YEAR **2012**
MAKE/MODEL **JEEP COMPAS**
VEHICLE IDENTIFICATION NUMBER [redacted]

803 - 726 - 0550

AGENCY/COMPANY ISSUING CARD
VISTA INSURANCE GROUP
P O BOX 5837
COLUMBIA SC 29250

INSURED

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[redacted]

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ACORD 50 (1/83) ACORD CORPORATION 1983

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ROA Page 73

SO. CAROLINA AUTOMOBILE INSURANCE IDENTIFICATION CARD
POLICY MEETS SC FINANCIAL RESPONSIBILITY REQUIREMENTS

COMPANY 40231 OLD DOMINION INSURANCE CO.
JACKSONVILLE, FL. 32245-6100

POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE
01G0167F	03/09/2014	03/09/2015

YEAR	MAKE/MODEL	VEHICLE IDENTIFICATION NUMBER
2008	VOLKS PASSAT	[redacted]

AGENCY/COMPANY ISSUING CARD
VISTA INSURANCE GROUP
P O BOX 5837
COLUMBIA SC 29250

803 - 726 - 0550

INSURED

DEBBIE COHN
[redacted]

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POLICY MEETS SC FINANCIAL RESPONSIBILITY REQUIREMENTS

COMPANY 40231 OLD DOMINION INSURANCE CO.
JACKSONVILLE, FL. 32245-6100

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YEAR	MAKE/MODEL	VEHICLE IDENTIFICATION NUMBER
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VISTA INSURANCE GROUP
P O BOX 5837
COLUMBIA SC 29250

803 - 726 - 0550

INSURED

DEBBIE COHN
[redacted]

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PERSONAL AUTO POLICY

YOUR PERSONAL AUTO POLICY QUICK REFERENCE

		Beginning On Page
	DECLARATIONS PAGE Your Name and Address Your Auto or Trailer Policy Period Coverages and Amounts of Insurance	
	AGREEMENT	1
	DEFINITIONS	1
PART A - LIABILITY COVERAGE	Insuring Agreement Supplementary Payments Exclusions Limit of Liability Out of State Coverage Financial Responsibility Required Other Insurance	2
PART B - MEDICAL PAYMENTS COVERAGE	Insuring Agreement Exclusions Limit of Liability Other Insurance	4
PART C – UNINSURED MOTORISTS COVERAGE	Insuring Agreement Exclusions Limit of Liability Other Insurance Arbitration	5
PART D - COVERAGE FOR DAMAGE TO YOUR AUTO	Insuring Agreement Transportation Expenses Exclusions Limit of Liability Payment of Loss No Benefit to Bailee Other Sources of Recovery Appraisal	6
PART E - DUTIES AFTER AN ACCIDENT OR LOSS	General Duties Additional Duties for Uninsured Motorists Coverage Additional Duties for Coverage for Damage to Your Auto	9
PART F - GENERAL PROVISIONS	Bankruptcy Changes Fraud Legal Action Against Us Our Right to Recover Payment Policy Period and Territory Termination Transfer of your Interest in this Policy Two or More Auto Policies	9

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PERSONAL AUTO POLICY

AGREEMENT

In return for payment of the premium and subject to all the terms of this policy, we agree with you as follows:

DEFINITIONS

A. Throughout this policy, "you" and "your" refer to:

1. The "named insured" shown in the Declarations; and
2. The spouse if a resident of the same household.

If the spouse ceases to be a resident of the same household during the policy period or prior to the inception of this policy, the spouse will be considered "you" and "your" under this policy but only until the earlier of:

1. The end of 90 days following the spouse's change of residency;
2. The effective date of another policy listing the spouse as a named insured; or
3. The end of the policy period.

B. "We", "us" and "our" refer to the Company providing this insurance.

C. For purposes of this policy, a private passenger type auto, pickup or van shall be deemed to be owned by a person if leased:

1. Under a written agreement to that person; and
2. For a continuous period of at least 6 months.

Other words and phrases are defined. They are in quotation marks when used.

D. "Bodily injury" means bodily harm, sickness or disease, including death that results.

E. "Business" includes trade, profession or occupation.

F. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.

G. "Occupying" means in, upon, getting in, on, out or off.

H. "Property damage" means physical injury to, destruction of or loss of use of tangible property.

I. "Trailer" means a vehicle designed to be pulled by a:

1. Private passenger auto; or
2. Pickup or van.

It also means a farm wagon or farm implement while towed by a vehicle listed in **1.** or **2.** above.

J. "Your covered auto" means:

1. Any vehicle shown in the Declarations.
2. A "newly acquired auto".
3. Any "trailer" you own.
4. Any auto or "trailer" you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
   - **a.** Breakdown;
   - **b.** Repair;
   - **c.** Servicing;
   - **d.** Loss; or
   - **e.** Destruction.

   This Provision **(J.4.)** does not apply to Coverage For Damage To Your Auto.

K. "Newly acquired auto":

1. "Newly acquired auto" means any of the following types of vehicles you become the owner of during the policy period:
   - **a.** A private passenger auto; or
   - **b.** A pickup or van, for which no other insurance policy provides coverage, that:
     - **(1)** Has a Gross Vehicle Weight of less than 10,000 lbs.; and
     - **(2)** Is not used for the delivery or transportation of goods and materials unless such use is:
       - **(a)** Incidental to your "business" of installing, maintaining or repairing furnishings or equipment; or
       - **(b)** For farming or ranching.
2. Coverage for a "newly acquired auto" is provided as described below. If you ask us to insure a "newly acquired auto" after a specified time period described below has elapsed, any coverage we provide for a "newly acquired auto" will begin at the time you request the coverage.
   - **a.** For any coverage provided in this policy except Coverage For Damage To Your Auto, a "newly acquired auto" will have the broadest coverage we now provide for any vehicle shown in the Declarations. Coverage begins on the date you become the owner. However, for this coverage to apply to a "newly acquired auto" which is in addition to any vehicle shown in the Declarations, you must ask us to insure it within 14 days after you become the owner.

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If a "newly acquired auto" replaces a vehicle shown in the Declarations, coverage is provided for this vehicle without your having to ask us to insure it.

b. Collision Coverage for a "newly acquired auto" begins on the date you become the owner. However, for this coverage to apply, you must ask us to insure it within:

(1) 14 days after you become the owner if the Declarations indicate that Collision Coverage applies to at least one auto. In this case, the "newly acquired auto" will have the broadest coverage we now provide for any auto shown in the Declarations.

(2) Four days after you become the owner if the Declarations do not indicate that Collision Coverage applies to at least one auto. If you comply with the 4 day requirement and a loss occurred before you asked us to insure the "newly acquired auto", a Collision deductible of $500 will apply.

c. Other Than Collision Coverage for a "newly acquired auto" begins on the date you become the owner. However, for this coverage to apply, you must ask us to insure it within:

(1) 14 days after you become the owner if the Declarations indicate that Other Than Collision Coverage applies to at least one auto. In this case, the "newly acquired auto" will have the broadest coverage we now provide for any auto shown in the Declarations.

(2) Four days after you become the owner if the Declarations do not indicate that Other Than Collision Coverage applies to at least one auto. If you comply with the 4 day requirement and a loss occurred before you asked us to insure the "newly acquired auto", an Other Than Collision deductible of $500 will apply.

PART A – LIABILITY COVERAGE

INSURING AGREEMENT

A. We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident. Damages include prejudgment interest awarded against the "insured". We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.

B. "Insured" as used in this Part means:

1. You or any "family member" for the ownership, maintenance or use of any auto or "trailer".
2. Any person using "your covered auto".
3. For "your covered auto", any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
4. For any auto or "trailer", other than "your covered auto", any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This Provision **(B.4.)** applies only if the person or organization does not own or hire the auto or "trailer".

SUPPLEMENTARY PAYMENTS

In addition to our limit of liability, we will pay on behalf of an "insured":

1. Up to $250 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in "bodily injury" or "property damage" covered under this policy.
2. Premiums on appeal bonds and bonds to release attachments in any suit we defend.
3. Interest accruing after a judgment is entered in any suit we defend. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.
4. Up to $200 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request.
5. Other reasonable expenses incurred at our request.

EXCLUSIONS

A. We do not provide Liability Coverage for any "insured":

1. Who intentionally causes "bodily injury" or "property damage".
2. For "property damage" to property owned or being transported by that "insured".

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[redacted]

3. For "property damage" to property:
   a. Rented to;
   b. Used by; or
   c. In the care of;
   that "insured".
   This Exclusion **(A.3.)** does not apply to "property damage" to a residence or private garage.
4. For "bodily injury" to an employee of that "insured" during the course of employment. This Exclusion **(A.4.)** does not apply to "bodily injury" to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that "insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This Exclusion **(A.5.)** does not apply to a share-the-expense car pool.
6. While employed or otherwise engaged in the "business" of:
   a. Selling;
   b. Repairing;
   c. Servicing;
   d. Storing; or
   e. Parking;
   vehicles designed for use mainly on public highways. This includes road testing and delivery. This Exclusion **(A.6.)** does not apply to the ownership, maintenance or use of "your covered auto" by:
   a. You;
   b. Any "family member"; or
   c. Any partner, agent or employee of you or any "family member".
7. Maintaining or using any vehicle while that "insured" is employed or otherwise engaged in any "business" (other than farming or ranching) not described in Exclusion **A.6.**
   This Exclusion **(A.7.)** does not apply to the maintenance or use of a:
   a. Private passenger auto;
   b. Pickup or van; or
   c. "Trailer" used with a vehicle described in **a.** or **b.** above.
8. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion **(A.8.)** does not apply to a "family member" using "your covered auto" which is owned by you.
9. For "bodily injury" or "property damage" for which that "insured":
   a. Is an insured under a nuclear energy liability policy; or
   b. Would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.
   A nuclear energy liability policy is a policy issued by any of the following or their successors:
   a. Nuclear Energy Liability Insurance Association;
   b. Mutual Atomic Energy Liability Underwriters; or
   c. Nuclear Insurance Association of Canada.

B. We do not provide Liability Coverage for the ownership, maintenance or use of:

1. Any vehicle which:
   a. Has fewer than four wheels; or
   b. Is designed mainly for use off public roads.
   This Exclusion **(B.1.)** does not apply:
   a. While such vehicle is being used by an "insured" in a medical emergency;
   b. To any "trailer"; or
   c. To any non-owned golf cart.
2. Any vehicle, other than "your covered auto", which is:
   a. Owned by you; or
   b. Furnished or available for your regular use.
3. Any vehicle, other than "your covered auto", which is:
   a. Owned by any "family member"; or
   b. Furnished or available for the regular use of any "family member".
   However, this Exclusion **(B.3.)** does not apply to you while you are maintaining or "occupying" any vehicle which is:
   a. Owned by a "family member"; or
   b. Furnished or available for the regular use of a "family member".
4. Any vehicle, located inside a facility designed for racing, for the purpose of:
   a. Competing in; or
   b. Practicing or preparing for;
   any prearranged or organized racing or speed contest.

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LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for each person for Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one auto accident. Subject to this limit for each person, the limit of liability shown in the Declarations for each accident for Bodily Injury Liability is our maximum limit of liability for all damages for "bodily injury" resulting from any one auto accident.

The limit of liability shown in the Declarations for each accident for Property Damage Liability is our maximum limit of liability for all "property damage" resulting from any one auto accident.

This is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the auto accident.

B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:

1. Part **B** or Part **C** of this policy; or
2. Any Underinsured Motorists Coverage provided by this policy.

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which "your covered auto" is principally garaged, we will interpret your policy for that accident as follows:

A. If the state or province has:

1. A financial responsibility or similar law specifying limits of liability for "bodily injury" or "property damage" higher than the limit shown in the Declarations, your policy will provide the higher specified limit.
2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage.

B. No one will be entitled to duplicate payments for the same elements of loss.

FINANCIAL RESPONSIBILITY

When this policy is certified as future proof of financial responsibility, this policy shall comply with the law to the extent required.

OTHER INSURANCE

If there is other applicable liability insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide for a vehicle you do not own shall be excess over any other collectible insurance.

PART B – MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

A. We will pay reasonable expenses incurred for necessary medical and funeral services because of "bodily injury":

1. Caused by accident; and
2. Sustained by an "insured".

We will pay only those expenses incurred for services rendered within 3 years from the date of the accident.

B. "Insured" as used in this Part means:

1. You or any "family member":
   a. While "occupying"; or
   b. As a pedestrian when struck by;

   a motor vehicle designed for use mainly on public roads or a trailer of any type.
2. Any other person while "occupying" "your covered auto".

EXCLUSIONS

We do not provide Medical Payments Coverage for any "insured" for "bodily injury":

1. Sustained while "occupying" any motorized vehicle having fewer than four wheels.
2. Sustained while "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion **(2.)** does not apply to a share-the-expense car pool.
3. Sustained while "occupying" any vehicle located for use as a residence or premises.
4. Occurring during the course of employment if workers' compensation benefits are required or available for the "bodily injury".
5. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
   a. Owned by you; or
   b. Furnished or available for your regular use.
6. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
   a. Owned by any "family member"; or
   b. Furnished or available for the regular use of any "family member".

   However, this Exclusion **(6.)** does not apply to you.

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7. Sustained while "occupying" a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (7.) does not apply to a "family member" using "your covered auto" which is owned by you.
8. Sustained while "occupying" a vehicle when it is being used in the "business" of an "insured". This Exclusion (8.) does not apply to "bodily injury" sustained while "occupying" a:
   a. Private passenger auto;
   b. Pickup or van that you own; or
   c. "Trailer" used with a vehicle described in a. or b. above.
9. Caused by or as a consequence of:
   a. Discharge of a nuclear weapon (even if accidental);
   b. War (declared or undeclared);
   c. Civil war;
   d. Insurrection; or
   e. Rebellion or revolution.
10. From or as a consequence of the following, whether controlled or uncontrolled or however caused:
    a. Nuclear reaction;
    b. Radiation; or
    c. Radioactive contamination.
11. Sustained while "occupying" any vehicle located inside a facility designed for racing, for the purpose of:
    a. Competing in; or
    b. Practicing or preparing for;

    any prearranged or organized racing or speed contest.

LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:
   1. "Insureds";
   2. Claims made;
   3. Vehicles or premiums shown in the Declarations; or
   4. Vehicles involved in the accident.

B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
   1. Part A or Part C of this policy; or
   2. Any Underinsured Motorists Coverage provided by this policy.

OTHER INSURANCE

If there is other applicable auto medical payments insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

PART C – UNINSURED MOTORISTS COVERAGE

INSURING AGREEMENT

A. We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of "bodily injury":
   1. Sustained by an "insured"; and
   2. Caused by an accident.

   The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "uninsured motor vehicle".

   Any judgment for damages arising out of a suit brought without our written consent is not binding on us.

B. "Insured" as used in this Part means:
   1. You or any "family member".
   2. Any other person "occupying" "your covered auto".
   3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

C. "Uninsured motor vehicle" means a land motor vehicle or trailer of any type:
   1. To which no bodily injury liability bond or policy applies at the time of the accident.
   2. To which a bodily injury liability bond or policy applies at the time of the accident. In this case its limit for bodily injury liability must be less than the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which "your covered auto" is principally garaged.

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3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits:
   a. You or any "family member";
   b. A vehicle which you or any "family member" are "occupying"; or
   c. "Your covered auto".
4. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company:
   a. Denies coverage; or
   b. Is or becomes insolvent.

However, "uninsured motor vehicle" does not include any vehicle or equipment:

1. Owned by or furnished or available for the regular use of you or any "family member".
2. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.
3. Owned by any governmental unit or agency.
4. Operated on rails or crawler treads.
5. Designed mainly for use off public roads while not on public roads.
6. While located for use as a residence or premises.

EXCLUSIONS

A. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained:
   1. By an "insured" while "occupying", or when struck by, any motor vehicle owned by that "insured" which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.
   2. By any "family member" while "occupying", or when struck by, any motor vehicle you own which is insured for this coverage on a primary basis under any other policy.

B. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained by any "insured":
   1. If that "insured" or the legal representative settles the "bodily injury" claim without our consent.
   2. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion (**B.2.**) does not apply to a share-the-expense car pool.
   3. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (**B.3.**) does not apply to a "family member" using "your covered auto" which is owned by you.

C. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:
   1. Workers' compensation law; or
   2. Disability benefits law.

D. We do not provide Uninsured Motorists Coverage for punitive or exemplary damages.

LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for each person for Uninsured Motorists Coverage is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one accident. Subject to this limit for each person, the limit of liability shown in the Declarations for each accident for Uninsured Motorists Coverage is our maximum limit of liability for all damages for "bodily injury" resulting from any one accident.

   This is the most we will pay regardless of the number of:
   1. "Insureds";
   2. Claims made;
   3. Vehicles or premiums shown in the Declarations; or
   4. Vehicles involved in the accident.

B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
   1. Part **A.** or Part **B.** of this policy; or
   2. Any Underinsured Motorists Coverage provided by this policy.

C. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

D. We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:
   1. Workers' compensation law; or
   2. Disability benefits law.

OTHER INSURANCE

If there is other applicable insurance available under one or more policies or provisions of coverage that is similar to the insurance provided under this Part of the policy:

1. Any recovery for damages under all such policies or provisions of coverage may equal but not exceed the highest applicable limit for any one vehicle under any insurance providing coverage on either a primary or excess basis.
2. Any insurance we provide with respect to a vehicle you do not own shall be excess over any collectible insurance providing such coverage on a primary basis.

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3. If the coverage under this policy is provided:
   a. On a primary basis, we will pay only our share of the loss that must be paid under insurance providing coverage on a primary basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on a primary basis.
   b. On an excess basis, we will pay only our share of the loss that must be paid under insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage provided on an excess basis.

ARBITRATION

A. If we and an "insured" do not agree:
   1. Whether that "insured" is legally entitled to recover damages; or
   2. As to the amount of damages which are recoverable by that "insured";

   from the owner or operator of an "uninsured motor vehicle", then the matter may be arbitrated. However, disputes concerning coverage under this Part may not be arbitrated.

   Both parties must agree to arbitration. If so agreed, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.

B. Each party will:
   1. Pay the expenses it incurs; and
   2. Bear the expenses of the third arbitrator equally.

C. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Local rules of law as to procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding as to:
   1. Whether the "insured" is legally entitled to recover damages; and
   2. The amount of damages. This applies only if the amount does not exceed the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which "your covered auto" is principally garaged. If the amount exceeds that limit, either party may demand the right to a trial. This demand must be made within 60 days of the arbitrators' decision. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.

PART D – COVERAGE FOR DAMAGE TO YOUR AUTO

INSURING AGREEMENT

A. We will pay for direct and accidental loss to "your covered auto" or any "non-owned auto", including their equipment, minus any applicable deductible shown in the Declarations. If loss to more than one "your covered auto" or "non-owned auto" results from the same "collision", only the highest applicable deductible will apply. We will pay for loss to "your covered auto" caused by:
   1. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
   2. "Collision" only if the Declarations indicate that Collision Coverage is provided for that auto.

   If there is a loss to a "non-owned auto", we will provide the broadest coverage applicable to any "your covered auto" shown in the Declarations.

B. "Collision" means the upset of "your covered auto" or a "non-owned auto" or their impact with another vehicle or object.

   Loss caused by the following is considered other than "collision":
   1. Missiles or falling objects;
   2. Fire;
   3. Theft or larceny;
   4. Explosion or earthquake;
   5. Windstorm;
   6. Hail, water or flood;
   7. Malicious mischief or vandalism;
   8. Riot or civil commotion;
   9. Contact with bird or animal; or
   10. Breakage of glass.

   If breakage of glass is caused by a "collision", you may elect to have it considered a loss caused by "collision".

C. "Non-owned auto" means:
   1. Any private passenger auto, pickup, van or "trailer" not owned by or furnished or available for the regular use of you or any "family member" while in the custody of or being operated by you or any "family member"; or
   2. Any auto or "trailer" you do not own while used as a temporary substitute for "your covered auto" which is out of normal use because of its:
      a. Breakdown;
      b. Repair;
      c. Servicing;
      d. Loss; or
      e. Destruction.

TRANSPORTATION EXPENSES

A. In addition, we will pay, without application of a deductible, up to a maximum of $600 for:

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1. Temporary transportation expenses not exceeding $20 per day incurred by you in the event of a loss to "your covered auto". We will pay for such expenses if the loss is caused by:
   a. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
   b. "Collision" only if the Declarations indicate that Collision Coverage is provided for that auto.
2. Expenses for which you become legally responsible in the event of loss to a "non-owned auto". We will pay for such expenses if the loss is caused by:
   a. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for any "your covered auto".
   b. "Collision" only if the Declarations indicate that Collision Coverage is provided for any "your covered auto".

   However, the most we will pay for any expenses for loss of use is $20 per day.

B. If the loss is caused by:
1. A total theft of "your covered auto" or a "non-owned auto", we will pay only expenses incurred during the period:
   a. Beginning 48 hours after the theft; and
   b. Ending when "your covered auto" or the "non-owned auto" is returned to use or we pay for its loss.
2. Other than theft of a "your covered auto" or a "non-owned auto", we will pay only expenses beginning when the auto is withdrawn from use for more than 24 hours.

C. Our payment will be limited to that period of time reasonably required to repair or replace the "your covered auto" or the "non-owned auto".

EXCLUSIONS

We will not pay for:

1. Loss to "your covered auto" or any "non-owned auto" which occurs while it is being used as a public or livery conveyance. This Exclusion **(1.)** does not apply to a share-the-expense car pool.
2. Damage due and confined to:
   a. Wear and tear;
   b. Freezing;
   c. Mechanical or electrical breakdown or failure; or
   d. Road damage to tires.

   This Exclusion **(2.)** does not apply if the damage results from the total theft of "your covered auto" or any "non-owned auto".
3. Loss due to or as a consequence of:
   a. Radioactive contamination;
   b. Discharge of any nuclear weapon (even if accidental);
   c. War (declared or undeclared);
   d. Civil war;
   e. Insurrection; or
   f. Rebellion or revolution.
4. Loss to any electronic equipment designed for the reproduction of sound and any accessories used with such equipment. This includes but is not limited to:
   a. Radios and stereos;
   b. Tape decks; or
   c. Compact disc players.

   This Exclusion **(4.)** does not apply to equipment designed solely for the reproduction of sound and accessories used with such equipment, provided:
   a. The equipment is permanently installed in "your covered auto" or any "non-owned auto"; or
   b. The equipment is:
      (1) Removable from a housing unit which is permanently installed in the auto;
      (2) Designed to be solely operated by use of the power from the auto's electrical system; and
      (3) In or upon "your covered auto" or any "non-owned auto" at the time of loss.
5. Loss to any electronic equipment that receives or transmits audio, visual or data signals and any accessories used with such equipment. This includes but is not limited to:
   a. Citizens band radios;
   b. Telephones;
   c. Two-way mobile radios;
   d. Scanning monitor receivers;
   e. Television monitor receivers;
   f. Video cassette recorders;
   g. Audio cassette recorders; or
   h. Personal computers.

   This Exclusion **(5.)** does not apply to:
   a. Any electronic equipment that is necessary for the normal operation of the auto or the monitoring of the auto's operating systems; or

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b. A permanently installed telephone designed to be operated by use of the power from the auto's electrical system and any accessories used with the telephone.

6. Loss to tapes, records, discs or other media used with equipment described in Exclusions **4.** and **5.**

7. A total loss to "your covered auto" or any "non-owned auto" due to destruction or confiscation by governmental or civil authorities.

   This Exclusion **(7.)** does not apply to the interests of Loss Payees in "your covered auto".

8. Loss to:

   a. A "trailer", camper body, or motor home, which is not shown in the Declarations; or

   b. Facilities or equipment used with such "trailer", camper body or motor home. Facilities or equipment include but are not limited to:

      (1) Cooking, dining, plumbing or refrigeration facilities;

      (2) Awnings or cabanas; or

      (3) Any other facilities or equipment used with a "trailer", camper body, or motor home.

   This Exclusion **(8.)** does not apply to a:

   a. "Trailer", and its facilities or equipment, which you do not own; or

   b. "Trailer", camper body, or the facilities or equipment in or attached to the "trailer" or camper body, which you:

      (1) Acquire during the policy period; and

      (2) Ask us to insure within 14 days after you become the owner.

9. Loss to any "non-owned auto" when used by you or any "family member" without a reasonable belief that you or that "family member" are entitled to do so.

10. Loss to equipment designed or used for the detection or location of radar or laser.

11. Loss to any custom furnishings or equipment in or upon any pickup or van. Custom furnishings or equipment include but are not limited to:

    a. Special carpeting or insulation;

    b. Furniture or bars;

    c. Height-extending roofs; or

    d. Custom murals, paintings or other decals or graphics.

    This Exclusion **(11.)** does not apply to a cap, cover or bedliner in or upon any "your covered auto" which is a pickup.

12. Loss to any "non-owned auto" being maintained or used by any person while employed or otherwise engaged in the "business" of:

    a. Selling;

    b. Repairing;

    c. Servicing;

    d. Storing; or

    e. Parking;

    vehicles designed for use on public highways. This includes road testing and delivery.

13. Loss to "your covered auto" or any "non-owned auto", located inside a facility designed for racing, for the purpose of:

    a. Competing in; or

    b. Practicing or preparing for;

    any prearranged or organized racing or speed contest.

14. Loss to, or loss of use of, a "non-owned auto" rented by:

    a. You; or

    b. Any "family member";

    if a rental vehicle company is precluded from recovering such loss or loss of use, from you or that "family member", pursuant to the provisions of any applicable rental agreement or state law.

LIMIT OF LIABILITY

A. Our limit of liability for loss will be the lesser of the:

1. Actual cash value of the stolen or damaged property; or

2. Amount necessary to repair or replace the property with other property of like kind and quality.

However, the most we will pay for loss to:

1. Any "non-owned auto" which is a trailer is $500.

2. Equipment designed solely for the reproduction of sound, including any accessories used with such equipment, which is installed in locations not used by the auto manufacturer for installation of such equipment or accessories, is $1,000.

B. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss.

C. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

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PAYMENT OF LOSS

We may pay for loss in money or repair or replace the damaged or stolen property. We may, at our expense, return any stolen property to:

1. You; or
2. The address shown in this policy.

If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the property at an agreed or appraised value.

If we pay for loss in money, our payment will include the applicable sales tax for the damaged or stolen property.

NO BENEFIT TO BAILEE

This insurance shall not directly or indirectly benefit any carrier or other bailee for hire.

OTHER SOURCES OF RECOVERY

If other sources of recovery also cover the loss, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a "non-owned auto" shall be excess over any other collectible source of recovery including, but not limited to:

1. Any coverage provided by the owner of the "non-owned auto";
2. Any other applicable physical damage insurance;
3. Any other source of recovery applicable to the loss.

APPRAISAL

A. If we and you do not agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:
   1. Pay its chosen appraiser; and
   2. Bear the expenses of the appraisal and umpire equally.

B. We do not waive any of our rights under this policy by agreeing to an appraisal.

PART E – DUTIES AFTER AN ACCIDENT OR LOSS

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

A. We must be notified promptly of how, when and where the accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.

B. A person seeking any coverage must:
   1. Cooperate with us in the investigation, settlement or defense of any claim or suit.
   2. Promptly send us copies of any notices or legal papers received in connection with the accident or loss.
   3. Submit, as often as we reasonably require:
      a. To physical exams by physicians we select. We will pay for these exams.
      b. To examination under oath and subscribe the same.
   4. Authorize us to obtain:
      a. Medical reports; and
      b. Other pertinent records.
   5. Submit a proof of loss when required by us.

C. A person seeking Uninsured Motorists Coverage must also:
   1. Promptly notify the police if a hit-and-run driver is involved.
   2. Promptly send us copies of the legal papers if a suit is brought.

D. A person seeking Coverage For Damage To Your Auto must also:
   1. Take reasonable steps after loss to protect "your covered auto" or any "non-owned auto" and their equipment from further loss. We will pay reasonable expenses incurred to do this.
   2. Promptly notify the police if "your covered auto" or any "non-owned auto" is stolen.
   3. Permit us to inspect and appraise the damaged property before its repair or disposal.

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PART F – GENERAL PROVISIONS

BANKRUPTCY

Bankruptcy or insolvency of the "insured" shall not relieve us of any obligations under this policy.

CHANGES

A. This policy contains all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us.

B. If there is a change to the information used to develop the policy premium, we may adjust your premium. Changes during the policy term that may result in a premium increase or decrease include, but are not limited to, changes in:

1. The number, type or use classification of insured vehicles;
2. Operators using insured vehicles;
3. The place of principal garaging of insured vehicles;
4. Coverage, deductible or limits.

If a change resulting from **A.** or **B.** requires a premium adjustment, we will make the premium adjustment in accordance with our manual rules.

C. If we make a change which broadens coverage under this edition of your policy without additional premium charge, that change will automatically apply to your policy as of the date we implement the change in your state. This Paragraph **(C.)** does not apply to changes implemented with a general program revision that includes both broadenings and restrictions in coverage, whether that general program revision is implemented through introduction of:

1. A subsequent edition of your policy; or
2. An Amendatory Endorsement.

FRAUD

We do not provide coverage for any "insured" who has made fraudulent statements or engaged in fraudulent conduct in connection with any accident or loss for which coverage is sought under this policy.

LEGAL ACTION AGAINST US

A. No legal action may be brought against us until there has been full compliance with all the terms of this policy. In addition, under Part **A**, no legal action may be brought against us until:

1. We agree in writing that the "insured" has an obligation to pay; or
2. The amount of that obligation has been finally determined by judgment after trial.

B. No person or organization has any right under this policy to bring us into any action to determine the liability of an "insured".

OUR RIGHT TO RECOVER PAYMENT

A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another we shall be subrogated to that right. That person shall do:

1. Whatever is necessary to enable us to exercise our rights; and
2. Nothing after loss to prejudice them.

However, our rights in this Paragraph **(A.)** do not apply under Part **D**, against any person using "your covered auto" with a reasonable belief that that person is entitled to do so.

B. 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:

1. Hold in trust for us the proceeds of the recovery; and
2. Reimburse us to the extent of our payment.

POLICY PERIOD AND TERRITORY

A. This policy applies only to accidents and losses which occur:

1. During the policy period as shown in the Declarations; and
2. Within the policy territory.

B. The policy territory is:

1. The United States of America, its territories or possessions;
2. Puerto Rico; or
3. Canada.

This policy also applies to loss to, or accidents involving, "your covered auto" while being transported between their ports.

TERMINATION

A. Cancellation

This policy may be cancelled during the policy period as follows:

1. The named insured shown in the Declarations may cancel by:
   a. Returning this policy to us; or
   b. Giving us advance written notice of the date cancellation is to take effect.
2. We may cancel by mailing to the named insured shown in the Declarations at the address shown in this policy:
   a. At least 10 days notice:
      (1) If cancellation is for nonpayment of premium; or

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(2) If notice is mailed during the first 60 days this policy is in effect and this is not a renewal or continuation policy; or

b. At least 20 days notice in all other cases.

3. After this policy is in effect for 60 days, or if this is a renewal or continuation policy, we will cancel only:

a. For nonpayment of premium; or

b. If your driver's license or that of:

(1) Any driver who lives with you; or

(2) Any driver who customarily uses "your covered auto";

has been suspended or revoked. This must have occurred:

(1) During the policy period; or

(2) Since the last anniversary of the original effective date if the policy period is other than 1 year; or

c. If the policy was obtained through material misrepresentation.

B. Nonrenewal

If we decide not to renew or continue this policy, we will mail notice to the named insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 20 days before the end of the policy period. Subject to this notice requirement, if the policy period is:

1. Less than 6 months, we will have the right not to renew or continue this policy every 6 months, beginning 6 months after its original effective date.
2. 6 months or longer, but less than one year, we will have the right not to renew or continue this policy at the end of the policy period.
3. 1 year or longer, we will have the right not to renew or continue this policy at each anniversary of its original effective date.

C. Automatic Termination

If we offer to renew or continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.

If you obtain other insurance on "your covered auto", any similar insurance provided by this policy will terminate as to that auto on the effective date of the other insurance.

D. Other Termination Provisions

1. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
2. If this policy is cancelled, you may be entitled to a premium refund. If so, we will send you the refund. The premium refund, if any, will be computed according to our manuals. However, making or offering to make the refund is not a condition of cancellation.
3. The effective date of cancellation stated in the notice shall become the end of the policy period.

TRANSFER OF YOUR INTEREST IN THIS POLICY

A. Your rights and duties under this policy may not be assigned without our written consent. However, if a named insured shown in the Declarations dies, coverage will be provided for:

1. The surviving spouse if resident in the same household at the time of death. Coverage applies to the spouse as if a named insured shown in the Declarations; and
2. The legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use "your covered auto".

B. Coverage will only be provided until the end of the policy period.

TWO OR MORE AUTO POLICIES

If this policy and any other auto insurance policy issued to you by us apply to the same accident, the maximum limit of our liability under all the policies shall not exceed the highest applicable limit of liability under any one policy.

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PERSONAL AUTO

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF POLICY PROVISIONS – SOUTH CAROLINA

I. Part A – Liability Coverage

Exclusion **A.1.** is replaced by the following:

We do not provide Liability Coverage for any "insured":

1. Who intentionally causes "bodily injury" or "property damage" to the extent that the limits of liability for this coverage exceed the limits of liability required by the South Carolina Financial Responsibility Act.

II. Part F – General Provisions

Part **F** is amended as follows:

A. The following is added to the **Fraud** Provision:

FRAUD

However, we will provide coverage to such "insured" for damages sustained by any person who has not made fraudulent statements or engaged in fraudulent conduct if such damages result from an accident which is otherwise covered under this policy.

B. The following is added to the **Our Right To Recover Payment** Provision:

OUR RIGHT TO RECOVER PAYMENT

This provision does not apply to **Part B – Medical Payments Coverage.**

C. The **Termination** Provision is replaced by the following:

TERMINATION

Cancellation

This policy may be cancelled during the policy period as follows:

1. The named insured shown in the Declarations may cancel by:
   a. Returning this policy to us; or
   b. Giving us advance written notice of the date cancellation is to take effect.
2. We may cancel by mailing notice to the named insured shown in the Declarations at the address shown in this policy at least 15 days prior to the date cancellation is to take effect.

   If this policy is cancelled within the first 60 days, and is not a renewal or continuation policy, the cancellation will become effective only on or after the 61st day of the policy period. However, if this policy is cancelled for nonpayment of premium, the cancellation will become effective only on or after the 31st day of the policy period.
3. After this policy has been in effect for more than 90 days, or if this is a renewal or continuation policy, we will cancel only:
   a. For nonpayment of premium; or
   b. If your driver's license or that of:
      (1) Any driver who lives with you; or
      (2) Any driver who customarily uses "your covered auto";

   has been suspended or revoked. This must have occurred:
      (1) During the policy period; or
      (2) If this is a renewal or continuation policy, during the policy period or the 90 days immediately preceding the last anniversary of the original effective date.

Nonrenewal

If we decide not to renew or continue this policy, we will mail notice to the named insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 15 days before the end of the policy period. Subject to this notice requirement, if the policy period is:

1. Less than 6 months, we will have the right not to renew or continue this policy every 6 months, beginning 6 months after its original effective date.
2. 6 months or longer, but less than one year, we will have the right not to renew or continue this policy at the end of the policy period.
3. 1 year or longer, we will have the right not to renew or continue this policy at each anniversary of its original effective date.

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Automatic Termination

If we offer to renew or continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.

Other Termination Provisions

1. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
2. If this policy is cancelled, you may be entitled to a premium refund. If so, we will send you the refund. The premium refund, if any, will be computed according to our manuals. However, making or offering to make the refund is not a condition of cancellation.
3. The effective date of cancellation stated in the notice shall become the end of the policy period.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

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Main Street America Assurance Company • MSA Insurance Company
Great Lakes Casualty Insurance Company



SOUTH CAROLINA

IMPORTANT INFORMATION ABOUT YOUR MAXIMUM OPTIONAL POLICY FEES

The South Carolina Department of Insurance requires insurers to notify policyholders of the Fee Schedule associated with a policy. The policy fees are as follows:

Fee Type	Maximum Fee
Installment Fee	$5
Late Fee	$10
Non Sufficient Fund Fee	$25

61-8652 (10/06)

POLICY NUMBER: [redacted]

PERSONAL AUTO
[redacted]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNDERINSURED MOTORISTS COVERAGE – SOUTH CAROLINA

SCHEDULE

Coverage is provided where a premium and a limit of liability are shown for the coverage.

Underinsured Motorists Coverage	Limit Of Liability			Premium Auto 1	Auto 2	Auto 3
Bodily Injury Liability	$	*	Each Person			
	$	*	Each Accident			
Property Damage Liability	$	*	Each Accident	$	$	$

***As indicated on Declarations.**

We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "underinsured motor vehicle" because of:

1. "Bodily injury" sustained by an "insured" and caused by an accident; and
2. "Property damage" caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "underinsured motor vehicle".

"Insured" as used in this endorsement means:

1. You or any "family member".
2. Any other person "occupying" "your covered auto".
3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

"Property damage" as used in this endorsement means injury to or destruction of "your covered auto". However, "property damage" does not include damage to property owned by the "insured" while contained in "your covered auto".

"Underinsured motor vehicle" means a land motor vehicle or trailer of any type to which a liability bond or policy applies at the time of the accident in limits equal to or greater than the minimum limit for liability specified by the South Carolina Financial Responsibility Act, but the limits of that bond or policy are not enough to pay the full amount the "insured" is legally entitled to recover as damages.

However, "underinsured motor vehicle" does not include any vehicle or equipment:

1. Operated on rails or crawler treads.
2. Designed mainly for use off public roads while not upon public roads.
3. While located for use as a residence or premises.

EXCLUSIONS

A. We do not provide Underinsured Motorists Coverage for "property damage" or "bodily injury" sustained:

1. By you while "occupying", or when struck by, any motor vehicle you own which is not insured for this coverage. This includes a trailer of any type used with that vehicle.
2. By any "family member" while "occupying", or when struck by, a motor vehicle owned by such "family member" which is not insured for this coverage. This includes a trailer of any type used with that vehicle.

B. We do not provide Underinsured Motorists Coverage for "property damage" or "bodily injury" sustained by any "insured":

1. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion **(B.1.)** does not apply to a share-the-expense car pool.
2. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion **(B.2.)** does not apply to a "family member" using "your covered auto" which is owned by you.

[redacted]

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C. This coverage shall not apply directly or indirectly to benefit:

1. Any insurer or self-insurer under any of the following or similar law:
   a. Workers' compensation law; or
   b. Disability benefits law.
2. Any insurer of property.

LIMIT OF LIABILITY

A. If "bodily injury" is sustained in an accident by any "insured" while "occupying" "your covered auto", or if "your covered auto" sustains "property damage" in an accident:

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the Limits Of Liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability Underinsured Motorists Coverage.
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the Limits Of Liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Underinsured Motorists Coverage.
3. Subject to the maximum limit of liability set forth in Paragraphs 1. and 2. above:
   a. The most we will pay for "bodily injury" sustained in that accident by an "insured" other than you or any "family member" is that "insured's" pro rata share of the each person or each accident limit shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to the vehicle that "insured" was "occupying" at the time of the accident; and
   b. You or any "family member" who sustains "bodily injury" in that accident will also be entitled to a pro rata share of the each person or each accident limit described in Paragraph a. above.

   A person's pro rata share shall be the proportion that that person's "bodily injury" damages bears to the total of all "bodily injury" damages sustained by all "insureds".
4. Our maximum limit of liability for all "property damage" resulting from that accident is the sum of the Limits Of Liability shown in the Schedule or in the Declarations for each accident for Property Damage Liability Underinsured Motorists Coverage.

   The maximum limit of liability is the most we will pay regardless of the number of:
   1. "Insureds";
   2. Claims made;
   3. Vehicles or premiums shown in the Schedule or in the Declarations; or
   4. Vehicles involved in the accident.

B. If "bodily injury" is sustained in an accident by you or any "family member" while not "occupying" any auto:

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the Limits Of Liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability Underinsured Motorists Coverage.
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the Limits Of Liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Underinsured Motorists Coverage.

   The maximum limit of liability is the most we will pay regardless of the number of:
   1. "Insureds";
   2. Claims made;
   3. Vehicles or premiums shown in the Schedule or in the Declarations; or
   4. Vehicles involved in the accident.

C. If "bodily injury" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member":

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the highest each person Limit Of Liability shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists coverage applicable to any one of "your covered autos".
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the highest each accident Limit Of Liability shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of "your covered autos".

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The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

D. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A, Part B, Part C or Part D of this policy.

E. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

F. We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:

1. Workers' compensation law; or
2. Disability benefits law.

G. We will reduce the "insured's" total damages by any amount available to that "insured", under any bodily injury liability bonds or policies applicable to the "underinsured motor vehicle", that such "insured" did not recover as a result of a settlement between that "insured" and the insurer of an "underinsured motor vehicle". However, any reduction of the "insured's" total damages will not reduce the limit of liability for this coverage.

OTHER INSURANCE

A. If an "insured" sustains "bodily injury" while:

1. "Occupying" a vehicle:
   a. Not owned by that person, including any vehicle while used as a temporary substitute for "your covered auto"; or
   b. Owned by you or any "family member" which is not insured for this coverage under this policy; or
2. Not "occupying" any vehicle;

\the following priorities of recovery apply:

First Priority	The policy affording Underinsured Motorists Coverage to the vehicle the "insured" was "occupying" at the time of the accident
Second Priority	Any policy affording Underinsured Motorists Coverage to the "insured" as a named insured or "family member".

1. If there is no applicable insurance available under the first priority, the maximum recovery under all policies in the second priority shall not exceed the highest applicable limit for any one vehicle under any one policy.
2. If there is applicable insurance available under the first priority:
   a. The limit of liability applicable to the vehicle the "insured" was "occupying", under the policy in the first priority, shall first be exhausted; and
   b. The maximum recovery in the second priority shall not exceed the highest limit for any one vehicle under any one policy in the second priority.
3. We will pay only our share of the loss, not to exceed our share of the maximum recovery. Our share is the proportion that our limit of liability bears to the total of all applicable limits in the same level of priority.

B. With respect to "property damage", this insurance shall apply only after the limits of any other collectible insurance applicable to the damaged property have been exhausted.

ADDITIONAL DUTY

Any person seeking coverage under this endorsement must also promptly send us copies of the legal papers if a suit is brought.

GENERAL PROVISIONS

Part F is amended as follows with respect to Underinsured Motorists Coverage:

A. The **Our Right To Recover Payment** Provision does not apply to Underinsured Motorists Coverage.

B. The following is added to the **Two Or More Auto Policies** Provision:

1. This provision does not apply to Underinsured Motorists Coverage.
2. No one will be entitled to receive duplicate payments for the same elements of loss under Underinsured Motorists Coverage.

C. The following provision is added:

Conformity To Statute

This endorsement is intended to be in full conformity with the South Carolina Insurance Laws. If any provision of this endorsement conflicts with that law, it is changed to comply with the law.

[redacted]

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POLICY NUMBER: [redacted] PERSONAL AUTO [redacted]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNDERINSURED MOTORISTS COVERAGE – SOUTH CAROLINA

SCHEDULE

Coverage is provided where a premium and a limit of liability is shown for the coverage.

Underinsured Motorists Coverage	Limit of Liability *	Premium * Auto 1	Auto 2	Auto 3
Bodily Injury Liability	$ _____ each person			
	$ _____ each accident			
Property Damage Liability	$ each accident	$	$	$

*** As Indicated on Declarations.**

We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "underinsured motor vehicle" because of:

1. "Bodily injury" sustained by an "insured" and caused by an accident; and
2. "Property damage" caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "underinsured motor vehicle".

We will pay under this coverage only after the limits of liability under any liability bonds or policies applicable to the "underinsured motor vehicle" have been exhausted by payment of judgments or settlements.

"Insured" as used in this endorsement means:

1. You or any "family member".
2. Any other person "occupying" "your covered auto".
3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in **1.** or **2.** above.

"Property damage" as used in this endorsement means injury to or destruction of "your covered auto". However, "property damage" does not include damage to property owned by the "insured" while contained in "your covered auto".

"Underinsured motor vehicle" means a land motor vehicle or trailer of any type to which a liability bond or policy applies at the time of the accident in limits equal to or greater than the minimum limit for liability specified by the South Carolina Financial Responsibility Act, but the limits of that bond or policy are not enough to pay the full amount the "insured" is legally entitled to recover as damages.

However, "underinsured motor vehicle" does not include any vehicle or equipment:

1. Operated on rails or crawler treads.
2. Designed mainly for use off public roads while not upon public roads.
3. While located for use as a residence or premises.

EXCLUSIONS

A. We do not provide Underinsured Motorists Coverage for "bodily injury" or "property damage" sustained by any "insured":

1. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion **(A.1.)** does not apply to a share-the-expense car pool.
2. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion **(A.2.)** does not apply to a "family member" using "your covered auto" which is owned by you.

B. This coverage shall not apply directly or indirectly to benefit:

1. Any insurer or self-insurer under any of the following or similar law:
   a. Workers' compensation law; or
   b. Disability benefits law.
2. Any insurer of property.

[redacted]

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LIMIT OF LIABILITY

A. If "bodily injury" is sustained in an accident by any "insured" while "occupying" "your covered auto", or if "your covered auto" sustains "property damage" in an accident:

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability Underinsured Motorists Coverage.
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Underinsured Motorists Coverage.
3. Subject to the maximum limit of liability set forth in Paragraphs **1.** and **2.** above:
   a. The most we will pay for "bodily injury" sustained in that accident by an "insured" other than you or any "family member" is that "insured's" pro rata share of the each person or each accident limit shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to the vehicle that "insured" was "occupying" at the time of the accident; and
   b. You or any "family member" who sustains "bodily injury" in that accident will also be entitled to a pro rata share of the each person or each accident limit described in Paragraph a. above.

   A person's pro rata share shall be the proportion that that person's "bodily injury" damages bears to the total of all "bodily injury" damages sustained by all "insureds".
4. Our maximum limit of liability for all "property damage" resulting from that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Property Damage Liability Underinsured Motorists Coverage.

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

B. If "bodily injury" is sustained in an accident by you or any "family member" while not "occupying" any auto:

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability Underinsured Motorists Coverage.
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Underinsured Motorists Coverage.

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

C. If "bodily injury" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member":

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the highest each person limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists coverage applicable to any one of "your covered autos".
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the highest each accident limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of "your covered autos"; and

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

D. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A, Part B, Part C or Part D of this policy.

E. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible

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F. We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:

1. Workers' compensation law; or
2. Disability benefits law.

OTHER INSURANCE

A. If an "insured" sustains "bodily injury" while "occupying" a vehicle not owned by that person or while not "occupying" any vehicle, the following priorities of recovery apply:

First Priority	The policy affording Underinsured Motorists Coverage to the vehicle the "insured" was "occupying" at the time of the accident.
Second Priority	Any policy affording Underinsured Motorists Coverage to the "insured" as a named insured or family member.

1. If there is no applicable insurance available under the first priority, the maximum recovery under all policies in the second priority shall not exceed the highest applicable limit for any one vehicle under any one policy.
2. If there is applicable insurance available under the first priority:
   a. The limit of liability applicable to the vehicle the "insured" was "occupying", under the policy in the first priority, shall first be exhausted; and
   b. The maximum recovery in the second priority shall not exceed the highest limit for any one vehicle under any one policy in the second priority.
3. We will pay only our share of the loss, not to exceed our share of the maximum recovery. Our share is the proportion that our limit of liability bears to the total of all applicable limits in the same level of priority.

B. With respect to "property damage", this insurance shall apply only after the limits of any other collectible insurance applicable to the damaged property have been exhausted.

ADDITIONAL DUTY

Any person seeking coverage under this endorsement must also promptly send us copies of the legal papers if a suit is brought.

GENERAL PROVISIONS

Part F is amended as follows with respect to Underinsured Motorists Coverage:

A. The Our Right To Recover Payment Provision does not apply to Underinsured Motorists Coverage.

B. The following is added to the Two Or More Auto Policies Provision:

TWO OR MORE AUTO POLICIES

1. This provision does not apply to Underinsured Motorists Coverage.
2. No one will be entitled to receive duplicate payments for the same elements of loss under Underinsured Motorists Coverage.

C. The following provision is added:

CONFORMITY TO STATUTE

This endorsement is intended to be in full conformity with the South Carolina Insurance Laws. If any provision of this endorsement conflicts with that law, it is changed to comply with the law.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

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POLICY NUMBER: [redacted]

PERSONAL AUTO
[redacted]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNINSURED MOTORISTS COVERAGE – SOUTH CAROLINA

SCHEDULE

Coverage is provided where a premium and a limit of liability are shown for the coverage.

Uninsured Motorists Coverage	Limit Of Liability *	Premium * Auto 1	Auto 2	Auto 3
Bodily Injury Liability	$_____ each person			
	$_____ each accident			
Property Damage Liability	$_____ each accident	$	$	$

*** As Indicated on Declarations.**

I. Part C – Uninsured Motorists Coverage

Part **C** is replaced by the following:

INSURING AGREEMENT

We will pay damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of:

1. "Bodily injury" sustained by an "insured" and caused by an accident; and
2. "Property damage" caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "uninsured motor vehicle".

"Insured" as used in this endorsement means:

1. You or any "family member".
2. Any other person "occupying" "your covered auto".
3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

"Property damage" as used in this endorsement means injury to or destruction of the property of an "insured".

"Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which neither:
   a. A liability bond or policy; nor
   b. Cash or securities deposited with the State Treasurer;

   applies at the time of the accident.
2. To which a liability bond or policy applies at the time of the accident. In this case its limit for liability must be less than the minimum limits specified by the South Carolina Financial Responsibility Act.
3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in "bodily injury" or "property damage" without hitting:
   a. You or any "family member";
   b. A vehicle which you or any "family member" are "occupying";
   c. "Your covered auto"; or
   d. Any of your property.

   If there is no physical contact with the hit-and-run vehicle the facts of the accident must be corroborated by an affidavit attesting to the truth of the facts of the accident signed by any eyewitness other than the owner or operator of the vehicle which you or any "family member" were "occupying" at the time of the accident.
4. To which a liability bond or policy applies at the time of the accident but 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.

However, "uninsured motor vehicle" does not include any vehicle or equipment:

1. Owned by any governmental unit or agency unless a cause of action against that governmental unit or agency is barred by the Tort Claims Act, South Carolina Laws 1986, Ratification No. 514, Subsection 15-78-60, or by other applicable statute.
2. Operated on rails or crawler treads.

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3. Designed mainly for use off public roads while not on public roads.

EXCLUSIONS

A. We do not provide Uninsured Motorists Coverage for "property damage" or "bodily injury" sustained by any "insured":

1. If that "insured" or the legal representative settles the "bodily injury" or "property damage" claim without our consent.
2. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This Exclusion (A.2.) does not apply to a share-the-expense car pool.
3. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (A.3.) does not apply to a "family member" using "your covered auto" which is owned by you.
4. For the first $200 of the amount of "property damage" to the property of each "insured" as the result of any one accident.

B. This coverage shall not apply directly or indirectly to benefit:

1. Any insurer or self-insurer under any of the following or similar law:
   a. Workers' compensation law; or
   b. Disability benefits law.
2. Any insurer of property.

LIMIT OF LIABILITY

A. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while "occupying" "your covered auto":

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability Uninsured Motorists Coverage.
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Uninsured Motorists Coverage.
3. Our maximum limit of liability for all "property damage" resulting from that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Property Damage Liability Uninsured Motorists Coverage.

Subject to the maximum limit of liability set forth in Paragraphs **1.**, **2.** or **3.** above:

1. The most we will pay for "bodily injury" or "property damage" sustained in that accident by an "insured" other than you or any "family member" is that "insured's" pro rata share of the each person or each accident limit shown in the Schedule or in the Declarations for this coverage applicable to the vehicle that "insured" was "occupying" at the time of the accident; and
2. You or any "family member" who sustains "bodily injury" or "property damage" in that accident will also be entitled to a pro rata share of the each person or each accident limit described in Paragraph 1. above.

A person's pro rata share shall be the proportion that that person's damages bears to the total damages sustained by all "insureds".

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

B. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while not "occupying" any auto:

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability Uninsured Motorists Coverage.
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability Uninsured Motorists Coverage.
3. Our maximum limit of liability for all "property damage" resulting from that accident is the sum of the limits of liability shown in the Schedule or in the Declarations for each accident for Property Damage Liability Uninsured Motorists Coverage.

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The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

C. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member":

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the highest each person limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to any one of "your covered autos";
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the highest each accident limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to any one of "your covered autos"; and
3. Our maximum limit of liability for all "property damage" resulting from that accident is the highest each accident limit of liability shown in the Schedule or in the Declarations for Property Damage Liability Uninsured Motorists Coverage applicable to any one of "your covered autos".

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

D. If "bodily injury" or "property damage" is sustained by an "insured" other than you or any "family member" in an accident in which neither you nor any "family member" sustained "bodily injury" or "property damage":

1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident will be the each person limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to the vehicle that "insured" was "occupying" at the time of that accident.
2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the each accident limit of liability shown in the Schedule or in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to the vehicle that "insured" was "occupying" at the time of the accident.
3. Our maximum limit of liability for all "property damage" resulting from that accident is the each accident limit of liability shown in the Schedule or in the Declarations for Property Damage Liability Uninsured Motorists Coverage applicable to the vehicle that "insured" was "occupying" at the time of the accident.

The maximum limit of liability is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

E. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:

1. Part A or Part B of this policy;
2. Any Underinsured Motorists Coverage provided by this policy; or
3. Part D of this policy or any similar coverage under any other policy.

F. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

OTHER INSURANCE

A. If an "insured" sustains "bodily injury" while "occupying" a vehicle not owned by that person or while not "occupying" any vehicle, the following priorities of recovery apply:

First Priority	The policy affording Uninsured Motorists Coverage to the vehicle the "insured" was "occupying" at the time of the accident.
Second Priority	Any policy affording Uninsured Motorists Coverage to the "insured" as a named insured or family member.

