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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2016-CP-32-815
Appellate Case No. 2020-001693

State Farm Mutual Automobile Insurance Company, Appellant,

v.

Myra M. Windham, Respondent.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

State Farm Mutual Automobile Insurance Company,
Respondent,

v.

Myra M. Windham, Appellant.

Appellate Case No. 2016-002185

Appeal From Lexington County
G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 5764
Heard October 15, 2019 – Filed August 19, 2020

REVERSED

Stephen H. Cook and John K. Koon, both of Koon Cook and Walters, LLC, of Columbia, for Appellant.

Alfred Johnston Cox and Jessica Waller Laffitte, both of Gallivan, White & Boyd, PA, of Columbia, for Respondent.

KONDUROS, J.: Myra M. Windham appeals the circuit court's grant of summary judgment to State Farm Mutual Automobile Insurance Company on its declaratory judgment action. State Farm sought a determination that Windham could not stack her underinsured motorist (UIM) coverage from her policies with it when she was in an automobile accident while driving a rental car. We reverse.

FACTS/PROCEDURAL HISTORY

Windham was involved in an automobile accident on September 29, 2012. The other party's insurance supplied her with a rental car. On October 5, 2012, while she was driving the rental car, she was involved in another accident. At the time, Windham and her husband (collectively, the Windhams) had multiple automobile insurance policies with State Farm. State Farm filed a declaratory judgment action seeking a determination that Windham could not stack UIM coverage from multiple policies. The parties stipulated to the following facts before the circuit court:

> 1. On September 29, 2012, . . . Windham . . . was involved in an automobile accident with Stephen H. Keever . . . while operating her 2007 Toyota Camry, which was repaired sometime after the October 5, 2012 accident.
>
> 2. On October 5, 2012, six days after the first wreck, . . . Windham was involved in an automobile accident with Jennifer Mary McArdle . . . while operating a 2013 Dodge rental car from Enterprise Leasing Corporation as a replacement for her automobile which was damaged and out of service from the September 29, 2012 accident.
>
> 3. Windham was using the rental car on October 5, 2012, as a temporary substitute vehicle because her vehicle had been rendered inoperable following the accident on September 29, 2012.
>
> 4. The rental car was paid for by Keever's liability carrier, Allstate Insurance Company.
>
> 5. None of the Windhams' vehicles were involved in the accident on October 5, 2012.
>
> 6. Windham was injured as a result of the October 5, 2012[] accident and claims that her injuries exceed the amount of McArdle's liability insurance, which has already been paid in full.

7. State Farm issued five automobile policies . . . ("the Policy or Policies")[] to Myra M. Windham and/or Paul A. Windham that were in effect at the time of the accidents. All of the Policies contain identical language.

. . . .

9. . . . Windham was an insured under all of the aforementioned Policies issued by State Farm.

10. The 2013 Dodge rental car meets the definition of a "temporary substitute car" as defined by each of the Policies.

11. The Dodge owned by Enterprise Leasing and rented to Windham at the time of the accident is not a vehicle shown under "YOUR CAR" on the Declarations Page of any of the Policies issued to Myra[] M. Windham and/or Paul A. Windham.

12. The Dodge rental car being driven by Windham at the time of the October 5, 2012 accident does not meet the definition of "owned by" in the policy.

13. State Farm has paid a single limit of UIM from one of the Windhams' policies in the amount of $100,000.00 to Windham as a result of the October 5, 2012 accident.

14. State Farm seeks a determination from this [c]ourt that Windham is not permitted to stack UIM coverage under the terms of State Farm's Policies or South Carolina law because none of her vehicles were involved in the accident on October 5, 2012.

15. . . . Windham seeks a determination from this [c]ourt that she is entitled to stack the remaining UIM limits from her other Policies with State Farm because the 2013 Dodge rental car qualifies as a temporary substitute vehicle.

One of the first sections of the car policy booklet from State Farm is entitled "**DEFINITIONS.**" The first sentence of that section states, "***We*** define certain words and phrases below for use throughout the policy. Each coverage includes additional definitions only for use with that coverage." Below are some relevant definitions from that section.

> ***Non-Owned Car*** means a ***car*** that is in the lawful possession of ***you*** or any ***resident relative*** and that neither:
>
> 1. is ***owned by:***
>
>   a. ***you;***
>
>   b. any ***resident relative;***
>
>   c. any other ***person*** who resides primarily in ***your*** household; or
>
>   d. an employer of any ***person*** described in a., b., or c. above; nor
>
> 2. has been operated by, rented by, or in the possession of:
>
>   a. ***you;*** or
>
>   ***b.*** any ***resident relative*** during any part of each of the 31 or more consecutive days immediately prior to the date of the accident or ***loss.***
>
> ***Owned By*** means:
>
> 1. owned by;
>
> 2. registered to; or
>
> 3. leased, if the lease is written for a period of 31 or more consecutive days, to.

Temporary Substitute Car means a ***car*** that is in the lawful possession of the *person* operating it and that:

1. replaces ***your car*** for a short time while ***your car*** is out of use due to its:

   a. breakdown;

   b. repair;

   c. servicing;

   d. damage; or

   e. theft; and

2. neither ***you*** nor the ***person*** operating it own or have registered.

If a ***car*** qualifies as both a ***non-owned car*** and a ***temporary substitute car,*** then it is considered a ***temporary substitute car*** only.

Your Car means the vehicle shown under "YOUR CAR" on the Declarations Page. ***Your car*** does not include a vehicle that ***you*** no longer own or lease.

If a ***car*** is shown on the Declarations Page under "YOUR CAR[,"] and ***you*** ask ***us*** to replace it with a ***car*** newly ***owned by you,*** then the ***car*** being replaced will continue to be considered ***your car*** until the earliest of:

1. the end of the 30th calendar day immediately following the date the ***car*** newly ***owned by you*** is delivered to ***you;***

2. the date this policy is no longer in force; or

3. the date ***you*** no longer own or lease the ***car*** being replaced.

In the section pertaining to UIM, the policy booklet states:

> **If Other Underinsured Motor Vehicle Coverage Applies**
>
> 1. The Underinsured Motor Vehicle Coverage provided by this policy applies as primary coverage for an ***insured*** who sustain[s] ***bodily injury*** or ***property damage*** while ***occupying your car.***
>
> 2. Except as provided in item 1. above, the Underinsured Motor Vehicle Coverage provided by this policy applies as excess coverage.
>
> 3. If:
>
>   a. ***you*** or any ***resident relative*** sustains ***bodily injury*** or ***property damage:***
>
>   (l) while ***occupying*** a motor vehicle not ***owned by you*** or any ***resident relative;*** or
>
>   (2) while not ***occupying*** a motor vehicle; and
>
>   b. Underinsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to ***you*** or any ***resident relative*** by the ***State Farm Companies*** apply to the same ***bodily injury*** **or** ***property damage,*** then
>
> the maximum amount that may be paid from all such policies combined is the single highest limit provided by any one of the policies. ***We*** may choose one or more policies from which to make payment.
>
> 4. If ***you*** or any ***resident relative*** sustains ***bodily injury*** or ***property damage*** while ***occupying*** a motor vehicle other than ***your car*** that is ***owned by you*** or any ***resident relative,*** then this coverage applies only to

the extent of the underinsured motor vehicle coverage applicable to the motor vehicle that the ***insured*** was ***occupying***.

However, if the motor vehicle that the ***insured*** was ***occupying*** was not insured for underinsured motor vehicle coverage at the time of the accident, then the maximum amount that may be paid from all policies combined that are issued to ***you*** or any ***resident relative*** by the ***State Farm Companies*** is the minimum limits required by the ***Financial Responsibility Act***. ***We*** may choose one or more policies from which to make payment.

5. Subject to items l., 2., 3., and 4. above, if this policy and one or more other sources provide underinsured motor vehicle coverage for the same damages on a:

   a. primary basis, then ***we*** will pay the proportion of damages payable as primary that the applicable limit of this coverage under this policy bears to the sum of such amount and the limits of all other underinsured motor vehicle coverage that apply as primary coverage; or

   b. excess basis, then ***we*** will pay the proportion of damages payable as excess that the applicable limit of this coverage under this policy bears to the sum of such amount and the limits of all other underinsured motor vehicle coverage that apply as excess coverage.

Both parties filed motions for summary judgment. Following a hearing on the motions, the circuit court issued an order granting State Farm's motion and denying Windham's. The court found:

> In order for stacking to be allowed under the Policies, Windham must be operating a car that is "owned by" an insured. She has stipulated that she did not own it, it was not registered to her[,] and she was not leasing it for a

> period of more than 31 days. Therefore, the rental car does not meet the definition of "owned by[,"] and Windham is not permitted to stack under the terms of the UIM coverage.

This appeal followed.

STANDARD OF REVIEW

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the circuit court under Rule 56(c), SCRCP; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003).

In *Bell v. Progressive Direct Insurance Co.*, 407 S.C. 565, 570, 572, 576, 757 S.E.2d 399, 401-02, 404 (2014), on appeal from the grant of summary judgment in a declaratory judgment action, the supreme court noted "both parties stipulated in the circuit court that the matters under consideration were matters of law for the court." The supreme court observed:

> "A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." *Felts v. Richland County*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). "When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." *Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 46, 717 S.E.2d 589, 592 (2011) (citation omitted). "In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them." *Id.* at 46-47, 717 S.E.2d at 592 (citation omitted). However, an appellate

> court may make its own determinations concerning questions of law and need not defer to the trial court's rulings.

Bell, 407 S.C. at 576, 757 S.E.2d at 404-05.

LAW/ANALYSIS

Windham argues the circuit court erred in granting State Farm summary judgment based on a determination the Policy prohibited her from stacking UIM coverage because she was driving a rental car. She contends the relevant statutes treat the vehicle in question the same as the insured's own vehicle, prohibiting any limitation on stacking. She further asserts the federal district court decision she presented to the circuit court was correctly reasoned. We agree.[1]

"The central purpose of the UIM statute is to provide coverage when the injured party's damages exceed the liability limits of the at-fault motorist . . . ." *Carter v. Standard Fire Ins. Co.*, 406 S.C. 609, 615, 753 S.E.2d 515, 518 (2013) (quoting *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005)). "[T]herefore, '[t]he UIM and [uninsured motorist] statutes are remedial in nature and enacted for the benefit of injured persons' and 'should be construed liberally to effect the purpose intended by the Legislature.'" *Id.* (second alteration by court) (quoting *Floyd*, 367 S.C. at 260, 626 S.E.2d at 10).

"Insurance policies are subject to general rules of contract construction." *Standard Fire Co. v. Marine Contracting & Towing Co.*, 301 S.C. 418, 421, 392 S.E.2d 460, 461 (1990). "We must enforce, not write, contracts of insurance and we must give policy language its plain, ordinary, and popular meaning. We should not torture the meaning of policy language to extend or defeat coverage that was never intended by the parties." *Fritz-Pontiac-Cadillac-Buick v. Goforth*, 312 S.C. 315, 318, 440 S.E.2d 367, 369 (1994). "The foremost rule in interpreting an insurance contract is to give effect to the intent of the parties as shown by the language of the contract itself." *Dorman v. Allstate Ins. Co.*, 332 S.C. 176, 178, 504 S.E.2d 127, 129 (Ct. App. 1998). "When the contract language is clear and unambiguous, the language alone determines the contract's force, and terms must be construed to give

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[1] Initially, State Farm asserts Windham's issue on appeal is not preserved for review. We find Windham's argument on appeal is preserved for appellate review because there is no real difference between what she argued to the circuit court and what she argues here. Accordingly, we address the merits of Windham's appeal.

effect to their 'plain, ordinary, and popular meaning.'" *Id.* (quoting *Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 650, 491 S.E.2d 272, 274 (Ct. App. 1997)). However, "[a]mbiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer." *Diamond State Ins. Co. v. Homestead Indus., Inc.*, 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995).

"Stacking refers to an insured's recovery of damages under more than one insurance policy in succession until all of his damages are satisfied or until the total limits of all policies have been exhausted." *State Farm Mut. Auto. Ins. Co. v. Moorer*, 330 S.C. 46, 60, 496 S.E.2d 875, 883 (Ct. App. 1998). "Stacking of UIM coverage, which is a statutorily required coverage, is governed specifically by statute." *Nakatsu v. Encompass Indem. Co.*, 390 S.C. 172, 179, 700 S.E.2d 283, 287 (Ct. App. 2010). When interpreting an insurance contract, statutory provisions are considered part of the contract as a matter of law. *Carter*, 406 S.C. at 615, 753 S.E.2d at 518. "To the extent a policy conflicts with an applicable statute, the statute prevails." *Lincoln Gen. Ins. Co. v. Progressive N. Ins. Co.*, 406 S.C. 534, 539, 753 S.E.2d 437, 440 (Ct. App. 2013). "All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used." *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). "[UIM] coverage is controlled by and subject to our [UIM] act, and any insurance policy provisions inconsistent therewith are void, and the relevant statutory provisions prevail as if embodied in the policy." *Carter*, 406 S.C. at 615, 753 S.E.2d at 518 (alterations by court) (quoting *Kay v. State Farm Mut. Auto. Ins. Co.*, 349 S.C. 446, 450, 562 S.E.2d 676, 678 (Ct. App. 2002)).

"Generally, stacking of additional coverage for which the insured has contracted is permitted unless limited by statute or a valid policy provision." *Ruppe v. Auto-Owners Ins. Co.*, 329 S.C. 402, 404, 496 S.E.2d 631, 631-32 (1998). "Construing specific statutory language, we have held an insured is entitled to stack [UIM] . . . coverage in an amount no greater than the amount of coverage on the vehicle involved in the accident. To this extent, stacking cannot be contractually prohibited." *Id.* at 405, 496 S.E.2d at 632 (footnote and citation omitted); *see also Carter*, 406 S.C. at 616, 753 S.E.2d at 518 (noting "an insurer cannot contractually limit coverage in contravention of section 38-77-160 [of the South Carolina Code (2015)]"). However, "stacking may be prohibited by contract if such a prohibition is consistent with statutory insurance requirements." *Ruppe*, 329 S.C. at 406, 496 S.E.2d at 633.

"The critical question in determining whether an insured has the right to stack is whether he is a Class I or Class II insured." *Ohio Cas. Ins. Co. v. Hill*, 323 S.C. 208, 211, 473 S.E.2d 843, 845 (Ct. App. 1996). "The two classes of insureds are: (1) the named insured, his spouse[,] and relatives residing in his household[] and (2) any person using, with the consent of the named insured, the motor vehicle to which the policy applies and a guest in the motor vehicle." *Concrete Servs., Inc. v. U.S. Fid. & Guar. Co.*, 331 S.C. 506, 509, 498 S.E.2d 865, 866 (1998). "A Class I insured is an insured or named insured who has a vehicle involved in the accident. An insured is a Class II insured if none of his vehicles are involved in the accident." *Ohio Cas. Ins. Co.*, 323 S.C. at 211, 473 S.E.2d at 845 (citation omitted). "Only a Class I insured may stack." *Id.*

"South Carolina courts have interpreted [section 38-77-160] to allow Class I insureds to stack UIM coverage from multiple automobile insurance policies." *Kay*, 349 S.C. at 449, 562 S.E.2d at 678. That section provides:

> [Automobile insurance] carriers shall . . . offer, at the option of the insured, [UIM] 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 or in excess of any damages cap or limitation imposed by statute. *If, however, an insured or named insured is protected by . . . [UIM] coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. 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 (emphasis added).

In *Jackson v. State Farm Mutual Automobile Insurance Co.*, 288 S.C. 335, 337, 342 S.E.2d 603, 604 (1986), the supreme court held, "A policy provision [that] purports to limit stacking of statutorily-required coverage is invalid." However, in *Ruppe*, the supreme court diminished this statement when considering whether a policy that prohibited the stacking of liability coverage was valid, noting, "Dicta in *Jackson* . . . states the rule that stacking of statutorily required coverage cannot be

contractually prohibited. A review of current stacking cases, however, indicates this statement is an oversimplification of our stacking law and we decline to apply it here." 329 S.C. at 405, 496 S.E.2d at 632 (footnote omitted).

> [A] Class I insured typically may pursue stacking whether or not he was injured in his vehicle. *See* S.C. Code Ann. § 38-77-30(7) (Class I insureds are insured "while in a motor vehicle or otherwise"); *Am. Sec. Ins. Co. v. Howard*, 315 S.C. 47, 53, 55, 431 S.E.2d 604, 608, 609-10 (Ct. App. 1993) (*invalidating an "owned vehicle" exclusion because UIM "is nowhere limited to the use of the insured vehicle, and cannot be so limited by the policy provisions*," and allowing a husband, as a Class I insured under his wife's policy covering the involved vehicle, to stack policies of multiple at-home vehicles)[, *overruled on other grounds by Concrete Servs., Inc.*, 331 S.C. at 513 n.4, 498 S.E.2d at 868 n.4].

Carter, 406 S.C. at 617, 753 S.E.2d at 519 (emphasis added).

In *Nationwide Mutual Insurance Co. v. Rhoden*, 398 S.C. 393, 401 n.5, 728 S.E.2d 477, 481 n.5 (2012), our supreme court looked at dicta from the case of *Concrete Services, Inc.*, 331 S.C. at 512, 498 S.E.2d at 868. *Rhoden* noted the *Concrete Services* court "engaged in a 'purely academic' discussion to clarify 'whether, in order to stack UIM coverage, an insured must own the vehicle involved in the accident.'" *Rhoden*, 398 S.C. at 402 n.5, 728 S.E.2d at 481 n.5 (quoting *Concrete Services, Inc.*, 331 S.C. at 512, 498 S.E.2d at 868). "The court held that a Class I insured need not 'own' the vehicle in order to stack UIM coverage." *Id.* at 402 n.5, 728 S.E.2d at 481-82 n.5. *Concrete Services* stated, "[I]n order to 'have' a vehicle involved in the accident, it is necessary only that the insured qualify as a Class I insured." 331 S.C. at 513, 498 S.E.2d at 868. The *Concrete Services* court further noted, "We have never required 'ownership' as a prerequisite to stacking; on the contrary, we have consistently held the determinative factor is Class I status." *Id.* (footnote omitted). "Accordingly, we hold that prior cases requiring a person to 'have' a vehicle involved in the accident as a prerequisite to stacking mean only that a person must be a Class I insured with respect to a vehicle involved in the accident . . . ." *Id.*

The *Rhoden* court found *Concrete Services* distinguishable because it was a stacking case and *Rhoden* did not involve stacking but instead concerned

portability. *Rhoden*, 398 S.C. at 398, 402 n.5, 728 S.E.2d at 479, 482 n.5. However, the *Rhoden* court noted "the ambiguity of section 38-77-160 remains the same, although *Concrete Services* has chosen an alternative interpretation *in light of the different public policy considerations in a stacking context* not present in this case." *Id.* at 402 n.5, 728 S.E.2d at 482 n.5 (emphasis added). "[A]t best, the statutory language [of section 33-77-160] is ambiguous . . . ." *Id.* at 402, 728 S.E.2d at 482.

The South Carolina district court case provided by Windham in her brief on appeal and to the circuit court, *State Farm Fire & Casualty Insurance Co. v. Holmes*, No. 6:14-CV-04050-TMC (D.S.C. Jan. 7, 2016), has similar facts to the present case. In that case, the district court found:

> The pivotal issue in this case is whether the vehicle involved in this accident, a rental car, is a non-owned car under the policy so as to allow for stacking. Holmes was driving a rental car because she had been involved in another accident on April 14, 2010, and her car was being repaired. State Farm contends that the rental car was owned by the rental company and not owned by Holmes. Defendants contend that the rental car was a temporary substitute car and because the policy specifically provides that a temporary substitute car is "not a non-owned car," the rental car should be treated no differently than either of Holmes'[s] insured vehicles.
>
> Holmes was driving a rental car because her car was being repaired after having been damaged in a prior accident two weeks earlier. She was using the rental car as a substitute car while her car was being repaired. Clearly, the rental car Holmes was using in this case falls under the policy's definition of a temporary substitute car. And as the policy specifically states that a temporary substitute car is "not a non-owned car," the policy allows for stacking under the circumstances of this case.

Id. We acknowledge "a federal court decision interpreting state law is not binding on this [c]ourt." *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 473 n.9, 674 S.E.2d 154, 161 n.9 (2009). However, "we find the [district's court's] reasoning logical

and its conclusion persuasive." *Phillips v. Periodical Publishers' Serv. Bureau, Inc.*, 300 S.C. 444, 446, 388 S.E.2d 787, 789 (1989).

Windham is a named insured or the spouse of a named insured under all of her and her husband's policies. Stacking of UIM coverage is allowed if the insured is a Class I insured and has the UIM coverage on the vehicle involved in the accident. *See Kay*, 349 S.C. at 449, 562 S.E.2d at 678 ("South Carolina courts have interpreted [section 38-77-160] to allow Class I insureds to stack UIM coverage from multiple automobile insurance policies."). Windham had UIM coverage on her car that was damaged in the first accident that caused her to be driving the rental car. Windham's rental vehicle took the place of her vehicle, as the policy booklet provides: "***Temporary Substitute Car*** means a ***car*** that is in the lawful possession of the ***person*** operating it and . . . replaces ***your car*** for a short time while ***your car*** is out of use due to . . . repair . . . [or] damage . . . ." Accordingly, she had a car in the accident and was a Class I insured. *See Rhoden*, 398 S.C. at 401, 728 S.E.2d at 481 ("[A] Class I insured is an insured or named insured who 'has' a vehicle involved in the accident."); *id.* at 402 n.5, 728 S.E.2d at 482 n.5 ("'[I]n order to "have" a vehicle involved in the accident, it is necessary only that the insured qualify as a Class I insured. . . . We have never required "ownership" as a prerequisite to *stacking* . . . . Accordingly, we hold that prior cases requiring a person to "have" a vehicle involved in the accident as a prerequisite to *stacking* mean[s] only that a person must be a Class I insured.'" (omissions, alterations, and emphases all by court) (quoting *Concrete Servs.*, 331 S.C. at 513, 498 S.E.2d at 868)). Because she was a Class I insured, she is required by statute to be allowed to stack her UIM coverage from all of her policies.

In *Burgess v. Nationwide Mutual Insurance Co.*, the court found not allowing Burgess UIM coverage did not offend public policy because he had declined UIM coverage for the vehicle that he owned that he was driving during the accident. 373 S.C. 37, 42, 644 S.E.2d 40, 43 (2007). That is not the case here. Windham had UIM coverage on the car for which the rental car was acting as a substitute through her policy. She is simply seeking to stack the other policies under which she is a Class I insured. The Windhams had opted for $100,000 in UIM coverage on each of their five vehicles. Windham did not choose to get in an accident that damaged her vehicle, which was the reason she was driving the rental car instead of her vehicle. The rental car takes the place of her own vehicle, and she should be allowed to stack as she would have been if she had been driving her vehicle that

was damaged in the first accident.[2] Accordingly, the trial court's grant of summary judgment to State Farm is

REVERSED.

LOCKEMY, C.J., and HILL, J., concur.

[2] Windham also argues that when the policy is read naturally and in view of an insured's reasonable expectations, it treats the rented vehicle the same as her vehicle. Based on our above determination, we need not address this assertion. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2016-CP-32-00815
Appellate Case No. 2016-002185

State Farm Mutual
Automobile Insurance Company ..... Respondent,

v.

Myra M. Windham ..... Appellant.

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Whether Myra Windham is entitled to stack the Underinsured Motorist Coverage from her five automobile insurance policies when she was injured while occupying a "temporary substitute car"—a rental car provided to her because her primary car was out of service, disabled, and inoperable.

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STATEMENT OF ISSUE ON APPEAL

Whether Myra Windham is entitled to stack the Underinsured Motorist Coverage from her five automobile insurance policies when she was injured while occupying a "temporary substitute car"—a rental car provided to her because her primary car was out of service, disabled, and inoperable.

STATEMENT OF THE CASE

This declaratory judgment is about the right to stack Underinsured Motorist Coverage—"UIM." The circuit court held stacking was prohibited because Myra Windham was driving a rental car instead of a vehicle she owned. Mrs. Windham believes the circuit court's holding is incorrect and that this Court should reverse.

The salient facts appear in the parties' two-page stipulation. (R.pp.19-20). Mrs. Windham was involved in an automobile wreck in September of 2012, while driving her Toyota Camry. (R.p.19, ¶1). Six days later, in October, she was involved in a second wreck, while driving a rental car. (R.p.19, ¶2).

The first wreck left Mrs. Windham's Camry inoperable. (R.p.19, ¶3). The rental car Mrs. Windham was driving in the second wreck was being provided by the insurance company for the other driver in the first wreck. (R.p.19, ¶4).

State Farm issued five (5) policies to Mrs. Windham or her husband. Each policy has a UIM limit of $100,000 per person. (R.p.11, ¶10). State Farm paid Mrs. Windham a single limit of $100,000 from one of her policies. (R.p.20, ¶13).

State Farm filed this lawsuit in March of 2016, asking the court to declare Mrs. Windham could not stack the UIM coverage on the other four policies. (R.pp.10-14). Mrs. Windham filed an answer and a counterclaim alleging she was entitled to stack. (R.pp.15-

18). In terms of what is at stake, this case is about whether there is $400,000 of additional insurance coverage to apply towards Mrs. Windham's damages.

Both sides moved for summary judgment, relying on their respective interpretations of the State Farm policies and of the automobile insurance code.

State Farm argued stacking was prohibited under the UIM statute, by precedent, and by its policy language. State Farm believed an insured must own the vehicle he or she is occupying in order to stack. (R.pp.30-31). This varied from State Farm's policy, which treats a leased car as an owned car if the lease is for at least 31 consecutive days. (R.p.113). Everyone agreed Mrs. Windham did not own or lease the rental car. (R.p.19, ¶12). State Farm believed these facts compelled a ruling in its favor.

Mrs. Windham argued stacking was required by the policy language, the UIM statute, and precedent. She said the policy entitled her to stack because a "temporary substitute car" is a car that is substituted for the insured's own car for a short time and under limited circumstances. (R.p.40). She believed the policy language explaining a "temporary substitute car" *is not* a "non-owned car" naturally means a "temporary substitute car" will be treated as an "owned car" even though the insured does not actually own it. (R.pp.40-42). She supported her argument by noting a U.S. District Judge had followed this same reasoning in a case involving the same insurance company—State Farm. (R.pp.42-43). She also argued this furthered the UIM statute's purpose and honored an insured's reasonable expectations. (R.pp.43-45); (R.p.63, line 8 - p.64, line 10).

The court had a summary judgment hearing on June 23, 2016. (R.pp.49-67). On August 8, 2016, the court granted summary judgment to State Farm. (R.pp.1-8).

Mrs. Windham filed a motion to reconsider on September 6, 2016. (R.p.46). This was timely because she did not receive the summary judgment order until August 26, 2016.

The circuit court denied reconsideration in a one-page order filed September 26, 2016. (R.p.9). Mrs. Windham noticed this appeal October 26, 2016.

ARGUMENT

There are two reasons this Court should reverse.

First, the relevant statutes, when properly construed, treat this sort of vehicle as the insured's own vehicle, prohibiting any limitation on stacking. The UIM statute entitles an insured to stack when the insured's vehicle "is involved" in a wreck. This standard is satisfied if the insured is injured while occupying a short term replacement for the insured's vehicle. This is bolstered by the common understanding of the words "replace" and "substitute," and it furthers the UIM statute's purpose. The statute does not require actual ownership. Denying stacking renders Mrs. Windham's coverage on her Camry illusory.

Second, the policy itself treats this sort of vehicle as the insured's own vehicle. The policy's language about a "temporary substitute car" *not being* a "non-owned car" naturally means it will be treated like an owned vehicle even though the insured does not actually own it. The doctrine of reasonable expectations supports this reading. The circuit court ignored the District Court decision following this logic, overlooking the fact that the insurance code and individual insurance policies work in tandem. UIM coverage is required to be offered, and in the case of required coverage, the statute sets the boundaries. If this was not so, different insurance companies could offer varying coverages that are all misleadingly labeled as "UIM," but the coverages will not be the same. This Court should reverse.

I. The proper construction of the relevant statutes requires treating Mrs. Windham's rental car as her own vehicle, prohibiting any limitation on stacking.

"Stacking" refers to an insured recovering damages under multiple insurance policies until all policy limits have been exhausted or the insured has recovered all of his or her damages. It is driven by the concept that a "Class I insured"—the person named in the policy and that person's resident relatives—is insured regardless of the vehicle he or she is occupying at the time of the wreck. See, e.g., *Holloway v. Nationwide*, 376 So. 2d 690, 694-695 (Ala. 1979).

The same is not true for guests or permissive users: those persons are insured for the sole reason that they occupy the vehicle at the time of a wreck. Stacking relies on the premise that a Class I insured is covered everywhere, and in a pure stacking analysis, Class I insureds have a right to stack because they (or their family members) paid the policy's premiums, giving them a right to the coverage they purchased. *Id.*; see also *Gambrell v. Travelers Ins. Co.*, 280 S.C. 69, 73, 310 S.E.2d 814, 817 (1983) ("[t]he crucial test" for stacking is the number of coverages that were "paid for.").

a. Statutory law entitles an insured to stack as long as the insured's vehicle "is involved" in the wreck.

In South Carolina, the right to stack UIM is controlled by statute. The same is true for *Uninsured* Motorist coverage: both UM and UIM are "required coverages" because they are defined by statute and required to be offered. *Nakatsu v. Encompass Indem. Co.*, 390 S.C. 172, 179, 700 S.E.2d 283, 287 (Ct. App. 2010); *Ruppe v. Auto-Owners*, 329 S.C. 402, 405, 496 S.E.2d 631, 632 (1998).

Two statutes inform the UIM stacking analysis.

The first is the definition of "insured" which delineates two classes of individuals: (1) the named insured, his or her spouse, and his or her resident relatives; and (2) permissive users and guests. S.C. Code Ann. § 38-77-30 (7) (Supp. 2016). Class I insureds have the right to stack UIM because the definition of insured explains they are insured "while in a motor vehicle *or otherwise*"—meaning their status as an insured is portable. *Davidson v. E. Fire & Cas. Ins. Co.*, 245 S.C. 472, 477-78, 141 S.E.2d 135, 138 (1965).

The second applicable statute is the definition of UIM, which contains two limitations on the right to stack. If the insured is occupying one of his or her vehicles at the time of a wreck, stacking is limited to the amount of coverage on the vehicle involved. S.C. Code Ann. § 38-77-160 (Supp. 2016). If none of the insured's vehicles is involved, the insured may not stack, and may recover under only one of his or her UIM coverages. *Id.* The two sentences containing these limitations are sometimes referred to as the "If, however" clause of the UIM statute. *Carter v. Standard Fire*, 406 S.C. 609, 624, 753 S.E.2d 515, 523 (2013). The clause means South Carolina does not follow a "pure stacking" analysis—stacking is not tied *exclusively* to the number of premiums an insured pays. Instead, the statute embodies a compromise, allowing stacking when the insured's vehicle is involved and tying the stackable coverage to the amount of UIM on the involved vehicle.

b. The "involvement" standard is satisfied when the insured is injured while occupying a short term replacement for the insured's actual vehicle.

The Supreme Court has explained "involved" in the UIM statute means "to relate to or have an effect on . . . to draw in as a participant . . . [to] implicate, include, affect." *Merck*

v. Nationwide, 318 S.C. 22, 24, 455 S.E.2d 697, 698 (1995). The term has been construed to encompass a vehicle that did not play any active role in the collision: *Merck* held a vehicle was "involved" even though it was disabled and loaded on a wrecker when a drunk driver ran off the road and struck the insured, the wrecker driver, and the wrecker. *Id.* In holding the insured could stack, the Court noted the disabled vehicle was present at the scene and the accident had an effect on the vehicle.

Mrs. Windham's Camry was not present at the second wreck or directly affected, but her circumstances fit different parts of *Merck*'s involvement definition—the explanation that involvement describes the insured's vehicle relating to or having an effect on the incident. Everyone concedes Mrs. Windham's principal vehicle was out of service and inoperable. Everyone concedes the rental car was a short-term replacement and substitute for Mrs. Windham's primary car. Unlike a situation where someone uses a rental car for pleasure or while out-of-town, everyone concedes that this rental car *was acting as* Mrs. Windham's own car for a brief time. Mrs. Windham's insured vehicle was "involved" in this wreck. It was out of service, requiring Mrs. Windham to use the rental car she was operating.

This definition of involved is broad, but it fits the UIM statute's purpose. South Carolina's appellate courts have repeatedly explained the UIM statute's purpose is not to limit coverage, but "to provide coverage when the injured party's damages exceed the liability limits of the at-fault motorist." *Carter*, 406 S.C. at 615, 753 S.E.2d at 518 (quoting *Floyd v. Nationwide*, 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005)). The UIM statute was enacted "for the benefit of injured persons" and "should be liberally construed to effect [that purpose]." *Id.* "Involved" must be construed broadly.

c. The circuit court incorrectly held having a vehicle "involved" requires ownership.

The circuit court held the UIM statute "reasonably implies ownership of the vehicle," relying on the Supreme Court's decision in *Nationwide v. Rhoden*. (R.pp.4-5).

The circuit court accurately quoted *Rhoden*, but it took the language out of context, and the circuit court's reasoning is contradicted by a different decision. *Rhoden* involved the public policy of binding an owner to the amount of UIM on the vehicle in the wreck. When the Supreme Court discussed the "involvement" standard, it explained the UIM statute was "at best" ambiguous and that UIM's "personal and portable" character required allowing resident relatives to stack because they did not own the measuring the vehicle, which had no UIM. *Nationwide v. Rhoden*, 398 S.C. 393, 401-402, 728 S.E.2d 477, 481-482 (2012). The Court also expressly acknowledged a prior decision that noted the court *has never* required ownership as a prerequisite to stacking. *Id.* at 401 n.5, 728 S.E.2d at 481 n.5 (citing *Concrete Services v. U.S. Fidelity and Guaranty*, 331 S.C. 506, 512, 498 S.E.2d 865, 868 (1998)). The Court explained its prior discussion as dictum and governed by public policy considerations *Rhoden* did not present. *Id.*

All of the public policy considerations operate in Mrs. Windham's favor. She did not elect to put UIM on some of her policies and not others. She and her husband purchased UIM on all the vehicles they owned. True, she was not driving a vehicle she owned, but she would have been driving her own car if it was not disabled and inoperable. Everyone agrees the rental car was a short term substitute or replacement for the insured car. The common understanding of "substitute" and "replace" is to take the place of another.

Denying stacking also creates the undesirable situation where the insurance contract on Mrs. Windham's Camry is rendered illusory. Each of Mrs. Windham's four other policies gave her liability insurance, personal injury protection coverage, UIM coverage, and the rest of her purchased coverages while she was driving the rental. (R.pp.114, 119, 125, 129, 133, & 136). If Mrs. Windham cannot stack, Mrs. Windham's premiums on her Camry count for nothing the whole time the car sat in the shop. Her policy was worthless.

The proper construction of the relevant statutes requires treating this vehicle as Mrs. Windham's own vehicle, entitling her to stack. The "involvement" standard must be construed broadly, and public policy supports Mrs. Windham receiving the benefit of her bargain rather than rendering her insurance policy temporarily worthless.

II. State Farm's policy, when read naturally and in view of an insured's reasonable expectations, treats such a vehicle as the insured's own vehicle.

The policy's stacking language is found in four numbered paragraphs under the heading "If Other Underinsured Motor Vehicle Coverage Applies." (R.p.135). The first paragraph explains the policy is primary coverage if an insured suffers bodily injury while occupying "your car"—a defined term. *Id.* The second paragraph explains the policy otherwise supplies excess coverage. *Id.* The third numbered paragraph limits stacking if bodily injury occurs while the insured is occupying a motor vehicle not "owned by" you—another defined term—or any resident relative. *Id.* The fourth numbered paragraph discusses recovering UIM when a wreck occurs while occupying a vehicle that *is* "owned by you" but is not "your car." *Id.* In short, the policy limits stacking unless an insured is driving "your car," a vehicle "owned by you," or a vehicle "owned by" a resident relative.

a. The circuit court focused on the wrong language, overlooking that a temporary substitute car replaces "your car" and is *not* a "non-owned car."

The circuit court held ownership was required. This varies from the policy, which does not require actual ownership and defines "owned by" as including a leased vehicle as long as the lease extends for more than 31 consecutive days. (R.p.113). The definition does not, however, include a "temporary substitute vehicle." This was State Farm's argument to the circuit court, (R.p.31), and the court adopted State Farm's analysis. (R.p.7).

The problem with this reasoning is that it relies on the wrong language. Stacking is allowed when an insured is driving "your car." One set of key language is the definition of "temporary substitute car," explaining a temporary substitute car "replaces *your car*." (R. p.113) (emphasis in original). As a temporary substitute car, the rental stands in the place of Mrs. Windham's Camry, making her UIM primary under the first numbered paragraph in the "Other Insurance Coverage" heading. (R.p.135).

More key language is in the same definition. The policy explains that if a "temporary substitute car" also meets the definition of a "non-owned car," it is not to be considered a non-owned car, but is a "temporary substitute car" only. (R.p.113). When read naturally, this gives the impression that a temporary substitute car will be treated as an owned car even though the insured does not actually own it. The opposite of non-owned is owned.

The Supreme Court has explained that insurance contracts are to be read in accordance with the insured's reasonable expectations. *Bell v. Progressive*, 407 S.C. 565, 578-581, 757 S.E.2d 399, 405-407 (2014). This doctrine cannot serve as an end-around clear policy language, but insurance contracts are rarely models of clarity, and the doctrine does

not thwart any clear policy language here. A reasonable insured would read "substitute," "replace," and the clause explaining a "temporary substitute car" is not a "non-owned car" to mean that a "temporary substitute car" will be treated as an "owned car."

b. The District Court decision is correctly reasoned.

The circuit court's order did not mention the U.S. District Court decision supporting Mrs. Windham's argument. The District Court decision was driven by some of the same policy language Mrs. Windham has identified here—the fact that a "temporary substitute car" is not a "non-owned car." (R.pp.200-202).

State Farm argued the District Court case was distinguishable because the policy in that case did not define "owned by." (R.p.35, n.2). This fit with State Farm's overall approach to Mrs. Windham's case—State Farm's general argument was two-fold. First, it claimed the statutory law "prohibit[ed]" Mrs. Windham from stacking. (R.p.31). Next, it claimed Mrs. Windham's policy was not "broader than South Carolina law," (R.p.32), implying the State Farm policy the District Court analyzed was more generous than the statute allows. The circuit court adopted this two-step analysis. (R.pp.4-5).

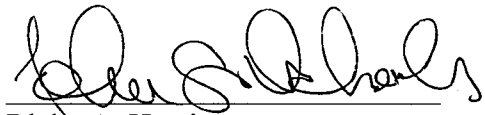
That reasoning collapses on itself—an insurance company cannot voluntarily permit something a statute *prohibits*. Not all coverages are limited by statute. This principle drove the decisions in *Jackson v. State Farm*, 288 S.C. 335, 337, 342 S.E.2d 603, 604 (1986) (involving "non-owned liability coverage"—coverage while driving a vehicle the insured does not own—which has no governing statute) and *Dorman v. Allstate*, 332 S.C. 176, 179, 504 S.E.2d 127, 129 (Ct. App. 1998) (involving collision coverage, which has no statutory limitations). Coverage may be negotiated, but statutory limitations on coverage control.

UIM coverage is limited by statute. It exists to provide coverage when an insured's damages exceed the amount the insured can recover from the at-fault driver, and an insurer cannot have different limitations than the ones in the UIM statute. The court has explained UIM coverage is subject to the UIM Act and insurance policy language inconsistent with the Act is void. *Carter*, 406 S.C. at 615, 753 S.E.2d at 518. The UIM statute sets the boundaries. The statute establishes the vehicle involved as the "measuring vehicle" for stacking and the statute prohibits stacking if none of the insured's vehicles are involved. It is important for insurers to follow these limitations. Otherwise, the coverages various insurance companies label as UIM are not the same and do not all follow the statute.

CONCLUSION

This Court should reverse. It should hold Mrs. Windham is entitled to stack, and it should remand this matter to circuit court for that court to consider Mrs. Windham's counterclaim for attorney's fees. See (R.p.18, ¶19).

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2016-CP-32-00815
Appellate Case No. 2016-002185

RECEIVED
SEP 19 2017
SC Court of Appeals

State Farm Mutual
Automobile Insurance Company ..... Respondent,

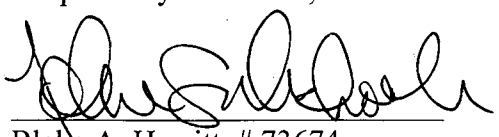
v.

Myra M. Windham ..... Appellant.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 211(a), SCACR, I certify that the *Brief of Appellant* and *Reply Brief* comply with the provisions of Rule 211(b), SCACR, and with the August 13, 2007, Supreme Court Order regarding personal data identifiers.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2016-2185

APPEAL FROM LEXINGTON COUNTY
Civil Action No. 2016-CP-32-815
G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED
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SC Court of Appeals

State Farm Mutual Automobile Insurance Company, Respondent,

vs.

Myra M. Windham, Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

I. **Whether The Circuit Court Correctly Held That Windham Is Not Entitled To Stack Pursuant To South Carolina Statutory And Common Law?**

II. **Whether The Circuit Court Properly Held That The Clear and Unambiguous Policy Language Prohibits Windham From Stacking?**

STATEMENT OF THE CASE

This is an appeal from a declaratory judgment action to determine whether Appellant Myra M. Windham ("Windham") is entitled to stack UIM coverages when she was involved in an automobile accident while driving a car that she does not own.

On October 5, 2012, Windham was involved in an automobile accident with Jennifer Mary McCardle ("McCardle") while operating a rental car owned by Enterprise Leasing Corporation. Windham was using the rental car as a temporary substitute vehicle following an automobile accident with Stephen Keever ("Keever") that occurred on September 29, 2012. Windham claims that she was injured as a result of both accidents and that her injuries exceed the amount of Keever's and McCardle's liability insurance. Windham filed suit against Keever and McCardle in March 2013 in the Lexington County Court of Common Pleas, c/a number 2013-CP-32-1043 ("underlying case").

In 2014, Windham served State Farm as UIM carrier, seeking recovery of UIM benefits against State Farm. State Farm issued five automobile policies to Myra Windham and/or Paul Windham. As a result of the October 5, 2012 accident, Windham has received $100,000 from McCardle's liability carrier and State Farm issued payment to Windham under the Underinsured Motorist ("UIM") Coverage in the amount of $100,000.00. Windham contends she is entitled to stack the remaining UIM limits from the other vehicles listed in the Policy Declarations because she was operating a "temporary substitute car." State Farm denies that Windham was entitled to stack coverage to recover UIM benefits under multiple policies, because none of her vehicles were involved in the October 5, 2012 accident.

To resolve the dispute, State Farm filed this declaratory judgment action, seeking a declaration that Windham is not permitted to stack UIM coverage under the terms of State Farm's Policies or South Carolina law because none of her vehicles were involved in the accident on October 5, 2012. Windham filed an answer and counterclaim, contending she was entitled to stack. Both sides moved for summary judgment, stipulating to the material facts and contending the question was a matter of law based on statutory and policy interpretation.

A hearing on the cross-motions for summary judgment was held on June 23, 2016. On August 6, 2016, the circuit court denied Windham's motion and granted State Farm's motion for summary judgment, finding Windham was not permitted to stack UIM coverages while operating a temporary substitute vehicle pursuant to South Carolina law and the unambiguous language found in the policies. The circuit court denied Windham's motion for reconsideration on September 6, 2016. Windham filed a notice of appeal on October 26, 2016.

STATEMENT OF FACTS

A. The Accidents

The following facts are stipulated by the parties. On September 29, 2012, Windham was involved in an automobile accident with Stephen Keever, while operating her Toyota Camry. Keever's liability carrier provided Windham a 2013 Dodge rental car as a temporary substitute vehicle following the accident. The rental car was paid for by Keever's liability carrier. On October 5, 2012, Windham was involved in an automobile accident with Jennifer Mary McCardle ("McCardle") while operating the Dodge rental car owned by Enterprise Leasing Corporation. None of the Windham household vehicles were involved in the McCardle accident. Windham was injured as a result of both accidents. She claims that her injuries exceed the amount of Keever's and McCardle's liability insurance. Windham filed suit against Keever and McCardle in March 2013 in the Lexington County Court of Common Pleas, c/a number 2013-CP-32-1043.

In 2014, Windham served State Farm as UIM carrier, seeking recovery of UIM benefits against State Farm. State Farm issued five automobile policies to Myra Windham and/or Paul Windham. As a result of the October 5, 2012 accident, Windham has received $100,000 from McCardle's liability carrier and State Farm issued payment to Windham under the Underinsured Motorist ("UIM") Coverage in the amount of $100,000.00. State Farm denied Windham's pursuit of additional coverage under the other four policies.

B. The Policies

State Farm issued five automobile policies to Myra Windham and/or Paul Windham, policy numbers 162 8590-D19-40C; 234 0370-A08-40M; 203 0864-F04-40C; 4629-A16-40Q; and 457 1883-B10-40A ("the Policy or Policies"), to Myra M. Windham and/or Paul

A. Windham. The terms of the policies are incorporated as if fully stated here. The Policies were in full force and effect on the date of the accident. The Policies included Underinsured Motorist ("UIM") Coverage limits in the amount of $100,000/$300,000/$50,000.

The UIM portions of the Policies provide:

> 3. If:
>
> a. ***you*** or any ***resident relative*** sustains ***bodily injury*** or ***property damage***:
>
> (1) while ***occupying*** a motor vehicle not ***owned by you*** or any ***resident relative***; or
>
> (2) while not ***occupying*** a motor vehicle; and
>
> b. Underinsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to **you** or any ***resident relative*** by the State Farm Companies apply to the same ***bodily injury*** or ***property damage***, then
>
> the maximum amount that may be paid from all such policies combined is the single highest limit provided by any one of the policies. ***We*** may choose one or more policies from which to make payment.

The policy further provides,

> 4. If ***you*** or any ***resident relative*** sustains ***bodily injury*** or ***property damage*** while ***occupying*** a motor vehicle other than ***your car*** that is ***owned by you*** or any ***resident relative***, then this coverage applies only to the extent of the underinsured motor vehicle coverage applicable to the motor vehicle that the ***insured*** was occupying.
>
> However, if the motor vehicle that the ***insured*** was ***occupying*** was not insured for underinsured motor vehicle coverage at the time of the accident, then the maximum amount that may be paid from all policies combined that are issued to ***you*** or any ***resident relative*** by the State Farm Companies is the minimum limits required by the Financial Responsibility Act. We may choose one or more policies from which to make payment.

The term "**owned by**" is defined in the Policy as:

> 1. owned by;

2. registered to; or

3. leased, if the lease is written for a period of 31 or more consecutive days, to.

The term "Your car" is defined in the policy as, "the vehicle shown under 'YOUR CAR' on the Declarations Page. ***Your car*** does not include a vehicle that ***you*** no longer own or lease."

STANDARD OF REVIEW

In cases with stipulated facts, this court reviews "whether the trial court properly applied the law to those facts." *Kay v. State Farm Mut. Auto. Ins. Co.*, 349 S.C. 446, 448, 562 S.E.2d 676, 678 (Ct. App. 2002) (quoting *WDW Props. v. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000)).

ARGUMENT

I. The Circuit Court Correctly Held That Windham Is Not Entitled To Stack Pursuant To South Carolina Statutory And Common Law.

For the first time in this matter, Windham asserts that her owned car was actually involved in the accident, such that she meets South Carolina's stacking requirements. This argument is not preserved for review. Moreover, the argument is meritless.

A. Windham's New Argument Regarding Her Car's Involvement Is Not Preserved For Appellate Review.

A review of the record demonstrates that Windham did not present this new argument regarding her own car's "involvement" in the accident to the circuit court. As such, it is not properly before this Court.

This Court has made clear that it "will not consider issues on appeal which have not been preserved for appellate review." *Ulmer v. Ulmer*, 369 S.C. 486, 632 S.E.2d 858 (2006). The issue preservation requirement ensures that the circuit court has the opportunity "to rule properly after it has considered all relevant facts, law, and arguments," *I'On, LLC v. Town of Mt. Pleasant,* 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000), and provides this Court "with a platform for meaningful appellate review," *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011). *See also Myers v. Myers*, 391 S.C. 308, 321, 705 S.E.2d 86, 93 (Ct. App. 2011) (finding that factual error

was not preserved for appellate review because the appellant failed to raise any issues regarding the court's factual findings in his Rule 59(e), SCRCP, motion); *Arnal v. Arnal,* 363 S.C. 268, 609 S.E.2d 821 (Ct. App. 2005) (finding wife's failure to raise family court's exclusion of parcel of land from marital estate in a Rule 59(e) motion precluded review of the issue on appeal).

"There is no error preservation exception allowing a party to bypass calling an erroneous ruling to the attention of the tribunal making it before appealing that ruling to a higher court." *State v. Oxner*, 391 S.C. at 134, 705 S.E.2d at 52 (2011) (affirming dismissal of the appeal because the appellant failed to move for reconsideration of a *sua sponte* ruling in the circuit court before appealing the ruling and thus "failed to preserve any issue related to that ruling for our appellate review").

By advancing her new argument in section I of her brief regarding the "involvement standard," Windham attempts to employ the very strategy repeatedly prohibited by the South Carolina Supreme Court. Windham cannot keep "an ace card up [her] sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give [her] another opportunity to prove [her] case." *I'On*, 338 S.C. at 422, 526 S.E.2d at 724-25.[1] Thus, the argument is not properly before the Court and should not be considered in this appeal.

[1] Though it is unclear from Windham's filings which order she is challenging, Respondent only addresses the circuit court's order dismissing the action because "the denial of a motion for summary judgment is not appealable, even after final judgment." *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 168, 580 S.E.2d 440, 444 (2003).

B. **Even if This Court Reaches The Merits of Windham's Newly Crafted Argument, The Circuit Court Nevertheless Correctly Held That Windham Is Not Entitled To Stack Pursuant to South Carolina Law.**

Even if this Court reaches the merits of Windham's newly crafted argument, the circuit court correctly held that pursuant to South Carolina law, State Farm is entitled to summary judgment as a matter of law, declaring that Windham is not entitled to stack UIM coverage.

Section 38-77-160 of the South Carolina Code states, in pertinent part:

> 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 S.C. Code Ann. § 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 in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute. *If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. 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 (emphasis added).

To ascertain whether an insured may stack under section 38-77-160, the court must determine whether the insured qualifies as a Class I or Class II insured. A Class I insured is an insured or named insured that has a vehicle involved in the accident. *South Carolina Farm Bureau Mut. Ins. Co. v. Mooneyham*, 304 S.C. 442, 442 n.1, 405 S.E.2d 396, 397 n.1 (1991); *Nationwide Mut. Ins. Co. v. Rhoden*, 728 S.E.2d 477 (2012). In *Rhoden*, the Supreme Court analyzed section 38-77-160 and reasoned that "'[h]aving a vehicle involved in the accident reasonably implies ownership of the vehicle." *Rhoden*,

728 S.E.2d at 481. A Class II insured is an insured whose vehicle was not involved in an accident. *Id.* Although Class I insureds may stack coverage, Class II insureds may not. *Fireman's Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 295 S.C. 538, 370 S.E.2d 85 (1988) (stating "where the insured is a member of the second class (none of the insureds vehicles is involved in the accident), UIM recovery is limited to the extent of coverage on one vehicle with UIM coverage").

