

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY

20154

Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2011-CP-23-03347

B. Gibbs Leaphart, Jr.,Appellant,

v.

J.B. Watts Company, Inc., and J.B. Watts Respondents.

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP2303347

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

B Gibbs Leaphart Jr

2012 APR 27 P 12:17

J B Watts Company Inc J B Watts

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
This matter comes before the Court on Plaintiff's Motion to Reconsider pursuant to SCRPC Rule 59(e). Plaintiff's Motion to Reconsider is denied.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

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


Circuit Court Judge

2162

Judge Code

4/26/2012

Date

For Clerk of Court Office Use Only

This judgment was entered on 4/27/12, and a copy mailed first class or placed in the appropriate attorney's box on 4/27/12 to attorneys of record or to parties (when appearing pro se) as follows:

Thornwell F. Sowell III Sowell Gray Stepp & Laffitte, LLC
P.O. Box 11449 Columbia, SC 29211
David C Dick Jr Sowell Gray Stepp & Laffitte, L.L.C. P.O.
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Susan Taylor Wall McNair Law Firm P O Box 1431
Charleston, SC 29402
Jennifer Dunlap Parker Poe Adams & Bernstein LLP 200
Meeting Street Suite 301 Charleston, SC 29401

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF RICHLAND

CASE NO: 2010CP4007127

IN THE COURT OF COMMON PLEAS

B Gibbs Leaphart Jr

vs.

JB Watts Company Inc

Plaintiff

Defendant

CHECK ONE:

RICHLAND COUNTY
2011 APR 19 PM 4:00
JEANNETTE W McBRIDE
G.S. Rule 41(a)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRPC;
 - Rule 43(k), SCRPC (Settled);
 - Other:
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other:

- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 - Affirmed; Reversed; Remanded; Other
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 19 April 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Thornwell F Sowell III
David C. Dick

Susan Taylor Wall

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeannette W McBride

Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 B. GIBBS LEAPHART, JR.,)
)
 PLAINTIFF,)
)
 VS.)
)
 J.B. WATTS COMPANY, INC., AND)
 J.B. WATTS,)
)
 DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-40-7127

**CONSENT ORDER TO TRANSFER
 VENUE TO GREENVILLE COUNTY**

2010/05/19 PM 3:59
 RICHLAND COUNTY
 JENNIFER M. MCBRIDE
 JUDGE, C.J.P. & G.S.

THIS MATTER COMES BEFORE THE COURT upon Defendants J.B. Watts Company, Inc.'s and J.B. Watts' (collectively referred to hereinafter as "Watts") Motion to Transfer Venue, which asserts that venue is improper in Richland County.


IT APPEARING TO THE COURT THAT venue is proper in Greenville County on the grounds that the individual Defendant resides in Greenville County, the corporate Defendant has its principal place of business in Greenville County, and the most substantial part of the alleged acts or omissions took place in Greenville County;

AND IT FURTHER APPEARING THAT all parties, by and through their undersigned counsel, consent to transferring venue to Greenville County;

NOW, THEREFORE, IT IS HEREBY ORDERED that venue in this action is TRANSFERRED from Richland County to Greenville County, and

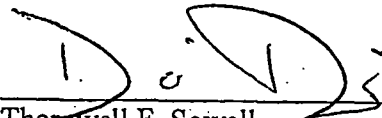
IT IS FURTHER ORDERED that the Clerk of Court for Richland County is hereby directed to forward the file in this case to the Clerk of Court for Greenville County, and

IT IS SO ORDERED.


HONORABLE ALISON R. LEE
CHIEF ADMINISTRATIVE JUDGE FOR
RICHLAND COUNTY

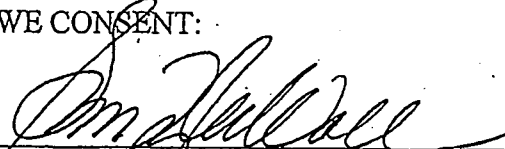
April 19, 2011
Columbia, South Carolina

WE CONSENT:


Thomwell F. Sowell
David C. Dick, Jr.
Sowell Gray Stepp & Lafitte, L.L.C.
P.O. Box 11449
Columbia, SC 29211
Phone: (803) 231-7835

ATTORNEYS FOR PLAINTIFF

WE CONSENT:


Susan Taylor Wall
Amanda C. Williams
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ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA 2012 APR 12 AM 9:00 JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

FILED-CLERK OF COURT CASE NO: 2011CP2303347

IN THE COURT OF COMMON PLEAS

GREENVILLE CO. S.C.

PAUL B. WICKENSIMER

B Gibbs Leaphart Jr vs. JB Watts Company Inc

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 12th day of April, 2012, and a copy mailed first class this 12th day of April, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Thornwell F. Sowell III Sowell Gray Stepp & Laffitte, LLC P.O. Box 11449 Columbia, SC 29211
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ATTORNEY(S) FOR THE PLAINTIFF(S)

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Jennifer Dunlap Parker-Poe Adams & Bernstein Llp 200 Meeting Street Suite 301 Charleston, SC 29401

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

B. GIBBS LEAPHART, JR.,

Plaintiff,

vs.

J.B. WATTS COMPANY, INC., AND J.B. WATTS,

Defendants.

) IN THE COURT OF COMMON PLEAS
 2012 APR 12 AM 9:02
) THIRTEENTH JUDICIAL CIRCUIT
 FILED-CLERK OF COURT
 GREENVILLE CO S.C.
 PAUL B. WICKENS
 C/A No.: 2011-CP-23-03347

ORDER

This matter comes before the Court on Defendants J.B. Watts Company, Inc. and J.B. Watts' Motion for Summary Judgment. A hearing on this motion was held on February 15, 2012. Present at the hearing were counsel for Plaintiff, David Dick, Esq. and Thornwell Sowell, Esq. Also present at the hearing was Susan Taylor Wall, Esq., counsel for Defendants. After considering the law, the briefs filed by both parties, the arguments of counsel, and all matters submitted in support of and in opposition to Defendants' Motion, this Court GRANTS Defendants' motion on all causes of action.

FACTS PRESENTED

This case arises out of an insurance coverage dispute concerning a policy covering the Plaintiff's Father and procured by the Defendants. The Plaintiff's father, Ben Leaphart, has a long-standing relationship with the Defendants, having purchased numerous insurance policies through them. For much of his life, the Plaintiff was covered under his father's automobile insurance policy. Plaintiff, at the time of the following events, was a resident of Columbia, South Carolina.

[Handwritten signature]
 7

On May 5, 2004, Plaintiff was a passenger in a vehicle driven by Tara Louise Austin and owned by her father. This vehicle was involved in an accident in Jasper County, South Carolina and Plaintiff was injured as a result. The Plaintiff and Ms. Austin's provider, State Farm, settled the matter. On October 26, 2004, the Plaintiff signed a "Covenant Not to Execute" ("Covenant") as part of this settlement with State Farm. This document allowed Plaintiff to retain his rights to proceed against Ms. Austin in the event that the Plaintiff could not recover by agreement or settlement against the underinsured motorist carrier. (Def. Ex. 4, ¶ 1). After settling with State Farm, the Plaintiff sought Underinsured Motorist ("UIM") coverage through his father's policy with State Auto. Suit was filed in Circuit Court in Jasper County, South Carolina to recover and State Auto answered on September 28, 2007, reserving its rights to deny coverage and arguing that he was not a "named insured," the "spouse" of a named insured, nor a "family member." At some point during this litigation, and for reasons not presented to the Court, the case was transferred to Richland County, South Carolina. On October 20, 2008, the Richland County Circuit Court held that Plaintiff was not entitled to UIM benefits under his father's policy with State Auto because he did not meet any of the applicable covered categories¹, and therefore that State Auto was not required to provide UIM benefits to Plaintiff for the injuries sustained in the accident.²

On October 13, 2010, Plaintiff filed this action in Richland County against the Defendants, who had procured the policy with State Auto for the Plaintiff's father, alleging breach of implied contract, negligence, breach of fiduciary duty, and violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"). Defendants answered on January 7, 2011

¹ The Richland County Circuit Court also noted that, while the Plaintiff was a listed driver on the policy, this was insufficient to provide coverage under the Policy. This Court only references this finding in the Richland County Order to provide context of the underlying litigation.

² For reference, the Richland County Action was B. Gibbs Leaphart, Jr. v. Tara Lee Louise Austin, C/A #: 2008-CP-40-00010.

with a denial of all of the Plaintiff's causes of action and raised the affirmative defense of statute of limitations on all causes of action. On April 19, 2011 and by consent order, this case was transferred to Greenville County for adjudication. Defendants filed this Motion for Summary Judgment on October 10, 2011 claiming that summary judgment should be granted because the statute of limitations has run and for other reasons. Because this Court finds that the statute of limitations on all of Plaintiff's causes of action has run, we do not reach Defendants' other arguments.

LEGAL STANDARD

In ruling on a summary judgment motion, this Court must determine whether a genuine issue of material fact exists. S.C. R. Civ. P. 56. A party seeking summary judgment bears the burden of identifying those portions of the pleadings, depositions, answers to interrogatories, any admissions on file, together with the affidavits, if any, which show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Bravis v. Dunbar, 316 S.C. 263, 449 S.E.2d 495 (Ct. App. 1994).

Although the burden is on the party seeking summary judgment, the non-moving party must point to specific facts showing that there is a genuine issue for trial, rather than resting on the assertions of its pleadings. Id. Thus, a court must grant summary judgment if the non-movant fails to make a showing sufficient to establish there is a genuine issue of material fact for trial. Dickert v. Metropolitan Life Ins. Co., 306 S.C. 311, 411 S.E.2d 672 (Ct. App. 1991) *Rev. 'd* in part on other grounds 311 S.C. 218, 428 S.E.2d. 700 (1992). A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for the purposes of resisting summary judgment. German v. New York Life Ins. Co., 286 S.C. 34, 331 S.E.2d. 385 (Ct.App. 1985); Shupe v. Settle, 315 S.C. 510, 445 S.E.2d 651 (Ct.App. 1994). "In cases

Jr3

applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hutchinson v. Liberty Life Ins. Co., 393 S.C. 19, 24, 709 S.E.2d 130, 133 (S.C. Ct. App. 2011).

CONCLUSIONS OF LAW

The applicable duration of the statute of limitations for all Plaintiff’s claims is three years. See S.C. Code §15-3-530(5) and S.C. Code §15-3-535 (as to breach of implied contract, negligence and breach of fiduciary duty) ; S.C. Code § 39-5-150 (as to SCUTPA actions). Plaintiff’s cause of action for breach of implied contract, negligence and breach of fiduciary duty are subject to the “discovery rule”, as explained *infra*. See Holy Loch Distributors, Inc. v. Hitchcock, 332 S.C. 247, 503 S.E.2d 787 (S.C. Ct. App. 1998); Witt v. American Trucking Associations, 860 F. Supp. 295 (D. S.C. 1994); S.C. Code § 15-3-535. The statute of limitations for Plaintiff’s SCUTPA cause of action begins to run “after discovery of the unlawful conduct which is the subject of the suit.” S.C. Code § 39-5-150. The question presented before this Court is when the causes of action above begin to accrue against an Insurance Agent where the coverage the Agent purported to convey is denied by the Insurance Company. Because there is no genuine issue of material fact as to the dates mentioned above, the time when the statute of limitations began to run is a question of law for the court. For the following reasons, this Court finds that the statute of limitations began to run when the insurance company answered with a denial of coverage in the Richland County action.

I. Plaintiff’s Breach of Implied Contract, Negligence and Breach of Fiduciary Duty Claims

Under the discovery rule, the statute begins to run on the date “the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from

the wrongful conduct [of another].” S.C. Code § 15-3-535; Kimmer v. Wright, 396 S.C. 53, 58, 719 S.E.2d 265, 268 (S.C. Ct. App. 2011). “Reasonable diligence”, as explained by the supreme court, means that an injured party “must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some rights of his have been invaded or that some claim against another party might exist.” Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (S.C. 2005). The statute of limitations is triggered “not merely by knowledge of an injury, but by facts, diligently acquired, sufficient to put an injured person on *notice* of the existence of a cause of action against another.” Id. (emphasis added). The standard as to when the limitations period begins to run is objective, rather than subjective. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995).

Three important dates were presented to the Court by the parties: October 26, 2004, the date the Plaintiff signed the Covenant, September 28, 2007, the date that State Auto answered with a denial in the Richland County action, and October 20, 2008, the date the Richland County action found for State Auto and denied Plaintiff UIM coverage.

This Court finds that State Auto’s answer of September 28, 2007 in the Richland County action was sufficient to put Plaintiff Leaphart on notice that “a cause of action arose from the [alleged] wrongful conduct” of J.B. Watts Co., Inc. Kimmer, 396 S.C. at 58, 719 S.E.2d at 268. In its answer, State Auto unequivocally reserved its right to deny coverage and stated its reasons for doing so. At that point, through the exercise of reasonable diligence, the Plaintiff should have been aware that the causes of action above may exist against the Defendants for failing to obtain the UIM coverage which the Plaintiff and his father thought they had.

JLS

Plaintiff argues that his claims against the Defendants were not ripe prior to the final adjudication of the coverage dispute in Richland County on October 20, 2008. As support for this argument, Plaintiff cites Webb v. Greenwood County, 229 S.C. 267, 279, 92 S.E.2d 688, 693 (1956), a takings case, where it was held that “[t]he Statute of Limitations begins to run from the time of the first injury or damage.” As such, Plaintiff argues that until final adjudication of the Richland County action, no injury had occurred for the Plaintiff to seek redress against the Defendants.

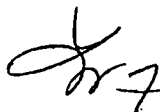
This Court agrees that the Plaintiff must have an injury to be discovered for the statute to run, but the Court finds that Plaintiff’s alleged injury occurred even before the UIM suit was filed. Viewing the facts alleged by the Plaintiff in a light most-favorable to the non-moving party, Plaintiff’s injury occurred when he moved from his father’s home, he was no longer covered under his father’s insurance policy, the Defendants knew the Plaintiff’s residence and failed to apprise the Plaintiff and his father that he was no longer covered, and the Plaintiff was injured in an accident. At this point, Plaintiff had no insurance to cover the full extent of his damages resulting from the accident and he was injured by the Defendants’ alleged negligence.

This position is supported by Riddle-Duckworth, Inc. v. Sullivan, 253 S.C. 411, 171 S.E.2d 486 (S.C. 1969). In Sullivan, the Respondent, Riddle-Duckworth, Inc., was a home and auto appliance business. Sullivan, 253 S.C. at 417, 171 S.E.2d at 488. The Appellant was an insurance agency who procured an insurance policy on behalf of the Respondent covering an elevator in the Respondent’s place of business. Id. This policy was renewed yearly through the insurance agency. Id. When there was a change in conditions at the Respondent’s place of business, they would notify the Appellant, and the appellant would report the changes to the insurance company. Sullivan, 253 S.C. at 418, 171 S.E.2d at 488. The Respondent also asked

the Appellant upon each change if the elevator maintained coverage after the change in conditions. Id. This continued from 1956 until 1962, when a change in the policy language led the Respondent to doubt that he had coverage. Id. The Appellant stated that the Respondent was still covered, and nothing further was done. Id. Subsequently, the elevator fell and injured a passenger. Sullivan, 253 S.C. at 419, 171 S.E.2d at 488. The injured passenger sued the Respondent for negligence in maintaining the elevator and was awarded damages in the amount of \$7,500.00. Id. The Respondent then filed suit against the Appellant for negligent procurement of the insurance policy. Id. The jury found for the Respondent and awarded damages as a result. Id.

On appeal, the Appellant argued, in addition to other points, that the trial court erred in failing to hold that Respondent's claim was barred by the six-year statute of limitations that was applicable at the time. Sullivan, 253 S.C. at 424-25, 171 S.E.2d at 492. Specifically, Appellant argued that the time at which the Respondent's cause of action arose was 1956, when the policy was first procured. Id. The supreme court rejected this argument on the basis that the Respondent filed suit for negligent procurement of the specific 1962 policy and also because the loss was sustained when the elevator fell. Sullivan, 253 S.C. at 425, 171 S.E.2d at 492-93. Since the lawsuit against the Appellant was filed within the same year as the policy was procured, the court held the suit was timely. Id.


While not specifically on point with the facts of this case, this Court believes that Sullivan provides guidance on the issue of when an injury is sustained by an insured where a policy that is negligently procured does not provide coverage. Sullivan also involved an action for the negligent procurement of an insurance policy by an insurance agent. The supreme court clearly held that the Respondent's claim could not have been brought until the issuance of the



policy, a representation of coverage that did not exist had been made, and a loss had been sustained. Sullivan, 253 S.C. at 425, 171 S.E.2d at 493. In the present case, Plaintiff's argument is that no loss was sustained as a result of the alleged negligent procurement of his UIM policy until the Richland County action was resolved in favor of the provider of the UIM policy. However, Plaintiff's loss as a result of the negligent procurement occurred on the date he sustained injury and damage that was not covered by his policy, May 5, 2004.

The primary distinction between the present case and Sullivan is that the Court did not have an issue involving the discovery rule due to the remarkable rapidity of the claim. Here, though the Plaintiff's causes of action arose at the date of the accident, it was not discovered until September 28, 2007, when State Auto answered with a general denial of UIM coverage. At this point, Plaintiff should have known through the exercise of reasonable diligence that he had a claim for recovery due to the alleged wrongful conduct of the Defendants. Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (S.C. 2005). This is so even though the suit against the insurance company had not been resolved. While Plaintiff may not have known if the Circuit Court would find in his favor and therefore know the extent of his injury, that is immaterial to a cause of action against the insurance agent. "[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial." Dean v. Ruscon Corp., 321 S.C. 360, 364, 468 S.E.2d 645, 648 (S.C. 1996).

This Court briefly addresses Defendants' argument that the Plaintiff's signing of the Covenant as part of a settlement with Ms. Austin's insurance company is the date the statute began to run on all of Plaintiff's causes of action. Defendant argues that this document acts as an acknowledgement that the Plaintiff knew his UIM coverage would be contested, and therefore proves that Plaintiff knew he had no coverage, and should have known of a cause of action



against the Defendants'. This Court does not interpret the document as an acknowledgement that the Plaintiff knew his coverage was likely to be contested. The Court notes that the Plaintiff reserved his rights to proceed against Ms. Austin in the event of a failure to settle or to agree on UIM benefits. However, this Court finds this reservation of rights is insufficient to show that the Plaintiff affirmatively knew of the contested coverage at that date. The Court stands on its determination that State Auto's answer in the Richland County action was the applicable date when the Plaintiff "knew or should have known through the exercise of reasonable diligence that a cause of action arose from the wrongful conduct of another." Epstein, 363 S.C. at 376, 610 S.E.2d at 818. Therefore, September 28, 2007 is the date when the statute of limitation began to run on Plaintiff's causes of action for breach of implied contract, negligence, and breach of fiduciary duty.

II. Plaintiff's SCUTPA Action

This Court also finds that the Plaintiff's SCUTPA action is barred by the statute of limitations. A SCUTPA action must be brought within three years of the Plaintiff's discovery of the unlawful conduct which was the subject of the suit. S.C. Code § 39-5-150.

Much like Plaintiff's other causes of action, this Court finds that State Auto's answer on September 28, 2007 triggered the statute of limitations on Plaintiff's SCUTPA claim. At that point, the alleged unlawful misrepresentations of coverage highlighted in the complaint clearly became known to the Defendants, as State Auto unequivocally denied coverage and stated the reasons therefore. As a result, Plaintiff's claim is also barred by a three-year statute of limitations imposed on SCUTPA claims. S.C. Code § 39-5-150.

Log

Conclusion

For the foregoing reasons, this Court finds as a matter of law that the statute of limitations on all of Plaintiff's causes of action began to run on September 28, 2007. This action was filed on October 13, 2010, outside of the applicable three-year statute of limitations for each claim. There is no genuine issue of material fact as to the dates mentioned above. Therefore, Defendants' motion for summary judgment is GRANTED as to all causes of action.

IT IS SO ORDERED.



LETTIA H. VERDIN
Presiding Judge

Greenville, South Carolina
April 11, 2012



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

B. Gibbs Leaphart, Jr.,) Civil Action No.:

Plaintiff,)

vs.)

J.B. Watts Company, Inc. and J.B. Watts,)

Defendants.)

COMPLAINT
 (Jury Trial Demand)

JEANETTE W. MCBRIDE
 C.C.P. & J.S.S.

2010 OCT 13 PM 3:33

RICHLAND COUNTY
 FILED

Plaintiff B. Gibbs Leaphart, Jr. ("Gibbs Leaphart"), complaining of the defendants J.B. Watts Insurance Company ("J.B. Watts & Company") and J. B. Watts, alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Gibbs Leaphart is a resident of Columbia, State of South Carolina.
2. On information and belief, Defendant J.B. Watts & Company is a South Carolina corporation with its principal place of business in Greenville County.
3. On information and belief, Defendant J.B. Watts is a citizen and resident of Greenville County, South Carolina, and it an agent and servant of J.B. Watts & Company.
4. Venue is proper pursuant to S.C. Code Ann. § 15-7-30 (Law Co-op. 1976).

THE FACTS

5. On May 5, 2004, Gibbs Leaphart was involved in a one car traffic accident wherein he was a passenger in the vehicle.
6. The operator of the vehicle was traveling Northbound on I-95 in the County of Jasper, State of South Carolina when she ran off the left side of the road, losing control and flipping the vehicle onto the crossover fence in the median of the highway.

7. The operator of the vehicle was driving a 1994 Jeep vehicle owned by her father, bearing South Carolina License Plate Number 187-KJH.

8. Gibbs Leaphart, who was a passenger in the right front seat of the vehicle, was thrown from the vehicle, suffering multiple injuries including but not limited to the amputation of the 2, 3 and 4 digits on his right hand. Gibbs Leaphart was transported via helicopter to the Memorial Health University Medical Center in Savannah, GA.

9. Gibbs Leaphart made a monetary recovery from the vehicle operator's liability insurance carrier and then sought underinsured motorist ("UMI") coverage from the State Auto policy of Mr. Ben G. Leaphart, Plaintiff's father.

10. Gibbs Leaphart was denied UMI coverage by State Auto because he was alleged to be neither a "named insured," the "spouse" of a named insured, nor a "family member."

11. On October 24, 2008, in a civil action over this issue, the Court agreed with State Auto, and denied Gibbs Leaphart any UMI coverage.

12. Gibbs Leaphart was listed as a driver / operator on the declarations page of the State Auto policy; however, the Court concluded that this fact did not make him a "named insured."

13. Further, the Court concluded that Gibbs Leaphart was not a "family member" because he did not reside in the household of Ben G. Leaphart.

14. The Court found that Gibbs Leaphart had not been a resident of his parent's household since 1997 and was a mere transient visitor for 11 years preceding the accident.

15. Accordingly the Court refused to grant any UMI coverage to Gibbs Leaphart.

16. For over 20 years Ben G. Leaphart has maintained State Auto insurance policies on his automobiles, permanent home, vacation home, and office building obtained through J.B. Watts & Company.

17. When Gibbs Leaphart turned 16 years on July 21, 1990, and obtained his driver's license, Ben G. Leaphart contacted J.B. Watts & Company and had him added as a driver on the State Auto insurance policy.

18. Since the time that Gibbs Leaphart obtained a drivers license at age 16, J.B. Watts has acted as agent for the providing of insurance coverage for the cars he drove and listed him a driver on the policies. This coverage continued through high school, college and eventually law school.

19. J.B. Watts is a long-time personal acquaintance of Ben G. Leaphart and as such has been aware of the fact that Gibbs Leaphart has lived outside the home since starting college in 1993. J.B. Watts at all relevant times referenced herein was an agent and servant of J.B. Watts & Company and therefore J.B. Watts' acts and omissions are binding upon and imputed to J.B. Watts & Company.

20. On more than one occasion Ben G. Leaphart referred Gibbs Leaphart to J.B. Watts and J.B. Watts & Company for the purpose of answering his questions or when he needed information regarding the insurance coverage on the car he was driving.

21. At the time of the accident, Ben G. Leaphart maintained insurance coverage on 6 vehicles with State Auto, written through J.B. Watts & Company of Greenville South Carolina by the agent J.B. Watts. Attached as Exhibit A is a copy of the policy for coverage for periods from January 1, 2004 to July 1, 2004.

22. The attached policy shows that one of the insured automobiles was garaged in Columbia, South Carolina where Gibbs Leaphart was residing at the time of the accident.

23. J.B. Watts and J.B. Watts & Company had knowledge of the fact that Gibbs Leaphart was living in Columbia at the time of the accident.

24. When J.B. Watts was informed of State Auto's denial of Gibbs Leaphart's claim, he assured Ben G. Leaphart that the denial was an error, and that Gibbs Leaphart was fully covered under the policy.

25. On information and belief, J.B. Watts and J.B. Watts & Company mistakenly and negligently believed that Gibbs Leaphart was fully covered under the policy.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

26. Each allegation contained above is realleged and incorporated by reference.

27. An implied in fact contract existed between Ben G. Leaphart and Defendants as evidenced by the conduct of the parties during the course of dealings.

28. Ben G. Leaphart agreed to pay the insurance premiums in return for Defendants' sound advice regarding the insurance and for the automotive insurance.

29. Plaintiff Gibbs Leaphart is a third-party beneficiary of this contract.

30. Ben G. Leaphart conferred a benefit to Defendants through the premiums and commissions paid for the insurance.

31. The failure of Defendants to provide accurate advice regarding which insurance was necessary to fully insure Gibbs Leaphart was a breach of the implied contract.

32. As a result of this breach of contract, Gibbs Leaphart has suffered damages for which he is entitled to recover actual and consequential damages. In addition, Plaintiff seeks attorneys' fees, costs, and prejudgment interest.

FOR A SECOND CAUSE OF ACTION
(Negligence)

33. Each allegation contained above is realleged and incorporated by reference.

34. As Ben G. Leaphart's insurance agent and liaison between State Auto and Ben G. Leaphart, Defendants owed Ben G. Leaphart and his son Gibbs Leaphart a duty of care in their selection of appropriate insurance, in properly advising Ben G. Leaphart of his coverage, and in their dealing with State Auto on behalf of Ben G. Leaphart.

35. By failing to provide proper advice regarding insurance coverage and by not providing the proper insurance coverage, Defendants breached their duty of care to Plaintiff. The Defendants' conduct was reckless.

36. As a proximate result of Defendants' negligent and reckless acts or omissions, Plaintiff has been injured and otherwise damaged, and he is entitled to a judgment in the amount of his actual and consequential damages, attorneys' fees and costs, prejudgment interest, and punitive damages in a total amount to be established at or before trial.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)

37. Each allegation contained above is realleged and incorporated by reference.

38. As an insurance agent for Ben G. Leaphart, the Defendants had a fiduciary relationship with and a fiduciary duty to Ben G. Leaphart and his son Gibbs Leaphart.

39. Because Defendants made numerous negligent representations, failed to inform Ben G. Leaphart of relevant information regarding insurance coverage, and failed to obtain the proper insurance coverage, Defendants failed to properly protect Plaintiff's interests and breached the fiduciary duties owed to Ben G. Leaphart and Gibbs Leaphart. The Defendants' conduct was reckless and willful.

40. As a result of Defendants' breach of its fiduciary duties, Plaintiff has been injured and otherwise damaged, and he is entitled to a judgment in the amount of his actual and consequential damages, together with prejudgment interest, punitive damages, attorney's fees, and costs of this action, for a total amount to be established at or before trial.

FOR A FOURTH CAUSE OF ACTION
(Unfair Trade Practices Act)

41. Each allegation contained above is realleged and incorporated by reference.

42. The misrepresentations by Defendants constitute an unfair and/or deceptive act or practice in trade or commerce, with a resulting harm to Plaintiff.

43. These unfair and/or deceptive acts or practices are capable of repetition or otherwise affect the public.

44. These unfair and/or deceptive acts or practices were willful and a knowing violation of S.C. Code § 39-5-20.

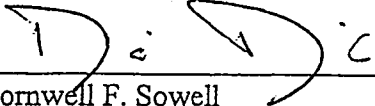
45. As a result of Defendants' unfair and/or deceptive acts or practices, including a willful violation of the South Carolina Unfair Trade Practices Act, Plaintiff has been damaged, has suffered an ascertainable loss of money or property, and is entitled to a judgment against Defendants, for actual damages, treble damages, plus pre-judgment interest, costs and attorneys' fees.

WHEREFORE, Plaintiff B. Gibbs Leaphart, Jr. seeks judgment against the Defendants J.B. Watts Company, Inc. and J.B. Watts for actual and consequential damages, punitive damages, treble damages, pre-judgment interest, costs and attorneys' fees, and for such other and further relief as is just and proper.

[Signature page follows]

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: _____


Thornwell F. Sowell
bsowell@sowell.com

David C. Dick, Jr.
ddick@sowell.com

1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211

Attorneys for Plaintiff

Columbia, South Carolina
October 13, 2010

EXHIBIT A



RENEWAL DECLARATIONS
PERSONAL AUTO PROGRAM

THIS DECLARATIONS PAGE WITH POLICY FORMS AND ENDORSEMENTS COMPLETES THE POLICY. THIS POLICY WILL CONTINUE IN FORCE FOR THE PERIOD INDICATED UPON VALID PAYMENT OF THE PREMIUM, WHEN DUE.

POLICY NUMBER ASC 3754417	POLICY PERIOD FROM 01/07/04 TO 07/07/04	COVERAGE IS PROVIDED IN THE STATE AUTO PROP. & CAS. INS. CO. 518 EAST BROAD STREET	AGENCY 1387	PROD 01
NAMED INSURED AND ADDRESS BEN G & MARTHA M LEAPHART 800 MCDANIEL AVE GREENVILLE SC 29605		AGENT J B WATTS CO INC PO BOX 10187 GREENVILLE SC 29603 TELEPHONE 864/271-0009		

VEHICLES COVERED

#	ST	TER	YR	MAKE-DESCRIPTION	SER NUMBER	SYM	CLASS	SIZE	ST	AM	RATE	TIER
01	SC	073	67	FORD MUSTANG	7Y03C275214	04	818120	N				MEDALIST
02	SC	073	92	GMC JIMMY S150	1GKDT13WLN2524434	16	809220	C				MEDALIST
03	SC	073	97	GMC JIMMY	1GKDT13W2V2516178	13	818220	C				MEDALIST

COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE

COVERAGE	LIMITS OF LIABILITY	AUTO	1	PREMIUMS	2	3
A LIABILITY-BODILY INJURY & PROPERTY DAMAGE	\$ 500,000 EACH ACCIDENT	128.00		231.00		131.00
B MEDICAL PAYMENTS	\$ 1,000 EACH PERSON	5.00		9.00		5.00
C UNINSURED MOTORISTS BODILY INJURY & PROPERTY DAMAGE	\$ 500,000 EACH ACCIDENT	18.00		23.00		18.00
C UNDERINSURED MOTORISTS BODILY INJURY & PROPERTY DAMAGE	\$ 500,000 EACH ACCIDENT	63.00		78.00		63.00
D DAMAGE TO YOUR AUTO- ACTUAL CASH VALUE LESS DEDUCTIBLE OTHER THAN COLLISION	\$ 250 DEDUCTIBLE	5.00		83.00		47.00
COLLISION	\$ 500 DEDUCTIBLE	17.00		112.00		77.00
EXTENDED TRANSPORTATION EXPENSES COV. \$30 PER DAY/\$900 MAXIMUM		7.00		8.00		7.00
UNINSURED MOTORISTS FUND		.50		.50		.50
PRIME OF LIFE PLAN						
	TOTAL BY AUTO	243.50		544.50		348.50

*** YOUR STATE AUTO COMPANIES AUTO POLICY HAS BEEN DISCOUNTED AS SHOWN BELOW:

PRIME OF LIFE DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 2
 PRIME OF LIFE DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 1

	26.00	60.00	38.00
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PREMIUMS REFLECT AUTO/HOME DISCOUNT OF:
 PASSIVE RESTRAINT DISCOUNT HAS BEEN APPLIED TO AUTO 3
 MULTI-CAR DISCOUNT APPLIED TO AUTO 1,2,3
 SIZE OF CAR DISCOUNT APPLIED TO AUTO 1,2,3
 PREMIUMS REFLECT SAFE DRIVER DISCOUNT FOR AUTO 1,2,3
 ANTI-LOCK BRAKE DISCOUNT OF 5% APPLIED TO AUTO 3



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#	ST	TER	YR	MAKE-DESCRIPTION	SER NUMBER	SYM	CLASS	SIZE	ST	AM	RATE	TIER
04	SC	073	01	CHRYSLER PT CRUISER	3C8FY4BB617551724	12	818220	C				MEDALIST
05	SC	073	91	DODGE DAKOTA	1B7GL23Y9MS296021	05	818120	F				MEDALIST
06	SC	073	01	JEEP CHEROKEE C	1J4FF58S91L620710	15	809220	C				MEDALIST

COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE

COVERAGE	LIMITS OF LIABILITY	AUTO	4	PREMIUMS	5	6
A LIABILITY-BODILY INJURY & PROPERTY DAMAGE	\$ 500,000 EACH ACCIDENT	131.00		128.00		220.00
B MEDICAL PAYMENTS	\$ 1,000 EACH PERSON	5.00		5.00		6.00
C UNINSURED MOTORISTS BODILY INJURY & PROPERTY DAMAGE	\$ 500,000 EACH ACCIDENT	16.00		18.00		16.00
C UNDERINSURED MOTORISTS BODILY INJURY & PROPERTY DAMAGE	\$ 500,000 EACH ACCIDENT	55.00		63.00		55.00
D DAMAGE TO YOUR AUTO- ACTUAL CASH VALUE LESS DEDUCTIBLE						
OTHER THAN COLLISION	\$ 250 DEDUCTIBLE	49.00		18.00		107.00
COLLISION	\$ 500 DEDUCTIBLE	92.00				182.00
EXTENDED TRANSPORTATION EXPENSES COV. \$30 PER DAY/\$900 MAXIMUM		7.00				8.00
UNINSURED MOTORISTS FUND		.50		.50		.50
PRIME OF LIFE PLAN						
	TOTAL BY AUTO	355.50		232.50		594.50

*** YOUR STATE AUTO COMPANIES AUTO POLICY HAS BEEN DISCOUNTED AS SHOWN BELOW:

PRIME OF LIFE DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 2
PRIME OF LIFE DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 1

PREMIUMS REFLECT AUTO/HOME DISCOUNT OF: 38.00 25.00 66.00
PASSIVE RESTRAINT DISCOUNT HAS BEEN APPLIED TO AUTO 4,6
MULTI-CAR DISCOUNT APPLIED TO AUTO 4,5,6
SIZE OF CAR DISCOUNT APPLIED TO AUTO 4,5,6
ANTI-THEFT DISCOUNT APPLIED TO AUTO 4,6
PREMIUMS REFLECT SAFE DRIVER DISCOUNT FOR AUTO 4,5,6
ANTI-LOCK BRAKE DISCOUNT OF 5% APPLIED TO AUTO 4,6



STATE AUTO

Insurance Companies

MOBDEC ASC 3754417 17 20031208 WFS LEAP APV R

RENEWAL DECLARATIONS PERSONAL AUTO PROGRAM

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VEHICLES COVERED

#	ST	TER	YR	MAKE-DESCRIPTION	SER NUMBER	SYM	CLASS	SIZE	ST	AM	RATE	TIER
07	SC	073	01	CHEVR EXPRESS G3	1GAHG39R711172936	14	818120	F				MEDALIST

COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE

COVERAGE	LIMITS OF LIABILITY	AUTO	PREMIUMS
A LIABILITY-BODILY INJURY & PROPERTY DAMAGE	\$ 500,000 EACH ACCIDENT	122.00	
B MEDICAL PAYMENTS	\$ 1,000 EACH PERSON	4.00	
C UNINSURED MOTORISTS BODILY INJURY & PROPERTY DAMAGE	\$ 500,000 EACH ACCIDENT	13.00	
C UNDERINSURED MOTORISTS BODILY INJURY & PROPERTY DAMAGE	\$ 500,000 EACH ACCIDENT	44.00	
D DAMAGE TO YOUR AUTO- ACTUAL CASH VALUE LESS DEDUCTIBLE OTHER THAN COLLISION	\$ 250 DEDUCTIBLE	54.00	
COLLISION	\$ 500 DEDUCTIBLE	95.00	
EXTENDED TRANSPORTATION EXPENSES COV. \$30 PER DAY/\$900 MAXIMUM		7.00	
UNINSURED MOTORISTS FUND		.50	
PRIME OF LIFE PLAN			
		TOTAL BY AUTO	339.50
		TOTAL TERM PREMIUM	\$2,658.50

*** YOUR STATE AUTO COMPANIES AUTO POLICY HAS BEEN DISCOUNTED AS SHOWN BELOW:

PRIME OF LIFE DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 2
PRIME OF LIFE DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 1

PREMIUMS REFLECT AUTO/HOME DISCOUNT OF: 36.00
 PASSIVE RESTRAINT DISCOUNT HAS BEEN APPLIED TO AUTO 7
 MULTI-CAR DISCOUNT APPLIED TO AUTO 7
 SIZE OF CAR DISCOUNT APPLIED TO AUTO 7
 ANTI-THEFT DISCOUNT APPLIED TO AUTO 7
 PREMIUMS REFLECT SAFE DRIVER DISCOUNT FOR AUTO 7
 ANTI-LOCK BRAKE DISCOUNT OF 5% APPLIED TO AUTO 7

DRIVER ID	DRIVER NAME
01	BEN G LEAPHART
02	MARTHA M LEAPHART
03	MILLER M LEAPHART
04	BEN G LEAPHART JR

FORM #	DATE	AUTO	FORM #	DATE	AUTO	FORM #	DATE	AUTO
AU671	02/01	ALL	PP0001	04/86	ALL	PP0005	12/89	ALL
AU689	01/97	ALL	AU0178	03/99	ALL	AU644	05/92	ALL
						PPAU23	08/99	ALL
						AU650	06/92	ALL

*****CONTINUED ON NEXT PAGE*****PAGE 3



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AU651 06/92 ALL	AU706 06/00 ALL	PP1301 12/99 ALL	PP0341 11/96 001
AU0465S 03/99 001	AU0488S 06/98 001	AU0302 12/89 001	PP0319 08/86 002
PP0341 11/96 002	AU0465S 03/99 002	AU0488S 06/98 002	AU0302 12/89 002
PP0319 08/86 002	PP0341 11/96 003	AU0465S 03/99 003	AU0488S 06/98 003
AU0302 12/89 003	PP0341 11/96 004	AU0465S 03/99 004	AU0488S 06/98 004
AU0302 12/89 004	PP0341 11/96 005	AU0465S 03/99 005	AU0488S 06/98 005
PP0341 11/96 006	AU0465S 03/99 006	AU0488S 06/98 006	AU0302 12/89 006
PP0305 08/86 006	PP0319 08/86 006	PP0341 11/96 007	AU0465S 03/99 007
AU0488S 06/98 007	AU0302 12/89 007	PP0305 08/86 007	

LOSS PAYEE FOR AUTO #006
BANK ONE
100 E BROAD ST
COLUMBUS, OH 43271

LOSS PAYEE FOR AUTO #007
LN# 023903109898 GMAC
INSURANCE SERVICE CENTER
PO BOX 2525
HUDSON, OH 44236

ADDITIONAL INSURED FOR AUTO #001
TIGERDAWG LLC
601 E MCBEE AVE STE 200
GREENVILLE, SC 29601

ADDITIONAL INSURED FOR AUTO #002
BEN G LEAPHART PA
PO BOX 10191
GREENVILLE, SC 29603

ADDITIONAL INSURED FOR AUTO #006
BANK ONE
100 E BROAD ST
COLUMBUS, OH 43271

GARAGE LOCATION FOR AUTO #006
3307 BLOSSOM STREET
COLUMBIA, SC 29205

12/08/03

POLICY PERIOD 12:01 AM STANDARD TIME

AUTHORIZED SIGNATURE DATE
*****PAGE 4 (LAST PAGE)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 B. GIBBS LEAPHART, JR.,)
)
 PLAINTIFF,)
)
 VS.)
)
 J.B. WATTS COMPANY, INC., AND)
 J.B. WATTS,)
)
 DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-40-7127

ANSWER OF DEFENDANTS

Defendants J.B. Watts Company, Inc., and J.B. Watts (together referred to herein as "Defendants"), by and through their undersigned counsel, and expressly subject to the Motion to Transfer Venue and Motion to Dismiss filed contemporaneously herewith, submit this Answer in response to the Complaint of Plaintiff and state as follows:

1. Defendants deny each and every allegation of the Complaint not hereinafter specifically admitted.

PARTIES, JURISDICTION, AND VENUE

2. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 1 of the Complaint and, therefore, deny the same.

3. Defendants admit the allegations of Paragraph 2 of the Complaint.

4. As to the allegations of Paragraph 3 of the Complaint, Defendants admit only that J.B. Watts is a citizen and resident of Greenville County, South Carolina. The remaining allegations of Paragraph 3 of the Complaint constitute conclusions of law to which Defendants are neither required to admit nor deny; to the extent a response is required, Defendants deny the same.

5. Defendants deny the allegations of Paragraph 4 of the Complaint and have filed a Motion to Transfer Venue contemporaneously herewith.

AS TO THE FACTUAL ALLEGATIONS

6. Defendants are without knowledge or information sufficient to admit or deny the allegations of Paragraphs 5, 6, 7 and 8 of the Complaint and, therefore, deny the same and demand strict proof thereof.

7. As to the allegations of Paragraph 9 of the Complaint, Defendants admit, upon information and belief, only that a claim for underinsured motorist benefits was made under the State Auto Policy issued to Ben G. Leaphart, Policy No. ASC3754417, and are without knowledge or information sufficient to admit or deny the remaining allegations of said Paragraph and, therefore, deny the same and demand strict proof thereof.

8. As to the allegations of Paragraph 10 of the Complaint, Defendants crave reference to any denial letter issued by State Auto, which letter speaks for itself and is the best evidence of State Auto's reasons for its denial of Plaintiff's claim and deny any allegations of said Paragraph not fully consistent therewith.

9. As to the allegations of Paragraphs 11, 12, 13, 14 and 15, Defendants crave reference to the Order entered by Judge Milling on October 22, 2008, which speaks for itself and is the best evidence of the findings of fact and conclusions of law contained therein and deny any allegations of said Paragraphs inconsistent therewith.

10. Defendants deny the allegations of Paragraph 16 of the Complaint.

11. As to the allegations of Paragraph 17 of the Complaint, Defendants admit, upon information and belief, that on or around the time Plaintiff turned 16 years of age he was added as an additional driver to the State Auto insurance policy issued to his father and deny all remaining allegations of said Paragraph.

12. As to the allegations of Paragraph 18 of the Complaint, Defendants admit only that J.B. Watts assisted in procuring insurance policies for Plaintiff's father, Ben Leaphart, and added Ben Leaphart's children to the policies as requested by him, including the addition of Plaintiff as a driver on the State Auto policy issued to Ben Leaphart on or around the time Plaintiff turned 16 years of age. Defendants are without knowledge or information sufficient to admit or deny the allegations of Paragraph 18 of the Complaint concerning Plaintiff's schooling, and deny all remaining allegations of said Paragraph.

13. Defendants deny the allegations of Paragraph 19 of the Complaint.

14. Defendants deny the allegations of Paragraph 20 of the Complaint.

15. As to the allegations of Paragraphs 21 and 22 of the Complaint, Defendants crave reference to Exhibit A referenced therein, which speaks for itself and is the best evidence of the information contained therein and deny any allegations of said Paragraphs inconsistent therewith.

16. Defendants deny the allegations of Paragraphs 23, 24 and 25 of the Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Breach of Contract)

17. Responding to the allegations of Paragraph 26 of the Complaint, Defendants repeat and reallege as if set forth verbatim herein the responses set forth above.

18. Defendants deny the allegations of Paragraphs 27, 28, 29, 30, 31 and 32 of the Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Negligence)

19. Responding to the allegations of Paragraph 33 of the Complaint, Defendants repeat and reallege as if set forth verbatim herein the responses set forth above.

20. Defendants deny the allegations of Paragraphs 34, 35 and 36 of the Complaint.

AS TO THE THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)

21. Responding to the allegations of Paragraph 37 of the Complaint, Defendants repeat and reallege as if set forth verbatim herein the responses set forth above.

22. Defendants deny the allegations of Paragraphs 38, 39 and 40 of the Complaint.

AS TO THE FOURTH CAUSE OF ACTION
(Unfair Trade Practices Act)

23. Responding to the allegations of Paragraph 41 of the Complaint, Defendants repeat and reallege as if set forth verbatim herein the responses set forth above.

24. Defendants deny the allegations of Paragraphs 42, 43, 44 and 45 of the Complaint.

25. Defendants deny the allegations of the WHEREFORE Clause and Prayer for Relief and specifically allege that Defendants have no liability to Plaintiff and deny all damages claimed.

FOR A FIRST DEFENSE
(Failure to State a Claim)

26. Further answering the Complaint, and as and for a further defense thereto, Defendants allege that the Complaint fails to state a claim upon which relief can be granted, and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE
(Comparative Negligence)

27. Further answering the Complaint, and as and for a further defense thereto, Defendants would allege and show that even if Defendants were negligent in any respect, which is denied, Plaintiff was comparatively negligent and/or otherwise at fault, which fault exceeded any fault on the part of Defendants, which is denied, and which fault proximately caused Plaintiff's alleged damages, if any, which are denied, so as to bar any recovery herein pursuant to

the doctrine of comparative negligence. Alternatively, Plaintiff was comparatively negligent and/or otherwise at fault in an amount equal to or less than any fault of Defendants, which is denied, which fault proximately caused Plaintiff's alleged damages, if any, which are denied, so as to proportionally reduce any recovery herein pursuant to the doctrine of comparative negligence.

FOR A THIRD DEFENSE
(Negligence of Third Parties)

28. Further answering the Complaint, and as and for a further defense thereto, Defendants allege that any injuries and damages allegedly suffered by Plaintiff, which are denied, were due to or caused by third persons over whom Defendants had no control, whose actions caused the alleged damages, if any, which are denied.

FOR A FOURTH DEFENSE
(Estoppel and Waiver)

29. Further answering the Complaint, and as and for a further defense thereto, Defendants allege that Plaintiff is estopped by his own conduct from asserting a claim for the recovery sought herein and also alleges that Plaintiff waived any claims against Defendants by and through its conduct so as to bar recovery herein.

FOR A FIFTH DEFENSE
(Statute of Limitations)

30. Further answering the Complaint, and as and for a further defense thereto, Defendants allege that some or all of Plaintiff's claims are barred by the applicable statute of limitations.

FOR A SIXTH DEFENSE
(Intervening/Superseding Acts)

31. Further answering the Complaint, and as and for a further defense thereto, any damages sustained by Plaintiff, which are denied, were solely caused by the acts or omissions of

parties or persons other than Defendants, over whom Defendants had no control, which acts or omissions constitute the intervening and/or superseding cause of Plaintiff's alleged damages, if any, which are denied, and bar Plaintiff's claims in the Complaint.

FOR A SEVENTH DEFENSE
(Assumption of the Risk)

32. Further answering the Complaint, and as and for a further defense thereto, Defendants allege that the claims in the Complaint are barred by the doctrine of assumption of the risk.

FOR AN EIGHTH DEFENSE
(No Proximate Cause)

33. Further answering the Complaint, and as and for a further defense thereto, Plaintiff has suffered no loss or damage proximately caused by or resulting from any actions or inactions of Defendants.

FOR A NINTH DEFENSE
(Constitution)

34. Further answering the Complaint, and as and for a further defense thereto, Plaintiff's claim for recovery of punitive damages is barred by the South Carolina Constitution and the Constitution of the United States because no reasonable and well-defined limits are placed on such punitive damages award and because the award and payment of punitive damages would constitute an imposition of punishment on Defendants without adequate notice of the substantive rules governing the conduct giving rise to such punitive damages.

FOR A TENTH DEFENSE
(No Basis for Punitive Damages)

37. Further answering the Complaint, and as and for a further defense thereto, Defendants allege Plaintiff fails to state any basis upon which punitive damages are recoverable against Defendants and accordingly, Plaintiff's prayer for such damages should be dismissed

and/or stricken from the Complaint pursuant to Rules 12(b)(6) and/or 12(f) of the South Carolina Rules of Civil Procedure.

FOR AN ELEVENTH DEFENSE
(Reservation of Rights)

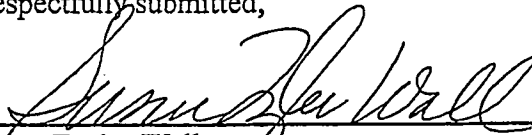
38. Further answering the Complaint, and as and for a further defense thereto, Defendants hereby give notice that they reserve the right to assert, and do not waive, any additional or further defenses as may be revealed by additional information acquired during discovery or otherwise, and reserve the right to amend this Answer to assert any such defenses.

FOR A TWELFTH DEFENSE
(Improper Venue)

38. Further answering the Complaint, and as and for a further defense thereto, Defendants allege that venue is improper in Richland County.

WHEREFORE, having answered the Complaint herein, Defendants pray that the same be dismissed as to them and the relief demanded by Plaintiff be denied; that costs and fees be awarded to Defendants; and for such other relief as this Court deems just and proper.

