

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

19545

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Case No. 2010-CP-07-5078
Carmen. T. Mulien, Circuit Court Judge

Case Tracking No. 2011197648

Dorris W. Green, Jr. as Guardian ad Litem for
Inman G., a minor.....Appellant,

v.

United States Automobile Association Auto and
Property Insurance Company.....Respondent

RECORD ON APPEAL

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Order Appointing Guardian ad Litem, of October 15, 2010

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CIVIL ACTION NO.: 2010-CP-07-

DORRIS W. GREEN, JR.,)

Petitioner,)

v.)

**ORDER APPOINTING
GUARDIAN AD LITEM**

IN RE:)

DORRIS W. GREEN, JR., as Guardian
ad Litem for Inman G., (a minor),)

Plaintiff,)

v.)

UNITED SERVICES AUTOMOBILE
ASSOCIATION AUTO AND PROPERTY
INSURANCE)

Defendant.)

10 OCT 15 AM 10:39
CLERK OF COURT

It appearing from the Petition in this matter that Inman G. is a minor under the age of eighteen (18) years, and that Dorris W. Green, Jr. is a suitable and proper person to act as such Guardian ad Litem,

NOW, THEREFORE, it is accordingly

ORDERED that Dorris W. Green be and hereby is appointed to act as Guardian ad Litem for the minor Plaintiff, Inman G., in the above-captioned matter.

S. H. Roseberry
Clerk of Court for the 14th Judicial Circuit

Beaufort, South Carolina

Dated: 10-15-10

I consent to act as Guardian ad Litem for the above-named minor, Inman G.

Dorris W. Green Jr.
Dorris W. Green, Jr., Petitioner

Order of June 23, 2011

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DORRIS W. GREEN, JR., as Guardian
ad Litem for *Inman G.*, a
minor,

Plaintiff,

vs.

UNITED SERVICES AUTOMOBILE
ASSOCIATION,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-07-5078

ORDER

CLERK OF COURT

2011 JUN 23 PM 3:26

On June 6, 2011 this Court heard arguments on the defendant's motion for summary judgment. For the following reasons the motion for summary judgment is granted.

The facts relevant to the defendant's motion for summary judgment are undisputed. On July 19, 2009 the plaintiff's minor son, *Inman G.*, was a passenger in a 2002 Honda vehicle driven by his mother Linda G. and when Linda G. allegedly turned left in front of an oncoming vehicle an accident ensued. (Plaintiff's Complaint, ¶ IV) At the time of the accident the 2002 Honda vehicle was insured under a policy issued by the defendant. This policy was written in the State of Florida. (Plaintiff's Complaint, ¶ VI)

The defendant's policy contained the following exclusion of liability coverage:

There is no coverage for BI [bodily injury] for which a **covered person** becomes legally responsible to pay to a member of that **covered person's** family residing in that **covered person's** household.

The effect of this provision as applied to the undisputed facts of this case is that Linda Green has no liability coverage for a claim against her by her son *Inman G.*

The plaintiff argues this provision violates the public policy of South Carolina and should not be enforced. The defendant argues that because the policy was issued in Florida, Florida law applies in determining the validity of the family member exclusion and under Florida law this exclusion is valid. This Court agrees with the defendant.

Unless the parties agree to a different rule, the validity and interpretation of a contract is ordinarily determined by the law of the state in which the contract was made. Unisun Insurance Company v. Hertz Rental Company, 436 S.E.2d 182, 184 (S.C. App. 1993) In construing insurance policies, South Carolina courts apply the law of the state where the policy was issued. Companion Property & Casualty Insurance Company v. Airborne Express, 631 S.E.2d 915, 916 (S.C. App. 2006) Florida has the same rule which is that the law of the jurisdiction where the contract was executed governs interpretation of substantive issues regarding the contract and the lex loci contractus rule determines the choice of law for interpretation of provisions in an automobile insurance policy. Lumbermens Mutual Casualty Company v. August, 530 So.2d 293 (Supreme Court of Florida 1988) Because it is undisputed the USAA policy was written in the State of Florida, this Court must look to Florida law to determine the validity of the family member exclusion.

This case is factually analogous to Newton v. Progressive Northwestern Insurance Company, 554 S.E.2d 437 (S.C. App. 2001). In that case Progressive issued a policy in Georgia to Newton. Several months after issuance of the policy Newton was involved in an automobile accident in South Carolina. Newton claimed the policy required reformation to include the minimum uninsured motorist coverage required by South Carolina law. The trial court granted summary judgment to Progressive. On appeal Newton argued the terms of the policy had to be reformed to comply with South Carolina liability policy requirements. 554 S.E.2d at 438 In

affirming the grant of summary judgment to Progressive the Court of Appeals held that a policy issued and delivered outside of South Carolina is not a policy issued or delivered in South Carolina and the fact that an accident which is within the risk covered by a policy occurred in a certain state does not make the contract one of that state. The Court of Appeals concluded that South Carolina's financial responsibility law did not require reformation of the Georgia policy. 554 S.E.2d at 440 Applying Newton to the facts of this lawsuit, South Carolina's automobile insurance statutes and case law do not require reformation of the Florida policy.

Under Florida law the provision in question is valid. Chrysler Credit Corporation v. United Services Automobile Association, 625 So.2d 69 (Florida District Court of Appeal 1993); Fitzgibbon v. Government Employees Insurance Company, 583 So.2d 1020 (Florida 1991); Mitchell v. State Farm Mutual Automobile Insurance Company, 678 So.2d 418 (Florida District Court of Appeal 1996) In Mitchell the Court stated in considering a challenge to a family exclusion clause that:

Injury to that family member is excluded from liability coverage by most, if not all, insurance policies issued in Florida. As counsel for State Farm candidly admitted to us at oral argument, they knew of no insurance policy offered in Florida without a family member exclusion. 678 So.2d at 420

The District Court of Appeal in Mitchell further held that:

Family exclusion clauses in automobile insurance policies are not void as contrary to this state's laws or public policy. If this rule is to be overturned, it must either be addressed by the Florida legislature or the Florida Supreme Court. 678 So.2d at 421

Because the policy in question was written in the State of Florida, Florida law applies and under Florida law the exclusion challenged by the plaintiff is valid.

The plaintiff cites Boone v. Boone, 546 S.E.2d 191 (S.C. 2001) in support of his position that the provision in question violates the public policy of South Carolina. However,

Boone did not involve the validity of a provision in an automobile insurance policy. Instead, the Supreme Court in Boone held that a Georgia law preventing spouses from suing one another based upon the legal fiction that spouses were one person violated South Carolina's public policy. In the present case, however, the insurance policy of USAA does not contain an outdated, anachronistic legal fiction as was involved in Boone and on this basis the facts of the present case are distinguishable from the facts in Boone. In fact, the USAA policy does not prevent Dorris I. Green from suing his mother Linda Green. Instead, it only provides that if that occurs Linda Green will have no liability coverage for that claim. Additionally, although some contracts may violate public policy, a sound public policy requires the enforcement of contracts deliberately made, which do not clearly contravene some positive law or rule of public morals. Courts should not annul contracts on doubtful grounds of public policy. In such matters, it is better that the legislature should first speak. Wilson v. Builders Transport, 498 S.E.2d 674, 679 (S.C. App. 1998) The fact that laws of two states may differ does not necessarily imply that the law of one state violates the public policy of the other. Dawkins v. State of South Carolina, 412 S.E.2d 407, 408 (S.C. 1991)

The plaintiff additionally claims entitlement to underinsurance policy benefits. The defendant's policy includes underinsurance motorist coverage within the definition of uninsured motorist coverage. The definition of uninsured coverage provides that an uninsured motor vehicle does not include any vehicle or equipment owned by or furnished or available for the regular use of the named insured or any family member. Here it is undisputed that the 2002 Honda involved in the accident of July 19, 2009 was furnished for the regular use of Dorris G. 's wife, Linda G. Linda G. testified that she and her husband owned the 2002 Honda up until the time of the July 2009 accident, that the car was registered or licensed in

Florida and that she primarily used that car. (Linda G. Deposition, pp. 19, 20; 37) There are certain exceptions to this exclusion of UIM coverage for any motor vehicle owned by or furnished for the regular use of the named insured or any family member, but those exceptions are inapplicable. Therefore, the plaintiff is not entitled to underinsurance motorist coverage under the terms of the USAA policy and the undisputed facts.

CONCLUSION

The policy in question was issued in Florida. Therefore, Florida's law must determine the validity of the exclusion of liability coverage challenged by the plaintiff. Under Florida law the family member exclusion of liability coverage is valid. Additionally, for the reasons stated herein, the provision is not violative of South Carolina's public policy. Furthermore, the plaintiff is not entitled to underinsurance motorist coverage. For all of these reasons the defendant's motion for summary judgment is granted and this lawsuit is dismissed with prejudice. All of which is so ORDERED.



Carmen T. Mullen
Administrative Judge, Fourteenth Judicial Circuit

Beaufort, South Carolina

June 23, 2011

Complaint

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CIVIL ACTION NO.: 2010-CP-07- **5078**

DORRIS W. GREEN, JR., as Guardian)

ad Litem for **Inman G.**,)

a minor,)

Plaintiff,)

COMPLAINT FOR DECLARATORY
JUDGMENT RELIEF

vs.)

UNITED SERVICES)

AUTOMOBILE ASSOCIATION AUTO)

and PROPERTY INSURANCE)

Defendant:)

100715
2010 OCT 15
3:25 PM
CLERK

The Plaintiff, Dorris W. Green, Jr, would respectfully show unto this Honorable Court as follows:

I

That **Inman G.**, is a minor, and thus a guardian ad litem must be appointed to represent his interest in the instant action. Dorris W. Green, Jr., is a fit and proper person to act as such, and will be appointed to represent his son's interest in this litigation.

II

That the Plaintiffs are citizens and residents of Beaufort County, South Carolina.

III

That Defendant is a corporation organized and existing pursuant to the Statute Laws of the State of South Carolina and transacts business in the State by virtue of insuring motor vehicles which operate upon the roadways of the State of South Carolina and at the time of the

hereinafter mentioned accident, insured the vehicle in which Plaintiff's minor was riding at the time the minor sustained life threatening and permanent injuries.

IV

That the instant action is being brought pursuant to Sec. 15-53-10, et seq., Declaratory Judgments and Decrees, seeking a declaratory judgment in regard to the rights of Plaintiff's minor to liability and underinsured motorist coverage under the auto policy of insurance written by Defendant to Linda G. and Dorris G., described hereinbelow.

IV

That on or about July 19, 20009, Plaintiff's minor, *Inman G.*, a minor under the age of five (5) years, was a passenger in a 2002 Honda vehicle driven by his mother, Linda G., in a southerly direction on US Highway 21, Beaufort, South Carolina, when she allegedly turned left in front of an oncoming vehicle and caused a violent collision.

V

That as a direct and proximate result of the accident, Plaintiff's minor suffered severe trauma, including but not limited to multiple bodily and facial lacerations, broken right tibia, broken right fibula and cerebral concussion, which required immediate transport to a trauma center and emergency surgeries.

VI

That the 2002 Honda vehicle in which Plaintiff was a passenger was insured by Defendant United Services Automobile Association Auto and Property Casualty (hereafter referred to as USAA) under policy number 22199987102 which was written in the State of Florida.

VII

That under the just referenced USAA policy, there is only liability coverage of \$10,000/20,000, contrary to the minimum liability limits of \$25,000/50,000 imposed by our State, and said out-of-state policy is and should be deemed reformed to comply with South Carolina liability requirements in that the subject auto accident occurred in the State of South Carolina.

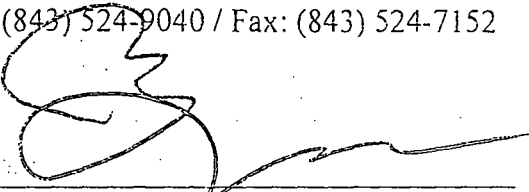
VIII

That further, the aforescribed Defendant USAA policy contained a proviso prohibiting the minor Plaintiff as a family member of the household of the alleged at-fault mother Linda G. from recovering contrary to South Carolina auto liability insurance law which requires insured motorists to provide liability coverage to any and all persons who may be injured by the insured's negligence, regardless of family affiliation. Consequently, Defendant's policy of insurance is and should be reformed to comport with South Carolina auto liability law such that Plaintiff's minor, in spite of being a household family member of Linda G., should be determined entitled to recover as against the policy for damages up to the liability and underinsured policy limits.

Wherefore, Plaintiff prays that the Court inquire into the matters set forth above and issue its judgment declaring that the subject auto liability policy written by Defendant be reformed or amended to comply with South Carolina law so that the liability coverage is \$25,000/50,000 and Plaintiff's minor be determined entitled to recover for his injuries and damages against Defendant's policy issued to Linda G., for the costs of this action, and for such other and further relief as this Court deems just and proper.

LAW OFFICE OF BERNARD McINTYRE

1606 King Street / Post Office Box 248
Beaufort, South Carolina 29901-0248
Ph: (843) 524-9040 / Fax: (843) 524-7152

By: 

Bernard McIntyre, Esquire
Attorney for the Plaintiff

Beaufort, South Carolina

Dated: October 15, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2010-CP-07-5078
	)	
DORRIS W. GREEN, JR., as Guardian	)	
ad Litem for <i>Inman G.</i>	)	
a minor,	)	
	)	
	)	AMENDED COMPLAINT FOR
Plaintiff,	)	DECLARATORY JUDGMENT RELIEF
	)	
vs.	)	
	)	
UNITED SERVICES	)	
AUTOMOBILE ASSOCIATION	)	
	)	
Defendant.	)	

2010 OCT 21 PM 1:19
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

The Plaintiff, Dorris W. Green, Jr, would respectfully show unto this Honorable Court as follows:

I

That *Inman G.* is a minor, and thus a guardian ad litem must be appointed to represent his interest in the instant action. Dorris W. Green, Jr., is a fit and proper person to act as such, and will be appointed to represent his son's interest in this litigation.

II

That the Plaintiffs are citizens and residents of Beaufort County, South Carolina.

III

That Defendant is a corporation organized and existing pursuant to the Statute Laws of the State of South Carolina and transacts business in the State by virtue of insuring motor vehicles which operate upon the roadways of the State of South Carolina and at the time of the hereinafter mentioned accident, insured the vehicle in which Plaintiff's minor was riding at the time the minor sustained life threatening and permanent injuries.

Amended Complaint

VII

That under the just referenced USAA policy, there is only liability coverage of \$10,000/20,000, contrary to the minimum liability limits of \$25,000/50,000 imposed by our State, and said out-of-state policy is and should be deemed reformed to comply with South Carolina liability requirements in that the subject auto accident occurred in the State of South Carolina.

VIII

That further, the aforescribed Defendant USAA policy contained a proviso prohibiting the minor Plaintiff as a family member of the household of the alleged at-fault mother Linda G. from recovering contrary to South Carolina auto liability insurance law which requires insured motorists to provide liability coverage to any and all persons who may be injured by the insured's negligence, regardless of family affiliation. Consequently, Defendant's policy of insurance is and should be reformed to comport with South Carolina auto liability law such that Plaintiff's minor, in spite of being a household family member of Linda G. should be determined entitled to recover as against the policy for damages up to the liability and underinsured policy limits.

Wherefore, Plaintiff prays that the Court inquire into the matters set forth above and issue its judgment declaring that the subject auto liability policy written by Defendant be reformed or amended to comply with South Carolina law so that the liability coverage is \$25,000/50,000 and Plaintiff's minor be determined entitled to recover for his injuries and damages against Defendant's policy issued to Linda G. for the costs of this action, and for such other and further relief as this Court deems just and proper.

LAW OFFICE OF BERNARD McINTYRE

IV

That the instant action is being brought pursuant to Sec. 15-53-10, et seq., Declaratory Judgments and Decrees, seeking a declaratory judgment in regard to the rights of Plaintiff's minor to liability and underinsured motorist coverage under the auto policy of insurance written by Defendant to Linda G. and Dorris G., described hereinbelow.

IV

That on or about July 19, 20009, Plaintiff's minor, *Inman G.*, a minor under the age of five (5) years, was a passenger in a 2002 Honda vehicle driven by his mother, Linda G., in a southerly direction on US Highway 21, Beaufort, South Carolina, when she allegedly turned left in front of an oncoming vehicle and caused a violent collision.

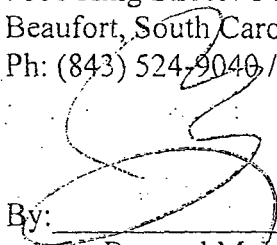
V

That as a direct and proximate result of the accident, Plaintiff's minor suffered severe trauma, including but not limited to multiple bodily and facial lacerations, broken right tibia, broken right fibula and cerebral concussion, which required immediate transport to a trauma center and emergency surgeries.

VI

That the 2002 Honda vehicle in which Plaintiff was a passenger was insured by Defendant United Services Automobile Association (hereafter referred to as USAA) under policy number 22199987102 which was written in the State of Florida.

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By: 

Bernard McIntyre, Esquire
Attorney for the Plaintiff

Beaufort, South Carolina

Dated: October 21, 2010

Answer to Amended Complaint

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

DORRIS W. GREEN, JR., as Guardian) Civil Action No. 2010-CP-07-5078
ad Litem for *Inman G.* a)
minor,)

Plaintiff,)

ANSWER

vs.)

(Jury Trial Requested)

UNITED SERVICES AUTOMOBILE)
ASSOCIATION,)

Defendant.)

The defendant, answering the amended complaint of the plaintiff, alleges that:

FOR A FIRST DEFENSE

1. Answering paragraph 1, the defendant admits, upon information and belief, that *Inman G.* is a minor but the defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 1 and, therefore, those allegations are denied.

2. Paragraph 2 is admitted upon information and belief.

3. Answering paragraph 3, the defendant would show that it is an interinsurance exchange and the defendant admits it transacts business in South Carolina by virtue of insuring motor vehicles which operate on the roadways of the State of South Carolina and that at the time of the accident the defendant insured the vehicle in which the plaintiff's minor was riding, but the defendant denies it is a corporation organized and existing pursuant to the laws of the State of South Carolina and the

defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 3 and, therefore, those allegations are denied.

4. Answering paragraph 4, the defendant admits that this lawsuit is brought pursuant to the South Carolina Declaratory Judgment Act concerning rights of the plaintiff's minor to certain coverages under the policy issued by the defendant but otherwise paragraph 4 is denied.

5. Answering the second paragraph 4, the defendant admits the plaintiff's minor was a passenger in a 2002 Honda driven by the minor's mother Linda

G. but the defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the second paragraph 4 and, therefore, the remaining allegations in the second paragraph 4 are denied.

6. Answering paragraph 5, the defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 and, therefore, those allegations are denied.

7. Answering paragraph 6, the defendant admits the 2002 Honda vehicle in which the plaintiff was a passenger was insured by the defendant and the policy insuring the vehicle in which the plaintiff was a passenger was written in the State of Florida but the defendant refers to the policy for policy number and, to the extent the policy number referenced in the policy is inconsistent with the allegations in paragraph 6, paragraph 6 is denied and otherwise paragraph 6 is denied.

8. Answering paragraph 7, the defendant refers to the liability limits in the policy in question and, to the extent the allegations in paragraph 7 are

inconsistent with the liability coverages in the policy, paragraph 7 is denied and the remaining allegations in paragraph 7 are denied.

9. Answering paragraph 8, the defendant refers to its policy for the terms and provisions set forth therein and, to the extent the allegations in paragraph 8 are inconsistent with the terms and provisions of the defendant's policy, paragraph 8 is denied and otherwise paragraph 8 is denied.

10. Except as is specifically admitted each and every allegation in the amended complaint and in the prayer of the amended complaint is denied.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Charles R. Norris

SC Bar No. 004238

E-Mail: charles.norris@nelsonmullins.com

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Attorneys for USAA

Charleston, South Carolina

November 22, 2010

Transcript of Proceedings

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
2010-CP-07-5078

Dorris W. Green Jr.,

Plaintiff

VS

United Services Automobile
Association Auto and
Property Ins.,

Defendant

TRANSCRIPT OF RECORD

June 6, 2011

BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE CARMEN T. MULLEN, Judge.

Deborah E. Everett
Official Court Reporter

 ORIGINAL

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

Bernard McIntyre, Attorney at Law
Attorney for the Plaintiff

Charles R. Norris, Attorney at Law
Attorney for the Defendant

I N D E X

NO WITNESSES INTRODUCED

EXHIBITS

NO EXHIBITS INTRODUCED

1 (Whereupon hearing began at 11:20 A.M)

2 THE COURT: The next case we have is
3 Dorris Green Jr. versus USAA. Bernard, ya'll come on
4 up. Give me one second. Okay, Mr. Norris.

5 MR. CHARLES NORRIS: Thank you, Your
6 Honor. I'm Charles Norris for the defendant, USAA.
7 This is a motion for summary judgement and I think what
8 we have before Your Honor this morning is -- is a pure
9 question of the law. I don't think this is one of
10 those motions where we are going to be arguing about
11 the facts.

12 I believe the undisputed facts is that USAA issued
13 a policy in Florida to Dorris G. insuring a 2002
14 Honda. That Florida policy contains an exclusion of
15 liability coverage for claims between family members.

16 In July of 2009, Dorris G. 's wife, Linda
17 G. , was involved in an accident where she turned
18 left in front of an oncoming car. Her son, *Inman G.*,

19 was in the car and was injured. I don't believe
20 that *Inman G.* has filed a suit yet, against his
21 mother. And I assume Mr. McIntyre wants to resolve
22 this issue of coverage before filing that lawsuit.

23 This is a declaratory judgement action. It raises
24 two issues. Number one, a plaintiff is asking that the
25 policy be reformed to remove the exclusion of liability

1 coverage for claims between family members. It's
2 really known as the family member exclusion.

3 And also, number two, the plaintiff claims
4 entitlement to under insurance motorists or a UIM
5 coverage under the policy.

6 From reading Mr. McIntyre's brief, and last year -
7 - last week, I'm sorry -- I sent the Court our brief --
8 -

9 THE COURT: I've read them both.

10 MR. NORRIS: Here's what is not in
11 dispute in Mr. McIntyre's brief, number one is that the
12 policy was issued in Florida. The policy does exclude
13 claims between family members. It appears from Mr.
14 McIntyre's brief -- he appears to concede that Florida
15 law applies in determining the validity of the
16 contract.

