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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2021-000243

Nationwide Affinity Insurance Company of America,Appellant.

v.

Andrew Green, Respondent.

RECORD ON APPEAL

J.R. Murphy, Esquire (S.C. Bar No. 7941)
Wesley B. Sawyer, Esquire (S.C. Bar No. 100229)
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorneys for Appellant

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Alexis Wimberly McCumber, Esquire
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Anastopoulo Law Firm, LLC
32 Ann Street
Charleston, SC 29403
Attorneys for Respondent

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2100986

Nationwide Affinity Insurance Company Of America
PLAINTIFF(S)

Andrew Green
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

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

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

This order amends the previous order of 2/1/2021 to say that the previous order does end the case.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/18/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Florence Common Pleas

Case Caption: Nationwide Affinity Insurance Company Of America VS Andrew Green
Case Number: 2020CP2100986
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/D. Craig Brown (2160)

Electronically signed on 2021-02-18 09:21:45 page 3 of 3

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2100986

Nationwide Affinity Insurance Company Of America
PLAINTIFF(S)

Andrew Green
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

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

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

This matter came before this Court on January 25, 2021, pursuant to Plaintiff's Motion for Judgment on the Pleadings. Attorney J.R. Murphy appeared on behalf of the Plaintiff and Attorney Alexis W. McCumber appeared on behalf of the Defendant. Both attorneys appeared via WebEx. Each attorney submitted memorandums in support of their position and argued the applicability of specific cases. Attorney for the Plaintiff argued that Bardsley v. Government Employees Ins. Co., 405 S.C. 68, 747 S.E.2d 436 (2013), was applicable to the underlying facts of this case which would preclude defendant from being entitled to underinsured (UIM) motorist coverage under the "property damage" provision. Defense counsel, on the other hand, argued that Glasscock v. U.S. Fidelity and Guar. Co., 348 S.C. 76, 557 S.E.2d 689 (2001) was applicable which would entitle Defendant to recover under the "property damage" provision of the underinsured coverage.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

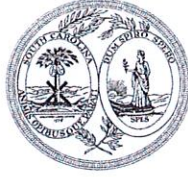
This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/01/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

After reviewing the attorney's respective memorandum and the above-referenced cases, this Court believes that Glasscock is controlling. The liability endorsement of the Nationwide policy defines "property damage" as "physical injury to, destruction of or loss of use of tangible property." The UIM endorsement in the Nationwide policy defined "property damage" as "injury to or destruction of your covered auto." Since Nationwide chose to include "physical injury to, destruction of or loss of use of tangible property," it chose to provide greater coverage than the minimum required by statute. Therefore, its UIM endorsement should also include the same language as required in Glasscock. In addition, its policy should be reformed to reflect such coverage.



Florence Common Pleas

Case Caption: Nationwide Affinity Insurance Company Of America VS Andrew Green
Case Number: 2020CP2100986
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/D. Craig Brown (2160)

Electronically signed on 2021-02-01 10:40:04 page 3 of 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

CIVIL ACTION NO:

Nationwide Affinity Insurance Company of America,

Plaintiff,

vs.

Andrew Green,

Defendant.

SUMMONS

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 4406-B Forest Drive, Post Office Box 6648, Columbia, South Carolina 29260 within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Plaintiff(s) will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

This the 6th day of April, 2020, in Columbia, South Carolina.

MURPHY & GRANTLAND, P.A.

s/ Wesley B. Sawyer
Wesley B. Sawyer, Esquire
(Bar No.: 100229)
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Wesley@murphygrantland.com
Attorneys for Nationwide Affinity Insurance Company of America

Columbia, South Carolina
April 6, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

CIVIL ACTION NO:

Nationwide Affinity Insurance Company of America,

Plaintiff,

v.

Andrew Green,

Defendant.

**DECLARATORY JUDGMENT
COMPLAINT
(Non-Jury)**

The Plaintiff, Nationwide Affinity Insurance Company of America, hereinafter (“Nationwide”), seeks declaratory relief to determine the rights of the parties, and alleges and shows as follows:

JURISDICTION AND VENUE

1. Nationwide is an insurance company organized and existing under the laws of the State of Ohio with its principle place of business in the State of Ohio. Nationwide is authorized to operate and issue insurance policies in the State of South Carolina.

2. Upon information and belief, Defendant Andrew Green is a citizen and resident of Florence County, State of South Carolina.

3. This matter is brought pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and pursuant to the Uniform Declaratory Judgment Act, South Carolina Code Ann. §15-53-10 through 15-53-140; there is a real and justiciable controversy between the parties, and by these proceedings Plaintiff asks this Court to inquire into and declare the rights and obligations of the parties hereto arising out of the facts set forth below.

4. Venue is proper in Florence County because the Defendant resides in Florence County.

NATIONWIDE POLICY

5. Nationwide issued a Nationwide Auto Policy to Shameika Clark, Policy Number 6139V 035103, with effective dates of June 28, 2018 through December 28, 2018 listing a 1996 Ford Aspire as an Insured Vehicle. The Nationwide policy lists limits for underinsured motorist bodily injury coverage of \$25,000.00 each person and underinsured motorist property damage coverage of \$25,000.00 each occurrence. A complete copy of the Policy is attached as Exhibit A to this Complaint, and Nationwide hereby incorporates the Policy in its entirety.

6. The Policy issued to Shameika Clark contains the following pertinent provisions:

UNDERINSURED MOTORISTS COVERAGE – SOUTH
CAROLINA

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

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

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

"Insured" as used in this endorsement means:

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

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

7. The policy defines the term “your covered auto” as:

J. "Your covered auto" means:

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

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

FACTS

8. On October 19, 2018, Defendant Andrew Green was a pedestrian struck by a motor vehicle operated by Harold Carraway in or near Florence, South Carolina.

9. As a result of the collision, Andrew Green filed a Summons and Complaint against Harold Carraway captioned *Andrew Green; and Sharon Dosani, as Parent and Natural Guardian of C.D. v. Harold Carraway*, Civil Action Number 2020-CP-21-00443 (hereinafter referred to as the “Underlying Complaint”).

10. In the Underlying Complaint, Green alleges he was a pedestrian on the side of the road when Carraway crossed the center line, ran off the road, and struck Plaintiff Green.

11. The Underlying Complaint does not allege that any vehicle that would qualify as a “your covered auto” under the terms of the Nationwide policy was involved in the collision.

12. Upon information and belief, the liability carrier for Harold Carraway tendered its policy limits for liability coverage.

13. Andrew Green has asserted a claim for underinsured motorist bodily injury and underinsured motorist property damage coverage from Nationwide.

14. Nationwide has offered its underinsured motorist bodily injury limits to Andrew Green.

15. Under the terms of the policy, no underinsured motorist property damage occurred in the collision because there was no damage to “your covered auto”.

FOR A FIRST DECLARATION

16. The Plaintiff repeats, realleges, and incorporates Paragraph 1 through 15 as if fully set forth verbatim herein.

17. Under the terms of the Nationwide Policy, underinsured motorist property damage coverage is limited to “property damage” caused by an accident.

18. The Nationwide policy defines the term “property damage” for purposes of underinsured motorist property damage coverage to mean “injury to or destruction of ‘your covered auto’”. The policy goes on to state “proper damage does not include damage to property owned by the ‘insured’ while contained in ‘your covered auto’”.

19. The collision alleged in the Underlying Complaint did not result in any damage to a “your covered auto” as that term is described in the Policy.

20. Therefore, Nationwide is entitled to a declaration that the above-referenced Policy does not provide underinsured motorist property damage coverage for any claims asserted in the Underlying Complaint or arising out of the subject accident referenced in the Underlying Complaint.

WHEREFORE, Nationwide requests that this Honorable Court inquire into these matters and declare that the Policy issued by Nationwide does not provide underinsured motorist property

damage coverage for Andrew Green for any claims or damages asserted against Harold Carraway, and that Nationwide does not owe any duty to indemnify or provide any insurance proceeds to Defendant Andrew Green under the underinsured motorist property damage policy coverage, together with costs and disbursements incurred and such other and further relief as the Court may deem just and proper.

MURPHY & GRANTLAND, P.A.

s/Wesley B. Sawyer

Wesley B. Sawyer, Esquire, (SC Bar #100229)

4406-B Forest Drive (29206)

P.O. Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for Nationwide Affinity Insurance

Company of America

Columbia, South Carolina

April 6, 2020

EXHIBIT A

Certification

I, Amanda Diniz

As a duly authorized Nationwide Insurance associate entrusted with oversight of the system of record from which this copy was produced, based upon information and belief; certify under the penalty of perjury that this attached copy of the Declaration and or Policy pages on policy number 6139V 035103 was made at or near the time of certification, as part of regularly conducted business activities, and is a true and accurate copy of the official record kept as part of regular business activities.

Date: January 30, 2020

Signature

Amanda Diniz

Amanda Diniz

Printed Name

Admin Support Coordinator

Job Title



Your Insurance Identification Card

Prepared on June 7, 2018

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

Important Notice ...

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

Shameika Clark
116 Fletcher St
Mc Coll, SC
29570-2306

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

03041001561010

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

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



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

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South Carolina Insurance Identification Card

Policy Number	Effective Date	Expiration Date
6139V 035103	Jun 28, 2018	Dec 28, 2018
Year	Make/Model	Vehicle Identification Number
1996	Ford/Aspire	KNJLT06H9T6182359

24 Hour Claims 1.800.421.3535

See the reverse side for more information.

SHAMEIKA CLARK

Nationwide Affinity Insurance Company Of America
PO Box 30000
Raleigh NC 27622-3000

NAIC Company Number: 26093

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

If you lose your card, contact your Nationwide agent.

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

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



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

24 Hour Claims 1.800.421.3535

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

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

When calling, please give these details:

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

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



Nationwide Insurance
1200 Locust St
Des Moines, IA 50391-9995

Your Revised Policy

Your bill is sent separately.
Nationwide Auto Policy
Policy Period: Jun 28, 2018 - Dec 28, 2018
Policy Number: **6139V 035103**

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

Shameika Clark
116 Fletcher St
Mc Coll, SC
29570-2306

03041001561027

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What's enclosed

- ✓ **Insurance Identification Cards** - Your ID cards are enclosed in this packet.
- ✓ **Declarations** - These pages show **your coverages** under this policy. Carefully review these details and call **Nationwide Sales Solutions Inc at 1.800.421.1444** or **Nationwide Customer Solution at 1.800.421.1444** if you have questions or want to make changes.
 - **General Information**
 - **Coverage Details**
 - **Your Total Policy Premium**
- ✓ **Insurance Documents** - Please keep these documents for future reference.



How to Contact Us

Your Nationwide Agent
Nationwide Customer Solution
Internet
24-Hour Claims Reporting
Hearing Impaired (TTY)
A 2001 07 16

Nationwide Sales Solutions Inc 1.800.421.1444
1.800.421.1444
Nationwide.com
1.800.421.3535
1.800.622.2421



Important Reminders from Nationwide

NOTES:

The enclosed Declarations confirms changes made to your insurance coverage. Please verify change(s).

A reduction in premium of \$ 13.04 is for recent policy change(s).

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

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

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

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

Thank you for choosing Nationwide. We value your business.





Your Policy Declarations

Nationwide Auto Policy

Policy Period: Jun 28, 2018 - Dec 28, 2018

Policy Number: **6139V 035103**

Policyholder (Named Insured):

Shameika Clark
116 Fletcher St
Mc Coll, SC
29570-2306

Keep these Declarations for your records.

General Policy Information

Issued: June 7, 2018

These Declarations are a part of the policy named above and identified by the policy number above. They supersede any Declarations issued earlier. Your policy provides the coverages and limits shown in the schedule of coverages. They apply to each insured vehicle as indicated. Your policy complies with the motorists' financial responsibility laws of your state only for vehicles for which Property Damage and Bodily Injury Liability coverages are provided.

Policy Period: June 28, 2018 - December 28, 2018 but only if the required premium for this period has been paid and only for six month renewal periods if renewal premiums have been paid as required. This policy is initially effective at (1) the time the application for insurance is completed, or (2) 12:01 a.m. on the first day of the policy period, whichever is later. Each renewal period begins and ends at 12:01 a.m. standard time at the address of the named insured stated herein. This policy expires at 12:01 a.m. at the address of the named insured stated herein.

Your carrier is Nationwide Affinity Insurance Company Of America, NAIC #26093.