At the time of the October 5, 2012 accident, Windham occupied a vehicle that was owned by Enterprise and was temporarily rented to her. It is stipulated that Windham had no ownership interest in this vehicle. South Carolina law is clear that, pursuant to section 38-77-160, in order to be a Class I insured, the insured must "have" a vehicle involved in the accident and "having" a vehicle involved in the accident reasonably implies ownership of the vehicle. *Rhoden*, 728 S.E.2d at 481. Because there is no dispute that Windham did not own the vehicle involved in the accident, she did not "have" a vehicle in the accident as is required by the statute. Thus, pursuant to section 38-77-160 and *Rhoden*, Windham "ha[d]" no vehicle in the accident and is necessarily a Class II insured, thereby prohibiting Windham from stacking UIM coverage.

Nevertheless, Windham attempts to eviscerate *Rhoden's* holding and dismiss its clear import. Windham argues that Rhoden's words don't mean what they say. Furthermore, Windham's newfound argument that her own vehicle actually was "involved" in the accident is unavailing. Essentially, Windham contends that this Court should adopt a broad definition of "involved" and conclude that Windham's owned car, the Camry, was involved in the second accident with McCardle accident, thereby

entitling her to stacking. However, this argument finds no support in South Carolina law or logic.

To further her argument, Windham relies on a wholly inapplicable case to diminish *Rhoden's* clear import. Windham's reliance upon *Merck v. Nationwide Mut. Ins. Co.*, 318 S.C. 22, 455 S.E.2d 697 (1995) is unavailing. In *Merck*, the insured's disabled vehicle was on a tow truck in the emergency lane. The insured was standing beside the tow truck with the tow truck driver when an intoxicated driver ran off the road, striking the insured, the tow truck driver, and the tow truck. *Id.* The Supreme Court affirmed this court's conclusion that the insured's vehicle was "involved in the accident" because it was present at the scene, and the accident had an effect on it when the car was thrown from the wrecker. Despite Windham's assertions to the contrary, *Merck's* holding and circumstances are wholly distinguishable from the facts at hand. Windham's car was not on the scene, nor did the accident have an effect on her car.[2]

Thus, Windham's newly-crafted argument regarding her car's "involvement" in the accident is neither properly before this Court nor persuasive under these circumstances. As such, the Court should affirm the circuit court's order granting State Farm summary judgment (R. pp.1-8).

[2] Furthermore, Windham is bound by her stipulations in this matter. She has stipulated that the rental car does not meet the definition of "your car" under the Policy. Yet, now Windham tries to contradict her own stipulations and argue, for the first time on appeal, that "your car" was involved in the accident. Furthermore, as discussed further in Section II, *infra*, Windham's "involvement" argument ignores and is contrary to the unambiguous policy language prohibiting stacking unless an insured is occupying a vehicle that meets either the definition of "your car" or a vehicle "owned by" "you" or a "resident relative" as discussed below.

II. The Circuit Court Properly Held That The Clear and Unambiguous Policy Language Prohibits Windham From Stacking.

In addition to South Carolina statutory and common law, the Policy language compels the same result—Windham is not entitled to stack under the circumstances presented.

"Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (citation omitted). "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary[,] and popular meaning." *Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha*, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977) (citation omitted). "[I]f the intention of the parties is clear, courts have no authority to torture the meaning of policy language to extend or defeat coverage that was never intended by the parties. *MGC Mgmt., Inc. v. Kinghorn Ins. Agency*, 336 S.C. 542, 549, 520 S.E.2d 820, 823 (Ct. App. 1999).

State Farm's policy language is clear and unambiguous. If an insured is occupying a motor vehicle other than "your car" that is "owned by" the insured or any resident relative, stacking is prohibited. "Owned by" is expressly defined in the Policy as "[] owned by; [] registered to; or [] leased, if the lease is written for a period of 31 or more consecutive days, to." The definition of "owned by" does not include a "temporary substitute car." This express definition of "owned by" and its application to the prohibition on stacking is consistent with section 38-77-160 and *Rhoden*. There is no basis in law or the Policy to alter the express definition of "owned by" to include "temporary substitute car" for purposes of stacking.

Windham has stipulated that the rental car involved in the accident does not meet either the definition of "your car" or the definition of "owned by" contained in the policy. Her stipulations on these facts are dispositive. In order for stacking to be allowed under the policy, she must be operating a car that is "owned by" an insured. Windham has stipulated that she did not own it, it was not registered to her and she was not leasing it for a period of more than 31 days. Therefore, the rental car does not meet the definition of "owned by", and she is not permitted to stack under the terms of the UIM coverage. State Farm's policy is consistent with 38-77-160, and Windham is not entitled to stack UIM coverages from her other policies, as the circuit court properly concluded.

However, Windham argues that State Farm's Policy is broader than South Carolina law, and allows stacking when an insured is driving a "temporary substitute car." In making this argument, Windham suggests the Court should look to the definitions of "temporary substitute car" and "non-owned car" definitions that have no bearing on whether an insured can stack UIM coverages.

The term "Non-Owned Car" is defined in the Policies as:

> [A] ***car*** that is in the lawful possession of ***you*** or any ***resident relative*** and that neither:
>
> 1. is owned by:
>
> a. ***you***;
>
> b. any ***resident relative***;
>
> c. any other ***person*** who resides primarily in your household; or
>
> d. an employer of any ***person*** described in a, b, or c, above; nor
>
> 2. has been operated by, rented by, or in the possession of:
>
> a. ***you***, or

b. any ***resident relative***;

during any part of each of the 31 or more consecutive days immediately prior to the date of the accident or loss.

The term "Temporary Substitute Car" is defined in the Policy as:

[A] ***car*** that is in the lawful possession of the person operating it and that:

1. Replaces ***your car*** for a short time while ***your car*** is out of use due to its:

    a. Breakdown;

    b. Repair;

    c. Servicing;

    d. Damage; or

    e. Theft; and

2. Neither ***you*** nor the ***person*** operating it own or have registered.

If a ***car*** qualifies as both a ***non-owned car*** and a ***temporary substitute car***, then it is considered a ***temporary substitute car*** only.

Windham contends that if a vehicle is a "temporary substitute car," it does not meet the definition of a "non-owned car," and therefore must be a vehicle that the insured owns for purpose of the UIM statute. However, as the circuit court correctly found, not only does the Policy fail to support this argument, the argument is nevertheless irrelevant to a person's ability to stack UIM coverage.

The UIM coverage portion of the Policy controls when determining who can stack UIM coverage. Nowhere in the UIM section of the Policy, other than an expanded definition of "insured," are the terms "temporary substitute car" and "non-owned car" used. Thus, Windham's argument regarding "temporary substitute car" is wholly irrelevant to the

issue of her ability to stack. Even if Windham's argument was relevant to her ability to stack UIM coverage, the argument nevertheless fails, because "owned by" is expressly defined in the Policy and does not include a "temporary substitute car." If the term "owned by" was meant to include a "temporary substitute car," State Farm would have included that in the definition of "owned by."

Moreover, one of the mandatory criteria of being a "temporary substitute car" is that the car must not be owned by the insured. By its very definition, a "temporary substitute car" cannot be one that the insured owns. Thus, Windham's argument that because a "temporary substitute car" does not meet the policy definition of a "non-owned car" it must therefore be an owned vehicle is categorically defeated by the very definition upon which she relies. Despite Windham's assertions to the contrary, it is clear that a vehicle that does not meet the policies definition of a "Non-owned car" does not automatically mean that it is considered an owned vehicle upon which UIM coverages can be stacked under 38-77-160 or the Policies. By not being included in the definition of a "non-owned car," a temporary substitute vehicle does not somehow morph into a car owned by the insured for the purpose of UIM coverage. Indeed, by its very definition "temporary substitute car" cannot be owned by the insured.

When the Policy is read as a whole, it is clear that the "Non-owned car" and "temporary substitute car" definitions do not and were not intended to apply to UIM coverage. In order to stack, the UIM policy unequivocally states that the vehicle being operated at the time of the accident must be "owned by" the insured and provides a definition for that term. A "temporary substitute car," by its very definition, cannot be owned by the insured. If it is owned by the insured, then it does not meet the definition of

a "temporary substitute car." The terms are mutually exclusive. Windham's attempt to defeat the meanings of both "temporary substitute car" and "owned by" requires one to torture the clear and unambiguous language of the Policy.

Windham has stipulated that the rental car was a "temporary substitute car" and that the rental car does not meet the definition of a "your car" or a vehicle "owned by" the insured. In conjunction with the clear policy language, Windham's stipulations (R., pp. 19-20) defeat her claim that she is entitled to stack UIM coverage.[3]

Windham further claims that State Farm's denial of stacking renders her insurance policy on her Camry illusory. This argument makes no sense – Windham is entitled to UIM coverage, per the contract, and is entitled to stacking only in certain limited circumstances—the policy is not illusory, it simply does not permit stacking *in this instance*.

Windham advances the doctrine of "reasonable expectations" as a reason to ignore the plain language of the policy and permit stacking. However, the Supreme Court has held that the doctrine of reasonable expectations will not be used to alter the plain terms of an insurance policy. *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 581, 757 S.E.2d 399, 407 (2014) (stating that "while we now hold that reasonable expectations

[3] Windham again relies on a federal court order in support of her position. See *State Farm and Casualty Insurance Company v. Carol Holmes*, C/A No. 6:14-4050-TMC (D.S.C. Jan. 7, 2016) (holding that because the insured's rental car was not a non-owned car, it was therefore a temporary substitute car and an owned car, and the insured was entitled to stack UIM coverage). However, the policy language at issue in that case is far different from the policy language in the case *sub judice*; in fact, the policy in the federal court case did not even define "owned by." Thus, the circumstances and policy language at issue in the two cases is clearly distinguishable. In any event, the district court order has no precedential value in this Court. *See Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 473 n.9, 674 S.E.2d 154, 161 (2009) (noting a federal court decision interpreting state law is not binding on state courts).

may be used as another interpretive tool, the doctrine cannot be used to alter the plain terms of an insurance policy").

The UIM policy does not permit and cannot be sensibly read to permit stacking when the insured is driving a "temporary substitute car." The policy language should not be tortured and altered by the Court to reach such an absurd result, and the circuit court should be affirmed.

CONCLUSION

The circuit court properly granted State Farm summary judgment in this declaratory judgment action. Pursuant to both South Carolina law and the clear and unambiguous Policy language, Windham is not entitled to stack UIM coverage because she was driving a "temporary substitute vehicle," and therefore did not have an owned vehicle involved in the accident. While Windham is certainly entitled to the 'personal and portable' UIM coverage in her Policy because she is an insured, she is not entitled to stack her coverage as the Policy, consistent with section 38-77-160, limits Windham's UIM coverage to the single highest UIM limit on any one of Windham's five policies. The circuit court correctly reached these conclusions and this Court should affirm.

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September 19, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2016-2185

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Civil Action No. 2016-CP-32-815
G. Thomas Cooper, Jr., Circuit Court Judge

State Farm Mutual Automobile Insurance Company (Respondent)..... Plaintiff

vs.

Myra M. Windham (Appellant)..... Defendant

CERTIFICATION OF RESPONDENT

Counsel for Respondent hereby certifies that the Final Brief of Respondent complies with Rule 211(b).

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September 19, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2016-CP-32-00815
Appellate Case No. 2016-002185

State Farm Mutual
Automobile Insurance Company ..... Respondent,

v.

Myra M. Windham ..... Appellant.

REPLY BRIEF

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ARGUMENT

In spite of what State Farm says, there are two reasons this Court should reverse.

First, the relevant statutes, when properly construed, treat this sort of vehicle as the insured's own vehicle, prohibiting any limitation on stacking. Precedent requires reading the relevant statutes honestly *and* with a lean in the insured's favor. Mrs. Windham's construction satisfies both requirements. The circuit court's construction does not.

Second, the policy itself, under a sensible and reasonable reading, honors the UIM statute and treats this sort of vehicle as the insured's own vehicle. The average person does not scour his insurance policy looking for holes; the average person thinks all UIM is the same. When a reasonable person reads State Farm's policy, the language implies a "temporary substitute car" will be treated as an "owned car" even though the insured does not own it. For all intents and purposes, Mrs. Windham's rental car *was* her car while her Camry was inoperable. It should be treated that way for stacking. After all, State Farm's policy labels the vehicle as a "substitute," not a "poor substitute" or a "substitute-light."

A. Mrs. Windham does not agree with—and respectfully, does not understand—State Farm's contention that her statutory construction argument was not presented to the circuit court.

The parties argued a single issue to circuit court: whether stacking was permitted or prohibited. Mrs. Windham argued stacking was required by the UIM statute and by State Farm's policy language, which *is* ambiguous. State Farm said it would "violate" the UIM statute to allow stacking. Some cases have several issues. This is not one of those cases.

Statutory arguments hinge on statutory language, and two statutes are in play here. The first is the statute differentiating Class I and Class II insureds. S.C. Code Ann. § 38-77-

30(7) (Supp. 2016). The second is the UIM statute, basing the right to stack on whether the insured's vehicle was "involved" in an accident. S.C. Code Ann. § 38-77-160 (Supp. 2016).

Both parties argued these statutes to the circuit court. State Farm said the UIM statute required the insured to own the vehicle involved in the wreck. (R.p.51, line 24 - p.52, line 2). State Farm also said stacking came down to whether Mrs. Windham was a Class I insured. (R.p.52, lines 2-6). Mrs. Windham followed suit, specifically arguing she was a Class I insured with respect to this vehicle (R.p.64, lines 1-2), and citing the UIM statute's requirement that her vehicle be involved. (R.pp.44-45). The circuit court had all of these arguments for its decision.

Mrs. Windham's brief to this Court argued the UIM statute's "involvement standard" is satisfied when a named insured is injured while occupying a temporary rental car provided after a wreck. (Brief of Appellant, pp.5-6). Mrs. Windham is unable to perceive how this argument is any different from her argument that she is a Class I insured while using a rental car temporarily substituting for and replacing her primary car. See, e.g. (R.p.63, line 20 - p.64, line 6). Involvement is determined by an insured's status as Class I or Class II. This is exactly the same argument. The words are different but the point is identical.

The circuit court held having a vehicle "involved" required the insured to own the vehicle in the wreck. (R.pp.4-5). Mrs. Windham's appellate brief contests this holding with the same arguments she made below. Mrs. Windham's summary judgment memo explained UIM coverage generally follows the insured and that the rental car should be treated as her own car because it was a temporary substitute for her own vehicle, which was inoperable. (R.pp.44-45). Mrs. Windham's appellate brief is making exactly the same argument when

it explains "substitution" and "replacement" are the critical concepts satisfying the UIM statute's involvement standard. (Brief of Appellant, p.6). All of these points drive in the same direction—this case's central dispute comes down to ownership versus causation. State Farm convinced the circuit court that "involved" requires owning the car in the wreck. Mrs. Windham says "involved" is describing a causal connection between the insured, the insured's vehicle, the insurance policy, and the accident. That connection is present here. Mrs. Windham was Class I with respect to this vehicle because the car she owned was inoperable and this rental car was furnished as a substitute.

B. On the merits, State Farm repeats the same errors it sold to the circuit court, selectively quoting precedent and missing the command to construe the UIM statute in the insured's favor.

State Farm's argument on the merits repeats the same errors from the circuit court's analysis.

First, State Farm continues to insist stacking requires an insured to own the vehicle involved in the wreck. State Farm pushed this argument to the circuit court, saying "[o]ur Courts have for years" held an insured "has to be driving a vehicle that they own." (R.p.51, line 24 - p.52, line 2). Later, State Farm argued Mrs. Windham was asking the circuit court to impermissibly "expand the law" by allowing "the law to say, well, you don't really have to own it to stack, you can be renting[.]" (R.p.66, lines 6-9). The circuit court agreed. (R.pp.4-5).

It is very difficult to reconcile the circuit court's holding with precedent. It is directly contrary to the Supreme Court's language in *Concrete Services Inc. v. U.S. Fidelity & Guaranty Co.*, noting "We have never required 'ownership' as a prerequisite to stacking."

331 S.C. 506, 513, 498 S.E.2d 865, 868 (1998). It is also directly contrary to State Farm's policy, which defines ownership to include a certain type of rented vehicle—a vehicle leased for more than 31 consecutive days. (R.p.113). An ownership standard is not *really* an ownership standard if people can define ownership to mean whatever they want.

The second error State Farm and the circuit court share on the merits is that they disregard the Supreme Court's acknowledgment that the UIM statute is "ambiguous at best," *Nationwide v. Rhoden*, 398 S.C. 393, 402, 728 S.E.2d 477, 482 (2012), and the command to read the statute broadly rather than narrowly. The UIM statute is remedial, enacted to benefit injured people, and it must be construed to further that purpose. *Carter v. Standard Fire*, 406 S.C. 609, 615, 753 S.E.2d 515, 518 (2013); *Floyd v. Nationwide*, 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005). "Involved" could be read as requiring the insured's vehicle to be damaged in the wreck. It could also be read to mean the insured's vehicle must be present at the scene and relate in some way to the wreck. Involved could further encompass the circumstances here—the insured's vehicle was inoperable, causing the insured to temporarily operate a rental vehicle furnished as a substitute and replacement. How does State Farm's narrow definition requiring actual ownership account for these variant readings? It ignores them. How does State Farm's argument construe the statute in Mrs. Windham's favor? It ignores that too.

C. State Farm has no good explanation for the three substantial weaknesses in its position: weakness of violation, expectation, and evisceration.

The argument State Farm sold to the circuit court has at least three core weaknesses, none of which have satisfactory answers.

i. "Violation" - the UIM statute.

First, State Farm's statutory argument directly conflicts with its policy language and with the decision from the U.S. District Court supporting Mrs. Windham's position. State Farm repeatedly told the circuit court allowing Mrs. Windham to stack when she was not driving a car she owned would "violate" the UIM statute. State Farm said this multiple times in writing, see (R.pp.25, 2, 7), and said it again at the hearing. (R.p.51, line 24 - p.52, line 2; p.66, lines 6-9). According to State Farm, allowing Mrs. Windham to stack would be illegal.

Yet, State Farm's policy does not require ownership. Instead, the policy defines "owned by" to include *some* non-owners—leases for more than 31 consecutive days—but not others. (R.p.113). This strikes Mrs. Windham as gamesmanship. State Farm cannot plausibly claim the law sets an ownership standard when ownership can mean whatever State Farm says it means. And how does State Farm handle the U.S. District Court's decision allowing stacking in precisely the same situation—a decision State Farm chose not to appeal? State Farm insists the policy language is different, but again, under State Farm's view of the statute, allowing stacking for a non-owned car is *unlawful*.

The correct viewpoint is the one Mrs. Windham is proposing. A policy cannot permit something the UIM statute prohibits. The UIM statute sets the boundaries for stacking.

ii. "Expectation" - the insured's understanding.

Second, State Farm never explains why Mrs. Windham, or any other reasonable person would not naturally expect a "temporary substitute car" to be treated in all instances as an "owned car."

The policy specifically says a temporary substitute car is not a "non-owned car." (R.p.113). Granted, the policy literally says such a vehicle "is a temporary substitute car only," *id.*, but it seems reasonable to assume most people expect something *not* being treated as a "non-owned car" to be treated as though it is "owned." The same definition also uses words like "replace" and "substitute." *Id.* A replacement is not always as good as the original, but if the discussion is about vehicles (as opposed to something like baseball players), it seems reasonable to conclude people expect their insurance policy to give a temporary replacement car the same terms applicable to their primary car, particularly when the temporary car is furnished out of necessity.

This car *was* Mrs. Windham's car for a short time. A reasonable person could plausibly read "substitute" and "replace" as signifying interchangeability; signaling "temporary substitute car" can be substituted everywhere "your car" appears in the policy. That is what terms like replace and substitute mean. That is why Mrs. Windham is a Class I insured for this vehicle. That is why she can stack.

iii. "Evisceration" - Mrs. Windham does not get her bargain.

Mrs. Windham got nothing for her car insurance premium while her primary vehicle—her Camry—was inoperable and in the shop. She and her husband paid State Farm premiums for five (5) vehicles. These policies had the same policy limits. The parties stipulated the policies had identical language. (R.p.19, ¶7).

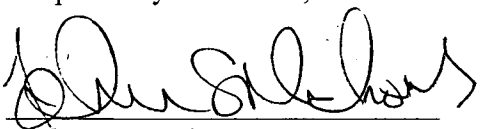
State Farm says Mrs. Windham's coverage on her Camry got her $100,000 in UIM benefits. This only true when one pretends blindness to the fact that Mrs. Windham would have been entitled to collect $100,000 in UIM under any of her other four (4) policies

regardless of who owned the car she was driving. Mrs. Windham paid to have primary UIM protection on five vehicles, but while her Camry was disabled, she was paying one of those premiums for nothing. If State Farm is right about stacking, Mrs. Windham would have done just as well to cancel her policy while her Camry was in the shop. State Farm's desired outcome strikes Mrs. Windham as creating all the wrong incentives. Mrs. Windham is not like the insureds in *Ruppe v. Auto-Owners*, 329 S.C. 402, 496 S.E.2d 631 (1998) and *Burgess v. Nationwide*, 373 S.C. 37, 644 S.E.2d 40 (2007)—Mrs. Windham does not want anything for which she has not paid. Short of hiring a lawyer to look for holes in her policy or refusing to accept a rental car, she could not have done anything more to protect herself.

CONCLUSION

This Court should reverse. It should hold Mrs. Windham is entitled to stack, and it should remand this matter to circuit court for that court to consider Mrs. Windham's counterclaim for attorney's fees. See (R.p.18, ¶19).

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2016-CP-32-00815
Appellate Case No. 2016-002185

RECEIVED
SEP 19 2017
SC Court of Appeals

State Farm Mutual
Automobile Insurance Company ..... Respondent,

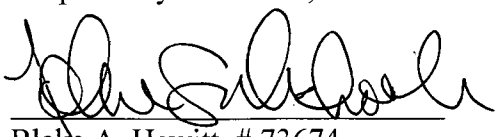
v.

Myra M. Windham ..... Appellant.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 211(a), SCACR, I certify that the *Brief of Appellant* and *Reply Brief* comply with the provisions of Rule 211(b), SCACR, and with the August 13, 2007, Supreme Court Order regarding personal data identifiers.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

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Sep 02 2020
SC Court of Appeals

Case No. 2016-CP-40-5885

Court of Appeals Case No.: 2016-002185

State Farm Mutual Automobile Insurance Company .....Respondent,

v.

Myra M. Windham.....Appellant.

RESPONDENT STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S PETITION FOR REHEARING

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Attorneys for Appellant State Farm Mutual Automobile Insurance Company

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent State Farm Mutual Automobile Insurance Company ("State Farm") hereby petitions for the Court for rehearing. The opinion of the Court (Opinion No. 5764) was filed August

19, 2020. The opinion reverses the grant of summary judgment in favor of the Appellant, finding that she is entitled to stack her underinsured motorist (UIM) coverage from her policies when she was in an automobile accident while driving a rental car. State Farm respectfully asserts that the issues set forth below warrant reconsideration by this Court.

I. INTRODUCTION

The Court's decision, in an unprecedented manner, reverses the grant of summary judgment in favor of the Appellant, allowing her to stack underinsured motorist benefits when she was involved in an automobile accident while driving a car that neither she nor any other insured under the policy owns. The decision fundamentally transforms stacking laws and eviscerates sound precedent which requires an insured or its spouse or resident relatives to "have" and therefore own a vehicle in the accident in order to stack. Furthermore, the Court ignores the plain and unambiguous terms the insurance policy while torturing others to extend coverage that was never intended by the parties. The Court also ignores the record and the stipulations of fact agreed upon by Appellant in reaching its decision.

Rehearing is warranted on multiple grounds. As detailed below, the Court's opinion misapprehends facts, law, and arguments critical to its determination. State Farm therefore respectfully requests that the Court grant its petition for rehearing.

II. STANDARD OF REVIEW

The purpose of a petition for rehearing "is to aid the court in deciding correctly a case heard by it." *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 172, 167 S.E. 234, 238 (1933). Where, as here, the existing record does not support the decision, a petition for rehearing is appropriate. *See, e.g.*, *Ashley II of Charleston, LLC v. PCS Nitrogen, Inc.*, 409 S.C. 487, 492 n.4, 763 S.E.2d 19, 21 n.4 (2014) ("If, based on the

current record, we have misapprehended the scope of PCS's indemnification claim against Ross, we invite a rehearing petition. . . "); *Arnold*, 168 S.C. at 172, 167 S.E. at 238 (court is "bound by the transcript of record as to the facts of the cause."). *See Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) ("In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument."); Rule 221(a), SCACR (petition shall state the points "supposed to have been overlooked or misapprehended"). These standards are met here.

III. ARGUMENT

A. The Court's Opinion Contradicts Years of Established Law Regarding the Rules and Limitations Concerning Stacking of Underinsured Motorist Coverage.

Respectfully, the Court significantly erred in its review, analysis and interpretation of South Carolina statutory and case law concerning UIM coverage, and a rehearing is necessary to protect the rights of State Farm and to prevent contradictory precedent.

Section 38-77-160 of the South Carolina Code states, in pertinent part:

> If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. 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.

Respectfully, there is nothing in the relevant statutes to support the Court's conclusion that the "relevant statutes treat the vehicle in question the same as the insured's own vehicle, prohibiting any limitation on stacking."

Our case law is clear that a Class I insured is an insured or named insured that has a vehicle involved in the accident. *South Carolina Farm Bureau Mut. Ins. Co. v. Mooneyham*, 304 S.C. 442, 442 n.1, 405 S.E.2d 396, 397 n.1 (1991); *Nationwide Mut. Ins. Co. v. Rhoden*, 728 S.E.2d 477 (2012). In *Rhoden*, the Supreme Court analyzed section 38-77-160 and reasoned that "'[h]aving a vehicle involved in the accident reasonably implies ownership of the vehicle." *Rhoden*, 728 S.E.2d at 481.

The Court relies heavily on *Concrete Servs., Inc. v. U.S. Fid. & Guar. Co.*, 331 S.C. 506, 513, 498 S.E.2d 865, 868 (1998) in reversing the trial court. *Rhoden* was decided twelve years after *Concrete Services*. As noted by *Rhoden*, *Concrete Services* suggested a contrary interpretation of section 38-77-160 but *Concrete Services* does not mandate reversal of the circuit court's sound order. In *Concrete Services*, the Supreme Court held that "prior cases requiring a person to 'have' a vehicle involved in the accident as a prerequisite to stacking mean only that a person must be a Class I insured with respect to a vehicle involved in the accident, i.e., they must be either the named insured, or the spouse or relative living in the same household with the named insured." 331 S.C. at 513, 498 S.E.2d at 868. Notably, the Supreme Court stated under the Class I insured definition, "it is patent that one may be the spouse or relative of a named insured and reside in the same household without owning the vehicle." *Id.*

The import of *Concrete Services* is clear: spouses and resident relatives of named insureds, though often times not the owner of the insured vehicle, are permitted to stack because they are resident relatives of someone who does own the vehicle. *Concrete Services'* "purely academic" dicta simply clarified that stacking, where applicable, is

permitted among the entire class of Class I insureds, so as to not penalize families who do not collectively own each insured vehicle under an insurance policy.[1]

The Court's misapplication of *Concrete Services* not only leads to an improper result here, it also opens the door for a host of other scenarios in which insureds such as Windham, operating borrowed cars for a variety of reasons are permitted to stack insurance policies, undoing well-established precedent, contradicting the legislative intent and purpose of section 38-77-160, and eviscerating the insurance policy language. It is the purview of the General Assembly, not the judicial branch, to decide if stacking should be expanded to the use of rental cars. *See Widenhouse v. Colson*, 405 S.C. 55, 58, 747 S.E.2d 188, 190 (2013) ("The primary source of the declaration of the public policy of the state is the General Assembly...." (quoting *Citizens' Bank v. Heyward,* 135 S.C. 190, 204, 133 S.E. 709, 713 (1925)) (internal quotation marks omitted); *State v. Corey D.*, 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000); *see also Keyserling v. Beasley*, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (this Court does "not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly").

At the time of the October 5, 2012 accident, Windham occupied a vehicle that was owned by Enterprise and was temporarily rented to her. It is stipulated that Windham had no ownership interest in this vehicle. South Carolina law is clear that, pursuant to section 38-77-160, in order to be a Class I insured, the insured must "have" a vehicle

[1] The facts of *Concrete Services* are also important: the insured corporation's sole shareholder's wife was injured in an automobile accident while operating a vehicle owned by the corporation. The Supreme Court held that the wife could not stack coverages from other vehicles owned by the corporation because the wife was not a spouse or family member of the named insured, a corporation. The vehicle's status under the policy was not at issue. Here, it is the status of vehicle, in conjunction with State Farm's specific policy language, which must lead the analysis and mandates a rehearing from this Court.

involved in the accident, and "having" a vehicle involved in the accident reasonably implies ownership of the vehicle, *Rhoden*, 728 S.E.2d at 481, by at least another Class I insured, *Concrete Services*, 331 S.C. at 513, 498 S.E.2d at 868. Because it is undisputed that neither Windham nor her husband owned the vehicle involved in the accident, she did not "have" a vehicle in the accident as is required by the statute. Respectfully, rehearing and reconsideration is warranted in this regard.

B. The Court's Opinion Tortures and Rewrites the Plain and Unambiguous Policy While Ignoring the Factual Stipulations.

In its opinion, the Court correctly notes that it "must enforce, not write, contracts of insurance and [it] must give policy language its plain, ordinary, and popular meaning." The Court also properly noted that it "should not torture the meaning of policy language to extend or defeat coverage that was never intended by the parties." Respectfully, however, the Court went on to break both of these cardinal rules of insurance policy interpretation, by invoking policy definitions that are not relevant to the analysis, while ignoring those that are. It then makes an unprecedented leap, neither supported in the policy language or statutory law that operating a "temporary substitute car" equates to having and owning a car involved in an accident.

At the time of the October 5, 2012 accident, Windham occupied a vehicle that was owned by Enterprise and was temporarily rented to her. It is stipulated that Windham had no ownership interest in this vehicle. She has stipulated that the rental car does not meet the definition of "your car" under the Policy. Yet, the Court now ignores those stipulations and finds essentially that Windham's own car was involved in the accident. Furthermore, the Court ignores the unambiguous policy language prohibiting stacking

unless an insured is occupying a vehicle that meets either the definition of "your car" or a vehicle "owned by" "you" or a "resident relative."

The UIM coverage portion of the Policy controls when determining who can stack UIM coverage. In order to stack, the UIM provisions unequivocally state that the vehicle being operated at the time of the accident must be "owned by" the insured and provides a definition for that term. A "temporary substitute car," by its very definition, cannot be owned by the insured. If it is owned by the insured, then it does not meet the definition of a "temporary substitute car." The terms are mutually exclusive. Yet the Court determined, in one short paragraph, that because the vehicle was a "temporary substitute car," Windham "had" a vehicle in the accident and is entitled to stack.

In reaching its abrupt conclusion, the Court relies in part on *State Farm Fire & Casualty Insurance Co. v. Holmes*, No. 6:14-CV-04050-TMC (D.S.C. Jan. 7, 2016), noting that *Holmes* "has similar facts to the present case." While *Holmes* also involved a rental car and an accident, the policy language at issue was very different than here. The policy in the federal court case did not define "owned by." Here, the policy language provides that stacking is *only* permitted when a car "owned by" an insured is involved, which is a defined term that specifically does not include "temporary substitute car." Thus, the Court's reliance on *Holmes* in conjunction with its failure to appreciate the differences in the policy language and definitions of the two circumstances is a significant error in a declaratory judgment action concerning policy provisions.

When the Policy at issue here is read as a whole, it is clear that the "temporary substitute car" definition does not and was not intended to apply to UIM coverage. However, the Court's leap concluding that because she was driving a "temporary

substitute car," Windham "had" a vehicle involved in the accident wholly lacks foundational reasoning, tortures the clear and unambiguous language of the policy and in fact rewrites the policy language. Moreover, the UIM sections and the definition of "owned by" and its application to the prohibition on stacking are consistent with section 38-77-160, *Rhoden*, and *Concrete Services*' clarification. Given the Court's misapplication of insurance policy construction rules and its perfunctory conclusion, rehearing is warranted.

IV. CONCLUSION

The Court's opinion ignores the precedent of *Rhoden* and broadens the dicta of *Concrete Services* to create new stacking laws permitting an insured to *stack* policies despite not having an owned vehicle involved in the accident. Moreover, the Court ignores the cardinals of insurance policy construction and manipulates the valid policy definitions and provisions related to UIM to find stacking coverage that was never intended to be there and which does not comport with section 38-77-160.

Reversing the circuit court's grant of summary judgment deprives State Farm of the benefit of its bargain and opens the door for numerous stacking scenarios unintended and unsupported by our well-established statutory laws and jurisprudence. Simply put, the Court's opinion has misapprehended, and at times ignored, the stipulated facts and the applicable law, expanding stacking in heretofore unpermitted ways.

For the foregoing reasons, State Farm respectfully submits that this Court misapprehended or overlooked matters of both law and fact that compel a different outcome in this case. Accordingly, rehearing is warranted and the Court should withdraw its current opinion and issue a new opinion affirming the grant of summary judgment in

favor of the State Farm, as requested by State Farm in its appellate briefing and in this Petition for Rehearing.

Respectfully submitted,

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STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

September 2, 2020

The South Carolina Court of Appeals

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Re: State Farm v. Myra Windham
Appellate Case No. 2016-002185

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V Claire Allen

CLERK

cc: The Honorable G. Thomas Cooper, Jr.

The South Carolina Court of Appeals

State Farm Mutual Automobile Insurance Company,
Respondent,

v.

Myra M. Windham, Appellant.

Appellate Case No. 2016-002185

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

James E. Lockemy C.J.

J.

J.

Columbia, South Carolina

cc:
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Stephen H. Cook, Esquire
Alfred Johnston Cox, Esquire

FILED
Dec 01 2020

Jessica Ann Waller, Esquire
The Honorable G. Thomas Cooper, Jr.

BNTD
BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
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August 30, 2017

VIA HAND DELIVERY
The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State Farm Mutual Automobile Insurance Company v. Myra M. Windham
Case Tracking No.: 2016-002185

Dear Ms. Kitchings:

Please find enclosed for filing the original unbound and fifteen (15) bound copies of the *Record on Appeal* in regards to this case. I have also enclosed a proof of service on counsel for the Respondent. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Erin Bridges
Paralegal
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC

/emb
Enclosures
cc: John K. Koon, Esquire
Stephen H. Cook, Esquire
A. Johnston Cox, Esquire
Jessica A. Waller, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2016-CP-32-0815

State Farm Mutual Automobile
Insurance Company, ... Respondent,

v.

Myra M. Windham . . . . . Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel with a copy of the *Record on Appeal* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

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Columbia, SC 29201

August 30, 2017

Erin Bridges
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2016-CP-32-00815
Appellate Case No. 2016-002185

State Farm Mutual
Automobile Insurance Company ..... Respondent,

v.

Myra M. Windham ..... Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON State Farm Mutual Automobile Insurance Company, Plaintiff, vs. Myra M. Windham, Defendant.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT Case No. 2016-CP-32-815 **ORDER GRANTING SUMMARY JUDGMENT MOTION OF STATE FARM AND DENYING SUMMARY JUDGMENT MOTION OF WINDHAM**

This matter comes before me upon cross Motions for Summary Judgment by the Plaintiff and Defendant. A hearing was held on June 23, 2016 at the Lexington County Courthouse. A. Johnston Cox appeared for State Farm and Steve Cook appeared for Windham. After consideration of the pleadings, stipulation of facts, the policies at issue, legal authority and arguments of the parties, State Farm's Motion for Summary Judgment is granted and Windham's Motion for Summary Judgment is denied.

State Farm brought this action seeking a determination from this Court that Windham is not permitted to stack UIM coverage under the terms of automobile policies issued to her by State Farm or South Carolina law because none of her vehicles were involved in an automobile accident that occurred on October 5, 2012. Windham counterclaimed seeking a determination from this Court that she is entitled to stack the UIM limits from policies issued by State Farm because the rental car she was driving at the time qualifies as a temporary substitute vehicle as defined in the policy.

FILED
2016 AUG -8 A 11:59
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

The parties stipulated to all material facts and asked the Court to determine the issue presented as a matter of law. The stipulated facts are as follows:

On September 29, 2012, Myra Windham ("Windham") was involved in an automobile accident with Stephen H. Keever ("Keever") while operating her 2007 Toyota Camry, which was repaired sometime after the October 5, 2012 accident. On October 5, 2012, six days after the first wreck, Ms. Windham was involved in an automobile accident with Jennifer Mary McArdle ("McArdle") while operating a 2013 Dodge rental car owned by Enterprise Leasing Corporation as a replacement for her automobile which was damaged and out of service from the September 29, 2012 accident. Windham was using the rental car on October 5, 2012, as a temporary substitute vehicle because her vehicle had been rendered inoperable following the accident on September 29, 2012. None of the Windhams' vehicles were involved in the accident on October 5, 2012.

Windham was injured as a result of the October 5, 2012, accident and claims that her injuries exceed the amount of McArdle's liability insurance, which has already been paid in full.

State Farm issued five automobile policies, policy numbers: 162-8590-D19-40C; 234-0370-A08-40M; 203-0684-F04-40C; 186-4629-A16-40Q; and 457-1883-B10-40A ("the Policy or Policies"), to Myra M. Windham and/or Paul A. Windham that were in effect at the time of the accidents. All of the Policies contain identical language.

Myra M. Windham was an insured under all of the aforementioned Policies issued by State Farm. State Farm has paid a single limit of UIM from one of the Windhams' policies in the amount of $100,000.00 to Windham as a result of the October 5, 2012 accident. Windham claims that she is entitled to stack UIM from the other State Farm policies up to an additional $400,000. State Farm disputes the ability to stack.

SJ #2

The Policy contains several defined terms that are issue in this case. The parties stipulated that the Dodge owned by Enterprise Leasing and rented to Windham at the time of the accident is not a vehicle shown under "YOUR CAR" on the Declarations Page of any of the Policies issued to Myra. M. Windham and/or Paul A. Windham. In addition, the Dodge rental car being driven by Windham at the time of the October 5, 2012 accident does not meet the definition of "owned by" in the policy. However, the Dodge rental car meets the definition of a "temporary substitute car" as defined by each of the Policies.

Summary judgment should be granted where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Gabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

"Stacking is generally permitted *unless limited by statute or by a valid policy provision.*" *Jackson v. State Farm Mut. Auto Ins. Co.*, 288 S.C. 335, 336, 342 S.E.2d 603, 604 (1986) (emphasis added). I find that the ability to stack UIM coverages is controlled by S.C. Code Ann. § 38-77-160 and unambiguous policy language contained within the Underinsured Motorist Coverage portion of the Policies. Based upon South Carolina law and the State Farm's policies at issue in this case, Windham is not permitted to stack UIM coverages when driving a car that meets the policy definition of a "temporary substitute car."

Section 38-77-160 of the South Carolina Code states, in pertinent part:

> 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 in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute. *If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. 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 (emphasis added).

To ascertain whether an insured may stack under section 38-77-160 the court must determine whether the insured qualifies as a Class I or Class II insured. A Class I insured is an insured or named insured that has a vehicle involved in the accident. *South Carolina Farm Bureau Mut. Ins. Co. v. Mooneyham*, 304 S.C. 442, 442 n.1, 405 S.E.2d 396, 397 n.1 (1991); *Nationwide Mut. Ins. Co. v. Rhoden*, 728 S.E.2d 477 (2012). In *Rhoden*, the Supreme Court analyzed section 38-77-160 and reasoned that "'[h]aving' a vehicle involved in the accident reasonably implies ownership of the vehicle." *Rhoden*, 728 S.E.2d at 481. A Class II insured is an insured whose vehicle was not involved in an accident. *Id.* Although Class I insureds may stack coverage, Class II insureds may not. *Fireman's Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 295 S.C. 538, 370 S.E.2d 85 (1988) (stating "where the insured is a member of the second class (none of the insureds vehicles is involved in the accident), UIM recover is limited to the extent of coverage on one vehicle with UIM coverage").

At the time of the October 5, 2012 accident, Windham occupied a vehicle that was owned by Enterprise and was temporarily rented to her. It is stipulated that Windham had no ownership interest in this vehicle and that none of her vehicles were involved in the accident. South Carolina law is clear that, pursuant to S.C. Code § 38-77-160, in order to be a Class I insured, the insured must "have" a vehicle involved in the accident and "having" a vehicle involved in the

accident reasonably implies ownership of the vehicle. *James*, 522 S.E. 2d at 868; *Rhoden*, 728 S.E.2d at 481. Because there is no dispute that Windham did not own the vehicle involved in the accident and none of her vehicles were involved in the accident, she did not "have" a vehicle in the accident as is required by the statute. Thus, pursuant to section 38-77-160 and *Rhoden*, Windham "ha[d]" no vehicle in the accident and is a necessarily Class II insured, thereby prohibiting Windham from stacking UIM coverage.

State Farm's policy does not conflict with 38-77-160 and does not voluntarily allow stacking of UIM coverages to a greater extent provided for in 38-77-160. The UIM portions of the Policies contain the following anti-stacking provision:

> 3. If:
>
> a. ***you*** or any ***resident relative*** sustains ***bodily injury*** or ***property damage***:
>
> (1) while ***occupying*** a motor vehicle not ***owned by you*** or any ***resident relative***; or
>
> (2) while not ***occupying*** a motor vehicle; and
>
> b. Underinsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to **you** or any ***resident relative*** by the State Farm Companies apply to the same ***bodily injury*** or ***property damage***, then
>
> the maximum amount that may be paid from all such policies combined is the single highest limit provided by any one of the policies. ***We*** may choose one or more policies from which to make payment.

"Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (citation omitted). "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary[,] and popular meaning." *Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha*, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977) (citation omitted). "[I]f the intention of the parties is clear, courts have no authority to torture the meaning of policy

language to extend or defeat coverage that was never intended by the parties. *MGC Mgmt., Inc. v. Kinghorn Ins. Agency*, 336 S.C. 542, 549, 520 S.E.2d 820, 823 (Ct. App. 1999). There is no basis in law or the Policy to alter the express definition of "owned by" to include "temporary substitute car" for purposes of stacking.

Under the clear and unambiguous language of the anti-stacking provision, if an insured sustains bodily injury while occupying a motor vehicle not "owned by" an insured, then the insured is prohibited from stacking and may only recover the single highest limit by any one of the policies. Conversely, it is clear that an insured must be driving a vehicle meeting the policy definition of "owned by" in order to stack UIM coverages from other State Farm policies.

The term "owned by" is defined in the Policy as:

1. owned by;
2. registered to; or
3. leased, if the lease is written for a period of 31 or more consecutive days, to.

It is undisputed that the Dodge rental car Windham was driving at the time of the accident does not meet the definition of "owned by" contained in the policy. Windham has stipulated that the rental car involved in the accident does not meet the definition of "owned by." Her stipulation on this issue of fact is dispositive of the issue presented.

Windham's argument that because the Dodge rental car meets the definition of a "temporary substitute car" she should be entitled to stack UIM coverages is unavailing. The term "Temporary Substitute Car" is defined in the Policy as:

[A] ***car*** that is in the lawful possession of the person operating it and that:

1. Replaces ***your car*** for a short time while ***your car*** is out of use due to its:
   a. Breakdown;

b. Repair;

c. Servicing;

d. Damage; or

e. Theft; and

2. Neither ***you*** nor the ***person*** operating it own or have registered.

If a ***car*** qualifies as both a ***non-owned car*** and a ***temporary substitute car***, then it is considered a ***temporary substitute car*** only.

Windham argues that because a temporary substitute car cannot be considered a "non-owned car" as defined by the policy, it is therefore converted into a car that the insured owns for purposes of stacking UIM coverage. However, a "temporary substitute car," by its very definition, cannot be owned by the insured. It is clear that a car that is classified as "temporary substitute car" serves a different purpose under the policy than a car that is classified as a "non-owned car," yet it is clear that both classifications involve cars that the insured does not own.

When the Policy is read as a whole, it is clear that the "Non-owned car" and "temporary substitute car" definitions do not and were not intended to apply to UIM coverage. In order to stack, the UIM policy unequivocally states that the vehicle being operated at the time of the accident must be "owned by" the insured and provides a definition for that term. The definition of "owned by" clearly does not include cars that are classified as either "temporary substitute cars" or "non-owned cars." If State Farm had intended that insureds could stack UIM coverages from other policies while the insured was using a "temporary substitute car" it would have included temporary substitute cars in the definition of "owned by."

In order for stacking to be allowed under the Policies, Windham must be operating a car that is "owned by" an insured. She has stipulated that she did not own it, it was not registered to her and she was not leasing it for a period of more than 31 days. Therefore, the rental car does

not meet the definition of "owned by", and Windham is not permitted to stack under the terms of the UIM coverage. State Farm's policy is consistent with S.C. Code Ann. § 38-77-160, and Windham is not entitled to stack UIM coverages from her other policies as a matter of law.

THEREFORE, IT IS ORDERED THAT: stacking of UIM coverages while Windham is operating a temporary substitute car is not permitted under South Carolina law or the State Farm policies at issue in this case. State Farm's Motion for Summary Judgment is GRANTED and Windham's Motion for Summary Judgment is DENIED.

AND IT IS SO ORDERED.

G. Thomas Cooper

Judge Thomas Cooper
Presiding Judge, Eleventh Judicial Circuit

G. Thomas Cooper, Jr.

August 1st, 2016
Columbia, South Carolina

FILED
2016 AUG -8 P 4:55
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
THE ELEVENTH JUDICIAL CIRCUIT

FILED
2016 SEP 26 A 11: 58
BETH A. CATOGG
CLERK OF COURT
LEXINGTON, SC

State Farm Mutual Automobile Insurance Company,

Plaintiff,

Vs.

Myra M. Windham,

Defendant.

Case No. 2016-CP-32-815

ORDER DENYING MYRA M. WINDHAM'S MOTION TO RECONSIDER

This matter comes before the Court by way of Defendant's September 1, 2016 Motion to Reconsider and Motion for Relief from Order granting Summary Judgment to State Farm and Denying Summary Judgment to Myra M. Windham pursuant to Rule 59(e), SCRCP. Specifically, Defendant asks this Court to reconsider its Order Granting State Farm's Motion for Summary Judgment and Denying Summary Judgment Motion of Windham dated August 1, 2016 and filed August 8, 2016.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Accordingly, this Court hereby **DENIES** Defendant's Motion under Rule 59(e), SCRCP, to reconsider this Court's Order that was filed August 8, 2016. Furthermore, pursuant to Rule 59(f), SCRCP, the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
September 26, 2016

G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

State Farm Mutual Automobile Insurance Company,

Plaintiff,

vs.

Myra M. Windham,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
Case No. 2016-CP-32-

2016CP3200815

JP FILED

COMPLAINT FOR DECLARATORY JUDGMENT (Non-Jury)

Plaintiff State Farm Mutual Automobile Insurance Company ("State Farm"), by and through its undersigned counsel, complaining of the Defendant Myra M. Windham ("Windham"), respectfully alleges and states as follows:

BACKGROUND

1. State Farm is an insurance company organized and existing under the laws of the state of Illinois, with its principal place of business in the County of McLean, and writes insurance policies in the state of South Carolina.

2. Defendant Myra M. Windham is a citizen and resident of Lexington County, South Carolina.

3. The loss and claims at issue in this case arise out of incidents that occurred in South Carolina. This case involves the interpretation of insurance policies entered into in South Carolina and that insures interests in South Carolina.

4. This is an insurance coverage action brought pursuant to the provisions of the South Carolina Uniform Declaratory Judgments Act, as codified in S.C. Code Ann. § 15-53-10, et. al. to determine whether automobile policies issued by State Farm to Windham permit stacking of

Underinsured Motorist Coverage arising out of an accident that occurred on October 5, 2012, while Windham was operating a rental car owned by Enterprise Leasing.

FACTUAL BACKGROUND

A. Automobile Accident

5. On October 5, 2012, Windham was involved in an automobile accident with Jennifer Mary McCardle ("McCardle") while operating a rental car owned by Enterprise Leasing.

6. Windham was using the rental car as a temporary substitute vehicle following an automobile accident that occurred on September 29, 2010.

7. Windham claims that she was injured as a result of the October 5, 2012 accident and that her injuries exceed the amount of McCardle's liability insurance.

B. The Policies

8. State Farm issued five automobile policies, policy numbers 162 8590-D19-40C; 234 0370-A08-40M; 203 0864-F04-40C; 4629-A16-40Q; and 457 1883-B10-40A ("the Policy or Policies"), to Myra M. Windham and/or Paul A. Windham. True and correct copies of the Policies are attached as **Exhibits A, B, C, D and E**, and the terms of the policies are incorporated as if fully stated here.

9. The Policies were in full force and effect on the date of the accident.

10. The Policies included Underinsured Motorist Coverage limits in the amount of $100,000/$300,000/$50,000.

11. The Policies provide:

> 3. If:
>
> a. ***you*** or any ***resident relative*** sustains ***bodily injury*** or ***property damage***:
>
> (1) while ***occupying*** a motor vehicle not ***owned by you*** or any ***resident relative***; or

(2) while not ***occupying*** a motor vehicle; and

b. Underinsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to **you** or any ***resident relative*** by the State Farm Companies apply to the same ***bodily injury*** or ***property damage***, then

the maximum amount that may be paid from all such policies combined is the single highest limit provided by any one of the policies. ***We*** may choose one or more policies from which to make payment.

12. The policy further provides,

4. If ***you*** or any ***resident relative*** sustains ***bodily injury*** or ***property damage*** while ***occupying*** a motor vehicle other than ***your car*** that is ***owned by you*** or any ***resident relative***, then this coverage applies only to the extent of the underinsured motor vehicle coverage applicable to the motor vehicle that the ***insured*** was occupying.

However, if the motor vehicle that the ***insured*** was ***occupying*** was not insured for underinsured motor vehicle coverage at the time of the accident, then the maximum amount that may be paid from all policies combined that are issued to ***you*** or any ***resident relative*** by the State Farm Companies is the minimum limits required by the Financial Responsibility Act. We may choose one or more policies from which to make payment.

13. The term "owned by" is defined in the Policy as:

1. owned by;

2. registered to; or

3. leased, if the lease is written for a period of 31 or more consecutive days, to.

14. The term "Your car" is defined in the policy as, "the vehicle shown under 'YOUR CAR' on the Declarations Page. ***Your car*** does not include a vehicle that ***you*** no longer own or lease."

FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)

15. The allegations contained in paragraphs 1 through 14 are incorporated as if fully stated here.

16. The Dodge being driven by Windham at the time of the accident is not a vehicle shown under "YOUR CAR" on the Declarations Page of any of the Policies issued to Myra M. Windham and/or Paul A. Windham.

17. The Dodge being driven by Windham at the time of the accident does not meet the definition of "owned by" in the policy.

18. Windham nor any other resident relative owned the Dodge rental car she was driving at the time of the accident.

19. The Dodge rental car being driven by Windham at the time of the accident was owned by Enterprise Leasing.

20. None of the Windhams' vehicles were involved in the accident on October 2, 2012.

21. As a result of the accident, State Farm has issued payment to Windham under the Underinsured Motorist Coverage in the amount of $100,000.

22. Windham contends that she is entitled to stack the remaining UIM limits from the other vehicles listed in the Policy Declarations.

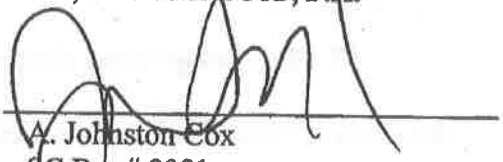
23. State Farm seeks a determination from this Court that Windham is not permitted to stack UIM coverage under the terms of State Farm's Policies or South Carolina law because none of her vehicles were involved in the accident on October 2, 2012.

24. State Farm is entitled to a judicial declaration that Windham is not permitted to stack UIM coverage under the terms of State Farm's Policies and the law of South Carolina.