17 And number four, under Florida law, this exclusion
18 is valid. My brief cites, and I enclosed for Your
19 Honor, several Florida cases which have explicitly
20 ruled on the validity of this exclusion.

21 So, what I think we really have to -- where I
22 think the battle line is drawn is that this is a
23 conflict of issue question, which obviously would be a
24 question of law for the Court.

25 South Carolina law, that we cited in our brief, is

1 that the law of the state where the policy was issued
2 determines what law applies. And we cited Unison
3 versus USAA and we cited Companion versus Airborne,
4 South Carolina cases which say the validity of a
5 contract is determined by the law from the state in
6 which the contract was made. Now, it's undisputable
7 the contract was made in Florida. In fact, the
8 plaintiff's own complaint alleges that the policy was
9 issued in Florida.

10 THE COURT: Let me ask you just quickly,
11 the case that you passed up to me, the 2001 case,
12 Juanita Boone versus Frank Boone, is the difference in
13 that case because the policy was also, in fact, issued
14 in South Carolina. The lawsuit was brought in South
15 Carolina, the husband and wife lived in South Carolina,
16 the accident occurred in Georgia, which is why Georgia
17 law was being applied?

18 MR. NORRIS: Are you talking about the
19 case Boone versus Boone?

20 THE COURT: Yes, sir.

21 MR. NORRIS: I don't think Boone versus
22 Boone, as I understand it concerned a question of
23 insurance coverage. As I understand that case, Georgia
24 had, in effect, what is really a legal fiction. Which
25 is that under the common law, go back to the 17th

1 century ---

2 THE COURT: Right ---

3 MR. NORRIS: --- or whatever. A husband
4 and wife were being one legal unit and South Carolina,
5 unlike Georgia, had moved beyond that and recognized
6 that husband and wives were distinct and legal entities
7 but Georgia had not. So, in Georgia -- the Georgia law
8 -- a husband could not sue a wife and the wife could
9 not sue the husband because they were regarded as one -
10 - you can't sue yourself so what happened in Boone is
11 that they tried to bring a lawsuit in South Carolina
12 and the problem is if you apply Georgia law then the
13 Court's of South Carolina would have to recognize what
14 our Court's had explicitly rejected, namely a legal
15 fiction.

16 The thing about the Boone case, though, the reason
17 I don't think that applies is that does not involve an
18 issue of insurance coverage. The case that's really on
19 point, much more so than Boone, in which what does
20 involve a case of insurance coverage is Newton versus
21 Progressive Insurance Company, which came out really
22 the same year as the Boone case. It's a 2001 case.

23 Now what happened in the Newton case is really,
24 basically, what we have here. In Newton, Progressive
25 issues a policy to Newton in Georgia. That policy does

1 not have uninsured motorists coverage because Newton
2 had rejected it. As we all know, in South Carolina,
3 uninsured motorist coverage, like basic liability
4 limits coverage, is a mandatory coverage. It's not
5 optional.

6 Newton then gets involved in a wreck in South
7 Carolina. Much like the case here. The only
8 difference is in Newton you've got a joint policy
9 issued in Georgia. Here you've got a policy issued in
10 Florida. In both cases you've got a wreck in South
11 Carolina.

12 And what Newton was asking the Court to do was to
13 reform the terms of the policy to comply with South
14 Carolina liability policy requirements. I'm looking at
15 the case here. And Newton's arguing that the Georgia
16 policy should be reformed to comply with South Carolina
17 law because it doesn't include a type of coverage --
18 uninsured motorist's coverage -- which is mandatory
19 under South Carolina law.

20 That was the argument in Newton. The trial court
21 granted summary judgement to the defendant Progressive
22 and it was affirmed on appeal by the Court of Appeals.
23 And the Court of Appeals said that section 38 77 150, I
24 think that's liability coverage, does not affect
25 policies issued in other state's, including Georgia. A

1 policy issued and delivered outside of South Carolina
2 is not a policy issued in the state. The fact that an
3 accident is which is within the risk covered by a
4 policy occurred in a certain state does not make the
5 contract one of that state, therefore properly held
6 this state's financial responsibility law did not
7 require the reformation of the Georgia policy to
8 include uninsured motorist coverage.

9 Umm ya' know, other than the fact that one case
10 involved Georgia and the other case involved South
11 Carolina, it's sort of difficult to find a distinction
12 between Newton and what we have here.

13 Now on Newton, I'm sorry, in the Boone case that
14 Mr. McIntyre handed to you, actually the two other
15 cases that he has cited in his memorandum and two of
16 them -- I don't know if it's in the Newton case -- but
17 one of them, it is Routen versus Pullman says, The fact
18 that the law of two states may differ does not
19 necessarily imply that the law of one state violates
20 the covered policy of the other.

21 That is also reiterated in Dawkins v. State, which
22 is also cited in Mr. McIntyre's brief. It's a 412 77
23 407. The fact that the law of two state's may differ
24 does not necessarily imply that the law of one state
25 violates the public policy of the other.

1 There is also a case I did not cite but -- well,
2 the name of the case is Wilson versus Builders
3 Transport. It's a 498 SE 2nd 764. It is a 1998
4 decision of the Court of Appeals and it says, Although
5 some contracts may violate public policy, a sound
6 public policy requires the enforcement of contracts
7 deliberately made which do not contravene some positive
8 law or role of public morals. Court's should not null
9 contracts on doubtful grounds of public policy. In
10 such matters it is better that the legislature should
11 first speak.

12 What that means to me is that it has to really,
13 really, really be clear, as it was in Boone, that what
14 is at issue violates public policy of this state
15 because that's a significant holding that something
16 violates the public policy of this state and I think --
17 A, I don't think it's that clear. B, the Florida
18 court's, specifically Mitchell versus State Farm, have
19 specifically concluded and I quote, "That family
20 exclusion clauses in automobile insurance policies are
21 not void as contrary to this state's laws or public
22 policy", that's a direct quote from Mitchell versus
23 State Farm.

24 Now, insurance is not regulated on a federal
25 level. There is no one federal law regulating

1 insurance. That means that you have different laws in
2 all fifty states. And it's not uncommon, for what is
3 mandatory in one state, not to be mandatory in another
4 state and vice versa. Ya' know, there maybe things in
5 Florida that are mandatory that aren't mandatory in
6 South Carolina. So, it's not unusual for there to be
7 differences in what is mandatory among the insurance
8 laws for various states. To jump from that to conclude
9 that this violates the public policy of South Carolina,
10 I think is a quantum leap that is just not supported.

11 So for that reason we think that the motion for
12 summary judgement should be granted. Now that is to
13 the liability coverage. There is another issue that's
14 involved which is whether under this policy you can get
15 under insured motorist coverage. Under this policy,
16 under insured motorist coverage is included within the
17 definition of uninsured motorist coverage. That's on
18 page 14 of the basic policy and I attached all that to
19 the material sent last week.

20 But that says uninsured motor vehicle does not
21 include a vehicle or equipment owned by or furnished or
22 available for the regular use of you or any family
23 member. Well here, the car was 2002 Honda, it was
24 owned by the plaintiff and Linda G. It was
25 furnished for her regular use and Linda G. primarily

1 used that car. And that is on pages 19 and 20 and 37
2 of Linda G 's deposition, which I attached. There
3 are a couple of exceptions to that exclusion that I
4 just read but there not applicable and that's on page
5 14 of the form.

6 So I think the battle lines, as I said, are pretty
7 clearly drawn. I think it's a question of law and I'll
8 also say this, that Mr. McIntyre technically speaking
9 has not moved for summary judgement but what he is
10 arguing is de facto motion for summary judgement
11 because his defense to my motion would basically grant
12 him the relief that he seeks, so it's almost as if Your
13 Honor was presented with cross motions for summary
14 judgement. I think, realistically, that that's where
15 we are even though Mr. McIntyre has technically has not
16 moved for summary judgement.

17 I'll be glad to answer any questions. That's
18 pretty much what I have to say.

19 THE COURT: All right, Mr. McIntyre.

20 MR. BERNARD McINTYRE: Your Honor, if it
21 please the Court, I don't think I'll be as long. I
22 actually think the issue is a little simpler than what
23 Mr. Norris makes it to be. I actually do think that
24 Boone versus Boone applies to this situation. And I
25 think it is very applicable because of the reason the

1 Court sets out in the case.

2 This is really a question about whether or not the
3 family member exclusion in a policy from Florida will
4 be applicable here in the state of South Carolina and
5 that's what it really boils down to.

6 And -- and as you know, that -- that -- that
7 clause excludes any coverage by any member that is a
8 resident member of the household from getting any
9 coverage if the member of the household is operating
10 the vehicle was at fault and caused injuries of that
11 person.

12 So it is really a matter of coverage. In Boone
13 versus Boone you have a situation where you have a
14 family member exclusion but it is in the form of
15 interpersonal, interspousal community. That is they
16 can't -- spouses can't recover against each other if --
17 if -- if one is at fault and causes the wreck because
18 we do have a wreck. In Boone versus Boone the wreck
19 happens in Georgia. Here the wreck, of course, happens
20 in South Carolina. Well, the wreck happens in Georgia.
21 The people live in South Carolina as they do here and
22 the -- because the wreck happened in Georgia, Georgia
23 law should apply. Just as here, Mr. Norris is arguing
24 Florida law ought to apply. But South Carolina,
25 normally in the conflicts of law situation would apply

1 Georgia law, as in the Boone case, but when it
2 conflicts with our public policy, the South Carolina
3 Supreme Court in Boone versus Boone says we don't
4 apply. And -- and -- and Boone versus Boone you had a
5 family member exclusion except in the form of
6 interspousal immunity.

7 The Court refused to apply the adoption of
8 interspousal immunity primarily for the same reason
9 that it is here. When you are excluding a child from
10 the coverage it says that married persons should be
11 allowed to recover and in any other situation other
12 than a car wreck, and the Court points that out -- the
13 Supreme Court does in Boone versus Boone -- in every
14 other situation a married person is allowed to recover,
15 in every other situation a child is allowed to recover
16 against a parent except in a car wreck.

17 The Court, the Supreme Court in Boone versus Boone
18 say, that's against the public policy of this state. If
19 you can recover in any other situation there's no
20 particular reason why you shouldn't here and because a
21 child ought to have the same legal rights to recover
22 against the parent's as anybody else, just as a married
23 person ought to have the right to recover against a
24 spouse as anyone else. The public policy of the state
25 -- it would be against the public policy of the state

1 to apply the family member exclusion and this Florida
2 policy because it prevents a person -- a minor child,
3 who has the legal right to recover in this state
4 without that policy to recover in this particular
5 incident.

6 And there's -- there's -- there's, initially Mr.
7 Norris, I think in his brief he implied that there
8 would be collusion and all that, but that was disposed
9 of. That -- that -- that was fully covered here in the
10 Boone versus Boone case. I think it's a case that is
11 very much on point. As the family member exclusion --
12 and I don't know any case, all the cases that Mr.
13 Norris cites are not -- none of them are South Carolina
14 cases that are on point in this situation. This is a
15 South Carolina Supreme Court case and I think that it's
16 on point.

17 He quotes a plethora of Florida cases but we are
18 asking a South Carolina court to determine this and the
19 Boone versus Boone case, I think, is instructive here.

20 THE COURT: Mr. Norris, do you want to
21 respond?

22 MR. NORRIS: Thank you. First of all,
23 Boone versus Boone actually involved a situation where
24 a wife could not sue because of -- what we have here --
25 the USAA policy doesn't prevent one family member from

1 suing the other, it just says there's no liability
2 coverage for it. What's involved in Boone versus Boone
3 was whether a spouse could sue a spouse. Not really an
4 insurance coverage issue. Here it is an insurance
5 coverage issue. Nothing has prevented the son from
6 suing the mother, it just says there is no liability
7 coverage for it.

8 As far as citing foreign law, really our case is
9 primarily predicated upon Newton versus Progressive,
10 which is a decision of the South Carolina Court of
11 Appeals, which is as close as you can get it involving
12 mandatory coverage under South Carolina law.

13 Now, the plaintiff in Newton was trying to do what
14 the plaintiff here is doing, mainly setting aside
15 because the Georgia policy did not include the South
16 Carolina mandatory coverage so, we are relying on the
17 South Carolina law.

18 THE COURT: All right. Thank you, y'all.
19 I'll email someone a proposed order, okay?

20 MR. NORRIS: Thank you.

21 MR. MCINTYRE: Thank you, Your Honor.

22 (Whereupon the hearing ended at 11:40 A.M.)

23 --- END OF TRANSCRIPT ---
24
25

Deposition Testimony of Linda L. Green

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) 14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT) CASE NO. 10-CP-07-5078

DORRIS W. GREEN, JR., as Guardian)
ad Litem for *Iman G.*, a)
minor,)

Plaintiff,)

vs.)

UNITED SERVICES AUTOMOBILE)
ASSOCIATION,)

Defendant.)

COPY

* * * * *

DEPOSITION OF: LINDA G.
DATE TAKEN: Wednesday, January 26, 2011
TIME: 1:15 p.m.
PLACE: 1606 King Street
Beaufort, SC
REPORTED BY: TERI L. SAMPSON, RPR,
Notary Public and Certified
Live Note Reporter

* * * * *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

1 A P P E A R A N C E S
2 REPRESENTING THE PLAINTIFF:
3

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1606 King Street
5 P.O. Box 248
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6 (843) 524-9049

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8

CHARLES R. NORRIS, ESQUIRE
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11
12
13
14
15
16
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19
20
21
22
23
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25

I N D E X

WITNESS: LINDA G

Examination	Page
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BY MR. MCINTYRE.	38
REPORTER'S CERTIFICATE	56

EXHIBITS:

(No exhibits were offered or marked for
identification.)

S T I P U L A T I O N S

It is hereby stipulated and agreed by and
between the parties hereto, through their respective
counsel, that the reading and signing of the
transcript is expressly waived by the Deponent.

1 BEAUFORT, SOUTH CAROLINA, WEDNESDAY, JANUARY 26, 2011

2 1:15 P.M.

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

4 - - - - -

5 WHEREUPON,

6 LINDA G.

7 being first duly sworn, testified as follows:

8 EXAMINATION

9 BY MR. NORRIS:

10 Q Mrs. G. , I'm Charles Norris and I
11 represent USAA and I'm going to ask you some questions
12 about your background and about the accident and the
13 injuries to your son.

14 If you don't understand one of my questions,
15 let me know and I'll try to --

16 A I will.

17 Q -- rephrase it so that it makes sense to you.
18 If -- or when you're answering my question, I would
19 appreciate it if you would answer out at least yes or
20 no. A lot of times when I depose people, they say
21 "Uh-huh" or "Uh-uh" or they nod their head. And while
22 I know what they're saying, Miss Sampson might not know
23 how to interpret that answer. So if I catch you doing
24 that, I'm just going to ask you, "Is that a yes or is
25 that a no."

1 Q And it's my understanding you are currently
2 married to Dorris G. , correct?

3 A Yes.

4 Q And you have two children of that marriage?

5 A Yes.

6 Q And that would be *Inman G.* and Edward
7 *N* ?

8 A Yes.

9 Q And those boys have lived with you and your
10 husband at Seaside Road in St. Helena their entire
11 lives, correct?

12 A Yes.

13 Q What is your Social Security number?

14 A 249-41-5198.

15 Q And what's your birth date?

16 A 1/21/72.

17 Q You don't have any criminal record, do you?

18 A No, sir.

19 Q Can you give me the last names of your
20 relatives who live in Beaufort County?

21 A Gillard, G-i-l-l-a-r-d.

22 Q Okay. Any others?

23 A Newton, N-e-w-t-o-n.

24 Q Okay. Any others?

25 A Jenkins.

1 Q So you can think silently and go ahead and
2 answer out when you're ready to answer.

3 A It could have been 2006, 2005.

4 Q What year did you get married to Dorris
5 G. ?

6 A We got married in -- September the 17th of
7 2004.

8 Q So a year or two after you got married, is
9 that when he left the Navy?

10 A No. We were married longer than that before
11 he left the Navy.

12 Q So if you got married in September of 2004,
13 how many years had you been married when he left the
14 Navy?

15 A About two and a half years.

16 Q So if you do the math, he would have left the
17 Navy in late 2006 or early 2007?

18 A No. It had to have been in 2000 -- it had to
19 have been in 2005, December of 2005, '4, '5, it had to
20 be December of 2006. I honestly can't really remember
21 exactly when he got out.

22 Q Let me suggest this also. Of course,
23 obviously, in response to all of my questions, you have
24 to tell the truth. But if you don't know something,
25 you can say, "I don't know."

1 Chevrolet Blazer?

2 A Yes.

3 Q Still own it?

4 A Yes.

5 Q And who primarily uses that car?

6 A He does.

7 Q Is that car registered or licensed in South
8 Carolina or Florida?

9 A South Carolina.

10 MR. McINTYRE: What vehicle is that?

11 MR. NORRIS: The 1998 Chevrolet Blazer.

12 BY MR. NORRIS:

13 Q Do you and your husband also own a 1998
14 Honda?

15 A Yes.

16 Q Who primarily uses that, you or your husband?

17 A He does.

18 Q And is that car licensed or registered in
19 Florida or South Carolina?

20 A Florida.

21 Q Okay. Up until the time of your July 2009
22 accident, did you and your husband own a 2002 Honda?

23 A Yes.

24 Q And was that car registered or licensed in
25 South Carolina or Florida?

1 A Florida.

2 Q Who primarily used that car, you or your
3 husband?

4 A I did.

5 Q Did your husband buy that car in
6 Jacksonville, Florida?

7 A Yes.

8 Q Okay. Is there any other car that you and
9 your husband have had insured with USAA other than the
10 1998 Chevrolet Blazer, the 1998 Honda, and the 2002
11 Honda?

12 A No.

13 Q Okay. Just those three cars?

14 A Yes.

15 Q Do you know whether your husband, as of
16 today's date, has a South Carolina or a Florida
17 driver's license?

18 A He has a Florida driver's license.

19 Q Do you know why he has a Florida driver's
20 license if he lives in South Carolina?

21 A He goes to Florida on a regular basis.

22 Q Why?

23 A To see his parents.

24 Q Is that why he has a Florida driver's
25 license?

1 And that was pretty much all that happened. I mean, it
2 just happened -- like they say accidents happen in
3 split seconds, it was just seconds.

4 Q Did you turn left in front of the other car?

5 A When I was at the intersection, there waiting
6 at the intersection making a left turn, there were no
7 other vehicles coming. So out of nowhere, that's when
8 I, you know, saw this yellow truck approaching me.

9 Q Did you turn left in front of the yellow
10 truck?

11 A I turned left.

12 Q And did the yellow truck broadside your car?

13 A It did, because it was enough time for me to
14 even see the truck coming towards me to where -- it
15 just, you know, happened so fast.

16 Q Why were you not able to clear the
17 intersection before that yellow truck came into the
18 intersection?

19 A I don't know. I honestly don't know.
20 Because it actually broadsided -- it actually caught
21 the driver and the passenger door on that side.

22 Q Okay. Was the impact on the passenger's side
23 or the driver's side?

24 A Passenger's side.

25 Q And were your two children in the back seat?

1 A Yes, sir, in car seats.

2 Q And *Inman G.* en was on the passenger's
3 side and his brother, Edward *N.* was on the driver's
4 side?

5 A Yes.

6 Q And that's the reason that Edward *N.* was
7 just shaken up, but your son *Inman G.* had more
8 serious injuries?

9 A Right. But Edward got just maybe a few
10 pieces of glass in his face.

11 Q Did the -- was the driver of the other car a
12 Michelle Kaufman (ph)?

13 A I don't know. I never saw the driver.

14 Q Never talked to her?

15 A Never talked to her.

16 Q Who do you feel was at fault in causing the
17 accident?

18 A I don't know.

19 Q Were you at fault?

20 A I'm not sure.

21 Q Do you feel that the other driver did
22 anything wrong?

23 A Maybe. Because I -- when I was making a left
24 turn, I actually -- there was -- there was more than
25 enough time, I saw the vehicle approaching and it just

1 A Yes.

2 Q So that's why the -- as far as you know, the
3 government has paid the medical bills?

4 A As far as I know, yes.

5 Q The 2002 Honda you were driving at the time
6 of the accident, that was actually owned by your
7 husband, but he furnished it for your regular use?

8 A Actually, it was actually purchased for me,
9 but I was the primary driver of that car.

10 Q Who actually owned the car at the time of the
11 accident, you or your husband?

12 A I mean, I was the primary driver.

13 Q Okay. Now, the 2002 Honda, I thought your
14 husband bought that car from a car dealer in
15 Jacksonville, Florida.

16 A Yes, he did.

17 Q Okay. Did you just say he bought it from
18 you?

19 A He bought it for me.

20 Q Oh, he bought it for you, not from you?

21 A Yes, for me.

22 Q I see. Okay. He bought it in Jacksonville,
23 Florida for you?

24 A Yes.

25 Q But he was the owner?

1 A Yes.

2 Q And he had it registered always in Florida?

3 A Yes.

4 Q Okay. And the other two cars are still
5 insured with USAA?

6 A Yes.

7 Q That would be the 1998 Honda and the
8 Chevrolet Blazer?

9 A Yes.

10 MR. NORRIS: I don't think I have anything
11 else. Thank you.

12 THE WITNESS: Thank you.

13 MR. McINTYRE: I just have a few questions.
14 I don't think I have a whole lot.

15 EXAMINATION

16 BY MR. McINTYRE:

17 Q Just to kind of carry you back briefly to the
18 first part of 2009, okay, which would be, I guess,
19 about two years ago. The first half of 2009 just
20 before this accident, where did you and your husband
21 live?

22 A Here in Beaufort.

23 Q Okay. Have the two of you -- what address
24 was that?

25 A It was -- actually, it's 186 Seaside Road.

1 Q Okay. And you-all have lived there since the
2 two of you have been married?

3 A Correct, yes.

4 Q Have you-all, as husband and wife, always
5 physically resided in Beaufort, South Carolina?

6 A Yes, we have.

7 Q Have you-all physically resided anywhere
8 else?

9 A No.

10 Q Have you had any other address?

11 A No.

12 Q Have you ever done anything to indicates that
13 you're going to be moving from Beaufort to Florida?

14 A No.

15 Q Okay. Have you and your husband ever
16 discussed any plans, taken any action or anything to
17 indicate that you-all are going to be moving from South
18 Carolina to Florida?