IMPORTANT MESSAGES:

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

Changes Made to Your Policy

- **Effective June 28, 2018**
- Added 1996 Ford Aspire
- Removed 1995 Lexu ES 300

Premium Summary and Other Charges

1996 Ford Aspire	\$	683.50
Total For Policy Coverages	\$	21.00
Total Policy Premium		\$ 704.50

How You Saved on this Policy with Nationwide

- Multi Car
- Paperless Policy
- Passive Restraint
- Accident Free

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Your Policy Declarations

Nationwide Auto Policy

Policy Period: Jun 28, 2018 - Dec 28, 2018

Policy Number: **6139V 035103**

For coverage definitions and descriptions, visit Nationwide.com

Rated Driver(s)

Name	Date of Birth	Marital Status
Shameika Clark	03/06/80	Separated

Insured Vehicle(s) and Schedule of Coverages

1996 Ford Aspire

VIN KNJLT06H9T6182359

Coverages	Limits of Liability	Premium
Bodily Injury Liability	\$ 25,000 Each Person \$ 50,000 Each Occurrence	\$ 197.80
Property Damage Liability	\$ 25,000 Each Occurrence	\$ 115.74
Medical Payments	\$ 2,000 Each Person	\$ 67.36
Uninsured Motorists Bodily Injury	\$ 25,000 Each Person \$ 50,000 Each Occurrence	\$ 33.08
Uninsured Motorists Property Damage	See Endorsement \$ 25,000 Each Occurrence	\$ 6.39
Underinsured Motorists Bodily Injury	\$ 25,000 Each Person \$ 50,000 Each Occurrence	\$ 64.94
Underinsured Motorist Property Damage	See Endorsement \$ 25,000 Each Occurrence	\$ 3.18
Damage To Your Auto	Actual Cash Value Less \$ 500	\$ 99.21
Other Than Collision (Comprehensive) With Safety Glass	See Endorsement	
Collision	Actual Cash Value Less \$ 500	\$ 95.80
Custom Equipment	\$ 3,000	Included
Loyalty Rewards	See Endorsement	Included
Pet Injury Collision Coverage		
Car Key Replacement Coverage		
Total for this Vehicle		\$ 683.50

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Your Policy Declarations

Nationwide Auto Policy

Policy Period: Jun 28, 2018 - Dec 28, 2018

Policy Number: **6139V 035103**

Policy Level Schedule of Coverages

Coverages	Limits of Liability	Premium
Roadside Assistance Plus	Disablement Up To 100 Miles \$100 Lockout \$500 Trip Interruption See Endorsement	\$ 21.00
Accident Forgiveness Feature Currently Eligible To Use		Included
Minor Violation Forgiveness Feature Currently Eligible To Use		Included
Total for Policy Coverages		\$ 21.00

Policy Form and Endorsements

- A 4500 07 16 Your Nationwide Auto Policy
- A 4568 07 16 Roadside Assistance Coverage
- A 4579 07 16 Loyalty Rewards
- A 5139 07 16 Uninsured Motorists Coverage - South Carolina
- A 5239 07 16 Underinsured Motorists Coverage - South Carolina

For Office Use Only:

05/25/18 \$ 13.04- Terr: 114 .



Issued By: Nationwide Affinity Insurance Company Of America

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

Countersigned At:

By: Nationwide Sales Solutions Inc

How to Contact Us

Your Nationwide Agent	Nationwide Sales Solutions Inc 1.800.421.1444
Nationwide Customer Solution	1.800.421.1444
Internet	Nationwide.com
24-Hour Claims Reporting	1.800.421.3535
Hearing Impaired (TTY)	1.800.622.2421

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Nationwide[®]
is on your side

PERSONAL AUTO POLICY

AGREEMENT

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

DEFINITIONS

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

1. The "named insured" shown in the Declarations;
2. The spouse if a resident of the same household;
3. The civil partner of the named insured by Civil Union or Registered Domestic Partnership filed and recognized by the state if a resident of the same household; or
4. A "Domestic partner".

If the spouse or civil partner who has entered into a Civil Union or Registered Domestic Partnership with the named insured ceases to be a resident of the same household during the policy period or prior to the inception of this policy, the spouse or civil partner will be considered "you" and "your" under this policy but only until the earlier of:

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

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

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

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

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

D. "Bodily injury" means bodily harm, sickness or disease, including death that results. "Bodily injury" does not include emotional distress, mental anguish, humiliation, mental distress or injury, or any similar injury unless the direct result of bodily harm.

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

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

G. "Occupying" means:

1. In;
2. Upon; or
3. Getting in, on, out or off.

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

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

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

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



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J. "Your covered auto" means:

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

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

K. "Newly acquired auto":

1. "Newly acquired auto" means any of the following types of vehicles you become the owner of during the policy period:
 - a. A private passenger auto; or
 - b. A pickup or van, for which no other insurance policy provides coverage, that:
 - (1) Has a Gross Vehicle Weight Rating of 10,000 lbs. or less; and
 - (2) Is not used for the delivery or transportation of goods and materials unless such use is:
 - (a) Incidental to your "business" of installing, maintaining or repairing furnishings or equipment; or
 - (b) For farming or ranching.
2. Coverage for a "newly acquired auto" is provided as described below. If you ask us to insure a "newly acquired auto" after a specified time period described below has elapsed, any coverage we provide for a "newly acquired auto" will begin at the time you request the coverage.
 - a. For any coverage provided in this policy except Coverage For Damage To Your Auto, a "newly acquired auto" will have the broadest coverage we now provide for any vehicle shown in the Declarations. Coverage begins on the date you become the owner. However, for this coverage to apply to a "newly acquired auto" which is in addition to any vehicle shown in the Declarations, you must ask us to insure it within 30 days after you become the owner.

If a "newly acquired auto" replaces a vehicle shown in the Declarations, coverage is provided for this vehicle without your having to ask us to insure it.
 - b. Collision Coverage for a "newly acquired auto" begins on the date you become the owner. However, for this coverage to apply, you must ask us to insure it within:
 - (1) 30 days after you become the owner if the Declarations indicate that Collision Coverage applies to at least one auto. In this case, the "newly acquired auto" will have the broadest coverage we now provide for any auto shown in the Declarations.
 - (2) Seven days after you become the owner if the Declarations do not indicate that Collision Coverage applies to at least one auto. If you comply with the 7-day requirement and a loss occurred before you asked us to insure the "newly acquired auto", a Collision deductible of \$500 will apply.



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- c. Other Than Collision Coverage for a "newly acquired auto" begins on the date you become the owner. However, for this coverage to apply, you must ask us to insure it within:
 - (1) 30 days after you become the owner if the Declarations indicate that Other Than Collision Coverage applies to at least one auto. In this case, the "newly acquired auto" will have the broadest coverage we now provide for any auto shown in the Declarations.
 - (2) Seven days after you become the owner if the Declarations do not indicate that Other Than Collision Coverage applies to at least one auto. If you comply with the 7-day requirement and a loss occurred before you asked us to insure the "newly acquired auto", an Other Than Collision deductible of \$500 will apply.
- L. "Domestic partner" means a person living with you and sharing a common domestic life and whose relationship resembles a mutually exclusive partnership such as that of a marriage, and:
 - 1. Is at least 18 years of age and capable of entering into a legal contract;
 - 2. Is not a "family member"; and
 - 3. Shares with you financial interdependence and a common residence.
 Evidence of such includes, but is not limited to:
 - a. Joint domestic responsibility for the maintenance of the household;
 - b. Having joint financial obligations, resources, or assets;
 - c. Documents such as a driver's license, tax returns, or bills showing a common address for both parties;
 - d. Both parties receiving mail at the same address; or
 - e. A declaration of domestic partnership with that person or similar declaration about that person with an employer or government entity.
 A "domestic partner" does not include more than one person, a roommate or housemate whether sharing expenses equally or not, or one who pays rent to the named insured.
- M. "Transportation network platform" means an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation.
- N. "Performance testing" is when a vehicle is used to:
 - 1. Test its performance in speed, handling; or
 - 2. Test or practice driver skills.

"Performance testing" does not apply to student-driver training activities participated in to obtain a state issued learner's permit or driver's license. "Performance testing" also does not apply to driver training activities to complete state-sanctioned courses in motor vehicle accident prevention, defensive driving or driver improvement.

PART A — LIABILITY COVERAGE

INSURING AGREEMENT

- A. We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident. Damages include prejudgment interest on covered damages awarded against the "insured" which do not exceed our limit of liability for this coverage. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements unless required by



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law. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.

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

1. You or any "family member" for the ownership, maintenance or use of any auto or "trailer".
2. Any person using "your covered auto".
3. For "your covered auto", any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
4. For any auto or "trailer", other than "your covered auto", any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This Provision **(B.4.)** applies only if the person or organization does not own or hire the auto or "trailer".
5. The following are not "insureds", under Part **A** of the policy:
 - a. The United States of America or any of its agencies.
 - b. Any person with respect to "bodily injury" or "property damage" resulting from the operation of an auto by that person as an employee of the United States Government. This applies only if the provisions of Section 2679 of Title 28, United States Code (Federal Tort Claims Act), as amended, require the Attorney General of the United States to defend that person in any civil action or proceeding which may be brought for the "bodily injury" or "property damage".

SUPPLEMENTARY PAYMENTS

We will pay on behalf of an "insured":

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

These payments will not reduce the limit of liability.

EXCLUSIONS

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

1. For "bodily injury" or "property damage" which is expected or intended by an "insured" even if the resulting "bodily injury" or "property damage":
 - a. Is of different kind, quality or degree than initially expected or intended; or
 - b. Is sustained by a different person, entity, real or personal property, than initially expected or intended.
2. For "property damage" to property owned or being transported by that "insured".
3. For "property damage" to property:
 - a. Rented to;
 - b. Used by; or



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c. In the care of;
that "insured".

This Exclusion **(A.3.)** does not apply to "property damage" to a residence or private garage.

4. For "bodily injury" to an employee of that "insured" during the course of employment. This Exclusion **(A.4.)** does not apply to "bodily injury" to a domestic employee unless workers' compensation benefits, disability benefits, or benefits under similar laws are required or available for that domestic employee.
5. For that "insured's" liability arising out of the ownership or operation of a vehicle while it is being used:
 - a. To carry persons or property for a fee or compensation. This includes but is not limited to any period of time a vehicle is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle; or
 - b. On a regular basis for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

Exclusion **A.5.a.** does not apply to vehicles used in shared-expense car pools or while the vehicle is used in the course of volunteer work for a tax-exempt organization.

6. While employed or otherwise engaged in the "business" of:
 - a. Selling;
 - b. Repairing;
 - c. Servicing;
 - d. Storing; or
 - e. Parking;

vehicles designed for use mainly on public highways. This includes road testing and delivery. This Exclusion **(A.6.)** does not apply to the ownership, maintenance or use of "your covered auto" by:

- a. You;
 - b. Any "family member"; or
 - c. Any business partner, agent or employee of you or any "family member".
7. Maintaining or using any vehicle while that "insured" is employed or otherwise engaged in any "business" (other than farming or ranching) not described in Exclusion **A.6.**

This Exclusion **(A.7.)** does not apply to the maintenance or use of a:

- a. Private passenger auto;
 - b. Pickup or van; or
 - c. "Trailer" used with a vehicle described in **a.** or **b.** above.
8. Using a vehicle:
 - a. Without a reasonable belief of being entitled to do so;
 - b. The "insured" has stolen; or
 - c. The "insured" knows to have been stolen.

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

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

- a. You;



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- b. A "family member"; or
 - c. A business partner, employee, or agent of you or a "family member".
9. For "bodily injury" or "property damage" for which that "insured":
- a. Is an insured under a nuclear energy liability policy; or
 - b. Would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.
- A nuclear energy liability policy is a policy issued by any of the following or their successors:
- a. Nuclear Energy Liability Insurance Association;
 - b. Mutual Atomic Energy Liability Underwriters; or
 - c. Nuclear Insurance Association of Canada.
10. For "bodily injury" to any person eligible to receive any benefits required to be provided or voluntarily provided by any "insured" under a:
- a. Workers' compensation;
 - b. Unemployment compensation;
 - c. Non-occupational or occupational disease;
 - d. Disability benefits;
- or any similar law.
11. For "bodily injury" or "property damage" arising out of the ownership, maintenance or use of any motor vehicle:
- a. While rented or leased to others by any "insured";
 - b. If under any type of conveyance of ownership including but not limited to a conditional sale, contract for sale, or rent to own, regardless of whether title has been transferred to others by any "insured"; or
 - c. Enrolled in a personal vehicle sharing program under the terms of a written agreement and being used in connection with such personal vehicle sharing program by anyone other than you or any "family member".
12. For "bodily injury" sustained by:
- a. You;
 - b. Any other "insured" person under the policy;
 - c. Any person or member of your family residing in the same household with you; or
 - d. Any member of the family of any other "insured" person residing in the same household with that other "insured".
- B. We do not provide Liability Coverage for the ownership, maintenance or use of:
- 1. Any vehicle which:
 - a. Has fewer than four wheels; or
 - b. Is designed mainly for use off public roads.This Exclusion **(B.1.)** does not apply:
 - a. While such vehicle is being used by an "insured" in a medical emergency;
 - b. To any "trailer"; or
 - c. To any non-owned golf cart.
 - 2. Any vehicle, other than "your covered auto", which is:
 - a. Owned by you; or



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- 4. Vehicles involved in the auto accident. A vehicle and attached "trailer" are considered as one vehicle. Therefore, the Limit of Liability will not be increased for an accident involving a vehicle which has an attached "trailer."
- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
 - 1. Part **B** or Part **C** of this policy; or
 - 2. Any Underinsured Motorists Coverage provided by this policy.
- C. We will apply the limit of liability to provide any separate limits required by law for Bodily Injury and Property Damage Liability. However, this provision (**C.**) will not change our total limit of liability.

OUT OF STATE COVERAGE

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

- A. If the state or province has:
 - 1. A financial responsibility or similar law specifying limits of liability for "bodily injury" or "property damage" higher than the limit shown in the Declarations, your policy will provide the higher specified limit.
 - 2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage.
- B. No one will be entitled to duplicate payments for the same elements of loss.