1. If there is no applicable insurance available under the first priority, the maximum recovery under all policies in the second priority shall not exceed the highest applicable limit for any one vehicle under any one policy.
2. If there is applicable insurance available under the first priority:

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a. The limit of liability applicable to the vehicle the "insured" was "occupying", under the policy in the first priority, shall first be exhausted; and

b. The maximum recovery in the second priority shall not exceed the highest limit for any one vehicle under any one policy in the second priority.

3. We will pay only our share of the loss, not to exceed our share of the maximum recovery. Our share is the proportion that our limit of liability bears to the total of all applicable limits in the same level of priority.

B. With respect to "property damage", this insurance shall apply only after the limits of any other collectible insurance applicable to the damaged property have been exhausted.

II. Part F – General Provisions

Part F is amended as follows with respect to Uninsured Motorists Coverage:

A. The Our Right to Recover Payment Provision is replaced by the following:

OUR RIGHT TO RECOVER PAYMENT

1. If we make payment under this policy and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right to the extent of such payment that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act. That person shall do:

   a. Whatever is necessary to enable us to exercise our rights; and

   b. Nothing after loss to prejudice them.

2. If an "insured" 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 that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.

3. We will pay our proportionate part of any reasonable costs and expenses incurred for any recovery, including reasonable attorneys' fees. However, we reserve the right to retain an attorney of our choice to pursue a claim instead of reasonable attorneys' fees.

4. If an "insured" making a claim for "property damage" under this insurance is also entitled to insurance or other compensation for the "property damage", we will not be obligated to pay a claim until the "insured" has assigned us the rights to the compensation, to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.

B. The following is added to the **Two or More Auto Policies** Provision:

TWO OR MORE AUTO POLICIES

1. This provision does not apply to Uninsured Motorists Coverage.

2. No one will be entitled to receive duplicate payments for the same elements of loss under Uninsured Motorists Coverage.

C. The following provision is added:

CONFORMITY TO STATUTE

This endorsement is intended to be in full conformity with the South Carolina Insurance Laws. If any provision of this endorsement conflicts with that law, it is changed to comply with the law.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

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[redacted]

PERSONAL AUTO
[redacted]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERAGE FOR DAMAGE TO YOUR AUTO EXCLUSION ENDORSEMENT

With respect to the coverage provided by this endorsement, the provisions of the policy apply unless modified by the endorsement.

I. Definitions

The following definition is added:

"Diminution in value" means the actual or perceived loss in market or resale value which results from a direct and accidental loss.

II. Part D – Coverage For Damage To Your Auto

The following exclusion is added:

We will not pay for:

Loss to "your covered auto" or any "non-owned auto" due to "diminution in value".

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

[redacted]

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POLICY NUMBER: [redacted]

PERSONAL AUTO
[redacted]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OPTIONAL LIMITS TRANSPORTATION EXPENSES COVERAGE

SCHEDULE

Description Of Your Covered Auto(s)	Limit Per Day For Temporary Transportation Or Loss Of Use Expenses	Maximum Limit Of Liability	Premium
2004 Nissan PATHFINDER SE/LE[redacted]	$30 Per Day	$900	$8.00
	Per Day		
	Per Day		

With respect to the coverage provided by this endorsement, the provisions of the policy apply unless modified by the endorsement.

OPTIONAL LIMITS TRANSPORTATION EXPENSES COVERAGE

When there is a loss to a "your covered auto" described in the Schedule or in the Declarations for which a specific premium charge indicates that Optional Limits Transportation Expenses Coverage is afforded, or to a "non-owned auto":

Coverage for Transportation Expenses provided under Part **D** of this policy is increased to the limits shown in the Schedule or in the Declarations.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

[redacted]

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PERSONAL AUTO [redacted]

TOWING AND LABOR COSTS COVERAGE

SCHEDULE

Description of Your Covered Auto	Limit of Towing and Labor Costs Coverage	Premium
2004 Nissan PATHFINDER SE/LE [redacted]	$75	$8.00
	$	$
	$	$

We will pay towing and labor costs incurred each time "your covered auto" or any "non-owned auto" is disabled, up to the amount shown in the Schedule or in the Declarations as applicable to that vehicle. If a "non-owned auto" is disabled, we will provide the broadest towing and labor costs coverage applicable to any "your covered auto" shown in the Schedule or in the Declarations. We will only pay for labor performed at the place of disablement.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

[redacted]

Copyright, Insurance Services Office, Inc., 1985, 1992

PERSONAL AUTO [redacted]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FULL SAFETY GLASS COVERAGE – SOUTH CAROLINA

COVERAGE FOR DAMAGE TO YOUR AUTO

With respect to the coverage provided by this endorsement, the provisions of the policy apply unless modified by this endorsement.

The following is added to Paragraph **A.** of the Insuring Agreement in Part **D:**

We will pay under Other Than Collision Coverage or under Collision Coverage for loss to safety glass on "your covered auto" without applying a deductible.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

[redacted]

Copyright, Insurance Services Office, Inc., 1996

IMPORTANT NOTICE

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

(a) YOUR UNINSURED AND UNDERINSURED MOTORIST INSURANCE COVERAGE HAS INCREASED TO THE LIMITS OF YOUR LIABILITY COVERAGE AND THIS INCREASE WILL COST YOU AN EXTRA PREMIUM CHARGE; AND

(b) YOUR TOTAL PREMIUM CHARGE FOR YOUR MOTOR VEHICLE INSURANCE COVERAGE WILL INCREASE IF YOU DO NOT NOTIFY YOUR AGENT OR INSURER OF YOUR DESIRE TO REDUCE COVERAGE WITHIN TWENTY DAYS OF THE MAILING OF THE POLICY OR THE PREMIUM NOTICE, AS THE CASE MAY BE;

(c) IF THIS IS A NEW POLICY AND YOU HAVE ALREADY SIGNED A WRITTEN REJECTION OF SUCH HIGHER LIMITS IN CONNECTION WITH IT PARAGRAPHS (1) AND (2) OF THIS NOTICE DO NOT APPLY.

61-5698 (3/99)

SOUTH CAROLINA RESIDENT ADJUSTER

Gay and Taylor Insurance Adjusters, Inc.
1321 Lady Street
P.O. Box 11407
Columbia, SC 29211

(803) 256-3420

The above is for your information. In the event of a claim, please contact your agent.

60-N155 (3/89)



THE MAIN STREET AMERICA GROUP

NGM Insurance Company • Old Dominion Insurance Company
Main Street America Assurance Company • MSA Insurance Company
Great Lakes Casualty Insurance Company



PRIVACY NOTICE

Dear Policyholder:

As your insurer, our objective is to professionally serve your insurance needs. We recognize that in providing these services, we have an obligation to safeguard the personal information you entrust to us as well as other information we may collect as part of the insurance transaction.

This notice describes the privacy practices and standards we adopted to protect and ensure the confidentiality of your non-public personal information. All of our insurance companies listed above adhere to these practices and standards.

OUR POLICY

We do not disclose any non-public personal information about our policyholders or claimants to any third parties except as is permitted by law. Any such disclosures are made for the purpose of underwriting and transacting the business of your insurance coverage or your claim. We do not sell or provide your non-public personal information to others for their marketing purposes.

THE INFORMATION WE COLLECT

Most of your non-public personal information is provided by you on your application for insurance. Depending on the type of insurance policy you request, we may seek additional information about you or other individuals who are being proposed for coverage under the policy. In certain circumstances we may collect information about you from third parties. For example, for automobile insurance we may seek driver information from the state motor vehicle departments; for property insurance we may send someone to inspect the property. We may review prior insurance claims information. We may obtain medical or financial information. We may also receive information about you from a consumer reporting agency. The information we collect allows us to properly underwrite and rate your policy of insurance and to complete the other transactions incidental to your insurance policy.

THE INFORMATION WE DISCLOSE

We do not disclose any non-public information about our policyholders except as permitted by law. In some cases this information can be disclosed to third parties without your authorization. These disclosures may include those made to your agent or broker, appraisers and independent adjusters who investigate, defend or settle your claims, insurance regulators, and/or your mortgage lender or lienholder.

HOW WE PROTECT YOUR PERSONAL INFORMATION

We restrict access to your personal information to those employees who need it to provide the insurance products and services you have requested. We maintain electronic and procedural safeguards to ensure the confidentiality of your information. These safeguards comply with state and federal laws designed to guard your non-public personal information. Our employees are educated on the importance of maintaining the standards we have in place.

ADDITIONAL INFORMATION

You have the right to review certain items of information we have collected about you, and the right to request corrections of that information if it is inaccurate.

If you would like a copy of our privacy policy please contact us as follows:

Main Street America Group
ATTN: Privacy Compliance Coordinator
55 West Street
Keene, NH 03431

IMPORTANT NOTICE

IN COMPLIANCE WITH THE REQUIREMENTS OF THE FAIR CREDIT REPORTING ACT (PUBLIC LAW 91-508), WE ADVISE THAT AS PART OF OUR ROUTINE PROCEDURE IN REVIEWING APPLICATIONS FOR INSURANCE OR RENEWALS OF INSURANCE POLICIES, WE MAY PROCURE A CONSUMER REPORT INCLUDING INFORMATION AS TO THE CONSUMER'S CHARACTER, GENERAL REPUTATION, PERSONAL CHARACTERISTICS OR MODE OF LIVING. IF SUCH INSURANCE IS FOR AN INDIVIDUAL AND IS PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES, SUCH INFORMATION MAY BE OBTAINED THROUGH PERSONAL INTERVIEWS WITH NEIGHBORS, FRIENDS OR OTHERS WITH WHOM THE CONSUMER IS AQUAINTED.

UPON REQUEST IN THE MANNER AS NOTED ABOVE, WE WILL PROVIDE, IN WRITING, A COMPLETE AND ACCURATE DISCLOSURE OF THE NATURE AND SCOPE OF THE CONSUMER REPORT REQUESTED OR ADVISE THAT NO INVESTIGATION WAS CONDUCTED.

These privacy practices and standards have been put in place to protect your personal information. You will receive a reaffirmation of our privacy practices annually.

Very truly yours,

Bruce R. Fox
Corporate Secretary

Main Street America Group
NGM Insurance Company
Old Dominion Insurance Company
Main Street America Assurance Company
MSA Insurance Company

Letter to Our Customers

When we (a member of the Main Street America Group) quote, issue or renew a policy, we require and obtain certain information about the people and property being insured; most of this information is provided by you on your application for insurance. Depending on the type of insurance policy you request, we may seek additional information about you or other individuals who are being covered under the policy. Such information is gathered through the use of consumer reporting agencies that provide motor vehicle reports, claim history reports and reports on credit histories.

All information is used to underwrite and rate policies at the time of application or subsequent renewals. Increase in premiums or other adverse action may result from a review of this information, including your credit history. Underwriting decisions will not be based solely on your credit history but in conjunction with other underwriting characteristics including, but not limited to, years driving experience, prior accident and/or conviction history and loss information. If any adverse action is taken based on your credit history, you will be notified and provided with instructions on how to obtain a copy of your report.

You have the option to request an updated credit history review prior to each policy renewal. Your request should be received in writing prior to the effective date of the renewal policy.

We thank you for allowing MSA to meet your automobile insurance needs and we look forward to serving your needs in the future.

OLD DOMINION INSURANCE CO.
P.O. BOX 16100
JACKSONVILLE, FL 32245-6100

AMENDMENT
PERSONAL AUTO POLICY
ACCOUNT NUMBER [redacted]
POLICY PERIOD: 12:01 AM STANDARD TIME
FROM 03/09/2014 TO 03/09/2015

EFFECTIVE 06/09/2014

POLICYHOLDER SINCE 03/09/2012

NAMED INSURED

DEBBIE COHN
[redacted]

AGENCY

390176003
VISTA INSURANCE GROUP
P O BOX 5837
COLUMBIA, SC 29250

803 - 726 - 0550

THIS IS NOT A BILL

Description of Auto(s) or Trailer(s)

AUTO	YEAR	TRADE NAME	MODEL	BODY TYPE	VEHICLE IDENTIFICATION NUMBER	ORIG COST NEW	SYMBOLS LS1	LS2	PH1	PH2	RATING CLASS	SUB	TERR	USE	AT	PR
1	04	NISSA	PATHFI	4W	[redacted]		315	520	15	15				3	3	Y
2	12	JEEP	COMPAS	4W			300	490	14	14				1	2	Y

Coverage provided only where both Limit of Liability and Premium are shown.

PART	(REFER TO FORM PP-0001 FOR COVERAGE DEFINITIONS)	1-04 NISSA	2-12 JEEP
A	LIABILITY		
	$100,000 EACH PERSON $300,000 EACH ACCIDENT	$271.00	$272.00
	PROPERTY DAMAGE $50,000 EACH ACCIDENT	$174.00	$187.00
B	MEDICAL PAYMENTS		
	$5,000 EACH PERSON	$32.00	$24.00
C	UNINSURED MOTORISTS		
	$100,000 EACH PERSON $300,000 EACH ACCIDENT	$17.00	$17.00
	PROPERTY DAMAGE $50,000 SUBJECT TO $200 DEDUCTIBLE	$11.00	$11.00
	UNDERINSURED MOTORISTS		
	$100,000 EACH PERSON $300,000 EACH ACCIDENT	$47.00	$47.00
	PROPERTY DAMAGE $50,000 EACH ACCIDENT	$11.00	$11.00
	LIMITS MIGHT BE REDUCED BY POLICY PROVISIONS OR LAW		
D	DAMAGE TO YOUR AUTO		
	COLLISION LOSS		
	ACV** LESS $500 DEDUCTIBLE - STANDARD	$150.00	$267.00
	COMPREHENSIVE (EXCLUDING COLLISION)		
	ACV** LESS $500 DEDUCTIBLE	$116.00	$144.00
	TOWING AND LABOR - $75 PER DISABLEMENT	$8.00	$8.00
	TRANSPORTATION EXPENSES $30/$900	$8.00	$8.00
	TOTAL PREMIUM BY VEHICLE	$845.00	$996.00

AMENDMENT REASON: VEHICLE ADD/CHANGE/DELETE
The Auto(s) or Trailers(s) described in this policy is (are) principally garaged at the above address unless otherwise stated here:

Auto 2 Any loss under Physical Damage is payable as interest may appear to the Named Insured and:
Ally Financial, P.O. Box 8132, Cockeysville, MD 21030

RETURN PREMIUM FOR AMENDMENT -$514.00 12 MONTHS PREMIUM $1,841.00

Endorsements made part of this policy at time of issue:
PP0001(06-98), 61-8643 (03-07), PP0488(05-13), PP0465 (06-98), PP1301(12-99), PP0302 (06-98), PP0303 (04-86), PP0341(11-96), 61-8599 (09-11)

NO	DRIVER NAME	LICENSE NUMBER	DOB			SX	MR	VR	SC	DT	GS	DD	MD
1	DEBBIE COHN	[redacted]	01	22	56	F	M	2	N	N	N	N	N
2	HARRY TREZONA		04	20	88	M	S	1	N	N	N	N	N

** ACTUAL CASH VALUE

61-7621 (01/10) SEE REVERSE FOR ADDITIONAL INFORMATION
DATE PROCESSED 06/10/2014

INSURED

COUNTERSIGNATURE:
PG 1/1

AB 39

9/17/2015 9:04:26 AM

LIBERALIZATION CLAUSE

"If the company revises this policy form with respect to policy provisions, endorsements or rules by which the insurance hereunder could be extended or broadened without additional premium charge, such insurance as is afforded hereunder shall be so extended or broadened effective immediately upon approval of such revision during the policy period by the appropriate insurance supervisory authority."

***LOSS PAYABLE CLAUSE PP 0305 (8/86) / AIP 1003 (8/86)**

Loss Payee:

Loss or damage under this policy shall be paid, as interest may appear, to you and the loss payee shown in the Declarations or in this endorsement. This insurance with respect to the interest of the loss payee, shall not become invalid because of your fraudulent acts or omissions unless the loss results from your conversion, secretion or embezzlement of "your covered auto." However, we reserve the right to cancel the policy as permitted by policy terms and the cancellation shall terminate this agreement as to the loss payee's interest. We will give the same advance notice of cancellation to the loss payee as we give to the named insured shown in the Declarations.
When we pay the loss payee we shall, to the extent of payment, be subrogated to the loss payee's rights of recovery.

OLD DOMINION INSURANCE COMPANY

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative. Old Dominion Insurance Company is a stock insurance company with headquarters located at:

4601 Touchton Road, East, Suite 3300
P.O. Box 16100
Jacksonville, FL 32245-6100
Telephone: (904) 642-3000

If you have questions about your policy, contact your agent at the address and phone number shown on the Declaration page. You may also contact the company at the address and phone number shown above.

Bruce R. Fox
Secretary

Gregg A. Effner
President

60-5231 (9/11)

WHEN THE FRONT OF THIS IS A RENEWAL OR AMENDED DECLARATION, YOUR POLICY HAS BEEN UPDATED TO SHOW CURRENT INFORMATION. IT SHOULD BE KEPT IN A SAFE PLACE ALONG WITH YOUR OTHER INSURANCE RECORDS.

THE APPROPRIATE POLICY PROVISIONS OR POLICY AGREEMENTS, ALONG WITH RELATED FORMS, CONTAINING AGREEMENTS AND CONDITIONS, WERE PREVIOUSLY ISSUED TO YOU. THOSE THAT HAVE NOT CHANGED AND STILL APPLY HAVE NOT BEEN INCLUDED AGAIN. WE ARE ENCLOSING ONLY THOSE FORMS THAT APPLY FOR THE FIRST TIME OR HAVE CHANGED DURING THE PAST POLICY TERM. IF, HOWEVER, YOU WOULD LIKE THE COMPLETE SET, PLEASE CONTACT YOUR AGENT.

THE ENDORSEMENTS APPEARING IN STATE COVERAGE PARTS AND THE FORMS SHOWN ON THE DECLARATIONS APPLY ONLY WHEN THE COVERAGES TO WHICH THEY PERTAIN ARE IDENTIFIED ON THE DECLARATION PAGE WITH A PREMIUM CHARGE OR THE ABBREVIATION "INCL".

IF YOUR POLICY IS BEING AMENDED THE REASON FOR THE CHANGE IS PRINTED ON THIS DECLARATION PAGE.

If you are billed directly by the company, your premium billing will be mailed to you in about two weeks. At that time, you will be offered the option of our convenient monthly installment plan or payment in full, whichever you choose.

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

COPY

Stephany Connelly and James M. Connelly,)
Plaintiff(s))
vs.)
The Main Street America Group, et al.)
Defendant(s))

CIVIL ACTION COVERSHEET

2016-CP-40-5885

Submitted By: John D. Kassel; Theile B. McVey
Address: P O Box 1476; Columbia SC 29202-1476
SC Bar #: 03286; 16682
Telephone #: 803-256-4242
Fax #: 803-256-1952
Other:
E-mail: jkassel@kassellaw.com; emoultrie@kassellaw.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.

FILED
RICHLAND COUNTY
2016 SEP 30 PM 12:49
JEANETTE W. McBRIDE
C.C.P. & G.S.

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	Torts - Professional Malpractice	Torts – Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Conversion (310)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Motor Vehicle Accident (320)	☐ Condemnation (410)
☐ General (130)	☐ Medical Malpractice (220)	☐ Premises Liability (330)	☐ Foreclosure (420)
☒ Breach of Contract (140)	Previous Notice of Intent Case # 20___-NI-____-_____	☐ Products Liability (340)	☐ Mechanic's Lien (430)
☐ Fraud/Bad Faith (150)		☐ Personal Injury (350)	☐ Partition (440)
☐ Failure to Deliver/ Warranty (160)	☐ Notice/ File Med Mal (230)	☐ Wrongful Death (360)	☐ Possession (450)
☐ Employment Discrim (170)	☐ Other (299) _____	☐ Assault/Battery (370)	☐ Building Code Violation (460)
☐ Employment (180)		☐ Slander/Libel (380)	☐ Other (499) _____
☐ Other (199) _____		☐ Other (399) _____	

Inmate Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals
☐ PCR (500)	☐ Reinstate Drv. License (800)	☐ Death Settlement (700)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Judicial Review (810)	☐ Foreign Judgment (710)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Relief (820)	☐ Magistrate's Judgment (720)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Permanent Injunction (830)	☐ Minor Settlement (730)	☐ Municipal (930)
_____	☐ Forfeiture-Petition (840)	☐ Transcript Judgment (740)	☐ Probate Court (940)
	☐ Forfeiture—Consent Order (850)	☐ Lis Pendens (750)	☐ SCDOT (950)
	☐ Other (899)	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Worker's Comp (960)
	_____		☐ Zoning Board (970)
			☐ Public Service Comm. (990)
		☐ Confession of Judgment (770)	☐ Employment Security Comm (991)
		☐ Petition for Workers Compensation Settlement Approval (780)	☐ Other (999) _____
		☐ Other (799) _____	

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

Submitting Party Signature: _____ Date: September 30, 2016

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)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	FOR THE FIFTH JUDICIAL CIRCUIT
Sephany A. Connelly and James M. Connelly,)	Civil Action No.: 2016-CP-40-5885
Plaintiffs,)	SUMMONS (Declaratory Judgement-Breach of Contract)
v.)	
The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trozona,)	
Defendants.)	

RICHLAND COUNTY FILED
2016 SEP 30 PM 2:49
JEANNETTE W. McBRIDE C.C.P. & G.S.

TO THE DEFENDANTS 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 this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

John D. Kassel (SC Bar No. 03268)
jkassel@kassellaw.com
Theile B. McVey (SC Bar No. 16682)
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ATTORNEYS FOR PLAINTIFFS

September 19, 2016

Columbia, South Carolina.

ROA Page 116

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FOR THE FIFTH JUDICIAL CIRCUIT
Sephany A. Connelly and James M. Connelly,	Civil Action No.: 2016-CP-40-5885
Plaintiffs,	COMPLAINT (Declaratory Judgement-Breach of Contract)
v. The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trozona,	
Defendants.	

RICHLAND COUNTY FILED
2016 SEP 30 PM 12:49
JEANNETTE W. MCBRIDE C.C.P. & G.S.

Plaintiffs will allege and show unto this court as follows:

JURISDICTION

1. Plaintiffs Stephany A. Connelly and James M. Connelly are married and are citizens and residents of the State of North Carolina.

2. Defendant The Main Street America Group is an insurance company doing business in South Carolina with its principal place of business in the State of Florida.

4. Defendant Old Dominion Insurance Company is an insurance company doing business in South Carolina with its principal place of business in the State of Florida.

5. Defendant Allstate Fire and Casualty Insurance Company is an insurance company doing business in South Carolina with its principal place of business in the State of Illinois.

6. Defendants Debbie Cohn and Freya Trozona are citizens and residents of Richland County, State of South Carolina.

FACTS COMMON TO ALL CAUSES OF ACTION

7. At all times relevant to this action, Defendants The Main Street America Group and Old Dominion Insurance Company issued an automobile insurance policy with provision for

uninsured motorist coverage, to Debbie Cohn, designated by policy number 01G0167F, with effective dates of March 9, 2014 to March 9, 2015, and with policy limits of $100,000 each person, $300,000.00 each accident.

8. At all times relevant to this action, Freya Trozona was an insured under the above identified The Main Street America Group and Old Dominion Insurance Company policy. Freya Trozona was a family member and resident relative of Debbie Cohn.

9. At all times relevant to this action, a motor vehicle described as a 2012 Jeep Comas vehicle, VIN 1C4NJCBA7CD504097, was listed as an insured vehicle under the above described The Main Street America Group and Old Dominion Insurance Company policy.

10. At all times relevant to this action, Defendant Allstate Fire and Casualty Company issued an automobile insurance policy with provision for uninsured motorist coverage, in the name of James and Stephany Connelly, designated by policy number 963 934 526, with effective dates of September 1, 2014 to March 1, 2015, with policy limits in the amount of $250,000.00 each person, $500,000.00 each accident. James and Stephany Connelly paid all premiums required for maintenance of this policy.

11. On February 24, 2015 Stephany Connelly was riding as a passenger in the 2012 Jeep Comas vehicle which was being operated by Freya Trozona. Ms. Connelly and Ms. Trozona were co- employees both working within the course and scope of their employment with Apple One Employment Agency. Ms. Trozona was a co- owner of the above described vehicle and had permission from Ms. Cohn to be driving the vehicle. Ms. Connelly was occupying the 2012 Jeep Comas vehicle with permission of Ms. Trozona.

12. On February 24, 2015 Ms. Trozona improperly turned left into a private drive way off of Academy Street in Columbia, S.C., or improperly backed down a private driveway onto Academy Street.

13. As a result of Ms. Trozona's actions, her vehicle collide with another vehicle properly in its lane and traveling eastbound on Academy Street.

14. Freya Trozona was negligent, grossly negligent, reckless, wilful and wanton in the following particulars:

a. In failing to keep her vehicle under proper control

b. In failing to yield to traffic on Academy Street

c. In turning into a private driveway from an improper lane of travel

d. In backing out of a private driveway without yielding to approaching traffic

e. In failing to keep a proper lookout

f. In traveling too fast for conditions

g. In failing to brake

h. In failing to take evasive action

15. The above described acts of negligence and gross negligence, recklessness, wilfulness and wantonness proximately caused the injuries and damages suffered by Stephany Connelly.

16. As a result of the collision, Ms. Connelly struck her head causing a loss of consciousness and numerous facial fractures. Ms. Connelly has endured pain, suffering, loss of enjoyment of life, mental anguish, hospital bills, medical bills and loss of income. James Connelly suffered a loss of consortium.

17. Ms. Connelly applied for and began receiving benefits under the South Carolina Workers' Compensation Act.

18. Ms. Freya Trozona was the negligent cause of Ms. Stephany Connelly's injuries and damages. Ms. Trozona was at fault in causing the wreck. Thus, Ms. Connelly is legally entitled to recover damages from Ms. Freya Trozona. However, under South Carolina Ann. §42-5-10 (1985), Ms. Trozona is immune from suit for a tort action.

19. Ms. Connelly made a claim for damages under The Main Street America Group and Old Dominion Insurance Company policy described above. The claim was denied. The stated reason was the exclusivity remedy provision of the South Carolina Workers' Compensation Act.

20. Ms. Connelly made a claim for damages under the Allstate Fire and Casualty Insurance Company policy described above. The claim was denied. The stated reason was the exclusivity remedy provision of the South Carolina Workers' Compensation Act.

FOR A FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT

21. Ms. Trozona's immunity and the insurers' denial of coverage rendered the 2012 Jeep Comas an uninsured motor vehicle.

22. As an insured in an uninsured vehicle, Ms. Stephany Connelly is eligible for coverage for uninsured motorist coverage under The Main Street America Group and Old Dominion Insurance Company policy and the Allstate Fire and Casualty Insurance Company policy described above.

23. There is now a controversy as to whether or not uninsured motorist coverage exists to cover Stephany Connelly's injuries and damages resulting from the February 24, 2015 wreck, as well as James M. Connelly's loss of consortium.

24. This action has brought pursuant to South Carolina Code § 15-53-10 et. seq.

25. Plaintiffs pray that this Court inquire into the matter and issue a declaratory judgement finding that uninsured motorist coverage from The Main Street America Group policy, the Old

Dominion Insurance Company policy, and the Allstate Fire and Casualty Insurance Company policy were in full force and each provided coverage, including uninsured motorist coverage and benefits, to Stephany A. Connelly and James M. Connelly for injuries and damages arising out of the February 24, 2015 wreck.

FOR A SECOND CAUSE OF ACTION
BREACH OF CONTRACT
(The Main Street America Group and Old Dominion Insurance Company)

26. In exchange for payment of premium, which has been received and paid in full, The Main Street America Group and Old Dominion Insurance Company promised to pay compensatory damages which an insured was legally entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by an insured and caused by an accident arising out of the use of an uninsured automobile.

27. An insured person, included any person occupying a covered vehicle, who received personal injury and bodily harm .

28. The Jeep Comas was a covered vehicle.

29. Pursuant to the above described policy and South Carolina Code Ann. §38-77-30(7) and §38-77-150, Stephany A. Connelly was an insured subject to the uninsured motorist benefits promised by the policy. Stephany A. Connelly was a permissive occupant of the Jeep Comas. James M. Connelly was her husband.

30. Stephany A. Connelly and James M. Connelly were entitled to uninsured motorist coverage and benefits as insures or in the alternative, as intended third party beneficiaries under the insurance policy.

31. Stephany A. Connelly and James M. Connelly received personal injury and bodily harm as a result of the February 24, 2015 wreck. Their injuries and damages are of a type that are compensable under the policy.

32. Despite demand for payment of compensation under the policy, The Main Street America Group and Old Dominion Insurance Company have refused to provide uninsured motorist benefits.

FOR A SECOND CAUSE OF ACTION
BREACH OF CONTRACT
(Allstate Fire and Casualty Insurance Company)

33. In exchange for payment of premium by Stephany A. Connelly and James M. Connelly, which has been received and paid in full, Allstate Fire and Casualty Insurance Company promised to pay compensatory damages which an insured was legally entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by an insured and caused by an accident arising out of the use of an uninsured automobile.

34. Stephany A. Connelly and James M. Connelly were named insures under the above described policy.

35. Pursuant to the above described policy and South Carolina Code Ann. §38-77-30(7) and §38-77-150, Stephany A. Connelly and James M. Connelly were insures subject to the uninsured motorist benefits promised by the policy.

36. Stephany A. Connelly and James M. Connelly received personal injury and bodily harm as a result of the February 24, 2015 wreck. Their injuries and damages are of a type that are compensable under the policy.

37. Despite demand for payment of compensation under the policy, Allstate Fire and Casualty Insurance Company has refused to provide uninsured motorist benefits.

WHEREFORE, Plaintiffs pray for uninsured motorist benefits in an amount commensurate with their damages, for the costs of this action, and for such other relief as this Court may find just and owing.

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803-758-6000
803-758-4445 (Facsimile)

ATTORNEYS FOR PLAINTIFFS

September 27, 2016

Columbia, South Carolina.

Summons and complaint of within entitled cause received at this office and service accepted in accordance with law this ____ day of _____

Director of Insurance
and Attorney in Agent Service

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Stephany A. Connelly and James M. Connelly,

Plaintiffs,

vs.

The Main Street America Group; Old Dominion Insurance Company; Allstate Fire and Casualty Insurance Company; Debbie Cohn; and Freya Trozona,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A#: 2016-CP-40-5885

RICHLAND COUNTY
FILED
2016 NOV -8 AM 8:48

ANSWER OF DEFENDANT ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY

Defendant, Allstate Fire and Casualty Insurance Company (hereinafter "Defendant"), by and through the undersigned counsel, hereby answers the Complaint of Plaintiffs herein as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Each and every paragraph of Plaintiffs' Complaint not hereinafter specifically admitted, qualified, or explained is denied.

2. Paragraph 1 is denied upon information and belief.

3. Defendant is currently without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 2 and, therefore, denies same and strict proof is demanded thereof.

4. [sic] Defendant is currently without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 4 and, therefore, denies same and strict proof is demanded thereof.

5. Paragraph 5 is admitted.

6. Defendant is currently without knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 6 through 9 and, therefore, denies same and strict proof is demanded thereof.

7. Paragraph 10 is admitted.

8. As to Paragraph 11, Defendant admits that on February 24, 2015 Stephany Connelly was riding as a passenger in the 2012 Jeep which was being operated by Freya Trozona and that they were co-employees working in the course and scope of their employment with AppleOne Employment Agency, and that Ms. Connelly had permission from Ms. Trozona to be in the vehicle. As to the remaining allegations of Paragraph 11, Defendant is currently without knowledge or information sufficient to form a belief as to the allegations and, therefore, denies same and strict proof is demanded thereof.

9. Defendant is currently without knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 12 through 16 and, therefore, denies same and strict proof is demanded thereof.

10. Paragraph 17 is admitted upon information and belief.

11. As to Paragraph 18, it is admitted only that the Workers' Compensation Act is Ms. Connelly's exclusive remedy and that Ms. Trozona is immune from suit for any damages arising out of the automobile accident. The remaining allegations of Paragraph 18 are denied and strict proof is demanded thereof.

12. Paragraph 19 is admitted upon information and belief.

13. Paragraph 20 is admitted.

14. Paragraphs 21 and 22 are denied.

15. As to Paragraph 23, it is admitted that there is an actual controversy as to whether the Old Dominion and Allstate policies provide uninsured motorist coverage in regards to Ms. Connelly's injuries resulting from the February 24, 2015 wreck. The remaining allegations of Paragraph 23 are denied and strict proof is demanded thereof.

16. Paragraph 24 is admitted.

17. Paragraph 25 is denied.

18. Paragraphs 26 through 32 are not directed toward this Defendant and therefore requires no response. To the extent a response is required, Paragraphs 26 through 32 are denied and strict proof is demanded thereof.

19. As to Paragraph 33, Defendant craves reference to the actual policy of insurance that was issued to the Plaintiffs. Any allegations contained in Paragraph 33 that are inconsistent with that policy and/or South Carolina are denied.

20. Paragraph 34 is admitted.

21. As to Paragraph 35, it is admitted only that Plaintiffs qualify as insureds under Defendant's insurance policy. The remaining allegations of Paragraph 35 are denied and strict proof is demanded thereof.

22. Paragraph 36 is denied.

23. As to Paragraph 37, it is admitted only that because the vehicle that Plaintiff Stephany Connelly was riding in at the time of this accident was not an uninsured motorist vehicle, the uninsured motorist provisions of the policy do not apply to this accident and therefore, her claim for uninsured motorist benefits was denied.

24. The WHEREFORE Paragraph of Plaintiffs' Complaint is denied, including but not limited to any allegations which state that Plaintiffs are entitled to relief of any form from Defendant.

FOR A SECOND DEFENSE

25. Because Plaintiffs are not legally entitled to recover any amounts from Defendant Freya Trozona, they are not entitled to receive any uninsured motorist coverage benefits under Defendant Allstate's policy.

FOR A THIRD DEFENSE

26. Defendant alternatively asserts that if it is determined that its uninsured motorist coverage is triggered as a result of the accident that occurred on February 24, 2015, Defendant is entitled to receive an offset for any amounts payable under the Workers' Compensation Act and any amount of uninsured motorist benefits received from the Old Dominion policy.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, Defendant Allstate prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

GALLIVAN, WHITE & BOYD, P.A.

By: _____

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Attorney for Defendant Allstate

November 4, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A#: 2016-CP-40-5885

Stephany A. Connelly and James M. Connelly,

Plaintiffs,

vs.

The Main Street America Group; Old Dominion Insurance Company; Allstate Fire and Casualty Insurance Company; Debbie Cohn; and Freya Trozona,

Defendants.

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2016 NOV -8 AM 8:48
JEAN H. TOAL
C.C.P. & G.S.

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the address(es) shown below.

DOCUMENT(S) AND PARTIES SERVED:

Answer of Defendant Allstate Fire and Casualty Insurance Company

John D. Kassel, Esquire
Theile B. McVey, Esquire
PO Box 1476
Columbia, SC 29202-1476

Attorneys for Plaintiffs

Legal Assistant

Date: November 4, 2016

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE CIRCUIT COURT
STEPHANY A. CONNELLY and JAMES CONNELLY, Plaintiffs, v. THE MAIN STREET AMERICA GROUP; OLD DOMINION INSURANCE COMPANY; ALLSTATE FIRE AND CASUALTY COMPANY; DEBBIE COHN; and FREYA TROZONA Defendants.	Civil Action No.: 2016-CP-40-05885 **MOTION TO DISMISS PLAINTIFF'S COMPLAINT ON BEHALF OF DEBBIE COHN**

PLEASE TAKE NOTICE that the Defendant, Debra Cohn, improperly named above, (hereinafter "Cohn" or "Defendant"), by and through her undersigned attorneys, will move before the Court of Common Pleas, County of Richland, South Carolina, on such day and at such time as the Court may appoint, for and Order dismissing the Plaintiffs' Complaints pursuant to Rule 12, or alternatively Rule 56 of the South Carolina rules of Civil Procedure. The grounds for said Motion are as follows:

1. This matter arises out of an automobile accident on or about February 24, 2015 involving an automobile owned by Freya Trezona.

2. Debra Cohn is not the owner of the vehicle and even if she was determined to be the owner, she was not driving the automobile on February 24, 2015 or in any other way involved in the accident.

3. It is properly alleged in the Complain that Freya Trozona [sic] was driving the automobile in which the plaintiff, Stephany Connelly was a passenger at the time of the accident.

4. It is further properly alleged in the Complaint that Freya Trozona [sic] and Stephany Connelly were co-employees within the scope and course of their employment at the time of the accident and that Freya Trozona [sic] is immune from any tort action by Stephany Connelly due to the provisions of the South Carolina Workers' Compensation Act.

5. It is further properly alleged in the Complaint that Stephany Connelly has made a claim against the policy of insurance issued to me as the named insured.

6. This is a matter of law and contract construction between the plaintiffs and my insurance company, Old Dominion Insurance Company. I have no interest in how the Court decides the issues asserted in plaintiffs' Complaint as I cannot be personally liable for any of Stephany Connelly's claims under the policy of insurance.

7. Stephany Connelly was not a passenger in the vehicle with my permission.

8. Freya Trezona was not a resident relative of my household at the time of the accident.

9. I further refer the Court to my Affidavit dated June 9, 2016 which is attached hereto as Exhibit A and incorporated by reference herein.

WHEREFORE, Debra Cohn respectfully requests that the Court dismiss her as an unnecessary party to the instant action with prejudice.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

DOUGALL & COLLINS

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William A. Collins, Esq.
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(803) 865-8858 (TEL)
(803) 865-8944 (FAX)

Attorneys for Defendants Old Dominion Insurance Company and Main Street America Group

December 16, 2016

Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the foregoing Defendant's Motion to Dismiss was served in the above-referenced case by depositing a copy of the same in the United States mail, postage prepaid, on the 16th day of December, 2016 addressed as follows:

John D. Kassel, Esq.
Kassel McVey Attorneys at Law
Post Office Box 1476
Columbia, SC 29202-1476
Attorney for Plaintiffs

Benjamin D. McCoy, Esq.
Howser, Newman & Besley, LLC
Post Office Box 12009
Columbia, SC 29211
Attorney for Plaintiffs

A. Johnston Cox, Esq.
Gallivan, White & Boyd, P.A.
Post Office Box 7368
Columbia, SC 29202
Attorney for Allstate Fire & Casualty Insurance Company

Thomas F. Dougall

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE CIRCUIT COURT
STEPHANY A. CONNELLY and JAMES CONNELLY; Plaintiffs, v. THE MAIN STREET AMERICA GROUP; OLD DOMINION INSURANCE COMPANY; ALLSTATE FIRE AND CASUALTY COMPANY; DEBBIE COHN; and FREYA TROZONA Defendants.	)	Civil Action No.: 2016-CP-40-05885 **ANSWER TO PLAINTIFF'S COMPLAINT ON BEHALF OF MAIN STREET AMERICA GROUP AND OLD DOMINION INSURANCE COMPANY**

NOW COME the defendants, The Main Street America Group and Old Dominion Insurance Company, improperly named above, hereinafter ("ODIC," "MSAG," "Defendants," or "Insurer") by and through their undersigned counsel, specifically reserving all of their rights to make jurisdictional, Rule 12, or other motions and in answer to the plaintiffs' Complaint would respectfully show unto the Court that:

FOR A FIRST DEFENSE
(Lack of Jurisdiction as to MSA)

1. MSAG, a holding company incorporated under the laws of the State of Florida, is not an insurance company, does no business in the State of South Carolina, has not been served with a Summons and Complaint, and therefore this Court lacks personal jurisdiction as to MSA pursuant to Rule 12(b)(2), SCRCP.

FOR A SECOND DEFENSE
(Insufficiency of Process of Service as to MSA)

2. MSAG has not been properly served in this matter and requests that it be dismissed from this matter for insufficiency of process pursuant to Rule 12(b)(4), SCRCP.

FOR A THIRD DEFENSE
(Insufficiency of Process of Service as to MSA)

3. MSAG has not been properly served in this matter and requests that it be dismissed from this matter for insufficiency of service of process pursuant to Rule 12(b)(5), SCRCP.

FOR A FOURTH DEFENSE
(Failure to State a Cause of Action as to MSA)

4. The Complaint herein fails to state facts sufficient to constitute a cause of action as to MSAG and therefore the Complaint should be dismissed, as to MSAG, pursuant to Rule 12(b)(6), SCRCP.

FOR A FIFTH DEFENSE
(General Denial)

5. Defendants deny each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.

6. ODIC and MSAG lack sufficient information as to the allegations in paragraph 1 of the Complaint and therefore deny the same.

7. As to paragraph 2 of the Complaint MSAG admits its principal place of business is in the State of Florida. MSAG denies it is an insurance company and denies any remaining allegations in paragraph 2 of the Complaint.

8. Paragraph 4 of the Complaint is admitted.

9. Upon information and belief paragraph 5 of the Complaint is admitted.

10. Upon information and belief paragraph 6 of the Complaint is admitted.

11. As to paragraph 7 of the Complaint ODIC admits it issued an automobile insurance policy, number 01G0167F, with effective dates of March 9, 2014 to March 9, 2015, with policy limits of $100,000 each person and $300,000 per accident to its named insured, Debbie Cohn. The remaining allegations in paragraph 7 of the Complaint, specifically any allegations as to MSAG are denied.

12. Paragraph 8 of the Complaint is denied.

13. As to paragraph 9 of the Complaint, ODIC admits it insured the 2012 Jeep Comas [sic]. Any allegations as to MSAG in paragraph 9 of the Complaint are denied.

14. ODIC and MSAG lack sufficient information as to the allegations in paragraph 10 of the Complaint and they are therefore denied.

15. As to paragraph 11 of the Complaint, ODIC and MSAG admit that on February 24, 2015 Stephany Connelly was riding as a passenger in the 2012 Jeep Comas [sic] which was being operated by Freya Trozona [sic] and that they were co-employees in the course and scope of their employment with Apple One Employment Agency and that Stephany Connelly was occupying the 2012 Jeep Comas [sic] with the permission of Freya Trozona [sic]. The remaining allegations of paragraph 11 of the Complaint are denied.

16. Upon information and belief paragraphs 12 and 13 of the Complaint are admitted.

17. ODIC and MSAG lack sufficient information as to the allegations in paragraph 14 of the Complaint and therefore each and every allegation in the paragraph and each and every subparagraph is denied.

18. Paragraph 15 of the Complaint is denied.

19. ODIC and MSAG lack sufficient information as to the allegations in paragraph 16 of the Complaint and it is therefore denied.

20. Paragraph 17 of the Complaint is admitted.

21. As to paragraph 18 of the Complaint ODIC and MSAG admit only that the Workers' Compensation Act is the sole and exclusive remedy for Stephany Connelly and that Freya Trozona [sic] is immune from suit for any damages arising out of the subject automobile accident and she is therefore an improper and unnecessary party to this lawsuit. The remaining allegations in paragraph 18 of the Complaint are denied.

22. As to paragraph 19 of the Complaint ODIC and MSAG admit that Stephany Connelly has made a claim for damages under the ODIC policy described above. MSAG denies it issued any insurance policy. All remaining allegations in paragraph 19 of the Complaint are denied.

23. Upon information and belief paragraph 20 of the Complaint is admitted.

24. Paragraphs 21 and 22 of the Complaint are denied.

25. As to paragraph 23 of the Complaint it is admitted that there is a controversy as to whether or not there is any uninsured motorist coverage in regard to Stephany Connelly's injuries and damages arising out of the alleged accident. The remaining allegations in paragraph 23 of the Complaint are denied.

26. Paragraph 24 of the Complaint is admitted.

27. Paragraph 25 of the Complaint is denied.

28. Paragraphs 26 of the Complaint is denied and ODIC and MSAG crave reference to the insurance policy in question for all terms, conditions, and exclusions contained therein and any allegations that are inconsistent with the terms, conditions, exclusions or South Carolina law are denied.

29. Paragraph 27 of the Complaint is unintelligible and it is therefore denied. To the extent that it attempts to allege any coverage under the ODIC insurance policy then ODIC and MSAG crave reference to the insurance policy in question for all terms, conditions, and exclusions contained therein and any allegations that are inconsistent with the terms, conditions, exclusions or South Carolina law are denied

30. As to paragraph 28 of the Complaint ODIC admits that it provided coverage for the Jeep Comas [sic] for its named insured Debbie Cohn. The remaining allegations in paragraph 28 of the Complaint are denied.

31. As to paragraph 29 of the Complaint it is admitted upon information and belief that James Connelly is the husband of Stephany Connelly. The remaining allegations in paragraph 29 of the Complaint are denied.

32. Paragraphs 30 and 31 of the Complaint are denied.

33. As to paragraph 32 of the Complaint ODIC and MSAG admit that ODIC has denied the claim made by the plaintiffs. ODIC and MSAG deny the remaining allegations in paragraph 32 of the Complaint.

34. Paragraphs 33, 34, 35, 36, and 37 of the Complaint contain no allegations

as to ODIC or MSAG and therefore no responsive pleading is required. To the extent that paragraphs 33, 34, 35, 36, and 37 of the Complaint can be read to contain any allegations against ODIC and MSAG they are denied.

35. As to the unnumbered paragraph following paragraph 37 of the Complaint, ODIC and MSAG deny that the plaintiffs are entitled to the relief requested.

FOR A SIXTH DEFENSE

36. Because plaintiffs are not legally entitled to recover any amount of damages from Freya Trezona they are not entitled to receive any benefits, including uninsured motorist coverage, under ODIC's policy of insurance.

FOR A SEVENTH DEFENSE

37. ODIC alternatively asserts that if the Court determines that the ODIC policy provides any uninsured motorist coverage to the plaintiffs then ODIC is entitled to an offset for any amounts paid under the Workers' Compensation Act.

FOR AN EIGHTH DEFENSE

38. Defendant ODIC has at all relevant times acted fairly, reasonably, and in good faith as to its insureds in accordance with its contractual obligations.

FOR A NITH DEFENSE

39. The terms, conditions, exclusions, endorsements, and limitations contained in the ODIC policy preclude plaintiffs' claims for coverage and reasonable grounds exist to deny plaintiffs' claims.

FOR A TENTH DEFENSE

40. Any coverage under the ODIC policy is precluded to the extent that plaintiff may have failed to perform any obligations under the alleged policies and failed to comply with the terms and conditions contained in the policies.

FOR AN ELEVENTH DEFENSE

41. Plaintiffs lack privity with defendant ODIC and have no contract with ODIC.

FOR A TWELFTH DEFENSE

42. The plaintiffs have failed to show, as a matter of law, that they are entitled to the declaratory relief requested.

FOR A THIRTEENTH DEFENSE

43. The plaintiffs have failed to state a cause of action upon which relief can be granted and therefore their Complaint should be dismissed pursuant to Rule 12(b)(6), SRCP.

FOR A FOURTEENTH DEFENSE

44. The plaintiffs' Complaint fails to state a cause of action upon which fees or costs can be awarded or alleged facts which, if proven, would entitle plaintiffs to an award of costs and fees.

FOR A FIFTEENTH DEFENSE

45. ODIC and MSAG hereby adopt, as if fully repeated verbatim herein, any defenses of any other defendants to the extent that such defenses are not inconsistent with any defenses stated in paragraphs 1 through 44 above.

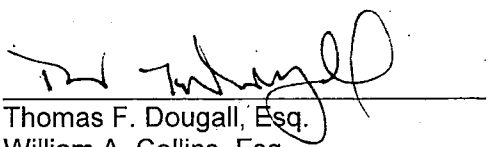
FOR A SIXTEENTH DEFENSE

46. ODIC and MSAG reserve any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the plaintiffs' Complaint and asserted their affirmative defenses Old Dominion Insurance Company and Main Street America Group pray that they dismissed from this lawsuit with prejudice, that the Complaint be dismissed with prejudice, and for such further relief as the court deems just and proper.

Respectfully submitted,

DOUGALL & COLLINS



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William A. Collins, Esq.
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(803) 865-8944 (FAX)

Attorneys for Defendants Old Dominion Insurance Company and Main Street America Group

December 16, 2016

Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the foregoing Defendants' Answer to Plaintiffs' Complaint was served in the above-referenced case by depositing a copy of the same in the United States mail, postage prepaid, on the 16th day of December, 2016 addressed as follows:

John D. Kassel, Esq.
Kassel McVey Attorneys at Law
Post Office Box 1476
Columbia, SC 29202-1476
Attorney for Plaintiffs

Benjamin D. McCoy, Esq.
Howser, Newman & Besley, LLC
Post Office Box 12009
Columbia, SC 29211
Attorney for Plaintiffs

A. Johnston Cox, Esq.
Gallivan, White & Boyd, P.A.
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Columbia, SC 29202
Attorney for Allstate Fire & Casualty Insurance Company

Thomas F. Dougall

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	
COUNTY OF RICHLAND)	**FOR THE FIFTH JUDICIAL CIRCUIT**
Stephany A. Connelly and James M. Connelly,)	**Civil Action No.: 2016-CP-40-5885**
)	
Plaintiffs,)	**JOINT STIPULATIONS OF FACT**
)	
v.)	
The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trozona,)	
)	
Defendants.)	

RICHLAND COUNTY
FILED
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JEANNETTE W. McBRIDE
C.C.P. & G.S.

1. Old Dominion Insurance Company issued an automobile liability insurance policy to Debbie Cohn ("Cohn"), designated by policy number 01G0167F, with effective dates of March 9, 2014 to March 9, 2015, and with policy limits of $100,000 each person, $300,000.00 each accident (the "Old Dominion Policy") The Old Dominion Policy contained an uninsured motorist endorsement with the same coverage limits.

2. The Old Dominion Policy was in full force and effect at the time of the accident.

3. The Old Dominion Policy issued to Cohn includes bodily injury liability insurance and property damage liability insurance with limits in compliance with S.C. Code Ann. §38-77-140.

4. Allstate Fire and Casualty Company issued an automobile liability insurance policy in the name of James and Stephany Connelly, designated by policy number 963934526, with effective dates of September 1, 2014 to March 1, 2015, with policy limits in the amount of $250,000.00 each person, $500,000.00 each accident (the "Allstate Policy"). The Allstate Policy

contained an uninsured motorist endorsement with the same coverage limits. James and Stephany Connelly paid all premiums required for maintenance of this policy.

5. Freya Trezona ("Trezona") is the daughter of Cohn.

6. Cohn and Trezona owned a motor vehicle described as a 2012 Jeep Compass vehicle, VIN 1C4NJCBA7CD504097 (the "Vehicle"). The Vehicle was an insured vehicle under the Old Dominion Policy.

7. Trezona is an insured under the Old Dominion Policy.

8. On February 24, 2015, Stephany Connelly ("Connelly") was riding as a passenger in the Vehicle that was being operated by Trezona.

9. Connelly was occupying the Vehicle with permission of Ms. Trezona.

10. For purposes of this declaratory judgment only, the parties stipulate that Trezona's negligence caused the accident and Connelly's resulting injuries and damages.

11. Connelly and Trezona were co- employees, both working within the course and scope of their employment with Apple One Employment Agency at the time of the accident.

12. Connelly applied for and began receiving benefits under the South Carolina Workers' Compensation Act (the "Act").

13. Connelly is not legally entitled to recover damages from Trezona , because Trezona is immune from suit as a co-employee under the exclusivity provision of the Act.

14. Connelly made a claim for damages under the liability and uninsured coverage of the Old Dominion Policy. The claim was denied. Old Dominion denied the claim under the liability policy because of its belief that Trezona cannot be legally responsible to Connelly due to her immunity under the Act.

15. The Old Dominion liability policy provides that: We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident.

16. The Old Dominion uninsured endorsement provided that: We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of "bodily injury": 1. Sustained by an "insured", and 2. Caused by an accident.

17. Connelly was an insured person under the Old Dominion Policy's uninsured motorist endorsement by reason of her occupancy in the Vehicle and the definition of an insured in the Old Dominion Policy.

18. Old Dominion denied the claim under the uninsured motorist coverage on the ground that the vehicle Trezona was driving was not an uninsured vehicle and workers' compensation is her exclusive remedy in South Carolina.

19. Connelly made a claim for damages under the uninsured coverage of the Allstate Policy. Allstate denied the claim on the grounds that the vehicle Trezona was driving was not uninsured at the time of the accident and that workers compensation is the plaintiff's exclusive remedy in South Carolina.

20. Old Dominion does not deny that the Vehicle was insured at the time of the accident.

[Signatures appear on the following page]

JOINT STIPULATIONS OF FACT
Connelly v. The Main Street America Group, et al.
Civil Action No.: 2016-CP-40-5885

WE SO STIPULATE:

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January 05, 2017

Columbia, South Carolina.

JOINT STIPULATIONS OF FACT
Connelly v. The Main Street America Group, et al.
Civil Action No.: 2016-CP-40-5885

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January 24, 2017

Elgin, South Carolina

JOINT STIPULATIONS OF FACT
Connelly v. The Main Street America Group, et al.
Civil Action No.: 2016-CP-40-5885

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January 23, 2017

Columbia, South Carolina.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Stephany A. Connelly and James M. Connelly, Plaintiffs, vs. The Main Street America Group; Old Dominion Insurance Company; Allstate Fire and Casualty Insurance Company; Debbie Cohn; and Freya Trozona, Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT Civil Action Number: 2016-CP-40-05885 **OLD DOMINION INSURANCE COMPANY AND MAIN STREET AMERICA GROUP'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendants Old Dominion Insurance Company (hereinafter "Old Dominion") and The Main Street America Group (hereinafter "Main Street") submit the following memorandum in support of their Motion for Summary Judgment.

BACKGROUND

This case arises out of an automobile accident that occurred on February 24, 2015, in Columbia, South Carolina. The following facts have been stipulated by the parties (See, Joint Stipulations of Fact, Exhibit A).