19 A No.

20 Q Okay. And with regard to all of your
21 affairs, whether it was a light bill, water bill, and
22 so forth, was that South Carolina?

23 A Yes.

24 Q Okay. You drive any of the cars you are able
25 to drive, any of these vehicles that are at the home?

1 Q Okay. Whenever you say you didn't file taxes
2 together in 2007, 2008 or 2009, does that mean you-all
3 didn't file together?

4 A Correct. That's correct.

5 Q Did you file taxes?

6 A I filed, yes.

7 Q Okay. But you don't know whether your
8 husband filed?

9 A That's correct.

10 Q Okay. If he filed, you don't know whether he
11 filed in South Carolina or in Florida?

12 A I don't know.

13 Q Okay. You-all file separate returns?

14 A Yes, we do.

15 Q Okay. But you file in South Carolina?

16 A Yes, I do.

17 Q And you claim South Carolina as your
18 residence?

19 A Yes, I do.

20 Q Okay. USAA didn't ever talk to you about
21 your residence even with respect to the Chevy Blazer,
22 did it?

23 A No.

24 Q Okay. Now, you were with your husband when
25 you-all went down to McElveen Auto Sales in Charleston

Medical University of South Carolina Medical Records

MUSC Medical Center
HOSPITAL DISCHARGE SUMMARY

Patient Name:

Inman G.

MRN: 002623965

Patcom: 844743476

Admitted: 07/19/2009

Discharged: 07/21/2009

Service:

Attending: Christian Streck, MD

Referring:

SERVICE: Pediatric Surgery

CHIEF COMPLAINT: Motor-vehicle collision.

HISTORY OF PRESENT ILLNESS: Dorris is a 4-year-old male without any significant medical history, who presented from outside hospital status post MVC. Per mom, patient was in car seat in rear passenger seat when T-boned on passenger side by a car. The patient did not lose consciousness and was alert the whole time. The patient's leg was pinned between door and car seat. The patient did complain of right leg pain. The patient was scanned at the outside hospital and was transferred to MUSC for definitive care. It was noted that the patient had a prolonged extrication of 7.5 minutes.

PAST MEDICAL HISTORY: Noncontributory. Full-term, normal delivery.

PAST SURGICAL HISTORY: None.

ALLERGIES: No known drug allergies.

MEDICATIONS: See medication reconciliation database.

SOCIAL HISTORY: Lives with mom, getting ready to preschool, developmentally on track.

FAMILY HISTORY: Hypertension.

REVIEW OF SYSTEMS: There are facial lacerations around the nose and mouth. There is also pain in the right leg. Rest of the review of systems within normal limits.

PHYSICAL EXAMINATION ON ADMISSION:

VITAL SIGNS: Temperature 37.6, pulse 110, respirations 27, blood pressure 108/47, weight is 17 kg.

SKIN: Within normal limits.

HEENT: Normocephalic, atraumatic. Pupils equal, round and reactive to light. Extraocular muscles intact. There is a laceration to the right side of face and dried blood on lip and some loose teeth.

NECK: Trachea midline. No thyromegaly. No lymphadenopathy.

CHEST: Clear to auscultation bilaterally. No pain on respiration with chest wall movements.

CARDIOVASCULAR: Regular rate and rhythm. No murmurs on auscultation.

GASTROINTESTINAL: Soft, nontender and nondistended. Bowel sounds present. No organomegaly.

EXTREMITIES: The right leg was elevated in soft cast and neurovascularly intact. Sensations throughout. Was able to move all extremities well except right leg. All extremities seems to be well perfused.

Due to the nature of the injuries orthopedics and oromaxillofacial surgery were consulted.

HOSPITAL COURSE: This 4-year-old male status post MVC with multiple facial lacerations and abrasions was admitted to the our service. The patient was in stable condition and the vital signs remained stable. The patient was seen by Orthopedics and Orthopedics recommended long-leg cast after reviewing the x-rays and seeing the patient. The patient's right leg was put in a long cast with diagnosis of right tibial fracture. The cast was bivalved and was over wrapped the next day. The oromaxillofacial surgery was also consulted and the facial lacerations were repaired in the OR by their team. After the surgery, the OMFS recommended regular diet as tolerated; however, the parents did not feel comfortable with the diet and the patient has been eating a soft mechanical diet since the surgery. The patient tolerated both surgery and the placement of cast very well. The orthopedics also recommended nonweightbearing to the right leg. Physical therapy was consulted and they recommended use of a wheelchair. Physical therapy was worried that the child may eventually not follow the nonweightbearing precautions and may harm to right leg. Discharge plan was discussed with both Orthopedics and OMFS. The discharge plan was also discussed with the parents. The parents understood and agreed to the plan of care and discharge plan as well. The next few days, the patient's pain improved and required less and less pain medicine. The patient began eating well and the condition continued to improve.

DISCHARGE DIAGNOSIS(ES):

1. Motor vehicle collision.
2. Right tibial fracture.
3. Multiple facial lacerations and abrasions.

DISCHARGE MEDICATIONS:

1. The patient will go home with Keflex 250 mg per 5 mL p.o. 3 times a day for 7 days.
2. Tylenol with codeine 120/12/5 one-half teaspoon p.o. every 4 hours.
3. Over-the-counter Tylenol 200 mg per 5 mL p.o. every 4 to 6 hours.

PATIENT'S DISPOSITION.: To home with durable medical equipment, reclining wheelchair, ELR and safety belt. The patient does not have any restriction in terms of activity, except nonweightbearing on right leg. The patient will continue soft mechanical diet for the next 7 days. The patient needs to call back for fevers greater than 101.5, bleeding or infection signs around the facial lacerations and a painful right lower extremity or any other concerns.

ADDITIONAL INSTRUCTIONS: Include weightbearing right lower extremity and use of wheelchair.

FOLLOWUP: The patient will follow up with OMFS on 07/27/2009 at 1 p.m. The patient will also followup at Pediatric Orthopedic Clinic in about 2 weeks.

Dictated by: Jong Taek Kim, MD

Jong Taek Kim, MD

Christian Streck, MD
Attending

424037 / 44076 /
JOB: 9082389
DD: 07/21/09 11:50 AM
DT: 07/21/09 02:01 PM

Additional CC:

Authenticated by CHRISTIAN J STRECK JR, MD On 07/31/2009 09:02:27 AM

United States Automobile Association Automobile and Property Insurance Company Policy

CERTIFIED POLICY



MAIL MCH-M-I
Y1392
DECEMBER 24, 2008

AUTOMOBILE POLICY PACKET

DORRIS G.
PO1 USN RET
4270 DEVOE AVE
SHARPS FL 32922

USAA 02219 99 87 7102 3

POLICY PERIOD: EFFECTIVE FEB 08 2009 TO AUG 08 2009

IMPORTANT MESSAGES

Refer to your Declarations Page and endorsements to verify that coverages, limits, deductibles and other policy details are correct and meet your insurance needs. Required information forms are also enclosed for your review.

To comply with Florida's Personal Injury Protection and Property Damage law, you must report any changes to your Florida vehicle registration to us immediately.

Your attached policy includes a charge for the Florida Hurricane Catastrophe Fund (FHCF) Emergency Assessment, which provides funds to pay FHCF obligations resulting from previous hurricane seasons. The FHCF charges are reflected on your Declarations page.

USAA considers many factors when determining your premium. Maintaining safe driving habits is one of the most important steps you can take in keeping your premium as low as possible. A history of claim or driving activity and your USAA payment history may affect your policy premium.

We have provided your ID cards in this packet. You can use the cards to show proof of insurance, if necessary.

This is not a bill. Any premium charge or change for this policy will be reflected on your next regular monthly statement. Your current billing statement should still be paid by the due date indicated.

To receive this document and others electronically, or manage your Auto Policy online, go to usaa.com.

For U.S. calls: Policy Service (800) 531-8111. Claims (800) 531-8222.

ACS1

49708-0406

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UNITED SERVICES AUTOMOBILE ASSOCIATION

(A RECIPROCAL INTERINSURANCE EXCHANGE)

9800 Fredericksburg Road - San Antonio, Texas 78288

FLORIDA AUTO POLICY

RENEWAL DECLARATIONS

(ATTACH TO PREVIOUS POLICY)

ADDL INFO ON NEXT PAGE MAIL MCH-M-I

RENEWAL OF

State	01 03	Veh	POLICY NUMBER
FL 249249		Terr	02219 99 87U 7102 3
POLICY PERIOD:		(12:01 A.M. standard time)	
EFFECTIVE FEB 08 2009 TO AUG 08 2009		OPERATORS	
01 DORRIS G.			

Named Insured and Address

DORRIS G.
PO1 USN RET
4270 DEVOE AVE
SHARPS FL 32922

Description of Vehicle(s)

VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	VEH USE*	WORK/SCHOOL
01	02	HONDA	ACCORD EX	SEDAN 4D	5200	1HGCG16572A051544	14 P	
03	98	HONDA	CIVIC LX	SEDAN 4D	2000	2HGEJ6679WH541998	13 P	

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. *W/C=Work/School; B=Business; F=Farm; P=Pleasure

VEH 01 SHARPS FL 32922-0000

VEH 03 SHARPS FL 32922-0000

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES ("ACV" MEANS ACTUAL CASH VALUE)	LIMITS OF LIABILITY		VEH 01 6-MONTH		VEH 03 6-MONTH		VEH		VEH	
	D=DED	PREMIUM	D=DED	PREMIUM	D=DED	PREMIUM	D=DED	PREMIUM	D=DED	PREMIUM
PART A - LIABILITY										
BODILY INJURY EA PER \$	10,000									
EA ACC \$	20,000	46.25		44.45						
PROPERTY DAMAGE EA ACC \$	10,000	43.04		41.14						
PART B - PERSONAL INJURY PROTECTION										
MAXIMUM BENEFITS	\$10,000									
DEDUCTIBLE APPLIES TO										
NAMED INSD/RESIDENT RELATIVE	D 250	33.31	D 250	48.13						
PART C - UNINSURED MOTORISTS										
STACKED										
BODILY INJURY EA PER \$	10,000									
EA ACC \$	20,000	29.48		27.90						
PART D - PHYSICAL DAMAGE COVERAGE										
COMPREHENSIVE LOSS ACV LESS	D 500	22.23								
COLLISION LOSS ACV LESS	D 500	95.34								
VEHICLE TOTAL PREMIUM		269.65		161.62						

TOTAL PREMIUM - SEE FOLLOWING PAGE(S)

LOSS PAYEE

VEH 01 CITIFINANCIAL AUTO, CORAOPOLIS PA

ENDORSEMENTS: ADDED 02-08-09 - NONE

REMAIN IN EFFECT(REFER TO PREVIOUS POLICY) - 5100FL(01) A400FL(02) A100FL(06)

INFORMATION FORMS(NOT PART OF POLICY)- 55FL(05) 663FL(03) 999FL(01)

N1

01 RMM4000000 03 XXX4000000

In WITNESS WHEREOF, the Subscribers at UNITED SERVICES AUTOMOBILE ASSOCIATION have caused these presents to be signed by their Attorney-in-Fact on this date DECEMBER 24, 2008

COUNTERSIGNED BY

5000 U

MARIA ELENA MCALEXANDER

Laura Bishop
Laura Bishop

President, USAA Reciprocal Attorney-in-Fact, Inc.

FLORIDA AUTOMOBILE INSURANCE IDENTIFICATION CARD

UNITED SERVICES AUTOMOBILE ASSN

POLICY IDENTIFICATION NO. CO. CODE EFF. DATE
02219 99 87U 7102 3 -04340 02/08/09

☒ PERSONAL INJURY PROTECTION BENEFITS
AND PROPERTY DAMAGE LIABILITY

☒ BODILY INJURY
LIABILITY

Name

DORRIS G

VEHICLE DESCRIPTION

YEAR MAKE/MODEL

2002 HONDA

VEHICLE IDENTIFICATION NUMBER

1HGCG16572A051544

NOT VALID MORE THAN ONE YEAR FROM EFFECTIVE DATE

Misrepresentation of Insurance is a first degree misdemeanor. Policy coverages extend to a rental car. See outline of coverage.

9800 Fredericksburg Road
San Antonio, Texas 78288

POLICY SERVICE (800) 531-8111

CLAIMS (800) 531-8222

Additional copies available at usaa.com

AUTOMOBILE INSURANCE IDENTIFICATION CARD

We've issued an identification card as evidence of liability insurance for your vehicle(s). The card is valid only as long as liability insurance remains in force.

You may be required to produce your identification card at vehicle registration or inspection, when applying for a driver's license, following an accident or upon a law enforcement officer's request.

KEEP A COPY OF THE ID CARD IN YOUR VEHICLE AT ALL TIMES.

For your convenience, additional copies are available on-line at usaa.com.

922 FL2

51798-1107

FLORIDA AUTOMOBILE INSURANCE IDENTIFICATION CARD

UNITED SERVICES AUTOMOBILE ASSN

POLICY IDENTIFICATION NO. CO. CODE EFF. DATE
02219 99 87U 7102 3 -04340 02/08/09

☒ PERSONAL INJURY PROTECTION BENEFITS
AND PROPERTY DAMAGE LIABILITY

☒ BODILY INJURY
LIABILITY

Name

DORRIS G.

VEHICLE DESCRIPTION

YEAR MAKE/MODEL

1998 HONDA

VEHICLE IDENTIFICATION NUMBER

2HGBJ6679WE541998

NOT VALID MORE THAN ONE YEAR FROM EFFECTIVE DATE

Misrepresentation of Insurance is a first degree misdemeanor. Policy coverages extend to a rental car. See outline of coverage.

9800 Fredericksburg Road
San Antonio, Texas 78288

POLICY SERVICE (800) 531-8111

CLAIMS (800) 531-8222

Additional copies available at usaa.com



UNITED SERVICES AUTOMOBILE ASSOCIATION

(A RECIPROCAL INTERINSURANCE EXCHANGE)

9800 Fredericksburg Road - San Antonio, Texas 78288

FLORIDA AUTO POLICY

RENEWAL DECLARATIONS

(ATTACH TO PREVIOUS POLICY)

Named Insured and Address

DORRIS G.
PO1 USN RET
4270 DEVOE AVE
SHARPS FL 32922

State		Veh		POLICY NUMBER
FL		Terr		02219 99 87U 7102 3
POLICY PERIOD:		(12:01 A.M. standard time)		
EFFECTIVE FEB 08 2009		TO AUG 08 2009		

Description of Vehicle(s)

VEH	YEAR	TRADE NAME	MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	VEH USE*	WORK/SCHOOL Miles One Way	Days Per Week

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. *W/C=Work/School; B=Business; F=Farm; P=Pleasure

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy.

COVERAGES		LIMITS OF LIABILITY ("ACV" MEANS ACTUAL CASH VALUE)		VEH		VEH		VEH		VEH	
				D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$	D=DED AMOUNT	PREMIUM \$
6 MONTH PREMIUM \$		431.27									
THE FOLLOWING COVERAGE(S) DEFINED IN THIS POLICY ARE NOT PROVIDED FOR:											
VEH 01 - MEDICAL PAYMENTS, RENTAL REIMBURSEMENT, TOWING AND LABOR											
VEH 03 - MEDICAL PAYMENTS, COMPREHENSIVE, COLLISION, RENTAL REIMBURSEMENT, TOWING AND LABOR											
FL HURRICANE CATASTROPHE EMERGENCY ASSESSMENT (NOT INCLUDED IN TOTAL PREMIUM)				\$	4.29						

In WITNESS WHEREOF, the Subscribers at UNITED SERVICES AUTOMOBILE ASSOCIATION have caused these presents to be signed by
their Attorney-in-Fact on this date DECEMBER 24, 2008
COUNTERSIGNED BY

5000 U

MARIA ELENA MCALEXANDER

Laura Bishop
Laura Bishop
President, USAA Reciprocal Attorney-in-Fact, Inc.



SUPPLEMENTAL INFORMATION

EFFECTIVE FEB 08 2009 TO AUG 08 2009

The following approximate premium discounts or credits have already been applied to reduce your policy premium costs.

NOTE: Age or senior citizen status, if allowed by your state/location, was taken into consideration when your rates were set and your premiums have already been adjusted.

VEHICLE 01

ANNUAL MILEAGE DISCOUNT	-\$	17.40
ANTI-LOCK BRAKE DISCOUNT	-\$	6.56
ANTI-THEFT DISCOUNT	-\$	1.97
DAYTIME RUNNING LIGHTS DISCOUNT	-\$	2.59
MULTI-CAR DISCOUNT	-\$	34.53
PASSIVE RESTRAINT DISCOUNT	-\$	4.96
PREMIER DRIVER DISCOUNT	-\$	12.16
VEHICLE EXPERIENCE DISCOUNT	-\$	12.69

VEHICLE 03

ANNUAL MILEAGE DISCOUNT	-\$	18.96
MULTI-CAR DISCOUNT	-\$	20.79
PASSIVE RESTRAINT DISCOUNT	-\$	7.58
PREMIER DRIVER DISCOUNT	-\$	7.32
VEHICLE EXPERIENCE DISCOUNT	-\$	7.58

FLORIDA NO-FAULT AND PROPERTY DAMAGE LIABILITY INFORMATION

A REMINDER - The information in this form is a brief, general discussion. Coverages are subject to all the provisions and exclusions contained in your insurance policy. PLEASE READ YOUR POLICY FOR DETAILS.

If you wish to select any of the PERSONAL INJURY PROTECTION (PIP) options or PROPERTY DAMAGE LIABILITY (PD) limits listed on this form please check the appropriate block and complete, sign, and return this form.

When purchasing any of these coverages, it is important to understand that you will be reimbursed only for reasonable and necessary medical expenses. Bills are audited, and amounts charged which are not reasonable, or charges incurred for treatment which is not necessary, will not be reimbursed. Any amounts not qualifying for reimbursement are your responsibility.

PERSONAL INJURY PROTECTION (PIP) provides benefits no matter who's at fault. In accordance with the Florida Motor Vehicle No-Fault Law, Florida requires you to carry \$10,000 PIP in addition to Property Damage Liability (PD) in order to register a vehicle. PIP deductibles and exclusion of work loss benefits are available. PD information is provided in Section II.

1. PIP

- is required on four-wheeled motor vehicles
- does not apply to motorcycles, golfcarts, and snowmobiles
- provides up to \$10,000 per person to include:
 - 80% of reasonable fees for medically necessary services
 - \$5,000 will be reserved, up to 30 days, for payments to licensed physicians and dentists for emergency services and hospital inpatient care.
 - 60% of work loss
 - expenses to obtain services the injured person would have performed
 - death benefit up to \$5,000 per person or the remainder of unused PIP benefits, whichever is less.

2. Exclusion of Work Loss Benefits

- you may exclude work loss benefits from PIP coverage, if for example, you are retired.
- you may choose to apply the exclusion of work loss benefit only to yourself, or to you and your dependent relatives.

For Personal Injury Protection insurance, the named insured may elect a deductible and to exclude coverage for loss of gross income and loss of earning capacity ("lost wages"). These elections apply to the named insured alone, or to the named insured and all dependent resident relatives. A premium reduction will result from these elections. The named insured is hereby advised not to elect the lost wage exclusion if the named insured or dependent resident relatives are employed, since lost wages will not be payable in the event of an accident.

60875-1107

663FL(03) Rev. 11-07

WE ARE REQUIRED BY FLORIDA LAW TO PROVIDE YOU WITH THE FOLLOWING INFORMATION

Effective May 1, 1989, any cancellation or nonrenewal of a policy providing Personal Injury Protection (PIP) or Property Damage (PD) coverage will be reported by the insurer to the Department of Highway Safety and Motor Vehicles.

Effective May 1, 1989, failure to maintain Personal Injury Protection (PIP); and **effective October 1, 1989**, failure to maintain Personal Injury Protection (PIP) and Property Damage (PD) coverage on a motor vehicle when required by law may result in the loss of registration and driving privileges in the state of Florida.

Effective October 1, 2007, Personal Injury Protection (PIP) is no longer required by law.

Effective January 1, 2008, failure to maintain Personal Injury Protection (PIP) and Property Damage (PD) coverage on a motor vehicle when required by law may result in the suspension of driver's license and vehicle registration.

Any operator or owner whose driver's license or registration has been suspended may effect its reinstatement upon compliance with the required evidence of coverage and upon payment to the Department of Highway Safety and Motor Vehicles of a nonrefundable reinstatement fee as follows:

\$150 for the first reinstatement

\$250 for the second reinstatement

\$500 for each subsequent reinstatement during the 3 years following the first reinstatement

If the person does not have a second reinstatement within 3 years after the initial reinstatement, the reinstatement fee shall be \$150 for the first reinstatement after that 3 year period.

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SECTION I

PERSONAL INJURY PROTECTION

DEDUCTIBLES

- ☐ \$250 ☐ \$500 ☐ \$1,000
☐ Apply deductible for the Named Insured only
☐ Apply deductible for the Named Insured and Dependent Resident Relatives

The premium reduction for deductible PIP ranges from approximately 10% to 50% depending upon the deductible option selected.

EXCLUSION OF WORK LOSS

I DO NOT NEED WORK LOSS BENEFITS, THEREFORE:

Approximate Premium Reduction

- ☐ Exclude work loss benefits for the named insured only 15%
☐ Exclude work loss benefits for the named insured and dependent resident relatives 23%

SECTION II

PROPERTY DAMAGE LIABILITY (PD)

PD protects you against legal liability for accidental damage to property of others caused by the operation of your vehicle. In addition to PIP, PD is mandatory in limits of at least \$10,000 in order to register a vehicle in Florida. PD limits must be the same for each vehicle insured for this coverage.

The premiums below reflect the total premium for this coverage for all the vehicles insured on your policy.

Available PD limits per accident	Semi-Annual Premium per policy	Available PD limits per accident	Semi-Annual Premium per policy
☐ \$10,000	\$ 84.18	☐ \$100,000	\$ 89.22
☐ \$25,000	\$ 86.35	☐ \$300,000	\$ 92.83
☐ \$50,000	\$ 87.78	☐ \$500,000	\$ 95.70

If this form is sent by facsimile machine (fax), the sender adopts the document received by USAA as a duplicate original and adopts the signature produced by the receiving fax machine as the sender's original signature.