FINANCIAL RESPONSIBILITY

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

OTHER INSURANCE AND SOURCES OF RECOVERY

- A. In any loss involving the use of "your covered auto", we will be liable for only our share of the loss if there is other collectible liability insurance. Our share is our proportion of the total insurance limits for the loss.
- B. For losses not involving "your covered auto", our coverage is excess over any other collectible:
 - 1. Insurance;
 - 2. Self-insurance;
 - 3. Proceeds from a governmental entity; or
 - 4. Sources of recovery.

If more than one policy issued by us or a company affiliated with us applies on an excess basis to the same loss, we will pay only up to the highest limit of any one of them.

PART B — MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

- A. We will pay "usual, customary and reasonable charges" for expenses incurred for "medically necessary" services or funeral costs because of "bodily injury":
 - 1. Caused by an auto accident; and
 - 2. Sustained by an "insured".

We will pay only those expenses incurred for services rendered within 2 years from the date of the accident.



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We may apply "utilization management or review" to determine:

1. "Usual, customary and reasonable charges"; and/or
 2. "Medically necessary" services.
- B.** "Insured" as used in this Part means:
1. You or any "family member":
 - a. While "occupying"; or
 - b. As a pedestrian when struck by:
a motor vehicle designed for use mainly on public roads or a trailer of any type.
 2. Any other person while "occupying" "your covered auto".
- C.** "Experimental treatment" means medical treatment that is experimental in nature which is not accepted as effective therapy by:
1. The state medical association or board;
 2. An appropriate medical specialty board;
 3. The American Medical Association;
 4. The Surgeon General; or
 5. The Federal Food and Drug Administration.
- D.** "Usual, customary and reasonable charges" means charges for services or supplies covered under this policy which are:
1. Usual and customary in the place where provided;
 2. Not more than what would have been charged if the injured person had no insurance; and
 3. Not "Experimental treatment."
- E.** "Medically necessary" means a service or procedure which is necessary, appropriate and consistent for the symptoms, diagnosis or treatment of a condition of injury or sickness within generally accepted current standards of good medical practice. The fact that any particular doctor may prescribe, order, recommend, or approve a service or procedure does not, in itself, make the service or procedure "medically necessary".
- F.** "Utilization management or review" means cost and utilization containment activities designed to determine "usual, customary and reasonable charges" for "medically necessary" services provided to an "insured". These activities include, but are not limited to, medical bill auditing and case management.

EXCLUSIONS

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

1. Sustained while "occupying" any motorized vehicle having fewer than four wheels.
2. Sustained while "occupying" "your covered auto" when:
 - a. It is being used to carry persons or property for a fee or compensation. This includes but is not limited to any period of time "your covered auto" is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle; or
 - b. It is being used on a regular basis for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

Exclusion **2.a.** does not apply to vehicles used in shared-expense car pools or while the vehicle is used in the course of volunteer work for a tax-exempt organization.
3. Sustained while "occupying" any vehicle located for use as a residence or premises.



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4. Occurring during the course of employment if any of the following benefits are required to be provided or voluntarily provided:
 - a. Workers' compensation;
 - b. Unemployment compensation;
 - c. Non-occupational or occupational disease;
 - d. Disability benefits;or any similar law.
5. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
 - a. Owned by you; or
 - b. Furnished or available for your regular use.
6. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
 - a. Owned by any "family member"; or
 - b. Furnished or available for the regular use of any "family member".However, this Exclusion **(6.)** does not apply to you.
7. Sustained while "occupying" a vehicle:
 - a. Without a reasonable belief of being entitled to do so;
 - b. The "insured" has stolen; or
 - c. The "insured" knows to have been stolen.An "insured" shall not be held to have a reasonable belief of being entitled to operate a vehicle if that person's license has been suspended, revoked, or never issued.
This exclusion does not apply to the use of "your covered auto" by:
 - a. You;
 - b. A "family member"; or
 - c. A business partner, employee, or agent of you or a "family member".
8. Sustained while "occupying" a vehicle when it is being used in the "business" of an "insured". This Exclusion **(8.)** does not apply to "bodily injury" sustained while "occupying" a:
 - a. Private passenger auto;
 - b. Pickup or van; or
 - c. "Trailer" used with a vehicle described in **a.** or **b.** above.
9. Caused by or as a consequence of:
 - a. Discharge of a nuclear weapon (even if accidental);
 - b. War (declared or undeclared);
 - c. Civil war;
 - d. Insurrection; or
 - e. Rebellion or revolution.
10. From or as a consequence of the following, whether controlled or uncontrolled or however caused:
 - a. Nuclear reaction;
 - b. Radiation; or



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- c. Radioactive contamination.
- 11. Sustained while "occupying" any vehicle in any activity while:
 - a. Used in an organized or prearranged competitive event, including but not limited to:
 - (1) Racing contest or event;
 - (2) Speed contest or event; or
 - (3) In practice or preparation for any racing or speed contest or event.
 - b. Used in "performance testing" that is done on a closed road, or a race track, or a testing facility environment where the "insured" is not competing.
- 12. Sustained while "occupying" any vehicle:
 - a. Rented or leased to others by any "insured";
 - b. If under any type of conveyance of ownership including but not limited to a conditional sale, contract for sale, or rent to own, regardless of whether title has been transferred to others by any "insured"; or
 - c. Enrolled in a personal vehicle sharing program under the terms of a written agreement and being used in connection with such personal vehicle sharing program by anyone other than you or any "family member".
- 13. Caused intentionally by or at the direction of you or a "family member", including willful acts the result of which that person knows or ought to know will follow from their conduct.

LIMIT OF LIABILITY

- A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:
 - 1. "Insureds";
 - 2. Claims made;
 - 3. Vehicles or premiums shown in the Declarations; or
 - 4. Vehicles involved in the accident.
- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
 - 1. Part **A** or Part **C** of this policy; or
 - 2. Any Underinsured Motorists Coverage provided by this policy.

OTHER INSURANCE

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

PART C — UNINSURED MOTORISTS COVERAGE

Refer to the attached Uninsured Motorists Endorsement only if the Declarations indicate that Uninsured Motorists Coverage is provided.

PART D — COVERAGE FOR DAMAGE TO YOUR AUTO

INSURING AGREEMENT

- A. We will pay for direct and accidental loss to "your covered auto" or any "non-owned auto", including their equipment, minus any applicable deductible shown in the Declarations. If loss to more than one "your covered auto" or "non-owned auto" results from the same



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"collision", only the highest applicable deductible will apply. We will pay for loss to "your covered auto" caused by:

1. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
2. "Collision" only if the Declarations indicate that Collision Coverage is provided for that auto.

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

For damage to "your covered auto's" or "non-owned auto's" windshield, we may offer to have it repaired in lieu of replacement. If you agree to our offer for the repair, we will not apply a deductible for the repair of the windshield.

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

Loss caused by the following is considered other than "collision":

1. Missiles or falling objects;
2. Fire;
3. Theft or larceny;
4. Explosion or earthquake;
5. Windstorm;
6. Hail, water or flood;
7. Malicious mischief or vandalism;
8. Riot or civil commotion;
9. Contact with bird or animal; or
10. Breakage of glass.

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

- C.** "Non-owned auto" means:

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

- D.** "Insured" as used in this Part means:

1. You or any "family member"; or
2. Any person using "your covered auto" with the reasonable belief that they are entitled to do so.

- E.** "Custom equipment" means equipment, furnishings and parts in or upon any auto, other than:

1. Original manufacturer equipment, furnishings, or parts; or



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2. Any replacement of original manufacturer equipment, furnishings or parts with other equipment, furnishings or parts of like kind and quality.

"Custom equipment" includes but is not limited to:

1. Special carpeting or insulation;
2. Furniture or bars;
3. Height-extending roofs;
4. Body, engine, exhaust or suspension enhancers;
5. Winches, or anti-roll or anti-sway bars;
6. Custom grilles, louvers, side pipes, hood scoops or spoilers;
7. Custom wheels, tires or spinners;
8. Custom chrome, murals, paint work, decals or other graphics;
9. Caps, covers or bedliners;
10. Snowplows;
11. Handicap accessible modifications; or
12. Electronic equipment that reproduces, receives or transmits audio, visual or data signals which is permanently installed in the auto using bolts or brackets, including slide-out brackets.

TRANSPORTATION EXPENSES

In addition, we will pay up to \$20 per day, to a maximum of \$600 for transportation expenses incurred by you. This applies only in the event of the total theft of "your covered auto" or a "non-owned auto". We will pay only transportation expenses incurred during the period:

1. Beginning 48 hours after the theft; and
2. Ending when "your covered auto" or the "non-owned auto" is returned to use or we pay for its loss.

EXCLUSIONS

We will not pay for:

1. Loss to "your covered auto" or any "non-owned auto" while used:
 - a. To carry persons or property for a fee or compensation. This includes, but is not limited to, any period of time "your covered auto" or any "non-owned auto" is being used by any person who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle; or
 - b. On a regular basis for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper, and mail delivery.

Exclusion **(1.a.)** does not apply to vehicles used in shared-expense car pools or while the vehicle is used in the course of volunteer work for a tax-exempt organization.

2. Damage due and confined to:
 - a. Wear and tear;
 - b. Freezing;
 - c. Mechanical or electrical breakdown or failure; or
 - d. Road damage to tires.

This Exclusion **(2.)** does not apply if the damage results from the total theft of "your covered auto" or any "non-owned auto".

3. Loss due to or as a consequence of:
 - a. Radioactive contamination;



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- b. Discharge of any nuclear weapon (even if accidental);
 - c. War (declared or undeclared);
 - d. Civil war;
 - e. Insurrection; or
 - f. Rebellion or revolution.
4. Loss to "your covered auto":
- a. While rented or leased to others;
 - b. If under any type of conveyance of ownership including but not limited to a conditional sale, contract for sale, or rent to own, regardless of whether title has been transferred to others; or
 - c. Enrolled in a personal vehicle sharing program under the terms of a written agreement and being used in connection with such personal vehicle sharing program by anyone other than you or any "family member".
5. Loss to "your covered auto" or any "non-owned auto" due to diminution in value.
6. Loss to any vehicle which occurs:
- a. While it is being used on a temporary or permanent basis, for the transportation of, or in exchange for, any illegal substance, or in connection with any criminal trade or transaction by:
 - (1) You;
 - (2) A "family member"; or
 - (3) Anyone else with your knowledge or permission; or
 - b. Due to confiscation of "your covered auto" by any law enforcement agency because of "your covered auto's" use in such activities.
7. Loss to:
- a. A "trailer", camper body, or motor home, which is not shown in the Declarations; or
 - b. Facilities or equipment used with such "trailer", camper body or motor home. Facilities or equipment include but are not limited to:
 - (1) Cooking, dining, plumbing or refrigeration facilities;
 - (2) Awnings or cabanas; or
 - (3) Any other facilities or equipment used with a "trailer", camper body, or motor home.

This Exclusion (7.) does not apply to a:

- a. "Trailer", and its facilities or equipment, which you do not own; or
 - b. "Trailer", camper body, or the facilities or equipment in or attached to the "trailer" or camper body, which you:
 - (1) Acquire during the policy period; and
 - (2) Ask us to insure within 30 days after you become the owner.
8. Loss to any "non-owned auto" which you or a "family member":
- a. Uses without reasonable belief of being entitled to do so;
 - b. Has stolen; or
 - c. Knows to be stolen.

You or a "family member" shall not be held to have a reasonable belief of being entitled to operate a "non-owned auto" if that person's license has been suspended, revoked, or never issued.



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

- a. You;
 - b. A "family member"; or
 - c. A business partner, employee, or agent of you or a "family member".
9. Loss to equipment designed or used for the detection or location of radar or laser.
10. Loss to any "custom equipment" in or upon "your covered auto" or any "non-owned auto".

This Exclusion (10.) does not apply to the amount shown in the Declarations for "custom equipment" in or upon "your covered auto".

11. Loss to any "non-owned auto" being maintained or used by any person while employed or otherwise engaged in the "business" of:
- a. Selling;
 - b. Repairing;
 - c. Servicing;
 - d. Storing; or
 - e. Parking;

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

12. Loss to "your covered auto" or any "non-owned auto":
- a. While used in an organized or prearranged competitive event, including but not limited to:
 - (1) Racing contest or event;
 - (2) Speed contest or event; or
 - (3) In practice or preparation for any racing or speed contest or event.
 - b. While used in "performance testing" that is done on a closed road, or a race track, or a testing facility environment where the "insured" is not competing.

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

- a. You; or
- b. Any "family member";

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

14. Loss caused intentionally by or at the direction of you or a "family member", including willful acts the result of which that person knows or ought to know will follow from their conduct.

LIMIT OF LIABILITY

- A. Our limit of liability per occurrence will be the lesser of the:

- 1. Actual cash value of the stolen or damaged property; or
- 2. Amount necessary to repair or replace the property with other property of like kind and quality.

In determining the amount necessary to repair damaged property, our estimate will be based on:

- a. The prevailing competitive labor rates charged in the area where the property is to be repaired, as determined by us; and



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b. The cost of repair or replacement parts and equipment which may be new, refurbished, restored, or used, including, but not limited to:

- (1) Original manufacturer parts or equipment; and
- (2) Nonoriginal manufacturer parts or equipment.