Respectfully submitted,



Susan Taylor Wall

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Amanda C. Williams

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ATTORNEYS FOR DEFENDANTS

January 6, 2011

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
B. GIBBS LEAPHART, JR.,)
PLAINTIFF,)
VS.)
J.B. WATTS COMPANY, INC., AND)
J.B. WATTS,)
DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-40-7127

**AMENDED ANSWER OF
DEFENDANTS**

Defendants J.B. Watts Company, Inc., and J.B. Watts (together referred to herein as "Defendants"), by and through their undersigned counsel, and expressly subject to their Motion to Transfer Venue and Motion to Dismiss, submit this Amended Answer in response to the Complaint of Plaintiff and state as follows:

1. Defendants deny each and every allegation of the Complaint not hereinafter specifically admitted.

PARTIES, JURISDICTION, AND VENUE

2. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 1 of the Complaint and, therefore, deny the same.

3. Defendants admit the allegations of Paragraph 2 of the Complaint.

4. As to the allegations of Paragraph 3 of the Complaint, Defendants admit only that J.B. Watts is a citizen and resident of Greenville County, South Carolina. The remaining allegations of Paragraph 3 of the Complaint constitute conclusions of law to which Defendants are neither required to admit nor deny; to the extent a response is required, Defendants deny the same.

5. Defendants deny the allegations of Paragraph 4 of the Complaint and have filed a Motion to Transfer Venue contemporaneously herewith.

AS TO THE FACTUAL ALLEGATIONS

6. Defendants are without knowledge or information sufficient to admit or deny the allegations of Paragraphs 5, 6, 7 and 8 of the Complaint and, therefore, deny the same and demand strict proof thereof.

7. As to the allegations of Paragraph 9 of the Complaint, Defendants admit, upon information and belief, only that a claim for underinsured motorist benefits was made under the State Auto Policy issued to Ben G. Leaphart, Policy No. ASC3754417, and are without knowledge or information sufficient to admit or deny the remaining allegations of said Paragraph and, therefore, deny the same and demand strict proof thereof.

8. As to the allegations of Paragraph 10 of the Complaint, Defendants crave reference to any denial letter issued by State Auto, which letter speaks for itself and is the best evidence of State Auto's reasons for its denial of Plaintiff's claim and deny any allegations of said Paragraph not fully consistent therewith.

9. As to the allegations of Paragraphs 11, 12, 13, 14 and 15, Defendants crave reference to the Order entered by Judge Milling on October 22, 2008, which speaks for itself and is the best evidence of the findings of fact and conclusions of law contained therein and deny any allegations of said Paragraphs inconsistent therewith.

10. Defendants deny the allegations of Paragraph 16 of the Complaint.

11. As to the allegations of Paragraph 17 of the Complaint, Defendants admit, upon information and belief, that on or around the time Plaintiff turned 16 years of age he was added as an additional driver to the State Auto insurance policy issued to his father and deny all remaining allegations of said Paragraph.

12. As to the allegations of Paragraph 18 of the Complaint, Defendants admit only that J.B. Watts assisted in procuring insurance policies for Plaintiff's father, Ben Leaphart, and added Ben Leaphart's children to the policies as requested by him, including the addition of Plaintiff as a driver on the State Auto policy issued to Ben Leaphart on or around the time Plaintiff turned 16 years of age. Defendants are without knowledge or information sufficient to admit or deny the allegations of Paragraph 18 of the Complaint concerning Plaintiff's schooling, and deny all remaining allegations of said Paragraph.

13. Defendants deny the allegations of Paragraph 19 of the Complaint.

14. Defendants deny the allegations of Paragraph 20 of the Complaint.

15. As to the allegations of Paragraphs 21 and 22 of the Complaint, Defendants crave reference to Exhibit A referenced therein, which speaks for itself and is the best evidence of the information contained therein and deny any allegations of said Paragraphs inconsistent therewith.

16. Defendants deny the allegations of Paragraphs 23, 24 and 25 of the Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Breach of Contract)

17. Responding to the allegations of Paragraph 26 of the Complaint, Defendants repeat and reallege as if set forth verbatim herein the responses set forth above.

18. Defendants deny the allegations of Paragraphs 27, 28, 29, 30, 31 and 32 of the Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Negligence)

19. Responding to the allegations of Paragraph 33 of the Complaint, Defendants repeat and reallege as if set forth verbatim herein the responses set forth above.

20. Defendants deny the allegations of Paragraphs 34, 35 and 36 of the Complaint.

AS TO THE THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)

21. Responding to the allegations of Paragraph 37 of the Complaint, Defendants repeat and reallege as if set forth verbatim herein the responses set forth above.

22. Defendants deny the allegations of Paragraphs 38, 39 and 40 of the Complaint.

AS TO THE FOURTH CAUSE OF ACTION
(Unfair Trade Practices Act)

23. Responding to the allegations of Paragraph 41 of the Complaint, Defendants repeat and reallege as if set forth verbatim herein the responses set forth above.

24. Defendants deny the allegations of Paragraphs 42, 43, 44 and 45 of the Complaint.

25. Defendants deny the allegations of the WHEREFORE Clause and Prayer for Relief and specifically allege that Defendants have no liability to Plaintiff and deny all damages claimed.

FOR A FIRST DEFENSE
(Failure to State a Claim)

26. Further answering the Complaint, and as and for a further defense thereto, Defendants allege that the Complaint fails to state a claim upon which relief can be granted, and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE
(Failure to Mitigate)

27. Further answering the Complaint, and as and for a further defense thereto, upon information and belief, Plaintiff has failed to mitigate his damages, which are expressly denied, and his failure to do so constitutes a bar and/or limitation of Plaintiff's ability to recover against Defendants.

FOR A THIRD DEFENSE
(Comparative Negligence)

28. Further answering the Complaint, and as and for a further defense thereto, Defendants would allege and show that even if Defendants were negligent in any respect, which is denied, Plaintiff was comparatively negligent and/or otherwise at fault, which fault exceeded any fault on the part of Defendants, which is denied, and which fault proximately caused Plaintiff's alleged damages, if any, which are denied, so as to bar any recovery herein pursuant to the doctrine of comparative negligence. Alternatively, Plaintiff was comparatively negligent and/or otherwise at fault in an amount equal to or less than any fault of Defendants, which is denied, which fault proximately caused Plaintiff's alleged damages, if any, which are denied, so as to proportionally reduce any recovery herein pursuant to the doctrine of comparative negligence.

FOR A FOURTH DEFENSE
(Negligence of Third Parties)

29. Further answering the Complaint, and as and for a further defense thereto, Defendants allege that any injuries and damages allegedly suffered by Plaintiff, which are denied, were due to or caused by third persons over whom Defendants had no control, whose actions caused the alleged damages, if any, which are denied.

FOR A FIFTH DEFENSE
(Estoppel and Waiver)

30. Further answering the Complaint, and as and for a further defense thereto, Defendants allege that Plaintiff is estopped by his own conduct from asserting a claim for the recovery sought herein and also alleges that Plaintiff waived any claims against Defendants by and through its conduct so as to bar recovery herein.

FOR A SIXTH DEFENSE
(Statute of Limitations)

31. Further answering the Complaint, and as and for a further defense thereto, Defendants allege that some or all of Plaintiff's claims are barred by the applicable statute of limitations.

FOR A SEVENTH DEFENSE
(Intervening/Superseding Acts)

32. Further answering the Complaint, and as and for a further defense thereto, any damages sustained by Plaintiff, which are denied, were solely caused by the acts or omissions of parties or persons other than Defendants, over whom Defendants had no control, which acts or omissions constitute the intervening and/or superseding cause of Plaintiff's alleged damages, if any, which are denied, and bar Plaintiff's claims in the Complaint.

FOR AN EIGHTH DEFENSE
(Assumption of the Risk)

33. Further answering the Complaint, and as and for a further defense thereto, Defendants allege that the claims in the Complaint are barred by the doctrine of assumption of the risk.

FOR A NINTH DEFENSE
(No Proximate Cause)

34. Further answering the Complaint, and as and for a further defense thereto, Plaintiff has suffered no loss or damage proximately caused by or resulting from any actions or inactions of Defendants.

FOR A TENTH DEFENSE
(Constitution)

35. Further answering the Complaint, and as and for a further defense thereto, Plaintiff's claim for recovery of punitive damages is barred by the South Carolina Constitution and the Constitution of the United States because no reasonable and well-defined limits are

placed on such punitive damages award and because the award and payment of punitive damages would constitute an imposition of punishment on Defendants without adequate notice of the substantive rules governing the conduct giving rise to such punitive damages.

FOR AN ELEVENTH DEFENSE
(No Basis for Punitive Damages)

36. Further answering the Complaint, and as and for a further defense thereto, Defendants allege Plaintiff fails to state any basis upon which punitive damages are recoverable against Defendants and accordingly, Plaintiff's prayer for such damages should be dismissed and/or stricken from the Complaint pursuant to Rules 12(b)(6) and/or 12(f) of the South Carolina Rules of Civil Procedure.

FOR A TWELFTH DEFENSE
(Reservation of Rights)

37. Further answering the Complaint, and as and for a further defense thereto, Defendants hereby give notice that they reserve the right to assert, and do not waive, any additional or further defenses as may be revealed by additional information acquired during discovery or otherwise, and reserve the right to amend this Answer to assert any such defenses.

FOR A THIRTEENTH DEFENSE
(Improper Venue)

38. Further answering the Complaint, and as and for a further defense thereto, Defendants allege that venue is improper in Richland County.

WHEREFORE, having answered the Complaint herein, Defendants pray that the same be dismissed as to them and the relief demanded by Plaintiff be denied; that costs and fees be awarded to Defendants; and for such other relief as this Court deems just and proper.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANTS

January ¹⁴, 2011

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
B. GIBBS LEAPHART, JR.,)
)
PLAINTIFF,)
)
VS.)
)
J.B. WATTS COMPANY, INC., AND)
J.B. WATTS,)
)
DEFENDANTS.)
)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-40-7127

MOTION TO TRANSFER VENUE

TO: THORNWELL F. SOWELL, ESQ. AND DAVID C. DICK, ESQ. ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE THAT Defendants J.B. Watts Company, Inc. ("J.B. Watts Company"), and J.B. Watts ("Mr. Watts"), by and through their undersigned counsel, pursuant to Rules 12(b)(3) and 82(b) of the South Carolina Rules of Civil Procedure, hereby move the Court for a transfer of this action from Richland County to Greenville County.

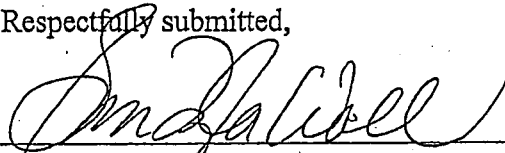
Venue is improper in Richland County. Pursuant to S.C. Code Ann. § 15-7-30(B), "[i]f there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section." As to Mr. Watts, under S.C. Code Ann. § 15-7-30(C), an action against a resident individual defendant "must be brought and tried in the county in which the: (1) defendant resides at the time the cause of action arose; or (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred." Mr. Watts resides in Greenville County, as alleged by Plaintiff in Paragraph 3 of the Complaint, and the most substantial part of the alleged acts or omissions took place in Greenville County, where the alleged dealings with Defendants took place. Thus, under S.C. Code Ann. § 15-7-30(C)(1) and (2), venue is proper only in Greenville County.

As to J.B. Watts Company, under S.C. Code Ann. § 15-7-30(E), “[a] civil action tried pursuant to this section against a domestic corporation, domestic limited partnership, domestic limited liability company, or domestic limited liability partnership, must be brought and tried in the county in which the: (1) corporation, limited partnership, limited liability company, or limited liability partnership has its principal place of business at the time the cause of action arose; or (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.” J.B. Watts Company has its principal place of business in Greenville County, as alleged by Plaintiff in Paragraph 2 of the Complaint. In addition, as stated earlier, the most substantial part of the alleged acts or omissions took place in Greenville County, where the alleged dealings with Defendants took place. Accordingly, venue is proper only in Greenville County under S.C. Code Ann. § 15-7-30(E).

Because the individual Defendant resides in Greenville County, the corporate Defendant has its principal place of business in Greenville County, and the most substantial part of the alleged acts or omissions took place in Greenville County, venue is proper in Greenville County, not Richland County, under S.C. Code Ann. § 15-7-30. Consequently, pursuant to Rule 82(b), SCRPC, venue must be transferred to Greenville County. *See also* S.C. Code Ann. §15-7-100(1); *Whaley v. CSX Transportation, Inc.*, 609 S.E.2d 286, 292 (S.C. 2005) (“A defendant’s right to be tried in the county of his residence is a substantial right.”).

This motion is based upon the pleadings, the applicable law, and any memorandum of law or other material that may be submitted to the Court before or at the hearing on this Motion.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANTS

January 6, 2011

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

B. GIBBS LEAPHART, JR.,)
)
PLAINTIFF,)
)
VS.)
)
J.B. WATTS COMPANY, INC., AND)
J.B. WATTS,)
)
DEFENDANTS.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-40-7127

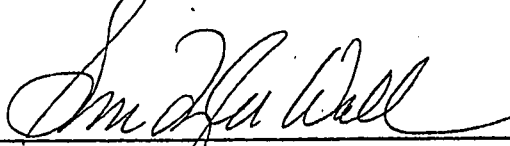
MOTION TO DISMISS

TO: THORNWELL F. SOWELL, ESQ. AND DAVID C. DICK, ESQ., ATTORNEYS FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE THAT Defendants J.B. Watts Company, Inc. and J.B. Watts (“Defendants”), by and through their undersigned counsel, hereby move the Court, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, to enter an Order dismissing, with prejudice, Plaintiff’s fourth cause of action against Defendants for alleged violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”). This case arises from an insurance policy procured through Defendant J.B. Watts Company, Inc., an independent insurance agency and J.B. Watts, a licensed insurance agent. Plaintiff’s SCUTPA claim is precluded because the alleged conduct is exempt from coverage under SCUTPA. Section 39-5-40(c) of SCUTPA provides that the statute “does not supersede or apply to unfair trade practices covered and regulated under Title 38, Chapter 57, §§ 38-57-10 through 38-5[7]-320 [the Insurance Trade Practices Act].” The Insurance Trade Practices Act specifically regulates unfair trade practices in the insurance industry in South Carolina. Because the Insurance Trade Practices Act and the conduct proscribed therein fall within the exemption from SCUTPA set forth in Section 39-5-40(c), Plaintiff’s fourth cause of action must be dismissed.

This motion is based upon the pleadings, the applicable law, and any memorandum of law or other material that may be submitted to the Court before or at the hearing on this motion:

Respectfully submitted,



Susan Taylor Wall
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Amanda C. Williams
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ATTORNEYS FOR DEFENDANTS

January 6, 2011

Charleston, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
)	
B. GIBBS LEAPHART, JR.,)	
	)	C/A No.: 2011-CP-23-03347
Plaintiff,)	
)	
vs.	)	DEFENDANTS' MOTION FOR
	)	SUMMARY JUDGMENT
J.B. WATTS COMPANY, INC., AND J.B.)	
WATTS,)	
)	
Defendants.)	

TO: THORNWELL F. SOWELL, ESQ. AND DAVID C. DICK, ESQ., ATTORNEYS FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE THAT Defendants J.B. Watts Company, Inc. and J.B. Watts ("Defendants"), by and through their undersigned counsel, hereby move the Court, pursuant to Rule 56 (b) of the South Carolina Rules of Civil Procedure, for an Order granting summary judgment to Defendants on all claims asserted by Plaintiff B. Gibbs Leaphart ("Plaintiff"), in the Complaint. Defendants are entitled to judgment as a matter of law on Plaintiff's claims for breach of contract, negligence, and breach of fiduciary duty.¹ The grounds for this Motion are:

1. There are no issues of material fact in dispute on the contract, negligence and breach of fiduciary duty claims.
2. Plaintiff's contract, negligence and breach of fiduciary duty claims are barred by the applicable statute of limitations.

¹ Defendants filed a Motion to Dismiss Plaintiff's South Carolina Unfair Trade Practices Act ("SCUPTA") claim on January 7, 2011. The grounds for dismissal of Plaintiff's SCUPTA claim are set forth in that Motion and any memorandum of law or other material that may be submitted to the Court before or at the hearing on that Motion. The hearing for Defendants' Motion to Dismiss has not been set as of the date of the filing of this Motion.

3. Plaintiff's breach of contract claim should be dismissed for the additional reason that there was no mutual understanding and intent among the parties sufficient to form an implied contract.

4. Plaintiff's negligence claim fails for the additional reason that Plaintiff has no competent evidence of a breach of the standard of care by Defendants proximately causing damages to Plaintiff. Specifically, and without limitation, as a matter of law, insurance agents have no duty to advise on coverage. Further, it is undisputed that neither Plaintiff, nor his father, sought the advice of Defendants concerning the insurance policy at issue.

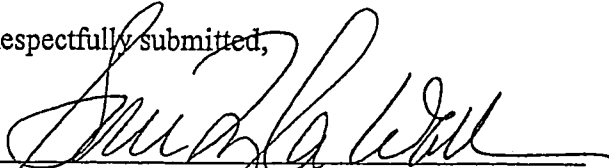
5. Plaintiff's breach of fiduciary duty claim also fails as a matter of law because Plaintiff cannot prove that he had a fiduciary relationship with Defendant or that Defendant breached any such duty owed to Plaintiff.

This Motion is based upon the pleadings, deposition testimony and exhibits, the controlling law, a Memorandum of Law to be filed with any supporting affidavits, and such other and further material as the Court may deem appropriate.

WHEREFORE, Defendants respectfully request that the Court issue an Order granting their Motion for Summary Judgment dismissing Plaintiff's Complaint and the claims asserted therein, *with prejudice*.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,



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ATTORNEYS FOR DEFENDANTS

October 5, 2011

Charleston, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
)	
B. GIBBS LEAPHART, JR.,)	
	)	C/A No.: 2011-CP-23-03347
Plaintiff,)	
)	
vs.	)	DEFENDANTS' MEMORANDUM OF
	)	LAW IN SUPPORT OF THEIR
J.B. WATTS COMPANY, INC., AND J.B.	)	MOTION FOR SUMMARY
WATTS,	)	JUDGMENT
)	
Defendants.)	
)	

Defendants J.B. Watts Company, Inc. and J.B. Watts (“Watts” or “Defendants”), by and through their undersigned counsel, respectfully submit this Memorandum of Law in Support of Defendants’ Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

I. INTRODUCTION

Watts is a family owned independent insurance agency in Greenville, South Carolina. Plaintiff Gibbs Leaphart’s father purchased automobile insurance through Watts for numerous cars titled in the father’s name. In May 2004, Leaphart was the passenger in a single car accident. After the accident, Leaphart recovered \$200,000 from the at-fault driver. Leaphart then sought to recover UIM benefits under his father’s automobile policy. After litigation, the court ruled that Leaphart had no right to recover UIM benefits because he was not a named insured, did not fall within the definition of family member, and was not occupying one of his father’s cars when the accident took place. More than six years after the accident, Leaphart filed an action against Watts attempting to assert causes of action for breach of contract, negligence, breach of fiduciary duty and violation of the South Carolina Unfair Trade Practices Act

("SCUPTA").¹ All claims fail as a matter of law because (1) all claims are barred by the applicable statute of limitations; (2) Watts had no duty to advise under the undisputed facts; (3) there was no mutual assent necessary to create a binding contract; (4) Watts was not the proximate cause of the denial of UIM coverage; (5) Watts was not in a fiduciary relationship with Leaphart; and (6) SCUPTA does not apply to an insurance agency or agent.

II. PROCEDURAL BACKGROUND

On October 13, 2010, Leaphart filed this Action in Richland County. Watts timely filed an Answer and Amended Answer to the Complaint, a Motion to Transfer Venue, and a Motion to Dismiss Plaintiff's SCUPTA claim. Venue was transferred to Greenville County and the case was assigned Civil Action No. 2011-CP-23-03347. On October 10, 2011, Watts filed a Motion for Summary Judgment.

III. STATEMENT OF FACTS

Leaphart's father purchased a State Auto policy through Watts which listed several automobiles he owned, including a 1992 GMC Jimmy S150 ("GMC Jimmy") that Plaintiff drove. (Pl. Dep. at p. 47, Ex. 1; State Auto Policy, Ex. 2.) Leaphart and his father admit that they failed to read, review, or ask any questions about coverage under the State Auto policy before the May 2004 accident. (Pl. Dep. at pp. 48, 51, Ex. 1; Ben Leaphart Dep. at pp. 47, 49, Ex. 3.) Leaphart admits that he had *no* dealings with Watts in purchasing or discussing his father's automobile policy up to the time of the accident. (Pl. Dep. at p. 54, Ex. 1.) Plaintiff only asked that someone at the agency send him copies of proof of insurance for the GMC Jimmy. (Pl. Dep. at pp. 54, 64, Ex. 1.)

¹ Defendants filed a Motion to Dismiss Plaintiff's SCUPTA claim on January 7, 2011. For efficiency purposes, we have briefed the grounds for that motion in this memorandum of law.

On May 5, 2004, Leaphart was injured while riding as a passenger in Tara Louise Austin's ("Austin") car. (Pl. Dep. pp. 29, 31-32, Ex. 1.) Leaphart recovered liability limits of \$100,000 and underinsured ("UIM") limits of \$100,000 from State Farm, insurer of the Austin car. (Pl. Dep. pp. 33-34, Ex. 1.) On October 26, 2004, Leaphart signed a Covenant Not to Execute which stated that Leaphart's UIM coverage under his father's State Auto insurance policy was in dispute. (Covenant Not to Execute, Ex. 4.)

On May 7, 2007, after receiving full benefits under the State Farm Policy, Leaphart filed a lawsuit against Austin in order to implicate the State Auto Policy. Under the applicable statutory provisions, State Auto entered an appearance and defended the case. (Notice of Appearance and Answer in *B. Gibbs Leaphart, Jr. vs. Tara Louise Austin*, C.A. No.: 2007-CP-27-291, Ex. 5.) In its Notice of Appearance and Answer, State Auto preserved its rights with respect to coverage. (Ex. 5.) In the litigation, State Auto took the position that Leaphart was not covered under the policy's UIM provision because he was not a named insured, did not qualify as a family member, nor did the accident involve one of the automobiles listed in the policy. By filing the lawsuit, Leaphart took the position that he fell within the definition of family member under the UIM provision of the policy. The court ultimately ruled that Leaphart was not entitled to UIM coverage under his father's policy.

Leaphart now claims that Watts should have known about his personal whereabouts and activities in 2004 and advised as to UIM coverage issues even though Leaphart admits he had no contact with Watts as to these matters and never read or asked questions about the policy. The law in South Carolina is clear that Watts had no duty to Leaphart under the admitted facts. Therefore, all claims fail and should be dismissed.

IV. LEGAL STANDARD

Rule 56, SCRCPP, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, “this initial responsibility may be discharged by ‘showing’—that is, pointing out to the trial court—that there is an absence of evidence to support the nonmoving party’s case.” *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party makes this demonstration, the opposing party “must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*.” *Id.* (emphasis in original); *see also Midland Mut. Life Ins. Co. v. Harrell*, 331 S.C. 394, 397, 503 S.E.2d 189, 190 (Ct. App. 1998). The nonmoving party must specifically set forth such facts, “as would be admissible in evidence,” to show that a true jury issue exists. *See* S.C.R. Civ. P. 56(e). Under South Carolina law, where “plain, palpable and indisputable facts exist on which reasonable minds cannot differ,” summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

V. DISCUSSION

A. All Claims Are Barred By The Applicable Statute of Limitations

It is well settled in South Carolina that claims for breach of contract, negligence, breach of fiduciary duty and violation of the SCUPTA must be brought within three years. *See* S.C. Code Ann. § 15-3-530; S.C. Code Ann. § 39-5-150. The statutory period begins to run when the claimant could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his favor, rather than when the claimant obtains actual knowledge of

either the potential claim or the facts giving rise thereto. *Austin v. Conway Hosp., Inc.*, 292 S.C. 334, 339, 356 S.E.2d 153, 156 (Ct. App. 1987) (quoting *Rogers v. Efrid's Exterminating Co.*, 284 S.C. 377, 379, 325 S.E.2d 541, 542 (1985)). Specifically the discovery rule focuses upon whether the complaining party acquired knowledge of *any* facts "sufficient to put said party on inquiry, which, if developed, will disclose" the alleged conduct. *Burgess v. American Cancer Soc.*, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. app. 1989) (quoting *Walter J. Klein Co. v. Kneece*, 239 S.C. 478, 484, 123 S.E.2d 870, 874 (1962)).

It is not necessary that the claimant acquire precise information of the alleged wrongful conduct for the statute to begin to run, but merely acquire "such facts as would have led to the knowledge thereof, if pursued with reasonable diligence." *Grayson v. Fidelity Life Ins. Co. of Philadelphia*, 114 S.C. 130, 103 S.E. 477, 478 (S.C. 1920). South Carolina law requires a party to exercise reasonable diligence once he is on notice that some right of his has been affected. See *Dean v. Ruscon*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996), *Snell v. Columbia Gun Exchange, Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (S.C. 1981). The South Carolina Supreme Court reiterated that the exercise of reasonable diligence means:

that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist. The statute of limitations begins to run from this point, and not when advice of counsel is sought or a full-blown theory of recovery developed.

Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d at 818 (emphasis in original)(citing *Berry v. McLeod*, 328 S.C. 435, 445, 492 S.E.2d 794, 799 (S.C. Ct. App. 1997)). The standard as to when the limitations period begins to run is objective, rather than subjective. *Kreutener v. David*, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995); *Burgess v. American Cancer Soc'y*, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989).

Leaphart had both actual knowledge and was on inquiry notice *more than three years* before filing this lawsuit against Watts on October 13, 2010. Leaphart acknowledged that his qualification for UIM coverage under his father's State Auto policy was in dispute when he signed the Covenant Not to Execute on October 26, 2004—almost *six years* before filing this lawsuit. (Ex.4.) Leaphart also knew that State Auto was preserving its rights with respect to UIM coverage when it filed its Notice of Appearance and Answer on September 28, 2007—*over three years* before filing this lawsuit. (Ex. 5.) Thus, all of Leaphart's claims must be dismissed based on his failure to file this claim within three years of when he knew or should have known he might have a claim against Watts.

B. All Claims Fail Because Defendants Did Not Breach Any Duty to Plaintiff

1. Defendants Had No Duty to Advise As A Matter of Law

“Generally, an insurer and its agents owe no duty to advise an insured.” *Trotter v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 465, 471, 377 S.E.2d 343, 347 (Ct. App. 1988) (internal citations omitted). Although an insurer may assume a duty to advise an insured either expressly or impliedly, it is the insured who bears the burden of proving the undertaking. *Id.* An implied undertaking may be shown if: (1) an agent received the compensation beyond a mere payment of the premium (not alleged in this case); (2) the insured made a clear request for advice; or (3) there is a course of dealing over an extended period of time which would put an objectively reasonable insurance agent on notice that his advise is being sought and relied on. *Id.*

In *Trotter*, a case on point, the insured claimed that his insurance agent was negligent in failing to advise him of an exclusion in his motor vehicle policy. *Id.* at 468, 377 S.E.2d at 345. The court held that the insurance agent had no duty to advise on coverage and a directed verdict should have been granted by the trial court. *Id.* at 473-74, 377 S.E.2d at 348.

a. Plaintiff Did Not Request Watts' Advice and Watts Did Not Undertake to Advise

Under the undisputed facts of this case, neither Leaphart nor his father requested advice from Watts as to the insurance coverage on the vehicle that Leaphart operated, Watts did not undertake to advise Plaintiff or his father, and there was no course of dealing to put the agency on notice that Plaintiff sought or relied on Watts' advice. First, it is undisputed that Watts did not have a duty to advise Leaphart or his father as to the son's insurance needs because it is undisputed that neither Leaphart nor his father requested Watts' advice. (Pl. Dep. pp. 48-49, 51, Ex. 1; Ben Leaphart Dep. pp. 66-68 Ex. 3.) Both Leaphart and his father testified that they asked no questions regarding coverage under the policy at issue. (Pl. Dep. pp. 48-49, 51, Ex. 1; Ben Leaphart Dep. pp. 66-68, Ex. 3.) Rather, they simply assumed that Leaphart was "fully covered" under his father's policy. (Pl. Dep. p. 107, Ex. 1; Ben Leaphart Dep. p. 94, Ex. 3.) However, the law is clear that an insured's testimony that he assumed an agent would obtain the best coverage for him is not sufficient to create a duty to advise. *Houck v. State Farm Fire and Casualty Ins. Co.*, 366 S.C. 7, 620 S.E.2d 326 (2005). As a matter of settled law, with "[a] request for 'full coverage,' [or] 'the best policy,'" such (or similar) expression, an insurance agent is not "under a duty to determine the insured's full insurance needs, to advise the insured about coverage, or to use discretion and expertise to determine what coverage the insured should purchase." *Id.* at 472, 377 S.E.2d at 347. Clearly, where a plaintiff does not even assert that he asked for advice from his agent, the plaintiff cannot maintain an action.

b. Plaintiff Did Not Provide Defendants With Sufficient Information Regarding His Living Situation To Create A Duty To Advise

Leaphart's allegation that Defendants knew he was living in Columbia at some point prior to the accident either through an alleged conversation between Watts and Plaintiff's father "sometime between the year 2001 and [the 2004 accident]" during which Plaintiff's father

“mentioned the fact that Gibb was in Columbia” or Leaphart’s alleged request on a few occasions that someone at the agency send proof of insurance cards to him in Columbia, did not create a duty on the part of Defendants to advise. (Ben Leaphart Dep. at pp. 21-22, Ex. 3; Pl. Dep. at pp. 102-04, Ex. 1.) The information was insufficient as a matter of law to place an insurance agent on notice that if challenged, Leaphart might not qualify for UIM coverage if he were ever involved in an accident in a non-covered vehicle. The language in the policy defines the term “family member” as a person related to the insured by blood, marriage or adoption who is a “resident of [the insured’s] household.” (Ex. 2.) The term “resident” is not defined in the policy. *Id.* Rather, the term “resident relative” is a term that has been defined by the case law in South Carolina. Accordingly, there is no bright line test for determining under what circumstances an individual is a resident.

The South Carolina Supreme Court first analyzed whether a person was a resident relative of the same household as the named insured in *Buddin v. Nationwide Mut. Ins. Co.*, 250 S.C. 332, 157 S.E. 633 (1967). The Court stated “a resident of the same household is one, other than a temporary or transient visitor, who lives together with others in the same house for a period of some duration, although he may not intend to remain there permanently.” *Id.* Since *Buddin*, this standard has been applied to varying factual situations to make it clear the resident relative analysis depends heavily on the facts of each situation. *Auto-Owners Ins. Co. v. Horne*, 356 S.C. 52, 61, 586 S.E.2d 865, 870 (Ct. App. 2003). The Court in *Buddin* noted several factors for possible consideration of whether or not a person is a resident, but stated that none of the factors was determinative of the issue. *Buddin*, 250 S.C. at 338-39, 157 S.E.2d at 636. The factors included: (1) the payment of rent or board; (2) the presence or absence of control over the relative; and (3) whether there was a lack of a permanent living arrangement. *Id.*

In a more recent case, *Richardson v. S.C. Farm Bureau Mut. Ins. Co.*, 336 S.C. 233, 236-37, 519 S.E.2d 120, 122 (Ct. App. 1999), the Court considered several additional factors in determining whether a daughter was a resident relative of her parents' household when she had moved away as a graduate student including: (1) the personal items she maintained in her parents' home; (2) the number of places she had lived preceding the accident; (3) the number of times per month she visited her parents and the length of the visits; (4) the length of time she spent with her parents in the summer; (5) whether she filed her own tax returns; (6) where she was registered to vote; and (7) her work and income prior to the accident.

The case law in South Carolina demonstrates that merely telling Watts that Leaphart was "living in Columbia" sometime prior to the accident is insufficient information to put an insurance agent on notice that Plaintiff would not be eligible for UIM coverage under the State Auto policy if he was a passenger in a non-covered car. As set forth in the *Buddin* and *Richardson* cases, Plaintiff must have provided far more information. Indeed, Plaintiff and his father admit there was no further discussion beyond merely mentioning that Plaintiff lived in Columbia sometime before the accident. (Pl. Dep. at pp. 110-13, Ex. 1.) Plaintiff further admitted that he considered his father's address to be his permanent address at the time of the accident. (Pl. Dep. at p. 17, Ex. 1.)

Similarly, the mere fact that one of the other cars listed in the policy was listed as being "garaged" in Columbia does not somehow create a duty on the part of Watts to advise. This argument is entirely disingenuous because Plaintiff did not even drive the car listed as being "garaged" in Columbia. (Pl. Dep. at p. 90, Ex. 1.) In fact, Leaphart's father's Greenville law firm, Ben Leaphart P.A., was listed as an additional insured for the GMC Jimmy that Plaintiff drove and the father provided a Greenville address for the car. (Ex. 2, Ben Leaphart Dep. at pp. 43-44, Ex. 3.) Accordingly, nothing on the face of the applicable State Auto policy could have

plausibly informed Watts that Leaphart did not qualify for UIM coverage under his father's policy if he were to be injured while riding in a car that was not listed on the policy.

c. Course of Dealing Between Plaintiff and Watts

In addition, there is no evidence of a course of dealing between Leaphart and Watts over an extended period of time which would have put Watts on notice that his advice was being sought and relied on. Although Leaphart's father had been procuring insurance through Watts for several years, the law is clear that mere length of time is not enough to establish a course of dealing sufficient to create a duty on behalf of the insurance agent/agency to advise. *Trotter*, 297 S.C. 297 S.C. at 473, 377 S.E.2d at 348 (the plaintiff has the burden of proving that his discussions with the agency would put a reasonable insurance agent on notice that his advice was being sought.) Both Leaphart and his father testified that they had no recollection of asking any questions about the State Auto policy before the May 5, 2004 accident. (Pl. Dep. at pp. 51, 61, Ex. 1; Ben Leaphart Dep. at p. 49, Ex. 3.) Leaphart father's dealings with Watts were minimal and involved nothing more than routine business. Even with periodic visits to discuss insurance, the law does not impose a duty on insurance agents to advise the insured. *Trotter*, 297 S.C. at 470, 473, 377 S.E.2d at 346, 348. Thus, under clear South Carolina law, Leaphart's claims against Watts fail as a matter of law.

2. There Was No Breach of Contract Claim Because There Was No Mutual Intent or Understanding Between the Parties

Leaphart asserts that an implied contract in fact existed between his father and Watts to which he was a third party beneficiary to "fully insure" him. First, as discussed above, South Carolina courts have rejected any claim that an insurance agency has a duty to insure that a customer is "fully insured." Furthermore, as to implied in fact contracts, the Court of Appeals of South Carolina has held,

An implied contract, like an express contract, rests on actual agreement of the parties to be bound to a particular undertaking. The parties must manifest their mutual assent to all essential terms of the contract in order for an enforceable obligation to exist. If one of the parties has not agreed, then a prerequisite to formation of the contract is lacking. [Citations omitted.]

Stanley Smith & Sons, Inc. v. Limestone College, 283 S.C. 430, 433, 322 S.E.2d 474, 477 (Ct. App. 1984).

Thus, Leaphart must prove Watts' assent by conduct to all terms essential to create a binding contract to "fully insure" Plaintiff. *Id.* As set forth above, there was no course of dealing that created a duty or an implied contract between the parties for Watts' advice. Moreover, the undisputed facts establish that there was no mutual intent and understanding among the parties as to what constituted "full insurance." Leaphart's father admitted that he had no conversations with Watts regarding UIM coverage for his son or for "full coverage":

Q: Did you ever ask anyone at the J.B. Watts Agency as to whether the drivers on your policy had full coverage?

A: Didn't see the need to, so no.

Q: Did you ever ask anyone at the J.B. Watts Agency about UIM coverage for your son Gibbs before his accident in 2004?

A: No.

(Ben Leaphart Dep. at pp. 67-68, Ex. 3.)

Q: ... [Y]ou never told anyone at J.B. Watts what you meant by what you're now characterizing as full protection, correct? Never had a conversation about full—

A: Never had a conversation about any of that.

Q: --protection?

A: Right.

(Ben Leaphart Dep. at pp. 67-68, Ex. 3.)

Accordingly, there was no mutual intent among the parties and no contract was formed. Thus, the breach of contract claim should be dismissed as a matter of law.

C. Watts Was Not The Proximate Cause Of Plaintiff's Inability to Obtain Additional UIM Coverage.

Watts was not the proximate cause of Plaintiff's inability to obtain UIM coverage as the passenger in a non listed vehicle under his father's automobile policy. "Proximate cause requires proof of both causation in fact and legal cause. Causation in fact is proved by establishing the plaintiff's injury would not have occurred "but for" the defendant's action. Legal cause is proved by establishing foreseeability." *Mellen v. Lane*, 377 S.C. 261, 278-79, 656 S.E.2d 236, 245 (Ct. App. 2008) (internal quotations and citations omitted).

Both Plaintiff and his father are the direct and legal cause of Plaintiff's inability to recover under the UIM provision. Both admit they failed to read the insurance policy at issue, which policy was in the father's possession for a considerable period of time before the accident, and both admit they did not ask Watts questions about the policy or ask for any advice. (Pl. Dep. pp. 48-49, 51, Ex. 1; Ben Leaphart Dep. p. 49, Ex. 3.)

- Q: ... But in fact you had never read the policy before the accident, had you??
A: That's correct.
Q: So how did you feel that you were fully covered?
A: Because I was never told that I was not fully covered.
Q: But you never asked whether or not you were fully covered, did you?
A: That's correct.

(Pl. Dep. at p. 144, Ex. 1.)

It is well settled that one cannot complain of misrepresentation concerning the contents of a written instrument in his possession when the truth could have been ascertained by reading the instrument. *Doub v. Weathersby-Breeland Ins. Agency*, 268 S.C. 319, 326, 233 S.E.2d 111, 114 (1977). A person must read the document and avail himself of every reasonable opportunity to understand its contents and its meaning. *Id.* Additionally, the law is clear that a person must prove that he had discussions with the agent that would put a reasonable agent on notice that his

advice was being sought. *Trotter*, 297 S.C. at 473, 377 S.E.2d at 348 fn. 7; *Mullen v. State Farm Casualty and Fire Co.*, C/A No. 09-2392-JFA, 2010 WL 2228969 (D.S.C. 2010) (granting summary judgment on the plaintiff's negligence and gross negligence claims where he made no clear request for advice and made only an allegation that a conversation occurred about adequacy of coverage.) Here, Plaintiff and his father's admission that they never asked for advice combined with their failure to read the policy is the proximate cause of the inability to collect under the policy.

D. Plaintiff Had No Fiduciary Duty Relationship with Defendants.

A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence. *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711, 715 (2003); *Regions Bank v. Schmauch*, 354 S.C. 648, 670 582 S.E.2d 432, 444 (Ct. App. 2003); *Steele v. Victory Sav. Bank*, 295 S.C. 290, 293, 368 S.E.2d 91, 93 (Ct. App. 1998). As a general rule, mere respect for another's judgment is not sufficient to establish the relationship. *Burwell v. S.C. Nat'l Bank*, 288 S.C. 34, 41, 340 S.E.2d 789, 790 (1986). Furthermore, a fiduciary relationship generally cannot be created by the unilateral action of one party. *Regions Bank*, 354 S.C. at 670, 582 S.E.2d at 444.

There are no known South Carolina case holding that an insurance agent is a fiduciary to an insured. Rather, the case law appears to be to the contrary. See *Gordon v. Fid. Cas. Co. of N.Y.*, 238 S.C. 438, 120 S.E.2d 509 (1961) (finding no relation of trust and confidence between an insured and insurance agent); *O'Connor v. Bhd. of R.R. Trainmen*, 217 S.C. 442, 60 S.E.2d 884 (1950) (holding there was no relation of trust and confidence between insured and soliciting agent where the agent did nothing to prevent insured from reading the application, among other factors).

In order to succeed on his breach of fiduciary duty claim, Plaintiff must prove that he imposed a special confidence in Watts and that Watts understood and accepted this confidence. There is no evidence to satisfy this threshold burden: *all evidence is to the contrary*. Leaphart admits that he had no involvement with Watts prior to the accident other than requesting that the agency send him copies of proof of insurance on a few occasions. (Pl. Dep. at pp. 52, 54, 64.) Indeed Plaintiff had never even met J.B. Watts prior to his deposition in this case. (Pl. Dep. at p. 115, Ex. 1.) Because there is no evidence that Leaphart acted in a manner leading Watts to reasonably conclude that he imposed a special confidence or trust in them, there can be no claim of a fiduciary relationship. Furthermore, as discussed above, there is no evidence of a breach of duty. Accordingly, Leaphart's breach of fiduciary duty claim against Watts must be dismissed as a matter of law.

E. Leaphart's SCUPTA Claim Fails As A Matter of Law Pursuant to the Insurance Practices Exemption.

The SCUPTA creates a private right of action for "[a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by §39-5-20." S.C. Code § 39-5-40(a). However, SC Code §39-5-40(c) specifically exempts certain unfair trade practices from coverage under the SCUPTA. Section 39-5-40(c) states, "[t]his article does not . . . apply to unfair trade practices covered and regulated under Title 38, Chapter 57, §§ 38-57-10 through 38-55-320 [Trade practices in the insurance business]." Thus, "all unfair trade practices regarding the insurance business are regulated by the Insurances Trade Practices Act, §§ 38-57-10 *et seq.*, and are exempt from the coverage of SCUPTA." *Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F.Supp. 128, 130-31 (D.S.C. 1994). Additionally, several courts in the District of South Carolina have dismissed SCUPTA claims pursuant to § 39-5-40(c). *See e.g., Ins. Products Mktg, Inc. v. Conseco Life Ins. Co.*, Civil

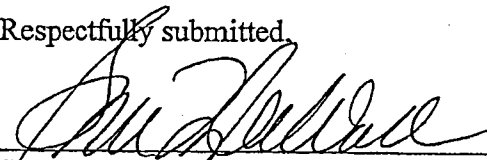
Action No. 9:11-cv-01269-PMD, 2011 WL 3841269 (D.S.C. Aug. 29, 2011); *Newman v. Bankers Life and Casualty Co.*, Civil No. 2:10-CV-02135-DCN, 2010 WL 4638566 (D.S.C. 2010) (dismissing plaintiff's SCUPTA cause of action based on conduct concerning the sale of insurance because the "insurance business is exempt from SCUPTA" and there was "no possibility" that plaintiff could succeed on his claim).

It is undisputed that Leaphart's claim under SCUPTA relates solely to a dispute over insurance coverage. Such claim is not supported by the terms of the SCUPTA itself nor by the relevant cases interpreting the Act. For these reasons, Leaphart's SCUPTA claim must be dismissed as a matter of law.

VI. CONCLUSION

For all of the foregoing reasons and any others in the record, Defendants respectfully request that the Court issue an Order GRANTING Defendant's Motion for Summary Judgment and dismissing Plaintiff's Complaint as to it, *with prejudice*.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANTS

December 14, 2011

Charleston, South Carolina

EXHIBIT 1

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
 COUNTY OF GREENVILLE) C/A No.: 2011-CP-23-03347

B. GIBBS LEAPHART, JR.,

Plaintiff,

vs.

J. B. WATTS COMPANY, INC. AND
 J. B. WATTS,

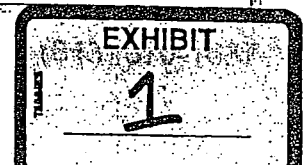
Defendants.

DEPOSITION OF
 GIBBS LEAPHART, JR. ESQUIRE

DATE: August 11, 2011
 TIME: 1:34 p.m. to 5:36 p.m.
 LOCATION: Parker Poe Adams & Bernstein, LLP
 1201 Main Street
 Suite 1450
 Columbia, South Carolina

REPORTED BY: Beth Walters

PALMETTO STATE COURT REPORTERS
 3022 S. Morgan's Point Road, Box 118
 Mt. Pleasant, South Carolina 29466
 843.670.1637 Fax: 843.216.9767
 Palmettostatecr@yahoo.com



1 that you recall purchasing the home at 105
2 Glenbrooke Circle on or around September 2005.

3 A Correct.

4 Q Okay. What lending institution did you
5 borrow the funds from to purchase the home?

6 A BB&T.

7 Q And did you fill out forms in order to
8 purchase that home?

9 A I did.

10 Q And in filling out those forms, did they
11 ask you for your permanent address?

12 A At that time?

13 Q Yes. In or around September 2005.

14 A I guess -- I mean, I guess they would
15 have. I don't recall what each of the documents
16 said.

17 Q And as best you can recall, in setting
18 forth your permanent address for purposes of
19 obtaining a bank loan from BB&T, what address did
20 you put down?

21 A In 2005 I don't know. I don't know the
22 answer to that question.

23 Q Do you recall putting down 800 McDaniel
24 Avenue, Greenville 29605?

25 A I could have put that down.

1 point that I moved the last time. I'm sorry.

2 Before I moved to the Hammond address before I moved
3 to my own place. Did that make sense?

4 Q So, do I understand your testimony to be
5 that during the time you were in law school, before
6 the accident, you lived in three different places?

7 A It would have been two different places.
8 And the accident was in the second, and I moved
9 again -- then I moved -- after the accident I moved
10 and then I moved one more time.

11 Q All right. So while you were in law
12 school, and before the accident, and let's back up
13 for purposes of the record, the accident occurred
14 on, let's see, May the 5th, 2004.

15 A Yes, Ma'am.

16 Q Correct? And you had already finished law
17 school but had not yet gone through a graduation
18 ceremony. Correct?

19 A Correct.

20 Q Your classes were over.

21 A Yes, Ma'am.

22 Q When you rented the -- was it a house or
23 an apartment off of Satchel Ford Road?

24 A That was a house.

25 Q All right. When you rented that house,

1 Q After you graduated from law school in the
2 Spring of 2004, did you take the South Carolina Bar
3 Exam in the Summer of 2004?

4 A I did.

5 Q In order to take the Bar Exam, did you
6 fill out an application with the committee on
7 character and fitness?

8 A I'm sure I did.

9 Q And in filling out --

10 A I did. I'm sorry. I did.

11 Q Yeah. In filling out that form, what did
12 you put down as your permanent address? Was it your
13 parents' home in Greenville?

14 A I don't recall.

15 Q Let's talk briefly about the accident.
16 For purposes of the record, you've testified to that
17 accident in some depth in your deposition that was
18 taken on February the 7th of 2008. Is that correct?

19 A Yes, Ma'am.

20 Q So I'm not gonna ask you repeat all those
21 things. Let's just see if we've got a correct
22 understanding of dates. The accident was on May the
23 5th 2004, correct?

24 A Correct.

25 Q And Tara Louise Austin was driving and you

1 were a passenger. Correct?

2 A That's correct.

3 Q She was your girlfriend at the time,
4 correct?

5 A Yes, Ma'am.

6 Q Is she now your wife?

7 A Yes, she is.

8 Q Does she live with you at the address that
9 you've given to us where you bought the house in
10 2005?

11 A Yes, Ma'am. I married her after I moved
12 into that house. Okay.

13 Q You were married in 2008; is that correct?

14 A Yes, Ma'am.

15 Q And the accident happened, was it in
16 Richland?

17 A Yes, Ma'am.

18 Q And you suffered injuries as a result of
19 that accident, correct?

20 A Yes, Ma'am.

21 Q Based upon the information that you gave
22 in the deposition taken in 2008, do we understand
23 that your total medical expenses from that accident
24 were \$65,638,85?

25 A If that's what they say, then that's

1 correct.

2 (Medical Specials for Gibbs Leaphart,
3 Defendants' Exhibit No. 1 is marked for
4 identification.)

5 BY MS. WALL:

6 Q Let's go ahead and -- I'm gonna hand you
7 what we're gonna mark as Defendant's number one.
8 And ask you if you recognize this as a two page
9 document entitled medical specials for Gibbs
10 Leaphart and there's a total on the second page of
11 \$65,638.85.

12 A Yes, Ma'am.

13 Q And to your knowledge is that correct?

14 A Yes, Ma'am.

15 Q Since that totaling as is set for on
16 Exhibit No. 1, have you incurred any additional
17 medical expenses?

18 A No, Ma'am.

19 Q Now, at the time of the accident, the car
20 that you were a passenger in and the car that was
21 driven by Tara Louise Austin was owned by Tara
22 Louise Austin's father. Is that correct?

23 A Yes, Ma'am.

24 Q And Mr. Austin had his insurance under a
25 State Farm policy. Is that correct?

1 A I believe so.

2 Q Do we understand that as a result of the
3 accident on May the 5th 2004, you recovered
4 \$200,000?

5 A You say I've recovered?

6 Q Recovered.

7 A Yes, Ma'am.

8 Q You were paid \$200,000, correct?

9 A Yes, Ma'am.

10 Q And that payment of \$200,000 came under
11 the State Farm policy in the name of Mr. Austin and
12 covered \$100,000 in liability and \$100,000 in under
13 insured motorist coverage, correct?

14 A That's my understanding.

15 (Certificate of Coverage from State Farm
16 Insurance, Defendants' Exhibit No. 2 is marked for
17 identification.)