Plaintiff Stephany Connelly was riding as a passenger in a vehicle operated and owned by Freya Trezona[1]. Connelly and Trezona were co-employees working within the course and scope of their employment with Apple One Employment Agency at the time of the accident. The Complaint alleges the accident occurred when Trezona either improperly turned left into a private driveway or improperly backed down the driveway causing her vehicle to collide with

[1] As discussed below, Trezona co-owned the vehicle with Old Dominion's named insured Debbie Cohn. Ms. Trezona is improperly named in this matter. The vehicle had liability limits in compliance with S.C. Code Ann. §38-77-140. See Old Dominion Policy, Exhibit B.

another vehicle. Connelly alleges she has incurred damages as a result of Trezona's negligent operation of the vehicle.

After the accident, Connelly applied for and began receiving benefits under the South Carolina Workers' Compensation Act (the "Act").[2] The fact the accident occurred within the course and scope of Connelly's and Trezona's employment has rendered two outcomes. First, Connelly has received benefits under the South Carolina Workers' Compensation Act. Second, as Connelly's co-employee, Trezona has received immunity from tort actions pursuant to the Act's exclusivity provision.

Following the accident, Connelly also made a third-party claim against Trezona and sought liability coverage from the Old Dominion policy. However, Old Dominion denied liability because Trezona is not legally obligated to pay any amount of damages to Connelly based upon the exclusivity provision found in S.C. Code Ann. § 42-5-10 and Trezona is immune from liability in tort under the Act.[3]

Following Old Dominion's denial of liability, Connelly then presented an uninsured motorist ("UM") claim to Old Dominion Insurance Company ("Old Dominion"). Again, Old Dominion denied the UM claim on the grounds that the vehicle Trezona was driving was not an

[2] S.C. Code Ann. §42-1-540 states: "The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death."

[3] South Carolina courts have held that the same immunity from civil suit provided to employers under the Workers' Compensation Act also extends to co-employees. *See, e.g., Posey v. Proper Mold & Engineering, Inc.*, 378 S.C. 210, 661 S.E.2d 395 (Ct. App. 2008); *Nolan v. Daley*, 222 S.C. 407, 73 S.E.2d 449 (1952) (holding a co-employee who negligently injures another employee while in the scope of employment is immune under the Act and cannot be held personally liable).

uninsured vehicle and that workers' compensation is Connelly's exclusive remedy in South Carolina.

Allstate issued an automobile policy to Plaintiffs James and Stephany Connelly. The Connellys maintained UM coverage in the amount of $250,000 per person and $500,000 per accident. The Allstate policy contains an uninsured motorist endorsement with the same coverage limits. Connelly presented a UM claim to Allstate and Allstate denied the claim on the grounds that the vehicle Trezona was driving was not an uninsured vehicle and that workers' compensation is Connelly's exclusive remedy in South Carolina.

In response to Old Dominion and Allstate's denial of coverage, Plaintiffs instituted this action alleging the denial of UM benefits constitutes a breach of contract and seeking a declaration that Connelly is entitled to UM benefits under both policies. However, as a matter of law and for the reasons stated herein, Connelly was not involved in an accident with an uninsured vehicle and she is not legally entitled to recover damages from the owner or operator of an uninsured vehicle.

STANDARD OF REVIEW

The determination of coverage under an insurance policy is an action at law. *Nationwide Mut. Ins. Co. v. Prioleau*, 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct. App. 2004); *see also Morehead v. Doe*, 324 S.C. 559, 568, 479 S.E.2d 817, 821 (Ct. App. 1996) (holding an action for breach of an insurance contract is an action at law); *Johnson v. State Farm Mut. Auto Ins. Co.*, 260 S.C. 24, 193 S.E.2d 806 (1973) (holding the construction of an unambiguous insurance policy is a matter for the trial judge). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is

entitled to judgment as a matter of law.". Rule 56(c), SCRCP; *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003). A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

ARGUMENT

The Trezona vehicle was insured and therefore cannot be an uninsured vehicle.

Old Dominion does not deny that it issued a policy of insurance coverage to Debbie Cohn, policy number 01G0167F with effective dates of March 9, 2014 to March 9, 2015 with liability limits of $100,000 per person and $300,000 per accident. As required by law the policy was endorsed to provide mandatory UM coverage in the amount of $100,000 per person and $300,000 per accident. In addition, Debbie Cohn purchased optional UIM coverage with the same limits. The policy limits exceed South Carolina's minimum liability insurance limits. Accordingly, the Jeep was an insured vehicle at all times relevant to Plaintiffs' Complaint.

It is clear under South Carolina law that a vehicle cannot be both insured and uninsured.

S.C. Code Ann. § 38-77-30 provides the following definition:

(14) "Uninsured motor vehicle" means a motor vehicle as to which:
- (a) there is not bodily injury liability insurance and property damage liability insurance both at least in the amounts specified in Section 38-77-140; or
- (b) there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder; or
- (c) there was that insurance, but the insurer who wrote the same is declared insolvent, or is in delinquency proceedings, suspension, or receivership, or is proven unable fully to respond to a judgment; and
- (d) there is no bond or deposit of cash or securities in lieu of the bodily injury and property damage liability insurance;
- (e) the owner of the motor vehicle has not qualified as a self-insurer in accordance with the applicable provisions of law.

> A motor vehicle is considered uninsured if the owner or operator is unknown. However, recovery under the uninsured motorist provision is subject to the conditions set forth in this chapter.
> Any motor vehicle owned by the State or any of its political subdivisions is considered an uninsured motor vehicle when the vehicle is operated by a person without proper authorization.

Accordingly, as the Jeep in question was insured by the Defendant, Debbie Cohn, under the policy of insurance issued by Old Dominion, and as the policy provided for insurance limits exceeding South Carolina's minimum limits under the South Carolina Financial Responsibility Act, the Jeep cannot be an uninsured vehicle. There is simply no statutory or contractual language to support plaintiffs' contention that the Trezona vehicle was an uninsured motor vehicle under the facts of this case.

The exclusivity of the Workers' Compensation Act does not render the Trezona vehicle uninsured and Plaintiffs are not "legally entitled to recover damages."

The Plaintiffs admit that "[o]n February 24, 2015 Stephany Connelly was riding as a passenger in the 2012 Jeep Comas (sic) vehicle which was being operated by Freya Trozona (sic). Ms. Connelly and Ms. Trozona (sic) were co-employees both working within the course and scope of their employment with Apple One Employment Agency. (Plaintiffs' Complaint, ¶11).

The issue of whether a co-employee's immunity under the Workers' Compensation Act renders a vehicle uninsured for purposes of UM coverage has not yet been addressed in South Carolina and a review of decisions from other jurisdictions addressing this issue reveals a split in authority. However, a finding that a co-employee's statutory immunity under the Act does not implicate uninsured motorist coverage is required to adhere to South Carolina's statutory definition of "uninsured motor vehicle," uninsured motorist statutes, and the legislative intent of the Workers' Compensation Act.

The statutory requirements for uninsured motorist coverage in South Carolina are found in S.C. Code Ann. §38-77-10, et. al. S.C. Code Ann. §38-77-150 states:

> No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is ***legally entitled to recover*** as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38-77-140.

S.C. Code Ann. § 38-77-150(A) (emphasis added). Tracking the "legally entitled to recover" language, the Old Dominion policy states:

> **INSURING AGREEMENT**
>
> We will pay damages which an "insured" is **legally entitled to recover** (emphasis added) from the owner or operator of an "uninsured motor vehicle" because of:
> 1. "Bodily injury" sustained by an "insured" and caused by an accident; and
> 2. "Property damage" caused by an accident.

(Policy, Exhibit B)

S.C. Code Ann. § 38-77-30 provides the following definition:

> (14) "Uninsured motor vehicle" means a motor vehicle as to which:
> (a) there is not bodily injury liability insurance and property damage liability insurance both at least in the amounts specified in Section 38-77-140; or
> (b) there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder; or
> (c) there was that insurance, but the insurer who wrote the same is declared insolvent, or is in delinquency proceedings, suspension, or receivership, or is proven unable fully to respond to a judgment; and
> (d) there is no bond or deposit of cash or securities in lieu of the bodily injury and property damage liability insurance;
> (e) the owner of the motor vehicle has not qualified as a self-insurer in accordance with the applicable provisions of law.
>
> A motor vehicle is considered uninsured if the owner or operator is unknown. However, recovery under the uninsured motorist provision is subject to the conditions set forth in this chapter.
>
> Any motor vehicle owned by the State or any of its political subdivisions is considered an uninsured motor vehicle when the vehicle is operated by a person without proper authorization.

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As previously discussed, it is undisputed that Connelly is not legally entitled to recover damages from Trezona due to her immunity under the Workers' Compensation Act. This is not only undisputed, it is so stipulated by the plaintiffs. (See Joint Stipulation of Fact 13).

These undisputed facts, statutes, and provisions guide the determination of whether the Trezona vehicle was uninsured and whether Plaintiffs are "legally entitled to recover" damages from Trezona. They also correspond with statues and provisions relied upon by the Supreme Court of Kentucky in *State Farm Mutual Automobile Insurance Co. v. Slusher*, 325 S.W.3d 318 (Ky. 2010). The *Slusher* Court addressed a factually similar situation involving the right of a worker to recover under his personal UM or UIM policy for injuries sustained in a work-related motor vehicle accident caused by the negligence of a co-worker. Like the instant case, the worker in *Slusher* was injured during the course and scope of his employment when his co-worker's truck rolled into the building in which the decedent was working. The worker's estate received workers' compensation benefits from the employer's carrier and was unable to assert a wrongful death claim against the co-worker due to the exclusive remedy provision of the Workers' Compensation Act[4]. When the worker's estate sought payment under his personal UM and UIM policies, the carrier denied on the grounds the policy limited UM and UIM liability to damages the estate was legally entitled to collect from the owner or operator of an uninsured or

[4] KRS 342.690(1) states: "If an employer secures payment of compensation as required by this chapter, the liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death .... The exemption from liability given an employer by this section shall also extend to such employer's carrier and to all employee's, officers or directors of such employer or carrier ...." *See also, Travelers Indemnity Co. v. Reker*, 100 S.W.3d 756, 760 (Ky. 2003) (holding the effect of this statute is to "shield a covered employer and its insurer from any other liability to a covered employee for damages arising out of a work-related injury.").

underinsured vehicle. Further, like S.C. Code Ann. § 38-77-150(A), Kentucky's statutory law eliminated the estate's legal entitlement to collect any damages from the employer or a co-worker in excess of the workers' compensation benefits paid.

Citing the exclusivity statute, the *Slusher* court found that except for the workers' compensation benefits that had already been awarded, the worker's estate is not "legally entitled to collect" any further amounts from either the employer or the co-worker. Consequently, the estate could not collect under its UM or UIM coverage because the contractual language of the policy afforded payment of those benefits only for "bodily injury an insured is legally entitled to collect from the driver of an uninsured motor vehicle." In reaching this conclusion, the *Slusher* court sided with a majority of other jurisdictions. *Slusher*, 325 S.W.3d at 324 n. 12 (citing *Ex parte Carlton*, 867 So.2d 332 (Ala. 2003) (employee injured as a passenger in a vehicle driven by a co-employee was, under Workers' Compensation Act, not legally entitled to recover from owner or operator of uninsured vehicle, for purposes of uninsured motorist statute, and, therefore not entitled to UM benefits under his insurance policy); *Wachtler v. State Farm Mut. Auto. Ins. Co.*, 835 So.2d 23 (Miss. 2003) (insured was not "legally entitled to recover" from co-employee driving truck that struck insured and, therefore, was not entitled to UM benefits under personal automobile policies; the exclusive remedy provision of the Workers' Compensation Act barred recovery from co-employee); *Williams v. Thomas*, 370 S.E.2d 773 (Ga. App. 1987) (an employee who suffered an on-the-job injury when struck by a motor vehicle owned by his employer and operated by his co-employee while in the scope of employment, and for which the employee was awarded workers' compensation benefits, held not entitled to recover uninsured motorist benefits under his own automobile insurance policy); *Williams v. Country Mut. Ins. Co.*, 328 N.E.2d 117 (Ill. App. 1975) (collision between two employees' automobiles on their

employer's premises in the course of employment, was within the purview of the state workers' compensation law; the injured employee's sole recourse was under the workers' compensation statute, and there was no coverage under the injured employee's UM coverage, even though the co-employee was uninsured); *Lee v. Allstate Ins. Co.*, 467 So.2d 44 (La. App. 1985) (employee injured in an automobile accident caused by co-employee held not entitled to recover from his co-employee's insurer or from his own UM carrier as both insurers were entitled to avail themselves of the exclusive remedy provision of the state workers' compensation statute.)).

In determining the worker's estate was not legally entitled to recover UM and/or UIM benefits due to the exclusivity provision in the Workers' Compensation Act, the *Slusher* court distinguished cases applying an "essential facts" approach. *Id.* Under this approach, some courts have interpreted the phrase "legally entitled to recover," or its equivalent, to allow an insured to collect UM coverage merely by establishing fault on the part of the tortfeasor and the amount of the insured's damages. *Id* at 322. Under the "essential facts" approach, the tortfeasor's immunity does not preclude UM coverage.[5]

Noting the shortcomings of the essential facts analysis, the *Slusher* court found that the abridgment of the essential facts approach "fails to properly consider an individualized analysis of a particular policy's language and its interplay with statutory public policy exemptions to tort liability, such as the exclusive remedy provisions of the Workers' Compensation Act." *Slusher*, 325 S.W.3d at 324 n. 11 (; *see also Williams v. State Farm Mut. Auto. Ins. Co.*, 641 A.2d 783, 787 (Conn. 1994) ("In order to recover uninsured motorist benefits, the plaintiff must prove, pursuant to the applicable statutes and regulations, as well as the contract, that he is 'legally

[5] Representative of the essential facts approach is *Borjas v. State Farm Mutual Automobile Insurance Co.*, 33 P.3d 1265 (Colo. Ct. App. 2001), which held "legally entitled to recover" means the insured need only establish fault of the uninsured motorist gave rise to damages and the extent of those damages.

entitled to collect' damages from the uninsured motorist...'Legally entitled to collect damages from the owner or driver of an uninsured motor vehicle,' means that in order to recover tinder the policy, the plaintiff must prove: (1) that the other motorist was uninsured; (2) that the other motorist was legally liable under the prevailing law; and (3) the amount of liability.") (emphasis added).

The reasoning in *Slusher* and other cases accounting for statutory immunity in a "legally entitled to recover" analysis is applicable to this case and in accord with South Carolina law and legislative intent. The legislature's intent is evidenced in the fact it did not include a provision in the Workers' Compensation Act entitling injured workers with damages in excess of allowable workers' compensation benefits to obtain further benefits.

Proof of the legislative intent that the Workers' Compensation Act is an employee's exclusive remedy against a co-employee is further evidenced by the fact the General Assembly chose not to include a provision in the Workers' Compensation Act entitling workers injured by co-employees to seek additional recovery from uninsured or underinsured motorist carriers.

The legislature certainly could have included such a provision, but apparently chose not to do so. This is illustrated by the fact that the legislature did include such a provision within the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-190, entitled "Compensation of plaintiff pursuant to underinsured or uninsured defendant provisions of plaintiff's insurance policy" provides:

> If the amount of the verdict or judgment is not satisfied by reason of the monetary limitations of this chapter upon recovery from the State or political subdivision thereof, the plaintiff's insurance company, subject to the underinsured and uninsured defendant provisions of the plaintiff's insurance policy, if any, shall compensate the plaintiff for the difference between the amount of the verdict or judgment and the payment by the political subdivision. If a cause of action is barred under § 15-78-60 of the 1976 Code, the plaintiff's insurance company must compensate him for his losses subject to the aforementioned provisions of his insurance policy.

The South Carolina Supreme Court construed this statute in *Cain v. Nationwide Property & Casualty Insurance Co.*, and held that "by enacting section 15-78-190, the Legislature assured that an insurance company could not cite the 'exclusive civil remedy portion of section 15-78-20[6] to deny payment from the plaintiff's uninsured or underinsured motorist coverage where recovery pursuant to the Tort Claims Act was insufficient." 378 S.C. 25, 31, 661 S.E.2d 349, 352 (2008). Conversely, the omission of a similar provision in the Workers' Compensation Act evinces the legislature's intent to allow insurance companies to cite the exclusivity portion of S.C. Code Ann. § 42-1-540 to deny payment from the plaintiff's UM/UIM coverage where recovery pursuant to the Workers' Compensation Act was insufficient. See *State v. Thomas*, 372 S.C. 466, 469, 642 S.E.2d 724, 725 (2007) (holding that the inclusion of specific provisions to prohibit suspension of sentences in other statutes and omission of any such provision in the proximity statute, indicates the legislature did not intend to limit the general authority to suspend sentences); *Branch v. City of Myrtle Beach ex rel. Attorney Gen. of S.C.*, 340 S.C. 405, 410, 532 S.E.2d 289, 292 (2000) (holding that by including definition of public employee in other sections but not in right-to-work statute, legislature did not intend to cover public employees).

The *Cain* opinion is instructive in that it also analyzed the statutory definitions of uninsured and underinsured vehicles. The Court recognized that limiting recovery from the government under the Tort Claims Act is not unusual, but the UM and UIM arena is unique. *Id.* The Court further recognized that "the sole purpose of these kinds of insurance is to provide compensation where the at-fault motorist either is not insured or does not have enough insurance." *Id.* Relying on the definitions of uninsured and underinsured vehicles in the

[6] Section 15-78-20(b) states: "The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)."

plaintiff's policy and corresponding statutory definitions, the *Cain* Court held plaintiff was not entitled to recover under the UM section of his policy because the tortfeasor's vehicle had insurance protection greater than the minimum limits but less than plaintiff's damages and was, therefore, "underinsured". *Id.* at 32, 661 S.E.2d at 353. Plaintiff did not have UIM coverage on his policy and consequently, could not recover.

The same analysis applies to this case. The Workers' Compensation Act is the exclusive remedy for workers injured in the course and scope of employment. South Carolina courts have held that the same immunity from civil suit provided to employers under the Act also extends to co-employees. *See, e.g., Posey v. Proper Mold & Engineering, Inc.*, 378 S.C. 210, 661 S.E.2d 395 (Ct. App. 2008); *Nolan v. Daley*, 222 S.C. 407, 73 S.E.2d 449 (1952) (holding a co-employee who negligently injures another employee while in the scope of employment is immune under the Act and cannot be held personally liable). Unlike the Tort Claims Act, the Workers' Compensation Act does not include a provision permitting the collection of UM or UIM benefits in accidents involving at-fault co-employees or employers. Although the purpose of these coverages is to compensate an individual when the at-fault motorist is uninsured or does not have enough insurance, the determination of coverage in UM/UIM policies still turns on the definitions of uninsured and underinsured vehicles as found in the policies and in statutory law.

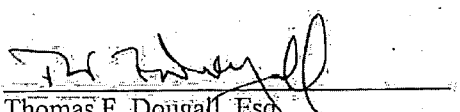
Considering the definitions of "uninsured motor vehicle" in the Old Dominion policy and in S.C. Code Ann. § 38-77-30, the Trezona vehicle in which Connelly was riding was not uninsured because there was bodily injury and property damage liability insurance in or exceeding statutorily required amounts on the vehicle. In addition, Connelly is not "legally entitled to recover" damages from Trezona because she is immune from suit pursuant to § 42-1-540. Immunity of the tortfeasor does not render the vehicle uninsured, especially when the

legislature chose not to include a provision allowing UM/UIM coverage in the Workers' Compensation Act.

CONCLUSION

In moving for Summary Judgment, Old Dominion acknowledges the marked split in authority over the issue presented in this case and urges the Court to adopt the view that gives effect to South Carolina's legislative intent and statutory definition of "uninsured motor vehicle". An "uninsured motor vehicle" means a "vehicle as to which there is not bodily injury liability insurance and property damage liability insurance" in amounts mandated by statute. S.C. Code Ann. § 38-77-30. The definition does not include vehicles driven by tortfeasor's immune from suit. The Trezona vehicle was an insured vehicle because it carried bodily injury and property damage coverage. Further, giving effect to the exclusivity provision of S.C. Code Ann. § 42-1-540, Plaintiffs' sole remedy is the Workers' Compensation Act. For these reasons, Old Dominion contends there is no genuine issue of any material fact that Plaintiffs are not entitled to UM coverage under the Old Dominion policy and respectfully requests an order granting Summary Judgment in its favor.

DOUGALL & COLLINS



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March 2, 2017

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Stephany A. Connelly and James M. Connelly, Plaintiffs, vs. The Main Street America Group; Old Dominion Insurance Company; Allstate Fire and Casualty Insurance Company; Debbie Cohn; and Freya Trezona, Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A#: 2016-CP-40-5885 **ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT**

RICHLAND COUNTY
FILED
2016 MAR -8 PM 12:47
BETTE W. ROBERTS
CLERK OF COURT

PLEASE TAKE NOTICE that the defendant, Allstate Fire and Casualty Insurance Company ("Allstate"), by and through its undersigned counsel, will move the Court, at a date and time to be set by the Court, but not sooner than ten (10) days after service hereof, for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment in its favor inasmuch as there is no genuine issue as to any material fact and Allstate is entitled to judgment as a matter of law on the following grounds:

> Plaintiffs are not entitled to uninsured motorist coverage because the exclusivity of the Workers' Compensation Act does not render the vehicle in which Connelly was riding uninsured and Plaintiffs are not "legally entitled to recover damages."

This motion is based upon the pleadings and discovery in this case, Rule 56 of the South Carolina Rules of Civil Procedure, all applicable common and statutory law, Allstate's Memorandum in Support of Summary Judgment and all exhibits and cases attached thereto.

For the foregoing reasons, Allstate respectfully requests that this Court grant its motion for summary judgment.

(SIGNATURE PAGE TO FOLLOW)

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March 10, 2017

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of **ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT** on all known counsel of record by placing a copy in the United States Mail, with due and proper postage affixed thereto and addressed as follows this the 6 day of March, 2017:

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Stephany A. Connelly and James M. Connelly, Plaintiffs, vs. The Main Street America Group; Old Dominion Insurance Company; Allstate Fire and Casualty Insurance Company; Debbie Cohn; and Freya Trezona, Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A#: 2016-CP-40-5885 **ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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C.C.P.&G.S.

Defendant Allstate Fire and Casualty Insurance Company (hereinafter "Allstate") submits the following memorandum in support of its Motion for Summary Judgment. Allstate seeks a ruling from the Court that Plaintiffs cannot recover under Allstate's Uninsured Motorist coverage because Stephany Connelly was not involved in an accident with an uninsured motorist and she is not legally entitled to recover damages from the owner or operator of an uninsured automobile.

BACKGROUND

This case arises out of an automobile accident that occurred on February 24, 2015, in Columbia, South Carolina. The following facts have been stipulated by the parties (See, Joint Stipulations of Fact, Exhibit A):

Plaintiff Stephany Connelly was injured in an automobile accident while riding as a passenger in a vehicle operated by Freya Trezona and co-owned by Debbie Cohn ("Cohn") and Freya Trezona ("Trezona"). Connelly and Trezona were co-employees working within the course and scope of their employment with Apple One Employment Agency at the time of the accident. As a result of Trezona's negligent operation of the vehicle, Connelly incurred

damages. At the time of the accident, the vehicle Trezona was driving was insured under a policy of liability insurance issued by Old Dominion Insurance Company ("Old Dominion") to Cohn with liability limits in compliance with S.C. Code Ann. § 38-77-140[1].

After the accident, Connelly applied for and began receiving benefits under the South Carolina Workers' Compensation Act (the "Act"). Pursuant to S.C. Code Ann. § 42-1-540[2], Connelly is not legally entitled to recover damages from Trezona, because she is Connelly's co-employee.[3]

However, Plaintiffs also made a third party claim against Trezona and sought liability coverage from the Old Dominion policy. Old Dominion denied the claim because on the ground that Trezona cannot be legally responsible to Connelly due to her immunity under the Workers' Compensation Act.[4] Plaintiffs then sought uninsured motorist ("UM") benefits from the Old Dominion policy. Old Dominion denied the UM claim on the grounds that the vehicle Trezona was driving was not an uninsured vehicle and workers' compensation is her exclusive remedy in South Carolina.

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[1] Defendant Freya Trezona is the daughter of Cohn and is an insured under the policy.

[2] S.C. Code Ann. § 42-1-540 states: "The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death."

[3] South Carolina courts have held that the same immunity from civil suit provided to employers under the Workers' Compensation Act also extends to co-employees. *See, e.g., Posey v. Proper Mold & Engineering, Inc.*, 378 S.C. 210, 661 S.E.2d 395 (Ct. App. 2008); *Nolan v. Daley*, 222 S.C. 407, 73 S.E.2d 449 (1952) (holding a co-employee who negligently injures another employee while in the scope of employment is immune under the Act and cannot be held personally liable).

[4] It is important to note that Old Dominion did not deny *coverage* for the accident. Rather, Old Dominion asserted (correctly) that Trezona has no personal *liability* for the accident.

Allstate issued an automobile policy to Plaintiffs James and Stephany Connelly with policy limits in the amount of $250,000 each person and $500,000 each accident. (Exhibit B). The Allstate policy contained an uninsured motorist endorsement with the same coverage limits. Connelly presented ("UM") claims to Allstate. Allstate also denied the claim on the grounds that the vehicle Trezona was driving was not uninsured at the time of the accident and that workers' compensation is Connelly's exclusive remedy in South Carolina.

In response to Old Dominion's and Allstate's denials of coverage, Plaintiffs instituted this action alleging the denial of UM benefits constitutes a breach of contract and seeking a declaration that Connelly is entitled to UM benefits under both policies. However, as a matter of law, Connelly was not involved in an accident with an uninsured motorist and she is not legally entitled to recover damages from the owner or operator of an uninsured automobile.

STANDARD OF REVIEW

The determination of coverage under an insurance policy is an action at law. *Nationwide Mut. Ins. Co. v. Prioleau*, 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct. App. 2004); *see also Morehead v. Doe*, 324 S.C. 559, 568, 479 S.E.2d 817, 821 (Ct. App. 1996) (holding an action for breach of an insurance contract is an action at law); *Johnson v. State Farm Mut. Auto Ins. Co.*, 260 S.C. 24, 193 S.E.2d 806 (1973) (holding the construction of an unambiguous insurance policy is a matter for the trial judge). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003). A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however,

summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

ARGUMENT

The exclusivity of the Workers' Compensation Act does not render the Trezona vehicle uninsured and Plaintiffs are not "legally entitled to recover damages."

The issue of whether a co-employee/tortfeasor's immunity under the Workers' Compensation Act renders a vehicle uninsured for purposes of UM coverage has not yet been addressed in South Carolina. A review of decisions from other jurisdictions addressing this issue reveals a split in authority. However, a finding that a co-employee's statutory immunity under the Act does not implicate uninsured motorist coverage is required to adhere to South Carolina's statutory definition of "uninsured motor vehicle," uninsured motorist statutes and the legislative intent of the Workers' Compensation Act.

The statutory requirements for uninsured motorist coverage in South Carolina are found in S.C. Code Ann. § 38-77-10 et. al. S.C. Code Ann. § 38-77-150 states,

> No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is ***legally entitled to recover*** as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38-77-140.

S.C. Code Ann. § 38-77-150(A) (emphasis added). Plaintiff's quest for uninsured motorist benefits must fail for two reasons: (1) the Trezona vehicle was not uninsured at the time of the accident and (2) Plaintiffs are not legally entitled to recover damages from Trezona.

I. The Trezona vehicle was not an uninsured motor vehicle at the time of the accident in which Connelly was injured.

S.C. Code Ann. § 38-77-30 provides the following definition:

(14) "Uninsured motor vehicle" means a motor vehicle as to which:

(a) there is not bodily injury liability insurance and property damage liability insurance both at least in the amounts specified in Section 38-77-140; or
(b) there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder; or
(c) there was that insurance, but the insurer who wrote the same is declared insolvent, or is in delinquency proceedings, suspension, or receivership, or is proven unable fully to respond to a judgment; and
(d) there is no bond or deposit of cash or securities in lieu of the bodily injury and property damage liability insurance;
(e) the owner of the motor vehicle has not qualified as a self-insurer in accordance with the applicable provisions of law.

A motor vehicle is considered uninsured if the owner or operator is unknown. However, recovery under the uninsured motorist provision is subject to the conditions set forth in this chapter.

Any motor vehicle owned by the State or any of its political subdivisions is considered an uninsured motor vehicle when the vehicle is operated by a person without proper authorization.

In addition, S.C. Code Ann. § 56-9-20 of the South Carolina Financial Responsibility Act contains the following definition:

(1) "Insured motor vehicle": A motor vehicle as to which there is bodily injury liability insurance and property damage liability insurance, meeting all of the requirements of item (7) of this section, or as to which a bond has been given or cash or securities delivered in lieu of such insurance or as to which the owner has qualified as a self-insurer in accordance with the provisions of § 56-9-60;

S.C. Code Ann. § 56-9-20.

Consistent with the statutory definition of "uninsured motor vehicle," the Allstate policy issued to Plaintiffs states:

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** ...
5. a phantom **motor vehicle** ....

(Policy p. 12, attached as Exhibit #1.)

The Trezona vehicle does not meet the definition of an uninsured vehicle under § 38-77-30 or Allstate's policy. Rather, it falls squarely into the definition of an insured vehicle as defined by the Financial Responsibility Act. It is undisputed that the vehicle was covered by a policy of insurance with liability limits in compliance with §38-77-140 at the time of the accident.

Further, Old Dominion did not deny coverage for the accident. Old Dominion denied *liability* for the accident. It is undisputed that Trezona cannot be legally responsible to Connelly, because she is immune from personal liability under the exclusivity provisions of the Workers' Compensation Act. *Nolan v. Daley*, 222 S.C. 407, 73 S.E.2d 449 (1952) ("a co-employee who negligently injures another employee while in the scope of employment is immune under the Act and cannot be held personally liable"); *Dickert v. Metro. Life Ins. Co.*, 311 S.C. 218; 428 S.E.2d 700 (1993).[5]

As a result, there is no statutory or contractual basis for the contention that the Trezona vehicle can be considered an uninsured motor vehicle under the facts of this case. To reach such a conclusion would be contrary to both South Carolina statutory law and Allstate's insurance policy.

[5] It is not alleged that this was a hit and run accident or a phantom vehicle.

II. Allstate's uninsured motorist coverage is not triggered by this accident, because Connelly is not legally entitled to recover damages from Trezona.

Consistent with the "legally entitled to recover" language found in § 38-77-150, the Allstate policy states:

> **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.**

(Policy p. 11.)

As previously discussed, it is undisputed - in fact it has been stipulated - that Connelly is not legally entitled to recover damages from Trezona due to her immunity under the Workers' Compensation Act. (See Joint Stipulations of Fact # 13). Again, this is not an issue of lack of coverage, but an issue of lack of legal liability. Because the Plaintiffs are not legally entitled to recover damages from Trezona *and* she was not operating an uninsured vehicle at the time of the accident, the Plaintiffs are prohibited from collecting uninsured motorist benefits under the facts of this case.

This determination is consistent with decisions in jurisdictions containing the same or similar UM statutes. In *State Farm Mutual Automobile Insurance Co. v. Slusher*, 325 S.W.3d 318 (Ky. 2010), the Kentucky supreme court addressed a factually similar situation involving the right of an employee to recover under his personal UM or UIM policy for injuries sustained in a work-related motor vehicle accident caused by the negligence of a co-employee. The employee in *Slusher* was injured during the course and scope of his employment when his co-employee's truck rolled into the building in which the decedent was working. The employee's estate

received workers' compensation benefits from the employer's carrier and was unable to assert a wrongful death claim against the co-employee due to the exclusive remedy provision of the Workers' Compensation Act[6]. When the employee's estate sought payment under his personal UM and UIM policies, the carrier denied on the grounds the policy limited UM and UIM liability to damages the estate was legally entitled to collect from the owner or operator of an uninsured or underinsured vehicle. Like S.C. Code Ann. § 38-77-150(A), Kentucky's statutory law eliminated the estate's legal entitlement to collect any damages from the employer or a co-worker in excess of the workers' compensation benefits paid.

Citing the exclusivity statute, the *Slusher* court found that except for the workers' compensation benefits that had already been awarded, the employee's estate is not "legally entitled to collect" any further amounts from either the employer or the co-employee. Consequently, the estate could not collect under its UM or UIM coverage because the contractual language of the policy afforded payment of those benefits only for "bodily injury an insured is legally entitled to collect from the driver of an uninsured motor vehicle."

In reaching this conclusion, the *Slusher* court sided with a majority of other jurisdictions. *Slusher*, 325 S.W.3d at 324 n. 12 (citing *Ex parte Carlton*, 867 So.2d 332 (Ala. 2003) (employee injured as a passenger in a vehicle driven by a co-employee was, under Workers' Compensation Act, not legally entitled to recover from owner or operator of uninsured vehicle, for purposes of

[6] KRS 342.690(1) states: "If an employer secures payment of compensation as required by this chapter, the liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death .... The exemption from liability given an employer by this section shall also extend to such employer's carrier and to all employees, officers or directors of such employer or carrier ...." *See also Travelers Indemnity Co. v. Reker*, 100 S.W.3d 756, 760 (Ky. 2003) (holding the effect of this statute is to "shield a covered employer and its insurer from any other liability to a covered employee for damages arising out of a work-related injury.").

uninsured motorist statute, and, therefore not entitled to UM benefits under his insurance policy); *Wachtler v. State Farm Mut. Auto. Ins. Co.*, 835 So.2d 23 (Miss. 2003) (insured was not "legally entitled to recover" from co-employee driving truck that struck insured and, therefore, was not entitled to UM benefits under personal automobile policies; the exclusive remedy provision of the Workers' Compensation Act barred recovery from co-employee); *Williams v. Thomas*, 370 S.E.2d 773 (Ga. App. 1987) (an employee who suffered an on-the-job injury when struck by a motor vehicle owned by his employer and operated by his co-employee while in the scope of employment, and for which the employee was awarded workers' compensation benefits, held not entitled to recover uninsured motorist benefits under his own automobile insurance policy); *Williams v. Country Mut. Ins. Co.*, 328 N.E.2d 117 (Ill. App. 1975) (collision between two employees' automobiles on their employer's premises in the course of employment, was within the purview of the state workers' compensation law; the injured employee's sole recourse was under the workers' compensation statute, and there was no coverage under the injured employee's UM coverage, even though the co-employee was uninsured); *Lee v. Allstate Ins. Co.*, 467 So.2d 44 (La. App. 1985) (employee injured in an automobile accident caused by co-employee held not entitled to recover from his co-employee's insurer or from his own UM carrier as both insurers were entitled to avail themselves of the exclusive remedy provision of the state workers' compensation statute.)).

In determining the worker's estate was not legally entitled to recover UM and/or UIM benefits due to the exclusivity provision in the Workers' Compensation Act, the *Slusher* court distinguished cases applying an "essential facts" approach. *Id.* Under this approach, some courts have interpreted the phrase "legally entitled to recover," or its equivalent, to allow an insured to collect UM coverage merely by establishing fault on the part of the tortfeasor and the

amount of the insured's damages. *Id* at 322. Under the "essential facts" approach, the tortfeasor's immunity does not preclude UM coverage.[7]

Noting the shortcomings of the essential facts analysis, the *Slusher* court found that the abridgment of the essential facts approach "fails to properly consider an individualized analysis of a particular policy's language and its interplay with statutory public policy exemptions to tort liability, such as the exclusive remedy provisions of the Workers' Compensation Act." *Slusher*, 325 S.W.3d at 324 n. 11; *see also Williams v. State Farm Mut. Auto. Ins. Co.*, 641 A.2d 783, 787 (Conn. 1994) ("In order to recover uninsured motorist benefits, the plaintiff must prove, pursuant to the applicable statutes and regulations, as well as the contract, that he is 'legally entitled to collect' damages from the uninsured motorist...'Legally entitled to collect damages from the owner or driver of an uninsured motor vehicle,' means that in order to recover tinder the policy, the plaintiff must prove: (1) that the other motorist was uninsured; (2) that the other motorist was legally liable under the prevailing law; and (3) the amount of liability.").

The reasoning in *Slusher* and other cases accounting for statutory immunity in a "legally entitled to recover" analysis is applicable to this case and in accord with South Carolina law and legislative intent. Applying the "essential facts" approach in South Carolina would completely defeat the statutory and policy definitions of uninsured motorist coverage and uninsured motor vehicle.

Proof of the legislative intent that the Workers' Compensation Act is an employee's exclusive remedy against a co-employee is further evidenced by the fact the General Assembly

[7] Representative of the essential facts approach is *Borjas v. State Farm Mutual Automobile Insurance Co.*, 33 P.3d 1265 (Colo. Ct. App. 2001), which held "legally entitled to recover" means the insured need only establish fault of the motorist gave rise to damages and the extent of those damages.

did not include a provision in the Workers' Compensation Act entitling workers injured by co-employees to seek additional recovery from uninsured and/or underinsured motorist carriers.

The General Assembly certainly could have included such a provision with the Act, just as it chose to do so within the South Carolina Tort Claims Act, the exclusive remedy against governmental employees and entities.[8] S.C. Code Ann. § 15-78-190, entitled "Compensation of plaintiff pursuant to underinsured or uninsured defendant provisions of plaintiff's insurance policy", provides:

> If the amount of the verdict or judgment is not satisfied by reason of the monetary limitations of this chapter upon recovery from the State or political subdivision thereof, the plaintiff's insurance company, subject to the underinsured and uninsured defendant provisions of the plaintiff's insurance policy, if any, shall compensate the plaintiff for the difference between the amount of the verdict or judgment and the payment by the political subdivision. If a cause of action is barred under § 15-78-60 of the 1976 Code, the plaintiff's insurance company must compensate him for his losses subject to the aforementioned provisions of his insurance policy.

The South Carolina Supreme Court construed this statute in *Cain v. Nationwide Property & Casualty Insurance Co.*, and held that "by enacting section 15-78-190, the Legislature assured that an insurance company could not cite the 'exclusive civil remedy portion' of section 15-78-20to deny payment from the plaintiff's uninsured or underinsured motorist coverage where recovery pursuant to the Tort Claims Act was insufficient." 378 S.C. 25, 31, 661 S.E.2d 349, 352 (2008).

If the General Assembly had intended that co-employees could circumvent the exclusivity provision of the Workers Compensation Act and recover uninsured or underinsured motorist benefits, it would have placed a similar provision within the Workers' Compensation Act. The fact that the General Assembly chose not to insert a similar provision into the Workers'

[8] Section 15-78-20(b) states: "The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)."

Compensation Act is fatal to the Plaintiff's argument. See *State v. Thomas*, 372 S.C. 466, 469, 642 S.E.2d 724, 725 (2007) (holding that the inclusion of specific provisions to prohibit suspension of sentences in other statutes and omission of any such provision in the proximity statute, indicates the legislature did not intend to limit the general authority to suspend sentences); *Branch v. City of Myrtle Beach ex rel. Attorney Gen. of S.C.*, 340 S.C. 405, 410, 532 S.E.2d 289, 292 (2000) (holding that by including definition of public employee in other sections but not in right-to-work statute, legislature did not intend to cover public employees).[9]

The Workers' Compensation Act is the exclusive remedy for workers injured in the course and scope of employment. The Tort Claims Act provides the exclusive remedy against governmental entities. Unlike the Tort Claims Act, the Workers' Compensation Act does not include a provision permitting the collection of UM or UIM benefits in accidents involving at-fault co-employees or employers. Although the purpose of these coverages is to compensate an individual when the at-fault motorist is uninsured or does not have enough insurance, the determination of coverage in UM/UIM policies still turns on the definitions of uninsured and underinsured vehicles as found in the policies and in statutory law.

Considering the definitions of "uninsured motor vehicle" in the Allstate policy and in S.C. Code Ann. § 38-77-30, the Trezona vehicle in which Connelly was riding was not uninsured, because there was bodily injury and property damage liability insurance in or exceeding statutorily required amounts on the vehicle. In addition, Connelly is not "legally

[9] The *Cain* opinion is instructive in that it also analyzed the statutory definitions of uninsured and underinsured vehicles. The Court recognized that "the sole purpose of these kinds of insurance is to provide compensation where the at-fault motorist either is not insured or does not have enough insurance." *Id.* Relying on the definitions of uninsured and underinsured vehicles in the plaintiff's policy and corresponding statutory definitions, the *Cain* Court held plaintiff was not entitled to recover under the UM section of his policy because the tortfeasor's vehicle had insurance protection greater than the minimum limits but less than plaintiff's damages and was, therefore, "underinsured". *Id.* at 32, 661 S.E.2d at 353.

entitled to recover" damages from Trezona because she is immune from suit pursuant to § 42-5-10. Immunity of the tortfeasor does not render the vehicle uninsured, especially when the legislature chose not to include a provision allowing UM/UIM coverage in the Workers' Compensation Act.

CONCLUSION

In moving for Summary Judgment, Allstate acknowledges the marked split in authority over the issue presented in this case and urges the Court to adopt the view that gives effect to South Carolina's legislative intent and statutory definition of "uninsured motor vehicle". An "uninsured motor vehicle" means a "vehicle as to which there is not bodily injury liability insurance and property damage liability insurance" in amounts mandated by statute. S.C. Code Ann. § 38-77-30. The definition does not include vehicles driven by tortfeasor's immune from suit. The Trezona vehicle was an insured vehicle because it carried bodily injury and property damage coverage.

Further, our legislature has adopted a public policy in favor of no-fault recovery for employees while injured on the job. The trade-off for this no-fault recovery is that the Workers Compensation Act is the employee's exclusive remedy against employers and co-employees. Giving effect to the exclusivity provision of S.C. Code Ann. § 42-1-540, Plaintiffs' sole remedy is the Workers' Compensation Act. For these reasons, Allstate contends there is no genuine issue of any material fact that Plaintiffs are not entitled to UM coverage under the Allstate policy and respectfully request an order granting Summary Judgment in its favor.

GALLIVAN, WHITE & BOYD, P.A.

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March 6, 2017

COPY

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	**FOR THE FIFTH JUDICIAL CIRCUIT**
Stephany A. Connelly and James M. Connelly,	**Civil Action No.: 2016-CP-40-05885**
Plaintiffs,	
v.	**Plaintiffs' Memorandum in Opposition to All Summary Judgment Motions and Cross Motion for Summary Judgment**
The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trozona,	
Defendants.	

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JEANETTE W. WALKER C.C.P. & G.S.

This matter comes before the Court initially on a motion for summary judgment by The Main Street America Group and Old Dominion Insurance Company (hereinafter "Old Dominion"). Subsequently, Allstate Fire and Casualty Insurance Company (hereinafter "Allstate") filed a similar motion for summary judgment. Now, Plaintiffs Stephany A. Connelly and James M. Connelly (hereinafter "the Connellys") respond in opposition to Old Dominion's and Allstate's motion for summary judgment and file a cross motion for summary judgment in their favor.

The Connellys are entitled to uninsured motorist coverage ("UM coverage") from both Old Dominion and Allstate as a matter of law because 1) Stephany Connelly was an insured; 2) the vehicle she was occupying was an uninsured vehicle; and 3) Freya Trozona was at fault in causing a motor vehicle wreck which injured Stephany Connelly[1]; and 4) a showing of fault is all that is necessary to trigger UM coverage under South Carolina Code §38-77-150(A).

[1] James M. Connelly has a loss of consortium claim.

STIPULATED FACTS

The parties have engaged in a written joint stipulation as to the operative facts of this case. See attached Joint Stipulations of Fact, Exhibit 1. On February 24, 2015 Stephany Connelly was riding as a passenger in a Jeep Compass vehicle owned and being operated by Freya Trozona. Ms. Connelly was occupying the vehicle with permission of Ms. Trozona. The vehicle had liability and UM coverage under an Old Dominion policy. Ms. Connelly maintained UM coverage under an Allstate policy by virtue of paying premiums. Ms. Trozona negligently caused a motor vehicle wreck resulting in injuries to Ms. Connelly. At the time of the wreck, Ms. Connelly and Ms. Trozona were co-employees, both working within the course and scope of their employment with Apple One Employment Agency. Ms. Connelly made a claim and received benefits under the South Carolina Workers' Compensation Act. Given the Workers' Compensation Act's exclusive remedy provision, Ms. Connelly was not able to recover damages from Ms. Trozona. Ms. Trozona was immune from suit. The Connellys had made claims for damages under the liability coverage and later under the UM coverages of both the Old Dominion and Allstate policies. Both carriers denied all claims on the grounds that workers' compensation was Ms. Connelly's exclusive remedy and the Trozona vehicle was not an uninsured vehicle. Following the denial of claims, the Connellys filed a Declaratory Judgment Action, as well as a breach of contract action, against Old Dominion and Allstate. The Connellys seek an order denying Old Dominion's and Allstate's summary judgment motion. Further, the Connellys urge this Court to grant their motion for summary judgment against both carriers, finding entitlement to UM benefits as a matter of law.

SCOPE OF REVIEW

A suit for declaratory judgment is neither legal nor equitable per se; the nature of the suit, therefore, is determined by the underlying issue. *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2 781 (1991). The issue here involves the determination of UM coverage. Therefore, the action is at law. *Horry County v. Ins. Reserve Fund*, 344 S.C. 493, 54 S.E.2d 637 (Ct. App. 2001). The parties' Joint Stipulations of Fact leave only a question of law for the trial court. *WDW Props. V. City of Sumter*, 342 S.C.6, 535 S.E.2d 631 (2000). Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011); see Rule 56(c), SCRCP.

I. THE TROZONA VEHICLE WAS AN UNINSURED VEHICLE

Old Dominion and Allstate deny that the Trozona Jeep Compass vehicle was an uninsured motor vehicle. The definition is controlled by statute. South Carolina Code §38-77-30(14)(b) provides that an uninsured motor vehicle means a motor vehicle as to which... "there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder..." Here, Old Dominion provided liability coverage on the Trozona vehicle but denied the Connellys' claims, relying on the exclusivity provision of the Workers' Compensation Act with its grant of immunity to Ms. Trozona. With denial of the liability claims, the Trozona vehicle's UM coverage became operable. The Trozona vehicle falls within the plain language of the statue because Old Dominion successfully denied any liability coverage.

Our Supreme Court has recognized the uninsured coverage on a vehicle can become operable depending upon the status of the driver. In *Unisun Ins. Co. V. Schmidt*, 339 S.C. 362, 529 S.E.2d 280 (2000) a non-permissive driver operating a BMW vehicle caused a wreck injuring the passenger. State Farm provided liability coverage for the BMW but nonetheless denied the passenger's liability claim. The passenger then initiated a UM claim, arguing the denial of liability coverage rendered the BMW an uninsured motor vehicle. The trial court agreed. The Court of Appeals reversed, without reaching the issue whether the BMW was an uninsured vehicle. The Supreme Court reversed, finding the passenger was an "insured", the BMW was an uninsured vehicle and the passenger was entitled to UM benefits. The ruling was based upon the statute and public policy. Citing S.C. Code Ann. §38-77-30(13)(b)[2] defining an uninsured motor vehicle to mean a vehicle as to which there is nominally that insurance but the insurer denies coverage thereunder, the Court found the BMW vehicle:

> [F]alls within the plain language of the statute because respondent successfully denied liability coverage. See also *Allstate Ins. Co. V. Wilson*, 259 S.C. 586, 593, 193 S.E.2d 527, 531 (1972)(appellant's uninsured motorist coverage became operative when respondent Allstate successfully denied liability for the other vehicle on ground that it was being driven without the consent of the insured).

Unisun, 339 S.C. at 367, 529 S.E.2d at 282.

So, if the BMW owner had been operating the vehicle there would have been coverage for the passenger. However, there was no liability coverage when the non permissive user took the wheel. See *Omni Insurance Company v. Evans*, 2014 WL 8335952 (S.C. Com.Pl.)(Trial Order, Judge Nettles)[Based upon the driver's non-permissive use of the vehicle, the insurance carrier's denial of

[2]Currently, this statutory language has been codified as §38-77-(14)(b).

liability converted the vehicle otherwise insured into an uninsured motor vehicle pursuant to S.C. Code Ann. §38-77-30(14)(1b)].[3]

With these cases in mind, consider the Old Dominion statement in its brief: "It is clear under South Carolina law that a vehicle cannot be both insured and uninsured". (Old Dominion Memorandum in Support of Motion for Summary Judgment, page 4). To the contrary, a vehicle's insurance status may change depending up the status of the driver. It should make no difference whether liability coverage was denied due to a non-permissive driver or because of a driver protected by workers' compensation immunity. From Ms. Connelly's point of view, there is no difference. The result would be the same: no compensation from either. Yet it would frustrate the intention of the Legislature and the parties for the Old Dominion and Allstate UM policies to pay for damages only caused by a non-permissive driver. Following the reasoning of *Unisun* and *Omni*, the Trozona vehicle was uninsured.

II. MS. CONNELLY WAS AN INSURED UNDER BOTH POLICIES

Ms. Connelly was occupying the Trozona vehicle as a passenger with permission of its owner. As such, she must be deemed an insured. An insured is defined by S.C. Code Ann. §38-77-30(7): "Insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal

[3] Allstate strains to distinguish between coverage and liability, saying Old Dominion denied the latter and not the former. Allstate memorandum, page 6.Old Dominion could not have denied liability for the wreck given that it stipulated Trozona was negligent and the cause of injuries and damages suffered by Connelly. Allstate seems to lose sight of its argument when it declared on page 3 of its memorandum "In response to Old Dominion's and Allstate's *denials of coverage*, Plaintiffs instituted this action..."(emphasis added).

representative of any of the above". Old Dominion and Allstate stipulated that Ms. Connelly was an insured under the Old Dominion policy by virtue of her occupancy of the vehicle. See Joint Stipulations of Fact, paragraph 17. Ms. Connelly was a named insured under the Allstate policy..

III. THE S.C. UM STATUTE REQUIRES ONLY A FINDING OF FAULT TO TRIGGER COVERAGE

A. South Carolina Public Policy Is to Protect Motorists From Uninsured Drivers

> The South Carolina UM statute S. C. Code § 38-77-150(A) provides: No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, *undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle*, within limits which may be no less than the requirements of Section 38-77-140. The uninsured motorist provision must also provide for no less than ten thousand dollars' coverage for injury to or destruction of the property of the insured in any one accident but may provide an exclusion of the first two hundred dollars of the loss or damage. The director or his designee may prescribe the form to be used in providing uninsured motorist coverage and when prescribed and promulgated no other form may be used. (Emphasis added.)

The novel question presented by this case is whether an innocent injured motor vehicle passenger is entitled to UM coverage where her at- fault driver is immune from suit pursuant to the South Carolina Workers' Compensation Act. In other words, in the context of the UM statute, is Ms. Connelly *legally entitled to recover damages* from Ms. Trozona? Clearly, Old Dominion and Allstate answer the question in the negative. If Ms. Trozona is immune from suit, the argument goes, then Ms. Connelly cannot be legally entitled to recover damages from her. Indeed, Ms. Connelly has stipulated that she cannot recover damages for her injuries from Ms. Trozona. However, the statute is ambiguous. It is not clear whether the language requires for example, procurement of a judgment against an uninsured driver as a condition precedent for UM benefits eligibility or simply a finding of fault against the adverse driver upon which damages would be legally premised.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E. 2d 457, 459 (2007). If the statute is

ambiguous then courts must construe the terms of the statute. *Town of Mt. Pleasant v. Roberst*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). The South Carolina UM statute § 38-77-150(A) is ambiguous. While not addressed directly in South Carolina, the *legally entitled to recover* language has been construed by other courts and found to be ambiguous. See *U. S. Fidelity and Guaranty Co., v. Preston*, 26 S.W.3d 145 (2000)(where a three judge panel of the Kentucky Court of Appeals expressed three separate interpretations of the critical language); *Jenkins v. City of Elkins*, 230 W.Va. 335, 345, 738 S.E.2d 1, 11 (2012)(The lack of a statutory or policy definition for the phrase "legally entitled to recover", and the parties' conflicting interpretation of the same, suggest to this court that the phrase is sufficiently ambiguous."); *see,* cases cited by Old Dominion and Allstate on pages 8-9 of their respective briefs interpreting *legally entitled to recover* as a condition precedent to UM coverage, whereas cases cited in this memorandum in footnote 5 suggest a more liberal interpretation commensurate simply with a finding of fault by the adverse driver.

When interpreting the language of the UM statute the Court must settle on a meaning that is consistent with the intent of the Legislature. The UM statute is remedial in nature, enacted for the benefit of the injured persons, and is to be liberally construed so that the purpose intended may be accomplished. *Gunnels v. American Liberty Ins. Co., 251 S.C. 242, 247, 161 S.E.2d 822, 824 (1968).*

The purpose of uninsured motorist coverage is to provide benefits and protection against the peril of injury or death by an uninsured motorist to an insured motorist, his family and the permissive users of his vehicle. *Ferguson v. state Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973). An uninsured motorist is a "financially unresponsive motorist". *O'Neill v. Smith*, 388 S.C. 246, 254, 695 S.E.2 531, 535 (2010). A substantive immunity may render the driver of an

insured vehicle in effect uninsured. *State Farm Mut. Auto. Ins. Co. V. Jeffers*, 686 So.2d 248 (Ala. 1996).