However, the most we will pay for loss to:

1. Any "non-owned auto" which is a "trailer" is \$1,500.
 2. "Custom equipment" in or upon "your covered auto" is the amount shown in the Declarations. Coverage for "custom equipment" shall not cause our limit of liability to be increased to an amount in excess of the actual cash value of "your covered auto", including its "custom equipment".
- B. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss.
- C. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.
1. Deductions for betterment apply only to parts normally subject to repair and replacement during the useful life of the insured motor vehicle.
 2. Such deductions shall be limited to the lesser of an amount equal to the proportion that the expired life of the part to be repaired or replaced bears to the normal useful life of that part, or the amount which the resale value of the vehicle is increased by the repair or replacement.
 3. Calculations for betterment, depreciation, physical condition and normal useful life must be included in our claim file.

PAYMENT OF LOSS

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

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

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

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

NO BENEFIT TO BAILEE

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

OTHER SOURCES OF RECOVERY

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

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

APPRAISAL

If you and we fail to agree on the amount of the loss to "your covered auto", either party may make a written demand that the amount of the loss to "your covered auto" be determined by appraisal. If either party makes a demand for appraisal, then each party will select and pay a single, competent, disinterested appraiser, and each party will notify the other of their



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appraiser's identity within 20 days of the request for appraisal. Within 20 days of selection, the appraisers shall each determine the amount of the loss to "your covered auto". Within 10 days of our receipt of the appraisers' written agreement, we will pay you the agreed-upon amount for the loss to "your covered auto".

If the appraisers are not able to agree upon an amount, then as soon as practical, but no later than 20 days after the submission of their written reports, the two appraisers will select a competent, impartial appraiser who shall be the umpire. If the two appraisers cannot agree on an umpire within 20 days after submission of their written reports, you or we may petition a court of competent jurisdiction, in the county and state of the named insured's address listed on the Declarations, to appoint a competent, impartial umpire. Immediate, written notice of the petition must be given to the other party.

The appraisers will submit their written reports to the umpire within 10 days of the selection of the umpire. In their reports, the appraisers will state the amount of the loss to "your covered auto". Neither you nor we, nor any representative of either, may discuss any aspect of the claim with the umpire prior to the issuance of the umpire's written report. The umpire will issue a written report setting the amount we will pay you for the loss to "your covered auto" within 20 days of receiving the appraisers' reports. The umpire's written report setting the amount of the loss to "your covered auto" must be agreed upon and signed by the umpire and at least one appraiser. The umpire's written report shall then be binding on both you and us.

All compensation, costs, fees or other expenses associated with or charged by the umpire will be shared equally by you and us. Any compensation, costs, fees or other expenses associated with that of an appraiser, expert witness or attorney will be borne and paid by the party who hires them. Neither we nor you waive any of the other rights, terms and conditions or obligations under this policy by requesting an appraisal.

LOSS PAYABLE CLAUSE

This clause applies to the Other than "collision" and "Collision" coverages provided by this policy. It protects the loss payee named in the policy Declarations.

Payment for loss will be made according to the interest of the named insured and the loss payee. At our option, payment may be made to both jointly, or to either separately. Either way, we will protect the interests of both.

Protection under this clause does not apply:

- A.** In any case of:
1. Fraud;
 2. Misrepresentation, either in the application process, or in the presentation of the claim;
 3. Material omission;
 4. Conversion;
 5. Embezzlement; or
 6. Secretion;

committed by or at the direction of you or a "family member".

- B.** Where the loss is otherwise not covered under the terms of this policy.

We will not notify the loss payee each time you renew this policy, and we may cancel this policy according to the terms.

The loss payee shall notify us upon learning of any change in ownership of the vehicle.

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



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If we become obligated to reimburse a loss payee under this coverage due to your failure to meet the policy requirements or through your failing to make your premium payments, we have the right to recover from you any money we pay.

PART E — DUTIES AFTER AN ACCIDENT OR LOSS

We have no duty to provide coverage under this policy if the person seeking coverage fails to comply with the following duties:

- A. We must be notified promptly of how, when and where the accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.
- B. A person seeking any coverage must:
 - 1. Cooperate with us in the investigation, settlement or defense of any claim or suit.
 - 2. Promptly send us copies of any notices or legal papers received in connection with the accident or loss.
 - 3. Submit to a recorded interview and/or examination under oath as often as reasonably requested by us, while not in the presence of any other "insured" or person making a claim for any coverage under this policy, at a time and place designated by us before an individual or individuals chosen by us.
 - 4. If injured, submit to examinations by company-selected physicians as often as the company reasonably requires. The injured person must grant us authority, at our request, to obtain copies of all wage and medical, dental or other health care provider records.
 - 5. Submit a proof of loss when required by us.
 - 6. Provide access to any data and/or records, from any source and/or recorded by any method or means, that we reasonably request for use in the evaluation or defense of any claim or suit and permit us to make copies of such data or records.
 - 7. Preserve any tangible property or evidence as long as we request.
 - 8. Permit us to inspect and appraise the damaged property before its repair or disposal.
- C. A person seeking Uninsured Motorists Coverage must also:
 - 1. Promptly notify the police if a hit-and-run driver is involved.
 - 2. Promptly send us copies of the legal papers if a suit is brought.
- D. A person seeking Coverage For Damage To Your Auto must also:
 - 1. Take reasonable steps after loss to protect "your covered auto" or any "non-owned auto" and their equipment from further loss. We will pay reasonable expenses incurred to do this.
 - 2. Promptly notify the police if "your covered auto" or any "non-owned auto" is stolen.

PART F — GENERAL PROVISIONS

BANKRUPTCY

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

CHANGES

- A. This policy contains all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us.
- B. The "insured" has a duty to notify us as soon as possible of any change which may affect the premium or the risk under this policy. If there is a change to the information used to develop the policy premium, we may adjust your premium. Changes during the policy



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term that may result in a premium increase or decrease include, but are not limited to, changes in:

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

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

- C. If we make a change which broadens coverage under this edition of your policy without additional premium charge, that change will automatically apply to your policy as of the date we implement the change in your state. This Paragraph (**C.**) does not apply to changes implemented with a general program revision that includes both broadenings and restrictions in coverage, whether that general program revision is implemented through introduction of:
 1. A subsequent edition of your policy; or
 2. An Amendatory Endorsement.
- D. Any terms of this policy which may be in conflict with statutes of the state in which the policy is issued are hereby amended to conform.
- E. A waiver of any part or condition of this policy must be in writing by us to be valid.

FRAUD AND MISREPRESENTATION

- A. This policy was issued in reliance on the information you provided at the time of your application for insurance coverage. We may void this policy, deny coverage under this policy, or, at our election, assert any other remedy available under applicable law, if you, or any "insured" person seeking coverage under this policy, knowingly, or unknowingly concealed, misrepresented or omitted any material fact or engaged in fraudulent conduct at the time the application was made or at any time during the policy period.
- B. We may void this policy, deny coverage for an accident or loss, or at our election, assert any other remedy available under applicable law, if any "insured" person or any other person seeking coverage under this policy has knowingly or unknowingly concealed or misrepresented any material fact or engaged in fraudulent conduct in connection with the filing or settlement of any claim.
- C. If we void this policy, this shall not affect the liability coverage of this policy up to the minimum limits required by the financial responsibility law of the state in which the policy is written, if we have certified your policy as proof of financial responsibility to the registrar of motor vehicles of the state in which the policy is written, and if the accident occurs before we notify the named insured that the policy is void. If we void this policy, you must reimburse us if we make a payment.
- D. No person or organization who engages in fraudulent conduct in connection with the application process, an accident or filing a claim, or engages in any material misrepresentation regarding the issuance of this policy shall be entitled to receive any payment under this policy at any time.

LEGAL ACTION AGAINST US

- A. No legal action may be brought against us until there has been full compliance with all the terms of this policy. In addition, under Part **A.**, no legal action may be brought against us until:
 1. We agree in writing that the "insured" has an obligation to pay; or
 2. The amount of that obligation has been finally determined by judgment after trial.



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

OUR RIGHT TO RECOVER PAYMENT

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

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

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

- B.** If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:

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

POLICY PERIOD AND TERRITORY

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

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

- B.** The policy territory is:

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

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

All coverages except Uninsured Motorists apply to accidents and losses in Mexico, if within 25 miles of the United States boundary. We will base the amount of any Comprehensive or Collision loss in Mexico on cost at the nearest United States point.

NOTE: You may need to buy auto insurance from a Mexican insurance company — regardless of coverage provided by this policy — before driving in Mexico. Otherwise, you may be subject to jail detention, auto impoundment, and other legal complications in case of an accident.

TERMINATION

A. Cancellation

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

1. The named insured shown in the Declarations may cancel by:
 - a. Returning this policy to us; or
 - b. Giving us advance written or oral notice of the date cancellation is to take effect.
2. We may cancel by mailing to the named insured shown in the Declarations at the address shown in this policy:
 - a. At least 10 days notice:
 - (1) If cancellation is for nonpayment of premium; or
 - (2) If notice is mailed during the first 60 days this policy is in effect and this is not a renewal or continuation policy; or
 - b. At least 30 days notice in all other cases.



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3. After this policy is in effect for 60 days, or if this is a renewal or continuation policy, we will cancel only:
 - a. For nonpayment of premium; or
 - b. If your driver's license or that of:
 - (1) Any driver who lives with you; or
 - (2) Any driver who customarily uses "your covered auto"; has been suspended or revoked. This must have occurred:
 - (1) During the policy period; or
 - (2) Since the last anniversary of the original effective date if the policy period is other than 1 year; or
 - c. If the policy was obtained through material misrepresentation.

B. Nonrenewal

If we decide not to renew or continue this policy, we will mail notice to the named insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 30 days before the end of the policy period. Subject to this notice requirement, if the policy period is:

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

C. Automatic Termination

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

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

D. Other Termination Provisions

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

ASSIGNABILITY

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

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



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TWO OR MORE AUTO POLICIES

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

OPTIONAL PAYMENT OF PREMIUM IN INSTALLMENTS

The premium for this policy may be paid in installments, under terms and conditions approved where required by the Department of Insurance. For each separate installment payment there may be an installment service charge.

RENEWAL

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

- A. Renewal will be in accordance with policy forms, rules, rates or fees and rating plans in use by us at the time.
- B. All premiums, premium installment payments, and fees must be paid when due, whether payable directly to us or through a premium finance plan.
- C. Prior to the expiration of a policy term for which premium has been paid, we will mail a notice to the first named insured for the premium required to renew or maintain the policy in effect. We will mail this notice to the address last known to us.

DIVIDENDS

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

NON-SUFFICIENT FUNDS AND LATE PAYMENT CHARGES

The company reserves the right to impose a fee for any premium payment that is unable to be processed due to non-sufficient funds, or if there are non-sufficient funds in an account that is being utilized for electronic funds transfer (EFT) payments, or if the premium is not paid by the due date. This is under the terms and conditions approved where required by the Department of Insurance.

If the initial premium payment for this policy is unable to be processed due to non-sufficient funds as indicated above, we reserve the right to void the policy back to the date of inception. When we void the policy, we will not be liable for any claims which occurred during the policy period. This includes any claims reported to us prior to receiving notice of the non-sufficient funds payment.

APPLICABLE CONTRACT LAW

The contract law of the state where the policy was issued governs the interpretation of this contract, except for the Mutual Policy Conditions and Proxy, which shall be governed by the insuring company's state of domicile.

INTEREST RATE

If a court determines that interest on judgment, decree, or order for the payment of money is required by law on amounts due and payable under the policy to an "insured", or if it is otherwise determined by us that you are entitled to interest on a payment from us, it will be paid at a rate of two percent per annum, unless another rate is required by law.

JOINT AND INDIVIDUAL INTERESTS

If there is more than one person who is a named insured as shown in the Declarations for this policy, any such person may cancel or change this policy. Such action will be binding on any "insured".



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BENEFITS

Subject to applicable eligibility rules, it is agreed that "Nationwide," or an organization which "Nationwide" has contracted with for this purpose, may:

1. Provide "participants" the opportunity to obtain benefits, such as memberships, merchandise, services, seminars, coupons, points, vouchers, gift cards or other things; or,
2. Make charitable contributions in recognition of "participants"; and
3. Modify or discontinue Benefits at any time without notice.

The following terms, as defined, are applicable to Benefits:

1. "Participants" means you, or others related by blood, marriage or other legally recognized familial relationship living in the participant's household.
2. "Nationwide" means the company issuing this policy as listed in the Declarations and all affiliated companies.

MUTUAL POLICY CONDITIONS

The following provisions are applicable only to policies issued by Nationwide Mutual Insurance Company or Nationwide Mutual Fire Insurance Company.

Nationwide Mutual Insurance Company

Mutual Policy Conditions — If this policy is issued by Nationwide Mutual Insurance Company, the first named insured is a member of the Company while this policy or any other policy issued by the Company is in force. While a member, the first named insured is entitled to one vote only — regardless of the number of policies issued by the Company to the first named insured — either in person or by proxy at any meeting of the members of the Company.

The annual meeting of members of Nationwide Mutual Insurance Company will be held at the Company's home office in Columbus, Ohio, at 10:00 a.m. (Eastern) on the first Thursday of April. If the Board of Directors of the Company should elect to change the time or place of such meeting, the Company will mail notice of the change to the member at the address last known to it. The Company will mail this notice at least 10 days in advance of the meeting date.