18 BY MS. WALL:

19 Q And for purposes of clarify in the record
20 hand to you what we've marked as Exhibit No 2. Ask
21 you to identify this as a copy of a certificate of
22 coverage from State Farm Insurance Companies
23 referencing the 1994 Jeep Wrangler that Tara Louise
24 Austin was driving on the date of the accident with
25 the coverage in effect with the limit set forth

1 Q Who owned that car? Who was on the title?

2 A I believe my father is. I don't remember
3 if he transferred the title or not.

4 Q Do you have any evidence that your father
5 transferred the title to the car to you?

6 A No. It was paid off when -- when I got
7 it. But I don't recall whether the title was ever
8 transferred or anything like that. I don't know.

9 Q So to your knowledge sitting here today,
10 the title was in your father's name; is that
11 correct? Is that your best recollection?

12 A To my knowledge it was probably in his
13 name. But I don't recall whether it was switched or
14 not.

15 Q Who paid the taxes on the car?

16 A While I had it, he did. Being -- that
17 being my father.

18 Q And who took out insurance on that car?

19 A I believe that was covered under the --
20 the policy in question.

21 Q So your father took out the policy in
22 question, correct?

23 A Yes.

24 Q So your father took out the insurance on
25 the 1992 GMC Jimmy S150, correct?

1 A Correct.

2 Q Before the accident on May the 5th 2004,
3 did you ever review your -- the automobile policy
4 under which you were an insured?

5 A Under -- by which date? As of when?

6 Q As of the time of the accident.

7 A I have not.

8 Q As of the time of the accident, had you
9 ever asked any questions of Mr. Watts or anyone at
10 J. B. Watts Insurance Agency with regard to
11 insurance on the GMC Jimmy?

12 A With regard to insurance?

13 Q Yes.

14 A The only thing that I would talked to
15 someone about would have been getting insurance --
16 the cards -- the insurance cards that go in the car.
17 And have to get those to Columbia.

18 Q And did you get the insurance cards that
19 go in the car?

20 A I did. Yes.

21 Q Did you review those cards and ask any
22 questions about them of the agency?

23 A The only way I would have -- the only
24 thing I would have looked at is to see if they were
25 up to date.

1 Q So is the answer to my question no?

2 A I reviewed them. But I wouldn't have --

3 Q You were reviewing them for a date?

4 A Yes. To make sure that they were not
5 going -- I wasn't going to ticket.

6 Q All right. Did you ask any questions of
7 anyone at the J. B. Watts Insurance Agency with
8 regard to the insurance policy or insurance cards
9 before the accident? Other than what you've
10 testified to.

11 A No. It was the insurance cards.

12 Q Okay. And that was just to make sure you
13 had them to put in the glove compartment?

14 A I needed to get them. I didn't have them
15 at the time. And I would call to make sure that
16 they were up to date if I didn't have them. If I
17 noticed that they were, you know, going out of date,
18 then I would have called to make sure I could have
19 gotten them.

20 Q And you got them, correct?

21 A Correct.

22 Q So there's no problem with that, correct?

23 A There wasn't a problem. Just sometimes I
24 wouldn't get them. But that wasn't an issue.

25 Q Did your father forward them to you?

1 sent down.

2 Q Other than having on occasion an insurance
3 card sent to you, what other contact, if any, did
4 you ever have with anyone at J. B. Watts before the
5 accident?

6 A I believe that with regard to that car, it
7 would have been the only one -- that would have been
8 the only contact I would have had with them.

9 Q So do we understand your testimony to be
10 that before your accident you never read the auto
11 policy in which you were named as a driver, correct?

12 A Yes, ma'am.

13 Q And you never asked any questions of
14 anyone at J. B. Watts with regard to coverage,
15 correct?

16 A That's correct.

17 Q And you never asked anyone at J. B. Watts
18 with regard to UIM; isn't that right?

19 A I don't even know if I knew what UIM was
20 at the time.

21 Q Okay. So you didn't ask any questions,
22 correct?

23 A That's correct, with regard to that.

24 Q With regard --

25 A With regard to coverage.

1 Q -- to coverage was my first question. UIM
2 was my second question, correct?

3 A Yes, ma'am.

4 Q You never asked any questions of J. B.
5 Watts. The only contact that you had with regard to
6 the GMC Jimmy was as you testified to with regard to
7 occasionally asking for copies of the insurance
8 cards that go in the car; is that correct?

9 A That's right.

10 Q What other contact, if any, before the
11 accident, did you ever have with anyone at J. B.
12 Watts on any topic involving insurance?

13 A I don't recall any.

14 Q Well I asked that because in answering my
15 earlier question, you said that was the only contact
16 with regard to that car. Did you have contact with
17 regard to another car?

18 A No, ma'am.

19 Q Okay.

20 MR. DICK: Can we take a short break?

21 MS. WALL: Certainly. We may take a
22 break.

23 (At this point there was a brief break in
24 the deposition.)

25

1 didn't you can tell me that.

2 A I mean, I -- I -- I know that he -- I
3 don't know what would happen to the policy itself.

4 Q Okay. So you weren't involved with the
5 insurance -- auto insurance policies at all, were
6 you? Up until the time of your accident.

7 A Other than what I've already testified
8 about in terms of acts to the policy, no ma'am.

9 Q All right. So either obtaining the
10 policy, adding or deleting vehicles, choosing limits
11 or any other matters related to the auto -- excuse
12 me, State Auto policies, you were not involved,
13 correct?

14 A I was not involved.

15 Q And did you understand that the State Auto
16 policies were direct bill policies, which meant that
17 the bills would go to your father for payment?

18 A I don't know how they were billed.

19 Q You didn't receive any bills from State
20 Auto, did you?

21 A Not that I can recall.

22 Q And you made no payments to State Auto,
23 did you?

24 A Before the accident?

25 Q Before the accident.

1 reviewing the policies?

2 A I remember receiving them. I mean, I --
3 I'm sure I got the policies. But I can't recall
4 anything that was contained with them -- within
5 them.

6 Q So do you even recall reading them?

7 A No.

8 Q So you don't recall reading them. And
9 thus, you certainly didn't ask any questions about
10 those policies, did you, of anyone at that point in
11 time?

12 A No. I had no reason to ask any questions.

13 Q Well whether you had a reason or not you
14 didn't ask any questions of J. B. Watts, did you?

15 A I didn't ask any questions. No ma'am.

16 (Automobile Declarations Page, Defendants'
17 Exhibit No. 6 is marked for identification.)

18 BY MS. WALL:

19 Q I'm gonna hand you what we've marked as
20 exhibit No. 6. And ask if you recognize this as an
21 automobile policy declarations page for the
22 Travelers with the named insured as Ben G. Leaphart,
23 Jr., for a policy period of September the 28th 2005
24 to September the 28th 2006, with a premium of
25 \$1,373. Do you see that?

1 with you as the named insured on the 2002 Volvo?

2 A I don't know why it would have been
3 switched over. I -- I don't...

4 Q So you have no recollection?

5 A No, ma'am.

6 Q Do you have any recollection of any
7 discussion with anyone at J. B. Watts agency with
8 regard to the Travelers automobile policy with you
9 as the named insured for the 2002 Volvo dated
10 September 2005 to September 2006?

11 A I don't recall any specific conversations
12 that I had, but I would have had to talk to him
13 about things like -- like we just talked about,
14 about getting the insurance cards and things of that
15 nature in my -- that would be the only thing that I
16 would know of off hand.

17 Q So you have no other recollection?

18 A And I don't' remember how I paid this
19 policy -- whether it was a draft or whether I had to
20 send the checks in. But I know I talked several
21 times with people about getting those types of
22 accounts set up to pay those bills.

23 Q So the first time that there was any
24 discussion with regard to account set up in your
25 name and paying bills would not have occurred before

1 recently. With different cars not being in the
2 right spot.

3 Q All right. What are you talking about?

4 A But that's not -- that's not -- I mean,
5 all I'm saying is there was a mistake -- there was
6 obviously a mistake as to what car was supposed to
7 be in Columbia in the policy.

8 Q But it wasn't yours.

9 A Correct.

10 Q It doesn't matter anyway because it wasn't
11 yours, correct?

12 A That's correct. That's correct.

13 Q So when you say that the Jimmy was garaged
14 in Columbia during that entire time period, and you
15 go on to say in paragraph eight the policy itself
16 notes a car was garaged in Columbia, that does not
17 have anything to do with the car that you drove, the
18 1992 Jimmy in 2004, correct?

19 A That's correct.

20 Q Okay. You go on in paragraph five of your
21 affidavit to state that you attempted to make
22 payments to cover the monthly insurance bills. But
23 we now know that's not correct, is it? Because your
24 deposition testimony was corrected by your lawyer.
25 And he said you didn't make payments, correct?

1 Q All right. Moving on. You state in
2 number eight, in the first sentence at all times
3 during 1997 to 2004 J. B. Watts Insurance Company
4 had actual knowledge that I was living in Columbia,
5 South Carolina rather than Greenville. What do you
6 base that statement on?

7 A I was in Columbia and I had been there
8 since '97. I had not been -- I had not been back in
9 Greenville since that time.

10 Q Did you at any time between 1997 and 2004
11 call anyone at J. B. Watts Insurance Agency and tell
12 them that you were living in Columbia, South
13 Carolina rather than Greenville?

14 A Yeah. I had to get my insurance cards
15 sent down here as opposed to Greenville.

16 Q Did you ever tell them that you were
17 living in Columbia as opposed to Greenville?

18 A I didn't think that I needed to say -- I
19 think that saying I need my cards sent to Columbia
20 to me is enough.

21 Q All right. So the answer to my question
22 is no, you didn't tell them that. Did you?

23 A I think telling someone that I need my
24 insurance card sent to this address in Columbia,
25 it's my address. I didn't ask for it to be sent to

1 800 McDaniel Avenue. I didn't ask -- I didn't go by
2 and pick it up myself. I didn't ask them to resend
3 it to my dad's house.

4 Q So the answer to my question is no, you
5 did not tell anyone at the J. B. Watts Insurance
6 Agency that you were living in Columbia rather than
7 Greenville?

8 MR. DICK: Object to form.

9 BY MS. WALL:

10 Q Is that correct?

11 A I don't think that's what that -- number
12 eight says.

13 Q I'm -- regardless of what it says. I've
14 asked you a question.

15 A I didn't call -- I don't -- I don't think
16 I called anyone and said hey I'm living -- guess
17 what I'm living in Columbia. But I called and said
18 here is my address in Columbia. I need my insurance
19 card sent here. And I'm sure I discussed with them.

20 Q You're sure you discussed what with them?

21 A I am sure that I discussed -- I discussed
22 the fact that I was living in Columbia and needed my
23 insurance cards sent to me in Columbia.

24 Q With whom did you have that discussion?

25 A I don't recall who it was in the office.

1 Q How many times did you have that
2 discussion?

3 A More than three.

4 Q More than three and less than what?

5 A Less than five.

6 Q So, between three and four times, you had
7 this discussion that you're now claiming. And you
8 don't know who you talked to. What year did those
9 discussions occur?

10 A I don't know.

11 Q What years did you not have your proof of
12 insurance cards, either because you lost them or for
13 whatever reason couldn't find them?

14 A I recall talking to them when I was living
15 at 801 King Street. And I recall talking to them
16 when I was at the Satchell Ford address.

17 Q And why do you recall that?

18 A Because I believe it was during that time.
19 It also may have been -- if I had any contact -- if
20 it was -- it would have been -- because I didn't
21 have the Jimmy when I lived at the Old Woodlands
22 address.

23 Q At the what?

24 A At the Old Woodlands address would have
25 been the initial address. That's when I had the

1 think you might have had a conversation in 1999.
2 Then you think you might have had a conversation or
3 call to get this insurance -- proof of insurance
4 card sometime between 2003 and 2004?

5 A Yes, ma'am.

6 Q What about between 2001 and 2003?

7 A Could have been there, too.

8 Q But you don't know.

9 A I've already said that I couldn't recall
10 for sure about when it happened.

11 Q In your affidavit you state that in
12 paragraph nine that you were never advised that you
13 were not covered under the policy. You never asked
14 about coverage, did you? You've already testified
15 to that. You never asked about coverage at any time
16 before the accident with J. B. Watts, correct?

17 A I assumed I was fully covered. That's
18 correct.

19 Q And why did you assume that?

20 A I never -- I never ask -- I never
21 specifically asked if I was -- about -- about the
22 policy itself.

23 Q You never asked about coverage either, did
24 you?

25 A No. I did not.

1 Q What do you mean by that?

2 A I believe I just testified that.

3 Q The UIM?

4 A Yes, ma'am.

5 Q And then you go on to say for which we
6 were paying. In fact you never paid for any part of
7 any of the policies to State Auto Insurance Company,
8 did you?

9 A I was confused on that issue. Yes.

10 MR. DICK: Can we take another break?

11 MS. WALL: We can.

12 (At this point there is a brief break in
13 the deposition.)

14 BY MS. WALL:

15 Q Did you ever tell anyone at J. B. Watts
16 that you were a temporary or transient visitor in
17 your parents' home?

18 A Did I ever tell someone --

19 Q Tell anyone at J. B. Watts?

20 A No. I don't recall.

21 Q At any time before your accident?

22 A Not that I recall.

23 Q Did you ever tell anyone at J. B. Watts
24 before your accident that you were an occasional
25 visitor in your parents' home?

1 A I personally did not.

2 Q Did you personally tell anyone at J. B.

3 Watts how many items you kept in your parents' home?

4 A No, I did not.

5 Q Did you personally ever tell anyone at J.

6 B. Watts how often you visited hour parents?

7 A No, I did not.

8 Q Did you personally ever tell anyone at J.

9 B. Watts whether you filed your own tax returns?

10 A No, I did not.

11 Q Did you personally tell anyone at J. B.

12 Watts how many summers you lived at home an dhow

13 many summers you lived away from home?

14 A Not that I'm aware of.

15 Q Pardon me?

16 A No.

17 Q Did you personally tell anyone at J. B.

18 Watts where you were registered to vote?

19 A No, I did not.

20 Q Did you personally tell anyone at J. B.

21 Watts the income that you derived from your playing

22 with the band?

23 A No, I did not.

24 Q Did you personally tell anyone at J. B.

25 Watts where you were going to law school?

1 A Not that I recall.

2 Q Did you personally tell anyone at J. B.
3 Watts where you were employed during your summers
4 while in school?

5 A I don't believe so.

6 Q Did you personally tell anyone at J. B.
7 Watts what your income was when you worked as a
8 Summer Associate at Turner Padgett?

9 A No.

10 Q Did you personally tell anyone at J. B.
11 Watts that you graduated from law school?

12 A Not that I recall.

13 Q Did you personally tell anyone at J. B.
14 Watts that you intended to clerk for Judge Cooper?

15 A No, I did not.

16 Q Did your father ever refer you to J. B.
17 Watts to answer questions that you might have?

18 A He could have.

19 Q Do you remember him ever doing that?

20 A May have been with regard to the
21 insurance.

22 Q Proof of insurance form?

23 A There you go.

24 Q But other than that, you have no
25 recollection, do you?

1 A No. No recollection. But if he would
2 have, it would have been related to some car related
3 issue like the proof of insurance.

4 Q You never asked any advice of anyone at J.
5 B. Watts before your accident, did you?

6 MR. DICK: Object to form.

7 A Advice as to what?

8 BY MS. WALL:

9 Q Anything.

10 A The only thing that I discussed with them
11 was with regard to the insurance cards that we
12 talked about.

13 Q And that's not advice, is it?

14 A I don't know if we talked about advice or
15 anything like that.

16 Q You didn't ask them for any advice, did
17 you?

18 MR. DICK: Object to form.

19 A Not that I recall.

20 BY MS. WALL:

21 Q Are you still insuring your house and
22 automobile with companies through the J. B. Watts
23 Insurance Agency?

24 A I am.

25 Q And other than your homeowners, what other

1 and a jewelry policy, is that correct?

2 A I think that's what -- it may have another
3 specific name to -- it may be a some sort of a
4 overage policy or something. I can't remember.
5 But -- yes.

6 Q Before coming -- sitting down in this
7 deposition today, had you ever before met Mr. J. B.
8 Watts?

9 A I'd never met J. B.

10 Q With your homeowners and your three
11 automobile policies and your jewelry policy, have
12 you worked with Bubba Watts with regard to those
13 policies?

14 A I have. I have.

15 Q And it's not your contention, is it, that
16 you have found Bubba Watts or anyone at the J. B.
17 Watts Agency to be dishonest, is it?

18 A No. I do not.

19 Q Or unethical?

20 A No. I do not.

21 Q Or not truth tellers?

22 A Correct.

23 Q Or reckless?

24 A With regard to -- yes. I don't -- I don't
25 hold them out to be reckless with regard to what

1 it was still in Columbia.

2 Q Now in answer to your lawyer's -- if I may
3 editorialize, leading, question, you agreed that you
4 quote "felt" you were fully covered. But in fact
5 you had never read the policy before the accident.
6 Had you?

7 MR. DICK: Object to form.

8 A That's correct.

9 BY MS. WALL:

10 Q So how did you feel that you were fully
11 covered?

12 A Because I was never told that I was not
13 fully covered.

14 Q But you never asked whether or not you
15 were fully covered, did you?

16 A That's correct.

17 Q That's correct you did not.

18 A Did not.

19 Q So in fact you could not have relied on J.
20 B. Watts or his company because you never asked a
21 single question about coverage before the accident.
22 Did you?

23 MR. DICK: Object to form.

24 A I didn't ask anyone. I didn't ask anyone
25 about a coverage issue.

EXHIBIT 2

STATE OF SOUTH CAROLINA

(AFFIDAVIT)

COUNTY OF GREENVILLE

The undersigned hereby certifies that the attached is a true and correct copy of
State Auto Property & Casualty Insurance Company policy as issued

to Ben G & Martha M Leaphart policy number ASC 3754417

providing coverage from 01/07/04 to 07/07/04.

Patricia M. Sluski

Patricia S. Spawthorpe

Signature of Notary

Commission Expires 1-30-07



State Auto 0030



AMENDED DECLARATIONS
PERSONAL AUTO PROGRAM

THIS DECLARATIONS PAGE WITH POLICY FORMS AND ENDORSEMENTS
AMENDS THE POLICY EFFECTIVE 01/07/04.

REASON FOR AMENDMENT DELETE VEHICLE

POLICY NUMBER ASC 3754417	FROM 01/07/04	TO 07/07/04	COVERED IS PROVIDED IN THE STATE AUTO PROP. & CAS. INS. CO. 518 EAST BROAD STREET	AGENCY 1387	PROD 01										
NAMED INSURED AND ADDRESS BEN G & MARTHA M LEAPHART 800 MCDANIEL AVE GREENVILLE SC 29605			AGENT J B WATTS CO INC PO BOX 10187 GREENVILLE SC 29603 TELEPHONE 864/271-0009												
VEHICLES COVERED															
#	ST	TER	YR	MAKE-DESCRIPTION	SER NUMBER	SYM	CLASS	SIZE	ST	AM	RATE	TIER			
01	SC	073	67	FORD MUSTANG	7Y03C275214	04	818120	N				MEDALIST			
02	SC	073	92	GMC JIMMY S150	1GKDT13WLN2524434	16	809220	C				MEDALIST			
03	SC	073	97	GMC JIMMY	1GKDT13W2V2516178	13	818220	C				MEDALIST			
COVERED IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE															
COVERED		LIMITS OF LIABILITY				AUTO		1		PREMIUMS		2		3	
A LIABILITY-BODILY INJURY & PROPERTY DAMAGE		\$ 500,000 EACH ACCIDENT				128.00		231.00		131.00					
B MEDICAL PAYMENTS		\$ 1,000 EACH PERSON				5.00		9.00		5.00					
C UNINSURED MOTORISTS BODILY INJURY & PROPERTY DAMAGE		\$ 500,000 EACH ACCIDENT				18.00		23.00		18.00					
C UNDERINSURED MOTORISTS BODILY INJURY & PROPERTY DAMAGE		\$ 500,000 EACH ACCIDENT				63.00		78.00		63.00					
D DAMAGE TO YOUR AUTO- ACTUAL CASH VALUE LESS DEDUCTIBLE OTHER THAN COLLISION		\$ 250 DEDUCTIBLE				5.00		83.00		47.00					
COLLISION		\$ 500 DEDUCTIBLE				17.00		112.00		77.00					
EXTENDED TRANSPORTATION EXPENSES COV. \$30 PER DAY/\$900 MAXIMUM						7.00		8.00		7.00					
UNINSURED MOTORISTS FUND						.50		.50		.50					
PRIME OF LIFE PLAN						INCL		INCL		INCL					
		TOTAL BY AUTO				243.50		544.50		348.50					
*** YOUR STATE AUTO COMPANIES AUTO POLICY HAS BEEN DISCOUNTED AS SHOWN BELOW:															
PRIME OF LIFE DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 2															
PRIME OF LIFE DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 1															
PREMIUMS REFLECT AUTO/HOME DISCOUNT OF:						26.00		60.00		38.00					
PASSIVE RESTRAINT DISCOUNT HAS BEEN APPLIED TO AUTO 3															
MULTI-CAR DISCOUNT APPLIED TO AUTO 1,2,3															
SIZE OF CAR DISCOUNT APPLIED TO AUTO 1,2,3															
PREMIUMS REFLECT SAFE DRIVER DISCOUNT FOR AUTO 1,2,3															
ANTI-LOCK BRAKE DISCOUNT OF 5% APPLIED TO AUTO 3															
*****CONTINUED ON NEXT PAGE*****PAGE 1															



MOBDEC ASC 3754417 17 20040211 1HS LEAP APV*ADV 39WATT0001387 029605

AMENDED DECLARATIONS
PERSONAL AUTO PROGRAM

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AMENDS THE POLICY EFFECTIVE 01/07/04.

REASON FOR AMENDMENT DELETE VEHICLE

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NAMED INSURED AND ADDRESS BEN G & MARTHA M LEAPHART 800 MCDANIEL AVE GREENVILLE SC 29605			AGENT J B WATTS CO INC PO BOX 10187 GREENVILLE SC 29603 TELEPHONE 864/271-0009										
VEHICLES COVERED													
#	ST	TER	YR	MAKE-DESCRIPTION	SER NUMBER	SYM	CLASS	SIZE	ST	AM	RATE	TIER	
04	SC	073	01	CHRYSLER PT CRUISER	3C8FY4BB617551724	12	818220	C				MEDALIST	
05	SC	073	91	DODGE DAKOTA	1B7GL23Y9MS296021	05	818120	F				MEDALIST	
06	SC	073	01	JEEP CHEROKEE C	1J4FF58S91L620710	15	809220	C				MEDALIST	
COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE													
COVERAGE		LIMITS OF LIABILITY				AUTO		PREMIUMS					
A LIABILITY-BODILY INJURY & PROPERTY DAMAGE		\$ 500,000 EACH ACCIDENT				131.00		128.00		220.00			
B MEDICAL PAYMENTS		\$ 1,000 EACH PERSON				5.00		5.00		6.00			
C UNINSURED MOTORISTS BODILY INJURY & PROPERTY DAMAGE		\$ 500,000 EACH ACCIDENT				16.00		18.00		16.00			
C UNDERINSURED MOTORISTS BODILY INJURY & PROPERTY DAMAGE		\$ 500,000 EACH ACCIDENT				55.00		63.00		55.00			
D DAMAGE TO YOUR AUTO- ACTUAL CASH VALUE LESS DEDUCTIBLE OTHER THAN COLLISION		\$ 250 DEDUCTIBLE				49.00		18.00		107.00			
COLLISION		\$ 500 DEDUCTIBLE				92.00				182.00			
EXTENDED TRANSPORTATION EXPENSES COV.		\$30 PER DAY/\$900 MAXIMUM				7.00				8.00			
UNINSURED MOTORISTS FUND						.50		.50		.50			
PRIME OF LIFE PLAN								INCL		INCL		INCL	
						TOTAL BY AUTO		355.50		232.50		594.50	
						TOTAL TERM PREMIUM						\$2,319.00	
*** YOUR STATE AUTO COMPANIES AUTO POLICY HAS BEEN DISCOUNTED AS SHOWN BELOW:													
PRIME OF LIFE DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 2													
PRIME OF LIFE DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 1													
PREMIUMS REFLECT AUTO/HOME DISCOUNT OF: 38.00 25.00 66.00													
PASSIVE RESTRAINT DISCOUNT HAS BEEN APPLIED TO AUTO 4,6													
MULTI-CAR DISCOUNT APPLIED TO AUTO 4,5,6													
SIZE OF CAR DISCOUNT APPLIED TO AUTO 4,5,6													
ANTI-THEFT DISCOUNT APPLIED TO AUTO 4,6													
PREMIUMS REFLECT SAFE DRIVER DISCOUNT FOR AUTO 4,5,6													
ANTI-LOCK BRAKE DISCOUNT OF 5% APPLIED TO AUTO 4,6													
DRIVER ID		DRIVER NAME											
01		BEN G LEAPHART											
02		MARTHA M LEAPHART											
03		MILLER M LEAPHART											
04		BEN G LEAPHART JR											
*****CONTINUED ON NEXT PAGE*****PAGE 2													



STATE AUTO

Insurance Companies

MOBDEC ASC 3754417 17 20040211 1H5 LEAP APV*A DV 39WATT0001387 028605

AMENDED DECLARATIONS
PERSONAL AUTO PROGRAM

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POLICY NUMBER ASC 3754417	FROM 01/07/04	POLICY PERIOD TO 07/07/04	COVERAGE IS PROVIDED IN THE STATE AUTO PROP. & CAS. INS. CO. 518 EAST BROAD STREET	AGENCY 1387	PROD 01																																																																																																																																				
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<p>ENDORSEMENTS/FORMS</p> <table border="1"> <thead> <tr> <th>FORM #</th> <th>DATE</th> <th>AUTO</th> <th>FORM #</th> <th>DATE</th> <th>AUTO</th> <th>FORM #</th> <th>DATE</th> <th>AUTO</th> <th>FORM #</th> <th>DATE</th> <th>AUTO</th> </tr> </thead> <tbody> <tr><td>AU671</td><td>02/01</td><td>ALL</td><td>PP0001</td><td>04/86</td><td>ALL</td><td>PP0005</td><td>12/89</td><td>ALL</td><td>PPAU23</td><td>08/99</td><td>ALL</td></tr> <tr><td>AU689</td><td>01/97</td><td>ALL</td><td>AU0178</td><td>03/99</td><td>ALL</td><td>AU644</td><td>05/92</td><td>ALL</td><td>AU650</td><td>06/92</td><td>ALL</td></tr> <tr><td>AU651</td><td>06/92</td><td>ALL</td><td>AU706</td><td>06/00</td><td>ALL</td><td>PP1301</td><td>12/99</td><td>ALL</td><td>PP0341</td><td>11/96</td><td>001</td></tr> <tr><td>AU0465S</td><td>03/99</td><td>001</td><td>AU0488S</td><td>06/98</td><td>001</td><td>AU0302</td><td>12/89</td><td>001</td><td>PP0319</td><td>08/86</td><td>001</td></tr> <tr><td>PP0341</td><td>11/96</td><td>002</td><td>AU0465S</td><td>03/99</td><td>002</td><td>AU0488S</td><td>06/98</td><td>002</td><td>AU0302</td><td>12/89</td><td>002</td></tr> <tr><td>PP0319</td><td>08/86</td><td>002</td><td>PP0341</td><td>11/96</td><td>003</td><td>AU0465S</td><td>03/99</td><td>003</td><td>AU0488S</td><td>06/98</td><td>003</td></tr> <tr><td>AU0302</td><td>12/89</td><td>003</td><td>PP0341</td><td>11/96</td><td>004</td><td>AU0465S</td><td>03/99</td><td>004</td><td>AU0488S</td><td>06/98</td><td>004</td></tr> <tr><td>AU0302</td><td>12/89</td><td>004</td><td>PP0341</td><td>11/96</td><td>005</td><td>AU0465S</td><td>03/99</td><td>005</td><td>AU0488S</td><td>06/98</td><td>005</td></tr> <tr><td>PP0341</td><td>11/96</td><td>006</td><td>AU0465S</td><td>03/99</td><td>006</td><td>AU0488S</td><td>06/98</td><td>006</td><td>AU0302</td><td>12/89</td><td>006</td></tr> <tr><td>PP0305</td><td>08/86</td><td>006</td><td>PP0319</td><td>08/86</td><td>006</td><td></td><td></td><td></td><td></td><td></td><td></td></tr> </tbody> </table> <p>LOSS PAYEE FOR AUTO #006 BANK ONE 100 E BROAD ST COLUMBUS, OH 43271</p> <p>ADDITIONAL INSURED FOR AUTO #001 TIGERDAWG LLC 601 E MCBEE AVE STE 200 GREENVILLE, SC 29601</p> <p>ADDITIONAL INSURED FOR AUTO #002 BEN G LEAPHART PA PO BOX 10191 GREENVILLE, SC 29603</p>						FORM #	DATE	AUTO	FORM #	DATE	AUTO	FORM #	DATE	AUTO	FORM #	DATE	AUTO	AU671	02/01	ALL	PP0001	04/86	ALL	PP0005	12/89	ALL	PPAU23	08/99	ALL	AU689	01/97	ALL	AU0178	03/99	ALL	AU644	05/92	ALL	AU650	06/92	ALL	AU651	06/92	ALL	AU706	06/00	ALL	PP1301	12/99	ALL	PP0341	11/96	001	AU0465S	03/99	001	AU0488S	06/98	001	AU0302	12/89	001	PP0319	08/86	001	PP0341	11/96	002	AU0465S	03/99	002	AU0488S	06/98	002	AU0302	12/89	002	PP0319	08/86	002	PP0341	11/96	003	AU0465S	03/99	003	AU0488S	06/98	003	AU0302	12/89	003	PP0341	11/96	004	AU0465S	03/99	004	AU0488S	06/98	004	AU0302	12/89	004	PP0341	11/96	005	AU0465S	03/99	005	AU0488S	06/98	005	PP0341	11/96	006	AU0465S	03/99	006	AU0488S	06/98	006	AU0302	12/89	006	PP0305	08/86	006	PP0319	08/86	006						
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STATE AUTO

Insurance Companies

MOBDEC ASC 3754417 17 20040211 1H5 LEAP APV ADV 39WATT0001387 029605


AMENDED DECLARATIONS
PERSONAL AUTO PROGRAM

THIS DECLARATIONS PAGE WITH POLICY FORMS AND ENDORSEMENTS
AMENDS THE POLICY EFFECTIVE 01/07/04.

REASON FOR AMENDMENT DELETE VEHICLE

POLICY NUMBER ASC 3754417	FROM 01/07/04	POLICY PERIOD TO 07/07/04	COVERED BY PROVIDED IN THE STATE AUTO PROP. & CAS. INS. CO. 518 EAST BROAD STREET	AGENCY 1387	PROD 01
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<p>ADDITIONAL INSURED FOR AUTO #006 BANK ONE PO BOX 2525 HUDSON, OH 44236</p> <p>GARAGE LOCATION FOR AUTO #006 3307 BLOSSOM STREET COLUMBIA, SC 29205</p>					
POLICY PERIOD 12:01 AM STANDARD TIME				02/11/04	
				----- AUTHORIZED SIGNATURE DATE	
*****PAGE 4 (LAST PAGE)					

PP 0001A



THE PERSONAL AUTO POLICY

STATE AUTOMOBILE MUTUAL INSURANCE COMPANY
STATE AUTO PROPERTY AND CASUALTY INSURANCE COMPANY

HOME OFFICE

518 EAST BROAD STREET
TELEPHONE 614-464-5000

COLUMBUS, OHIO 43215-3976

PP0001B

READ YOUR POLICY CAREFULLY. This cover sheet provides only a brief outline of some of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth, in detail, the rights and obligations of both you and your insurance company. IT IS THEREFORE IMPORTANT THAT YOU READ YOUR POLICY.

YOUR PERSONAL AUTO POLICY QUICK REFERENCE

PERSONAL AUTO POLICY	DECLARATIONS (Pages Numbered Separately)	Page number of PF0001 (04/86)
	Your Name and Address	
	Your Auto or Trailer	
	Policy Period	
	Coverages and Amounts of Insurance	
	AGREEMENT	1
	DEFINITIONS	1
PART A- LIABILITY COVERAGE	Insuring Agreement Supplementary Payments Exclusions Limit of Liability Out of State Coverage Financial Responsibility Other Insurance	1
PART B- MEDICAL PAYMENTS COVERAGE	Insuring Agreement Exclusions Limit of Liability Other Insurance	3
PART C- UNINSURED MOTORISTS COVERAGE	Insuring Agreement Exclusions Limit of Liability Other Insurance Arbitration	4
PART D- COVERAGE FOR DAMAGE TO YOUR AUTO	Insuring Agreement Transportation Expenses Exclusions Limit of Liability Payment of Loss No Benefit to Bailee Other Insurance Appraisal	5
PART E- DUTIES AFTER AN ACCIDENT OR LOSS	General Duties Additional Duties for Uninsured Motorists Coverage Additional Duties for Coverage for Damage to Your Auto	7
PART F- GENERAL PROVISIONS	Bankruptcy Changes Fraud Legal Action Against Us Our Right to Recover Payment Policy Period and Territory Termination Transfer of Your Interest In this Policy Two or More Auto Policies Premium Installment Payments Dividends Notice of Policyholder Meetings Non-assessable	7
ENDORSEMENTS- APPLICABLE ONLY IF SPECIFIED ON THE DECLARATIONS PAGE		

PERSONAL AUTO POLICY

AGREEMENT

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

DEFINITIONS

- A. Throughout this policy, "you" and "your" refer to:
1. The "named insured" shown in the Declarations; and
 2. The spouse if a resident of the same household.
- B. "We", "us" and "our" refer to the Company providing this insurance.
- C. For purposes of this policy, a private passenger type auto shall be deemed to be owned by a person if leased:
1. Under a written agreement to that person and;
 2. For a continuous period of at least 6 months.
- Other words and phrases are defined. They are in quotation marks when used.
- D. "Bodily injury" means bodily harm, sickness or disease, including death that results.
- E. "Business" includes trade, profession or occupation.
- F. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.
- G. "Occupying" means in, upon, getting in, on, out or off.
- H. "Property damage" means physical injury to, destruction of or loss of use of tangible property.
- I. "Trailer" means a vehicle designed to be pulled by a:
1. Private passenger auto; or
 2. Pickup or van.
- It also means a farm wagon or farm implement while towed by a vehicle listed in 1. or 2. above.
- J. "Your covered auto" means:
1. Any vehicle shown in the Declarations.
 2. Any of the following types of vehicles on the date you become the owner:
 - a. a private passenger auto; or
 - b. a pickup or van.

This provision (J.2.) applies only if:

 - a. you acquire the vehicle during the policy period;
 - b. you ask us to insure it within 30 days after you become the owner; and
 - c. with respect to a pickup or van, no other insurance policy provides coverage for that vehicle.

If the vehicle you acquire replaces one shown in the Declarations, it will have the same coverage as the vehicle it replaced. You must ask us to insure a replacement vehicle within 30 days only if:

 - a. you wish to add or continue Coverage for Damage to Your Auto; or
 - b. it is a pickup or van used in any "business" other than farming or ranching.

If the vehicle you acquire is in addition to any shown in the Declarations, it will have the broadest coverage we now provide for any vehicle shown in the Declarations.
 3. Any "trailer" you own.
 4. Any auto or "trailer" you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:

a. breakdown;	d. loss; or
b. repair;	e. destruction.
c. servicing;	

PART A – LIABILITY COVERAGE

INSURING AGREEMENT

- A. We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident. Damages include prejudgment interest awarded against the "insured." We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.
- B. "Insured" as used in this Part means:
1. You or any "family member" for the ownership, maintenance or use of any auto or "trailer."
 2. Any person using "your covered auto."
 3. For "your covered auto," any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
 4. For any auto or "trailer," other than "your covered auto," any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This provision (B.4.) applies only if the person or organization does not own or hire the auto or "trailer."

SUPPLEMENTARY PAYMENTS

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

1. Up to \$250 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in "bodily injury" or "property damage" covered under this policy.
2. Premiums on appeal bonds and bonds to release attachments in any suit we defend.
3. Interest accruing after a judgment is entered in any suit we defend. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.
4. Up to \$50 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request.

5. Other reasonable expenses incurred at our request.

EXCLUSIONS

- A. We do not provide Liability Coverage for any person:
1. Who intentionally causes "bodily injury" or "property damage."
 2. For damage to property owned or being transported by that person.
 3. For damage to property:
 - a. rented to;
 - b. used by; or
 - c. in the care of; that person.This exclusion (A.3.) does not apply to damage to a residence or private garage.
 4. For "bodily injury" to an employee of that person during the course of employment. This exclusion (A.4.) does not apply to "bodily injury" to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
 5. For that person's liability arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee. This exclusion (A.5.) does not apply to a share-the-expense car pool.
 6. While employed or otherwise engaged in the "business" of:

a. selling;	d. storing; or
b. repairing;	e. parking;
c. servicing;	

vehicles designed for use mainly on public highways. This includes road testing and delivery. This exclusion (A.6.) does not apply to the ownership, maintenance or use of "your covered auto" by:
 - a. you;
 - b. any "family member"; or
 - c. any partner, agent or employee of you or any "family member."
 7. Maintaining or using any vehicle while that person is employed or otherwise engaged in any "business" (other than farming or ranching) not described in Exclusion A.6. This exclusion (A.7.) does not apply to the maintenance or use of a:
 - a. private passenger auto;
 - b. pickup or van that you own; or
 - c. "trailer" used with a vehicle described in a. or b. above.

EXCLUSION (continued)

8. Using a vehicle without a reasonable belief that that person is entitled to do so.
9. For "bodily injury" or "property damage" for which that person:
 - a. Is an insured under a nuclear energy liability policy; or
 - b. would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.

A nuclear energy liability policy is a policy issued by any of the following or their successors:

- a. American Nuclear Insurers;
 - b. Mutual Atomic Energy Liability Underwriters; or
 - c. Nuclear Insurance Association of Canada.
- B. We do not provide Liability Coverage for the ownership, maintenance or use of:
1. Any motorized vehicle having fewer than four wheels.
 2. Any vehicle, other than "your covered auto," which is:
 - a. owned by you; or
 - b. furnished or available for your regular use.
 3. Any vehicle, other than "your covered auto," which is:
 - a. owned by any "family member;" or
 - b. furnished or available for the regular use of any "family member."

However, this exclusion (B.3.) does not apply to your maintenance or use of any vehicle which is:

- a. owned by a "family member;" or
- b. furnished or available for the regular use of a "family member."

LIMIT OF LIABILITY

- A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for all damages resulting from any one auto accident. This is the most we will pay regardless of the number of:
1. "Insureds;"

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

B. We will apply the limit of liability to provide any separate limits required by law for bodily injury and property damage liability. However, this provision (B.) will not change our total limit of liability.

OUT OF STATE COVERAGE

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

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

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

FINANCIAL RESPONSIBILITY

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

OTHER INSURANCE

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

PART B – MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

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

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

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

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

1. You or any "family member;"
 - a. while "occupying;" or
 - b. as a pedestrian when struck by:
a motor vehicle designed for use mainly on public roads or a trailer of any type.
2. Any other person while "occupying" "your covered auto."

EXCLUSIONS

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

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

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

7. Sustained while "occupying" a vehicle without a reasonable belief that that person is entitled to do so.

8. Sustained while "occupying" a vehicle when it is being used in the "business" of an "insured." This exclusion (8.) does not apply to "bodily injury" sustained while "occupying" a:

- a. private passenger auto;
- b. pickup or van that you own; or
- c. "trailer" used with a vehicle described in a. or b. above.

9. Caused by or as a consequence of:

- a. discharge of a nuclear weapon (even if accidental);
- b. war (declared or undeclared);
- c. civil war;
- d. insurrection; or
- e. rebellion or revolution.

10. From or as a consequence of the following, whether controlled or uncontrolled or however caused:

- a. nuclear reaction;
- b. radiation; or
- c. radioactive contamination.

LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:

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

B. Any amounts otherwise payable for expenses under this coverage shall be reduced by any amounts paid or payable for the same expenses under Part A or Part C.

C. No payment will be made unless the injured person or that person's legal representative agrees in writing that any payment shall be applied toward any settlement or judgment that person receives under Part A or Part C.

OTHER INSURANCE

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

PART C - UNINSURED MOTORISTS COVERAGE

INSURING AGREEMENT

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

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

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

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

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

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

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

1. To which no bodily injury liability bond or policy applies at the time of the accident.
2. To which a bodily injury liability bond or policy applies at the time of the accident. In this case its limit for bodily injury liability must be less than the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which "your covered auto" is principally garaged.
3. Which is a hit and run vehicle whose operator or owner cannot be identified and which hits:
 - a. you or any "family member;"
 - b. a vehicle which you or any "family member" are "occupying;" or
 - c. "your covered auto."
4. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - a. denies coverage; or
 - b. is or becomes insolvent.

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

1. Owned by or furnished or available for the regular use of you or any "family member."
2. Owned or operated by a self-insurer under any applicable motor vehicle law.

3. Owned by any governmental unit or agency.
4. Operated on rails or crawler treads.
5. Designed mainly for use off public roads while not on public roads.
6. While located for use as a residence or premises.

EXCLUSIONS

A. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained by any person:

1. While "occupying," or when struck by, any motor vehicle owned by you or any "family member" which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.
2. If that person or the legal representative settles the "bodily injury" claim without our consent.
3. While "occupying" "your covered auto" when it is being used to carry persons or property for a fee. This exclusion (A.3.) does not apply to a share-the-expense car pool.
4. Using a vehicle without a reasonable belief that that person is entitled to do so.

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

1. workers' compensation law; or
2. disability benefits law.

LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for all damages resulting from any one accident. This is the most we will pay regardless of the number of:

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

B. Any amounts otherwise payable for damages under this coverage shall be reduced by all sums:

1. Paid because of the "bodily injury" by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A; and

LIMIT OF LIABILITY (Continued)

2. Paid or payable because of the "bodily injury" under any of the following or similar law:
 - a. workers' compensation law; or
 - b. disability benefits law.
- C. Any payment under this coverage will reduce any amount that person is entitled to recover for the same damages under Part A.

OTHER INSURANCE

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

ARBITRATION

- A. If we and an "insured" do not agree:
 1. Whether that person is legally entitled to recover damages under this Part; or
 2. As to the amount of damages;either party may make a written demand for arbitration. In this event, each party will select an arbitrator. The two arbitrators will

select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.

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

PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

INSURING AGREEMENT

- A. We will pay for direct and accidental loss to "your covered auto" or any "non-owned auto," including their equipment, minus any applicable deductible shown in the Declarations. We will pay for loss to "your covered auto" caused by:
 1. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
 2. "Collision" only if the Declarations indicate that Collision Coverage is provided for that auto.If there is a loss to a "non-owned auto," we will provide the broadest coverage applicable to any "your covered auto" shown in the Declarations.

- B. "Collision" means the upset of "your covered auto" or its impact with another vehicle or object. Loss caused by the following is considered other than "collision":

1. Missiles or falling objects;
2. Fire;
3. Theft or larceny;

4. Explosion or earthquake;
5. Windstorm;
6. Hall, water or flood;
7. Malicious mischief or vandalism;
8. Riot or civil commotion;
9. Contact with bird or animal; or
10. Breakage of glass.

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

- C. "Non-owned auto" means any private passenger auto, pickup, van or "trailer" not owned by or furnished or available for the regular use of you or any "family member" while in the custody of or being operated by you or any "family member." However, "non-owned auto" does not include any vehicle used as a temporary substitute for a vehicle you own which is out of normal use because of its:

- | | |
|---------------|-----------------|
| 1. Breakdown; | 4. Loss; or |
| 2. Repair; | 5. Destruction. |
| 3. Servicing; | |

TRANSPORTATION EXPENSES

In addition, we will pay up to \$10 per day, to a maximum of \$300, for transportation expenses incurred by you. This applies only in the event of the total theft of "your covered auto." We will pay only transportation expenses incurred during the period:

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

EXCLUSIONS

We will not pay for:

1. Loss to "your covered auto" which occurs while it is used to carry persons or property for a fee. This exclusion (1.) does not apply to a share-the-expense car pool.
2. Damage due and confined to:
 - a. wear and tear;
 - b. freezing;
 - c. mechanical or electrical breakdown or failure; or
 - d. road damage to tires.This exclusion (2.) does not apply if the damage results from the total theft of "your covered auto."
3. Loss due to or as a consequence of:
 - a. radioactive contamination;
 - b. discharge of any nuclear weapon (even if accidental);
 - c. war (declared or undeclared);
 - d. civil war;
 - e. insurrection; or
 - f. rebellion or revolution.
4. Loss to equipment designed for the reproduction of sound. This exclusion (4.) does not apply if the equipment is permanently installed in "your covered auto" or any "non-owned auto."
5. Loss to tapes, records or other devices for use with equipment designed for the reproduction of sound.
6. Loss to a camper body or "trailer" you own which is not shown in the Declarations. This exclusion (6.) does not apply to a camper body or "trailer" you:
 - a. acquire during the policy period; and
 - b. ask us to insure within 30 days after you become the owner.
7. Loss to any "non-owned auto" or any vehicle used as a temporary substitute for a vehicle you own, when used by you or any "family member" without a reasonable belief that you or that "family member" are entitled to do so.

8. Loss to:

- a. TV antennas;
- b. awnings or cabanas; or
- c. equipment designed to create additional living facilities.

9. Loss to any of the following or their accessories:

- a. citizens band radio;
- b. two-way mobile radio;
- c. telephone; or
- d. scanning monitor receiver.

This exclusion (9.) does not apply if the equipment is permanently installed in the opening of the dash or console of "your covered auto" or any "non-owned auto". This opening must be normally used by the auto manufacturer for the installation of a radio.

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

- a. special carpeting and insulation, furniture, bars or television receivers;
- b. facilities for cooking and sleeping;
- c. height-extending roofs; or
- d. custom murals, paintings or other decals or graphics.

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

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

- a. selling;
- b. repairing;
- c. servicing;
- d. storing;
- e. parking;

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

13. Loss to any "non-owned auto" being maintained or used by any person while employed or otherwise engaged in any "business" not described in exclusion 12. This exclusion (13.) does not apply to the maintenance or use by you or any "family member" of a "non-owned auto" which is a private passenger auto or "trailer."

LIMIT OF LIABILITY

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

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

LIMIT OF LIABILITY (Continued)

2. Amount necessary to repair or replace the property.

However, the most we will pay for loss to any "non-owned auto" which is a "trailer" is \$500.

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

PAYMENT OF LOSS

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

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

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

NO BENEFIT TO BAILEE

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

OTHER INSURANCE

If other insurance also covers the loss we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a "non-owned auto" or any vehicle used as a temporary substitute for a vehicle you own shall be excess over any other collectible insurance.

APPRAISAL

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

1. Pay its chosen appraiser; and
2. Bear the expenses of the appraisal and umpire equally.

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

PART E - DUTIES AFTER AN ACCIDENT OR LOSS

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

B. A person seeking any coverage must:

1. Cooperate with us in the investigation, settlement or defense of any claim or suit.
2. Promptly send us copies of any notices or legal papers received in connection with the accident or loss.
3. Submit, as often as we reasonably require:
 - a. to physical exams by physicians we select. We will pay for these exams.
 - b. to examination under oath and subscribe the same.

4. Authorize us to obtain:

- a. medical reports; and
- b. other pertinent records.

5. Submit a proof of loss when required by us.

C. A person seeking Uninsured Motorists Coverage must also:

1. Promptly notify the police if a hit and run driver is involved.
2. Promptly send us copies of the legal papers if a suit is brought.

D. A person seeking Coverage for Damage to Your Auto must also:

1. Take reasonable steps after loss to protect "your covered auto" and its equipment from further loss. We will pay reasonable expenses incurred to do this.
2. Promptly notify the police if "your covered auto" is stolen.
3. Permit us to inspect and appraise the damaged property before its repair or disposal.

PART F - GENERAL PROVISIONS

BANKRUPTCY

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

CHANGES

This policy contains all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us. If a change requires a premium adjustment, we will adjust the premium as of the effective date of change.

We may revise this policy form to provide more coverage without additional premium charge. If we do this your policy will automatically provide the additional coverage as of the date the revision is effective in your state.

FRAUD

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

LEGAL ACTION AGAINST US

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

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

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

OUR RIGHT TO RECOVER PAYMENT

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

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

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

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

1. Hold in trust for us the proceeds of the recovery; and

2. Reimburse us to the extent of our payment.

POLICY PERIOD AND TERRITORY

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

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

B. The policy territory is:

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

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

TERMINATION

A. Cancellation. This policy may be cancelled during the policy period as follows:

1. The named insured shown in the Declarations may cancel by:

- a. returning this policy to us; or
- b. giving us advance written notice of the date cancellation is to take effect.

2. We may cancel by mailing to the named insured shown in the Declarations at the address shown in this policy:

- a. at least 10 days notice:
 - (1) if cancellation is for nonpayment of premium; or
 - (2) if notice is mailed during the first 60 days this policy is in effect and this is not a renewal or continuation policy; or

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

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

- a. for nonpayment of premium; or
- b. if your driver's license or that of:
 - (1) any driver who lives with you; or
 - (2) any driver who customarily uses "your covered auto;"

has been suspended or revoked. This must have occurred:

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

c. if the policy was obtained through material misrepresentation.

B. **Nonrenewal.** If we decide not to renew or continue this policy, we will mail notice to the named Insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 20 days before the end of the policy period. If the policy period is other than 1 year, we will have the right not to renew or continue it only at each anniversary of its original effective date.