In South Carolina, UM coverage occupies a lofty well respected place in the state's jurisprudence. Its importance is demonstrated by its mandatory nature. Every policy of motor vehicle insurance must contain a UM endorsement. *Nationwide Mutual Insurance Co. v. Smith,* 376 S.C. 60, 66, 654 S.E.2d 837, 840 (Ct. App. 2009) ("Initially, we note that in South Carolina all automobile insurance policies are statutorily required to contain UM coverage"). South Carolina mandates that UM coverage must be provided in an amount equal to the minimum liability limits and requires insurance carriers to offer, at the option of the insured, UM coverage up to the limits of the insured's liability coverage. *Id.* Further, contractual provisions attempting to restrict UM benefits are either void or themselves limited. For example, an insured's UM carrier is not entitled to outright exclude or reduce UM benefits if that insured is also receiving workers' compensation benefits. *Ferguson v. state Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973)(finding any limiting language in an insurance contract which had the effect of providing less protection than made obligatory by the statues is contrary to public policy and is of no force and effect). Efforts to deny UM benefits because of the exclusivity provision of the S.C. Workers' Compensation Act were rebuffed in *Wright v. Smallwood*, 308 S.C. 471, 419 S.E.2d 219 (1992) (concluding that the statutorily imposed contractual liability of UM coverage was consistent with the purpose and policy of the Workers' Compensation law). *Antley v. Nobel Ins. Co*, 350 S.C. 621, 567 S.E.2d 872 (Ct. App. 2002) reiterated the notion that an insurance carrier cannot rely on the exclusivity provision of the Workers' Compensation Act to deny UM benefits, nor can it exclude outright UM coverage in its policy. However, some reduction of UM benefits is permissible pursuant to S.C. Code §38-77-220

which allows an employer to offset benefits under its own UM coverage by the amount its employee receives in workers' compensation. The rationale was to eliminate an employer from paying double premiums and creating a windfall to an employee[4]. The workers' compensation offset in an employer purchased policy may permissibly reduce an employee's UM benefits below the statutory mandatory minimum. *Sweetser v. South Carolina dept. of Ins. Reserve Fund*, 390 S.C. 632, 703 S.E.2d 509 (2010).

The cases discussed above, *Ferguson, Wright, and Sweetser*, demonstrate the important role UM coverage plays in protecting South Carolina citizens from uninsured drivers and the Legislature's sparring allowance of permitting limitations on access to UM coverage. Given the remedial nature of the UM statute §38-77-150 and public policy aimed at preserving coverage, Old Dominion's and Allstate's interpretation of the UM statute should be rejected. Both interpretations lead to a total foreclosure of any UM coverage for Ms. Connelly. Such a view of the statute is inconsistent with the expressed policy of the state *to provide benefits and protection against the peril of injury or death by an uninsured motorist*. Ms. Connelly was an innocent passenger, injured by an at fault driver who was in effect "uninsured". Notably, neither the Old Dominion nor the Allstate policy was purchased by Ms. Connelly's employer. As such, neither is entitled to the workers' compensation offset described in *Antley* or *Sweetser*.

B. Numerous Jurisdictions Allow UM Coverage Despite an Immune Adverse Driver

South Carolina courts have not directly addressed the questions whether an at-fault driver causing injury, who is immune from suit, can nonetheless trigger the *legally entitled to recover* language of the UM statue, resulting in UM coverage. However, numerous cases from other

[4] In dealing with underinsured motor vehicle coverage (UIM) the court in *Williamson v U.S. Fire Ins. Co.*, 314 S.C. 215, 442 S.E.2d 587 (1994) allowed a workers' compensation offset for an employer purchased UIM policy.

jurisdictions have answered this question. To promote the public policy of protecting motorists injured by uninsured drivers, these courts interpret the *legally entitled to recover* language as simply requiring a showing of fault by the adverse driver. For example, in *Borjas v. State Farm Mut. Auto. Ins. Co.*, 33 P.2d 1265 (Colorado Ct. App. 2001) an injured insured was allowed to collect her own UM coverage after being hit by a vehicle driven by a police officer, despite the officer being cloaked with immunity under the Colorado Governmental Immunity Act (CGIA). Colorado's UM statute provided coverage for persons who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. §10-4-609(1)(a), C.R. S. 2000. State Farm argued its UM coverage was not available because the injured plaintiff was not *legally entitled to recover damages* from the at- fault driver who was immune from liability under the CGIA. State Farm cited various cases denying UM coverage because of immunity. In rejecting State Farm's position, the Court found such an interpretation was inconsistent with the public policy expressed by the legislature. "If we were to follow that line of cases, members of the public would be deprived of the opportunity to protect themselves from loss under the circumstances presented here, a result not intended by the General Assembly". *Borjas*, 33 P.3d at 1269. The Court noted the policy underlying the statute was to compensate innocent drivers for injuries received at the hands of one from whom damages cannot be recovered. *Borjas*, 33 P.3d at 1267. The Court stated:

> It is entirely consistent with this public policy to construe §10-4-609 to require that UM insurance coverage apply even though the tortfeasor is immune from liability under the CGIA. Negligent drivers and their employers who are immune from liability under the CGIA may not be financially irresponsible in the sense that they lack the ability to pay, but from the perspective of the injured innocent driver, the lack of legal responsibility has the same effect.
>
> *Borjas*, 33P.3d at 1268.

Finally the *Borjas* court listed several other justifications for allowing UM coverage despite a claim of immunity. Citing 1 A. Widiss, *Uninsured and Underinsured Motorist Insurance* §7.14, at 388-90 (2d ed. 2001) the Court noted, 1) while tort immunity protects the torfeasor, it should have no effect on an insurance company providing first party UM insurance coverage; 2) it is consistent with the strong public policy of providing insurance coverage to protect drivers when no compensation is available from the negligent tortfeasor; 3) tort immunities are personal to the tortfeasor and therefore cannot be raised by an insurer; and finally, 4) the immune tortfeasor is unaffected by providing UM coverage, while at the same time, those disadvantaged by the immunity can protect themselves by purchasing UM insurance. The court concluded that the phrase *legally entitled to recover damages* as used in the UM statute, simply meant that the insured injured motorist must be able to establish the fault of the uninsured motorist as the cause of her damages[5].

C. An Insured's Own UM Coverage Is Available Despite an At Fault Co-Worker Driver with Immunity Based Upon Workers' Compensation.

In *Barfield v. Barfield*, 742 P.2d 1107 (Oklahoma Sup. Ct. 1987) the widow of a deceased passenger killed by his at- fault co-employee driver was allowed to recover under her husband's UM policy despite receipt of workers' compensation benefits. The court found that tort immunity under the Workers' Compensation Act did not preclude recovery under one's own contract of insurance. Protection under a UM policy is a contractual right resting in the insured and co-existent with the

[5] The *Borjas* court cited numerous cases interpreting similar statutes and finding UM coverage despite an at fault driver cloaked with governmental immunity: *Watkins v. US*, 462 F.Supp. 980 (S.D. Ga. 1977)(under a similar Georgia UM statute although the tortfeasor was immune under a federal statute, UM insurance coverage applied); *State Farm Automobile Insurance Co., v Baldwin*, 470 So.2d 1230 (Ala. 1985)(under a similar Alabama UM statute an insured was legally entitled to recover under a UM policy even though recovery from the tortfeasor was barred by governmental immunity); *Michigan Millers, Mutual Insurance Co., v. Bourke*, 607 So.2d 418 (Fla. 1992); *West American Insurance Co. V. Popa*, 108 Md. App. 73, 670 A.2d 1021 (1996), aff'd. 352 Md. 455, 723 A.2d 1 (1998); *Williams v. Holsclaw*, 128 N.C. App. 205, 495 S.E.2d 166 (1998); *Kmok-Sullivan v. State Farm Mutual Automobile Insurance Co.*, 746 A.2 1118 (Pa. Super.Ct. 1999)(petition for appeal granted Jan 3, 2001).

protection under the workers' compensation act. An UM carrier does not stand in the tortfeasor's shoes and thus does not enjoy the benefits of the tortfeasor's immunity. The conditions for recovery under the UM policy can be satisfied even if the insured cannot prove all the elements of the tort against the uninsured driver. Interpreting the Oklahoma UM statute[6], the court found "[T]the words 'legally entitled to recover' simply mean that the insured must be able to establish fault on the part of the uninsured motorist which gives rise to damages and prove the extent of those damages." *Barfield*, 742 P.2d at 1112. Recovery is based upon a contractual promise by the insurer to the insured to provide coverage in the event of injury or death resulting by fault of an uninsured motorist. "It would be manifestly unjust to permit the insurer to avoid its contractual duty as well as its statutorily imposed liability under 36 O.S. 1981 §3636, by its assertion of entitlement to third party tort immunity which would deny the insured's widow receipt of that for which the decedent has paid a premium". *Barfield*, 742 P2d at 1113.

D. An Employer's UM Coverage Is Available Despite an At- Fault Co-Worker Driver with Immunity Based Upon Workers' Compensation

The Oklahoma Supreme Court found the estate of a fatally injured worker eligible for employer provided UM coverage even though a co-employee negligently caused the deadly wreck within the course and scope of employment. *Torres v. Kansas City Fire and Marine*, 849 P.2d 407

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[6] The Oklahoma statute, 36 O.S. 1981, §3636(A) and (B), very similar to the South Carolina UM statute, S.C. Code Annon. §38-77-150, reads as follows:

> (A) No policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be issued, delivered, renewed, or extended in this state with respect to a motor vehicle registered or principally garaged in this state unless the policy includes the coverage described in subsection (B) of this section.
>
> (B) The policy referred to in subsection (A) of this section shall provide coverage therein or supplemental thereto for the protection of persons insured thereunder who are ***legally entitled to recover damages*** from the owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom. (Emphasis added).

(Oklahoma Sup Ct. 1993). There, the decedent was a passenger in a company owned vehicle driven by a co-employee. The passenger's estate filed for and received workers' compensation benefits. The estate also brought an action against the carrier for the employer which had a UM endorsement on the vehicle. The UM carrier admitted the wreck was caused by the negligence of the co-employee driver. The carrier admitted the passenger was an insured under the policy by virtue of his occupancy in the vehicle. The trial court ruled as a matter of law recovery was proper under the UM endorsement and the matter of damages was tried to a jury. A jury verdict resulted for estate. The UM carrier appealed, arguing the UM endorsement was inapplicable because the negligent co-employee was immune from liability by virtue of the exclusivity provisions of the workers' compensation laws and thus the insured was not legally entitled to recover damages from the wrongdoer. Under the Oklahoma UM statute, the carrier was obligated to provide coverage to an insured who is "legally entitled to recover damages from the owners or operators of uninsured motor vehicles[7]..." The court of appeals affirmed. The Supreme Court of Oklahoma found the estate was entitled to benefits under the UM policy despite the co-employee negligent driver being immune from suit under the exclusivity provision of the state's workers' compensation act.

Relying on a previous decision, *Uptegraft v. Home Insurance Company*, 622 P.2d 681 (Oklahoma Sup. Ct. 1983), the Court stated, "[W]e said the words legally entitled to recover simply mean that the insured must be able to establish fault on the part of the uninsured motorist which gives rise to damages and prove the extent of those damages". *Torres*, 849 P.2d at 410. The Court rejected the view the phrase required an insured to establish all the elements of a viable claim in tort.

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[7] See Oklahoma statute referenced in footnote 6.

The rationale for the court's decision was based upon contract interpretation aimed at effectuating the intention of the parties. The decedent was a passenger in the vehicle and thus an insured under the UM policy. The intention of the passenger, purchaser of the policy, and carrier, was for the insurance carrier to bear the loss for injury to an insured person uncompensated by an uninsured wrongdoer. Interpreting the phrase *legally entitled to recover damages* as simply requiring a showing of fault promotes the parties intention of providing coverage. To require more would result in the insured bearing the loss. Further, the court noted that UM benefits were recoverable despite the fact that the passenger did not pay any premiums for the UM coverage.

Given South Carolina's policy of protecting UM benefits, it is likely the "fault" requirement would prevail in interpreting the UM statute. A judgment is not a condition precedent for UM coverage. See *Ferguson v. State Farm*, 261 S.C. at 102, 198 S.E.2d at 525(UM coverage where the liability of the uninsured motorist has been *established)*. See *Otterbacher v. Snyder*, Unpublished Opinion, 2015 WL 4068204 (Ct. App.)(discussing liability coverage and finding that until Otterbacher obtained a judgment against a person insured under the Selective policy, *or otherwise establishes liability* of an insured, she cannot bring an action against Selective.)

More importantly, allowing recovery of UM benefits to the Connellys furthers the intent of the Legislature of protecting injured motorists from those who are uninsured, while at the same time doing no harm to the workers' compensation statutory scheme. The workers' compensation agreement was to deliver swift and predetermined amounts of benefits to injured workers in exchange for employer immunity from tort liability. *Parker v Williams and Madjanik*, Inc., 275 S.C. 65, 267 S.E2d 524 (1980). Providing UM benefits to the Connellys does nothing to disrupt that agreement.

Old Dominion and Allstate argue the legislative intent to deny UM benefits can be inferred from the inclusion in the South Carolina Tort Claims act of§15-78-190, specifically addressing the availability of UM benefits under that Act while failing to include a similar provision under the South Carolina Workers' Compensation Act. The argument misses the mark. The purposes of §15-78-190 was to assure that an insurance company could not cite the exclusive civil remedy portion of the S.C. Tort Claims Act to deny payment from the plaintiff's uninsured or underinsured motorist coverage where recovery under the Act was insufficient. *Cain v. Nationwide Property and Casualty Ins. Co.*, 378 S.C. 25, 661 S.E.2d 349 (2008). Likewise, the South Carolina Workers' Compensation Act also provides a remedy to injured plaintiffs due to the limited nature of recovery available under the Act. §42-1-560 allows an injured plaintiff to seek an action against a third party despite receiving workers' compensation benefits[8]. Certainly, this section is broader than §15-78-190 in that it allows recovery against more than simply a UM or UIM carrier. §42-1-560 demonstrates a legislative intent, under the Workers' Compensation Act, to permit other recovery despite the exclusivity provisions contained in the Act.

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[8] (a) The right to compensation and other benefits under this title shall not be affected by the fact that the injury or death is caused under circumstances creating a legal liability in some person, other than the employer or another person exempt from liability under Section 42-1-540 to pay damages therefor, the person so liable being hereinafter referred to as the third party. The respective rights and interests of the injured employee, or, in the case of his death, his dependents and any person entitled to sue therefor, and of the employer or person, association, corporation or carrier liable for the payment of compensation and other benefits under this title, hereinafter called the "carrier," in respect to the cause of action and the damages recovered shall be as provided by this section.

IV. CONCLUSION

The public policy expressed by the Legislature in enacting the South Carolina Uninsured Motorist statute, §38-77-150 is to protect motorists harmed by uninsured drivers. Uninsured drivers can include those who are without liability coverage and financially irresponsible, as well as drivers cloaked with immunity from a tort suit. From the perspective of the injured motorist, the outcome from meeting either type of driver on the roadway is the same: no compensation. To effectuate the intent of the Legislature this Court must interpret the critical language *legally entitled to recover* as simply a requirement to demonstrate fault. Such an interpretation protects a passenger occupying a vehicle with permission despite her driver being cloaked with workers' compensation immunity from a tort suit. At the same time, recovery of UM benefits does not frustrate the goals of the workers' compensation statutes. Moreover, allowing UM recovery meets the expectation of the parties and certainly allows those who paid for UM insurance premiums the benefit of their bargain.

For these reasons, Stephany and James Connelly respectfully request that this Court issue an Order denying Old Dominion's and Allstate's motion for summary judgment. Further, the Connellys respectfully request that this Court issue an Order finding that Ms. Connelly was an insured under the UM endorsement of both the Old Dominion and Allstate policies; that the Trezona Jeep Compass vehicle was an uninsured vehicle due to denial of coverage; that the stipulation of fact finding Ms. Trezona at fault in operating her vehicle and causing the Connellys' injuries and damages, triggered the application of UM benefits under §38-77-150. In short, the Connellys seek an Order granting them summary judgment on their entitlement to UM benefits as a matter of law. Finally, the Connellys seek an Order setting this matter for trial on the sole issue of damages.

[Signature appears on the following page.]

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March 21, 2017

Columbia, South Carolina.

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	**FOR THE FIFTH JUDICIAL CIRCUIT**
Stephany A. Connelly and James M. Connelly,	**Civil Action No.: 2016-CP-40-05885**
Plaintiffs,	
v.	**CERTIFICATE OF SERVICE**
The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trozona,	
Defendants.	

COPY

RICHLAND COUNTY FILED
2017 MAR 21 AM 11:35
JEANNETTE W. McBRIDE C.C.P. & G.S.

I, Elizabeth C. Moultrie, Paralegal, an employee of Kassel McVey Attorneys at Law, counsel for Plaintiffs in the above-entitled matter, do hereby certify that on the 21st day of **MARCH 2017,** I caused the attached **PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT and PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** to be served upon counsel for Defendants by depositing a true and correct copy in the United States Mail, First Class, with postage pre-paid, return address clearly printed on the envelope, and addressed as follows:

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March 21, 2017

Columbia, South Carolina.

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	**FOR THE FIFTH JUDICIAL CIRCUIT**
Stephany A. Connelly and James M. Connelly,	)	**Civil Action No.: 2016-CP-40-05885**
Plaintiffs,	)	**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**
v.	)	
The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trozona,	)	
Defendants.	)	

JEANNETTE W. MCBRIDE
C.C.P. & G.S.
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RICHLAND COUNTY
FILED

YOU WILL PLEASE TAKE NOTICE that on the tenth day hence, or as soon thereafter as they may be heard, Plaintiffs, by and through their undersigned counsel, will move before this Honorable Court under Rule 56 of the *South Carolina Rules of Civil Procedures* for its Order granting summary judgment in their favor. Specifically, Plaintiffs move for summary judgment on their claim for uninsured motorist coverage ("UM coverage") from both The Main Street America Group, Old Dominion Insurance Company, and Allstate Fire and Casualty Insurance Company, as a matter of law because, 1) Stephany Connelly was an insured under both policies; 2) the vehicle she was occupying at the time of the motor vehicle collision that caused her injuries was uninsured; and, 3) Freya Trozona was at fault in causing the motor vehicle wreck that caused Stephany Connelly's injuries; and 4) a showing of fault is all that is necessary to trigger UM coverage under South Carolina Code §38-77-150(A).

This Motion is made pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure* and is based on the Joint Stipulation of Facts filed by the parties as well as the accompanying Memorandum.

[Signature appears on the following page.]

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ATTORNEYS FOR PLAINTIFFS

March 21, 2017

Columbia, South Carolina.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Stephany A. Connelly and James M. Connelly, Plaintiffs, vs. The Main Street America Group; Old Dominion Insurance Company; Allstate Fire and Casualty Insurance Company; Debbie Cohn; and Freya Trezona, Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A#: 2016-CP-40-5885 **ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN REPLY TO PLAINTIFFS' OPPOSITION TO ALL SUMMARY JUDGMENT MOTIONS**

2017 APR -3 PM 1:23

Defendant Allstate Fire and Casualty Insurance Company (hereinafter "Allstate") submits the following memorandum in opposition to Plaintiff's Motion for Summary Judgment and in reply to Plaintiffs' Opposition to all Summary Judgment Motions. Allstate seeks a ruling from the Court that Plaintiffs cannot recover under Allstate's Uninsured Motorist coverage because Stephany Connelly was not involved in an accident with an uninsured motorist and she is not legally entitled to recover damages from the owner or operator of an uninsured automobile.

ARGUMENT

I. The Trezona vehicle was not an uninsured motor vehicle at the time of the accident in which Connelly was injured.

The argument that the Trezona vehicle was uninsured ignores the undisputed facts of this case. According to the Joint Stipulation of Facts, the Trezona vehicle was insured by an automobile liability insurance policy issued to Debbie Cohn. *See* Stipulation ¶ 1. The policy issued to Cohn included bodily injury and property damage liability insurance with limits in compliance with S.C. Code Ann. § 38-77-140. *Id.* at ¶ 3. It is further stipulated that "[t]he

Vehicle was an insured vehicle under the Old Dominion Policy." *Id.* at ¶ 6. Despite the existence of insurance coverage, Connelly's claim against Trezona was denied because Trezona "cannot be legally responsible to Connelly due to her immunity under the Act." *Id.* at ¶ 14[1]. In other words, the Old Dominion policy provided coverage for the injuries Connelly sustained, but Connelly is not legally entitled to recover against her co-employee, Trezona, because she is not legally liable for the accident.

Contrary to Plaintiffs' argument, the exclusivity provision of the Act does not convert an insured motorist into an uninsured motorist. As explained in the following section, UM coverage is not triggered until legal liability is established. According to the South Carolina Supreme Court, "recovery under the uninsured endorsement is subject to the condition that the insured establish legal liability on the part of the uninsured motorist." *Vernon v. Harleysville Mut. Cas. Co.*, 244 S.C. 152, 135 S.E.2d 841 (1964). Plaintiffs cannot establish legal liability on the part of Trezona because Trezona is immune from personal liability under the exclusivity provisions of the Workers' Compensation Act[2].

Moreover, Connelly does not need the Court to deem Trezona's vehicle uninsured in order to recover damages from the accident. The South Carolina legislature has guaranteed

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[1] As noted by Plaintiffs in footnote 3 of their Memorandum, Allstate's reference to a denial of coverage on page 3 of its Memorandum in Support of Motion for Summary Judgment was an error as it contradicts the parties' Joint Stipulations of Fact. The use of the word "coverage" was a scrivener's error. Allstate relies on the Stipulation to establish the facts of this case.

[2] Legal liability is what distinguishes this case from the case relied upon by Plaintiffs, *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 529 S.E.2d 280 (2000). The carrier in *Unisun* denied *coverage* to the driver, because he was driving the car without permission of the named insured, and thus did not meet the policy definition of an insured person. Because the driver was not covered by a liability policy, he became an uninsured motorist. The injured party in *Unisun* established the liability of the at-fault driver and was entitled to UM coverage. In this case, Trezona was not uninsured and Connelly cannot establish the liability of Trezona. Therefore, she is not entitled to UM coverage.

Connelly recovery by passing the Workers' Compensation Act. The Act ensures that an employee riding in a vehicle with a co-employee is *never* in an uninsured situation because it ensures that an employee always has a remedy, regardless of lack of fault of the co-employee. The Worker's Compensation Act also limits her remedies – the co-employee is immune from personal liability. That is the trade-off to South Carolina's public policy that all injured employees receive workers compensation benefits, even when the employee herself may be at fault.

As explained by the Court of Appeals, the Act strikes a balance between exclusive rights and remedies and "wholly" substitutes Connelly's common law rights:

> The Workers' Compensation Act was founded upon a recognition that it is desirable to discard the common law doctrines of tort liability in the employer-employee relationship and substitute a duty of the employer, regardless of fault, to compensate the employee, in predetermined amounts based upon his wages, for loss of earnings resulting from accidental injury arising out of and in the course of his employment.
>
> In effect, the Workers' Compensation Act shifts from the employee to the employer the risk of work related injuries incident to modern industrial activity. In return, it requires the worker, as a condition for receiving the benefits of the Act, to surrender his right to sue at common law. This balancing of advantages is embodied in the exclusive rights and remedies provision of the Act....
>
> [The exclusivity] provision bars all actions against an employer where a personal injury to an employee comes within the Act. It makes the Act the exclusive means of settling all such claims. In some cases, the amount of compensation available under the Act may be substantially less than could be recovered in a successful common law action; but in other cases the employee will receive benefits he would not otherwise have enjoyed because of his inability to establish the employer's common law liability. This is a balance struck by the Legislature in order to afford the widest practical coverage for work related injuries.
>
> **The Workers' Compensation Act provides an exclusive system of compensation in derogation of common law rights and is not cumulative or supplemental thereto, but wholly substitutional.** The compensation afforded by the Act is statutory in character, and the right of any claimant thereto is dependent upon the terms and conditions of the statute. These include the

> procedures for adjudicating a compensation claim as well as the terms and conditions of substantive entitlement.

Cook v. Mack's Transfer & Storage, 291 S.C. 84, 86-87, 352 S.E.2d 296, 298 (Ct. App. 1986) (internal citations omitted) (emphasis added).

The Iowa Supreme Court distinguished a case relied upon by Plaintiffs, *Barfield v. Barfield*, 742 P.2d 1107 (Okla. Sup. Ct. 1987), and held that the insured was not "legally entitled to recover" damages from his co-employee within the meaning of his UM policy, because the exclusivity provision of the workers' compensation statute provided a substantive bar to any legal claim against his co-employee for his injuries. In doing so, the Iowa Supreme Court stated:

> In this case, our legislature has adopted the workers' compensation system. This system supplants the common law, and we no longer recognize a cause of action for negligence by an employee against the employer or co-employee. Thus, Otterberg never had any legal right to recover against the driver of the ambulance.

*Otterberg v. Farm Bureau Mut. Ins. Co.*696 N.W.2d 24, 30 (Iowa 2005) (internal citations omitted); *see also Wachtler v. State Farm Mut. Auto. Ins. Co.*, 835 So. 2d 23, 27 (Miss. 2003) ("The holding of the Oklahoma Supreme Court [in *Barfield*] is contrary to a majority of the jurisdictions in this country and to this Court's holding and interpretation of 'legally entitled to recover.'"); *State Farm Mut. Auto. Ins. Co. v. Royston*, 817 P.2d 118 (Haw. 1991) (identifying *Barfield* as "a sharply divided five to four decision" and siding with an "overwhelming majority" as well as the dissent in *Barfield* by holding the unambiguous UM statute and legislative history confirm that "tort liability of the uninsured owner or operator is a prerequisite for recovery.").

The South Carolina legislature also chose to supplant the common law. The long-established policy of the Act to provide compensation to injured employees regardless of fault substitutes and supplants Connelly's common law right of recovery against Trezona and overshadows the policy of the uninsured motorist statute. In fact, Connelly need not draw on the

policy of the UM statute to afford her coverage when she is already protected and guaranteed coverage by the Workers' Compensation Act. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Royston*, 817 P.2d 118 (Haw. 1991) (holding legislative intent of UM statute was to provide for instances where persons suffered injuries for which no compensation or recourse would be available due to the financial irresponsibility of the guilty motorist and finding no need to "torture the meaning" of the UM statute to provide a remedy when one has already been provided by the workers' compensation act). Connelly is guaranteed benefits and protection because she and her co-employee are subject to the Act. Thus, the Act does not convert an insured motorist into an uninsured motorist. Rather, it ensures that an employee like Connelly is never in an uninsured situation.

II. Allstate's uninsured motorist coverage is not triggered by this accident because Connelly is not legally entitled to recover damages from Trezona.

Plaintiffs present as the main issue in this case the following question: "[I]n the context of the UM statute, is Ms. Connelly legally entitled to recover damages from Ms. Trezona?" They then exhaust ten pages of their Memorandum on this question without recognizing that it has already been answered. Plaintiffs stipulated that "Connelly is not legally entitled to recover damages from Trezona, because Trezona is immune from suit as a co-employee under the exclusivity provision of the Act." Plaintiffs should be bound by this stipulation. *See* Stipulation ¶ 13; *Belue v. Fetner*, 251 S.C. 600, 606, 164 S.E.2d 753, 755 (1968) ("When counsel enter into an agreed stipulation of fact as a basis for decision by the court, both sides will be bound by such agreed stipulation, and the court will not go beyond such stipulation to determine the facts upon which the case is to be decided."); *Kirkland v. Allcraft Steel Co.*, 329 S.C. 389, 392, 496 S.E.2d 624, 626 (1998) ("Stipulations, of course, are binding upon those who make them.").

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In the event the Court does not bind Plaintiffs to the Stipulation, Allstate asks the Court to give effect to the unambiguous terms of both the UM statute[3] and Allstate's policy. Contrary to Plaintiffs' argument, S.C. Code Ann. § 38-77-150 makes the requirements and procedure for obtaining UM coverage clear:

> (B) No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record.

Based on section 38-77-150(B), a UM claim is commenced by filing suit against the at-fault party and serving the UM carrier with a copy of the complaint. In this case, Plaintiffs cannot commence a UM claim because they cannot file suit against Trezona. Thus, Trezona's immunity under the Act does not render Trezona uninsured. It simply means she is not legally liable for the accident.

Analyzing similar facts, a Utah court provided helpful instruction:

> If an insured is injured by an uninsured motorist, the insured may recover damages from his own insurance company upon showing that he is "legally entitled" to recover those damages from the uninsured tortfeasor. This showing of legal entitlement typically entails a lawsuit against the uninsured tortfeasor to litigate the issues of liability and damages. A judgment favorable to the insured

[3] Plaintiffs' reference to *U.S. Fidelity and Guaranty Co. v. Preston*, 26 S.W.3d 145 (Ky. 2000), to support their argument that the UM statute is ambiguous misses the mark. This Kentucky case was distinguished by the more recent case of *State Farm Mutual Automobile Insurance Co. v. Slusher*, 325 S.W.3d 318 (Ky. 2010), which held a co-worker's estate was not legally entitled to recover UM benefits due to the exclusivity of the workers' compensation act and found no ambiguity in the interplay between the policy language and the exclusive remedy provision of the act. The *Slusher* court distinguished the case cited by Plaintiffs because it involved a latent ambiguity in the phrase "legally entitled to collect" when confronted with applicable laws of foreign jurisdictions that reflected public policies of those jurisdictions. For the same reasons, *U.S Fidelity and Guaranty* is distinguished from this case and does not support Plaintiffs' ambiguity argument.

> fixes the insurer's contractual duty to satisfy that judgment, within the policy limits.

Peterson v. State Farm Bureau Ins. Co., 927 P.2d 192, 195 (Utah Ct. App. 1996) (distinguishing case relied upon by Plaintiffs, *Torres v. Kansas City Fire and Marine*, 849 P.2d 407 (Okla. Sup. Ct. 1993), and citing *Lima v. Chambers*, 657 P.2d 279 (Utah 1982)); *see also Dodson v. Aetna Casualty & Surety Co.*, 851 F.2d 736 (4th Cir. 1988) (applying Virginia law and holding the phrase "legally entitled to recover" interposed a requirement that the insured have a legally enforceable right to recover damages). Connelly cannot obtain a judgment against Trezona. Consequently, she lacks legal entitlement to UM coverage.

The requirement of legal liability as a prerequisite to UM coverage is supported by cases cited by Plaintiffs. For instance, in *Ferguson v. State Farm Mutual Automobile Insurance Co.*, the South Carolina Supreme Court analyzed the interplay of UM coverage and the Workers' Compensation Act in terms of liability: "[I]nsurer's liability under the uninsured motorist endorsement ... arises after the liability of the uninsured motorist has been established." 261 S.C. 96, 102, 198 S.E.2d 522, 525 (1973) (holding insurer of injured employee could not offset statutorily required UM coverage by amount of workers' compensation benefits for accident involving uninsured third party after employee obtained a judgment against the third party); *see also Wright v. Smallwood*, 308 S.C. 471, 419 S.E.2d 219 (1992) (holding exclusivity provision of the Act did not bar injured employee's claim for UM benefits under his employer's policy after obtaining a judgment against an at-fault third party); *Antley v. Nobel Ins. Co.*, 350 S.C. 621, 567 S.E.2d 872 (Ct. App. 2002), *overruled in part by Sweetser v. S.C. Dep't of Ins. Reserve Fund*, 390 S.C. 632, 703 S.E.2d 509 (2010) (allowing injured employee to pursue UM claim under his employer's policy after employee filed a John Doe action against an unknown driver); *Sweetser*, 390 S.C. 632, 703 S.E.2d 509 (allowing offset of recovery in tort suit against

uninsured driver against workers' compensation benefits). Although these cases reflect a policy against limiting statutorily required coverage, they do not support Plaintiffs' arguments in this case because each of these cases involves *legally liable third parties* and not statutorily immune co-workers. Unlike the injured employees in the cases cited by Plaintiffs, Connelly cannot assert an UM action against Trezona because Trezona is statutorily immune from suit and liability. Therefore, Connelly cannot claim entitlement to UM coverage.

CONCLUSION

The unambiguous terms of the UM statute require Connelly to establish Trezona's legal liability before she can claim entitlement to UM coverage. Because the Workers' Compensation Act substitutes Connelly's common law rights, providing her exclusive remedy and rendering Trezona immune from liability, Connelly is not entitled to UM coverage under the Allstate policy. If the legislature had intended that Connelly could pursue UM or UIM coverage against a co-employee, it would have placed such a provision in the Workers' Compensation Act, just as it did in the Tort Claims Act. For the reasons stated above and in Allstate's Memorandum in Support of Motion for Summary Judgment, Allstate respectfully requests denial of Plaintiffs' Motion for Summary Judgment and an order granting summary judgment in Allstate's favor.

GALLIVAN, WHITE & BOYD, P.A.

By: _____

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Stephany A. Connelly and James M. Connelly,

Plaintiffs,

vs.

The Main Street America Group; Old Dominion Insurance Company; Allstate Fire and Casualty Insurance Company; Debbie Cohn; and Freya Trozona,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A#: 2016-CP-40-5885

CERTIFICATE OF SERVICE

RICHLAND COUNTY FILED
2017 APR -3 PM 1:23

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, *or by other delivery as indicated,* to all parties of record at the address(es) shown below.

DOCUMENT(S) AND PARTIES SERVED:

1. **ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN REPLY TO PLAINTIFFS' OPPOSITION TO ALL SUMMARY JUDGMENT MOTIONS**

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Carol L. Newton 3/24/17
Carol L. Newton
Legal Assistant to Ashley B. Stratton

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE CIRCUIT COURT
STEPHANY A. CONNELLY and JAMES CONNELLY, Plaintiffs, v. THE MAIN STREET AMERICA GROUP; OLD DOMINION INSURANCE COMPANY; ALLSTATE FIRE AND CASUALTY COMPANY; DEBBIE COHN; and FREYA TROZONA Defendants.	)	Civil Action No.: 2016-CP-40-05885 **MAIN STREET AMERICA GROUP AND OLD DOMINION INSURANCE COMPANY'S ADOPTION OF ALLSTATE'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN REPLY TO PLAINTIFF'S OPPOSITION TO ALL SUMMARY JUDGMENT MOTIONS**

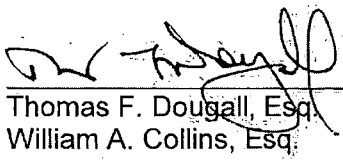
Defendants Main Street America Group and Old Dominion Insurance Company (hereinafter "Old Dominion") hereby adopts as if fully stated verbatim herein, Allstate Fire & Casualty Company's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and Reply to Plaintiff's Opposition to all summary judgment motions dated March 29, 2017.

For the reasons stated therein, Connelly is not entitled to Uninsured Motorist ("UM") coverage under Old Dominion's insurance policy because the unambiguous terms of the UM statute require that Connelly establish Trezona's legal liability before she can claim entitlement to UM coverage and the Workers' Compensation Act wholly substitutes Connelly's common law rights, providing her exclusive remedy and rendering Trezona immune from liability. Therefore Connelly cannot be entitled to UM coverage under Old Dominion's policy.

Accordingly, Old Dominion respectfully requests that the Court deny Plaintiff's Motion for Summary Judgment and enter an order granting summary judgment in favor of Old Dominion.

Respectfully submitted,

DOUGALL & COLLINS



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March 29, 2017

Columbia, South Carolina

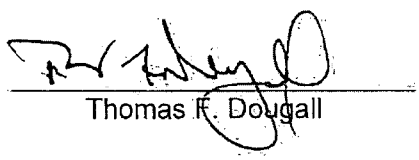
CERTIFICATE OF SERVICE

This is to certify that the foregoing Main Street America Group and Old Dominion Insurance Company's Adoption of Allstate's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment and Reply to Plaintiff's Opposition to All Motions for Summary Judgment was served in the above-referenced case by depositing a copy of the same in the United States mail, postage prepaid, on the 29th day of March, 2017 addressed as follows:

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Thomas F. Dougall

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Stephany A. Connelly and James M. Connelly, Plaintiffs, vs. The Main Street America Group; Old Dominion Insurance Company; Allstate Fire and Casualty Insurance Company; Debbie Cohn; and Freya Trozona, Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT C/A#: 2016-CP-40-5885 **DEFENDANT ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

2017 MAY -8 AM 11:38

The South Carolina Supreme Court issued an opinion on April 26, 2017, answering certified questions from the District Court and interpreting the interplay between the Workers' Compensation Act (the "Act") and the Uniform Contribution Among Tortfeasors Act. *Machin v. Carus Corp.*, Op. No. 27714 (S.C. Sup. Ct. filed April 26, 2017) (Shearouse Adv. Sh. No. 17 at 18). The issue in *Machin* was whether the defendant (the supplier of the product which injured plaintiff) could argue an empty chair defense placing responsibility for plaintiff employee's injuries on his employer from whom he had already received workers' compensation benefits without any argument or jury instructions about workers' compensation. In holding the defendant can argue the empty chair defense suggesting plaintiff's employer is the wrongdoer and that the jury can hear an explanation of how the Workers' Compensation scheme had already determined the employer's legal responsibility, the Supreme Court provided helpful, timely guidance for the instant case.

Specifically, the Court explained how the exclusivity provision of the Workers' Compensation Act extinguishes the legal liability of the employer. In doing so, the Court initially recognized that the Act replaces "the common law idea of tort liability":

> "The Workers' Compensation Act was designed to supplant tort law by providing a no-fault system focusing on quick recovery, relatively ascertainable awards, and limited litigation." ... The concept of workers' compensation is "founded upon recognition of the advisability, from the standpoint of society as well as of employer and employee, of discarding the common law idea of tort liability in the employer-employee relationship and of substituting therefor the principle of liability on the part of the employer, regardless of fault, to compensate the employee, in predetermined amounts based upon his wages, for loss of earnings resulting from accidental injury arising out of and in the course of employment ...The employee receives the right to swift and sure compensation; the employer receives immunity from tort actions by the employee ... This quid pro quo approach to [workers'] compensation has worked to the advantage of society as well as the employee and the employer."

Machin at 22 (citing *Nicholson v. S.C. Dep't of Soc. Servs.*, 411 S.C. 381, 389, 769 S.E.2d 1, 5 (2015) and *Parker v. Williams and Madjanik, Inc.*, 275 S.C. 65, 69-70, 267 S.E.2d 524, 526 (1980)). Thus, the Act and its exclusivity provision limit the injured employee's rights and remedies to those provided by the Act. *Id.* at 23. Also, by enacting the Act's exclusivity provision, the legislature has pre-determined "that for policy reasons the employer may not be the legal cause of the plaintiff's injuries." *Id.* at 27 (citing *Snyder v. LTG Lufttechnische GmbH*, 955 S.W.2d 252, 256 (Tenn. 1997)).

The same principles apply to this case in which the Court is asked to interpret the interplay of the Workers' Compensation Act and the Uninsured Motorist (UM) statute. As recognized in *Machin*, Connelly's common law rights and remedies in tort liability are limited and supplanted by the Act. And for the policy reasons undergirding the Act, the legislature has already determined that Trezona may not be the legal cause of Connelly's injuries. If Trezona is not the legal cause of Connelly's injuries, then Connelly is not legally entitled to recover from Trezona.

The *Machin* opinion not only clarifies the difference between legal cause and cause in fact, but it also emphasizes the importance of interpreting statutes based on legislative intent even when "compelling policy argument[s]" are presented. *Id.* at 32. The obligation of the *Machin* Court to harmonize the Uniform Contribution Among Tortfeasors Act with the Workers' Compensation Act is the same obligation this Court has to harmonize the UM statute with the Workers' Compensation Act. *See Id.* at 33 ("To construe a 'potential tortfeasor' [in subpart (D)] as including the plaintiff's employer would create an irreconcilable conflict with the language and purpose of our Workers' Compensation Act and would be inconsistent with this Court's obligation to harmonize statutory scheme when such a construction is consistent with legislative intent.").

Effectuating the legislature's intent requires this Court to refrain from adding a provision to the Workers Compensation Act like the one contained in the Tort Claims Act that allows for recovery under an individual's UM or UIM policy "[i]f the amount of the verdict or judgment is not satisfied by reason of the monetary limitations [of the Tort Claims Act]." *See* S.C. Code Ann. § 15-78-190; *Machin* at 33 ("To be sure, the legislature could characterize a plaintiff's employer in a way that would permit inclusion of the employer on the verdict form, but the exclusivity provision of the Workers' Compensation Act forecloses the possibility of an employer ever being a 'potential tortfeasor.'"). The fact that the legislature included such a provision in the Tort Claims Act and not in the Workers' Compensation Acts evinces the intent to limit an injured employee's right and remedies to those provided by the Workers' Compensation Act. Thus, despite Connelly's "compelling policy argument", this Court, like the *Machin* Court, is bound by legislative intent to limit Connelly's rights and remedies to the Act.

Conclusion

Allstate brings the *Machin* opinion to the Court's attention because it guides this Court's decision on the parties' respective Motions for Summary Judgment. Because *Machin* is an applicable and controlling legal authority, Allstate asks this Court to consider it and to grant summary judgment in its favor.

Although Old Dominion's policy provides liability coverage for the accident that occurred, Trezona has no legal liability to Connelly. Because Trezona has no legal liability under South Carolina law, Connelly is not legally entitled to recover damages from Trezona. Because the vehicle was not uninsured at the time of the accident and Connelly is not legally entitled to recover damages against Trezona, uninsured motorist coverage does not apply.

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May 5, 2017

ROA Page 213

CERTIFICATE OF SERVICE

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused **DEFENDANT ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the address(es) shown below on May 5, 2017.

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Attorney for Plaintiffs

JEANNETTE W. McBRIDE
C.C.P. & G.S.
2017 MAY -8 AM 11:33
RICHLAND CO.
FILED

Carol L. Newton
Legal Assistant for Ashley B. Stratton

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	COURT OF COMMON PLEAS NONJURY
STEPHANY A. CONNELLY AND JAMES M. CONNELLY, PLAINTIFFS, vs. THE MAIN STREET AMERICA GROUP, OLD DOMINION INSURANCE COMPANY; ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY; DEBBIE COHN; AND FREYA TROZONA, DEFENDANTS.	TRANSCRIPT OF RECORD 2016-CP-40-5885

May 17th, 2017
Columbia, South Carolina

B E F O R E:

THE HONORABLE JOCELYN NEWMAN, Judge.

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

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Attorney for the Plaintiffs

THOMAS F. DOUGALL
ESQ.
Attorney for the Defendant Old Dominion Insurance Company

ALFRED J. COX
ESQ.
Attorney for the Defendant

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

INDEX OF WITNESSES

(There were no exhibits marked or testimony taken during this hearing.)

P R O C E E D I N G S

THE COURT: All right. I'm ready to hear from whoever.

MR. DOUGALL: Your Honor, Tom Dougall on behalf of Old Dominion Insurance Company. Basically I think we have resolved the motion to dismiss.

Is that correct, John?

MR. KASSEL: Yes.

MR. DOUGALL: Freya Trozona, who is named as a defendant, and Debbie Cohn, who is named as a defendant, are to be dismissed. I think you can do that by a simple Form 4.

THE COURT: Okay.

MR. DOUGALL: And that will just leave us with our cross motions for summary judgment.

THE COURT: Okay.

MR. DOUGALL: And, basically, Your Honor, this case -- I thought I was gonna get to argue my motion to dismiss again today, but the motions for summary judgment are actually, kind of interesting. Plaintiff's counsel has come up with a unique theory of law that I think he understands we disagree with him.

But basically what happened was, in February 20 -- on February 24th of 2015, there was an automobile accident here in Columbia. The car was driven by Freya Trozona, who

was a named insured on the Old Dominion policy, and I represent Old Dominion Insurance Company. Her passenger was a lady named Stephany Connelly, who is the plaintiff in this case.

At the time of the accident, Freya Trozona and Stephany Connelly were co-employees acting within the course and scope of their employment, and I've presented to the Court also, I just want to briefly mention it, a stipulation -- a joint stipulation of facts. The parties agree that those are the facts.

Ms. Trozona and Ms. Connelly were co-employees. They were acting within the course and scope of their employment going to a meeting, and they were involved in an accident. And Ms. Trozona was the at-fault driver, allegedly, and I think we would agree, the at-fault driver of the vehicle.

Ms. Connelly then filed -- Ms. Connelly sustained injuries and filed a workers' comp claim. She was paid those worker comp benefits, and now, through this suit, she is trying to claim that she's entitled to uninsured motorist coverage from my policy, the Old Dominion policy, that insured Freya Trozona, the at-fault driver, and Mr. Cox's Allstate policy, which was her at home automobile policy.

Now, as we have previously mentioned, they're basically two outcomes from the, the accident. First, Ms. Connelly has received all the workers' comp benefits that she has

applied for, but Ms. Trozona, as a co-employee, is immune from suit, and that's in the stipulation of facts. The plaintiffs agree that she can not be sued.

So, basically, when Ms. Connelly tendered the claim to Old Dominion Insurance Company, which was Ms. Trozona's carrier, they denied the claim on liability saying there can't be liability for an immune co-employee. Then, because she had no liability, tort liability under the Workers' Comp Act, the plaintiffs have come up with this theory that, because she doesn't have liability coverage, the vehicle has now miraculously become an uninsured vehicle. And that's really what this case is about.

She then presented an -- a UM claim to Old Dominion insurance policy, which, again, we denied due to the fact that there's no legal liability for Ms. Trozona because she's immune from suit as a co-employee. They then tendered the same claim to Allstate who also denied it on the same basis. There's no legal liability.

Basically, our argument is that the exclusivity provisions of the workers' comp claim, the Workers' Comp Act, can not render the Trozona vehicle uninsured and the plaintiff, Ms. Connelly, is not legally entitled to recover damages.

Now, providentially, there's a case I passed up to you just a minute ago that has the little blue tab with it.

THE COURT: Uh-huh. (Affirmative).

MR. DOUGALL: And that's the Machin case, which came out about two weeks ago, April 26th. It was on a certified question from the U.S. District Court. And, for some reason, when it prints out, it doesn't print out numbers on the pages but, on Page 11, it really answers the question.

Now, if you look at that first paragraph that starts with the defendants, right about the middle of the page, and if you substitute co-employee for the employer, because they're talking about the Workers' Comp Act, then what you would get, and also substituting South Carolina for Tennessee, that paragraph would then read the defendants here wanted the jury to assess fault against the co-employee by arguing that the co-employee's actions were the proximate or legal cause of the plaintiff's injuries. Of course, the co-employee can not be found to be the proximate or legal cause of the plaintiff's injuries because the co-employee is immune from tort liability under the exclusivity provision of the South Carolina Workers' Compensation Act.

By enacting the exclusivity provision, the Legislature has already determined that, for policy reasons, the co-employee may not be the legal cause of the plaintiff's injuries, and basically we can go back and we can argue, which I don't think we need to, whether the vehicle was insured or not, but if you even read through the insurance

policy in South Carolina Code 38-77-30, which talks about what is an uninsured vehicle, this was not an uninsured vehicle, and, in fact, the parties have stipulated to that.

Old Dominion provided 100,000/300,000 liability, and the only reason they denied the claim is because Ms. Trozona can not legally be responsible for damages to her co-employee. And I don't think there's any significant issue about whether this vehicle is insured or not.

That follows with our argument on the insurance -- insuring agreements, which basically say we'll pay if somebody is legally entitled to recover damages from the insurance. Trozona is the insured under my policy, but the plaintiff can't legally recover damages from Trozona, and that's the entire crux of our argument. That if she can't be legally liable, we don't have to pay and you can't take an insured vehicle and turn it into an uninsured vehicle just because the workers' comp provisions don't allow you to recover damages, and we've cited several provisions from different states, particularly on Page 5 of our memo, that basically go through this whole litany.

And when you look at our act, it says basically, under the Workers' Compensation Act, we have abolished any tort liability for the co-employee just as we abolished tort liability for the employer due to sound policy reasons, which are stated, again, in this Machin case that I handed

up to you that it's -- the reason we enacted the South Carolina Workers' Compensation Act was to ensure that the employees could get benefits, could get them quickly under the guise that there would be no tort liability against their employer, but there would be an automatic right to recover for injuries sustained in the scope and course of employment, and Machin goes back through all of that.

The only twist I think you will find, and we've cited it in our brief, if you go through to the South Carolina Tort Claims Act, the Legislature actually has a different decision and provision in there that says, under the Tort Claims Act, you could recover but you can't under the Workers' Comp Act, and the Legislature has made that decision.

And why they made it, I don't know. I wasn't here when they did it, don't really care, but the South Carolina Workers' Comp Act says you can't get it under the Workers' Comp Act. So, you've got a situation where the same Legislature, looking at two different statutes, provided for two different remedies for people claiming under those statutes. But it's very clear that, under the Workers' Comp Statute, they do not allow that co-employee to sue the other co-employee for any damages. Therefore, Old Dominion Insurance can not be liable to Ms. Connelly because she can't sue Freya Trozona.

In fact, if you look at the stipulation of facts, the parties agree that Ms. Trozona is absolutely immune from suit.

So, how would we even get to a liability case because they can't name her as an employee -- I mean they can't name her as a defendant because she's absolutely immune from suit. And you can't do it as a John Doe because we know who the at-fault party was. You're gonna have to name somebody who's immune from suit, which just opens you up to an easy motion to dismiss.

So, I don't even know how we would get to the UM case.

THE COURT: Okay.

MR. DOUGALL: And I think that's the gist of my argument but I'll let you -- Mr. Cox finish up as he sees fit.

THE COURT: Yes, sir.

MR. COX: Thank you, Your Honor.

If I could, and I'd maybe like to walk through this a little more step-by-step, okay, as far as the, the statutes go.

We have two interplaying statutes here, which is the, the UM Statute and the Workers' Comp Statute. He -- Ms. Connelly can not recover under either one. And so, I want to walk through both of these and kind of tell you why.

Our UM Statute, which is 38-77-150, states very clearly

that, in order to be able to get UM or -- it requires the policy to be issued to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle.

So, first, under the UM Statute, the insured has to show that he is legally entitled to recover damages from the operator of an uninsured motor vehicle, and, in this instance, Ms. Connelly can do neither.

Ms. Connelly has already stipulated, in our stipulation of facts, that she can not legally recover damages from Ms. Trozona. So, as far as I'm concerned, that issue is, is over. There, there is no reason to discuss that issue any further but we will just in case.

And the other issue is, and I will discuss that in a second, the operator -- it must be an operator of an uninsured motor vehicle.

Okay. We have a very specific definition in our UM Statutes of what a uninsured motor vehicle is.

Okay. I, I -- it's, it's 38-77-30. That's in my brief. I'm not gonna go through all that, but it's clear that this situation, this vehicle being driven by Ms. Trozona, does not fall within any of these individual categories of an insured vehicle either before or after the accident.

Mr. Kassel tries to argue that because Ms. Trozona is,

is not legally liable, that that somehow transforms this vehicle into an insured motor vehicle but it doesn't because it still -- it does not meet any of the definitions of an insured motor vehicle under South Carolina Statute. It was not an uninsured motor vehicle. If there had been a third person sitting in the back seat that was not an employee or co-employee of Ms. Trozona and Ms. Trozona was at fault in this accident, there's liability coverage on that car, and Ms. Connelly has stipulated that the liability coverage is in a sufficient amount to satisfy 38-77-140, which is what's required as a minimum limits.

So --.

THE COURT: Well, let me go ahead and interrupt --

MR. COX: Yeah.

THE COURT: -- in anticipation of plaintiff's argument.

Why does it not meet the definition of a vehicle that has insurance but the insurer writing the same successfully denies coverage thereunder?

MR. COX: Because there is no coverage denial. It's a liability denial. There is no liability. They're not denying that there's liability coverage applicable to the vehicle. They're denying that there's any liability on the part of the person driving the vehicle.

THE COURT: Okay.

MR. COX: So, that's the difference and that's the

difference between the cases that Mr. Kassel cites. He cites the -- I think it's Unisun Schmidt. He doesn't cite Rollison but I was involved in that case and we could cite that one.

Those were situations where -- I think both of those were single car accidents. The person driving the car did not have permission to drive the car. So, the carrier denied coverage because the operator was driving without permission.

THE COURT: Got you.

MR. COX: So, they denied coverage. There was no liability coverage that applied to the car. Therefore, it becomes an uninsured motorist vehicle.

THE COURT: Understood.

MR. COX: Okay. So, that's the difference is that there's no coverage denial. There was a liability denial.

THE COURT: Okay.

MR. COX: All right. So, there is no insured motor vehicle. It -- this vehicle does not meet the definition under our statutes. In fact, it meets the definition of an insured vehicle under our statutes.

The second issue is this issue of whether or not she can leave -- she's legally entitled to recover damages from Ms. Trozona, and this is something that is absolutely controlled by the Workers' Comp Act. The Machin case and

the other cases we've cited in our briefs talk about how the Workers' Comp Act is completely supplanted toward law in this area. There is no tort law in this area. There's only statutory law.

Okay. Determining the rights of co-employees or, or employees to sue their employer or co-employees.

Okay. There, there is no tort law in law. So, it's only by statute can you determine whether you can recover.

All right. The Workers' Comp Statute very clearly and plainly states that an employee can't sue a co-employee and an employee can not sue a -- an employer. You are not legally entitled to recover damages.

The Machin case goes on and talks about how the employer/employee can't be a tortfeasor period. There -- they, they can not be a tortfeasor, which was one of the reasons that the Supreme Court decided that you could not put an employer or a co-employee on the verdict form for the purpose of allocating fault.

All right. So, they're not tortfeasors.

There is no provision whatsoever in the Workers' Comp Act that allows a co-employee to recover damages from another co-employee period. It doesn't say oh, you can't sue the co-employee. Well, but you can sue the co-employee to get underinsured or uninsured motor coverage. It doesn't say that. There is no tort recovery period against a

co-employee.

Now, as, as Tom said, completely different under the Tort Claims Act.

Okay. The Legislature, in that situation, decided and specifically included a provision, and I've cited the provision number in our brief, that specifically says if, if a, an injured party's damages exceed the, the tort claims cap, they can make a claim, if any, against uninsured motorist coverage or underinsured motorist coverage.

Okay. Specifically stated that.

The fact that that is not included in the UM Statute, I mean, I'm sorry, in the Workers' Comp Statute is actually fatal to any argument that they might have because they easily could of done that. The Legislature easily could of done that.

The Kane case, which actually we both cited, is Kane versus Nationwide. It is pretty instructive in this. It was a case about whether or not -- clarifying whether you could bring an under or uninsured motorist claim in the context of the Tort Claims Act, and, in that case, it said yes, you can, but the vehicle still has to meet the definition of either an insured motor vehicle or an underinsured motor vehicle.

Okay. And, in that case, they said it doesn't meet the definition of an uninsured motor vehicle because there was

insurance on the vehicle. So, if anything, it has to be an underinsured claim under the Tort Claims Act, okay, because there was what, three hundred thousand in coverage on the governmental vehicle or whatever, but the, the -- but the important part of that decision from the Supreme Court is you still have to show that it meets the definition of an uninsured motor vehicle to even consider under the Tort Claims Act, which specifically allows going after UM and UIM to, to, to be able to do that.