Proxy — By accepting this policy, the member appoints the Chairman of the Board of Directors of the Company, with full power of substitution, to be the member's proxy, and such individual is thereby authorized and empowered to vote on behalf of the member on all matters presented for a vote at any meeting of the members of the Company. The proxy will continue in force for the full duration of this policy or any renewal thereof issued by the Company to the member. This proxy may be revoked at any time by providing written notice of such revocation to:

Secretary
Nationwide
Attention: Proxy Revocation
One Nationwide Plaza
Columbus, Ohio 43215

The member may also revoke this proxy in person at any meeting of the members by so announcing in the open meeting before any vote is taken or the proxy authority is exercised.

The proxy granted to the Chairman of the Board of Directors of the Company will be superseded by any other valid proxy filed with the Secretary of the Company in accordance with the Company's bylaws, a copy of which will be provided upon written request to the Secretary of the Company.



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Nationwide Mutual Fire Insurance Company

Mutual Policy Conditions — If this policy is issued by Nationwide Mutual Fire Insurance Company, the first named insured is a member of the Company while this policy or any other policy issued by the Company is in force. While a member, the first named insured is entitled to one vote only — regardless of the number of policies issued by the Company to the first named insured — either in person or by proxy at any meeting of the members of the Company.

The annual meeting of members of Nationwide Mutual Fire Insurance Company will be held at the Company's home office in Columbus, Ohio, at 9:30 a.m. (Eastern) on the first Thursday of April. If the Board of Directors of the Company should elect to change the time or place of such meeting, the Company will mail notice of the change to the member at the address last known to it. The Company will mail this notice at least 10 days in advance of the meeting date.

Proxy — By accepting this policy, the member appoints the Chairman of the Board of Directors of the Company, with full power of substitution, to be the member's proxy, and such individual is thereby authorized and empowered to vote on behalf of the member on all matters presented for a vote at any meeting of the members of the Company. The proxy will continue in force for the full duration of this policy or any renewal thereof issued by the Company to the member. This proxy may be revoked at any time by providing written notice of such revocation to:

Secretary
Nationwide
Attention: Proxy Revocation
One Nationwide Plaza
Columbus, Ohio 43215

The member may also revoke this proxy in person at any meeting of the members by so announcing in the open meeting before any vote is taken or the proxy authority is exercised.

The proxy granted to the Chairman of the Board of Directors of the Company will be superseded by any other valid proxy filed with the Secretary of the Company in accordance with the Company's bylaws, a copy of which will be provided upon written request to the Secretary of the Company.

This policy is non-assessable, meaning it is not subject to any assessment beyond the premiums required for each policy term.



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IN WITNESS WHEREOF: The company listed in the Declarations has caused this policy to be signed and countersigned as may be required by a duly authorized representative of the company.

President

ALLIED Property and Casualty Insurance Company
AMCO Insurance Company
Colonial County Mutual Insurance Company
Harleysville Insurance Company of New Jersey
Nationwide Affinity Insurance Company of America
Nationwide Assurance Company
Nationwide General Insurance Company
Nationwide Insurance Company of America
Nationwide Mutual Fire Insurance Company
Nationwide Mutual Insurance Company
Nationwide Property and Casualty Insurance Company
Titan Insurance Company

Secretary

ALLIED Property and Casualty Insurance Company
AMCO Insurance Company
Colonial County Mutual Insurance Company
Crestbrook Insurance Company
Depositors Insurance Company
Harleysville Insurance Company of New Jersey
Nationwide Affinity Insurance Company of America
Nationwide Agribusiness Insurance Company
Nationwide Assurance Company
Nationwide General Insurance Company
Nationwide Insurance Company of America
Nationwide Mutual Fire Insurance Company
Nationwide Mutual Insurance Company
Nationwide Property and Casualty Insurance Company
Titan Insurance Company

President

Depositors Insurance Company

President

Nationwide Agribusiness Insurance Company

President

Crestbrook Insurance Company



ROADSIDE ASSISTANCE COVERAGE

Coverage is subject to all terms and conditions of the policy, including **PART D — COVERAGE FOR DAMAGE TO YOUR AUTO**, except as changed by this endorsement.

DEFINITIONS

- A. "Roadside assistance representative" means our contracted vendor that will provide roadside assistance of a disabled vehicle for you or any "family member".
- B. "Private passenger auto" means any of the following types of vehicles:
 - 1. Four-wheel automobile for private passenger use;
 - 2. Four-wheel van; or
 - 3. Pickup truck having either 4 or 6 wheels.

INSURING AGREEMENT

ROADSIDE ASSISTANCE COVERAGE

In the event that "your covered auto" or any "private passenger auto" you or any "family member" are "occupying" becomes disabled:

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

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

In addition, the following emergency roadside services are covered:

- A. Extraction if stuck on or immediately next to a public road;
- B. Delivery of supplies, including oil, water, other fluids and fuel;
- C. Service to the battery;
- D. Changing of flat tires; and
- E. Lockout service, up to \$100.

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

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

TRIP INTERRUPTION EXPENSE

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

- A. Meals (excluding alcohol) and lodging needed when the disablement causes a delay en route; and
- B. Commercial transportation fares for you or any "family member" to continue to the intended destination or home residence.

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



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LIMIT OF LIABILITY

LOSS SETTLEMENT

- A. If "your covered auto" is covered by us under **PART D — COVERAGE FOR DAMAGE TO YOUR AUTO**, and is disabled as a result of a covered loss, payment will be made under **PART D — COVERAGE FOR DAMAGE TO YOUR AUTO**. In the event the cost of damages and the tow of "your covered auto" are below your deductible, payment for the tow will be made under this endorsement.
- B. No deductible applies to Roadside Assistance Coverage.

OTHER INSURANCE

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

DUPLICATE PAYMENT

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

This endorsement applies as stated in the policy Declarations.

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



LOYALTY REWARDS

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

With this endorsement, the policy is amended to provide the following:

PET INJURY COLLISION COVERAGE

If you have Collision coverage, as shown in the Declarations, we will reimburse you for reasonable expenses as determined by us, up to \$1,000 for injury or loss to your or a "family member's" dog or cat. The following expenses are covered:

- A.** Reasonable and necessary veterinary expenses, including medicines; and
 - B.** The cost to replace your dog or cat (with a similar dog or cat), if injury results in death.
- The most we will pay is \$1,000 per occurrence for all expenses regardless of the number of dogs and cats involved.

Coverage is subject to the following conditions:

1. It applies only to a dog or cat owned by you or a "family member".
2. It applies only if the dog or cat is injured while inside "your covered auto" at the time of a covered "collision" loss.
3. Our obligation to pay for an injury under this coverage has no effect on any other policy that you have with us.

No deductible applies to any payment made under the Pet Injury Collision coverage.

CAR KEY REPLACEMENT COVERAGE

If you have Other than "collision" coverage, as shown in the Declarations, we will reimburse you for reasonable expense incurred to replace the key or electronic entry device for "your covered auto" and for the services to gain entry into "your covered auto".

The most we will pay is \$400 per occurrence for all expenses.

Coverage is subject to the following conditions:

- A.** The key or electronic entry device for "your covered auto" is lost, stolen, disabled or locked in "your covered auto" and you are unable to enter "your covered auto".
- B.** Original copies of receipts for services must be submitted before reimbursement is payable.

No deductible applies to any payments made under the Car Key Replacement coverage.

This endorsement applies as stated in the policy Declarations.

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



UNINSURED MOTORISTS COVERAGE — SOUTH CAROLINA

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

PART C — UNINSURED MOTORISTS COVERAGE

Part C is replaced by the following:

INSURING AGREEMENT

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

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

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

"Insured" as used in this endorsement means:

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

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

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

1. To which neither:
 - a. A liability bond or policy; nor
 - b. Cash or securities deposited with the State Treasurer;
 applies at the time of the accident.
2. To which a liability bond or policy applies at the time of the accident. In this case its limit for liability must be less than the minimum limits specified by the South Carolina Financial Responsibility Act.
3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in "bodily injury" or "property damage" without hitting:
 - a. You or any "family member";
 - b. A vehicle which you or any "family member" are "occupying";
 - c. "Your covered auto"; or
 - d. Any of your property.

If there is no physical contact with the hit-and-run vehicle, the facts of the accident must be corroborated by an affidavit attesting to the truth of the facts of the accident signed by any eyewitness other than the owner or operator of the vehicle which you or any "family member" were "occupying" at the time of the accident. In all cases when the operator or owner of an involved motor vehicle is unknown, the "insured", or someone on the "insured's" behalf, must report the accident to the police within a reasonable time after its occurrence.

4. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company:



- a. Successfully denies coverage;
 - b. Is or becomes insolvent;
 - c. Is in delinquency proceedings, suspension or receivership; or
 - d. Is proven unable to respond to a judgment.
5. For which the owner has not qualified as a self-insurer in accordance with the applicable provisions of the South Carolina Insurance Laws.

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

1. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.
2. Owned by any governmental unit or agency unless a cause of action against that governmental unit or agency is barred by the Tort Claims Act, South Carolina Laws 1986, Ratification No. 514, Subsection 15-78-60, or by other applicable statute.
3. Operated on rails or crawler treads.
4. Designed mainly for use off public roads while not on public roads.

EXCLUSIONS

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

1. If that "insured" or the legal representative settles the "bodily injury" claim and such settlement prejudices our right to recover payment.
2. While "occupying" "your covered auto" when it is being used:
 - a. To carry persons or property for a fee or compensation. This includes but not limited to any period of time that "insured" is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle; or
 - b. On a regular basis for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

Exclusion **A.2.a.** does not apply to motor vehicles used in shared-expense car pools or while the vehicle is used in the course of volunteer work for a tax-exempt organization.

3. While using a motor vehicle:
 - a. Without a reasonable belief of being entitled to do so;
 - b. The "insured" has stolen; or
 - c. The "insured" knows to have been stolen.

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

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

- a. You;
 - b. A "family member"; or
 - c. A business partner, employee, or agent of you or a "family member".
4. For the first \$200 of the amount of "property damage" to the property of each "insured" as the result of any one accident.
 5. While "occupying", or when struck by, "your covered auto" while:
 - a. Enrolled in a personal vehicle sharing program under the terms of a written agreement; and
 - b. Being used in connection with such personal vehicle sharing program by anyone other than you or any "family member".



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

LIMIT OF LIABILITY

- A.** If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while "occupying" "your covered auto":
1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the Limits Of Liability shown in the Declarations for each person for Bodily Injury Liability Uninsured Motorists Coverage.
 2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the Limits Of Liability shown in the Declarations for each accident for Bodily Injury Liability Uninsured Motorists Coverage.
 3. Our maximum limit of liability for all "property damage" resulting from that accident is the sum of the Limits Of Liability shown in the Declarations for each accident for Property Damage Liability Uninsured Motorists Coverage.

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

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

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

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

1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Declarations; or
 4. Vehicles involved in the accident.
- B.** If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while not "occupying" any auto:
1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the Limits Of Liability shown in the Declarations for each person for Bodily Injury Liability Uninsured Motorists Coverage.
 2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the Limits Of Liability shown in the Declarations for each accident for Bodily Injury Liability Uninsured Motorists Coverage.



3. Our maximum limit of liability for all "property damage" resulting from that accident is the sum of the Limits Of Liability shown in the Declarations for each accident for Property Damage Liability Uninsured Motorists Coverage.

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

1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Declarations; or
 4. Vehicles involved in the accident.
- C. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member":
1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the highest each person Limit Of Liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to any one of "your covered autos";
 2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the highest each accident Limit Of Liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to any one of "your covered autos"; and
 3. Our maximum limit of liability for all "property damage" resulting from that accident is the highest each accident Limit Of Liability shown in the Declarations for Property Damage Liability Uninsured Motorists Coverage applicable to any one of "your covered autos".

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

1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Declarations; or
 4. Vehicles involved in the accident.
- D. If "bodily injury" or "property damage" is sustained by an "insured" other than you or any "family member" in an accident in which neither you nor any "family member" sustained "bodily injury" or "property damage":
1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident will be the each person Limit Of Liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to the vehicle that "insured" was "occupying" at the time of that accident.
 2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the each accident Limit Of Liability shown in the Declarations for Bodily Injury Liability Uninsured Motorists Coverage applicable to the vehicle that "insured" was "occupying" at the time of the accident.
 3. Our maximum limit of liability for all "property damage" resulting from that accident is the each accident Limit Of Liability shown in the Declarations for Property Damage Liability Uninsured Motorists Coverage applicable to the vehicle that "insured" was "occupying" at the time of the accident.

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

1. "Insureds";



- 2. Claims made;
 - 3. Vehicles or premiums shown in the Declarations; or
 - 4. Vehicles involved in the accident.
- E.** No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:
- 1. Part **A** of this Policy;
 - 2. Any Underinsured Motorists Coverage provided by this Policy; or
 - 3. Part **D** of this Policy or any similar coverage under any other policy.
- F.** We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

OTHER INSURANCE

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

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

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

- 1. If there is no applicable insurance available under the first priority, the maximum recovery under all policies in the second priority shall not exceed the highest applicable limit for any one vehicle under any one policy.
 - 2. If there is applicable insurance available under the first priority:
 - a. The limit of liability applicable to the vehicle the "insured" was "occupying", under the Policy in the first priority, shall first be exhausted; and
 - b. The maximum recovery in the second priority shall not exceed the highest limit for any one vehicle under any one policy in the second priority.
 - 3. We will pay only our share of the loss, not to exceed our share of the maximum recovery. Our share is the proportion that our limit of liability bears to the total of all applicable limits in the same level of priority.
- B.** With respect to "property damage", this insurance shall apply only after the limits of any other collectible insurance applicable to the damaged property have been exhausted.