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

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

D. **Other Termination Provisions.**

1. If the law in effect in your state at the time this policy is issued, renewed or continued:

- a. requires a longer notice period;
- b. requires a special form of or procedure for giving notice; or
- c. modifies any of the stated termination reasons;

we will comply with those requirements.

2. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.

3. If this policy is cancelled, you may be entitled to a premium refund. If so, we will send you the refund. The premium refund, if any, will be computed according to our manuals. However, making or offering to make the refund is not a condition of cancellation.

4. The effective date of cancellation stated in the notice shall become the end of the policy period.

TRANSFER OF YOUR INTEREST IN THIS POLICY

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

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

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

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

TWO OR MORE AUTO POLICIES

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

UNDERINSURED MOTORISTS COVERAGE - SOUTH CAROLINA

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

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

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

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

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

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

"Insured" as used in this endorsement means:

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

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

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

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

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

EXCLUSIONS

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

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

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

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

LIMIT OF LIABILITY

A. If "bodily injury" is sustained in an accident by any "insured" while "occupying" "your covered auto," or if "your covered auto" sustained "property damage" in an accident, our maximum limit of liability for all damages resulting from that accident is the sum of the limits of liability for Underinsured Motorists Coverage shown in the Schedule or in the Declarations applicable to each vehicle.

Subject to the maximum limit of liability for all damages:

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

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

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

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

- B. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while not "occupying" any auto, our maximum limit of liability for all damages resulting from the accident will be the highest limit of liability shown in the Declarations for this coverage applicable to any one of "your covered autos."

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

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

- C. If "bodily injury" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member", our maximum limit of liability for all damages resulting from that accident will be the highest limit of liability shown in the Schedule or in the Declarations for this coverage applicable to any one of "your covered autos." This is the most we will pay regardless of the number of:

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

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

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

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

OTHER INSURANCE

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

FIRST PRIORITY The policy affording Underinsured Motorists Coverage to the vehicle the "insured" was "occupying" at the time of the accident.

SECOND PRIORITY Any policy affording Underinsured Motorists Coverage to the "insured" as a named insured or family member.

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

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

ADDITIONAL DUTY

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

GENERAL PROVISIONS

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

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

- B. The following is added to the Two or More Auto Policies provision:

TWO OR MORE AUTO POLICIES

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

C. The following provision is added:

CONFORMITY TO STATUTE

This endorsement is intended to be in full

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

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UNINSURED MOTORISTS COVERAGE - SOUTH CAROLINA

I. UNINSURED MOTORISTS COVERAGE

Part C is replaced by the following:

INSURING AGREEMENT

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

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

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

"Insured" as used in this endorsement means:

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

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

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

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

- a. you or any "family member;"
- b. a vehicle which you or any "family member" are "occupying;"
- c. "your covered auto;" or
- d. any of your property.

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

4. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - a. successfully denies coverage;
 - b. is or becomes insolvent;
 - c. is in delinquency proceedings, suspension or receivership; or
 - d. is proven unable to respond to a judgment.
5. For which the owner has not qualified as a self-insurer in accordance with the applicable provisions of the South Carolina Insurance Laws.

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

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

EXCLUSIONS

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

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

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

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

LIMIT OF LIABILITY

A. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while "occupying" "your covered auto," our maximum limit of liability for all damages resulting from that accident is the sum of the limits of liability for Uninsured Motorists Coverage shown in the Declarations applicable to each vehicle.

Subject to the maximum limit of liability for all damages:

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

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

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

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

B. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while not "occupying" any auto, our maximum limit of liability for all damages resulting from that accident is the sum of the limits of liability for Uninsured Motorists Coverage shown in the Declarations applicable to each vehicle.

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

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

C. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member," our maximum limit of liability for all damages resulting from the accident will be the highest limit of liability shown in the Declarations for this coverage applicable to any one of "your covered autos." This is the most we will pay regardless of the number of:

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

D. If "bodily injury" or "property damage" is sustained by an "insured" other than you or any "family member" in an accident in which neither you nor any "family member" sustained "bodily injury" or "property damage," our maximum limit of liability for all damages resulting from that accident will be the limit of liability shown in the Declarations for this coverage applicable to the vehicle that "insured" was "occupying" at the time of that accident. This is the most we will pay regardless of the number of:

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

E. We will apply the limit of liability shown in the Declarations to first provide the separate limits required by the Statutes of South Carolina for:

1. "Bodily injury" or death of one person in any one accident; and
2. "Bodily injury" or death of two or more people in any one accident; and
3. Injury to or destruction of property of an "insured" in any one accident.

This provision will not change our total limit of liability.

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

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

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

OTHER INSURANCE

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

FIRST The policy affording Uninsured Motorists Coverage to the vehicle the "insured" was occupying at the time of the accident.

SECOND PRIORITY Any policy affording Uninsured Motorists Coverage to the "Insured" as a named insured or family member.

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

II. GENERAL PROVISIONS

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

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

OUR RIGHT TO RECOVER PAYMENT

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

- b. nothing after loss to prejudice them.
2. If an "Insured" has prosecuted to judgment any suit against any person responsible, we will be entitled to an assignment of the judgment to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.
3. We will pay our proportionate part of any reasonable costs and expenses incurred for any recovery, including reasonable attorneys' fees. However, we reserve the right to retain an attorney of our choice to pursue a claim instead of reasonable attorneys' fees.
4. If an "Insured" making a claim for "property damage" under this insurance is also entitled to insurance or other compensation for the "property damage," we will not be obligated to pay a claim until the "Insured" has assigned us the rights to the compensation, to the extent of payment under this coverage that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.

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

TWO OR MORE AUTO POLICIES

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

C. The following provision is added:

CONFORMITY TO STATUTE

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

**FULL SAFETY GLASS COVERAGE - SOUTH CAROLINA
COVERAGE FOR DAMAGE TO YOUR AUTO**

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

The following is added to paragraph A of the Insuring Agreement in Part D:

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

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

PP0341 (1/96)

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ADDITIONAL INSURED - LESSOR

Any liability and any required no-fault coverages afforded by this policy for "your leased auto" also apply to the lessor named as an additional Insured in the Declarations. This insurance is subject to the following additional provisions:

1. We will pay damages for which the lessor becomes legally responsible only if the damages arise out of acts or omissions of:
 - (a) you or any "family member", or
 - (b) any other person except the lessor or any employee or agent of the lessor using "your leased auto".
2. "Your leased auto" means:

- (a) an auto shown in the Declarations which you lease for a continuous period of at least six months under a written agreement which requires you to provide primary insurance for the lessor, and
 - (b) any substitute or replacement auto furnished by the lessor named in this endorsement.

3. If we terminate this policy, notice will also be mailed to the lessor.
4. The lessor is not responsible for payment of premiums.
5. The designation of the lessor as an additional Insured shall not operate to increase our limits of liability.

PP0319 (08/86)

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EXTENDED TRANSPORTATION EXPENSES COVERAGE ENDORSEMENT

The provisions and exclusions that apply to Part D - Coverage for Damage to Your Auto also apply to this endorsement except as changed by this endorsement.

EXTENDED TRANSPORTATION EXPENSES COVERAGE

When there is a loss to a "your covered auto" described in the Declarations for which a specific premium charge indicates that Extended Transportation Expenses Coverage is afforded, or to a "non-owned auto", we will pay, without application of a deductible, up to the amount shown in the Declarations for:

1. Transportation expenses incurred by you.
2. Loss of use expenses for which you become legally responsible in the event of loss to a "non-owned auto".

This coverage applies only if:

1. "Your covered auto" or the "non-owned auto" is withdrawn from use for more than 24 hours; and
2. The loss is caused by "collision" or is otherwise covered under Part D of this policy.

However, this coverage does not apply when there is a total theft of "your covered auto" or a "non-owned auto". Such coverage is provided under Part D of this policy.

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

Coverage for Transportation Expenses Coverage provided under Part D of this policy is increased to the amount shown in the Declarations if the amount is other than \$15 per day/\$450 maximum.

AU0302 (12/89)

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LOSS PAYABLE CLAUSE

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

When we pay the loss payee we shall, to the extent of payment, be subrogated to the loss payee's rights of recovery.

PP0305 (08/86)

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AMENDMENT OF POLICY PROVISIONS - SOUTH CAROLINA

I. LIABILITY COVERAGE

Part A is amended as follows:

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

We do not provide Liability Coverage for any person:

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

B. If this policy provides single limit coverage Paragraph B. of the Limit of Liability provision is replaced by the following:

We will apply the limit of liability shown in the Declarations to first provide the separate limits required by the Statutes of South Carolina for:

1. "Bodily Injury" or death of one person in any one auto accident;
2. "Bodily injury" or death of two or more people in any one auto accident; and
3. Injury to or destruction of property of others in any one auto accident.

This provision will not change our total limit of liability.

II. PART B-MEDICAL PAYMENTS COVERAGE

The Limit of Liability provision of Part B is replaced by the following:

LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:

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

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

III. GENERAL PROVISIONS

Part F is amended as follows:

A. The following is added to the Fraud provision:

FRAUD

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

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

OUR RIGHT TO RECOVER PAYMENT

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

C. The Termination provision is replaced by the following:

TERMINATION

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

1. The named Insured shown in the Declarations may cancel by:

- (a) Returning this policy to us; or
- (b) Giving us advance written notice of the date cancellation is to take effect.

2. We may cancel by mailing notice to the named Insured shown in the Declarations at the address shown in this policy at least 15 days prior to the date cancellation is to take effect. However, if this policy is cancelled within the first 60 days, and is not a renewal or continuation policy, the cancellation will become effective only on or after the 61st day of the policy period.

3. After this policy has been in effect for more than 90 days, or if this is a renewal or continuation policy, we will cancel only:

- a. For nonpayment of premium; or
- b. If your driver's license or that of:
 - (1) Any driver who lives with you; or
 - (2) Any driver who customarily uses "your covered auto";

has been suspended or revoked. This must have occurred:

- (1) During the policy period; or
- (2) If this is a renewal or continuation policy, during the policy period or the 90 days immediately preceding the last anniversary of the original effective date.

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

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

AMENDMENT TO SUPPLEMENTARY PAYMENTS

(Appeal Bonds)

Important Notice

Supplementary Payments under Part A, Liability Coverage, are designed to be paid in addition to your limits of liability, but not in excess of these limits with respect to appeal bonds. As a result, with regard to premiums on appeal bonds, Item 2., if a decision is made to appeal a judgment resulting from an auto accident, the following change is simply clarifying our intent that this additional coverage will not exceed your Liability limits. This coverage is still in addition to your Liability limits.

Under Part A, Liability Coverage, Supplementary Payments, Item 2. is deleted and replaced by the following:

2. Premiums on appeal bonds, and bonds to release attachments, but not in excess of our limit of liability, in any suit we defend. We are not required to apply for, secure or otherwise furnish these bonds.

AU706 (06/00)

ADDITIONAL INSURED - LESSOR

Any liability and any required no-fault coverages afforded by this policy for "your leased auto" also apply to the lessor named as an additional insured in the Declarations. This insurance is subject to the following additional provisions:

1. We will pay damages for which the lessor becomes legally responsible only if the damages arise out of acts or omissions of:
 - (a) you or any "family member", or
 - (b) any other person except the lessor or any employee or agent of the lessor using "your leased auto".
2. "Your leased auto" means:

- (a) an auto shown in the Declarations which you lease for a continuous period of at least six months under a written agreement which requires you to provide primary insurance for the lessor, and

- (b) any substitute or replacement auto furnished by the lessor named in this endorsement.

3. If we terminate this policy, notice will also be mailed to the lessor.
4. The lessor is not responsible for payment of premiums.
5. The designation of the lessor as an additional insured shall not operate to increase our limits of liability.

PP0319 (08/86)

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AMENDATORY ENDORSEMENT

This Amendatory Endorsement:

- A. Implements a general program revision; and
- B. Changes the current edition of your policy to a 12-89 Edition.

This endorsement amends the policy as follows:

I. DEFINITIONS

The definition of "your covered auto" (J.) is replaced by the following:

J. "Your covered auto" means:

1. Any vehicle shown in the Declarations.
2. Any of the following types of vehicles on the date you become the owner:
 - a. a private passenger auto; or
 - b. a pickup or van that:
 - (1) has a Gross Vehicle Weight of less than 10,000 lbs; and
 - (2) is not used for the delivery or transportation of goods and materials unless such use is:
 - (a) incidental to your "business" of installing, maintaining or repairing furnishings or equipment; or
 - (b) for farming or ranching.

This provision (J.2) applies only if:

- a. you acquire the vehicle during the policy period;
- b. you ask us to insure it within 30 days after you become the owner; and
- c. with respect to a pickup or van, no other insurance policy provides coverage for that vehicle.

If the vehicle you acquire replaces one shown in the Declarations, it will have the same coverage as the vehicle it replaced. You must ask us to insure a replacement vehicle within 30 days only if you wish to add or continue Coverage for Damage to Your Auto.

If the vehicle you acquire is in addition to any shown in the Declarations, it will have the broadest coverage we now provide for any vehicle shown in the Declarations.

3. Any "trailer" you own.
4. Any auto or "trailer" you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:

- a. breakdown;
- b. repair;
- c. servicing;
- d. loss; or
- e. destruction.

This provision (J.4.) does not apply to Coverage for Damage to Your Auto.

II. PART A - LIABILITY COVERAGE

Part A is amended as follows:

A. Exclusions A.2, A.3. and A.5. are replaced by the following:

We do not provide Liability Coverage for any person:

2. For "property damage" to property owned or being transported by that person.
3. For "property damage" to property:
 - a. rented to;
 - b. used by; or
 - c. in the care of;that person.

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

5. For that person's liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This exclusion (A.5.) does not apply to a share-the-expense car pool.

B. Exclusion B.3. is replaced by the following:

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

3. Any vehicle, other than "your covered auto", which is:
 - a. owned by any "family member"; or
 - b. furnished or available for the regular use of any "family member".

However, this exclusion (B.3.) does not apply to you while you are maintaining or "occupying" any vehicle which is:

- a. owned by a "family member"; or
- b. furnished or available for the regular use of a "family member".

III. PART B - MEDICAL PAYMENTS COVERAGE

Exclusion 2 is replaced by the following:

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

2. Sustained while "occupying" "your covered auto" when it is being used as a public or livery conveyance. This exclusion (2) does not apply to a share-the-expense car pool.

IV. PART C - UNINSURED MOTORISTS COVERAGE

Part C is amended as follows:

A. The first sentence of Paragraph A. of the Insuring Agreement is replaced by the following:

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

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

B. Exception 2 to the definition of "uninsured motor vehicle" is replaced by the following:

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

2. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.

C. Exclusion A.3 is replaced by the following:

We do not provide Uninsured Motorists Coverage for "bodily injury" sustained by any person:

3. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This exclusion (A.3) does not apply to a share-the-expense car pool.

D. The following exclusion is added to Part C:

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

V. PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

Part D is amended as follows:

A. The first sentence of Paragraph B. of the Insuring Agreement is replaced by the following:

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

B. Paragraph C. of the Insuring Agreement is replaced by the following:

"Non-owned auto" means:

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

C. The Transportation Expenses provision is replaced by the following:

TRANSPORTATION EXPENSES

In addition we will pay, without application of a deductible, up to \$15 per day, to a maximum of \$450, for:

1. Transportation expenses incurred by you in the event of the total theft of "your covered auto". This applies only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
2. Loss of use expenses for which you become legally responsible in the event of the total theft of a "non-owned auto". This applies only if the Declarations indicate that Other Than Collision Coverage is provided for any "your covered auto".

We will pay only expenses incurred during the period:

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

D. Exclusions 4, 5, and 9, do not apply.

E. The following exclusion is substituted for exclusions 4, 5, and 9:

We will not pay for loss to:

- a. any electronic equipment designed for the reproduction of sound, including, but not limited to:
 - (1) radios and stereos;
 - (2) tape decks; or
 - (3) compact disc players;

b. any other electronic equipment that receives or transmits audio, visual or data signals, including, but not limited to:

- (1) citizens band radios;
- (2) telephones;
- (3) two-way mobile radios;
- (4) scanning monitor receivers;
- (5) television monitor receivers;
- (6) video cassette recorders;
- (7) audio cassette recorders; or
- (8) personal computers;

c. tapes, records, discs, or other media used with equipment described in a. or b.; or

d. any other accessories used with equipment described in a. or b.

This exclusion does not apply to:

a. equipment designed solely for the reproduction of sound and accessories used with such equipment, provided such equipment is permanently installed in "your covered auto" or any "non-owned auto"; or

b. any other electronic equipment that is:

(1) necessary for the normal operation of the auto or the monitoring of the auto's operating systems; or

(2) an integral part of the same unit housing any sound reproducing equipment described in a. and permanently installed in the opening of the dash or console of "your covered auto" or any "non-owned auto" normally used by the manufacturer for installation of a radio.

F. Exclusions 1., 2., 7., 8. and 10. are replaced by the following:

We will not pay for:

1. Loss to "your covered auto" or any "non-owned auto" which occurs while it is being used as a public or livery conveyance. This exclusion (1.) does not apply to a share-the-expense car pool.

2. Damage due, and confined to:

- a. wear and tear
- b. freezing;

c. mechanical or electrical breakdown or failure; or

d. road damage to tires.

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

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

8. Loss to:

- a. awnings or cabanas; or
- b. equipment designed to create additional living facilities.

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

- a. special carpeting and insulation, furniture or bars;
- b. facilities for cooking and sleeping;
- c. height-extending roofs; or
- d. custom murals, paintings or other decals or graphics.

G. The following exclusion is added to Part D

We will not pay for loss to "your covered auto" or any "non-owned auto" due to destruction or confiscation by governmental or civil authorities because of you or any "family member":

- a. engaged in illegal activities; or
- b. failed to comply with Environmental Protection Agency or Department of Transportation standards.

This exclusion does not apply to the interests of Loss Payees in "your covered auto".

H. The Other Insurance provision is replaced by the following:

OTHER SOURCES OF RECOVERY

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

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

VI. PART E - DUTIES AFTER AN ACCIDENT OR LOSS

Part E is amended as follows:

A. The following lead-in language is added to Part E

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

B. Paragraph D is replaced by the following:

A person seeking Coverage for Damage to Your Auto must also:

1. Take reasonable steps after loss to protect "your covered auto" or any "non-owned auto" and their equipment from further loss. We will pay reasonable expenses incurred to do this.
2. Promptly notify the police if "your covered auto" or any "non-owned auto" is stolen.
3. Permit us to inspect and appraise the damaged property before its repair or disposal.

VII. PART F - GENERAL PROVISIONS

The Changes provision is replaced by the following:

PP0005 (12/89). Page 4 of 4

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CHANGES

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

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

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

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

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

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

AMENDATORY ENDORSEMENT - SOUTH CAROLINA
RETAINED PREMIUM

The following is added to the Cancellation Condition of the policy:

If this policy is cancelled by you or us as provided by the policy, any unearned premium or refund of less than one dollar will be retained by us, unless you request in writing that it be returned to you.

AU644 (05/92)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**COVERAGE FOR DAMAGE TO YOUR AUTO EXCLUSION
ENDORSEMENT**

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

I. Definitions

The following definition is added:

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

II. Part D - Coverage For Damage To Your Auto

The following exclusion is added:

We will not pay for:
Loss to "your covered auto" or any "non-owned auto"
due to "diminution in value."

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

PP1301 (12/99)
**PP1301-199912

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EXTENDED TRANSPORTATION EXPENSES COVERAGE ENDORSEMENT

The provisions and exclusions that apply to Part D - Coverage for Damage to Your Auto also apply to this endorsement except as changed by this endorsement.

EXTENDED TRANSPORTATION EXPENSES COVERAGE

When there is a loss to a "your covered auto" described in the Declarations for which a specific premium charge indicates that Extended Transportation Expenses Coverage is afforded, or to a "non-owned auto", we will pay, without application of a deductible, up to the amount shown in the Declarations for:

1. Transportation expenses incurred by you.
2. Loss of use expenses for which you become legally responsible in the event of loss to a "non-owned auto".

This coverage applies only if:

1. "Your covered auto" or the "non-owned auto" is withdrawn from use for more than 24 hours; and
2. The loss is caused by "collision" or is otherwise covered under Part D of this policy.

However, this coverage does not apply when there is a total theft of "your covered auto" or a "non-owned auto". Such coverage is provided under Part D of this policy.

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

Coverage for Transportation Expenses Coverage provided under Part D of this policy is increased to the amount shown in the Declarations if the amount is other than \$15 per day/\$450 maximum.

AU0302 (12/89)

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BROAD FORM PERSONAL AUTO COVERAGES ENDORSEMENT

PART A - LIABILITY

Supplementary Payments Provisions 1 and 4 of Part A are replaced by the following:

1. Up to \$350 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in "bodily injury" or "property damage" covered under this policy.
4. Up to \$75 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request.

Supplementary Payments Provisions 6, 7 and 8 are added:

6. Expenses incurred by an "insured" for first aid to others at the time of an accident involving an auto or "trailer" to which the Liability Coverage applies. However, any payment under this provision will reduce any amount that person is entitled to recover under the Liability and Medical Payments Coverages.
7. ACCIDENTAL DEATH COVERAGE In addition to our limit of liability, we will pay on behalf of you or your spouse the sum of \$1,000 in the event of your death, subject to the following conditions:

1. death must result directly and independently of all other causes from "bodily injury;"
2. the injury must be caused by accident and sustained by you in one of the following ways:
 - a. while "occupying" a motor vehicle designed for use mainly on public roads,
 - b. as a pedestrian when struck by either a motor vehicle designed for use mainly on public roads or a trailer of any type;
3. death must occur within 90 days of the accident (this provision, 7A3., does not apply in Pa.)

If both of you die, as provided herein, \$1,000 will be paid each. Payment will be made to the decedent's surviving spouse, otherwise the decedent's estate.

The provisions of this Supplementary Payments Provision 7 do not apply:

1. to death sustained while "occupying" any vehicle located for use as a residence or premises;
2. to the death of you resulting from "bodily injury" sustained in the course of your occupation while operating, "occupying," loading or unloading any commercial auto or trailer, or repairing or servicing any auto or trailer, or any auto or trailer used as a public or livery conveyance,

3. to suicide, sane or insane;
4. to death caused by or as a consequence of discharge of a nuclear weapon (even if accidental), war (declared or undeclared), civil war, insurrection, or rebellion or revolution.
8. Reasonable expenses for attorney's fee, not in excess of \$50, incurred by you in the event of your arrest as a result of an accident causing bodily injury to any person.

PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

A. The following is added to Insuring Agreement paragraph A:

The deductible amount shall not apply:

1. to loss caused by a "collision" of "your covered auto" or any "non-owned auto," with another auto insured by us; or
2. to loss caused by a "collision" of "your covered auto" or any "non-owned auto," with another auto not insured by us provided:
 - a. the loss to "your covered auto" or any "non-owned auto," exceeds the deductible amount; and
 - b. the operator of such other auto has been positively identified; and
 - c. the operator of such other auto is, in our judgment, solely at fault for the loss to "your covered auto" or any "non-owned auto," and
 - d. no statute is applicable at the time of the accident which relieves the operator of such other auto of tort liability or in any other manner impairs the subrogation right of us.

B. The Personal Effects Provision is added to Part D. In addition, we will pay for loss by fire or lightning to wearing apparel and other personal effects which are the property of you or a "family member," while such effects are in or upon "your covered auto" or any "non-owned auto". The limit of our liability for loss to personal effects arising out of any one accident is \$250.

C. The following exclusion in Part D is deleted:

8. Loss to:
 - a. awnings or cabanas; or
 - b. equipment designed to create additional living facilities.

COMMUNICABLE DISEASE EXCLUSION ENDORSEMENT

The following exclusion applies to this policy:

This policy does not provide coverage for "bodily injury" or "property damage" arising out of the transmission of a communicable disease by any insured.

AU650 (06/92)

PERSONAL AUTO POLICY - PRIME OF LIFE ENDORSEMENT

The package of extra coverages provided by this endorsement apply only if you maintain your eligibility in the "Prime of Life" Plan.

"Insured" as used in this endorsement in respect to Total Disability and Death Indemnity means you and "family members" who are 45 years of age or older.

Other words in quotation marks are defined in the policy.

CELLULAR PHONE COVERAGE

If you maintain both your home and personal auto insurance with us we will provide coverage for loss or damage to your cellular phone. Coverage will be provided by your home or personal auto insurance. Duplicate payments will not be made for the same elements of loss. No deductible applies to this coverage.

RENTED VEHICLE COVERAGE

This coverage is subject to all the provisions of your policy except as changed herein. When there is loss or damage to a "non owned auto" that you rent for less than 90 consecutive days, we will provide coverage for any damage or loss to the "non owned auto" that you rent including its equipment and actual loss of use and other reasonable costs or expenses resulting from the damage or loss. No deductible or waiting periods apply to this coverage. Duplicate payments will not be made for the same elements of loss. This coverage is not contingent upon physical damage coverage being provided for "your covered autos."

EMERGENCY TRAVEL EXPENSE

We will pay up to \$250. for travel expenses incurred because of loss to "your covered auto" more than 50 miles from your legal residence provided the loss is covered under the policy. No deductible applies to this coverage.

Emergency Travel expense means:

1. Lodging, including meals, and/or transportation back to your legal residence.
2. Returning "your covered auto" to its garage location, unless we declare it a total loss.

This limit is in addition to the transportation limit provided by the policy.

EMERGENCY AMBULANCE EXPENSE

We will pay up to \$2,500. for emergency ambulance service or other necessary means of transportation as directed by professional medical emergency personnel for transportation to a hospital because of "bodily injury" sustained by you or "family members" and caused directly by an accident involving a motor vehicle designed for use mainly on public roads or a trailer of any type.

LOCKSMITH SERVICES - Lost or Stolen Keys

We will pay up to \$100. for necessary locksmith services incurred because keys to "your covered auto" or a "non-owned auto" have been lost or stolen. No deductible applies to this coverage.

TOTAL DISABILITY - Wage Loss Coverage

We will pay the "insured" \$200. per week up to 50 weeks for continuous total disability because of "bodily injury" sustained by the "insured" and caused directly by an accident involving a motor vehicle designed for use mainly on public roads or a trailer of any type. The continuous total disability means disability that begins within 20 days of the accident and prevents the "insured" from performing every duty pertaining to "insured's" fulltime wage earning occupation or employment as determined by a licensed physician. This coverage applies only if actual lost wages are sustained because of inability to work. If there are other sources of recovery for wage loss benefits, this coverage will be excess.

DEATH INDEMNITY

We will pay \$25,000. in the event of death of the "insured" because of "bodily injury" sustained by the "insured" and caused directly by an accident involving a motor vehicle designed for use mainly on public roads or a trailer of any type. This benefit supersedes and is not in addition to any other death benefit endorsed on the policy except that this benefit will be excess of any death benefit provided or endorsed on the policy in accordance with requirements of law.

ENDORSEMENT - PHYSICAL DAMAGE AMENDMENT
LIMIT OF LIABILITY

The Limit of Liability provision in Part D - Coverage For Damage To Your Auto is replaced by the following:

LIMIT OF LIABILITY

- A. Our limit of liability for loss will be the lesser of the:
 - 1. Actual cash value of the stolen or damaged property;
 - 2. Amount necessary to repair or replace the property with other property of like kind and quality.However, the most we will pay for loss to any "non-owned auto" which is a trailer is \$500.
- B. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss.
- C. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

AU689 (01/97)

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POLICY CHANGES

The FRAUD provision in PART F - GENERAL PROVISIONS is replaced by the following:

FRAUD

The entire policy will be void if any person we insure has:

1. intentionally concealed or misrepresented any material fact or circumstance with respect to the application for or continuation of this policy; or
2. made false statements or engaged in fraudulent conduct in connection with any accident or loss for which recovery is sought under this policy.

AU651 (06/92)

EXHIBIT 3

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

B. GIBBS LEAPHART, JR.,
Plaintiff,

C.A. NO.:
2011-CP-23-03347

-vs-

J. B. WATTS COMPANY, INC., and
J. B. WATTS,

Defendants.

Deposition of BEN G. LEAPHART, a witness called by Counsel on behalf of the Defendant, pursuant to the applicable provisions of the South Carolina Rules of Civil Procedure, taken before Gary A. Haygood, a Professional Court Reporter and Notary Public in and for the State of South Carolina, on Wednesday, August 17, 2011, at the Law Office of Ashmore, Leaphart, Rabon, Hinds, 601 E. McBee Avenue, Suite 200, Greenville, South Carolina, commencing at the hour of 2:11 p.m.

PALMETTO STATE COURT REPORTERS
3022 S. Morgan's Point Road, Box 118
Mt. Pleasant, South Carolina 29466
843.670.1637 • Palmettostatecr@yahoo.com

EXHIBIT

3

1 coverage. All he had to do was contact me and say,
2 you know, son, you need to get a new -- you need to
3 get Gibbs on a different policy, and he didn't do
4 that. And as a result, I don't believe that my son
5 has been fully compensated for his injuries.

6 Q. Anything else?

7 A. That's pretty much it.

8 Q. All right. The second thing you said was, J.B. knew
9 your son was not a member of your household.

10 What is that based on?

11 A. That's based on a number of things. J.B. and I have
12 been friends and acquaintances for a long time.
13 Just as a side, this is not something I'm relishing,
14 but it's something I think needs to be done. J.B.
15 knew my family. His wife taught my, either Gibbs or
16 my other son Mac, at Augusta Circle Elementary
17 School. We didn't run into each other that much
18 socially, but he was aware of, whenever we talked,
19 we would talk about what the children are doing.

20 But mainly I remember a telephone conversation
21 that I had with J.B. sometime between the year 2001
22 and Gibbs' wreck here in this office. And as I
23 recall, it was in that small conference room over
24 there. Why I called J.B. or why J.B. called me, I
25 don't know. Most likely, it was an issue on the

1 policy. Whenever I'd get a new policy or a renewal
2 policy, the first thing, the only thing I would do
3 would be to look to see, to make sure all of our
4 cars were covered. And sometimes on an occasion or
5 two, there would be a car missing, and I would call.
6 And I just remember that on that occasion, I
7 mentioned the fact that Gibbs was in Columbia. And
8 his response was, Gibbs is in Columbia? And I said,
9 yes, Gibbs is in Columbia. And I don't have any
10 idea why I made that comment, other than we were
11 looking at the policy, and there may have been a
12 problem with the address or something. But I know
13 for a fact I told J.B. that Gibbs was living in
14 Columbia. And this would have been in -- as I say,
15 the reason I placed the date would have been after I
16 moved into this building, and it was pretty good --
17 I don't know whether it was close to the wreck of
18 not.

19 Q. Anything else?

20 A. As to why J.B. knew or should have known that Gibbs
21 was living in Columbia; is that your question?

22 Q. Well, your statement was twofold. Why you believe
23 J.B. Watts failed in his duty, and your second
24 statement was why J.B. knew Gibbs was not a member
25 of your household.

1 understand.

2 Q. All right. Let's go ahead and look at the bottom of
3 the second page, where it says driver ID. Those are
4 the four drivers that are listed as drivers on the
5 policy that you took out with State Auto, correct?

6 A. Yes, ma'am.

7 Q. And those include you, your wife, and your two sons,
8 correct?

9 A. That's correct.

10 Q. Now, looking on the third page, third declaration
11 sheet there, this states -- do you see? Do you see
12 where it says additional insured for auto number
13 two?

14 A. Yes, ma'am.

15 Q. And auto number two we know is the GMC Jimmy S150,
16 correct?

17 A. Correct.

18 Q. That says additional insured for auto number two,
19 Ben G. Leaphart, P.A.; do you see that?

20 A. That's correct.

21 Q. And that's the name that you used for yourself as an
22 attorney; is that correct?

23 A. Yes, ma'am. That -- okay.

24 Q. And what is PO Box 10191?

25 A. That was my old post office box.

- 1 Q. And when you say yours, that's for you as --
- 2 A. Ben G. Leaphart, P.A.
- 3 Q. All right. Ben G. Leaphart, P.A. was your legal
- 4 entity name; that is, it was the name that was on
- 5 your letterhead for your law firm for a number of
- 6 years, correct?
- 7 A. For five years.
- 8 Q. Okay. Is that correct?
- 9 A. Yes, ma'am.
- 10 Q. All right. And that indicates that you as an
- 11 attorney are an additional insured for the GMC Jimmy
- 12 S150 with an address PO Box 10191 in Greenville,
- 13 South Carolina, correct?
- 14 A. Correct.
- 15 Q. And did you use that for tax purposes?
- 16 A. At the time that I bought the car, yes. By the
- 17 time, by 2004, well, not long after it, it wasn't --
- 18 didn't help me much. I didn't --
- 19 Q. But you --
- 20 A. Yeah. The answer to your question is, I purchased
- 21 it through my corporation, in order that I might
- 22 take some tax advantages, correct.
- 23 Q. And the tax advantages would include depreciation?
- 24 A. Yes, ma'am.
- 25 Q. Did it also include reimbursement for gas mileage?

- 1 A. That would have been the only time, yes.
- 2 Q. When did he begin driving the GMC Jimmy in Columbia?
- 3 A. Whenever I gave it to him, which I'm thinking was
- 4 '99 or 2000.
- 5 Q. And how did you come to give him that car at that
- 6 time?
- 7 A. Because I bought a new car.
- 8 Q. And what car was that?
- 9 A. That would have been the -- the other Jimmy, the '97
- 10 Jimmy.
- 11 Q. And when did you buy the '97 Jimmy?
- 12 A. I have no idea.
- 13 Q. Now, attached to the declaration pages, we're still
- 14 looking at Exhibit No. 3, is the personal auto
- 15 policy itself; do you see that?
- 16 A. Uh-huh, yes, ma'am.
- 17 Q. When did you read this policy?
- 18 A. Never. Well, let me back up. I read this policy --
- 19 most likely, I would have looked at this policy
- 20 extensively when there was the denial of the UIM
- 21 coverage.
- 22 Q. All right. So it's your testimony that you never
- 23 read your auto policy until after Gibbs' accident in
- 24 2004?
- 25 A. Yes, ma'am, that's my testimony.

1 provisions will control. The policy itself sets
2 forth, in detail, the rights and obligations of both
3 you and your insurance company. And then it puts in
4 caps again, it is therefore important that you read
5 your policy.

6 Do you see that?

7 A. Yes, ma'am.

8 Q. And you did not read your policy; is that correct?

9 A. I did not read my policy.

10 Q. Did you read any portion of this policy at all --

11 A. Do you mean --

12 Q. -- before, the policy that we're looking at or any
13 version thereof, before your son's accident in 2004?

14 A. No, ma'am.

15 Q. Did you ask anyone at J.B. Watts any questions about
16 your auto policy before your son's accident on May
17 the 5th 2004?

18 A. I don't know.

19 Q. Do you have any recollection of asking any
20 questions?

21 A. I have no recollection of asking a question, and I
22 have no recollection of not asking questions. So I
23 have no recollection whether I asked a question or
24 not.

25 Q. So as you sit here today, you cannot recall a single

1 Q. Is it your contention, do you contend that they
2 acted recklessly as to you?

3 MR. DICK: Object to form.

4 A. I'm not contending anything.

5 Q. Do you contend that they acted recklessly as to your
6 son?

7 MR. DICK: Object to form.

8 A. If failing to advise me or Gibbs or my wife with the
9 knowledge that I had a son who was driving an
10 automobile and there was an exclusion in that
11 policy, that if he were in a wreck in someone else's
12 car, he would not be covered, I would think that
13 that would be reckless.

14 Q. All right. When at any time did you ask anyone at
15 the J.B. Watts Agency that if your son Gibbs was in
16 a wreck in someone else's car and that person didn't
17 have sufficient coverage for his injuries, was he
18 covered or not?

19 A. After the wreck. Well, let me back up. After the
20 -- it was determined in the lawsuit on the UIM
21 coverage that he was not covered. Because of that
22 fact I had a conversation with J.B.

23 Q. But you never had that conversation before that, did
24 you?

25 A. No. I didn't see a need to.

1 Q. Did you have -- did you ask any questions of anyone
2 at the J.B. Watts Agency, as to whether if any of
3 the drivers on your policy were driving any of the
4 cars on your policy and they were in an accident,
5 whether they would have any coverage?

6 A. Didn't I just answer that question?

7 Q. No. And I'll be happy to repeat it.

8 A. As my own lawyer I'm going to object as to it being
9 asked and answered, but go ahead.

10 Q. Did you at any time ask anyone at the J.B. Watts
11 Agency whether anyone on your policy as a listed
12 driver driving any of your automobiles would be --

13 A. My automobiles?

14 Q. -- covered under the policy?

15 A. My automobiles?

16 Q. I believe that's what I said twice now.

17 A. Okay. All right. Then I'll withdraw my objection.
18 No, I didn't ask them that.

19 Q. Did you ever ask anyone at the J.B. Watts Agency as
20 to whether the drivers on your policy had full
21 coverage?

22 A. Didn't see the need to, so no.

23 Q. Did you ever ask anyone at the J.B. Watts Agency
24 about UIM coverage for your son Gibbs before his
25 accident in 2004?

1 A. No.

2 Q. Other than what you've testified to here today, upon
3 what basis do you claim that Mr. J.B. Watts or
4 anyone at the J.B. Watts Agency knew your son was
5 not a legal resident of your household in
6 Greenville?

7 MR. DICK: Object to form.

8 Q. If anything else?

9 A. Other than what I've testified to today?

10 Q. Uh-huh.

11 A. Nothing.

12 Q. Is it your belief that your son was a member of your
13 household while he was in college from 1993 to 1997?

14 MR. DICK: Object to form.

15 A. You mean in terms of the policy definitions?

16 Q. In terms of your definition.

17 A. Was he a member of my household during that period
18 of time?

19 Q. Yes.

20 A. When he was in college. Yes, I would think he would
21 be a member of my household during college. He came
22 home fairly regularly and visited.

23 Q. And his permanent address as used on his college
24 application was your Greenville, your McDaniel
25 Avenue, Greenville address, wasn't it?

1 occasion about that and was trying to find out if he
2 was fully covered, and J.B. said yeah, he's covered.
3 Then when I told him, I said, they're saying that
4 because he was not driving one of our cars, J.B.
5 said, no, he's not covered. Because he wasn't
6 driving one of the insured cars, he's not covered.
7 And I don't know whether J.B. said that immediately
8 or whether J.B. went back and checked the policy and
9 came back to me, but we had that conversation. Now
10 granted, that was all after the fact. That was
11 after the wreck. That was after, well after all
12 that.

13 Q. Okay. So prior to the wreck, did J.B. or anybody at
14 J.B. Watts Company inform you that Gibbs was not
15 covered under the UIM coverage, if he was driving
16 not your car?

17 A. No.

18 MS. WALL: Object to the form.

19 Q. Earlier you testified that you never asked J.B.
20 Watts or anybody at J.B. Watts Company whether or
21 not Gibbs was covered if he was in another car.

22 Why did you not ask them about that?

23 A. Because I assumed he was, and I didn't see any need
24 to ask J.B. or anybody, because I was depending on
25 J.B. and his company to provide us full protection.

EXHIBIT 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

)
)
)
COVENANT NOT TO EXECUTE

This GOVENANT made this 26th day of October, 2004, by and between Ben Gibbs Leaphart hereinafter referred to as "Covenantor" and STATE FARM INSURANCE COMPANIES hereinafter referred to as "Covantee."

WHEREAS, on May 5, 2004, in Charleston County, South Carolina, the Covenantor, was allegedly injured, as a passenger, in an automobile accident with Tara Lee Austin; and

WHEREAS, the automobile being driven by Tara Lee Austin, was owned by Roby Scott Austin and insured by State Farm Insurance Companies; and

WHEREAS, the automobile being driven by Tara Lee Austin had only Fifteen Thousand (\$15,000.00) and no/100 Dollars per person and Thirty Thousand (\$30,000.00) and no/100 Dollars per accident bodily injury liability coverage with the Covantee, State Farm Insurance Companies, under policy number 0128-267-40B; and

WHEREAS, there may be additional liability coverage that applies hereto; and

WHEREAS, the automobile in which the Covenantor, Ben Gibbs Leaphart, was a passenger was insured by State Auto Mutual Insurance Company under policy number ASC3754417, and the policy on same provides for underinsurance coverage; and qualification as an underinsured motor vehicle being in dispute in the case at bar; and

WHEREAS, any execution of any judgment received as a result of the injuries claimed herein, will be satisfied from any additional or excess liability coverage or underinsured motorist coverage and not from the personal assets of R. Scott Austin or Pamela Austin; and

WHEREAS, Covenantor agrees that their sole recovery additional hereto is limited to recovery under any liability or underinsured motorist policy and not from execution, except to the extent of any applicable liability and/or underinsured motorist coverage, against the personal assets of R. Scott Austin or Pamela Austin; and

WHEREAS, this Covenant does not prohibit Covenantor from pursuing and collecting other liability coverage, whether denominated as excess or primary, or other underinsured motorist coverages.



WHEREAS, pursuit of other liability coverage or underinsured motorist coverage will not affect the personal or individual exposure of R. Scott Austin and Pamela Austin, except to the extent of any applicable liability or underinsured motorist coverage; and

WHEREAS, the damages sustained by the Covenantor, in the automobile accident of May 5, 2004 may exceed the liability limits of the insurance policy of R. Scott Austin and Pamela Austin and the Covenantor is desirous of protecting his right to proceed to suit against Tara Lee Austin for purposes of collecting additional liability coverage and/or underinsured benefits; and

NOW, FOR AND IN CONSIDERATION OF the payment to the Covenantor of the sum of Fifteen Thousand (\$15,000.00) and no/100 Dollars by the Covenantee, the sufficiency and receipt of which is hereby acknowledged, the Covenantor and Covenantee agree as follows:

1. That in the event the Covenantor is unable to resolve by agreement and settlement his claim with any additional liability insurance carrier or the underinsured carrier, State Auto Mutual Insurance Company, the Covenantor shall have the right to bring suit against Tara Lee Austin and prosecute same to final judgment.

2. Notwithstanding any judgment that may be rendered in said suit, it is the express intent of the parties that R. Scott Austin and Pamela Austin their respective heirs and assigns, shall never at any time, be liable to the Covenantor, his subrogees, heirs, or assigns, beyond the consideration expressed herein, by reason of any damages or injuries on which such judgment may be based except as herein stated. In consideration of the payment to the Covenantor of the sum of Fifteen Thousand (\$15,000.00) and no/100 Dollars Covenantor, his subrogees, heirs, or assigns, shall not at any time, nor shall anyone for him or in his behalf, enforce against R. Scott Austin or Pamela Austin, by execution or otherwise, any judgment that may be rendered in the above-mentioned lawsuit except as herein stated. Upon reduction to judgment of the aforementioned lawsuit, Covenantor, his subrogees, heirs, or assigns will immediately provide R. Scott Austin and Pamela Austin with an executed Satisfaction of Judgment in any case presented by Covenantor against them for the accident dated May 5, 2004, unless such Satisfaction of Judgment will impede collection or pursuit of additional liability coverage or underinsured motorist coverage. If a Satisfaction of Judgment will impede collection or pursuit of additional liability coverage or underinsured motorist coverage, Covenantor, his subrogees, heirs, or assigns will provide R. Scott Austin and Pamela Austin a Satisfaction of Judgment upon the earlier of the following events: (a) payment of said judgment by any other liability insurance carrier and/or underinsured motorist carrier or (b) final resolution of any additional liability coverage and/or underinsured motorist coverage claim. If immediate satisfaction of the judgment is not filed after either payment of the judgment or final resolution of any other liability or underinsured motorist claim, this Covenant may be recorded as a Satisfaction of Judgment.

3. Covenantor, Covenantee, R. Scott Austin, and Pamela Austin expressly reserve all rights of action, claims, demands or other legal remedies against all firms and persons except as modified by the terms of this Covenant. This Covenant is not a release, nor shall it be construed as a release of any party, person, firm or corporation.

4. Covenantor expressly represents that he has been represented by counsel, has been fully advised of all facets of potential lawsuit, and all claims arising out of or in relation thereto, and is aware and fully advised that the execution of this instrument will fully and forever prevent and bar the collection of any additional payments of any kind, nature or description against R. Scott Austin or Pamela Austin, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys, except as herein stated.

5. In executing this agreement, Covenantor represents and warrants that he has relied on his investigation and on the investigation and advice of his attorney, and has not relied on any statement, representation, or commitment of any kind made by Covenantee, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

6. All provisions and recitals in this Covenant are intended to be and are Covenants of the parties and are a material part of this agreement and binding on the parties hereto, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.

7. The Covenantor agrees that if there exists any subrogation, assignment, lien, or interest, whether created by contract, statute or otherwise, that he will obtain a release from the person or entity holding such interest and that the Covenantor will protect, save, defend, hold harmless, and indemnify the Covenantee and R. Scott Austin and Pamela Austin from any such subrogation, assignment, claims, or interests. By entering this agreement the Covenantee does not make any representation as to the effect of this agreement on the Covenantor's claim for additional liability coverage or underinsured motorist coverage and the Covenantor and his attorney expressly acknowledge this disclaimer.

8. The Covenantor and the Covenantor's attorney, if represented, expressly agree to keep State Farm Insurance Companies, R. Scott Austin, and Pamela Austin abreast of developments in his attempt to collect additional liability coverage and/or underinsured motorist benefits, including specific notice as to the date of trial, the amount of verdict, status of the underinsured motorist claim and whether a settlement has been obtained.

9. The parties expressly recognize that the payment made herein in this agreement is in partial settlement and satisfaction of a doubtful and disputed claim, that the Covenantee, R. Scott Austin and Pamela Austin deny any liability to the Covenantor and that this agreement and payment is not intended as, nor should it be construed as, an admission of liability.

10. All parties agree that this Covenant is a product of negotiation and agreement among the parties.

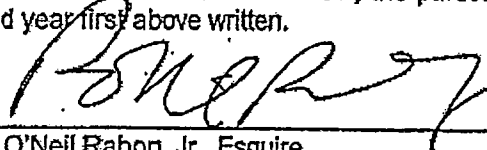
11. The provisions and stipulations hereof shall inure to the benefit of, and shall be binding upon, the heirs, executors, administrators, assigns and successors in interest of the parties hereto.

12. The execution of the Covenant Not to Execute is acknowledged to have taken place in the State of South Carolina. Further, that such Covenant shall be construed pursuant to South Carolina law.

13. Covenantor acknowledges that neither Covenantee nor R. Scott Austin or Pamela Austin have made any representations on the availability of excess liability coverage and/or underinsured motorist coverage should this Covenant be executed.

14. Should any damages be incurred by R. Scott Austin or Pamela Austin due to the failure to immediately satisfy any judgment hereafter rendered, Covenantor agrees to save, defend, hold harmless and indemnify Covenantee, R. Scott Austin, and Pamela Austin from any and all liability therefor.

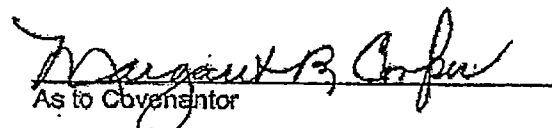
IN WITNESS WHEREOF, the parties have executed this agreement on the day, month and year first above written.



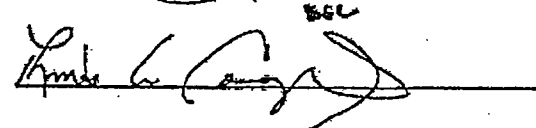
R. O'Neil Rabon, Jr., Esquire



Ben Gibbs Leaphart, Jr.



As to Covenantor



STATE FARM INSURANCE COMPANIES

As to the Covenantee

BY: _____

5500B-5S/kms

EXHIBIT 5

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)
FOR THE FOURTEENTH JUDICIAL CIRCUIT)

COUNTY OF JASPER)

07-29-11

B. Gibbs Leaphart, Jr.,)

Plaintiff,)

vs.)

Tara Lee Louise Austin,)

Defendant.)

NOTICE OF APPEARANCE
AND ANSWER

(Jury trial demanded)

FILED
PAGE
2007 SEP 28 AM 11: 30
MARGARET BOSTICK
CLERK OF COURT/RMC
JASPER COUNTY SC

2008 CP 480 0010

TO: R. O'NEIL RABON, JR., ESQUIRE, ATTORNEY FOR PLAINTIFF

The undersigned, as attorneys for State Auto Insurance Company, hereby notify and advise this Court, the parties above-named and their attorneys, that they are appearing on behalf of State Auto Insurance Company, an insurance carrier which is alleged to provide underinsured motorist coverage to one or more parties to this action and that, in making this appearance, State Auto Insurance Company specifically preserves and does not waive any rights pursuant to its policy of insurance including, but not limited to, the applicability of underinsured motorist coverage to this action and further intends to preserve all rights which it may have pursuant to South Carolina Code Section 38-77-160 (1976 as amended).

FILED
2008 JAN 23 AM 9: 09
BARBARA A. SCOTT
CLERK OF COURT

FOR A FIRST DEFENSE
(Statute of Limitations)

1. Defendant would show that all claims asserted against this Defendant are barred by the applicable statute of limitations.

FOR A SECOND DEFENSE

2. The Defendant denies each and every allegation of the Plaintiff's Complaint not

SCANNED
POSTED
BY pd DATE 10.1.07



hereinafter specifically admitted or qualified.