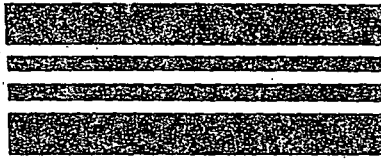
Home Phone: () _____

Office Phone: () _____

USAA Number

Signature of Named Insured

Date



022199987663FL

022199987663FL

**FLORIDA UNINSURED MOTORISTS (UM) COVERAGE
Selection/Rejection Notice**

I. WE ARE REQUIRED BY LAW TO MAKE THE FOLLOWING STATEMENT

YOU ARE ELECTING NOT TO PURCHASE CERTAIN VALUABLE COVERAGE WHICH PROTECTS YOU AND YOUR FAMILY OR YOU ARE PURCHASING UNINSURED MOTORIST LIMITS LESS THAN YOUR BODILY INJURY LIABILITY LIMITS WHEN YOU SIGN THIS FORM. PLEASE READ CAREFULLY.

IF UNINSURED MOTORISTS LIMITS EQUAL TO THE BODILY INJURY LIMITS ON THE POLICY ARE SELECTED, THE PRECEDING STATEMENT SHOULD BE DISREGARDED.

A REMINDER

The information in this form is a brief, general discussion. Coverages are subject to all the provisions and exclusions contained in your insurance policy. PLEASE READ YOUR POLICY FOR DETAILS.

II. WHAT IS UM?

- Protects if you are injured and the uninsured motorist is at fault.
- Protects against injury caused by a hit and run driver.
- Protects against injury caused by a motorist with liability limits less than your damages. His policy pays first then yours pays up to your limits or the amount of damages, whichever is less.

III. HOW IS UM ISSUED?

We are required by Florida law to issue your automobile liability policy with UM limits equal to your BI limits unless you select a lower limit or reject UM entirely. UM limits cannot exceed the BI limits on the policy.

STACKED UM COVERAGE:

Your UM coverage is also affected by the number of vehicles insured. Your UM policy limits for each motor vehicle described in your policy are added together (stacked) to equal the total amount of UM coverage available. For example, if you request 100/200 BI limits, and there are two vehicles insured on your policy, you have 200/400 total UM coverage, 100/200 x 2. The amount of UM coverage available would automatically change during the policy term if you increase or decrease the number of vehicles insured for UM under the policy.

~~YOUR POLICY WILL BE ISSUED WITH THE STACKED FORM OF UM UNLESS YOU SELECT NON-STACKED UM EXPLAINED BELOW. YOUR PREMIUMS ARE SIGNIFICANTLY HIGHER BASED UPON "STACKED" LIMITS.~~

NON-STACKED UM COVERAGE:

You have the option to purchase non-stacked (limited) form of Uninsured Motorist coverage. Under this type of coverage, if injury occurs in a vehicle owned or leased by you or any family member who resides with you, you will only be entitled to the amount of UM coverage purchased for that vehicle. If an injury occurs while occupying someone else's vehicle, or you are struck as a pedestrian, you are entitled to select the highest limit of UM coverage available on any one vehicle for which you are a named insured, insured family member, or insured resident of the named insured's household. This policy will not apply if you select the coverage available under any other policy issued to you or to any other family member who resides with you.

Rejection/Selection Form

The premiums below reflect the total premium for this coverage for all the vehicles insured on your policy. TO ORDER, TO CHANGE, OR TO REJECT UM COVERAGES, COMPLETE THE UM SELECTION/REJECTION NOTICE. SIGN AND RETURN TO US.

UM COVERAGE				
Semi-annual premium per policy				
Stacked Premium	Limits		Non-Stacked Premium	
	Per person / per accident			
\$ 35.83	\$ 5,000	\$ 10,000	N/A	
\$ 57.38	\$ 10,000	\$ 20,000	\$ 32.20	
\$ 76.02	\$ 15,000	\$ 30,000	\$ 42.37	
\$ 91.26	\$ 20,000	\$ 40,000	\$ 51.79	
\$ 103.61	\$ 25,000	\$ 50,000	\$ 60.52	
\$ 135.07	\$ 50,000	\$ 100,000	\$ 93.20	
\$ 160.26	\$ 100,000	\$ 200,000	\$ 121.52	
\$ 162.43	\$ 100,000	\$ 300,000	\$ 125.39	
\$ 203.59	\$ 300,000	\$ 500,000	\$ 157.11	
\$ 220.54	\$ 500,000	\$ 500,000	\$ 176.23	
\$ 221.74	\$ 500,000	\$ 1,000,000	\$ 177.21	
\$ 232.39	\$ 1,000,000	\$ 1,000,000	\$ 185.92	

V. SELECTING OR REJECTING UM COVERAGE - If you want the UM limits shown on your Declarations, no action is required on your part.

If you want to change your UM limit, want to reject UM entirely, want the non-stacked form of UM, or want to re-add stacked UM, please indicate your choice and complete this order/rejection form, sign below, and return to us.

- ☐ I want the NON-STACKED form of Uninsured Motorists coverage,
in limits of \$ _____ / \$ _____
- ☐ I want the STACKED form of Uninsured Motorists coverage,
in limits of \$ _____ / \$ _____
- ☐ I reject both STACKED and NON-STACKED Uninsured Motorists coverage entirely.

USAA Number _____

Signature of Named Insured _____

Date _____

If this form is sent by facsimile machine (fax), the sender adopts the document received by USAA as a duplicate original and adopts the signature produced by the receiving fax machine as the sender's original signature.

Home phone: () _____ Office phone: () _____

IV. DETERMINING THE UM LIMITS YOU NEED

If you select the stacked form of UM, you may want to consider a lower limit on each car in order that the sum of these limits (stacking) equals the total UM coverage and premium you desire. If you select the non-stacked form of UM, review your current limits, realize that the total amount of UM coverage available is reduced to the limit on one vehicle.

Consider sources of protection you already have. UM applies only to auto accidents and should be looked upon as supplemental protection to a full-range income protection and medical expense program.* Consider:

- income source. Active duty military personnel may not need as much protection as a self-employed person.
- medical care coverage from employment sources.
- the portion of income derived from investments, pensions and annuities.

*USAA Life Company now offers an Income Replacement Policy and Medical Expense Program in most states. For information, call (800) 531-8000.

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USAA
9800 Fredericksburg Road
San Antonio, Texas 78288

FLORIDA AUTO POLICY

READ YOUR POLICY, DECLARATIONS AND ENDORSEMENTS CAREFULLY

The automobile insurance contract between the named insured and the company shown on the Declarations page consists of this policy plus the Declarations page and any applicable endorsements. The Quick Reference section outlines essential information contained in the Declarations and the major parts of the policy.

The policy provides the coverages and amounts of insurance shown in the Declarations for which a premium is shown.

This is a participating policy. You are entitled to dividends as may be declared by the company's Board of Directors.

If this policy is issued by United Services Automobile Association ("USAA"), a reciprocal interinsurance exchange, the following apply:

- By purchasing this policy you are a member of USAA and are subject to its bylaws.
- This is a non-assessable policy. You are liable only for the amount of your premium as USAA has a free surplus in compliance with Article 19.03 of the Texas Insurance Code of 1951, as amended.
- The USAA Board of Directors may annually allocate a portion of USAA's surplus to Subscriber's Savings Accounts. Amounts allocated to such accounts remain a part of USAA's surplus and may be used as necessary to support the operations of the Association. A member shall have no right to any balance in the member's account except until following termination of membership, as provided in the bylaws.

For additional information, call:
Policy Service (800) 531-8111
Claims (800) 531-8222

QUICK REFERENCE

DECLARATIONS PAGE		
		Named Insured and Address Policy Period Operators Description of Vehicle(s) Coverages, Amounts of Insurance and Premiums Endorsements
Beginning on Page	3	Agreement and Definitions
Part A	4	Liability Coverage
		Definitions Insuring Agreement Bodily Injury Liability Coverage and Property Damage Liability Coverage Limit of Liability Supplementary Payments Exclusions Out of State Coverage Financial Responsibility Required Other Insurance
Part B-1	7	Personal Injury Protection Coverage
		Definitions Insuring Agreement Limit of Liability Application of Deductible Exclusions Other Insurance
Part B-2	10	Medical Payments Coverage
		Definitions Insuring Agreement Medical Payments Coverage Air Bag and Seat Belt Benefits Limit of Liability Exclusions Other Insurance Special Provisions Arbitration
(Quick Reference continued on Page 2)		

Part C 14	Uninsured Motorists Coverage	Part E 22	General Provisions
	- Definitions - Insuring Agreement - Limit of Liability - Exclusions - Other Insurance - Non-Duplication - Arbitration		- Air Bag - Bankruptcy - Changes - Duties After an Accident or Loss - Legal Action Against Us - Mediation - Misrepresentation - Non-Duplication of Payment - Our Right to Recover Payment - Ownership - Policy Period and Territory - Termination - Transfer of Your Interest in this Policy - Two or More Auto Policies
Part D 17	Physical Damage Coverage		
	- Definitions - Insuring Agreement - Comprehensive Coverage - Collision Coverage - Rental Reimbursement Coverage - Towing and Labor Costs Coverage - Limit of Liability - Payment of Loss - Loss Payable Clause - Waiver of Collision Deductible - Exclusions - Mandatory Pre-Insurance Inspection - No Benefit to Bailee - Other Sources of Recovery - Appraisal		

FLORIDA AUTO POLICY

AGREEMENT

In return for payment of the premium and subject to all the terms of this policy, we will provide the coverages and limits of liability for which a premium is shown in the Declarations.

DEFINITIONS

The words defined below are used throughout this policy. They are in **boldface** when used.

- A. **You** and **your** refer to the "named insured" shown in the Declarations and spouse if a resident of the same household.
- B. **We**, **us**, and **our** refer to the Company providing this insurance.
- C. **Auto business** means the business of altering, customizing, leasing, parking, repairing, road testing, delivering, selling, servicing, or storing vehicles.
- D. **Bodily injury** (referred to as **BI**) means bodily harm, sickness, disease, or death.
- E. **Driving contest or challenge** includes, but is not limited to:
 - 1. A competition against other people, vehicles, or time; or
 - 2. An activity that challenges the speed or handling characteristics of a vehicle or improves or demonstrates driving skills, provided the activity occurs on a track or course that is closed from non-participants.
- 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. **Miscellaneous vehicle** means the following motorized vehicles: a motorcycle, moped or similar type vehicle; motor home; golfcart; snowmobile; all-terrain vehicle; or dune buggy.
- H. **Occupying** means in, on, getting into or out of.
- I. **Property damage** (referred to as **PD**) means physical injury to, destruction of, or loss of use of tangible property.
- J. **Temporary substitute vehicle** means a private passenger auto, pickup, **van**, **miscellaneous vehicle**, or **trailer** not owned by **you** or a **family member** while it is used as a temporary replacement for **your covered auto** when withdrawn from normal use because of its breakdown, repair, servicing, loss, or destruction.
- K. **Trailer** means a vehicle designed to be pulled by a private passenger auto, pickup, **van**, or **miscellaneous vehicle**. It also means a farm wagon or implement while towed by such vehicles.
- L. **Van** means a four-wheeled land motor vehicle of the van type with a load capacity of not more than 2,000 pounds.
- M. **Your covered auto** means:
 - 1. Any vehicle shown in the Declarations.
 - 2. Any of the following types of vehicles acquired by **you** or a **family member** during the policy period, beginning on the date **you** or a **family member** becomes the owner, but only if no other similar insurance policy provides coverage for such vehicle:
 - a. A private passenger auto;
 - b. A pickup or **van**; or
 - c. A **miscellaneous vehicle** not used in any business or occupation.

(DEFINITIONS Cont'd.)

For such newly acquired vehicles, **we** will automatically provide the broadest coverages as are provided for any vehicle shown in the Declarations. If **your** policy does not provide Comprehensive and Collision coverages, **we** will provide each with a \$250 deductible. However, **we** will not provide any coverage for more than 30 days after the date **you** or a **family member** becomes the owner of the vehicle. If **you** wish to continue any coverage beyond the 30-day period, **you** must request it prior to the end of the 30-day period.

3. Any trailer you own.

4. Any temporary substitute vehicle. Only those coverages provided for the vehicle withdrawn from normal use will be extended to its temporary substitute vehicle.

PART A - LIABILITY COVERAGE

DEFINITIONS

Covered person 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. Any other person or organization, but only with respect to legal liability imposed on them for the acts or omissions of a person for whom coverage is afforded in 1. or 2. above. With respect to an auto or **trailer** other than **your covered auto**, this provision only applies if the other person or organization does not own or hire the auto or **trailer**.

The following are not **covered persons** under Part A:

1. The United States of America or any of its agencies.
2. Any person with respect to **BI** or **PD** 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 **BI** or **PD**.

INSURING AGREEMENT

We will pay compensatory damages for **BI** or **PD** for which any **covered person** becomes legally liable because of an auto accident. **We** will settle or defend, as **we** consider appropriate, any claim or suit asking for these damages. **Our** duty to settle or defend ends when **our** limit of liability for these coverages has been paid or tendered. **We** have no duty to defend any suit or settle any claim for **BI** or **PD** not covered under this policy.

LIMIT OF LIABILITY

For **BI** sustained by any one person in any one auto accident, **our** maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative or consequential damages recoverable by any persons, is the limit of liability shown in the Declarations for "each person" for **BI** Liability.

Subject to this limit for "each person", the limit of liability shown in the Declarations for "each accident" for **BI** Liability is **our** maximum limit of liability for all damages for **BI** resulting from any one auto accident. The limit of liability shown in the Declarations for "each accident" for **PD** Liability is **our** maximum limit of liability for all damages to all property resulting from any one auto accident.

These limits are the most **we** will pay regardless of the number of:

1. **Covered persons;**

(PART A Cont'd.)

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

However, if a policy provision that would defeat coverage for a claim under this Part is declared to be unenforceable as a violation of the Florida Motor Vehicle Responsibility Statutes governing proof of financial responsibility, **our** limit of liability will be the minimum required by the Florida Motor Vehicle Responsibility Statutes governing proof of financial responsibility.

SUPPLEMENTARY PAYMENTS

In addition to **our** limit of liability, **we** will pay on behalf of a **covered person**:

1. Premiums on appeal bonds and bonds to release attachments in any suit **we** defend. But **we** will not pay the premium for bonds with a face value over **our** limit of liability shown in the Declarations.
2. Prejudgment interest awarded against the **covered person** on that part of the judgment **we** pay. If **we** make an offer to pay the applicable limit of liability, **we** will not pay any prejudgment interest based on that period of time after the offer.
3. Interest accruing, in any suit **we** defend, on that part of a judgment that does not exceed **our** limit of liability. **Our** duty to pay interest ends when **we** offer to pay that part of the judgment that does not exceed **our** limit of liability.
4. Up to \$100 a day for loss of wages because of attendance at hearings or trials at **our** request.
5. The amount a **covered person** must pay to the United States Government because of damage to a government-owned private passenger auto, pickup, or **van** which occurs while the vehicle is in the care, custody, or control of a **covered person**. The most **we** will pay is an amount equal to one month of the basic salary of the **covered person** at the time of loss. Only Exclusions A.1. and A.8. apply.

6. Other reasonable expenses incurred at **our** request.
7. All defense costs **we** incur.

EXCLUSIONS

A. **We** do not provide Liability Coverage for any **covered person**:

1. Who intentionally acts or directs to cause **BI** or **PD**, or who acts or directs to cause with reasonable expectation of causing, **BI** or **PD**.
2. For **PD** to property owned or being transported by a **covered person**.
3. For **PD** to property rented to, used by, or in the care of any **covered person**. This does not apply to damage to a residence or garage.
4. For **BI** to an employee of that person which occurs during the course of employment. This exclusion (A.4.) does not apply to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that person's liability arising out of the ownership or operation of a vehicle while it is being used to carry persons for a fee. This exclusion (A.5.) does not apply to a share-the-expense car pool.
6. While employed or otherwise engaged in the **auto business**. This exclusion (A.6.) does not apply to the ownership, maintenance, or use of **your covered auto** by **you**, any **family member**, or any partner, agent, or employee of **you** or any **family member**.
7. Maintaining or using any vehicle while that person is employed or otherwise engaged in any business or occupation other than the **auto business**, farming, or ranching.

This exclusion (A.7.) does not apply to the maintenance or use of a private passenger auto; a pickup or **van** that **you** own; or a **trailer** used with these vehicles.

(PART A Cont'd.)

8. Using a vehicle without expressed or implied permission.
 9. For **BI** or **PD** for which that person is an insured under any nuclear energy liability policy. This exclusion (A.9.) applies even if that policy is terminated due to exhaustion of its limit of liability.
 10. For **BI** or **PD** occurring while **your covered auto** is rented or leased to others.
 11. For punitive or exemplary damages.
- B. We do not provide Liability Coverage for the ownership, maintenance, or use of:
1. Any vehicle that is not **your covered auto** unless that vehicle is:
 - a. A four or six wheel land motor vehicle designed for use on public roads with a rated load capacity of no more than 2,000 pounds;
 - b. A moving van for personal use;
 - c. A **miscellaneous vehicle** having at least four wheels.
 - d. A vehicle used in the business of farming or ranching; or
 - e. A vehicle being used in a medical emergency.
 2. Any vehicle, other than **your covered auto**, that is owned by **you**, or furnished or available for **your** regular use.
 3. Any vehicle, other than **your covered auto**, that is owned by, or furnished or available for the regular use of, any **family member**. This exclusion (B.3.) does not apply to **your** maintenance or use of such vehicle.
 4. Any vehicle while being operated in, or in practice for, any **driving contest or challenge**.

- C. There is no coverage for **BI** for which a **covered person** becomes legally responsible to pay to a member of that **covered person's** family residing in that **covered person's** household.
- D. There is no coverage for liability assumed by any **covered person** under any contract or agreement.

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, **your** policy will provide at least the minimum amounts and types of coverages required by law. However, no one will be entitled to duplicate payments for the same elements of loss.

FINANCIAL RESPONSIBILITY REQUIRED

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.

With respect to a vehicle **you** or a **family member** do not own, any insurance **we** provide to a **covered person** shall be excess over:

1. Any other applicable liability insurance, or
2. Any self-insurance in compliance with a state's financial responsibility law.

However, with respect to a vehicle leased or rented by **you**, if **you** have agreed to provide primary coverage in a written lease or rental agreement, the coverage provided by this policy is primary, but only for the statutory minimum financial responsibility limits required by the Florida Responsibility Law and the Florida Motor Vehicle No-Fault Law.

PART B-1 - PERSONAL INJURY PROTECTION COVERAGE (Referred to as PIP)

DEFINITIONS

A. **Covered person** as used in this Part means:

1. You or any family member:
 - a. While occupying any motor vehicle; or
 - b. As a **pedestrian** for **BI** resulting from an accident occurring within the State of Florida.
2. Any other person who sustains **BI** as a result of an accident occurring within the State of Florida and involving **your covered auto**:
 - a. While occupying **your covered auto**; or
 - b. As a **pedestrian**, if a resident of Florida, who is not an **owner** of a **motor vehicle** for which Security is required under the Florida Motor Vehicle No-Fault Law, or is not entitled to PIP benefits from the insurer of the **owner(s)** of such a **motor vehicle**.

B. **Family member** as used in this Part means a relative of any degree by blood, by marriage, or by adoption, who usually makes his or her home in the same family unit, whether or not temporarily living elsewhere.

C. **Medically necessary** refers to a medical service or supply that a prudent physician would provide for the purpose of preventing, diagnosing, or treating an illness, injury, disease, or symptom in a manner that is:

1. In accordance with generally accepted standards of medical practice;
2. Clinically appropriate in terms of type, frequency, extent, site, and duration, and
3. Not primarily for the convenience of the patient, physician, or other health care provider.

Medically necessary does not include the following:

1. Spinal ultrasound, also known as sonography, ultrasonography, and echography;
2. Surface EMG;
3. Somatosensory Evoked Potential for use in the diagnosis of radiculopathy or distal nerve entrapment when treating persons sustaining bodily injury covered by personal injury protection benefits; and
4. Dermatomal Evoked Potential.

D. **Medical benefits** means reasonable expenses for **medically necessary** surgical, medical, X-ray, dental, and rehabilitative services, including prosthetic devices, and **medically necessary** ambulance, hospital, and nursing services. Such benefits shall also include **medically necessary** remedial treatment and services recognized and permitted under the laws of the state for an injured person who relies upon spiritual means through prayer alone for healing, in accordance with his or her religious beliefs; however, this sentence does not affect the determination of what other services or procedures are **medically necessary**.

E. **Motor vehicle**

1. Means any self-propelled vehicle with four or more wheels which is of a type both designed and required to be licensed for use on the highways of the State of Florida and any **trailer** or semi-trailer designed for use with such vehicle.

2. Does not include a mobile home or any **motor vehicle** which is used in mass transit and designed to transport more than five passengers exclusive of the operator of the **motor vehicle** and owned by a municipality, a transit authority, or a political subdivision of the state. This exception does not apply to a **motor vehicle** used in public school transportation.

(PART B-1 Cont'd.)

F. **Owner** means a person or organization who holds the legal title to a **motor vehicle**, and also includes:

1. A debtor having the right to possession, in the event a **motor vehicle** is the subject of a security agreement, and
2. A lessee having the right to possession, in the event a **motor vehicle** is the subject of a lease with option to purchase and such lease agreement is for a period of six months or more, and
3. A lessee having the right to possession, in the event a **motor vehicle** is the subject of a lease without option to purchase, and such lease agreement is for a period of six months or more, and the lease agreement provides that the lessee shall be responsible for securing insurance.

G. **Pedestrian** means a person while not occupying any self-propelled vehicle.

H. **Reasonably accessible** means any location within the municipality where the **covered person** is receiving treatment, or in which the **covered person** resides, or within 10 miles by road of the **covered person's** residence, provided such location is within the county in which the **covered person** resides.

If there is no qualified physician to conduct the examination in a location **reasonably accessible** to the **covered person**, then such examination shall be conducted in an area of the closest proximity to the insured's residence.

I. **Reasonable fee** is the amount which we will pay for charges made by a licensed hospital, licensed physician, or other licensed medical provider for **medically necessary** services. In determining what is reasonable, we will consider the following:

1. The actual charge;
2. The charge negotiated with a provider; or
3. The charge determined by a statistically valid database that is designed to reflect charges for the same or comparable services or supplies in cases involving no

insurance. The database will also reflect, where applicable, (a) the value of the actual medical services based on a nonspecialty specific relative value scale for the services relative to other services and, (b) in the case of new procedures, services, or supplies, a comparison to commonly-used procedures, services, or supplies.