PART F — GENERAL PROVISION

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

A. The **OUR RIGHT TO RECOVER PAYMENT** Provision is replaced by the following:

OUR RIGHT TO RECOVER PAYMENT



1. If we make payment under this Policy and the person to or for whom payment was made has a right to recover damages from another, we shall be subrogated to that right to the extent of such payment that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act. That person shall do:
 - a. Whatever is necessary to enable us to exercise our rights; and
 - b. Nothing after loss to prejudice them.
 2. If an "insured" has prosecuted to judgment any suit against any person responsible, we will be entitled to an assignment of the judgment to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.
 3. We will pay our proportionate part of any reasonable costs and expenses incurred for any recovery, including reasonable attorneys' fees. However, we reserve the right to retain an attorney of our choice to pursue a claim instead of reasonable attorneys' fees.
 4. If an "insured" making a claim for "property damage" under this insurance is also entitled to insurance or other compensation for the "property damage", we will not be obligated to pay a claim until the "insured" has assigned us the rights to the compensation, to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.
- B.** The following is added to the **TWO OR MORE AUTO POLICIES** Provision:
1. This provision does not apply to Uninsured Motorists Coverage.
 2. No one will be entitled to receive duplicate payments for the same elements of loss under Uninsured Motorists Coverage.
- C.** The following provision is added:

CONFORMITY TO STATUTE

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

This endorsement applies as stated in the policy Declarations.

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



UNDERINSURED MOTORISTS COVERAGE — SOUTH CAROLINA

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

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

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

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

"Insured" as used in this endorsement means:

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

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

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

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

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

EXCLUSIONS

- A. We do not provide Underinsured Motorists Coverage for "property damage" or "bodily injury" sustained:
 1. By you while "occupying", or when struck by, any motor vehicle you own which is not insured for this coverage. This includes a trailer of any type used with that vehicle.
 2. By any "family member" while "occupying", or when struck by, a motor vehicle owned by such "family member" which is not insured for this coverage. This includes a trailer of any type used with that vehicle.
- B. We do not provide Underinsured Motorists Coverage for "property damage" or "bodily injury" sustained by any "insured":
 1. While "occupying" "your covered auto" when it is being used:
 - a. To carry persons or property for a fee or compensation. This includes but not limited to any period of time that "insured" is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle; or
 - b. On a regular basis for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

Exclusion **B.1.** does not apply to motor vehicles used in shared-expense car pools or while the vehicle is used in the course of volunteer work for a tax exempt organization.

2. While using a motor vehicle;



- a. Without a reasonable belief of being entitled to do so;
 - b. The "insured" has stolen; or
 - c. The "insured" knows to have been stolen.
- An "insured" shall not be held to have reasonable belief of being entitled to operate a motor vehicle if that person's license has been suspended, revoked, or never issued. This exclusion does not apply to the use of "your covered auto" by:
- a. You;
 - b. A "family member"; or
 - c. A business partner, employee, or agent of you or a "family member".
3. While "occupying", or when struck by, "your covered auto" while:
- a. Enrolled in a personal vehicle sharing program under the terms of a written agreement; and
 - b. Being used in connection with such personal vehicle sharing program by anyone other than you or any "family member".
- C. This coverage shall not apply directly or indirectly to benefit:
1. Any insurer or self-insurer under any of the following or similar law:
 - a. Workers' compensation law; or
 - b. Disability benefits law.
 2. Any insurer of property.

LIMIT OF LIABILITY

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

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

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



1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Declarations; or
 4. Vehicles involved in the accident.
- B.** If "bodily injury" is sustained in an accident by you or any "family member" while not "occupying" any auto:
1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the Limits Of Liability shown in the Declarations for each person for Bodily Injury Liability Underinsured Motorists Coverage.
 2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the Limits Of Liability shown in the Declarations for each accident for Bodily Injury Liability Underinsured Motorists Coverage.

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

1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Declarations; or
 4. Vehicles involved in the accident.
- C.** If "bodily injury" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member":
1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the highest each person Limit Of Liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of "your covered autos".
 2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the highest each accident Limit Of Liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of "your covered autos".

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

1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- D.** No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part **A**, Part **C** or Part **D** of this Policy.
- E.** We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.
- F.** We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:
1. Workers' compensation law; or
 2. Disability benefits law.



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

OTHER INSURANCE

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

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

the following priorities of recovery apply:

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

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

ADDITIONAL DUTY

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

GENERAL PROVISIONS

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

- A. The Our Right To Recover Payment Provision does not apply to Underinsured Motorists Coverage.
- B. The following is added to the Two Or More Auto Policies Provision:
 - 1. This provision does not apply to Underinsured Motorists Coverage.
 - 2. No one will be entitled to receive duplicate payments for the same elements of loss under Underinsured Motorists Coverage.



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C. The following provision is added:

Conformity To Statute

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

This endorsement applies as stated in the policy Declarations.

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

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IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2020-CP-21-00986

NATIONWIDE AFFINITY INSURANCE
COMPANY OF AMERICA,

Plaintiff(s),

ANSWER

v.

ANDREW GREEN,

Defendant(s).

Defendant, Andrew Green, by and through undersigned counsel, Answers Plaintiff's
Complaint as follows:

1. Defendant Admits Paragraph 1, upon information and belief.
2. Defendant Admits Paragraph 2.
3. Defendant Admits Paragraph 3.
4. Defendant Admits Paragraph 4.
5. Defendant Admits Paragraph 5, upon information and belief.
6. Answering Paragraph 6, Defendant Admits that the policy attached as Exhibit A to the Complaint contains this endorsement/provision but denies that it is applicable and would further show that any such limitation is violative of South Carolina law and public policy.
7. Answering Paragraph 7, Defendant Admits that the policy attached as Exhibit A to the Complaint contains this endorsement/definition but denies that it is applicable and would further show that any such limitation is violative of South Carolina law and public policy.
8. Defendant Admits Paragraph 8.
9. Defendant Admits Paragraph 9.
10. Defendant Admits Paragraph 10.

11. Answering Paragraph 11, Defendant Admits that Defendant was a pedestrian at the time of the collision and that there was no damage to “your covered auto” but denies that it is applicable and would further show that any such limitation is violative of South Carolina law and public policy.

12. Defendant Admits Paragraph 12.

13. Defendant Admits Paragraph 13.

14. Defendant Admits Paragraph 14.

15. Defendant Denies Paragraph 15.

16. Upon information and belief, no Answer to Paragraph 16 is required. To the extent one is, Denied.

17. Answering Paragraph 17, Defendant Admits that the policy attached as Exhibit A to the Complaint contains this endorsement but denies that it is applicable and would further show that any such limitation is violative of South Carolina law and public policy.

18. Answering Paragraph 18, Defendant Admits that the policy attached as Exhibit A to the Complaint contains this endorsement but denies that it is applicable and would further show that any such limitation is violative of South Carolina law and public policy.

19. Answering Paragraph 19, Defendant Admits that Defendant was a pedestrian at the time of the collision and that there was no damage to “your covered auto” but denies that it is applicable and would further show that any such limitation is violative of South Carolina law and public policy.

20. Defendant Denies the requested relief sought in Paragraph 20.

21. Defendant Denies the requested relief sought in Plaintiff’s prayer for judgment and would assert the following defenses:

FOR A FIRST DEFENSE
(Violation of Statute / Public Policy)

22. Defendant would show that S.C. Code Ann. § 38-77-140 provides, “An automobile insurance policy may not be issued...unless it contains a provision insuring the persons defined as insured against loss from the liability imposed by law for damages...subject to limits exclusive of interest and costs, with respect to each motor vehicle, as follows: (3) twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.”

23. Defendant would further show that such mandatory property damage liability coverage is not limited to the exclusion of personal property.

24. Defendant would show that Underinsured coverage is defined in S.C. Code Ann. § 38-77-160 as providing coverage “in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist.”

25. Defendant would show that he suffered damages as alleged, including damage to personal property, and that such damages exceed the liability limits maintained by the at-fault driver.

26. Defendant would show that, if such damages are proven, Plaintiff’s limiting language is violative of South Carolina’s insurance code and public policy and cannot be enforced.

FOR A SECOND DEFENSE
(Reformation)

27. S.C. Code Ann. § 38-77-160 provides that “Automobile insurance carriers shall offer, at the option of the insured, uninsured motorist coverage up to the limits of the insured’s liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. Such

carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage.”

28. That, under South Carolina law, failure to make such offer requires that the policy be reformed to include such un-offered coverage.

29. That even if Plaintiff’s policy were a permissible form of optional coverage not contemplated by the statutes, Plaintiff’s failure to offer such necessary coverages as required by the statutes mandate that the policy be reformed to include such coverage.

WHEREFORE, having fully answered Plaintiff’s Complaint, Defendant prays that judgment be entered in Defendant’s favor on the merits.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

/s/ Alexis W. McCumber

Alexis W. McCumber

Eric M. Poulin

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(843) 614-8888

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
June 15, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

CIVIL ACTION NO: 2020-CP-21-00986

Nationwide Affinity Insurance Company of America,

Plaintiff,

v.

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

Andrew Green,

Defendant.

TO: ALEXIS W. McCUMBER, ESQUIRE, COUNSEL FOR DEFENDANT AND TO THE DEFENDANT ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Nationwide Affinity Insurance Company of America ("Nationwide"), by its undersigned attorney, will move before the presiding judge of the Florence County Court of Common Pleas at the Florence County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof or as soon thereafter as counsel may be heard for an order granting Nationwide a judgment on the pleadings pursuant to Rule 12(c), SCRPC.

Defendant Green has filed his Answer, and based on the allegations of the Complaint and the admissions of Defendant, there is no material issue of fact and Plaintiff is entitled to a judgment as a matter of law. Defendant Green has admitted that the policy issued by Nationwide contained a provision limiting underinsured motorist (UIM) property damage coverage to damage to "your covered auto." (Ans. ¶ 6). Moreover, Defendant Green has admitted that the subject incident involving Harold Carroway did not cause damage to a "your covered auto." (Ans. ¶ 11). Therefore, Nationwide is entitled to a declaration that the Policy issued by Nationwide does not provide UIM property damage coverage to Defendant Green for any claims or damages asserted

against Harold Carroway, and Nationwide does not owe any duty to indemnify or provide any insurance proceeds under the UIM property damage coverage.

This motion is supported by the pleadings in this matter and the contemporaneously filed memorandum of law.

MURPHY & GRANTLAND, P.A.

s/Wesley B. Sawyer

Wesley B. Sawyer, Esquire, (SC Bar #100229)

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Attorneys for Nationwide Affinity Insurance

Company of America

Columbia, South Carolina

August 26, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

CIVIL ACTION NO: 2020-CP-21-00986

Nationwide Affinity Insurance Company of
America,

Plaintiff,

v.

Andrew Green,

Defendant.

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

The Plaintiff, Nationwide Affinity Insurance Company of America, hereinafter (“Nationwide”), submits this Memorandum of Law in support of its Motion for Judgment on the Pleadings:

SUMMARY

This case involves a dispute over whether underinsured motorist (UIM) property damage coverage is mandated by South Carolina’s insurance statute. It is not. Under South Carolina law, “UIM property damage coverage is not statutorily mandated.” *Bardsley v. Government Employees Ins. Co.*, 405 S.C. 68, 77, 747 S.E.2d 436, 441 (2013). Therefore, coverage for UIM property damage is controlled by the plain terms of the insurance contract. The contract here limits UIM property damage to damage to a covered automobile. Therefore, Defendant Green – who was injured as a pedestrian – is not entitled to any UIM property damage coverage under the Nationwide insurance policy.

FACTS

A. The vehicle versus pedestrian collision.

On October 19, 2018, Defendant Andrew Green was a pedestrian when he was struck by a motor vehicle operated by Harold Carraway in or near Florence, South Carolina. (Compl. ¶ 8); (Ans. ¶ 8). As a result, Defendant Green has filed a lawsuit against Carraway and has alleged that Carraway ran off the road, striking Green. (Compl. ¶¶ 9-10); (Ans. ¶¶ 9-10). As a pedestrian, Green did not have a motor vehicle involved in the collision. (Compl. ¶ 11); (Ans. ¶ 11).

After Carraway's liability carrier tendered its liability limits, Defendant Green presented a claim to Nationwide for UIM bodily injury and property damage coverage. (Compl. ¶¶ 12-13); (Ans. ¶¶ 12-13). Nationwide has offered its UIM bodily injury limits. (Compl. ¶ 14); (Ans. ¶ 14). However, Defendant Green is not entitled to any UIM property damage coverage because he did not suffer any damages to a "your covered auto" in the collision.

B. The Policy.

Nationwide issued an insurance policy to Shameika Clark, which included UIM limits of \$25,000 per person for "bodily injury" and \$25,000 each occurrence for "property damage." The Policy provides in pertinent part:

UNDERINSURED MOTORISTS COVERAGE – SOUTH CAROLINA

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

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

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

"Insured" as used in this endorsement means:

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

(Compl. ¶¶ 5-6); (Ans. ¶¶ 5-6); (Ex. 1, Policy, UIM Form, p. 1).¹ Thus, the Policy only provides UIM coverage for "bodily injury" and "property damage" caused by an auto accident.