3. In answering the allegations of Paragraphs one and two of the Complaint, it is admitted that Plaintiff and Defendant are residents of Columbia, State of South Carolina, and would affirmatively show that Columbia is in the County of Richland, State of South Carolina.

4. The allegations of Paragraph three of the Complaint are admitted, upon information and belief.

5. In answering the allegations of Paragraphs four, five, six and eight of the Complaint, it is admitted, upon information and belief, that on or about the date stated, and in or about the area referred to the Plaintiff was a passenger in a vehicle operated by the Defendant when the Defendant ran off the roadway and overturned, however, the allegations concerning the specific nature of the accident and the allegations therein concerning the Plaintiff's alleged injuries and damages are denied, due to lack of sufficient knowledge or information to form a belief as to the truth of the allegations thereof, and the remaining allegations of said paragraphs are denied.

6. In answering the allegations of Paragraph seven of the Complaint, those allegation are denied, due to lack of sufficient knowledge or information to form a belief as to the truth of the allegations thereof, and it is further, affirmatively denied that the Defendant was in any ways guilty of any reckless acts or omissions, or that she operated a motor vehicle with a reckless disregard for the rights and safety of others, and especially the rights and safety of the Plaintiff.

FOR A THIRD DEFENSE
(Punitive Damages)

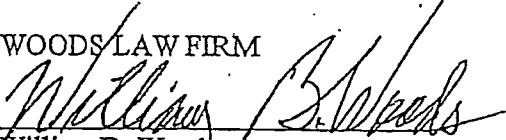
7. This Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of American in that it violates the double jeopardy clause in

that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts, the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against himself in a penalty situation such as punitive damages, the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature, Plaintiff's claim for punitive damages violates this Defendant's right to access to the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right, the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, and the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards and, therefore, the Plaintiff's claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, it is prayed that the Plaintiff's Complaint be dismissed, with costs, and for such other and further relief that the Court deems just and proper.

This Defendant demands a jury trial.

WOODS LAW FIRM



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Lexington, South Carolina 29072

Attorney for Defendants

September 26, 2007

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

B. Gibbs Leaphart, Jr.,)

Plaintiff,)

vs.)

Tara Lee Louise Austin,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

2008CP4000010

CASE NO.: 07-CP-27-291

CERTIFICATE OF SERVICE

FILED
PAGE
2007 SEP 28 AM 11:30
MARGARET BOSTICK
CLERK OF COURT/RMC
JASPER COUNTY SC

I, the undersigned employee of Woods Law Firm, LLC do hereby certify that I have served State Auto's Notice of Appearance and Answer, Interrogatories, Request for Production and Motion to Change Venue of the Plaintiff by personally mailing a copy of the same, postage prepaid, on the date shown below as follows:

R. O'Neil Rabon, Jr.
601 McBee Avenue, Suite 200
Post Office Box 10766
Greenville, South Carolina 29603

Sheila Leventis
Sheila Leventis

September 26, 2007

FILED
2008 JAN 23 AM 9:18
BARBARA A. SCOTT
C.O.C. & G.S.

SCANNED
DATE 10/1/07

STATE OF SOUTH CAROLINA)
)
) 2012 FEB 14 AM 9:18)
) COUNTY OF GREENVILLE)
) FILED-CLERK OF COURT)
) B. Gibbs Leaphart, Jr., GREENVILLE CO S C.)
) PAUL B. WICKENSING)
) Plaintiff,)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
Civil Action No.: 2011-CP-23-03347

vs.)
)
) J.B. Watts Company, Inc. and J.B. Watts,)
)
) Defendants.)

PLAINTIFF'S MEMORANDUM OF
LAW IN OPPOSITION TO THE
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

Plaintiff B. Gibbs Leaphart, Jr. ("Gibbs Leaphart"), by and through his undersigned counsel, respectfully submits this Memorandum of Law in Opposition to the Defendants' Motion for Summary Judgement.

THE FACTS

Gibbs Leaphart is a resident of Columbia, South Carolina who was involved in a one car traffic accident wherein he was a passenger in the vehicle on May 5, 2004. (Pl. Dep. pp. 29, 31-32).¹ The operator of the vehicle was traveling Northbound on I-95 in the County of Jasper, State of South Carolina when she ran off the left side of the road, losing control and flipping the vehicle onto the crossover fence in the median of the highway. *Id.*; Compl. ¶ 6.

Gibbs Leaphart, who was a passenger in the right front seat of the vehicle, was thrown from the vehicle, suffering multiple injuries including but not limited to the amputation of the 2, 3 and 4 digits on his right hand. Compl. ¶ 8. Gibbs Leaphart continues to have issues to this day with his hand, ear, neck, back and shoulder. (Pl. Dep. pp. 141-42).

¹ Excerpts to the Plaintiff's Deposition are attached hereto as Exhibit E.

The operator of the vehicle was driving a 1994 Jeep vehicle owned by her father and insured under his policy with State Farm. Compl. ¶ 7. Gibbs Leaphart received a monetary settlement from the vehicle operator's liability insurance carrier and then sought underinsured motorist ("UIM") coverage from the State Auto policy of Mr. Ben G. Leaphart ("Ben Leaphart"), Plaintiff's father. (Pl. Dep. pp. 33-34; Compl. ¶ 9).

Gibbs Leaphart was allegedly covered under Ben Leaphart's policy with State Auto. Gibbs was a listed driver on this policy which had policy limits of \$500,000. (See Exhibit A). Gibbs Leaphart was denied UIM coverage by State Auto because he was alleged to be neither a "named insured," the "spouse" of a named insured, nor a "family member." State Auto did not deny coverage until it filed its Notice of Appearance and Answer on September 28, 2007. (See Exhibit B).

On October 20, 2008, in a civil action over this issue, the Court agreed with State Auto, and denied Gibbs Leaphart any UIM coverage. (See Exhibit C). Gibbs Leaphart was listed as a driver / operator on the declarations page of the State Auto policy; however, the Court concluded that this fact did not make him a "named insured." *Id.* Further, the Court concluded that Gibbs Leaphart was not a "family member" because he did not reside in the household of Ben Leaphart. *Id.*

The Court found that Gibbs Leaphart had not been a resident of his parent's household since 1997 and was a mere transient visitor for 11 years preceding the accident. *Id.* Accordingly the Court refused to grant any UIM coverage to Gibbs Leaphart under the State Auto policy. *Id.*

After the Court's decision, it became clear that in order for Gibbs Leaphart to have been fully covered under the UIM policy, he should have been listed as a named insured or placed on his own separate policy. (See Exhibits A & C). However, J.B. Watts and J.B. Watts & Company

never informed Gibbs or Ben Leaphart of this fact. (Pl. Dep. pp. 137,139; Ben Leaphart Dep. pp. 93-94).² After being denied UIM coverage by the Court, Gibbs Leaphart brought this action against the Defendants on October 13, 2010.

For over 20 years Ben Leaphart has maintained State Auto insurance policies on his automobiles, permanent home, vacation home, and office building obtained through J.B. Watts & Company. Compl. ¶ 16. When Gibbs Leaphart turned 16 years on July 21, 1990, and obtained his driver's license, Ben Leaphart contacted J.B. Watts & Company and had him added as a driver on the State Auto insurance policy. Compl. ¶ 17. Since the time that Gibbs Leaphart obtained a drivers license at age 16, J.B. Watts has acted as agent for the providing of insurance coverage for the cars he drove and listed him a driver on the policies. Compl. ¶ 18. This coverage continued through high school, college and eventually law school. *Id.*

J.B. Watts is a long-time personal acquaintance of Ben Leaphart, and Ben Leaphart on several social occasions has discussed the activities of Gibbs Leaphart with J.B. Watts. (Ben Leaphart Dep. pp. 21, 23). In his deposition, Ben Leaphart testified that he specifically told J.B. Watts that Gibbs Leaphart was living in Columbia. (Ben Leaphart Dep. pp. 21-22; 77).

On more than one occasion Ben G. Leaphart referred Gibbs Leaphart to J.B. Watts and J.B. Watts & Company for the purpose of answering his questions or when he needed information regarding the insurance coverage on the car he was driving. Compl. ¶ 20. In fact, Gibbs Leaphart on several occasions contacted J.B. Watts & Company and asked them to mail his proof of insurance cards to his address in Columbia. (Pl. Dep. pp. 48, 102-105).

At the time of the accident, Ben G. Leaphart maintained insurance coverage on 6 vehicles with State Auto, written through J.B. Watts & Company of Greenville South Carolina by the

² Excerpts to the Ben Leaphart's Deposition are attached hereto as Exhibit F.

agent J.B. Watts. (See Exhibit A). The attached policy shows that one of the insured automobiles was garaged in Columbia, South Carolina where Gibbs Leaphart was residing at the time of the accident. *Id.*

J.B. Watts and J.B. Watts & Company (hereinafter collectively referred to as "Watts") had knowledge of the fact that Gibbs Leaphart was living in Columbia at the time of the accident. (Ben Leaphart Dep. pp. 21-22; 77; Pl. Dep. pp. 48, 102-105). When J.B. Watts was informed of State Auto's denial of Gibbs Leaphart's claim, he assured Ben G. Leaphart that the denial was an error, and that Gibbs Leaphart was fully covered under the policy. (Ben Leaphart Dep. pp. 93-94).

Plaintiff has now filed this action because J.B. Watts and J.B. Watts & Company mistakenly and negligently believed that Gibbs Leaphart was fully covered under the policy, never informed the Leapharts of the gap in coverage, and as a result Gibbs Leaphart has been denied UIM coverage by State Auto. Plaintiff has asserted causes of action for breach of contract, negligence, breach of fiduciary duty, and violation of the South Carolina Unfair Trade Practices Act.³

STANDARD

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. *Montgomery v. CXS Transp., Inc.*, 376 S.C. 37, 47, 656 S.E.2d 20, 25 (2008). In determining whether a genuine issue of fact exists, a court must assume as true the evidence of the nonmoving party and draw all reasonable inferences in favor of that party. *Id.* Summary judgment is appropriate "if the pleadings,

³ Plaintiff will not address the issues related to the South Carolina Unfair Trade Practices Act as this ground was not raised in the Defendants' Motion for Summary Judgment.

depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Singleton v. Sherer*, 377 S.C. 185, 196, 659 S.E.2d 196, 202 (Ct. App. 2008). All ambiguities, conclusions, and inferences arising from the evidence "must be construed most strongly against the moving party." *Connor Holdings, L.L.C. v. Cousins*, 373 S.C. 81, 85, 644 S.E.2d 58, 60 (2007).

"Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Doe v. Batson*, 345 S.C. 316, 321-22, 548 S.E.2d 854, 857 (Ct. App. 2001) (citing *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)). In cases where the applicable burden of proof is preponderance of the evidence, "the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgt. Co., Inc.*, 381 S.C. 326, 330-1, 673 S.E.2d 801, 803 (2009).

ARGUMENT

In their motion for summary judgment, the Defendants argue that (1) all claims are barred by the state of limitations; (2) Watts had no duty to advise; (3) there was no mutual assent to create a binding contract; (4) Watts was not the proximate cause of the denial of UIM coverage; and (5) Watts was not in a fiduciary relationship with Gibbs Leaphart. Because there exist several genuine issues of material fact, each of the Defendants' grounds for summary judgment fails.

I. The Complaint was filed within the statute of limitations.

The Defendants' first argument is that the statute of limitations bars the Plaintiffs claims because they were not filed within three years. However, because Gibbs Leaphart filed his

Complaint within three years of the Court's decision to deny him UIM coverage, the statute of limitations has been met.

Gibbs Leaphart's cause of action against Watts was not ripe until the Court denied his claim for UIM coverage from State Auto. Until the claim against State Auto was denied, Gibbs Leaphart did not have any damages caused by Watts. "The Statute of Limitations begins to run from the time of the first injury or damage. This is the settled law of South Carolina and governs this case." *Webb v. Greenwood County*, 229 S.C. 267, 279, 92 S.E.2d 688, 693 (1956) (emphasis added). Accordingly, the three year statute of limitations did not begin to run until the Court denied Gibbs Leaphart's claims against State Auto. The Court denied the claims against State Auto on October 28, 2008 and this action was filed on October 13, 2010, less than two years after the Court's decision. Clearly, Gibbs Leaphart's complaint was within the applicable statute of limitations.

II. The Defendants had a duty to advise and breached that duty.

In general terms, an insurance agent or broker "must exercise good faith, reasonable skill, care and diligence." *Great Am. Ins. Co. v. Mills*, 2008 WL 2250256, *9 (D.S.C. 2008) (quoting *Sullivan Co., Inc. v. New Swirl, Inc.*, 313 S.C. 34, 437 S.E.2d 30, 31 (1993)). "If, because of his fault or neglect, the agent fails to procure insurance, or does not follow instructions, or the policy issued is void, or materially deficient, or does not provide the coverage he undertook to supply, the agent is liable to his principal." *Id.* Regarding an agent's duty to advise and inform an insured, the Supreme Court of South Carolina in the seminal insurance case *Trotter v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 465, 377 S.E.2d 343 (Ct. App. 1988) recognized that insurers and their agents generally do not have a duty to advise an insured. *Id.* at 471, 377 S.E.2d at 347. However, the *Trotter* court conceded that where "the agent . . . undertakes to advise the insured,

he must exercise due care in giving advice.” *Id.*; see also *Great Am. Ins. Co. v. Mills*, 2008 WL 2250256 (D.S.C. 2008).

An insurance agent’s duty to exercise due care may be assumed either expressly or impliedly. *Id.* An implied undertaking may be shown if: (1) the agent received consideration beyond a mere payment of the premium,⁴ (2) the insured made a clear request for advice, or (3) there is a course of dealing over an extended period of time which would put an objectively reasonable insurance agent on notice that his advice is being sought and relied on. *Id.*

a. **Ben Leaphart made a clear request for advice.**

As the named insured, and the procurer of the insurance policy through Watts, Ben Leaphart has testified that he specifically relied on Watts to ensure his family had adequate coverage. As in this case, “Defendant was a licensed insurance agent and held himself out to the public as knowledgeable and experienced in the insurance business. As such, he was requested and undertook to provide plaintiff with the insurance coverage desired. Plaintiff, while experienced in his own business, was not experienced in the insurance field and had a right to rely upon the expert knowledge of the agent. The reasonableness of the conduct of the parties must be assessed in that light.” *Riddle-Duckworth, Inc. v. Sullivan*, 253 S.C. 411, 424, 171 S.E.2d 486, 492 (1969).

In his deposition, when asked why he did not place his sons on their own separate policies, he testified, “[b]ecause I, obviously, was told that it was a better advantage to keep them on my policy.” (Ben Leaphart Dep. at p. 62). Further, Ben Leaphart testified that Watts never informed him that Gibbs Leaphart was not covered under the UIM coverage if Gibbs Leaphart was in a vehicle other than one listed on the policy. (Ben Leaphart Dep. pp. 93-94).

⁴ Plaintiff has not alleged there was any additional consideration.

Ben Leaphart also testified that he made it crystal clear to Watts that Gibbs Leaphart was living in Columbia, South Carolina. (Ben Leaphart Dep. pp. 21-22, 77). Ben Leaphart testified, "I know for a fact I told J.B. that Gibbs was living in Columbia." *Id.*

Watts advised Ben Leaphart that it was a "better advantage" to keep his sons on his policy when he knew or should have know that his sons would not be covered by the UIM coverage in certain situations. This is especially true considering the fact that Ben Leaphart specifically told Watts that Gibbs Leaphart was no longer living at home and Gibbs Leaphart had informed the agency his address was in Columbia. Despite this, Watts never informed Ben Leaphart that Gibbs Leaphart was not fully covered under the UIM policy.

The Plaintiff's expert Donald P. Roinestad ("Roinestad") agrees that Watts knew or should have known that Gibbs Leaphart was not fully covered. *See* Aff. Roinestad, Exhibit G. "Watts should have known, however, that the savings a multi-car discount can provide is negligible compared to the loss in protection to a listed principal driver not considered a "family member" under the Policy." *Id.* at ¶ 14.a.1.1. With all ambiguities, conclusions, and inferences arising from the evidence construed most strongly against the Defendants, it is clear that Ben Leaphart clearly requested advice from Watts, and thus the motion for summary judgment must be denied.

b. The course of dealings between Ben Leaphart and Watts put Watts on notice that their advice was being sought and relied on.

For over 20 years Ben Leaphart has maintained State Auto insurance policies on his automobiles, permanent home, vacation home, and office building obtained through Watts. This extensive course of dealings with Watts over a 20 plus year period sufficiently puts Watts on notice that their advice was being sought and relied on.

J.B. Watts and Ben Leaphart have been friends and acquaintances for over 20 years. (Ben Leaphart Dep. p. 21). J.B. Watts was familiar with the Leapharts, and his wife taught the Leaphart sons. *Id.* On several occasions Ben Leaphart would see J.B. Watts at social functions and they would discuss their children. *Id.* For over 20 years, Ben Leaphart has obtained insurance policies through Watts on his automobiles, personal home, vacation home, and office building. Compl. ¶ 16. Ben Leaphart clearly had a very extensive business relationship with Watts, and Watts provided all of the Leaphart family's insurance needs.

Additionally, each of the policies received by Ben Leaphart was sent in an envelope from Watts that said, "This policy comes with an agent!" (See Exhibit D). This statement was marked with emphasis and placed on the front of every envelope containing the insurance policy procured by Watts. Clearly the implication of this statement is that Ben Leaphart was buying more than just an insurance policy, he was also receiving the advice of his agent Watts. "Watts, who held himself out to be a skilled insurance agent, was bound to exercise the same degree of professional care as a skilled insurance agent of ordinary prudence engaged in the same line of business." *Aff. Roinestad, Exhibit G, ¶ 14.*

As further evidence that Ben Leaphart was seeking the advice of Watts, Ben Leaphart testified that he "would have called to make sure that all of the cars were covered." (Ben Leaphart Dep. p. 50). Ben Leaphart would review the declarations page of the insurance policy received from Watts to make sure it listed the coverage and cars he had specified to Watts, and then call Watts if there were any issues. (Ben Leaphart Dep. pp. 22, 50-51). In fact, based on the face of the declarations page it appeared that Ben Leaphart had \$500,000 of UIM coverage and listed Gibbs Leaphart as a driver directly below the coverage. (See Exhibit A).

Ben Leaphart testified, "I know for a fact I told J.B. that Gibbs was living in Columbia." (Ben Leaphart Dep. pp. 21-22). This was in addition to that fact that Gibbs Leaphart had contacted the agency and informed them that his address was in Columbia. Watts was clearly on notice that Gibbs was living in Columbia, and he should have provided advice to the Leaphart family regarding the change in coverage this known fact created.

Plaintiff's expert Roinestad opined that "[t]he defendants failed to exercise reasonable skill, care, and diligence – and violated the standard of care – by not providing the proper automobile insurance protection for B. Gibbs Leaphart, Jr." Aff. Roinestad, Exhibit G, ¶ 15. Based on the extensive insurance relationship with Watts, and the coverages that were provided on the face of the insurance policy, it is obvious that Watts was put on notice that their advice was being sought and relied upon with regard to coverage of the Leaphart family. Accordingly, a duty to advise the Leapharts existed, and the Defendants' motion for summary judgement should be denied.

III. The Defendants breached their contract with Plaintiff.

The Defendants argue that there was no mutual assent to an implied contract between Gibbs Leaphart and Watts. However, as discussed above, Watts owed a duty to Ben Leaphart and Gibbs Leaphart to provide accurate advice concerning the insurance policy and to provide the appropriate coverage. Gibbs Leaphart was a third party beneficiary to this implied contract and thus has standing to bring a breach of contract claim.

The South Carolina federal district court has held that an insured, other than the policyholder, has standing to bring a claim against the insurer and its agent. *Wright v. Allstate Ins. Co.*, 746 F. Supp. 612 (D.S.C. 1990). Like the present case, the policy at issue insured the plaintiff as a permissive user but not for underinsured coverage. The court stated that primarily,

"[t]o have standing, a party must have a personal interest in the subject matter of the lawsuit." *Id.* at 614 (citing *Duke Power Co. v. South Carolina Public Service Com.*, 284 S.C. 81, 326 S.E.2d 395, 404 (1985); *Furman Univ. v. Livingston*, 244 S.C. 200, 136 S.E.2d 254 (1964)). The court rejected the insurance company's argument that the plaintiff's status as a "permissive user" in an automobile insurance policy prevented the requisite privity of contract to sue the insurer. *Id.* The court agreed that where statutes refer to the "insured" generally and the "named insured" and "policyholder" specifically in other provisions, the Legislature could have limited the applicable statute with those terms. *Id.* However, as underinsured coverage is designed to insure for the benefit of those like Gibbs Leaphart whose claims for injury exceed the liability limits of insured at-fault motorists, those parties have a personal interest in the action. Therefore, because the plaintiff has a personal interest in the subject matter of the lawsuit, he has standing to pursue his action against the insurance company and agent. *See also Fireman's Ins. Co. v. Cincinnati Ins. Co.*, 394 S.E.2d 855 (Ct. App. 1990) (plaintiff insurance company had standing to seek declaratory judgment that defendant insurance company failed to make an effective offer of underinsured motorist coverage to its policyholder, despite evidence offered by defendant and its policyholder that an effective offer had been made and rejected.) For a similar fact situation, see *Adams v. State Farm Mutual Auto. Ins. Co.*, No. 89-2408, *per curiam*, (4th Cir. July 12, 1990) (unpublished), attached hereto as Exhibit H. As Gibbs Leaphart certainly had a personal interest in the coverage procured by his agent, this analysis supports the argument that Watts' duties extended to Gibbs Leaphart as a listed driver on the policy in question.

Therefore, Watts' failure to provide accurate advice and to procure the proper policy and coverage was a breach of contract that affected Gibbs Leaphart. The policy in question was a

renewal policy that was renewed every 6 months by Ben Leaphart. A renewal is defined by the South Carolina Code as:

Renewal" or "to renew" means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, the renewal policy to provide types and limits of coverage at least equal to those contained in the policy being superseded, or the issuance and delivery of a certificate or notice extending the terms of a policy beyond its policy period or term with types and limits of coverage at least equal to those contained in the policy being extended. However, any policy with a policy period or term of less than six months or any period with no fixed expiration date is considered as if written for successive policy periods or terms of six months.

S.C. Code Ann. § 38-77-30 (emphasis added). Prior to Gibbs Leaphart graduating from college, he was fully covered under the UIM policy. Even if he had been riding in a car owned by someone else, he still would have been covered under the UIM policy of Ben Leaphart.

However, after Gibbs Leaphart graduated from college and moved to Columbia, he went from being fully covered under the UIM policy to only partially covered. Watts was put on notice of this situation when he was told by Ben Leaphart that Gibbs Leaphart was now living in Columbia, and when Gibbs Leaphart contacted Watts' insurance company and requested that his insurance cards be sent to Columbia. Despite being put on notice of this change in the status of the insured, Watts never informed Ben Leaphart that Gibbs Leaphart was no longer fully covered under the UIM coverage. Watts continued to issue renewal policies to Ben Leaphart despite the fact that the policy was no longer providing the same coverage. This fact constitutes a breach of contract, and thus the Defendants' motion for summary judgment should be denied.

IV. Watts was the proximate cause of Plaintiff's inability to obtain UIM coverage.

South Carolina law provides that one cannot complain of misrepresentation concerning the contents of a written instrument in his possession when the truth could have been ascertained

by reading the instrument. *Maw v. McAllister*, 252 S.C. 280, 285, 166 S.E.2d 203, 204 (1969). However, insurance policies provide a much lower standard when it comes to reading the policy itself. "While an insured cannot abandon all care, the rules which require one to inform himself of the terms of his contract and to take precautions for his own protection are less exacting when dealing with one's own insurance agent or broker in the procurement of an insurance contract." *Riddle-Duckworth, Inc. v. Sullivan*, 253 S.C. 411, 423-24, 171 S.E.2d 486, 492 (1969). Accordingly, not only does the insured have a reduced standard when dealing with the insurance agent, but by reading the policy, the insured must have been able to ascertain the truth.

In fact, several South Carolina cases have held that the fact that the insured did not read the policy does not bar the plaintiff's claims. *Giles v. Lanford & Gibson, Inc.*, 285 S.C. 285, 328 S.E.2d 916 (Ct. App. 1985); *Great Am. Ins. Co. v. Mills*, 2008 WL 2250256 (D.S.C. May 29, 2008) (applying South Carolina law); *Orangeburg Sausage Co. v. Cincinnati Ins. Co.*, 316 S.C. 331, 450 S.E.2d 66 (Ct. App. 1994). Ben Leaphart had a right to rely on the knowledge and representation of Watts. *Riddle-Duckworth, Inc.*, 253 S.C. 424, 171 S.E.2d 492. Ben Leaphart testified that he did read every declarations page of the policy, but did not read the fine print of the policy itself. (Ben Leaphart Dep. pp. 50-51). He relied on Watts to ensure that there were no loopholes in his coverage, and reading the policy would have not affected this right to rely on Watts.

Further, even if Ben Leaphart had read the policy, it would not have revealed the truth of the situation. Gibbs Leaphart was denied UIM coverage by the Court based on a very small loophole in the policy. Even a close reading of this policy would not have revealed the loophole. Ben Leaphart read the declarations page of the policy which provided that he had \$500,000 of UIM coverage and listed Gibbs Leaphart directly below that. (See Exhibit A).

Even if Ben Leaphart had looked deeper into the fine print of the policy it would have revealed that UIM coverage was provided to "You or your 'family member.'" (See Exhibit A, Bates # State Auto 47). Clearly a plain reading of this language would assume that Gibbs Leaphart, as his son, was covered under the UIM coverage. It is only after searching out the policy definition of a family member and then searching South Carolina case law for the definition of a resident that one would have known that Gibbs Leaphart was not covered. *In fact, it took a prolonged legal proceeding against State Auto to discover that Gibbs Leaphart was not covered by the UIM coverage.*

However, this is just the type of loophole that Watts was being paid to inform Ben Leaphart about. Just as the envelope stated that the policy came with an agent, it was that agent's duty to inform Ben Leaphart that Gibbs Leaphart was not covered under the policy. Ben Leaphart had a right to rely on the advice of Watts, and even if Ben Leaphart had read the policy he would not have been reasonably able to discover that Gibbs Leaphart was not fully covered.

Ben Leaphart's right to rely on Watts was confirmed by the South Carolina Court of Appeals in *Orangeburg Sausage Co.*, 316 S.C. 331, 450 S.E.2d 66. Under the policy, Gibbs Leaphart was fully covered while he was a member of Ben Leaphart's household. But when Gibbs Leaphart moved out of the house, and Ben Leaphart informed Watts of this event, the coverage under the policy changed, and Gibbs Leaphart was no longer fully covered. Ben Leaphart was entitled to rely on Watts to inform him of this change in coverage. This is identical to the plaintiff in the *Orangeburg Sausage Co.* case who "relied upon the agent whom they trusted to provide them with the same coverage they enjoyed for the previous five years under the policy." *Orangeburg Sausage Co.*, 316 S.C. at 339, 450 S.E.2d at 71. The Court of Appeals held that the plaintiff "was entitled to rely on [the insurance agent] to properly renew the

insurance policy. A review of the policy by a layman would not have revealed the coverage problem." *Id.*, 316 S.C. at 340, 450 S.E.2d at 71.

Unless the evidence shows reasonable persons could not disagree, the question of proximate cause is one for the jury. *Bramlette v. Charter-Med.-Columbia*, 302 S.C. 68, 393 S.E.2d 914 (1990). Clearly there are several issues of fact that reasonable persons could disagree upon. Accordingly, the Defendants' motion for summary judgment should be denied.

V. Watts had a fiduciary duty to Plaintiff.

While there are no known South Carolina cases specifically addressing whether an insurance agent owes an insured a fiduciary duty, South Carolina courts have recognized that a relationship between an insurer and an insured can be characterized as "special." See *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 503 n. 5, 473 S.E.2d 52, 55 n. 5 (1996) ("The duty of good faith and fair dealing is such a duty that arises by operation of law due to the special relationship of the parties in an insurance contract . . ."); see also *Lira v. Shelter Ins. Co.*, 913 P.2d 514 (Colo. 1996) (holding tort liability for breach of implied duty of good faith and fair dealing is based on quasi-fiduciary nature of insurance relationship and is predicated on parties' contractual responsibilities). "A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence." *O'Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992). "Whether there is a fiduciary relationship between two people is an equitable issue." *Hendricks v. Clemson Univ.*, 353 S.C. 449, 458, 578 S.E.2d 711, 715 (2003) (citing *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150 (Ct.App.1987)).

Additionally, several jurisdictions including North Carolina, Georgia, and the Fourth Circuit have held that an insurance agent does owe an insured a fiduciary duty. *Fli-Back Co., Inc. v. Philadelphia Mfrs. Mut. Ins. Co.*, 502 F.2d 214, 217 (4th Cir. 1974) (“The relationship between an insurance agent and his client is both contractual and fiduciary”); *R-Anell Homes v. Alexander & Alexander*, 303 S.E.2d 573, 577 (N.C. Ct. App. 1983) (“[T]here is a fiduciary duty on the part of the insurance agent to keep the insured correctly informed as to his insurance coverage.”); *European Bakers, Ltd. v. Holman*, 338 S.E.2d 702 (Ga. Ct. App. 1985) (The Georgia court of appeals, in reversing judgment for the agent, found that the agent owed a fiduciary duty to the insured.).⁵

The court in *Great Am. Ins. Co. v. Mills*, *supra*, conceded that a “difficult question is presented by the situation . . . in which [the insured] did business with the company and its agent for over fifteen years and the agent was allegedly notified of [the insured’s position].” *Id.* Similarly, the Complaint and the deposition testimony indicate that Watts knew or should have known, as a result of his communications with and long business relationship with the Leaphart family, that Gibbs Leaphart was not living in his father’s home for many years and was thus not fully covered under the insurance policy.

The particulars of the Leaphart family’s longstanding relationship with Watts certainly indicate a level of confidence and trust between them. In communicating with Watts directly regarding his insurance information, Gibbs Leaphart himself indicated a special confidence in the agent’s expertise. *See, e.g., Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct. App. 1987). Not only did Watts have a fiduciary duty to the policyholder, Ben

⁵ *See also Perelman v. Fisher*, 700 N.E.2d 189 (Ill. App. Ct. 1998); *Aden v. Fortsh*, 776 A.2d 792 (N.J. 2001); *Harris v. A. P. Nichols Inv. Co.*, 25 S.W.2d 484 (Mo. Ct. App. 1930); *City Blueprint & Supply Co., Inc. v. Boggio*, 3 So. 3d 62, 65 (La. Ct. App. 2008).

Leaphart, but Watts also owed a fiduciary duty to all of the Leaphart family members. Each of these family members placed specific confidence and trust in Watts to ensure that they were properly covered under the insurance policies.

As previously discussed in section III, the South Carolina federal district court has held that an insured, other than the policyholder, had standing to bring a claim against the insurer and its agent. *Wright v. Allstate Ins. Co.*, 746 F. Supp. 612 (D.S.C. 1990). As Gibbs Leaphart certainly had a personal interest in the coverage procured by his agent, this analysis supports the conclusion that Watts' fiduciary duties extended to Gibbs Leaphart as a listed driver on the policy in question. Accordingly, Watts owed a fiduciary duty to Gibbs Leaphart, and the Defendants' motion for summary judgment should be denied.

CONCLUSION

For the foregoing reasons, the Defendants' Motion for Summary Judgment should be denied.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

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bsowell@sowell.com

David C. Dick, Jr.
ddick@sowell.com

1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211

Attorneys for Plaintiff

Columbia, South Carolina
February 9, 2012

EXHIBIT A

STATE OF SOUTH CAROLINA

(AFFIDAVIT)

COUNTY OF GREENVILLE

The undersigned hereby certifies that the attached is a true and correct copy of
State Auto Property & Casualty Insurance Company policy as issued
to Ben G & Martha M Leaphart policy number ASC 3754417
providing coverage from 01/07/04 to 07/07/04

Patricia M. Klenck

~~Patricia S. Leaphart~~
Signature of Notary

Commission Expires 6-30-12



State Auto 0030



AMENDED DECLARATIONS
PERSONAL AUTO PROGRAM

THIS DECLARATIONS PAGE WITH POLICY FORMS AND ENDORSEMENTS
AMENDS THE POLICY EFFECTIVE 01/07/04.

REASON FOR AMENDMENT DELETE VEHICLE

POLICY NUMBER ASC 3754417	POLICY PERIOD FROM 01/07/04	TO 07/07/04	COVERAGE IS PROVIDED BY THE STATE AUTO PROP. & CAS. INS. CO. 518 EAST BROAD STREET	AGENCY 1387	PRPD 01								
RATED INSURED AND ADDRESS BEN G & MARTHA M LEAPHARN 800 MCDONNELL AVE GREENVILLE SC 29605			AGENT C B WATTS CO INC PO BOX 10187 GREENVILLE SC 29603 TELEPHONE 864/271-0009										
VEHICLES COVERED													
#	ST	TRK	YR	MAKE	DESCRIPTION	SNR NUMBER	SYM	CLASS	SIZE	ST	AM	RATE	TIER
01	SC	073	57	FORD	MUSTANG	7Y03CA75214	04	816120	N				MEDALIST
02	SC	073	92	GMC	JIMMY	1GKBD13W1N2524434	18	809220	C				MEDALIST
03	SC	073	97	GMC	JIMMY	1GKBD13W2V2516170	13	818220	C				MEDALIST
COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE													
COVERAGE													
LIMITS OF LIABILITY													
AUTO													
PREMIUMS													
1													
2													
3													
A LIABILITY-BODILY INJURY & PROPERTY DAMAGE													
\$ 500,000 EACH ACCIDENT													
128.00													
251.00													
151.00													
B MEDICAL PAYMENTS													
\$ 1,000 EACH PERSON													
5.00													
9.00													
5.00													
C UNINSURED MOTORISTS													
BODILY INJURY & PROPERTY DAMAGE													
\$ 500,000 EACH ACCIDENT													
18.00													
23.00													
18.00													
C UNDERINSURED MOTORISTS													
BODILY INJURY & PROPERTY DAMAGE													
\$ 500,000 EACH ACCIDENT													
63.00													
78.00													
63.00													
D DAMAGE TO YOUR AUTO- ACTUAL CASH VALUE LESS DEDUCTIBLE													
OTHER THAN COLLISION													
\$ 250 DEDUCTIBLE													
5.00													
83.00													
47.00													
COLLISION													
\$ 500 DEDUCTIBLE													
17.00													
112.00													
77.00													
EXTENDED TRANSPORTATION EXPENSES GOV.													
500 PER DAY/\$500 MAXIMUM													
7.00													
8.00													
7.00													
UNINSURED MOTORISTS FUND													
.50													
.50													
.50													
PRIME OF LIFE PLAN													
TOTAL BY AUTO													
INCL													
243.50													
INCL													
544.50													
INCL													
345.50													
*** YOUR STATE AUTO COMPANIES AUTO POLICY HAS BEEN DISCOUNTED AS SHOWN BELOW:													
PRIME OF LIFE DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 2													
PRIME OF LIFE DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 1													
PREMIUMS REFLECT AUTO/HOME DISCOUNT OF:													
PASSIVE RESTRAINT DISCOUNT HAS BEEN APPLIED TO AUTO 3													
MULTI-CAR DISCOUNT APPLIED TO AUTO 1,2,3													
SIZE OF CAR DISCOUNT APPLIED TO AUTO 1,2,3													
PREMIUMS REFLECT SAFE DRIVER DISCOUNT FOR AUTO 1,2,3													
ANTI-LOCK BRAKE DISCOUNT OF 5% APPLIED TO AUTO 3													
26.00													
68.00													
38.00													
*****CONTINUED ON NEXT PAGE*****PAGE 1													



STATE AUTO
Insurance Companies

MOBILE ASD 8754417 17 20040211 1HS TRAP-APV ADV 3SWATT0001867 022808

AMENDED DECLARATIONS
PERSONAL AUTO PROGRAM

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AMENDS THE POLICY EFFECTIVE 01/07/04.

REASON FOR AMENDMENT DELETE VEHICLE

POLICY NUMBER ASD 3754417	FROM 01/07/04	TO 07/07/04	COVERAGE IS PROVIDED BY THE STATE AUTO PROP. & CAS. INS. CO. 418 EAST BROAD STREET	AGENCY 1387	PROD 01						
NAME OF INSURED AND ADDRESS BEN G & MARTHA M LEAPHART 800 MCANFIELD AVE GREENVILLE SC 29605			AGENT J E WATTS CO INC PO BOX 12187 GREENVILLE SC 29603 TELEPHONE 864/271-0009								
VEHICLES COVERED											
#	ST	YR	MAKE-DESCRIPTION	VEH NUMBER	SYM	CLASS	SIZE	ST	AM	RATE	TIER
04	SC	07	CORVETTE CRUISER	1G8NY48B617551724	12	818220	C				MEDALIST
05	SC	07	FORD BODNER	1B7GK23Y9M298021	05	018120	F				MEDALIST
06	SC	07	JEEP CHEROKEE	1J4FF5Q991L620710	15	809220	C				MEDALIST
COVERAGE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE											
COVERAGE		LIMITS OF LIABILITY		AUTO	\$	PREMIUMS	\$	\$	\$	\$	\$
A LIABILITY-BODILY INJURY & PROPERTY DAMAGE		\$ 200,000 EACH ACCIDENT		121.00		121.00		220.00			
B MEDICAL PAYMENTS		\$ 1,000 EACH PERSON		5.00		5.00		6.00			
C UNINSURED MOTORISTS BODILY INJURY & PROPERTY DAMAGE		\$ 500,000 EACH ACCIDENT		16.00		16.00		16.00			
D UNDERINSURED MOTORISTS BODILY INJURY & PROPERTY DAMAGE		\$ 500,000 EACH ACCIDENT		55.00		55.00		55.00			
E DAMAGE TO YOUR AUTO- ACTUAL CASH VALUE LESS DEDUCTIBLE OTHER THAN COLLISION		\$ 250 DEDUCTIBLE		49.00		16.00		107.00			
F COLLISION		\$ 500 DEDUCTIBLE		92.00				182.00			
G EXTENDED TRANSPORTATION EXPENSES COV. \$30 PER DAY/\$500 MAXIMUM				7.00				8.00			
H UNINSURED MOTORISTS FUND						.50		.50			
I PRIME OF LIFE PLAN											
				TOTAL BY AUTO		355.50		832.50			594.50
				TOTAL TERM PREMIUM				82,318.00			
*** YOUR STATE AUTO COMPANIES AUTO POLICY HAS BEEN DISCOUNTED AS SHOWN BELOW:											
PRIME OF LIFE DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 2											
PRIME OF LIFE DRIVER DISCOUNT OF 10% APPLIES TO DRIVER # 1											
PREMIUMS REFLECT AUTO/HOME DISCOUNT OF				38.00		29.00		86.00			
PASSIVE RESTRAINT DISCOUNT HAS BEEN APPLIED TO AUTO 4,5											
MULTI-CAR DISCOUNT APPLIED TO AUTO 4,5,6											
SIZE OF CAR DISCOUNT APPLIED TO AUTO 4,5,6											
ANTI-THEFT DISCOUNT APPLIED TO AUTO 4,5											
PREMIUMS REFLECT SAFE DRIVER DISCOUNT FOR AUTO 4,5,6											
ANTI-LOCK BRAKE DISCOUNT OF 5% APPLIED TO AUTO 4,5											
DRIVER ID	DRIVER NAME										
01	BEN G LEAPHART										
02	MARTHA M LEAPHART										
03	MILLER M LEAPHART										
04	BEN G LEAPHART JR										
****CONTINUED ON NEXT PAGE****PAGE 2											



STATE AUTO
Insurance Companies

HO8D80 A80 8164417 17 20040241 146 LEAF APV ADV 3 SWATT0001007 020000

AMENDED DECLARATIONS
PERSONAL AUTO PROGRAM

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REASON FOR AMENDMENT DELETE VEHICLE

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BEN G & MARTHA M LEAPHART 900 MCDONNELL AVE GREENVILLE NC 29605			J B WATTS CO INC PO BOX 10187 GREENVILLE SC 29603 TELEPHONE 864/271-0000																																																																																																																																						
<p>ENDORSEMENTS/FORMS</p> <table border="1"> <thead> <tr> <th>FORM #</th> <th>DATE</th> <th>AUTO</th> <th>FORM #</th> <th>DATE</th> <th>AUTO</th> <th>FORM #</th> <th>DATE</th> <th>AUTO</th> <th>FORM #</th> <th>DATE</th> <th>AUTO</th> </tr> </thead> <tbody> <tr><td>AU571</td><td>02/01</td><td>ALL</td><td>PP0001</td><td>03/85</td><td>ALL</td><td>PP0003</td><td>12/86</td><td>ALL</td><td>PP0023</td><td>08/99</td><td>ALL</td></tr> <tr><td>AU589</td><td>01/87</td><td>ALL</td><td>AU0178</td><td>03/99</td><td>ALL</td><td>AU644</td><td>08/92</td><td>ALL</td><td>AU650</td><td>07/92</td><td>ALL</td></tr> <tr><td>AU651</td><td>08/82</td><td>ALL</td><td>AU706</td><td>08/00</td><td>ALL</td><td>PP1301</td><td>12/99</td><td>ALL</td><td>PP0341</td><td>11/98</td><td>001</td></tr> <tr><td>AU04658</td><td>03/99</td><td>001</td><td>AU04888</td><td>06/98</td><td>001</td><td>AU0302</td><td>12/89</td><td>001</td><td>PP0319</td><td>08/86</td><td>001</td></tr> <tr><td>PP0341</td><td>11/96</td><td>002</td><td>AU04658</td><td>03/99</td><td>002</td><td>AU04888</td><td>06/98</td><td>002</td><td>AU0302</td><td>12/89</td><td>002</td></tr> <tr><td>PP0319</td><td>08/86</td><td>002</td><td>PP0341</td><td>11/96</td><td>003</td><td>AU04658</td><td>03/99</td><td>003</td><td>AU04888</td><td>06/98</td><td>003</td></tr> <tr><td>AU0302</td><td>12/89</td><td>003</td><td>PP0341</td><td>11/96</td><td>004</td><td>AU04658</td><td>03/99</td><td>004</td><td>AU04888</td><td>06/98</td><td>004</td></tr> <tr><td>AU0302</td><td>12/89</td><td>004</td><td>PP0341</td><td>11/96</td><td>005</td><td>AU04658</td><td>03/99</td><td>005</td><td>AU04888</td><td>06/98</td><td>005</td></tr> <tr><td>PP0341</td><td>11/96</td><td>005</td><td>AU04658</td><td>03/99</td><td>006</td><td>AU04888</td><td>06/98</td><td>006</td><td>AU0302</td><td>12/89</td><td>006</td></tr> <tr><td>PP0305</td><td>08/86</td><td>006</td><td>PP0319</td><td>08/86</td><td>006</td><td></td><td></td><td></td><td></td><td></td><td></td></tr> </tbody> </table> <p>LOSS PAYOR FOR AUTO #006 BANK ONE 100 E BROAD ST COLUMBUS, OH. 43271</p> <p>ADDITIONAL INSURED FOR AUTO #001 TIGERDING LLC 501 E MORRIS AVE STE 200 GREENVILLE, SC 29601</p> <p>ADDITIONAL INSURED FOR AUTO #002 BEN G LEAPHART EX PO BOX 10181 GREENVILLE, SC 29603</p>						FORM #	DATE	AUTO	FORM #	DATE	AUTO	FORM #	DATE	AUTO	FORM #	DATE	AUTO	AU571	02/01	ALL	PP0001	03/85	ALL	PP0003	12/86	ALL	PP0023	08/99	ALL	AU589	01/87	ALL	AU0178	03/99	ALL	AU644	08/92	ALL	AU650	07/92	ALL	AU651	08/82	ALL	AU706	08/00	ALL	PP1301	12/99	ALL	PP0341	11/98	001	AU04658	03/99	001	AU04888	06/98	001	AU0302	12/89	001	PP0319	08/86	001	PP0341	11/96	002	AU04658	03/99	002	AU04888	06/98	002	AU0302	12/89	002	PP0319	08/86	002	PP0341	11/96	003	AU04658	03/99	003	AU04888	06/98	003	AU0302	12/89	003	PP0341	11/96	004	AU04658	03/99	004	AU04888	06/98	004	AU0302	12/89	004	PP0341	11/96	005	AU04658	03/99	005	AU04888	06/98	005	PP0341	11/96	005	AU04658	03/99	006	AU04888	06/98	006	AU0302	12/89	006	PP0305	08/86	006	PP0319	08/86	006						
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STATE AUTO

Insurance Companies

MO8080 ASO 0754417 17 20040211 1HS LEAP-APV-ADV 39RATTD001007 020004

AMENDED DECLARATIONS
PERSONAL AUTO PROGRAM

THIS DECLARATIONS PAGE WITH POLICY FORMS AND ENDORSEMENTS
AMENDS THE POLICY EFFECTIVE 01/07/04.

REASON FOR AMENDMENT: DELETE VEHICLE

POLICY NUMBER	FROM	POLICY PERIOD	TO	COVERAGE IS PROVIDED BY THE	AGENCY	PROD.
ASC 3784417	01/07/04		07/07/04	STATE AUTO PRSP. & CAS. INS. CO. 118 EAST BROAD STREET	1387	01
NAMED INSURED AND ADDRESS				AGENT		
ERN G & MARTHA M LINDHART 800 MCDANIEL AVE GREENVILLE SC 29608				J B WATTS CO INC. PO BOX 10107 GREENVILLE SC 29603 TELEPHONE 854/271-0009		
ADDITIONAL INSURED FOR AUTO #006						
BANK ONE PO BOX 2528 HOBBSON, OH				44236		
GARAGE LOCATION FOR AUTO #006						
9307 BLOSSOM STREET COLUMBIA, SC				29205		
POLICY PERIOD 12:01 AM STANDARD TIME						08/11/04
AUTHORIZED SIGNATURE						DATE
*****PAGE 4 (LAST PAGE)*****						

State Auto 0034

PP 0001A

**THE
PERSONAL
AUTO
POLICY**

STATE AUTOMOBILE MUTUAL INSURANCE COMPANY
STATE AUTO PROPERTY AND CASUALTY INSURANCE COMPANY

HOME OFFICE

518 EAST BROAD STREET
TELEPHONE 614-484-5000

COLUMBUS, OHIO 43216-3976

State Auto 0035

PP 0001 B

READ YOUR POLICY CAREFULLY. This cover sheet provides only a brief outline of some of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth, in detail, the rights and obligations of both you and your insurance company. IT IS THEREFORE IMPORTANT THAT YOU READ YOUR POLICY.

YOUR PERSONAL AUTO POLICY QUICK REFERENCE

PERSONAL AUTO POLICY	DECLARATIONS (Pages Numbered Separately) Your Name and Address Your Auto or Trailer Policy Period Coverages and Amounts of Insurance	Page number of PP0001 (04/88)
	AGREEMENT	1
	DEFINITIONS	1
PART A- LIABILITY COVERAGE	Insuring Agreement Supplementary Payments Exclusions Limit of Liability Out of State Coverage Financial Responsibility Other Insurance	1
PART B- MEDICAL PAYMENTS COVERAGE	Insuring Agreement Exclusions Limit of Liability Other Insurance	5
PART C- UNINSURED MOTORISTS COVERAGE	Insuring Agreement Exclusions Limit of Liability Other Insurance Arbitration	4
PART D- COVERAGE FOR DAMAGE TO YOUR AUTO	Insuring Agreement Transportation Expenses Exclusions Limit of Liability Payment of Loss No Benefit to Estates Other Insurance Appraisal	6
PART E- DUTIES AFTER AN ACCIDENT OR LOSS	General Duties Additional Duties for Uninsured Motorists Coverage Additional Duties for Coverage for Damage to Your Auto	7
PART F- GENERAL PROVISIONS	Bankruptcy Changes Fraud Legal Action Against Us Our Right to Recover Payment Policy Period and Territory Termination Transfer of Your Interest in This Policy Two or More Auto Policies Premium Installment Payments Dividends Notice of Policyholder Meetings Non-assessable	7
ENDORSEMENTS- APPLICABLE ONLY IF SPECIFIED ON THE DECLARATIONS PAGE		

PERSONAL AUTO POLICY

AGREEMENT

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

DEFINITIONS

- A. Throughout this policy, "you" and "your" refer to:
1. The "named insured" shown in the Declarations; and
 2. The spouse if a resident of the same household.
- B. "We", "us" and "our" refer to the Company providing this insurance.
- C. For purposes of this policy, a private passenger type auto shall be deemed to be owned by a person if leased:
1. Under a written agreement to that person and;
 2. For a continuous period of at least 6 months.
- Other words and phrases are defined. They are in quotation marks when used.
- D. "Bodily Injury" means bodily harm, sickness or disease, including death that results.
- E. "Business" includes trade, profession or occupation.
- F. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.
- G. "Occupying" means in, upon, getting in, on, out of or off.
- H. "Property damage" means physical injury to, destruction of or loss of use of tangible property.
- I. "Trailer" means a vehicle designed to be pulled by a:
1. Private passenger auto; or
 2. Pickup or van.
- It also means a farm wagon or farm implement while towed by a vehicle listed in 1. or 2. above.
- J. "Your covered auto" means:
1. Any vehicle shown in the Declarations.
 2. Any of the following types of vehicles on the date you become the owner:
 - a. a private passenger auto; or
 - b. a pickup or van.