WHEREFORE, a justiciable controversy exists between the parties in this action arising out of these claims. Therefore, State Farm asks this Court to construe and determine the rights of the parties and to declare whether Windham is permitted to stack UIM coverage under the terms of

State Farm's Policies or South Carolina law when none of her vehicles were involved in the accident on October 2, 2012. State Farm prays that it be granted the relief set forth above and any such other and further relief as this Court shall deem just and proper.

GALLIVAN, WHITE & BOYD, P.A.

By: 

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March 7, 2016

Attorney for Plaintiff

FILED
2016 MAR -7 PM 2:21

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
State Farm Mutual Automobile Insurance Company, Plaintiff, v. Myra M. Windham, Defendant.	)	C.A. No.: 2016-CP- 32- 0815 DEFENDANT MYRA WINDHAM'S ANSWER AND COUNTERCLAIM

The Defendant Myra Windham answers the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of Plaintiff's Complaint which is not hereinafter admitted or qualified below.

FILED
2016 MAR 17 A 11:42
CLERK OF COURT
LEXINGTON SC

FOR A SECOND DEFENSE

2. Defendant admits the allegations of paragraphs 1, 2 & 3.
3. The allegations of paragraph 4 state conclusions of law which the Defendant is not required to admit or deny.
4. Answering the allegations of paragraph 5, Defendant admits this lawsuit arises from an automobile accident and she craves reference to her Complaint in the underlying action for the exact allegations and denies the allegations of paragraph 5 to the extent they are inconsistent therewith.
5. Defendant admits the allegations of paragraph 6 and 7.
6. Answering the allegations of paragraph 8, Defendant admits that she had five automobile policies with State Farm to recover underinsured motorist (UIM) benefits and craves reference to the Complaint in the underlying action for the exact allegations and denies the allegations of paragraph 8 to the extent they are

inconsistent therewith. Furthermore, Defendant craves reference to the subject insurance policies for the exact terms and conditions and denies the allegations of these paragraphs to the extent they are inconsistent therewith. Defendant craves particular attention to the definitions and language regarding temporary substitute vehicle as set forth on page 5 of Plaintiff's policy which reads as follows:

> **Temporary substitute car** means a **car** that is in the lawful possession of the **person** operating it and that:
>
> 1. Replaces **your car** for a short time while **your car** is out of use due to its:
>
> a. breakdown;
>
> b. repair;
>
> c. servicing;
>
> d. damage; or
>
> e. theft; and
>
> 2. Neither **you** nor the **person** operating it own or have registered.
>
> If a **car** qualifies as both a **non-owned car** and a **temporary substitute car,** then it is considered a **temporary substitute car** only.

7. Defendant admits the allegations of paragraph 9 and 10.
8. Answering paragraphs 11, 12, 13 & 14, Defendant craves reference to the subject insurance policies for the exact terms and conditions and denies the allegations of these paragraphs to the extent they are inconsistent therewith.
9. Paragraph 15 requires no Answer.
10. Answering paragraphs 16 through 20, Defendant craves reference to the subject insurance policies for the exact terms and conditions and denies the allegations of

these paragraphs to the extent they are inconsistent therewith. Plaintiff selected certain language from the contract that has nothing to do with the stacking issue because Plaintiff is ignoring that the rental car was being used by Defendant as a temporary substitute vehicle.

11. As to paragraph 21, Defendant admits that a check was issued for a portion of the UIM limits available under her UIM coverage but demands the $400,000 balance under the remaining policies.

12. Defendant admits the allegations of paragraph 22.

13. Answering paragraph 23, Defendant Windham admits that Plaintiff is seeking an Order denying stacking but Plaintiff is seeking an Order allowing the policies to be stacked in accordance with the terms of the policy regarding a temporary substitute vehicle which permits stacking as determined by other courts in South Carolina with the same facts.

14. Defendant denies the allegations of paragraph 24 and demands strict thereof.

RESERVATION OF AFFIRMATIVE DEFENSES

15. Defendant reserves the right to amend her Answer or plead additional affirmative defenses after filing this pleading.

AS A THIRD DEFENSE BY WAY OF COUNTERCLAIM

(BREACH OF CONTRACT)

16. Defendant, Myra M. Windham, entered into five mutually binding insurance contracts with Plaintiff for UIM coverage.

17. Upon information and belief, Plaintiff has breached the terms of these policies by not allowing the Defendant to stack the subject policies; specifically, Plaintiff breached the terms of page 5 set forth above as well as page twenty-five (25) of the

policy (see policy attached as an exhibit to Plaintiff's complaint) under Insuring Agreement which states "we will pay damages for bodily injury or property damage an insured is legally entitled to collect from the owner or driver of an underinsured motor vehicle...".

18. Defendant prays that this Court declare that the Defendant was at all times relevant to the subject collision and incurred under the subject insurance policy and that she is entitled to stack UIM coverage under the five State Farm policies in question for a total of $500,000 in UIM coverage available.

19. In filing this suit for declaratory judgment, requiring the Defendant to hire counsel to represent her, Plaintiff is liable to the Defendant for this breach of contract in the amount of Defendant's attorneys' fees and costs incurred in the defense of this declaratory judgment action.

WHEREFORE, having fully answered Plaintiffs Complaint and Counterclaimed, Defendant prays that this Court declare that Plaintiff be denied the relief they are seeking and grant Defendant the relief she is seeking by allowing her to stack all her UIM policies for a total of $500,000. Defendant also requests that she be awarded reasonable attorneys' fees, costs and such further relief as the Court may deem reasonable and proper due to Plaintiff's breach of their obligations under the contract.

BY: _____

John K. Koon
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Telephone: (803)256-4082
Facsimile: (803) 254-0658
Attorneys for the Plaintiff

FILED
MAR 17 A 11:43
CLERK OF COURT
LEXINGTON, SC

Columbia, South Carolina

March 16, 2016

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

State Farm Mutual Automobile Insurance Company,

Plaintiff,

vs.

Myra M. Windham,

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
Case No. 20[illegible]CP-32-815

MB

ORIGINAL

STIPULATION OF FACTS

The Parties to this action stipulate to the following facts:

1. On September 29, 2012, Myra Windham ("Windham") was involved in an automobile accident with Stephen H. Keever ("Keever") while operating her 2007 Toyota Camry, which was repaired sometime after the October 5, 2012 accident.

2. On October 5, 2012, six days after the first wreck, Ms. Windham was involved in an automobile accident with Jennifer Mary McArdle ("McArdle") while operating a 2013 Dodge rental car from Enterprise Leasing Corporation as a replacement for her automobile which was damaged and out of service from the September 29, 2012 accident.

3. Windham was using the rental car on October 5, 2012, as a temporary substitute vehicle because her vehicle had been rendered inoperable following the accident on September 29, 2012.

4. The rental car was paid for by Keever's liability carrier, Allstate Insurance Company.

5. None of the Windhams' vehicles were involved in the accident on October 5, 2012.

6. Windham was injured as a result of the October 5, 2012, accident and claims that her injuries exceed the amount of McArdle's liability insurance, which has already been paid in full.

7. State Farm issued five automobile policies, policy numbers: 162-8590-D19-40C; 234-0370-A08-40M; 203-0684-F04-40C; 186-4629-A16-40Q; and 457-1883-B10-40A ("the Policy or Policies"), to Myra M. Windham and/or Paul A. Windham that were in effect at the time of the accidents. All of the Policies contain identical language.

8. The Policies attached as exhibits to the Complaint in this case are true and accurate copies of the Policies issued to Myra Windham.

9. Myra M. Windham was an insured under all of the aforementioned Policies issued by State Farm.

10. The 2013 Dodge rental car meets the definition of a "temporary substitute car" as defined by each of the Policies.

11. The Dodge owned by Enterprise Leasing and rented to Windham at the time of the accident is not a vehicle shown under "YOUR CAR" on the Declarations Page of any of the Policies issued to Myra. M. Windham and/or Paul A. Windham.

12. The Dodge rental car being driven by Windham at the time of the October 5, 2012 accident does not meet the definition of "owned by" in the policy.

13. State Farm has paid a single limit of UIM from one of the Windhams' policies in the amount of $100,000.00 to Windham as a result of the October 5, 2012 accident.

14. State Farm seeks a determination from this Court that Windham is not permitted to stack UIM coverage under the terms of State Farm's Policies or South Carolina law because none of her vehicles were involved in the accident on October 5, 2012.

15. Ms. Windham seeks a determination from this Court that she is entitled to stack the remaining UIM limits from her other Policies with State Farm because the 2013 Dodge rental car qualifies as a temporary substitute vehicle.

WE SO STIPULATE:

GALLIVAN, WHITE & BOYD, P.A.

By: _____

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Attorney for Plaintiff

June 22, 2016

WE SO STIPULATE:

KOON & COOK, PA

By: _____

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Attorneys for Defendant

June 22, 2016

ORIGINAL

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON State Farm Mutual Automobile Insurance Company, Plaintiff, vs. Myra M. Windham, Defendant.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT Case No. 2016-CP-32-815 **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

FILED
2016 MAY 27 PM 1:08
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

YOU WILL PLEASE TAKE NOTICE that Plaintiff (hereinafter sometimes referred to as "State Farm"), by and through the undersigned counsel, will move at a date and time to be set by the Court, but no sooner than ten (10) days after service hereof, for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment in Plaintiff's favor. The grounds for this motion are that there is no genuine issue of material fact and Plaintiff is not entitled to stack underinsured motorist coverage under the policy of insurance because she was operating a rental car at the time of her accident. Therefore, State Farm is entitled to summary judgment as a matter of law.

This motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and is based upon the pleadings that have been filed in this action, supporting memoranda of law filed or to be filed prior to the hearing, and the applicable common and statutory law of the State of South Carolina. State Farm further reserves the right to supplement this Motion prior to the hearing.

[Signature Page to Follow]

GALLIVAN, WHITE & BOYD, P.A.

By: _____

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Attorneys for Plaintiff

May 24, 2016

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)
)
State Farm Mutual Automobile Insurance Company,) Case No. 2016-CP-32-815
)
Plaintiff,) DEFENDANT'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT
)
vs.)
)
Myra M. Windham)
)
Defendant.)

FILED
2016 JUN -1 AM 11:27
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON S.C.
JP

YOU WILL PLEASE TAKE NOTICE that Defendant, Myra M. Windham, by and through the undersigned counsel, will move at a date and time to be set by the Court, but no sooner than ten (10) days after service hereof, for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment in Defendant's favor. The grounds for this motion are that there is no genuine issue of material fact and Defendant is entitled to stack the remainder of her underinsured motorist coverage because at the time of the accident she was operating a rental car, which qualifies as a "Temporary Substitute Car"; a type of car afforded UIM coverage under Ms. Windham's insurance policy. Therefore, Ms. Myra Windham is entitled to summary judgment as a matter of law.

This motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and is based upon the pleadings that have been filed in this action, supporting memoranda of law filed or to be filed prior to the hearing, and the applicable common and statutory law of the State of South Carolina. Ms. Windham further reserves the right to supplement this Motion prior to the hearing.

(Signature page to follow)

KOON AND COOK, P.A.

By: _____

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FILED
2016 JUN -1 AM 11:27
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

May 27, 2016

Columbia, South Carolina

Certificate of Service

I, the undersigned employee of Koon and Cook, P.A., do hereby certify that on May 27, 2016, I have caused the Notice of Motion and Motion for Summary Judgment to be served on the Plaintiff, by US Mail, Postage Prepaid to Plaintiff's Attorneys of record as follows:

A. Johnston Cox, Esquire
Jessica A. Waller, Esquire
Gallivan, White & Boyd
PO Box 7368
Columbia, SC 29202

_____

Jordan A. Cox

Date: May 27, 2016

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON State Farm Mutual Automobile Insurance Company, Plaintiff, vs. Myra M. Windham, Defendant.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT Case No. 2016-CP-32-815 **MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Plaintiff (hereinafter sometimes referred to as "State Farm"), by and through the undersigned counsel, submits this memorandum of law in support of its motion for summary judgment. As explained below, summary judgment is proper in State Farm's favor because no genuine issue of material fact exists and State Farm is entitled to summary judgment as a matter of law.

I. BACKGROUND

This is a declaratory judgment action to determine whether Myra M. Windham ("Windham") is entitled to stack UIM coverages when she was involved in an automobile accident while driving a car that she does not own. She should not be entitled to stack coverages, because allowing her to do so under these circumstances violate statutory law of South Carolina and the provisions of the policies issued by State Farm.

On October 5, 2012, Windham was involved in an automobile accident with Jennifer Mary McCardle ("McCardle") while operating a rental car owned by Enterprise Leasing Corporation. Windham was using the rental car as a temporary substitute vehicle following an automobile accident with Stephen Keever ("Keever") that occurred on September 29, 2012. Windham claims

that she was injured as a result of both accidents and that her injuries exceed the amount of Keever's and McCardle's liability insurance. Windham filed suit against Keever and McCardle in March 2013 in the Lexington County Court of Common Pleas, c/a number 2013-CP-3201043 ("underlying case").

In 2014, Windham served State Farm as UIM carrier, seeking recovery of UIM benefits against State Farm. State Farm issued five automobile policies to Myra Windham and/or Paul Windham. As a result of the October 5, 2012 accident, Windham has received $100,000 from McCardle's liability carrier and State Farm issued payment to Windham under the Underinsured Motorist ("UIM") Coverage in the amount of $100,000.00. Windham contends that she is entitled to stack the remaining UIM limits from the other vehicles listed in the Policy Declarations because she was operating a "temporary substitute car." State Farm disputes that Windham was entitled to stack coverage to recover UIM benefits under multiple policies because none of her vehicles were involved in the October 5, 2012 accident.

State Farm filed this declaratory judgment action, seeking a declaration that Windham is not permitted to stack UIM coverage under the terms of State Farm's Policies or South Carolina law because none of her vehicles were involved in the accident on October 5, 2012.[1] This declaration is sought based upon the following grounds: (1) the Dodge being driven by Windham at the time of the accident is not a vehicle shown under "YOUR CAR" on the Declarations Page of any of the Policies issued to Myra M. Windham and/or Paul A. Windham; (2) the Dodge being driven by Windham at the time of the accident does not meet the definition of "owned by" in the policy; (3) neither Windham nor any other resident relative owned the Dodge rental car she was driving at the time of the accident; (4) the Dodge rental car being driven by Windham at the time of the accident

[1] The underlying case has been stayed pending the resolution of this action.

was owned by Enterprise Leasing; and (5) none of the Windhams' vehicles were involved in the accident on October 5, 2012.

II. THE POLICIES

State Farm issued five automobile policies to Myra Windham and/or Paul Windham, policy numbers 162 8590-D19-40C; 234 0370-A08-40M; 203 0864-F04-40C; 4629-A16-40Q; and 457 1883-B10-40A ("the Policy or Policies"), to Myra M. Windham and/or Paul A. Windham. True and correct copies of the Policies are attached as **Exhibits A, B, C, D and E**, and the terms of the policies are incorporated as if fully stated here. The Policies were in full force and effect on the date of the accident. The Policies included Underinsured Motorist ("UIM") Coverage limits in the amount of $100,000/$300,000/$50,000.

The UIM portions of the Policies provide:

> 3. If:
>
> a. ***you*** or any ***resident relative*** sustains ***bodily injury*** or ***property damage***:
>
> (1) while ***occupying*** a motor vehicle not ***owned by you*** or any ***resident relative***; or
>
> (2) while not ***occupying*** a motor vehicle; and
>
> b. Underinsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to **you** or any ***resident relative*** by the State Farm Companies apply to the same ***bodily injury*** or ***property damage***, then
>
> the maximum amount that may be paid from all such policies combined is the single highest limit provided by any one of the policies. ***We*** may choose one or more policies from which to make payment.

The policy further provides,

> 4. If ***you*** or any ***resident relative*** sustains ***bodily injury*** or ***property damage*** while ***occupying*** a motor vehicle other than ***your car*** that is ***owned by you*** or any ***resident relative***, then this coverage applies only to the extent of the underinsured motor vehicle coverage applicable to the motor vehicle that the ***insured*** was occupying.

> However, if the motor vehicle that the ***insured*** was ***occupying*** was not insured for underinsured motor vehicle coverage at the time of the accident, then the maximum amount that may be paid from all policies combined that are issued to ***you*** or any ***resident relative*** by the State Farm Companies is the minimum limits required by the Financial Responsibility Act. We may choose one or more policies from which to make payment.

The term "owned by" is defined in the Policy as:

1. owned by;
2. registered to; or
3. leased, if the lease is written for a period of 31 or more consecutive days, to.

The term "Your car" is defined in the policy as, "the vehicle shown under 'YOUR CAR' on the Declarations Page. ***Your car*** does not include a vehicle that ***you*** no longer own or lease."

III. LAW/ANALYSIS

A. Summary Judgment Standard

Summary judgment should be granted where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Gabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

"When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in a light most favorable to the non-moving party." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E.2d 68, 70 (2007). However, "[o]nce the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the

pleadings[,] [but] must come forward with specific facts showing there is a genuine issue for trial." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003). Finally, when reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted. *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008).

B. State Farm is Entitled to Summary Judgment as a Matter of Law

For the reasons set forth below, State Farm is entitled to summary judgment as a matter of law.

1. The Burden of Proof is on Windham to Demonstrate She is Entitled to Stack UIM Benefits Under the Policies.

As an initial matter, Windham has the burden of proving that she is entitled to UIM stacking coverage under the policies.

"The burden of proof is on the insured to show that a claim falls within the coverage of an insurance contract. The insurer bears the burden of establishing exclusions to coverage." *Gamble v. Travelers Ins. Co.*, 251 S.C. 98, 160 S.E.2d 523 (1968). The fact that State Farm initiated the declaratory judgment action does not alter the burden of proof. *See Penn Am. Ins. Co. v. Valade*, 28 Fed. Appx. 253 (4th Cir. (N.C.) 2002) (stating that party seeking coverage under an insurance policy bears the burden of proving that any claimed damage falls within the policy's terms and this burden of proof remains unchanged when the insurer initiates a declaratory judgment proceeding concerning its coverage obligations under an insurance policy). Thus, in order to survive summary judgment, Windham must meet the burden of proof in demonstrating that she is entitled to stack UIM benefits.

2. Because Windham was Operating a Rental Car at the time of the Accident, she is not Entitled to Stack UIM Benefits Under the Policies.

Pursuant to the policy language and South Carolina law, State Farm is entitled to summary judgment as a matter of law, declaring that Windham is not entitled to stack UIM coverage.

Section 38-77-160 of the South Carolina Code states, in pertinent part:

> 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 in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute. *If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. 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 (emphasis added).

To ascertain whether an insured may stack under section 38-77-160 the court must determine whether the insured qualifies as a Class I or Class II insured. A Class I insured is an insured or named insured that has a vehicle involved in the accident. *South Carolina Farm Bureau Mut. Ins. Co. v. Mooneyham*, 304 S.C. 442, 442 n.1, 405 S.E.2d 396, 397 n.1 (1991); *Nationwide Mut. Ins. Co. v. Rhoden*, 728 S.E.2d 477 (2012). In *Rhoden*, the Supreme Court analyzed section 38-77-160 and reasoned that "'[h]aving' a vehicle involved in the accident reasonably implies ownership of the vehicle." *Rhoden*, 728 S.E.2d at 481. A Class II insured is an insured whose vehicle was not involved in an accident. *Id.* Although Class I insureds may stack coverage, Class II insureds may not. *Fireman's Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 295 S.C. 538, 370 S.E.2d 85 (1988) (stating "where the insured is a member of the second class

(none of the insureds vehicles is involved in the accident), UIM recover is limited to the extent of coverage on one vehicle with UIM coverage").

At the time of the October 5, 2012 accident, Windham occupied a vehicle that was owned by Enterprise and was temporarily rented to her. It is stipulated that Windham had no ownership interest in this vehicle. South Carolina law is clear that, pursuant to S.C. Code § 38-77-160, in order to be a Class I insured, the insured must "have" a vehicle involved in the accident and "having" a vehicle involved in the accident reasonably implies ownership of the vehicle. *James*, 522 S.E. 2d at 868; *Rhoden*, 728 S.E.2d at 481. Because there is no dispute that Windham did not own the vehicle involved in the accident, she did not "have" a vehicle in the accident as is required by the statute. Thus, pursuant to section 38-77-160 and *Rhoden*, Windham "ha[d]" no vehicle in the accident and is a necessarily Class II insured, thereby prohibiting Windham from stacking UIM coverage.

The Policy language compels the same result. Under the terms of the UIM policy coverage, if an insured sustains bodily injury while occupying a motor vehicle not "owned by" an insured, then the insured is prohibited from stacking and may only recover the single highest limit by any one of the policies. "Owned by" is expressly defined in the Policy as "[] owned by; [] registered to; or [] leased, if the lease is written for a period of 31 or more consecutive days, to." The definition of "owned by" does not include a "temporary substitute car." This express definition of "owned by" and its application to the prohibition on stacking is consistent with section 38-77-160 and *Rhoden*.

It is undisputed that the Dodge rental car Windham was driving at the time of the accident does not meet the definition of "owned by" contained in the policy. Windham has stipulated that the rental car involved in the accident does not meet the definition of "owned by."

Her stipulation on this issue of fact is dispositive of the issue presented. In order for stacking to be allowed under the policy, she must be operating a car that is "owned by" an insured. Windham has stipulated that she did not own it, it was not registered to her and she was not leasing it for a period of more than 31 days. Therefore, the rental car does not meet the definition of "owned by", and she is not permitted to stack under the terms of the UIM coverage. State Farm's policy is consistent with 38-77-160, and Windham is not entitled to stack UIM coverages from her other policies.

However, Windham argues that State Farm's Policy is broader than South Carolina law, and allows stacking when an insured is driving a "temporary substitute car." In making this argument she relies on the definitions of "temporary substitute car" and "non-owned car," definitions that have no bearing on whether an insured can stack UIM coverages.

> The term "Non-Owned Car" is defined in the Policies as:
>
> [A] ***car*** that is in the lawful possession of ***you*** or any ***resident relative*** and that neither:
>
> 1. is owned by:
>
> a. ***you***;
>
> b. any ***resident relative***;
>
> c. any other ***person*** who resides primarily in your household; or
>
> d. an employer of any ***person*** described in a, b, or c, above; nor
>
> 2. has been operated by, rented by, or in the possession of:
>
> a. ***you***, or
>
> b. any ***resident relative***;
>
> during any part of each of the 31 or more consecutive days immediately prior to the date of the accident or loss.

The term "Temporary Substitute Car" is defined in the Policy as:

[A] ***car*** that is in the lawful possession of the person operating it and that:

1. Replaces ***your car*** for a short time while ***your car*** is out of use due to its:
    a. Breakdown;
    b. Repair;
    c. Servicing;
    d. Damage; or
    e. Theft; and
2. Neither ***you*** nor the ***person*** operating it own or have registered.

If a ***car*** qualifies as both a ***non-owned car*** and a ***temporary substitute car***, then it is considered a ***temporary substitute car*** only.

Windham contends that if a vehicle is a "temporary substitute car," it does not meet the definition of a "non-owned car," and therefore must be a vehicle that the insured owns for purpose of the UIM statute. However, not only does the Policy fail to support this argument, the argument is nevertheless irrelevant to a person's ability to stack UIM coverage.

The UIM coverage portion of the Policy controls when determining who can stack UIM coverage. Nowhere in the UIM section of the Policy, other than an expanded definition of "insured," are the terms "temporary substitute car" and "non-owned car" used. Thus, Windham's argument regarding "temporary substitute car" is wholly irrelevant to the issue of her ability to stack.

Even if Windham's argument was relevant to her ability to stack UIM coverage, the argument nevertheless fails. As described above, the term "owned by" is expressly defined in the policy and does not include a "temporary substitute car." If the term "owned by" was meant to

include a "temporary substitute car," State Farm would have included that in the definition of "owned by."

"Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (citation omitted). "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary[,] and popular meaning." *Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha*, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977) (citation omitted). "[I]f the intention of the parties is clear, courts have no authority to torture the meaning of policy language to extend or defeat coverage that was never intended by the parties. *MGC Mgmt., Inc. v. Kinghorn Ins. Agency*, 336 S.C. 542, 549, 520 S.E.2d 820, 823 (Ct. App. 1999). There is no basis in law or the Policy to alter the express definition of "owned by" to include "temporary substitute car" for purposes of stacking.

Windham's reasoning fails under the plain language of the Policy. First, one of the mandatory criteria of being a "temporary substitute car" is that the car must not be owned by the insured. *See* Policy (defining "temporary substitute car" as "a ***car*** that is in the lawful possession of the person operating it and . . . "[n]either you nor the person operating it own or have registered"). Stated another way, by its very definition, a "temporary substitute car" cannot be one that the insured owns. Thus, Windham's argument that because a "temporary substitute car" does not meet the policy definition of a "non-owned car" it must therefore be an owned vehicle is categorically defeated by the very definition upon which she relies.

Rather, it is clear that a vehicle that does not meet the policies definition of a "Non-owned car" does not automatically mean that it is considered an owned vehicle upon which UIM coverages can be stacked under 38-77-160 or the Policies. By not being included in the

definition of a "non-owned car," a temporary substitute vehicle does not somehow morph into a car owned by the insured for the purpose of UIM coverage. By its very definition "temporary substitute car" cannot be owned by the insured. Windham's attempt to defeat the meanings of both "temporary substitute car" and "owned by" requires a torturing on the policy and is in degradation to the plain and unambiguous terms of the Policy.

When the Policy is read as a whole, it is clear that the "Non-owned car" and "temporary substitute car" definitions do not and were not intended to apply to UIM coverage. In order to stack, the UIM policy unequivocally states that the vehicle being operated at the time of the accident must be "owned by" the insured and provides a definition for that term. As discussed above, "temporary substitute car," by its very definition, cannot be owned by the insured. If it is owned by the insured, then it does not meet the definition of a "temporary substitute car." The terms are mutually exclusive. Windham has stipulated that the rental car was a "temporary substitute car" and that the rental car does not meet the definition of a vehicle "owned by" the insured. In conjunction with the clear policy language, Windham's stipulations defeat her claim that she is entitled to stacking.

The UIM policy does not permit and cannot be sensibly read to permit stacking when the insured is driving a "temporary substitute car." The policy language should not be tortured and altered by the Court to reach such an absurd result.[2]

[2] It is anticipated that Windham will rely on a recent federal court order in *State Farm and Casualty Insurance Company v. Carol Holmes*, C/A No. 6:14-4050-TMC (D.S.C. Jan. 7, 2016), wherein the district court denied the insurer summary judgment and granted the insured summary judgment on a similar issue. The district court held that because the insured's rental car was not a non-owned car, it was therefore a temporary substitute car and an owned car, and the insured was entitled to stack UIM coverage. However, the policy language at issue in that case is far different from the policy language in the case *sub judice*; in fact, the policy in the federal court case did not even define "owned by." (*See* **Exhibit F**). Thus, the circumstances and policy language at issue in the two cases is clearly distinguishable. In any event, the district

IV. CONCLUSION

In sum, section 38-77-160 provides that where an insured "is protected by [UIM coverage], the policy shall provide he is protected only to the extent of the coverage he *has* on the vehicle involved in the accident," i.e., only where a vehicle is owned by the insured. (emphasis added). State Farm's UIM stacking limitation is consisted with this provision. Per the plain and clear meaning of the Policy language, an insured cannot stack UIM coverage unless operating a vehicle "owned by" the insured or "your car," as expressly identified in the Declarations. The plain and unambiguous definitions of "owned by" and "your car" do not include "temporary substitute car," and the term "temporary substitute car" expressly excludes cars owned by the insured. Windham is certainly entitled to the 'personal and portable' UIM coverage in her Policy because she is an insured. State Farm has already paid the single $100,000 limit that she is entitled to receive. Nevertheless, the Policy, consistent with § 38-77-160, limits Windham's UIM coverage to the single highest UIM limit on any one of Windham's five policies.

Therefore, State Farm is entitled to summary judgment as a matter of law and Windham's motion for summary judgment should be denied.

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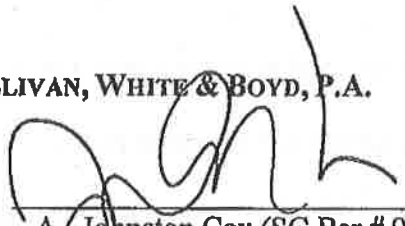
court order has no precedential value in this Court. *See Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 473 n.9, 674 S.E.2d 154, 161 (2009) (noting a federal court decision interpreting state law is not binding on state courts).

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

By: 

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June 22, 2016

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Plaintiff, vs. MYRA M. WINDHAM, Defendant.	)	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT Civil Action No. 2016-CP-32-815 **Defendant's Memorandum in Support of Her Motion for Summary Judgment and In Opposition to Plaintiff's Motion for Summary Judgment**

INTRODUCTION

This memorandum is in support of Defendant, Myra Windham's Motion for Summary Judgment in regard to her counterclaim and in opposition to Plaintiff, State Farm Mutual Automobile Insurance (hereinafter referred to as "State Farm") Motion for Summary Judgment. This is a Declaratory Judgment action in which Ms. Windham claims that she is entitled to stack Underinsured Motorist Coverage from her policies with State Farm.

FACTS

This is a declaratory judgment action arising from a suit concerning two separate automobile accidents, both of which occurred in Lexington County, South Carolina on September 29, 2012, and October 5, 2012, respectively. (Stip. of Facts ¶¶ 1-2). Defendant, Myra Windham, who had been involved in both wrecks, originally filed an action against Stephen H. Keever and Jennifer M. McArdle in the Court of Common Pleas of Lexington County (C/A No.: 13-CP-32-1043). The state-court-action sought damages for personal injuries sustained by Windham in the two

wrecks. Accordingly, all claims concerning the wreck on September 29, 2012, have been completely settled; only claims related to the wreck on October 5, 2012, are currently at issue.

On October 5, 2012, Windham was driving a rental car because her vehicle had been rendered inoperable as a result of the first collision on September 29, 2012. (Stip. of Facts ¶ 3). At this time, State Farm insured five vehicles owned by Ms. Windham under the following policy numbers: 162-8590-D19-40C, 234-0370-A08-40M, 203-0864-F04-40C, 186-4629-A16-40Q, and 457-1883-B10-40A. It is undisputed that on October 5, 2012, each of the aforementioned policies was in full force and effect, and each provided the same amount of UIM. (Stip. of Facts ¶ 7). It is also undisputed that State Farm issued payment to Ms. Windham under her UIM coverage in the amount of $100,000. (Stip of Fact ¶ 13). However, State Farm refuses to pay the policy limits of any of her other UIM policies, and is instead seeking a declaration that the remaining UIM policies cannot be stacked because Windham was operating a non-owned rental car at the time of the accident, despite the fact that Ms. Windham was driving a rental car as a temporary substitute for her owned vehicle. (Pl.'s Mot. for Summ. J.).

PROCEDURAL STANDARD

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a party's motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file..., show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." S.C.R. Civ. P. 56(c). The South Carolina Supreme Court has held that when deciding on such a motion, a court "must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party; however, the opposing party may not rest upon mere allegations or denials, but must respond with

specific facts showing a genuine issue." *City of Columbia v. Town of Irmo*, 316 S.C 193, 195, 447 S.E.2d 855, 857 (1994).

ARGUMENT

I. THE RENTAL VEHICLE BEING DRIVEN BY WINDHAM AT THE TIME OF THE SUBJECT WRECK WAS AN ADMITTED TEMPORARY SUBSTITUTE VEHICLE.

State Farm takes the position that since none of the insured vehicles in the Windham's household were involved in the wreck, Ms. Windham is not entitled to stack the policies mentioned above. (Compl. ¶ 23). State Farm contends that the rental vehicle the Defendant was driving at the time of the wreck was a non-owned car, thus, she should not be allowed to stack her UIM coverage. This argument ignores the fact that the rental vehicle being driven at the time of the wreck was being driven as a result of a previous wreck Myra Windham had been an innocent participant in a mere six days prior. Accordingly, the State Farm Insurance Policy in question expressly defines a rental car as a temporary substitute car; a car included under an insured's UIM coverage. The relevant definition reads as follows:

> ***Temporary Substitute Car*** – means a ***car*** that is in the lawful possession of the ***person*** operating it and that:
>
> 1. Replaces ***your car*** for a short time while ***your car*** is out of use due to its:
>   a. Breakdown;
>   b. Repair;
>   c. Servicing;
>   d. Damage; or
>   e. Theft; and
> 2. Neither ***you*** nor the ***person*** operating it own or have registered.
>
> If a ***car*** qualifies as both a ***non-owned car*** and a ***temporary substitute car***, then it is considered a temporary substitute car only.
>
> (State Farm Policy Booklet, Pg. 5, larger type added).

The foremost rule in interpreting an insurance contract is to give effect to the intent of the parties as shown by the language of the contract itself. When the contract language is clear and unambiguous, the language alone determines the contract's force, and terms must be construed to give effect to their "plain, ordinary, and popular meaning." *Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 650, 491 S.E.2d 272, 274 (Ct. App. 1997); *Sphere Drake Ins. Co. v.* Litchfield, 313 S.C. 471, 473, 438 S.E.2d 275, 277 (Ct. App. 1993). The plain language reading of the definition of temporary substitute car differentiates between a temporary substitute car and a non-owned car. Furthermore, State Farm defines non-owned car as follows:

> ***Non-Owned Car*** – means a car that is in the lawful possession of **you** or any **resident relative** and that neither:
> 1. is **owned by:**
> a. **you**
> b. any **resident relative;**
> c. any other **person** who resides primarily in **your** household; or
> d. an employer of any **person** described in a.,b., or c. above; nor
> 2. has been operated by, rented by, or in the possession of:
> a. **you;** or
> b. any **resident relative**
>
> during any part of each of the 31 or more consecutive days immediately prior to the date of the accident or **loss**
>
> (State Farm Policy Booklet, Pg. 5).

The use of the rental vehicle which was involved in the wreck in this case is consistent with a plain language reading of State Farm's definition of a temporary substitute car. Specifically, Ms. Windham was driving a rental car only because her car had been damaged to the point of inoperability in a previous wreck. Additionally, State Farm expressly states in the insurance policy that if a car could qualify as either a temporary substitute car or a non-owned car, than such car will be treated as a temporary substitute car under the insured's policies. In the present case, Myra Windham was driving a rental car as a ***temporary substitute*** for her vehicle, which at the time of the collision was ***out of use due to damage.*** By State Farm's own definition, if this Court finds

that the rental vehicle was a temporary substitute car, then it must be considered an owned car for the purposes of stacking coverage. Defendant is thus a Class 1 insured.

In addition to the rental vehicle meeting the definition of a temporary substitute car per the policy definitions, our Court has found that rental vehicles qualify as temporary substitute cars. In the *Dorman* case, our state Supreme Court concluded that Mr. Dorman rented a car from Alamo Rent-A-Car, Inc. as a ***temporary substitute vehicle*** for a family car being repaired. *Dorman v. Allstate Ins. Co.*, 332 S.C. 176, 504 S.E.2d 127 (1998). While the main issue in this case was not determining whether or not the rental car was a temporary substitute vehicle, our Court made the determination that if an individual rents a vehicle while their insured car is being repaired, this qualifies as a temporary substitute vehicle. *Id.*

A recent Order issued by the Honorable Timothy M. Cain in United States District Court for the District of South Carolina: Greenville Division dealt with almost identical wording and issues in a State Farm policy. *State Farm Fire and Casualty Insurance Company v. Carol Holmes. State Farm v. Holmes,* C/A No. 6:14-4050-TMC (D.S.C. January 20, 2016). (The Order is attached and incorporated by reference as Exhibit A.) In *Holmes,* the defendant had been involved in a wreck while driving a rental car; she was driving the rental car because her car was undergoing repair. *Id.* At the time, she had two insured vehicles with State Farm. *Id.* During mediation, it was agreed that State Farm would pay the limits of one of the two policies, but not the other. *Id.* Accordingly, State Farm brought a declaratory judgment action arguing that Holmes should not be entitled to stack her policies because she was driving a rental vehicle when the wreck occurred. *Id.* However, in Holmes' insurance policy, a temporary substitute car was defined as:

> A car not owned or leased by or leased to you or your spouse, if it replaces your car for a short time. Its use has to be with the consent of the owner. Your car has to be out of use due to its breakdown,

> repair, servicing, damage or loss. A temporary substitute car is not considered a non-owned car. *Id.*

This clear and unambiguous definition coupled with the undisputed fact that Holmes was driving the rental car while her car was being repaired led the court to find that Holmes was entitled to stack her UIM policies under the terms of the agreement, and subsequently granted her motion for summary judgment.

The circumstances present in *Holmes* are essentially identical to the ones found in Ms. Windham's case. Just like the defendant in *Holmes*, it is undisputed that Myra Windham was driving a rental car as a substitute because her vehicle was rendered completely inoperable from the wreck on September 29, 2012. (Stip. of Facts ¶ 3). Furthermore, the agreement between Ms. Windham and State Farm, much like the agreement in *Holmes,* includes a "temporary substitute" clause extending coverage to a non-owned vehicle in the lawful possession of the insured. For the aforementioned reasons, Ms. Windham should be entitled to stack her UIM coverage just like the defendant in *Holmes*.

State Farm wrote the policy and included the language:

> If a ***car*** qualifies as both a ***non-owned car*** and a ***temporary substitute car***, then it is considered a temporary substitute car only.
>
> (State Farm Policy Booklet, Pg. 5).

State Farm cannot include this language in the policy try to get stacking precluded pursuant to the definition of **Non-owned car.** State Farm agrees that Ms. Windham was driving a temporary substitute vehicle. Any ambiguity must be construed against the insurer who drafted the policy. The UIM and UM statutes are remedial in nature and enacted for the benefit of injured persons and should be *construed liberally to effect the purpose intended by the Legislature. Id.*

citing Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005) (Emphasis Added).

II. NO VALID POLICY PROVISIONS OR STATUTE(S) EXIST FOR LIMITING THE DEFENDANTS' ABILITY TO STACK UIM POLICIES.

Stacking of uninsured and underinsured coverages, which are both statutorily required coverages, is governed specifically by statute. *See S.C. Code Ann. §* 38-77-160. Our courts have held an insured is entitled to stack underinsured or uninsured in an amount no greater than the amount of coverage on the vehicle involved in the accident. *S.C. Farm Bureau Mut. Ins. Co. v. Mooneyham*, 304 S.C. 442, 405 S.E.2d 396 (1991). To this extent, stacking cannot be contractually prohibited. *Ruppe v. Auto-Owners Ins. Co.*, 329 S.C. 402, 496 S.E.2d 631(1998) *citing Nationwide Mut. Ins. Co. v. Howard*, 288 S.C. 5, 339 S.E.2d 501 (1985). Generally, stacking of additional coverage for which the insured has contracted is permitted unless limited by statute or a valid policy provision. *Jackson v. State Farm Mut. Auto Ins. Co.*, 288 S.C. 335, 342 S.E.2d 603 (1986). As a general proposition, UIM coverage follows the individual insured rather than the vehicle insured, that is, UIM coverage, like UM is 'personal and portable.' Thus a Class I insured may pursue stacking whether or not he was injured in his vehicle. *Carter v. Std. Fire Ins. Co.*, 406 S.C. 609, 753 S.E.2d 515 (2013). The UIM and UM statutes are remedial in nature and enacted for the benefit of injured persons and should be *construed liberally to effect the purpose intended by the Legislature. Id. citing Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005) (Emphasis Added).

State Farm is not able to present any valid reason why the Defendant should not be allowed to stack UIM policies. Their Complaint indicates that because none of the Windhams' vehicles were involved in the accident, the Defendant is not allowed to stack. (See Complaint, ¶

23). As discussed above, that the rental vehicle was a temporary substitute car and, as such, should be treated no differently than any of the Windhams' insured vehicles. If this Court finds that the rental vehicle used by the Defendant at the time of the wreck qualifies as a temporary substitute vehicle, and thus an "owned car," then State Farm is unable to point to any policy provision limiting the Defendant's right to stack.

CONCLUSION

For the reasons stated above, the Court should grant the Defendant's Motion for Summary Judgment as to her counterclaim for and issue its order declaring that that Defendant Windham is entitled to stack UIM coverage under the five State Farm policies issued to her.

Respectfully submitted,

KOON AND COOK, P.A.

By:

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John K. Koon
2016 Gadsden Street
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(803) 256-4082
Attorneys for the Defendant

June 22, 2016

Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT
State Farm Mutual Automobile Insurance Company, Plaintiff, vs. Myra M. Windham, Defendant.	Case No. 2016-CP-32-815 **Notice of Motion and Motion for Reconsideration and Motion for Relief from Order granting Summary Judgment to State Farm and Denying Summary Judgment to Myra M. Windham**

FILED
2016 SEP -6 P 1:56
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON CO. SC
JP

TO: THE HONORABLE G. THOMAS COOPER, JR., PRESIDING JUDGE and A. JOHNSTON COX, ESQUIRE, ATTORNEY FOR THE PLAINTIFF

PLEASE TAKE NOTICE that the Defendant will move before the Honorable G. Thomas Cooper, Jr. presiding Judge of the Court of Common Pleas on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order granting relief from the Order issued on August 1, 2016, pursuant to Rule 60 and Rule 59, SCRCP. This Order was received by the Defendant on August 26, 2016.

The basis for the Motion is as follows:

a) The Court's findings and conclusion that Ms. Windham is prevented from qualifying as a Class I insured under Section 38-77-160 because she did not own a vehicle involved in the accident is erroneous and against established South Carolina law. It has been established by *Carter v. Standard Fire Insurance Company* that as a general proposition UIM coverage is understood to follow the individual rather than stay with the vehicle insured; thus, an insured may pursue stacking whether or not he was injured in his own vehicle. *See Carter v. Std. Fire Ins. Co.*, 406 S.C. 609, 617, 735 S.E.2d 515, 519 (2013); *See also Burgess v. Nationwide Mut. Ins. Co.*, 373 S.C. 37, 644 S.E.2d 40 (2007).

b) The Court's finding and conclusion that Ms. Windham is prevented from stacking UIM coverage because she was driving a temporary substitute car at the time of the accident is erroneous and against the probative evidence in the record. The relevant provisions of State Farm's insurance agreement, Plaintiff's Exhibit A, state that for the purposes of liability coverage a "temporary substitute vehicle" is to be distinguished from a "non-owned vehicle", while such distinction does not expressly categorize a "temporary substitute vehicle" as an "owned vehicle", the present ambiguity creates an implication that a "temporary substitute vehicle" for the purposes of liability coverage in general, including UIM coverage, should be seen as analogous to an "owned vehicle"; a fact reinforced by State Farm's definition of a "temporary substitute vehicle," which states that such a vehicle *replaces your vehicle while your vehicle is out of use*. (Emphasis Added).

c) The Court's failure to find and conclude that Ms. Windham is entitled to stack UIM coverage pursuant to the Doctrine of Reasonable Expectations is erroneous and against the probative evidence in the record is and an error of law.

Myra Windham hereby moves for the Court to reconsider its findings and conclusions and amend its Order. Defendant respectfully requests that the Court amend its Order to find that Myra Windham's operation of a temporary substitute vehicle at the time of her accident entitles her to stack her UIM coverage and that her Motion for summary judgment should be granted and that the Plaintiff's Motion for summary judgment should be denied.

Pursuant to Rule 11, SCRCP, Defendant's counsel asserts that consulting opposing counsel would serve no useful purpose.

KOON COOK AND WALTERS, LLC

By:

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Attorneys for Defendant Myra Windham

Columbia, South Carolina

September 1, 2016

FILED
2016 SEP -6 P 1:56
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

2016-CP-32-0815

State Farm Mutual Automobile Insurance Company,

Plaintiff,

v.

Myra M. Windham,

Defendant.

Transcript of Record

June 23, 2016
Lexington, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Judge

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

A. Johnston Cox, Esquire
Attorneys for the Plaintiff

Stephen H. Cook, Esquire
Attorneys for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

I N D E X

Motion Hearing

WITNESS/DESCRIPTION PAGE NO.

EXHIBITS:

No exhibits were marked to this proceeding.

Certificate of Court Reporter 20

THE COURT: State Farm verses Windham.

MR. COOK: I'll hand up my briefs.

MR. COX: I have one as well, Judge.

MR. COOK: This is actually also a motion, the schedule cross motions.

THE COURT: I see. Well, since State Farm is listed as the first party, I'll just defer to Mr. Cox at this point.

MR. COX: Thank Your Honor.

THE COURT: Tell me what this is about?

MR. COX: Your Honor, this is -- this is going to be more exciting -- we are here -- this is a declaratory judgment action, Your Honor. As Steve said we have cross or competing motions for summary judgment. We have stipulated to some facts which I have handed up, as part of my packet, to you, and so we believe, both of us, there really are no issues of fact. This is purely an issue of law for the Court to decide and that's why we're here today.

This is a UIM stacking case and the question that is being presented to is whether Ms. Windham, who was a State Farm insured is entitled either under South Carolina law or under State Farm's policy to stack UIM coverages when she is driving a vehicle that she does not own. And you may be thinking to yourself, well, that's been settled quite some time and you'd be right. Our Courts have held for years in order for an insurer to stack UIM coverage that it has to be

driving a vehicle that they have or own and that is the Rhoden case, 728 S.E. 2d 477. It's all to do with, you know, the class one, class two insured. Class one insured has to be an insured who has a vehicle or owns a vehicle involved in an accident. Class two insured is quote "None of his vehicles are involved in the accident." That's State Farm verses James, 522 S.E 2d 445. Which the Courts decided in our favor. We think that the issue is very clear and falls within these -- within these well settled cases in law in South Carolina. It's undisputed in this case that Ms. Windham was driving a vehicle that she did not own and is not listed on any of her policies at the time of the accident and therefore she is not permitted to stack either under 38-77-160 or under State Farm's policy. So let me -- let me just kind of give you the basic facts of this so we can understand where they're coming from on their argument. Ms. Windham was involved in an automobile accident September 29, 2012. And as a result of that accident the liability carrier put her into a rental car. Five days or six days later she's driving a rental car and she gets into another accident with Ms. McCardle (sp). And we are talking here today about UIM that would be applicable to the McCardle accident while Ms. Windham was driving a rental car. There are five cars in the Windham household. I'm not sure why she rented a car as to opposed to driving one of the other

five, but it doesn't really matter she was in a rental car at the time. So State Farm issued five UIM policies each with limits of $100,000. As a result of the McCardle accident the liability carrier paid $100,000 in liability money for the McCardle accident. The one --

THE COURT: When was the McCardle accident?

MR. COX: Well, it happened on October 5, 2012.

THE COURT: What happened on the first accident?

MR. COX: She received liability and a bunch of UIM for that one, too.

THE COURT: What do you mean?

MR. COX: Well, she was in this first automobile accident. The at fault carrier was All State. So All State ended up paying her, I think it was $100,000. $100,00 for that accident and then she also received UIM from State Farm for that accident and I can't remember --

THE COURT: She was driving her car?

MR. COX: She was driving her car at the time. That's right. So she was actually able to stack policies for the first accident. And she got most of them, didn't she?

MR. COOK: Your Honor, it -- I believe she got three hundred to four hundred -- somewhere in that range.

MR. COX: I think that's probably right. So the first accident she was driving her own vehicle. She did receive liability and she also stacked some UIM. I'm sorry, I

should know that, I just don't remember the amount.

THE COURT: It doesn't matter.

MR. COX: So then the second accident comes along, she's driving a rental car on October 5, 2012. And the GEICO was the liability carrier on that. They paid her $100,000, as well, for that accident. And State Farm also has paid her one level of UIM of $100,000 for the second accident.

THE COURT: All right.

MR. COX: Went to mediation to try and get the thing settled. But to get into the procedural history of everything else --

THE COURT: You answered the question.

MR. COX: Okay. Got it. So this is where the dispute comes in. They say that she should be able to stack because she's driving a rental car which under the policy meets the definition of a temporary substitute car, okay. And we say that it does -- that they are not able to stack because there is an anti-stacking provision in the UIM policy that says you can only stack UIM if you're driving a vehicle that meets the definition of one that owned by -- and that is a defined term in the policy, the insured. So what I've given you, Judge, is I've given you a big old copy of the policy, but if you go to the first yellow tab there I have put in there for you just the three or four specific policy provisions that we are talking about, okay, because this can

be, you know, if you're not looking at it it can be kind of hard to listen to all this and get it.

Okay. So what I've given you, if you've got it. It says policy provisions at issue. It should be one or two pages. The first yellow tab?

THE COURT: I have it.

MR. COX: Okay. Good. All right. So the first one we're talking about, Judge, is the only provision in the policy dealing with stacking of UIM and it's found on Page 27 of the policy and it is the anti-stacking provision and it says very clearly if you or any resident relative sustains bodily injury or property damage while occupying a motor vehicle not owned by you, is also a defined term, you or any resident relative. And you can skip down. And under insured motor vehicle insured coverage -- in one or more other vehicle policies issued to you or any resident relative by State Farm Company apply to the same bodily injury or property damage. Maximum amount that may be paid from all such policies combined is the single highest limit provided by any one of the policies. Okay. So just boiling that down what that says is if you are occupying a vehicle which meets the definition of owned by, and when you read the policy, Judge, these bold items are the defined terms, so if you are operating a vehicle that is owned by you or a resident relative you can stack. If you are not driving a

vehicle that meets the definition of owned by, then you cannot stack. You are only entitled to one level of coverage, which is consistent with South Carolina law. Okay. 38-77-160, and the court cases after that say you have -- you own the car you can stack, if you don't you can't. Okay. So you go to the term "owned by" in the policy to see what vehicles are encompassed within that definition. So you have "owned by" means owned by, registered to or leased, if the lease is written for a period of one or more consecutive days.

Now, in this situation, Ms. Windham, and so we've stipulated some facts, it is stipulated in this case that none of her cars were involved in the accident. It is also stipulated that the rental car does not meet the definition of "owned by", which -- I mean, it doesn't. So those are just the facts. It doesn't meet those definitions. And so it is State Farm's position that that is dispositive of the issue before the Court because the provision as written is consistent in South Carolina law and the vehicle that she was driving, she didn't own it, and there's no -- Enterprise Rental Car owned it and it does not meet the definition of "owned by" in the policy.

Seems to be a very simple argument. We have a very good lawyer in here, Mr. Cook, who has come up with an argument against it, which we do not believe makes any sense, really,

or that carries the day. So what they're arguing -- they want to ignore the only provision in the policy that deals with stacking and when you can stack, which is found in the Underinsured Motorist coverage policy. That they want to shift the Court's focus to two other definitions and that is the definition in the policy of a non-owned car and a definition of a temporary substitute car, and I've got that definition for you too, Judge. Those two definitions for you in this handout that will make it easier for you.

All right. So temporary substitute cars is pretty, you know, it's a car that's in lawful possession but it replaces your car, being a defined term, the car that's in the policy for a short time while your car is out of use due to break down, repair, blah, blah, blah. That neither you nor the person operating it own or have registered. And this is the -- this is the part that they really focused on and it says, if a car qualifies as both a non-owned car, as defined in the policy, and a temporary substitute car, as defined in the policy, then it is considered a temporary substitute car only.

Those are very specific defined terms in the policy. In a non-owned car you can get an idea that there two but it's basically it is a car that is neither owned by you or resident relative or any other person who resides in the household and other issues.