One more thing on the issue of, of the legal, legally entitled to recovery. Lawson versus Porter, a Supreme Court case, says recovery under a UM is subject to the condition that the insured establish legal liability of the uninsured motorist. Legal liability.

Okay. And, and Mr. Kassel's gonna argue that he doesn't have to do that. He's gonna, he's gonna argue well, all I got to do is show that they're at fault, and, and, therefore, if they're at fault, then I can pursue an uninsured motorist claim. Not in South Carolina. You have to prove legal liability. Our Courts have already determined that Ms. Trozona has no legal liability.

THE COURT: Okay. Tell me that case name again please.

MR. COX: I'm sorry. Which one?

The last one?

THE COURT: The last one.

MR. COX: Lawson versus Porter. It's at 180 S.E.2d 642.

THE COURT: Okay.

MR. COX: And we cited another case. It says the same thing. Vernon versus Harleysville. It's in our briefing.

THE COURT: Okay. Thank you.

Yes, sir.

MR. KASSEL: May it please the Court, Your Honor.

I'm John Kassel. Pleasure to be with you and these fine lawyers. They gave me way too much credit that I came up with a unique theory of law. Everything I'm gonna tell you I have taken from other cases.

My argument is based on case law of other cases. I say that on the up front, number one.

Number two. This isn't a tort claim I'm bringing.

Okay. I'm not suggesting I'm bringing some kind of tort action against the driver for negligently driving and looking for tort damages from her. What I am doing is I'm bringing a contract action, and the South Carolina Compensation Act does not, by its terms, preclude contract actions.

Interestingly, also the Tort Claims Act that this Kane case is, is based upon doesn't preclude a contract action. It says so by its very terms. That's important to understand and see as we go through this, judge.

This is an issue of whether Ms. Connelly is entitled to UM uninsured motorist coverage, which our South Carolina Courts have determined to be a contract action. It's a contract action. She contracted with Johnston's carrier, paid them money for UM coverage. She has the benefit of, of Tom Dougall's client's Old Dominion UM coverage cause she's a passenger in the car, permissive passenger with a right to be there, and so her expectation is that she's entitled to UM through both of these unless they can convince you otherwise.

So, that's what this is about. Ms. Trozona caused a wreck. She caused injury to Ms. Connelly and now she is immune from a tort action because of workers' comp. I understand that and I'm not fighting that. She's immune. As a co-employee, she's immune. That doesn't mean I can't go after uninsured, uninsured coverage. And, in fact, the case law that I cite in my brief makes a correlation between immunity with being the same thing as uninsured. Both are devoid of paying benefits.

It doesn't matter to Ms. Connelly whether she has immunity, her driver, or whether her driver can't respond because she has no money. The result is the same and the cases I've cite say that. And so, that's the basis of the argument, that an immune driver is really the same thing as an uninsured driver.

THE COURT: Because she is immune, there's no coverage available which is the same as uninsured?

MR. KASSEL: Right, and I---

THE COURT: Okay.

MR. KASSEL: Right.

And I cite this Jenkins case and it's in the brief, judge. It's a West Virgina case and the reason I'm doing this is that, in South Carolina, there are no cases. This is the first. There are no cases that talk about this very issue of whether you can go after UM coverage from an immune negligent driver who's shielded by workers' comp.

So, we're all looking to other jurisdictions, and I will tell you, just as a road map, what I did was I looked and there is a plethora of cases out there that talk about ability to get UM coverage when there is governmental immunity, and I can discuss those with you. And, in fact, the majority of cases fall in the position helpful to the plaintiff that you can get UM coverage if there's governmental immunity.

There is a difference, and I admit this, I'm in the minority when it comes to workers' compensation, and I've cited -- there are the two cases that speak to allowing UM coverage from a -- even though you've been hurt by a co-employee in a workers' comp setting.

This Jenkins case that I was gonna mention to Your

Honor, listen to this language. Immunity from liability is no different than failure to purchase liability insurances for purposes of their statute in West Virgina. I cite this Colorado case, it's in the Borjas, negligent drivers and their employers who are immune from liability under the Colorado immunity statute may not be financially irresponsible in the sense that they lack the ability to pay, but from the prospective of the insured innocent driver, the lack of legal responsibility has the same effect.

Now, if immunity triggers the same thing as uninsured, then we have to look at the South Carolina Uninsured Motorist Statute and that's this 38-77-150, and that statute says that we will pay -- that any, anyone who writes a policy of insurance has to have this provision, and it says that this provision will pay all sums which the insured is legally entitled to recover as damages from the owner of an uninsured vehicle.

What are we legally entitled to recover from an owner of an uninsured vehicle?

If, you know, if, if we're just gonna practice bumper sticker law and go no deeper than that, you know, maybe they win, but the moment you scratch the surface, if you are tempted, you will find that a majority of cases dealing with governmental immunity interpret that very language. This

language, all sums which he is legally entitled to recover, is nation wide. I find it in every jurisdiction. It's not a creature of South Carolina. It's in our statute but it's in statutes across this country.

Where our case -- our Courts have not interpreted that statute in workers' comp setting, other -- or in a governmental immunity setting, a lot of cases from other jurisdictions have, and there is a conflict on how that term, that term, statute, has been interpreted. And once there's an ambiguity there, then it's up to the Courts to construe it.

What does it mean?

What does it mean in this UM setting?

It is as straightforward as they, my friends, the defendants, want to say?

They can't -- you can't recover from Ms. Trozona, your driver, then you can't get UM or is it a little bit more complicated than that?

And I'm sorry to say it's a little bit more complicated than that.

If you look at these cases in the context of UM, there are a slight majority of cases that interpret that language as saying I don't have to prove legal liability. I don't have to get a judgment. All I have to do is demonstrate fault. It's that element of fault by the driver that will

trigger the UM statute. I didn't -- you know, that's not my theory. That's from the case law.

For example, in this Jenkins case, this is the Court writing, our research indicates that a slight majority of Courts that have considered the issue have determined that the phrase legally entitled to recover or its equivalent means that an insured is entitled to uninsured motorist coverage merely by establishing fault on the part of the tortfeasor in the amount of the insured damages. All I can do is find fault.

Now -- but what -- and, and that language is also in this Borjas case that I cited, which is the Colorado case. We conclude, the Court says, that the phrase legally entitled to recover damages means that the insured must be able to establish the fault of the insured motorist that gave rise to the damages and the extent of those damages.

And I would argue to Your Honor that Nation, the case that's been cited here today, essentially says the same thing. Nation was not an uninsured motorist case. It was a product liability case about what defendants go on a verdict form, and it did say, of course, that an employer -- cause what happens in those cases when you bring a third party action that the defendant, product manufacturer, always wants to blame the employer as the cause, and the question was can you put the employer actually on the verdict form,

and, finally, that question got answered in that case.

And they said no, you know, he's not a proximate cause, if not legally liable, under our -- because of workers' compensation.

But you know what the Court said?

You can argue their fault even though they're not the proximate cause. You can still argue to the jury their fault, which is what I'm attempting to do here. So, I think Nation helps me do that.

So, I think the real question for you, Your Honor, is, with these two interpretations, do I have to show I can get a judgment against Trozona or do I merely have to show that she was at fault?

The question for Your Honor is what would be the rule in South Carolina, and I think that way you -- the answer to that question is you say I'm gonna look to the intent of the Legislature.

What did they mean by this UM statute?

What is the purpose of the UM statute?

And it's clear, when you look at cases like Ferguson versus State Farm that talk about the UM cases and the statute, the purpose is to protect motorist from the carnage and injury delivered by uninsured motorists, and that we want to protect those folks with some compensation. And so, we created this notion of uninsured coverage through our

statute and we hold this pretty wholly.

In South Carolina, uninsured motorist coverage holds a lofty place in our jurisdiction, and I say that to argue that you don't do away with it easily. Look. Uninsured motorist coverage is mandatory in South Carolina. You have to include it in your, in your coverage if you're gonna write insurance in this state. The limits of uninsured motorist coverage are mandatory in South Carolina.

The statute that provides uninsured motorist coverage is a remedial statute that has to be interpreted liberally to provide coverage, and we have determined that you can't even -- you can't limit, by policy, uninsured coverage to do away with it. And Ferguson versus State Farm is an example of that. You can't write it out but by putting in, as they try to do in Ferguson, well, if you collect it, workers' compensation, in an amount greater than the UM, you can no longer get UM.

That's what they tried to do in Ferguson and the Supreme Court said you can't do that. This is uninsured coverage. You can't undermine uninsured coverage.

Now, Your Honor, this is -- Ferguson was not a case involving the exclusivity of workers' compensation but a second case came out. And this is an old case. It's a 1992 case from South Carolina, Wright versus Smallwood. And the reason I'm telling you this, judge, is when you try to make

a determination of whether South Carolina would require just a showing of mere fault or something more, I think the clues to that answer lie in these cases.

Smallwood -- Wright versus Smallwood is an important case in that regard because it -- it was an attempt by an insurance carrier to raise the workers' comp exclusivity provision to bar payment of UM. Now, it's not exactly on point because we've never had the case exactly on point.

In the Wright case, Mr. Wright was a city employee who was on-the-job. He was hit by an uninsured driver. He collected comp from the City. The City also underwrote the workers' comp but also was self-insured for auto. He collected his comp and he brought a DJ action against his employer, against the City, to determine if they owed him uninsured coverage, and the City defended by saying you can't sue us. You can't sue your employer. Exclusivity provision of comp. You can't sue your co-employee as they're telling us here. Exclusivity provision of comp.

Our Supreme Court said no. The exclusivity provision of comp does not prevent Mr. Wright from suing his employer to get UM. 1992.

Why?

Because the exclusivity provision of comp only applies to torts. It does not apply to contract actions. Mr. Wright is bringing a contract action. He's bringing a

claim for UM and they allowed that.

We are not suing Ms. Trozona, the driver, for any money. In fact, we've dismissed our claim against her.

THE COURT: Okay.

MR. KASSEL: We are not even suing her employer, the common employer, which was Apple One. They're not even parties. We are bringing a claim against an entity called Old Dominion and Allstate, not the employer, not the co-employee, for UM benefits.

Now, Your Honor, without wearing you out with all of this in this argument, I just want to point out that, when you look at the body of case law that deals with the governmental immunity, there is an over -- there is a majority of cases that allow one to go after UM as well as comp. When you get to the area of cases that specifically deal with our situation where you have one employee who's injured by a negligent co-employee, we're in the minority. My position is in the minority.

It doesn't mean that I'm wrong despite the reaction from my---

MR. COX: No.

MR. DOUGALL: No, you're doing great.

MR. KASSEL: South Carolina has often adopted the minority position and the reasons you adopt the minority positions is that you're right.

And so, I cite to the Court two cases that are both from the State of Oklahoma. They both involve one employee getting injured by another employee.

One case, the Barfield case, allowed the employer to go after her own UM coverage. The second case was the Torres case that allowed the employee to go after the employer's UM coverage.

Now, in -- I would say that this, you know, when you look at the equities of this, judge, is there a difference between going after your own carrier for UM that you paid money for in premium versus going after the UM coverage of the vehicle you're in?

You know, someone may argue that.

Does -- do the Connellys have a stronger position against Allstate because they're not getting the benefit of their bargain?

Remember. The Connellys went out to protect themselves. They didn't have -- they, they went out and they purchased this UM. They got this UM. They paid for it. They wanted to protect themselves and now the defense position is you don't get the benefit of that protection. You have to be pleased with a limited recovery of workers' comp. Thank you very much.

Those two cases allow the plaintiff to get UM coverage and why?

What is the rationale?

Here it is. Because if you allow UM coverage, then you further the legislative intent to protect people from injury from those that can't get minor -- the uninsured or the immune. You protect that. And that's what our Legislature attempts to do.

We have historical precedent like the Wright versus Smallwood case allowing UM actions despite the exclusivity of comp. You have that. Allowing UM does nothing to interfere with the balance carefully crafted by workers' comp. You know, the balance in workers' comp was the employee gave up his rights to sue the employer in exchange for what was suppose to be fast, determined compensation, and, in exchange, the employer didn't have to be burdened by liability for tort and didn't have to look at punitive damages.

If Ms. Connelly gets UM coverage, how will it upset that balance?

It can't.

If she gets UM coverage, it does nothing to, to that or will affect any of the values that we're trying to protect in the comp action. If you don't allow UM coverage, it does grave harm to the folks that need the protection of UM. So, it, it doesn't hurt to provide it but it hurts greatly to deny it.

Your Honor, briefly, and I want to sit down, but just two quick points, and I'm sorry that my argument is a bit long because it isn't the bumper sticker argument. There is nuance to it.

Was this an uninsured, uninsured vehicle?

It has to be an uninsured vehicle in order to get uninsured coverage and was it?

And, you know, how can this be an insured vehicle if there's liability coverage on it?

Well, I rely on the Unisun versus Schmidt case. It's a South Carolina case. There was a BMW that had bunches of coverage on it. It was being driven by a non-permissive driver. It caused injury to a passenger. The passenger made a claim. Coverage was denied. The Court said that's an uninsured vehicle in Schmidt. The Court said that's an uninsured vehicle.

How can that be?

You have liability coverage. You pay for it. Dad bought that BMW. You know he had full coverage. Permissive driver. The status of the driver changed whether that vehicle was now insured or uninsured. The driver brought a liability claim. It was denied. She brought a UM claim. She was allowed to go forward.

Well, they say well, they're not denying coverage. They're denying liability. That's a distinction we need to

spend time on.

They are clearly denying liability. They stipulated to the denial of liability. All I have to do is prove fault in this case. I've done that. They've stipulated. They stipulated that Ms. Trozona was negligent. They stipulated that her negligence was the cause of these injuries. That's stipulated in the record. And, as such, you can not deny liability once you've stipulated to those facts.

And I would further argue to you, Your Honor, that this notion of whether we denied liability or denied coverage is a little bit like dancing angels on the head of a pin. Those concepts, in the Schmidt case, when you read the case, almost use those terms interchangeably.

You can't -- a vehicle can be uninsured if there's no liability coverage, and it can be uninsured if you successfully deny coverage. And we think they've done both in this case. And I want to make sure I argue this to the Court that both of these grounds are covered.

Our statute says uninsured motor vehicle means a vehicle as to which there's no bodily injury liability insurance and property damage liability insurance both, at least, in the specified amounts. So, if there's no coverage, it can be an uninsured vehicle. Again, in that Jenkins case, they had almost an identical statute and they said this. We believe the definition of uninsured motor,

motor vehicle, under our statute, is broad enough to encompass tortfeasor, feasor who is immune from liability.

So, we think that it's an uninsured vehicle because this tortfeasor is immune. We have that language from that case to support it. And we think it's an uninsured vehicle by virtue of the fact that they denied coverage.

And, finally, Your Honor and I'll sit down, this notion -- there's an argument that my friends are making that, under the Tort Claims Act, they have a specific provision, this Section 190, that says that, under the Tort Claims Act, it has an exclusivity provision, you can still bring a claim for underinsured or uninsured motorist coverage and such provision does not exist in the workers' comp code. And, therefore, it envisions a legislative intent not to include it in comp because they included it in tort claims.

I think there's something wrong with that argument and it's this that I don't need that provision in workers' comp allowing me to bring an uninsured motorist case. I don't need a Section 190 in the comp provision to bring this.

Again, I go back to Wright versus Smallwood, that 1992 case, where the injured employee was allowed, despite the exclusivity provision of comp, to sue his employer for UM, and look what the purpose of 190 is, that section, from the Kane case where I cited it. The purpose of Section 190 was

to ensure that an insurance company could not cite the exclusive civil remedy portion of the South Carolina Tort Claims Act to deny payment from the plaintiff's uninsured or underinsured motorist coverage for recovery under the act was sufficient.

They could not rely on the exclusivity provision, and that's why they have that Section 190 in it. I don't need that. I already have the Wright versus Smallwood opinion that says exactly the same thing, and that was in 1992 that we had that opinion. So, it's understandable why the Legislature didn't put it in comp. They didn't need to.

The Courts -- our Supreme Court have offered an opinion that allowed an employee to sue his employer for a comp -- for, for UM because it's a contractual action. And certainly, under the Tort -- under the Workers' Comp Statute, we have third party claims and that's been well established for years that recognizes the limited recovery of comp and it allows individual to go after third parties.

I submit these folks are gonna be a third party and I should be able to bring my case against them. And like the gentleman in Wright versus Smallwood, if you brought a DJ action, you brought it against the employer. I brought a DJ action. I brought it against two carriers.

I ask the Court to grant my motion for summary judgment and allow me to have a hearing on damages is with the

element I need to prove and go forward.

THE COURT: Yes, sir.

MR. DOUGALL: Your Honor, just very quickly.

I think Mr. Kassel, in his arguments, has now admitted that he has absolutely no tort claim. I don't think we need to argue that anymore and I think it's very clear, from our cases and our statute, that he can't have a tort claim, and he's now saying this is purely a contract issue.

Well, then let's go back to the provisions of the contract and he cites this Wright case. I want, I want to quickly handle that one because, in Wright, you had an at-fault third party who could be found liable for damages. It wasn't a co-employee. It wasn't an employer. It was an at-fault third party. You don't have that here and, in fact, he admits he has to dismiss the employee because he has no cause of action against that employee.

If you go to Schmidt, there's a whole different issue in Schmidt. In Schmidt, you had a car that was insured, and daddy let his daughter drive that car to a party, and, at all times, she was insured under the contract. She was insured for liability coverage. She was insured for UM coverage. She was insured for UIM coverage.

But while she was at the party, imagine a bunch of high school kids who got drunk and one of the drunk guys, who didn't have permission from daddy to drive his BMW, took off

in the BMW and injured another child who was at the party. So, the insurance company's legally, under those policy provisions, which I'll go into in a second, said there is no liability coverage for the nonpermissive driver. Therefore, the vehicle now becomes uninsured under the statute.

It wasn't because there was an exclusive provision. It was because they were interpreting the actual language of the contract, and when there was no liability coverage for the third party not at fault in the back seat, then the UM provisions came into play. That is not what we have here.

What we have here are two co-employees who can't sue each other because there's no legal liability. So, let's go to the factual provisions of the insuring agreements, and basically I think our provisions are not significantly different although there may be some different pronouns, but the policy itself says 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 bodily injury sustained by an insured person.

Now, you got several problems there. First off, Ms Trozona -- I mean, excuse me, Ms. Connelly is not legally entitled to recover damages from the owner or operator. Ms. Trozona was the owner and operator of that vehicle but she can't be sued.

So, when the claim is presented to Old Dominion

Insurance Company, there's no legal liability to recover damages. So, the possible -- and Mr. Kassel, very effectively, tries to convince the Court that there's no difference between legally entitled to recover and just all I got to do is show there was an accident and there were damages.

That's not the case. You've got to show legal liability to recover and we cite to you the Slusher case out of Kentucky. State Farm Mutual Automobile Insurance Company versus Slusher, which is at 325 S.W.3d 318. And basically the Slusher Court addressed the exact same situation we have here, which Mr. Kassel admits is the majority position in the country, and what you had in Slusher was a worker trying to recover under a UIM, UIM or UM policy for injuries sustained in a work related motor vehicle accident caused by the negligence of a coworker, the exact same case that you have before you right now.

And just like this case, the -- basically the Court said you can't do that and the carriers in that case also defied liability under the liability provisions and refused to pay. Kentucky statutory law, like ours, eliminated a legal entitlement to collect any damages from the employer or co-worker. In citing the exclusivity of that statute, the Court found that, except for the compensation benefits, the worker's estate was not legally entitled to collect any

further amounts from either the employer or the co-worker. Therefore, the estate could not collect under either the UM or the UIM coverage because of the contractural language of the policy.

So, if Mr. Kassel wants to make this a contract case, we'd be more than happy to argue that with you too because the majority of law says you lose on that one also cause you go to look at the contract, and the contract says you can't legally recover damages from Ms. Trozona, the operator of the vehicle, because she's immune from suit. She's immune not only from tort suit, she's immune from a contract action. She is immune because the South Carolina Legislature said she was immune.

THE COURT: Well, for whatever reason she's immune, let me ask Mr. Kassel, and I know I'm interrupting you---

MR. DOUGALL: That's okay.

THE COURT: ---but let me ask Mr. Kassel what am I to make of this stipulation of facts that may of been, I, I don't know if it was a gotcha you moment or part of the defense counsel or, or, you know, or that was intentional on everyone's part, but it, in fact, uses the language legally entitled to recover. Paragraph 13 admits or there's an agreement, a stipulation, that Connelly is not legally entitled to recover damages, and if the contract requires, the insurance contract requires her to be legally entitled

to recover damages, explain.

MR. KASSEL: The contract has to be in compliance with the statute.

THE COURT: Okay.

MR. KASSEL: Very clear.

THE COURT: Okay.

MR. KASSEL: So, they can't write a contract that is -- that does any violence to the statute. The statute language is what we've been arguing to Your Honor for an hour cause -- what that language means. I stipulated, in 13, that Ms. Connelly can't recover from Ms. Trozona because that's the law. She can't sue Ms. Connelly -- Ms. Connelly can't sue Ms. Trozona because Ms. Trozona has this immunity. I get that. I mean I'm not arguing against that. I'm just saying, in the UM context---

THE COURT: Okay. I understand.

MR. KASSEL: ---that, that language could mean just simply fault.

THE COURT: I understand.

MR. DOUGALL: And, Your Honor, going further with Slusher, basically Slusher talked about those two competing positions, and it said, in that case, in determining that the worker's estate was not legally entitled to recover UM or UIM due to exclusivity, exclusivity provisions of the Workers' Comp Act, it distinguished two types of cases. It

distinguished cases applying an essential facts test where some Courts have interpreted the phrase, as Mr. Kassel wants you to interpret it here today, that the phrase legally entitled to recover basically only means you have to establish fault on the part of the tortfeasor, and the amount of the insured's damages.

Again, that's the essential facts test. That's what Mr. Kassel here is trying to argue.

But the Slusher Court, noting the shortcomings of that, found that the abridgment of the essential facts approach fails to properly consider the individualized analysis of a particular policy's language. So now we're back to the contract case again, and it -- you have to analyze that particular policy's language and it's interplayed with a statutory public policy exceptions in tort liability such as exclusive remedy provisions of the Workers' Comp Act.

And then, going down to Page 7, we then cite to you the majority of cases which say you don't follow that. You follow the statute. You follow the contract language. And if you've got a party who's not legally entitled to recover damages, then the insurance company doesn't have to pay UM benefits.

And Mr. Kassel tries to get around all of that by saying I'm not suing Ms. Trozona. Well, he's not cause he can't but we insure Ms. Trozona. We have a contract with

her and Ms. Connelly can not legally recover damages from Ms. Trozona. Therefore, under our contract, under the clear policy as interpreted by the majority of the Courts who have looked at this issue, we have no legal liability to pay, and it becomes as simple as that.

THE COURT: All right. Mr. Cox.

MR. COX: Very, very briefly, Your Honor.

THE COURT: Yes, sir.

MR. COX: Just because he's done a good job.

Yeah, I just want to -- Mr. Kassel says he's not gonna upset any apple carts. I've heard a lot today from Mr. Kassel that would upset a lot of apple carts.

He's tying to actually tell you, judge, that, that he doesn't have to sue the at-fault motorist in order to get UM coverage. He's saying he can sue the insurance company directly. He can not.

Under 38-77-150, it clearly says you have to sue the at-fault driver and you have to establish legal liability of the at-fault driver. He can't end run the entire statutory scheme and bring a DJ action and, and not sue the at-fault driver for UM coverage. It's -- he -- that -- I don't know -- I don't know if it's bumper sticker law or bumper sticker argument but that's -- I guess that's a good phrase. I've never heard---

THE COURT: Me either.

MR. COX: ---law actually referred to as bumper sticker.

THE COURT: Me either but I like it.

MR. COX: Right. I do too but---

MR. KASSEL: I think there's a political derivation from it.

THE COURT: Certainly.

MR. COX: But, but the fact of the matter is, judge, we have law. We have statutory law and it's very clear as to, as to what has to happen here.

You know, there, there is no question that if, if Ms. Connelly had been involved in an accident with a third person, who did not have insurance, that, that she'd be entitled to go after some uninsured motorist. She'd have to sue that person, right. She'd have to sue that person in order to commence a UM action.

And -- but that's just not the case here. All the cases that he cited are third party actions against -- that, that area allowed specifically by the UM statute -- I mean by the -- I'm sorry. The Workers' Comp Statute that you can go after -- you can sue third parties, and, if applicable, you can get UIM and you can get UM but this is not that situation cause, cause this is just not a, a third party.

Ms. Connelly is absolutely getting the benefit of the bargain in her loss. If she had been involved with an

uninsured motorist, as defined by South Carolina statutory law, it would be available to her. That she's not being deprived any bargain under her policy as, as clearly written, and, and I hear what you're saying about the stipulation, legally entitled to recover damages, and the statute is the exact same language as in Allstate's policy.

So, they're not doing any harm to the, to the statutory language. In fact, they took the language from the statute and put it in the policy. So, there, there is harm and, and just the status of the driver argument.

He said oh, well, in Rollison and Schmidt case, the status of the driver. And so, the status of the driver is what matters.

Well, what's important about the status of the driver in those cases is that that driver did not meet the definition of an insured person under a policy. Ms., Ms. Connelly -- you know, I mean -- I'm sorry. Ms. Trozona meets the definition of an insured person in this case. She, she's an insured person under, under the Old Dominion policy.

So, it's a -- that is a coverage issue, right. She did not have coverage because she was not an insured person in the Unisun case or the, or the Schmidt case.

Does that make sense?

I think I've confused you.

THE COURT: No.
MR. COX: The issue.
THE COURT: I understand.
MR. COX: Here, there's just no liability.
Okay?
THE COURT: Got it.
MR. COX: Got it.
Oh. And the other cases from other jurisdictions, very quickly, he is right. He's in the minority, the vast minority. There's only one or two jurisdictions that have, that have gone along with that, with that. In those cases, the cases that we've cited in our briefs, they talk about why those cases really don't make any sense. And one of the reasons is there's no discussion in those cases at all, and maybe it's because they don't have specific definitions of what an insured motor vehicle is in their statutory scheme like we do. There's no discussion at all of how the vehicle is magically transformed into an underinsured motor vehicle.
Our statute specifically requires that they have to be driving an uninsured motor vehicle as defined in our statutory scheme and we don't have that, Your Honor.
THE COURT: Okay. I'll let y'all know something.
MR. COX: Thank you very much.
MR. KASSEL: Thank you, Your Honor.
THE COURT: A lot to chew on.

MR. COX: It is. It's an interesting issue.
THE COURT: It is.
MR. DOUGALL: Thank you for your time.
THE COURT: Absolutely.
Good seeing all of you.
MR. COX: Good to see you.

* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Richland County, South Carolina, on the 17th day of May, 2017.

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

November 1st, 2017

Pamela E. Green

PAMELA E. GREEN, Court Reporter

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2017-002234

APPEAL FROM RICHLAND COUNTY COURT OF COMMON PLEAS
Civil Action No. 2016-CP-40-5885
Jocelyn Newman, Circuit Court Judge

Stephany A. Connelly and James M. Connelly ..... Plaintiffs

v.

The Main Street America Group; Old Dominion Insurance Company; Allstate Fire and Casualty Insurance Company; Debbie Cohn; and Freya Trezona ..... Defendants

Of whom, Allstate Fire and Casualty Insurance Company; The Main Street America Group; and Old Dominion Insurance Company are ..... Appellants

and

Of whom, Stephany A. Connelly and James M. Connelly are ..... Respondents

---

APPELLANT ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S CERTIFICATION AS TO RECORD ON APPEAL

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Pursuant to Rule 210(g), Counsel for Appellant, Allstate Fire and Casualty Insurance Company, hereby certifies that the Record on Appeal served on the parties of record on March 28, 2018 contains all material proposed to be included by any of the parties and not any other material.

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March 28, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
C/A No. 2016-CP-40-05885
Jocelyn Newman, Circuit Judge

Appellate Case No. 2017-002234

Stephany A. Connelly and James M. Connelly, Plaintiffs,

v.

The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trezona Defendants,

Of which Allstate Fire and Casualty Insurance Company, The Main Street America Group, Old Dominion Insurance Company are the Appellants,

And

Stephany A. Connelly and James M. Connelly are the Respondents.

FINAL BRIEF OF THE APPELLANTS
The Main Street America Group and Old Dominion Insurance Company

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STATEMENT OF THE ISSUES ON APPEAL

I. Under South Carolina law, an employee, who in fact injured her co-employee while acting in the course and scope of employment, is not the legal cause of the injury. The respondent, Stephany Connelly, suffered an injury—while a passenger in her co-employee's car—due to the co-employee's alleged negligence in operating the vehicle. Connelly applied for, and began receiving, worker's compensation. She also filed a claim with the co-employee's liability insurer and, following denial based on the co-employee's immunity, filed a claim as an "insured" under the "uninsured motorist" (UM) endorsement of the same auto policy. The insurer denied the UM claim because Connelly was not "legally entitled to recover" damages from the driver.

Does the UM statute, which mandates inclusion in the auto policies of a provision "undertaking to pay the insured all sums he is legally entitled to recover as damages from the owner or operator of the uninsured motor vehicle," require merely a demonstration of fault, as opposed to legal liability, on the part of the uninsured driver?

II. Freya Trezona, Connelly's co-employee and the alleged at-fault driver, was insured against liability for bodily injury, and the car she drove was an insured vehicle. In response to Connelly's claim for coverage of her injury, the insurer of the vehicle denied liability by asserting Trezona's immunity under the South Carolina Workers' Compensation Act.

Was denial of liability by Old Dominion tantamount to a successful denial of coverage, under § 38-77-30(14)(b), whereby an insured car could become an "uninsured motor vehicle" under the terms of the very same policy?

STATEMENT OF THE CASE

Stephany A. and James M. Connelly sought judicial declaration that they were entitled to payment of damages under the UM provisions of the auto policies issued by the Appellants, The Main Street America Group (Main Street)[1], Old Dominion Insurance Company (Old Dominion), and Allstate Fire and Casualty Insurance Company (Allstate). (R. p. 124.) In their complaint filed on September 30, 2016, the Connellys also claimed breach of contract on the part of the insurers. (R. pp. 121–27.)

On December 10, 2016, Old Dominion and Main Street answered the complaint, asserting that the driver's immunity from liability in tort precluded any right to UM benefits under the policy. (R. pp. 129, 131, 140, and 142.)

On January 31, 2017, the parties jointly stipulated to the material facts (R. pp. 146–51), and in March 2017, each moved for summary judgment. (R. pp. 152, 165, and 200.)
The Honorable Jocelyn Newman, Circuit Judge, heard the motions on May 17, 2017. At the hearing, the attorneys for Old Dominion and Allstate argued that their respective clients were entitled to judgment as a matter of law because, under the South Carolina Workers Compensation Act (the Act), the at-fault driver was immune from liability in tort, which liability is a prerequisite for their duty to pay damages. (R. p. 224, lines 13–23; pp. 228, lines 18–25, and 229, lines 1–12.) Counsel for the Connellys, on the other hand, argued that the denial of the claim under the liability provisions of Old Dominion's policy rendered the vehicle "uninsured," and that the policy language "legally entitled to recover" could be read as requiring only the showing of fault on the part of the driver, instead of the showing of ability, under the law, to recover damages from her. (R. pp. 239, lines 21–25 and 240, lines 1–10.)

[1] The Main Street America Group is a holding company that owns Old Dominion Insurance Company. The Main Street America Group did not issue the policy in question.

By the Order dated September 28, 2017, the court denied Old Dominion's and Allstate's motions and granted summary judgment for the Connellys. (R. pp. 2–16.) First, the court found that Old Dominion did not deny liability but rather denied coverage under the policy, rendering Trezona's car an "uninsured motor vehicle." (R. pp. 4–5.) Then, having found the UM coverage operable, Judge Newman held that "[t]o effectuate the intent of the legislature this Court must interpret the critical language 'legally entitled to recover' as simply a requirement to demonstrate fault." (R. p. 15.) Consistent with this holding, the court ordered a trial on the issue of damages. (R. p. 16.)

On October 26, 2017, The Main Street America Group and Old Dominion Insurance Company filed their Notice of Appeal of Judge Newman's order.

STATEMENT OF THE FACTS

On February 24, 2015, Stephany Connelly and her co-worker, Freya Trezona travelled by car in the course and scope of their employment with AppleOne Employment Agency. (R. p. 147.) Trezona drove the car, which belonged to her and her mother and was insured by Old Dominion. (R. pp. 146–47.) Due to her alleged negligence in operating the vehicle, Trezona caused an accident that resulted in injuries to her passenger, Connelly. (R. p. 147.) Trezona was an "insured" under the liability provisions of the Old Dominion policy and Connelly was an "insured" under the UM endorsement. (R. pp. 147–48.)

Connelly made a workers' compensation claim and received benefits. (R. p. 147.) Thereafter, she made claims for damages under the liability and uninsured motorist coverage of the Old Dominion's policy. (R. p. 147.) Connelly is not legally entitled to recover damages from Trezona because, under the exclusivity provision of the South Carolina Workers' Compensation Act, Trezona is immune to court action. (R. p. 147.) Because of Trezona's immunity Old

Dominion denied the claim under the liability part of the policy. (R. p. 147.) Old Dominion also denied the UM claim because the vehicle operated by Trezona was not an "uninsured vehicle" and workers compensation was her exclusive remedy (R. p. 148.) Connelly also filed a UM claim under her policy with Allstate. (R. p. 148.) Allstate denied it on the same grounds as did Old Dominion. (R. p. 148.)

STANDARD OF REVIEW

This is an appeal of summary judgment in a declaratory judgment action. A suit for judicial declaration of the parties' rights and obligations is neither equitable nor legal—the underlying issues determine its nature. *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2d 781 (1991). Thus, an action involving interpretation of an insurance contract and the statutory framework in which it operates is necessarily an action at law. *Cobb v. Benjamin*, 325 S.C. 573, 482 S.E.2d 589 (Ct. App. 1997).

The grant of summary judgment is reviewed by this Court under the standard that governs the trial court under Rule 56(c), SCRCP. *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 302, 433 S.E.2d 871, 873 (Ct. App. 1993). The trial court should render summary judgment if, upon consideration of the entire record, it determines that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. When all material facts are stipulated by the parties, only the questions of law remain. *WDW Props. v. City of Sumter,* 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000). "An appellate court may decide questions of law with no particular deference to the circuit court." *In re Campbell*, 379 S.C. 593, 599, 666 S.E.2d 908, 911 (2008). "The interpretation of a statute is a question of law, which this Court reviews de novo." *S.C. Public Interest Found. v. Courson*, 420 S.C. 120, 123, 801 S.E.2d 185 (Ct. App. 2017).

ARGUMENT

This case boils down to one simple question: Under applicable law, what are the sums Connelly is entitled to recover as damages from Trezona? As the following argument demonstrates, the answer is zero. Accordingly, the circuit court's order should be reversed and the case dismissed.

I. Under the South Carolina UM statute, determination of legal liability of the at-fault driver is the condition precedent to an insurer's obligation to pay benefits under the UM endorsement.

South Carolina law requires insurance companies offering automobile insurance in this state to include in their policies a provision "undertaking to pay the insured all sums he is legally entitled to recover as damages from the owner or operator of the uninsured motor vehicle." S.C. Code Ann. § 38-77-150(A) (2015). Consistent with this mandate, Old Dominion issued a policy whose insuring agreement for uninsured motorists coverage tracks the language of the statute: "We will pay damages which an 'insured' is legally entitled to recover from the owner or operator of the 'uninsured motor vehicle' . . . ." (R. p. 102.)

A. The plain and ordinary meaning of the phrase "legally entitled to recover as damages" entails feasibility of a court action against the uninsured motorist.

The language of the statute is a starting point for its interpretation. *Jennings v. Jennings*, 401 S.C. 1, 736 S.E.2d 242, 243 (2012). Unless the language is ambiguous, the common and ordinary meaning of the words used in the statute governs its application. *Id.* at 4, 736 S.E.2d at 243–44. Here, the statutory phrase "legally entitled to recover as damages" is clear and unambiguous. It establishes that a claimant under the UM provision must have a judgment awarding damages, or, at the very least, a demonstrable ability to obtain one in the court of law.

Exposition of the phrase in accordance with the dictionary definitions demonstrates that it cannot impart any other meaning. The adverb "legally" means, according to the Oxford English Dictionary, "In a legal manner; according to law, lawfully." *The Oxford English Dictionary* (online edition).[2] Merriam Webster defines "legally" in a similar vein: "in legal manner: in accordance with the law." *Merriam-Webster* (online edition).[3] Judicial usage of this adverb is consistent with these definitions. *See e.g. Commonwealth v. Groller*, 41 D.&C. 366 (Pa. D. & C. 1941) ("according to the applicable law"); *Whitaker v. Com.*, 367 S.W.2d 831 (Ky. 1963) ("enabled by law"); *Baessler v. Freier*, 258 P.3d 720 (Wyo. 2011) ("conforming to or permitted by law or established rules"). The word "entitled" denotes possession of a right. It means: to be "furnished with proper grounds for seeking or claiming something." *Merriam-Webster* (online edition).[4] In legal usage, "to recover" is "to secure by legal process." *Garner's Dictionary of Legal Usage* 758 (3rd ed. 2011). And last but not least, "damages" is "money claimed by, or ordered to be paid to, a person as compensation for loss or injury." *Black's Law Dictionary* 471 (10th ed. 2014). That word happens to be defined by the statute as including "both actual and punitive damages," S.C. Code Ann. 38-77-30(4) (2015), thus implying a type of compensation only a jury can award.

Accordingly, the phrase "legally entitled to recover as damages" denotes a situation where the insured has a case she can win. Put another way, for a right to compensation under the UM endorsement to arise, she must have a right, under the law, to seek a judicial award of compensation from the uninsured driver. Fair reading of this passage, in accordance with the ordinary meaning of each word, compels this conclusion.

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[2] http://www.oed.com/view/Entry/107015?redirectedFrom=legally#eid (last visited Jan. 17, 2018).
[3] https://www.merriam-webster.com/dictionary/legally (last visited Jan. 17, 2018).
[4] https://www.merriam-webster.com/dictionary/entitled (last visited Jan. 17, 2018).

B. The statutory context reinforces the sense of "legally entitled to recover as damages" conveyed by the plain and ordinary meaning of its constituent words.

The text of the statute must be read as a whole and construed so that "no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous. *16 Jade Street, LLC v. R. Design Const. Co., LLC*, 398 S.C. 338, 343, 728 S.E.2d 448, 450 (2012). Furthermore, the statutory provisions should be interpreted in a way that renders them compatible, not contradictory. *See Davis v. Sch. Dist. of Greenville County*, 374 S.C. 39, 45, 647 S.E.2d 219, 222 (2007).

Here, the whole text of Article 3—"Mandate to Write and Insurance Coverage," S.C. Code Ann. § 38-77-112 (2015), *et seq.*—bolsters the reading of the phrase "legally entitled to recover" as setting forth a prerequisite of a feasible court action. Consider the language of § 38-77-150(B), which appears immediately below the phrase at issue: "No action may be brought under the uninsured motorist provision unless copies of the pleadings in the *action establishing liability* are served in a manner provided by law upon the insurer . . . ." S.C. Code Ann. § 38-77-150(B) (2015) (emphasis added). Consider also § 38-77-190. This section provides that "an insurer paying a claim under the uninsured motorist provision . . . is subrogated to the rights of the insured to whom the claim was paid against any and every person causing the injury." S.C. Code Ann. § 38-77-190 (2015). In light of this provision, to hold that an insured does not have to have a claim capable of being reduced to judgment is to render the insurer's subrogation right illusory, and the section itself superfluous.

Thus, it stands to reason that "legally entitled to recover" presupposes feasibility of a lawsuit, and, unsurprisingly, that is how the South Carolina Supreme Court has understood the phrase.

C. Under the South Carolina Supreme Court's jurisprudence, to recover under the UM endorsement an insured must first have a case in tort against the uninsured motorist.

In its opinion in *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 134 S.E.2d 206 (1964), which involved an issue of coverage of punitive damages under the policies written in accordance with the Uninsured Motorist Act of 1959,[5] the Supreme Court held that the "[r]ecovery under the uninsured endorsement is *subject to the condition* that the insured *establish legal liability* on the part of the uninsured motorist." *Id.* at 394, 134 S.E.2d at 209 (emphasis added). The court indicated that the liability is to be established in an action *ex delicto*. *Id.* Only "[a]fter a judgment is entered against the uninsured motorist, a direct action *ex contractu* can be brought to recover from the insurance company on its endorsement . . . ." *Id.* In *Vernon v. Harleysville Mutual Casualty Company*, 244 S.C. 152, 135 S.E.2d 841 (1964), the Supreme Court reiterated this point stating that the uninsured motorist endorsement "guarantees payment, within specified limits, of *a judgment recovered* against uninsured motorist *on his tort liability*." *Id.* at 158, 135 S.E.2d at 844 (emphasis added) (prior to seeking payment under UM endorsement, the plaintiff brought an action and obtained judgment whereby the negligence of the uninsured motorist, its causal link with the injury sustained, as well the amount of damages, were determined.) *See also Lawson v. Porter*, 256 S.C. 65, 180 S.E.2d 643 (1971); *H.C. Park v. Safeco Ins. Co. of America*, 251 S.C. 410, 413, 251 S.E.2d 709, 710 (1968) ("[N]o right to recover can accrue to the plaintiff against [the] insurance company until and unless [the tortfeasor] becomes liable to pay."); *Ferguson v. State Farm Mut. Auto. Ins. Co.,* 261 S.C. 96,

[5] Uninsured Motorist Act of 1959 contains the same critical phrase as the current iteration of the law. The act provided that no policy should be issued "unless it contain[ed] an endorsement or provisions undertaking to pay the insured all sums which he shall be *legally entitled to recover as damages* from the owner or operator of an uninsured vehicle." S.C. Code Ann. § 46-750.13 (1962) (emphasis added).

102, 198 S.E.2d 522, 525 (1973) ("[T]he insurer's liability under the uninsured motorist endorsement is contractual in nature and arises after the liability of the uninsured motorist has been established.")

Here, Connelly cannot establish legal liability of the allegedly uninsured driver. Under South Carolina law, a mere demonstration of fault entitles one to nothing. To show that she is legally entitled to recover damages, Connelly must have a case against Trezona—she must demonstrate presence of each and every element of the cause of action for negligence. However, in the words of her counsel, "Ms. Connelly can't recover from Ms. Trozona [sic] because that's the law." (R. p. 255, lines 11–12.) Since Connelly has no case *ex delicto* against Trezona, she cannot have an *ex contractu* case against Old Dominion.

D. Operation of the South Carolina Workers' Compensation Act's exclusivity provision deprives Connelly of a tort cause of action against Trezona, precluding recovery under the UM endorsement.

Apart from her injury, the existence of the duty of care on the part of Trezona, and the negligent breach of that duty, Connelly must be able to prove causation, which comprises cause-in-fact and the legal cause. *See* Michael G. Sullivan, *Elements of Civil Causes of Action* 172 (2000); F. Patrick Hubbard and Robert L. Felix, *The South Carolina Law of Torts* 152–74 (4th ed. 2011). The South Carolina Workers' Compensation Act, however, makes that impossible.

Under the Act, all rights and remedies granted thereby "*exclude all other rights and remedies* of such employee . . . as against his employer, at common law or otherwise, on account of such injury, loss of service or death." S.C. Code Ann. § 42-1-540 (2015) (emphasis added). This exclusion extends to co-employees. *Strickland v. Galloway*, 348 S.C. 644, 647, 560 S.E.2d 448, 449 (Ct. App. 2002). According to the South Carolina Supreme Court in *Machin v. Carus Corp.*, 419 S.C. 527, 799 S.E.2d 468 (2017), operation of this provision removes an essential

element of the negligence cause of action: the co-employee "cannot be found to be the proximate, or legal cause of the plaintiff's injuries because [she] is immune from tort liability . . . ." *Id.* at 543, 799 S.E.2d at 476. For this reason, Trezona's alleged negligence in operation of the vehicle is not the proximate cause of Connelly's injuries and, therefore, Connelly's recovery in tort is precluded as a matter of law.

South Carolina appellate courts have not considered the effect of the at-fault driver's immunity under the Act on an insurer's liability under the UM endorsement; however, many courts of other jurisdictions have opined on that issue, expounding statutory and policy language similar or identical to that before this Court. Take for instance a 2016 opinion of the Court of Appeals in Austin, Texas, in *Soledad v. Tex. Farm Bureau Mut. Ins. Co.*, 505 S.W.3d 600 (Tex. Ct. App. 2016).

In *Soledad*, the court considered implication of the "legally entitled to recover" language in light of the Texas Workers' Compensation Act's exclusivity provision. The court held—without engaging in detailed explication of the phrase—that the plaintiff, who suffered injuries caused by her co-employee's negligent driving in the course and scope of their employment, was "not 'legally entitled to recover' damages from the owner or operator of the vehicle that caused her injuries, and . . . therefore . . . failed to satisfy her policy's unambiguous requirements to obtain UM/UIM benefits." *Id.* at 606. The Texas court remarked, citing 23[6] court opinions from

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[6] *Valentine v. Safeco Lloyds Ins. Co.*, 928 S.W.2d 639 (Tex. App.–Houston [1st Dist.]); *Ex parte Carlton*, 867 So. 2d 332, 338 (Ala. 2003); *Continental Divide Ins. Co. v. Dickinson*, 179 P.3d 202 (Colo. Ct. App. 2007); *Allstate Ins. Co. v. Boynton*, 486 So.2d 552 (Fla. 1986); *Williams v. Thomas*, 370 S.E.2d 773 (Ga. 1988); *State Farm Mut. Auto. Ins. Co. v. Royston*, 817 P.2d 118, 119 (Haw. 1991); *Atlantic Mut. Ins. Co. v. Payton*, 682 N.E.2d 1144 (Ill. 1997); *Otterberg v. Farm Bureau Mut. Ins. Co.*, 696 N.W.2d 24 (Iowa 2005); *State Farm Mut. Auto. Ins. Co. v. Slusher*, 325 S.W.3d 318 (Ky. 2010); *Hebert v. Clarendon Am. Ins. Co.*, 984 So.2d 952 (La. App. 2008); *Hopkins v. Auto–Owners Ins. Co.*, 200 N.W.2d 784 (Mich. 1972); *Medders v. United States Fid. & Guar. Co.*, 623 So.2d 979 (Miss. 1993); *Kesterson v. Wallut*, 157 S.W.3d

across the nation, that "the majority of courts in other jurisdictions have also held that an employee who receives workers' compensation benefits is not 'legally entitled to recover' from her employer or co-employee and is therefore not entitled to UM/UIM benefits." *Id.* at 603–04. Among those cited, a case from South Carolina's neighboring state is noteworthy.

Just like the South Carolina Supreme Court in *Laird*, *Vernon*, and *Lawson*, the Court of Appeals of Georgia interprets the Georgia Uninsured Motorist Act's requirement that the insurers undertake to pay all sums the insured would be legally entitled to recover as damages, as setting forth a condition in the form of a suit that "shall have been brought and recovered against the uninsured motorist." *Williams v. Thomas*, 370 S.E.2d 773, 775 (Ga. Ct. App. 1988) (citing *Hartford Acc., etc., Co. v. Studebaker*, 228 S.E.2d 322 (1976) and nine other Georgia opinions). Absent such action, the insurer is not liable to pay anything to the insured. *Id.* In *Williams*, the Georgia court held that because the exclusive rights and remedies provision of the Georgia Workers' Compensation Act barred the appellant from obtaining a judgment against the co-employee who caused his injury, he could not "satisfy the condition precedent to an action against his insurer for recovery under the uninsured motorist provisions of his policy." *Id.*

Farther west, the Supreme Court of Mississippi ruled likewise. In *Medders v. U.S. Fidelity and Guar. Co.*, 623 So. 2d 979 (Miss. 1993), it affirmed the lower court's decision against an insured seeking UM benefits for the injuries caused by a fellow employee, holding that the statutory phrase "legally entitled to recover . . . limits the scope of the coverage

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675 (Mo. App. 2004); *Okuly v. USF & G Ins. Co.*, 78 P.3d 877 (Mont. 2003); *Matarese v. New Hampshire Mun. Ass'n Prop. Liab. Ins. Trust, Inc.*, 791 A.2d 175 (N.H. 2002); *Kough v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 568 A.2d 127 (N.J. Super. Ct. App. Div. 1990); *Stuhlmiller v. Nodak Mut. Ins. Co.*, 475 N.W.2d 136 (N.D. 1991); *Snyder v. American Family Ins. Co.*, 871 N.E.2d 574, 583 (Ohio 2007); *Cope v. West Am. Ins. Co. of Ohio Cas. Grp.*, 785 P.2d 1050 (Or. 1990); *Erie Ins. Exch. v. Conley*, 29 A.3d 389 (Pa. Super. Ct. 2011); *Lieber v. ITT Hartford Ins. Ctr., Inc.*, 15 P.3d 1030 (Utah 2000); *Welch v. Miller & Long Co. of Md., Inc.*, 521 S.E.2d 767 (Va. 1999); *Romanick v. Aetna Cas. & Sur. Co.*, P.2d 728 (Wash. 1990).

mandated by the statute to those instances in which the insured would be entitled . . . to recover through legal action." *Id.* at 989. It further held that "[t]here is no statutory mandate to provide coverage where the alleged tortfeasor is immune from liability." *Id.* According to the court, "[t]he statutory language . . . is 'simply too unambiguous to admit a judicially created exception . . . .'" *Id.* (quoting the United States Court of Appeals for the Fifth Circuit in *Perkins v. Insurance Co. of North America*, 799 F.2d 955, 962 (5th Cir. 1986)).

E. The trial court's finding of ambiguity has no merit and its decision ignores the plain and ordinary meaning of the statute.

The trial court found ambiguity where there was none. Based on this finding it proceeded to read the critical words in contravention of their ordinary meaning. In the words of Bryan Garner and the late Justice Scalia, the trial court climbed "the ladder of abstraction" to discern suitable legislative purpose and derive from it the text's meaning. *See* A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 18–19 (2012). However, for the South Carolina courts the words of the statutory text in their ordinary meaning ought to be paramount.

In *Bentley v. Spartanburg County*, 398 S.C. 418, 730 S.E.2d 296 (2012), our Supreme Court stressed that the courts are "interpreters not legislators and are bound by the language of the [statute] as written." *Id* at 426, 730 S.E.2d at 301. It is but a truism that "the words in the statute must be given their ordinary meaning." *Anderson v. South Carolina Election Comm'n*, 397 S.C. 551, 556, 725 S.E.2d 704, 707 (2012). Indeed, "where language is unambiguous, the Court's inquiry is over, and the statute must be applied according to its plain meaning." *Jennings*, 401 S.C. at 4, 736 S.E.2d at 244. "The court has no right to add words [the legislature] omitted, nor to interpolate them on conceits of symmetry and policy." *Consumer Advocate v. South Carolina Dept. of Ins.,* 397 S.C. 599, 602, 725 S.E.2d 708, 710 (Ct. App. 2012). "Where a

statute is clear on its face, it is improvident to judicially engraft requirement to legislation just because doing so may further the intent behind the statute." *Grier v. AMISUB of South Carolina, Inc.*, 397 S.C. 532, 540, 725 S.E.2d 692, 698 (2012).

Here, the phrase "legally entitled to recover as damages" is not ambiguous—it does not have alternative meanings. *See* A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 32 (2012). The trial court presumptively held the phrase to be ambiguous: It failed to articulate how this phrase could impart different meanings in different factual contexts. The trial court merely cited lack of statutory or policy definition, and the parties' conflicting interpretations, as evidence of ambiguity. (R. p. 7.) In doing so, the trial court disregarded precedent, which holds that the phrase at issue establishes existence of a feasible court claim against the at-fault driver as the prerequisite for the insurer's liability under UM endorsement. *See e.g. Laird*, 243 S.C. 388, 134 S.E.2d 206.

Unlike the trial court's order in the present case, a Kentucky opinion in *State Farm Mut. Auto, Ins. Co. v. Slusher*, 325 S.W.3d 318 (Ky. 2010) demonstrates how an ambiguity may arise. More important, however, it shows when a finding to that effect is without merit.

The facts of *Slusher* are analogous to the facts at bar: an estate of a truck driver, killed due to negligence of his co-worker, received workers' compensation and then sought payment under a UM endorsement. *Id.* at 319–20. The Kentucky Court of Appeals found the phrase "legally entitled to collect" ambiguous and used the "essential facts" approach to resolve that ambiguity. *Id.* at 321. It held that "to recover UM or UIM benefits an insured need only prove: (1) the fault of the uninsured or underinsured motorist; and (2) the extent of damages caused [thereby]." *Id.* The Supreme Court of Kentucky, however, disagreed and reversed. *Id.* at 325.