This provision (J.2.) applies only if:

 - a. you acquire the vehicle during the policy period;
 - b. you ask us to insure it within 30 days after you become the owner; and
 - c. with respect to a pickup or van, no other insurance policy provides coverage for that vehicle.

If the vehicle you acquire replaces one shown in the Declarations, it will have the same coverage as the vehicle it replaced. You must ask us to insure a replacement vehicle within 30 days only if:

 - a. you wish to add or continue Coverage for Damage to Your Auto; or
 - b. it is a pickup or van used in any "business" other than farming or ranching.

If the vehicle you acquire is in addition to any shown in the Declarations, it will have the broadest coverage we now provide for any vehicle shown in the Declarations.
 3. Any "trailer" you own.
 4. Any auto or "trailer" you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:

a. breakdown;	d. loss; or
b. repair;	e. destruction.
c. servicing;	

PART A - LIABILITY COVERAGE

INSURING AGREEMENT

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

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

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

SUPPLEMENTARY PAYMENTS

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

1. Up to \$250 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in "bodily injury" or "property damage" covered under this policy.
2. Premiums on appeal bonds and bonds to release attachments in any suit we defend.
3. Interest accruing after a judgment is entered in any suit we defend. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.
4. Up to \$50 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request.

6. Other reasonable expenses incurred at our request.

EXCLUSIONS

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

1. Who intentionally causes "bodily injury" or "property damage."
2. For damage to property owned or being transported by that person.
3. For damage to property:
 - a. rented to;
 - b. used by; or
 - c. in the care of;that person.

This exclusion (A.3.) does not apply to damage to a residence or private garage.

4. For "bodily injury" to an employee of that person during the course of employment. This exclusion (A.4.) does not apply to "bodily injury" to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that person's liability arising out of the ownership or operation of a vehicle while it is being used to carry persons or property for a fee. This exclusion (A.5.) does not apply to a share-the-expense car pool.

B. While employed or otherwise engaged in the "business" of:

- | | |
|---------------|----------------|
| a. selling; | d. storing; or |
| b. repairing; | e. parking; |
| c. servicing; | |

vehicles designed for use mainly on public highways. This exclusion (A.6.) does not apply to the ownership, maintenance or use of "your covered auto" by:

- a. you;
- b. any "family member"; or
- c. any partner, agent or employee of you or any "family member."

7. Maintaining or using any vehicle while that person is employed or otherwise engaged in any "business" (other than farming or ranching) not described in Exclusion A.6. This exclusion (A.7.) does not apply to the maintenance or use of a:

- a. private passenger auto;
- b. pickup or van that you own; or
- c. "trailer" used with a vehicle described in a. or b. above.

EXCLUSION (continued)

- 8. Using a vehicle without a reasonable belief that that person is entitled to do so.
 - 9. For "bodily injury" or "property damage" for which that person:
 - a. is an insured under a nuclear energy liability policy; or
 - b. would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.
- A nuclear energy liability policy is a policy issued by any of the following or their successors:
- a. American Nuclear Insurers;
 - b. Mutual Atomic Energy Liability Underwriters; or
 - c. Nuclear Insurance Association of Canada.
- B. We do not provide Liability Coverage for the ownership, maintenance or use of:
- 1. Any motorized vehicle having fewer than four wheels.
 - 2. Any vehicle, other than "your covered auto," which is:
 - a. owned by you; or
 - b. furnished or available for your regular use.
 - 3. Any vehicle, other than "your covered auto," which is:
 - a. owned by any "family member," or
 - b. furnished or available for the regular use of any "family member."
- However, this exclusion (B.3.) does not apply to your maintenance or use of any vehicle which is:
- a. owned by a "family member," or
 - b. furnished or available for the regular use of a "family member."

LIMIT OF LIABILITY

- A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for all damages resulting from any one auto accident. This is the most we will pay regardless of the number of:
 - 1. "Insureds;"

- 2. Claims made;
 - 3. Vehicles or premiums shown in the Declarations; or
 - 4. Vehicles involved in the auto accident.
- B. We will apply the limit of liability to provide any separate limits required by law for bodily injury and property damage liability. However, this provision (B.) will not change our total limit of liability.

OUT OF STATE COVERAGE

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

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

FINANCIAL RESPONSIBILITY

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

OTHER INSURANCE

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

PART B - MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

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

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

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

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

1. You or any "family member,"
 - a. while "occupying" or
 - b. as a pedestrian when struck by a motor vehicle designed for use mainly on public roads or a trailer of any type;
2. Any other person while "occupying" your covered auto.

EXCLUSIONS

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

1. Sustained while "occupying" any motorized vehicle having fewer than four wheels.
2. Sustained while "occupying" your covered auto when it is being used to carry persons or property for a fee. This exclusion (2.) does not apply to a share-the-expense car pool.
3. Sustained while "occupying" any vehicle located for use as a residence or premises.
4. Occurring during the course of employment if workers' compensation benefits are required or available for the "bodily injury."
5. Sustained while "occupying" or when struck by any vehicle (other than "your covered auto") which is:
 - a. owned by you; or
 - b. furnished or available for your regular use.
6. Sustained while "occupying" or when struck by any vehicle (other than "your covered auto") which is:
 - a. owned by any "family member," or
 - b. furnished or available for the regular use of any "family member."However, this exclusion (6.) does not apply to you.
7. Sustained while "occupying" a vehicle without a reasonable belief that that person is entitled to do so.

8. Sustained while "occupying" a vehicle when it is being used in the "business" of an "insured." This exclusion (8.) does not apply to "bodily injury" sustained while "occupying" a:

- a. private passenger auto;
- b. pickup or van that you own; or
- c. "trailer" used with a vehicle described in a. or b. above.

9. Caused by or as a consequence of:

- a. discharge of a nuclear weapon (even if accidental);
- b. war (declared or undeclared);
- c. civil war;
- d. Insurrection; or
- e. rebellion or revolution.

10. From or as a consequence of the following, whether controlled or uncontrolled or however caused:

- a. nuclear reaction;
- b. radiation; or
- c. radioactive contamination.

LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:

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

B. Any amounts otherwise payable for expenses under this coverage shall be reduced by any amounts paid or payable for the same expenses under Part A or Part C.

C. No payment will be made unless the injured person or that person's legal representative agrees in writing that any payment shall be applied toward any settlement or judgment that person receives under Part A or Part C.

OTHER INSURANCE

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

PART C - UNINSURED MOTORISTS COVERAGE

INSURING AGREEMENT

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

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

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

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

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

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

C. "uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which no bodily injury liability bond or policy applies at the time of the accident.
2. To which a bodily injury liability bond or policy applies at the time of the accident. In this case its limit for bodily injury liability must be less than the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which "your covered auto" is principally garaged.
3. Which is a hit and run vehicle whose operator or owner cannot be identified and which hits:
 - a. you or any "family member;"
 - b. a vehicle which you or any "family member" are "occupying;" or
 - c. "your covered auto."
4. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - a. denies coverage; or
 - b. is or becomes insolvent.

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

1. Owned by or furnished or available for the regular use of you or any "family member;"
2. Owned or operated by a self-insurer under any applicable motor vehicle law.

3. Owned by any governmental unit or agency.
4. Operated on rails or crawler treads.
5. Designed mainly for use off public roads while not on public roads;
6. While located for use as a residence or premises.

EXCLUSIONS

A. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained by any person:

1. While "occupying," or when struck by, any motor vehicle owned by you or any "family member" which is not insured for this coverage under this policy. This includes a trailer of any type used with that vehicle.
 2. If that person or the legal representative settles the "bodily injury" claim without our consent.
 3. While "occupying" "your covered auto" when it is being used to carry persons or property for a fee. This exclusion (A,3.) does not apply to a share-the-expense car pool.
 4. Using a vehicle without a reasonable belief that that person is entitled to do so.
- B. This coverage shall not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar law:

1. workers' compensation law; or
2. disability benefits law.

LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for all damages resulting from any one accident. This is the most we will pay regardless of the number of:

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

B. Any amounts otherwise payable for damages under this coverage shall be reduced by all sums:

1. Paid because of the "bodily injury" by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A; and

LIMIT OF LIABILITY (Continued)

- 2. Paid or payable because of the "bodily injury" under any of the following or similar law:
 - a. workers' compensation law; or
 - b. disability benefits law.
- G. Any payment under this coverage will reduce any amount that person is entitled to recover for the same damages under Part A.

OTHER INSURANCE

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

ARBITRATION

- A. If we and an "insured" do not agree:
 - 1. Whether that person is legally entitled to recover damages under this Part; or
 - 2. As to the amount of damages;
 either party may make a written demand for arbitration. In this event, each party will select an arbitrator. The two arbitrators will

select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.

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

C. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Local rules of law as to procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding as to:

- 1. Whether the "insured" is legally entitled to recover damages; and
- 2. The amount of damages. This applies only if the amount does not exceed the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which "your covered auto" is principally garaged. If the amount exceeds that limit, either party may demand the right to a trial. This demand must be made within 90 days of the arbitrators' decision. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.

PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

INSURING AGREEMENT

A. We will pay for direct and accidental loss to "your covered auto" or any "non-owned auto," including their equipment, minus any applicable deductible shown in the Declarations. We will pay for loss to "your covered auto" caused by:

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

2. "Collision" only if the Declarations indicate that Collision Coverage is provided for that auto.

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

B. "Collision" means the upset of "your covered auto" or its impact with another vehicle or object.

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

- 1. Missiles or falling objects;
- 2. Fire;
- 3. Theft or larceny;

- 4. Explosion or earthquake;
- 5. Windstorm;
- 6. Fall, water or flood;
- 7. Malignant mischief or vandalism;
- 8. Riot or civil commotion;
- 9. Contact with bird or animal; or
- 10. Breakage of glass.

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

C. "Non-owned auto" means any private passenger auto, pickup, van or trailer not owned by or furnished or available for the regular use of you or any "family member" while in the custody of or being operated by you or any "family member." However, "non-owned auto" does not include any vehicle used as a temporary substitute for a vehicle you own which is out of normal use because of its:

- 1. Breakdown; 4. Loss; or
- 2. Repair; 5. Destruction.
- 3. Seizure;

TRANSPORTATION EXPENSES

In addition, we will pay up to \$10 per day, to a maximum of \$300, for transportation expenses incurred by you. This applies only in the event of the total theft of "your covered auto." We will pay only transportation expenses incurred during the period:

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

EXCLUSIONS

We will not pay for:

1. Loss to "your covered auto" which occurs while it is used to carry persons or property for a fee. This exclusion (1.) does not apply to a share-the-expense car pool.
2. Damage due and confined to:
 - a. wear and tear;
 - b. freezing;
 - c. mechanical or electrical breakdown or failure; or
 - d. total damage to tires.This exclusion (2.) does not apply if the damage results from the total theft of "your covered auto."
3. Loss due to or as a consequence of:
 - a. radioactive contamination;
 - b. discharge of any nuclear weapon (even if accidental);
 - c. war (declared or undeclared);
 - d. civil war;
 - e. insurrection; or
 - f. rebellion or revolution.
4. Loss to equipment designed for the reproduction of sound. This exclusion (4.) does not apply if the equipment is permanently installed in "your covered auto" or any "non-owned auto."
5. Loss to tapes, records or other devices for use with equipment designed for the reproduction of sound.
6. Loss to a camper body or "trailer" you own which is not shown in the Declarations. This exclusion (6.) does not apply to a camper body or "trailer" you:
 - a. acquire during the policy period; and
 - b. ask us to insure within 30 days after you become the owner.
7. Loss to any "non-owned auto" or any vehicle used as a temporary substitute for a vehicle you own, when used by you or any "family member" without a reasonable belief that you or that "family member" are entitled to do so.

D. Loss to:

- a. TV antennas;
- b. awnings or cabanas; or
- c. equipment designed to create additional living facilities.

9. Loss to any of the following or their accessories:

- a. citizen's band radio;
- b. two-way mobile radio;
- c. telephone; or
- d. scanning monitor receiver.

This exclusion (9.) does not apply if the equipment is permanently installed in the opening of the dash or console of "your covered auto" or any "non-owned auto." This opening must be normally used by the auto manufacturer for the installation of a radio.

10. Loss to any custom furnishings or equipment in or upon any pickup or Van. Custom furnishings or equipment include, but are not limited to:

- a. special carpeting and insulation, furniture, bars or television receivers;
- b. facilities for cooking and sleeping;
- c. height-extending seats; or
- d. custom mirrors, paintings or other decals or graphics.

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

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

- a. selling;
- b. repairing;
- c. servicing;
- d. storing;
- e. parking;

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

13. Loss to any "non-owned auto" being maintained or used by any person while employed or otherwise engaged in any "business" not described in exclusion 12. This exclusion (13.) does not apply to the maintenance or use by you or any "family member" of a "non-owned auto" which is a private passenger auto or "trailer."

LIMIT OF LIABILITY

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

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

LIMIT OF LIABILITY (Continued)

2. Amount necessary to repair or replace the property.

However, the most we will pay for loss to any "non-owned auto" which is a "trailer" is \$500.

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

PAYMENT OF LOSS.

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

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

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

NO BENEFIT TO BAILEE

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

OTHER INSURANCE

If other insurance also covers the loss we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a "non-owned auto" or any vehicle used as a temporary substitute for a vehicle you own shall be excess over any other collectible insurance.

APPRAISAL

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

1. Pay its chosen appraiser; and
2. Bear the expenses of the appraisal and umpire equally.

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

PART E - DUTIES AFTER AN ACCIDENT OR LOSS

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

B. A person seeking any coverage must:

1. Cooperate with us in the investigation, settlement or defense of any claim or suit.

2. Promptly send us copies of any notices or legal papers received in connection with the accident or loss.

3. Submit, as often as we reasonably require:

a. To physical exams by physicians we select. We will pay for these exams.

b. To examination under oath and subpoena if the same.

4. Authorize us to obtain:

a. Medical reports; and

b. Other pertinent records.

5. Submit a report of loss when required by us.

C. A person seeking Uninsured Motorists Coverage must also:

1. Promptly notify the police if a hit-and-run driver is involved.

2. Promptly send us copies of the legal papers if a suit is brought.

D. A person seeking Coverage for Damage to Your Auto must also:

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

2. Promptly notify the police if "your covered auto" is stolen.

3. Permit us to inspect and appraise the damaged property before its repair or disposal.

PART F - GENERAL PROVISIONS

BANKRUPTCY

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

CHANGES

This policy contains all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us. If a change requires a premium adjustment, we will adjust the premium as of the effective date of change.

We may revise this policy form to provide more coverage without additional premium charge. If we do this your policy will automatically provide the additional coverage as of the date the revision is effective in your state.

FRAUD

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

LEGAL ACTION AGAINST US

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

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

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

OUR RIGHT TO RECOVER PAYMENT

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

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

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

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

1. Hold in trust for us the proceeds of the recovery; and

2. Reimburse us to the extent of our payment.

POLICY PERIOD AND TERRITORY

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

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

B. The policy territory is:

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

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

TERMINATION

A. Cancellation. This policy may be cancelled during the policy period as follows:

1. The named insured shown in the Declarations may cancel by:

- a. returning this policy to us; or
- b. giving us advance written notice of the date cancellation is to take effect.

2. We may cancel by mailing to the named insured shown in the Declarations at the address shown in this policy:

- a. at least 10 days notice:
 - (1) if cancellation is for nonpayment of premium; or
 - (2) if notice is mailed during the first 60 days this policy is in effect and this is not a renewal or continuation policy; or
- b. at least 20 days notice in all other cases.

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

- a. for nonpayment of premium; or
- b. if your driver's license or that of:
 - (1) any driver who lives with you; or
 - (2) any driver who customarily uses "your covered auto;"

has been suspended or revoked. This must have occurred:

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

c. if the policy was obtained through material misrepresentation.

B. **Nonrenewal.** If we decide not to renew or continue this policy, we will mail notice to the named insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 20 days before the end of the policy period. If the policy period is other than 1 year, we will have the right not to renew or continue (1) only at each anniversary of its original effective date,

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

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

D. **Other Termination Provisions.**

1. If the law in effect in your state at the time this policy is issued, renewed or continued:

- a. requires a longer notice period;
- b. requires a special form or procedure for giving notice; or
- c. modifies any of the stated termination reasons;

we will comply with those requirements.

2. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.

3. If this policy is cancelled, you may be entitled to a premium refund. If so, we will send you this refund. The premium refund, if any, will be computed according to our manuals. However, making or offering to make the refund is not a condition of cancellation.

4. The effective date of cancellation stated in the notice shall become the end of the policy period.

TRANSFER OF YOUR INTEREST IN THIS POLICY

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

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

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

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

TWO OR MORE AUTO POLICIES

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

UNDERINSURED MOTORISTS COVERAGE - SOUTH CAROLINA

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

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

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

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

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

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

"Insured" as used in this endorsement means:

1. You or any "family member."
2. Any other person "occupying" "your covered auto."

3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

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

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

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

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

EXCLUSIONS:

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

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

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

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

LIMIT OF LIABILITY

A. If "bodily injury" is sustained in an accident by any "insured" while "occupying" "your covered auto" or if "your covered auto" sustained "property damage" in an accident, our maximum limit of liability for all damages resulting from that accident is the sum of the limits of liability for Underinsured Motorists Coverage shown in the Schedule or in the Declarations, applicable to each vehicle, subject to the maximum limit of liability for all damages:

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

A person's pro-rata share shall be the proportion that that person's damages bear to the total damages sustained by all "insureds". The maximum limit of liability is the most we will pay regardless of the number of:

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

B. If "bodily injury" or "property damage" is sustained in an accident by you or any family member while not "occupying" any auto, our maximum limit of liability for all damages resulting from the accident will be the highest limit of liability shown in the Declarations for this coverage applicable to any one of "your covered autos."

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

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

C. If "bodily injury" is sustained in an accident by you or any family member while "occupying" a vehicle not owned by you or any family member, our maximum limit of liability for all damages resulting from that accident will be the highest limit of liability shown in the Schedule or in the Declarations for this coverage applicable to any one of "your covered autos." This is the most we will pay regardless of the number of:

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

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

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

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

- a. Workers' compensation law; or
- b. Disability benefit law.

OTHER INSURANCE

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

FIRST PRIORITY The policy affording Underinsured Motorists Coverage to the vehicle the "insured" was "occupying" at the time of the accident.

SECOND PRIORITY Any policy affording Underinsured Motorists Coverage to the "insured" as a named insured or family member.

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

2. If there is applicable insurance available under the first priority:

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

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

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

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

ADDITIONAL DUTY

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

GENERAL PROVISIONS

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

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

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

TWO OR MORE AUTO POLICIES

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

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



STATE AUTO
Insurance Companies

STATE AUTO

C. The following provision is added:

CONFORMITY TO STATUTE

This endorsement is intended to be in full

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

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1/2-AU0488S-1/08/98

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01-01-2010

STATE AUTO

State Auto 0049

UNINSURED MOTORISTS COVERAGE - SOUTH CAROLINA

I. UNINSURED MOTORISTS COVERAGE

Part C is replaced by the following:

INSURING AGREEMENT

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

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

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

"Insured" as used in this endorsement means:

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

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

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

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

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

4. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - a. successfully denies coverage;
 - b. is or becomes insolvent;
 - c. is in delinquency proceedings, suspension or receivership; or
 - d. is proven unable to respond to a judgment.

- b. For which the owner has not qualified as a self-insurer in accordance with the applicable provisions of the South Carolina Insurance Laws.

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

1. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.
2. Owned by any governmental unit or agency unless a cause of action against that governmental unit or agency is barred by the Tort Claims Act, South Carolina Laws 1989, Reaffirmation No. 514, Subsection 16-78-60, or by other applicable statute.
3. Operated on rails or crawler treads.
4. Designed mainly for use off public roads while not on public roads.

EXCLUSIONS

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

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

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

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

LIMIT OF LIABILITY

A. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while "occupying" "your covered auto," our maximum limit of liability for all damages resulting from that accident is the sum of the limits of liability for Uninsured Motorists Coverage shown in the Declarations applicable to each vehicle;

subject to the maximum limit of liability for all damages:

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

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

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

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

B. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while not "occupying" any auto, our maximum limit of liability for all damages resulting from that accident is the sum of the limits of liability for Uninsured Motorists Coverage shown in the Declarations applicable to each vehicle.

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

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

C. If "bodily injury" or "property damage" is sustained in an accident by you or any "family member" while "occupying" a vehicle not owned by you or any "family member," our maximum limit of liability for all damages resulting from the accident will be the highest limit of liability shown in the Declarations for this coverage applicable to any one of "your covered autos." This is the most we will pay regardless of the number of:

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

D. If "bodily injury" or "property damage" is sustained by an "insured" other than you or any "family member" in an accident in which neither you nor any "family member" sustained "bodily injury" or "property damage," our maximum limit of liability for all damages resulting from that accident will be the limit of liability shown in the Declarations for this coverage applicable to the vehicle that "insured" was "occupying" at the time of that accident. This is the most we will pay regardless of the number of:

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

E. We will apply the limit of liability shown in the Declarations to first provide the separate limits required by the Statutes of South Carolina for:

1. "Bodily injury" or death of one person in any one accident; and
2. "Bodily injury" or death of two or more people in any one accident; and
3. Injury to or destruction of property of an "insured" in any one accident.

This provision will not change our total limit of liability.

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

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

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

OTHER INSURANCE

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

1. FIRST This policy affording Uninsured Motorists Coverage to the vehicle that "insured" was occupying at the time of the accident.

SECOND PRIORITY Any policy affording Uninsured Motorists Coverage to the "Insured" as a named Insured or family member.

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

2. If there is applicable insurance available under the first priority:

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

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

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

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

II. GENERAL PROVISIONS

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

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

OUR RIGHT TO RECOVER PAYMENT

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

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

b. nothing after loss to prejudice them.

2. If an "Insured" has prosecuted to judgment any suit against any person responsible, we will be entitled to an assignment of the judgment to the extent of payment under this insurance that does not exceed the minimum limits specified by the South Carolina Motor Vehicle Financial Responsibility Act.

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

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

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

TWO OR MORE AUTO POLICIES

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

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

C. The following provision is added:

CONFORMITY TO STATUTE

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

FULL SAFETY GLASS COVERAGE - SOUTH CAROLINA
COVERAGE FOR DAMAGE TO YOUR AUTO

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

The following is added to paragraph A of the Insuring Agreement in Part D:

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

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

PP0341 (1/1/86)

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ADDITIONAL INSURED - LESSOR

Any liability and any required no-fault coverages afforded by this policy for "your leased auto" also apply to the lessor named as an additional insured in the Declarations. This insurance is subject to the following additional provisions:

1. We will pay damages for which the lessor becomes legally responsible only if the damages arise out of acts or omissions of:

- (a) you or any "family member", or
- (b) any other person except the lessor or any employee or agent of the lessor using "your leased auto".

2. "Your leased auto" means:

(a) an auto shown in the Declarations which you lease for a continuous period of at least six months under a written agreement which requires you to provide primary insurance for the lessor, and

(b) any substitute or replacement auto furnished by the lessor named in this endorsement.

3. If we terminate this policy, notice will also be mailed to the lessor.

4. The lessor is not responsible for payment of premiums.

5. The designation of the lessor as an additional insured shall not operate to increase our limits of liability.

PP0019 (08/86)

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State Auto 0054

EXTENDED TRANSPORTATION EXPENSES COVERAGE ENDORSEMENT

The provisions and exclusions that apply to Part D - Coverage for Damage to Your Auto also apply to this endorsement except as changed by this endorsement.

EXTENDED TRANSPORTATION EXPENSES COVERAGE

When there is a loss to a "your covered auto" described in the Declarations for which a specific premium charge indicates that Extended Transportation Expenses Coverage is afforded, or to a "non-owned auto", we will pay, without application of a deductible, up to the amount shown in the Declarations for:

1. Transportation expenses incurred by you.
2. Loss of use expenses for which you become legally responsible in the event of loss to a "non-owned auto".

This coverage applies only if:

1. "Your covered auto" or the "non-owned auto" is withdrawn from use for more than 24 hours; and
2. The loss is caused by "collision" or is otherwise covered under Part D of this policy.

However, this coverage does not apply when there is a total theft of "your covered auto" or a "non-owned auto". Such coverage is provided under Part D of this policy.

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

Coverage for Transportation Expenses Coverage provided under Part D of this policy is increased to the amount shown in the Declarations if the amount is other than \$15 per day/\$450 maximum.

AU0302 (12/89)

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State Auto 0055

LOSS PAYABLE CLAUSE

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

When we pay the loss payee we shall, to the extent of payment, be subrogated to the loss payee's rights of recovery.

PP0305 (08/86)

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State Auto 0056

AMENDMENT OF POLICY PROVISIONS - SOUTH CAROLINA

I. LIABILITY COVERAGE

Part A is amended as follows:

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

We do not provide Liability Coverage for any person:

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

B. If this policy provides single limit coverage Paragraph B. of the Limit of Liability provision is replaced by the following:

We will apply the limit of liability shown in the Declarations to first provide the separate limits required by the Statutes of South Carolina for:

1. "Bodily Injury" or death of one person in any one auto accident;
2. "Bodily Injury" or death of two or more people in any one auto accident; and
3. Injury to or destruction of property of others in any one auto accident.

This provision will not change our total limit of liability.

II. PART B-MEDICAL PAYMENTS COVERAGE

The Limit of Liability provision of Part B is replaced by the following:

LIMIT OF LIABILITY

A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:

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

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

III. GENERAL PROVISIONS

Part F is amended as follows:

A. The following is added to the Fraud provision:

FRAUD

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

B. The following is added to the Our Right to Recover Payment provision:

OUR RIGHT TO RECOVER PAYMENT

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

C. The Termination provision is replaced by the following:

TERMINATION

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

1. The named insured shown in the Declarations may cancel by:

- (a) Returning this policy to us; or
- (b) Giving us advance written notice of the date cancellation is to take effect.

2. We may cancel by mailing notice to the named insured shown in the Declarations at the address shown in this policy at least 15 days prior to the date cancellation is to take effect. However, if this policy is cancelled within the first 60 days, and is not a renewal or continuation policy, the cancellation will become effective only on or after the 61st day of the policy period.

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

- a. For nonpayment of premium; or
- b. If your driver's license or that of:
 - (i) Any driver who lives with you, or
 - (ii) Any driver who customarily uses "your covered auto";

has been suspended or revoked. This must have occurred:

- (i) During the policy period; or
- (ii) If this is a renewal or continuation policy, during the policy period or the 60 days immediately preceding the last anniversary of the original effective date.

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

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

AMENDMENT TO SUPPLEMENTARY PAYMENTS

(Appeal Bonds)

Important Notice

Supplementary Payments under Part A, Liability Coverage, are designed to be paid in addition to your limits of liability, but not in excess of these limits with respect to appeal bonds. As a result, with regard to premiums on appeal bonds, Item 2, if a decision is made to appeal a judgment resulting from an auto accident, the following change is simply clarifying our intent that this additional coverage will not exceed your Liability limits. This coverage is still in addition to your Liability limits.

Under Part A, Liability Coverage, Supplementary Payments, Item 2, is deleted and replaced by the following:

2. Premiums on appeal bonds, and bonds to release attachments, but not in excess of our limit of liability, in any suit we defend. We are not required to apply for, secure or otherwise furnish these bonds.

AU706 (06/00)

State Auto 0058

ADDITIONAL INSURED - LESSOR

Any liability and any required no-fault coverages afforded by this policy for "your leased auto" also apply to the lessor named as an additional insured in the Declarations. This insurance is subject to the following additional provisions:

1. We will pay damages for which the lessor becomes legally responsible only if the damage arises out of acts or omissions of:
 - (a) you or any "family member", or
 - (b) any other person except the lessor or any employee or agent of the lessor using "your leased auto".
2. "Your leased auto" means:

(a) an auto shown in the Declarations which you lease for a continuous period of at least six months under a written agreement which requires you to provide primary insurance for the lessor, and

(b) any substitute or replacement auto furnished by the lessor named in this endorsement.

3. If we terminate this policy, notice will also be mailed to the lessor.
4. The lessor is not responsible for payment of premiums.
5. The designation of the lessor as an additional insured shall not operate to increase our limits of liability.

PP0310 (08/86)

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State Auto 0059

AMENDATORY ENDORSEMENT

This Amendatory Endorsement:

- A. Implements a general program revision; and
- B. Changes the current edition of your policy to a 12-89 Edition.

This endorsement amends the policy as follows:

I. DEFINITIONS:

The definition of "your covered auto" (J.) is replaced by the following:

J. "Your covered auto" means:

1. Any vehicle shown in the Declarations.
2. Any of the following types of vehicles on the date you become the owner:
 - a. a private passenger auto; or
 - b. a pickup or van that:
 - (1) has a Gross Vehicle Weight of less than 10,000 lbs; and
 - (2) is not used for the delivery or transportation of goods and materials unless such use is:
 - (a) incidental to your "business" of installing, maintaining or repairing furnishings or equipment; or
 - (b) for farming or ranching.

This provision (J.2.) applies only if:

- a. you acquire the vehicle during the policy period;
- b. you ask us to insure it within 30 days after you become the owner; and
- c. with respect to a pickup or van, no other insurance policy provides coverage for that vehicle.

If the vehicle you acquire replaces one shown in the Declarations, it will have the same coverage as the vehicle it replaced. You must ask us to insure a replacement vehicle within 30 days only if you wish to add or continue Coverage for Damage to Your Auto.

If the vehicle you acquire is in addition to any shown in the Declarations, it will have the broadest coverage we now provide for any vehicle shown in the Declarations:

3. Any "trailer" you own
4. Any auto or "trailer" you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
 - a. breakdown;
 - b. repair;
 - c. servicing;
 - d. loss; or
 - e. destruction.

- a. breakdown;
- b. repair;
- c. servicing;
- d. loss; or
- e. destruction.

This provision (J.4.) does not apply to Coverage for Damage to Your Auto.

II. PART A - LIABILITY COVERAGE

Part A is amended as follows:

A. Exclusions A.2, A.3, and A.5 are replaced by the following:

We do not provide Liability Coverage for any person:

2. For "property damage" to property owned or being transported by that person.

3. For "property damage" to property:

- a. rented to;
- b. used by; or
- c. in the care of;

that person.

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

5. For that person's liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This exclusion (A.5.) does not apply to a share-the-expense car pool.

B. Exclusion B.3 is replaced by the following:

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

3. Any vehicle, other than "your covered auto", which is:

- a. owned by any "family member"; or
- b. furnished or available for the regular use of any "family member".

However, this exclusion (B.3.) does not apply to you while you are maintaining or "occupying" any vehicle which is:

- a. owned by a "family member"; or
- b. furnished or available for the regular use of a "family member".

III. PART B - MEDICAL PAYMENTS COVERAGE

Exclusion 2 is replaced by the following:

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

2. Sustained while "occupying" "your covered auto" when it is being used as a public or livery conveyance. This exclusion (2.) does not apply to a share-the-expense car pool.

IV. PART C - UNINSURED MOTORISTS COVERAGE

Part C is amended as follows:

A. The first sentence of Paragraph A. of the Insuring Agreement is replaced by the following:

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

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

B. Exception 2 to the definition of "uninsured motor vehicle" is replaced by the following:

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

2. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.

C. Exclusion A.3 is replaced by the following:

We do not provide Uninsured Motorists Coverage for "bodily injury" sustained by any person:

3. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This exclusion (A.3) does not apply to a share-the-expense car pool.

D. The following exclusion is added to Part C:

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

V. PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

Part D is amended as follows:

A. The first sentence of Paragraph B. of the Insuring Agreement is replaced by the following:

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

B. Paragraph C. of the Insuring Agreement is replaced by the following:

"Non-owned auto" means:

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

a. breakdown;	d. loss; or
b. repair;	e. destruction;
c. servicing	

C. The Transportation Expenses provision is replaced by the following:

TRANSPORTATION EXPENSES

In addition we will pay, without application of a deductible, up to \$15 per day, to a maximum of \$450, for:

1. Transportation expenses incurred by you in the event of the total theft of "your covered auto". This applies only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
2. Loss of use expenses for which you become legally responsible in the event of the total theft of a "non-owned auto". This applies only if the Declarations indicate that Other Than Collision Coverage is provided for any "your covered auto".

We will pay only expenses incurred during the period:

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

D. Exclusions 4, 5, and 9 do not apply.

E. The following exclusion is substituted for exclusions 4, 5, and 9:

We will not pay for loss to:

- a. any electronic equipment designed for the reproduction of sound, including, but not limited to,
 - (1) radios and stereos;
 - (2) tape decks; or
 - (3) compact disc players;

b. any other electronic equipment that receives or transmits audio, visual or data signals, including, but not limited to:

- (1) citizens band radios;
- (2) telephones;
- (3) two-way mobile radios;
- (4) scanning monitor receivers;
- (5) television monitor receivers;
- (6) video cassette recorders;
- (7) audio cassette recorders; or
- (8) personal computers;

c. tapes, records, discs, or other media used with equipment described in a or b;

d. any other accessories used with equipment described in a or b.

This exclusion does not apply to:

a. equipment designed solely for the reproduction of sound and accessories used with such equipment, provided such equipment is permanently installed in "your covered auto" or any "non-owned auto"; or

b. any other electronic equipment that is:

(1) necessary for the normal operation of the auto or the monitoring of the auto's operating systems; or

(2) an integral part of the same unit housing any sound reproducing equipment described in a and permanently installed in the opening of the dash or console of "your covered auto" or any "non-owned auto" normally used by the manufacturer for installation of a radio.

F. Exclusions 1, 2, 7, 8, and 10, are replaced by the following:

We will not pay for:

1. Loss to "your covered auto" or any "non-owned auto" which occurs while it is being used as a public or livery conveyance. This exclusion (1.) does not apply to a share-the-expense car pool.

2. Damage due and confined to:

- a. wear and tear
- b. freezing

c. mechanical or electrical breakdown or failure, or

d. road damage to tires.

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

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

a. loss to:

a. savings or estates; or

b. equipment designed to create additional living facilities.

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

a. special carpeting and insulation, furniture or bars;

b. facilities for cooking and sleeping;

c. height-adjusting seats; or

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

G. The following exclusion is added to Part C:

We will not pay for loss to "your covered auto" or any "non-owned auto" due to confiscation by governmental or civil authorities because of you or any "family member":

a. engaged in illegal activities; or

b. failed to comply with Environmental Protection Agency or Department of Transportation standards.

This exclusion does not apply to the interests of loss payees in "your covered auto".

H. The other insurance provision is replaced by the following:

OTHER SOURCES OF RECOVERY

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

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

VI. PART E - DUTIES AFTER AN ACCIDENT OR LOSS.

Part E is amended as follows:

A. The following lead-in language is added to Part E

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

B. Paragraph C is replaced by the following:

A person seeking coverage for Damage to Your Auto must also:

1. Take reasonable steps after loss to protect "your covered auto" or any "non-owned auto" and their equipment from further loss. We will pay reasonable expenses incurred to do this.
2. Promptly notify the police if "your covered auto" or any "non-owned auto" is stolen.
3. Permit us to inspect and appraise the damaged property before its repair or disposal.

VII. PART F - GENERAL PROVISIONS

The Changes provision is replaced by the following:

PF0005 (12/89) Page 4 of 4

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CHANGES.

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

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

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

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

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

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

AMENDATORY ENDORSEMENT - SOUTH CAROLINA
RETAINED PREMIUM

The following is added to the Cancellation Condition of the policy:

If this policy is cancelled by you or us as provided by the policy, any unearned premium or refund of less than one dollar will be retained by us, unless you request in writing that it be returned to you.

AU644 (08/92)

State Auto 0064

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**COVERAGE FOR DAMAGE TO YOUR AUTO EXCLUSION
ENDORSEMENT**

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

I. Definitions

The following definition is added:

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

II. Part D - Coverage For Damage To Your Auto

The following exclusion is added:

We will not pay for
Loss to "your covered auto" or any "non-owned auto"
due to "diminution in value."

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

PP-1301 (12/88)
PP-1301-1001

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0104000000

STATE AUTO

State Auto 0065

EXTENDED TRANSPORTATION EXPENSES COVERAGE ENDORSEMENT

The provisions and exclusions that apply to Part D - Coverage for Damage to Your Auto also apply to this endorsement except as changed by this endorsement.

EXTENDED TRANSPORTATION EXPENSES COVERAGE

When there is a loss to a "your covered auto" described in the Declarations for which a specific premium charge indicates that Extended Transportation Expenses Coverage is afforded, or to a "non-owned auto", we will pay, without application of a deductible, up to the amount shown in the Declarations for:

1. Transportation expenses incurred by you.
2. Loss of use expenses for which you become legally responsible in the event of loss to a "non-owned auto".

This coverage applies only if:

1. "Your covered auto" or the "non-owned auto" is withdrawn from use for more than 24 hours; and
2. The loss is caused by "collision" or is otherwise covered under Part D of this policy.

However, this coverage does not apply when there is a total theft of "your covered auto" or a "non-owned auto". Such coverage is provided under Part D of this policy.

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

Coverage for Transportation Expenses Coverage provided under Part D of this policy is increased to the amount shown in the Declarations if the amount is other than \$15 per day/\$150 maximum.

AU0302 (12/89)

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State Auto 0066

BROAD FORM PERSONAL AUTO COVERAGES ENDORSEMENT

PART A - LIABILITY

Supplementary Payments Provisions 1 and 4 of Part A are replaced by the following:

1. Up to \$350 for the cost of bail bonds required because of an accident, including related traffic law violations. This accident must result in "bodily injury" or "property damage" covered under this policy.
4. Up to \$75 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request.

Supplementary Payments Provisions 6, 7 and 8 are added:

6. Expenses incurred by an "insured" for first aid to others at the time of an accident involving an auto or "trailer" to which the Liability Coverage applies. However, any payment under this provision will reduce any amount that person is entitled to recover under the Liability and Medical Payments Coverages.

7. **ACCIDENTAL DEATH COVERAGE** In addition to our limit of liability, we will pay on behalf of you or your spouse the sum of \$1,000 in the event of your death, subject to the following conditions:

1. death must result directly and independently of all other causes from "bodily injury;"
2. the injury must be caused by accident and sustained by you in one of the following ways:
 - a. while "occupying" a motor vehicle designed for use mainly on public roads;
 - b. as a pedestrian when struck by either a motor vehicle designed for use mainly on public roads or a trailer of any type;
3. death must occur within 90 days of the accident (this provision, T.A.S., does not apply in Pa.)

If both of you die, as provided herein, \$1,000 will be paid each. Payment will be made to the decedent's surviving spouse, otherwise the decedent's estate.

The provisions of this Supplementary Payments Provision 7 do not apply;

1. to death sustained while "occupying" any vehicle located for use as a residence or premises;
2. to the death of you resulting from "bodily injury" sustained in the course of your occupation while operating, "occupying," loading or unloading any commercial auto or trailer, or repairing or servicing any auto or trailer, or any auto or trailer used as a public or livery conveyance.

3. to suicide, sane or insane;

4. to death caused by or as a consequence of discharge of a nuclear weapon (even if accidental), war (declared or undeclared), civil war, insurrection, or rebellion or revolution.

8. Reasonable expenses for attorney's fee, not in excess of \$50, incurred by you in the event of your arrest as a result of an accident causing bodily injury to any person.

PART D - COVERAGE FOR DAMAGE TO YOUR AUTO

A. The following is added to Insuring Agreement paragraph A:

The deductible amount shall not apply:

1. to loss caused by a "collision" of "your covered auto" or any "non-owned auto," with another auto insured by us; or
2. to loss caused by a "collision" of "your covered auto" or any "non-owned auto," with another auto not insured by us provided:
 - a. the loss to "your covered auto" or any "non-owned auto," exceeds the deductible amount; and
 - b. the operator of such other auto has been positively identified; and
 - c. the operator of such other auto is, in our judgment, solely at fault for the loss to "your covered auto" or any "non-owned auto," and
 - d. no statute is applicable at the time of the accident which relieves the operator of such other auto of tort liability or in any other manner impairs the subrogation right of us.

B. The Personal Effects Provision is added to Part D. In addition, we will pay for loss by fire or lightning to wearing apparel and other personal effects which are the property of you or a "family member," while such effects are in or upon "your covered auto" or any "non-owned auto". The limit of our liability for loss to personal effects arising out of any one accident is \$250.

C. The following exclusion in Part D is deleted:

6. Loss for:
 - a. savings or cashes; or
 - b. equipment designed to create additional living facilities.

PPAU23 (08/88)

State Auto 0067

COMMUNICABLE DISEASE EXCLUSION ENDORSEMENT

The following exclusion applies to this policy:

This policy does not provide coverage for "bodily injury" or "property damage" arising out of the transmission of a communicable disease by any insured.

AU680 (06/82)

State Auto 0068

PERSONAL AUTO POLICY - PRIME OF LIFE ENDORSEMENT

The package of extra coverages provided by this endorsement apply only if you maintain your eligibility in the "Prime of Life" Plan.

"Insured" as used in this endorsement in respect to Total Disability and Death Indemnity means you and "family members" who are 48 years of age or older.

Other words in quotation marks are defined in the policy.

CELLULAR PHONE COVERAGE

If you maintain both your home and personal auto insurance with us we will provide coverage for loss or damage to your cellular phone. Coverage will be provided by your home or personal auto insurance. Duplicate payments will not be made for the same elements of loss. No deductible applies to this coverage.

RENTED VEHICLE COVERAGE

This coverage is subject to all the provisions of your policy except as changed herein. When there is loss or damage to a "non owned auto" that you rent for less than 90 consecutive days, we will provide coverage for any damage or loss to the "non owned auto" that you rent including its equipment and actual loss of use and other reasonable costs of expenses resulting from the damage or loss. No deductible or waiting periods apply to this coverage. Duplicate payments will not be made for the same elements of loss. This coverage is not contingent upon physical damage coverage being provided for "your covered autos."

EMERGENCY TRAVEL EXPENSE

We will pay up to \$250. for travel expenses incurred because of loss to "your covered auto" more than 50 miles from your legal residence provided the loss is covered under the policy. No deductible applies to this coverage.

Emergency travel expense means:

1. Lodging, including meals, and/or transportation back to your legal residence.
2. Returning "your covered auto" to its garage location, unless we declare it a total loss.

This limit is in addition to the transportation limit provided by the policy.

EMERGENCY AMBULANCE EXPENSE

We will pay up to \$2,500. for emergency ambulance services or other necessary means of transportation as directed by professional medical emergency personnel for transportation to a hospital because of "bodily injury" sustained by you or "family members" and caused directly by an accident involving a motor vehicle designed for use mainly on public roads or a trailer of any type.

LOCKSMITH SERVICES - Lost or Stolen Keys.

We will pay up to \$100. for necessary locksmith services incurred because keys to "your covered auto" or a "non owned auto" have been lost or stolen. No deductible applies to this coverage.

TOTAL DISABILITY - Wage Loss Coverage

We will pay the "insured" \$200. per week up to 50 weeks for continuous total disability because of "bodily injury" sustained by the "insured" and caused directly by an accident involving a motor vehicle designed for use mainly on public roads or a trailer of any type. The continuous total disability means disability that begins within 20 days of the accident and prevents the "insured" from performing every duty pertaining to "insured's" fulltime wage earning occupation or employment as determined by a licensed physician. This coverage applies only if actual lost wages are sustained because of inability to work. If there are other sources of recovery for wage loss benefits, this coverage will be excess.

DEATH INDEMNITY

We will pay \$25,000. in the event of death of the "insured" because of "bodily injury" sustained by the "insured" and caused directly by an accident involving a motor vehicle designed for use mainly on public roads or a trailer of any type. This benefit supersedes and is not in addition to any other death benefit endorsed on the policy except that this benefit will be excess of any death benefit provided or endorsed on the policy in accordance with requirements of law.

ENDORSEMENT - PHYSICAL DAMAGE AMENDMENT
LIMIT OF LIABILITY

The Limit of Liability provision in Part D - Coverage For Damage To Your Auto is replaced by the following:

LIMIT OF LIABILITY

- A. Our limit of liability for loss will be the lesser of the:
1. Actual cash value of the stolen or damaged property;
 2. Amount necessary to repair or replace the property with other property of like kind and quality;
- However, the most we will pay for loss to any "non-owned auto" which is a trailer is \$500.
- B. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss.
- C. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

AUBS (01/97)

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State Auto 0070

POLICY CHANGES.

The FRAUD provision in PART F - GENERAL PROVISIONS is replaced by the following:

FRAUD

The entire policy will be void if any person we insure has:

1. intentionally concealed or misrepresented any material fact or circumstance with respect to the application for or continuation of this policy; or
2. made false statements or engaged in fraudulent conduct in connection with any accident or loss for which recovery is sought under this policy;

AUG 54 (16/92)

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

B. Gibbs Leaphart, Jr.

Plaintiff,

vs.

Tara Lee Louise Austin,

Defendant.

ORIGINAL

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

07-29-11

NOTICE OF APPEARANCE
AND ANSWER

(Jury trial demanded)

MARKET STREET
CLERK OF COURT
JASPER COUNTY, SC

FILED
SEP 29 11:11:30

2109 CP 400 00 10

TO: R. O'NEIL RABON, JR., ESQUIRE, ATTORNEY FOR PLAINTIFF

The undersigned, as attorneys for State Auto Insurance Company, hereby notify and advise this Court, the parties above-named and their attorneys, that they are appearing on behalf of State Auto Insurance Company, an insurance carrier which is alleged to provide underinsured motorist coverage to one or more parties to this action and that, in making this appearance, State Auto Insurance Company specifically preserves and does not waive any rights pursuant to its policy of insurance including, but not limited to, the applicability of underinsured motorist coverage to this action and further intends to preserve all rights which it may have pursuant to South Carolina Code Section 38-77-160 (1976 as amended).

FOR A FIRST DEFENSE
(Statute of Limitations)

1. Defendant would show that all claims asserted against this Defendant are barred by the applicable statute of limitations.

FOR A SECOND DEFENSE

2. The Defendant denies each and every allegation of the Plaintiff's Complaint and not

DEFENDANT'S
EXHIBIT
11
LEAPHART

FILED
POSTED
BY [signature] DATE 10.1.11

hereinafter specifically admitted or qualified,

3. In answering the allegations of Paragraphs one and two of the Complaint, it is admitted that Plaintiff and Defendant are residents of Columbia, State of South Carolina, and would affirmatively show that Columbia is in the County of Richland, State of South Carolina.

4. The allegations of Paragraph three of the Complaint are admitted, upon information and belief.

5. In answering the allegations of Paragraphs four, five, six and eight of the Complaint, it is admitted, upon information and belief, that on or about the date stated, and in or about the area referred to the Plaintiff was a passenger in a vehicle operated by the Defendant when the Defendant ran off the roadway and overturned, however, the allegations concerning the specific nature of the accident and the allegations therein concerning the Plaintiff's alleged injuries and damages are denied, due to lack of sufficient knowledge or information to form a belief as to the truth of the allegations thereof, and the remaining allegations of said paragraphs are denied,

6. In answering the allegations of Paragraph seven of the Complaint, those allegations are denied, due to lack of sufficient knowledge or information to form a belief as to the truth of the allegations thereof, and it is further, affirmatively denied that the Defendant was in any way guilty of any reckless acts or omissions, or that she operated a motor vehicle with a reckless disregard for the rights and safety of others, and especially the rights and safety of the Plaintiff.

FOR A THIRD DEFENSE
(Punitive Damages)

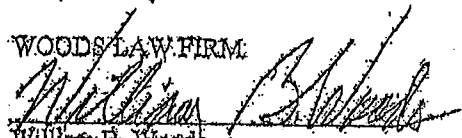
7. This Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in

that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts, the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against himself in a penalty situation such as punitive damages, the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature, Plaintiff's claim for punitive damages violates this Defendant's right to access to the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right, the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, and the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards and, therefore, the Plaintiff's claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, it is prayed that the Plaintiff's Complaint be dismissed, with costs, and for such other and further relief that the Court deems just and proper.

This Defendant demands a jury trial.

WOODS LAW FIRM


William B. Woods

Post Office Box 2444

146 E. Main Street

Lexington, South Carolina 29072

Attorney for Defendants

September 26, 2007

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

2008 CP 400 0010

B. Gibbs Leaphart, Jr.,
Plaintiff,

CASE NO.: 07-CP-27-291

vs.

Tara Lee Louise Austin,
Defendant.

CERTIFICATE OF SERVICE

MARGARET BOSTICK
CLERK OF COURT/REC'D
JASPER COUNTY SC

2007 SEP 28 AM 11:30

FILED
PAGE

I, the undersigned employee of Woods Law Firm, LLC do hereby certify that I have served State Auto's Notice of Appearance and Answer, Interrogatories, Request for Production and Motion to Change Venue of the Plaintiff by personally mailing a copy of the same, postage prepaid, on the date shown below as follows:

R. O'Neil Rabon, Jr.
601 McBee Avenue, Suite 200
Post Office Box 10766
Greenville, South Carolina 29603

Sheila Leventis
Sheila Leventis

September 26, 2007

2007 JAN 23 AM 9:18
BARBARA A. SCOTT
C.L.E. & E.S.

FILED

SEARCHED
SERIALIZED
INDEXED
FILED
2007 JAN 23

EXHIBIT C

COPY

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

B. Gibbs Leaphart, Jr.,

Plaintiff,

vs.