We have stipulated on our side that this car would constitute a temporary substitute car as defined in the policy. It's just our position it doesn't make any difference, you know, whether it meets the definition of a temporary substitute car or not. So their argument is that because this car, as a temporary substitute car, can't be under the policy considered a non-owned car as defined in the policy then it magically is transformed into a car that the insured owns in general, okay. Which is an argument -- I mean there's just really no way to interpret the policy without absolutely torturing it to reach that conclusion and the reason being is that their argument fails with the very definition of a temporary substitute car. In order for it to be considered a temporary substitute car you cannot own it. The insured can't own it. If the insured owns it then it's not a temporary substitute car as defined by the policy. So there are -- the argument that just because it doesn't meet the definition of a non-owned car does not automatically transport to a car the insured owns. They can't own it and it be considered a temporary substitute car. There is, in this policy, a very specific defined term of "owned by". And this car, they have stipulated, does not fall within that definition.

The temporary substitute car definition is mentioned nowhere in the anti-stacking provision. The only term,

identified term in there is owned by. So if you're in a car that is owned by you that is defined by the policy then you can stack. If State Farm had intended that its insureds can stack temporary -- can stack coverage while they driving a temporary substitute car they would have included that in the definition of "owned by", but they didn't very clearly. And so there really is no way that you can, under the terms of this policy, shove temporary substitute car within the definition of "owned by". And especially since they stipulated that it does not meet that definition.

Now, they are going to -- Steve is going to get up and lay around this Holmes case, which is a recent district court decision that State Farm had up in Greenville, and in that case this issue of whether or not you can stack under -- actually the State Farm policy at issue in that case was heard for a rental car. Same, temporary substitute car. And the judge, the district court judge ruled against State Farm in that case. And they are relying heavily on that decision.

I would just like to point out -- I know he's going to talk about it, but before he gets up and talks about it. As you know, Judge, that decision has no precedential value to you because it's not a state court case so it's not binding on you. The second thing is is that the policy that was at issue in that case is completely different than the policy

that we have in this case. I did hand up to you, in case you wanted to look at it, the answer that was filed by the insured in that case which attached a copy of the policy that was at issue in that case.

In that case there was no -- because it looks like a really old -- to me -- I don't know -- but there is no defined term of "owned by" number on, in that policy. And -- and there is no discussion in that case at all about any anti-stacking provision within the policy at all. And didn't consider any of the arguments, that order did not consider any of the arguments that I'm making today. Especially, you know, I just don't understand how a temporary substitute car is defined as a car that the insured does not own, but somehow not be included in a very specific non -- definition of a non-owned car turns it into a car that the insured owns. I -- with all due respect to the judge I just think he got the wrong -- and it has no precedential value to you, but it is different, our case is different in that we have a very different anti-stacking provision which very clearly and unambiguously lays out when you can stack and when can't and what type of vehicle you need to be driving in order to be able to stack. There's no -- did not have in that case.

So for that reason, Judge, we have a clear and unambiguous policy provision that only allows stacking when

and insured is driving a vehicle that meets the definition of owned by. It is stipulated that the rental car is not owned by her and does not meet the definition of "owned by" in the policy and it's also stipulated that none of their cars were involved in the accident. So either under South Carolina law they're not entitled to stack under the clear cases that we have and State Farm's policy is not providing any broad coverage that -- than is stated in South Carolina law. So for that reason we ask for summary judgment on this issue.

THE COURT: All right. Mr. Cook.

MR. COOK: Thank Your Honor. Steve Cook on behalf of the defendant.

Just to refresh a little bit we had a wreck on September 29. She's in a rental car. Six days later she's involved in a second wreck.

THE COURT: The first wreck she was in her own car?

MR. COOK: Yes, sir, she was in her own car and then she's in a wreck.

THE COURT: Right.

MR. COOK: And so she is in a rental car at the time of the second wreck six days later.

THE COURT: Right.

MR. COOK: And they stipulate that she was driving a temporary substitute car as defined in the policy. Our

position is she would be a Class I insured because the temporary substitute vehicle by its clear and unambiguous -- she steps into replacing what you were driving. That's what a temporary substitute vehicle was and that's exactly what Judge Cain said in the order that was issued in January up in the Greenville District of US Federal Court. State Farm says since it's not an owned car it can't be stacked, but the policy provides a provision that if the car qualifies as a non-owned car and a temporary substitute car then it's considered a temporary substitute car. So they not -- it's our position they take that location and at a minimum create an ambiguity in the policy that would have to be construed against State Farm who drafted the policy. And I've attached Judge Cain's order as Exhibit A to our memorandum, Your Honor, and that case, which is almost identical facts as this, a person driving a rental car and a passenger. He has the same analysis as we're arguing today, that she was a Class I insured because she's driving a temporary replacement vehicle and that she would be entitled to stack her policies. Again, the -- we put the language in our memo, Your Honor, from that policy, from the policy in Greenville, which I also says -- and Cain's, Judge Cain's case that a temporary substitute car is not considered a non-owned car.

So it's our position that actually that the clear and

unambiguous definition of temporary substitute vehicle puts it into a Class I status. But when you get to the situation where they're claiming, it does meet the definition of owned since the policy itself says if it's an associated vehicle it does not meet the definition of non-owned. It worse for us created an ambiguity in the policy and any ambiguity in the policy has to be construed in favor of us.

I'll remind the Court, and I know the Court's very familiar with stacking and otherwise, but UIM and UM statutes are remedial in nature and enacted for the benefit of injured persons and should be construed liberally to affect the purpose intended by the legislature. That's Foley (sp) verses Nationwide.

It's interesting that they went -- where insurance companies love to be, lost this case, filed a motion for reconsideration which was denied and then they did not appeal that case. That became the law of the cases as to State Farm and it is at least persuasive on Your Honor if not binding, it is persuasive, that case.

The foremost rule when interpreting insurance contracts give effect to the attendant parties as shown by the language in the contract itself. In this situation the plain ordinary popular meaning which is what Wray (sp) verses State Farm says is the following, the substitute vehicle is replaced what she had. It is in effect of the

car she had. It was a Class I vehicle and she was driving it. Again, it meets the definitions. The policy specifically say it's a temporary substitute car. And again the UIM statutes are remedial in nature to the effect and benefit of an active person. Person should be construed literally for the purpose intended.

One of the doctrine which we haven't found on this is if there's an ambiguity in the policy that under the doctrine of reasonable expectations the insured's entitled to expect that they're going to be covered for this.

Again, I don't think there's a whole lot more I can or should say. Judge Cain's order uses the exact rational we're using here. It was a temporary substitute vehicle which they set up in the policy. They set up that definition. It became a Class I insured because it was replacing her car while it was being repaired. Secondly, they specifically say if it was temporary substitute it does not meet the definition of non-owned vehicle. That at minimum in their favor creates an ambiguity in the policy and as the drafter of the policy ambiguity must be completely construed against State Farm and we would ask that the Court follow the logic of Judge Cain in the case. We've attached the Holmes case and determine that she is entitled to stack the other four policies on the car.

THE COURT: All right. Counsel, anything further?

MR. COX: Yes, Your Honor. Just real briefly. We are not dealing here with the plain and ordinary meaning of terms. We are dealing with very specific defined terms within this insurance policy. We have a very clear provision and a very clearly defined definition of owned by which does not follow the clear and ordinary meaning of owned by. I mean, if you look at that owned by includes the party lease. You don't really own it, you're leasing it. So we're not dealing with the plain and ordinary meaning. We're dealing with the specific definitions involved in this policy and if you look at the policy there is no ambiguity in this policy. It is crystal clear that you can only stack if the car meets the definition of "owned by". There is no ambiguity in that. A temporary substitute vehicle is not within that definition. She can't stack.

You should not follow the logic of Judge Cain in this case for the reasons I've already said. The policy in that case was completely different from the policy in this case, number one. Number two, I honestly have a hard time following the logic and it's not a persuasive, it's not a case that is binding upon the -- these definitions of a non-owned car and a temporary car, they are both categories of cars that the insured does not own. They're just -- have a different definition because throughout the policy if you're driving one or the other different people get different

types of coverage when you're driving one or two of those vehicles. It has nothing to do with whether or not you can stack UIM coverage. If it did it would have been defined, you would see it in the UIM policy. It doesn't. So for that reason, Judge, we ask that you uphold the clear language of the policy. What Steve is asking you to do is to expand the law. He's asking you to expand the law to say, well, you don't really have to own it to stack, you can be renting is, which is not the law in South Carolina. I imagine the Supreme Court is going to have to, you know, change that or the legislature if that's what they want, but that's not for you to do.

Thank you.

THE COURT: All right.

MR. COOK: If I can briefly respond. The definition of temporary substitute vehicle is there specifically subject insured can be covered when they end the temporary coverage. They don't have to go out and buy other coverage when they specifically in their words say that if you're temporary substitute you're not a non-owned. They -- and if anything they create an ambiguity and that gets construed against them. They can say the exact word, exact words, but they put the terms in the policy and she gets the benefit of any ambiguity.

THE COURT: All right.

MR. COX: If I could just clarify that real quickly. If Ms. Windham gets into a non-owned car with permission just like a temporary substitute car she's going to be covered then, too. It doesn't make any difference to her. It might make a difference to other people who are, you know, riding with her or -- you know, she can't give permission to somebody else to drive her car, you know, a non-owned car, but as far as -- it doesn't have anything to do with UIM coverage.

THE COURT: All right. I'll take proposed orders within ten days.

MR. COX: Thanks, Your Honor.

MR. COOK: Thank you, Your Honor.

(This proceeding was concluded.)

Exhibit A

FILED
2021 JUN 17 PM 12:21

State Farm

Certified Policy Record

I, the undersigned, do hereby confirm that I am custodian of the records pertaining to the issuance of policies by State Farm Mutual Automobile Insurance Company.

I certify that the attached documents represent a true and accurate record of the terms and conditions of Policy Number 162 8590-D19-40C including any endorsements, if applicable, for the policy term(s) April 19, 2012 to October 19, 2012 and insuring Paul A & Myra M Windham of 320 Beaumont Dr, Lexington SC 29072-8848 based on available records.

The following endorsements are included:
6091W CERTIFICATE OF GUARANTEED RENEWAL - EFFECTIVE DATE 10-19-11.
6940A AMENDATORY ENDORSEMENT - EFFECTIVE DATE 10-19-11.

It is State Farm's business practice to print a new Declarations Page only when a policy issuance transaction such as a change of coverage occurs. Therefore, the included Declarations Page which was in effect at the time of loss will indicate the policy period of the last policy issuance transaction.

The policy was in effect on the loss date of October 05, 2012.

Shay Anderson
Underwriting Team Manager
Date: 2/18/16

1004516

2000 143551 200 03-21-2012

Statefarm

State Farm Mutual Automobile Insurance Company
11350 Johns Creek Parkway
Duluth GA 30098

46661-5-F MUTL VOL

DECLARATIONS PAGE

NAMED INSURED
AT2 40-1903-654F A
07287
WINDHAM, PAUL A & MYRA M
[redacted]

POLICY NUMBER 162 8590-D19-40C
POLICY PERIOD OCT 19 2010 to APR 19 2011
12:01 A.M. Standard Time

STATE FARM PAYMENT PLAN NUMBER
1108763927

AGENT
TERRI BROCK
6158 ST ANDREWS ROAD
COLUMBIA, SC 29212-3122

PHONE:(803)772-4000

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
IF AN AMOUNT IS DUE, THEN A SEPARATE STATEMENT IS ENCLOSED.

YOUR CAR

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID. NUMBER	CLASS
2008	TOYOTA	CAMRY	CONV	4T1FA38P18U141380	6D3030M000

SYMBOLS	COVERAGE & LIMITS	PREMIUMS
A	Liability Coverage Bodily Injury Limits Each Person, Each Accident $250,000 $500,000 Property Damage Limit Each Accident $50,000	$172.16
D	Comprehensive Coverage - $1,000 Deductible	$48.36
G	Collision Coverage - $1,000 Deductible	$84.99
H	Emergency Road Service Coverage	$2.20
U	Uninsured Motor Vehicle Coverage Bodily Injury Limits Each Person, Each Accident $100,000 $300,000 Property Damage Limit Each Accident $50,000	$13.39
W	Underinsured Motor Vehicle Coverage Bodily Injury Limits Each Person, Each Accident $100,000 $300,000 Property Damage Limit Each Accident $50,000	$51.22
	Total premium for OCT 19 2010 to APR 19 2011.	$372.32 This is not a bill.

IMPORTANT MESSAGES

Replaced policy number 1628590-40B.

New Policy Form

Location used to determine rate charged-911 OAKLAND AVE, CAYCE SC 29033-3613.

EXCEPTIONS, POLICY BOOKLET & ENDORSEMENTS (See policy booklet & individual endorsements for coverage details.)

YOUR POLICY CONSISTS OF THIS DECLARATIONS PAGE, THE POLICY BOOKLET - FORM 9840A, AND ANY ENDORSEMENTS THAT APPLY, INCLUDING THOSE ISSUED TO YOU WITH ANY SUBSEQUENT RENEWAL NOTICE.
CREDITOR- WELLS FARGO DEALER SERVICES, PO BOX 5075, CORAOPOLIS PA 15108-5075.

R

Agent: TERRI BROCK
Telephone: (803)772-4000
Prepared OCT 20 2010 1903-344

This policy is issued by State Farm Mutual Automobile Insurance Company.

MUTUAL CONDITIONS

1. **Membership.** While this policy is in force, the first insured shown on the Declarations Page is entitled to vote at all meetings of members and to receive dividends the Board of Directors in its discretion may declare in accordance with reasonable classifications and groupings of policyholders established by such Board.

2. **No Contingent Liability.** This policy is non-assessable.

3. **Annual Meeting.** The annual meeting of the members of the company shall be held at its home office at Bloomington, Illinois, on the second Monday of June at the hour of 10:00 A.M., unless the Board of Directors shall elect to change the time and place of such meeting, in which case, but not otherwise, due notice shall be mailed each member at the address disclosed in this policy at least 10 days prior thereto.

In Witness Whereof, the State Farm Mutual Automobile Insurance Company has caused this policy to be signed by its President and Secretary at Bloomington, Illinois.

Kim M. Brunner
Secretary

Edward B. Rust Jr.
President

6091W CERTIFICATE OF GUARANTEED RENEWAL

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

This endorsement is issued by the **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY** of Bloomington, Illinois.

1. ***We*** will not cancel or nonrenew this policy as long as:
   a. this policy insures a ***private passenger car***;
   b. premiums are paid when due;
   c. all drivers of ***your car*** maintain valid drivers licenses;
   d. ***you*** continue to reside in an area in which State Farm Mutual Automobile Insurance Company sells automobile insurance and has the Certificate of Guaranteed Renewal available for use; and
   e. no ***person*** other than ***you*** becomes a named insured on this policy.
2. ***You*** will be able to select from those coverages which continue to be available from State Farm Mutual Automobile Insurance Company.
3. Coverage will be provided by ***our*** Car Policy, including any revisions that may be made to it.

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6940A AMENDATORY ENDORSEMENT

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. **THIS POLICY**

Item 5. is changed to read:

Your purchase of this policy may allow:

a. *you* to purchase or obtain certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other products from the ***State Farm Companies***, subject to their applicable eligibility rules; or

b. the premium or price for other products or services purchased by *you*, including non-insurance products or services, to vary. Such other products or services must be provided by the ***State Farm Companies*** or by an organization that has entered into an agreement or contract with the ***State Farm Companies***. The ***State Farm Companies*** do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization.

2. **LIABILITY COVERAGE**

Insuring Agreement and Supplementary Payments are replaced by the following:

Insuring Agreement

1. *We* will pay damages an ***insured*** becomes legally liable to pay because of:

   a. ***bodily injury*** to others; and

   b. damage to property

   caused by an accident that involves a vehicle for which that ***insured*** is provided Liability Coverage by this policy.

2. *We* have the right to:

   a. investigate, negotiate, and settle any claim or lawsuit;

   b. defend an ***insured*** in any claim or lawsuit, with attorneys chosen by ***us***; and

   c. appeal any award or legal decision

   for damages payable under this policy's Liability Coverage.

Supplementary Payments

We will pay, in addition to the damages described in the **Insuring Agreement** of this policy's Liability Coverage, those items listed below that result from such accident:

1. Attorney fees for attorneys chosen by ***us*** to defend an ***insured*** who is sued for such damages. *We* have no duty to pay attorney fees incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

2. Court costs awarded by the court against an ***insured*** and resulting from that part of the lawsuit:

   a. that seeks damages payable under this policy's Liability Coverage; and

   b. against which *we* defend an ***insured*** with attorneys chosen by ***us***.

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We have no duty to pay court costs incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

3. Interest the ***insured*** is legally liable to pay on damages payable under the **Insuring Agreement** of this policy's Liability Coverage:
   a. before a judgment, but only the interest on the lesser of:
      (1) that part of the damages *we* pay; or
      (2) this policy's applicable Liability Coverage limit; and
   b. after a judgment.

   We have no duty to pay interest that accrues after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage. *We* also have no duty to pay interest that accrues on any damages paid or payable by a party other than the *insured* or *us*;
4. Premiums for bonds, provided by a company chosen by *us*, required to appeal a decision in a lawsuit against an *insured*. *We* have no duty to:
   a. pay for any bond with a face amount that exceeds this policy's applicable Liability Coverage limit;
   b. furnish or apply for any bonds; or
   c. pay premiums for bonds purchased after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage; and
5. The following costs and expenses if related to and incurred after a lawsuit has been filed against an *insured*:
   a. Loss of wages or salary, but not other income, up to $200 for each day an *insured* attends, at *our* request:
      (1) an arbitration;
      (2) a mediation; or
      (3) a trial of a lawsuit; and
   b. Reasonable expenses incurred by an *insured* at *our* request other than loss of wages, salary, or other income.

   The amount of any of the costs or expenses listed above that are incurred by an *insured* must be reported to *us* before *we* will pay such incurred costs or expenses.

3. **GENERAL TERMS**
   a. The paragraph under **Where Coverage Applies** that reads:

      Liability Coverage, Personal Injury Protection Coverage, Medical Payments Coverage, and Physical Damage Coverages also apply in Mexico within 50 miles of the United States of America border. A Physical Damage Coverage *loss* in Mexico is determined on the basis of cost at the nearest United States of America point.

      is deleted.
   b. The following is added:

      Limited Coverage in Mexico

      This policy does not provide Mexican auto insurance and does not comply with Mexican auto insurance requirements. If *you* or any other *insured* plan to drive in Mexico, then auto insurance providing

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coverage in Mexico should be purchased from a Mexican insurance company.

Subject to the above paragraph, the following coverages apply in Mexico, but only for accidents and *losses* that occur in Mexico within 50 miles of the United States of America border and only for *insureds* as defined under each of the following coverages:

a. **Liability Coverage**

For claims brought against an *insured* in Mexico, the **Supplementary Payments** provision of this policy's Liability Coverage is changed to read:

We may, in addition to the damages described in item 1. of the **Insuring Agreement** of this policy's Liability Coverage, pay or reimburse, at our option, reasonable attorney fees for an attorney licensed in Mexico to appear for and provide advice to *insureds* as defined under this policy's Liability Coverage. The amount of such attorney fees incurred by an *insured* must be reported to *us* before *we* will make payment.

b. **Personal Injury Protection Coverage**

c. **Medical Payments Coverage**

d. **Physical Damage Coverages**

Any amount payable for the repair or replacement of the *covered vehicle* under the **Limits and Loss Settlement – Comprehensive Coverage and Collision Coverage** provision of this policy will be limited to the cost to repair or replace the *covered vehicle* in the United States of America.

WE HAVE NO DUTY TO PROVIDE A DEFENSE FOR *YOU* OR ANY OTHER *INSURED* IN ANY CRIMINAL, CIVIL, OR OTHER ACTION.

WE HAVE NO DUTY TO PAY ANY CLAIM OR COST THAT WOULD NOT BE PAYABLE UNDER THIS POLICY IF THE ACCIDENT OR *LOSS* HAD OCCURRED IN THE STATE OF SOUTH CAROLINA IN THE UNITED STATES OF AMERICA.

All other policy provisions not in conflict with the provisions in this **Limited Coverage in Mexico** provision of this policy apply.

If Other Coverage Applies

Any coverage provided by this **Limited Coverage in Mexico** provision is excess over any other applicable insurance.

Legal Action Against Us

Any legal action against *us* arising out of an accident or *loss* occurring in Mexico must be brought in a court that has jurisdiction in the state of South Carolina in the United States of America.

c. Paragraph c. of 5. **Premium** is changed to read:

c. The premium for this policy may vary based upon:

(1) the purchase of other products or services from the ***State Farm Companies***;

(2) the purchase of products or services from an organization that has entered into an agreement or contract with

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the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization; or

(3) an agreement, concerning the insurance provided by this policy, that the *State Farm Companies* has with an organization of which *you* are a member, employee, subscriber, licensee, or franchisee.

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Exhibit B

FILED
2018 FEB -7 PM 12:21
TINA CARRIG
CLERK OF COURT

State Farm

Certified Policy Record

I, the undersigned, do hereby confirm that I am custodian of the records pertaining to the issuance of policies by State Farm Mutual Automobile Insurance Company.

I certify that the attached documents represent a true and accurate record of the terms and conditions of Policy Number 234 0370-A08-40M including any endorsements, if applicable, for the policy term(s) August 10, 2012 to January 08, 2013 and insuring Paul A Windham of 320 Beaumont Dr, Lexington SC 29072-8848 based on available records.

The following endorsements are included:
6091W CERTIFICATE OF GUARANTEED RENEWAL - EFFECTIVE DATE 07-08-11.
6940A AMENDATORY ENDORSEMENT - EFFECTIVE DATE 01-08-12.

It is State Farm's business practice to print a new Declarations Page only when a policy issuance transaction such as a change of coverage occurs. Therefore, the included Declarations Page which was in effect at the time of loss will indicate the policy period of the last policy issuance transaction.

The policy was in effect on the loss date of October 05, 2012.

Shay Anderson
Underwriting Team Manager
Date: 2/18/16

1004516

2000 143551 200 03-21-2012

State Farm Mutual Automobile Insurance Company
11350 Johns Creek Parkway
Duluth GA 30098

54180-5-F MATCH 00041 MUTL VOL

DECLARATIONS PAGE

NAMED INSURED 00041 40-1903-554F A

WINDHAM, PAUL A
[redacted]

POLICY NUMBER 234 0370-A08-40M
POLICY PERIOD JAN 08 2011 to JUL 08 2011
12:01 A.M. Standard Time

STATE FARM PAYMENT PLAN NUMBER
1108763927

AGENT
TERRI BROCK
6158 ST ANDREWS RD
COLUMBIA, SC 29212-3122

PHONE: (803)772-4000

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
IF AN AMOUNT IS DUE, THEN A SEPARATE STATEMENT IS ENCLOSED.

YOUR CAR

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID. NUMBER	CLASS
2003	TOYOTA	SEQUOIA	SPORT WG	5TDZT38A935142103	6D3H40M000

SYMBOLS	COVERAGE & LIMITS	PREMIUMS
A	Liability Coverage	$167.53
	Bodily Injury Limits	
	Each Person, Each Accident	
	$250,000 $500,000	
	Property Damage Limit	
	Each Accident	
	$50,000	
D	Comprehensive Coverage - $1,000 Deductible	$42.93
G	Collision Coverage - $1,000 Deductible	$61.37
H	Emergency Road Service Coverage	$2.20
U	Uninsured Motor Vehicle Coverage	$13.39
	Bodily Injury Limits	
	Each Person, Each Accident	
	$100,000 $300,000	
	Property Damage Limit	
	Each Accident	
	$50,000	
W	Underinsured Motor Vehicle Coverage	$51.22
	Bodily Injury Limits	
	Each Person, Each Accident	
	$100,000 $300,000	
	Property Damage Limit	
	Each Accident	
	$50,000	
	Additional Use of Non-Owned Car Coverage	
	BIPD Liability	$5.00
	Total premium for JAN 08 2011 to JUL 08 2011.	$343.64 This is not a bill.

IMPORTANT MESSAGES

Replaced policy number 2340370-40L.

New Policy Form

Location used to determine rate charged-911 OAKLAND AVE, CAYCE SC 29033.

EXCEPTIONS, POLICY BOOKLET & ENDORSEMENTS (See policy booklet & individual endorsements for coverage details.)

YOUR POLICY CONSISTS OF THIS DECLARATIONS PAGE, THE POLICY BOOKLET -
FORM 9840A, AND ANY ENDORSEMENTS THAT APPLY, INCLUDING THOSE ISSUED TO YOU
WITH ANY SUBSEQUENT RENEWAL NOTICE.
CREDITOR- WELLS FARGO DEALER SERVICES, PO BOX 5075, CORAOPOLIS PA
15108-5075.
6049R.4 USE OF NONOWNED CARS-LIABILITY AND MEDICAL PAYMENTS COVERAGES -
PAUL WINDHAM.

R

Agent: TERRI BROCK
Telephone: (803)772-4000
Prepared JAN 07 2011 1903-344

This policy is issued by State Farm Mutual Automobile Insurance Company.

MUTUAL CONDITIONS

1. **Membership.** While this policy is in force, the first insured shown on the Declarations Page is entitled to vote at all meetings of members and to receive dividends the Board of Directors in its discretion may declare in accordance with reasonable classifications and groupings of policyholders established by such Board.

2. **No Contingent Liability.** This policy is non-assessable.

3. **Annual Meeting.** The annual meeting of the members of the company shall be held at its home office at Bloomington, Illinois, on the second Monday of June at the hour of 10:00 A.M., unless the Board of Directors shall elect to change the time and place of such meeting, in which case, but not otherwise, due notice shall be mailed each member at the address disclosed in this policy at least 10 days prior thereto.

In Witness Whereof, the State Farm Mutual Automobile Insurance Company has caused this policy to be signed by its President and Secretary at Bloomington, Illinois.

Kim M. Brunner
Secretary

Edward B. Rust Jr.
President

6049R.4 USE OF NON-OWNED CARS — LIABILITY AND MEDICAL PAYMENTS COVERAGES

This endorsement is a part of *your* policy. Except for the changes it makes, all other terms of the policy remain the same and apply to this endorsement. It is effective at the same time as *your* policy unless a different effective date is shown for the endorsement on the Declarations Page.

In consideration of the premium charged, it is agreed that the coverage for the use of ***non-owned cars*** under Liability – Coverage A and Medical Payments – Coverage C, by the ***person*** named below and his or her ***spouse***, is extended by changing the following policy provisions as they apply to the ***person*** named below and his or her ***spouse***:

1. DEFINED WORDS

Non-owned car means:

1. a ***car***;
2. any other land motor vehicle if the accident arises out of the use of the vehicle for locomotion; or
3. an attached trailer, while towed by a motor vehicle we insure for liability;

if not owned by, registered to or leased to:

1. an ***insured***;
2. any ***relative*** unless at the time of the accident or ***loss***:
   a. the vehicle currently is or has within the last 30 days been insured for liability coverage; and
   b. the driver is an ***insured*** who does not own or lease the vehicle; or
3. any other ***person*** residing in the same household as an ***insured*** or any ***relative***.

A ***non-owned car*** must be in the lawful possession of the ***person*** operating it.

Relative – as used in this endorsement, means a ***person*** related to the ***person*** named below or his or her ***spouse*** by blood, marriage or adoption who resides primarily with the ***person*** named below. It includes the unmarried and unemancipated child of the ***person*** named below or his or her ***spouse*** while that child is away at school.

Spouse – as used in this endorsement, means the husband or wife of the ***person*** named below who resides primarily with the ***person*** named below.

2. LIABILITY – COVERAGE A (SECTION I)

a. The second paragraph of Who Is an Insured is changed to read:

When we refer to a ***non-owned car***, ***insured*** means:

1. _____ and ***spouse;*** and

2. any ***person*** or organization which does not own or hire the ***non-owned car*** but is liable for its use by the ***person*** named above or his or her ***spouse.***

b. The items under THERE IS NO COVERAGE FOR ***NON-OWNED CARS*** are replaced by the following:

1. WHILE BEING REPAIRED, SERVICED OR USED BY ANY ***PERSON*** WHILE THAT ***PERSON*** IS WORKING IN ANY ***CAR BUSINESS;*** OR

2. WHILE USED IN THE ***INSURED'S*** BUSINESS OR OCCUPATION unless the ***non-owned car*** is operated or ***occupied*** by the ***person*** named above, or his or her ***spouse,*** or their private chauffeur or domestic servant.

c. **When Coverage A Does Not Apply is changed by adding:**

THERE IS NO COVERAGE FOR ***BODILY INJURY*** TO ANY ***PERSON*** OR DAMAGE TO OR DESTRUCTION OF PROPERTY CAUSED BY ACCIDENT ARISING OUT OF THE OPERATION OF ANY EQUIPMENT WHICH IS A PART OF OR MOUNTED ON ANY TRAILER INSURED UNDER THIS ENDORSEMENT.

3. **MEDICAL PAYMENTS – COVERAGE C (SECTION II)**

a. **Item 2b of Persons for Whom Medical Expenses Are Payable is changed to read:**

b. a ***non-owned car.*** The ***bodily injury*** has to result from such ***non-owned car's*** operation or occupancy by the ***person*** named above or his or her ***spouse.***

b. **What Is Not Covered is changed by adding:**

THERE IS NO COVERAGE FOR ***BODILY INJURY*** TO ANY ***PERSON*** CAUSED BY ACCIDENT ARISING OUT OF THE OPERATION OF ANY EQUIPMENT WHICH IS A PART OF OR MOUNTED ON ANY TRAILER INSURED UNDER THIS ENDORSEMENT.

6091W CERTIFICATE OF GUARANTEED RENEWAL

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

This endorsement is issued by the **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY** of Bloomington, Illinois.

1. *We* will not cancel or nonrenew this policy as long as:
   a. this policy insures a ***private passenger car***;
   b. premiums are paid when due;
   c. all drivers of ***your car*** maintain valid drivers licenses;
   d. ***you*** continue to reside in an area in which State Farm Mutual Automobile Insurance Company sells automobile insurance and has the Certificate of Guaranteed Renewal available for use; and
   e. no ***person*** other than ***you*** becomes a named insured on this policy.
2. ***You*** will be able to select from those coverages which continue to be available from State Farm Mutual Automobile Insurance Company.
3. Coverage will be provided by ***our*** Car Policy, including any revisions that may be made to it.

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6940A AMENDATORY ENDORSEMENT

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. **THIS POLICY**

Item 5. is changed to read:

Your purchase of this policy may allow:

a. *you* to purchase or obtain certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other products from the ***State Farm Companies***, subject to their applicable eligibility rules; or

b. the premium or price for other products or services purchased by *you*, including non-insurance products or services, to vary. Such other products or services must be provided by the ***State Farm Companies*** or by an organization that has entered into an agreement or contract with the ***State Farm Companies***. The ***State Farm Companies*** do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization.

2. **LIABILITY COVERAGE**

Insuring Agreement and **Supplementary Payments** are replaced by the following:

Insuring Agreement

1. *We* will pay damages an ***insured*** becomes legally liable to pay because of:

   a. ***bodily injury*** to others; and

   b. damage to property

   caused by an accident that involves a vehicle for which that ***insured*** is provided Liability Coverage by this policy.

2. *We* have the right to:

   a. investigate, negotiate, and settle any claim or lawsuit;

   b. defend an ***insured*** in any claim or lawsuit, with attorneys chosen by *us*; and

   c. appeal any award or legal decision

   for damages payable under this policy's Liability Coverage.

Supplementary Payments

We will pay, in addition to the damages described in the **Insuring Agreement** of this policy's Liability Coverage, those items listed below that result from such accident:

1. Attorney fees for attorneys chosen by *us* to defend an ***insured*** who is sued for such damages. *We* have no duty to pay attorney fees incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

2. Court costs awarded by the court against an ***insured*** and resulting from that part of the lawsuit:

   a. that seeks damages payable under this policy's Liability Coverage; and

   b. against which *we* defend an ***insured*** with attorneys chosen by *us*.

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We have no duty to pay court costs incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

3. Interest the ***insured*** is legally liable to pay on damages payable under the **Insuring Agreement** of this policy's Liability Coverage:
   a. before a judgment, but only the interest on the lesser of:
      (1) that part of the damages *we* pay; or
      (2) this policy's applicable Liability Coverage limit; and
   b. after a judgment.

   We have no duty to pay interest that accrues after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage. *We* also have no duty to pay interest that accrues on any damages paid or payable by a party other than the ***insured*** or ***us***;
4. Premiums for bonds, provided by a company chosen by ***us***, required to appeal a decision in a lawsuit against an ***insured***. *We* have no duty to:
   a. pay for any bond with a face amount that exceeds this policy's applicable Liability Coverage limit;
   b. furnish or apply for any bonds; or
   c. pay premiums for bonds purchased after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage; and
5. The following costs and expenses if related to and incurred after a lawsuit has been filed against an ***insured***:
   a. Loss of wages or salary, but not other income, up to $200 for each day an ***insured*** attends, at ***our*** request:
      (1) an arbitration;
      (2) a mediation; or
      (3) a trial of a lawsuit; and
   b. Reasonable expenses incurred by an ***insured*** at ***our*** request other than loss of wages, salary, or other income.

   The amount of any of the costs or expenses listed above that are incurred by an ***insured*** must be reported to ***us*** before *we* will pay such incurred costs or expenses.

3. **GENERAL TERMS**
   a. The paragraph under **Where Coverage Applies** that reads:

      Liability Coverage, Personal Injury Protection Coverage, Medical Payments Coverage, and Physical Damage Coverages also apply in Mexico within 50 miles of the United States of America border. A Physical Damage Coverage ***loss*** in Mexico is determined on the basis of cost at the nearest United States of America point.

      is deleted.
   b. The following is added:

      Limited Coverage in Mexico

      This policy does not provide Mexican auto insurance and does not comply with Mexican auto insurance requirements. If ***you*** or any other ***insured*** plan to drive in Mexico, then auto insurance providing

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coverage in Mexico should be purchased from a Mexican insurance company.

Subject to the above paragraph, the following coverages apply in Mexico, but only for accidents and *losses* that occur in Mexico within 50 miles of the United States of America border and only for *insureds* as defined under each of the following coverages:

a. **Liability Coverage**

For claims brought against an *insured* in Mexico, the **Supplementary Payments** provision of this policy's Liability Coverage is changed to read:

We may, in addition to the damages described in item 1. of the **Insuring Agreement** of this policy's Liability Coverage, pay or reimburse, at our option, reasonable attorney fees for an attorney licensed in Mexico to appear for and provide advice to *insureds* as defined under this policy's Liability Coverage. The amount of such attorney fees incurred by an *insured* must be reported to *us* before *we* will make payment.

b. **Personal Injury Protection Coverage**

c. **Medical Payments Coverage**

d. **Physical Damage Coverages**

Any amount payable for the repair or replacement of the *covered vehicle* under the **Limits and Loss Settlement – Comprehensive Coverage and Collision Coverage** provision of this policy will be limited to the cost to repair or replace the *covered vehicle* in the United States of America.

WE HAVE NO DUTY TO PROVIDE A DEFENSE FOR *YOU* OR ANY OTHER *INSURED* IN ANY CRIMINAL, CIVIL, OR OTHER ACTION.

WE HAVE NO DUTY TO PAY ANY CLAIM OR COST THAT WOULD NOT BE PAYABLE UNDER THIS POLICY IF THE ACCIDENT OR *LOSS* HAD OCCURRED IN THE STATE OF SOUTH CAROLINA IN THE UNITED STATES OF AMERICA.

All other policy provisions not in conflict with the provisions in this **Limited Coverage in Mexico** provision of this policy apply.

If Other Coverage Applies

Any coverage provided by this **Limited Coverage in Mexico** provision is excess over any other applicable insurance.

Legal Action Against Us

Any legal action against *us* arising out of an accident or *loss* occurring in Mexico must be brought in a court that has jurisdiction in the state of South Carolina in the United States of America.

c. Paragraph c. of **5. Premium** is changed to read:

c. The premium for this policy may vary based upon:

(1) the purchase of other products or services from the ***State Farm Companies***;

(2) the purchase of products or services from an organization that has entered into an agreement or contract with

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the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization; or

(3) an agreement, concerning the insurance provided by this policy, that the *State Farm Companies* has with an organization of which *you* are a member, employee, subscriber, licensee, or franchisee.

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Exhibit C

FILED
2016 FEB -7 AM 12:21

State Farm®

Certified Policy Record

I, the undersigned, do hereby confirm that I am custodian of the records pertaining to the issuance of policies by State Farm Mutual Automobile Insurance Company.

I certify that the attached documents represent a true and accurate record of the terms and conditions of Policy Number 203 0864-F04-40C including any endorsements, if applicable, for the policy term(s) June 04, 2012 to December 04, 2012 and insuring Paul A Windham of 320 Beaumont Dr, Lexington SC 29072-8848 based on available records.

It is State Farm's business practice to print a new Declarations Page only when a policy issuance transaction such as a change of coverage occurs. Therefore, the included Declarations Page which was in effect at the time of loss will indicate the policy period of the last policy issuance transaction.

The policy was in effect on the loss date of October 05, 2012.

Shay Anderson
Underwriting Team Manager
Date: 4/18/12

1004516

2000 143551 200 03-21-2012

State Farm State Farm Mutual Automobile Insurance Company

11350 Johns Creek Parkway
Duluth GA 30098

44882-5-F MUTL VOL

DECLARATIONS PAGE

NAMED INSURED
AT 1 40-1903-554F A
WINDHAM, PAUL A
[redacted]

POLICY NUMBER 203 0864-F04-40C
POLICY PERIOD FEB 10 2012 to JUN 04 2012
12:01 A.M. Standard Time

STATE FARM PAYMENT PLAN NUMBER
1108763927

AGENT
TERRI BROCK
6158 SAINT ANDREWS RD
COLUMBIA, SC 29212-3122

PHONE: (803)772-4000

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
IF AN AMOUNT IS DUE, THEN A SEPARATE STATEMENT IS ENCLOSED.

YOUR CAR

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID. NUMBER	CLASS
2007	TOYOTA	CAMRY	4DR	4T1BE46K77U561286	9B7063M000

SYMBOLS	COVERAGE & LIMITS	PREMIUMS
A	Liability Coverage Bodily Injury Limits Each Person, Each Accident $250,000 $500,000 Property Damage Limit Each Accident $50,000	$213.60
D	Comprehensive Coverage - $500 Deductible	$31.50
G	Collision Coverage - $500 Deductible	$116.10
H	Emergency Road Service Coverage	$1.40
U	Uninsured Motor Vehicle Coverage Bodily Injury Limits Each Person, Each Accident $100,000 $300,000 Property Damage Limit Each Accident $50,000	$8.25
W	Underinsured Motor Vehicle Coverage Bodily Injury Limits Each Person, Each Accident $100,000 .... $300,000 Property Damage Limit Each Accident $50,000	$33.80

Total premium for FEB 10 2012 to JUN 04 2012. $404.65 This is not a bill.

IMPORTANT MESSAGES

Replaced policy number 2030864-40B.

Your total renewal premium for DEC 04 2011 to JUN 04 2012 is $639.15.

Location used to determine rate charged-911 OAKLAND AVE, CAYCE SC 29033-3613.

EXCEPTIONS, POLICY BOOKLET & ENDORSEMENTS (See policy booklet & individual endorsements for coverage details.)

YOUR POLICY CONSISTS OF THIS DECLARATIONS PAGE, THE POLICY BOOKLET - FORM 9840A, AND ANY ENDORSEMENTS THAT APPLY, INCLUDING THOSE ISSUED TO YOU WITH ANY SUBSEQUENT RENEWAL NOTICE.
CREDITOR- ONEMAIN FINANCIAL, 205 COLUMBIA AVE, LEXINGTON SC 29072-2662.
6940A AMENDATORY ENDORSEMENT.

This policy is issued by State Farm Mutual Automobile Insurance Company.

MUTUAL CONDITIONS

1. **Membership.** While this policy is in force, the first insured shown on the Declarations Page is entitled to vote at all meetings of members and to receive dividends the Board of Directors in its discretion may declare in accordance with reasonable classifications and groupings of policyholders established by such Board.

2. **No Contingent Liability.** This policy is non-assessable.

3. **Annual Meeting.** The annual meeting of the members of the company shall be held at its home office at Bloomington, Illinois, on the second Monday of June at the hour of 10:00 A.M., unless the Board of Directors shall elect to change the time and place of such meeting, in which case, but not otherwise, due notice shall be mailed each member at the address disclosed in this policy at least 10 days prior thereto.

In Witness Whereof, the State Farm Mutual Automobile Insurance Company has caused this policy to be signed by its President and Secretary at Bloomington, Illinois.

Lynne M. Yourell
Secretary

Edward B. Rust Jr.
President

Policy Number: 203 0864-F04-40C
Sheet 1 of 1

PLEASE ATTACH TO YOUR POLICY BOOKLET

6940A AMENDATORY ENDORSEMENT

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. **THIS POLICY**

Item 5. is changed to read:

Your purchase of this policy may allow:

a. *you* to purchase or obtain certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other products from the *State Farm Companies*, subject to their applicable eligibility rules; or

b. the premium or price for other products or services purchased by *you*, including non-insurance products or services, to vary. Such other products or services must be provided by the *State Farm Companies* or by an organization that has entered into an agreement or contract with the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization.

2. **LIABILITY COVERAGE**

Insuring Agreement and **Supplementary Payments** are replaced by the following:

Insuring Agreement

1. *We* will pay damages an *insured* becomes legally liable to pay because of:

   a. ***bodily injury*** to others; and

   b. damage to property

   caused by an accident that involves a vehicle for which that *insured* is provided Liability Coverage by this policy.

2. *We* have the right to:

   a. investigate, negotiate, and settle any claim or lawsuit;

   b. defend an *insured* in any claim or lawsuit, with attorneys chosen by *us*; and

   c. appeal any award or legal decision

   for damages payable under this policy's Liability Coverage.

Supplementary Payments

We will pay, in addition to the damages described in the **Insuring Agreement** of this policy's Liability Coverage, those items listed below that result from such accident:

1. Attorney fees for attorneys chosen by *us* to defend an *insured* who is sued for such damages. *We* have no duty to pay attorney fees incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

2. Court costs awarded by the court against an *insured* and resulting from that part of the lawsuit:

   a. that seeks damages payable under this policy's Liability Coverage; and

   b. against which *we* defend an *insured* with attorneys chosen by *us*.

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STI-0202-C10006

We have no duty to pay court costs incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

3. Interest the *insured* is legally liable to pay on damages payable under the **Insuring Agreement** of this policy's Liability Coverage:

   a. before a judgment, but only the interest on the lesser of:

      (1) that part of the damages *we* pay; or

      (2) this policy's applicable Liability Coverage limit; and

   b. after a judgment.

   We have no duty to pay interest that accrues after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage. *We* also have no duty to pay interest that accrues on any damages paid or payable by a party other than the *insured* or *us*;

4. Premiums for bonds, provided by a company chosen by *us*, required to appeal a decision in a lawsuit against an *insured*. *We* have no duty to:

   a. pay for any bond with a face amount that exceeds this policy's applicable Liability Coverage limit;

   b. furnish or apply for any bonds; or

   c. pay premiums for bonds purchased after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage; and

5. The following costs and expenses if related to and incurred after a lawsuit has been filed against an *insured*:

   a. Loss of wages or salary, but not other income, up to $200 for each day an *insured* attends, at *our* request:

      R16259: AUTO - ENHANCED UNDERWRITING MODELS (1) an arbitration;

      (2) a mediation; or

      (3) a trial of a lawsuit; and

   b. Reasonable expenses incurred by an *insured* at *our* request other than loss of wages, salary, or other income.

   The amount of any of the costs or expenses listed above that are incurred by an *insured* must be reported to *us* before *we* will pay such incurred costs or expenses.

3. **GENERAL TERMS**

a. The paragraph under **Where Coverage Applies** that reads:

   Liability Coverage, Personal Injury Protection Coverage, Medical Payments Coverage, and Physical Damage Coverages also apply in Mexico within 50 miles of the United States of America border. A Physical Damage Coverage *loss* in Mexico is determined on the basis of cost at the nearest United States of America point.

   is deleted.

b. The following is added:

   Limited Coverage in Mexico

   This policy does not provide Mexican auto insurance and does not comply with Mexican auto insur-

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0251404469
ED1

PLEASE ATTACH TO YOUR POLICY BOOKLET

Policy Number: 203 0864-F04-40C

ance requirements. If *you* or any other *insured* plan to drive in Mexico, then auto insurance providing coverage in Mexico should be purchased from a Mexican insurance company.

Subject to the above paragraph, the following coverages apply in Mexico, but only for accidents and *losses* that occur in Mexico within 50 miles of the United States of America border and only for *insureds* as defined under each of the following coverages:

a. **Liability Coverage**

For claims brought against an *insured* in Mexico, the **Supplementary Payments** provision of this policy's Liability Coverage is changed to read:

We may, in addition to the damages described in item 1. of the **Insuring Agreement** of this policy's Liability Coverage, pay or reimburse, at our option, reasonable attorney fees for an attorney licensed in Mexico to appear for and provide advice to *insureds* as defined under this policy's Liability Coverage. The amount of such attorney fees incurred by an *insured* must be reported to *us* before *we* will make payment.

b. **Personal Injury Protection Coverage**

c. **Medical Payments Coverage**

d. **Physical Damage Coverages**

Any amount payable for the repair or replacement of the *covered vehicle* under the **Limits and Loss Settlement – Comprehensive Coverage** and **Collision Coverage** provision of this policy will be limited to the cost to repair or replace the *covered vehicle* in the United States of America.

WE HAVE NO DUTY TO PROVIDE A DEFENSE FOR *YOU* OR ANY OTHER *INSURED* IN ANY CRIMINAL, CIVIL, OR OTHER ACTION.

WE HAVE NO DUTY TO PAY ANY CLAIM OR COST THAT WOULD NOT BE PAYABLE UNDER THIS POLICY IF THE ACCIDENT OR *LOSS* HAD OCCURRED IN THE STATE OF SOUTH CAROLINA IN THE UNITED STATES OF AMERICA.

All other policy provisions not in conflict with the provisions in this **Limited Coverage in Mexico** provision of this policy apply.

If Other Coverage Applies

Any coverage provided by this **Limited Coverage in Mexico** provision is excess over any other applicable insurance.

Legal Action Against Us

Any legal action against *us* arising out of an accident or *loss* occurring in Mexico must be brought in a court that has jurisdiction in the state of South Carolina in the United States of America.

e. Paragraph e. of 5. **Premium** is changed to read:

e. The premium for this policy may vary based upon:

(1) the purchase of other products or services from the *State Farm Companies*;

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(2) the purchase of products or services from an organization that has entered into an agreement or contract with the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization; or

(3) an agreement, concerning the insurance provided by this policy, that the *State Farm Companies* has with an organization of which *you* are a member, employee, subscriber, licensee, or franchisee.

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0251404469

175

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Exhibit D

State Farm

Certified Policy Record

I, the undersigned, do hereby confirm that I am custodian of the records pertaining to the issuance of policies by State Farm Mutual Automobile Insurance Company.

I certify that the attached documents represent a true and accurate record of the terms and conditions of Policy Number 186 4629-A16-40Q including any endorsements, if applicable, for the policy term(s) July 16, 2012 to January 16, 2013 and insuring Paul A Windham of 320 Beaumont Dr, Lexington SC 29072-8848 based on available records.

The following endorsements are included:
6091W CERTIFICATE OF GUARANTEED RENEWAL - EFFECTIVE DATE 07-16-11.
6940A AMENDATORY ENDORSEMENT - EFFECTIVE DATE 01-16-12.

It is State Farm's business practice to print a new Declarations Page only when a policy issuance transaction such as a change of coverage occurs. Therefore, the included Declarations Page which was in effect at the time of loss will indicate the policy period of the last policy issuance transaction.

The policy was in effect on the loss date of October 05, 2012.

Shay Anderson
Underwriting Team Manager
Date: 2/18/14

1004516

2000 143561 200 03-21-2012

StateFarm

State Farm Mutual Automobile Insurance Company
11350 Johns Creek Parkway
Duluth GA 30098

63638-6-F MUTL VOL

DECLARATIONS PAGE

NAMED INSURED
AT2 40-1903-554F A
004557
WINDHAM, PAUL A
[redacted]

POLICY NUMBER 186 4629-A16-40Q
POLICY PERIOD JAN 16 2011 to JUL 16 2011
12:01 A.M. Standard Time

STATE FARM PAYMENT PLAN NUMBER
1108763927

AGENT
TERRI BROCK
6158 ST ANDREWS RD
COLUMBIA, SC 29212-3122

PHONE:(803)772-4000

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
IF AN AMOUNT IS DUE, THEN A SEPARATE STATEMENT IS ENCLOSED.

YOUR CAR

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID. NUMBER	CLASS
2005	HYUNDAI	TUCSON	SPORT WG	KM8JN12D85U231090	9C7H53M000

SYMBOLS	COVERAGE & LIMITS	PREMIUMS
A	Liability Coverage Bodily Injury Limits Each Person, Each Accident $250,000 $500,000 Property Damage Limit Each Accident $50,000	$456.40
D	Comprehensive Coverage - $500 Deductible	$58.26
G	Collision Coverage - $500 Deductible	$210.13
H	Emergency Road Service Coverage	$2.20
U	Uninsured Motor Vehicle Coverage Bodily Injury Limits Each Person, Each Accident $100,000 $300,000 Property Damage Limit Each Accident $50,000	$13.39
W	Underinsured Motor Vehicle Coverage Bodily Injury Limits Each Person, Each Accident $100,000 $300,000 Property Damage Limit Each Accident $50,000	$51.22
	Total premium for JAN 16 2011 to JUL 16 2011.	$791.60 This is not a bill.

IMPORTANT MESSAGES

Replaced policy number 1864629-40P.

New Policy Form

Location used to determine rate charged-911 OAKLAND AVE, CAYCE SC 29033.

EXCEPTIONS, POLICY BOOKLET & ENDORSEMENTS (See policy booklet & individual endorsements for coverage details.)

YOUR POLICY CONSISTS OF THIS DECLARATIONS PAGE, THE POLICY BOOKLET - FORM 9840A, AND ANY ENDORSEMENTS THAT APPLY, INCLUDING THOSE ISSUED TO YOU WITH ANY SUBSEQUENT RENEWAL NOTICE.

R

Agent: TERRI BROCK
Telephone: (803)772-4000
Prepared JAN 17 2011 1903-344

This policy is issued by State Farm Mutual Automobile Insurance Company.

MUTUAL CONDITIONS

1. **Membership.** While this policy is in force, the first insured shown on the Declarations Page is entitled to vote at all meetings of members and to receive dividends the Board of Directors in its discretion may declare in accordance with reasonable classifications and groupings of policyholders established by such Board.

2. **No Contingent Liability.** This policy is non-assessable.

3. **Annual Meeting.** The annual meeting of the members of the company shall be held at its home office at Bloomington, Illinois, on the second Monday of June at the hour of 10:00 A.M., unless the Board of Directors shall elect to change the time and place of such meeting, in which case, but not otherwise, due notice shall be mailed each member at the address disclosed in this policy at least 10 days prior thereto.

In Witness Whereof, the State Farm Mutual Automobile Insurance Company has caused this policy to be signed by its President and Secretary at Bloomington, Illinois.

Kim M. Brunner
Secretary

Edward B. Rust Jr.
President

6091W CERTIFICATE OF GUARANTEED RENEWAL

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

This endorsement is issued by the **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY** of Bloomington, Illinois.

1. ***We*** will not cancel or nonrenew this policy as long as:
   a. this policy insures a ***private passenger car***;
   b. premiums are paid when due;
   c. all drivers of ***your car*** maintain valid drivers licenses;
   d. ***you*** continue to reside in an area in which State Farm Mutual Automobile Insurance Company sells automobile insurance and has the Certificate of Guaranteed Renewal available for use; and
   e. no ***person*** other than ***you*** becomes a named insured on this policy.
2. ***You*** will be able to select from those coverages which continue to be available from State Farm Mutual Automobile Insurance Company.
3. Coverage will be provided by ***our*** Car Policy, including any revisions that may be made to it.