Kentucky's highest court acknowledged that the "[c]ontract language, like statutory language may be clear on its face and yet contain a latent ambiguity[,]" *id.* at 322, and agreed with the lower court that the cases it relied on in reaching its decision indeed exposed a latent ambiguity. *Id.* at 323. However, in the case before it, there were no circumstances that would warrant analogous finding. *Id.* The opinions cited by the lower court involved Missouri's sovereign immunity law, which prevented further recovery from the tortfeasor, and Georgia's comparative negligence law, which prevented recovery by the sixty-percent at-fault plaintiff from a forty-percent at-fault tortfeasor. *Id.* at 323–24. These different legal regimes exposed ambiguity of the word "legally" in the phrase "legally entitled to collect." *Id.* at 324. A court could legitimately ask, "Did 'legally' mean under the law of Georgia or the law of Kentucky?" *Id.* Likewise, "Did 'a legal right to recover mean 'legal' under Missouri law or 'legal' under Kentucky law?" *Id.* The *Slusher* court concluded that the case under its review raised no similar questions. *Id.* It held that by operation of the exclusivity provision of the workers' compensation statute, the plaintiff "is not now, nor will ever be, 'legally entitled to collect' any further amounts from the [tortfeasor]." *Id.* at 323. And consequently, because "the contractual language of the . . . policy affords payment of UM . . . benefits only for 'bodily injury an insured is legally entitled to collect from the owner or driver of an uninsured . . . motor vehicle,' under the facts of this case, the [plaintiff] may not collect under its UM . . . coverage." *Id.*

The Supreme Court of Kentucky deemed conclusory the lower court's declaration that the language at issue was ambiguous. *Id.* at 323–24. This is because, the court held, when the interplay between the policy language and the exclusive remedy provisions of the Workers' Compensation Act is examined, no such ambiguity can be found. *Id.* at 323. The Kentucky court could find "no construction of such language that would support a conclusion that the [plaintiff]

was 'legally entitled to collect' any amounts from either the owner of the vehicle . . . or its driver . . . over and above the workers' compensation benefits already awarded under the Act." *Id.*

In Florida, the Supreme Court, considering similar facts, reached the same conclusion. At the outset of its analysis in the case of *Allstate Ins. v. Boynton*, 486 So.2d 552 (Fla. 1986), the court noted that the plain meaning of the requirement expressed by the phrase "legally entitled to recover" is that "the insured must have a claim against the tortfeasor which could be reduced to judgment in the court of law." *Id.* at 555. Having observed the lower court's more limited construction of the phrase, the Supreme Court of Florida proceeded to examine the out-of-state caselaw where "legally entitled to recover" was held to require only showing of fault on the part of the uninsured motorist and the extent of damages caused thereby. *Id.* at 556. The common thread of those cases, however, was that none of them, as opposed to the case at bar, involved operation of the exclusivity provisions of the workers' compensation statutes. *Id.*

The *Boynton* court first noted the availability to the insurer of the tortfeasor's substantive defenses, as well as the importance of the insurer's subrogation rights, and then warned against lumping together different types of immunities into one broad category. *Id.* at 558. According to the court, the immunity under the workers' compensation law calls for special attention because it "exists not only to protect the employer in exchange for his provision of immediate, guaranteed benefits but also to protect society by limiting the impact of work-related injury to the remedy offered." *Id.* at 559. The court indicated that "[e]xpanding UM coverage to cover the circumstances before [it] . . . would create a large class of uninsured vehicles." *Id.*

The Supreme Court of Florida commented that in that state the workers' compensation law provides the source of indemnification for a worker injured by a co-worker driving an uninsured vehicle. *Id.* Therefore, considering that the society's goal of protecting the worker

under this circumstance has been achieved, the court did "not need to *torture the meaning of a statute aimed at curing another ill entirely* to provide a remedy where one has already been provided." *Id.* (emphasis added).

Likewise here, this Court should decline Connelly's invitation to disregard the plain and ordinary meaning of the statutory language in order to provide a remedy already accorded under the South Carolina Workers' Compensation Act.

II. Lack of legal liability on the part of Trezona, and its assertion by Old Dominion in denying Connelly's claim, did not convert Trezona's car into an "uninsured motor vehicle."

As stipulated by Connelly, Trezona's car was insured. (R. p. 146.) Old Dominion had been insuring the car under the terms of the auto policy issued to Trezona's mother. (R. p. 146–47.) Under the policy, Old Dominion promised to "pay damages for 'bodily injury' or 'property damage' for which any 'insured' becomes legally responsible because of an auto accident." (R. p. 82.) It also promised to "settle or defend. . . . any claim or suit asking for those damages." (R. p. 82.)

Under § 38-77-30 (14) of the South Carolina Code of Laws, the statutory term "uninsured motor vehicle" is defined to mean, among others, "a motor vehicle as to which: (a) there is not bodily injury liability coverage . . . ; or (b) there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder; . . . ." S.C. Code Ann. § 38-77-30 (14) (2015). Here, the trial court held, contrary to Connelly's own stipulation, that Old Dominion denied coverage of Connelly's claim under the policy, whereby Trezona's car became an "uninsured vehicle," triggering operation of the UM endorsement. (R. p. 4.)

But note that in rejecting Connelly's claim Old Dominion did not deny coverage under the policy. It simply denied that Trezona was legally responsible to pay Connelly damages for

the bodily injury she had suffered. (R. p. 147.) Old Dominion could not have denied coverage because Old Dominion's policy covered Trezona's liability, should one arise; in this case, however, there was simply no liability to be covered.

Connelly might argue that this is an attempt at making a distinction that does not reflect a real difference. That is not so. The trial court implicitly acknowledged the difference but, regrettably, confused "liability" with "negligence," mischaracterizing the parties' stipulation in the process.[7] (R. p. 5.) Again, the trial court failed to interpret and apply the statute in accordance with its plain and ordinary meaning.

A. Old Dominion did not deny coverage, which denial would be necessary to render Trezona's car an "uninsured motor vehicle" under the statute.

The words used in the statute to define an uninsured motor vehicle must be given not only their ordinary meaning but also be construed in context: "their meaning may be ascertained by reference to words associated with them in the statute." *Travelscape, LLC v. South Carolina Dep't. of Revenue*, 391 S.C. 89, 101, 705 S.E.2d 28, 34 (2011). As before, the fair reading of the policy and statutory language provides the answer.

According to Merriam Webster, the word coverage means "a fact of including or treating," and in reference to insurance, "inclusion within the scope of protective or beneficial plan". *Webster's Third New International Dictionary* 524–25 (1961). In the insurance industry's parlance it is the aggregate of all risks the insurer agrees to take upon itself. *See* 10 *Words and Phrases*, "Coverage" 297 (2008). Finally, Black's Law Dictionary defines insurance coverage as "inclusion of a risk under insurance policy; the risks within the scope of an insurance policy." *Black's Law Dictionary* 446 (10th ed. 2014). In other words, coverage is the scope of the

[7] "This argument is foreclosed given both carriers' stipulation that Trezona was negligent and that her negligence was the cause of Ms. Connelly's injuries. Therefore, liability could not be denied only coverage." (R. p. 5.)

insurer's legally enforceable promise. This scope is bounded by the monetarily expressed limits, the effective date of the policy, the relevant definitions, such as "insured" or "bodily injury," and the exclusionary provisions. *See* 10 *Words and Phrases*, "Coverage" 299 (2008) ("'Coverage' is net total of policy inclusions minus exclusions."). The insured's liability in tort, on the other hand, is a circumstance that may or may not fall within that scope. The case at bar perfectly demonstrates the difference, as there was coverage but no liability to be covered.

The statutory definition read as a whole makes it explicit. Consider that the words preceding the word "coverage" are "successfully" and "denied." The adverb "successfully" connotes an effort to achieve a result, and, coupled with "denied," implies a process, such as declaratory judgment action. Declaratory judgment action is a procedural vehicle routinely employed by insurers to obtain judicial approval for their understanding of the extent of their contractual promises. Therefore, a denial of coverage occurs when the insurer concludes, sometimes with judicial help, that it did not agree to undertake a particular risk.

The case of *Allstate v. Wilson*, 259 S.C. 586, 193 S.E.2d 527 (1972), provides an example of a successful denial of coverage with simultaneous acknowledgment of the tortfeasor's liability. In *Wilson* the South Carolina Supreme Court considered an auto policy's definition of an "insured," whether the at-fault driver was embraced by that definition, and the implications for the victim's UM coverage under her own policy. *Id.* The driver was not a named insured. *Id.* at 590, 193 S.E.2d at 529. To be an "insured," the driver would have had to have driven the car with the permission of the named insured. *Id.* The plaintiff sued both the driver and his father, the named insured on the policy. *Id.* The insurer retained counsel to represent both defendants. *Id.* It did so, however, under reservation of rights because, in his statement to the insurer, the father denied having permitted his son to drive the car. *Id.* at 589, 193 S.E.2d at 529. "At the end

of the plaintiff's testimony the trial judge granted a nonsuit to the father of the defendant on the ground that [the defendant] was driving the automobile at the time and place in question without permission." *Id.* The jury found the driver liable but the insurer refused to pay the awarded damages. *Id.* According to the Supreme Court, the trial court's grant of nonsuit to the father marked the moment when the insurer "was successful in denying coverage under its liability policy." *Id.* at 593, 193 S.E.2d at 530. Consequently, the "vehicle operated by [the defendant] was an 'uninsured motor vehicle' within the meaning of the [statutory definition]." The court therefore held that "the uninsured motorist endorsement became operative when it was ascertained that the [tortfeasor] was uninsured." *Id.* at 593, 193 S.E.2d at 531.

Here, the extent of coverage provided by Old Dominion has never been in dispute. Trezona was an "insured" under the policy and had been covered for payment of "damages for 'bodily injury' for which [she would] become[] legally responsible because of an auto accident." (R. p. 82.) The fact of the matter is, however, that under South Carolina law Trezona would never become responsible to pay damages to Connelly.

B. Denial of a claim because the alleged tortfeasor is not legally responsible to pay damages cannot be considered a "denial of coverage."

Black's Law Dictionary provides an apt definition of liability: "legal responsibility to another or to society, enforceable by civil remedy or criminal punishment." *Black's Law Dictionary* 1053 (10th ed. 2014). Note that it is distinguished from fault, defined as a "breach of duty as an element of the tort of negligence." *Black's Law Dictionary* 725, 1053 (10th ed. 2014). In jurisprudential terms, "liability" is a correlative of "power," and the liability's jural opposite is "immunity." *See* Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 Yale Law Journal 16 (1913). The correlative of "immunity," on the

other hand, is termed "disability." *Id.* These Hohfeldian jural relations provide a useful framework for analysis here.

Consider that upon a verdict Trezona would have been burdened with liability, as she would become liable to pay the damages awarded by the jury. Conversely, Connelly would have been invested with the power to seek execution. Note, however, that the jural opposite of liability is immunity, which had been conferred on Trezona by the South Carolina Workers' Compensation Act. Thus, by asserting this immunity, Old Dominion denied existence of Trezona's liability.

Consequently, Old Dominion's denial of Connelly's claim "because . . . Trezona cannot be legally responsible to Connelly due to her immunity under the Act," (R. p. 147), was not a denial of coverage under the policy, and Trezona's car was not, and has never been, an "uninsured motor vehicle."

CONCLUSION

At no point did Trezona's car become an uninsured motor vehicle as defined by the statute. And even if it did, Connelly did not have a right to claim benefits under UM endorsement of Old Dominion's policy. This is because, due to the operation of the South Carolina Workers' Compensation Act's exclusivity provision, she lacked a feasible cause of action against Trezona—she could not satisfy, as a matter of law, the condition precedent to Old Dominion's obligation under the UM endorsement. In short, Conelly was not legally entitled to recover damages from Trezona.

Because of its failure to interpret and apply the UM statute in accordance with its plain and ordinary meaning, the trial court made a reversible error. For this reason, the Appellants, The Main Street America Group and Old Dominion Insurance Company, respectfully request this

Court to reverse the trial court's Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendants' Motions for Summary Judgment, and to dismiss the Connellys' complaint with prejudice.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
C/A No. 2016-CP-40-05885
Jocelyn Newman, Circuit Judge

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SC Court of Appeals

Appellate Case No. 2017-002234

Stephany A. Connelly and James M. Connelly, Plaintiffs,

v.

The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trezona Defendants,

Of which Allstate Fire and Casualty Insurance Company, The Main Street America Group, Old Dominion Insurance Company are the Appellants,

And

Stephany A. Connelly and James M. Connelly are the Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCARC.

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Of which Allstate Fire and Casualty Insurance Company, The Main Street America Group and Old Dominion Insurance Company are the Appellants,

And

Stephany A. Connelly and James M. Connelly are the Respondents.

BRIEF OF APPELLANT ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY

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STATEMENT OF THE ISSUES ON APPEAL

I. Whether the circuit court erred in finding legal entitlement to recovery is not a condition precedent to the recovery of uninsured motorist coverage under South Carolina's statutory scheme.

II. Whether the circuit court erred in finding the immunity granted by the Workers' Compensation Act transforms a fully insured vehicle into an uninsured vehicle.

III. Whether the circuit court erred in failing to effectuate the legislative intent of the Workers' Compensation Act and Uninsured Motorist Statutes.

STATEMENT OF THE CASE

Stephany Connelly ("Connelly") was allegedly injured while riding as a passenger in a vehicle driven by her co-worker, Freya Trezona ("Trezona") on February 24, 2015, in Columbia, South Carolina. Trezona was allegedly negligent in causing the accident. Connelly instituted this declaratory judgment action against Main Street America Group ("Main Street") and Old Dominion Insurance Company ("Old Dominion"), who issued an automobile liability policy covering the vehicle involved in the accident; Allstate Fire and Casualty Insurance Company ("Allstate"), the carrier of an automobile policy issued to Connelly and her husband, James; Trezona, the alleged at-fault driver; and Debbie Cohn, Trezona's mother and co-owner of the Trezona vehicle.

The action seeks a declaration that Main Street/Old Dominion's and Allstate's uninsured motorist coverage applies to the accident. The insurance carriers, Main Street/Old Dominion and Allstate, as well as the Respondents, the Connellys, submitted cross motions for summary judgment. In an Order filed October 2, 2017, the circuit court denied the carriers' motions for summary judgment and granted judgment as a matter of law to the Connellys.

STATEMENT OF FACTS

The following facts have been stipulated by the parties. Connelly was injured in an automobile accident while riding as a passenger in a vehicle operated by Trezona and co-owned by Debbie Cohn and Trezona. Connelly and Trezona were co-employees working within the course and scope of their employment with Apple One Employment Agency at the time of the accident. As a result of Trezona's negligent operation of the vehicle, Connelly incurred damages. At the time of the accident, the vehicle Trezona was driving was insured under a policy of liability insurance issued by Old Dominion to Cohn[1] with liability limits in compliance with S.C. Code Ann. § 38-77-140.

After the accident, Connelly applied for and began receiving benefits under the South Carolina Workers' Compensation Act (the "Act"). Pursuant to S.C. Code Ann. § 42-1-540[2], Connelly is not legally entitled to recover damages from Trezona, because she is Connelly's co-employee[3].

---

[1] Trezona is the daughter of Cohn and is an insured under the policy.

[2] S.C. Code Ann. § 42-1-540 states: "The rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death."

[3] South Carolina courts have held that the same immunity from civil suit provided to employers under the Workers' Compensation Act also extends to co-employees. *See, e.g., Posey v. Proper Mold & Engineering, Inc.*, 378 S.C. 210, 661 S.E.2d 395 (Ct. App. 2008); *Nolan v. Daley*, 222 S.C. 407, 73 S.E.2d 449 (1952) (holding a co-employee who negligently injures another employee while in the scope of employment is immune under the Act and cannot be held personally liable).

However, Connelly made a claim against Trezona's automobile liability policy to Main Street/Old Dominion. The policy's bodily injury liability limits of $100,000/$300,000 were in effect at the time of the collision and Trezona meets the definition of an insured under the terms of the policy. Main Street/Old Dominion denied liability for the accident, because Trezona is immune from suit under the South Carolina Workers' Compensation Act[4]. Connelly then sought uninsured motorist ("UM") benefits from the Main Street/Old Dominion policy. Main Street/Old Dominion denied the UM claim on the grounds that the vehicle Trezona was driving was not an uninsured vehicle and workers' compensation is Connelly's exclusive remedy in South Carolina.

Allstate issued an automobile policy to the Connellys with policy limits in the amount of $250,000 each person and $500,000 each accident. The Allstate policy contained an uninsured motorist endorsement with the same coverage limits. Connelly also presented a UM claim to Allstate. Like Main Street/Old Dominion, Allstate also denied the claim on the grounds that the vehicle Trezona was driving was not uninsured at the time of the accident and that Connelly was not entitled to legally recover damages from Trezona because workers' compensation is Connelly's exclusive remedy in South Carolina.

The circuit court held that Trezona's lack of legal liability to Connelly pursuant to the Workers' Compensation Act transforms the Trezona vehicle, which meets the General Assembly's definition of an insured motor vehicle, into an uninsured motor vehicle. The circuit court also held that Connelly can by-pass the statutes requiring

[4] Main Street/Old Dominion did not deny *coverage* for the accident. The liability policy was in effect at the time of the accident. Main Street denied that Trezona had any *liability* to Connelly for the accident.

commencement of a tort action against the at-fault motorist to recover UM benefits and bring a direct action against the UM carriers to obtain UM benefits. Further, the circuit court held that Connelly is entitled to UM benefits under both policies irrespective of the exclusivity provision in the Workers' Compensation Act and the statutes controlling the availability of uninsured motorist coverage.

STANDARD OF REVIEW

The determination of coverage under an insurance policy is an action at law. *Nationwide Mut. Ins. Co. v. Prioleau*, 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct. App. 2004); *see also Morehead v. Doe*, 324 S.C. 559, 568, 479 S.E.2d 817, 821 (Ct. App. 1996) (holding an action for breach of an insurance contract is an action at law); *Johnson v. State Farm Mut. Auto. Ins. Co.*, 260 S.C. 24, 193 S.E.2d 806 (1973) (holding the construction of an unambiguous insurance policy is a matter for the trial judge). An appellate court may decide novel questions of law with "no particular deference to the lower court." *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000).

An appellate court reviews the grant of summary judgment under the same standard applied by the circuit court. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003). A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. *David*, 367 S.C. at 250, 626 S.E.2d at 5.

ARGUMENT

The exclusive remedy provision of the Workers' Compensation Act does not convert an insured vehicle into an uninsured vehicle under South Carolina's uninsured motorist statutes or Allstate's policy. The statutory requirements for uninsured motorist coverage in South Carolina are found in S.C. Code Ann. § 38-77-10 *et. al.* Section 38-77-150 states:

> No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is ***legally entitled to recover*** as damages from the *owner or operator of an uninsured motor vehicle*, within limits which may be no less than the requirements of Section 38-77-140.

S.C. Code Ann. § 38-77-150(A) (emphasis added).

Allstate's policy is consistent with § 38-77-150. It states:

> **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**.

(R.p.47.) Under section 38-77-150 and Allstate's policy, a person seeking UM coverage must be legally entitled to recover damages from the owner or operator of an uninsured motor vehicle. Neither condition precedent to coverage is met in this case.

Connelly has stipulated that Trezona's vehicle maintained the limits required by §38-77-140 and that she is not legally entitled to recover damages from Trezona. (R.p.147 ¶13.) Therefore, Connelly is not entitled to recover UM benefits under Allstate's policy. Simply put, Connelly's pursuit of UM benefits fails because both prerequisites

found in § 38-77-150 are absent - Trezona was not operating an uninsured motor vehicle as defined by South Carolina law and she is not legally entitled to recover damages from Trezona.

The circuit court erroneously based its decision to grant Connelly's motion for summary judgment on decisions from a small minority of states which hold under their statutory schemes that "legally entitled to recover" is ambiguous and only requires a finding of fault to trigger coverage. The circuit court also erred in holding that Connelly can bring a direct action against Allstate to obtain UM benefits and is not required to commence an action against Trezona, the at-fault driver. In so holding, the circuit court both failed to recognize the legislative intent and public policy behind the Workers' Compensation Act and UM statutes and to apply the plain and unambiguous provisions of South Carolina's UM statutes and Allstate's policy.

I. The circuit court erred in finding legal entitlement to recovery is not a condition precedent to the recovery of uninsured motorist coverage under South Carolina's statutory scheme.

In South Carolina, UM coverage is triggered upon the insured's legal entitlement to recover damages from the owner or operator of an uninsured motor vehicle. In other words, a condition precedent to the recovery of UM coverage is establishing the legal liability of the at-fault motorist.

In order to obtain UM coverage, S.C. Code Ann. § 38-77-150 requires filing suit against the at-fault party and serving the UM carrier with a copy of the complaint:

> (B) No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record.

Based upon § 38-77-150, the South Carolina Supreme Court has found that "recovery under the uninsured endorsement is subject to the condition that the insured establish legal liability on the part of the uninsured motorist." *Vernon v. Harleysville Mut. Cas. Co.*, 244 S.C. 152, 135 S.E.2d 841 (1964); *see also Cormier v. Nat'l Farmers Union Prop. & Cas. Co.*, 445 N.W.2d 644, 647 (N.D. 1989) ("[T]he clear meaning of the language, 'legally entitled to recover,' imports a condition precedent to the uninsured motorist insurer's obligation that the insured have a legally enforceable right to recover damages from the owner or operator of the uninsured motor vehicle.").

As explained further by the South Carolina Supreme Court,

> Recovery under the uninsured endorsement is subject to the condition that the insured establish legal liability on the part of the uninsured motorist. Such an action is one *ex delicto* and the only issues to be determined therein are the liability and the amount of damage. After a judgment is entered against the uninsured motorist, a direct action *ex contractu* can be brought to recover from the insurance company endorsement, and policy defenses may be properly raised by the insurance company.

Laird v. Nationwide Ins. Co., 243 S.C. 388, 394, 134 S.E.2d 206, 209 (1964); *see also, Lawson v. Porter*, 256 S.C. 65, 68, 180 S.E.2d 643, 644 (1971); *Criterion Ins. Co. v. Hoffmann*, 258 S.C. 282, 294, 188 S.E.2d 459, 464 (1972). Furthermore, the tort action against the uninsured motorist must be commenced against the uninsured motorist within the applicable three year statute of limitations or any claim to uninsured motorist benefits is forfeited. *See Williams v. Selective Ins. Co.*, 315 S.C. 532, 446 S.E.2d 402 (1994); *Louden v. Moragne*, 327 S.C. 465, 486 S.E.2d 525 (Ct. App. 1997).

As explained even further by the *Criterion* Court,

> The right to sue and collect from one's own liability insurance carrier in case of a loss caused by a hit-and-run driver or other driver of an uninsured automobile is a creature of the legislature. Except for the

> statute, and endorsements required, no right exists to recover from one's own insurance carrier. One must look to the terms of the uninsured motorist statute and policy endorsements and comply therewith to get the benefit of law.
>
> Both our statute and the policy endorsements here involved require the service of a complaint.... It is the province of the lawmakers to create a right of action, to provide for process and to declare the procedure for collecting from one's own insurance carrier. They did just that.

Criterion, 258 S.C. at 290, 188 S.E.2d at 462. When the legislature enacted § 38-77-150, it established the mechanism whereby actions may be brought under the UM provisions. *See also* S.C. Code Ann. §§ 38-77-170 and 180 (establishing procedures for actions against unknown "John Doe" drivers). These statutes evince a legislative intent that in order to recover UM coverage, an injured individual must be able to maintain an action against the at-fault uninsured motorist and that a legal right to recovery must exist. The effect of the circuit court order, on the other hand, is that an injured individual can bring an action against the UM carrier directly when no such action could be brought against the uninsured motorist. Surely such an absurd result was not intended by the legislature.

The circuit court's holding plaintiffs are not required to first secure a judgment against the uninsured driver undermines the legislative intent and directly contradicts not only the plain and unambiguous terms and procedures set forth in § 38-77-150, but also Supreme Court precedent in *Laird, Lawson* and *Criterion* acknowledging the legislature's authority to establish the procedure for collecting UM coverage. Further, the Supreme Court recognized the right to recover from one's own insurance carrier is entirely dependent on the statute and policy endorsements. *Criterion*, 258 S.C. at 290, 188 S.E.2d at 462 ("One must look to the terms of the uninsured motorist statute and policy endorsements and comply therewith to get the benefit of law."); *see also Ex parte*

Carlton, 867 So. 2d 332, 337 (Ala. 2003) ("[W]hether an insured is 'legally entitled to recover' depends entirely on the merits of the insured's claim against a tortfeasor under the laws of the state."); *Erie Ins. Exch. v. Conley*, 29 A.3d 389, 392 (Pa. Super. Ct. 2011) ("Pursuant to the clear and unambiguous language of the policy, we conclude that, in order for Appellant to be eligible to receive UM or UIM coverage under the policy, the law must entitle him to recover damages for bodily injuries from the owner or operator of an uninsured or underinsured motor vehicle, *i.e.*, from his employer."); *Peterson v. State Farm Bureau Ins. Co.*, 927 P.2d 192, 195 (Utah Ct. App. 1996) ("Thus, for an insured to satisfy the 'legally entitled to recover' criterion, Utah law requires a viable claim that is able to be reduced to judgment in a court of law.").

In this case, there is no dispute Connelly is not legally entitled to recover from Trezona. Connelly has admitted that she is not legally entitled to recover damages from Trezona. (R.p.147 ¶13)("Connelly is not legally entitled to recover damages from Trezona, because Trezona is immune from suit as a co-employee under the exclusivity provision of the Act."). "When counsel enter into an agreed stipulation of fact as a basis for decision by the court, both sides will be bound by such agreed stipulation, and the court will not go beyond such stipulation to determine the facts upon which the case is to be decided." *Belue v. Fetner*, 251 S.C. 600, 606, 164 S.E.2d 753, 755 (1968); *Kirkland v. Allcraft Steel Co.*, 329 S.C. 389, 392, 496 S.E.2d 624, 626 (1998) ("Stipulations, of course, are binding upon those who make them.").

As prescribed by the exclusivity provision of the Workers' Compensation Act, Trezona is not subject to legal liability. Connelly is not legally entitled to recover damages from Trezona and does not have a viable claim that is capable of being reduced

to judgment in a court of law. Consequently, Connelly cannot meet the first condition precedent to the recovery of UM benefits under the policy and her claim for UM coverage must fail.

Based on the statutory framework for entitlement to UM coverage, suit must be first brought against the uninsured driver and legal liability established. The legislature allows the UM carrier to defend the uninsured driver and assert any defenses available to the uninsured motorist. *See* § 38-77-150(B) ("The insurer has the right to appear and defend in the name of the uninsured motorist.") If the uninsured motorist has a liability, service or statute of limitations defense, then the insurer is entitled to raise it in defense of the action. *See Williams,* 315 S.C. 532, 446 S.E.2d 402; *Louden*, 327 S.C. 465, 486 S.E.2d 525. Such defenses do not render the vehicle being driven at the time of the accident an uninsured vehicle.

Just as a UM carrier can raise a statute of limitations defense available to an uninsured motorist, so too can a UM carrier raise a liability defense provided by the Workers' Compensation Act. As explained by the Kansas District Court (where unlike in South Carolina direct actions against UM carriers are permitted by Kansas UM statutes):

> The insured must be able to establish fault on the part of the uninsured motorist which gives rise to the damages and to prove the extent of those damages. This would mean that in a direct action against the insurer the insured has the burden of proving that the other motorist was uninsured, and the amount of this liability. In resisting the claim the insurer would have available to it, in addition to policy defenses compatible with the statute, the substantive defenses that would have been available to the uninsured motorist such as contributory negligence, etc.
>
> If the insurance company can assert any defense that would have been available to the uninsured motorist (in the case at bar the exclusive remedy of the workers' compensation scheme), then an injured person cannot recover from the insurance company when it could not recover against the tortfeasor. The reasonable inference to be drawn from these cases is that

> the exclusive remedy of the workers' compensation scheme does not transform an otherwise "insured" motorist into an "uninsured" motorist and that the insurance company may raise the exclusive remedy bar as a defense to the payment of uninsured motorist benefits.

Chance v. Farm Bureau Mut. Ins. Co., 756 F. Supp. 1440, 1443 (D. Kan. 1991) (citing *Winner v. Ratzlaff*, 505 P.2d 606, 607 (Kan. 1973)); *see also Hebert v. Clarendon Am. Ins. Co.*, 984 So. 2d 952, 955 (La. Ct. App. 2008) (citing *Carlisle v. State*, 400 So. 2d 284, 285 (La. Ct. App. 1981)) ("[T]he plaintiff had no cause of action against the UM carriers because '[u]insured motorist coverage is contingent upon there being liability by an uninsured or underinsured motorist,' and because the plaintiff had no cause of action against the fellow employee due to the statutory immunity provided by La.R.S. 23:1032, he had no cause of action against the UM carriers."); *Hopkins v. Auto-Owners Ins. Co.*, 200 N.W.2d 784, 786 (Mich. Ct. App. 1972) ("Because of the exclusiveness of the workmen's compensation coverage, plaintiff never had a remedy against the tortfeasor. He was never entitled to damages from the negligent motorist."). Allstate has the same workers' compensation immunity defense as the at-fault motorist, Trezona. In turn, Connelly cannot recover from Allstate, because she cannot recover from Trezona.

A finding that Connelly is not entitled to UM benefits arising from her accident with Trezona is wholly consistent with South Carolina's UM statutes and our Supreme Court's historical interpretation of those statutes. It is also consistent with the vast majority of jurisdictions that have applied their UM statutes to similarly made arguments. For instance, in *State Farm Mutual Automobile Insurance Co. v. Slusher*, 325 S.W.3d 318 (Ky. 2010), the Kentucky Supreme Court addressed a factually similar situation involving the right of an employee to recover under his personal UM or UIM policy for injuries sustained in a work-related motor vehicle accident caused by the negligence of a

co-employee. The employee in *Slusher* was injured during the course and scope of his employment when his co-employee's truck rolled into the building in which the decedent was working. The employee's estate received workers' compensation benefits from the employer's carrier and was unable to assert a wrongful death claim against the co-employee due to the exclusive remedy provision of the Workers' Compensation Act[5]. When the employee's estate sought payment under his personal UM and UIM policies, the carrier denied on the grounds the policy limited UM and UIM liability to damages the estate was legally entitled to collect from the owner or operator of an uninsured or underinsured vehicle. Like S.C. Code Ann. § 38-77-150(A), Kentucky's statutory law eliminated the estate's legal entitlement to collect any damages from the employer or a co-worker in excess of the workers' compensation benefits paid.

Citing the exclusivity statute, the *Slusher* court found that except for the workers' compensation benefits that had already been awarded, the employee's estate is not "legally entitled to collect" any further amounts from either the employer or the co-employee. Consequently, the estate could not collect under its UM or UIM coverage because the contractual language of the policy afforded payment of those benefits only

[5] KRS 342.690(1) states: "If an employer secures payment of compensation as required by this chapter, the liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death .... The exemption from liability given an employer by this section shall also extend to such employer's carrier and to all employees, officers or directors of such employer or carrier." *See also Travelers Indem. Co. v. Reker*, 100 S.W.3d 756, 760 (Ky. 2003) (holding the effect of this statute is to "shield a covered employer and its insurer from any other liability to a covered employee for damages arising out of a work-related injury.").

for "bodily injury an insured is legally entitled to collect from the driver of an uninsured motor vehicle."

In reaching this conclusion, the *Slusher* court sided with a majority of other jurisdictions. *Slusher*, 325 S.W.3d at 324 n. 12 (citing *Carlton*, 867 So.2d 332 (employee injured as a passenger in a vehicle driven by a co-employee was, under Workers' Compensation Act, not legally entitled to recover from owner or operator of uninsured vehicle, for purposes of uninsured motorist statute, and, therefore not entitled to UM benefits under his insurance policy); *Wachtler v. State Farm Mut. Auto. Ins. Co.*, 835 So.2d 23 (Miss. 2003) (insured was not "legally entitled to recover" from co-employee driving truck that struck insured and, therefore, was not entitled to UM benefits under personal automobile policies; the exclusive remedy provision of the Workers' Compensation Act barred recovery from co-employee); *Williams v. Thomas*, 370 S.E.2d 773 (Ga. App. 1987) (an employee who suffered an on-the-job injury when struck by a motor vehicle owned by his employer and operated by his co-employee while in the scope of employment, and for which the employee was awarded workers' compensation benefits, held not entitled to recover uninsured motorist benefits under his own automobile insurance policy); *Williams v. Country Mut. Ins. Co.*, 328 N.E.2d 117 (Ill. App. 1975) (collision between two employees' automobiles on their employer's premises in the course of employment, was within the purview of the state workers' compensation law; the injured employee's sole recourse was under the workers' compensation statute, and there was no coverage under the injured employee's UM coverage, even though the co-employee was uninsured); *Lee v. Allstate Ins. Co.*, 467 So.2d 44 (La. App. 1985) (employee injured in an automobile accident caused by co-employee held not entitled to

recover from his co-employee's insurer or from his own UM carrier as both insurers were entitled to avail themselves of the exclusive remedy provision of the state workers' compensation statute.)).

In determining the worker's estate was not legally entitled to recover UM and/or UIM benefits due to the exclusivity provision in the Workers' Compensation Act, the *Slusher* court distinguished cases applying the same analysis as the circuit court when it held the UM statute requires only a finding of fault to trigger coverage. Under this "essential facts" approach, the circuit court and a small minority of jurisdictions addressing this issue interpret the phrase "legally entitled to recover," or its equivalent, to allow an insured to collect UM coverage merely by establishing fault on the part of the tortfeasor and the amount of the insured's damages. *Id.* at 322. Under the "essential facts" approach, the tortfeasor's immunity does not preclude UM coverage[6].

Noting the shortcomings of the essential facts analysis, the *Slusher* court found that the abridgment of the essential facts approach "fails to properly consider an individualized analysis of a particular policy's language and its interplay with statutory public policy exemptions to tort liability, such as the exclusive remedy provisions of the Workers' Compensation Act." *Slusher*, 325 S.W.3d at 324 n. 11; *see also Williams v. State Farm Mut. Auto. Ins. Co.*, 641 A.2d 783, 787 (Conn. 1994) ("In order to recover uninsured motorist benefits, the plaintiff must prove, pursuant to the applicable statutes

[6] Representative of the essential facts approach is *Borjas v. State Farm Mutual Automobile Insurance Co.*, 33 P.3d 1265 (Colo. Ct. App. 2001), which held "legally entitled to recover" means the insured need only establish fault of the motorist giving rise to damages and the extent of those damages. However, *Borjas* is easily distinguished from this case because it involved governmental immunity and not workers' compensation immunity. Importantly, the plaintiff in *Borjas* had no source of recovery due to the at-fault motorist's negligence. In contrast, Connelly has already recovered workers' compensation benefits.

and regulations, as well as the contract, that he is 'legally entitled to collect' damages from the uninsured motorist...'Legally entitled to collect damages from the owner or driver of an uninsured motor vehicle,' means that in order to recover under the policy, the plaintiff must prove: (1) that the other motorist was uninsured; (2) that the other motorist was legally liable under the prevailing law; and (3) the amount of liability.").

UM coverage in South Carolina is not triggered simply by a finding of negligence and to hold otherwise, as the circuit court did in this case, is to contravene both the UM statute and the terms of the policy. In *Criterion*, the South Carolina Supreme Court held the right to recover UM coverage from one's own insurance carrier was created by the legislature and is based entirely on compliance with the UM statute and applicable policy provisions. *Criterion*, 258 S.C. at 290 ("One must look to the terms of the uninsured motorist statute and policy endorsements and comply therewith to get the benefit of law."). Holding that only a finding of fault triggers UM coverage circumvents the unambiguous language of § 38-77-150 establishing as a condition precedent to the recovery of UM benefits the existence of a claim capable of being reduced to judgment in a court of law. The circuit court's error in its analysis of the "legally entitled to recover" language found in both the UM statute and the policy requires reversal of the order granting summary judgment to the Connellys and entry of an order granting summary judgment to Allstate.

II. The circuit court erred in finding the immunity granted by the Workers' Compensation Act transforms a fully insured vehicle into an uninsured vehicle.

Connelly's UM claim must fail because she does not meet the first requirement of § 38-77-150 – that she be "legally entitled to recover" in a claim against Trezona.

However, her UM claim must also fail because Trezona was not the operator or owner of an uninsured motor vehicle – the second condition precedent to the recovery of UM. The General Assembly has specifically defined the term "uninsured motor vehicle." S.C. Code Ann. § 38-77-30 provides the following definition:

> (14) "Uninsured motor vehicle" means a motor vehicle as to which:
>
> (a) there is not bodily injury liability insurance and property damage liability insurance both at least in the amounts specified in Section 38-77-140; or
> (b) there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder; or
> (c) there was that insurance, but the insurer who wrote the same is declared insolvent, or is in delinquency proceedings, suspension, or receivership, or is proven unable fully to respond to a judgment; and
> (d) there is no bond or deposit of cash or securities in lieu of the bodily injury and property damage liability insurance;
> (e) the owner of the motor vehicle has not qualified as a self-insurer in accordance with the applicable provisions of law.
>
> A motor vehicle is considered uninsured if the owner or operator is unknown. However, recovery under the uninsured motorist provision is subject to the conditions set forth in this chapter.
>
> Any motor vehicle owned by the State or any of its political subdivisions is considered an uninsured motor vehicle when the vehicle is operated by a person without proper authorization.

In addition, S.C. Code Ann. § 56-9-20 of the South Carolina Financial Responsibility Act contains the following definition:

> (1) "Insured motor vehicle": A motor vehicle as to which there is bodily injury liability insurance and property damage liability insurance, meeting all of the requirements of item (7) of this section, or as to which a bond has been given or cash or securities delivered in lieu of such insurance or as to which the owner has qualified as a self-insurer in accordance with the provisions of § 56-9-60;

S.C. Code Ann. § 56-9-20.

Consistent with the statutory definition of "uninsured motor vehicle," the Allstate policy issued to the Connellys states:

> **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** ...
> 5. a phantom **motor vehicle** ....

(R.p.48.)

The position advanced by the Connellys and adopted by the circuit court is that the vehicle driven by Trezona was uninsured because liability coverage was denied based on the exclusivity of the Workers' Compensation Act. At the same time, the Connellys maintain the exclusivity provision of the Act does not apply because, according to their argument, the Act is not Connelly's exclusive remedy. The Connellys cannot have application and non-application of the Act at the same time. *See, e.g., Atl. Mut. Ins. Co. v. Payton*, 682 N.E.2d 1144, 1148 (1997) ("A reason that the driver is deemed uninsured is because the Workers' Compensation Act grants immunity from any liability towards a co-employee. Now Payton is trying to argue that the exclusive remedy and immunity protection provided by the Act do not apply. He cannot have application and non-application of the provisions of the Act at the same time.").

The circuit court held in error that Main Street/Old Dominion's refusal to offer its liability limits based upon Trezona's lack of legal liability rendered UM coverage operable pursuant to § 38-77-30(14) (providing a vehicle is uninsured when "there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder"). This conclusion glosses over the fact that Main Street/Old Dominion did not and has not ever denied liability coverage for Trezona's accident. *North River Ins. Co. v. Gibson*, 244 S.C. 393, 396, 137 S.E.2d 264, 265 (1964) ("The real question is whether [the carrier] has effectively denied coverage, within the meaning of the statute."). There is no evidence in the record that Main Street/Old Dominion denied liability coverage. Connelly meets the definition of an insured, the policy was in effect and the policy contained more than the mandatory minimum limits of liability coverage. If Connelly were to file suit against Trezona, Main Street/Old Dominion would retain counsel to defend her and file a motion to dismiss based upon the exclusivity provision of the Workers' Compensation Act[7].

The circuit court's decision should be reversed because the court failed to acknowledge the difference between denying *liability* for an accident and denying *coverage*. "[T]he Workers' Compensation Act does not just provide the employer with a defense of exclusivity but takes away from the employee the right to recover damages from his employer and co-employee." *Payton*, 682 N.E.2d at 1146; *Cook v. Mack's Transfer & Storage*, 291 S.C. 84, 88, 352 S.E.2d 296, 299 (Ct. App. 1986) ("Since a remedy exists under the statute, the injured worker has no right to bring a common law action in the courts."). Trezona, through her liability carrier, has availed herself of this

[7] A motion Connelly concedes should be granted, which is why no suit against Trezona has been filed.

defense to liability - and pursuant to South Carolina law, that same defense would be available to Allstate in defense of any uninsured motorist claim filed by Connelly.

The Trezona vehicle does not meet the definition of an uninsured vehicle under § 38-77-30 or Allstate's policy. It is undisputed that the vehicle was covered by a policy of insurance with liability limits in compliance with §38-77-140 at the time of the accident. Connelly's inability to recover liability coverage for the accident is not because the vehicle was uninsured, but because Trezona has no legal liability under South Carolina law. The trial court's ruling undermines South Carolina's entire statutory scheme. Pursuant to South Carolina statutes UM coverage must be based upon the legal liability of an uninsured motorist. UM carriers can raise all legal defenses available to an uninsured driver in defense of that driver.

Under Connelly's theory, a denial to offer liability coverage of a negligent driver based upon a statute of limitations defense would also render a vehicle uninsured. The premise is the same – the driver is negligent and liability coverage is unavailable because the driver is no longer legally liable for the accident. Therefore the vehicle is "uninsured" allowing her to collect UM coverage directly from the UM carrier only upon a showing that the driver was negligent. Of course, to reach this result, one would have to overlook the fact, as the trial court did in this case, that the vehicle was fully insured at the time of the accident and liability coverage was never denied. Such a result was not contemplated by the legislature in passing statutes that clearly predicate the recovery of UM coverage upon a determination of legal liability of a motorist that is actually operating an uninsured vehicle.

Connelly's argument that workers' compensation exclusivity renders an otherwise insured vehicle uninsured has been rejected by the vast majority of jurisdictions that have considered it in light of their own statutory UM schemes. *See, e.g., Chance*, 756 F. Supp. at 1446 ("Nor does the exclusive remedy of the workers' compensation scheme convert Stover's automobile into an 'uninsured motor vehicle.' Stover's policy included liability insurance and therefore he was not 'uninsured' at the time of the accident."); *Kough v. New Jersey Auto. Full Ins. Underwriting Ass'n*, 568 A.2d 127, 134 (N.J. Ct. App. 1990) ("[Arguing a] fully insured [vehicle] might be deemed an uninsured motor vehicle because the liability insurance as not applicable to plaintiff at the time of the accident, or because the liability insurer denied coverage ... would be a strained interpretation since it would deem [the] vehicle uninsured even if she had in effect a liability policy of $500,000. Moreover, such a broad interpretation of the phrase 'uninsured vehicle' would still require a tortured definition of the phrase 'legally entitled to recover.'").

For example, the Alabama Supreme Court held the exclusivity provision of the applicable workers' compensation scheme precluded an individual from recovering UM benefits because the individual was not legally entitled to recover damages from the owner or operator of an uninsured vehicle. *Carlton*, 867 So. 2d at 332. In doing so, the court explicitly overruled prior decisions which "carved out judicial exceptions to the legislative determination that an insured could recover uninsured-motorist benefits only when the insured was legally entitled to recover from the uninsured motorist." *Id.* at 336. According to the court, "[t]hese were exceptions the Legislature could have provided for but did not see fit to do so." *Id.* (highlighting the "folly of judicially expanding the meaning of the unambiguous" UM statute and the "nonsensical result of the case"). The

court noted, "The mere fact that a vehicle insured for bodily injury liability is operated by someone who is immune from liability while operating that vehicle cannot make the vehicle an 'uninsured motor vehicle.'" *Id.* According to the court, "Expanded coverage is appropriate when the policyholder and the insurer contract for it or when the legislature requires it. But, such coverage should not be imposed by a court through an expansive interpretation of clear statutory language." *Id.* at 337.

As recognized by the *Carlton* court, the circuit court erred in transforming a fully insured vehicle into an "uninsured vehicle". In doing so, the circuit court imposed coverage through "an expansive interpretation of clear statutory language." *Id.* Such expanded coverage should be a mechanism of either the legislature or the policy contract, but not of judicial pronouncement. The circuit court's error requires reversal of the order and the entry of an order holding the Trezona vehicle was not "uninsured".

III. The circuit court erred in failing to effectuate the legislative intent of the Workers' Compensation Act and the Uninsured Motorist Statutes.

In holding UM coverage co-exists with the exclusivity provision of the Workers' Compensation Act, the circuit erred in failing to recognize that Workers' Compensation is a "creature of statute" that fully replaces Connelly's common law rights. *See Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 441, 581 S.E.2d 836, 838-39 (2003) ("[W]orkers' compensation is a creature of statute. As such, we are bound to strictly construe the terms of the statute and to rely on the General Assembly to amend the statute where necessary."). The South Carolina Supreme Court recently recognized that the exclusivity provision of the Workers' Compensation Act extinguishes the legal liability of the employer and replaces "the common law idea of tort liability":

> "The Workers' Compensation Act was designed to supplant tort law by providing a no-fault system focusing on quick recovery, relatively ascertainable awards, and limited litigation." ... The concept of workers' compensation is "founded upon recognition of the advisability, from the standpoint of society as well as of employer and employee, of discarding the common law idea of tort liability in the employer-employee relationship and of substituting therefor the principle of liability on the part of the employer, regardless of fault, to compensate the employee, in predetermined amounts based upon his wages, for loss of earnings resulting from accidental injury arising out of and in the course of employment ... The employee receives the right to swift and sure compensation; the employer receives immunity from tort actions by the employee ... This quid pro quo approach to [workers'] compensation has worked to the advantage of society as well as the employee and the employer."

Machin v. Carus Corp., 419 S.C. 527, 534, 799 S.E.2d 468, 471 (2017) (citing *Nicholson v. S.C. Dep't of Soc. Servs.*, 411 S.C. 381, 389, 769 S.E.2d 1, 5 (2015); *Parker v. Williams and Madjanik, Inc.*, 275 S.C. 65, 69-70, 267 S.E.2d 524, 526 (1980)).

Similarly, the Court of Appeals held:

> The Workers' Compensation Act was founded upon a recognition that it is desirable to discard the common law doctrines of tort liability in the employer-employee relationship and substitute a duty of the employer, regardless of fault, to compensate the employee, in predetermined amounts based upon his wages, for loss of earnings resulting from accidental injury arising out of and in the course of his employment.
>
> In effect, the Workers' Compensation Act shifts from the employee to the employer the risk of work related injuries incident to modern industrial activity. In return, it requires the worker, as a condition for receiving the benefits of the Act, to surrender his right to sue at common law. This balancing of advantages is embodied in the exclusive rights and remedies provision of the Act....
>
> [The exclusivity] provision bars all actions against an employer where a personal injury to an employee comes within the Act. It makes the Act the exclusive means of settling all such claims. In some cases, the amount of compensation available under the Act may be substantially less than could be recovered in a successful common law action; but in other cases the employee will receive benefits he would not otherwise have enjoyed because of his inability to establish the employer's common law liability.

> This is a balance struck by the Legislature in order to afford the widest practical coverage for work related injuries.
>
> **The Workers' Compensation Act provides an exclusive system of compensation in derogation of common law rights and is not cumulative or supplemental thereto, but wholly substitutional.** The compensation afforded by the Act is statutory in character, and the right of any claimant thereto is dependent upon the terms and conditions of the statute. These include the procedures for adjudicating a compensation claim as well as the terms and conditions of substantive entitlement.

Cook, 291 S.C. at 86-87, 352 S.E.2d at 298 (internal citations omitted) (emphasis added). The exclusivity provision of the Act limits the injured employee's rights and remedies to those provided by the Act. *Machin*, 419 S.C. at 534, 799 S.E.2d at 471. Also, by enacting the Act's exclusivity provision, the legislature has pre-determined "that for policy reasons the employer may not be the legal cause of the plaintiff's injuries." *Id.* at 540, 799 S.E.2d at 475 (citing *Snyder v. LTG Lufttechnische GmbH*, 955 S.W.2d 252, 256 (Tenn. 1997)). Because the Workers' Compensation Act is a creature of statute, courts are constrained to strictly construe the Act and leave it to the General Assembly to amend and define any ambiguities. *See Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 110, 580 S.E.2d 100, 105 (2003) ("We are further bound by precedent to strictly construe statutes in derogation of the common law. Workers' compensation statutes provide an exclusive compensatory system in derogation of common law rights. As such, when reading a workers' compensation statute we strictly construe its terms, leaving it to the Legislature to amend and define its ambiguities."). Applying this logic to the instant case, Trezona may not be the legal cause of Connelly's injuries. In turn, Connelly is not legally entitled to recover from Trezona.

In failing to give effect to the exclusivity provision of the Act, the circuit court also failed to acknowledge the distinction between cause in fact and legal cause. *See*

R.p.5 ("[The argument] that Main Street/Old Dominion did not deny coverage but denied liability ... is foreclosed given both carriers' stipulation that Trezona was negligent and that her negligence was the cause of Ms. Connelly's injuries. Therefore, liability could not be denied only coverage.")[8]. In *Machin*, the Supreme Court held that distinguishing between cause in fact and legal or proximate cause "is not merely an exercise in semantics":

> The terms are not interchangeable. Although both cause in fact and proximate, or legal, cause are elements of negligence that the plaintiff must prove, they are very different concepts. Cause in fact refers to the cause and effect relationship between the defendant's tortious conduct and the plaintiff's injury or loss. Thus, cause in fact deals with the "but for" consequences of an act. The defendant's conduct is a cause of the event if the event would not have occurred but for that conduct. In contrast, proximate cause, or legal cause, concerns a determination of whether legal liability should be imposed where cause in fact has been established. Proximate or legal cause is a policy decision made by the legislature or the courts to deny liability for otherwise actionable conduct based on considerations of logic, common sense, policy, [and] precedent.

Machin, 419 S.C. at 541-42, 799 S.E.2d at 475-76 (citing *Snyder*, 955 S.W.2d at 256 n. 6 (holding refusal to allow a jury to find an employer to be a proximate cause of a plaintiff's injuries is a rule "uniquely applicable to the allocation of fault to an employer when the employer's liability is governed by the Workers[']] Compensation Law")). Thus, while Trezona's negligence was the cause in fact of Connelly's injuries, it was not the legal or proximate cause of the injuries because the legislature "has already determined that for policy reasons the employer may not be the legal cause of the plaintiff's injuries." *Id.* at 540, 799 S.E.2d at 475 (citing *Snyder*, 955 S.W.2d at 256).

[8] Again, this argument can be made where a negligent driver is not legally liable because the statute of limitations has expired.

To justify the departure from the clear mandate of the legislature when it enacted the exclusivity provision of the Act, the circuit court reasoned that UM coverage sounds in contract and, according to the court, the exclusivity provision only bars tort actions[9]. In doing so, the circuit court incorrectly relied on *Barfield v. Barfield*, 742 P.2d 1107 (Okla. Sup. Ct. 1987). *See Wachtler*, 835 So. 2d at 27 ("The holding of the Oklahoma Supreme Court [in *Barfield*] is contrary to a majority of the jurisdictions in this country

[9] Several jurisdictions have analyzed similar facts and held that the contract-tort distinction is immaterial in this context. *See Cont'l Nat'l Indem. Co. v. Fields*, 926 So. 2d 1033, 1037-38 (Ala. 2005) ("We agree that Tamms's contractual cause of action survives her death; the fact that her cause of action survives does not, however, answer the ultimate question of whether her estate is legally entitled to recover under the uninsured-motorist statute. To satisfy this condition precedent to recovery, Fields, as Tamms's personal representative, must establish that the uninsured motorist, Coultas, is legally liable to the estate for damages."); *Peterson v. Kludt*, 317 N.W.2d 43, 49 (Minn. 1982) ("[The statute] allow[s] an injured party to proceed against both the employer's workers' compensation insurer and third parties if the underlying obligation sounds in contract (as here) as opposed to tort... because Peterson elected workers' compensation coverage and thus can no longer proceed personally against Western National and General Casualty, there is no contractual obligation between Peterson and State Farm for which State Farm is liable.... Here there was no lack of insurance, but rather the insurance was inapplicable because Peterson elected to make his recovery, as he was required to do, under the Workers' Compensation Act. As a result, Peterson is barred from recovering against his own insurance company, State Farm, on uninsured motorist insurance."); *Kough*, 568 A.2d at 132 ("The reasoning in our case law seems to reject a contractual analysis for UM coverage such as emphasized by the majority of the Oklahoma Supreme Court in *Barfield*. Our Supreme Court has characterized uninsured motorist insurance as a 'contractual substitute for a tort action against an uninsured motorist.' Simply stated, 'an uninsured motorist claim is a statutory cause of action which has many characteristics of a tort action.' UM coverage has been described as 'compensation for the uninsured driver's common law liability.' 'The insured's legal entitlement to damages for the uninsured driver's negligence imports into the UM policy all of the normal rules governing tort liability and damages.'") (internal citations omitted); *Romanick v. Aetna Cas. & Sur. Co.*, 795 P.2d 728, 730 (Wash. Ct. App. 1990) ("Romanick is correct in that he has a contractual relationship with Aetna; however, Aetna's duties under that contract are defined in terms of what Romanick is legally entitled to recover from Shaffer. In other words, Aetna's liability is gauged by that of Shaffer. Therefore, the relationship between Romanick and Shaffer is relevant in determining Aetna's obligation.").

and to this Court's holding and interpretation of 'legally entitled to recover.'"); *State Farm Mut. Auto. Ins. Co. v. Royston*, 817 P.2d 118 (Haw. 1991) (identifying *Barfield* as "a sharply divided five to four decision" and siding with an "overwhelming majority" as well as the dissent in *Barfield* by holding the unambiguous UM statute and legislative history confirm that "tort liability of the uninsured owner or operator is a prerequisite for recovery."). In finding an insured was not "legally entitled to recover" damages from his co-employee within the meaning of his UM policy because the exclusivity provision of the workers' compensation statute provided a substantive bar to any legal claim against his co-employee for his injuries, the Iowa Supreme Court distinguished *Barfield* and held:

> In this case, our legislature has adopted the workers' compensation system. This system supplants the common law, and we no longer recognize a cause of action for negligence by an employee against the employer or co-employee. Thus, Otterberg never had any legal right to recover against the driver of the ambulance.... **The phrase "legally entitled to recover" cannot be stretched so far as to cover situations when an insured could have never recovered from the uninsured motorist because the law did not provide for any recovery**.... Although we liberally interpret the phrase "legally entitled to recover," we will not interpret it so liberally as to contravene our fundamental principles of recovery.... [W]e find no intent expressed by our legislature that the benefits of UM coverage are broad enough to supplement compensation under our workers' compensation system. Thus, we will not interfere with the clear statement by our legislature that UM coverage exists only when the insured is "legally entitled to recover" from the tortfeasor.

*Otterberg v. Farm Bureau Mut. Ins. Co.*696 N.W.2d 24, 30-31 (Iowa 2005) (internal citations omitted) (emphasis added).