J. **Replacement services expenses** means, with respect to the period of disability of the **covered person**, all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for such injury, the **covered person** would have performed without income for the benefits of the **covered person's** household.

K. **Work loss** means, with respect to the period of disability of the **covered person**, any loss of gross income and earning capacity from inability to work proximately caused by the **BI** sustained by the **covered person**. However, **work loss** does not include any loss after the death of a **covered person**.

L. **Your covered auto** as used in this Part does not include any **miscellaneous vehicle** for which security is not required under the Florida Motor Vehicle No-Fault Law.

INSURING AGREEMENT

We will pay, in accordance with the Florida Motor Vehicle No-Fault Law, to or for the benefit of the **covered person**:

1. 80% of **medical benefits**, and
2. 60% of **work loss**, and
3. 100% of **replacement services expenses**, and
4. Death benefits of \$5,000,

incurred as a result of **BI**, caused by an accident arising out of the ownership, maintenance, or use of a **motor vehicle** and sustained by a **covered person**.

(PART B-1 Cont'd.)

We will not be liable for subsequent PIP benefits if a **covered person** unreasonably refuses to submit to a physical or mental examination, as required in Part E - General Provisions, Duties After An Accident or Loss.

Whenever a person making a claim is charged with committing a felony, we shall withhold benefits until, at the trial level, the prosecution makes a formal entry on the record that it will not prosecute the case against the person, the charge is dismissed, or the person is acquitted.

LIMIT OF LIABILITY

Regardless of the number of **covered persons** or **beneficiaries**, claims made, vehicles or premiums shown in the Declarations, or vehicles involved in an auto accident, the total aggregate limit of PIP benefits available under Florida Motor Vehicle No-Fault Law, from all sources combined, including this policy, for all loss and expense incurred by or on behalf of any one person who sustains **BI** as the result of one accident shall not exceed the amount indicated in the Declarations.

Any amount payable under this insurance (PIP) shall be reduced by the amount of benefits a **covered person** has recovered or is entitled to recover for the same elements of loss under the workers' compensation laws of any state or the Federal Government.

APPLICATION OF DEDUCTIBLE

The amount of any deductible stated in the Declarations shall be deducted from the total amount of **medical benefits, work loss, and replacement services expenses**, before the application of any percentage limitation incurred by or on behalf of each person to whom the deductible applies and who sustains **BI** as a result of any one accident. Such deductible shall not apply to:

1. The death benefit; or
2. Any person determined eligible pursuant to the Florida Crime Compensation Act, excluding S.960.28 of the act.

EXCLUSIONS

A. We do not provide PIP Coverage for **BI** sustained by any **covered person**:

1. While **occupying** a motor vehicle of which **you** are the **owner** and which is not **your covered auto** under this Part;
2. While operating **your covered auto** without **your** express or implied consent;
3. If such person's conduct contributed to his **BI** under any of the following circumstances:
 - a. Causing **BI** to himself intentionally; or
 - b. While committing a felony;
4. For **work loss** if an entry in the Declarations indicates such coverage does not apply; or
5. While **occupying** a motor vehicle located for use as a residence or premises.

B. We do not provide PIP Coverage for **BI** sustained by any **covered person** while **occupying**, or when struck by, any vehicle, other than **your covered auto**, that is owned by or furnished or available for the regular use of, any **family member**. This does not apply to **you**.

OTHER INSURANCE

If there is other applicable PIP Coverage, we will pay only **our** share of the loss and of expenses incurred in processing the claim. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits.

Notwithstanding any provision of this coverage to the contrary, if a person is injured while **occupying**, or through being struck by, a **motor vehicle** rented or leased under a rental or lease agreement which does not specify otherwise in bold type on the face of such agreement, the PIP Coverage afforded under the lessor's policy shall be primary.

PART B-2 - MEDICAL PAYMENTS COVERAGE

DEFINITIONS

A. **Air bag** means a supplemental passive restraint system commonly referred to as an **air bag** which is originally installed by the vehicle manufacturer and which, at the time of the accident, had not been made inoperable through modification, deactivation, disconnection, switching off or prior deployment.

B. **Beneficiary** means (in order of priority of payment):

1. The surviving spouse if a resident in the same household as the deceased at the time of the accident; or
2. If the deceased is an unmarried minor, either of the surviving parents, who had legal custody at the time of the accident; or
3. The estate of the deceased.

C. **Covered person** as used in this Part, B-2, means:

1. **You or any family member while occupying any auto.**
2. Any other person while **occupying your covered auto.**
3. **You or any family member while not occupying a motor vehicle if injured by:**

- a. A motor vehicle designed for use mainly on public roads;
- b. A **miscellaneous vehicle**; or
- c. A **trailer.**

D. **Medically necessary and appropriate medical services** are those services or supplies provided or prescribed by a licensed hospital, licensed physician, or other licensed medical provider that, as determined by **us** or someone on **our** behalf, are required to identify or treat **BI** caused by an auto accident and sustained by a **covered person** and that are:

1. Consistent with the symptoms, diagnosis, and treatment of the **covered person's** injury and appropriately documented in the **covered person's** medical records;
2. Provided in accordance with recognized standards of care for the **covered person's** injury at the time the charge is incurred;
3. Consistent with published practice guidelines and technology, and assessment standards of national organizations or multi-disciplinary medical groups;
4. Not primarily for the convenience of the **covered person**, his or her physician, hospital, or other health care provider;
5. The most appropriate supply or level of service that can be safely provided to the **covered person**; and
6. Not excessive in terms of scope, duration, or intensity of care needed to provide safe, adequate, and appropriate diagnosis and treatment.

However, **medically necessary and appropriate medical services** do not include the following:

1. Nutritional supplements or over-the-counter drugs;
2. Experimental services or supplies, which means services or supplies that **we** determine have not been accepted by the majority of the relevant medical specialty as safe and effective for treatment of the condition for which its use is proposed;
3. Inpatient services or supplies provided to the **covered person** when these could safely have been provided to the **covered person** as an outpatient;
4. Spinal ultrasound, also known as sonography, ultrasonography, and echography;

(PART B-2 Cont'd.)

5. Surface EMG;

6. Somatosensory Evoked Potential for use in the diagnosis of radiculopathy or distal nerve entrapment when treating persons sustaining bodily injury covered by personal injury protection benefits; and

7. Dermatomal Evoked Potential.

E. **Reasonable fee** is the amount, as determined by us or someone on our behalf, which we will pay for charges made by a licensed hospital, licensed physician, or other licensed medical provider for **medically necessary and appropriate medical services**. We will pay the lesser of:

1. The actual charge;
2. The charge negotiated with a provider;
3. The charge authorized, established, or approved by the Department of Insurance under Florida's PIP law; or
4. The charge determined by a statistically valid database that is designed to reflect charges for the same or comparable services or supplies in the same or similar geographic region. The database will also reflect, where applicable, (a) the value of the actual medical services based on a nonspecialty specific relative value scale for the services relative to other services, and (b) in the case of new procedures, services, or supplies, a comparison to commonly-used procedures, services, or supplies.

F. **Seat belt** means manual or automatic safety belts or seat and shoulder restraints or a child restraint device. Both the lap and shoulder restraints must be worn at the time of the accident for coverage to apply. If the **covered person** is a child, the child restraint device must meet federal motor vehicle safety standards and must be one recommended by its manufacturer as appropriate for use by children of like age and weight. The child must be properly seated and restrained within the device and the device must be attached to the interior of the vehicle in accordance with the manufacturer's instructions.

INSURING AGREEMENT

A. **Medical Payments Coverage.** We will pay only the reasonable fee for **medically necessary and appropriate medical services** and the reasonable expense for funeral services because of **BI** caused by an auto accident, sustained by a **covered person**. The medical services must be rendered within three years of the date of the accident unless those services are otherwise covered by PIP Coverage, but not payable due to the co-insurance requirements of that coverage.

A provider of medical services may charge more than the limits established by this policy's defined terms, but such additional charges are not covered. We or someone on our behalf will review, by audit or otherwise, claims for benefits under this coverage to determine whether fees and expenses were reasonable and whether treatment was medically necessary and appropriate.

We will pay under this coverage only if bills and statements are submitted in accordance with the billing requirements that are applicable to claims submitted under PIP Coverage.

B. **Air Bag and Seat Belt Benefits.** We will provide the benefits described only if, at the time of the accident, Personal Injury Protection Coverage was provided by the policy and the **covered person** for whom benefits are sought was:

1. Wearing a **seat belt**; or
2. Wearing a **seat belt** and **occupying a seat** in an automobile in which he was protected by an **air bag**; and
3. Entitled to collect benefits for medical expenses incurred as a result of the accident under the terms of the policy's Personal Injury Protection Coverage.

(PART B-2 Cont'd.)

We will pay a Death Benefit of \$15,000 to the **beneficiary** of a **covered person** who dies as the direct result of **BI** sustained in an automobile accident while wearing a **seat belt**. We will pay an Additional Death Benefit of \$10,000 to the **beneficiary** of a **covered person** who dies as a direct result of **BI** sustained in an automobile accident while wearing a **seat belt** and **occupying** a seat protected by an **air bag**. In either case, death must occur within three years of the date of the accident.

LIMIT OF LIABILITY

The following provisions represent the most we will pay regardless of the number of **covered persons** or **beneficiaries**, claims made, vehicles or premiums shown in the Declarations, or vehicles involved in an auto accident.

A. Medical Payments.

1. The limit of liability shown in the Declarations for Medical Payments Coverage is the maximum limit of liability for each **covered person** injured in any one accident.
2. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A or Part C of the policy.

B. Air Bag and Seat Belt Benefits.

1. The maximum Death Benefit we will pay under Air Bag & Seat Belt Benefits is \$15,000 for death of any one **covered person**. The maximum Additional Death Benefit we will pay for death of any one **covered person** is \$10,000. These amounts are the most we will pay regardless of the number of vehicles to which this coverage applies, the number of coverages or premiums shown in the Declarations, or any other factor.
2. No one will be entitled to duplicate payments for the same elements of loss.

EXCLUSIONS

We do not provide Medical Payments Coverage under this Part for any **covered person** for **BI**:

1. Sustained while **occupying** any vehicle that is not **your covered auto** unless that vehicle is:
 - a. A four or six wheel land motor vehicle designed for use on public roads with a rated load capacity of no more than 2000 pounds;
 - b. A moving van for personal use;
 - c. A **miscellaneous vehicle** having at least four wheels; or
 - d. A vehicle used in the business of farming or ranching.
2. Sustained while **occupying your covered auto** when it is being used to carry persons for a fee. This does not apply to a share-the-expense car pool.
3. Sustained while **occupying** any vehicle located for use as a residence.
4. Occurring during the course of employment if workers' compensation benefits are required or available.
5. Sustained while **occupying**, or when struck by, any vehicle, other than **your covered auto**, that is owned by **you** or furnished or available for **your** regular use.
6. Sustained while **occupying**, or when struck by, any vehicle, other than **your covered auto**, that is owned by or furnished or available for the regular use of any **family member**. This does not apply to **you**.
7. Sustained while **occupying** a vehicle without expressed or implied permission.
8. Sustained while **occupying** a vehicle when it is being used in the business or occupation of a **covered person**. This does not apply to **BI** sustained while **occupying** a private passenger auto; a pickup or **van you own**; or a **trailer** used with these vehicles.

(PART B-2 Cont'd.)

9. Caused by or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
10. Sustained while **occupying your covered auto** while it is rented or leased to others.
11. Sustained while a participant in, or in practice for, any **driving contest or challenge**.

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** or a **family member** do not own, shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

The Death Benefit and Additional Death Benefit under Air Bag and Seat Belt Benefits will be paid in addition to any death benefit payable under the policy's PIP Coverage.

If there are other applicable air bag or seat belt death benefits, the maximum limit of **our** liability for the death of any one **covered person** under all such policies shall not exceed \$15,000 for the Death Benefit and \$10,000 for the Additional Death Benefit.

SPECIAL PROVISIONS

- A. If **your covered auto** and every other motor vehicle **you** own are within the policy territory referred to in Part E - General Provisions, then coverage under Part B-2 Medical Payments Coverage will apply to **you** and any **family member** anywhere in the world.
- B. Any coverage under Part B-2 Medical Payments Coverage, shall pay the portion of any claim for PIP medical expenses which are otherwise covered but not payable due to the limitation of 80% of medical expenses regardless of whether the full amount of PIP benefits have been exhausted. However, Medical Payments shall not be payable for the amount of any deductible which has been selected under PIP.

ARBITRATION

If **we** and a **covered person** do not agree:

1. On the **reasonable fee**;
2. That expenses are reasonable;
3. Whether services or supplies are **medically necessary and appropriate medical services**; or
4. Whether there is coverage under the terms of the Insuring Agreement for Part B - 2 Medical Payments Coverage.

then, that disagreement may be arbitrated, provided both parties so agree. This arbitration shall be limited to the aforementioned issues and shall not address any other coverage questions. Any arbitration finding that goes beyond the aforementioned issues shall be voidable by **us** or the **covered person** involved in the disagreement.

If both parties agree to arbitrate, each party will select an arbitrator, and those two arbitrators will select a third. If the two arbitrators cannot agree on a third within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

Unless both parties agree otherwise, arbitration will take place in the county in which the **covered person** lived at the time of the accident, and local rules of law as to procedure and evidence will apply. A decision agreed to by two or more of the arbitrators will be binding up to an amount that, when added to amounts previously paid by **us**, does not exceed the limit of liability for this coverage.

PART C - UNINSURED MOTORISTS COVERAGE (STACKED)
(referred to as UM Coverage)

DEFINITIONS

A. Covered person 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 **BI** to which this coverage applies sustained by a person described in 1. or 2. above.

However, the definition of **covered person** does not include the Government of the United States of America.

B. Uninsured Motor Vehicle.

1. **Uninsured motor vehicle** means a land motor vehicle or **trailer** of any type:
 - a. To which no liability bond or policy applies at the time of the accident.
 - b. To which a liability bond or policy applies at the time of the accident but its limit for bodily injury liability is not enough to pay the full amount the **covered person** is legally entitled to recover as damages.
 - c. That is a hit-and-run vehicle. This means a motor vehicle whose owner or operator cannot be identified and that hits or that causes an accident resulting in **BI** without hitting:

(1) **You or any family member;**

(2) A vehicle which **you** or any **family member** are **occupying;**
or

(3) **Your covered auto.**

d. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company denies coverage or is or becomes insolvent within 4 years after the accident.

2. **Uninsured motor vehicle** does not include any vehicle or equipment:

- a. Owned by or furnished or available for the regular use of **you** or any **family member**, unless it is **your covered auto** to which Part A of the policy applies and liability coverage is excluded for any person other than **you** or any **family member** for damages sustained in the accident by **you** or any **family member**.
- b. Operated on rails or crawler treads.
- c. Designed mainly for use off public roads while not upon public roads.
- d. While located for use as a residence or premises.

(PART C Cont'd.)

INSURING AGREEMENT

A. We will pay compensatory damages which a **covered person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of **BI** sustained by a **covered person** and caused by an auto accident. However, we will not pay damages for pain, suffering, mental anguish, or inconvenience unless the **BI** consists in whole or in part of:

- (1) Significant and permanent loss of an important bodily function;
- (2) Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement;
- (3) Significant and permanent scarring or disfigurement; or
- (4) Death.

B. 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.

LIMIT OF LIABILITY

A. Accidents involving **BI** to **you** or any **family member**.

1. For **BI** sustained by **you** or any **family member** in any one accident, our maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative, or consequential damages recoverable by any persons, is the limit of liability shown in the Declarations for "each person" for UM Coverage, multiplied by the number of premiums shown in the Declarations for UM Coverage.
2. Subject to the maximum limit for "each person" set forth in A.1. above, our maximum limit of liability for all damages for **BI** resulting from any one accident is the limit of liability shown in the Declarations for "each accident" for UM

Coverage, multiplied by the number of premiums shown in the Declarations for UM Coverage.

3. Subject to the maximum limits of liability for "each person" and "each accident" set forth in A.1. and A.2. above, for **BI** sustained in any one accident by a **covered person** other than **you** or any **family member**, our maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative, or consequential damages recoverable by any persons is the lesser of:

- a. The "each person" limit of liability shown in the Declarations applicable to the vehicle that person was **occupying** at the time of the accident; or
- b. That **covered person's** pro-rata share of the "each accident" limit of liability applicable to that vehicle.

You or any **family member** who sustains **BI** in the accident will also be entitled to a pro-rata share of the "each accident" limit of liability to that vehicle. A person's pro-rata share shall be the proportion that that person's damages bears to the total damages sustained by all **covered persons**.

B. Accidents not involving **BI** to **you** or any **family member**:

1. For **BI** sustained by any **covered person** other than **you** or any **family member** in any one accident, our maximum limit of liability for all resulting damages, including, but not limited to, all direct, derivative, or consequential damages recoverable by any persons, is the limit of liability shown in the Declarations for "each person" for UM Coverage applicable to the vehicle that the **covered person** was **occupying** at the time of the accident.

(PART C Cont'd.)

2. Subject to the maximum limit for "each person" set forth in B.1. above, **our** maximum limit for all damages for **BI** resulting from any one accident is the limit of liability shown in the Declarations for "each accident" for UM Coverage applicable to the vehicle that the **covered person** was **occupying** at the time of the accident.

C. The limits of liability described in Paragraphs A. and B., above, are the most we will pay regardless of the number of:

1. Covered persons;
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

D. Any amount otherwise payable for damages under UM Coverage shall be reduced by all sums payable because of the **BI**:

1. Under any workers' compensation, disability benefits law, or similar law; or
2. Under any PIP Coverage, automobile medical expense coverage, or motor vehicle liability insurance.

E. Any amount otherwise payable for damages under UM shall be reduced by all sums paid because of the **BI** by or on behalf of persons or organizations who may be legally responsible. This includes all sums under Part A.

EXCLUSIONS

A. **We** do not provide UM Coverage for **BI** sustained by any **covered person**:

1. If that person or legal representative settles the **BI** claim without **our** written consent. However, this exclusion (A.1.) does not apply:

- a. if such settlement does not prejudice **our** right to recover payment; or
- b. if that person or legal representative provides **us** with advance notice of any proposed settlement as required by Part E - Duties After An Accident Or Loss.

2. While **occupying your covered auto** when it is being used to carry persons for a fee. This exclusion (A.2.) does not apply to a share-the-expense car pool.

3. Using a vehicle without expressed or implied permission.

4. While **your covered auto** is rented or leased to others.

5. While **occupying** any vehicle when it is being operated in, or in practice for, any **driving contest or challenge**.

B. UM coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:

1. worker's compensation law; or
2. disability benefits law.

C. **We** do not provide UM Coverage for punitive or exemplary damages.

OTHER INSURANCE

If there is other applicable similar 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** or a **family member** do not own, shall be excess over any other collectible insurance.

(PART C Cont'd.)

NON-DUPLICATION

No **covered person** will be entitled to receive duplicate payments under this coverage for the same elements of loss which were:

- A. Paid because of the **BI** by or on behalf of persons or organizations who may be legally responsible.
- B. Paid or payable under any workers' compensation law or similar disability benefits law.
- C. Paid under another provision or coverage in this policy.
- D. Paid under any PIP Coverage or under any automobile medical expense coverage.

ARBITRATION

- A. If **we** and a **covered person** disagree as to:
 - 1. Whether the **covered person** is legally entitled to recover damages from the owner or operator of an **uninsured motor vehicle** or an **underinsured motor vehicle**; or
 - 2. The amount of damages that the **covered person** is legally entitled to collect from that owner;
- then, that disagreement may be arbitrated, provided both parties so agree. This arbitration shall be limited to the two aforementioned factual issues and shall not address any other issues, including but not limited to, coverage questions. Any arbitration finding that goes beyond the two aforementioned factual issues shall be voidable by **us** or a **covered person**.
- B. If both parties agree to arbitration, each party will select an arbitrator, and those two arbitrators will select a third. If the two arbitrators cannot agree on a third within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.
 - C. Unless both parties agree otherwise, arbitration will take place in the county in which the **covered person** lived at the time of the accident, and local rules of law as to procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding up to the coverage limit of liability.

PART D - PHYSICAL DAMAGE COVERAGE

DEFINITIONS

- A. **Actual cash value** means the amount that it would cost, at the time of **loss**, to buy a comparable vehicle. As applied to **your covered auto**, a comparable vehicle is one of the same make, model, model year, body type, and options with substantially similar mileage and physical condition.
- B. **Collision** means the impact with an object and includes upset of a vehicle. **Loss** caused by the following is covered under Comprehensive Coverage and is not considered **collision**: fire; missiles or falling objects; hail, water or flood; malicious mischief or vandalism; theft or larceny; riot or civil commotion; explosion or earthquake; contact with bird or animal; windstorm; or breakage of window glass. If breakage of window glass is caused by a **collision**, you may elect to have it considered a **loss** caused by **collision**.
- C. **Equipment and accessories** means the following while in or upon **your covered auto**:
 - 1. Any item usual and incidental to the use of a motor vehicle as a motor vehicle.
 - 2. Any device or instrument for transmitting, recording, receiving, or reproducing data, sound, or pictures that is capable of being operated by power from the electrical system of **your covered auto**, including:
 - a. Cassettes, compact discs, and other media for use with any such device or instrument; and

(PART D Cont'd.)

- b. Antennas and other accessories for use with any such device or instrument.

D. **Loss** means direct and accidental damage to the operational safety, function, or appearance of, or theft of, **your covered auto** or **equipment and accessories** that are not permanently installed in **your covered auto**. **Loss** includes a total loss, but does not include any damage other than the cost to **repair or replace**. **Loss** does not include any loss of use, or diminution in value that would remain after **repair or replacement** of the damaged or stolen property.

E. **Nonowned vehicle** means any private passenger auto, **trailer**, pickup, **van**, or **miscellaneous vehicle** not owned by, or furnished or available for the regular use of, **you** or any **family member**. This applies only when such vehicle is in the custody of or being operated by **you** or a **family member**. A **nonowned vehicle** does not include a **temporary substitute vehicle** or any of the following vehicles used in any business or occupation other than farming or ranching - pickup, **van**, or **miscellaneous vehicle**.

F. **Repair or replace** means restoring the damaged property to its pre-accident operational safety, function, and appearance. However, **we** may at **our** option **repair or replace** with parts of like kind and quality, including used or non-OEM parts (non-OEM parts are those produced by someone other than the original equipment manufacturer). **Repair or replace** does not include:

- 1. A return to the pre-accident market value of the property; or
- 2. Restoration, alteration, or replacement of undamaged property, unless such is needed for the operational safety of the vehicle.