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6940A AMENDATORY ENDORSEMENT

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. **THIS POLICY**

   Item 5. is changed to read:

   Your purchase of this policy may allow:

   a. ***you*** to purchase or obtain certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other products from the ***State Farm Companies***, subject to their applicable eligibility rules; or

   b. the premium or price for other products or services purchased by ***you***, including non-insurance products or services, to vary. Such other products or services must be provided by the ***State Farm Companies*** or by an organization that has entered into an agreement or contract with the ***State Farm Companies***. The ***State Farm Companies*** do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization.

2. **LIABILITY COVERAGE**

   Insuring Agreement and Supplementary Payments are replaced by the following:

   Insuring Agreement

   1. ***We*** will pay damages an ***insured*** becomes legally liable to pay because of:

      a. ***bodily injury*** to others; and

      b. damage to property

      caused by an accident that involves a vehicle for which that ***insured*** is provided Liability Coverage by this policy.

   2. ***We*** have the right to:

      a. investigate, negotiate, and settle any claim or lawsuit;

      b. defend an ***insured*** in any claim or lawsuit, with attorneys chosen by ***us***; and

      c. appeal any award or legal decision

      for damages payable under this policy's Liability Coverage.

   Supplementary Payments

   We will pay, in addition to the damages described in the **Insuring Agreement** of this policy's Liability Coverage, those items listed below that result from such accident:

   1. Attorney fees for attorneys chosen by ***us*** to defend an ***insured*** who is sued for such damages. ***We*** have no duty to pay attorney fees incurred after ***we*** deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

   2. Court costs awarded by the court against an ***insured*** and resulting from that part of the lawsuit:

      a. that seeks damages payable under this policy's Liability Coverage; and

      b. against which ***we*** defend an ***insured*** with attorneys chosen by ***us***.

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We have no duty to pay court costs incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

3. Interest the ***insured*** is legally liable to pay on damages payable under the **Insuring Agreement** of this policy's Liability Coverage:
   a. before a judgment, but only the interest on the lesser of:
      (1) that part of the damages *we* pay; or
      (2) this policy's applicable Liability Coverage limit; and
   b. after a judgment.

   We have no duty to pay interest that accrues after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage. *We* also have no duty to pay interest that accrues on any damages paid or payable by a party other than the ***insured*** or ***us***;
4. Premiums for bonds, provided by a company chosen by ***us***, required to appeal a decision in a lawsuit against an ***insured***. *We* have no duty to:
   a. pay for any bond with a face amount that exceeds this policy's applicable Liability Coverage limit;
   b. furnish or apply for any bonds; or
   c. pay premiums for bonds purchased after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage; and
5. The following costs and expenses if related to and incurred after a lawsuit has been filed against an ***insured***:
   a. Loss of wages or salary, but not other income, up to $200 for each day an ***insured*** attends, at ***our*** request:
      (1) an arbitration;
      (2) a mediation; or
      (3) a trial of a lawsuit; and
   b. Reasonable expenses incurred by an ***insured*** at ***our*** request other than loss of wages, salary, or other income.

   The amount of any of the costs or expenses listed above that are incurred by an ***insured*** must be reported to ***us*** before *we* will pay such incurred costs or expenses.

3. **GENERAL TERMS**
   a. The paragraph under **Where Coverage Applies** that reads:

      Liability Coverage, Personal Injury Protection Coverage, Medical Payments Coverage, and Physical Damage Coverages also apply in Mexico within 50 miles of the United States of America border. A Physical Damage Coverage ***loss*** in Mexico is determined on the basis of cost at the nearest United States of America point.

      is deleted.
   b. The following is added:

      Limited Coverage in Mexico

      This policy does not provide Mexican auto insurance and does not comply with Mexican auto insurance requirements. If ***you*** or any other ***insured*** plan to drive in Mexico, then auto insurance providing

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coverage in Mexico should be purchased from a Mexican insurance company.

Subject to the above paragraph, the following coverages apply in Mexico, but only for accidents and *losses* that occur in Mexico within 50 miles of the United States of America border and only for *insureds* as defined under each of the following coverages:

a. **Liability Coverage**

For claims brought against an *insured* in Mexico, the **Supplementary Payments** provision of this policy's Liability Coverage is changed to read:

We may, in addition to the damages described in item 1. of the **Insuring Agreement** of this policy's Liability Coverage, pay or reimburse, at our option, reasonable attorney fees for an attorney licensed in Mexico to appear for and provide advice to *insureds* as defined under this policy's Liability Coverage. The amount of such attorney fees incurred by an *insured* must be reported to *us* before *we* will make payment.

b. **Personal Injury Protection Coverage**

c. **Medical Payments Coverage**

d. **Physical Damage Coverages**

Any amount payable for the repair or replacement of the *covered vehicle* under the **Limits and Loss Settlement – Comprehensive Coverage and Collision Coverage** provision of this policy will be limited to the cost to repair or replace the *covered vehicle* in the United States of America.

WE HAVE NO DUTY TO PROVIDE A DEFENSE FOR *YOU* OR ANY OTHER *INSURED* IN ANY CRIMINAL, CIVIL, OR OTHER ACTION.

WE HAVE NO DUTY TO PAY ANY CLAIM OR COST THAT WOULD NOT BE PAYABLE UNDER THIS POLICY IF THE ACCIDENT OR *LOSS* HAD OCCURRED IN THE STATE OF SOUTH CAROLINA IN THE UNITED STATES OF AMERICA.

All other policy provisions not in conflict with the provisions in this **Limited Coverage in Mexico** provision of this policy apply.

If Other Coverage Applies

Any coverage provided by this **Limited Coverage in Mexico** provision is excess over any other applicable insurance.

Legal Action Against Us

Any legal action against *us* arising out of an accident or *loss* occurring in Mexico must be brought in a court that has jurisdiction in the state of South Carolina in the United States of America.

c. Paragraph c. of **5. Premium** is changed to read:

c. The premium for this policy may vary based upon:

(1) the purchase of other products or services from the *State Farm Companies*;

(2) the purchase of products or services from an organization that has entered into an agreement or contract with

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the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization; or

(3) an agreement, concerning the insurance provided by this policy, that the *State Farm Companies* has with an organization of which *you* are a member, employee, subscriber, licensee, or franchisee.

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Exhibit E

FILED
2006 NOV -7 AM 10: 21
CLERK OF
SUPERIOR

State Farm

Certified Policy Record

I, the undersigned, do hereby confirm that I am custodian of the records pertaining to the issuance of policies by State Farm Mutual Automobile Insurance Company.

I certify that the attached documents represent a true and accurate record of the terms and conditions of Policy Number 457 1883-B10-40A including any endorsements, if applicable, for the policy term(s) October 05, 2012 to February 10, 2013 and insuring Paul A & Myra M Windham of 320 Beaumont Dr, Lexington SC 29072-8848 based on available records.

The policy was in effect on the loss date of October 05, 2012.

Shay Anderson
Underwriting Team Manager
Date: 2/18/14

1004516

2000 143651 200 03-21-2012

StateFarm State Farm Mutual Automobile Insurance Company

11350 Johns Creek Parkway
Duluth GA 30098

49138-5-F MUTL VOL

DECLARATIONS PAGE

NAMED INSURED
AT1 40-1903-554F A
001285 CCSS
WINDHAM, PAUL A & MYRA M
[redacted]

POLICY NUMBER 457 1883-B10-40A
POLICY PERIOD OCT 05 2012 to FEB 10 2013
12:01 A.M. Standard Time

STATE FARM PAYMENT PLAN NUMBER
1108763927

AGENT
TERRI BROCK
6158 SAINT ANDREWS RD
COLUMBIA, SC 29212-3122

PHONE: (803)772-4000

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
IF AN AMOUNT IS DUE, THEN A SEPARATE STATEMENT IS ENCLOSED.

YOUR CAR

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID. NUMBER	CLASS
2007	NISSAN	XTERRA	SPORT WG	5N1AN08W27C503712	9D7H12M000

SYMBOLS	COVERAGE & LIMITS	PREMIUMS
A	Liability Coverage Bodily Injury Limits Each Person, Each Accident $250,000 $500,000 Property Damage Limit Each Accident $50,000	$546.40
D	Comprehensive Coverage - $500 Deductible	$52.10
G	Collision Coverage - $500 Deductible	$194.40
H	Emergency Road Service Coverage	$1.50
U	Uninsured Motor Vehicle Coverage Bodily Injury Limits Each Person, Each Accident $100,000 $300,000 Property Damage Limit Each Accident $50,000	$9.05
W	Underinsured Motor Vehicle Coverage Bodily Injury Limits Each Person, Each Accident $100,000 $300,000 Property Damage Limit Each Accident $50,000	$37.10
	Total premium for OCT 05 2012 to FEB 10 2013.	$840.55 This is not a bill.

IMPORTANT MESSAGES

Replaced policy number 4571883-40.

Your total renewal premium for AUG 10 2012 to FEB 10 2013 is $1,211.16.

Location used to determine rate charged-911 OAKLAND AVE, CAYCE SC 29033.

EXCEPTIONS, POLICY BOOKLET & ENDORSEMENTS (See policy booklet & individual endorsements for coverage details.)

YOUR POLICY CONSISTS OF THIS DECLARATIONS PAGE, THE POLICY BOOKLET - FORM 9840A, AND ANY ENDORSEMENTS THAT APPLY, INCLUDING THOSE ISSUED TO YOU WITH ANY SUBSEQUENT RENEWAL NOTICE.
CREDITOR- WELLS FARGO AUTO FINANCE, PO BOX 4050, CORAOPOLIS PA 15108-6944.
6940A AMENDATORY ENDORSEMENT.

02756/07864

This policy is issued by State Farm Mutual Automobile Insurance Company.

MUTUAL CONDITIONS

1. **Membership.** While this policy is in force, the first insured shown on the Declarations Page is entitled to vote at all meetings of members and to receive dividends the Board of Directors in its discretion may declare in accordance with reasonable classifications and groupings of policyholders established by such Board.

2. **No Contingent Liability.** This policy is non-assessable.

3. **Annual Meeting.** The annual meeting of the members of the company shall be held at its home office at Bloomington, Illinois, on the second Monday of June at the hour of 10:00 A.M., unless the Board of Directors shall elect to change the time and place of such meeting, in which case, but not otherwise, due notice shall be mailed each member at the address disclosed in this policy at least 10 days prior thereto.

In Witness Whereof, the State Farm Mutual Automobile Insurance Company has caused this policy to be signed by its President and Secretary at Bloomington, Illinois.

Lynne M. Yarnell
Secretary

Edward B. Rust Jr.
President

PLEASE ATTACH TO YOUR POLICY BOOKLET

Policy Number: 457 1883-B10-40A
Sheet 1 of 1

6940A AMENDATORY ENDORSEMENT

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. **THIS POLICY**

   Item 5. is changed to read:

   Your purchase of this policy may allow:

   a. *you* to purchase or obtain certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other products from the *State Farm Companies*, subject to their applicable eligibility rules; or

   b. the premium or price for other products or services purchased by *you*, including non-insurance products or services, to vary. Such other products or services must be provided by the *State Farm Companies* or by an organization that has entered into an agreement or contract with the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization.

2. **LIABILITY COVERAGE**

   Insuring Agreement and **Supplementary Payments** are replaced by the following:

   Insuring Agreement

   1. *We* will pay damages an *insured* becomes legally liable to pay because of:

      a. *bodily injury* to others; and

      b. damage to property

      caused by an accident that involves a vehicle for which that *insured* is provided Liability Coverage by this policy.

   2. *We* have the right to:

      a. investigate, negotiate, and settle any claim or lawsuit;

      b. defend an *insured* in any claim or lawsuit, with attorneys chosen by *us*; and

      c. appeal any award or legal decision

      for damages payable under this policy's Liability Coverage.

   Supplementary Payments

   We will pay, in addition to the damages described in the **Insuring Agreement** of this policy's Liability Coverage, those items listed below that result from such accident:

   1. Attorney fees for attorneys chosen by *us* to defend an *insured* who is sued for such damages. *We* have no duty to pay attorney fees incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage;

   2. Court costs awarded by the court against an *insured* and resulting from that part of the lawsuit:

      a. that seeks damages payable under this policy's Liability Coverage; and

      b. against which *we* defend an *insured* with attorneys chosen by *us*.

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We have no duty to pay court costs incurred after *we* deposit in court or pay the amount due under the **Insuring Agreement** of this policy's Liability Coverage.

3. Interest the *insured* is legally liable to pay on damages payable under the **Insuring Agreement** of this policy's Liability Coverage:

   a. before a judgment, but only the interest on the lesser of:

      (1) that part of the damages *we* pay; or

      (2) this policy's applicable Liability Coverage limit; and

   b. after a judgment.

   We have no duty to pay interest that accrues after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage. *We* also have no duty to pay interest that accrues on any damages paid or payable by a party other than the *insured* or *us*.

4. Premiums for bonds, provided by a company chosen by *us*, required to appeal a decision in a lawsuit against an *insured*. *We* have no duty to:

   a. pay for any bond with a face amount that exceeds this policy's applicable Liability Coverage limit;

   b. furnish or apply for any bonds; or

   c. pay premiums for bonds purchased after *we* deposit in court, pay, or offer to pay, the amount due under the **Insuring Agreement** of this policy's Liability Coverage; and

5. The following costs and expenses if related to and incurred after a lawsuit has been filed against an *insured*:

   a. Loss of wages or salary, but not other income, up to $200 for each day an *insured* attends, at *our* request:

      R16259: AUTO - ENHANCED UNDERWRITING MODELS (1) an arbitration;

      (2) a mediation; or

      (3) a trial of a lawsuit; and

   b. Reasonable expenses incurred by an *insured* at *our* request other than loss of wages, salary, or other income.

   The amount of any of the costs or expenses listed above that are incurred by an *insured* must be reported to *us* before *we* will pay such incurred costs or expenses.

3. **GENERAL TERMS**

   a. The paragraph under **Where Coverage Applies** that reads:

      Liability Coverage, Personal Injury Protection Coverage, Medical Payments Coverage, and Physical Damage Coverages also apply in Mexico within 50 miles of the United States of America border. A Physical Damage Coverage *loss* in Mexico is determined on the basis of cost at the nearest United States of America point.

      is deleted.

   b. The following is added:

      Limited Coverage in Mexico

      This policy does not provide Mexican auto insurance and does not comply with Mexican auto insur-

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ance requirements. If *you* or any other *insured* plan to drive in Mexico, then auto insurance providing coverage in Mexico should be purchased from a Mexican insurance company.

Subject to the above paragraph, the following coverages apply in Mexico, but only for accidents and *losses* that occur in Mexico within 50 miles of the United States of America border and only for *insureds* as defined under each of the following coverages:

a. **Liability Coverage**

For claims brought against an *insured* in Mexico, the **Supplementary Payments** provision of this policy's Liability Coverage is changed to read:

We may, in addition to the damages described in item 1. of the **Insuring Agreement** of this policy's Liability Coverage, pay or reimburse, at our option, reasonable attorney fees for an attorney licensed in Mexico to appear for and provide advice to *insureds* as defined under this policy's Liability Coverage. The amount of such attorney fees incurred by an *insured* must be reported to *us* before *we* will make payment.

b. **Personal Injury Protection Coverage**

c. **Medical Payments Coverage**

d. **Physical Damage Coverages**

Any amount payable for the repair or replacement of the *covered vehicle* under the **Limits and Loss Settlement – Comprehensive Coverage** and **Collision Coverage** provision of this policy will be limited to the cost to repair or replace the *covered vehicle* in the United States of America.

WE HAVE NO DUTY TO PROVIDE A DEFENSE FOR *YOU* OR ANY OTHER *INSURED* IN ANY CRIMINAL, CIVIL, OR OTHER ACTION.

WE HAVE NO DUTY TO PAY ANY CLAIM OR COST THAT WOULD NOT BE PAYABLE UNDER THIS POLICY IF THE ACCIDENT OR *LOSS* HAD OCCURRED IN THE STATE OF SOUTH CAROLINA IN THE UNITED STATES OF AMERICA.

All other policy provisions not in conflict with the provisions in this **Limited Coverage in Mexico** provision of this policy apply.

If Other Coverage Applies

Any coverage provided by this **Limited Coverage in Mexico** provision is excess over any other applicable insurance.

Legal Action Against Us

Any legal action against *us* arising out of an accident or *loss* occurring in Mexico must be brought in a court that has jurisdiction in the state of South Carolina in the United States of America.

c. Paragraph c. of **5. Premium** is changed to read:

c. The premium for this policy may vary based upon:

(1) the purchase of other products or services from the *State Farm Companies*;

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(2) the purchase of products or services from an organization that has entered into an agreement or contract with the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization; or

(3) an agreement, concerning the insurance provided by this policy, that the *State Farm Companies* has with an organization of which *you* are a member, employee, subscriber, licensee, or franchisee.

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Please read the policy carefully. If there is an accident, contact your State Farm agent or one of our Claim Offices at once. (See "INSURED'S DUTIES" in this policy booklet.)

Georgia-South Carolina Office
11350 Johns Creek Parkway
Duluth, GA 30098-0001
Phone: (770) 418-5000

State Farm®
Car Policy
Booklet

South Carolina
Policy Form 9840A

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THIS POLICY

1. This policy consists of:
   a. the most recently issued Declarations Page;
   b. the policy booklet version shown on that Declarations Page; and
   c. any endorsements that apply, including those listed on that Declarations Page as well as those issued in connection with any subsequent renewal of this policy.
2. This policy contains all of the agreements between all named insureds who are shown on the Declarations Page and all applicants and:
   a. *us*; and
   b. any of *our* agents.
3. *We* agree to provide insurance according to the terms of this policy:
   a. based on payment of premium for the coverages chosen; and
   b. unless otherwise stated in "EXCEPTIONS, POLICY BOOKLET, & ENDORSEMENTS" on the Declarations Page, in reliance on the following statements:
      (1) The named insured shown on the Declarations Page is the sole owner of *your car*.
      (2) Neither *you* nor any member of *your* household has, within the past three years, had:
         (a) vehicle insurance canceled or nonrenewed by an insurer; or
         (b) either:
            (i) a license to drive; or
            (ii) a vehicle registration suspended, revoked, or refused.

(3) *Your car* is used for pleasure and business.

4. All named insureds shown on the Declarations Page and all applicants agree by acceptance of this policy that:
   a. the statements in 3.b. above are made by such named insured or applicant and are true; and
   b. *we* provide this insurance on the basis those statements are true.
5. *Your* purchase of this policy may allow *you* to purchase certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other policies from the ***State Farm Companies***, subject to their applicable eligibility rules.

DEFINITIONS

We define certain words and phrases below for use throughout the policy. Each coverage includes additional definitions only for use with that coverage. These definitions apply to the singular, plural, possessive, and any other form of these words and phrases. Defined words and phrases are printed in boldface italics.

Bodily Injury means bodily injury to a *person* and sickness, disease, or death that results from it.

Car means a land motor vehicle with four or more wheels, designed for use primarily on public roads. *Car* does not include:

1. Any vehicle while located for use as a dwelling or other premises; or
2. A truck-tractor designed to pull any type of trailer.

Car Business means a business or job where the purpose is to sell, lease, rent, repair, service, modify, transport, store, or park land motor vehicles or any type of trailer.

Financial Responsibility Act means the Motor Vehicle Financial Responsibility Act of South Carolina.

Fungi means any type or form of fungus or fungi and includes:

1. Mold;
2. Mildew; and
3. Any of the following that are produced or released by fungi:
   a. Mycotoxins;
   b. Spores;
   c. Scents; or
   d. Byproducts.

Newly Acquired Car means a *car* newly *owned by you*. A *car* ceases to be a *newly acquired car* on the earlier of:

1. the effective date and time of a policy, including any binder, issued by *us* or any other company that describes the *car* as an insured vehicle; or
2. the end of the 14th calendar day immediately following the date the *car* is delivered to *you*.

If a *newly acquired car* is not otherwise afforded comprehensive coverage or collision coverage by this or any other policy, then this policy will provide Comprehensive Coverage or Collision Coverage for that *newly acquired car*, subject to a deductible of $500. Any coverage provided as a result of this paragraph will apply only until the end of the 5th calendar day immediately following the date the *newly acquired car* is delivered to *you*.

Non-Owned Car means a *car* that is in the lawful possession of *you* or any *resident relative* and that neither:

1. is *owned by*:
   a. *you*;
   b. any *resident relative*;
   c. any other *person* who resides primarily in *your* household; or
   d. an employer of any *person* described in a., b., or c. above; nor
2. has been operated by, rented by, or in the possession of:
   a. *you*; or
   b. any *resident relative*

   during any part of each of the 31 or more consecutive days immediately prior to the date of the accident or *loss*.

Occupying means in, on, entering, or exiting.

Our means the Company issuing this policy as shown on the Declarations Page.

Owned By means:

1. owned by;
2. registered to; or
3. leased, if the lease is written for a period of 31 or more consecutive days, to.

Pedestrian means a *person* who is not *occupying*:

1. a motorized vehicle; or
2. a vehicle designed to be pulled by a motorized vehicle.

Person means a human being.

Private Passenger Car means:

1. a *car* of the private passenger type, other than a pickup truck, van, minivan, or sport utility vehicle, designed primarily to carry *persons* and their luggage; or
2. a pickup truck, van, minivan, or sport utility vehicle:
   a. that is not used for:
      (1) wholesale; or
      (2) retail

      pickup or delivery; and
   b. that has a Gross Vehicle Weight Rating of 10,000 pounds or less.

Resident Relative means a *person*, other than *you*, who resides primarily with the first *person* shown as a named insured on the Declarations Page and who is:

1. related to that named insured or his or her spouse by blood, marriage, or adoption, including an unmarried and unemancipated child of either who is away at school and otherwise maintains his or her primary residence with that named insured; or
2. a ward or a foster child of that named insured, his or her spouse, or a *person* described in 1. above.

State Farm Companies means one or more of the following:

1. State Farm Mutual Automobile Insurance Company;
2. State Farm Fire and Casualty Company; and
3. Subsidiaries or affiliates of either 1. or 2. above.

Temporary Substitute Car means a *car* that is in the lawful possession of the *person* operating it and that:

1. replaces *your car* for a short time while *your car* is out of use due to its:
   a. breakdown;
   b. repair;
   c. servicing;
   d. damage; or
   e. theft; and
2. neither *you* nor the *person* operating it own or have registered.

If a *car* qualifies as both a *non-owned car* and a *temporary substitute car*, then it is considered a *temporary substitute car* only.

Trailer means:

1. a trailer:
   a. designed to be pulled by a *private passenger car*;
   b. not designed to carry *persons*; and
   c. while not used as premises for office, store, or display purposes; or
2. a farm implement or farm wagon while being pulled on public roads by a *car*.

Us means the Company issuing this policy as shown on the Declarations Page.

We means the Company issuing this policy as shown on the Declarations Page.

You or *Your* means the named insured or named insureds shown on the Declarations Page. If a named insured shown on the Declarations Page is a *person*, then "*you*" or "*your*" includes the spouse of the first *person* shown as a named insured if the spouse resides primarily with that named insured.

Your Car means the vehicle shown under "YOUR CAR" on the Declarations Page. *Your car* does not include a vehicle that *you* no longer own or lease.

If a *car* is shown on the Declarations Page under "YOUR CAR", and *you* ask *us* to replace it with a *car* newly *owned by you*, then the *car* being replaced will continue to be considered *your car* until the earliest of:

1. the end of the 30th calendar day immediately following the date the *car* newly *owned by you* is delivered to *you*;
2. the date this policy is no longer in force; or
3. the date *you* no longer own or lease the *car* being replaced.

LIABILITY COVERAGE

This policy provides Liability Coverage if "A" is shown under "SYMBOLS" on the Declarations Page.

Additional Definition

Insured means:

1. *you* and *resident relatives* for:
   a. the ownership, maintenance, or use of:
      (1) *your car*;
      (2) a *newly acquired car*; or
      (3) a *trailer*; and
   b. the maintenance or use of:
      (1) a *non-owned car*; or
      (2) a *temporary substitute car*;
2. the first *person* shown as a named insured on the Declarations Page and that named insured's spouse who resides primarily with that named insured for the maintenance or use of a *car* that is *owned by*, or furnished by an employer to, a *person* who resides primarily in *your* household, but only if such *car* is neither *owned by*, nor furnished by an employer to, the first *person* shown as a named insured on the Declarations Page or that *person's* spouse;
3. any other *person* for his or her use of:
   a. *your car*;
   b. a *newly acquired car*;
   c. a *temporary substitute car*; or
   d. a *trailer* while attached to a *car* described in a., b., or c. above.

   Such vehicle must be used with the expressed or implied consent of *you*; and
4. any other *person* or organization vicariously liable for the use of a vehicle by an *insured* as defined in 1., 2., or 3. above, but only for such vicarious liability. This

provision applies only if the vehicle is neither *owned by*, nor hired by, that other *person* or organization.

Insured does not include the United States of America or any of its agencies.

Insuring Agreement

1. *We* will pay:
   a. damages an *insured* becomes legally liable to pay because of:
      (1) *bodily injury* to others; and
      (2) damage to property
      caused by an accident that involves a vehicle for which that *insured* is provided Liability Coverage by this policy;
   b. attorney fees for attorneys chosen by *us* to defend an *insured* who is sued for such damages; and
   c. court costs charged to an *insured* and resulting from that part of a lawsuit:
      (1) that seeks damages payable under this policy's Liability Coverage; and
      (2) against which *we* defend an *insured* with attorneys chosen by *us*.

   We have no duty to pay attorney fees and court costs incurred after *we* deposit in court or pay the amount due under this policy's Liability Coverage.
2. *We* have the right to:
   a. investigate, negotiate, and settle any claim or lawsuit;
   b. defend an *insured* in any claim or lawsuit, with attorneys chosen by *us*; and
   c. appeal any award or legal decision
   for damages payable under this policy's Liability Coverage.

Supplementary Payments

We will pay, in addition to the damages, fees, and costs described in the **Insuring Agreement** above, the interest, premiums, costs, and expenses listed below that result from such accident:

1. Interest on damages owed by the *insured* that accrues:
   a. before a judgment, where owed by law, but only on that part of the judgment *we* pay; and
   b. after a judgment. *We* will not pay interest on damages paid or payable by a party other than the *insured* or *us*.

   We have no duty to pay interest that accrues after *we* deposit in court, pay, or offer to pay, the amount due under this policy's Liability Coverage;
2. Premiums for bonds, provided by a company chosen by *us*, required to appeal a decision in a lawsuit against an *insured*. *We* have no duty to:
   a. pay for bonds that exceed this policy's applicable Liability Coverage limit;
   b. furnish or apply for any bonds; or
   c. pay premiums for bonds purchased after *we* deposit in court, pay, or offer to pay, the amount due under this policy's Liability Coverage; and
3. The following costs and expenses if related to and incurred after a lawsuit has been filed against an *insured*:
   a. Loss of wages or salary, but not other income, up to $200 for each day an *insured* attends, at *our* request:
      (1) an arbitration;
      (2) a mediation; or
      (3) a trial of a lawsuit; and
   b. Reasonable expenses incurred by an *insured* at *our* request other than loss of wages, salary, or other income.

The amount of any of the costs or expenses listed above that are incurred by an *insured* must be reported to *us* before *we* will pay such incurred costs or expenses.

Limits

1. The Liability Coverage limits for *bodily injury* are shown on the Declarations Page under "Liability Coverage – Bodily Injury Limits – Each Person, Each Accident."
   a. The limit shown under "Each Person" is the most *we* will pay for all damages resulting from *bodily injury* to any one *person* injured in any one accident. "*Bodily injury* to any one *person*" includes all injury and damages to other *persons* resulting from that *bodily injury*, and all emotional distress resulting from that *bodily injury* sustained by other *persons* who do not sustain that *bodily injury*.
   b. The limit shown under "Each Accident" is the most *we* will pay, subject to the limit for "Each Person", for all damages resulting from *bodily injury* to two or more *persons* injured in the same accident.
2. The Liability Coverage limit for damage to property is shown on the Declarations Page under "Liability Coverage – Property Damage Limit – Each Accident". The limit shown is the most *we* will pay for all damages resulting from damage to property in any one accident.
3. These Liability Coverage limits are the most *we* will pay regardless of the number of:
   a. *insureds*;
   b. claims made;
   c. vehicles insured; or
   d. vehicles involved in the accident.

Nonduplication

We will not pay any damages or expenses under Liability Coverage that have already been paid under Uninsured Motor Vehicle Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*.

Exclusions

THERE IS NO COVERAGE FOR AN *INSURED*:

1. TO THE EXTENT THE LIABILITY COVERAGE LIMITS OF THIS POLICY EXCEED THE LIABILITY COVERAGE LIMITS REQUIRED BY THE *FINANCIAL RESPONSIBILITY ACT* IF SUCH *INSURED* INTENTIONALLY CAUSES *BODILY INJURY* OR DAMAGE TO PROPERTY;
2. OR FOR THAT *INSURED'S* INSURER FOR ANY OBLIGATION UNDER ANY TYPE OF WORKERS' COMPENSATION, DISABILITY, OR SIMILAR LAW;
3. FOR *BODILY INJURY* TO THAT *INSURED'S* EMPLOYEE WHICH ARISES OUT OF THAT EMPLOYEE'S EMPLOYMENT. This exclusion does not apply to that *insured's* household employee who is neither covered, nor required to be covered, under workers' compensation insurance;
4. FOR *BODILY INJURY* TO THAT *INSURED'S* FELLOW EMPLOYEE WHILE THE FELLOW EMPLOYEE IS IN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT. This exclusion does not apply to *you* and *resident relatives* who are legally liable for *bodily injury* to fellow employees;
5. FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A VEHICLE WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN *INSURED*;
6. FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A VEHICLE WHILE IT IS BEING USED TO CARRY *PERSONS* FOR A CHARGE. This exclusion does not apply to the use of a *private passenger car* on a share-the-expense basis;
7. WHILE MAINTAINING OR USING A VEHICLE IN CONNECTION WITH

THAT ***INSURED'S*** EMPLOYMENT IN OR ENGAGEMENT OF ANY KIND IN A ***CAR BUSINESS***. This exclusion does not apply to:

a. ***you***;

b. any ***resident relative***; or

c. any agent, employee, or business partner of ***you*** or any ***resident relative***; or

d. any ***person*** other than a ***person*** described in a., b., or c. above up to the liability coverage limits required by the ***Financial Responsibility Act***;

while maintaining or using ***your car***, a ***newly acquired car***, a ***temporary substitute car***, or a ***trailer owned by you***;

8. WHILE THAT ***INSURED*** IS VALET PARKING A VEHICLE. This exclusion does not apply up to the liability coverage limits required by the ***Financial Responsibility Act*** while an ***insured*** is valet parking ***your car***, a ***newly acquired car***, a ***temporary substitute car***, or a ***trailer owned by you***;

9. WHILE MAINTAINING OR USING ANY VEHICLE OTHER THAN ***YOUR CAR***, A ***NEWLY ACQUIRED CAR***, A ***TEMPORARY SUBSTITUTE CAR***, OR A ***TRAILER*** IN ANY BUSINESS OR OCCUPATION OTHER THAN A ***CAR BUSINESS*** OR VALET PARKING. This exclusion does not apply to the maintenance or use of a ***private passenger car***;

10. FOR DAMAGE TO PROPERTY WHILE IT IS:

a. ***OWNED BY***;

b. RENTED TO;

c. USED BY;

d. IN THE CARE OF; OR

e. TRANSPORTED BY

YOU, A ***RESIDENT RELATIVE***, OR THE ***PERSON*** WHO IS LEGALLY LIABLE FOR THE DAMAGE. This exclusion does not apply to damage to a:

a. motor vehicle ***owned by*** the employer of ***you*** or any ***resident relative*** if such damage is caused by an ***insured*** while operating another motor vehicle;

b. residence while rented to or leased to an ***insured***; or

c. private garage while rented to or leased to an ***insured***;

11. FOR LIABILITY ASSUMED UNDER ANY CONTRACT OR AGREEMENT;

12. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR EQUITABLE ACTION;

13. WHILE USING A ***TRAILER*** WITH A MOTOR VEHICLE IF THAT ***INSURED*** IS NOT PROVIDED LIABILITY COVERAGE BY THIS POLICY FOR THE USE OF THAT MOTOR VEHICLE;

14. FOR THE OWNERSHIP, MAINTENANCE, OR USE OF ANY VEHICLE WHILE IT IS:

a. OFF PUBLIC ROADS AND BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR

b. ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (14.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving.

This exclusion (14.) does not apply to ***your car*** up to the liability coverage limits required by the ***Financial Responsibility Act***; OR

15. WHO IS AN EMPLOYEE OF THE UNITED STATES OF AMERICA OR ANY OF ITS AGENCIES, IF THE PROVISIONS OF THE FEDERAL TORT CLAIMS ACT APPLY.

If Other Liability Coverage Applies

1. If Liability Coverage provided by this policy and one or more other Car Policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same accident, then:
   a. the Liability Coverage limits of such policies will not be added together to determine the most that may be paid; and
   b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.
2. The Liability Coverage provided by this policy applies as primary coverage for the ownership, maintenance, or use of *your car* or a *trailer* attached to it.
   a. If:
      (1) this is the only Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Liability Coverage which applies to the accident as primary coverage; and
      (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

   then *we* will pay the proportion of damages payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other liability coverage that apply as primary coverage.
   b. If:
      (1) more than one Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Liability Coverage which applies to the accident as primary coverage; and
      (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

   then the *State Farm Companies* will pay the proportion of damages payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 1. above bears to the sum of such amount and the limits of all other liability coverage that apply as primary coverage.
3. Except as provided in 2. above, the Liability Coverage provided by this policy applies as excess coverage.
   a. If:
      (1) this is the only Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Liability Coverage which applies to the accident as excess coverage; and
      (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

   then *we* will pay the proportion of damages payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other liability coverage that apply as excess coverage.
   b. If:
      (1) more than one Car Policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Liability Coverage which applies to the accident as excess coverage; and
      (2) liability coverage provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the ***State Farm Companies*** will pay the proportion of damages payable as excess that the maximum amount that may be paid by the ***State Farm Companies*** as determined in 1. above bears to the sum of such amount and the limits of all other liability coverage that apply as excess coverage.

Required Out-of-State Liability Coverage

If:

1. an ***insured*** is in another state of the United States of America, a territory or possession of the United States of America, the District of Columbia, or any province or territory of Canada, and as a nonresident becomes subject to its motor vehicle compulsory insurance law, financial responsibility law, or similar law; and
2. this policy does not provide at least the minimum liability coverage required by such law for such nonresident,

then this policy will be interpreted to provide the minimum liability coverage required by such law.

This provision does not apply to liability coverage required by law for motor carriers of passengers or motor carriers of property.

Financial Responsibility Certification

When this policy is certified under any law as proof of future financial responsibility, and while required during the policy period, this policy will comply with such law to the extent required.

PERSONAL INJURY PROTECTION COVERAGE

This policy provides Personal Injury Protection Coverage if "P" with a number beside it is shown under "SYMBOLS" on the Declarations Page. "P" with a number beside it is *your* "coverage symbol".

Check *your* coverage symbol with the **Schedule** in the provision titled **Limits** for the choice of coverage *you* made.

Additional Definitions

Insured means:

1. *you* and ***resident relatives***:
   a. while ***occupying*** a ***motor vehicle*** other than a motorcycle; or
   b. if struck as a ***pedestrian*** by a ***motor vehicle***; or
2. any other ***person*** while ***occupying***:
   a. ***your car***;
   b. a ***newly acquired car***;
   c. a ***temporary substitute car***; or
   d. a ***trailer*** while attached to a ***car*** described in a., b., or c. above.

   Such vehicle must be used with the expressed or implied consent of ***you***.

Medical Expenses mean ***reasonable expenses*** for ***medical services***.

Medical Services mean treatments, procedures, products, and other services that are:

1. necessary to achieve maximum medical improvement for the ***bodily injury***;
2. rendered by a healthcare provider:
   a. who is licensed as a healthcare provider if a license is required by law; and
   b. within the legally authorized scope of that healthcare provider's practice;
3. commonly and customarily recognized throughout the medical profession and

within the United States of America as appropriate for the treatment of the ***bodily injury***;

4. primarily designed to serve a medical purpose;
5. not experimental; and
6. not for research purposes.

Motor Vehicle means a vehicle or trailer of a kind required to be registered under South Carolina law.

Reasonable Expenses mean the lowest one of the following charges:

1. The usual and customary fees charged by a majority of healthcare providers who provide similar ***medical services*** in the geographical area in which the charges were incurred;
2. The fee specified in any fee schedule:
   a. applicable to medical payments coverage, no-fault coverage, or personal injury protection coverage included in motor vehicle liability policies issued in the state where ***medical services*** are provided; and
   b. as prescribed or authorized by the law of the state where ***medical services*** are provided;
3. The fees agreed to by both the ***insured's*** healthcare provider and ***us***; or
4. The fees agreed upon between the ***insured's*** healthcare provider and a third party when ***we*** have a contract with such third party.

Insuring Agreement

Medical Expenses and **Funeral Expenses** apply to all Personal Injury Protection Coverages. **Loss of Income** and **Essential Services Expenses** apply only to coverages with coverage symbol P1, P2, P3, P4, P5, P6, and P7.

1. **Medical Expenses**

   We will pay ***medical expenses*** incurred because of ***bodily injury*** that is sustained by an ***insured*** and caused by accident resulting from the maintenance or use of a ***motor vehicle*** as a vehicle if:
   a. that ***insured*** is first provided ***medical services*** within one year immediately following the date of the accident; and
   b. such ***medical expenses*** are for ***medical services*** that are provided within three years immediately following the date of the accident.
2. **Funeral Expenses**

   We will pay funeral expenses incurred for an ***insured*** who dies within three years immediately following the date of a ***motor vehicle*** accident if the death is a direct result of ***bodily injury*** sustained in such accident.
3. **Loss of Income**

   We will pay 85% of an ***insured's*** actual loss of earnings from work due to ***bodily injury*** that is sustained by an ***insured*** and caused by a ***motor vehicle*** accident. This applies only if the ***insured*** was receiving earnings from work at the time of the accident. The loss must be incurred within three years of the date of the accident and while the ***insured*** is living.
4. **Essential Services Expenses**

   We will pay reasonable expenses incurred for needed services the ***insured*** would have done for his or her family, but is unable to do because of ***bodily injury*** that is sustained by that ***insured*** and caused by a ***motor vehicle*** accident. This benefit applies only if the ***insured*** was not receiving earnings from work at the time of the accident. The expense must be incurred within three years of the date of the accident and while the ***insured*** is living.

Determining Medical Expenses

We have the right to:

1. obtain and use:
   a. utilization reviews;
   b. peer reviews; and
   c. medical bill reviews

   to determine if the incurred charges are *medical expenses*;
2. use a medical examination of the *insured* to determine if:
   a. the *bodily injury* was caused by a *motor vehicle* accident; and
   b. the expenses incurred are *medical expenses*; and
3. enter into a contract with a third party that has an agreement with the *insured's* healthcare provider to charge fees as determined by that agreement.

Arbitration

1. If there is a disagreement as to:
   a. whether incurred charges are *medical expenses*; or
   b. the amount due under this coverage for Funeral Expenses, Loss of Income, or Essential Services Expenses

   then the disagreement will be resolved by arbitration upon written request of the *insured* or *us*.
2. The arbitration will take place in the county in which the *insured* resides unless the parties agree to another location.

   The *insured* and *we* will each select a competent arbitrator. These two arbitrators will select a third competent arbitrator. If they are unable to agree on the third arbitrator within 30 days, then either the *insured* or *we* may petition a court that has jurisdiction to select the third arbitrator.

   Each party will pay the cost of its own arbitrator, attorneys, and expert witnesses, as well as any other expenses incurred by that party. Both parties will share equally the cost of the third arbitrator.
3. The arbitrators shall only decide whether incurred charges are *medical expenses* and the amount due under this coverage for Funeral Expenses, Loss of Income, or Essential Services Expenses. Arbitrators shall have no authority to decide any other questions of fact, decide any questions of law, or conduct arbitration on a class-wide or class-representative basis.
4. A written decision that is both agreed upon by and signed by any two arbitrators, and that also contains an explanation of how they arrived at their decision, will be binding on:
   a. *us*;
   b. the *insured*;
   c. any assignee of the *insured*; and
   d. any *person* or organization with whom the *insured* expressly or impliedly contracts for *medical services*, funeral services, or essential services.
5. Subject to 1., 2., 3., and 4. above, state court rules governing procedure and admission of evidence will be used.
6. *We* do not waive any of *our* rights by submitting to arbitration.

Limits

1. The most *we* will pay is the amount shown under "Aggregate Limit" in the **Schedule** for *your* coverage symbol. This limit is the most *we* will pay for all loss and expense combined, incurred by or on behalf of any one *insured* as a result of any one accident, regardless of the number of:
   a. Insureds;
   b. claims made;
   c. vehicles insured; or
   d. vehicles involved in the accident.
2. Subject to the aggregate limit shown in the **Schedule** for *your* coverage symbol, the most *we* will pay for funeral expenses incurred for any one *insured* is $3,000.

3. **Schedule**

Coverage Symbol	Medical Expenses	Funeral Expenses	Loss of Income	Essential Services Expenses	Aggregate Limit
P1	Yes	Yes	Yes	Yes	$1,000
P2	Yes	Yes	Yes	Yes	$1,500
P3	Yes	Yes	Yes	Yes	$2,000
P4	Yes	Yes	Yes	Yes	$2,500
P5	Yes	Yes	Yes	Yes	$5,000
P6	Yes	Yes	Yes	Yes	$10,000
P7	Yes	Yes	Yes	Yes	$25,000
P8	Yes	Yes	No	No	$1,000
P9	Yes	Yes	No	No	$1,500
P10	Yes	Yes	No	No	$2,000
P11	Yes	Yes	No	No	$2,500
P12	Yes	Yes	No	No	$5,000
P13	Yes	Yes	No	No	$10,000
P14	Yes	Yes	No	No	$25,000

Exclusions

THERE IS NO COVERAGE FOR AN ***INSURED***:

1. WHO INTENTIONALLY CAUSES AN ACCIDENT WHICH RESULTS IN THAT ***INSURED'S BODILY INJURY***;
2. WHILE VOLUNTARILY ***OCCUPYING*** A ***MOTOR VEHICLE*** KNOWN BY THAT ***PERSON*** TO BE STOLEN;
3. WHILE COMMITTING A FELONY;
4. WHILE ATTEMPTING TO ELUDE A POLICE OFFICER;
5. WHILE ***OCCUPYING***, USING, OR MAINTAINING A MOTORCYCLE;
6. WHO IS EITHER ***OCCUPYING*** OR STRUCK AS A ***PEDESTRIAN*** BY A VEHICLE, ***OWNED BY*** THAT ***INSURED***, ***YOU***, OR ANY ***RESIDENT RELATIVE*** IF IT IS NOT ***YOUR CAR*** OR A ***NEWLY ACQUIRED CAR***;
7. WHO IS ***OCCUPYING*** A VEHICLE WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN ***INSURED***;
8. WHO IS ***OCCUPYING*** A VEHICLE WHILE IT IS BEING USED TO CARRY ***PERSONS*** FOR A CHARGE. This exclusion does not apply to:
   a. the use of a ***private passenger car*** on a share-the-expense basis; or
   b. an ***insured*** while ***occupying*** a ***non-owned car*** as a passenger;
9. WHILE MAINTAINING OR USING A VEHICLE IN CONNECTION WITH THAT ***INSURED'S*** EMPLOYMENT IN OR ENGAGEMENT OF ANY KIND IN A ***CAR BUSINESS***. This exclusion does not apply to:
   a. ***you***;
   b. any ***resident relative***; or
   c. any agent, employee, or business partner of a. or b. above

   while maintaining or using ***your car***, a ***newly acquired car***, a ***temporary substitute car***, or a ***trailer owned by you***;

10. WHILE THAT ***INSURED*** IS VALET PARKING A VEHICLE;
11. WHILE MAINTAINING OR USING A ***NON-OWNED CAR*** IN ANY BUSINESS OR OCCUPATION OTHER THAN A ***CAR BUSINESS*** OR VALET PARKING. This exclusion does not apply to the maintenance or use of a ***private passenger car***;
12. WHO IS EITHER ***OCCUPYING*** OR STRUCK AS A ***PEDESTRIAN*** BY A VEHICLE THAT:
    a. IS DESIGNED FOR USE PRIMARILY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS;
    b. RUNS ON RAILS OR CRAWLER-TREADS; OR
    c. IS LOCATED FOR USE AS A DWELLING OR OTHER PREMISES;
13. WHOSE ***BODILY INJURY*** RESULTS FROM WAR OF ANY KIND;
14. WHOSE ***BODILY INJURY*** RESULTS FROM:
    a. NUCLEAR REACTION;
    b. RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR
    c. THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;
15. WHOSE ***BODILY INJURY*** RESULTS FROM THE DISCHARGE OF A FIREARM;
16. WHOSE ***BODILY INJURY*** RESULTS FROM EXPOSURE TO ***FUNGI***; OR
17. WHO IS ***OCCUPYING*** A VEHICLE WHILE IT IS:
    a. BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR
    b. ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (17.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving.

If Other Personal Injury Protection Coverage or Similar Vehicle Insurance Applies

1. An ***insured*** shall not recover for the same expense or loss under both this coverage and other similar vehicle insurance.
2. If Personal Injury Protection Coverage is provided by this policy and one or more other vehicle policies issued to ***you*** or any ***resident relative*** by the ***State Farm Companies*** apply to the same ***bodily injury***, then:
    a. the Personal Injury Protection Coverage limits of such policies shall not be added together to determine the most that may be paid; and
    b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. ***We*** may choose one or more policies from which to make payment.
3. The Personal Injury Protection Coverage provided by this policy applies as primary coverage for an ***insured*** who sustains ***bodily injury*** while ***occupying your car*** or a ***trailer*** attached to it.
    a. If:
        (1) this is the only vehicle policy issued to ***you*** or any ***resident relative*** by the ***State Farm Companies*** that provides Personal Injury Protection Coverage or other similar vehicle insurance which applies to the accident as primary coverage; and
        (2) personal injury protection coverage or other similar vehicle insurance provided by one or more sources other than the ***State Farm Companies*** also applies as primary coverage for the same accident,

then *we* will pay the proportion of expenses or loss payable as primary that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other personal injury protection coverage or similar vehicle insurance that apply as primary coverage.

b. If:

(1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Personal Injury Protection Coverage or other similar vehicle insurance which applies to the accident as primary coverage; and

(2) personal injury protection coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as primary coverage for the same accident,

then the *State Farm Companies* will pay the proportion of expenses or loss payable as primary that the maximum amount that may be paid by the *State Farm Companies* as determined in 2. above bears to the sum of such amount and the limits of all other personal injury protection coverage or similar vehicle insurance that apply as primary coverage.

4. Except as provided in 3. above, the Personal Injury Protection Coverage provided by this policy applies as excess coverage, but only in the amount by which the limits of this coverage exceed the primary coverage.

a. If:

(1) this is the only vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* that provides Personal Injury Protection Coverage or other similar vehicle insurance which applies to the accident as excess coverage; and

(2) personal injury protection coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then *we* will pay the proportion of expenses or loss payable as excess that *our* applicable limit bears to the sum of *our* applicable limit and the limits of all other personal injury protection coverage or similar vehicle insurance that apply as excess coverage.

b. If:

(1) more than one vehicle policy issued to *you* or any *resident relative* by the *State Farm Companies* provides Personal Injury Protection Coverage or other similar vehicle insurance which applies to the accident as excess coverage; and

(2) personal injury protection coverage or other similar vehicle insurance provided by one or more sources other than the *State Farm Companies* also applies as excess coverage for the same accident,

then the *State Farm Companies* will pay the proportion of expenses or loss payable as excess that the maximum amount that may be paid by the *State Farm Companies* as determined in 2. above bears to the sum of such amount and the limits of all other personal injury protection coverage or similar vehicle insurance that apply as excess coverage.

Workers' Compensation Coordination

Any Personal Injury Protection Coverage provided by this policy applies as excess over any benefits recovered under any workers' compensation law or any other similar law.

Our Payment Options

We may, at *our* option, make payment to one or more of the following:

1. The *insured*;
2. The *insured's* surviving spouse;

3. A parent or guardian of the ***insured***, if the ***insured*** is a minor or an incompetent ***person***;
4. A ***person*** authorized by law to receive such payment; or
5. Any ***person*** or organization that provides the ***medical services***, funeral services, or other services payable under this coverage.

MEDICAL PAYMENTS COVERAGE

This policy provides Medical Payments Coverage if "C" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means:

1. ***you*** and ***resident relatives:***
   a. while ***occupying***:
      (1) ***your car***;
      (2) a ***newly acquired car***;
      (3) a ***temporary substitute car***;
      (4) a ***non-owned car***; or
      (5) a ***trailer*** while attached to a ***car*** described in (1), (2), (3), or (4) above; or
   b. if struck as a ***pedestrian*** by a motor vehicle or any type of trailer; and
2. any other ***person*** while ***occupying***:
   a. ***your car***;
   b. a ***newly acquired car***;
   c. a ***temporary substitute car***; or
   d. a ***trailer*** while attached to a ***car*** described in a., b., or c. above.

   Such vehicle must be used with the expressed or implied consent of ***you***.

Medical Expenses mean ***reasonable expenses*** for ***medical services***.

Medical Services mean treatments, procedures, products, and other services that are:

1. necessary to achieve maximum medical improvement for the ***bodily injury***;
2. rendered by a healthcare provider:
   a. who is licensed as a healthcare provider if a license is required by law; and
   b. within the legally authorized scope of that healthcare provider's practice;
3. commonly and customarily recognized throughout the medical profession and within the United States of America as appropriate for the treatment of the ***bodily injury***;
4. primarily designed to serve a medical purpose;
5. not experimental; and
6. not for research purposes.

Reasonable Expenses mean the lowest one of the following charges:

1. The usual and customary fees charged by a majority of healthcare providers who provide similar ***medical services*** in the geographical area in which the charges were incurred;
2. The fee specified in any fee schedule:
   a. applicable to medical payments coverage, no-fault coverage, or personal injury protection coverage included in motor vehicle liability policies issued in the state where ***medical services*** are provided; and
   b. as prescribed or authorized by the law of the state where ***medical services*** are provided;
3. The fees agreed to by both the ***insured's*** healthcare provider and ***us***; or

4. The fees agreed upon between the ***insured's*** healthcare provider and a third party when ***we*** have a contract with such third party.

Insuring Agreement

We will pay:

1. ***medical expenses*** incurred because of ***bodily injury*** that is sustained by an ***insured*** and caused by accident resulting from the maintenance or use of a motor vehicle as a vehicle if:
   a. that ***insured*** is first provided ***medical services*** within one year immediately following the date of the accident; and
   b. such ***medical expenses*** are for ***medical services*** that are provided within three years immediately following the date of the accident; and
2. funeral expenses incurred for an ***insured*** who dies within three years immediately following the date of a motor vehicle accident if the death is a direct result of ***bodily injury*** sustained in such accident.

Determining Medical Expenses

We have the right to:

1. obtain and use:
   a. utilization reviews;
   b. peer reviews; and
   c. medical bill reviews

   to determine if the incurred charges are ***medical expenses***;
2. use a medical examination of the ***insured*** to determine if:
   a. the ***bodily injury*** was caused by a motor vehicle accident; and
   b. the expenses incurred are ***medical expenses;*** and
3. enter into a contract with a third party that has an agreement with the ***insured's*** healthcare provider to charge fees as determined by that agreement.