The South Carolina legislature chose to supplant the common law rights of an injured employee with the workers' compensation scheme. The long-established policy of the Act to provide compensation to injured employees regardless of fault substitutes

and supplants Connelly's common law right of recovery against Trezona and overshadows the policy of the uninsured motorist statute. In fact, Connelly need not draw on the policy of the UM statute to afford her coverage when she is already protected and guaranteed coverage by the Workers' Compensation Act. *See, e.g., Royston*, 817 P.2d at 122 (holding legislative intent of UM statute was to provide for instances where persons suffered injuries for which no compensation or recourse would be available due to the financial irresponsibility of the guilty motorist and finding no need to "torture the meaning" of the UM statute to provide a remedy when one has already been provided by the workers' compensation act).

The South Carolina legislature has guaranteed Connelly recovery – even in situations where the adverse driver is not at fault - by passing the Workers' Compensation Act. The Act ensures that an employee riding in a vehicle with a co-employee is *never* in an uninsured situation because it ensures that an employee always has a remedy, regardless of lack of fault of the co-employee. *See, e.g., Cormier*, 445 N.W.2d at 648 ("The clearly expressed purpose of the uninsured motorist statute is to protect insureds from uninsured motor vehicles.... The Cormiers' argument does not advance the legislative intent to compensate persons injured by uninsured vehicles (and thus effectively without recourse) where there is available recovery under workers compensation.") (internal citations omitted). The Worker's Compensation Act also limits her remedies – the co-employee is immune from personal liability. That is the trade-off to South Carolina's public policy that all injured employees receive workers compensation benefits, even when the employee herself may be at fault. As recognized by the Florida Supreme Court, expanding UM coverage to cover the situation presented

in this case would "roil the waters in an area where the legislature has attempted to calm the seas":

> In Florida a source of indemnification for a worker injured by a co-worker driving an uninsured vehicle is already available, *i.e.* the benefits of the Workers' Compensation Law. Society's goal of protecting the worker under this circumstance has been achieved. We do not need to torture the meaning of a statute aimed at curing another ill entirely to provide a remedy where one has already been provided.
>
> In addition, the immunity offered through workers' compensation exists not only to protect the employer in exchange for his provision of immediate, guaranteed benefits, but also to protect society by limiting the impact of a work-related injury to the remedy offered. Expanding UM coverage to cover the circumstance before us here would ... create a large class of uninsured vehicles. The ensuing litigation would roil the waters in an area where the legislature has attempted to calm the seas. Absent a clear statement of intent from the legislature that it considers the benefits of broader UM coverage to outweigh the detriment, we will not disturb its clear and unambiguous statement that coverage exists only when the insured is legally entitled to recover from the tortfeasor.

Allstate Ins. Co. v. Boynton, 486 So. 2d 552, 559 (Fla. 1986); *overruled in part by statute as recognized in State Farm Mut. Auto. Ins. Co. v. Hassen*, 650 So. 2d 128, 137 (Fla. Dist. Ct. App. 1995) (finding amendment of UM statute changes *Boynton* rationale only in "situation[s] involving retention of subrogation rights.").

Proof of the legislative intent that the Workers' Compensation Act is an employee's exclusive remedy against a co-employee is further evidenced by the fact the General Assembly did not include a provision in the Workers' Compensation Act entitling workers injured by co-employees to seek additional recovery from uninsured and/or underinsured motorist carriers. The General Assembly certainly could have included such a provision with the Act, just as it chose to do in the South Carolina Tort

Claims Act, the exclusive remedy against governmental employees and entities[10]. S.C. Code Ann. § 15-78-190, entitled "Compensation of plaintiff pursuant to underinsured or uninsured defendant provisions of plaintiff's insurance policy," provides:

> If the amount of the verdict or judgment is not satisfied by reason of the monetary limitations of this chapter upon recovery from the State or political subdivision thereof, the plaintiff's insurance company, subject to the underinsured and uninsured defendant provisions of the plaintiff's insurance policy, if any, shall compensate the plaintiff for the difference between the amount of the verdict or judgment and the payment by the political subdivision. If a cause of action is barred under § 15-78-60 of the 1976 Code, the plaintiff's insurance company must compensate him for his losses subject to the aforementioned provisions of his insurance policy.

The South Carolina Supreme Court construed this statute in *Cain v. Nationwide Property & Casualty Insurance Co.*, and held that "by enacting section 15-78-190, the Legislature assured that an insurance company could not cite the 'exclusive civil remedy portion' of section 15-78-20 to deny payment from the plaintiff's uninsured or underinsured motorist coverage where recovery pursuant to the Tort Claims Act was insufficient." 378 S.C. 25, 31, 661 S.E.2d 349, 352 (2008)[11].

If the General Assembly had intended that co-employees could circumvent the exclusivity provision of the Workers Compensation Act and recover uninsured or

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[10] Section 15-78-20(b) states: "The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)."

[11] The *Cain* opinion is instructive in that it also analyzed the statutory definitions of uninsured and underinsured vehicles. The Court recognized that "the sole purpose of these kinds of insurance is to provide compensation where the at-fault motorist either is not insured or does not have enough insurance." *Id.* Relying on the definitions of uninsured and underinsured vehicles in the plaintiff's policy and corresponding statutory definitions, the *Cain* Court held plaintiff was not entitled to recover under the UM section of his policy because the tortfeasor's vehicle had insurance protection greater than the minimum limits but less than plaintiff's damages and was, therefore, "underinsured". *Id.* at 32, 661 S.E.2d at 353.

underinsured motorist benefits, it would have placed a similar provision within the Workers' Compensation Act[12]. The fact that the General Assembly chose not to insert a similar provision into the Workers' Compensation Act evinces the legislature's intent in limiting an injured employee's remedies to the Act. S*ee State v. Thomas*, 372 S.C. 466, 469, 642 S.E.2d 724, 725 (2007) (holding that the inclusion of specific provisions to prohibit suspension of sentences in other statutes and omission of any such provision in the proximity statute, indicates the legislature did not intend to limit the general authority to suspend sentences); *Branch v. City of Myrtle Beach ex rel. Attorney Gen. of S.C.*, 340 S.C. 405, 410, 532 S.E.2d 289, 292 (2000) (holding that by including definition of public employee in other sections but not in right-to-work statute, legislature did not intend to cover public employees); *see also Williams*, 370 S.E.2d at 774 ("Although it could have done so, the General Assembly has made no exception to the unambiguous rights and remedies provisions of this statute of exclusivity, so as to enable an injured employee to obtain a judgment against a co-employee in order to meet any **statutory or contractual conditions** necessary to the ultimate recovery of insurance benefits from his own insurer.") (emphasis added).

The circuit erred in failing to effectuate the legislative intent in both the Workers' Compensation Act and the UM statutes. Both workers' compensation and uninsured motorist coverage are creatures of statute, enacted by the legislature in derogation of the

[12] The circuit court reasoned that the Act's provision allowing claims against "third parties" implicitly allows claims against a UM carrier. However, a co-employee is not a third party under the Act and the Act only allows such actions where the at-fault party is someone other than an employer or co-employee. A UM carrier is not an at-fault party in an accident case. The Act does not permit a third party action under the facts of this case, and as previously discussed, the availability of UM coverage turns on the legal liability of the uninsured motorist.

common law. In holding "legally entitled to recover" is ambiguous and allowing the recovery of UM coverage upon only a showing a fault, the circuit court circumvented South Carolina statutes establishing basis and the procedure for the maintenance of a UM action.

The implications of the circuit court's order are far-reaching in that it permits claimants to bring direct actions against UM carriers in cases where the at-fault driver has no legal liability. There is no provision in South Carolina's UM statutes allowing a direct action against a UM carrier without first commencing and action and obtaining a judgment against the at-fault driver. Because the circuit court's order stands in direct contravention of the legislative intent in enacting both the Workers' Compensation Act and the UM statutes, the order should be reversed and summary judgment entered for Allstate.

CONCLUSION

For the reasons stated above, Allstate respectfully requests the reversal of the circuit court's order and the institution of an order granting judgment as a matter of law in favor of Allstate on the grounds that Connelly is not "legally entitled to recover" from Trezona and consequently, cannot maintain a direct action against Allstate for UM coverage in contravention of the clearly stated intention of the legislature in both the Workers' Compensation Act and the UM statute.

[Signature Page to Follow]

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April 12, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2017-002234

APPEAL FROM RICHLAND COUNTY COURT OF COMMON PLEAS
Civil Action No. 2016-CP-40-5885
Jocelyn Newman, Circuit Court Judge

Stephany A. Connelly and James M. Connelly ..... Plaintiffs

v.

The Main Street America Group; Old Dominion Insurance Company; Allstate Fire and Casualty Insurance Company; Debbie Cohn; and Freya Trezona ..... Defendants

Of whom, Allstate Fire and Casualty Insurance Company; The Main Street America Group; and Old Dominion Insurance Company are ..... Appellants

and

Of whom, Stephany A. Connelly and James M. Connelly are ..... Respondents

---

APPELLANT ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S CERTIFICATION AS TO BRIEF AND REPLY BRIEF

Counsel for Appellant, Allstate Fire and Casualty Insurance Company, hereby certifies that the Brief and Reply Brief of Appellant Allstate complies with Rule 211(b).

[Signature Page to Follow]

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY
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Case No. 2016-CP-40-5885
Jocelyn Newman, Circuit Court Judge

Stephany A. Connelly and James M. Connelly, Plaintiffs,

v.

The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trezona, Defendants,

Of whom Allstate Fire and Casualty Insurance Company, The Main Street America Group and Old Dominion Insurance Company,.....Appellants,

And

Stephany A. Connelly and James M. Connelly, ...Respondents.

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STATEMENT OF THE ISSUES ON APPEAL

I. Whether S.C. Code Ann. 38-77-150's "legally entitled to recover" language is ambiguous given conflicting interpretations by various courts nationally.

II. Whether interpreting S.C. Code Ann. 38-77-150's "legally entitled to recover" language to mean simply finding fault effectuates the South Carolina Legislature's intent to protect motorists from injury and death caused by at fault uninsured motorists.

III. Whether the Trezona vehicle was an uninsured vehicle pursuant to S.C. Code Ann. 38-77-30 (14) given the denial of coverage by Appellants.

IV. Whether procuring uninsured motorist benefits can co-exist with the exclusivity provision of the South Carolina Workers' Compensation Act.

STATEMENT OF THE CASE

Stephany Connelly was injured in a motor vehicle wreck while riding as a passenger in a vehicle being operated by her co-worker Freya Trezona on February 24, 2015. Trezona negligently caused the wreck. Connelly brought a personal injury claim against Trezona. Her husband, James Connelly brought a similar claim against Trezona for loss of consortium. Main Street America Group/Old Dominion Insurance Company denied all claims for liability coverage and uninsured motorist coverage. Allstate Fire and Casualty Insurance Company denied all claims for uninsured motorist coverage.

On September 30, 2016 the Connellys brought a declaratory judgment against both carriers seeking a declaration that the Connellys were entitled to uninsured motorist coverage. All parties filed motions for summary judgment. In an order filed October 2, 2017, the circuit court granted the Connellys motion for summary judgment and denied both carriers' motion for summary judgment. This appeal followed. The Connellys filed a motion pursuant to Rule 204(b) of the South Carolina Appellate Court Rules seeking an Order certifying the case for review by the Supreme Court. The motion was denied February 7, 2018.

STATEMENT OF FACTS

The parties engaged in a written joint stipulation as to the operative facts of this case. (R. pp.142-147). On February 24, 2015 Stephany Connelly was riding as a passenger in a Jeep Compass vehicle owned and operated by Freya Trezona. Ms. Connelly was occupying the vehicle with permission of Ms. Trezona. The vehicle had liability and uninsured motorist coverage issued under a policy by Main Street America Group and Old Dominion Insurance Company ("Main Street/Old Dominion"). In an effort to protect themselves the Connellys paid for and maintained a separate policy of uninsured motorist coverage with Allstate Fire and Casualty Insurance Company ("Allstate") covering their private vehicle. Ms. Trezona negligently caused a motor vehicle wreck resulting in injuries to Ms. Connelly.

At the time of the wreck, Ms. Connelly and Ms. Trezona were co-employees, both working within the course and scope of their employment with Apple One Employment Agency. Ms. Connelly made a claim for and received benefits under the South Carolina Workers' Compensation Act. Stephany Connelly then made a claim for damages under the Trezona liability policy. James Connelly made a claim as well for loss of consortium. Main Street/Old Dominion denied coverage, relying on the Workers' Compensation Act's exclusive remedy provision which provided tort immunity to Trezona. Faced with an absence liability coverage the Connellys made claims for uninsured motorist ("UM") benefits under both the Main Street/Old Dominion and Allstate policies. Both carriers denied the UM claims stating the Trezona vehicle was not an uninsured vehicle and the Workers' Compensation Act provided the exclusive remedy for the Connellys.

The circuit court found the Trezona vehicle to be uninsured given the carriers' denial of coverage under S.C. Code Ann. South Carolina Code §38-77-30(14)(b) and *Unisun Ins. Co. v.*

Schmidt, 339 S.C. 362, 529 S.E.2d 280 (2000). Further, the circuit court held that the *legally entitled to receive* language of S.C. Code Ann. 38-77-150 to be ambiguous and interpreted the statute to simply require a finding of fault by the uninsured driver. Such an interpretation would effectuate the legislative intent to provide recovery to those injured by uninsured motorists. Finally, the circuit court distinguished between claims against an employer/co-employee and claims against an uninsured motorist carrier. While the S.C. Workers' Compensation Act would block the former, its exclusivity provision would not block the latter.

STANDARD OF REVIEW

A suit for declaratory judgment is neither legal nor equitable per se; the nature of the suit, therefore, is determined by the underlying issue. *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2d 781 (1991). The issue here involves the determination of UM coverage. Therefore, the action is one at law. *Horry County v. Ins. Reserve Fund*, 344 S.C. 493, 54 S.E.2d 637 (Ct. App. 2001). An appellate court may decide questions of law with no particular deference to the circuit court. *In re Campbell*, 379 S.C. 593, 666 S.E.2d 908 (2008). The interpretation of a statute is a question of law which an appellate court reviews *de novo*. *S.C. Public Interest Foundation v. Courson*, 801 S.E.2d 185, (Ct. App. 2017).

An appellate court reviews the grant of summary judgement under the same standard applied by the circuit court. *David v. McLeod Regional Medical Center*, 367 S.C. 242, 626 S.E.2d 1 (2006). Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011); see, Rule 56(c), SCRCP.

ARGUMENT

I. S.C. Code Ann. 38-77-150's *legally entitled to recover* language is ambiguous given conflicting interpretations by various courts nationally.

The South Carolina UM statute S. C. Code § 38-77-150(A) provides that a UM policy must undertake to pay the insured all sums which he is *legally entitled to recover as damages* from the owner or operator of an uninsured motor vehicle... (Emphasis added.)

The novel question presented by this case is whether an innocently injured motor vehicle passenger is entitled to UM coverage where the at-fault driver is immune from suit pursuant to the South Carolina Workers' Compensation Act. Under the UM statute one must be legally entitled to recover damages from the uninsured motorist before UM benefits are available. Was Ms. Connelly *legally entitled to recover damages* from Ms. Trezona? No, if this language means Ms. Connelly must first receive a judgment following a lawsuit against Ms. Trezona. Under the S.C. Workers' Compensation Act, Ms. Trezona is immune from a tort action by Ms. Connelly. Yes, if this language simply means Ms. Connelly must demonstrate fault against Ms. Trezona in causing the wreck[1]. Review of decisions from other jurisdictions addressing similar language and coming to different interpretations suggest ambiguity of this statutory language.

First, the statutory language is not defined in the statute or in a policy. Second, various courts have entertained different interpretations. For example, Appellants rely on several cases from distant jurisdictions interpreting the *legally entitled to recover* language as a fatal obstacle to the recovery of UM benefits. See, *Otterberg v. Farm Bureau Mut. Ins. Co.*, 696 N.W.2d 24 (Iowa 2005);

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[1]Ms. Connelly has stipulated she cannot recover damages for her injuries from Ms. Trezona in a tort action. Depending on this Court's interpretation of the UM statute, Ms. Connelly's stipulation may provide no roadblock to UM coverage.

Wachtler v. State Farm Mut. Auto. Ins. Co., 835 So. 2d 23 (Miss. 2003); and *State Farm Mutual Auto. Ins. Co. v. Slusher*, 325 S.W.3d (Ky. 2010). By contrast, other courts have interpreted the same or similar language in a broader vein. See, *Torres v. Kansas City Fire and Marine*, 1993 OK 32, 849 P.2d 407 (Sup Ct. 1993) finding the *legally entitled to recover* language to mean the insured must simply establish fault on the part of the uninsured motorist. The lack of a statutory or policy definition for the phrase *legally entitled to recover*, and the parties' conflicting interpretations provides evidence of the statute's ambiguity. *Jenkins v. City of Elkins*, 230 W.Va. 335, 345, 738 S.E.2d 1, 11 (2012).

II. Interpreting S.C. Code Ann. 38-77-150's *legally entitled to recover* language to mean simply finding fault effectuates the South Carolina Legislature's intent to protect motorists from injury and death caused by at-fault uninsured motorists.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E. 2d 457, 459 (2007). If the statute is ambiguous then courts must construe the terms of the statute. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). When interpreting the language of the UM statute the Court must settle on a meaning that is consistent with the intent of the Legislature. The UM statutes are remedial in nature, enacted for the benefit of the injured persons, and is to be liberally construed so that the purpose intended may be accomplished. *Gunnels v. American Liberty Ins. Co.*, 251 S.C. 242, 247, 161 S.E.2d 822, 824 (1968).

Given the ambiguity of the statute, this Court must construe the language in a way that is consistent with the intent of the Legislature. The purpose of the South Carolina uninsured motorist statute is to provide benefits to protect against the peril of injury or death by an uninsured motorist to an insured motorist, his family and the permissive users of his vehicle. *Ferguson v. State Farm*

Mut. Auto. Ins. Co., 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973). An uninsured motorist is a "financially unresponsive motorist". *O'Neill v. Smith*, 388 S.C. 246, 254, 695 S.E.2 531, 535 (2010). To an injured motorist it makes no difference whether unresponsiveness is due to workers' compensation immunity or lack of insurance. In either instance, the availability of UM benefits furthers the protective goal of the Legislature. Interpreting the statute to require Respondents first secure a judgment against the unresponsive driver undermines the legislative intent. Requiring a finding of fault against the unresponsive driver furthers the legislative intent. "The uninsured motorist statue is remedial in nature, enacted for the benefit of injured persons, and is to be liberally construed so that the purpose intended may be accomplished." *Unisun Insurance v. Schmidt*, 339 S.C. 362, 529 S.E.2d 280 (Sup. Ct. 2000). It is mandatory coverage. Attempts to restrict UM benefits are either void or themselves limited. See, *Ferguson v. State Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522, 524(1973) (finding any limiting language in an insurance contract which had the effect of providing less protection than made obligatory by the statues is contrary to public policy and is of no force and effect); *Wright v. Smallwood*, 308 S.C. 471, 419 S.E.2d 219 (1992) (Efforts to deny UM benefits given the exclusivity provision of the S.C. Workers' Compensation Act were rebuffed).

In order to effectuate the legislative intent of protecting motorists from unresponsive drivers this Court is bound to interpret the *legally entitled to recover* language as requiring simply a showing of fault by the unresponsive driver and the amount of resulting damages. As will be seen, cases from other jurisdictions endorse this view.

Providing UM coverage furthers the legislative intent to allow individuals to protect themselves from unresponsive and uninsured motorists who cause harm. Here, the Connellys

attempted to protect themselves by paying for and procuring UM coverage from Allstate. They paid the premiums for the coverage. Appellants now want to deny them the security they bargained for.

A formal judgment against an unresponsive motorist is not the only way to demonstrate fault and trigger UM coverage. In *Ferguson v. State Farm*, 261 S.C. 96, 198 S.E. 2d 522 (1973) a judgment was rendered against the uninsured driver. However, the court concluded liability under the UM coverage arose after the liability of the uninsured motorist *had been established.* (Emphasis added. 261 S.C. at 102, 198 S.E.2 at 525). There was no language in the opinion to suggest procuring a judgment was the only way to establish liability. In *Otterbacher v. Snyder*, Unpublished Opinion, 2015 WL 4068204 (Ct. App.) the court concluded that until Otterbacher obtained a judgment *or otherwise establishes liability* against the person who collided with him in a motor vehicle wreck, Otterbacher could not pursue the other driver's liability coverage. See, *Park v. Safeco Ins. Co. Of Am.*, 251 S.C. 410, 413, 162 S.E. 2d 709, 710 (1968) (No right to recover can accrue to plaintiff against the insurance company until and unless the insured driver becomes liable to pay). In this case the fault requirement is satisfied as the parties stipulated Ms. Trezona was at fault in causing the wreck and injuries to Ms. Connelly.

Appellants suggest the Connellys cannot trigger UM coverage as result of the wreck because they are not legally entitled to recover damages from Ms. Trezona due to workers' compensation immunity. This argument falls away when interpreting the statute to simply mean the Connellys must demonstrate fault and resulting damages. Appellants argue further the Connellys cannot satisfy the UM statute which requires them to file suit against Ms. Trezona. Actually, the language of S.C. Code Ann. § 38-77-150(B) does not address any requirement of filing suit against the at-fault driver. It does lay out a procedure for serving the UM carrier:

> (B) No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record.

In this case, the Connellys served their declaratory judgment action establishing liability upon both carriers in accordance with the statute.

A. Numerous Jurisdictions Allow UM Coverage Despite an Immune Adverse Driver

South Carolina courts have not directly addressed the questions whether an at-fault driver causing injury, who is immune from suit, can nonetheless trigger the *legally entitled to recover* language of the UM statue, resulting in UM coverage. However, numerous cases from other jurisdictions have answered this question. To promote the public policy of protecting motorists injured by uninsured drivers, these courts interpret the *legally entitled to recover* language as simply requiring a showing of fault by the adverse driver. For example, in *Borjas v. State Farm Mut. Auto. Ins. Co.*, 33 P.2d 1265 (Colorado Ct. App. 2001) an injured insured was allowed to collect her own UM coverage after being hit by a vehicle driven by a police officer, despite the officer being cloaked with immunity under the Colorado Governmental Immunity Act (CGIA). Colorado's UM statute provided coverage for persons who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. §10-4-609(1)(a), C.R.S. 2000. State Farm argued its UM coverage was not available because the injured plaintiff was not *legally entitled to recover damages* from the at-fault driver who was immune from liability under the CGIA. State Farm cited various cases denying UM coverage

because of immunity. In rejecting State Farm's position, the Court found such an interpretation was inconsistent with the public policy expressed by the legislature. "If we were to follow that line of cases, members of the public would be deprived of the opportunity to protect themselves from loss under the circumstances presented here, a result not intended by the General Assembly". *Borjas*, 33 P.3d at 1269. The Court noted the policy underlying the statute was to compensate innocent drivers for injuries received at the hands of one from whom damages cannot be recovered. *Borjas*, 33 P.3d at 1267. The Court stated:

> It is entirely consistent with this public policy to construe §10-4-609 to require that UM insurance coverage apply even though the tortfeasor is immune from liability under the CGIA. Negligent drivers and their employers who are immune from liability under the CGIA may not be financially irresponsible in the sense that they lack the ability to pay, but from the perspective of the injured innocent driver, the lack of legal responsibility has the same effect.
> *Borjas*, 33P.3d at 1268.

Finally the *Borjas* court listed several other justifications for allowing UM coverage despite a claim of immunity[2]. Giving a further rationale for its opinion, the Court relied on the reasoning expressed in the treatise 1 A. Widiss, *Uninsured and Underinsured Motorist Insurance* §7.14, at 388-90 (2d ed. 2001): 1) while tort immunity protects the torfeasor, it should have no effect on an insurance company providing first party UM insurance coverage; 2) it is consistent with the strong

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[2] The *Borjas* court cited numerous cases interpreting similar statutes and finding UM coverage despite an at fault driver cloaked with governmental immunity: *Watkins v. US*, 462 F.Supp. 980 (S.D. Ga. 1977)(under a similar Georgia UM statute although the tortfeasor was immune under a federal statute, UM insurance coverage applied); *State Farm Automobile Insurance Co., v Baldwin*, 470 So.2d 1230 (Ala. 1985)(under a similar Alabama UM statute an insured was legally entitled to recover under a UM policy even though recovery from the tortfeasor was barred by governmental immunity); *Michigan Millers, Mutual Insurance Co., v. Bourke*, 607 So.2d 418 (Fla. 1992); *West American Insurance Co. v. Popa*, 108 Md. App. 73, 670 A.2d 1021 (1996), aff'd. 352 Md. 455, 723 A.2d 1 (1998); *Williams v. Holsclaw*, 128 N.C. App. 205, 495 S.E.2d 166 (1998); *Kmok-Sullivan v. State Farm Mutual Automobile Insurance Co.*, 746 A.2d 1118 (Pa. Super.Ct. 1999)(petition for appeal granted Jan 3, 2001).

public policy of providing insurance coverage to protect drivers when no compensation is available from the negligent tortfeasor; 3) tort immunities are personal to the tortfeasor and therefore cannot be raised by an insurer; and finally, 4) the immune tortfeasor is unaffected by providing UM coverage, while at the same time, those disadvantaged by the immunity can protect themselves by purchasing UM insurance. The court concluded that the phrase *legally entitled to recover damages* as used in the UM statute, simply meant that the insured injured motorist must be able to establish the fault of the uninsured motorist as the cause of her damages.

B. UM Coverage Is Available Despite Worker's Compensation Immunity

While *Borjas* addressed the availability of UM coverage in the face of a governmental immunity, there is support for the same result applying where a workers' compensation immunity is in place. In *Barfield v. Barfield*, 742 P.2d 1107 (Oklahoma Sup. Ct. 1987) the widow of a deceased passenger killed by his at-fault co-employee driver was allowed to recover under her husband's UM policy despite receipt of workers' compensation benefits. The court found that tort immunity under the Workers' Compensation Act did not preclude recovery under one's own contract of insurance. Protection under a UM policy is a contractual right resting in the insured and co-existent with the protection under the workers' compensation act. An UM carrier does not stand in the tortfeasor's shoes and thus does not enjoy the benefits of the tortfeasor's immunity. The conditions for recovery under the UM policy can be satisfied even if the insured cannot prove all the elements of the tort against the uninsured driver. Interpreting the Oklahoma UM statute[3], the court

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[3] The Oklahoma statute, 36 O.S. 1981, §3636(A) and (B), very similar to the South Carolina UM statute, S.C. Code Annon. §38-77-150, reads as follows:

(A) No policy insuring against loss resulting from liability imposed by law for bodily

found the words *legally entitled to recover* simply meant the insured must establish fault on the part of the uninsured motorist which gave rise to damages and must prove the extent of those damages. *Barfield*, 742 P.2d at 1112. Recovery was based upon a contractual promise by the insurer to the insured to provide coverage in the event of injury or death resulting by fault of an uninsured motorist. "It would be manifestly unjust to permit the insurer to avoid its contractual duty as well as its statutorily imposed liability under 36 O.S. 1981 §3636, by its assertion of entitlement to third party tort immunity which would deny the insured's widow receipt of that for which the decedent has paid a premium". *Barfield,* 742 P2d at 1113.

UM benefit recovery is not limited to coverage paid for by the insured. UM benefits may also be sought even though the policy was procured and paid for by the employer. The Oklahoma Supreme Court found the estate of a fatally injured worker eligible for employer provided UM coverage even though a co-employee negligently caused the deadly wreck within the course and scope of employment. *Torres v. Kansas City Fire and Marine*, 849 P.2d 407 (Oklahoma Sup Ct. 1993). There, the decedent was a passenger in a company owned vehicle driven by a co-employee. The passenger's estate filed for and received workers' compensation benefits. The estate also brought an action against the carrier for the employer which had a UM endorsement on the vehicle. The UM

> injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be issued, delivered, renewed, or extended in this state with respect to a motor vehicle registered or principally garaged in this state unless the policy includes the coverage described in subsection (B) of this section.
>
> (B) The policy referred to in subsection (A) of this section shall provide coverage therein or supplemental thereto for the protection of persons insured thereunder who are ***legally entitled to recover damages*** from the owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom. (Emphasis added).

carrier admitted the wreck was caused by the negligence of the co-employee driver. The carrier admitted the passenger was an insured under the policy by virtue of his occupancy in the vehicle. The trial court ruled as a matter of law recovery was proper under the UM endorsement and the matter of damages was tried to a jury. A jury verdict resulted for estate. The UM carrier appealed, arguing the UM endorsement was inapplicable because the negligent co-employee was immune from liability by virtue of the exclusivity provisions of the workers' compensation laws and thus the insured was not legally entitled to recover damages from the wrongdoer. Under the Oklahoma UM statute, the carrier was obligated to provide coverage to an insured who is "legally entitled to recover damages from the owners or operators of uninsured motor vehicles..." The court of appeals affirmed. The Supreme Court of Oklahoma found the estate was entitled to benefits under the UM policy despite the co-employee negligent driver being immune from suit under the exclusivity provision of the state's workers' compensation act.

Relying on a previous decision, *Uptegraft v. Home Insurance Company*, 622 P.2d 681 (Oklahoma Sup. Ct. 1983), the Court stated, "[W]e said the words legally entitled to recover simply mean that the insured must be able to establish fault on the part of the uninsured motorist which gives rise to damages and prove the extent of those damages". *Torres*, 849 P.2d at 410. The Court rejected the view the phrase required an insured to establish all the elements of a viable claim in tort.

The rationale for the court's decision was based upon contract interpretation aimed at effectuating the intention of the parties. The decedent was a passenger in the vehicle and thus an insured under the UM policy. The intention of the passenger, purchaser of the policy, and carrier, was for the insurance carrier to bear the loss for injury to an insured person uncompensated by an uninsured wrongdoer. Interpreting the phrase *legally entitled to recover damages* as simply requiring

a showing of fault promotes the parties' intention of providing coverage. To require more would result in the insured bearing the loss. Further, the court noted that UM benefits were recoverable despite the fact that the passenger did not pay any premiums for the UM coverage.

III. The Trezona vehicle was an uninsured vehicle pursuant to S.C. Code Ann. 38-77-30 (14) given the denial of coverage by Appellants.

Before UM benefits become available, the at-fault motorist must be operating an uninsured vehicle. Main Street/Old Dominion and Allstate deny the Trezona Jeep Compass vehicle was an uninsured motor vehicle. The definition is controlled by statute. South Carolina Code §38-77-30(14) and its relevant subsection (b) provides that an uninsured motor vehicle means a motor vehicle as to which... "there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder..." Here, Main Street/Old Dominion provided liability coverage on the Trezona vehicle but denied the Connellys' claims, relying on the exclusivity provision of the Workers' Compensation Act with its grant of immunity to Ms. Trezona. With denial of the claims, the Trezona vehicle's UM coverage became operable. The Trezona vehicle falls within the plain language of the statue because Main Street/Old Dominion successfully denied any liability coverage. A similar result was reached in *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 529 S.E.2d 280 (2000) where The Supreme Court found denial of liability coverage due to vehicle operation by a non-permissive driver triggered the vehicle's UM coverage. See also *Allstate Ins. Co. V. Wilson*, 259 S.C. 586, 593, 193 S.E.2d 527, 531 (1972) (appellant's uninsured motorist coverage became operative when respondent Allstate successfully denied liability for the other vehicle on ground that it was being driven without the consent of the insured).

Appellants herein argue Main Street/Old Dominion did not deny coverage but liability. Thus

the Trezona vehicle was an insured vehicle. This argument is foreclosed given both carriers' stipulation that Ms. Trezona was negligent and the cause of Ms. Connelly's injuries. Liability could not be denied only coverage. Moreover, both carriers cite to language in their respective policies defining an insured vehicle. According to Appellants the Trezona vehicle failed to meet the policy language definition of an uninsured vehicle. Appellants made a coverage denial. Further, the policies by their language exclude coverage for injuries arising out of the course of employment. (R. pp 82, Main Street/Old Dominion policy);(R. pp. 41, 47 Allstate policy).

IV. Procuring uninsured motorist benefits can co-exist with the exclusivity provision of the South Carolina Workers' Compensation Act.

Eligibility of UM benefits is compatible with the exclusivity provision of the Workers' Compensation Act. First, the exclusivity provision of the Workers' Compensation Act does not bar UM claims. The exclusivity provision only bars tort actions. A UM claim is a contract action. *Wright v. Smallwood*, 308 S.C. 471, 419 S.E.2d 219 (Sup. Ct. 1992). Second, the Connellys have not sued (in tort or contract) Ms. Trezona or their mutual employer Apple One. Thus there is no breach of the exclusivity provision. Third, the carefully balanced interests crafted by the Workers' Compensation Act are preserved despite allowance of UM benefits. *Machin v. Carus Corp*, 419 S.C. 527, 799 S.E.2d 468 (2017) reiterates the underlying policy considerations of the statute: tort immunity for the employer while instituting a no fault scheme for work place injuries to insure swift and sure but limited compensation. Allowing UM coverage has no impact on the workers' compensation system. Ms. Trezona, Apple One and the workers' compensation insurance carrier will not be negatively affected by the Connellys' receipt of UM benefits[4]. Fourth, the Workers' Compensation Act

[4]In situations where the employer provided the UM coverage, the UM carrier may be entitled to an offset for workers' compensation benefits provided. See, *Sweetser v. SC*

anticipates recovery other than workers' compensation for workplace injuries. South Carolina Code §42-1-560 allows an injured plaintiff to seek an action for workplace injury against a third party despite receiving workers' compensation benefits. These so called third party actions are a recognition by the Legislature that workers' compensation benefits are limited in amount. They are designed to replace lost income and pay for medical expenses. Workers' compensation benefits, unlike tort damages, do not include loss of consortium, pain and suffering, emotional distress, loss of enjoyment of life and punitive damages. To suggest as Appellants do, that workers' compensation will provide the Connellys with some kind of remedy ignores the limited nature of that remedy. An insured is entitled to recover the same amount he would have recovered if the offending motorist had maintained liability insurance. *Ferguson v. State Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 101, 198 S.E.2d 522, 525 (1973).

Finally, Appellants reliance on South Carolina Code §15-78-190 of the Tort Claims Act is misplaced. The South Carolina Tort Claims Act is the exclusive remedy to address injuries caused by tortious conduct of state actors. Appellants assert §15-78-190 allows UM and underinsured benefits if a tort claims remedy is inadequate. If the Legislature wanted a similar provision in the Workers' Compensation Act it would have inserted one. As discussed supra, the Legislature did just that and inserted §42-1-560 in the Act.

Department of Insurance Reserve Fund, 390 S.C. 632, 703 S.E.2d 509 (Sup. Ct. 2010) and South Carolina Code §38-77-220.

V. CONCLUSION

The public policy expressed by the Legislature in enacting the South Carolina uninsured motorist statute, §38-77-150 is to protect motorists harmed by uninsured drivers. Uninsured drivers can include those who are without liability coverage and financially irresponsible, as well as drivers cloaked with immunity from a tort suit. From the perspective of the injured motorist, the outcome from meeting either type of driver on the roadway is the same: no compensation from either. To effectuate the intent of the Legislature this Court must interpret the critical language *legally entitled to recover* as simply a requirement to demonstrate fault. Such an interpretation protects a passenger occupying a vehicle with permission despite her driver being cloaked with workers' compensation immunity from a tort suit. At the same time, recovery of UM benefits does not frustrate the goals of the workers' compensation statutes. Moreover, allowing UM recovery meets the expectation of the parties and certainly allows those who paid for UM insurance premiums the benefit of their bargain.

For these reasons, the Connellys respectfully requests this Court to affirm the ruling of the circuit court granting summary judgment to them for the reasons stated above. Further, this Court may affirm the order of the circuit court based on any ground appearing in the record.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Appellate Case No. 2017-002234

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Case No. 2016-CP-40-5885
Jocelyn Newman, Circuit Court Judge

Stephany A. Connelly and James M. Connelly.....Plaintiffs,

v.

The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trezona.....Defendants,

Of whom Allstate Fire and Casualty Insurance Company, The Main Street America Group and Old Dominion Insurance Company.....Appellants,

AND

Stephany A. Connelly and James M. Connelly.....Respondents

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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211 (b), SCARC.

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v.

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Of which Allstate Fire and Casualty Insurance Company, The Main Street America Group and Old Dominion Insurance Company are the Appellants,

And

Stephany A. Connelly and James M. Connelly are the Respondents.

REPLY BRIEF OF APPELLANT ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY

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STATEMENT OF THE ISSUES ON APPEAL

I. Whether the circuit court erred in finding legal entitlement to recovery is not a condition precedent to the recovery of uninsured motorist coverage under South Carolina's statutory scheme.

II. Whether the circuit court erred in finding the immunity granted by the Workers' Compensation Act transforms a fully insured vehicle into an uninsured vehicle.

III. Whether the circuit court erred in failing to effectuate the legislative intent of the Workers' Compensation Act and Uninsured Motorist Statutes.

In reply to the Brief of Respondents Stephany A. Connelly and James M. Connelly (the "Connellys") and in further support of the Brief of Appellant Allstate Fire and Casualty Insurance Company ("Allstate"), Allstate offers the following arguments, incorporating by reference the background facts stated in its prior Brief.

I. The circuit court erred in finding legal entitlement to recovery is not a condition precedent to the recovery of uninsured motorist coverage under South Carolina's statutory scheme.

The trial court erred in finding the phrase "legally entitled to recover" found in S.C. Code Ann. § 38-77-150 is ambiguous. It is unambiguous when read in the context of the entire statute. As recognized by the South Carolina Supreme Court, "[t]he right to sue and collect from one's own liability insurance carrier in case of a loss caused by a ... driver of an uninsured automobile is a creature of the legislature." *Criterion Ins. Co. v. Hoffmann*, 258 S.C. 282, 292, 188 S.E.2d 459, 463 (1972). Accordingly, "[t]he statute creating the right has set forth the procedure for enforcing the right." *Id.* One needs look no further than the clear language of the statute to determine entitlement to UM coverage.

Subsection (A) of § 38-77-150 mandates that automobile insurance policies must contain uninsured motorist ("UM") provisions "undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle." Subsection (B) then sets forth a prerequisite for actions under UM provisions: copies of the pleadings in the action establishing liability must be served on the insurer. Thus, legal entitlement to recovery means the claimant (in this case, the Connellys) must commence an "action establishing liability" against the uninsured motorist and serve the UM carrier with copies of the pleadings.

Interpreting prior versions of the UM statute containing the same mandate that copies of the pleadings in the action establishing liability must be served on the insurance carrier, the *Criterion* Court recognized the right to recover UM coverage depends on strict compliance with the statute:

> The terms of the statute and the policy which we have quoted are clear and not ambiguous. This being true, there is no room for construction and we are required to apply the statute according to its literal meaning. Most courts take a liberal view when dealing with the question of coverage; however, the procedural obligations that the insured must discharge in order to recover, since they are prescribed by statute, are viewed by the courts as mandatory, and strict compliance with them is a prerequisite to recover.

Criterion, 258 S.C. at 291-92, 188 S.E.2d at 463. In this case, strict compliance with § 38-77-150 requires the Connellys to bring an action against Trezona to establish her legal liability to the Connellys. However, due to Trezona's immunity under the Workers' Compensation Act, the Connellys cannot establish her legal liability. (R.p.147 ¶13.) Therefore, the Connellys have failed to comply with the requirements of § 38-77-150 and are not entitled to UM coverage.

The circuit court erred in ignoring the plain and unambiguous terms of § 38-77-150(A) & (B) and looking to other jurisdictions for an interpretation of "legally entitled to recover" when South Carolina courts have consistently held entitlement to UM coverage hinges on establishing the liability of the uninsured motorist. *See Vernon v. Harleysville Mut. Cas. Co.*, 244 S.C. 152, 159, 135 S.E.2d 841, 844 (1964) ("[R]ecovery under the uninsured endorsement is subject to the condition that the insured establish legal liability on the part of the uninsured motorist."); *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 394, 134 S.E.2d 206, 209 (1964) (holding an UM action is *ex delicto* and requires the insured establish the legal liability of the uninsured motorist before "a direct

action *ex contractu* can be brought to recover from the insurance company endorsement"); *Ferguson v. State Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 102, 198 S.E.2d 522, 525 (1973) (holding an "insurer's liability under the uninsured motorist endorsement ... arises after the liability of the uninsured motorist has been established").

The circuit court further erred in holding the "legally entitled to recover" language of § 38-77-150 simply requires a finding of fault against the uninsured motorist because a finding of fault does not equate to establishing legal liability. Trezona is at fault because her negligence was the cause in fact of the accident and Connelly's resulting injuries and damages. (R.p.147 ¶10[1].) However, Trezona is not legally liable for the accident and Connelly's injuries and damages because she is Connelly's co-employee and is immune from suit. *See Machin v. Carus Corp.*, 419 S.C. 527, 540, 799 S.E.2d 468, 475 (2017) (holding that for policy reasons the employer may not be the legal cause of the plaintiff's injuries). As recognized by the South Carolina Supreme Court in *Machin*, "legal cause is a policy decision made by the legislature or the courts to deny liability for otherwise actionable conduct." *Id.* at 542, 799 S.E.2d at 476.

The approach adopted by the circuit court ignores the distinction between cause in fact and legal cause and essentially holds § 38-77-150 meaningless. Entitlement to UM coverage requires establishing the legal liability of the uninsured motorist and not simply finding fault. As described by the *Criterion* Court, the precedent the Connellys "would have this Court establish is inconsistent with the statute and the endorsements and would

[1] This stipulation was made "[f]or purposes of the declaratory judgment action only." The carriers have not admitted Trezona's negligence for the purpose of a tort action. The limited nature of this stipulation is reflected in the subsequent stipulation that Connelly is not legally entitled to recover damages from Trezona because Trezona is immune from suit pursuant to the Workers' Compensation Act. (R.p.147 ¶13.)

invite litigants to neglect the procedures obviously intended by the legislature and clearly declared in the statute." *Criterion*, 258 S.C. at 295-96, 188 S.E.2d at 465. Because the circuit court erred in holding "legally entitled to recover" is ambiguous and ignoring § 38-77-150's mandate that legal liability must established, the Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendants' Motion for Summary Judgment should be reversed.

II. The circuit erred in finding the immunity granted by the Workers' Compensation Act transforms a fully insured vehicle into an uninsured vehicle.

The circuit court's holding that the vehicle driven by Trezona is uninsured because Trezona is immune from suit changes the landscape of uninsured motorist coverage in South Carolina. In an area of insurance law where "[t]he General Assembly has unequivocally spoken on the prerequisites to bringing an action against an uninsured motorist carrier," the circuit court has erroneously interpreted statutory language and judicially expanded coverage. *See Collins v. Doe*, 352 S.C. 462, 466, 574 S.E.2d 739, 741 (2002) ("The legislature unambiguously required that a plaintiff seeking to recover against her uninsured motorist coverage for the negligence of an unknown John Doe driver strictly comply with the plain language of the statute."); *Ex parte Carlton,* 867 So. 2d 332, 337 (Ala. 2003) ("Expanded coverage is appropriate when the policyholder and the insurer contract for it or when the legislature requires it. But, such coverage should not be imposed by a court through an expansive interpretation of clear statutory language.").

In the instant case, the at-fault driver was negligent but not legally liable for the accident. Per the circuit court's ruling, this makes the vehicle uninsured. Under the same

reasoning, a liability carrier's refusal to pay liability coverage based upon a statute of limitations defense would also render the vehicle uninsured. The situations are the same: the driver is negligent and the driver has liability insurance but the carrier refuses to pay based upon a legal/procedural defense. Does an effective statute of limitations defense transform a fully insured vehicle into an uninsured vehicle[2]? Surely this is not the result intended by the legislature.

Further, the Connellys mischaracterize Allstate's policy. To be clear, the instant action is one for a declaratory judgment. The exclusions referenced by the Connellys are found in the liability section of Allstate's policy. The Connellys are not seeking coverage under Allstate's liability coverage. Further, if a co-employee could assert a claim against the Connellys, Allstate's policy states that such a claim, if viable, would be covered[3].

Similarly, the Connellys' reliance on *Unisun Insurance Co. v. Schmidt*, 339 S.C. 362, 529 S.E.2d 280 (2000), is misplaced. That case involved the denial of liability coverage based upon lack of permissive use, not a denial of liability. There was no liability coverage in *Unisun* because the person driving the vehicle did not meet the policy's definition of an insured person. The liability policy simply did not apply to the accident because it was not an insured event. Here, Old Dominion did not deny coverage – Trezona is an insured person and was driving the vehicle with permission. Coverage exists and applies to the accident. The accident is an insured event. However, Trezona has no legal liability – she is not legally responsible to the Connellys for their injuries.

---

[2] Under the Connellys' theory, assertion of any legal defense to liability would render the vehicle uninsured.

[3] The exclusion referenced in the Connellys' Brief is contained in "Part 1 Automobile Liability Insurance" and states: "This coverage does not apply for: ... anyone other than **you**, for claims made by a co-worker injured in the course of employment." (R.p.43.)

Therefore, Old Dominion refused to pay any of its liability limits to the Connellys. The holding in *Unisun* has absolutely no bearing on the issue presented in this case. Based upon established South Carolina law and the terms of the UM provision of Allstate's policy, Trezona's vehicle does not meet the definition of an uninsured vehicle.

III. The circuit court erred in failing to effectuate the legislative intent of the Workers' Compensation Act and the Uninsured Motorist Statutes.

The Connellys' failure to meet the requirements imposed by the UM statutes is fatal to their claim. South Carolina courts have consistently required strict compliance with UM statutes despite the fact that such statutes are remedial in nature and should be liberally construed. *See, e.g., Shealy v. Doe*, 370 S.C. 194, 634 S.E.2d 45 (Ct. App. 2006) (rejecting interpretation of UM statute that would "totally eviscerate" its efficacy because even though "the result is lamentable to the injured party," it is "mandated by the statute"). For instance, in *Enos v. Doe*, 380 S.C. 295, 669 S.E.2d 619 (Ct. App. 2008), the Court of Appeals affirmed a directed verdict for an insurance carrier because the plaintiff seeking UM coverage failed to comply with the statutory mandate requiring a sworn affidavit for John Doe claims. Faced with the same policy arguments as the Connellys assert in this case, the Court strictly enforced the statute, reasoning that the "legislature has clearly dictated that recovery from an uninsured motorist carrier is only allowed when certain conditions are met." *Enos*, 380 S.C. at 312, 669 S.E.2d at 627. According to the Court, "[t]he General Assembly has unequivocally spoken on the prerequisites to bringing an action against an uninsured motorist carrier, and [plaintiff] has failed to meet the *sine qua non* prescribed by the legislature." *Id.*

Similarly, the Connellys have failed to meet the statutory mandates imposed by the legislature because they are not "legally entitled to recover" from Trezona and

because Trezona was not operating an uninsured vehicle. While the denial of UM coverage may be a "lamentable" result, it is up to the legislature to change the result:

> It is perhaps unnecessary to say that courts have no legislative powers, and in the interpretation and construction of statutes their sole function is to determine, and within the constitutional limits of the legislative power to give effect to, the intention of the Legislature. They cannot read into a statute something that is not within the manifest intention of the Legislature as gathered from the statute itself. To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret. The responsibility for the justice or wisdom of legislation rests with the Legislature, and it is the province of the courts to construe, not to make, the laws. There is a marked distinction between liberal construction of statutes, by which courts, from the language used, the subject-matter, and the purposes of those framing them, find out their true meaning, and the act of a court in ingrafting upon a law something that has been omitted, which the court believes ought to have been embraced. The former is a legitimate and recognized rule of construction, while the latter is judicial legislation, forbidden by the constitutional provisions distributing the powers of government among three departments, the legislative, the executive, and the judicial.

Laird, 243 S.C. at 395, 134 S.E.2d at 209 (1964) (citing *Creech v. S.C. Pub. Serv. Auth.*, 200 S.C. 127, 20 S.E.2d 645 (1942), *overruled on other grounds by Williams v. Town of Hilton Head Island*, 311 S.C. 417, 429 S.E.2d 802 (1993)). Further recognizing the legislature alone holds the power to change statutes, the *Criterion* Court held:

> If it is advisable that the statute be changed, it is within the province of the legislature to do so. For the courts "to set about to relieve against the consequences of the insured's neglect under the facts and circumstances of this case would inevitably lead to the establishment of a mischievous precedent, and to great uncertainty and confusion in the determination of future cases of a similar nature. It is needless to describe the effects of such a condition of things in order to appreciate the necessity of avoiding it."

Criterion, 258 S.C. at 294, 188 S.E.2d at 464 (internal citations omitted). In this case, the circuit court departed from the plain language of the UM statute and judicially expanded

UM coverage. The court's erroneous assumption of legislative powers requires reversal of its Order.

CONCLUSION

For the reasons stated herein and in the Brief of Appellant, Allstate respectfully requests reversal of the circuit court's Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendants' Motion for Summary Judgment.

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April 12, 2018

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In the Court of Appeals
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v.

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Of whom, Allstate Fire and Casualty Insurance Company; The Main Street America Group; and Old Dominion Insurance Company are ..... Appellants

and

Of whom, Stephany A. Connelly and James M. Connelly are ..... Respondents

---

APPELLANT ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S CERTIFICATION AS TO BRIEF AND REPLY BRIEF

Counsel for Appellant, Allstate Fire and Casualty Insurance Company, hereby certifies that the Brief and Reply Brief of Appellant Allstate complies with Rule 211(b).

[Signature Page to Follow]

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Of which Allstate Fire and Casualty Insurance Company, The Main Street America Group, Old Dominion Insurance Company are the Appellants,

And

Stephany A. Connelly and James M. Connelly are the Respondents.

THE APPELLANTS
The Main Street America Group and Old Dominion Insurance Company's
NOTICE OF JOINDER IN THE APPELLANT
Allstate Fire and Casualty Insurance Company's
FINAL REPLY BRIEF

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THE STATE OF SOUTH CAROLINA
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The Main Street America Group and Old Dominion Insurance Company's
NOTICE OF JOINDER IN THE APPELLANT
Allstate Fire and Casualty Insurance Company's
FINAL REPLY BRIEF

The Appellants, The Main Street America Group, Old Dominion Insurance Company (Old Dominion and Main Street), hereby join in the Initial Reply Brief of Appellant Allstate Fire and Casualty Insurance Company, adopt the argument contained therein, and make two additional points in reply to Respondents Stephany A. Connelly and James M. Connelly's (the Connellys) Brief:

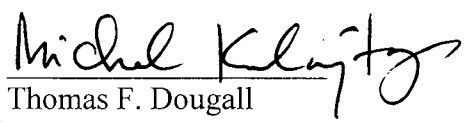
1. The policy exclusion referenced by the Connellys on page 15 of their Brief states that Old Dominion does "not provide Liability Coverage for any 'insured' . . . for 'bodily injury' . . . to an *employee of that 'insured'* during the course of employment." (R. pp. 82–83.) (emphasis added). Connelly was not an employee

of Trezona at the time of the accident and, therefore, this exclusion was not, and could not have been, the grounds for denial of Connelly's claim.

2. Contrary to their assertion on page 9 of their Brief, the Connellys did not serve pleadings as prescribed by § 38-77-150(B). This is because § 38-77-150(B) contemplates two separate actions, one in tort against the uninsured motorist, and another in contract against the insurer. Here, the Connellys' declaratory judgment action is an action seeking to establish liability of the insurers under UM endorsements, and not an action seeking to establish Trezona's liability in tort.

The undersigned certifies compliance with the requirements of Rule 211(b), SCARC.

Respectfully submitted,



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Columbia, South Carolina
March 30, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Stephany A. Connelly and James M. Connelly, Plaintiffs,

v.

The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trezona, Defendants,

Of which Allstate Fire and Casualty Insurance Company, The Main Street America Group, and Old Dominion Insurance Company are the Appellants,

And

Stephany A. Connelly and James M. Connelly are the Respondents.

Appellate Case No. 2017-002234

Appeal From Richland County
Jocelyn Newman, Circuit Court Judge

Opinion No. 5755
Submitted June 1, 2020 – Filed August 12, 2020

AFFIRMED

Thomas Frank Dougall and Michal Kalwajtys, both of Dougall & Collins, of Elgin, for Appellants The Main Street America Group and Old Dominion Insurance Company.

Alfred Johnston Cox and Ashley Berry Stratton, both of Gallivan, White & Boyd, PA of Columbia, for Appellant Allstate Fire and Casualty Insurance Company.

Theile Branham McVey and John D. Kassel, both of Kassel McVey, of Columbia, for Respondents.

THOMAS, J.: Stephany A. Connelly (Connelly) and James M. Connelly (collectively, Respondents) filed this declaratory judgment action against The Main Street America Group (MSA), Old Dominion Insurance Company (Old Dominion), Allstate Fire and Casualty Insurance Company (Allstate) (collectively, Insurers), Debbie Cohn, and Freya Trezona.[1] Insurers appeal the trial court's grant of summary judgment to Respondents. Insurers argue the trial court erred in (1) finding legal entitlement to recovery is not a condition precedent to recovery of uninsured motorist coverage; (2) finding the immunity granted by the Workers' Compensation Act transforms a fully insured vehicle into an uninsured vehicle; and (3) failing to effectuate legislative intent. We affirm.

I. STIPULATED FACTS

The parties filed a Joint Stipulation of Facts. Old Dominion issued an automobile liability insurance policy (Old Dominion Policy) to Cohn containing liability coverage and uninsured motorist (UM) coverage of $100,000 per person, $300,000 per accident.[2] Trezona is Cohn's daughter. Cohn and Trezona owned a 2012 Jeep, which was insured under the Old Dominion Policy. Allstate issued an automobile policy to Respondents with liability coverage and UM coverage of $250,000 per person and $500,000 per accident (Allstate Policy).

On February 24, 2015, Connelly was riding as a passenger in the Jeep driven by Trezona. For purposes of this declaratory judgment action only, the parties stipulated that Trezona's negligence caused an accident resulting in injuries and damages to Connelly.