G. **Your covered auto** as used in this Part includes:

- 1. **Equipment and accessories** permanently installed in **your covered auto**.

- 2. A **nonowned vehicle**. If there is a **loss** to a **nonowned vehicle**, **we** will provide the broadest coverage shown in the Declarations.

INSURING AGREEMENT

A. Comprehensive Coverage (excluding collision).

- 1. Physical damage. **We** will pay for **loss** caused by other than **collision** to **your covered auto**, and **equipment and accessories** that are not permanently installed in **your covered auto** minus any applicable deductible shown in the Declarations.

We will pay under Comprehensive Coverage for the cost of repairing or replacing the damaged windshield on **your covered auto** without a deductible. **We** will pay only if the Declarations indicates that Comprehensive Coverage applies.

- 2. Transportation expenses. **We** will also pay:

- a. Up to \$15 a day, to a maximum of \$450, for transportation expenses incurred by **you**. This applies only in the event of a total theft of **your covered auto**. **We** will pay only transportation expenses incurred during the period beginning 48 hours after the theft and ending when **your covered auto** is returned to use or, if not recovered or not repairable, when **we** pay for its loss.

- b. If Increased Rental Reimbursement Coverage is afforded, limits for transportation expenses are increased up to \$30 per day to a maximum of \$900.

B. Collision Coverage. **We** will pay for **loss** caused by **collision** to **your covered auto** and **equipment and accessories** that are not permanently installed in **your covered auto**, minus any applicable deductible shown in the Declarations.

(PART D Cont'd.)

C. Rental Reimbursement Coverage and Increased Rental Reimbursement Coverage (for loss other than total theft):

1. We will reimburse **you** for expenses **you** incur to rent a substitute for **your covered auto**. These coverages apply only if:
 - a. **Your covered auto** is withdrawn from use for more than 24 hours due to a **loss**, other than a total theft, to that auto; and
 - b. The **loss** is covered under Comprehensive Coverage or caused by **collision**, and the cause of **loss** is not otherwise excluded under Part D of this policy.
 2. We will reimburse **you** only for that period of time reasonably required to **repair or replace your covered auto**. If we determine **your covered auto** is a total loss, the rental period will end when we pay for its loss.
- D. Towing and Labor Costs Coverage. We will pay the reasonable costs you incur for one of the following each time your covered auto is disabled:**
1. Mechanical labor up to one hour at the place of breakdown.
 2. Towing, to the nearest place where necessary repairs can be made during regular business hours, if the vehicle will not run or is stranded on or immediately next to a public road.
 3. Delivery of gas to, or a change of tire on the disabled vehicle. However, **we** do not pay for the cost of these items.

LIMIT OF LIABILITY

- A. For a total loss to your covered auto, our limit of liability under Comprehensive and Collision Coverages is its actual cash value. We will declare your covered auto to be a total loss if, in our judgment, the cost to**

repair or replace it would be greater than its actual cash value minus its salvage value after the loss.

- B. For a loss other than a total loss to your covered auto, our limit of liability under Comprehensive and Collision Coverages is the amount necessary to repair or replace the damaged or stolen property without deduction for depreciation.**
- C. For loss to equipment and accessories that are not permanently installed in your covered auto, our limits of liability are described below. These limits are separate from the limits available for a loss to your covered auto:**
1. For **loss** cassettes, compact discs, and other media as described in Definition C.2.a, without deduction for depreciation, **our limit of liability is the lesser of:**
 - a. The amount necessary to **repair or replace** such damaged or stolen property; or
 - b. **\$250.**
 2. For **loss** to all other **equipment and accessories** that are not permanently installed in **your covered auto**, without deduction for depreciation, **our limit of liability is the lesser of:**
 - a. The amount necessary to **repair or replace** such damaged or stolen **equipment and accessories**; or
 - b. The **actual cash value of your covered auto.**
- D. Under Rental Reimbursement Coverage, our limit of liability is \$15 a day, to a maximum of \$450. Under Increased Rental Reimbursement Coverage, our limit of liability is \$30 a day, to a maximum of \$900.**
- E. Under Towing and Labor Costs Coverage, our limit of liability is the reasonable price for the covered service.**

(PART D Cont'd.)

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 **you** or to the address shown in the Declarations. If we return stolen property, we will pay for any damage resulting from the theft. We may keep all or part of the damaged or stolen property and pay **you** an agreed or appraised value for it. We cannot be required to assume the ownership of damaged property. We may settle a claim either with **you** or with the owner of the property.

LOSS PAYABLE CLAUSE

Loss or damage under this policy will be paid, as interest may appear, to the named insured and the loss payee shown in the Declarations. This insurance, with respect to the interest of the loss payee, will not become invalid because of **your** fraudulent acts or omissions unless the **loss** results from **your** conversion, secretion, or embezzlement of **your covered auto**. We may cancel the policy as permitted by policy terms and the cancellation will 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 will, to the extent of payment, be subrogated to the loss payee's rights of recovery.

WAIVER OF COLLISION DEDUCTIBLE

We will not apply the deductible to **loss** caused by **collision** with another vehicle if all of these conditions are met:

1. The **loss** to **your covered auto** is greater than the deductible amount; and
2. The owner and driver of the other vehicle are identified; and
3. The owner or driver of the other vehicle has a liability policy covering the **loss**; and
4. The driver of **your covered auto** is not legally responsible, in any way, for causing or contributing to the **loss**.

EXCLUSIONS

We will not pay for:

1. **Loss** to **your covered auto** which occurs while it is used to carry persons for a fee. This does not apply to a share-the-expense car pool.
2. Damage due and confined to wear and tear, freezing, or road damage to tires. This does not apply if the damage results from the total theft of **your covered auto**. This exclusion (2.) does not apply to Towing and Labor Costs Coverage.
3. Damage due and confined to mechanical or electrical breakdown or failure, including such damage resulting from negligent servicing or repair of **your covered auto** or its equipment. We will pay for ensuing damage only to the extent the damage occurs outside of the major component (such as transmission/transaxle, electrical system, engine including cooling and lubrication thereof, air conditioning, computer, suspension, braking, drive assembly, and steering) in which the initial mechanical or electrical breakdown or failure occurs.

This exclusion (3.) does not apply if the damage results from the total theft of **your covered auto**, and it does not apply to Towing and Labor Costs Coverage.
4. **Loss** due to or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
5. **Loss** to a camper body or **trailer you own** which is not shown in the Declarations. This does not apply to one **you** acquire during the policy period and ask **us** to insure within 30 days after **you** become the owner.
6. **Loss** to any **nonowned vehicle** or **temporary substitute vehicle** when used by any person without a reasonable belief that that person is entitled to do so.
7. **Loss** to equipment designed or used to evade or avoid the enforcement of motor vehicle laws.

(PART D Cont'd.)

8. **Loss** to any **nonowned vehicle** arising out of its use by **you** or a **family member** while employed or otherwise engaged in **auto business** operations.
9. **Loss** to your **covered auto** while it is rented or leased to others.
10. **Loss** to any vehicle while it is being operated in, or in practice for, any **driving contest or challenge**.
11. **Loss** resulting from:
 - a. The acquisition of a stolen vehicle;
 - b. Any legal or governmental action to return a vehicle to its legal owner; or
 - c. Any confiscation or seizure of a vehicle by governmental authorities.

This exclusion (11.) does not apply to innocent purchasers of stolen vehicles for value under circumstances that would not cause a reasonable person to be suspicious of the sales transaction or the validity of the title.
12. **Loss** resulting from use in any illicit or prohibited trade or transportation where **you** or any **family member** is a willing participant.
13. Any **loss** arising out of any act committed:
 - a. By or at the direction of **you** or any **family member**; and
 - b. With the intent to cause a **loss**.

MANDATORY PRE-INSURANCE INSPECTION

We have the right to inspect any private passenger motor vehicle which **you** insure or intend to insure for Physical Damage Coverage under this policy. This right applies only in accordance with Florida Statute 627.744.

When we require an inspection **you** must cooperate and make the vehicle available for the inspection.

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 **nonowned vehicle** or **temporary substitute vehicle** will be excess over any other collectible source of recovery including, but not limited to:

1. Any coverage provided by the owner of the **nonowned vehicle** or **temporary substitute vehicle**.
2. Any other applicable physical damage insurance.
3. Any other source of recovery applicable to the **loss**.

This provision does not apply to Towing and Labor Costs Coverage.

APPRAISAL

If **we** and **you** do not agree on the amount of **loss**, either may demand an appraisal. 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 pay its chosen appraiser and share the expenses of the umpire equally. Neither **we** nor **you** waive any of **our** rights under this policy by agreeing to an appraisal.

PART E - GENERAL PROVISIONS

AIR BAG

If an air bag in **your covered auto** deploys for any reason, **we** will pay without deductible to replace it.

BANKRUPTCY

Bankruptcy or insolvency of the **covered person**, as defined in this policy, shall not relieve **us** of any obligations under this policy.

CHANGES

- A. The premium is based on information **we** have received from **you** and other sources. **You** agree to cooperate with **us** in determining if this information is correct and complete. **You** agree that if this information changes, or is incorrect or incomplete, **we** may adjust **your** premiums accordingly during the policy period.
- B. If, during the policy period, the risk exposure changes for any of the following reasons, the necessary premium adjustments will be made effective the date of change in exposure. **You** agree to give **us** notice of such exposure changes as soon as is reasonably possible:
1. Change in location where any vehicle is garaged.
 2. Change, addition, or deletion relating to the description, equipment, purchase date, registration, cost, usage, miles driven annually, or operators of any vehicle.
 3. Replacement, deletion, or addition of any vehicle. **You** must request coverage for a newly acquired vehicle within 30 days from the date the vehicle is acquired if **you** wish to continue any coverage. See DEFINITIONS - **your covered auto**.
 4. Change, addition, or deletion relating to the date of birth, marital status, or driving record of any operator.

5. Addition or deletion of an operator.

6. Change, addition, or deletion of any coverage or limits.

C. **We** will make any calculations or adjustments of **your** premium using the applicable rules, rates, and forms as of the effective date of the change.

D. If **we** make a change which broadens coverage under this edition of **our** policy without additional premium charge, that change will automatically apply to **your** insurance as of the date **we** implement that change in **your** location. This paragraph does not apply to changes implemented with a revision that includes both broadenings and restrictions in coverage. Otherwise, this policy includes all of the agreements between **you** and **us**. Its terms may not be changed or waived except by endorsement issued by **us**.

DUTIES AFTER AN ACCIDENT OR LOSS

A. **We** must be notified promptly of how, when, and where an 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 a suit, 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. The examination must be signed.

(PART E Cont'd.)

4. Authorize us to obtain medical reports and other pertinent records.
 5. Submit a proof of loss when required by us.
 6. Promptly notify the police if a hit-and-run driver is involved.
- C. A person seeking coverage under Part B-1 Personal Injury Protection Coverage must also:

1. As soon as practicable, give to us written proof of claim, under oath if required, which may include full particulars of the nature and extent of the injuries and treatment received and contemplated, and such other information as may assist us in determining the amount due and payable.
2. Submit to mental examinations by physicians we select at our expense when and as often as we may reasonably require. Mental exams or physical exams as required by us in B.3.a. above will be scheduled in a location reasonably accessible to such person, and a copy of the medical report shall be forwarded to such person if requested. Reasonably accessible means any location:
 - a. Within the municipality where such person is receiving treatment or in which that person resides; or
 - b. Within 10 miles by road of such person's residence, provided such location is within the county in which that person resides.

If there is no qualified physician to conduct the examination in a location reasonably accessible to such person, then the examination shall be conducted in an area of the closest proximity to that person's residence.

- D. A person seeking coverage under Part C - UM Coverage must also comply with the following:

1. If the covered person and the owner or operator of the uninsured motor vehicle legally liable for the covered person's BI reach a settlement agreement to pay the covered person such person's limits of liability, the covered person must submit the agreement to us in writing for our approval prior to final execution of such settlement agreement if:
 - a. The settlement would not fully satisfy the covered person's claim for BI, and
 - b. An uninsured motor vehicle claim has been or will be made against us.
2. The covered person may file suit against us and the legally liable person if, within 30 days after our receipt of the settlement agreement we do not:
 - a. Approve the settlement;
 - b. Waive our rights of recovery against the person or organization legally liable for the BI;
 - c. Authorize the signing of a full release; and
 - d. Agree to arbitrate the uninsured motor vehicle claim.

The suit shall decide if the covered person is legally entitled to collect damages and if so, the amount.

- E. A person seeking coverage under Part D - Physical Damage Coverage must also:

1. Take reasonable steps after loss to protect your covered auto and its equipment from further loss. We will pay reasonable expenses incurred to do this.

(PART E Cont'd.)

2. Promptly notify the police if **your covered auto** is stolen.
3. Permit **us** to inspect and appraise the damaged property before its repair or disposal.

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.
1. In addition, under Part A, no legal action may be brought against **us** until **we** agree in writing that the **covered person**, as defined in Part A, has an obligation to pay, or the amount of that obligation has been finally determined by judgment after trial.
 2. In addition, under Part B-1 PIP and Part B-2 Medical Payments, if **we** fail to deny or pay a claim within 30 days of receiving adequate proof of that claim, the **covered person** will not file suit for those benefits until providing **us** with a written demand for payment and giving **us** 15 days in which to respond to that demand.
- B. No person or organization has any right under this policy to bring **us** into any action to determine the liability of a **covered person**, as defined in this policy.

MEDIATION

We or the insured may request mediation of any claim for personal injury in an amount of \$10,000 or less or a claim for **PD** in any amount arising out of the ownership, operation, use, or maintenance of a motor vehicle prior to the institution of litigation.

Such request shall be filed with the Florida Department of Financial Services on a form approved by the department. The request must state why mediation is being requested and the issue in dispute.

The Florida Department of Financial Services will appoint a mediator. Each party may reject one mediator whether before or after the other party has made a rejection. The mediator will notify the parties of the date, time, and place of the mediation conference, which will be held within 45 days of the request for mediation. The mediation will be conducted informally and may be held by telephone if feasible. Participants must have authority to make a binding decision, and must mediate in good faith. Information and disclosures provided during mediation are not admissible in any subsequent action or proceeding relating to the claim or cause of action giving rise to the claim. Costs of the mediator shall be shared equally by each party unless the mediator determines a party has not mediated in good faith.

If a person files suit which relates to facts already mediated, such facts shall not be mediated again. Only one mediation may be requested for each claim, unless all parties agree to further mediation.

The filing of a request for mediation tolls the applicable time requirements for filing suit for a period of 60 days following the conclusion of the mediation process or the time prescribed in the Limitation of Actions, whichever is later.

MISREPRESENTATION

We do not provide coverage for any **covered person**, as defined in this policy, who has knowingly concealed or misrepresented any material fact or circumstance relating to this insurance:

1. At the time application was made; or
2. At any time during the policy period; or
3. In connection with the presentation or settlement of a claim.

NON-DUPLICATION OF PAYMENT

When a claim, or part of a claim, is payable under more than one provision of this policy, **we** will pay the claim only once under this policy.

(PART E Cont'd.)

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 will be subrogated to that right. That person shall do whatever is necessary to enable us to exercise our rights, and shall do nothing after loss to prejudice them. However, our rights in this paragraph do not apply under Part D - Physical Damage Coverage, against any person using your covered auto with a reasonable belief that that person is entitled to do so nor under Part B-2 Medical Payments Coverage, Air Bag and Seat Belt Benefits.
- B. If we make a payment under this policy and the person to or for whom payment was made recovers damages from another, that person shall hold in trust for us the proceeds of the recovery and reimburse us to the extent of our payment. However, this paragraph does not apply to Part B-2 Medical Payments Coverage, Air Bag and Seat Belt Benefits.
- C. Our rights do not apply under Paragraph A, with respect to coverage under Part C - UM Coverage, Section 2. of the definition of uninsured motor vehicle, if we:

1. Have been given prompt written notice of a tentative settlement between a covered person, as defined in Part C, and the insurer of an uninsured motor vehicle; and
2. Fail to advance payment to such person in an amount equal to the tentative settlement within 30 days after receipt of notification.

If we advance payment to the covered person in an amount equal to the tentative settlement within 30 days after receipt of notification, that payment will be separate from any amount the covered person is entitled to recover under the provisions of Part C - UM Coverage. However, we shall have a right to recover such advance payment.

- D. If the covered person, as defined in this policy, recovers from the party at fault and

we share in the recovery, we will pay our share of the legal expenses. Our share is that percent of the legal expenses that the amount we recover bears to the total recovery. This does not apply to any amounts recovered or recoverable by us from any other insurer under any inter-insurer arbitration agreement.

- E. If we make payment for a claim under Part A, and the covered person, as defined in Part A:

1. Failed or refused to comply with the duties specified in this provision; and
2. Prejudiced our defense of the liability claim by such failure or refusal;

then, the covered person shall reimburse us to the extent of our payment and cost of defense.

OWNERSHIP

For purposes of this policy, a private passenger type auto, pickup, or van is deemed to be owned by a person if leased under a written agreement to that person for a continuous period of at least six months.

POLICY PERIOD AND TERRITORY

- A. This policy applies only to accidents and losses which occur during the policy period as shown in the Declarations and within the policy territory. The policy territory is the United States of America (USA), its territories and possessions, Puerto Rico, and Canada, including transportation of your covered auto between any ports of these locations.

However, PIP benefits under Part B-1 PIP Coverage apply only to accidents occurring within the State of Florida with respect to any covered person, as defined in Part B-1 PIP, other than you or any family member.

- B. The policy territory also includes Mexico, subject to the following conditions:
1. All coverages afforded by the policy, except PIP Coverage, are extended to include coverage during trips into Mexico. This applies only to loss or accident that occurs within 75 miles of the USA border.

(PART E Cont'd.)

2. Any liability coverage afforded by the policy, except PIP Coverage, is extended to include the remainder of Mexico, but only if **you** have valid and collectible liability coverages from a licensed Mexican insurance company at the time of loss. Also, for this Part to be effective, the original liability suit for **BI** or **PD** must be brought in the USA.
3. This coverage does not extend:
 - a. To any **covered person**, as defined in this policy, who does not live in the USA.
 - b. To any **covered person**, as defined in this policy, **occupying** an auto which is not principally garaged and used in the USA.
 - c. To any auto which is not principally garaged and used in the USA.
4. The words "state or province" as used in the Out of State Coverage provision in Part A of the policy do not include a "state or province" of Mexico.
5. Losses payable under Part D of the policy will be paid in the USA. If the auto must be repaired in Mexico, **our** limit of liability will be determined at the nearest point in the USA where repairs can be made.
6. Any insurance **we** provide will be excess over any other similar valid and collectible insurance.
- b. The named insured transfers ownership of **your covered auto**; or
- c. The named insured purchases another policy covering **your covered auto** which was covered under the policy being cancelled; or
- d. **You** are a member of the United States Armed Forces and are called to or on active duty outside the United States in an emergency situation.
2. **You** may cancel for any reason after this policy is in effect for 60 days, but the effective date of cancellation cannot be earlier than the date of **your** request.
3. **We** may cancel by mailing a notice to the named insured shown in the Declarations at the address shown in the policy:
 - a. At least ten days notice if cancellation is for nonpayment of premium; or
 - b. At least 45 days notice in all other cases.
4. If this is a new policy providing PIP and **PD** liability coverage, **we** will not cancel for nonpayment of premium during the first 60 days following the date of issuance. However, **we** may cancel if a check used to pay **us** is dishonored for any reason.
5. After this policy is in effect for 60 days, or if this is a renewal policy, **we** will cancel only:
 - a. For nonpayment of premium;
 - b. For material misrepresentation or fraud; or
 - c. If **your** driver's license, or that of any driver who lives with **you** or customarily uses **your covered auto**, has been suspended or revoked. This must have occurred:
 - (1) During the policy period or during the 180 days immediately preceding its effective date; or

TERMINATION

- A. Cancellation. This policy may be cancelled during the policy period as follows:
 1. **You** may not cancel a new or renewal policy providing PIP and **PD** liability coverage during the first 60 days this policy is in effect unless:
 - a. **Your covered auto** has been totally destroyed so that it is no longer operable on the roads of Florida; or

(PART E Cont'd.)

- (2) If the policy is a renewal, during its policy period.
6. If this policy is issued to meet the requirements of Florida Statute 627.7275(2) (a) to reinstate a driver's license because of failure to maintain the required security, the following special provisions apply and supersede any contrary provisions in the policy:
- a. **You** may not cancel this policy for any reason.
 - b. Effective when **our** underwriting is completed or 30 days from the effective date of the policy, whichever comes first:
 - (1) **We** may not cancel this policy for any reason.
 - (2) No refund or premium will be allowed.
 - (3) This policy may not be changed for any reason that materially increases the risk, including but not limited to, changing to a high risk vehicle, adding vehicles, adding new drivers or moving to a different rating territory.
 - (4) If there is a material change in the policy, **you** must obtain a new six-month non-cancelable policy. If **you** obtain the policy from **us**, **we** will give **you** a credit on the new policy for any unearned premium paid on the previously issued policy.
7. **We** may cancel for any other reason permitted by law.
- B. Nonrenewal. If **we** decide not to renew this policy **we** will mail notice by registered or certified mail or United States Post Office proof of mailing to the named insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 45 days before the end of the policy period.

C. Automatic Termination. If **we** offer to renew 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 premium when due will 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. This does not apply to liability coverage purchased for travel in Mexico.

D. Other Termination Provisions.

- 1. Mailing of any notice by registered or certified mail or United States Post Office proof of mailing will be sufficient proof of notice.
- 2. If this policy is cancelled, **you** may be entitled to a premium 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 will become the end of the policy period.

TRANSFER OF YOUR INTEREST IN THIS POLICY

Your rights and duties under this policy may not be assigned without **our** written consent. However, if the named insured shown in the Declarations dies, **we** will provide coverage until the end of the policy period for:

- 1. The surviving spouse if resident in the same household at the time of death. Coverage applies to the spouse as if the named insured shown in the Declarations; and

(PART E Cont'd.)

2. The legal representative of the deceased person as if the named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use **your covered auto**.

TWO OR MORE AUTO POLICIES

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

This provision does not apply to stacked UM Coverage.