Arbitration

1. If there is a disagreement as to whether incurred charges are ***medical expenses,*** then the disagreement will be resolved by arbitration upon written request of the ***insured*** or ***us.***
2. The arbitration will take place in the county in which the ***insured*** resides unless the parties agree to another location.

   The ***insured*** and ***we*** will each select a competent arbitrator. These two arbitrators will select a third competent arbitrator. If they are unable to agree on the third arbitrator within 30 days, then either the ***insured*** or ***we*** may petition a court that has jurisdiction to select the third arbitrator.

   Each party will pay the cost of its own arbitrator, attorneys, and expert witnesses, as well as any other expenses incurred by that party. Both parties will share equally the cost of the third arbitrator.
3. The arbitrators shall only decide whether incurred charges are ***medical expenses.*** Arbitrators shall have no authority to decide any other questions of fact, decide any questions of law, or conduct arbitration on a class-wide or class-representative basis.
4. A written decision that is both agreed upon by and signed by any two arbitrators, and that also contains an explanation of how they arrived at their decision, will be binding on:
   a. ***us***;
   b. the ***insured***;
   c. any assignee of the ***insured***; and
   d. any ***person*** or organization with whom the ***insured*** expressly or impliedly contracts for ***medical services.***
5. Subject to 1., 2., 3., and 4. above, state court rules governing procedure and admission of evidence will be used.
6. ***We*** do not waive any of ***our*** rights by submitting to arbitration.

Limit

The Medical Payments Coverage limit is shown on the Declarations Page under "Medical Payments Coverage – Limit – Each Person". This limit is the most *we* will pay for the ***medical expenses*** and funeral expenses combined, incurred by or on behalf of any one ***insured*** as a result of any one accident, regardless of the number of:

1. ***insureds***;
2. claims made;
3. vehicles insured; or
4. vehicles involved in the accident.

Subject to the limit shown on the Declarations Page, the most *we* will pay for funeral expenses incurred for any one ***insured*** is $3,000.

Exclusions

THERE IS NO COVERAGE FOR AN ***INSURED***:

1. WHO IS STRUCK AS A ***PEDESTRIAN*** BY A MOTOR VEHICLE, ***OWNED BY*** THAT ***INSURED*** OR ***YOU***, IF IT IS NOT ***YOUR CAR*** OR A ***NEWLY ACQUIRED CAR***;
2. IF ANY WORKERS' COMPENSATION LAW OR ANY SIMILAR LAW APPLIES TO THAT ***INSURED'S BODILY INJURY***;
3. WHO IS ***OCCUPYING*** A VEHICLE WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN ***INSURED***;
4. WHO IS ***OCCUPYING*** A VEHICLE WHILE IT IS BEING USED TO CARRY ***PERSONS*** FOR A CHARGE. This exclusion does not apply to:
   a. the use of a ***private passenger car*** on a share-the-expense basis; or
   b. an ***insured*** while ***occupying*** a ***non-owned car*** as a passenger;
5. WHILE MAINTAINING OR USING A VEHICLE IN CONNECTION WITH THAT ***INSURED'S*** EMPLOYMENT IN OR ENGAGEMENT OF ANY KIND IN A ***CAR BUSINESS***. This exclusion does not apply to:
   a. ***you***;
   b. any ***resident relative***; or
   c. any agent, employee, or business partner of a. or b. above

   while maintaining or using ***your car***, a ***newly acquired car***, a ***temporary substitute car***, or a ***trailer owned by you***;
6. WHILE THAT ***INSURED*** IS VALET PARKING A VEHICLE;
7. WHILE MAINTAINING OR USING A ***NON-OWNED CAR*** IN ANY BUSINESS OR OCCUPATION OTHER THAN A ***CAR BUSINESS*** OR VALET PARKING. This exclusion does not apply to the maintenance or use of a ***private passenger car***;
8. WHO IS EITHER ***OCCUPYING*** OR STRUCK AS A ***PEDESTRIAN*** BY A VEHICLE THAT IS LOCATED FOR USE AS A DWELLING OR OTHER PREMISES;
9. WHO IS STRUCK AS A ***PEDESTRIAN*** BY A VEHICLE THAT:
   a. IS DESIGNED FOR USE PRIMARILY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
   b. RUNS ON RAILS OR CRAWLER-TREADS;
10. WHOSE ***BODILY INJURY*** RESULTS FROM WAR OF ANY KIND;
11. WHOSE ***BODILY INJURY*** RESULTS FROM:
    a. NUCLEAR REACTION;
    b. RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR
    c. THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;

12. WHOSE ***BODILY INJURY*** RESULTS FROM THE DISCHARGE OF A FIREARM;

13. WHOSE ***BODILY INJURY*** RESULTS FROM EXPOSURE TO ***FUNGI***; OR

14. WHO IS ***OCCUPYING*** A VEHICLE WHILE IT IS:

    a. BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR

    b. ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (14.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving.

If Other Medical Payments Coverage or Similar Vehicle Insurance Applies

1. An ***insured*** shall not recover for the same ***medical expenses*** or funeral expenses under both this coverage and other medical payments coverage or similar vehicle insurance.

2. If Medical Payments Coverage provided by this policy and one or more other vehicle policies issued to ***you*** or any ***resident relative*** by the ***State Farm Companies*** apply to the same ***bodily injury***, then:

    a. the Medical Payments Coverage limits of such policies shall not be added together to determine the most that may be paid; and

    b. the maximum amount that may be paid from all such policies combined is the single highest applicable limit provided by any one of the policies. ***We*** may choose one or more policies from which to make payment.

3. If other medical payments coverage, personal injury protection coverage, or similar vehicle insurance applies, then the Medical Payments Coverage provided by this policy applies as excess coverage.

    a. If:

        (1) this is the only vehicle policy issued to ***you*** or any ***resident relative*** by the ***State Farm Companies*** that provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as excess coverage; and

        (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the ***State Farm Companies*** also applies as excess coverage for the same accident,

    then ***we*** will pay the proportion of ***medical expenses*** and funeral expenses payable as excess that ***our*** applicable limit bears to the sum of ***our*** applicable limit and the limits of all other medical payments coverage or similar vehicle insurance that apply as excess coverage.

    b. If:

        (1) more than one vehicle policy issued to ***you*** or any ***resident relative*** by the ***State Farm Companies*** provides Medical Payments Coverage or other similar vehicle insurance which applies to the accident as excess coverage; and

        (2) medical payments coverage or other similar vehicle insurance provided by one or more sources other than the ***State Farm Companies*** also applies as excess coverage for the same accident,

    then the ***State Farm Companies*** will pay the proportion of ***medical expenses*** and funeral expenses payable as excess that the maximum amount that may be paid by the ***State Farm Companies*** as determined in 2. above

bears to the sum of such amount and the limits of all other medical payments coverage or similar vehicle insurance that apply as excess coverage.

Our Payment Options

We may, at *our* option, make payment to one or more of the following:

1. The ***insured***;
2. The ***insured's*** surviving spouse;
3. A parent or guardian of the ***insured***, if the ***insured*** is a minor or an incompetent ***person***;
4. A ***person*** authorized by law to receive such payment; or
5. Any ***person*** or organization that provides the ***medical services*** or funeral services.

UNINSURED MOTOR VEHICLE COVERAGE

This policy provides Uninsured Motor Vehicle Coverage if "U" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means:

1. ***you***;
2. ***resident relatives***;
3. any other ***person*** while ***occupying*** or using:
   a. ***your car***;
   b. a ***newly acquired car***; or
   c. a ***temporary substitute car***;

   with the expressed or implied consent of ***you***; and
4. any ***person*** to the extent he or she may recover damages under a state wrongful death statute because of the death of an ***insured*** under 1., 2., or 3. above.

Motor Vehicle means a self-propelled vehicle or trailer designed for use on public roads, but does not include tractor engines, road rollers, farm trailers, tractor cranes, power shovels, well drillers, or electric trolleys.

Property Damage means damage to property of the ***insured***.

Uninsured Motor Vehicle means a ***motor vehicle***:

1. the ownership, maintenance, and use of which is:
   a. not insured or bonded for bodily injury and property damage liability at the time of the accident; or
   b. insured or bonded for bodily injury and property damage liability at the time of the accident; but
      (1) the limits are less than required by the ***Financial Responsibility Act***;
      (2) the insuring company:
         (a) denies that its policy provides liability coverage for damages that result from the accident; or
         (b) is or becomes insolvent; or
      (3) a cause of action for the ***bodily injury*** or ***property damage*** is barred by the South Carolina Tort Claims Act; or
2. the owner and driver of which remain unknown, but only if:
   a. the ***bodily injury*** or ***property damage*** was caused by physical contact with the unknown vehicle, or the accident was witnessed by someone other than the owner or driver of the insured vehicle. The witness must sign an affidavit attesting to the truth of the facts of the accident contained in the affidavit; and

b. the *insured* was not negligent in failing to determine the identity of the other vehicle and the driver of the other vehicle at the time of the accident.

Uninsured Motor Vehicle does not include a motor vehicle ***owned by***:

1. a self-insurer in accordance with the applicable provisions of law; or
2. the State or any of its political subdivisions when the vehicle is operated by a *person* with proper authorization.

Insuring Agreement

We will pay damages for ***bodily injury*** and ***property damage*** an *insured* is legally entitled to recover from the owner or driver of an ***uninsured motor vehicle.*** The ***bodily injury*** must be sustained by an *insured*. The ***bodily injury*** and ***property damage*** must be caused by an accident that involves the operation, maintenance, or use of an ***uninsured motor vehicle.***

Our Right to Defend

We have the right to appear and defend in the name of the owner and driver of the ***uninsured motor vehicle*** on the issues of legal liability of, and the damages owed by, such owner or driver.

Limits

1. The Uninsured Motor Vehicle Coverage limits for ***bodily injury*** are shown on the Declarations Page under "Uninsured Motor Vehicle Coverage – Bodily Injury Limits – Each Person, Each Accident".
   a. The most *we* will pay for all damages resulting from ***bodily injury*** to any one *person* injured in any one accident is the lesser of:
      (1) the amount of all damages resulting from that ***bodily injury*** reduced by the sum of all payments for damages resulting from that ***bodily injury*** made by or on behalf of any *person* or organization who is or may be held legally liable for that ***bodily injury***; or
      (2) the limit shown under "Each Person".

      "***Bodily injury*** to any one *person*" includes all injury and damages to other *persons* resulting from that ***bodily injury***, and all emotional distress resulting from that ***bodily injury*** sustained by other *persons* who do not sustain that ***bodily injury***.
   b. Subject to a. above, the most *we* will pay for all damages resulting from ***bodily injury*** to two or more *insureds* injured in the same accident is the limit shown under "Each Accident".
2. The Uninsured Motor Vehicle Coverage limit for ***property damage*** is shown on the Declarations Page under "Uninsured Motor Vehicle Coverage – Property Damage Limit – Each Accident". The most *we* will pay for ***property damage*** is the lesser of:
   a. the amount of ***property damage*** reduced by the sum of all payments made by or on behalf of any *person* or organization who is or may be held legally liable for that ***property damage***; or
   b. the limit shown under "Each Accident".
3. These Uninsured Motor Vehicle Coverage limits are the most *we* will pay regardless of the number of:
   a. *insureds*;
   b. claims made;
   c. vehicles insured; or
   d. vehicles involved in the accident.

Nonduplication

We will not pay under Uninsured Motor Vehicle Coverage any damages:

1. that have already been paid to or for the *insured*:
   a. by or on behalf of any *person* or organization who is or may be held legally liable for the ***bodily injury*** to the *insured*; or

b. for *bodily injury* under Liability Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*;

2. that:
   a. have already been paid;
   b. could have been paid; or
   c. could be paid

   to or for the *insured* under any workers' compensation law, disability benefits law, or similar law; or

3. that are *property damage* paid or payable under any policy of property insurance.

Exclusions

THERE IS NO COVERAGE:

1. FOR AN *INSURED* WHO, WITHOUT *OUR* WRITTEN CONSENT, SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY* OR *PROPERTY DAMAGE* AND THEREBY IMPAIRS *OUR* RIGHT TO RECOVER *OUR* PAYMENTS;
2. TO THE EXTENT THE UNINSURED MOTOR VEHICLE COVERAGE LIMITS OF THIS POLICY EXCEED THE COVERAGE LIMITS REQUIRED BY THE *FINANCIAL RESPONSIBILITY ACT*:
   a. FOR AN *INSURED* WHO SUSTAINS *BODILY INJURY* WHILE *OCCUPYING* A MOTOR VEHICLE *OWNED BY YOU* OR ANY *RESIDENT RELATIVE* IF:
      (1) THE MOTOR VEHICLE IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*; AND
      (2) IT WAS NOT INSURED FOR UNINSURED MOTOR VEHICLE COVERAGE AT THE TIME OF THE ACCIDENT;
   b. IF THE *UNINSURED MOTOR VEHICLE* IS *OWNED BY YOU* OR ANY *RESIDENT RELATIVE*; OR
   c. FOR *PROPERTY DAMAGE*:
      (1) TO A MOTOR VEHICLE; OR
      (2) IN A MOTOR VEHICLE

      OWNED BY YOU OR ANY *RESIDENT RELATIVE* IF THE MOTOR VEHICLE WAS NOT INSURED FOR UNINSURED MOTOR VEHICLE COVERAGE AT THE TIME OF THE ACCIDENT;
3. FOR *PROPERTY DAMAGE* THAT WAS PROXIMATELY CAUSED BY THE DRIVER OF *YOUR CAR* OR A *NEWLY ACQUIRED CAR*;
4. FOR AN *INSURED* WHOSE *BODILY INJURY* RESULTS FROM THE DISCHARGE OF A FIREARM;
5. TO THE EXTENT IT BENEFITS:
   a. ANY WORKERS' COMPENSATION OR DISABILITY BENEFITS INSURANCE COMPANY;
   b. A SELF-INSURER UNDER ANY WORKERS' COMPENSATION LAW, DISABILITY BENEFITS LAW, OR SIMILAR LAW; OR
   c. ANY PROPERTY INSURER;
6. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR EQUITABLE ACTION; OR
7. FOR THE FIRST $200 OF *PROPERTY DAMAGE* SUSTAINED BY EACH *INSURED* IN EACH ACCIDENT.

If Other Uninsured Motor Vehicle Coverage Applies

1. The Uninsured Motor Vehicle Coverage provided by this policy applies as primary coverage for an *insured* who sustains *bodily injury* or *property damage* while *occupying your car.*

2. Except as provided in item 1. above, the Uninsured Motor Vehicle Coverage provided by this policy applies as excess coverage.

3. If:

   a. *you* or any *resident relative* sustains *bodily injury* or *property damage*:

      (1) while *occupying* a motor vehicle not *owned by you* or any *resident relative*; or

      (2) while not *occupying* a motor vehicle; and

   b. Uninsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to *you* or any *resident relative* by the *State Farm Companies* apply to the same *bodily injury* or *property damage*, then

   the maximum amount that may be paid from all such policies combined is the single highest limit provided by any one of the policies. *We* may choose one or more policies from which to make payment.

4. If *you* or any *resident relative* sustains *bodily injury* or *property damage* while *occupying* a motor vehicle other than *your car* that is *owned by you* or any *resident relative*, then this coverage applies only to the extent of the uninsured motor vehicle coverage applicable to the motor vehicle that the *insured* was *occupying*.

   However, if the motor vehicle that the *insured* was *occupying* was not insured for uninsured motor vehicle coverage at the time of the accident, then the maximum amount that may be paid from all policies combined that are issued to *you* or any *resident relative* by the *State Farm Companies* is the minimum limits required by the *Financial Responsibility Act*. *We* may choose one or more policies from which to make payment.

5. Subject to items 1., 2., 3., and 4. above, if this policy and one or more other sources provide uninsured motor vehicle coverage for the same damages on a:

   a. primary basis, then *we* will pay the proportion of damages payable as primary that the applicable limit of this coverage under this policy bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as primary coverage; or

   b. excess basis, then *we* will pay the proportion of damages payable as excess that the applicable limit of this coverage under this policy bears to the sum of such amount and the limits of all other uninsured motor vehicle coverage that apply as excess coverage.

Our Payment Options

We may, at *our* option, make payment to one or more of the following:

1. The *insured*;
2. The *insured's* surviving spouse;
3. A parent or guardian of the *insured*, if the *insured* is a minor or an incompetent *person*; or
4. A *person* authorized by law to receive such payment.

UNDERINSURED MOTOR VEHICLE COVERAGE

This policy provides Underinsured Motor Vehicle Coverage if "W" is shown under "SYMBOLS" on the Declarations Page.

Additional Definitions

Insured means:

1. ***you***;
2. ***resident relatives***;
3. any other ***person*** while ***occupying*** or using:
   a. ***your car***;
   b. a ***newly acquired car***; or
   c. a ***temporary substitute car***;

   with the expressed or implied consent of ***you***; and
4. any ***person*** to the extent he or she may recover damages under a state wrongful death statute because of the death of an ***insured*** under 1., 2., or 3. above.

Motor Vehicle means a self-propelled vehicle or trailer designed for use on public roads, but does not include tractor engines, road rollers, farm trailers, tractor cranes, power shovels, well drillers, or electric trolleys.

Property Damage means damage to property of the ***insured***.

Underinsured Motor Vehicle means a ***motor vehicle*** the ownership, maintenance, and use of which is either:

1. insured or bonded for bodily injury and property damage liability at the time of the accident; or
2. self-insured under any motor vehicle financial responsibility law, any motor carrier law, or any similar law

in an amount that is at least equal to the amount required by the ***Financial Responsibility Act*** and:

1. the amount of the insurance, bonds, and self-insurance from all sources is less than the amount of the ***insured's*** damages; or
2. the ***insured's*** damages exceed any damages cap or limitation imposed by statute.

Underinsured Motor Vehicle does not include a motor vehicle while located for use as a dwelling or other premises.

Insuring Agreement

We will pay damages for ***bodily injury*** and ***property damage*** an ***insured*** is legally entitled to recover from the owner or driver of an ***underinsured motor vehicle***. The ***bodily injury*** must be sustained by an ***insured***. The ***bodily injury*** and ***property damage*** must be caused by an accident that involves the operation, maintenance, or use of an ***underinsured motor vehicle***.

We will pay only if all bodily injury and property damage liability bonds, policies, and self-insurance plans that apply to the ***insured's bodily injury*** or ***property damage*** have been:

1. used up by payment of judgments or settlements; or
2. paid to the extent required by any damages cap or limitation imposed by statute.

Our Right to Defend

We have the right to appear and defend in the name of the owner and driver of the ***underinsured motor vehicle*** on the issues of legal liability of, and the damages owed by, such owner or driver.

Limits

1. The Underinsured Motor Vehicle Coverage limits are shown on the Declarations Page under "Underinsured Motor Vehicle Coverage – Bodily Injury Limits – Each Person, Each Accident".
   a. The most ***we*** will pay for all damages resulting from ***bodily injury*** to any one ***person*** injured in any one accident is the lesser of:
      (1) the amount of all damages resulting from that ***bodily injury*** reduced by the sum of all payments for damages resulting from that

bodily injury made by or on behalf of any *person* or organization who is or may be held legally liable for that *bodily injury*; or

(2) the limit shown under "Each Person".

"*Bodily injury* to any one *person*" includes all injury and damages to other *persons* resulting from that *bodily injury*, and all emotional distress resulting from that *bodily injury* sustained by other *persons* who do not sustain that *bodily injury*.

b. Subject to a. above, the most *we* will pay for all damages resulting from *bodily injury* to two or more *insureds* injured in the same accident is the limit shown under "Each Accident".

2. The Underinsured Motor Vehicle Coverage limit for *property damage* is shown on the Declarations Page under "Underinsured Motor Vehicle Coverage – Property Damage Limit – Each Accident". The most *we* will pay for *property damage* is the lesser of:

a. the amount of *property damage* reduced by the sum of all payments made by or on behalf of any *person* or organization who is or may be held legally liable for that *property damage*; or

b. the limit shown under "Each Accident".

3. These Underinsured Motor Vehicle Coverage limits are the most *we* will pay regardless of the number of:

a. *insureds*;

b. claims made;

c. vehicles insured; or

d. vehicles involved in the accident.

Nonduplication

We will not pay under Underinsured Motor Vehicle Coverage any damages:

1. that have already been paid to or for the *insured*:

a. by or on behalf of any *person* or organization who is or may be held legally liable for the *bodily injury* to the *insured*; or

b. for *bodily injury* under Liability Coverage of any policy issued by the *State Farm Companies* to *you* or any *resident relative*;

2. that:

a. have already been paid;

b. could have been paid; or

c. could be paid

to or for the *insured* under any workers' compensation law, disability benefits law, or similar law; or

3. that are *property damage* paid or payable under any policy of property insurance.

Exclusions

THERE IS NO COVERAGE:

1. FOR AN ***INSURED*** WHO, WITHOUT ***OUR*** WRITTEN CONSENT, SETTLES WITH ANY ***PERSON*** OR ORGANIZATION WHO MAY BE LIABLE FOR THE ***BODILY INJURY*** OR ***PROPERTY DAMAGE*** AND THEREBY IMPAIRS ***OUR*** RIGHT TO RECOVER ***OUR*** PAYMENTS;

2. TO THE EXTENT THE UNDERINSURED MOTOR VEHICLE COVERAGE LIMITS OF THIS POLICY EXCEED THE COVERAGE LIMITS REQUIRED BY THE *FINANCIAL RESPONSIBILITY ACT*:

a. FOR AN ***INSURED*** WHO SUSTAINS ***BODILY INJURY*** WHILE ***OCCUPYING*** A MOTOR VEHICLE ***OWNED BY YOU*** OR ANY ***RESIDENT RELATIVE*** IF:

(1) THE MOTOR VEHICLE IS NOT ***YOUR CAR*** OR A ***NEWLY ACQUIRED CAR***; AND

(2) IT WAS NOT INSURED FOR UNDERINSURED MOTOR VEHICLE

COVERAGE AT THE TIME OF THE ACCIDENT;

b. IF THE ***UNDERINSURED MOTOR VEHICLE*** IS ***OWNED BY YOU*** OR ANY ***RESIDENT RELATIVE***; OR

c. FOR ***PROPERTY DAMAGE***:

(1) TO A MOTOR VEHICLE: OR

(2) IN A MOTOR VEHICLE

OWNED BY YOU OR ANY ***RESIDENT RELATIVE*** IF THE MOTOR VEHICLE WAS NOT INSURED FOR UNDERINSURED MOTOR VEHICLE COVERAGE AT THE TIME OF THE ACCIDENT;

3. FOR ***PROPERTY DAMAGE*** THAT WAS PROXIMATELY CAUSED BY THE DRIVER OF ***YOUR CAR*** OR A ***NEWLY ACQUIRED CAR***;

4. FOR AN ***INSURED*** WHOSE ***BODILY INJURY*** RESULTS FROM THE DISCHARGE OF A FIREARM;

5. TO THE EXTENT IT BENEFITS:

a. ANY WORKERS' COMPENSATION OR DISABILITY BENEFITS INSURANCE COMPANY;

b. A SELF-INSURER UNDER ANY WORKERS' COMPENSATION LAW, DISABILITY BENEFITS LAW, OR SIMILAR LAW; OR

c. ANY PROPERTY INSURER; OR

6. FOR ANY ORDER OF RESTITUTION ISSUED BY A COURT IN A CRIMINAL PROCEEDING OR EQUITABLE ACTION.

If Other Underinsured Motor Vehicle Coverage Applies

1. The Underinsured Motor Vehicle Coverage provided by this policy applies as primary coverage for an ***insured*** who sustain ***bodily injury*** or ***property damage*** while ***occupying your car.***

2. Except as provided in item 1. above, the Underinsured Motor Vehicle Coverage provided by this policy applies as excess coverage.

3. If:

a. ***you*** or any ***resident relative*** sustains ***bodily injury*** or ***property damage***:

(1) while ***occupying*** a motor vehicle not ***owned by you*** or any ***resident relative***; or

(2) while not ***occupying*** a motor vehicle; and

b. Underinsured Motor Vehicle Coverage provided by this policy and one or more other vehicle policies issued to ***you*** or any ***resident relative*** by the ***State Farm Companies*** apply to the same ***bodily injury*** or ***property damage***, then

the maximum amount that may be paid from all such policies combined is the single highest limit provided by any one of the policies. ***We*** may choose one or more policies from which to make payment.

4. If ***you*** or any ***resident relative*** sustains ***bodily injury*** or ***property damage*** while ***occupying*** a motor vehicle other than ***your car*** that is ***owned by you*** or any ***resident relative***, then this coverage applies only to the extent of the underinsured motor vehicle coverage applicable to the motor vehicle that the ***insured*** was ***occupying***.

However, if the motor vehicle that the ***insured*** was ***occupying*** was not insured for underinsured motor vehicle coverage at the time of the accident, then the maximum amount that may be paid from all policies combined that are issued to ***you*** or any ***resident relative*** by the ***State Farm Companies*** is the minimum limits required by the ***Financial Responsibility Act***. ***We*** may choose one or more policies from which to make payment.

5. Subject to items 1., 2., 3., and 4. above, if this policy and one or more other sources

provide underinsured motor vehicle coverage for the same damages on a:

a. primary basis, then *we* will pay the proportion of damages payable as primary that the applicable limit of this coverage under this policy bears to the sum of such amount and the limits of all other underinsured motor vehicle coverage that apply as primary coverage; or

b. excess basis, then *we* will pay the proportion of damages payable as excess that the applicable limit of this coverage under this policy bears to the sum of such amount and the limits of all other underinsured motor vehicle coverage that apply as excess coverage.

Our Payment Options

We may, at *our* option, make payment to one or more of the following:

1. The ***insured***;
2. The ***insured's*** surviving spouse;
3. A parent or guardian of the ***insured***, if the ***insured*** is a minor or an incompetent ***person***; or
4. A ***person*** authorized by law to receive such payment.

PHYSICAL DAMAGE COVERAGES

The physical damage coverages are Comprehensive Coverage, Collision Coverage, Emergency Road Service Coverage, and Car Rental and Travel Expenses Coverage.

This policy provides:

1. Comprehensive Coverage if "D";
2. Collision Coverage if "G";
3. Emergency Road Service Coverage if "H";
4. Car Rental and Travel Expenses Coverage if "R1"

is shown under "SYMBOLS" on the Declarations Page.

If a deductible applies to Comprehensive Coverage, then it is shown on the Declarations Page. The deductible that applies to Collision Coverage is shown on the Declarations Page.

Additional Definitions

Covered Vehicle means:

1. ***your car***;
2. a ***newly acquired car***;
3. a ***temporary substitute car***;
4. a camper that is designed to be mounted on a pickup truck and shown on the Declarations Page;
5. a ***non-owned car*** while it is:
   a. being driven by an ***insured***; or
   b. in the custody of an ***insured*** if at the time of the ***loss*** it is:
      (1) not being driven; or
      (2) being driven by a ***person*** other than an ***insured*** and being ***occupied*** by an ***insured***;
6. a ***non-owned trailer*** while it is being used by an ***insured***; and
7. a ***non-owned camper*** while it is being used by an ***insured***;

including its parts and its equipment that are common to the use of the vehicle as a vehicle. However, parts and equipment of ***trailers*** and

campers must be securely fixed as a permanent part of the *trailer* or camper.

Daily Rental Charge means the sum of:

1. the daily rental rate;
2. mileage charges; and
3. related taxes.

Insured means *you* and *resident relatives.*

Loss means:

1. direct, sudden, and accidental damage to; or
2. total or partial theft of

a *covered vehicle. Loss* does not include any reduction in the value of any *covered vehicle* after it has been repaired, as compared to its value before it was damaged.

Loss Caused By Collision means a *loss* caused by:

1. a *covered vehicle* hitting or being hit by another vehicle or another object; or
2. the overturning of a *covered vehicle.*

Any *loss* caused by missiles, falling objects, windstorm, hail, fire, explosion, earthquake, water, flood, total or partial theft, malicious mischief, vandalism, riot, civil commotion, or hitting or being hit by a bird or an animal is not a *Loss Caused By Collision.*

Non-Owned Camper means a camper designed to be mounted on a pickup truck that is in the lawful possession of an *insured* and that neither:

1. is *owned by*:
   a. an *insured*;
   b. any other *person* who resides primarily in *your* household; or
   c. an employer of any *person* described in a. or b. above; nor
2. has been used by, rented by, or in the possession of an *insured* during any part of each of the 31 or more consecutive days immediately prior to the date of the *loss.*

Non-Owned Trailer means a *trailer* that is in the lawful possession of an *insured* and that neither:

1. is *owned by*:
   a. an *insured*;
   b. any other *person* who resides primarily in *your* household; or
   c. an employer of any *person* described in a. or b. above; nor
2. has been used by, rented by, or in the possession of an *insured* during any part of each of the 31 or more consecutive days immediately prior to the date of the *loss.*

Insuring Agreements

1. **Comprehensive Coverage**

   We will pay:

   a. for *loss*, except *loss caused by collision*, to a *covered vehicle*; and
   b. transportation expenses incurred by an *insured* as a result of the total theft of *your car* or a *newly acquired car.* These transportation expenses are payable:
      (1) during the period that:
         (a) starts on the date *you* report the theft to *us*; and
         (b) ends on the earliest of:
            (i) the date the vehicle is returned to *your* possession in a drivable condition;
            (ii) the date *we* offer to pay for the *loss* if the vehicle has not yet been recovered; or
            (iii) the date *we* offer to pay for the *loss* if the vehicle is recovered, but is a total loss as determined by *us*; and
      (2) during the period that:
         (a) starts on the date the vehicle is left at a repair facility if the

stolen vehicle is recovered, returned to *your* possession in a drivable condition, and has unrepaired damage that resulted from the total theft; and

(b) ends on the date the vehicle is repaired.

These transportation expenses must be reported to *us* before *we* will pay such incurred expenses.

2. **Collision Coverage**

We will pay for ***loss caused by collision*** to a ***covered vehicle.***

3. **Emergency Road Service Coverage**

We will pay the fair cost incurred by an ***insured*** for:

a. up to one hour of labor to repair a ***covered vehicle*** at the place of its breakdown;

b. towing to the nearest repair facility where necessary repairs can be made if a ***covered vehicle*** is not drivable;

c. towing a ***covered vehicle*** out of a location where it is stuck if the vehicle is on or immediately next to a public road;

d. delivery of gas, oil, battery, or tire necessary to return a ***covered vehicle*** to driving condition. *We* do not pay the cost of the gas, oil, battery, or tire; and

e. up to one hour of labor for locksmith services to unlock a ***covered vehicle*** if its key is lost, stolen, or locked inside the vehicle.

4. **Car Rental and Travel Expenses Coverage**

a. **Car Rental Expense**

We will pay the ***daily rental charge*** incurred when *you* rent a ***car*** from a ***car business*** while ***your car*** or a ***newly acquired car*** is:

(1) not drivable; or

(2) being repaired

as a result of a ***loss*** which would be payable under Comprehensive Coverage or Collision Coverage.

We will pay this ***daily rental charge*** incurred during a period that:

(1) starts on the date:

(a) the vehicle is not drivable as a result of the ***loss***; or

(b) the vehicle is left at a repair facility if the vehicle is drivable; and

(2) ends on the earliest of:

(a) the date the vehicle has been repaired or replaced;

(b) the date *we* offer to pay for the ***loss*** if the vehicle is repairable but *you* choose to delay repairs; or

(c) five days after *we* offer to pay for the ***loss*** if the vehicle is:

(i) a total loss as determined by *us*; or

(ii) stolen and not recovered.

The amount of any such ***daily rental charge*** incurred by *you* must be reported to *us* before *we* will pay such amount.

b. **Travel Expenses**

We will pay expenses for commercial transportation, lodging, and meals if ***your car*** or a ***newly acquired car*** is not drivable as a result of a ***loss*** which would be payable under Comprehensive Coverage or Collision Coverage. The ***loss*** must occur more than 50 miles from *your* home. *We* will only pay these expenses if they are incurred by:

(1) an ***insured*** during the period that:

(a) starts after the ***loss*** occurs; and

(b) ends on the earlier of:

(i) the *insured's* arrival at his or her destination or home if the vehicle is left behind for repairs; or

(ii) the repair of the vehicle if the *insured* waits for repairs before continuing on to his or her destination or returning home; and

(2) *you*, or any *person you* choose, to travel to retrieve the vehicle and drive it to either the original destination or *your* home if the vehicle was left behind for repairs.

These expenses must be reported to *us* before *we* will pay such incurred expenses.

c. **Rental Car – Repayment of Deductible Expense**

We will pay the comprehensive deductible or collision deductible an *insured* is required to pay the owner of a *car* rented from a *car business*.

Supplementary Payments – Comprehensive Coverage and Collision Coverage

If the *covered vehicle* sustains *loss* for which *we* make a payment under Comprehensive Coverage or Collision Coverage, then *we* will pay reasonable expenses incurred to:

1. tow the *covered vehicle* immediately after the *loss*:

   a. for a reasonable distance from the location of the *loss* to any one repair facility chosen by an *insured* or the owner of the *covered vehicle*, if the *covered vehicle* is not drivable; or

   b. to any one repair facility or commercial storage facility, neither of which was chosen by an *insured* or the owner of the *covered vehicle*. *We* will also pay reasonable expenses incurred to tow the *covered vehicle* for a reasonable distance from this facility to any one repair facility chosen by an *insured* or the owner of the *covered vehicle*, if the *covered vehicle* is not drivable;

2. store the *covered vehicle*, if it is not drivable immediately after the *loss*, at:

   a. any one repair facility or commercial storage facility, neither of which was chosen by an *insured* or the owner of the *covered vehicle*; and

   b. any one repair facility chosen by the owner of the *covered vehicle*, and *we* determine such vehicle is a total loss.

   If the owner of the *covered vehicle* consents, then *we* may move the *covered vehicle* at *our* expense to reduce storage costs. If the owner of the *covered vehicle* does not consent, then *we* will pay only the storage costs that would have resulted if *we* had moved the damaged *covered vehicle*; and

3. clean up debris from the *covered vehicle* at the location of the *loss*. The most *we* will pay to clean up the debris is $250 for any one *loss*.

Limits and Loss Settlement – Comprehensive Coverage and Collision Coverage

1. *We* have the right to choose to settle with *you* or the owner of the *covered vehicle* in one of the following ways:

   a. Pay the cost to repair the *covered vehicle* minus any applicable deductible. The deductible amount does not apply to *loss* to safety glass.

      (1) *We* have the right to choose one of the following to determine the cost to repair the *covered vehicle*:

         (a) The cost agreed to by both the owner of the *covered vehicle* and *us*;

         (b) A bid or repair estimate approved by *us*; or

         (c) A repair estimate that is written based upon or adjusted to:

(i) the prevailing competitive price;

(ii) the lower of paintless dent repair pricing established by an agreement *we* have with a third party or the paintless dent repair price that is competitive in the market; or

(iii) a combination of (i) and (ii) above.

The prevailing competitive price means prices charged by a majority of the repair market in the area where the ***covered vehicle*** is to be repaired as determined by a survey made by *us*. If asked, *we* will identify some facilities that will perform the repairs at the prevailing competitive price. The estimate will include parts sufficient to restore the ***covered vehicle*** to its pre-loss condition.

You agree with *us* that the repair estimate may include new, used, recycled, and reconditioned parts. Any of these parts may be either original equipment manufacturer parts or non-original equipment manufacturer parts.

You also agree that replacement glass need not have any insignia, logo, trademark, etching, or other marking that was on the replaced glass.

(2) The cost to repair the ***covered vehicle*** does not include any reduction in the value of the ***covered vehicle*** after it has been repaired, as compared to its value before it was damaged.

(3) If the repair or replacement of a part results in betterment of that part, then *you* or the owner of the ***covered vehicle*** must pay for the amount of the betterment;

b. Pay the actual cash value of the ***covered vehicle*** minus any applicable deductible.

(1) The owner of the ***covered vehicle*** and *we* must agree upon the actual cash value of the ***covered vehicle***. If there is disagreement as to the actual cash value of the ***covered vehicle***, then the disagreement will be resolved by appraisal upon written request of the owner or *us*, using the following procedures:

(a) The owner and *we* will each select a competent appraiser.

(b) The two appraisers will select a third competent appraiser. If they are unable to agree on a third appraiser within 30 days, then either the owner or *we* may petition a court that has jurisdiction to select the third appraiser.

(c) Each party will pay the cost of its own appraiser, attorneys, and expert witnesses, as well as any other expenses incurred by that party. Both parties will share equally the cost of the third appraiser.

(d) The appraisers shall only determine the actual cash value of the ***covered vehicle***. Appraisers shall have no authority to decide any other questions of fact, decide any questions of law, or conduct appraisal on a class-wide or class-representative basis.

(e) A written appraisal that is both agreed upon by and signed by any two appraisers, and that also contains an explanation of how they arrived at their appraisal, will be binding on the

owner of the *covered vehicle* and *us*.

(f) *We* do not waive any of *our* rights by submitting to an appraisal.

(2) The damaged *covered vehicle* must be given to *us* in exchange for *our* payment, unless *we* agree that the owner may keep it. If the owner keeps the *covered vehicle*, then *our* payment will be reduced by the value of the *covered vehicle* after the *loss*; or

c. Return the stolen *covered vehicle* to its owner and pay, as described in 1.a. above, for any direct, sudden, and accidental damage that resulted from the theft.

2. The most *we* will pay for transportation expenses under Comprehensive Coverage is $25 per day subject to an aggregate limit of $750 per *loss*.

3. The most *we* will pay for *loss* to a *non-owned trailer* or a *non-owned camper* is $2,500.

Limits – Car Rental and Travel Expenses Coverage

1. **Car Rental Expense**

The limit for Car Rental Expense is shown on the Declarations Page under "Limit – Car Rental Expense – Each Day, Each Loss".

a. The limit shown under "Each Day" is the most *we* will pay for the *daily rental charge*. If:

(1) a dollar amount is shown, then *we* will pay the *daily rental charge* up to that dollar amount;

(2) a percentage amount is shown, then *we* will pay that percentage of the *daily rental charge*.

b. Subject to the "Each Day" limit, the limit shown under "Each Loss" is the most *we* will pay for Car Rental Expense incurred as a result of any one *loss*.

2. **Travel Expenses**

The most *we* will pay for Travel Expenses incurred by all *insureds* as a result of any one *loss* is $500.

3. **Rental Car – Repayment of Deductible Expense**

The most *we* will pay for Rental Car – Repayment of Deductible Expense incurred as a result of any one *loss* is $500.

Nonduplication

We will not pay for any *loss* or expense under the Physical Damage Coverages for which the *insured* or owner of the *covered vehicle* has already received payment from, or on behalf of, a party who is legally liable for the *loss* or expense.

Exclusions

THERE IS NO COVERAGE FOR:

1. ANY ***COVERED VEHICLE*** THAT IS:
   a. INTENTIONALLY DAMAGED; OR
   b. STOLEN

   BY OR AT THE DIRECTION OF AN ***INSURED***;
2. ANY ***COVERED VEHICLE*** WHILE IT IS RENTED TO OR LEASED TO OTHERS BY AN ***INSURED***;
3. ANY ***COVERED VEHICLE*** WHILE IT IS USED TO CARRY ***PERSONS*** FOR A CHARGE. This exclusion does not apply to the use of a ***private passenger car*** on a share-the-expense basis;
4. ANY ***COVERED VEHICLE*** DUE TO:
   a. THEFT;
   b. CONVERSION;
   c. EMBEZZLEMENT; OR
   d. SECRETION

BY AN *INSURED*, A CONSIGNEE, AN AGENT OF A CONSIGNEE, OR A *PERSON* WHO OBTAINS POSSESSION OF THE *COVERED VEHICLE* WITH THE PERMISSION OF A CONSIGNEE OR AGENT OF A CONSIGNEE;

5. *LOSS* TO *YOUR CAR* OR A *NEWLY ACQUIRED CAR* IF AN *INSURED* VOLUNTARILY RELINQUISHES POSSESSION OF THAT *CAR* TO A *PERSON* OR ORGANIZATION UNDER AN ACTUAL OR PRESUMED SALES AGREEMENT;

6. ANY *COVERED VEHICLE* TO THE EXTENT *OUR* PAYMENT WOULD BENEFIT ANY CARRIER OR OTHER BAILEE FOR HIRE THAT IS LIABLE FOR *LOSS* TO SUCH *COVERED VEHICLE*;

7. *LOSS* TO ANY *COVERED VEHICLE* DUE TO *FUNGI*. THIS APPLIES REGARDLESS OF WHETHER OR NOT THE *FUNGI* RESULT FROM A *LOSS* THAT IS PAYABLE UNDER ANY OF THE PHYSICAL DAMAGE COVERAGES. *WE* WILL ALSO NOT PAY FOR ANY TESTING OR REMEDIATION OF *FUNGI*, OR ANY ADDITIONAL COSTS REQUIRED TO REPAIR ANY *COVERED VEHICLE* THAT ARE DUE TO THE EXISTENCE OF *FUNGI*;

8. *LOSS* TO ANY *COVERED VEHICLE* THAT RESULTS FROM:

   a. NUCLEAR REACTION;

   b. RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE; OR

   c. THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;

9. *LOSS* TO ANY *COVERED VEHICLE* THAT RESULTS FROM THE TAKING OF OR SEIZURE OF THAT *COVERED VEHICLE* BY ANY GOVERNMENTAL AUTHORITY;

10. *LOSS* TO ANY *COVERED VEHICLE* THAT RESULTS FROM WAR OF ANY KIND;

11. *YOUR CAR* WHILE SUBJECT TO ANY:

    a. LIEN AGREEMENT;

    b. RENTAL AGREEMENT;

    c. LEASE AGREEMENT; OR

    d. SALES AGREEMENT

    NOT SHOWN ON THE DECLARATIONS PAGE;

12. ANY *NON-OWNED CAR* WHILE IT IS:

    a. BEING MAINTAINED OR USED BY ANY *PERSON* WHILE THAT *PERSON* IS EMPLOYED IN OR ENGAGED IN ANY WAY IN A *CAR BUSINESS*; OR

    b. USED IN ANY BUSINESS OR OCCUPATION OTHER THAN A *CAR BUSINESS*. This exclusion (12.b.) does not apply to a *private passenger car*;

13. ANY PART OR EQUIPMENT OF A *COVERED VEHICLE* IF THAT PART OR EQUIPMENT:

    a. FAILS OR IS DEFECTIVE; OR

    b. IS DAMAGED AS A DIRECT RESULT OF:

       (1) WEAR AND TEAR;

       (2) FREEZING; OR

       (3) MECHANICAL, ELECTRICAL, OR ELECTRONIC BREAKDOWN OR MALFUNCTION

    OF THAT PART OR EQUIPMENT.

    This exclusion does not apply if the *loss* is the result of theft of the *covered vehicle*;

14. ANY PART OR EQUIPMENT:

    a. THAT IS NOT LEGAL FOR USE IN OR ON THE *COVERED VEHICLE*

IN THE JURISDICTION WHERE THE ***COVERED VEHICLE*** IS REGISTERED; OR

b. THE USE OF WHICH IS NOT LEGAL IN THE JURISDICTION WHERE THE ***COVERED VEHICLE*** IS REGISTERED BECAUSE OF HOW OR WHERE THAT PART OR EQUIPMENT IS INSTALLED IN OR ON THE ***COVERED VEHICLE***.

However, if there is a legal version of the part or equipment that is necessary for the safe operation of the *covered vehicle*, then *we* will pay the cost that *we* would otherwise have paid to repair the vehicle with the legal version of the part or equipment. *We* will not pay any cost necessary to modify the vehicle for installation of the legal version of the part or equipment;

15. TIRES. This exclusion does not apply if:

a. *loss* is caused by missiles, falling objects, windstorm, hail, fire, explosion, earthquake, water, flood, total or partial theft, malicious mischief, vandalism, riot, civil commotion, or hitting or being hit by a bird or an animal; or

b. *loss caused by collision* to another part of the *covered vehicle* causes *loss* to tires;

16. REMOVABLE PRODUCTS USED FOR STORAGE OF AUDIO, VIDEO, OR OTHER DATA, INCLUDING BUT NOT LIMITED TO TAPES, DISCS, AND MEMORY CARDS, NOR IS THERE COVERAGE FOR THE RECONSTRUCTION OF DATA CONTAINED THEREIN;

17. ANY EQUIPMENT USED TO DETECT OR INTERFERE WITH SPEED MEASURING DEVICES;

18. A CAMPER, INCLUDING ITS PARTS AND ITS EQUIPMENT, THAT IS:

a. DESIGNED TO BE MOUNTED ON A PICKUP TRUCK;

b. ***OWNED BY*** AN ***INSURED***; AND

c. NOT SHOWN ON THE DECLARATIONS PAGE; OR

19. ANY ***COVERED VEHICLE*** WHILE IT IS:

a. BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR

b. ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (19.b.) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving.

If Other Physical Damage Coverage or Similar Coverage Applies

1. If the same *loss* or expense is payable under more than one of the physical damage coverages provided by this policy, then only the one coverage that pays the most for that *loss* or expense applies.

2. If any of the physical damage coverages provided by this policy and one or more other policies issued to an *insured* by the ***State Farm Companies*** apply to the same *loss* or expense, then only one policy applies. *We* will select a policy that pays the most for the *loss* or expense.

3. The physical damage coverages provided by this policy apply as primary coverage for a *loss* to *your car*.

If similar coverage provided by one or more sources other than the ***State Farm Companies*** also applies as primary coverage for the same *loss* or expense, then the ***State Farm Companies*** will pay the proportion of the *loss* or expense payable as primary that the maximum amount that may be paid by the ***State Farm Companies*** bears to the sum of such amount and the limits of

all other similar coverage that applies as primary coverage.

4. Except as provided in 3. above, the physical damage coverages provided by this policy apply as excess coverage.

   If similar coverage provided by one or more sources other than the ***State Farm Companies*** also applies as excess coverage for the same ***loss*** or expense, then the ***State Farm Companies*** will pay the proportion of the ***loss*** or expense payable as excess that the maximum amount that may be paid by the ***State Farm Companies*** bears to the sum of such amount and the limits of all other similar coverage that applies as excess coverage.

Financed Vehicle

1. If a creditor is shown on the Declarations Page, then any Comprehensive Coverage or Collision Coverage provided by this policy applies to that creditor's interest in ***your car***. Coverage for the creditor's interest is only provided for a ***loss*** that is payable to ***you***.

   However, if this policy is cancelled or nonrenewed, then ***we*** will provide coverage for the creditor's interest until ***we*** notify the creditor of the termination of such coverage. This coverage for the creditor's interest is only provided for a ***loss*** that would have been payable to ***you*** if this policy had not been cancelled or nonrenewed. The date such termination is effective will be at least 10 days after the date ***we*** mail or electronically transmit a notice of the termination to the creditor.

2. If ***we*** pay such creditor, then ***we*** are entitled to the creditor's right of recovery against ***you*** to the extent of ***our*** payment. ***Our*** right of recovery does not impair the creditor's right to recover the full amount of its claim.

Our Payment Options

1. **Comprehensive Coverage and Collision Coverage**

   a. ***We*** may, at ***our*** option, make payment to one or more of the following for ***loss*** to a ***covered vehicle owned by you***:

      (1) ***You***;

      (2) The repairer; or

      (3) A creditor shown on the Declarations Page, to the extent of its interest.

   b. ***We*** may, at ***our*** option, make payment to one or more of the following for ***loss*** to a ***covered vehicle*** not ***owned by you***:

      (1) ***You***;

      (2) The owner of such vehicle;

      (3) The repairer; or

      (4) A creditor, to the extent of its interest.

2. **Emergency Road Service Coverage and Car Rental and Travel Expenses Coverage**

   We may, at ***our*** option, make payment to one or more of the following:

   a. ***You***;

   b. The ***insured*** who incurred the expense; or

   c. Any party that provided the service for which payment is owed.

DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE

This policy provides Death, Dismemberment and Loss of Sight Coverage if "S" is shown under "SYMBOLS" on the Declarations Page.

Additional Definition

Insured means a ***person*** whose name is shown under "Death, Dismemberment and Loss of Sight Coverage – Persons Insured" on the Declarations Page.

Insuring Agreement

We will pay the highest applicable benefit shown in the following Death, Dismemberment and Loss of Sight Benefits Schedules if an ***insured***:

1. dies; or
2. suffers dismemberment or permanent loss of sight, as described in the schedule

as the direct result of an accident that involves the use of a land motor vehicle or any type of trailer as a vehicle and not due to any other cause.

The ***insured*** must be ***occupying*** or be struck as a ***pedestrian*** by a land motor vehicle or any type of trailer at the time of the accident. The death, dismemberment, or permanent loss of sight must occur within 90 days immediately following the date of the accident.

Benefit

The applicable benefit shown in the schedule is the most *we* will pay for any one ***insured*** in any one accident. Any benefit paid or payable for dismemberment or permanent loss of sight reduces the death benefit.

The benefits shown in the schedules are doubled for an ***insured*** who at the time of the accident was ***occupying*** a ***private passenger car*** and using a seat belt in the manner recommended by the vehicle's manufacturer.

Death, Dismemberment and Loss of Sight Benefits Schedules

If the amount shown on the Declarations Page for the ***insured*** is $5,000, then *we* will pay the applicable benefit shown below for death or for the described dismemberment or permanent loss of sight:

Death	$5,000
Loss of both hands; both feet; all sight of both eyes; one hand and one foot; or one hand or one foot and all sight of one eye	$5,000
Loss of one hand or one foot; or all sight of one eye	$2,500
Loss of the thumb and a finger on one hand; or any three fingers	$1,500
Loss of any two fingers	$1,000

The hand must be cut off through or above the wrist. The foot must be cut off through or above the ankle. The whole thumb or finger must be cut off.

If the amount shown on the Declarations Page for the ***insured*** is $10,000, then *we* will pay the applicable benefit shown below for death or for the described dismemberment or permanent loss of sight:

Death	$10,000
Loss of both hands; both feet; all sight of both eyes; one hand and one foot; or one hand or one foot and all sight of one eye	$10,000
Loss of one hand or one foot; or all sight of one eye	$5,000
Loss of the thumb and a finger on one hand; or any three fingers	$3,000
Loss of any two fingers	$2,000

The hand must be cut off through or above the wrist. The foot must be cut off through or above the ankle. The whole thumb or finger must be cut off.

Exclusions

DEATH, DISMEMBERMENT AND LOSS OF SIGHT COVERAGE DOES NOT APPLY TO AN ***INSURED***:

1. WHILE IN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT IN A ***CAR BUSINESS***;
2. WHILE ***OCCUPYING***, LOADING, OR UNLOADING:
   a. AN EMERGENCY VEHICLE IN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT;
   b. A VEHICLE, OTHER THAN AN EMERGENCY VEHICLE, WHILE USED IN THE:
      (1) ***INSURED'S*** BUSINESS; OR
      (2) COURSE AND SCOPE OF HIS OR HER EMPLOYMENT IN OTHER THAN A ***CAR BUSINESS***.