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[1] Cohn and Trezona were dismissed by consent.

[2] In Respondents' complaint, Respondents identify the policy as written by MSA and Old Dominion.

Connelly and Trezona were co-employees, both working within the course and scope of their employment with Apple One Employment Agency at the time of the accident. Connelly began receiving benefits under the South Carolina Workers' Compensation Act (the Act). "Connelly is not legally entitled to recover damages from Trezona" because Trezona is immune from suit as a co-employee under the exclusivity provision of the Act.

Connelly made a claim for damages under the liability and UM coverage of the Old Dominion Policy. Old Dominion denied the claim, relying on Trezona's immunity under the Act. Connelly also made a claim under the UM coverage of the Allstate Policy. Allstate denied the claim on the grounds the vehicle was not uninsured at the time of the accident, and the Act provided Connelly's exclusive remedy.

II. OTHER FACTS

Respondents filed this declaratory judgment action. Insurers answered, denying liability and moving for summary judgment. Respondents also moved for summary judgment. The court heard arguments on the cross-motions for summary judgment. By order filed October 2, 2017, the court granted Respondents' motion for summary judgment and denied Insurers' motions for summary judgment. Insurers appeal.

III. STANDARD OF REVIEW

"Because declaratory judgment actions are neither legal nor equitable, the standard of review depends on the nature of the underlying issues." *Goldston v. State Farm Mut. Auto. Ins. Co.*, 358 S.C. 157, 166, 594 S.E.2d 511, 516 (Ct. App. 2004). The "determination of coverage under an insurance policy" is an action at law. *Nationwide Mut. Ins. Co. v. Prioleau*, 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct. App. 2004). In an action at law, tried without a jury, the appellate court will not disturb the trial court's findings of fact unless they are found to be without evidence that reasonably supports those findings. *Id.* However, "[w]hen an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts." *WDW Props. v. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000).

IV. LAW/ANALYSIS

A. "Legally Entitled to Recover"

Insurers argue the trial court erred in finding legal entitlement to recovery is not a condition precedent to entitlement to UM coverage. We disagree.

The Allstate policy states as follows:

> **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 Old Dominion Policy similarly states, "We will pay damages which an 'insured' is legally entitled to recover from the owner or operator of an 'uninsured motor vehicle' because of: 1. "Bodily injury" . . . and 2. 'Property damage' . . . ."

The South Carolina UM statute provides that a UM policy must "pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle . . . ." S.C. Code Ann. § 38-77-150 (A) (2015).

Insurers argue Connelly is precluded from coverage because "legally entitled to recover" requires Connelly to be able to maintain an action against Trezona and secure a judgment against her before receiving UM coverage. Because Trezona is immune from suit under the Act's exclusivity provision, and Connelly stipulated she was not legally entitled to recover from Trezona, Insurers argue Connelly cannot recover under the UM provisions of the policies.

The trial court found "if the meaning of the statutory language ['legally entitled to recover'] is ambiguous and simply means the insured must demonstrate fault on the part of the uninsured driver[,] then the discussion is far from over." The court noted the language is not defined in either the statute or the insurance policies. The court also noted a "[r]eview of decisions from other jurisdictions addressing

similar language and coming to different interpretations suggest[s] ambiguity of this statutory language."

The trial court acknowledged the jurisdictions "interpreting the 'legally entitled to recover language' as a fatal obstacle" to Connelly's ability to collect UM benefits. *See Otterberg v. Farm Bureau Mut. Ins. Co.*, 696 N.W.2d 24, 30–31 (Iowa 2005) (holding an insured was not legally entitled to recover UM benefits because the injuries sustained were covered under the workers' compensation system); *State Farm Mut. Auto. Ins. Co. v. Slusher*, 325 S.W.3d 318, 324 (Ky. 2010) (denying UM coverage for injuries resulting from a co-employee's negligent operation of a motor vehicle where the workers' compensation law granted immunity to the co-employee); *Wachtler v. State Farm Mut. Auto. Ins. Co.*, 835 So. 2d 23, 28 (Miss. 2003) (finding a claimant was not legally entitled to recover UM benefits from his personal insurer because he was not legally entitled to recover damages from his co-employee due to the exclusivity provision of the workers' compensation statute). However, the court also noted other jurisdictions that "have interpreted the same or similar language in a broader vein." *See Torres v. Kansas City Fire & Marine Ins. Co.*, 849 P.2d 407, 410 (Okla. 1993) (finding a claimant was entitled to UM coverage despite a negligent co-employee's immunity because the coverage was intended to compensate an insured for a loss for which the tortfeasor is unable to make full compensation, and the insurer assumed the risk); *Jenkins v. City of Elkins*, 738 S.E.2d 1, 11 (W.Va. 2012) (finding "[t]he lack of a statutory or policy definition for the phrase 'legally entitled to recover,' and the parties' conflicting interpretation of the same" rendered the phrase ambiguous); *id.* at 14 (construing "'legally entitled to recover' . . . to mean that an insured is entitled to uninsured coverage merely by establishing fault on the part of the tortfeasor and the amount of the insured's damages").

The West Virginia court in *Jenkins* summarized the issue as follows:

> The parties have pointed out that there is a split of authority on the meaning that should be attached to the phrase. Our research indicates that a slight majority of courts that have considered the issue have determined that the phrase "legally entitled to recover," or its equivalent, means that an insured is entitled to uninsured motorist coverage merely by establishing fault on the part of the tortfeasor and the amount of the insured's damages; the tortfeasor's immunity, for whatever reason, does not prevent coverage.

738 S.E.2d at 12. The court in *Jenkins* continued, stating as follows:

> [T]he existence of a tort immunity or other limitation on the insured's rights against the tortfeasor should not preclude claims under the uninsured motorist coverage on the ground that the insured would not be legally entitled to recover from the tortfeasor.
>
> First, the immunity only absolves the defendant from liability. Since the uninsured motorist insurance company has no relation to the tortfeasor and allowing an insured to recover uninsured motorist insurance benefits does not adversely affect any interest of the tortfeasor which the tort immunity protects, the tort immunity should have no effect on whether an insurance company providing first party, uninsured motorist insurance coverage for an individual is obligated to indemnify the insured.
>
> Second, . . . [t]he problem should be adjudicated by balancing the public policy interests. The uninsured motorist insurance statutes . . . reflect a strong public policy in favor of providing indemnification for persons who are injured by uninsured motorists. Whether the tortfeasor is immune from litigation is, therefore, usually a matter of relatively small importance in regard to the indemnification of an insured person by an insurer . . . . The important fact is that no compensation is available from the negligent tortfeasor.

Id. at 13−14 (alterations in original) (quoting Alan I. Widiss & Jeffrey E. Thomas, *Uninsured & Underinsured Motorist Insurance*, § 7.14, at 532 (2005)). Finally, the court in *Jenkins* rejected the reasoning of jurisdictions not permitting recovery as inconsistent with the public policy behind the uninsured motorist statute. *Id.* at 13−14.

Based in part on the differing interpretations of "legally entitled to recover," the trial court found our South Carolina statute is ambiguous as to the language "legally entitled to recover" and construed the language in a manner "consistent

with the intent of the legislature . . . to protect against the peril of injury . . . by an uninsured motorist . . . ." The court concluded, "[i]nterpreting the statute to require that plaintiffs first secure a judgment . . . undermines the legislative intent." Thus, the court found "legally entitled to recover" required only "demonstrating fault and resulting damages," which Connelly satisfied as the parties stipulated to Trezona's fault and Connelly's damages.

We find no error in the trial court's application of statutory interpretation to the language "legally entitled to recover." In *Ferguson v. State Farm Mutual Automobile Insurance Co.*, our supreme court concluded coverage under a UM policy arose after the liability of the uninsured motorist had been established. 261 S.C. 96, 102, 198 S.E.2d 522, 525 (1973) ("It is our conclusion that the appellant's liability under the uninsured motorist endorsement is contractual in nature and arises after the liability of the uninsured motorist has been established . . . ."). The court in *Ferguson* did not suggest procurement of a judgment was necessary. *Id.* The uninsured motorist legislation "is remedial in nature and is entitled to a liberal construction to effectuate the purpose thereof." *Gunnels v. Am. Liberty Ins. Co.*, 251 S.C. 242, 247, 161 S.E.2d 822, 824 (1968). "[A]ny limiting language in an insurance contract which ha[s] the effect of providing less protection than made obligatory by the statutes is contrary to public policy and is of no force and effect." *Ferguson*, 261 S.C. at 100, 198 S.E.2d at 524. We agree with the court in *Jenkins* and find the phrase "legally entitled to recover" should be "construed to mean that an insured is entitled to uninsured coverage merely by establishing fault on the part of the tortfeasor and the amount of the insured's damages." *Jenkins*, 738 S.E.2d at 14.

Furthermore, we find support from this court's opinion in *Antley v. Nobel Insurance Co.*, 350 S.C. 621, 567 S.E.2d 872 (Ct. App. 2002), *overruled in part on other grounds by Sweetser v. S.C. Dep't of Ins. Reserve Fund*, 390 S.C. 632, 703 S.E.2d 509 (2010).[3] Antley was injured while operating a truck owned by his employer in an accident caused by an unidentified driver in Georgia. *Antley*, 350 S.C. at 624, 567 S.E.2d at 873. Antley filed an action in Georgia seeking UM coverage under his personal automobile insurance policy. *Id.* Antley also claimed workers' compensation benefits. *Id.* at 624, 567 S.E.2d at 873−74. The insurer

[3] The court in *Sweetser* overruled *Antley* to the extent it did not permit an employer "to offset the employee's recovery under the automobile policy against the employee's compensation benefits . . . ." *Sweetser*, 390 S.C. at 637 n.5, 703 S.E.2d at 512 n.5.

denied coverage, in part arguing Antley's exclusive remedy was provided for under the Act. *Id.* The trial court found Antley was not excluded from pursuing coverage under the UM provision of the policy. *Id.* at 624, 567 S.E.2d at 874. On appeal, this court rejected the insurer's argument, stating as follows:

> Our supreme court previously has rejected the same argument now advanced by [the insurer], finding that workers' compensation gives an employee "the right to swift and sure compensation," while an employer in turn "receives *immunity from tort actions* by the employee." *Wright v. Smallwood*, 308 S.C. 471, 475, 419 S.E.2d 219, 221 (1992) (quoting *Parker v. Williams & Madjanik, Inc.*, 275 S.C. 65, 70, 267 S.E.2d 524, 526 (1980)). In *Wright*, the court went on to reiterate that because UM coverage sounds in contract, not tort, "the exclusivity provision of [the Act] does not operate to bar [a] contractual claim for UM benefits." *Id.*

Id. at 626, 567 S.E.2d at 874 (third alteration in original). We likewise find support from the United States District Court interpreting South Carolina law in *Sanders v. Doe*, 831 F.Supp. 886 (S.D. Ga. 1993). The court in *Sanders* rejected a similar argument by the insurer that the plaintiff was barred from recovering UM benefits because of the exclusive remedy provision of the Act. *Sanders*, 831 F.Supp. at 890. The court found the following:

> Workers' compensation laws shift the risk of work-related injury from the employee to the employer but compromise the employee's right to sue at common law. The employer's protection from suit by the injured employee, however, is not so broad to encompass any conceivable form of action. Rather, workers' compensation laws are intended to shield the employer, and any other statutorily-insulated entity, from liability in tort actions. Uninsured motorist coverage sounds in contract. Thus, [the Act] does not preclude Plaintiff's recovery of uninsured motorist benefits from [the insurer].

Id. at 891 (internal citation omitted). We find no error by the trial court in finding Connelly was not precluded from recovery of UM benefits.

To the extent Insurers separately rely on the failure to be served with pleadings of a tort action against Trezona by Connelly under section 38-77-150(B), we likewise find no error. As noted by the trial court, the language of section 39-77-150(B) does not address any requirement of filing suit against the at-fault driver. *See* §38-77-150(B) (2015) ("No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer . . . "). Respondents filed this declaratory judgment action, Insurers were served, and the parties stipulated to Trezona's negligence. We find Insurers were afforded the protection intended by section 38-77-150(B).

B. Uninsured Vehicle

Insurers argue the trial court erred in finding the immunity granted by the Act transformed Trezona's insured vehicle into an uninsured vehicle because they denied liability, not coverage. We disagree.

In the parties' Joint Stipulation of Facts, Insurers stipulated that "Trezona's negligence caused the accident and Connelly's resulting injuries and damages." The trial court noted the stipulation and found Insurers' arguments−that they did not deny coverage but denied liability and Trezona's vehicle was therefore an insured vehicle−were "foreclosed" because liability could not be denied given the stipulations; thus, only coverage could be denied, and Insurers made coverage denials. Citing the statutory definition of an insured, the court next found Connelly was an "insured" under either policy. Connelly was a named insured under the Allstate Policy and she was occupying the Trezona vehicle as a passenger with permission of the owner, which made her an insured under the Old Dominion Policy; thus, Connelly was an insured under each policy.

The statutory definition of an insured is as follows:

> "Insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above.

S.C. Code Ann. § 38-77-30(7) (2015). We find no error in the trial court's finding that Connelly was an "insured" in this case. *See, e.g.*, *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 367, 529 S.E.2d 280, 282 (2000) (determining a "vehicle [fell] within the plain language of the [uninsured motorist] statute because [the insurer] successfully denied liability coverage"); *id.* at 368, 529 S.E.2d at 283 (finding the permissive user entitled to uninsured motorist coverage because she was injured by an uninsured motorist, the insurer successfully denied liability, and the vehicle became an uninsured motor vehicle). Pursuant to the stipulations, Insurers denied coverage rather than liability. *See Kirkland v. Allcraft Steel Co.*, 329 S.C. 389, 392, 496 S.E.2d 624, 626 (1998) ("A stipulation is an agreement, admission or concession made in judicial proceedings by the parties thereto or their attorneys."); *id.* ("Stipulations, of course, are binding upon those who make them."). Thus, due to the immunity provided by the exclusivity provision of the Workers' Compensation Act, the vehicle was, in effect, an uninsured vehicle, and Connelly is entitled to UM benefits.

C. Legislative Intent

Insurers finally argue the trial court erred in failing to effectuate the legislative intent of the Act and the UM statutes. We disagree.

The trial court recognized the "cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." The court also noted the purpose of the UM statutes, their remedial nature, and the legislative intent to benefit injured persons.

"The purpose of the uninsured motorist law is 'to provide benefits and protection against the peril of injury or death by an uninsured motorist to an insured motorist, his family, and the permissive users of his vehicle.'" *Schmidt*, 339 S.C. at 368, 529 S.E.2d at 283 (quoting *Ferguson v. State Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973)). "[T]he statute is remedial in nature, enacted for the benefit of the injured persons, and is to be liberally construed so that the purpose intended may be accomplished." *Nationwide Mut. Ins. Co. v. Smith*, 376 S.C. 60, 69, 654 S.E.2d 837, 841 (Ct. App. 2007). Our supreme court has distinguished between UM claims as contract actions, and the exclusivity provision of the Act, which bars tort claims. *See Wright v. Smallwood*, 308 S.C. 471, 473, 419 S.E.2d 219, 220 (1992) (explaining governmental immunity under the South Carolina Tort Claims Act did not bar a claim against the governmental entity for UM benefits because UM coverage sounds in contract rather than tort). We find

no error by the trial court in its application of the rules of statutory construction in determining the legislative intent.

V. CONCLUSION

Based on the foregoing, the order on appeal is

AFFIRMED.[4]

LOCKEMY, C.J., and MCDONALD, J., concur.

[4] We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
C/A No. 2016-CP-40-05885
Jocelyn Newman, Circuit Judge

RECEIVED
Aug 27 2020
SC Court of Appeals

Appellate Case No. 2017-002234

Stephany A. Connelly and James M. Connelly, Plaintiffs,

v.

The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trezona Defendants,

Of which Allstate Fire and Casualty Insurance Company, The Main Street America Group, Old Dominion Insurance Company are the Appellants,

And

Stephany A. Connelly and James M. Connelly are the Respondents.

THE APPELLANTS
The Main Street America Group and Old Dominion Insurance Company's
PETITION FOR REHEARING

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INTRODUCTION

The appellants, The Main Street America and Old Dominion Insurance Company, hereby petition this Court, in accordance with Rule 221 of the South Carolina Appellate Court Rules, for rehearing of this appeal. This petition is made on the following grounds:

In its Opinion No. 5755, filed on August 12, 2020, the Court applied the concepts of fault, liability, and coverage without due analytical rigor and overlooked or misapprehended the following points:

- The parties' stipulation that "Trezona's negligence caused the accident" does not amount to an admission of her liability in tort when the parties also stipulated that Old Dominion denied Connelly's claim because "Trezona cannot be legally responsible to Connelly due to her immunity under the Act";

- A fair reading of the phrase "legally entitled to recover as damages," in accordance with the ordinary meaning of its constituent words, does not reveal any semantic dichotomy that could support a finding of ambiguity, particularly in light of Connelly's stipulation that she "is not legally entitled to recover damages from Trezona, because Trezona is immune from suit as a co-employee under the exclusivity provision of the Act."

- The Supreme Court's opinions in *Laird* v. *Nationwide*, *Vernon v. Harleysville*, *Park v. Safeco*, and *Lawson v. Porter*, hold that recovery under a UM endorsement is subject to the condition that the insured establish the at-fault driver's legal liability in a tort action;

- In *Ferguson v. State Farm* the insured obtained a judgment against the at-fault driver before proceeding against the insurance company to recover benefits under the UM endorsement; and

- Unlike here, the at-fault drivers in *Antley v. Nobel* and *Sanders v. Doe* were not vested with immunity to a tort action and, therefore, having instituted lawsuits against those drivers, the victims could seek UM benefits from their insurers.

DISCUSSION[1]

I. South Carolina caselaw has long held that a judgment against the at-fault driver is a *sine qua non* of an action against an insurer for recovery of the benefits under the policy's uninsured motorist coverage.

Under § 38-77-150(A) of the South Carolina Code, the insurers are to include in their policies a provision "undertaking to pay the insured all sums he is *legally entitled to recover as damages* from the owner or operator of the uninsured motor vehicle." S.C. Code Ann. § 38-77-150(A) (2015) (emphasis added). This Court endorsed the trial court's view that, in spite of the statutory language, "finding entitlement to recovery is not a condition precedent to entitlement to UM coverage." *Connelly v. The Main Street America Group*, Op. No. 5755 (S.C. Ct. App. filed Aug. 12, 2020) (Shearouse Adv. Sh. No. 31 at 35). This Court failed to grapple, however, with a string of opinions of the South Carolina Supreme Court that hold otherwise.

A. *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 134 S.E.2d 206 (1964)

Mrs. Laird sued an uninsured at-fault driver and won a judgment awarding both compensatory and punitive damages. *Id.* at 390–92, 134 S.E.2d at 207–08. Having established the driver's liability in tort, she demanded her uninsured-motorist-coverage (UM) carrier to pay the sums that equaled the damages award, in accordance with its policy obligation. *Id.* Because the insurer, Nationwide Insurance Company, refused to pay the sum of punitive damages, Laird sued for breach of contract. *Id.* The circuit court found for Laird and Nationwide appealed. *Id.*

Considering the issue whether Nationwide was required to pay the punitive-damages portion of the judgment, the Supreme Court first noted the language of the UM endorsement of

[1] These appellants hereby incorporate by reference the statement of facts and the argument section of their final brief and adopt the arguments made by the appellant, Allstate Fire and Casualty Insurance Company, in its petition for rehearing.

Nationwide's policy as consistent with the statutory command: The endorsement "obligat[ed] the insurer to pay the insured 'all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle." *Id.* at 393, 134 S.E.2d at 209. The court then held that "[r]ecovery under the uninsured endorsement is *subject to the condition* that the insured *establish legal liability* on the part of the uninsured motorist." *Id.* at 394, 134 S.E.2d at 209 (emphasis added). The motorist's legal liability is to be established in a tort action. *Id.* The *Laird* court was explicit that only "[a]fter a *judgment is entered* against the uninsured motorist, a direct action *ex contractu* can be brought to recover from the insurance company on its endorsement . . . ." *Id.* (emphasis added).

B. Vernon v. Harleysville Mut., 244 S.C. 152, 135 S.E.2d 841 (1964)

Just three and a half months after deciding *Laird*, the South Carolina Supreme Court issued an opinion in *Vernon v. Harleysville*, a case involving a declaratory judgment action for allocation of liability between two insurers. 244 S.C. at 153, 135 S.E.2d 842. The plaintiff had recovered a judgment against the uninsured motorist and then sought payment of benefits under the UM and collision coverages. *Id.*

Having parsed the language of the policies at issue, the Supreme Court observed that the UM "endorsement guarantees payment, within specified limits, of *a judgment recovered against an uninsured motorist on his tort liability.*" *Id.* at 158, 135 S.E.2d at 844 (emphasis added). In other words, an insured does not have an enforceable right to seek UM benefits from its insurer until a jury delivers a verdict awarding damages from the at-fault driver.

The court went on to cite its recent opinion in *Laird* to expound the statutory provision obligating insurers to undertake to pay all sums their insureds are legally entitled to recover as damages:

> We have held that *recovery* under the uninsured endorsement *is subject to the condition that the insured establish legal liability on the part of the uninsured motorist*. Such an action is *ex delicto* and the liability and the amount of damages are the only issues to be determined therein. *After judgment is entered against the uninsured motorist*, a direct action can be brought to recover from the insurance company on its endorsement.

Id. at 159, 135 S.E.2d 844 (emphasis added) (citing *Laird v. Nationwide Insurance Co.*, 243 S.C. 388, 134 S.E.2d 206 (1964)).

C. *Lawson v. Porter*, 256 S.C. 65, 180 S.E.2d 643 (1971)

In *Lawson*, the Supreme Court considered whether an insurer—appearing in the action in which the insured sought to establish the uninsured driver's liability in tort—could assert its subrogation rights and other policy defenses. *Id.* at 67–68, 180 S.E.2d at 643–44. The court drew a careful distinction between the action establishing tort liability of the at-fault driver and a contract action establishing an insurer's liability under the UM endorsement. *Id.* at 68, 180 S.E.2d at 644. The court reiterated *Laird*'s holding that the former, resulting in a judgment, is necessary for the latter's viability and held that "in the event the plaintiff *obtains a judgment* against the defendant and an action *ex contractu* is brought by him against [the insurer], under the uninsured motorist provision of his policy, then [the insurer] may plead any policy defenses . . . ." *Id.* at 68–69, 180 S.E.2d at 644.

This holding all but outright states that a tort action resulting in a judgment against the at-fault driver is a condition precedent to recovery from the UM insurer.[2]

[2] Note that this reading of the phrase "legally entitled to recover as damages" has been embraced by the United States Courts of Appeals for the Fourth and Third Circuits. *See Adcock v. Allstate Ins. Co.*, 936 F.2d 567 (4th Cir. 1991) ("Under South Carolina law, recovery under an uninsured motorist endorsement . . . is subject to the condition that the insured first establish the legal liability of the uninsured motorist. . . . Because [the insured]'s release of the [at-fault driver] barred him from ever establishing the condition precedent to his recovery of benefits from his own insurance company, summary judgment was proper . . . ."); *O'Brien v. Government Employees Insurance Company*, 372 F.2d 335, 341–42 (3rd Cir. 1967) ("We also note that

D. H.C. Park v. Safeco Inc. of America, 251 S.C. 410, 162 S.E.2d 709 (1968)

The Supreme Court's decision in *Park v. Safeco* perfectly illustrates operation of *Laird*'s holding that the statutory phrase "legally entitled to recover as damages" sets a condition precedent (in the form of a tort judgment against the at-fault driver) to recovery of the UM benefits.

Mr. Park suffered injuries in a collision with one Richard McCall. Before suing McCall in tort, however, Park filed a declaratory judgment action against two insurers: his own UM carrier, Southern Home Insurance Company, and McCall's liability insurer, Safeco Insurance Company of America. *Id.* at 411–12, 162 S.E.2d at 709–10. According to the Supreme Court, "[t]he effect of the plaintiff's request to the court [wa]s to ask it to determine which insurance company, if either, should pay a judgment when and if such should be obtained." *Id.* at 414, 162 S.E.2d at 711.

The court held that Park had no standing to sue the insurers until and unless he established McCall's liability in tort. *Id.* at 415, 162 S.E.2d at 711. This is because, Park

> ha[d] no right to call upon McCall for payment of damages until he establishe[d] liability, and accordingly, *he ha[d] no right* to call upon any insurance company alleged to protect McCall, nor *to call upon his own insurance carrier under the uninsured motorist endorsement of his own policy until such liability [w]as fixed*. Stated another way, no right to recover c[ould] accrue to plaintiff against either insurance company until and unless McCall be[came] liable to pay.

Id. at 413, 162 S.E.2d at 710 (emphasis added).

Virginia's sister state, South Carolina, has enacted an Uninsured Motorists Act, modeled after the Virginia Act, which contains provisions . . . identical to the Virginia Act . . . . Although the courts of that state have not passed upon the identical question involved here, there is no doubt that they view a judgment against the motorist as necessary to a suit against the insurer on the contract.")

II. This Court followed the trial court's failure to distinguish fault from liability.

As shown by the Supreme Court's opinions cited above, a viable court action establishing an uninsured driver's liability in tort is a prerequisite to the insurer's liability under contract. In affirming the trial court's order, this Court conflated fault with liability, mischaracterized the parties' stipulations, and failed to follow mandatory authority.

For example, contrary to the *Lawson* opinion where the Supreme Court distinguished two types of actions and the insures' role in them, this Court found that the language of § 39-77-150(B) of the South Carolina Code "did not address any requirement of filing suit against the at-fault driver[]" while quoting its language that expressly provides for service of copies of the pleadings in an action establishing driver's liability before the insured could proceed against the insurer. *Connelly*, Op. No. 5755 (S.C. Ct. App. filed Aug. 12, 2020) (Shearouse Adv. Sh. No. 31 at 10). The Court then found that because "Respondents filed this declaratory judgment, Insurers were served, and the parties stipulated to Trezona's negligence . . . the Insurers were afforded protection intended by § 38-77-150(B)." *Id.*

As the Supreme Court indicated in *Park*, however, a declaratory judgment action to determine the insurer's liability under a UM endorsement is not an action establishing tort liability of the uninsured driver. *See Park*, 251 S.C. at 413–15, 162 S.E.2d at 710–11. This is particularly salient here, because although the parties stipulated that Trezona had been negligent, they did not stipulate that she was liable. (R. p. 143 at ¶¶ 10, 13, 14.)

To state the obvious, negligence is a defendant's degree of fault that may or may not lead to his or her liability. *See Black's Law Dictionary* 1053, 1196 (10th ed. 2014) That fault is not tantamount to liability is perfectly illustrated by manufacturers' liability for the injuries caused by their products or employers' liability for the employees' on-the-job injuries: They

can be held liable despite having exercised utmost care. *See generally* F. Patrick Hubbard and Robert L. Felix, *The South Carolina Law of Torts* 235–42, 301–03 (4th ed. 2011); *Machin v. Carus Corp.*, 419 S.C. 527, 534, 799 S.E.2d 468, 471 (2017). In a negligence cause of action, on the other hand, proving fault, though necessary, is not sufficient. *See generally* F. Patrick Hubbard and Robert L. Felix, *The South Carolina Law of Torts* 45–243 (4th ed. 2011).

To establish liability, plaintiff has to prove that defendant's fault, be it negligence or recklessness, was not only the cause-in-fact but also the legal cause of his or her injury. *See id.*; *Machin*, 419 S.C. at 541–42, 799 S.E.2d at 475–76 (2017). Thus, sometimes a defendant will not be liable if the plaintiff's own failure to exercise due care significantly contributed to their accident, nor will a defendant be liable if by operation of law his or her negligence was not the legal cause of plaintiff's injuries. *Id.*

Here, Trezona's negligence—because of Trezona's status as Connelly's co-employee—was not the legal cause of Connelly's injuries, which barred Trezona's liability in tort. *See Machin*, 419 S.C. at 543, 799 S.E.2d at 476. In fact, the parties' stipulation provides that "Connelly is not legally entitled to recover damages from Trezona, because Trezona is immune from suit as a co-employee under the exclusivity provision of the [South Carolina Workers' Compensation] Act[]"; and further, that Connelly's claim under the liability and UM coverages of Old Dominion's policy was denied because "Trezona cannot be legally responsible to Connelly due to her immunity under the Act." (R. p. 143 at ¶¶ 13 and 14.)

In light of the above analysis, this Court's finding (in discussing the status of Trezona's car as an uninsured vehicle) that because the "Insurers stipulated that Trezona's negligence caused the accident . . . liability could not be denied, and Insurers made coverage denials[,]"

Connelly, Op. No. 5755 (S.C. Ct. App. filed Aug. 12, 2020) (Shearouse Adv. Sh. No. 31 at 40–41), is plainly wrong.

III. The finding of ambiguity in the statutory language was unwarranted.

"The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012). This is Scalia and Garner's articulation of the supremacy-of-text principle that evidently has been endorsed by the South Carolina Supreme Court: "Statutory construction must begin with the language of the statute. In interpreting statutory language, words are generally given their common and ordinary meaning." *Jennings v. Jennings*, 401 S.C. 1, 4, 736 S.E.2d 242, 243 (2012) (citations omitted). This Court, however, did not engage in textual and structural interpretations of the phrase "legally entitled to recover as damages" before approving the trial court's erroneous application of the canons of statutory construction.

The trial court sought to deviate from the plain meaning of the statutory language by searching for a nonexistent ambiguity. In doing so it did not scrutinize the text—considering the meaning of each word and their larger statutory context—as to uncover any semantic dichotomies. Instead, the trial court based its finding of ambiguity solely on the basis of "the lack of statutory or policy definition for the phrase 'legally entitled to recover' and the parties' conflicting interpretations . . . ." (R p. 7.) This allowed for purposive interpretation and a conclusion that "[i]nterpreting the statute to require that plaintiffs first secure the judgment . . . undermines the legislative intent." *Connelly*, Op. No. 5755 (S.C. Ct. App. filed Aug. 12, 2020) (Shearouse Adv. Sh. No. 31 at 38).

But even if the phrase were ambiguous, that ambiguity had been long resolved. As discussed above, in *Laird* and *Vernon* the Supreme Court explicitly held that the phrase

"legally entitled to recover as damages" necessarily entailed the requirement of securing a judgment against the driver before any recovery against the insurer could be had. *Laird*, 243 S.C. at 394, 134 S.E.2d at 209; *Vernon*, 244 S.C. at 159, 135 S.E. 2d. at 844. So, even though the trial court found such an interpretation contrary to the legislative intent, it was nonetheless bound by it.

IV. This Court misapplied *Ferguson v. State Farm* and attached undue significance to *Antley v. Nobel* and *Sanders v. Doe.*

This Court was correct to cite the Supreme Court's opinion in *Ferguson v. State Farm Mut. Auto. Ins. Co.*, 261 S.C. 96, 198 S.E.2d 522 (1973) for the proposition that the insurer's obligation to its insured under the UM policy becomes enforceable only after the liability of the uninsured driver is established. *Connelly*, Op. No. 5755 (S.C. Ct. App. filed Aug. 12, 2020) (Shearouse Adv. Sh. No. 31 at 38). Inexplicably, however, it inferred from that decision that procurement of a judgment against the uninsured driver was not necessary to the recovery of UM benefits. *Id.*

Granted, the *Ferguson* court did not address this issue explicitly, but only because it must have viewed it as a foregone conclusion. Note that before suing State Farm, the insured's widow won a $100,000 verdict against the estate of the at-fault driver. *Ferguson*, 261 S.C. at 98, 198 S.E.2d at 523. The sole issue before that court was whether the exclusionary provisions of the policy—which allowed State Farm to reduce its liability for recovered judgment by the amount the estate received under the Workers' Compensation Act (the insured died while driving in the course and scope of his employment)—violated the UM statute because they reduced the required effective coverage and were contrary to public policy. *Id.* at 100–101, 198 S.E.2d at 524–25.

Consistent with its prior decisions, the Supreme Court held that State Farm's "liability under the uninsured motorist endorsement is contractual in nature and arises after the liability of the uninsured motorist has been established and is not subject to reduction by the amounts received by the respondent here under the Workmen's Compensation Law . . . ." *Id.* at 102, 198 S.E.2d 525.

Apart from *Ferguson*, this Court sought to anchor its decision in caselaw from other jurisdictions, which on closer examination turns out to be irrelevant.

This Court cited *Antley v. Nobel Insurance Co.*, 350 S.C. 621, 567 S.E.2d 872 (Ct. App. 2002) and *Sanders v. Doe*, 831 F.Supp. 886 (S.D. Ga. 1993) to support its finding that Connelly was not precluded from recovery of UM benefits even though she had received workers' compensation benefits. *Connelly*, Op. No. 5755 (S.C. Ct. App. filed Aug. 12, 2020) (Shearouse Adv. Sh. No. 31 at 39–40). Unlike Connelly, however, Antley and Sanders were not victims of their co-employees or employers.

The plaintiff in *Antley* was a professional truck driver who had suffered injuries in an accident caused by an unidentified driver in Savanah, Georgia. *Antley*, 350 S.C. at 624, 567 S.E.2d at __. Because the accident occurred in the course and scope of his employment, he was entitled to the benefits under the Workers' Compensation Act. *Id.* Unlike here, however, his receiving workers' compensation could not have barred recovery of the UM benefits because the liability of the unidentified driver could be established in an action filed pursuant to the "John Doe" provision of the Georgia's UM statute. *See Id.*

Thus, Antley first sued the unknown driver as "John Doe" in Georgia and only then sued the insurer in South Carolina to reform the policy and recover UM benefits. *Id.* Furthermore, unlike here, Nobel Insurance Company, which insured Antley's employer, sought

to evade coverage by invoking exclusionary provisions of its policy and attempting to avail itself of the immunity that belonged to its named insured. *Id.* at 625–626, 567 S.E.2d at __. The court rightfully rejected that argument because an action to recover UM benefits is contractual in nature and the exclusive remedy provision of the Workers' Compensation Act immunizes the employers to actions in tort. *Id.*

Here, however, these appellants never argued that Connelly could not recover UM benefits because they were somehow protected from contractual liability by the exclusive remedy provision of the Act. It was Trezona, the at-fault driver, who was protected by the Act. Because of that protection, Connelly was not legally entitled to recover damages from her. And as the Supreme Court's precedent holds, that recovery was indispensable to Old Dominion's subsequent contractual liability. Because unlike Trezona, *Antley*'s John Doe was not immune to liability in tort, the quoted passage from *Antley* opinion has no bearing on the issues raised in this appeal. *See Connelly*, Op. No. 5755 (S.C. Ct. App. filed Aug. 12, 2020) (Shearouse Adv. Sh. No. 31 at 39.)

Similarly, the opinion of the United States District Court for the Southern District of Georgia in *Sanders v. Doe*, 831 F.Supp. 886 (S.D. Ga. 1993), bears no significance for the issues at hand. *Sanders* involved almost identical set of facts as *Antley*. The insurer, Aetna Casualty and Surety Company, tried to cloak itself in the protected status of the plaintiff's employer, claiming to be its alter ego. *Id.* at 890. Because Aeatna's obligations to Sanders were contractual in nature, Aeatna could not have been protected by the Act's exclusive remedy provision that immunized only employers and co-employees to an action in tort. *Id.* at 890–91. But again, the John Doe driver in *Sanders* was not immune by virtue of the exclusive remedy provision of the Act and his liability, unlike Trezona's, could be established.

Because it is the at-fault driver's status as immune to liability in tort that matters here, the *Antley* and *Sanders* opinions are of no moment.

CONCLUSION

Under long-standing precedent an insured's recovery of benefits under uninsured-motorist coverage is conditioned upon successful tort action against the at-fault driver. Only a liability established in such an action can lead to insurer's liability in contract. Mere demonstration of fault in a declaratory judgement action cannot establish tort liability. Holding otherwise has no support in the text of the statute and runs counter to mandatory caselaw.

Because this Court overlooked and misapprehend both law and stipulated facts, The Main Street America Group and Old Dominion Insurance Company hereby request rehearing and reconsideration of the appellants' arguments and reversal of the trial court's order.

Respectfully submitted,



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August 27, 2020
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
C/A No. 2016-CP-40-05885
Jocelyn Newman, Circuit Judge

RECEIVED
Aug 27 2020
SC Court of Appeals

Appellate Case No. 2017-002234

Stephany A. Connelly and James M. Connelly, Plaintiffs,

v.

The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trezona Defendants,

Of which Allstate Fire and Casualty Insurance Company, The Main Street America Group, Old Dominion Insurance Company are the Appellants,

And

Stephany A. Connelly and James M. Connelly are the Respondents.

PROOF OF SERVICE

I certify that on August 27, 2020 I have served the appellants The Main Street America Group and Old Dominion Insurance Company's Petition for Rehearing by electronic mail—in accordance with the May 29, 2020, order of the Supreme Court, Appellate Case No. 2020-000447 at § (g)(3)—on counsel for the respondents, Stephany A. Connelly and James M. Connelly, and the appellant, Allstate Fire and Casualty Insurance Company, sent to their AIS-registered email addresses, as follows: John D. Kassel, Esq., jkassel@kassellaw.com; Theile Branham McVey, Esq., tmcvey@kassellaw.com; Benjamin Davis McCoy, Esq., bmccoy@hnblaw.com; Alfred Johnston Cox, Esq., jcox@gwblawfirm.com; and Ashley Berry Stratton, Esq., astratton@gwblawfirm.com.

[SIGANTURE PAGE FOLLOWS]



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Subject:	SERVICE of Old Dominion and MSA"s Petition for Rehearing--Connelly v. Allstate, et al., Appellate Case No. 2017-002234
Date:	Thursday, August 27, 2020 6:38:00 PM
Attachments:	Old Dominion and MSA"s Petition for Rehearing--Appellate Case No. 2017-002234.pdf

Dear Counsel:

Attached please find a PDF of the appellants The Main Street America Group and Old Dominion Insurance Company's Petition for Rehearing in the above-referenced matter, hereby served upon you as counsel of record, in accordance with the Supreme Court's May 29, 2020 Order, §(g)(3), (Appellate Case No. 2020-000447).

Best regards,
Michal Kalwajtys
Attorney for the Appellants
The Main Street America Group and
Old Dominion Insurance Company

RECEIVED
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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 Court Judge

RECEIVED
Aug 27 2020
SC Court of Appeals

Case No. 2016-CP-40-5885

Court of Appeals Case No.: 2017-002234

Stephany A. Connelly and James M. Connelly ..... Plaintiffs

v.

The Main Street America Group; Old Dominion Insurance Company; Allstate Fire and Casualty Insurance Company; Debbie Cohn; and Freya Trezona ..... Defendants

Of whom, Allstate Fire and Casualty Insurance Company; The Main Street America Group; and Old Dominion Insurance Company are ..... Appellants

and

Of whom, Stephany A. Connelly and James M. Connelly are..... Respondents

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APPELLANT ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY'S PETITION FOR REHEARING

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Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Appellant Allstate Fire and Casualty Insurance Company ("Allstate") hereby petitions for the Court for rehearing. The opinion of the Court (Opinion No. 5755) was filed August 12, 2020. The opinion affirms the grant of summary judgment in favor of the respondents, finding that they are entitled to recover uninsured motorist benefits when involved in accident caused by an individual who is immune from suit. Allstate respectfully asserts that the issues set forth below warrant reconsideration by this Court.[1]

I. INTRODUCTION

The Court's decision, in an unprecedented manner, affirms the grant of summary judgment in favor of the respondents, allowing them to pursue uninsured motorist benefits with respect to claims against a motorist against whom they could never legally recover damages. The decision fundamentally transforms the process for presenting uninsured motorist claims while depriving insurers of their affirmative defenses. Furthermore, the Court misconstrued the facts in the record and failed to recognize the distinction between an insured and an uninsured motor vehicle as defined by the South Carolina General Assembly.

Rehearing is warranted on multiple grounds. As detailed below, the Court's opinion misapprehends facts, law, and arguments critical to its determination. Allstate therefore respectfully requests that the Court grant its petition for rehearing.

II. STANDARD OF REVIEW

[1] In addition to the arguments and facts contained herein, Allstate incorporates the arguments and facts contained in its Final Brief and the arguments made by Main Street/Old Dominion.

The purpose of a petition for rehearing "is to aid the court in deciding correctly a case heard by it." Arnold v. Carolina Power & Light Co., 168 S.C. 163, 172, 167 S.E. 234, 238 (1933). Where, as here, the existing record does not support the decision, a petition for rehearing is appropriate. See, e.g., Ashley II of Charleston, LLC v. PCS Nitrogen, Inc., 409 S.C. 487, 492 n.4, 763 S.E.2d 19, 21 n.4 (2014) ("If, based on the current record, we have misapprehended the scope of PCS's indemnification claim against Ross, we invite a rehearing petition. . . "); Arnold, 168 S.C. at 172, 167 S.E. at 238 (court is "bound by the transcript of record as to the facts of the cause."). See Kennedy v. S.C. Ret. Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) ("In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument."); Rule 221(a), SCACR (petition shall state the points "supposed to have been overlooked or misapprehended"). These standards are met here.

III. ARGUMENT

A. The Court's Opinion Circumvents the Statutory Requirement that an Injured Individual Establish Legal Liability By Allowing the Individual To Bring an Action Against the UM Carrier Directly When No Such Action Could Be Brought Against the Uninsured Motorist.

First, the Court's opinion allows individuals to recover uninsured motorist benefits directly from an insurer without establishing the legal liability of the uninsured motorist – a process which has heretofore never been recognized by this State. By not requiring the respondents to file suit against the uninsured motorist, the Court's analysis essentially nullifies the uninsured motorist insurer's ability to defend the uninsured driver and assert any defenses available to the uninsured motorist.

As an initial matter, the Court's opinion misapprehends the statutory requirement that the respondents must file and serve a tort lawsuit against Trezona, and serve the

insurers with a copy of the same. While this Court and the trial court found that the language of section 38-77-150(B) does not address any requirement of filing suit against the at-fault driver, such assertion is against the plain language of the statute. Section 38-77-150(B) specifically provides:

> No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer . . .

S.C. Code § 38-77-150(B) (emphasis added).

The phrase "pleadings in the action establishing liability" implies that some action must be filed against the uninsured motorist to establish the uninsured motorist was, in fact, liable. A declaratory judgment action directly against the insurers, where the question before the Court is whether a claim is covered by the terms and conditions of a policy, fails to meet this requirement. South Carolina's statutory scheme allows the UM carrier to defend the uninsured driver and assert any defenses available to the uninsured motorist. See § 38-77-150(B) ("The insurer has the right to appear and defend in the name of the uninsured motorist.") If the uninsured motorist has a liability, service or statute of limitations defense, then the insurer is entitled to raise it in defense of the action. See Williams v. Selective Ins. Co., 315 S.C. 532, 446 S.E.2d 402 (1994); Louden v. Moragne, 327 S.C. 465, 486 S.E.2d 525 (Ct. App. 1997). Such is not true if a declaratory judgment action filed directly against the insurer satisfies the statutory requirement.[2]

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[2] This Court's decision would arguably allow an injured party to bring a declaratory judgment action directly against a UM insurer after the statute of limitations has expired as to the at-fault driver. The same rationale applies; although the at-fault driver was negligent and caused the damages, the at-fault driver is no longer legally obligated to pay damages to an injured party because the statute of limitations has expired and is essentially immune from liability.

The Court's misapplication of the statutory requirement that pleadings must be filed establishing liability of the uninsured motorist is further exemplified with its misapprehension of the phrase "legally entitled to recover." In its opinion, the Court determined that the statutory phrase "legally entitled to recover" is ambiguous and that the phrase requires only "demonstrating fault and resulting damages." However, the words of a statute "must be given their plain and ordinary meaning without resort[ing] to subtle or forced construction to limit or expand [the statute's] operation." Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). While the statute may not contain any language specifically addressing the situation of an uninsured motorist being immune to suit, silence in not tantamount to ambiguity. The statute does plainly state, however, that the claimant must be "legally entitled to recover" from the uninsured motorist. The Court's interpretation of the statute as only requiring a demonstration of "fault" completely ignores the plain meaning of the phrase. A finding of fault does not equate to a finding of legal liability. This approach ignores the distinction between cause in fact and legal cause and essentially holds § 38-77-150 meaningless.

Under § 38-77-150, entitlement to UM coverage requires establishing the legal liability of the uninsured motorist and not simply finding fault. There a number of reasons why a party may be at fault for causing an accident but not legally liable to the plaintiff (i.e. statute of limitations, exclusivity provisions of the Act, comparative negligence, etc.). For those reasons, the statute permits insurers to defend in the name of the uninsured motorists and raise any affirmative defenses the uninsured motorist may have. See Williams, 315 S.C. 532, 446 S.E.2d 402; Louden, 327 S.C. 465, 486 S.E.2d 525. If the legislature intended to allow claimants to recover simply with a showing of

fault, it could have done that. It did not. Rather, the legislature chose to require the claimant to establish the "liability" – not the fault – of the uninsured motorist.

In support of its decision to equate "legally entitled to recover" with "fault," the Court relied on the decisions in Antley v. Nobel Insurance Co., 350 S.C. 621, 567 S.E.2d 872 (Ct. App. 2002), *overruled in part on other grounds by* Sweetser v. S.C. Dep't of Ins. Reserve Fund, 390 S.C. 632, 703 S.E.2d 509 (2010) and Sanders v. Doe, 831 F.Supp. 886 (S.D. Ga. 1993). Neither of these cases, however, is even remotely analogous to the facts at hand. Both Antley and Sanders are John Doe UM claims against unknown drivers – not uninsured drivers that were immune from suit. While the insurers in those cases did in fact raise the exclusivity remedy as a defense to the UM claims due to the plaintiffs' recovery of workers compensation benefits, they did not do so as a defense of the uninsured motorist. The John Does in those cases – as non-co-employee third-parties – would not enjoy the protection afforded by the Act as Trezona does here and, thus, the plaintiffs in Antley and Sanders were, in fact, "legally entitled to recover" from John Doe. Here, the respondents are not legally entitled to recover from Trezona as the respondents have admitted. As such, the respondents cannot recover UM benefits.

The effect of the Court's opinion is to allow claimants to circumvent the statutory requirements that they establish the legal liability of the uninsured motorists in order to recover of claims on which they are legally not entitled. In effect, in any situation where the claimant could not legally recover against the uninsured motorist, claimants can now file a suit directly against the purported UM insurer and deprive the UM insurer of the ability to raise any defenses it could have raised on behalf of the uninsured motorist. This precedent "is inconsistent with the statute and the endorsements and would invite

litigants to neglect the procedures obviously intended by the legislature and clearly declared in the statute." Criterion, 258 S.C. at 295-96, 188 S.E.2d at 465. The Court's misapprehension and misapplication of the law warrants rehearing on as a matter of law.

B. The Court's Opinion Misapprehends the Stipulations and the Meaning of "Uninsured Vehicle."

Second, the Court's opinion, in determining that the Trezona vehicle was "uninsured," misapprehends the distinction between denying liability for an accident and denying liability coverage. Like the trial court, the Court found that Old Dominion denied coverage because, based on the stipulation that Trezona was negligent, liability could not be denied. As discussed above, negligence does not equate to legal liability and, thus, Old Dominion could, in fact, deny liability despite the stipulation. There is nothing in the record to suggest that Old Dominion's policy was not in full force and effect or that the claims would not trigger coverage under the terms and conditions of its policy. Simply put, Old Dominion had liability coverage for Trezona and, thus, the respondents do not have a claim for uninsured motorist coverage.

In support of its finding that the Trezona vehicle was "uninsured," the Court relied on Unisun Insurance Co. v. Schmidt, 339 S.C. 362, 529 S.E.2d 280 (2000). That case involved the denial of liability coverage based upon lack of permissive use – not a denial of liability. There was no liability coverage in Unisun because the person driving the vehicle did not meet the policy's definition of an insured person. The liability policy simply did not apply to the accident because it was not an insured event. Here, Old Dominion did not deny coverage – Trezona is an insured person and was driving the vehicle with permission. Liability coverage exists and applies to the accident. The accident is an insured event. However, Trezona has no legal liability – she is not legally

responsible to the Connellys for their injuries. Therefore, Old Dominion refused to pay any of its liability limits to the Connellys. The holding in Unisun has absolutely no bearing on the issue presented in this case. Based upon established South Carolina law and the terms of the UM provision of Allstate's policy, Trezona's vehicle does not meet the definition of an uninsured vehicle. See S.C. Code 38-77-30 (defining "uninsured motor vehicle," in part, as a motor vehicle as to which (a) there is not liability insurance at least in the amounts specified in § 38-77-140 or (b) there is liability insurance, but the insurer successfully denies coverage).

If the respondents had filed suit against Trezona, as they are statutorily required to do, then there would be no dispute that the Trezona vehicle was insured. Once suit was filed against Trezona, Old Dominion, as the liability insurer, would have retained counsel to defend Trezona. Defense counsel would have moved to dismiss the complaint against Trezona based on the exclusivity provisions of the Act. If the motion was denied, Old Dominion would continue to provide a defense to Trezona and pay for any judgments or settlements up to its liability limits. If the motion was granted, Connelly's claims against Trezona would be dismissed with prejudice, because they are not legally entitled to recover damages against her (just as they would not be legally entitled to recover against her if they failed to sue her within the applicable statute of limitations – which also occurred here). A successful legal defense, whether it is an immunity defense, lack of jurisdiction defense, Rule 12(b)(6) defense, improper service defense or a statute of limitations defense does not transform a vehicle into an "uninsured motor vehicle" just because the at-fault driver was negligent and caused the damages. Finding otherwise

would lead to an absurd result permitting plaintiffs to pursue UM coverage directly against their own insurers any time they are unsuccessful in tort against another motorist.

Moreover, the Court's opinion creates another scenario that is contrary to South Carolina law. In finding for Connelly, the trial court ordered that a hearing be held to determine the Connelly's damages. Upon remand, that process will move forward. The only defendants in the case are the insurers, so either a judge or a jury will be awarding tort damages to the Connellys directly against the insurers. However, the insurers are not the correct defendants. The insurers did not cause the Connelly's injuries and are not legally responsible to the Connelly's for their injuries. Under South Carolina's statutory scheme, a UM carrier does not "stand in the shoes" of an uninsured motorist and cannot be named as a defendant in a tort action to recover UM benefits. See S.C. Code § 38-77-150 ("the insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability . . . The evidence of service upon the insurer may not be made a part of the record.") (emphasis added). Liability and damages must be established against the at-fault driver before any direct action to recover UM benefits can be brought against an insurer. See Lawson v. Porter, 180 S.E.2d 643, 644 (S.C. 1971) ("Recovery under the uninsured endorsement is subject to the condition that the insured establish the legal liability on the part of the uninsured motorist ... After the judgment is entered against the uninsured motorist, a direct action can be brought *ex contractu* to recover from the insurance company ...") (emphasis added). This Court's decision is contrary to South Carolina statutory law and long standing legal precedent. This decision allows an action directly against an insurer before damages are established and awarded

against an at-fault driver. In fact, it allows a direct action against a UM insurer without any action being brought against and at-fault driver at all.

Finding that a fully insured vehicle becomes "uninsured" simply because the liability insurer successfully asserts a legal defense to liability, even if the at-fault driver was negligent and caused the damages, is a misapprehension of well-established law. The Court's misapprehension and misapplication of the law warrants rehearing as a matter of law.

IV. CONCLUSION

The Court's opinion ignores the statutory requirements of S.C. Code § 38-77-150 and creates a new standard for claimants pursuing uninsured motorist claims. Rather than having to file a tort lawsuit against a defendant to establish legal liability and damages, a claimant can file suit directly against his or her UM insurer and deprive the UM insurer of defenses it would be able to make on behalf of the uninsured motorist. Furthermore, if the defendant has liability insurance but the claimant may not be able to legally recover against the defendant, the claimant can remedy the situation through making a UM claim directly against the insurer. This is not a result intended by the legislature.

Allowing the trial court's grant of summary judgment to stand deprives Allstate of a valid defense it would be entitled to make on behalf of Trezona and permits the respondents to recover for damages to which they admittedly are not legally entitled to recover.[3] The respondents should not be permitted to circumvent the statutory process

[3] Both § 38-77-150 and Allstate's policy limit Connelly's recovery of UM benefits to those an insured is "legally entitled to recover as damages" from the owner or operator of an uninsured motor vehicle. The Connelly's stipulation that they are not "legally entitled to recover damages" from Trezona defeats their claim regardless of the meaning this

for obtaining UM benefits simply by filing a declaratory judgment action. Even with a judicial declaration that the respondents can obtain UM coverage, they would still need to establish damages – an issue that is not before the Court in a declaratory judgment action and would still need to be litigated in tort. Simply put, the Court's opinion has misapprehended the facts and the applicable law, turning the process for obtaining UM benefits on its head.

For the foregoing reasons, Allstate submits that this Court misapprehended or overlooked matters of both law and fact that compel a different outcome in this case. Accordingly, rehearing is warranted and the Court should withdraw its current opinion and issue a new opinion reversing the grant of summary judgment in favor of the respondents, as requested by Allstate in its appellate briefing and in this Petition for Rehearing.

Respectfully submitted,

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August 24, 2020

Court assigns to that phrase. They have stipulated that they are not "legally entitled to recover damages" against Trezona, whatever meaning is given to the phrase.

The South Carolina Court of Appeals

Stephany A. Connelly and James M. Connelly, Plaintiffs,

v.

The Main Street America Group, Old Dominion Insurance Company, Allstate Fire and Casualty Insurance Company, Debbie Cohn, and Freya Trezona, Defendants,

Of which Allstate Fire and Casualty Insurance Company, The Main Street America Group and Old Dominion Insurance Company are the Appellants,

And

Stephany A. Connelly and James M. Connelly are the Respondents.

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ORDER

After careful consideration of the petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.

James E. Lockemy J.

Paula H. Thomas J.

Stephanie P. McDonald J.

Columbia, South Carolina

FILED

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The Honorable Jocelyn Newman