Amendment Of Policy Provisions

This Amendment forms a part of the auto policy to which it is attached, and it modifies that policy as follows:

This Amendment replaces Part D in its entirety.

PART D - PHYSICAL DAMAGE COVERAGE

DEFINITIONS

- A. **Actual cash value** means the amount that it would cost, at the time of **loss**, to buy a comparable vehicle. As applied to **your covered auto**, a comparable vehicle is one of the same make, model, model year, body type, and options with substantially similar mileage and physical condition.
- B. **Collision** means the impact with an object and includes upset of a vehicle. **Loss** caused by the following is covered under Comprehensive Coverage and is not considered **collision**: fire; missiles or falling objects; hail, water or flood; malicious mischief or vandalism; theft or larceny; riot or civil commotion; explosion or earthquake; contact with bird or animal; windstorm; or breakage of window glass. If breakage of window glass is caused by a **collision** you may elect to have it considered a **loss** caused by **collision**.
- C. **Equipment and accessories** means personal property while in or upon **your covered auto**.
- D. **Loss** means direct and accidental damage to the operational safety, function, or appearance of, or theft of, **your covered auto** or **equipment and accessories** that are not permanently installed in **your covered auto**. **Loss** includes a total loss, but does not include any damage other than the cost to **repair** or replace. **Loss** does not include any loss of use, or diminution in value that would remain after **repair** or replacement of the damaged or stolen property.

E. Nonowned vehicle.

1. **Nonowned vehicle** means any private passenger auto, pickup, **van**, **miscellaneous vehicle**, or **trailer** not owned by, or furnished or available for the regular use of, **you** or a **family member**. This applies only when the vehicle is in the custody of or being operated by **you** or a **family member**.
2. A **nonowned vehicle** does not include any of the following vehicles used in any business or occupation other than farming or ranching:
 - a. A pickup;
 - b. A **van**; or
 - c. A **miscellaneous vehicle**.

F. Repair

1. **Repair** means restoring the damaged property to its pre-**loss** operational safety, function, and appearance. This may include the replacement of component parts.
2. **Repair** does not require:
 - a. A return to the pre-**loss** market value of the property;
 - b. Restoration, alteration, or replacement of undamaged property, unless such is needed for the operational safety of the vehicle; or
 - c. Rekeying of locks following theft or misplacement of keys.

G. **Your covered auto**, as used in this Part, includes:

1. **Equipment and accessories** permanently installed in **your covered auto**.
2. A **nonowned vehicle**. If there is a **loss** to a **nonowned vehicle**, we will provide the broadest coverage shown on the Declarations.

INSURING AGREEMENT

A. **Comprehensive Coverage** (excluding **collision**).

1. **Physical damage**. We will pay for **loss** caused by other than **collision** to **your covered auto**, and **equipment and accessories** that are not permanently installed in **your covered auto**, minus any applicable deductible shown on the Declarations. We will pay under Comprehensive Coverage for the cost of repairing or replacing the damaged windshield on **your covered auto** without a deductible. We will pay only if the Declarations indicate that Comprehensive Coverage applies.
2. **Transportation expenses**. We will also pay:
 - a. Up to \$15 a day, to a maximum of \$450, for transportation expenses incurred by **you**. This applies only in the event of a total theft of **your covered auto**. We will pay only transportation expenses incurred during the period beginning 48 hours after the theft and ending when **your covered auto** is returned to use or, if not recovered or not **repairable**, when we pay for its loss.
 - b. If Increased Rental Reimbursement Coverage is afforded, limits for transportation expenses are increased up to \$30 per day to a maximum of \$900.

B. **Collision Coverage**. We will pay for **loss** caused by **collision** to **your covered auto**, and **equipment and accessories** that are not permanently installed in **your covered auto**, minus any applicable deductible shown on the Declarations.

C. **Rental Reimbursement Coverage** and **Increased Rental Reimbursement Coverage** (for **loss** other than total theft).

1. We will reimburse **you** for expenses **you** incur to rent a substitute for **your covered auto**. These coverages apply only if:

- a. **Your covered auto** is withdrawn from use for more than 24 hours due to a **loss**, other than a total theft, to that auto; and
- b. The **loss** is covered under Comprehensive Coverage or caused by **collision**, and the cause of **loss** is not otherwise excluded under Part D of this policy.

2. We will reimburse **you** only for that period of time reasonably required to **repair or replace your covered auto**. If we determine **your covered auto** is a total loss, the rental period will end when we pay for its loss.

D. **Towing and Labor Costs Coverage**. We will pay the reasonable costs **you** incur for one of the following each time **your covered auto** is disabled:

1. Mechanical labor up to one hour at the place of breakdown.
2. Towing, to the nearest place where necessary repairs can be made during regular business hours, if the vehicle will not run or is stranded on or immediately next to a public road.
3. Delivery of gas to, or a change of tire on a disabled vehicle. However, we do not pay for the cost of these items.

LIMIT OF LIABILITY

A. Total loss to **your covered auto**. Our limit of liability under Comprehensive Coverage and Collision Coverage is the **actual cash value** of the vehicle. We will declare **your covered auto** to be a total loss if, in our judgment, the cost to **repair** it would be greater than its **actual cash value** minus its salvage value after the **loss**.

B. Other than a total loss to **your covered auto**:

1. Our limit of liability under Comprehensive Coverage and Collision Coverage is the amount necessary to **repair** the **loss** based on our estimate or an estimate that we approve, if submitted by **you** or a third party. Upon request, we will identify at least one facility that is willing and able to complete the **repair** for the amount of the estimate.
2. Our estimate may specify used, rebuilt, remanufactured, or non-Original Equipment Manufacturer (non-OEM) parts which are at least equivalent in kind and quality to the damaged parts prior to the loss in terms of fit, appearance, and performance.
3. **You** may request that damaged parts be replaced with new Original Equipment Manufacturer (OEM) parts. **You** will be responsible, however, for any cost difference between the parts included in our estimate and the new OEM parts used in the **repair**.

4. We will not take a deduction for depreciation. We will take a deduction if prior damage has not been **repaired**. Prior damage does not include wear and tear.

C. **Equipment and accessories** that are not permanently installed in **your covered auto**. The limits of liability described below are separate from the limits available for a **loss** to **your covered auto**:

1. Our limit of liability is the lesser of:

- a. The amount necessary to replace the damaged or stolen property; or
- b. \$250.

2. We will not take a deduction for depreciation.

D. Under Rental Reimbursement Coverage, our limit of liability is \$15 a day, to a maximum of \$450. Under Increased Rental Reimbursement Coverage, our limit of liability is \$30 a day, to a maximum of \$900.

E. Under Towing and Labor Costs Coverage, our limit of liability is the reasonable price for the covered service.

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 **you** or to the address shown on the Declarations. If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the damaged or stolen property and pay **you** an agreed or appraised value for it. We cannot be required to assume the ownership of damaged property. We may settle a claim either with **you** or with the owner of the property.

LOSS PAYABLE CLAUSE

Loss or damage under this policy will be paid, as interest may appear, to the named insured and the loss payee shown on the Declarations. This insurance, with respect to the interest of the loss payee, will not become invalid because of **your** fraudulent acts or omissions unless the **loss** results from **your** conversion, secretion, or embezzlement of **your covered auto**. We may cancel the policy as permitted by policy terms and the cancellation will 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 on the Declarations. We may send notices to the loss payee either by mail or by electronic means. However, if the loss payee requests in writing that we not send notices, including a notice of cancellation, we will abide by that request. When we pay the loss payee we will, to the extent of payment, be subrogated to the loss payee's rights of recovery.

WAIVER OF COLLISION DEDUCTIBLE

We will not apply the deductible to loss caused by **collision** with another vehicle if all of these conditions are met:

1. The **loss to your covered auto** is greater than the deductible amount; and
2. The owner and driver of the other vehicle are identified; and
3. The owner or driver of the other vehicle has a liability policy covering the **loss**; and
4. The driver of **your covered auto** is not legally responsible, in any way, for causing or contributing to the **loss**.

EXCLUSIONS

We will not pay for:

1. **Loss to your covered auto** which occurs while it is used to carry persons for a fee. This exclusion (1.) does not apply to a share-the-expense car pool.

2. Damage due and confined to wear and tear, freezing, or road damage to tires. This does not apply if the damage results from the total theft of **your covered auto**. This exclusion (2.) does not apply to Towing and Labor Costs Coverage.

3. Damage due and confined to mechanical or electrical breakdown or failure, including such damage resulting from negligent servicing or repair of **your covered auto** or its equipment. We will pay for ensuing damage only to the extent the damage occurs outside of the major component (such as transmission/transaxle, electrical system, engine including cooling and lubrication thereof, air conditioning, computer, suspension, braking, drive assembly, and steering) in which the initial mechanical or electrical breakdown or failure occurs.

This exclusion (3.) does not apply if the damage results from the total theft of **your covered auto**, and it does not apply to Towing and Labor Costs Coverage.

4. **Loss** due to or as a consequence of war, insurrection, revolution, nuclear reaction, or radioactive contamination.
5. **Loss** to a camper body or trailer you own which is not shown on the Declarations. This exclusion (5.) does not apply to one you acquire during the policy period and ask us to insure within 30 days after you become the owner.
6. **Loss** to any nonowned vehicle when used by any person without a reasonable belief that that person is entitled to do so.
7. **Loss** to equipment designed or used to evade or avoid the enforcement of motor vehicle laws.
8. **Loss** to any nonowned vehicle arising out of its use by you or a family member while employed or otherwise engaged in auto business operations.
9. **Loss** to **your covered auto** while it is rented or leased to others.

10. **Loss** to any vehicle while it is being operated in, or in practice for, any **driving contest or challenge**.

11. **Loss** resulting from:

- a. The acquisition of a stolen vehicle;
- b. Any legal or governmental action to return a vehicle to its legal owner; or
- c. Any confiscation or seizure of a vehicle by governmental authorities.

This exclusion (11.) does not apply to innocent purchasers of stolen vehicles for value under circumstances that would not cause a reasonable person to be suspicious of the sales transaction or the validity of the title.

12. **Loss** resulting from use in any illicit or prohibited trade or transportation.

13. Any **loss** arising out of any act committed:

- a. By or at the direction of **you** or any **family member**; and
- b. With the intent to cause a **loss**.

14. **Loss** caused by **fungi**, wet or dry rot, or bacteria. This means the presence, growth, proliferation, spread, or any activity of **fungi**, wet or dry rot, or bacteria. This exclusion (14.) does not apply to damage directly resulting from a **loss** covered under Comprehensive Coverage or Collision Coverage.

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 **nonowned vehicle** will be excess over any other collectible source of recovery including, but not limited to:

1. Any coverage provided by the owner of the **nonowned vehicle**.
2. Any other applicable physical damage insurance.
3. Any other source of recovery applicable to the **loss**.

This provision does not apply to Towing and Labor Costs Coverage.

APPRAISAL

If **we** and **you** do not agree on the amount of **loss**, either may demand an appraisal. 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 pay its chosen appraiser and share the expenses of the umpire equally. Neither **we** nor **you** waive any rights under this policy by agreeing to an appraisal.

AMENDMENT OF POLICY PROVISIONS

This Amendment forms a part of the auto policy to which it is attached, and it modifies that policy as follows:

DEFINITIONS

Definition J., temporary substitute vehicle, is deleted.

The following definitions are revised:

G. **Miscellaneous vehicle** means the following motorized vehicles: motor home; golf cart; snowmobile; all-terrain vehicle; or dune buggy.

M. **Your covered auto** means:

1. Any vehicle shown on the Declarations.
2. Any newly acquired vehicle.
3. Any trailer you own.

The following definitions are added:

N. **Fungi** means any type or form of fungi, including mold or mildew, and includes any mycotoxins, spores, scents, or byproducts produced or released by fungi.

O. **Motorcycle** means a two- or three-wheeled motor vehicle that is subject to motor vehicle licensing in the location where the **motorcycle** is principally garaged.

P. **Newly acquired vehicle.**

1. **Newly acquired vehicle** means a vehicle, not insured under another policy, that is acquired by **you** or any **family member** during the policy period and is:

- a. A private passenger auto, pickup, or van;
- b. A **miscellaneous vehicle** that is not used in any business or occupation; or

c. A **motorcycle**, but only if a **motorcycle** is shown on the current Declarations.

2. **We** will automatically provide for the **newly acquired vehicle** the broadest coverages as are provided for any vehicle shown on the Declarations. If **your** policy does not provide Comprehensive Coverage or Collision Coverage, **we** will automatically provide these coverages for the **newly acquired vehicle** subject to a \$250 deductible for each loss.

3. Any automatic provision of coverage under P.2. will apply for up to 30 days after the date **you** or a **family member** becomes the owner of the **newly acquired vehicle**. If **you** wish to continue coverage for the **newly acquired vehicle** beyond this 30-day period, **you** must request it during this 30-day period, and **we** must agree to provide the coverage **you** request for this vehicle. If **you** request coverage after this 30-day period, any coverage that **we** agree to provide will be effective at the date and time of **your** request unless **we** agree to an earlier date.

4. **You** must pay an additional premium as set out in Part E, Changes, B.3., for any coverage **we** provide under P.2. or P.3. above.

PART A - LIABILITY COVERAGE

EXCLUSIONS

The following exclusion is added:

- E. We do not provide Liability Coverage for BI sustained as a result of exposure to fungi, wet or dry rot, or bacteria.

PART B-1 - PERSONAL INJURY PROTECTION COVERAGE

(Referred to as PIP)

DEFINITIONS

Definition A.2. is revised as follows:

2. Any other person who sustains BI as a result of an accident occurring within the State of Florida and involving **your covered auto**:

- a. While **occupying your covered auto**; or
- b. As a pedestrian, if a resident of Florida;

who is not an **owner** of a **motor vehicle** for which Security is required under the Florida Motor Vehicle No-Fault Law, or is not entitled to PIP benefits from the insurer of the **owner(s)** of such **motor vehicle**.

Definition C., Medically necessary, Definition D., Medical benefits, Definition I., Reasonable fee, and Definition K., Work loss, are replaced in their entirety by the following:

C. Medically necessary

1. Refers to a medical service or supply that a prudent physician would provide for the purpose of preventing, diagnosing, or treating an illness, injury, disease, or symptom in a manner that is:

- a. In accordance with generally accepted standards of medical practice;

- b. Clinically appropriate in terms of type, frequency, extent, site, and duration, and

- c. Not primarily for the convenience of the patient, physician, or other health care provider.

2. Does not include the following:

- a. Spinal ultrasound, also known as sonography, ultrasonography, and echography;
- b. Somatosensory Evoked Potential for use in the diagnosis of radiculopathy or distal nerve entrapment when treating persons sustaining bodily injury covered by personal injury protection benefits; and
- c. Dermatomal Evoked Potential.

- D. **Medical benefits** means **reasonable fees for medically necessary** surgical, medical, X-ray, dental, and rehabilitative services, including prosthetic devices, and **medically necessary** ambulance, hospital, and nursing services. However, **medical benefits** shall provide reimbursement only for such services and care that are lawfully provided, supervised, ordered, or prescribed by a physician licensed under chapter 458 or chapter 459, a dentist licensed under chapter 466, or a chiropractic physician licensed under chapter 460 or that are provided by any of the following persons or entities:

1. A hospital or ambulatory surgical center licensed under chapter 395.
 2. A person or entity licensed under § 401.2101-401.45 that provides emergency transportation and treatment.
 3. An entity wholly owned by one or more physicians licensed under chapter 458 or chapter 459, chiropractic physicians licensed under chapter 460, or dentists licensed under chapter 466 or by such practitioner or practitioners and the spouse, parent, child, or sibling of that practitioner or those practitioners.
 4. An entity wholly owned, directly or indirectly, by a hospital or hospitals.
 5. A health care clinic licensed under § 400.990-400.995 that is:
 - a. Accredited by the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, the Commission on Accreditation of Rehabilitation Facilities, or the Accreditation Association for Ambulatory Health Care, Inc.; or
 - b. A health care clinic that:
 - (i) Has a medical director licensed under chapter 485, chapter 459, or chapter 460;
 - (ii) Has been continuously licensed for more than 3 years or is a publicly traded corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange; and
 - (iii) Provides at least four of the following medical specialties: (A) General medicine; (B) Radiography; (C) Orthopedic medicine; (D) Physical medicine; (E) Physical therapy; (F) Physical rehabilitation; (G) Prescribing or dispensing outpatient prescription medication; (H) Laboratory services.
- I. **Reasonable fee** is no more than 80 percent of the following schedule of maximum charges:
 1. For emergency transport and treatment by providers licensed under chapter 410, 200 percent of Medicare.
 2. For emergency services and care provided by a hospital licensed under chapter 395, 75 percent of the hospital's usual and customary charges.
 3. For emergency services and care as defined by § 395.002(10) provided in a facility licensed under chapter 395 rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist, the usual and customary charges in the community.
 4. For hospital inpatient services, other than emergency services and care, 200 percent of Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services.
 5. For hospital outpatient services, other than emergency services and care, 200 percent of Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services.
 6. For all other medical services, supplies, and care:
 - a. 200 percent of the applicable Medicare Part B fee schedule.
 - b. If such services, supplies, or care are not reimbursable under Medicare Part B, 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under § 440.13 and rules adopted thereunder which are in effect at the time such services, supplies, or care are provided.

For purposes of this definition (I.), the applicable fee schedule or payment limitation under Medicare is the fee schedule or payment limitation in effect at the time the services, supplies or care were rendered and for the area in which such services were rendered, except that it may not be less than the applicable 2007 Medicare Part B fee scheduled for medical services, supplies, and care subject to Medicare Part B.

- K. **Work loss** means, with respect to the period of disability of the **covered person**, 60 percent of gross income and earning capacity from inability to work proximately caused by the BI sustained by the **covered person**. However, **work loss** does not include any loss after death of a **covered person**.

INSURING AGREEMENT

The Insuring Agreement is replaced in its entirety by the following:

- A. **We** will pay, in accordance with the Florida Motor Vehicle No-Fault Law, to or for the benefit of the **covered person**:
1. **Medical benefits**, and
 2. **Work loss**, and
 3. **Replacement services expenses**, and
 4. Death benefits equal to the lesser of:
 - a. \$5,000; or
 - b. The remainder of unused personal injury protection benefits incurred as a result of **BI**, caused by an accident arising out of the ownership, maintenance, or use of a **motor vehicle** and sustained by a **covered person**.
- B. **We** will not be liable for subsequent PIP benefits if a **covered person** unreasonably refuses to submit to an examination as required in Part E - General Provisions, Duties After An Accident or Loss.

- C. Whenever a person making claim is charged with committing a felony, **we** shall withhold benefits until, at the trial level, the prosecution makes a formal entry on the record that it will not prosecute the case against the person, the charge is dismissed, or the person is acquitted.

- D. **We** or someone on **our** behalf will review, by audit or otherwise, claims for benefits under this coverage to determine if the charges are **reasonable fees** for **medically necessary** and appropriate services or reasonable expenses for funeral services. A provider of medical or funeral services may charge more than the amount **we** determine to be **reasonable fees** and reasonable expenses, but such additional charges are not covered.

- E. If the service provider sues the **covered person** because **we** refuse to pay expenses that **we** determine are unreasonable or unnecessary, **we** will settle or defend the suit, as **we** consider appropriate. **We** will pay defense costs and any resulting settlement or judgment against the **covered person** for reasonable and necessary expenses, subject to the limit of liability for this coverage. The **covered person** must cooperate with **us** in the defense of any claim or lawsuit. **We** will also pay a **covered person** up to \$100 a day for loss of wages because of attendance at hearings or trials at **our** request.

LIMIT OF LIABILITY

The following is added to the Limit of Liability:

We will reserve \$5,000 of personal injury protection benefits for payment to physicians licensed under chapter 458 or chapter 459 or dentists licensed under chapter 466 who provide emergency services and care, as defined in § 395.002(9), or who provide hospital inpatient care. The amount held in reserve will be used only to pay claims from such physicians or dentists until 30 days after the date **we** receive notice of the accident. After the 30-day period, any amount of the reserve for which **we** have not received notice of a claim from a physician or dentist who provided emergency services and care or who provided

hospital inpatient care may be used to pay other personal injury protection benefits for loss or expense incurred because of the accident.

EXCLUSIONS

The following exclusions are added:

- C. We will not pay benefits under PIP Coverage for services, supplies, or care that is not reimbursable under Medicare or Florida workers' compensation law.

- D. We will not pay benefits under PIP Coverage for any person:

1. Entitled to PIP benefits from:
 - a. The owner of a motor vehicle other than **you**; or
 - b. That owner's insurer.
2. Who owns an uninsured motor vehicle subject to the Florida No-Fault Law.

PART B-2 - MEDICAL PAYMENTS COVERAGE

DEFINITIONS

Definitions A., Air Bag, and F., Seat Belt, are deleted.

INSURING AGREEMENT

Paragraph A. of the Insuring Agreement is replaced in its entirety by the following:

Medical Payments Coverage:

- A. We will pay only the **reasonable fee** for **medically necessary and appropriate medical services** and the reasonable expense for funeral services. These fees and expenses must:
1. Result from **BI** sustained by a **covered person** in an auto accident; and
 2. Be incurred for services rendered within three years from the date of the auto accident.
- B. We or someone on **our** behalf will review, by audit or otherwise, claims for benefits under this coverage to determine if the charges are **reasonable fees** for **medically necessary and appropriate services** or reasonable expenses for funeral services. A provider of medical or funeral services may charge more than the amount **we** determine to be **reasonable fees** and reasonable expenses, but such additional charges are not covered.

- C. If the service provider sues the **covered person** because **we** refuse to pay expenses that **we** determine are unreasonable or unnecessary, **we** will settle or defend the suit, as **we** consider appropriate, but **we** will settle or defend only if the **covered person** has not promised to pay the provider even if the expenses are unreasonable or unnecessary. **We** will pay defense costs and any resulting settlement or judgment against the **covered person** for reasonable and necessary expenses, subject to the limit of liability for this coverage. The **covered person** must cooperate with **us** in the defense of any claim or lawsuit. **We** will also pay a **covered person** up to \$100 a day for loss of wages because of attendance at hearings or trials at **our** request.

Paragraph B., Air Bag and Seat Belt Benefits, is deleted.

LIMIT OF LIABILITY

The Limit of Liability section is replaced in its entirety by the following:

Medical Payments

1. The limit of liability shown in the **Declarations** for **Medical Payments Coverage** is the most **we** will pay for each **covered person** injured in any one accident, regardless of the number of **covered persons**, claims made, vehicles or premiums shown in the **Declarations**, or vehicles involved in an auto accident.