      This exclusion (2.b.) does not apply if the vehicle is a ***private passenger car***;
   c. A MILITARY VEHICLE; OR
   d. A VEHICLE WHILE IT IS:
      (1) BEING PREPARED FOR, USED IN PRACTICE FOR, OR OPERATED IN ANY RACING CONTEST, SPEED CONTEST, HILL-CLIMBING CONTEST, JUMPING CONTEST, OR ANY SIMILAR CONTEST; OR
      (2) ON A TRACK DESIGNED PRIMARILY FOR RACING OR HIGH-SPEED DRIVING. This exclusion (2.d.(2)) does not apply if the vehicle is being used in connection with an activity other than racing, high-speed driving, or any type of competitive driving;
3. WHILE ***OCCUPYING***, LOADING, UNLOADING, OR WHO IS STRUCK AS A ***PEDESTRIAN*** BY:
   a. A MOTOR VEHICLE THAT RUNS ON RAILS OR CRAWLER-TREADS;
   b. A MOTOR VEHICLE THAT IS DESIGNED FOR USE PRIMARILY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
   c. A MOTOR VEHICLE OR ANY TYPE OF TRAILER, EITHER OF WHICH IS LOCATED FOR USE AS A DWELLING OR OTHER PREMISES; OR
4. FOR DEATH, DISMEMBERMENT, LOSS OF SIGHT, OR ***TOTAL DISABILITY*** THAT RESULTS FROM:
   a. WAR OF ANY KIND;
   b. NUCLEAR REACTION, RADIATION OR RADIOACTIVE CONTAMINATION FROM ANY SOURCE, OR THE ACCIDENTAL OR INTENTIONAL DETONATION OF, OR RELEASE OF RADIATION FROM, ANY NUCLEAR OR RADIOACTIVE DEVICE;
   c. THE DISCHARGE OF A FIREARM;
   d. EXPOSURE TO ***FUNGI***;
   e. SUICIDE OR ATTEMPTED SUICIDE REGARDLESS OF WHETHER THE ***INSURED*** WAS SANE OR INSANE; OR
   f. DISEASE except pus-forming infection due to ***bodily injury*** sustained in the accident.

Our Payment Options

We may, at ***our*** option, make payment to one or more of the following:

1. The ***insured***;
2. The ***insured's*** surviving spouse;
3. A parent or guardian of the ***insured***, if the ***insured*** is a minor or an incompetent ***person***; or
4. A ***person*** or organization authorized by law to receive such payment.

INSURED'S DUTIES

1. **Notice to Us of an Accident or Loss**

   The ***insured*** must give ***us*** or one of ***our*** agents notice of the accident or ***loss*** as soon as reasonably possible. The notice must give ***us***:

   a. ***your*** name;

   b. the names and addresses of all ***persons*** involved in the accident or ***loss***;

   c. the hour, date, place, and facts of the accident or ***loss***; and

   d. the names and addresses of witnesses to the accident or ***loss***.

2. **Notice to Us of a Claim or Lawsuit**

   a. If a claim is made against an ***insured***, then that ***insured*** must immediately send ***us*** every demand, notice, and claim received.

   b. If a lawsuit is filed against an ***insured***, then that ***insured*** must immediately send ***us*** every summons and legal process received.

3. **Insured's Duty to Cooperate With Us**

   a. The ***insured*** must cooperate with ***us*** and, when asked, assist ***us*** in:

      (1) making settlements;

      (2) securing and giving evidence;

      (3) attending, and getting witnesses to attend, depositions, hearings, and trials; and

      (4) preserving his or her right to recover damages from others.

   b. The ***insured*** must not, except at his or her own cost, voluntarily:

      (1) make any payment to others; or

      (2) assume any obligation to others

      unless authorized by the terms of this policy.

   c. Any ***person*** or organization making claim under this policy must, when ***we*** require, give ***us*** proof of loss on forms ***we*** furnish.

4. **Questioning Under Oath**

   Under:

   a. Liability Coverage, each ***insured***;

   b. Personal Injury Protection Coverage, Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, or Death, Dismemberment and Loss of Sight Coverage, each ***insured***, or any other ***person*** or organization making claim or seeking payment; and

   c. Physical Damage Coverages, each ***insured*** or owner of a ***covered vehicle***, or any other ***person*** or organization making claim or seeking payment;

   must, at ***our*** option, submit to an examination under oath, provide a statement under oath, or do both, as reasonably often as ***we*** require. Such ***person*** or organization must answer questions under oath, asked by anyone ***we*** name, and sign copies of the answers. ***We*** may require each ***person*** or organization answering questions under oath to answer the questions with only that ***person's*** or organization's legal representative, ***our*** representatives, any ***person*** or ***persons*** designated by ***us*** to record the questions and answers, and no other ***person*** present.

5. **Other Duties Under the Physical Damage Coverages**

   When there is a ***loss***, ***you*** or the owner of the ***covered vehicle*** must:

   a. protect the ***covered vehicle*** from additional damage. ***We*** will pay any reasonable expense incurred to do so that is reported to ***us***;

   b. make a prompt report to the police when the ***loss*** is the result of theft;

   c. allow ***us*** to:

(1) inspect any damaged property before its repair or disposal;

(2) test any part or equipment before that part or equipment is removed or repaired; and

(3) move the ***covered vehicle*** at ***our*** expense in order to conduct such inspection or testing;

d. provide ***us*** all:

(1) records;

(2) receipts; and

(3) invoices

that ***we*** request and allow ***us*** to make copies; and

e. not abandon the ***covered vehicle*** to ***us***.

6. Other Duties Under Personal Injury Protection Coverage, Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, and Death, Dismemberment and Loss of Sight Coverage

A ***person*** making claim under:

a. Personal Injury Protection Coverage, Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, or Death, Dismemberment and Loss of Sight Coverage must:

(1) notify ***us*** of the claim and give ***us*** all the details about the death, injury, treatment, and other information that ***we*** may need as soon as reasonably possible after the injured ***insured*** is first examined or treated for the injury. If the ***insured*** is unable to give ***us*** notice, then any other ***person*** may give ***us*** the required notice;

(2) be examined as reasonably often as ***we*** may require by physicians chosen and paid by ***us***. A copy of the report will be sent to the ***person*** upon written request;

(3) provide written authorization for ***us*** to obtain:

(a) medical bills;

(b) medical records;

(c) wage, salary, and employment information; and

(d) any other information ***we*** deem necessary to substantiate the claim.

If an injured ***insured*** is a minor, unable to act, or dead, then his or her legal representative must provide ***us*** with the written authorization.

If the holder of the information refuses to provide it to ***us*** despite the authorization, then at ***our*** request the ***person*** making claim or his or her legal representative must obtain the information and promptly provide it to ***us***; and

(4) allow ***us*** to inspect the vehicle that the ***insured occupied*** in the accident;

b. Uninsured Motor Vehicle Coverage must report an accident, involving a motor vehicle whose owner and driver remain unknown, to the police and to ***us*** within a reasonable period of time; and

c. Uninsured Motor Vehicle Coverage and Underinsured Motor Vehicle Coverage must:

(1) send ***us*** immediately a copy of all lawsuit papers if the ***insured*** files a lawsuit against the party liable for the accident; and

(2) if making a claim for ***property damage***:

(a) allow ***us*** to:

(i) inspect any ***property damage*** before its repair or disposal;

(ii) test any part or equipment before that part or equipment is removed or repaired; and

(iii) move the damaged property at *our* expense in order to conduct such inspection or testing; and

(b) protect the damaged property from additional damage. *We* will pay any reasonable expense incurred to do so that is reported to *us*;

(c) provide *us* all:

(i) records;

(ii) receipts; and

(iii) invoices

that *we* request and allow *us* to make copies;

(d) not abandon the damaged property to *us*; and

(e) give *us* sworn proof of claim within 60 days of the accident. This proof of claim must state:

(i) who owns the property and how much they own;

(ii) the amount of any claims or liens on the property;

(iii) the value of the property at the time of the accident;

(iv) details of the accident; and

(v) details of any other insurance applicable to the property.

GENERAL TERMS

1. **When Coverage Applies**

The coverages provided by this policy are shown on the Declarations Page and apply to accidents and *losses* that occur during the policy period. The policy period is shown on the Declarations Page and is for successive periods of six months each for which the renewal premium is paid. The policy period begins and ends at 12:01 AM Standard Time at the address shown on the Declarations Page.

2. **Where Coverage Applies**

The coverages provided by this policy are shown on the Declarations Page and apply to accidents and *losses* that occur:

a. in the United States of America and its territories and possessions;

b. in Canada; and

c. while a vehicle for which coverage is provided by this policy is being shipped between the ports of the United States of America, its territories, its possessions, and Canada.

The Liability Coverage, Personal Injury Protection Coverage, Medical Payments Coverage, and Physical Damage Coverages also apply in Mexico within 50 miles of the United States border. A Physical Damage Coverage *loss* in Mexico is determined on the basis of cost at the nearest United States point.

Death, Dismemberment and Loss of Sight Coverage applies anywhere in the world.

3. **Newly Owned or Newly Leased Car**

If *you* want to insure a *car* newly *owned by you* with the *State Farm Companies* after that *car* ceases to be a *newly acquired car*, then *you* must either:

a. request *we* replace the *car* currently shown on the Declarations Page of this policy with the *car* newly *owned by*

you and pay *us* any added amount due. If *you* make such request while this policy is in force and:

(1) before the *car* newly *owned by you* ceases to be a *newly acquired car*, then that *car* newly *owned by you* will be insured by this policy as *your car* beginning on the date the *car* newly *owned by you* is delivered to *you*. The added amount due will be calculated based on that date; or

(2) after the *car* newly *owned by you* ceases to be a *newly acquired car*, then that *car* newly *owned by you* will be insured by this policy as *your car* beginning on the date and time *you* make the request. The added amount due will be calculated based on that date; or

b. apply to the *State Farm Companies* for a separate policy to insure the *car* newly *owned by you*. Such policy will be issued only if both the applicant and the vehicle are eligible for coverage at the time of the application.

4. **Changes to This Policy**

a. **Changes in Policy Provisions**

We may only change the provisions of this policy by:

(1) issuing a revised policy booklet, a revised Declarations Page, or an endorsement; or

(2) revising this policy to give broader coverage without an additional premium charge. If any coverage provided by this policy is changed to give broader coverage, then *we* will give *you* the broader coverage as of the date *we* make the change effective in the state of South Carolina without issuing a revised policy booklet, a revised Declarations Page, or an endorsement.

b. **Change of Interest**

(1) No change of interest in this policy is effective unless *we* consent in writing.

(2) Except under Death, Dismemberment and Loss of Sight Coverage, if a named insured shown on the Declarations Page dies, then the definition of *insured* under each of the coverages provided by this policy is changed to include:

(a) any *person* with lawful custody of *your car*, a *newly acquired car*, or a *temporary substitute car* until a legal representative is qualified; and then

(b) the legal representative of the deceased named insured.

This only applies while such *person* is maintaining or using *your car*, a *newly acquired car*, or a *temporary substitute car*.

Policy notice requirements are met by mailing the notice to the most recent policy address that *we* have on record for the deceased named insured.

c. **Joint and Individual Interests**

If *you* consists of more than one *person* or entity, then each acts for all to change or cancel the policy.

d. **Change of Policy Address**

We may change the named insured's policy address as shown on the Declarations Page and in *our* records to the most recent address provided to *us* by:

(1) *you*; or

(2) the United States Postal Service.

5. **Premium**

a. Unless as otherwise provided by an alternative payment plan in effect with the ***State Farm Companies*** with respect to the premium for this policy, the premium is due and payable in full on or before the first day of the policy period shown on the most recently issued Declarations Page or Renewal Notice.

b. The renewal premium for this policy will be based upon the rates in effect, the coverages carried, the applicable limits, deductibles, and other elements that affect the premium that apply at the time of renewal.

c. The premium for this policy may vary based upon the purchase of other insurance from the ***State Farm Companies.***

d. The premium for this policy is based upon information *we* have received from *you* or other sources. *You* must inform *us* if any information regarding the following is incorrect or incomplete, or changes during the policy period, and *you* must answer questions *we* ask regarding the following:

(1) ***Your car***, or its use, including annual mileage;

(2) The ***persons*** who regularly drive ***your car***, including newly licensed family members;

(3) ***Your*** marital status; or

(4) The location where ***your car*** is primarily garaged.

If the above information or any other information used to determine the premium is incorrect, incomplete, changes during the policy period, or is not provided to *us* when *we* ask, then *we* may decrease or increase the premium during the policy period. If *we* decrease the premium during the policy period, then *we* will provide a refund or a credit in the amount of the decrease. If *we* increase the premium during the policy period, then *you* must pay the amount of the increase.

6. **Renewal**

We agree to renew this policy for the next policy period upon payment of the renewal premium when due, unless *we* mail or deliver a nonrenewal notice or a cancellation notice as set forth in 7. and 8. below.

7. **Nonrenewal**

If *we* decide not to renew this policy, then, at least 30 days before the end of the current policy period, *we* will mail or deliver a nonrenewal notice to the most recent policy address that *we* have on record for the named insured who is shown on the Declarations Page.

8. **Cancellation**

a. **How You May Cancel**

You may cancel this policy by providing to *us* advance notice of the date cancellation is effective. *We* may confirm the cancellation in writing.

b. **How and When We May Cancel**

We may cancel this policy by mailing or delivering a written notice to the most recent policy address that *we* have on record for the named insured who is shown on the Declarations Page. The notice will provide the date cancellation is effective.

(1) If *we* mail or deliver a cancellation notice:

(a) during the first 90 days following this policy's effective date; or

(b) because the premium is not paid when due,

then the date cancellation is effective will be at least 15 days after the date *we* mail or deliver the cancellation notice.

Otherwise, the date cancellation is effective will be at least 20 days after the date *we* mail or deliver the cancellation notice.

(2) After this policy has been in force for more than 90 days, *we* will not cancel this policy before the end of the current policy period unless:

(a) the premium is not paid when due; or

(b) *you*, any *resident relative*, or any other *person* who usually drives *your car* has had his or her driver's license under suspension or revocation:

(1) during the policy period; or

(2) if the policy is a renewal, during its policy period or the 90 days immediately preceding the last anniversary of the effective date of the policy.

c. **Return of Unearned Premium**

If *you* cancel this policy, then premium may be earned on a short rate basis. If *we* cancel this policy, then premium will be earned on a pro rata basis.

Any unearned premium may be returned within a reasonable time after cancellation. Delay in the return of any unearned premium does not affect the cancellation date.

9. **Assignment**

No assignment of benefits or other transfer of rights is binding upon *us* unless approved by *us*.

10. **Bankruptcy or Insolvency of the Insured**

Bankruptcy or insolvency of the *insured* or his or her estate will not relieve *us* of *our* obligations under this policy.

11. **Concealment or Fraud**

There is no coverage under this policy if *you* or any other *person* insured under this policy has made false statements with the intent to conceal or misrepresent any material fact or circumstance in connection with any claim under this policy.

12. **Our Right to Recover Our Payments**

a. Personal Injury Protection Coverage, Medical Payments Coverage, Underinsured Motor Vehicle Coverage, and Death, Dismemberment and Loss of Sight Coverage payments are not recoverable by *us*.

b. To the extent allowed by law, under Uninsured Motor Vehicle Coverage:

(1) the right of recovery of the *insured* passes to *us*, to the extent of *our* payments;

(2) *we* will pay *our* share of the reasonable costs of any recovery. *Our* share is the percent that *our* recovery bears to the total recovery. *We* reserve the right to select an attorney to handle the recovery; and

(3) an *insured* making claim for *property damage* must assign to *us*, to the extent of *our* payments, the right to any other compensation for it. *We* do not have to make any payment until the *insured* has done this.

c. Under all other coverages, the following apply:

(1) **Subrogation**

If *we* are obligated under this policy to make payment to or for a *person* or organization who has a legal right to collect from another *person* or organization, then *we* will be subrogated to that right to the extent of *our* payment.

The *person* or organization to or for whom *we* make payment must help *us* recover *our* payments by:

(a) doing nothing to impair that legal right;

(b) executing any documents *we* may need to assert that legal right; and

(c) taking legal action through *our* representatives when *we* ask.

(2) **Reimbursement**

If *we* make payment under this policy and the *person* or organization to or for whom *we* make payment recovers or has recovered from another *person* or organization, then the *person* or organization to or for whom *we* make payment must:

(a) hold in trust for *us* the proceeds of any recovery; and

(b) reimburse *us* to the extent of *our* payment.

13. **Legal Action Against Us**

Legal action may not be brought against *us* until there has been full compliance with all the provisions of this policy. In addition, legal action may only be brought against *us* regarding:

a. Liability Coverage after the amount of damages an *insured* is legally liable to pay has been finally determined by:

(1) judgment after an actual trial, and any appeals of that judgment if any appeals are taken; or

(2) agreement between the claimant and *us*.

b. Personal Injury Protection Coverage, Medical Payments Coverage, Uninsured Motor Vehicle Coverage, Underinsured Motor Vehicle Coverage, and Physical Damage Coverages if the legal action relating to these coverages is brought against *us* within three years immediately following the date of the accident.

c. Underinsured Motor Vehicle Coverage if copies of the pleadings in the action establishing liability are served upon *us* in the manner provided by law.

14. **Choice of Law**

Without regard to choice of law rules, the law of the state of:

a. South Carolina will control, except as provided in b. below, in the event of any disagreement as to the interpretation and application of any provision in this policy; and

b. Illinois will control in the event of any disagreement as to the interpretation and application of this policy's:

(1) Mutual Conditions provision found on the most recently issued Declarations Page, if this policy was issued by the State Farm Mutual Automobile Insurance Company; or

(2) Participating Policy provision found on the most recently issued Declarations Page, if this policy was issued by any subsidiary or affiliate of the State Farm Mutual Automobile Insurance Company.

15. **Severability**

If any provision of this policy is held invalid or unenforceable by a court that has jurisdiction, then:

a. such provision will remain in full force to the extent not held invalid or unenforceable; and

b. all other provisions of this policy will remain valid and enforceable.

16. **Conformity to Law**

The coverage provided by this policy is done so in accordance with South Carolina insurance law. If any provisions of this policy are in conflict with South Carolina statutes, the policy is amended to conform to the minimum requirements of the statutes.

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Exhibit F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

State Farm Fire and Casualty Insurance Company, Plaintiff, v. Carol Holmes, Defendant.	C.A. No.: 6:14-cv-04050-TMC **DEFENDANT CAROL HOLMES' ANSWER**

The Defendant Carol Holmes answers the Plaintiff's Complaint as follow:

1. Defendant admits the allegations of paragraphs 1 and 2.

2. Defendant denies the allegations of paragraph 3 and demand strict proof thereof.

3. The allegations of paragraph 4 state conclusions of law which the Defendant is not required to admit or deny.

4. Answering the allegations of paragraph 5, Defendant admits this lawsuit arises from an automobile accident and she craves reference to her Complaint in the underlying action for the exact allegations and denies the allegations of paragraph 5 to the extent they are inconsistent therewith.

5. Defendant admits, upon information and belief, the allegations of paragraph 6 except she lacks sufficient information upon which to form a belief as to whether Willie Sullivan was paid $100,000.00.

6. Answering the allegations of paragraph 7, Defendant admits she has asserted a claim against State Farm to recover underinsured motorist (UIM) benefits and craves reference to her Complaint in the underlying action for the exact allegations and denies the allegations of paragraph 7 to the extent they are inconsistent therewith. Furthermore, Defendant craves reference to the subject

insurance policies for the exact terms and conditions and denies the allegations of these paragraphs to the extent they are inconsistent therewith.

7. Defendant admits, upon information and belief, only the allegations of paragraph 8 pertaining to how much the Defendant has been previously paid. The remaining allegations of paragraph 8 state conclusions of law to which no response is required.

8. Defendant denies each and every allegation of Plaintiff's Complaint which is not hereinabove admitted.

RESERVATION OF AFFIRMATIVE DEFENSES

8. Defendant reserves the right to amend her Answer or plead additional affirmative defenses after filing this pleading.

AS A FIRST DEFENSE
(LACK OF SUBJECT MATTER JURISDICTION)

9. Defendant, Carol Holmes, entered into a contract of insurance with State Farm and the amount in controversy for her claim is $50,000.00 which falls below the $75,000.00 jurisdictional threshold.

AS A SECOND DEFENSE BY WAY OF COUNTERCLAIM
(BREACH OF CONTRACT)

10. Defendant, Carol Holmes, entered into two mutually binding insurance contracts with Plaintiff.

11. Upon information and belief, the Plaintiff has breached the terms of these policies by not allowing the Defendant to stack the subject policies; specifically, Plaintiff breached the terms of page nineteen (19) of the policy (see Exhibit A) which states "we will pay damages for bodily injury or property damage an insured: 1. is legally entitled to collect from the owner or driver of an underinsured motor vehicle…".

12. In filing this suit for declaratory judgment, requiring the Defendant to hire counsel to represent her, Plaintiff is liable to the Defendant for this breach of contract in the amount of Defendant's attorneys' fees and costs incurred in the defense of this declaratory judgment action.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant prays that this Court declare that: Defendant was at all times relevant to the subject collision and incurred under the subject insurance policy and that she is entitled to stack UIM coverage under the two State Farm policies in question for a total of $50,000. Defendant also requests that she be awarded reasonable attorneys' fees, attorneys' costs and such further relief as the Court may deem reasonable and proper due to Plaintiff's breach of their obligations under the contract.

PETERS, MURDAUGH, PARKER
ELTZROTH & DETRICK, P.A.

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ATTORNEYS FOR DEFENDANT
CAROL HOLMES

December 24, 2014
Hampton, South Carolina

PLEASE READ YOUR POLICY CAREFULLY. IF YOU HAVE AN ACCIDENT, CONTACT YOUR STATE FARM AGENT OR ONE OF OUR CLAIM OFFICES AT ONCE. (SEE "REPORTING A CLAIM-INSURED'S DUTIES" IN THIS POLICY.)

Authorized Representative

State Farm Fire and Casualty Company, Home Office, Bloomington, Illinois
Georgia-South Carolina Office • 11350 Johns Creek Parkway • Duluth, GA 30098-0001 • Ph (770) 418-5413

YOUR STATE FARM CAR POLICY

South Carolina
Policy Form 9940.3

[redacted]

STATE FARM FIRE AND CASUALTY COMPANY
BLOOMINGTON, ILLINOIS
A STOCK COMPANY

DEFINED WORDS WHICH ARE USED IN SEVERAL PARTS OF THE POLICY

We define some words to shorten the policy. This makes it easier to read and understand. Defined words are printed in boldface italics. *You* can pick them out easily.

Bodily Injury – means bodily injury to a *person* and sickness, disease or death which results from it.

Car – means a land motor vehicle with four or more wheels, which is designed for use mainly on public roads. It does not include:

1. any vehicle while located for use as a dwelling or other premises; or
2. a truck-tractor designed to pull a trailer or semi-trailer.

Car Business – means a business or job where the purpose is to sell, lease, repair, service, transport, store or park land motor vehicles or trailers.

Insured – means the *person, persons* or organization defined as *Insureds* in the specific coverage. If the information *you* have provided State Farm is incorrect or incomplete, or changes during the policy period, State Farm may decrease or increase the premium during the policy period as set out in the provision titled Premium of the Conditions section of this policy.

Loss – defined in Sections IV and V.

Motor Vehicle – defined in Sections II and III.

Newly Acquired Car – means a *replacement car* or an *additional car*.

Replacement Car – means a *car* purchased by or leased to *you* or *your spouse* to replace *your car*. This policy will only provide coverage for the *replacement car* if *you* or *your spouse*:

1. tell us about it within 30 days after its delivery to *you* or *your spouse*; and
2. pay us any added amount due.

Additional Car – means an added *car* purchased by or leased to *you* or *your spouse*. This policy will only provide coverage for the *additional car* if:

1. it is a *private passenger car* and we insure all other *private passenger cars*; or
2. it is other than a *private passenger car* and we insure all *cars*

owned by or leased to *you* or *your spouse* on the date of its delivery to *you* or *your spouse*.

This policy provides coverage for the *additional car* only until the earlier of:

1. 12:01 A.M. Standard Time at the address shown on the declarations page on the 31st day after the delivery of the *car* to *you* or *your spouse*; or
2. the effective date and time of a policy issued by us or any other company that describes the *car* on its declarations page.

You or *your spouse* may apply for a policy that will provide coverage beyond the 30th day for the *additional car*. Such policy will be issued only if both the applicant and the vehicle are eligible for coverage at the time of application.

If a *newly acquired car* is not otherwise afforded comprehensive or collision coverage by this or any other policy, this policy will provide the comprehensive or collision coverage not otherwise provided for the *newly acquired car*. If

such coverage is provided by this paragraph, it will apply only until 12:01 A.M. Standard Time at the address shown on the declarations page on the sixth day after the delivery of the *car* to *you* or *your spouse*. Any comprehensive or collision coverage provided by this paragraph is subject to a deductible of $500.

Non-Owned Car – means a *car* not owned by, registered to or leased to:

1. *you, your spouse*;
2. any *relative* unless at the time of the accident or *loss*:
   a. the *car* currently is or has within the last 30 days been insured for liability coverage; and
   b. the driver is an *insured* who does not own or lease the *car*;
3. any other *person* residing in the same household as *you*, *your spouse* or any *relative*; or
4. an employer of *you*, *your spouse* or any *relative*.

Non-owned car does not include a:

1. rented *car* while it is used in connection with the *insured's* employment or business; or
2. *car* which has been operated or rented by or in the possession of an *insured* during any part of each of the last 21 or more consecutive days. If the *insured* is an *insured* under one or more other car policies issued by us, the 21 day limit is increased by an additional 21 days for each such additional policy.

A *non-owned car* must be a *car* in the lawful possession of the *person* operating it.

Occupying – means in, on, entering or alighting from.

Person – means a human being.

Private Passenger Car – means a *car*:

1. with four wheels;
2. of the private passenger or station wagon type; and
3. designed solely to carry *persons* and their luggage.

Relative – means a *person* related to *you* or *your spouse* by blood, marriage or adoption who resides primarily with *you*. It includes *your* unmarried and unemancipated child away at school.

Spouse – means *your* husband or wife who resides primarily with *you*.

Temporary Substitute Car – means a *car* not owned by or leased to *you* or *your spouse*, if it replaces *your car* for a short time. Its use has to be with the consent of the owner. *Your car* has to be out of use due to its breakdown, repair, servicing, damage or *loss*. A *temporary substitute car* is not considered a *non-owned car*.

Utility Vehicle – means a motor vehicle with:

1. a pickup, panel or van body; and
2. a Gross Vehicle Weight of 10,000 pounds or less.

You or *Your* – means the named insured or named insureds shown on the declarations page.

Your Car – means the *car* or the vehicle described on the declarations page.

DECLARATIONS CONTINUED

We, the State Farm Fire and Casualty Company, agree to insure *you* according to the terms of this policy based:

1. on *your* payment of premium for the coverages *you* chose; and
2. in reliance on *your* statements in these declarations.

You agree, by acceptance of this policy that:

1. the statements in these declarations are *your* statements and are true; and
2. we insure *you* on the basis *your* statements are true; and
3. this policy contains all of the agreements between *you* and us or any of our agents.

Unless otherwise stated in the exceptions space on the declarations page, *your* statements are:

1. Ownership. *You* are the sole owner of *your car*.
2. Insurance and License History. Neither *you* nor any member of *your* household within the past three years has had:
   a. vehicle insurance canceled by an insurer; or
   b. a license to drive or vehicle registration suspended, revoked or refused.
3. Use. *Your car* is used for pleasure and business.

WHEN AND WHERE COVERAGE APPLIES

When Coverage Applies

The coverages *you* chose apply to accidents and *losses* that take place during the policy period.

The policy period is shown under "Policy Period" on the declarations page and is for successive periods of six months each for which *you* pay the renewal premium. Payments must be made on or before the end of the current policy period. The policy period begins and ends at 12:01 A.M. Standard Time at the address shown on the declarations page.

Where Coverage Applies

The coverages *you* chose apply:

1. in the United States of America, its territories and possessions or Canada; or
2. while the insured vehicle is being shipped between their ports.

The liability, personal injury protection, medical payments and physical damage coverages also apply in Mexico within 50 miles of the United States border. A physical damage coverage *loss* in Mexico is determined on the basis of cost at the nearest United States point.

Death, dismemberment and loss of sight coverage applies anywhere in the world.

FINANCED VEHICLES

If a creditor is shown in the declarations, we may pay any comprehensive or collision *loss* to:

1. *you* and, if unpaid, the repairer; or
2. *you* and such creditor, as its interest may appear, when we find it is not practical to repair *your car*; or
3. the creditor, as to its interest, if *your car* has been repossessed.

When we pay the creditor for *loss* for which *you* are not covered, we are entitled to the creditor's right of recovery against *you* to the extent of our payment. Our right of recovery shall not impair the creditor's right to recover the full amount of its claim.

The coverage for the creditor's interest only is valid until we terminate it. We will not terminate such coverage because of:

1. any act or negligence of the owner or borrower; or
2. a change in the ownership or interest unknown to us, unless the creditor knew of it and failed to tell us within 10 days; or
3. an error in the description of the vehicle.

The date of termination of the creditor's interest will be at least 10 days after the date we mail or electronically transmit the termination notice.

REPORTING A CLAIM — INSURED'S DUTIES

1. Notice to Us of an Accident or Loss

The *insured* must give us or one of our agents written notice of the accident or *loss* as soon as reasonably possible. The notice must give us:

a. *your* name;

b. the names and addresses of all *persons* involved;

c. the hour, date, place and facts of the accident or *loss*; and

d. the names and addresses of witnesses.

2. Notice to Us of Claim or Suit

If a claim or suit is made against an *insured*, that *insured* must at once send us every demand, notice or claim made and every summons or legal process received.

3. Other Duties Under the Physical Damage Coverages

When there is a *loss*, *you* or the owner of the property also shall:

a. make a prompt report to the police when the *loss* is the result of theft or larceny.

b. protect the damaged vehicle. We will pay any reasonable expense incurred to do it.

c. show us the damage, when we ask.

d. provide all records, receipts and invoices, or certified copies of them. We may make copies.

e. answer questions under oath when asked by anyone we name, as often as we reasonably ask, and sign copies of the answers.

4. Other Duties Under Personal Injury Protection, Medical Payments, Uninsured Motor Vehicle, Underinsured Motor Vehicle and Death, Dismemberment and Loss of Sight Coverages

Any *person* who suffers a *bodily injury* which results in a personal injury protection or medical payments coverage claim must notify us of the claim in writing as soon as reasonably possible after the *person's* first examination or treatment resulting from the *bodily injury*. Another *person* may give us the required notice on behalf of the injured *person*.

The *person* making claim also shall:

a. under personal injury protection, medical payments, uninsured motor vehicle, underinsured motor vehicle, and death, dismemberment and loss of sight coverages:

(1) give us all the details about the death, injury, treatment and other information we need to determine the amount payable.

(2) be examined by physicians chosen and paid by us as often as we reasonably may require. A copy of the report will be sent to the *person* upon written request. The *person*, or his or her legal representative if the *person* is dead or unable to act, shall authorize us to obtain all medical reports and records.

(3) answer questions under oath when asked by anyone we name, as often as we reasonably ask, and sign copies of the answers.

b. under the uninsured motor vehicle coverage:

(1) report a "hit-and-run" accident to the police within a reasonable time and to us within 30 days.

(2) let us see the insured *car* the *person occupied* in the accident.

(3) send us at once a copy of all suit papers if the *person* sues the party liable for the accident for damages.

c. under the uninsured motor vehicle and underinsured motor vehicle coverages, if making claim for damage to property, give us a sworn proof of loss within 60 days of the accident. This proof must state as to the property:

(1) who owns it and how much they own;

(2) the amount of any claims or liens;

(3) its value at the time of the accident; and

(4) details of the accident and any other insurance on it.

If we ask, the *insured* shall show us the property.

d. under the death, dismemberment and loss of sight coverage, give us proof of claim on forms we furnish.

5. Insured's Duty to Cooperate With Us

The *insured* shall cooperate with us and, when asked, assist us in:

a. making settlements;

b. securing and giving evidence;

c. attending, and getting witnesses to attend, hearings and trials; and

d. preserving his or her right to recover damages from others.

The *insured* shall not, except at his or her own cost, voluntarily:

a. make any payment or assume any obligation to others; or

b. incur any expense, other than for first aid to others.

SECTION I — LIABILITY — COVERAGE A

You have this coverage if "A" appears in the "Coverages" space on the declarations page.

We will:

1. pay damages which an *insured* becomes legally liable to pay because of:
   a. *bodily injury* to others, and
   b. damage to or destruction of property including loss of its use,

   caused by accident resulting from the ownership, maintenance or use of *your car*; and
2. defend any suit against an *insured* for such damages with attorneys hired and paid by us. We will not defend any suit after we have paid the applicable limit of our liability for the accident which is the basis of the lawsuit.

In addition to the limits of liability, we will pay for an *insured* any costs listed below resulting from such accident.

1. Court costs of any suit for damages that we defend.
2. Interest on damages owed by the *insured* due to a judgment and accruing:
   a. after the judgment, and until we pay, offer or deposit in court, the amount due under this coverage; or
   b. before the judgment, where owed by law, and until we pay, offer or deposit in court the amount due under this coverage, but only on that part of the judgment we pay.
3. Premiums or costs of bonds:
   a. to secure the release of an *insured's* property attached under a court order;
   b. required to appeal a decision in a suit for damages if we have not paid our limit of liability that applies to the suit; and
   c. up to $250 for each bail bond needed because of an accident or related traffic law violation.

   We have no duty to furnish or apply for any bonds. The amount of any bond we pay for shall not be more than our limit of liability.
4. Expenses incurred by an *insured*:
   a. for loss of wages or salary up to $100 per day if we ask the *insured* to attend the trial of a civil suit.
   b. for first aid to others at the time of the accident.
   c. at our request.

We have the right to investigate, negotiate and settle any claim or suit.

Coverage for the Use of Other Cars

The liability coverage extends to the use, by an *insured*, of a *newly acquired car*, a *temporary substitute car* or a *non-owned car*.

Who Is an Insured

When we refer to *your car*, a *newly acquired car* or a *temporary substitute car*, *insured* means:

1. *you*;
2. *your spouse*;
3. the *relatives* of the first *person* named in the declarations;
4. any other *person* while using such a *car* if its use is within the scope of consent of *you* or *your spouse*; and

5. any other *person* or organization liable for the use of such a *car* by one of the above *insureds*.

When we refer to a *non-owned car*, *insured* means:

1. the first *person* named in the declarations;
2. his or her *spouse*;
3. their *relatives*; and
4. any *person* or organization which does not own or hire the *car* but is liable for its use by one of the above *persons*.

THERE IS NO COVERAGE FOR *NON-OWNED CARS*:

1. IF THE DECLARATIONS STATE THE "USE" OF *YOUR CAR* IS OTHER THAN "PLEASURE AND BUSINESS"; OR
2. WHILE:
   a. BEING REPAIRED, SERVICED OR USED BY ANY *PERSON* WHILE THAT *PERSON* IS WORKING IN ANY *CAR BUSINESS*; OR
   b. USED IN ANY OTHER BUSINESS OR OCCUPATION. This does not apply to a *private passenger car* driven or *occupied* by the first *person* named in the declarations, his or her *spouse* or their *relatives*.

Trailer Coverage

1. Trailers designed to be pulled by a *private passenger car* or a *utility vehicle*, except those trailers in 2.a. below, are covered while owned or used by an *insured*.

   Farm implements and farm wagons are considered trailers while pulled on public roads by a *car* we insure for liability.

   These trailers are not described in the declarations, and no extra premium is charged.

2. The following trailers are covered only if described on the declarations page and extra premium is paid:
   a. those trailers designed to be pulled by a *private passenger car* or a *utility vehicle*:
      (1) if designed to carry *persons*; or
      (2) while used with a motor vehicle whose use is shown as "commercial" on the declarations page (trailers used only for pleasure use are covered even if not described and no extra premium paid); or
      (3) while used as premises for office, store or display purposes; or
   b. any trailer not designed for use with a *private passenger car* or a *utility vehicle*.

THERE IS NO COVERAGE WHEN A TRAILER IS USED WITH A MOTOR VEHICLE OWNED OR HIRED BY *YOU* WHICH WE DO NOT INSURE FOR LIABILITY COVERAGE.

Limits of Liability

The amount of bodily injury liability coverage is shown on the declarations page under "Limits of Liability – Coverage A – Bodily Injury, Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one *person*" includes all injury and damages to others resulting from this *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

The amount of property damage liability coverage is shown on the declarations page under "Limits of Liability – Coverage A – Property Damage, Each Accident".

We will pay damages for which an *insured* is legally liable up to these amounts.

The limits of liability are not increased because more than one *person* or organization may be an *insured*.

A motor vehicle and attached trailer are one vehicle. Therefore, the limits are not increased.

The liability coverage shall be excess over and shall not pay again any expenses paid under the personal injury protection or medical payments coverages.

When Coverage A Does Not Apply

In addition to the limitations of coverage in **Who Is an Insured** and **Trailer Coverage**:

THERE IS NO COVERAGE:

1. WHILE ANY VEHICLE INSURED UNDER THIS SECTION IS:
   a. RENTED OR LEASED TO OTHERS.
   b. USED TO CARRY *PERSONS* FOR A CHARGE. This does not apply to the use on a share expense basis of:
      (1) a *private passenger car*; or
      (2) a *utility vehicle*, if all passengers are riding in that area of the vehicle designed by the manufacturer of the vehicle for carrying passengers.
   c. BEING REPAIRED, SERVICED OR USED BY ANY *PERSON* EMPLOYED OR ENGAGED IN ANY WAY IN A *CAR BUSINESS* TO THE EXTENT THE LIMITS OF LIABILITY OF THIS POLICY EXCEED THE LIMITS OF LIABILITY REQUIRED BY LAW. This does not apply to:
      (1) *you* or *your spouse*;
      (2) any *relative*;
      (3) any resident of *your* household; or
      (4) any agent, employee or partner of *you*, *your spouse*, any *relative* or such resident.

   This coverage is excess for (3) and (4) above.
2. FOR ANY *BODILY INJURY* TO:
   a. A FELLOW EMPLOYEE WHILE ON THE JOB AND ARISING FROM THE MAINTENANCE OR USE OF A VEHICLE BY ANOTHER EMPLOYEE IN THE EMPLOYER'S BUSINESS. *You* and *your spouse* are covered for such injury to a fellow employee.
   b. ANY EMPLOYEE OF AN *INSURED* ARISING OUT OF HIS OR HER EMPLOYMENT. This does not apply to a household employee who is not covered or required to be covered under any workers' compensation insurance.
3. FOR:
   a. THE UNITED STATES OF AMERICA OR ANY OF ITS AGENCIES; OR
   b. ANY *PERSON* WHO IS AN EMPLOYEE OF THE UNITED STATES OF AMERICA OR ANY OF ITS AGENCIES, IF THE PROVISIONS OF THE FEDERAL TORT CLAIMS ACT APPLY.
4. FOR ANY DAMAGES TO PROPERTY OWNED BY, RENTED TO, IN THE CHARGE OF OR TRANSPORTED BY AN *INSURED*. But coverage applies to a rented:
   a. residence; or
   b. private garage

   damaged by a *car* we insure.

5. FOR ANY OBLIGATION OF AN *INSURED*, OR HIS OR HER INSURER, UNDER ANY TYPE OF WORKERS' COMPENSATION OR DISABILITY OR SIMILAR LAW.

6. FOR LIABILITY ASSUMED BY THE *INSURED* UNDER ANY CONTRACT OR AGREEMENT.

If There Is Other Liability Coverage

1. **Policies Issued by Us to You, Your Spouse or Any Relative**

   If two or more vehicle liability policies issued by us to *you*, *your spouse*, or any *relative* apply to the same accident, the total limits of liability under all such policies shall not exceed that of the policy with the highest limit of liability.

2. **Other Liability Coverage Available From Other Sources**

   Subject to item 1, if other vehicle liability coverage applies, we are liable only for our share of the damages. Our share is the per cent that the limit of liability of this policy bears to the total of all vehicle liability coverage applicable to the accident.

3. **Temporary Substitute Car, Non-Owned Car, Trailer**

   Subject to items 1 and 2, if a *temporary substitute car*, a *non-owned car* or a trailer designed for use with a *private passenger car* or *utility vehicle*:

   a. has other vehicle liability coverage on it; or

   b. is self-insured under any motor vehicle financial responsibility law, a motor carrier law or any similar law,

   then this coverage is excess over such insurance or self-insurance.

4. **Newly Acquired Car**

   THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER VEHICLE LIABILITY COVERAGE ON A *NEWLY ACQUIRED CAR*.

Motor Vehicle Compulsory Insurance Law or Financial Responsibility Law

1. **Out-of-State Coverage**

   If an *insured* under the liability coverage is in another state or Canada and, as a nonresident, becomes subject to its motor vehicle compulsory insurance, financial responsibility or similar law:

   a. the policy will be interpreted to give the coverage required by the law; and

   b. the coverage so given replaces any coverage in this policy to the extent required by the law for the *insured's* operation, maintenance or use of a *car* insured under this policy.

   Any coverage so extended shall be reduced to the extent other coverage applies to the accident. In no event shall a *person* collect more than once.

2. **Financial Responsibility Law**

   When certified under any law as proof of future financial responsibility, and while required during the policy period, this policy shall comply with such law to the extent required. The *insured* agrees to repay us for any payment we would not have had to make under the terms of this policy except for this agreement.

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SECTION II — PERSONAL INJURY PROTECTION — COVERAGE P AND MEDICAL PAYMENTS — COVERAGE C

PERSONAL INJURY PROTECTION – COVERAGE P

You have this coverage if "P" with a number beside it appears in the "Coverages" space on the declarations page. "P" with a number beside it is *your* coverage symbol.

Check *your* coverage symbol with the Schedule in the Limits of Liability for the choice of coverage *you* made.

What We Pay

We will pay for *bodily injury* to an *insured*, caused by accident, resulting from the maintenance or use of a *motor vehicle* as a vehicle:

1. Medical Expenses. These are reasonable expenses incurred, for services furnished within three years of the date of the accident, for necessary medical, surgical, X-ray, dental, ambulance, hospital, professional nursing services, eyeglasses, hearing aids and prosthetic devices.

   REASONABLE MEDICAL EXPENSES DO NOT INCLUDE EXPENSES:

   a. FOR TREATMENT, SERVICES, PRODUCTS OR PROCEDURES THAT ARE:

      (1) EXPERIMENTAL IN NATURE, FOR RESEARCH, OR NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE; OR

      (2) NOT COMMONLY AND CUSTOMARILY RECOGNIZED THROUGHOUT THE MEDICAL PROFESSION AND WITHIN THE UNITED STATES AS APPROPRIATE FOR THE TREATMENT OF THE *BODILY INJURY*; OR

   b. INCURRED FOR:

      (1) THE USE OF THERMOGRAPHY OR OTHER RELATED PROCEDURES OF A SIMILAR NATURE; OR

      (2) THE PURCHASE OR RENTAL OF EQUIPMENT NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE.

   Expenses are reasonable only if they are consistent with the usual fees charged by the majority of similar medical providers in the geographical area in which the expenses were incurred for the specific medical service.

   Services are necessary only if the services are rendered by a medical provider within the legally authorized scope of the provider's practice and are essential in achieving maximum medical improvement for the *bodily injury* sustained in the accident.

   We have the right to make or obtain a utilization review of the medical expenses and services to determine if they are reasonable and necessary for the *bodily injury* sustained.

   The *bodily injury* must be discovered and treated within one year of the date of the accident.

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2. **Funeral Expenses.** These are funeral, burial or cremation expenses. Subject to the Aggregate Limit shown for *your* coverage symbol in the Schedule in **Limits of Liability,** the most we pay for Funeral Expenses is $3,000 per *person.*

If *your* coverage symbol is P1, P2, P3, P4, P5, P6 or P7, we will also pay for the following for *bodily injury* to an *insured,* caused by accident, resulting from the maintenance or use of a *motor vehicle* as a vehicle:

1. **Loss of Income.** This is 85% of an *insured's* actual loss of earnings from work due to *bodily injury* to the *insured.* This applies only if the *insured* was receiving earnings from work at the time of the accident. The loss must be incurred within three years of the date of the accident and while the *insured* is living.

2. **Essential Services Expenses.** These are reasonable expenses incurred for needed services the *insured* would have done for his or her family. This benefit applies only if the *insured* was not receiving earnings from work at the time of the accident. The expense must be incurred within three years of the date of the accident and while the *insured* is living.

Definitions

Insured – means:

1. *you, your spouse* and any *relative:*
   a. while *occupying* a *motor vehicle* other than a motorcycle; or
   b. when struck as a *pedestrian* by a *motor vehicle;* or
2. any other *person* while *occupying your car,* a *non-owned car,* a *newly acquired car* or a *temporary substitute car,* if Coverage P is carried on *your car.*

The vehicle must be used by or with the permission of *you* or *your spouse.*

Motor Vehicle – means a vehicle or trailer of a kind required to be registered under South Carolina law.

Pedestrian – means a *person* not *occupying* a land motor vehicle.

Deciding Amount

The amount due under this coverage shall be decided by agreement between the *insured* and us. If there is no agreement, the amount due shall be decided by arbitration upon written request of the *insured* or us. Each party shall select a competent and impartial arbitrator. These two shall select a third one. If unable to agree on the third one within 30 days, either party may request a judge of a court of record in the county in which the arbitration is pending to select a third one. The written decision of any two arbitrators shall be binding on us, the *insured,* any assignee of the *insured* and any *person* or organization with whom the *insured* expressly or impliedly contracts for the rendition of medical, essential or funeral services. The arbitrators shall not award punitive damages or other noncompensatory damages.

The cost of the arbitrator and any expert witness shall be paid by the party who hired them. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties.

The arbitration shall take place in the county in which the *insured* resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used.

If There Is Other Coverage

1. No Duplication of Benefits

   No *insured* shall recover more than once for the same expense or loss under this or similar vehicle insurance or self-insurance.

2. If an *insured* sustains *bodily injury* while *occupying your car,* and *your car* is described on the declarations page of another policy providing personal injury protection coverage:

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a. the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limit of liability; and

b. we are liable only for our share. Our share is that percent of the damages that the limit of liability of this coverage bears to the total of all such personal injury protection coverage applicable to the accident.

3. If an *insured* sustains *bodily injury* while *occupying* a *motor vehicle* which is not *your car* or a *newly acquired car*; and:

a. such vehicle is described on the declarations page of another policy providing personal injury protection coverage; or

b. its driver, other than *you*, *your spouse* or any *relative*, is an *insured* under another policy,

coverage under this policy applies:

a. as excess to any similar coverage that applies to the vehicle or driver as primary coverage; but

b. only in the amount by which the limits of this coverage exceed the primary coverage.

If coverage from more than one policy applies as excess:

a. the total limit of liability shall not exceed the difference between the limit of liability of the coverage that applies as primary and the highest limit of liability of any one of the coverages that apply as excess; and

b. we will pay our share. Our share is that percent of the expense or loss that the excess coverage provided by this policy bears to the total of all applicable limits of liability of all personal injury protection coverages that apply as excess.

4. If an *insured* sustains *bodily injury*:

a. as a *pedestrian*; or

b. while *occupying* a *motor vehicle* which is not *your car* or a *newly acquired car*; and:

(1) such vehicle is not described on the declarations page of another policy providing personal injury protection coverage; and

(2) its driver is:

(i) *you* or *your spouse*; or

(ii) any other *person* who does not have personal injury protection coverage that covers the occupants of such vehicle,

then:

a. the total limits of liability under all policies issued by us shall not exceed that of the policy with the highest limit of liability; and

b. we will pay our share. Our share is that percent of the expense or loss that the applicable limit of liability of this policy bears to the total applicable limit of liability.

5. Coverage under this policy applies as excess over any benefits recovered under any workers' compensation law.

6. THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER PERSONAL INJURY PROTECTION COVERAGE ON A *NEWLY ACQUIRED CAR*.

What Is Not Covered Under Coverage P

1. THERE IS NO COVERAGE FOR *BODILY INJURY* TO ANY *PERSON*:

a. WHO INTENTIONALLY CAUSES AN ACCIDENT;

b. VOLUNTARILY *OCCUPYING* A *MOTOR VEHICLE* KNOWN BY THAT *PERSON* TO BE STOLEN;

c. WHILE COMMITTING A FELONY;

d. WHILE ATTEMPTING TO ELUDE A POLICE OFFICER; OR

e. *OCCUPYING*, USING OR MAINTAINING A MOTORCYCLE.

2. THERE IS NO COVERAGE:

a. WHILE A *NON-OWNED CAR* IS USED:

(1) BY ANY *PERSON* EMPLOYED OR ENGAGED IN ANY WAY IN A *CAR BUSINESS*; OR

(2) IN ANY OTHER BUSINESS OR JOB. This does not apply when the first *person* named in the declarations, his or her *spouse* or any *relative* is operating or *occupying* a *private passenger car*.

b. WHILE *OCCUPYING* OR THROUGH BEING STRUCK BY ANY *MOTOR VEHICLE* OR TRAILER:

(1) DESIGNED MAINLY FOR USE OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR

(2) LOCATED FOR USE AS A RESIDENCE OR PREMISES; OR

(3) THAT RUNS ON RAILS OR CRAWLER-TREADS.

c. FOR *BODILY INJURY* DUE TO WAR OF ANY KIND.

d. FOR *BODILY INJURY*:

(1) SUSTAINED WHILE *OCCUPYING*, OR THROUGH BEING STRUCK BY A VEHICLE OWNED BY OR LEASED TO *YOU*, *YOUR SPOUSE* OR ANY *RELATIVE*, WHICH IS NOT INSURED FOR THIS COVERAGE UNDER THIS POLICY; OR

(2) SUSTAINED BY ANY *PERSON*, other than the first *person* named in the declarations, his or her *spouse* or their *relatives*, WHILE *OCCUPYING* A VEHICLE:

(i) RENTED OR LEASED TO OTHERS; OR

(ii) USED TO CARRY *PERSONS* FOR A CHARGE. This does not apply to a *private passenger car* used on a share expense basis.

Limits of Liability

1. The Most We Pay

The most we pay for all loss and expense due to *bodily injury* to one *insured* is the amount shown under "Aggregate Limit" in the Schedule for *your* coverage symbol.

A *motor vehicle* and attached trailer are one vehicle as respects limits.

2. Schedule

Coverage Symbol	Aggregate Limit
P1	$ 1,000
P2	1,500
P3	2,000
P4	2,500
P5	5,000
P6	10,000
P7	25,000
P8*	1,000
P9*	1,500
P10*	2,000
P11*	2,500
P12*	5,000
P13*	10,000
P14*	25,000

* Coverages P8 through P14 do not include loss of income and essential services expenses coverages.

MEDICAL PAYMENTS – COVERAGE C

You have this coverage if "C" appears in the "Coverages" space on the declarations page.

MEDICAL EXPENSES

We will pay reasonable medical expenses incurred, for *bodily injury* caused by accident, for services furnished within three years of the date of the accident. These expenses are for necessary medical, surgical, X-ray, dental, ambulance, hospital, professional nursing and funeral services, eyeglasses, hearing aids and prosthetic devices.

REASONABLE MEDICAL EXPENSES DO NOT INCLUDE EXPENSES:

1. FOR TREATMENT, SERVICES, PRODUCTS OR PROCEDURES THAT ARE:
   a. EXPERIMENTAL IN NATURE, FOR RESEARCH, OR NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE; OR
   b. NOT COMMONLY AND CUSTOMARILY RECOGNIZED THROUGHOUT THE MEDICAL PROFESSION AND WITHIN THE UNITED STATES AS APPROPRIATE FOR THE TREATMENT OF THE *BODILY INJURY*; OR
2. INCURRED FOR:
   a. THE USE OF THERMOGRAPHY OR OTHER RELATED PROCEDURES OF A SIMILAR NATURE; OR
   b. THE PURCHASE OR RENTAL OF EQUIPMENT NOT PRIMARILY DESIGNED TO SERVE A MEDICAL PURPOSE.

Expenses are reasonable only if they are consistent with the usual fees charged by the majority of similar medical providers in the geographical area in which the expenses were incurred for the specific medical service.

Services are necessary only if the services are rendered by a medical provider within the legally authorized scope of the provider's practice and are essential in achieving maximum medical improvement for the *bodily injury* sustained in the accident.