Tara Lee Louise Austin,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO.: 08-CP-40-0010

ORDER

2008 OCT 22 PM 4:31
BARBARA A. SCOTT
C.C.J. & S.S.
RICHLAND COUNTY
FILED

This matter came before the Court on October 8, 2008, on Motion for Summary Judgment. Plaintiff, B. Gibbs Leaphart, Jr., is the insured under a State Auto Property and Casualty Insurance Company (State Auto), purported underinsured motorist policy. State Auto is the carrier for the Plaintiff. Appearing on behalf of the Plaintiff was R. O'Neil Rabon, Jr. and appearing on behalf of State Auto was William B. Woods. This Court heard oral arguments from both counsel and received a written Memorandum of Law from counsel from State Auto. Affidavits of the Plaintiff, and his father Ben G. Leaphart, Sr., were filed with the court by Plaintiff's counsel, and timely provided to counsel for State Auto prior to the hearing.

FACTS

Plaintiff, B. Gibbs Leaphart, Jr., was involved in a motor vehicle accident on May 5, 2004, wherein he was a passenger in a vehicle being operated by the Defendant, Tara Lee Louise Austin. The Defendant was driving her father's vehicle back from vacation when she lost control of the vehicle causing it to flip over, resulting in the severance of three (3) of Plaintiff's fingers along with other injuries. No other cars were involved in the accident. The Plaintiff recovered against the Defendant's liability insurance carrier and then sought underinsured motorist (UIM) coverage from the State Auto policy of Mr. Ben G. Leaphart, Plaintiff's father.



State Auto Property and Casualty Insurance Company issued policy number ASC 3754417 to the "named insured(s)", Ben G & Martha M. Leaphart, 800 McDaniel Avenue, Greenville, South Carolina 29605, as indicated in box one (1) of the declarations page. "Additional drivers" added to the policy are Miller M. Leaphart and B. Gibbs Leaphart, Jr. (Plaintiff), both sons of the "named insureds".

The policy lists six (6) vehicles:

- 01 1967 Ford Mustang
- 02 1992 GMC Jimmy S150
- 03 1997 GMC Jimmy
- 04 2001 Chrysler PT Cruiser
- 05 1991 Dodge Dakota
- 06 2001 Jeep Cherokee

The UIM provisions of the policy issued to Ben G. and Martha M. Leaphart are as follows:

Underinsured Motorists Coverage – South Carolina (Page 1 of 3)

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

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

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

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

"Insured" as used in this endorsement means:

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

The terms contained in the policy are defined as:

Definitions; (Page 1 of 10)

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

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

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

DISCUSSION

In applying the policy language, UIM coverage will only be paid for bodily injury to an "insured". "Insured" means "you" or any "family member", or any other person "occupying" your covered auto". "You" is defined as the "named insured" and the spouse if a resident of the same household. "Family member" is defined as a person related to you by blood, marriage or adoption who is a resident of your household, commonly referred to as a "resident relative" under South Carolina law. *See, Auto-Owners v. Horne*, 356 S.C. 52, 586 S.E.2d 865 (2003). Plaintiff, B. Gibbs Leaphart, Jr., must fit into one of these categories as the "named insured", the "spouse", or a "resident relative" if he is to qualify for UIM benefits, as he was not occupying a "covered auto".

Attorneys for State Auto argued that there is simply no coverage available to the Plaintiff under the facts of this case. He is not, by definition, a "named insured" or a "spouse" of a named insured. Plaintiff is also not a "family member" as Plaintiff has testified in his deposition that he has not lived with his parents, the "named insureds" since graduating from Wofford College. The affidavits filed with the Court by Plaintiff's counsel further substantiated that the Plaintiff's residence, at the time of the accident given rise to the within action, was in Columbia, South Carolina, rather than the named insureds in Greenville, South Carolina. Attorney for State Auto points out that Plaintiff also could not avail himself of coverage under any other provisions, as he was not "occupying" a covered auto.


Plaintiff argued that he should be entitled to UIM because the parents insurance agent was aware that Plaintiff lived in Columbia and that there was a covered vehicle garaged in Columbia and collected a premium for the coverages on this vehicle. Counsel for State Auto points out that this argument has no merit, as the policy provisions are clear, and that the Plaintiff would have been entitled to all coverages for this vehicle, if he had been an operator or an occupant of this vehicle. He further pointed out that Plaintiff's argument was factually incorrect, as the vehicle described on the

declarations page as being garaged in Columbia, SC was auto number 06 (2001 Jeep Cherokee), with the address shown thereon as 3307 Blossom Street, Columbia, SC, and that neither this vehicle nor the address shown thereon applies to this Plaintiff, but rather to his brother. According to Plaintiff's deposition testimony (page 23), he has never lived at that specific location and both the deposition (page 83) and Plaintiff's affidavit state that he drove only vehicle number 02, the 1992 GMC Jimmy S150, from 1997 until 2004.

Counsel for State Auto further points out, in anticipation of Plaintiff's contention that he should be entitled to coverage because he is listed as a driver / operator on the declarations page of the policy, South Carolina law makes clear that "listing an individual as an operator on the declarations page of an insurance policy does not make that individual a named insured." *Ex Parte: United Services Automobile Association, In Re: Becky Todd Smith and Barry Smith v. Tracy Lee Moore and Ola A. Moore*, 365 S.C. 50, 614 S.E.2d 652 (Ct.App.2005) (Opinion No. 3977). Accordingly, it is found that Plaintiff is not a named insured under this policy for purposes of this matter and therefore, is not entitled to the same benefits accorded the "named insured(s)", Ben G. & Martha M. Leaphart. Every page of the declaration page, in box one, lists the named insured(s) as Ben G. and Martha M. Leaphart. On the bottom of the page, it lists additional drivers. Plaintiff is listed on the policy as an additional driver only. There is a clear distinction as to the definitions and benefits of a "named insured" compared to an additional driver. For these reasons, B. Gibbs Leaphart, Jr. is not the "named insured".

Because Plaintiff is the son of the "named insured" there is no dispute that Plaintiff is not the "spouse" of the named insured and therefore, is not entitled to UIM under that definition. No further discussion is required.


The statutory and case law in South Carolina, together with the factual evidence, makes clear that Plaintiff was not a "resident relative" of his parents household when the accident occurred.

4 

The South Carolina Supreme Court first analyzed whether a person was a resident of a household in *Buddin v. Nationwide Mut. Ins. Co.*, 250 S.C. 332, 157 S.E.2d 633 (1967). The Court stated "a resident of the same household is one, other than a temporary or transient visitor, who lives together with others in the same house for a period of some duration, although he may not intend to remain there permanently." *Id.* at 339, 157 S.E.2d at 636 (quoting *Hardware Mut. Cas. Co. v. Home Indem. Co.*, 241 Cal.App.2d 303, 50 Cal.Rptr. 508, 514 (1966)); see also *Farmers Ins. of Columbus, Inc. v. Taylor*, 39 Ohio App.3d 68, 528 N.E.2d 968, 969 (1987) (stating "the word 'resident' as used in the phrase 'resident of your household,' [unless otherwise defined in a policy,] refers to one who lives in the home of the named insured for a period of some duration or regularity, although not necessarily there permanently, but excludes a temporary or transient visitor.").

The cases presented which support State Auto's contention that Plaintiff is not a "resident relative" were *Richardson v. S.C. Farm Bureau Mut. Ins. Co.* 336 S.C. 233, 236-37, 519 S.E.2d 120, 122 (Ct. App. 1999), *Auto-Owners v. Horne*, 356 S.C. 52, 586 S.E.2d 865 (2003) and *Smith v. Auto-Owners*, 377 S.C. 512, 660 S.E.2d 271 (2008). This court finds that the factual evidence in this matter is more conclusive and definitive than the above-mentioned case law to find that Plaintiff was not a "resident relative" of his parent's household at the time of the accident. In the Plaintiff's deposition, and by his own admission per affidavit, it was clearly shown that Plaintiff had not been a resident relative of his parent's household since 1997 and was a mere transient visitor for the past 11 years.

I further find that South Carolina Statutory law further supports the policy language found in this policy. In South Carolina, the statutory definition of "insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured the motor vehicle to which the policy applies and a guest in the motor vehicle to which

5. 

the policy applies or the personal representative of any of the above. S.C. Code Ann. § 38-77-30 (7)(2002).


This language is synonymous with the language found in State Auto's policy in that an insured must be a named insured, spouse or relative of the named insured, while a resident of the same household. The statutory language further clarifies that the definitions of an insured would apply whether the spouse or "resident relative" of the "named insured" is in the motor vehicle, is driving the motor vehicle with consent or is a guest in the motor vehicle.

Counsel for Plaintiff argued that they are not attempting to stack coverage, and that the cases presented by Counsel for State Auto are all related to stacking of UIM coverage. While I find that this is generally true, I also find that the cases also support State Auto's contention that the Plaintiff is not entitled to UIM coverage benefits in any amount.

In *Concrete Services*, the court made clear that a person must first be protected by UM or UIM before they can recover excess UM or UIM coverage and that they are limited to the amount of UIM recovered on the vehicle in the accident.

The court stated, "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 the coverage on any one of the vehicles with the excess or underinsured coverage."

Concrete Services, Inc. v. United States Fidelity and Guaranty Company, 331 S.C. 506, 498 S.E.2d 865. As Plaintiff was neither an "insured" and or a "named insured" under the policy provisions, and none of the "insured's" or "named insured's" vehicles were involved in the accident, the Plaintiff would not be entitled to UIM policy benefits, and, therefore could not recover "excess" UIM benefits.

6 

In further support of their position, State Auto offered an analysis of UIM coverage provided by Professor William P. Davis of the University of South Carolina School of Law. In his summary of the law, he states:

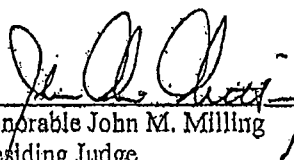
If a person is occupying a non-owned vehicle when injured by an uninsured or underinsured motorist, he or she will obviously be allowed to recover the UM or UIM covering the vehicle in the accident. If that person qualifies as a class I insured with respect to that vehicle, i.e., as the named insured or the spouse or relative living in the same household with the named insured (*Concrete Services, Inc. v. USF&G*, 498 S.E.2d 865 (1998)), then he can stack all coverage's available to him under any policy. Of course, under *Mooneyham* and *Hill*, he would only be able to stack the amount of UM or UIM coverage available on the vehicle involved in the accident. *If that person occupied a vehicle not owned by him, his spouse or a resident relative, then he is only entitled to recover UI or UIM on the vehicle that he was occupying, plus one such coverage from another policy in which he qualifies as an insured, i.e., a policy issued to him, his spouse or a resident relative.*

Davis, William P., Insurance, Law 695, Pg. 21 (2006)(emphasis added).

Under the terms of the State Auto policy at issue, only a "named insured", "spouse" or a "resident relative" may recover underinsured motorist coverage if occupying a vehicle not listed on and covered by the policy. Here the evidence clearly establishes that Plaintiff is neither a "named insured", "spouse" or "resident relative", and was not occupying a vehicle covered by the policy and therefore, is not entitled to recover UIM benefits in any amount.

IT IS THEREFORE,

ORDERED that the State Auto's Motion for Summary Judgment is hereby GRANTED.


Honorable John M. Milling
Presiding Judge

Darlington, South Carolina

October 20, 2008

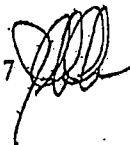


EXHIBIT D

Your Independent Agent

J B WATTS CO INC
PO BOX 10187
GREENVILLE SC 29603

This policy
comes with
an agent!

FIRST CLASS MAIL

BEN G & MARTHA M LEAPHART
300 MCDANIEL AVE
GREENVILLE SC 29605

4872091112-113139 RETURN SERVICE REQUESTED
29605

233

PLF_00966

EXHIBIT E

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
 COUNTY OF GREENVILLE) C/A No.: 2011-CP-23-03347

B. GIBBS LEAPHART, JR.,
 Plaintiff,

vs.

J. B. WATTS COMPANY, INC. AND
 J. B. WATTS,

Defendants.

DEPOSITION OF
 GIBBS LEAPHART, JR. ESQUIRE

DATE: August 11, 2011
 TIME: 1:34 p.m. to 5:36 p.m.
 LOCATION: Parker Poe Adams & Bernstein, LLP
 1201 Main Street
 Suite 1450
 Columbia, South Carolina

REPORTED BY: Beth Walters

PALMETTO STATE COURT REPORTERS
 3022 S. Morgan's Point Road, Box 118
 Mt. Pleasant, South Carolina 29456
 843.670.1637 Fax: 843.216.9767
 Palmettostatecr@yahoo.com

1 point that I moved the last time. I'm sorry.
2 Before I moved to the Hammond address before I moved
3 to my own place. Did that make sense?

4 Q So, do I understand your testimony to be
5 that during the time you were in law school, before
6 the accident, you lived in three different places?

7 A It would have been two different places.
8 And the accident was in the second, and I moved
9 again -- then I moved -- after the accident I moved
10 and then I moved one more time.

11 Q All right. So while you were in law
12 school, and before the accident, and let's back up
13 for purposes of the record, the accident occurred
14 on, let's see, May the 5th, 2004.

15 A Yes, Ma'am.

16 Q Correct? And you had already finished law
17 school but had not yet gone through a graduation
18 ceremony. Correct?

19 A Correct.

20 Q Your classes were over.

21 A Yes, Ma'am.

22 Q When you rented the -- was it a house or
23 an apartment off of Satchel Ford Road?

24 A That was a house.

25 Q All right. When you rented that house,

1 Q After you graduated from law school in the
2 Spring of 2004, did you take the South Carolina Bar
3 Exam in the Summer of 2004?

4 A I did.

5 Q In order to take the Bar Exam, did you
6 fill out an application with the committee on
7 character and fitness?

8 A I'm sure I did.

9 Q And in filling out --

10 A I did. I'm sorry. I did.

11 Q Yeah. In filling out that form, what did
12 you put down as your permanent address? Was it your
13 parents' home in Greenville?

14 A I don't recall.

15 Q Let's talk briefly about the accident.
16 For purposes of the record, you've testified to that
17 accident in some depth in your deposition that was
18 taken on February the 7th of 2008. Is that correct?

19 A Yes, Ma'am.

20 Q So I'm not gonna ask you repeat all those
21 things. Let's just see if we've got a correct
22 understanding of dates. The accident was on May the
23 5th 2004, correct?

24 A Correct.

25 Q And Tara Louise Austin was driving and you

1 were a passenger. Correct?

2 A That's correct.

3 Q She was your girlfriend at the time,
4 correct?

5 A Yes, Ma'am.

6 Q Is she now your wife?

7 A Yes, she is.

8 Q Does she live with you at the address that
9 you've given to us where you bought the house in
10 2005?

11 A Yes, Ma'am. I married her after I moved
12 into that house. Okay.

13 Q You were married in 2008; is that correct?

14 A Yes, Ma'am.

15 Q And the accident happened, was it in
16 Richland?

17 A Yes, Ma'am.

18 Q And you suffered injuries as a result of
19 that accident, correct?

20 A Yes, Ma'am.

21 Q Based upon the information that you gave
22 in the deposition taken in 2008, do we understand
23 that your total medical expenses from that accident
24 were \$65,638,85?

25 A If that's what they say, then that's

1 correct.

2 (Medical Specials for Gibbs Leaphart,
3 Defendants' Exhibit No. 1 is marked for
4 identification.)

5 BY MS. WALL:

6 Q Let's go ahead and -- I'm gonna hand you
7 what we're gonna mark as Defendant's number one.
8 And ask you if you recognize this as a two page
9 document entitled medical specials for Gibbs
10 Leaphart and there's a total on the second page of
11 \$65,638.85.

12 A Yes, Ma'am.

13 Q And to your knowledge is that correct?

14 A Yes, Ma'am.

15 Q Since that totaling as is set for on
16 Exhibit No. 1, have you incurred any additional
17 medical expenses?

18 A No, Ma'am.

19 Q Now, at the time of the accident, the car
20 that you were a passenger in and the car that was
21 driven by Tara Louise Austin was owned by Tara
22 Louise Austin's father. Is that correct?

23 A Yes, Ma'am.

24 Q And Mr. Austin had his insurance under a
25 State Farm policy. Is that correct?

1 A I believe so.

2 Q Do we understand that as a result of the
3 accident on May the 5th 2004, you recovered
4 \$200,000?

5 A You say I've recovered?

6 Q Recovered.

7 A Yes, Ma'am.

8 Q You were paid \$200,000, correct?

9 A Yes, Ma'am.

10 Q And that payment of \$200,000 came under
11 the State Farm policy in the name of Mr. Austin and
12 covered \$100,000 in liability and \$100,000 in under
13 insured motorist coverage, correct?

14 A That's my understanding.

15 (Certificate of Coverage from State Farm
16 Insurance, Defendants' Exhibit No. 2 is marked for
17 identification.)

18 BY MS. WALL:

19 Q And for purposes of clarify in the record
20 hand to you what we've marked as Exhibit No 2. Ask
21 you to identify this as a copy of a certificate of
22 coverage from State Farm Insurance Companies
23 referencing the 1994 Jeep Wrangler that Tara Louise
24 Austin was driving on the date of the accident with
25 the coverage in effect with the limit set forth

1 A Correct.

2 Q Before the accident on May the 5th 2004,
3 did you ever review your -- the automobile policy
4 under which you were an insured?

5 A Under -- by which date? As of when?

6 Q As of the time of the accident.

7 A I have not.

8 Q As of the time of the accident, had you
9 ever asked any questions of Mr. Watts or anyone at
10 J. B. Watts Insurance Agency with regard to
11 insurance on the GMC Jimmy?

12 A With regard to insurance?

13 Q Yes.

14 A The only thing that I would talked to
15 someone about would have been getting insurance --
16 the cards -- the insurance cards that go in the car.
17 And have to get those to Columbia.

18 Q And did you get the insurance cards that
19 go in the car?

20 A I did. Yes.

21 Q Did you review those cards and ask any
22 questions about them of the agency?

23 A The only way I would have -- the only
24 thing I would have looked at is to see if they were
25 up to date.

1 Q All right. Moving on. You state in
2 number eight, in the first sentence at all times
3 during 1997 to 2004 J. B. Watts Insurance Company
4 had actual knowledge that I was living in Columbia,
5 South Carolina rather than Greenville. What do you
6 base that statement on?

7 A I was in Columbia and I had been there
8 since '97. I had not been -- I had not been back in
9 Greenville since that time.

10 Q Did you at any time between 1997 and 2004
11 call anyone at J. B. Watts Insurance Agency and tell
12 them that you were living in Columbia, South
13 Carolina rather than Greenville?

14 A Yeah. I had to get my insurance cards
15 sent down here as opposed to Greenville.

16 Q Did you ever tell them that you were
17 living in Columbia as opposed to Greenville?

18 A I didn't think that I needed to say -- I
19 think that saying I need my cards sent to Columbia
20 to me is enough.

21 Q All right. So the answer to my question
22 is no, you didn't tell them that. Did you?

23 A I think telling someone that I need my
24 insurance card sent to this address in Columbia,
25 it's my address. I didn't ask for it to be sent to

1 800 McDaniel Avenue. I didn't ask -- I didn't go by
2 and pick it up myself. I didn't ask them to resend
3 it to my dad's house.

4 Q So the answer to my question is no, you
5 did not tell anyone at the J. B. Watts Insurance
6 Agency that you were living in Columbia rather than
7 Greenville?

8 MR. DICK: Object to form.

9 BY MS. WALL:

10 Q Is that correct?

11 A I don't think that's what that -- number
12 eight says.

13 Q I'm -- regardless of what it says. I've
14 asked you a question.

15 A I didn't call -- I don't -- I don't think
16 I called anyone and said hey I'm living -- guess
17 what I'm living in Columbia. But I called and said
18 here is my address in Columbia. I need my insurance
19 card sent here. And I'm sure I discussed with them.

20 Q You're sure you discussed what with them?

21 A I am sure that I discussed -- I discussed
22 the fact that I was living in Columbia and needed my
23 insurance cards sent to me in Columbia.

24 Q With whom did you have that discussion?

25 A I don't recall who it was in the office.

1 Q How many times did you have that
2 discussion?

3 A More than three.

4 Q More than three and less than what?

5 A Less than five.

6 Q So, between three and four times, you had
7 this discussion that you're now claiming. And you
8 don't know who you talked to. What year did those
9 discussions occur?

10 A I don't know.

11 Q What years did you not have your proof of
12 insurance cards, either because you lost them or for
13 whatever reason couldn't find them?

14 A I recall talking to them when I was living
15 at 801 King Street. And I recall talking to them
16 when I was at the Satchell Ford address.

17 Q And why do you recall that?

18 A Because I believe it was during that time.
19 It also may have been -- if I had any contact -- if
20 it was -- it would have been -- because I didn't
21 have the Jimmy when I lived at the Old Woodlands
22 address.

23 Q At the what?

24 A At the Old Woodlands address would have
25 been the initial address. That's when I had the

1 car. And I remember having several issues with
2 that -- with the insurance card.

3 Q All right. Let's back up.

4 A But I can't tell you exactly when it was.

5 Q When did you live at the Woodlands
6 address?

7 A It would have been '97 to probably 2000?

8 Q When did you live at the King Street
9 address?

10 A That would have been probably 2003, maybe?

11 Q To 2004?

12 A I think that's right.

13 Q And when did you live at the Satchell Ford
14 address?

15 A That would have been after -- that would
16 have been right before I went -- that was when I
17 went to law school. So that would have been 2001.
18 I lived there, I believe, two years.

19 Q 2001 to 2003 when you moved to King
20 Street.

21 A That's right.

22 Q So you start out at Woodlands, then you go
23 to Satchell Ford and then you go to King Street.

24 A Yes, ma'am.

25 Q Okay. Did you have any conversation with

1 State Auto?

2 A That's correct.

3 Q When you asked J. B. Watts for your
4 insurance cards -- or your insurance -- proof of
5 insurance cards, did they send you those cards to
6 your addresses in Columbia?

7 A The company did. Yes.

8 Q Okay. Did you ever -- you testified
9 earlier that you didn't ask anybody at J. B. Watts
10 about coverage issues. Did you ever feel the need
11 to ask anybody about coverage issues there?

12 A No. I did not.

13 Q And why didn't you feel the need to ask
14 them about that?

15 A Well I thought that -- that I was covered.
16 I felt that I'd been covered under the policy since
17 I had gotten the car and if I needed additional
18 coverage that somebody would have told me.

19 Q Okay. So did anybody at J. B. Watts ever
20 tell you that you needed additional coverage?

21 A No.

22 Q Did J. B. Watts himself ever tell you that
23 you needed additional coverage?

24 A No. I have never talked to J. B.

25 Q Okay. After college, did you ever move

1 gonna ask it again just in case. Did anybody at --
2 did J. B. Watts or anybody at his company ever tell
3 you you needed to be on your own policy?

4 A No.

5 Q Okay. Okay. Look at Exhibit No. 11.

6 MS. WALL: Give us just a minute.

7 MR. DICK: It's the Answer.

8 BY MR. DICK:

9 Q Okay. This is the Notice and of
10 Appearance and Answer of State Auto. You got it?

11 A Yes.

12 Q Okay. Prior to receiving this Exhibit
13 number eleven, had State auto ever informed you that
14 you were not fully covered under that -- the policy
15 of your father's?

16 A No. They did not.

17 Q Had anyone -- had J. B. Watts or anyone at
18 his company ever informed you that you were not
19 fully covered under the policy of your father?

20 A No.

21 Q And by the policy of your father, I'm
22 referring to the policy at issue in this case, which
23 is the State Auto policy that he purchased and which
24 you are listed on.

25 A That's correct.

1 injuries. Could you go ahead and just list all the
2 issues that you're having? I think that you
3 probably -- you've pretty much cleared the ear
4 issues. But what additional, I guess, injuries did
5 you have from that accident in -- what are the -- I
6 guess, the problems that you've had with them up
7 until today?

8 MS. WALL: Object to the form.

9 A We adjust the ear and the neck and the
10 right hand, obviously. But I still have issues with
11 my neck and both shoulders, which are --

12 BY MR. DICK:

13 Q What -- what issues do you have today with
14 your neck and shoulder?

15 A I have brought -- the right shoulder was
16 dislocated. It was a class three tear that ripped
17 all the tendons out. So I -- there is no
18 connection. There's always popping and cracking. I
19 have pain in my right shoulder, you know, virtually
20 every day. And pain in the neck that continues.
21 And that would be the ear, the neck, the hand and
22 both shoulders.

23 Q Okay. And aside from the -- I know you
24 said that your pointer finger breaks open, what
25 issues do you have today with your hand?

1 A Well it always hurts. It's in constant
2 pain. It's always stiff. The finger -- the tips
3 are numb. The left -- you know, it's -- the -- I
4 mean I can grip larger things, but when it comes to
5 handling smaller, smaller things, it's a lot more
6 difficult. But those are the main issues. I mean,
7 arthritis -- obviously there's arthritis in the hand
8 from the accident itself. But, you know, the doctor
9 said that was gonna -- that's what happens with
10 these type of injuries. So...

11 Q Do they expect that that's gonna get any
12 better?

13 A It's gonna get worse.

14 Q I think that's all I have for you.

15 MS. WALL: Well, then. Let's settle in.
16 Because I've got some for you.

17 R-E-E-X-A-M-I-N-A-T-I-O-N

18 BY MS. WALL:

19 Q All right. You were asked by your lawyer
20 to look at Exhibit No. 3, the check made out to you
21 for \$200,000. Do you remember that?

22 A Yes, ma'am.

23 Q And I believe your testimony was that you
24 considered that to be your residence at the time.
25 That being 801 King Street. And the time was

EXHIBIT F

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

B. GIBBS LEAPHART, JR.,
Plaintiff,

C.A. NO.:
2011-CP-23-03347

-vs-

J. B. WATTS COMPANY, INC., and
J. B. WATTS,

Defendants.

Deposition of BEN G. LEAPHART, a witness called by Counsel on behalf of the Defendant, pursuant to the applicable provisions of the South Carolina Rules of Civil Procedure, taken before Gary A. Haygood, a Professional Court Reporter and Notary Public in and for the State of South Carolina, on Wednesday, August 17, 2011, at the Law Office of Ashmore, Leaphart, Rabon, Hinds, 601 E. McBee Avenue, Suite 200, Greenville, South Carolina, commencing at the hour of 2:11 p.m.

PALMETTO STATE COURT REPORTERS
3022 S. Morgan's Point Road, Box 118
Mt. Pleasant, South Carolina 29466
843.670.1637 • Palmettostatecr@yahoo.com

1 coverage. All he had to do was contact me and say,
2 you know, son, you need to get a new -- you need to
3 get Gibbs on a different policy, and he didn't do
4 that. And as a result, I don't believe that my son
5 has been fully compensated for his injuries.

6 Q. Anything else?

7 A. That's pretty much it.

8 Q. All right. The second thing you said was, J.B. knew
9 your son was not a member of your household.

10 What is that based on?

11 A. That's based on a number of things. J.B. and I have
12 been friends and acquaintances for a long time.
13 Just as a side, this is not something I'm relishing,
14 but it's something I think needs to be done. J.B.
15 knew my family. His wife taught my, either Gibbs or
16 my other son Mac, at Augusta Circle Elementary
17 School. We didn't run into each other that much
18 socially, but he was aware of, whenever we talked,
19 we would talk about what the children are doing.

20 But mainly I remember a telephone conversation
21 that I had with J.B. sometime between the year 2001
22 and Gibbs' wreck here in this office. And as I
23 recall, it was in that small conference room over
24 there. Why I called J.B. or why J.B. called me, I
25 don't know. Most likely, it was an issue on the

1 policy. Whenever I'd get a new policy or a renewal
2 policy, the first thing, the only thing I would do
3 would be to look to see, to make sure all of our
4 cars were covered. And sometimes on an occasion or
5 two, there would be a car missing, and I would call.
6 And I just remember that on that occasion, I
7 mentioned the fact that Gibbs was in Columbia. And
8 his response was, Gibbs is in Columbia? And I said,
9 yes, Gibbs is in Columbia. And I don't have any
10 idea why I made that comment, other than we were
11 looking at the policy, and there may have been a
12 problem with the address or something. But I know
13 for a fact I told J.B. that Gibbs was living in
14 Columbia. And this would have been in -- as I say,
15 the reason I placed the date would have been after I
16 moved into this building, and it was pretty good --
17 I don't know whether it was close to the wreck of
18 not.

19 Q. Anything else?

20 A. As to why J.B. knew or should have known that Gibbs
21 was living in Columbia; is that your question?

22 Q. Well, your statement was twofold. Why you believe
23 J.B. Watts failed in his duty, and your second
24 statement was why J.B. knew Gibbs was not a member
25 of your household.

1 A. All right. That's the most direct. Also, as you
2 know, there was a car listed on the policy as being
3 garaged on Blossom Street in Columbia.

4 Q. And that, of course, was not a car that Gibbs drove,
5 was it?

6 A. No.

7 Q. That was car number six, and that was driven by
8 someone else, wasn't it?

9 A. That was my car. It was a Jeep Cherokee.

10 Q. Right. And that is not the car that your son Gibbs
11 drove, was it?

12 A. No, sure wasn't.

13 Q. Anything else that forms the basis for your
14 assertion here today that J.B. Watts knew that your
15 son Gibbs was not a member of your household?

16 A. Let's see. What did I tell you? I told you that
17 he's known -- we've been friends for a long time,
18 and he's familiar with my family situation. That we
19 would have discussed on more than one occasion
20 either socially, most likely, just seeing each other
21 at the post office, what they were doing. And we
22 had that specific telephone call.

23 Q. Was that a telephone call or was that a meeting?

24 A. No, I said a telephone call.

25 Q. I thought you said J.B. met with you in your office,

1 question that you asked, correct?

2 A. About this policy or about this?

3 Q. About any auto policy that you had with State Auto.

4 A. Are you talking about the policy itself or any of
5 these cover sheets?

6 Q. If you don't understand my question, I'll be happy
7 to rephrase it.

8 A. Obviously, I don't, because I just asked you --

9 Q. Exactly.

10 A. -- what are you talking about?

11 Q. I will rephrase my question for you.

12 A. Thank you.

13 Q. Do you have any recollection of asking any question
14 to anyone at J.B. Watts, with regard to the State
15 Auto auto policy that you had before your son Gibbs'
16 accident on May the 5th 2004?

17 A. Yes.

18 Q. And what question was that?

19 A. I would have called -- I would have called to make
20 sure that all the cars were covered.

21 Q. You would --

22 A. Because that is the one thing I looked at whenever I
23 got this policy. I didn't read the policy. I
24 didn't see a need to read the policy. I read this
25 cover sheet to make sure that I had the coverage

1 that I was paying for and that all of the cars were
2 listed.

3 Q. All right.

4 A. So I would have called and maybe not asked a
5 question, but I may have called and said, are all
6 these -- it doesn't look like all these cars are on
7 here.

8 Q. All right. Let's back up then. What you did look
9 at -- let me back up even further.

10 You recall, do you not, that these were six
11 month auto policies that you took out? Every six
12 months you received a new declarations pages for
13 your review that gave you that information. And
14 you're looking at right now one of those declaration
15 pages, specifically in Exhibit No. 3, which goes
16 from January to July 2004, correct?

17 A. Are you talking before I get to the part that says,
18 the personal auto policy?

19 Q. I'm talking about the declaration pages. And if
20 you'll like them, they're titled declaration pages;
21 do you see those?

22 A. Yes, ma'am. I looked at every one of those.

23 Q. Okay. So every six months you would look at every
24 declaration page that was sent to you from State
25 Auto, correct?

1 know that I have had those conversations with either
2 J.B. or someone at his office.

3 Q. And what conversations are those?

4 A. That would be about the advantage of keeping Gibbs'
5 and Mac's cars on my policy, rather than having
6 their own policy.

7 Q. But they weren't their cars. They were your cars,
8 weren't they? You bought them. They were titled in
9 your name, and you paid for the insurance on them.

10 A. But I could have transferred them over to their
11 names, and then they -- and then they could have
12 gotten their own policy.

13 Q. Well, why didn't you do that?

14 A. Because I, obviously, was told that it was a better
15 advantage to keep them on my policy.

16 Q. Because it cost less?

17 A. That's what I understood.

18 Q. And you were trying to save money?

19 A. It costs -- it would not have cost them as much.

20 Q. It didn't cost them anything to be on your policy,
21 did it, sir? You paid --

22 A. Wait a minute.

23 Q. -- the premium, didn't you?

24 A. Wait a minute. Wait a minute. It didn't cost them
25 anything to be on my policy. It would have cost

1 A. As of today, yes, ma'am.

2 Q. Well, I need to know. Today's your day. You're
3 under oath, and your deposition.

4 A. Yes. If I think of something else, I'll let you
5 know.

6 Q. What else would you look at to refresh your
7 recollection as to any other portion of that
8 conversation?

9 A. I apologize. That's all I know. That's all I know
10 today. That's all I know.

11 Q. So that's all you know, correct? That's all you
12 recall?

13 A. That's all I recall, as far as my conversation with
14 J.B. on that one day. I have -- as I -- as I recall
15 my testimony, it was I don't know why we were having
16 the conversation, but I believe it was about -- it
17 most likely was about something changing a car,
18 adding a car, or something to that nature. And in
19 that conversation I told him that Gibbs was living
20 in Columbia.

21 Q. And what was the response to you, if any?

22 A. From J.B.?

23 Q. Yes.

24 A. If any, as I recall, it was, he's living in
25 Columbia? I said yes.

1 coverage?

2 MS. WALL: Object to the form.

3 A. That's correct.

4 Q. Did anybody -- did J.B. Watts or anybody at J.B.
5 Watts tell you that they would not have the same
6 coverage if they were left on your policy?

7 MS. WALL: Object to the form.

8 A. No. I don't recall anyone ever telling me that.

9 Q. Okay. With regard to UIM coverage, did J.B. Watts
10 or anybody at J.B. Watts, Inc. tell you that if you
11 did not move Gibbs and Mac to their own policy that
12 they would be lacking UIM coverage?

13 A. No.

14 Q. This may be the same question another way. But did
15 J.B. Watts or anyone at J.B. Watts tell you that
16 Gibbs did not have UIM coverage under the policy in
17 question that's the subject of this lawsuit?

18 A. Only in my -- the only time I realized -- the only
19 conversation I had with anybody at J.B. Watts
20 Company was with J.B., and that was after the -- it
21 was -- the issue of the coverage was brought up on
22 the motion for summary judgment or whenever it came
23 up in the lawsuit for UIM. And I called J.B. about
24 it. And J.B. and I had a conversation, because I
25 was trying -- I had talked to J.B. on more than one

1 occasion about that and was trying to find out if he
2 was fully covered, and J.B. said yeah, he's covered.
3 Then when I told him, I said, they're saying that
4 because he was not driving one of our cars, J.B.
5 said, no, he's not covered. Because he wasn't
6 driving one of the insured cars, he's not covered.
7 And I don't know whether J.B. said that immediately
8 or whether J.B. went back and checked the policy and
9 came back to me, but we had that conversation. Now
10 granted, that was all after the fact. That was
11 after the wreck. That was after, well after all
12 that.

13 Q. Okay. So prior to the wreck, did J.B. or anybody at
14 J.B. Watts Company inform you that Gibbs was not
15 covered under the UIM coverage, if he was driving
16 not your car?

17 A. No.

18 MS. WALL: Object to the form.

19 Q. Earlier you testified that you never asked J.B.
20 Watts or anybody at J.B. Watts Company whether or
21 not Gibbs was covered if he was in another car.

22 Why did you not ask them about that?

23 A. Because I assumed he was, and I didn't see any need
24 to ask J.B. or anybody, because I was depending on
25 J.B. and his company to provide us full protection.

EXHIBIT G

9. Attached to this affidavit as Exhibit A is a true and correct copy of my *curriculum vitae*.

10. I have reviewed the following documents:

- The complaint
- State Auto Insurance Companies Policy No. ASC 3754417
- Gibbs B. Leaphart, Jr., Esquire, 8-11-11 Deposition
- Ben G. Leaphart 8-17-11 Deposition
- Defendants' Memorandum of Law in Support of Their Motion for Summary Judgment
- Plaintiff's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment

11. Based upon my education, training, experience, and review of the documents in this matter, I have concluded that J. B. Watts Company, Inc., (hereinafter referred to as "the Agent") and J.B. Watts ("Watts") violated the prevailing standard of care in the performance of their responsibilities and obligations owed to Mr. B. Gibbs Leaphart, Jr., ("Gibbs Leaphart") for obtaining the necessary insurance coverages Gibbs Leaphart would expect to receive under State Auto Insurance Companies Policy No. ASC 3754417 ("Policy").

12. The Agent issued a single automobile policy to Ben G. & Martha M. Leaphart (the parents of Gibbs Leaphart) covering the six vehicles they owned.

13. The defendants failed to exercise reasonable skill, care, and diligence when they neglected to issue a separate policy for the vehicle for which Gibbs Leaphart was the principal driver. This inaction by the Agent and Watts breached the professional standard of care and denied B. Gibbs Leaphart, Jr., \$500,000 of Underinsured Motorists Coverage for an accident that occurred on May 5, 2004, when he was a passenger in a vehicle not owned by the named insured.

14. Watts, who held himself out to be a skilled insurance agent, was bound to exercise the same degree of professional care as a skilled insurance agent of ordinary prudence engaged in the same line of business.

14.a.1. The primary benefit of including all vehicles in one policy is for the policyholders to receive a discount for having more than one vehicle on the policy.

14.a.1.1. Watts should have known, however, that the savings a multi-car discount can provide is negligible compared to the loss in protection to a listed principal driver not considered a "family member" under the Policy.

14.a.2. Watts should have known that Gibbs Leaphart would not have protection under the Policy while driving or occupying a non-owned vehicle.

14.a.2.1. In order for a person to be covered under the Policy, that person would have to be considered an insured as defined by the policy. The Liability Coverage, Medical Payment Coverage, Uninsured Motorists Coverage and Underinsured Motorist Coverage all separately defined an insured as *1. You or any "family member" 2. Any other person "occupying your covered auto"*.

14.a.2.2. Under the Policy, Gibbs Leaphart would be considered an insured while driving or "occupying" any of the vehicles listed on the policy because these vehicles were covered autos.

14.a.2.3. Because Gibbs Leaphart was not considered a "family member" under the Policy, he had no protection while driving or occupying a non-owned vehicle.

14.a.2.4. A professional agent should know the Policy's definition of a "family member" as well as the restrictions it places on the driver/s listed on the policy. The Policy defines "family member" as ... *a person related to you by blood, marriage or adoption who is a resident of your household*

14.a.2.5. Watts knew the Leaphart family well for more than 20 years, and had knowledge of the fact that Gibbs Leaphart had not lived in the household of his parents (the named insureds) in

Greenville, S.C., since 1997 and was in fact living in
Columbia, S.C., at the time of the Policy's inception and
coverage period.

15. The defendants failed to exercise reasonable skill, care, and diligence — and
violated the standard of care — by not providing the proper automobile insurance
protection for B. Gibbs Leaphart, Jr.

15.a.1. The defendants should have issued a separate automobile policy for the
vehicle driven by B. Gibbs Leaphart, Jr., rather than including it on the
Policy issued to Ben G. & Martha M. Leaphart.

15.a.1.1. By including the vehicle assigned to Gibbs Leaphart as
principal driver on the Policy, they failed to provide the same
automobile protection for him as they had for the other
members of the Leaphart family.

15.a.1.2. They failed to understand that the Policy's definition of
"family member" excluded underinsured motorist coverage, as
well as all other coverages provided by the Policy, for Gibbs
Leaphart as a driver or occupant of a non-owned vehicle.

15.a.2. Ben G. & Martha M. Leaphart wanted complete automobile insurance
protection for both their sons. The defendants failed to properly advise
Ben G. & Martha M. Leaphart relative to the shortfalls in protection the
Policy afforded B. Gibbs Leaphart, Jr.

15.a.3. The defendants failed to adequately investigate the needs of their
clients.

Donald P. Roinestad, 1049 General Allen Lane, West Chester, PA. 19382
(Printed Full Name and Address)

Donald P Roinesta d
(Signature)

2-7-2012
(Date)

State of PA County of Montgomery

The foregoing instrument was acknowledged before me this 1st day of February,
2012, by: Donald P. Roinestad

who is personally known to me, or
 who produced the following identification: _____

[SEAL]

Antoinette M. Dunn
Notary Public

Antoinette M. Dunn
Printed Notary Name

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
ANTOINETTE M. DUNN, Notary Public
Plymouth Twp., Montgomery County My Commission Expires
My Commission Expires December 18, 2014

LITCON LLC

Donald P. Rolnestad, CPCU, CLU, CIC, CRM, AMIM
Executive Officer

CURRICULUM VITAE

Donald P. Rolnestad, CPCU, CLU, CIC, CRM, AMIM

EDUCATION

- 2008 Associate in Marine Insurance Management, Insurance Institute of America
- 2007 Certified Risk Manager, Certified Risk Managers International
- 2006 Chartered Life Underwriter, The American College
- 1991 Certified Insurance Counselor, The National Alliance for Insurance Education & Research
- 1979 Chartered Property and Casualty Underwriters, The American Institute for Property and Casualty Underwriters, Inc.
- 1970 San Diego State University, Bachelors of Arts

PROFESSIONAL EXPERIENCE

- 1997 - Present Executive Officer
Consultant and Expert Witness in Claim Litigation
LITCON, LLC
West Chester, PA
- 1998 - Present Director, Office of Compliance
Unifrin Direct
Plymouth Meeting, PA
- 2002 - Present President
Unifrin Direct General Agency, Inc.
Plymouth Meeting, PA

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Page 2
Curriculum Vitae
Donald P. Rolnestad CPCU, CLU, CIC, CRM, GRM, AMIM

1989 – 1998 Director, Office of Underwriting
 The Hartford
 Southington, CT
 Underwriting
 Product
 Claim Litigation, Consultation, Corporate Litigation

1973 – 1989 Various positions within the Office of Underwriting
 The Hartford
 Home Office and Regional Offices

INSURANCE LICENSES

Agency/Broker/Producer License Property & Casualty in forty nine states and the District of Columbia
Agency/Broker/Producer License Life & Accident & Health in Pennsylvania & North Carolina
Managing General Agent License in Texas

HONORS/ ACTIVITIES

- Recognition of Continuing Professional Development 1997 to 2013. Society of Chartered Property and Casualty Underwriters, Inc
- Society of CPCU – Consultant, Litigation and Expert Witness Section
- Society of CPCU – Regulations and Legislation Section

PROFESSIONAL SOCIETIES

The CPCU Society
The Society of CIC
Certified Risk Managers International

Page 3
Curriculum Vitae
Donald P. Rolnestad CPOU, CLU, CIC, CRM, AMIM.

Case Files

Benjamin Franklin Murray v Nationwide Mutual Insurance Company, State Farm Insurance Co., and United States Liability Insurance Company.

Unfair Claim Practices
North Carolina - 92 CVS 2898
Consultant

Michael Shane Davis v Integon Insurance Company, ET AL.

Unfair Claims Practices
Uninsured/Underinsured Motorist Coverage
North Carolina - 94CVS 1429
Deposition

Carolina Brokerage Company of West End, Inc v American Safety Insurance Company, Hadley & Lyden, Inc. and James P. Lyden

Truckers Liability
North Carolina - 95 CVS 00703
Consultant

McClintock v McKinney Insurance Group, Inc.

Agent Errors and Omissions
North Carolina - 96 CVS 8834
Consultant

Viola Harris, Administratrix Of The Estate Of Wesley Harris, Jr., v Iredell/Statesville Board Of Education, and/or Iredell/Statesville Schools

Errors and Omissions/Risk Management
North Carolina - 96-CVS-1741
Affidavit

Kelth High v Budget Rent-A-Car Corporation

West Virginia - Civil Action 96-C-337
Bad Faith
Deposition

Richard Strauss v Tina Morano, et al.

Automobile Coverage
Pennsylvania
Consultant

Ray Crane Insurance v Peerless Insurance

Products Liability
Connecticut
Consultant

Cameron Nims, Sally Nims and Rufus Nims, Trustees of the Estate of Sarah P. Nims v North Carolina Farm Bureau

Cancellation of Coverage
North Carolina - 99-CV-5261
Affidavit

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Curriculum Vitae
Donald P. Rolnestad OPCU, OLU, CIC, CRM, AMIM

Estate of Brian Brewington v Home Beneficial Insurance Company
Bad Faith
Company Practices and Procedures
North Carolina -- 99-CVS-3799
Consultant

Johnston County Country Club v USF&G
Bad Faith -- Social Host Liquor Liability
North Carolina -- 95-CVS-00114
Trial

Narrans v Harleysville Insurance Company
Unfair Claim Practices
North Carolina -- 00-CVS-2280
Deposition

M. Kovens Company, et al. v Blue Ridge Insurance Company, et al.
Underwriting Practices and Procedures
Maryland
Consultant

Estate of Purnell v Tapco
Underwriting Practices and Procedures
North Carolina
Consultant

North Carolina Farm Bureau Mutual Insurance Company v Roadway Express ET, et al.
Underwriting Practices and Procedures
North Carolina -- 00-CVS-109
Consultant

Brown v North Carolina Farm Bureau
Unfair Claim Practices
North Carolina -- 00-CVS-2280
Deposition

Harleysville Mutual Insurance Company v James Faircloth, Sylvia Faircloth, Jim's Pawn Shop, Inc.,
and Callahan & Rice Insurance Group, Inc.
Unfair Claim Practices
North Carolina
Consultant

Stereo Trends, Inc. v Auto-Owners Insurance Company, and Walter Smith, d/b/a United
Claims Service
Unfair Claim Practices
North Carolina -- 03 CVS 3520
Deposition

Governors Landing vs. Zurich Insurance Company
Unfair Claim Practices
North Carolina - 03-CVS-1998
Deposition

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Curriculum Vitae

Donald P. Rolnestad CPCU, OLU, CIC, ORM, AMIM

Purvis v Kansas City Life

Unfair Claim Practices

North Carolina - 03 CVS 2180

Deposition

Pride In North Carolina v Fairmont Insurance, et al.,

Unfair Claim Practices

North Carolina - 04 CVS 5272 (Wake County)

Consultant

Parker Gold v Assurance Company of North America

North Carolina

Consultant

MacDonald v Stonebridge Life Insurance Company

Unfair and Deceptive Trade Practices

North Carolina

Consultant

Warner v Affirmative Insurance Company

Unfair Claims Practices

North Carolina - 04-CV-10288

Consultant

Frank A Moody v Able Outdoor

Breach of Contract

Unfair and Deceptive Trade Practices

North Carolina - 02 CVS 801

Deposition

Richard Childress Racing Enterprises, Inc. v United of Omaha Life Insurance Company, et al.

Unfair Claim Practices /Underwriting/Agency Management

North Carolina, Davidson County - 02 CVS 01038

Trial

Stephenson v Reassure America Life Insurance Company

North Carolina

Consultant

The City of Goldsboro v Lexington Insurance Company

Unfair Claims Practices

North Carolina

Consultant

Massengill v Primerica Life Insurance Company, et al

Unfair and Deceptive Trade Practices /Agency Management

North Carolina

Consultant

Jann-Long Chen, Individually and as Administrator of the Estate of Suh-Hen Liang, et al v. TRIAA
CREF et al.