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

Paragraph B., Air Bag and Seat Belt Benefits, is deleted.

EXCLUSIONS

The following exclusion is added:

12. Sustained as a result of a **covered person's** exposure to **fungi**, wet or dry rot, or bacteria.

OTHER INSURANCE

The Other Insurance section is replaced in its entirety by the following:

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** or a **family member** do not own shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

ARBITRATION

The Arbitration section is deleted in its entirety.

PART C - UNINSURED MOTORISTS COVERAGE (STACKED)

(Referred to as UM Coverage)

ARBITRATION

The Arbitration section is deleted in its entirety.

PART E - GENERAL PROVISIONS

AIR BAG

The Air Bag section is deleted in its entirety.

CHANGES

Paragraph B. is revised as follows:

B. If, during the policy period, the risk changes for any of the following reasons, **we** will make the necessary premium adjustments effective the date of change in exposure. Change in exposure means the occurrence of an event listed in B.1. through B.7. or in E. below, or a similar event that may ~~increase or decrease the policy premium~~. **You** agree to give **us** notice of any exposure change as soon as is reasonably possible. Changes that may result in a premium adjustment include, but are not limited to, the following:

1. Change in location where any vehicle is garaged.

2. Change in description, equipment, purchase date, registration, cost, usage, miles driven annually, or operators of any vehicle.

3. Replacement or addition of any vehicle. A replacement or additional exposure vehicle is a **newly acquired vehicle**. **You** must pay the applicable premium for the **newly acquired vehicle** beginning on the date **you** or a **family member** becomes the owner of the vehicle. See DEFINITIONS - **newly acquired vehicle**.

4. Deletion of a vehicle. The named insured may request that a vehicle shown on the Declarations be deleted from this policy. The effective date of this change cannot be earlier than the date of the named insured's request unless **we** agree to an earlier date.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

DORRIS W. GREEN, JR., as Guardian)
ad Litem for *Thman G.*)
minor,)

Plaintiff,)

vs.)

UNITED SERVICES AUTOMOBILE)
ASSOCIATION,)

Defendant.)

Civil Action No. 2010-CP-07-5078

MOTION FOR SUMMARY
JUDGMENT

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Pursuant to SCRCP 56 the defendant moves for summary judgment on the plaintiff's claim in paragraph VIII of the plaintiff's complaint that the defendant's insurance policy should be reformed to exclude an exclusion of liability coverage for claims against a covered person by a member of that person's household. The ground for this motion is that the insurance policy at issue was written in the State of Florida and insured a vehicle licensed in the State of Florida and subject to Florida law, not South Carolina law. Florida Law applies in determining the enforceability of the exclusion in question. Under the law of Florida the exclusion at issue is a valid, enforceable exclusion. The defendant further moves for summary judgment as to the plaintiff's claim in paragraph VIII of his complaint that the plaintiff is entitled to underinsured motorist coverage under the defendant's policy. This motion is based upon the attached affidavit of Mary Anne Rice which attaches a certified copy of the policy, upon applicable cases and statutes and upon the depositions of Dorris G.

and Linda G.

Motion for Summary Judgment, dated March 7, 2011

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March 7, 2011

Defendant's Memorandum In Support of Motion for Summary Judgment

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

DORRIS W. GREEN, JR., as Guardian) Civil Action No. 2010-CP-07-5078
ad Litem for Inman G.)
minor,)

Plaintiff,)

vs.)

UNITED SERVICES AUTOMOBILE)
ASSOCIATION,)

Defendant.)

MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

The plaintiff's complaint seeks to reform a policy issued by United Services Automobile Association (USAA). The ground for this attempted reformation is that certain provisions in USAA's policy do not comport with South Carolina law. However, South Carolina law does not apply to USAA's policy. Instead, Florida law applies to the policy which was written in the State of Florida and the provisions in the policy contested by the plaintiff are valid under Florida law. USAA is therefore entitled to summary judgment.

BACKGROUND

This lawsuit arises out of an accident on July 19, 2009 when Inman G. was injured while a passenger in a 2002 Honda driven by his mother Linda Green. (Plaintiff's Complaint, ¶ 4) The plaintiff's complaint alleges the accident was a result of Linda G. allegedly turning left in front of an oncoming vehicle. (Plaintiff's Complaint, ¶ 4) The 2002 Honda in which Inman G. was a passenger was insured by USAA under a policy written in the State of Florida. (Plaintiff's Complaint, ¶ 6) A certified copy of the USAA policy is attached to USAA's motion for

summary judgment. The policy number in the certified copy of the policy attached to USAA's motion for summary judgment is the same policy number referenced in paragraph 6 of the plaintiff's complaint.

Part A of the policy provides liability coverage. (Page 4 of Form 5100FL(01)) Subsection C on page 6 of Form 5100FL(01) contains the following exclusion of liability coverage:

There is no coverage for BI for which a covered person becomes legally responsible to pay to a member of that covered person's family residing in that covered person's household.

In other words, there is no liability coverage for a bodily injury for which a covered person [here, Linda G.] becomes legally responsible to pay to a member of that covered person's family [here, *Inman G.*] residing in that covered person's household. *Inman G.* has lived with his mother Linda G. his entire life. (Linda G. Deposition, p. 6)

Paragraph 8 of the plaintiff's complaint admits USAA's policy contains a proviso excluding liability coverage for Linda G. for a claim against her by her son *Inman G.* However, the complaint further alleges in paragraph 8 that this provision is "contrary to South Carolina auto liability insurance law" which requires liability coverage to any and all persons regardless of family affiliation. The problem with this theory is that it is Florida law, not South Carolina law, which governs the validity of the exclusion of liability coverage for claims of one family member against another.

FLORIDA LAW APPLIES TO THE USAA POLICY

Unless the parties agree to a different rule, the validity and interpretation of a contract is ordinarily to be determined by the law of the state in which the contract was made.

Unisun Insurance Company v. Hertz Rental Company, 436 S.E.2d 182, 184 (S.C. App. 1993)

In construing insurance policies, South Carolina courts apply the law of the state where the policy was issued. Companion Property & Casualty Insurance Company v. Airborne Express, 631 S.E.2d 915, 916 (S.C. App. 2006) Florida has the same rule which is that the law of the jurisdiction where the contract was executed govern interpretation of substantive issues regarding the contract and that the lex loci contractus rule determines the choice of law for interpretation of provisions in an automobile insurance policy. Lumbermen's Mutual Casualty Company v. August, 530 So.2d 293 (Supreme Court of Florida 1988)

In Newton v. Progressive Northwestern Insurance Company, 554 S.E.2d 437 (S.C. App. 2001) Progressive issued a policy in Georgia to Newton. Several months after issuance of the policy Newton was involved in an automobile accident in South Carolina. Newton claimed the policy required reformation to include the minimum uninsured motorist coverage required by South Carolina law. The trial court granted summary judgment to Progressive. On appeal Newton argued the terms of the policy had to be reformed to comply with South Carolina liability policy requirements. 554 S.E.2d at 438 In affirming the grant of summary judgment to Progressive the Court of Appeals held that a policy issued and delivered outside of South Carolina is not a policy issued or delivered in South Carolina and the fact that an accident which is within the risk covered by a policy occurred in a certain state does not make the contract one of that state. The Court of Appeals concluded that South Carolina's financial responsibility law did not require reformation of the Georgia policy. 554 S.E.2d at 440

Paragraph 6 of the plaintiff's complaint alleges the policy in question "was written in the State of Florida." The policy itself states on the declarations page that it is a Florida auto policy. Under these undisputed facts and the law cited above this Court must look

to Florida law rather than South Carolina law to determine the validity of the exclusion of liability coverage for claims between family members.¹

THE FAMILY MEMBER EXCLUSION IS VALID UNDER FLORIDA LAW

In Chrysler Credit Corporation v. United Services Automobile Association, 625 So.2d 69 (Florida District Court of Appeal 1993) USAA maintained a family member exclusion in its policy precluded coverage as to any claims arising against the Estate of Hagen arising from the injury and death of the son. The trial court entered summary judgment in favor of USAA which was affirmed on appeal. In upholding the validity of this exclusion the court cited a decision of the Florida Supreme Court in Fitzgibbon v. Government Employees Insurance Company, 583 So.2d 1020 (Florida 1991)

In Mitchell v. State Farm Mutual Automobile Insurance, 678 So.2d 418 (Florida District Court of Appeal 1996) the Court stated in considering a challenge to a family exclusion clause that:

Injury to that family member is excluded from liability coverage by most, if not all, insurance policies issued in Florida. As counsel for State Farm candidly admitted to us at oral argument, they knew of no insurance policy offered in Florida without a family member exclusion. 678 So.2d at 420

Citing GEICO v. Fitzgibbon, the District Court of Appeal in Mitchell held that:

Family exclusion clauses in automobile insurance policies are not void as contrary to this state's laws or public policy. If this rule is to be overturned, it must either be addressed by the Florida Legislature or the Florida Supreme Court. 678 So.2d at 421

Attached for the Court's convenience is a copy of the GEICO, Mitchell and Chrysler Credit cases.

¹ Obviously, which State's law applies is a question of law for the Court, not a question of fact for the jury.

Because the policy in question was written in the State of Florida, Florida law applies and under Florida law the exclusion challenged by the plaintiff is valid. Accordingly, USAA is entitled to summary judgment on the plaintiff's attempt to reform USAA's policy to remove the exclusion of liability coverage for claims of one family member against another.²

THE PLAINTIFF'S COMPLAINT DOES NOT SEEK TO REFORM THE POLICY CONCERNING A CLAIM FOR UNDERINSURANCE POLICY BENEFITS. HOWEVER, PARAGRAPH 8 OF THE COMPLAINT DOES SEEK TO RECOVER LIABILITY AND UNDERINSURED POLICY LIMITS. UNDER THE UNDISPUTED FACTS THE PLAINTIFF IS NOT ENTITLED TO UNDERINSURANCE BENEFITS.

The definition in part C of the policy of uninsured motor vehicle includes not only a motor vehicle to which no liability policy applies, but also a motor vehicle insured under a policy with limits for bodily injury liability not enough to pay the full amount the covered person is legally entitled to recover as damages. (P. 14 of Form 5100FL(01)) In other words, the USAA policy written in Florida includes within the definition of uninsured motor (UM) vehicle a motor vehicle with insufficient liability limits or what is more commonly known as underinsurance motorist (UIM) coverage.

The definition section of UM coverage (P. 14 of Form 5100FL(01)) provides that an uninsured motor vehicle does not include any vehicle or equipment owned by or furnished or available for the regular use of you (defined in the policy as the named insured, which in this case is Dorris G.) or any family member (defined in the policy as a person related to you - the named insured - by blood or marriage who is a resident of your

² The plaintiff's complaint also seeks to reform the policy to increase the liability coverage limits from \$10,000/\$20,000 to South Carolina's minimum limits of \$25,000/\$50,000. It is unnecessary to consider this part of the plaintiff's complaint because the policy provides no liability coverage for the claim of *Irman G.* against his mother Linda G. Because the policy provides no liability coverage, it is unnecessary to consider how much liability coverage should be provided.

household.). (P. 3 of Form 5100FL(01)) It is undisputed the 2002 Honda involved in the accident of July 19, 2009 was furnished for the regular use of Dorris G.'s wife, Linda G. Linda G. testified that she and her husband owned the 2002 Honda up until the time of the July 2009 accident, that that car was registered or licensed in Florida and that she primarily used that car. (Linda G. Deposition, pp. 19, 20; 37)

The exclusion of UIM coverage for any motor vehicle owned by or furnished for the regular use of the named insured or any family member does have an exception. However, that exception is inapplicable.

The exception to the exclusion of UIM coverage for a vehicle furnished or available for the regular use of the named insured or family member applies only if:

1. The vehicle is the named insured's covered auto to which part A (liability coverage) applies; and
2. Liability coverage is **excluded** (emphasis added) for any person other than the named insured or any family member for damages sustained in the accident by the named insured or a family member. (P. 14 of Form 5100FL(01))

Here, in contrast, liability coverage is excluded for the named insured (the plaintiff) and his family members for damages sustained in an accident by the named insured or a family member. Accordingly, part 2 of the exception to the exclusion of UIM coverage does not apply. Therefore, the 2002 Honda is not included within UIM coverage and the plaintiff is not entitled to UIM coverage under the policy insuring the 2002 Honda vehicle.

CONCLUSION

The plaintiff's complaint alleges in paragraph 6 that the policy in question was written in the State of Florida. Therefore, Florida law, not South Carolina law, governs the

validity of provisions in the policy. Under Florida law the exclusion of liability coverage for a claim of one family member against another is valid. Accordingly, the plaintiff is not entitled to reform the Florida policy to remove this exclusion. Furthermore, the plaintiff is not entitled to UIM coverage under the Florida policy because the vehicle involved in the accident was not included within the definition of an uninsured motor vehicle.

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May 27, 2011

Plaintiff's Memorandum In Opposition to Motion for Summary Judgment

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2010-CP-07-5078

DORRIS W. GREEN, JR., as Guardian
ad Litem for *Inman G.*,
a minor,)

Plaintiff,)

vs.)

UNITED SERVICES
AUTOMOBILE ASSOCIATION)

Defendant.)

**MEMORANDUM OF LAW IN
OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT**

In October 2010 Plaintiff filed this action against Defendant United Services Automobile Association (hereinafter referred to as USAA) to have the family exclusion provision of his policy declared void and the underinsured motorist coverage recognized to provide Plaintiff further coverage for his injuries.

Subsequently, Defendant filed a Motion for Summary Judgment on Plaintiff's claim that the family exclusion provision in Defendant's insurance policy should be declared valid and Plaintiff denied coverage. Defendant contends that the policy was written in Florida and insured a vehicle licensed in Florida and therefore the law of Florida determines the validity and enforceability of the family exclusion.

In addition, Defendant has moved for summary judgment on the issue of the non-availability of underinsured motorist coverage. Defendant puts forth the argument that there is no underinsured motorist coverage under the policy Plaintiff purchased from Defendant.

DISCUSSION

Plaintiff is married to Linda L. Green. They have been married seven years and live in South Carolina. The couple has two children as a result of their union, namely: *Inman G.*, 6 years old, and Edward *N.*, 5 years old. They were passengers in a 2002 Honda being driven by their mother, Linda *G.*, when she allegedly caused a wreck in Beaufort, South Carolina, on July 19, 2009. The two boys were injured, *Inman G.* is badly so, that he was hospitalized at Medical University of South Carolina for several days with severe and permanent facial and right leg injuries.

The 2002 Honda driven by Linda *G.* was insured by Defendant. The policy was written in Florida for the period from February 8, 2009 through August 8, 2009. The liability coverage under the policy was \$10,000 per person per accident. It contained a proviso excluding coverage for bodily injury to a family member in the household caused by the negligent operation of the vehicle by another household member. This is oftentimes referred to as the family member exclusion. Under the policy a family member injured in a wreck riding with a household family member can not recover if the family member driving is at fault.

The family exclusion provision violates the public policy of the State of South Carolina. The provision is against the "natural justice" of our State. See Dawkins v. State, 412 S.E. 2d 407, 408 (SC1991). The State Courts of South Carolina will not apply or enforce a foreign law that violates the public policy of our State. Rauton v. Pullman Co., 191 S.E. 416 (SC1937); Boone v. Boone, 546 S.E. 2d 191 (SC 2001).

In Boone, supra, Plaintiff sued husband for injuries she suffered in a car accident while she was riding with him. Husband and wife lived in South Carolina. The accident occurred

in Georgia. The substantive law of Georgia applied and provided for interspousal immunity in personal injury cases. On appeal the South Carolina Supreme Court reversed the lower court decision, concluding that the doctrine of interspousal immunity violates the public policy of our State. Respondent had argued the doctrine prevented fraudulent claims and promoted domestic tranquility. The Court found the argument entirely unpersuasive.

Further, the Court noted that it would not apply foreign substantive law where it violates the public policy of this State. Interspousal immunity is absolutely “contrary to natural justice”, according to the Court, and serves no worthy end. Id. The Court was illustrative and instructive in observing that, even in Georgia, spouses were not immune from suit from the other for any other actions, including tort actions, except car wrecks, and refusing to apply the immunity doctrine would be “in the furtherance of justice.” Id.

In the present case Florida law interposes the family member exclusion preventing the minor ~~Emmanuel G.~~ from recovering for his injuries solely because he lives in the household with his mother driver. He is only 6 years old, much too young to collude with her to make a fraudulent claim. His injuries are severe and permanent and observable. As the Court said in Boone, the reason “is simply not justified in the twenty first century.” Id. The immunity exclusion is against the public policy of the State of South Carolina and violates the “natural justice” of a minor to recover for permanent, life-altering injuries resulting from a car wreck for which he would have otherwise been able to recover damages but for the archaic notion of family immunity.

The invalidity and contrariness of the clause to the public policy of the State of South Carolina is even greater in the instant case because, like Boone, Plaintiff resides in South

Carolina, but unlike Boone where the accident happened in Georgia with Georgia substantive law applying, here the accident occurred in South Carolina.

The family member exclusion does not apply because it is against the public policy of our State. Thus, Plaintiff minor is entitled to recover the liability coverage under Defendant's policy. That Florida policy provided for \$10,000 of liability coverage, but because the accident occurred in South Carolina, the liability coverage automatically came up to \$25,000 which is the minimum liability limits in South Carolina. See S.C. Code Sec. 38-77-140 (1976, as amended). Indeed, Defendant's policy states that in the case of an accident outside Florida, "the policy will provide at least the minimum amounts and types of coverages required by law." That minimum liability coverage in South Carolina is \$25,000.

Moreover, Defendant argues that Plaintiff is not entitled to underinsured motorist coverage (UIM) under the policy purchased through Defendant. Under Defendant's policy Plaintiff is provided UIM coverage under the uninsured motorist provisions. Under part C Defendant defines an uninsured vehicle as a motor vehicle "to which a liability policy applies at the time of the accident but its limit for bodily injury liability is not enough to pay the full amount the covered person is entitled to recover as damages." In other words, the uninsured vehicle was the one in which Plaintiff was riding when injured. Under Defendant's policy, uninsured and underinsured are used interchangeably, at least in defining the coverages available to covered insureds. Here, the uninsured, or alternatively, the underinsured, is a person such as Plaintiff minor who has been injured to such an extent that "liability is not enough to pay the full amount" of damages.

That amount has to be at least the minimum liability limits which in South Carolina is \$25,000, and not the \$10,000 referenced in Defendant's policy. S.C. Code Sec. 38-77-160 (1976, as amended); Bowers v. National General Insurance, 536 S.E.2d 693 (S.C. App. 2000), rehearing den'd; Norwood v. Allstate Insurance Co., 489 S.E.2d 661 (S.C. App. 1997), rehearing den'd, certiorari den'd. Just as the liability limits have to come up from \$10,000 to \$25,000, so does the uninsured motorist or UIM coverage.

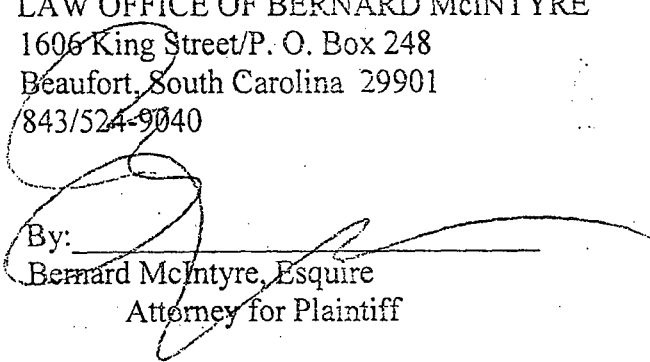
CONCLUSION

Based on the foregoing, Plaintiff respectfully submits that the family member exclusion in Defendant's policy is invalid in South Carolina as in contravention of public policy and liability coverage of \$25,000 should be made available to Plaintiff for his injuries.

Additionally, uninsured motorist coverage under Defendant's policy also affords UIM coverage of \$25,000 for each vehicle with there being three and, stacking allowed, the total UIM coverage available would be \$75,000.

Respectfully Submitted,

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By: 

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Attorney for Plaintiff

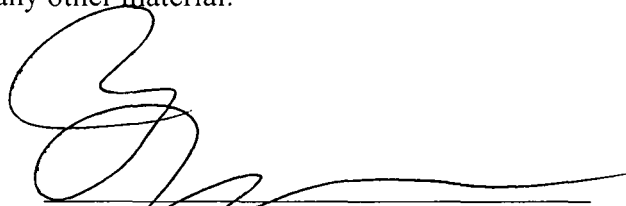
Beaufort, South Carolina
May 27, 2011

Certificate of Appellant

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all the materials proposed to be included by any of the parties and not any other material.

January 30, 2012
Beaufort, South Carolina

A handwritten signature in black ink, appearing to read 'Bernard McIntyre', written over a horizontal line.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Carmen. T. Mullen, Circuit Court Judge

Case Tracking No. 2011197648

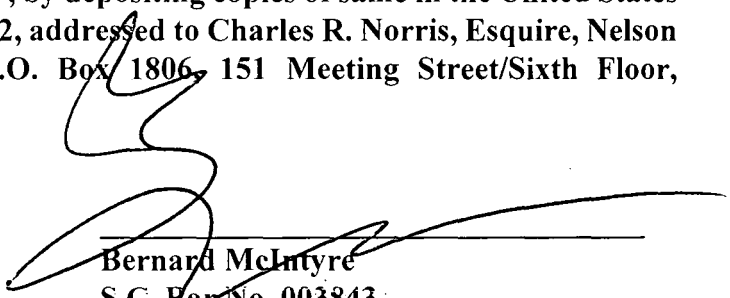
Dorris W. Green, Jr. as Guardian ad Litem for
Inman G., a minor.....Appellant,

v.

United States Automobile Association Auto and
Property Insurance Company.....Respondent

PROOF OF SERVICE

I certify that I served three (3) copies of the Record on Appeal on Charles R. Norris, Esquire, Nelson Mullins Riley & Scarborough, LLP, by depositing copies of same in the United States Mail, postage prepaid, on January 31, 2012, addressed to Charles R. Norris, Esquire, Nelson Mullins Riley & Scarborough, LLP, P.O. Box 1806, 151 Meeting Street/Sixth Floor, Charleston, SC 29401-2239.



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