"Property damage" means "injury to or destruction of 'your covered auto'":

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

(Ex. 1, Policy, UIM Form, p. 1)). Therefore, UIM property damage coverage is limited under the terms of the Policy to damage to "your covered auto." Green admits no damage occurred to a "your covered auto." (Ans. ¶ 11). Therefore, Nationwide is entitled to declaratory judgment in its favor.

ARGUMENT

"The terms of the policy govern the scope of coverage, unless in conflict with statutory requirements." *Pennell v. Foster*, 338 S.C. 9, 18, 524 S.E.2d 630, 634 (Ct. App. 1999). Thus, the plain language of the Nationwide Policy limiting UIM property damage coverage to damage to "your covered auto" applies unless the language conflicts with statutory requirements. It does not.

South Carolina Code § 38-77-160 sets forth coverage automobile insurers must offer:

Such carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are

¹ A complete, certified copy of the Policy was attached as Exhibit A to the Complaint. Defendant Green has admitted to the authenticity of the Policy. (Ans. ¶ 5). Therefore, the Policy may be considered on a Motion for Judgment on the Pleadings. The relevant portions of the Policy are attached to this Motion as Exhibit 1.

sustained in excess of the liability limits carried by the at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute. . . .

S.C. Code § 38-77-160. Read in a vacuum, one might assume that this statutory provision includes UIM bodily injury and UIM property damage coverage. However, the General Assembly chose to limit the definition of “underinsured motor vehicle” to one “as to which there is bodily injury liability insurance or a bond applicable at the time of the accident in an amount of at least that specified in Section 38-77-140 and the amount of the insurance or bond is less than the amount of the insureds’ damages.” S.C. Code § 38-77-30(15) (emphasis added). Therefore, when the statute requires an offer of UIM coverage, that statutory requirement is limited to UIM bodily injury coverage.

The South Carolina Supreme Court addressed this very statutory question in *Bardsley*. That case, like the case here, involved a dispute over the recovery of UIM property damage coverage under a policy of automobile insurance. The policy included an offsetting provision, which the insured claimed was “void as a matter of public policy because [it was] contrary to the legislative intent of the UIM statute, Section 38-77-160 of the South Carolina Code.” 405 S.C. at 77, 747 S.E.2d at 440-441. The Supreme Court rejected this contention because South Carolina Code § 38-77-160 does not apply to UIM property damage coverage:

Section 38-77-160 requires that an insurer “offer ... underinsured motorist coverage....” An “underinsured motor vehicle” is statutorily defined as “a motor vehicle as to which there is bodily injury insurance liability ... at the time of the accident in an amount of at least that specified in Section 38-77-140 and the amount of the insurance ... is less than the amount of the insureds’ damages.” S.C. Code § 38-77-30(15) (200). ***Thus, UIM property damage coverage is not statutorily mandated,*** and the “other insurance” provision does not conflict with the public policy expressed in section 38-77-160.

Id. at 77, 747 S.E.2d at 441 (emphasis added). Therefore, an insurer is not required to offer UIM property damage coverage, and any UIM property damage coverage provided by the insurer is purely voluntary.²

When addressing insurance coverage that is not controlled by statute, the Court must construe the policy terms in accordance with their plain and unambiguous meaning. *See Sphere Drake Ins. Co. v. Litchfield*, 313 S.C. 471, 438 S.E.2d 275 (Ct. App. 1993). “Parties to a contract of insurance have the right to make their own contract. It is not the function of the courts to rewrite or torture the meaning of the policy to extend coverage.” *Id.* at 473, 438 S.E.2d at 277 (citations omitted). “If the language is clear and unambiguous, the language alone determines the contract’s force and effect.” *Id.* (citation omitted). “The court is without authority to alter a contract by construction or to make a new contract for the parties.” *Id.* (citation omitted).

In his Answer, Defendant Green admits that the Policy limits the definition of “property damage” in the UIM coverage part to damage to “your covered auto,” and he admits that “there was no damage to ‘your covered auto’ . . .” (Ans. ¶¶ 14-19). His sole defense is his contention that the limitation of coverage to “your covered auto” violates South Carolina law. (Ans. ¶ 19). This is the same argument raised by the insured in *Bardsley*, which the South Carolina Supreme Court rejected. Therefore, Nationwide is entitled to judgment on the pleadings as a matter of law.

² Before the Supreme Court rendered its decision in *Bardsley*, the South Carolina Court of Appeals held that UIM property damage coverage could not be limited to damage to “your covered auto.” *See Glasscock, Inc. v. U.S. Fidelity and Guar. Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001). In that case, the Court of Appeals relied on an interpretation of § 38-77-160 that included UIM property damage as part of the statutory language. Therefore, the Supreme Court’s holding in *Bardsley* – as a ruling from the State’s highest court on this statutory interpretation question – is controlling, and *Glasscock* has been effectively overruled.

CONCLUSION

For the above-stated reasons, Nationwide's Motion for Judgment on the Pleadings should be granted. The Nationwide Policy limits UIM property damage coverage to damage to "your covered auto." Defendant Green was a pedestrian when he was struck by a vehicle operated by Harold Carraway. As such, he admits that there was no damage to a "your covered auto." Thus, he is not entitled to any UIM property damage coverage under the plain terms of the Policy.

South Carolina law does not require an offer of UIM property damage coverage. *See Bardsley, supra*. Therefore, any UIM property damage coverage is purely voluntary and must be construed according to the language in the insurance Policy. Because the Policy limits UIM property damage coverage to damage to "your covered auto," Green's admission there was no such damage is dispositive, and Nationwide is entitled to judgment on the pleadings as a matter of law.

MURPHY & GRANTLAND, P.A.

s/Wesley B. Sawyer

Wesley B. Sawyer, Esquire, (SC Bar #100229)

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Columbia, South Carolina 29260

(803) 782-4100

Attorneys for Nationwide Affinity Insurance

Company of America

Columbia, South Carolina
August 26, 2020

EXHIBIT 1



Your Policy Declarations

Nationwide Auto Policy

Policy Period: Jun 28, 2018 - Dec 28, 2018

Policy Number: **6139V 035103**

Policyholder (Named Insured):

Shameika Clark
116 Fletcher St
Mc Coll, SC
29570-2306

Keep these Declarations for your records.

General Policy Information

Issued: June 7, 2018

These Declarations are a part of the policy named above and identified by the policy number above. They supersede any Declarations issued earlier. Your policy provides the coverages and limits shown in the schedule of coverages. They apply to each insured vehicle as indicated. Your policy complies with the motorists' financial responsibility laws of your state only for vehicles for which Property Damage and Bodily Injury Liability coverages are provided.

Policy Period: June 28, 2018 - December 28, 2018 but only if the required premium for this period has been paid and only for six month renewal periods if renewal premiums have been paid as required. This policy is initially effective at (1) the time the application for insurance is completed, or (2) 12:01 a.m. on the first day of the policy period, whichever is later. Each renewal period begins and ends at 12:01 a.m. standard time at the address of the named insured stated herein. This policy expires at 12:01 a.m. at the address of the named insured stated herein.

Your carrier is Nationwide Affinity Insurance Company Of America, NAIC #26093.

03041001561034

IMPORTANT MESSAGES:

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

Changes Made to Your Policy

- **Effective June 28, 2018**
- Added 1996 Ford Aspire
- Removed 1995 Lexu ES 300

Premium Summary and Other Charges

1996 Ford Aspire	\$	683.50
Total For Policy Coverages	\$	21.00
Total Policy Premium	\$	704.50

How You Saved on this Policy with Nationwide

- Multi Car
- Paperless Policy
- Passive Restraint
- Accident Free



Your Policy Declarations

Nationwide Auto Policy

Policy Period: Jun. 28, 2018 - Dec 28, 2018

Policy Number: **6139V 035103**

For coverage definitions and descriptions, visit Nationwide.com

Rated Driver(s)

Name	Date of Birth	Marital Status
Shameika Clark	03/06/80	Separated

Insured Vehicle(s) and Schedule of Coverages

1996 Ford Aspire

VIN KNJLT06H9T6182359

Coverages	Limits of Liability	Premium
Bodily Injury Liability	\$ 25,000 Each Person \$ 50,000 Each Occurrence	\$ 197.80
Property Damage Liability	\$ 25,000 Each Occurrence	\$ 115.74
Medical Payments	\$ 2,000 Each Person	\$ 67.36
Uninsured Motorists Bodily Injury	\$ 25,000 Each Person \$ 50,000 Each Occurrence	\$ 33.08
Uninsured Motorists Property Damage	See Endorsement \$ 25,000 Each Occurrence	\$ 6.39
Underinsured Motorists Bodily injury	\$ 25,000 Each Person \$ 50,000 Each Occurrence	\$ 64.94
Underinsured Motorist Property Damage	See Endorsement \$ 25,000 Each Occurrence	\$ 3.18
Damage To Your Auto	Actual Cash Value Less \$ 500	\$ 99.21
Other Than Collision (Comprehensive) With Safety Glass	See Endorsement	
Collision	Actual Cash Value Less \$ 500	\$ 95.80
Custom Equipment	\$ 3,000	included
Loyalty Rewards	See Endorsement	included
Pet Injury Collision Coverage		
Car Key Replacement Coverage		
Total for this Vehicle		\$ 683.50

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Continued on the next page



Your Policy Declarations

Nationwide Auto Policy

Policy Period: Jun 28, 2018 - Dec 28, 2018

Policy Number: **6139V 035103**

Policy Level Schedule of Coverages

Coverages	Limits of Liability	Premium
Roadside Assistance Plus	Disablement Up To 100 Miles \$100 Lockout \$500 Trip Interruption See Endorsement	\$ 21.00
Accident Forgiveness Feature Currently Eligible To Use		Included
Minor Violation Forgiveness Feature Currently Eligible To Use		Included
Total for Policy Coverages		\$ 21.00

Policy Form and Endorsements

- A 4500 07 16 Your Nationwide Auto Policy
- A 4568 07 16 Roadside Assistance Coverage
- A 4579 07 16 Loyalty Rewards
- A 5139 07 16 Uninsured Motorists Coverage - South Carolina
- A 5239 07 16 Underinsured Motorists Coverage - South Carolina

For Office Use Only:

05/25/18 \$ 13.04- Terr: 114 .



Issued By: Nationwide Affinity Insurance Company Of America

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

Countersigned At:

By: Nationwide Sales Solutions Inc

How to Contact Us

Your Nationwide Agent	Nationwide Sales Solutions Inc 1.800.421.1444
Nationwide Customer Solution	1.800.421.1444
Internet	Nationwide.com
24-Hour Claims Reporting	1.800.421.3535
Hearing Impaired (TTY)	1.800.622.2421

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UNDERINSURED MOTORISTS COVERAGE — SOUTH CAROLINA

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

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

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

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

"Insured" as used in this endorsement means:

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

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

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

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

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

EXCLUSIONS

- A. We do not provide Underinsured Motorists Coverage for "property damage" or "bodily injury" sustained:
 1. By you while "occupying", or when struck by, any motor vehicle you own which is not insured for this coverage. This includes a trailer of any type used with that vehicle.
 2. By any "family member" while "occupying", or when struck by, a motor vehicle owned by such "family member" which is not insured for this coverage. This includes a trailer of any type used with that vehicle.
- B. We do not provide Underinsured Motorists Coverage for "property damage" or "bodily injury" sustained by any "insured":
 1. While "occupying" "your covered auto" when it is being used:
 - a. To carry persons or property for a fee or compensation. This includes but not limited to any period of time that "insured" is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle; or
 - b. On a regular basis for retail or wholesale delivery, including but not limited to pizza, magazine, newspaper and mail delivery.

Exclusion **B.1.** does not apply to motor vehicles used in shared-expense car pools or while the vehicle is used in the course of volunteer work for a tax exempt organization.
 2. While using a motor vehicle;

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- a. Without a reasonable belief of being entitled to do so;
- b. The "insured" has stolen; or
- c. The "insured" knows to have been stolen.

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

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

- a. You;
 - b. A "family member"; or
 - c. A business partner, employee, or agent of you or a "family member".
3. While "occupying", or when struck by, "your covered auto" while:
- a. Enrolled in a personal vehicle sharing program under the terms of a written agreement; and
 - b. Being used in connection with such personal vehicle sharing program by anyone other than you or any "family member".
- C. This coverage shall not apply directly or indirectly to benefit:
- 1. Any insurer or self-insurer under any of the following or similar law:
 - a. Workers' compensation law; or
 - b. Disability benefits law.
 - 2. Any insurer of property.