We have the right to make or obtain a utilization review of the medical expenses and services to determine if they are reasonable and necessary for the *bodily injury* sustained.

The *bodily injury* must be discovered and treated within one year of the date of the accident.

Persons for Whom Medical Expenses Are Payable

We will pay medical expenses for *bodily injury* sustained by:

1. a. the first *person* named in the declarations;
   b. his or her *spouse*; and
   c. their *relatives*.

   These *persons* have to sustain the *bodily injury*:
   a. while they operate or *occupy* a vehicle covered under the liability section; or
   b. through being struck as a *pedestrian* by a motor vehicle or trailer.

   A *pedestrian* means a *person* not an occupant of a motor vehicle or trailer.
2. any other *person* while *occupying*:
   a. a vehicle covered under the liability coverage, except a *non-owned car*. Such vehicle has to be used by a *person* who is insured under the liability coverage; or
   b. a *non-owned car*. The *bodily injury* has to result from such *car's* operation or occupancy by the first *person* named in the declarations, his or her *spouse* or their *relatives*.

Deciding Amount

The amount due under this coverage shall be decided by agreement between the *person* making claim and us. If there is no agreement, the amount due shall be decided by arbitration upon written request of the *person* making claim or us. Each party shall select a competent and impartial arbitrator. These two shall select a third one. If unable to agree on the third one within 30 days, either party may request a judge of a court of record in the county in which the arbitration is pending to select a third one. The written decision of any two arbitrators shall be binding on us, the *person* making claim, any assignee of the *person* making claim and any *person* or organization with whom the *person* making claim expressly or impliedly contracts for the rendition of medical services. The arbitrators shall not award punitive damages or other noncompensatory damages.

The cost of the arbitrator and any expert witness shall be paid by the party who hired them. The cost of the third arbitrator and other expenses of arbitration shall be shared equally by both parties.

The arbitration shall take place in the county in which the *person* making claim resides unless the parties agree to another place. State court rules governing procedure and admission of evidence shall be used.

Payment of Medical Expenses

We may pay the injured *person* or any *person* or organization performing the services.

Limit of Liability

Medical Expenses. The amount of coverage for medical expenses, including funeral services, is shown on the declarations page under "Limit of Liability – Coverage C – Each Person". If the amount shown is $3,000 or more, the most we pay for funeral services is $3,000 per *person*.

A motor vehicle and attached trailer are one vehicle as respects limits.

If There Are Other Medical Payments Coverages

1. Non-Duplication

   No *person* for whom medical expenses are payable under this coverage shall recover more than once for the same medical expense under this or similar vehicle insurance.

2. Policies Issued by Us to You, Your Spouse or Relatives

   If two or more policies issued by us to *you, your spouse* or *your relatives* provide vehicle medical payments coverage and apply to the same *bodily injury* sustained:

   a. while *occupying* a *non-owned car*, a *temporary substitute car*; or

   b. as a *pedestrian*

   the total limits of liability under all such policies shall not exceed that of the policy with the highest limit of liability.

3. Subject to items 1 and 2 above, if other vehicle medical payments, personal injury protection or similar coverage applies to *bodily injury*, this coverage is excess.

4. THIS COVERAGE DOES NOT APPLY IF THERE IS OTHER VEHICLE MEDICAL PAYMENTS COVERAGE ON A *NEWLY ACQUIRED CAR*.

What Is Not Covered Under Coverage C

THERE IS NO COVERAGE:

1. WHILE A *NON-OWNED CAR* IS USED:

   a. BY ANY *PERSON* EMPLOYED OR ENGAGED IN ANY WAY IN A *CAR BUSINESS*; OR

   b. IN ANY OTHER BUSINESS OR JOB. This does not apply when the first *person* named in the declarations, his or her *spouse* or any *relative* is operating or *occupying* a *private passenger car*.

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2. WHILE *OCCUPYING* OR THROUGH BEING STRUCK BY ANY MOTOR VEHICLE OR TRAILER:
   a. DESIGNED MAINLY FOR USE OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
   b. LOCATED FOR USE AS A RESIDENCE OR PREMISES; OR
   c. THAT RUNS ON RAILS OR CRAWLER-TREADS.
3. FOR *BODILY INJURY* DUE TO WAR OF ANY KIND.
4. FOR MEDICAL EXPENSES FOR *BODILY INJURY*:
   a. SUSTAINED WHILE *OCCUPYING* OR THROUGH BEING STRUCK BY A VEHICLE OWNED BY OR LEASED TO *YOU*, *YOUR SPOUSE*, OR ANY *RELATIVE*, WHICH IS NOT INSURED UNDER THIS COVERAGE; OR
   b. TO THE EXTENT WORKERS' COMPENSATION BENEFITS ARE REQUIRED TO BE PAYABLE; OR
   c. SUSTAINED BY ANY *PERSON*, other than the first *person* named in the declarations, his or her *spouse* or their *relatives*, WHILE *OCCUPYING* A VEHICLE:
      (1) RENTED OR LEASED TO OTHERS; OR
      (2) USED TO CARRY *PERSONS* FOR A CHARGE. This does not apply to a *private passenger car* used on a share expense basis.

SECTION III — UNINSURED MOTOR VEHICLE — COVERAGE U AND UNDERINSURED MOTOR VEHICLE — COVERAGE W

UNINSURED MOTOR VEHICLE – COVERAGE U

You have this coverage if "U" appears in the "Coverages" space on the declarations page.

We will pay damages for *bodily injury* or *property damage* an *insured* is legally entitled to collect from the owner or driver of an *uninsured motor vehicle*. The *bodily injury* or *property damage* must be caused by accident arising out of the operation or ownership of the *uninsured motor vehicle*. The *bodily injury* must be sustained by an *insured*.

Uninsured Motor Vehicle – means:

1. a *motor vehicle*, the ownership, maintenance or use of which is:
   a. not insured or bonded for bodily injury and property damage liability at the time of the accident; or

b. insured or bonded for bodily injury and property damage liability at the time of the accident, but:

(1) the limits of liability are less than required by the *Financial Responsibility Act*;

(2) the insuring company denies coverage or is, or becomes, insolvent; or

(3) a cause of action for the *bodily injury* or *property damage* is barred by the South Carolina Tort Claims Act; or

2. a "hit-and-run" *motor vehicle* whose owner or operator remains unknown, but only if:

a. the *bodily injury* or *property damage* was caused by physical contact with the unknown vehicle, or the accident was witnessed by someone other than the owner or operator of the insured vehicle. The witness must sign an affidavit attesting to the truth of the facts of the accident contained in the affidavit; and

b. the *insured* was not negligent in failing to determine the identity of the other vehicle and the driver of the other vehicle at the time of the accident.

An *uninsured motor vehicle* does not include any motor vehicle owned by:

1. the *insured* who sustains *bodily injury* or *property damage*;

2. a self-insurer in accordance with the applicable provisions of law; or

3. the State or any of its political subdivisions when the vehicle is operated by a *person* with proper authorization.

UNDERINSURED MOTOR VEHICLE – COVERAGE W

You have this coverage if "W" appears in the "Coverages" space on the declarations page.

We will pay damages for *bodily injury* or *property damage* an *insured*:

1. is legally entitled to collect from the owner or driver of an *underinsured motor vehicle*; or

2. would have been legally entitled to collect except for the existence of any damages cap or limitation imposed by statute.

The *bodily injury* or *property damage* must be caused by accident arising out of the operation or ownership of the *underinsured motor vehicle*. The *bodily injury* must be sustained by an *insured*.

THERE IS NO COVERAGE UNTIL THE LIMITS OF LIABILITY OF ALL APPLICABLE BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY INSURANCE POLICIES OR BONDS THAT APPLY TO THE *BODILY INJURY* OR *PROPERTY DAMAGE* HAVE BEEN USED UP BY PAYMENT OF JUDGMENTS OR SETTLEMENTS, OR PAYMENT HAS BEEN MADE UNDER SUCH POLICIES OR BONDS UP TO ANY DAMAGES CAP OR LIMITATION IMPOSED BY STATUTE.

Underinsured Motor Vehicle – means a *motor vehicle*, 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 the *Financial Responsibility Act* and:

1. the amount of the insurance or bond is less than the amount of the *insured's* damages; or

2. the *insured's* damages exceed any damages cap or limitation imposed by statute.

An *underinsured motor vehicle* does not include any *motor vehicle* while located for use as premises.

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Our Right to Defend

If the *insured* files suit against the owner or driver of the *underinsured motor vehicle*, we have the right to defend on the issues of the legal liability of and the damages owed by such owner or driver.

Definitions

Financial Responsibility Act – means the Motor Vehicle Financial Responsibility Act of South Carolina.

Motor Vehicle – means a self-propelled vehicle or trailer designed for use on public roads.

A *motor vehicle* does not include:

1. traction engines;
2. road rollers;
3. farm tractors;
4. tractor cranes;
5. power shovels;
6. well drillers; or
7. electric trolleys.

Property Damage – means damage to property of the *insured*.

Who Is an Insured

Insured – means:

1. *you*, *your spouse* and *relatives*;
2. any other *person* while *occupying* or using *your car*, a *newly acquired car* or a trailer attached to either, if such vehicle is:
   a. insured under the liability coverage; and
   b. being used with *your* consent; and
3. any *person* to the extent he or she may recover damages under a state wrongful death statute because of the death of an *insured* under 1. or 2. above.

Payment of Any Amount Due

We will pay any amount due to the *insured* or the *insured's* representative.

Limits of Liability

Coverage U

1. Bodily Injury

   The amount of coverage is shown on the declarations page under "Limits of Liability – U – Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. *"Bodily injury* to one *person"* includes all injury and damages to others resulting from this *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

2. Property Damage

   The amount of coverage is shown on the declarations page under "Limits of Liability – U – Property Damage, Each Accident". This is the amount of coverage for all *property damage* as the result of one accident.

3. The most we pay will be the lesser of:
   a. the difference between:
      (1) the amount of the *insured's* damages; and
      (2) the amount paid to the *insured* by or for any *person* or organization who is or may be held legally liable for the *bodily injury* or *property damage*; or
   b. the limit of liability of this coverage.

Coverage W

1. Bodily Injury

   The amount of coverage is shown on the declarations page under "Limits of Liability – W – Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. *"Bodily injury* to one *person"* includes

all injury and damages to others resulting from this *bodily injury*. Under "Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.

2. Property Damage

The amount of coverage is shown on the declarations page under "Limits of Liability – W – Property Damage, Each Accident". This is the amount of coverage for all *property damage* as the result of the accident.

3. Any amount payable under this coverage shall be reduced by any amount paid or payable under any:

a. workers' compensation;

b. disability benefits;

c. or similar law.

This does not reduce the limits of liability of this coverage.

4. The most we pay will be the lesser of:

a. the difference between:

(1) the amount of the *insured's* damages; and

(2) the amount paid to the *insured* by or for any *person* or organization who is or may be held legally liable for the *bodily injury* or *property damage*; or

b. the limit of liability of this coverage.

Coverages U and W

1. The limits of liability are not increased because more than one vehicle or *person* is insured under this policy.

2. Any amount paid under these coverages shall reduce any amount paid or payable to or for the *insured* under the liability coverage of this policy.

When Coverages U and W Do Not Apply

THERE IS NO COVERAGE:

1. UNDER COVERAGE U FOR ANY *INSURED* WHO, WITHOUT OUR WRITTEN CONSENT:

a. SETTLES WITH ANY *PERSON* OR ORGANIZATION WHO MAY BE LIABLE FOR THE *BODILY INJURY* OR *PROPERTY DAMAGE*; AND

b. THEREBY IMPAIRS OUR RIGHT TO RECOVER OUR PAYMENTS.

2. TO THE EXTENT IT BENEFITS:

a. ANY WORKERS' COMPENSATION OR DISABILITY BENEFITS INSURANCE COMPANY.

b. A SELF-INSURER UNDER ANY WORKERS' COMPENSATION, OR DISABILITY BENEFITS OR SIMILAR LAW.

3. FOR *PROPERTY DAMAGE* FOR WHICH THE *INSURED* HAS BEEN PAID.

4. FOR *BODILY INJURY* OR *PROPERTY DAMAGE* TO THE EXTENT THE LIMITS OF LIABILITY OF COVERAGES U AND W UNDER THIS POLICY EXCEED THE LIMITS REQUIRED BY THE *FINANCIAL RESPONSIBILITY ACT* WHILE:

a. *YOU*,

b. *YOUR SPOUSE*, OR

c. ANY *RELATIVE*

IS *OCCUPYING* A *MOTOR VEHICLE* OWNED BY OR LEASED TO:

a. *YOU*,

b. *YOUR SPOUSE*, OR

c. ANY *RELATIVE*

IF IT IS NOT *YOUR CAR* OR A *NEWLY ACQUIRED CAR*.

5. FOR *BODILY INJURY* OR *PROPERTY DAMAGE*:

   a. WHILE AN *INSURED*, OTHER THAN:

      (1) *YOU*;

      (2) *YOUR SPOUSE*; OR

      (3) ANY *RELATIVE*,

      IS *OCCUPYING* A *MOTOR VEHICLE* OTHER THAN *YOUR CAR*, A *NEWLY ACQUIRED CAR* OR A TRAILER ATTACHED TO EITHER.

   b. IF ANY *INSURED* IS STRUCK AS A PEDESTRIAN BY A *MOTOR VEHICLE* OWNED BY OR LEASED TO:

      (1) *YOU*;

      (2) *YOUR SPOUSE*; OR

      (3) ANY *RELATIVE*.

6. UNDER COVERAGE U, FOR THE FIRST $200 OF *PROPERTY DAMAGE* SUSTAINED BY EACH *INSURED* IN EACH ACCIDENT.

If There Is Other Uninsured Motor Vehicle Coverage

1. If:

   a. *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* as a pedestrian; and

   b. coverage from more than one of our policies issued to *you*, *your spouse* or a *relative* applies to the accident:

      (1) the one policy with the highest limit shall apply in that limit; and

      (2) each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage liability.

   Subject to the above, if policies issued by other insurers apply, we are liable only for our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all such uninsured motor vehicle coverage that applies to the accident.

2. If:

   a. the *insured* sustains *bodily injury* or *property damage* while *occupying your car*; and

   b. *your car* is described on the declarations page of another policy providing uninsured motor vehicle coverage:

      (1) the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limits of liability; and

      (2) we are liable only for our share. Our share is that percent of the damages that the limits of liability of this coverage bear to the total of all such uninsured motor vehicle coverage that applies.

3. If *you*, *your spouse* or a *relative* sustains *bodily injury* or *property damage* while *occupying* a *motor vehicle* owned by or leased to *you*, *your spouse* or *relative* which is not *your car* or a *newly acquired car*, this policy shall:

   a. be excess; and

   b. apply only in an amount equal to the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage liability.

   Subject to the above, if other policies apply as excess, we are liable only for our share. Our share is that percent of the damages in excess of the limits of the primary coverage that the minimum amount required by the *Financial Responsibility Act* for bodily injury and property damage liability bear to the total of all uninsured motor vehicle coverage that applies as excess to the accident.

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4. If *you, your spouse* or a *relative* sustains *bodily injury* or *property damage* while *occupying* a vehicle not owned by or leased to *you, your spouse* or any *relative*, this coverage applies as excess to any uninsured motor vehicle coverage which applies to the vehicle as primary coverage.

   If coverage from more than one of our policies issued to *you, your spouse* or a *relative* applies to the accident:

   a. the one policy with the highest limit shall apply in that limit; and

   b. each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage liability.

   Subject to the above, if policies issued by other insurers apply, we are liable only for our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all uninsured motor vehicle coverage that applies as excess to the accident.

If There Is Other Underinsured Motor Vehicle Coverage

1. If:

   a. *you, your spouse* or a *relative* sustains *bodily injury* or *property damage* as a pedestrian; and

   b. coverage from more than one of our policies issued to *you, your spouse*, or a *relative* applies to the accident:

      (1) the one policy with the highest limit shall apply in that limit; and

      (2) each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage liability.

   Subject to the above, if policies issued by other insurers apply, we are liable only for our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all underinsured motor vehicle coverage that applies to the accident.

2. If:

   a. the *insured* sustains *bodily injury* or *property damage* while *occupying your car*; and

   b. *your car* is described on the declarations page of another policy providing underinsured motor vehicle coverage:

      (1) the total limits of liability under all such coverages shall not exceed that of the coverage with the highest limits of liability; and

      (2) we are liable only for our share. Our share is that percent of the damages that the limits of liability of this coverage bear to the total of all such underinsured motor vehicle coverage that applies.

3. If *you, your spouse* or a *relative* sustains *bodily injury* or *property damage* while *occupying* a *motor vehicle* owned by or leased to *you, your spouse* or *relative* which is not *your car* or a *newly acquired car*, this policy shall:

   a. be excess; and

   b. apply only in an amount equal to the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage liability.

   Subject to the above, if other policies apply as excess, we are liable only for our share. Our share is that percent of the damages in excess of the limits of the primary coverage that the minimum amount required by the *Financial Responsibility Act* for bodily injury and property damage liability bears to the total of all underinsured motor vehicle coverage that applies as excess to the accident.

4. If *you, your spouse* or a *relative* sustains *bodily injury* or *property damage* while *occupying* a vehicle not owned by or leased to *you, your spouse* or any *relative*, this coverage applies as excess to any underinsured motor vehicle coverage which applies to the vehicle as primary coverage.

If coverage from more than one of our policies issued to *you, your spouse* or a *relative* applies to the accident:

a. the one policy with the highest limit shall apply in that limit; and

b. each of the other policies we issued shall apply only in an amount equal to the minimum limits required by the *Financial Responsibility Act* for bodily injury and property damage liability.

Subject to the above, if policies issued by other insurers apply, we are liable only for our share. Our share is that percent of the damages that the amount of the limit of liability that applies from this policy bears to the total of all underinsured motor vehicle coverage that applies to the accident.

SECTION IV — PHYSICAL DAMAGE COVERAGES

Loss – means, when used in this section, each direct and accidental loss of or damage to:

1. *your car*;
2. its equipment which is common to the use of *your car* as a vehicle;
3. clothes and luggage insured; and
4. a detachable living quarters attached or removed from *your car* for storage. Detachable living quarters includes its body and items securely fixed in place as a permanent part of the body. *You* must have told us about the living quarters before the *loss* and paid any extra premium needed.

COMPREHENSIVE – COVERAGE D. *You* have this coverage if "D" appears in the "Coverages" space on the declarations page. If deductible applies the amount is shown by th number beside "D".

1. Loss to Your Car. We will pay for *los* to *your car* EXCEPT *LOSS* BY *COLL SION* but only for the amount of eac such *loss* in excess of the deductib amount, if any. The deductible amou does not apply to *loss* to safety glass.

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Breakage of glass, or *loss* caused by missiles, falling objects, fire, theft, larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, is payable under this coverage. *Loss* due to hitting or being hit by a bird or an animal is payable under this coverage.

2. We will repay *you* for transportation costs if *your car* is stolen. We will pay up to $16 per day for the period that begins 48 hours after *you* tell us of the theft. The period ends when we offer to pay for *loss*.

COLLISION – COVERAGE G. *You* have this coverage if "G" appears in the "Coverages" space on the declarations page. The deductible amount is shown by the number beside "G".

We will pay for *loss* to *your car* caused by *collision* but only for the amount of each such *loss* in excess of the deductible amount. The deductible amount does not apply to *loss* to safety glass. If the *collision* is with another motor vehicle insured with us, *you* do not pay *your* deductible if it is $100 or less as we pay it.

Collision – means *your car* upset or hit or was hit by a vehicle or other object.

Clothes and Luggage – Comprehensive and Collision Coverages

We will pay for *loss* to clothes and luggage owned by the first *person* named in the declarations, his or her *spouse*, and their *relatives*. These items have to be in or on *your car*. *Your car* has to be covered under this policy for:

1. Comprehensive, and the *loss* caused by fire, lightning, flood, falling objects, explosion, earthquake, or theft. If the *loss* is due to theft *YOUR* ENTIRE *CAR* MUST HAVE BEEN STOLEN; or
2. Collision, and the *loss* caused by *collision*.

We will pay up to $200 for *loss* to clothes and luggage in excess of any deductible amount shown for comprehensive or collision. $200 is the most we will pay in any one occurrence even though more than one *person* has a *loss*. This coverage is excess over any other coverage.

Limit of Liability – Comprehensive and Collision Coverages

The limit of our liability for *loss* to property or any part of it is the lower of:

1. the actual cash value; or
2. the cost of repair or replacement.

Actual cash value is determined by the market value, age and condition at the time the *loss* occurred. Any deductible amount that applies is then subtracted.

The cost of repair or replacement is based upon one of the following:

1. the cost of repair or replacement agreed upon by *you* and us;
2. a competitive bid approved by us; or
3. an estimate written based upon the prevailing competitive price. The prevailing competitive price means prices charged by a majority of the repair market in the area where the *car* is to be repaired as determined by a survey made by us. If *you* ask, we will identify some facilities that will perform the repairs at the prevailing competitive price. We will include in the estimate parts sufficient to restore the vehicle to its pre-loss condition. *You* agree with us that such parts may include either parts furnished by the vehicle's manufacturer or parts from other sources including non-original equipment manufacturers.

Any deductible amount that applies is then subtracted.

Settlement of Loss – Comprehensive and Collision Coverages

We have the right to settle a *loss* with *you* or the owner of the property in one of the following ways:

1. pay the agreed upon actual cash value of the property at the time of the *loss* in exchange for the damaged property. If the owner keeps the damaged property, we will deduct its value after the *loss* from our payment. The damaged property cannot be abandoned to us;
2. pay to:
   a. repair the damaged property or part, or
   b. replace the property or part.

   If the repair or replacement results in betterment, *you* must pay for the amount of betterment; or
3. return the stolen property and pay for any damage due to the theft.

If we can pay the *loss* under either comprehensive or collision, we will pay under the coverage where *you* collect the most.

When there is *loss* to *your car*, clothes and luggage in the same occurrence, any deductible will be applied first to the *loss* to *your car*. *You* pay only one deductible.

If the owner of the property and we cannot agree on the amount due, it shall be decided by an appraisal of the *loss* upon written request by either party. Each party shall select a competent appraiser. These two shall select a third appraiser. The written decision of any two appraisers shall be binding on each party. The cost of the appraiser shall be paid by the party who hired him or her. The cost of the third appraiser and other appraisal expenses shall be shared equally by both parties. We do not waive any of our rights by any act relating to appraisal. The terms of the provision titled **Limit of Liability – Comprehensive and Collision Coverages** are not subject to appraisal. If *you* give us *your* consent, we may move the damaged property, at our expense, to reduce storage costs during the appraisal process. If *you* do not give us *your* consent, we will pay only the storage costs which would have resulted if we had moved the damaged property.

The Settlement of Loss provision for comprehensive and collision coverages incorporates the Limit of Liability provision of those coverages.

EMERGENCY ROAD SERVICE – COVERAGE H. *You* have this coverage if "H" appears in the "Coverages" space on the declarations page.

We will pay the fair cost *you* incur for *your car* for:

1. mechanical labor up to one hour at the place of its breakdown;
2. towing to the nearest place where the necessary repairs can be made during regular business hours if it will not run;
3. towing it out if it is stuck on or immediately next to a public highway;
4. delivery of gas, oil, loaned battery, or tire. WE DO NOT PAY THE COST OF THE GAS, OIL, BATTERY OR TIRE;
5. locksmith services, up to one hour, to open *your car* if *your* key is lost, stolen or locked inside *your car*. We will only pay the cost of labor.

CAR RENTAL EXPENSE – COVERAGE R. *You* have this coverage if "R" appears in the "Coverages" space on the declarations page.

We will repay *you* up to $10 per day when *you* rent a *car* from a car rental agency or garage due to a *loss* to *your car* which would be payable under coverage D or G, starting:

1. when it cannot run due to the *loss*; or
2. if it can run, when *you* leave it at the shop for agreed repairs;

and ending when:

1. it has been repaired or replaced, or
2. we offer to pay for the *loss*, or
3. *you* incur 30 days rent,

whichever comes first.

Any car rent payable under Coverage R is REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.

CAR RENTAL AND TRAVEL EXPENSES – COVERAGE R1. *You* have this coverage if "R1" appears in the "Coverages" space on the declarations page.

1. **Car Rental Expense.** We will:
   a. pay *you* up to $16 of the daily rental charge when *you* rent a *car* from a car rental agency or garage; or
   b. pay *you* $10 for each complete 24 hour period that *your car* is not drivable if *you* choose to not rent a *car*. *You* must report to us the period of time that *your car* was not drivable.

   We will pay only if *your car* is not drivable because of a *loss* which would be payable under coverage D or G.

   This applies during a period starting:
   a. when *your car* cannot run due to the *loss*; or
   b. if *your car* can run, when *you* leave it at the shop for agreed repairs;

   and ending:
   a. when it has been repaired or replaced, or
   b. (1) when we offer to pay for the *loss*, if *your car* is repairable; or
      (2) five days after we offer to pay for the *loss*, if *your car* was stolen and not recovered or we declared it a total loss,

   whichever comes first.

   Any car rent payable under this coverage is REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.

2. **Travel Expenses.** If *your car* cannot run due to a *loss* which would be payable under coverage D or G more than 50 miles from home, we will repay *you* for expenses incurred by *you*, *your spouse* and any *relative* for:
   a. Commercial transportation fares to continue to *your* destination or home.
   b. Extra meals and lodging needed when the *loss* to *your car* causes a delay enroute. The expenses must be incurred between the time of the *loss* and *your* arrival at *your* destination or home or by the end of the fifth day, whichever occurs first.
   c. Meals, lodging and commercial transportation fares incurred by *you* or a *person you* choose to drive *your car* from the place of repair to *your* destination or home.

3. **Rental Car – Repayment of Deductible Amount Expense.** We will repay the expense of any deductible amount you are required to pay the owner under comprehensive or collision coverage in effect on a substitute *car* rented from a car rental agency or garage.

Total Amount of Expenses Payable – Coverage R1

1. The most we will pay for the total of the "Car Rental Expense" and "Rental Car – Repayment of Deductible Amount Expense" incurred in any one occurrence is $400.
2. The most we will pay for "Travel Expenses" incurred by all *persons* in any one occurrence is $400.

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CAR RENTAL AND TRAVEL EXPENSES – COVERAGE R2. *You* have this coverage if "R2" appears in the "Coverages" space on the declarations page.

1. Car Rental Expense.

a. We will:

(1) pay 80% of the rental charge when *you* rent a *car* from a car rental agency or garage. "Rental charge" means the daily rental rate plus charges for mileage and related taxes; or

(2) pay *you* $10 for each complete 24 hour period that *your car* is not drivable if *you* choose to not rent a *car*. *You* must report to us the period of time that *your car* was not drivable.

We will pay only if *your car* is not drivable because of a *loss* which would be payable under coverage D or G.

b. Payment will be made for a period that:

(1) starts:

(a) when *your car* is not drivable due to the *loss;* or

(b) if *your car* is drivable, when *you* leave it at the shop for agreed repairs; and

(2) ends:

(a) when *your car* has been repaired or replaced; or

(b) when we offer to pay for the *loss*, if *your car* is repairable but *you* choose to delay repairs; or

(c) five days after we offer to pay for the *loss* if:

(i) *your car* was stolen and not recovered; or

(ii) we declare that *your car* is a total loss;

whichever comes first.

Any car rent payable under this coverage is REDUCED TO THE EXTENT IT IS PAYABLE UNDER COMPREHENSIVE.

2. Travel Expenses. If *your car* is not drivable due to a *loss* which occurs more than 50 miles from home and which would be payable under coverage D or G, we will pay *you* for expenses incurred by *you*, *your spouse* and any *relative* for:

a. commercial transportation fares to continue to *your* destination or home;

b. extra meals and lodging needed when the *loss* to *your car* causes a delay enroute. The expenses must be incurred between the time of the *loss* and *your* arrival at *your* destination or home or by the end of the fifth day, whichever occurs first; and

c. meals, lodging and commercial transportation fares incurred by *you* or a *person you* choose to drive *your car* from the place of repair to *your* destination or home.

3. Rental Car – Repayment of Deductible Amount Expense. We will pay the expense of any deductible amount *you* are required to pay the owner under comprehensive or collision coverage in effect on a substitute *car* rented from a car rental agency or garage.

Total Amount of Expenses Payable – Coverage R2

1. The most we will pay for "Car Rental Expense" incurred in any one occurrence is $500.

2. The most we will pay for "Travel Expenses" incurred by all *persons* in any one occurrence is $400.

3. The most we will pay for "Rental Car – Repayment of Deductible Amount Expense" incurred in any one occurrence is $400.

Trailer Coverage

1. **Owned Trailer**

Your trailer is covered:

a. when it is described on the declarations page of the policy; and

b. for the coverages shown as applying to it.

2. **Non-Owned Trailer or Detachable Living Quarters**

Any physical damage coverage in force on *your car* applies to a non-owned:

a. trailer, if it is designed for use with a *private passenger car*; or

b. detachable living quarters unit

used by the first *person* named in the declarations, his or her *spouse* or their *relatives*.

The most we will pay under the comprehensive or collision coverage for a *loss* to such non-owned trailer or unit is $500.

A non-owned trailer or detachable living quarters unit is one that:

a. is not owned by or registered in the name of:

(1) *you, your spouse*, any *relative*;

(2) any other *person* residing in the same household as *you, your spouse* or any *relative*; or

(3) an employer of *you, your spouse* or any *relative*; and

b. has not been used or rented by or in the possession of *you, your spouse* or any *relative* during any part of each of the last 21 or more consecutive days. If *you* are insured by one or more other car policies issued by us, the 21 day limit is increased by an additional 21 days for each such additional policy; and

c. is not rented and used in connection with the employment or business of *you, your spouse* or any *relative*.

Coverage for the Use of Other Cars

The coverages in this section *you* have on *your car* extend to a *loss* to a *newly acquired car*, a *temporary substitute car* or a *non-owned car*. These coverages extend to a *non-owned car* while it is driven by or in the custody of an *insured*.

Insured – as used in this provision means:

1. the first *person* named in the declarations;

2. his or her *spouse*; or

3. their *relatives*.

When the Physical Damage Coverages Do Not Apply

THERE IS NO COVERAGE FOR:

1. A *NON-OWNED CAR*:

a. IF THE DECLARATIONS STATE THE "USE" OF *YOUR CAR* IS OTHER THAN PLEASURE AND BUSINESS;

b. WHILE BEING REPAIRED, SERVICED OR USED BY ANY *PERSON* WHILE THAT *PERSON* IS WORKING IN ANY *CAR BUSINESS*; OR

c. WHILE USED IN ANY OTHER BUSINESS OR OCCUPATION. This does not apply to a *private passenger car* driven or *occupied* by the first *person* named in the declarations, his or her *spouse* or their *relatives*.

2. ANY VEHICLE WHILE:

a. RENTED OR LEASED TO OTHERS; OR

b. USED TO CARRY *PERSONS* FOR A CHARGE. This does not apply to the use on a share expense basis.

3. *LOSS* TO ANY VEHICLE DUE TO:

a. TAKING BY ANY GOVERNMENTAL AUTHORITY;

b. WAR OF ANY KIND;

c. AND LIMITED TO WEAR AND TEAR, FREEZING, MECHANICAL OR ELECTRICAL BREAKDOWN OR FAILURE. This does not apply when the *loss* is the result of a theft covered by this policy. Nor does it apply to emergency road service; OR

d. CONVERSION, EMBEZZLEMENT OR SECRETION BY ANY *PERSON* WHO HAS THE VEHICLE DUE TO ANY LIEN, RENTAL, LEASE OR SALES AGREEMENT.

4. TIRES unless:

a. stolen, or damaged by fire or vandalism; or

b. other *loss* covered by this section happens at the same time.

5. TAPES OR DISCS FOR RECORDING OR REPRODUCING SOUND.

6. ANY LASER OR RADAR DETECTOR.

7. *YOUR CAR* WHILE SUBJECT TO ANY LIEN, LEASE OR SALES AGREEMENT NOT SHOWN IN THE DECLARATIONS.

If There Is Other Coverage

1. **Policies Issued by Us to You, Your Spouse, or Any Relative**

If two or more vehicle policies issued by us to *you*, *your spouse*, or any *relative* apply to the same *loss* or occurrence, we will pay under the policy with the highest limit.

2. **Coverage Available From Other Sources**

Subject to item 1, if other coverage applies to the *loss* or expenses, we will pay only our share. Our share is the percent the limit of liability of this policy bears to the total of all coverage that applies.

3. **Temporary Substitute Car, Non-Owned Car or Trailer**

Subject to items 1 and 2, if a *temporary substitute car*, a *non-owned car* or trailer designed for use with a *private passenger car* has other coverage on it, then this coverage is excess.

No Benefit to Bailee

These coverages shall not benefit any carrier or other bailee for hire liable for *loss*.

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SECTION V — DEATH, DISMEMBERMENT AND LOSS OF SIGHT — COVERAGE S

If "S" is shown in the "Coverages" space on the declarations page each *insured* has the coverage.

We will pay the amount shown in the schedule that applies for death, or *loss*, caused by accident. The *insured* has to be *occupying* or be struck by a land motor vehicle or trailer. The death or *loss* must be the direct result of the accident and not due to any other cause. The death or *loss* must occur within 90 days of the accident.

Insured – means a *person* listed under "Persons Insured – Coverage S" on the declarations page.

Loss – means the loss of:

1. the foot or hand, cut off through or above the ankle or wrist; or
2. the whole thumb or finger; or
3. all sight.

The Most We Pay

The most we will pay because of the death of, or *loss* to, the *insured*, except as provided below, is shown under "Amount" next to his or her name on the declarations page.

The amount shown in the schedule for death or *loss* is doubled for an *insured* who, at the time of the accident, is using the vehicle's complete restraint system as recommended by the vehicle's manufacturer.

If the *insured* dies as a result of this accident, any payment made or due for *loss* reduces the amount of the death payment.

SCHEDULE

	If amount under S in the declarations is:	
	$5,000	$10,000
Death	$5,000	$10,000
Loss of:		
hands; feet; sight of eyes; one hand & one foot; or one hand or one foot & sight of one eye	5,000	10,000
one hand or one foot; or sight of one eye	2,500	5,000
thumb & finger on one hand; or three fingers	1,500	3,000
any two fingers	1,000	2,000

Payment of Any Amount Due

We will pay any amount due:

1. to the *insured*;
2. to a parent or guardian if the *insured* is a minor or an incompetent *person*;
3. to the surviving *spouse*; or
4. at our option, to any *person* or organization authorized by law to receive such payment.

Any payment made is to its extent a complete discharge of our obligations. We are not responsible for the way the money is used.

Autopsy

We have the right to have an autopsy made where it is not forbidden by law.

When Coverage S Does Not Apply

THIS COVERAGE DOES NOT APPLY TO:

1. AN *INSURED* WHILE ON THE JOB, OPERATING, *OCCUPYING*, LOADING OR UNLOADING:
   a. AN EMERGENCY VEHICLE; OR
   b. A VEHICLE USED IN THE *INSURED'S* BUSINESS OR JOB.

   But 1.b. does not apply if the vehicle is:
   (1) a *private passenger car* or school bus; or
   (2) of the pickup or van type, with a Gross Vehicle Weight of 10,000 pounds or less, while not used for delivery.
2. AN *INSURED* WHILE:
   a. ON THE JOB IN ANY *CAR BUSINESS*; OR
   b. *OCCUPYING* ANY:
      (1) VEHICLE WHILE BEING USED IN A RACE; OR
      (2) MILITARY VEHICLE.
3. AN *INSURED* WHILE *OCCUPYING* OR THROUGH BEING STRUCK BY A MOTOR VEHICLE OR TRAILER:
   a. THAT RUNS ON RAILS OR CRAWLER-TREADS;
   b. DESIGNED FOR USE MAINLY OFF PUBLIC ROADS WHILE OFF PUBLIC ROADS; OR
   c. LOCATED FOR USE AS PREMISES.
4. THE DEATH OF OR *LOSS* TO AN *INSURED* DUE TO:
   a. DISEASE except pus forming infection due to *bodily injury* received in the accident; or
   b. SUICIDE OR ATTEMPTED SUICIDE WHILE SANE OR INSANE; OR
   c. WAR OF ANY KIND.

CONDITIONS

1. Policy Changes

a. **Policy Terms.** The terms of this policy may be changed or waived only by:

(1) an endorsement issued by us; or

(2) the revision of this policy form to give broader coverage without an extra charge. If any coverage *you* carry is changed to give broader coverage, we will give *you* the broader coverage without the issuance of a new policy as of the date we make the change effective.

b. **Change of Interest.** No change of interest in this policy is effective unless we consent in writing. However, if *you* die, we will protect as named insured, except under death, dismemberment and loss of sight coverage:

(1) *your* surviving *spouse*;

(2) any *person* with proper custody of *your car*, a *newly acquired car* or a *temporary substitute car* until a legal representative is qualified; and then

(3) the legal representative while acting within the scope of his or her duties.

Policy notice requirements are met by mailing the notice to the deceased named insured's last known address.

c. **Consent of Beneficiary.** Consent of the beneficiary under death, dismemberment and loss of sight coverage is not needed to cancel or change the policy.

d. **Joint and Individual Interests.** When there are two or more named insureds, each acts for all to cancel or change the policy.

2. Suit Against Us

There is no right of action against us:

a. until all the terms of this policy have been met; and

b. under the liability coverage, until the amount of damages an *insured* is legally liable to pay has been finally determined by:

(1) judgment after actual trial, and appeal if any; or

(2) agreement between the *insured*, the claimant and us.

Bankruptcy or insolvency of the *insured* or his or her estate shall not relieve us of our obligations.

c. under personal injury protection, medical payments, any physical damage and death, dismemberment and loss of sight coverages, until 30 days after we get the *insured's* notice of accident or *loss*.

d. under the underinsured motor vehicle coverage, unless copies of the pleadings in the action establishing liability are served upon us in the manner provided by law.

3. Our Right to Recover Our Payments

a. Underinsured motor vehicle and death, dismemberment and loss of sight coverage payments are not recoverable by us.

b. Under personal injury protection and medical payments coverages:

(1) we are subrogated to the extent of our payment to the right of recovery the injured *person* has against any party liable for the *bodily injury*.

(2) if the *person* to or for whom we have made payment has not recovered from any party liable for the *bodily injury*, he or she shall:

(a) not hurt our rights to recover;

(b) keep these rights in trust for us;

(c) execute any legal papers we need; and

(d) when we ask, take action through our representative to recover our payments.

(3) if the *person* to or for whom we make payment recovers from any party liable for the *bodily injury*, that *person* shall hold in trust for us the proceeds of the recovery, and reimburse us to the extent of our payment.

e. To the extent allowed by law, under uninsured motor vehicle coverage:

(1) the right of recovery of the *insured* passes to us, to the extent of our payments.

(2) we shall pay our share of the reasonable costs of any recovery. Our share is the percent that our recovery bears to the total recovery. We reserve the right to select an attorney to handle the recovery.

(3) an *insured* making claim for *property damage* shall assign to us, to the extent of our payments, the right to any other compensation for it. We do not have to make any payment until the *insured* has done this.

d. Under all other coverages, the right of recovery of any party we pay passes to us. Such party shall:

(1) not hurt our rights to recover; and

(2) help us get our money back.

4. Cancellation

How You May Cancel. *You* may cancel *your* policy by notifying us in writing of the date to cancel, which must be later than the date *you* mail or deliver it to us. We may waive these requirements by confirming the date and time of cancellation to *you* in writing.

How and When We May Cancel. We may cancel *your* policy by written notice, mailed or delivered to *your* last known address. The notice shall give the date cancellation is effective.

If we cancel *your* policy effective during the first 90 days that the policy is in force, the cancellation notice will be mailed or delivered to *you* at least 15 days before the cancellation effective date.

If we cancel *your* policy effective after it has been in force for more than 90 days, any notice of cancellation will be mailed or delivered to *you* at least:

a. 15 days before the cancellation effective date if the cancellation is because *you* did not pay the premium; or

b. 20 days before the cancellation effective date if the cancellation is because of any other reason.

The mailing of the notice shall be sufficient proof of notice.

Unless we cancel *your* policy effective during the first 90 days that the policy is in force, we will not cancel *your* policy before the end of the current policy period unless:

a. *you* fail to pay the premium when due; or

b. *you*, *your spouse*, any *relative* or any other *person* who usually drives *your car* has had his or her driver's license suspended or revoked:

(1) during the policy period or,

(2) if the policy is a renewal, during its policy period or the 90 days immediately preceding the last anniversary of the effective date of the policy.

Return of Unearned Premium. If *you* cancel, premium may be earned on a short rate basis. If we cancel, premium will be earned on a pro-rata basis. Any unearned premium may be returned at the time we cancel or within a reasonable time thereafter. Delay in the return of unearned premium does not affect the cancellation.

5. Renewal

Unless we mail or deliver to *you* a notice of cancellation or a notice of our intention not to renew the policy, we agree to renew the policy for the next policy period upon *your* payment of the renewal premium when due. It is agreed that the renewal premium will be based upon the rates in effect, the coverages carried, the applicable limits of liability, deductibles and other elements that affect the premium that apply at the time of renewal.

Other elements that may affect *your* premium include, but are not limited to:

a. drivers of ***your car*** and their ages and marital status;

b. ***your car*** and its use;

c. eligibility for discounts or other premium credits;

d. applicability of a surcharge based either on accident history, or on other factors.

A notice of our intention to not renew will be mailed or delivered to *your* last known address at least 30 days before the end of the current policy period. The mailing of it shall be sufficient proof of notice.

6. Conformity With State Statutes

If any terms of this policy are in conflict with the statutes of South Carolina, they are amended to conform to those statutes.

7. Premium

The premium for this policy may vary based upon the purchase of other insurance from one of the State Farm affiliated companies.

The premium for this policy is based on information State Farm has received from *you* or other sources. If the information is incorrect or incomplete, or changes during the policy period, *you* must inform State Farm of any changes regarding the following:

a. ***your car***, or its use, including annual mileage;

b. the ***persons*** who regularly drive ***your car***, including newly licensed family members;

c. ***your*** marital status; or

d. the location where ***your car*** is principally garaged.

You agree that if this information or any other information used to determine the premium is incorrect or incomplete, or changes during the policy period, we may decrease or increase the premium during the policy period based upon the corrected, completed or changed information. *You* agree that if the premium is decreased or increased during the policy period, State Farm will refund or credit to *you* any decrease in premium and *you* will pay for any increase in premium.

8. Concealment or Fraud

There is no coverage under this policy if *you* or any other ***person*** insured under this policy has made false statements with the intent to conceal or misrepresent any material fact or circumstance in connection with any claim under this policy.

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9. Participating Policy

You are entitled to participate in a distribution of the earnings of the company as determined by our Board of Directors in accordance with the company's Articles of Incorporation, as amended.

In Witness Whereof, the State Farm Fire and Casualty Company has caused this policy to be signed by its President and Secretary at Bloomington, Illinois, and countersigned on the declarations page by a duly authorized representative of the Company.

Kim M. Brunner

SECRETARY

Edward B Rust Jr

PRESIDENT

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9403

[redacted]

37
9403

[redacted]

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6 Reporting a Claim – Insured's Duties – What to do if *you* have an accident, claim or are sued.
3 Defined Words
5 Declarations Continued
5 When and Where Coverage Applies
6 Financed Vehicles – Coverage for Creditor

Coverages

8 **A – Liability** – When there is damage to others.
12 **P – Personal Injury Protection** – When there are medical expenses, loss of income, essential services expenses or funeral expenses.
16 **C – Medical Payments** – When there are medical and funeral expenses.
18 **U – Uninsured Motor Vehicle** – When the other *car* or driver is not insured.
19 **W – Underinsured Motor Vehicle** – When the other *car* or driver is underinsured.
24 **D – Comprehensive** – When *your car* is damaged except by collision or upset. Any deductible amount is shown by the number beside "D" on the declarations page.
25 **G – Collision** – When *your car* is damaged by collision or upset. The deductible is shown by the number beside "G" on the declarations page.
26 **H – Emergency Road Service** – When *your car* breaks down or needs a tow.
26 **R – Car Rental Expense** – When *you* need to rent a *car* because of damage to *your car*.
27 **R1 – Car Rental and Travel Expenses** – When *you* need to rent a *car* and pay extra travel expenses because of damage to *your car*.
28 **R2 – Car Rental and Travel Expenses** – When *you* need to rent a *car* and pay extra travel expenses because of damage to *your car*.
31 **S – Death, Dismemberment and Loss of Sight** – Pays for death of or certain injuries to *persons* named.

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33 1. Policy Changes
33 2. Suit Against Us
33 3. Our Right To Recover Our Payments
34 4. Cancellation
35 5. Renewal
35 6. Conformity With State Statutes
35 7. Premium
35 8. Concealment or Fraud
36 9. Participating Policy

Policy Form 9940.3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

State Farm Fire and Casualty Insurance Company,	)	C/A No. 6:14-4050-TMC
Plaintiff,	)	
v.	)	**ORDER**
Carol Holmes, and Danyelle Young, Individually and as Parent and Natural Guardian of D.Y., a minor under the age of 14 years;	)	
Defendant.	)	

This matter is before the court on cross-motions for summary judgment. Plaintiff State Farm Fire and Casualty Insurance Company ("State Farm") filed a motion for summary judgment. (ECF No. 51). Defendants Carol Holmes ("Holmes"), and Danyelle Young ("Young"), individually and also as parent and natural guardian of D.Y. ("D.Y."), a minor under the age of 14 years (collectively referred to herein as "Defendants") filed a response opposing State Farm's motion. (ECF No. 53). Defendants also filed a motion for summary judgment. (ECF No. 52). However, State Farm did not file any response to Defendants' motion, and the time to do so has now run. For the reasons below, the court denies State Farm's summary judgment motion and grants Defendants' summary judgment motion.

I. Background/Procedural History

On April 24, 2010, Defendants Young and D.Y. were passengers in a rental vehicle being driven by the third Defendant, Holmes, which was involved in a car accident. Holmes had two automobile insurance policies with State Farm with each providing $50,000 per person of

Exhibit A

underinsured motorists ("UIM") coverage and $100,000 per accident. A lawsuit was filed in state court seeking recovery of the UIM benefits under the two policies via stacking.[1] During mediation, the parties reached an agreement that State Farm would pay Defendants the limits of one of the policies and file a declaratory action to determine if Defendants were entitled to coverage under the other policy.[2] State Farm then filed this action seeking a declaration that the two UIM policies cannot be stacked because Holmes was driving a rental car at the time of the accident.

II. Applicable Law

Summary judgment is appropriate only "if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). In deciding whether a genuine issue of material fact exists, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in his favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). However, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* at 248. A litigant "cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another." *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, disposition by summary judgment is appropriate." *Monahan v.*

[1] Stacking permits an insured to recover damages under more than one policy until the insured satisfies all of his damages or exhausts the limits of all available policies. *Giles v. Whitaker*, 376 S.E.2d 278 (S.C. 1989).

[2] Accordingly, State Farm has already paid $75,000 to Holmes, $100,000 to Young, and $25,000 to D.Y. under one of the State Farm policies.

County of Chesterfield, 95 F.3d 1263, 1265 (4th Cir. 1996).[1]

III. Discussion

In South Carolina, stacking of insurance coverage is permitted unless limited by statute or a valid policy provision. *Jackson v. State Farm Mut. Auto Ins. Co.*, 342 S.E.2d 603 (S.C. 1986). Section 38-77-160 provides, in pertinent part:

> If . . . an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. 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. There are two classes of insureds under § 38-77-160. *South Carolina Farm Bureau Mut. Ins. Co. v. Mooneyham*, 405 S.E.2d 396, 397 n.1 (S.C. 1991). Class I applies when an insured or named insured has a vehicle involved in the accident. *Id.* Class II applies to an insured whose vehicle was not involved in the accident. *Id.* A Class II insured is an insured whose vehicle was not involved in the accident and is not entitled to stack. *Id.* To stack under § 38-77-160, the insured or named insured must be a Class I insured. *Ohio Casualty Ins. Co. v. Hill*, 473 S.E.2d 843 (S.C. Ct.App.1996).

[1] State Farm's failure to file a response does not relieve Defendants from the burden imposed upon the moving party. *See Custer v. Pan Am. Life Ins. Co.*, 12 F.3d 410 (4th Cir.

There are two applicable policy provisions. The policy defines a "Temporary Substitute Car" as

> a car not owned or leased by or leased to you or your spouse, if it replaces your car for a short time. Its use has to be with the consent of the owner. Your car has to be out of use due to its breakdown, repair, servicing, damage, or loss. A temporary substitute car is not considered a non-owned car.

(ECF No. 52- 3 at 4).

1993)(holding that while "the failure to respond to a summary judgment motion may leave uncontroverted those facts established by the motion, the moving party must still show the uncontroverted facts entitle the party to 'a judgment as a matter of law.'" (quoting Fed.R.Civ.P. 56(c)).

The policy also provides that a "Non-Owned Car" means

a car not owned by, registered to or leased to:

1. you, your spouse;

---

2. any relative unless at the time of the accident or loss:

a. the car currently is or has within the last 30 days been insured for liabilitycoverage; and

b. the driver is an insured who does not own or lease the car;

3. any other person residing in the same household as you, your spouse or anyrelative; or

4. an employer of you, your spouse or any relative.

Non-owned car does not include a:

1. rented car while it is used in connection with the insured's employment orbusiness; or

2. car which has been operated or rented by or in the possession of an insuredduring any part of each of the last 21 or more consecutive days. If the insured is an insured under one or more other car policies issued by us, the 21 day limit is increased by an additional 21 days for each such additional policy.

(ECF No. 52-3 at 4).

The foremost rule in interpreting an insurance contract is to give effect to the intent of the parties as shown by the language of the contract itself." *Dorman v. Allstate Ins. Co.*, 504 S.E.2d 127, 129 (S.C.App.1998). "When the contract language is clear and unambiguous, the language alone determines the contract's force, and terms must be construed to give effect to their 'plain, ordinary, and popular meaning.' " *Id.* (*citing Gray v. State Farm Auto Ins. Co.*, 491 S.E.2d 272 (S.C.App. 1997)).

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The pivotal issue in this case is whether the vehicle involved in this accident, a rental car, is a non-owned car under the policy so as to allow for stacking. Holmes was driving a rental car because she had been involved in another accident on April 14, 2010, and her car was being repaired. State Farm contends that the rental car was owned by the rental company and not owned by Holmes. Defendants contend that the rental car was a temporary substitute car and because the policy specifically provides that a temporary substitute car is "not a non-owned car," the rental car should be treated no differently than either of Holmes' insured vehicles.

Holmes was driving a rental car because her car was being repaired after having been damaged in a prior accident two weeks earlier. She was using the rental car as a substitute car while her car was being repaired. Clearly, the rental car Holmes was using in this case falls under the policy's definition of a temporary substitute car. And as the policy specifically states that a temporary substitute car is "not a non-owned car," the policy allows for stacking under the circumstances of this case. Further, there is no argument that Holmes was using the rental car for

employment or business or had rented the car for longer than 21 days. Accordingly, pursuant to the policy, Defendants are entitled to stack UIM coverage.

IV. Conclusion

Accordingly, based on the foregoing, State Farm's Summary Judgment (ECF No. 51) is **DENIED**, and Defendants' Summary Judgment Motion (ECF No. 52) is **GRANTED**.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
January 7, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2016-CP-32-00815
Appellate Case No. 2016-002185

State Farm Mutual
Automobile Insurance Company. . . . . Respondent,

v.

Myra M. Windham. . . . . Appellant.

CERTIFICATE OF COUNSEL

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

Respectfully submitted,

August 30, 2017

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