LIMIT OF LIABILITY

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

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

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1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Declarations; or
 4. Vehicles involved in the accident.
- B.** If "bodily injury" is sustained in an accident by you or any "family member" while not "occupying" any auto:
1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the sum of the Limits Of Liability shown in the Declarations for each person for Bodily Injury Liability Underinsured Motorists Coverage.
 2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the sum of the Limits Of Liability shown in the Declarations for each accident for Bodily Injury Liability Underinsured Motorists Coverage.
- The maximum limit of liability is the most we will pay regardless of the number of:
1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Declarations; or
 4. Vehicles involved in the accident.
- C.** If "bodily injury" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member":
1. Our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in that accident is the highest each person Limit Of Liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of "your covered autos".
 2. Subject to this limit for each person, our maximum limit of liability for all damages arising out of "bodily injury" sustained in that accident is the highest each accident Limit Of Liability shown in the Declarations for Bodily Injury Liability Underinsured Motorists Coverage applicable to any one of "your covered autos".
- The maximum limit of liability is the most we will pay regardless of the number of:
1. "Insureds";
 2. Claims made;
 3. Vehicles or premiums shown in the Schedule or in the Declarations; or
 4. Vehicles involved in the accident.
- D.** No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part **A**, Part **C** or Part **D** of this Policy.
- E.** We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.
- F.** We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any of the following or similar law:
1. Workers' compensation law; or
 2. Disability benefits law.

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

OTHER INSURANCE

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

the following priorities of recovery apply:

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

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

ADDITIONAL DUTY

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

GENERAL PROVISIONS

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

- A. The Our Right To Recover Payment Provision does not apply to Underinsured Motorists Coverage.
- B. The following is added to the Two Or More Auto Policies Provision:
 1. This provision does not apply to Underinsured Motorists Coverage.
 2. No one will be entitled to receive duplicate payments for the same elements of loss under Underinsured Motorists Coverage.



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C. The following provision is added:

Conformity To Statute

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

This endorsement applies as stated in the policy Declarations.

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

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IN THE STATE OF SOUTH CAROLINA)
COUNTY OF)

IN THE COURT OF COMMON PLEAS
FOR THE JUDICIAL CIRCUIT
CASE NO: 2020-CP-21-00986

NATIONWIDE AFFINITY INSURANCE
COMPANY OF AMERICA,

Plaintiff(s),

v.

ANDREW GREEN,

Defendant(s).

**DEFENDANT’S MEMORANDUM IN
OPPOSITION TO PLAINTIFF’S
MOTION FOR JUDGMENT ON THE
PLEADINGS**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD:

COMES NOW the Defendant, Andrew Green, by and through undersigned counsel, and does hereby submit this memorandum of law in opposition to Plaintiff Nationwide Affinity Insurance Company of America’s (herein “Nationwide”) Motion for Judgment on the Pleadings.

INTRODUCTION

This is a declaratory judgment action brought to determine an insurance coverage question: Can Nationwide exclude underinsured (UIM) property damage coverage when its insured is injured as a pedestrian?

This matter stems from a motor vehicle v. pedestrian collision that occurred on October 19, 2018 in Florence County. On that day, Defendant Andrew Green was lawfully walking home from school along the side of Third Loop Road in Florence, South Carolina, when Harold Carraway, traveling west on Third Loop Road, drove left of center, went off the left side of the roadway, striking Mr. Green and a friend. As a result of this collision, Mr. Green was gravely injured, incurring over \$175,000.00 in medical bills.

Harold Carraway had a minimum limits liability policy with State Farm. That policy was exhausted prior to any litigation.

PROCEDURAL HISTORY

Andrew Green and the other young man he was walking with, Chase Dosani, filed the underlying lawsuit – *Andrew Green and Chase Dosani v. Harold Carraway* (2020-CP-21-00443) on February 11, 2020. Nationwide filed this instant declaratory judgment action on April 6, 2020. Nationwide requests that this Court declare what Nationwide’s obligations are to Andrew Green under the insurance policy, specifically, the UIM property damage provision of the policy.

Andrew Green admitted in his answer that he was not driving “your covered auto” at the time of the collision. However, Mr. Green also stated in his answer that the policy provision purporting to limit UIM property damage coverage is violative of South Carolina Law.

LEGAL STANDARD

A judgment on the pleadings is considered to be a drastic procedure by our courts. *McCurry v. Keith*, 312 S.C. 254, 255, 439 S.E.2d 861, 862 (Ct. App. 1994). “Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP. When considering such motion, the court must regard all properly pleaded factual allegations as admitted.” *Pope v. Wilson*, 427 S.C. 377, 384, 831 S.E.2d 442, 445–46 (Ct. App. 2019), reh’g denied (Aug. 27, 2019) quoting *Falk v. Sadler*, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000). “On review of the motion, the court may not consider matters outside the pleadings.” *Id.*

In evaluating a Rule 12(c) motion, the court must consider that “a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties.” *Id.* at 287, 533 S.E.2d at 353 (quoting *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)).

ARGUMENT

Nationwide believes that since Andrew Green admitted that he was not driving “your covered auto” in the collision, he has effectively admitted that he is not entitled to the property damage coverage under the policy. That is not the case. Defendant continually asserts in his Answer that while yes, he was not driving “your covered auto” – the exclusion is violative of South Carolina law and public policy. [See, generally Def. Ans.].

Underinsured coverage is defined in S.C. Code Ann. § 38-77-160 as providing coverage “in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist.”

It continues to read quite clearly, “If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage.” S.C. Code Ann. § 38-77-160. The statute does not place a limitation to only the bodily injury portion of the policy. Surely, if that had been the legislature’s intent, they would have written an exclusion into the statute.

S.C. Code Ann. § 38-77-140 provides, “An automobile insurance policy may not be issued ... unless it contains a provision insuring the persons defined as insured against loss from the liability imposed by law for damages ... with respect to each motor vehicle, as follows: (3) twenty-five thousand dollars because of injury to or destruction of property of others in any one accident.”

Defendant would show that he suffered damages as alleged, including damage to his personal property, and that such damages exceed the liability limits maintained by the at-fault driver. If such damages are proven, Plaintiff’s limiting language is violative of South Carolina’s insurance code and public policy and cannot be enforced.

A. UIM Endorsement Violative of South Carolina Law and Damage to “Your Covered Auto” not Dispositive of UIM Coverage.

Nationwide claims that Andrew Green is precluded from claiming property damage coverage as a result of the collision that is the subject of this litigation. Specifically, Nationwide claims that the UIM Endorsement only extends to damage to “your covered auto” and, since Andrew Green was not occupying “your covered auto” at the time of the collision, he is not entitled to those damages. We disagree for the following reasons.

i. UIM Endorsement Should be Reformed to Mirror Liability Coverage.

UIM coverage follows the individual insured rather than the vehicle insured, that is, UIM coverage, like UM, is “personal and portable.” *Burgess v. Nationwide Mut. Ins. Co.*, 373 S.C. 37, 41, 644 S.E.2d 40, 42 (2007).

S.C. Code Ann. § 38-77-30 defines “Insured” as the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, *while in a motor vehicle or otherwise.*” (*emphasis added*).

Again, our law contemplates if the insured’s vehicle is not involved in the accident, stating that coverage is available to the extent of coverage on any one of the vehicles with the excess or underinsured coverage. S.C. Code Ann. § 38-77-160. Nothing in this statute limits this coverage to bodily injury coverage.

S.C. Code Ann. § 38–77–160 further requires insurers to offer underinsured motorist coverage **up to the limits of** the insured's liability coverage: “Automobile insurance carriers shall offer ... at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist...” “Up to the limits

of” **does not apply only to the dollar amount.** *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 83, 557 S.E.2d 689, 693 (Ct. App. 2001). “Because underinsured motorist coverage is intended to provide coverage where the at-fault driver's liability coverage is insufficient, we conclude the legislature intended for underinsured motorist coverage to provide the same type of coverage as liability coverage.... [I]t is logical to conclude underinsured motorist coverage should provide the same spectrum of coverage as liability coverage.” *Id.* (citing *State Farm Mut. Auto. Ins. Co. v. Bookert*, 330 S.C. 221, 228, 499 S.E.2d 480, 483–84 (Ct. App. 1997), rev'd, 337 S.C. 291, 523 S.E.2d 181 (1999)).

UIM coverage is entirely voluntary, and permits insureds, at their option, to purchase insurance coverage for situations exactly like this – where they are injured by an at-fault driver who does not carry sufficient liability insurance to cover the insureds' damages. Essentially, the insured is buying insurance coverage for situations, as where he is a passenger in another's vehicle or is a pedestrian, where he cannot otherwise insure himself. *Burgess v. Nationwide Mut. Ins. Co.*, 373 S.C. 37, 42, 644 S.E.2d 40, 43 (2007) (“[A]s a general proposition, UIM coverage follows the individual insured rather than the vehicle insured, that is, UIM coverage, like UM, is ‘personal and portable.’”).

Nationwide’s Policy [attached to Plaintiff’s Complaint] initially defines “property damage” as:

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

[Policy p. 13].

However, later on, “property damage” is redefined under the Underinsured Motorist Provision of the Policy.

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

[Policy, p. 47].

Nationwide hangs its hat on this narrow definition. However, this definition is not in concert with the definition of "property damage" as defined earlier in the policy. It is also not in concert with S.C. Code Ann. § 38-77-160 as it is certainly not **"up to the limits of"** the insured's liability coverage. The South Carolina Court of Appeals interpreted (and reformed) a very similar policy in *Glasscock, Inc. v. U.S. Fidelity and Guar. Co.* In *Glasscock*, an insured brought action against automobile insurer for declaratory judgment that "property damage" under the UIM coverage included loss of use. 348 S.C. 76, 557 S.E.2d 689 (S.C. Ct. App. 2001). The language of the endorsements defining "property damage" under the liability and UIM sections of the policy were different (and read exactly as they do in the instant case). The liability endorsement read: "'Property damage' means damage to or loss of use of tangible property." The UIM endorsement read: "'Property damage' as used in this endorsement means injury to or destruction of your covered 'auto.'" *Id.* at 76, 690.

The Court found that "property damage" in the UIM coverage had to include loss of use since the liability coverage defined "property damage" to include loss of use, and, thus, **the UIM coverage definition of "property damage" as limited to injury to or destruction of the named insured's "covered auto" was invalid as it was not "up to the limits of" the liability coverage.** *Id.* 76, 692. As such, the policy was reformed. The Nationwide policy should be similarly reformed and judgment on the pleadings should be denied as the limitation imposed by the UIM Endorsement is not in concert with the (1) definition of property damage in the liability coverage portion of the Policy; (2) S.C. Code Ann. § 38-77-160 or (3) *Glasscock*.

ii. **Distinguishing *Bardsley*.**

Nationwide contends that the dispute at issue here mirrors the dispute over UIM property damage coverage in *Bardsley v. Gov't Employees Ins. Co.*, 405 S.C. 68, 747 S.E.2d 436 (2013). It most certainly does not.

In *Bardsley*, a speeding car smashed into the home of the Bardsleys killing Mr. Bardsley instantly. The Bardsleys had an UIM policy with Geico. The policy provided: “With respect to property damage, this insurance shall be excess over other valid and collectible insurance applicable to the damaged property.” *Id.* at 73, 438. Geico argued that all other insurance had not been exhausted (while the driver’s liability policy had tendered its full limits, the homeowner’s policy tendered only some of its limits) and as such, there was no UIM property damage coverage available. *Id.* at 74, 438. Essentially, it was last in line and the others in front of it had not all been called on yet.

Here, as distinguished from *Bardsley*, all other insurance coverage has been exhausted. Harold Carraway’s bodily injury and property damage coverage has been tendered in full. Nationwide’s UIM bodily injury limits have been tendered in full. The ONLY remaining coverage is the UIM property damage limits. And Mr. Green has not yet been made whole. The only similarity the *Bardsley* case has to the case at hand is that it reinforces that the purpose of additional UIM coverage – to protect insureds from this very situation – a grave injury when the at fault driver is not adequately insured.

Nationwide argues that *Bardsley* “effectively overruled” *Glasscock*. This is simply not true. A quick Westlaw search shows that there is no negative treatment of the *Glasscock* case and there is no mention of *Glasscock* in *Bardsley*.

Here, we have the exact same differences in the policy definitions of “property damage” as the court found and invalidated in *Glasscock*. The case is still good law and should be upheld. This Court should follow precedent and find that the statute mandating an offer of UIM coverage “up to the limits” of the liability coverage requires the insurer to provide the same type of coverage, not just the same dollar limit. *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).

CONCLUSION

For all the foregoing reasons, Andrew Green would show that Nationwide’s Motion for Judgment on the Pleadings should be denied. The Nationwide UIM policy should be reformed to include property damage coverage when “your covered auto” is not involved in the collision because that is what our legislature intended, that is what our Courts have upheld, and that is the right thing to do.

Respectfully Submitted,

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January 21, 2021

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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2020-CP-21-00986

Nationwide Affinity Ins. Co. of America,Appellant,

v.

Andrew Green,Respondent.

NOTICE OF APPEAL

Nationwide Affinity Insurance Company of America appeals the Order dated February 1, 2021 and Amended Order dated February 18, 2021 of the Honorable D. Craig Brown. Appellant received written notice of entry of these orders on February 1, 2021 and February 18, 2021, respectively.

March 3, 2021



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SC Court of Appeals

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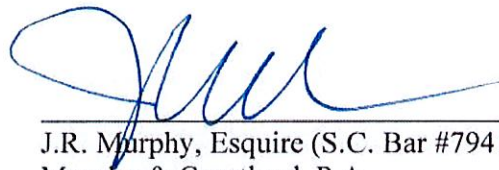
v.

Andrew Green,Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Andrew Green by depositing a copy of it in the United States Mail, postage prepaid, on March 3, 2021, addressed to:

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IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

Case No. 2021-000243

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SC Court of Appeals

Nationwide Affinity Insurance Company of America,Appellant.

v.

Andrew Green, Respondent.

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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