Unfair Trade Practices/Unfair Claims Settlement Practices

North Carolina - 08-CVS-7102

Consultant

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Curriculum Vitae
Donald P. Rolnestad CPCU, CLU, CIC, CRM, AMIM

Paintmasters Painting & Wallcovering, Inc. v. Erie Insurance Exchange
Unfair Trade Practices/Unfair Claims Settlement Practices
North Carolina 5:07-CV-299-BR
Consultant

State National Insurance Company v. Anzhela Explorer LLC, Jeff Dorsay, Mark Rosandich
Underwriting/Agency Management
Florida 07-61182-CIV-Moreno
United States Southern District Court of Florida
Affidavit
Trial

Katie Bell v. New York Life Insurance and Annuity Corporation; William Cox
Unfair Trade Practices /Agency Management
South Carolina 4:08-cv-1679-TLW
Consultant
Open File

William Daniel Parker v. Catfish, Inc v. Erie Insurance Exchange
Unfair Trade Practices/Unfair Claims Settlement Practices
North Carolina 08-CVS 3977
Consultant

Carrie Mitchell v OM Financial Life Insurance Company & Alan Smith
Unfair Trade Practices/Unfair Claims Settlement Practices
North Carolina 08-CV 8377
Consultant

Patrick Ryan Driggers v. Progressive Southeastern Insurance
Unfair Trade Practices/Unfair Claims Settlement Practices
North Carolina 07 CV 3178
Consultant

MMJUA of Rhode Island - Nursing Home/Hospital Premium Deficiency v Marsh Inc.
Underwriting
Rhode Island
Consultant

Doris A. Gasque v. Allianz Life Insurance Company of North America
Underwriting/Agency Management
South Carolina 08-cv-01920-JFA
Deposition

Dorothea L. White v. Allianz Life Insurance Company of North America
Underwriting/Agency Management
South Carolina 3:09-cv-01082-JFA
Deposition

Lucy E. Arnold v. Allianz Life Insurance Company of North America
Underwriting/Agency Management
South Carolina 3:09-cv-01092-JFA
Deposition

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Curriculum Vitae
Donald P. Roinestad - CPCU, CLU, CIC, CRM, AMIM

Sherman P. Lohr and Joyce K. Lohr v. Conseco Life Insurance Company and Raymond Bostlan
Unfair and Deceptive Trade Practices/Agency Management
North Carolina 07-CV-01331
Consultant

Oren J. Heffner v. Johnson Insurance Services and The Cincinnati Insurance Company
Unfair and Deceptive Trade Practices/Agency Management
North Carolina 09-CVS-00626
Consultant

F/V Predator, Inc v Federal Insurance Services and the Cincinnati Insurance Company
Unfair and Deceptive Trade Practices/Unfair Claims Settlement Practices/Agency Management
Consultant

James L. Cobb v Pennsylvania Life Insurance Company et al and Amanda Carlson
Unfair and Deceptive Trade Practices/Unfair Claims Settlement Practices/Agency Management
North Carolina 09-CVS-7083
Consultant

Suzanne Boozer and Felice Oldacre v Rick Long, Fisher Brown, Inc
Unfair and Deceptive Trade Practices/Agency Management
Florida 2008-CA-001037
Consultant

Ann Carucci v Chase Life Insurance Company New York, formerly known as Zurich Life Insurance
Company of New York
Unfair Trade Practices/Unfair Claims Settlement Practices
New York 4:08-CV-1679-TLW
Affidavit

Donald Galney v Allianz Life Insurance Company of North America
Underwriting/Agency Management
South Carolina 09-CP-26-4716
Deposition

Bradley Lee Davis v Hamilton Companies and Great American Life Insurance Company
Unfair Trade Practices
North Carolina
Consultant
Open File

Goldsmith Seed v Great American Insurance Company
Unfair Claims Settlement Practices/Underwriting
California 1-08 CV 120930
Affidavit
Trial

Donna Swanger v Erie Insurance Exchange, et al
Unfair and Deceptive Trade Practices/Unfair Claims Settlement Practices
North Carolina 10 CVS 614
Consultant

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Curriculum Vitae

Donald P. Rolnestad CPCU, CLU, CIC, CRM, AMIM

Elizabeth Reinstein v Bryan Conlon and Government Employees Insurance Company
Underwriting Practices
North Carolina 09 CVS 015829
Consultant

Heidi M Baker v Safety Source Northeast and St. Paul Travelers Insurance
Coverage
Rhode Island
Consultant
Open File

Margaret Nucero v Life Insurance Company, Formerly Known as Jefferson Pilot and Nelson R Berman
Unfair and Deceptive Trade Practices/Unfair Claims Settlement Practices
New Jersey 09*5774 (RMB/JS)
Affidavit
Open File

Allen G. Thomas and Allen G. Thomas Jr. v. New York Life Insurance Company, New York Life and
Annuity Corporation, and Robert Dunn, Jr.
Unfair and Deceptive Trade Practices
North Carolina 11 CVS 38
Consultant

Harold Chestnut v. American General Life Insurance Co., f/k/a The Old Line Insurance Company of
America
Unfair and Deceptive Trade Practices
South Carolina Case No. 4:11-cv-02160-TLW
Affidavit
Open File

EXHIBIT H

Unpublished Disposition

908 F.2d 966

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. See CTA4 Rule 32.1.

United States Court of Appeals, Fourth Circuit.

Edgwin ADAMS, Mary E. Adams, Administratrix of the Estate of Charlie Adams, Plaintiffs-Appellees,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant-Appellant,

and

United States Fidelity and Guaranty Company, Defendant.

No. 89-2408. | Argued February 6, 1990 | Decided July 12, 1990.

Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Robert J. Staker, District Judge. (CA-86-703-3).

Attorneys and Law Firms

Richard Gregory McNeer, Campbell, Woods, Bagley, Emerson, McNeer & Herndon, Huntington, W. Va., (argued), for appellant; David Reid Dillon, Campbell, Woods, Bagley, Emerson, McNeer & Herndon, Huntington, W. Va., on brief.

Richard Thompson, Wayne, West Virginia, for appellee.

S.D.W.Va.

AFFIRMED.

Before MURNAGHAN and WILKINSON, Circuit Judges, and Hiram H. WARD, Senior United States District Judge for the Middle District of North Carolina, Sitting by Designation.

Opinion

PER CURIAM:

*1 While test driving an automobile owned by Car Spot, Inc. ("Car Spot"), Edgwin and Charlie Adams were struck by an automobile driven by Charlotte Hall. Charlie Adams died and Edgwin Adams was injured. Two passengers in the

car driven by Hall also were injured. There is no dispute that the accident was caused by Hall's negligence.

The various parties were insured as follows. The Adamses were covered by a policy with State Farm Mutual Automobile Insurance Company ("State Farm"). The policy provided underinsured motorist coverage with limits of \$50,000 per individual and \$100,000 per occurrence.¹ Hall was covered by a policy with Capital Enterprise Insurance Group ("Capital"). Car Spot was covered by a policy with United States Fidelity and Guarantee Company ("USF & G"). The USF & G policy provided \$1,000,000 in liability coverage but contained no explicit provision for underinsurance coverage.

Edgwin Adams and the estate of Charlie Adams ("plaintiffs") brought two lawsuits. In the United States District Court for the Eastern District of Kentucky, they sued Hall for negligence. The court ruled for the plaintiffs, awarding \$150,000 to the estate of Charlie Adams and \$110,000 to Edgwin Adams. The plaintiffs settled with Capital, receiving \$40,000 for the estate of Charlie Adams and \$25,000 for Edgwin Adams.

The plaintiffs also brought a declaratory action against USF & G and State Farm in West Virginia state court seeking a declaration of their underinsurance coverage rights against the two insurers. The defendants removed the case to federal court. In the suit, the plaintiffs acknowledged that Car Spot's policy with USF & G did not provide for underinsurance. However, the plaintiffs argued, USF & G had failed to offer an adequate opportunity to obtain underinsurance coverage to Car Spot and that alleged failure violated West Virginia Code § 33-6-31(b),² under which underinsurance coverage in the amount of the liability coverage would be implied by law. In the alternative, the plaintiffs argued they were entitled to recover under the underinsurance coverage explicitly provided in their policy with State Farm.

While the suit was pending, the West Virginia Supreme Court of Appeals heard an appeal of an unrelated case, the decision of which would govern the analysis of whether underinsurance should be implied by law in the USF & G policy. Accordingly, the district court below stayed the suit, pending a decision from the West Virginia high court.

Before the West Virginia Supreme Court of Appeals issued a decision, however, the plaintiffs settled with USF & G. USF & G, without objection by State Farm, was subsequently dismissed from the suit. Under the terms of the settlement, USF & G was to pay \$45,000 to the estate of Charlie Adams

and \$22,500 to Edgwin Adams. Thus, as a result of their settlements with Capital and USF & G, the estate of Charlie Adams had received \$85,000 (as compared to the damages of \$150,000 found by the Kentucky federal court) and Edgwin Adams had received \$47,500 (as compared to the damages of \$110,000 found by the Kentucky federal court).

*2 After the dismissal of USF & G, the West Virginia Supreme Court of Appeals handed down its decision in the pending case of *Bias v. Nationwide Mutual Ins. Co.*, 365 S.E.2d 789 (W.Va.1987). The decision involved an interpretation of § 33-6-31(b)'s requirement that every policy "shall provide an option to the insured" of obtaining underinsurance coverage. The court wrote:

[T]he insurer has the burden of proving that an effective offer was made, and that any rejection of said offer by the insured was knowing and informed. The insurer's offer must be made in a commercially reasonable manner, so as to provide the insured with adequate information to make an intelligent decision. The offer must state, in definite, intelligible, and specific terms, the nature of the coverage offered, the coverage limits, and the costs involved. When an insurer is required by statute to offer optional coverage, it is included in the policy by operation of law when the insurer fails to prove an effective offer and a knowing and intelligent rejection by the insured.

Id. at 791 (citations omitted).

State Farm thereupon moved for summary judgment, arguing that USF & G did not make an adequate offer of underinsurance to Car Spot under the standard enunciated in *Bias*, and, therefore, Car Spot, by operation of law, carried underinsurance coverage in the amount of \$1,000,000 with USF & G; that by operation of law the plaintiffs were beneficiaries of Car Spot's underinsurance coverage; that USF & G's coverage was primary to State Farm's coverage; that the coverage provided by USF & G would be in the face amount of the implied coverage (\$1,000,000), hence clearly sufficient as primary coverage; and that, accordingly, the plaintiffs' recovery rights lay with USF & G, not with State Farm.

The district court denied State Farm's motion for summary judgment. The court agreed that if Car Spot had underinsured motorist coverage with USF & G by operation of law, the coverage would be primary to State Farm's and that the coverage would be in the amount of \$1,000,000. However, the court felt there was a genuine issue of material fact as to whether communications between the USF & G agent and Car Spot's president, examined *infra*, had amounted to an

adequate offer of underinsurance under the *Bias* standard. If USF & G had made an adequate offer and Car Spot had rejected that offer, then, under *Bias*, Car Spot would not have had underinsurance coverage with USF & G and the plaintiffs' recovery would lie with State Farm. Therefore, trial was deemed necessary to determine if such an offer and rejection had occurred.

At trial, both sides presented evidence pertaining to the manner in which USF & G had offered underinsurance coverage to Car Spot and Car Spot's arguable rejection of that coverage. The principal evidence on the issue was the testimony of USF & G agent Charles Carroll and Car Spot president Charles Runyon. Carroll provided uncontradicted, though uncorroborated, testimony that he made an in-person offer of underinsurance coverage to Runyon. Carroll described his explanation to Runyon of the costs involved as follows:

*3 Q Did you tell [Runyon] what the cost would be for such coverage?

A No, no, because he wasn't interested. He didn't ask and he wasn't interested. You can't generally when you deliver a policy, you go over these coverages, you explain what they have, what they don't have. If you strike a subject that they are particularly interested in, they will generally say, 'Charlie, why don't you get me a price on that and we'll think about it.' It would be extremely time-consuming to get prices on every renewal on every form of coverage before you delivered it.

Q Well, let me ask you this: As opposed to telling him what the specific cost was, did you tell him that underinsured coverage would cost a relatively small amount?

A I was yes, yes.

Q Did Mr. Runyon indicate whether he wanted that coverage, underinsured motorists coverage, that is?

A He indicated that he did not want it.

Runyon testified as follows:

Q For the times [Carroll] came out prior to the Adams' accident, you don't recall specifically what was said and done; is that correct?

A Correct.

Q I take it then you cannot say one way or the other whether he offered underinsured motorist coverage to you before the Adams' accident; is that correct?

A I don't remember the expression 'underinsured,' but I don't know. You know, you are talking about something that happened so long ago that if he did I couldn't remember, if he didn't I couldn't remember.

In addition to Carroll's face-to-face communications with Runyon, there was further evidence of attempts by USF & G to alert Car Spot to the availability of underinsurance. USF & G had provided Car Spot with a document entitled "IMPORTANT MESSAGE FOR OUR WEST VIRGINIA INSUREDS." That document included the following:

WHAT IS UNDERINSURED MOTORIST COVERAGE?

Underinsured Motorist Coverage enables you to recover damages to which you are legally entitled for bodily injury or property damage which exceed[s] the limit of Liability Coverage carried by the owner or operator of the other vehicle.

DO YOU HAVE ANY OPTIONS?

... [Y]ou may select increased limits of Uninsured Motorists Coverage and/or Underinsured Motorists Coverage up to the Liability Coverage limits of your policy.

You should give careful consideration to this additional insurance coverage because it may provide important protection for a small premium.

There was evidence that USF & G enclosed with the message a form on which the insured could select one of several available underinsurance plans.

The district court found as fact that Runyon received the message and the attached form. The district court further found that:

Carroll offered underinsured motorist coverage to Runyon (Car Spot) and in so doing informed, and explained to, Runyon the availability of that coverage to Car Spot under that renewal policy, the nature of that coverage, what that coverage was and under what circumstances it would and would not apply, and that the cost to Car Spot therefor would be 'relatively small,' and that, acting on Car Spot's behalf,

Runyon then declined to purchase that coverage from USF & G for Car Spot.

*4. Based on those factual conclusions, the district court found that Carroll "effectively" offered underinsurance to Car Spot and that he did so "in a commercially reasonable manner, so as to provide Runyon, acting as he was for Car Spot, with adequate information for Runyon to make an intelligent decision as to whether or not Car Spot should purchase that coverage from USF & G, and that in so doing Carroll stated, in definite, intelligible, and specific terms" the relevant features of the available coverage. The district court acknowledged that Carroll did not quote Runyon a specific price. However, the district court reasoned that where Carroll's efforts to alert Runyon to the availability of underinsurance were so zealous, it simply would not make sense to require a specific price quote, especially given that Runyon had already rejected the offer of insurance in a manner that the district court found to be "knowing and intelligent."

We find no error in the district court's analysis. The determination of whether a given set of face-to-face communications constitutes an effective offer is necessarily fact-bound. Here, the district court found, in a manner not clearly erroneous, facts that track the standard announced in *Bias*. The court found an effective offer made in a commercially reasonable manner and a knowing and informed rejection by the insured. We are somewhat concerned as to whether Carroll's failure to quote a specific price comports with *Bias*' requirement for a statement in "specific terms" of the "costs involved." However, where, as here, the district court is so convinced as a factual matter that further specification of cost would have served no purpose, the court's subsequent finding of compliance with *Bias* will not be disturbed. See *Leagus General Ins. Co. v. Tvedt*, 317 N.W.2d 40 (Minn. 1982) (insurer's failure to specify cost excused where insurer otherwise made aggressive attempt to encourage purchase of the additional insurance). As to the effect under *Bias* of a failure to specify a cost in the absence of certainty that the insured would have refused the offer anyway we express no opinion.³

Accordingly, the judgment of the district court against State Farm and in favor of the plaintiffs is

AFFIRMED.

Parallel Citations

1990 WL 101369 (C.A.4 (W.Va.))

Footnotes

- 1 Underinsured motorist coverage, or underinsurance, entitles an insured to collect, up to the underinsurance policy limits, the amount by which the insured's damages exceed the limits of a wrongdoer's liability policy.
- 2 Section 33-6-31 provides that automobile insurance policies shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he shall legally be entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle up to an amount not less than limits of bodily injury liability insurance and property damage liability insurance purchased by the insured without setoff against the insured's policy or any other policy.
- 3 We note that, in the context of the instant case, the question was of primary interest to State Farm and USF & G. The plaintiffs were only collaterally concerned on a one-time, secondary basis. It was, therefore, incumbent, if State Farm truly expected to rely on the contention of USF & G underinsured motorist coverage, on State Farm to seek resolution of the issue before allowing USF & G's dismissal from the case. Although State Farm did raise the issue in opposition to a motion for summary judgment brought by USF & G, State Farm did not object to the settlement that resulted in USF & G's dismissal.
State Farm has made the additional contention that even if it is liable to the plaintiffs, the liability should be reduced by a set-off against the policy limits of the amounts received by the plaintiffs from their settlement with Hall's insurer. However, prior to judgment, State Farm stipulated that if it was liable, each of the plaintiffs would be entitled to the policy limits plus pre-judgment interest. We hold State Farm to its stipulation and, accordingly, reject its argument as to set-off.

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	
B. Gibbs Leaphart, Jr.,	)	Civil Action No.: 2011-CP-23-03347
)	
)	
)	
vs.	)	<u>PLAINTIFF'S NOTICE OF MOTION</u>
	)	<u>AND MOTION</u>
J.B. Watts Company, Inc. and J.B. Watts,	)	<u>FOR RECONSIDERATION</u>
	)	<u>PURSUANT TO RULE 59(e)</u>
)	
Defendants.)	

FILED - CLERK OF COURT
 GREENVILLE CO. S.C.
 APR 26 2012

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, the Plaintiff B. Gibbs Leaphart, Jr. ("Plaintiff") hereby moves the Court to reconsider its Order, dated April 11, 2012 and filed April 12, 2012 granting Defendants J.B. Watts Company, Inc. and J.B. Watts' ("Defendants") Motion for Summary Judgment. Counsel for the Plaintiff received "written notice of the entry of the order" on April 13, 2012. Accordingly, this motion is timely pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

This motion is based on the following grounds:

1. The Court's Order dated April 11, 2012 and filed April 12, 2012 ("Order) grants Defendants' Motion for Summary Judgment as to all causes of action based on a three-year statute of limitations applicable to all causes of action – breach of implied contract, negligence, breach of fiduciary duty, and SCUPTA.
2. This Court erred in its finding that the statute of limitations began to run on Plaintiff's causes of action for breach of implied contract, negligence, and breach of fiduciary duty on September 27, 2007 when the insurance company answered with a denial of coverage in the Richland County action.

3. This Court erred in its finding that the statute of limitations began to run on Plaintiff's SCUPTA action on September 27, 2007 when the insurance company answered with a denial of coverage in the Richland County action.

4. This Court erred in finding the statute of limitations began to run on September 27, 2007 because the determination of whether the Plaintiff was a resident relative in the underlying case in Richland County against the insurance company was a factual issue. Thus, the Plaintiff could not have known, and should not have known, that he was not a resident relative until the Court ruled on that issue.

5. This Court erred in finding the Plaintiff was injured on the date the automobile accident occurred, May 5, 2004. While the Plaintiff sustained physical injuries on that date, the Plaintiff was not injured by the Defendants in this case until the Court held he was not covered under the insurance policy.

For the above reasons, Plaintiff respectfully requests the Court to reconsider its Order, dated April 11, 2012 and filed April 12, 2012. This Motion shall be based upon this notice, the pleadings on file with the Court, any supporting memorandum of law filed in support of the motion, and such arguments and evidence as may be adduced at the hearing on this motion.

PLAINTIFF REQUESTS ORAL ARGUMENT.

[Signature Page follows]

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By:  

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STATE OF SOUTH CAROLINA:
:
IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE :
:
B. GIBBS LEAPHART, JR. :
:
TRANSCRIPT OF RECORD
vs. :
2011-CP-23-3347
:
J.B. WATTS, INC and :
February 15, 2012
J.B. WATTS :
Greenville, South Carolina

B E F O R E:
HONORABLE LETITIA H. VERDIN, Judge.

A P P E A R A N C E S:
DAVID C. DICK, JR.
THORNWELL F. SOWELL, III
Attorneys for the Plaintiff
SUSAN TAYLOR WALL
Attorney for the Defendant

Maria M. Smith, RPR
Court Reporter

1 THE COURT: All right. This is Gibbs Leaphart vs.
2 J. B. Watts. And this is Defendant's Motion for Summary
3 Judgment. My review of the file is that there are about five
4 grounds for summary judgment; is that correct?

5 MS. WALL: That is right, your Honor.

6 THE COURT: All right. Then I propose, unless there's
7 any objection to this, that we go ground by ground and just a
8 couple of minutes on each one. And I apologize, I certainly
9 will give you the full 45 minutes that is allotted, but I'm
10 going to have to hold you to 45 minutes because I've got a
11 lunch appointment that I do have to get to and I'm very sorry
12 about that. All right. Yes, ma'am.

13 MS. WALL: Thank you, your Honor. If it please the
14 Court, Susan Wall with McNair on behalf of the Defendants in
15 this case. J. B. Watts is an independent insurance agency,
16 not insurance company, an agency, here in Greenville and my
17 clients are here with me this morning. Your Honor, you're
18 absolutely correct in our brief. We have a number of bases
19 for this dispositive Motion for Summary Judgment. I'd like
20 to focus on the first of our grounds which is statute of
21 limitations, because it's dispositive of all of the causes of
22 action and it's based on undisputed facts and very clear
23 South Carolina law.

24 Looking, your Honor, at the background of the
25 undisputed facts, which are material to a statute of

1 limitations argument, first of all, the auto accident at
2 issue was on May 5th, 2004. Plaintiff was a passenger in his
3 girlfriend's car. He was injured in that accident. He had
4 just graduated from University of South Carolina Law School,
5 was approximately 30 years old.

6 Now, within five months of that accident on October
7 19th, 2004, so we're still in 2004, he recovered \$200,000
8 from the at-fault driver's carrier State Farm. At the same
9 time, in October of 2004, Plaintiff, the injured passenger
10 here, Gibbs Leaphart, determined to make a claim under his
11 father's insurance policy with State Auto for underinsured
12 motorist coverage, UIM coverage. And we know that he made
13 that determination in October 2004 because, your Honor, as
14 we've attached to our brief, number four, he entered into a
15 covenant not to execute wherein on page 3, paragraphs three
16 and four, he specifically is reserving all rights of actions,
17 claims, demands or other legal remedies against all firms and
18 persons, and then goes on in paragraph four to say that he's
19 represented by counsel and has been fully advised.

20 For the next three years he attempts to collect under
21 the State Auto policy for UIM coverage and that is denied by
22 State Auto. Therefore, in May -- on May the 7th, 2007,
23 Plaintiff files a suit against State Auto. It's technically
24 against the at-fault driver to bring in the statute, but it's
25 State Auto. And State Auto answers and denies on September

1 the 28th, 2007.

2 Now, this lawsuit against the agency was not filed
3 until October the 13th, 2010; over six years from the time of
4 the accident, over six years from the time when Plaintiff
5 knew or should have known that he might have a cause of
6 action against the agency. Your Honor, statute of
7 limitations law in South Carolina is well settled and
8 established and it defeats all the claims in this case. We
9 know that there's a three year's statute of limitation,
10 15-3-530. And it is a discovery rule that applies. It's
11 when a person knew or should have known through the exercise
12 of reasonable diligence that they might have a claim, not
13 that they do have a claim, but they might have a claim and
14 they then have three years to do an investigation. This is
15 an objective standard. It's not when this Plaintiff knew or
16 should have known, it's an objective standard.

17 Under the undisputed facts that we just outlined, your
18 Honor, it's clear that the statute of limitations has run as
19 to the agency. He knew there was an issue with regard to
20 collecting UIM under his father's policy. It was his
21 father's policy that was sold by the agency to the father,
22 the State Auto policy. He knew that in 2004, and yet he
23 waited until 2010 to file the suit against the agency.

24 We know under the clear case law what it says, Snell,
25 and I've cited to the Court the critical cases, your Honor,

1 and it's exactly what I just said, a person of common
2 knowledge and experience is on notice that some right of his
3 has been invaded or some claim against another party might
4 exist and that of course is the Snell case, your Honor, and I
5 have extra copies of the case to hand to the Court if you
6 would like. And then we have the Burgess case which says a
7 party cannot escape the application of this rule by claiming
8 ignorance of existing facts and circumstances because the law
9 also provides that such -- if such facts and circumstances
10 could have been known to the party, through the exercise of
11 ordinary care and reasonable diligence, the same result
12 follows.

13 Now, your Honor, the Plaintiff would have the Court
14 think that the statute of limitations as to the agency does
15 not begin to run until he received a final adverse ruling in
16 the lawsuit that he filed against State Auto ruling that, in
17 fact, he was not an insured for purposes of UIM coverage.
18 But that argument has been expressly, expressly, your Honor,
19 rejected by our Supreme Court. There is no tolling of the
20 statute of limitations while you wait for a final ruling,
21 there is no tolling of the statute of limitations while you
22 wait for your damages to be finally realized.

23 The two critical cases, your Honor, the first is of
24 course Epstein we cited in our brief, your Honor. Again, I
25 have an extra copy to hand up to the Court. What does the

1 Epstein case say? That case, of course, is exactly what
2 happened in that case. The, the Plaintiff waited until an
3 appeal was finished and then he filed -- he sued his lawyer
4 and the Court said, no, you can't wait to do that. We don't
5 recognize any sort of tolling in South Carolina. The Court
6 also said the fact that the injured party may not comprehend
7 the full extent of the damage is immaterial. It states
8 that -- and it goes on to cite a number of South Carolina
9 cases to that accord.

10 We then go from Epstein to the more recent 2011 Supreme
11 Court -- excuse me -- Court of Appeals case, which is
12 Kimmer v. Wright. And in Kimmer, again, the Court says once
13 a reasonable person has reason to believe that some right of
14 his has been invaded or that some claim against another party
15 might exist, the requirement of reasonable diligence to
16 investigate this information further takes precedent over the
17 inability to ascertain the amount of damages, or even the
18 possibility that damages may be forthcoming at all. And they
19 argue in their brief, your Honor, well we didn't know if we
20 have any damages, we didn't know how much our damages would
21 be, but that's been expressly rejected by our Courts, your
22 Honor, and for precisely this reason that we have in this
23 case because the claim becomes stale. We are now going from
24 2004 to 2010 and here we are in 2011, your Honor.

25 Your Honor, on this factor of the statute of

1 limitations, it's very clear, again, that not only should he
 2 have known but that he had actual notice of a dispute in
 3 collecting UIM under his father's policy. The word dispute
 4 is in that exhibit that we've handed up to the Court, Exhibit
 5 Number Four, but more than that it's absolutely clear and,
 6 again, the law says you don't even have to have a lawyer to
 7 have your three years begin to run.

8 THE COURT: All right.

9 MS. WALL: He had a lawyer, your Honor. So -- and
 10 then, finally, there's an admission in Plaintiff's brief on
 11 page 2, which of course is correct, and that is when they
 12 sued the carrier State Auto in May of 2007. State Auto
 13 answered on September the 28th, 2007, and in that answer,
 14 just as they admit on page 2 of their brief, State Auto
 15 denied coverage. It said, "State Auto did not deny coverage
 16 until it filed its Notice of Appearance and Answer on
 17 September the 28th, 2007."

18 So, even if we threw out the window clear South
 19 Carolina Law, we know that they didn't sue the agency within
 20 three years of September the 28th, 2007. They didn't sue the
 21 agency until October the 13th, 2010. More than three years
 22 after the last possible date when they have express knowledge
 23 that coverage is denied, your Honor.

24 Would you like me to go on to the other or would you
 25 like to hear from the other side on the statute of

1 limitations?

2 THE COURT: Let's hear a response. Let's hear a
3 response on that. Yes, sir.

4 MR. DICK: May it please the Court. Your Honor, my
5 name is David Dick and Mr. Sowell and I represent the
6 Plaintiff. The Plaintiff, Mr. Gibbs Leaphart, is sitting at
7 the end of the table there. Before I get into the argument
8 I'd just like to walk you through a few of the facts that I
9 think are important and I will save some of the other facts
10 for later, but as to the ones that relate to the statute of
11 limitations, the accident did occur on May 5th, 2004. It was
12 a single car accident. My client was thrown from the car.
13 He suffered the amputation of three of his fingers on the
14 dominant hand, he tore his shoulder up, back, neck, his ear
15 was partially torn off, so pretty significant injuries.

16 After that he did recover from the driver's insurance,
17 and it's important in this case to note that the driver was
18 driving a car that was not listed on my client's father's
19 policy. So this was a car driven by somebody else and owned
20 by somebody else, an insured under a separate policy. So
21 under that separate policy, under the driver's policy, my
22 client recovered and then sought to recover from his father's
23 policy which he was listed on for underinsured insurance.

24 Now, regardless of what our brief says and whether
25 denial of coverage is the right term or not, the answer to

1 the complaint that my client filed never denied coverage for
2 those claims, it simply stated a reservation of rights. So I
3 may have misspoke in our brief but it does not deny coverage;
4 in fact, it just states a reservation of rights.

5 So, my client then goes through the trial process
6 assuming that -- or under the assumption the entire time that
7 he has a right to recover under his father's policy only to
8 be told by the Court on I believe October 20th, 2008, for the
9 first time, that he was not entitled to coverage under the
10 UIM policy. He was -- and we'll get into it later -- but
11 subject to a kind of a loophole in that policy that provided
12 that if he lived outside of the house he would not be
13 provided under insurance or underinsured coverage.

14 So, the point is until October 2008 my client's cause
15 of action against Mr. Watts and his agency was not ripe. He
16 had no cause of action against them. He had no damage. He
17 had no injury. Now, all of the case law that Ms. Wall cites
18 is -- states that an injured party must act promptly and must
19 discover, but the point there is that it says an injured
20 party. My client was not injured by Mr. Watts until the
21 Court came back with its initial ruling the first time that,
22 that he was not entitled to underinsured coverage.

23 Now some of the cases Ms. Wall talks about deal with an
24 appeal. This wasn't an appeal. There was no decision prior
25 to the Court's ruling on October 20th, 2008. Accordingly, if

1 you look at the case law, all case law states the statute of
2 limitations begins to run at the time the injury or damage
3 occurs or when one knows that injury or damage. Well until
4 the Court made its ruling on October 2008, there was no
5 injury or damage to know about. Mr. Watts -- I mean Mr.
6 Leaphart assumed that he was going to be able to recover
7 under that policy. If the Court in that case decided that he
8 could cover -- recover under the policy, he would have no
9 cause of action against Mr. Watts for negligence or any of
10 the other causes of action that we've alleged here. But I
11 think that the main point is that until October 2008 there
12 was no denial of coverage, there was only a reservation of
13 rights, and there was no Court ruling or otherwise that
14 provided any damage or injury caused by Mr. Watts to my
15 client Mr. Leaphart and, therefore, the statute of
16 limitations could not have run prior to that date. So at
17 the, you know, the earliest I think the statute of
18 limitations began to run on October 2008 and we are well
19 within I think two years of filing our lawsuit of that date
20 so. . .

21 THE COURT: All right.

22 MR. DICK: I believe that's all I've got on that issue.

23 THE COURT: Okay. All right. And let's move onto some
24 of these other arguments that you've got just -- and I know
25 that the statute of limitations would be dispositive, but

1 let's just move onto those other arguments.

2 MS. WALL: All right. Your Honor, I'll be happy to if
3 you would just give me one moment to respond.

4 THE COURT: Sure. Your time is your time.

5 MS. WALL: The problem with what your Honor has just
6 been told is that you were told that the Plaintiff did not
7 know but, of course, that's not the test. It's what a
8 reasonable person should know. It is not a subjective test.
9 So that doesn't come into it at all. Furthermore, whenever
10 you have a coverage dispute case, the insurance agent, if
11 there's any basis at all, the insurance agent is always
12 named, I have dozens of them; always named in the coverage
13 case. And why is that? To preclude exactly what's happening
14 here, which is the running of the statute of limitations. So
15 indeed, your Honor, the statute of limitations has clearly
16 run.

17 THE COURT: All right.

18 MS. WALL: Moving onto the discussion with regard to --
19 the fact that there is no duty, as a matter of law, on the
20 part of the Defendant here to have advised Plaintiff's
21 father, because of course their theory is that this is a
22 third party beneficiary case, that this Plaintiff is a third
23 party beneficiary under their theory of the relationship
24 between Defendant and Plaintiff's father. The key case, your
25 Honor, and it is dispositive in this case, is Trotter.

1 Trotter is on all fours with the case we have before the
2 Court today. In Trotter there was a relationship between the
3 Plaintiff -- here, of course, it's not the Plaintiff, it's
4 the Plaintiff's father -- with the insurance agent for many
5 years that he had been selling insurance policies for many
6 years, they had an on-going relationship, there were periodic
7 visits to pay premiums, to change vehicles and so forth. In
8 that case the Court found that it was insufficient. There
9 was no evidence to put a reasonable insurance agent on notice
10 that his advice was being sought. You have to ask for advice
11 before someone can give you that advice because he wouldn't
12 know what it is you are seeking. What is your question? You
13 have to ask the question. Trotter, all of the other cases
14 that go along with it that we cited, your Honor, including
15 Houck, and a number of others, all say that.

16 It is undisputed in the record, your Honor, and I have
17 the original deposition of course to hand to the Court.
18 While I do that, to go a little bit more quickly, your Honor
19 will look at what the -- I just pulled out some pages and
20 they're in the brief, but I will just go through them very,
21 very quickly with your Honor. What does the father say on
22 page 47, and I'm just going to go very quickly at the bottom.

23 "So it's your testimony that you never read your
24 auto policy until after this accident 2004?

25 Yes, ma'am, that's my testimony."

1 Page 52: Line 17:

2 "I did not read the policy.

3 Did you review the declaration pages?

4 Yes, ma'am."

5 Line 21:

6 "And in reviewing the declaration pages did you
7 ever ask any question of anyone at J. B. Watts
8 with regard to coverage?"

9 And he answers:

10 "Not that I recall."

11 On page -- on line 24.

12 Turning to page 67, line 19:

13 "Did you ever ask anyone at the J. B. Watts
14 Agency as to whether the drivers on your policy
15 had full coverage?"

16 Didn't see the need to so, no."

17 Page 94. And this comes from his own attorney:

18 "You never asked J. B. Watts or anyone at J. B.
19 Watts Company whether or not Gibbs was covered if
20 he was in another car? Why did you not ask them
21 about that?"

22 Because I assumed he was."

23 And that's very important, your Honor. Because all of
24 these cases talk about an assumption on the part of the
25 Plaintiff does not create a duty on a part -- on the part of

1 the Defendant to give information. And then finally, your
2 Honor, page 95, on line five:

3 "You never told anyone at J. B. Watts what
4 you meant by what you're now characterizing as
5 full protection, correct? Never had conversation
6 about fault?"

7 And he answers:

8 "Never had a conversation about any of that."

9 And I asked:

10 "Protection?"

11 And he says:

12 "Right."

13 So the point is, your Honor, there were never -- it's
14 undisputed -- no questions asked about the policy, about
15 coverage, about what it means. How could there have been.
16 He never even read the policy but he admits he asked no
17 questions. The one thing he said he did was that he told
18 J. B. at one point in time, and he doesn't remember when,
19 sometime between 2001 and 2004, that his son was in
20 Columbia. That, your Honor, under Trotter, under Houck,
21 under every one of the cases, is insufficient as a matter of
22 law. And I would remind the Court that the Houck case, and a
23 number of the others that are cited in Houck and in Trotter
24 are summary judgment cases.

25 THE COURT: All right.

1 MS. WALL: And, and just to cite once to Trotter, your
2 Honor, on page 6 it says, and I quote, "A request for full
3 coverage, the best policy, or similar expressions does not
4 place an insurance agent under a duty to determine the
5 insured's full insurance needs, to advise the insured about
6 coverage, or to use his discretion and expertise, to
7 determine what coverage the insured should purchase." And
8 that is precisely what we have in this case, your Honor, and
9 Trotter is dispositive. And then going onto Houck, Houck
10 does say, your Honor, that the existence of a duty owed is a
11 question of law for the Court. So, I'm not taking this out
12 of context and asking this Court to do something that it
13 doesn't have the absolute authority to do under the law and
14 under the Houck case, which is also dispositive of the case
15 that we have before you, your Honor, because it says in such
16 an action if no duty exists the Defendant is entitled to
17 judgment as a matter of law. And the Houck case goes onto
18 discuss, there's no evidence of either an expressed or
19 implied undertaking. And there's none in this case, your
20 Honor, absolutely none. The fact that they had a long
21 relationship, notwithstanding there was a long relationship
22 in the Trotter case, and they found that there was no duty,
23 as a matter of law, on the agent to be volunteering advice
24 where none was asked whatsoever which is what we have in this
25 case.

1 So, your Honor, that is the second ground that defeats
2 all of the causes of action. I would just very, very briefly
3 if I might respond to they have filed an affidavit from an
4 expert out of Pennsylvania. This affidavit does nothing to
5 defeat summary judgment. And the reason is because he
6 doesn't cite any specific evidence in the record that would
7 take us outside of Trotter, Houck, and it's progeny and, of
8 course, we know that an expert's affidavit that is contrary
9 to South Carolina law will not be considered because an
10 expert cannot create new law for us where it's already
11 established under the cases such as Trotter and Houck. Thank
12 you, your Honor.

13 THE COURT: All right. Thank you. First of all, let
14 me ask you, so far as the deposition excerpts that were
15 handed up, do you have any dispute that these are accurate?

16 MR. DICK: I do not.

17 THE COURT: Do you have any additional things that you
18 want me to look at from this deposition?

19 MR. DICK: I would only cite what is in our brief.

20 THE COURT: Okay.

21 MR. DICK: The excerpts there are attached as well. I
22 guess she's handed up these.

23 THE COURT: I'm going to hand back the originals then
24 if there's no objection to that. All right.

25 MR. DICK: And I'll cite -- I'll state for you kind of

1 I guess the main points out of those depositions, but I think
2 they're fairly well laid out in our brief.

3 THE COURT: All right. And I've got your brief right
4 here.

5 MR. DICK: Yeah, exactly where it is.

6 THE COURT: All right.

7 MR. DICK: Just to begin, and I guess it sounds like
8 Ms. Wall has touched on both their no duty argument and their
9 contributory negligence argument, so I will touch on both of
10 those here. But before I begin, just again to give you the
11 factual background here and, again, obviously we're here on
12 summary judgment and all we have to do is prove a scintilla
13 of the evidence, and all the inferences, ambiguities and
14 conclusions are to be construed in favor of the non-moving
15 party. But the policy in question was a policy with State
16 Auto. It was procured by Mr. Leaphart's father, Ben
17 Leaphart. Ben Leaphart had been a customer of the Watts &
18 Watts Agency for over 20 years. All of his insurance needs
19 were procured through that agency, his personal home,
20 vacation home, all of his automobiles, his office building,
21 everything was procured through the Watts Agency. They were
22 long time personal acquaintances. I think Mr. Watts' wife
23 taught the children. They knew each other well. And in
24 addition to that, and I think it's a key point, is -- Do you
25 have a copy of our brief, by the way?

1 THE COURT: I do.

2 MR. DICK: Okay. If you look at Exhibit "D" I believe
3 to our brief you'll see the envelope that each of these
4 policies came in. So, each of the policies, including the
5 policy that is in dispute here, came in an envelope from
6 J. B. Watts listed there on the envelope that specifically
7 says, "This policy comes with an agent," exclamation mark. I
8 mean clearly the implied issue there is that you're getting
9 more than just this policy, you're getting this agent's
10 representation, his advice, all those types of things.

11 So, not only do we have this long standing relationship
12 but we have this, this statement by the agent himself as
13 well. In addition to that, and kind of getting into the crux
14 of our argument and the evidence, Ben Leaphart has stated
15 that he had a specific conversation with Mr. Watts where he
16 told him that Gibbs was living in Columbia. In addition to
17 that, Ben Leaphart also had conversations with Mr. Watts
18 about keeping his son on his policy and what the benefits of
19 keeping his son on that policy were. They were essentially
20 cost. It cost less to keep him on Ben Leaphart's policy but
21 he was never informed that there may be a gap in coverage
22 under that scenario.

23 THE COURT: But did he ever ask if there was a gap?

24 MR. DICK: He did not ever specifically ask is there a
25 gap in this policy. Now, in addition to that, Gibbs Leaphart

1 was on a number of occasions left without a proof of
2 insurance card, whether it got lost in the mail or whatnot,
3 but he called the agency on several occasions and also said
4 please send this to my address in Columbia, I need my proof
5 of insurance card. So, at least in terms of this summary
6 judgment argument and assuming the facts in our favor, I
7 think it's clear that Mr. Watts knew that Gibbs was living in
8 Columbia.

9 And to get into the argument regarding duty, basically
10 the South Carolina case law states that to -- in order for an
11 insurance agent to have a duty he either has to receive
12 something more than the payment on the policy, which we don't
13 allege here, or there's an express request for advice or
14 there was an implied request for advice which manifests
15 itself in terms of a long standing relationship and that sort
16 of thing. As far as the express advice is concerned, it's
17 our allegation that by Mr. Leaphart, Ben Leaphart, having
18 conversations with Watts regarding putting Gibbs on his own
19 policy, or keeping him on his policy, he was specifically
20 asking what is the best option here. I mean he asked. He
21 said, he testified that he was clearly told that it was more
22 advantageous to keep his son on his policy and not put him on
23 his own.

24 Now what's important about this, and Ms. Wall has
25 stated that well this is a duty issue and it's one for the

1 Court, but really the standard that the South Carolina Courts
2 apply is based in fact. I mean was -- you know, is there a
3 question of fact about an expressed request for advice asked
4 or would a reasonable agent have known, and all those things
5 I think are factual questions, ones that are specifically
6 addressed by our expert in his affidavit. And what he says
7 in his affidavit is quite clear, that as a reasonable
8 insurance agent Watts should have known that it was not more
9 advantageous for Gibbs to be on his father's policy because
10 he would be uncovered in the situation where he was in
11 anybody else's car other than his own. And that, I think, is
12 the factual question that that affidavit speaks to, at least
13 in terms of an expressed duty because by asking -- you know,
14 we're dealing with a sophisticated insurance agent here who
15 knows the business and someone who does not know the
16 business. Because Ben Leaphart is not going to know to ask
17 well is there a gap in coverage because of this. He simply
18 asks, okay, is it more advantageous to put him on his own
19 policy or keep him on mine and he's relying, expressly, on
20 that insurance -- that agent's advice to determine which is
21 the appropriate method. And it's clear from our expert's
22 affidavit that that was not the correct advice and that he
23 either did not know of the gap coverage or he should have
24 known about it and negligently, you know, failed to, you
25 know, learn of that issue.

1 Moving onto the implied duty and I guess that's a
2 little bit of a lower standard but what the law -- the law
3 there says that there's a course of dealing over an extended
4 period of time which put in objectively a reasonable
5 insurance agent on notice that his advice is being sought and
6 relied on. Well here we have that exact thing, that course
7 of dealing over an extended period of time. I mean this -- I
8 don't know how you have more of a close relationship with
9 your insurance as Mr. Ben Leaphart had. He had over 20 years
10 of all of his policies through this agent. He had a notice
11 in the mail that said it came with more than just this
12 policy, it came with this agent, and implicitly his advice.

13 And to bolster that fact, again, we've got our expert
14 who is a reasonable insurance agent who is a property and
15 casualty agent licensed in South Carolina that has said that
16 in his review, all of the depositions, everything, even, you
17 know, even the memorandums and has said, no, as a reasonable
18 agent he should have known that Gibbs was not covered, that
19 his advice was being sought and that he -- and he breached
20 his duty by failing to provide the proper coverage for Mr.
21 Leaphart.

22 As kind of an additional component of this, and it
23 really kind of applies across all of our causes of action,
24 what's interesting was this policy was a renewal policy. It
25 had been the same policy for as many years back as we had in

1 the record, and the only thing that had changed occasionally
2 a car had been added or removed. And we've listed in our
3 memorandum the South Carolina codes definition of renewal,
4 but basically it's that you will receive the same coverage
5 that you had prior, in the prior period.

6 Well, the facts of this are the policy existed, you
7 know, before Gibbs was actually listed. In 1990 he got his
8 driver's license and was listed on the policy. Then in 1997
9 he graduated from college and moved to Columbia where he
10 lived for, oh, I think over 10 years. From 1990 to 1997
11 Mr. Leaphart was fully covered. He had all of his under-
12 insured, all of his uninsured coverage was proper. It was as
13 it was listed on the declaration, declaration -- excuse me.

14 THE COURT: Declaration.

15 MR. DICK: Declaration page. And then in 1997 the
16 coverage changed. He moved out of the house, down to
17 Columbia and he became a non-resident relative. And at that
18 point a renewal policy was issued, but the coverage had
19 changed and neither my client or Mr. Ben Leaphart were ever
20 advised of that change in coverage.

21 Now if you look at our brief and you look at all of the
22 case law and you'll see that -- and I'm just going to cite
23 the Orangeburg Sausage case here. It's Orangeburg Sausage
24 vs. Cincinnati Insurance at 316 SC 331. But it says that the
25 Plaintiff was entitled to rely on Bryant, the agent, to

1 properly renew the insurance policy. A review of the policy
2 by a layman would not have revealed the coverage problem.
3 Well that speaks to both of Ms. Wall's arguments. One, that
4 they had -- the Plaintiff, Mr. Leaphart, was entitled to rely
5 on that coverage being renewed at the same coverage that it
6 was previously. Again, it says the Plaintiff -- says,
7 "Moreover, the Plaintiff relied upon the agent whom they
8 trusted to provide them with the same coverage they enjoyed
9 for the previous five years under the policy." Well it had
10 been seven years that he had been fully covered and all of a
11 sudden he becomes not fully covered. Mr. Leaphart
12 specifically tells him that Gibbs is living out of the house
13 in Columbia. He specifically asked is it more advantageous
14 to keep him on his home policy, yet he's never advised that
15 the coverage has changed and that Gibbs Leaphart is now not
16 fully covered.

17 Under the Orangeburg case he is required to provide
18 that advice. He, he -- and Gibbs is allowed to rely on
19 that. And the same goes for the case of Great American
20 Insurance v. Mills. This is a South Carolina District Court
21 case that construes South Carolina law.

22 THE COURT: Why don't you give me the cite on that.

23 MR. DICK: It is -- I believe it is unpublished. So it
24 is 2008 WL 2250256.

25 THE COURT: All right.

1 MR. DICK: And that one says in the case before the
2 Court finds that there was at least an implied duty by the
3 agent of Great American to procure or accurately renew the
4 crop insurance policy for the correct entity. So, again, it
5 states that that claim that he has a duty to advise them and
6 to properly procure the proper renewal which wasn't done in
7 this case.

8 THE COURT: All right.

9 MR. DICK: Just quickly, as far as it goes for ---

10 THE COURT: Let's wrap it up.

11 MR. DICK: Okay.

12 THE COURT: Because I need to move on.

13 MR. DICK: Yeah. The contributory negligence simply,
14 one, all the case law says that questions of contributory
15 negligence and recklessness are ordinarily for the jury and
16 rarely become questions of law for the Court. If you look at
17 our brief you saw it cited multiple cases where the insurance
18 policy wasn't read and was -- the Court held that that was
19 not dispositive. In addition, if you look at the policy
20 itself, it's a quagmire. Even reading it wouldn't have put
21 him on notice that Gibbs was not covered. You first have to
22 go to the insurance declaration -- oh, my gosh, I can't say
23 that word. I'm sorry.

24 THE COURT: That's all right. Why don't you just say
25 dec page.

1 MR. DICK: Oh, the dec page. If you look at the dec
2 page it says he's got 500,000 of uninsured. If you go to the
3 uninsured section it says well it's for a family member, he
4 is a family member, you then look at the family member
5 section and it defines -- I forget what it says is the
6 definition of family member, but you can't even construe
7 that, you then have to go to South Carolina case law to
8 determine what a resident relative is term and so the reading
9 of this policy would have made no difference in this case,
10 but, again, that's a question for the jury, not for this
11 summary judgment.

12 THE COURT: All right.

13 MS. WALL: Your Honor, very briefly, let me correct the
14 record here. The coverage, the policy never changed.
15 Coverage never changed. And you were told several times that
16 this policy changed. Never changes, same policy, keeps
17 getting renewed. What changed was, according to them, that
18 he went into law school and therefore arguably would not be
19 covered -- excuse me, your Honor -- for UIM. The policy
20 never changes. I want to make sure the record is absolutely
21 clear on that.

22 THE COURT: Sure.

23 MS. WALL: Now the other thing is there's absolutely no
24 testimony nor did he cite you to any that Ben, the father,
25 asked any question of J. B. Watts. I just gave you the pages

1 where he, in fact, denied he asked any questions at all;
2 never read the policy, never asked the question, didn't think
3 he needed to, he just assumed. So, I don't -- I just don't
4 know where that's coming from.

5 And then, finally, your Honor, I go back to Trotter one
6 more time because this is -- this is absolutely dispositive.
7 In Trotter it says the Plaintiff in Trotter, Mr. Trotter said
8 he sometime discussed insurance when he went to the agent's
9 office. And then the Court goes onto say, the Plaintiff has
10 the burden of proving that these discussions would put a
11 reasonable insurance agent on notice that his advice is being
12 sought. Well, we already know that he didn't ask for any
13 advice. I asked Mr. Leaphart that at least 10 times in his
14 deposition: Did you ever ask for any advice. And he said
15 no. So clearly they can't be on notice that he's looking for
16 advice when he denies he ever asked for advice, your Honor.

17 So, my last two points, and then we will be -- my
18 client is worried about the envelope issue. They actually
19 didn't send the envelope. It comes directly from State Auto,
20 but ---

21 THE COURT: All right.

22 MS. WALL: --- let me move onto the very last points in
23 the brief which are clearly there could be no cause of action
24 for breach of fiduciary duty in South Carolina. You have to
25 have a relationship. You can't create it unilaterally.

1 Clearly -- I mean Mr. -- the Plaintiff in here, Mr. Leaphart,
2 admits that he had no relationship with J. B. Watts at all.
3 Never read the policies, never asked for advice, didn't know
4 anything about the insurance, didn't ask any questions about
5 insurance, all he ever did was call a couple of times for a
6 proof of insurance to put into his glove compartment of his
7 car. And then, finally, we know that there's no such thing
8 as a UTPA cause of action against an insurance agent because,
9 of course, that's a regulated and they don't even attempt to
10 argue against that. That's a regulated, that falls under the
11 insurance code, your Honor, and therefore that can't be. And
12 it is exactly 11:45. Thank you, your Honor.

13 THE COURT: That is fine and I appreciate -- I
14 appreciate y'all being courteous of the time for me. Yes,
15 sir.

16 MR. DICK: Can I just say a couple of things very
17 quickly?

18 THE COURT: Of course, of course. I started five
19 minute late so I'm going to give y'all five minutes.

20 MR. DICK: All right. Great. I've got two minutes
21 then. Mr. Leaphart of one just factually did not go to law
22 school in Columbia when he went to Columbia. He lived there
23 for I think four or five years before he actually started to
24 attend law school. So he was, he was living there on his
25 own. And it's clear that the Court has already found that

1 that made him a non-resident relative and I don't think
2 Mr. Watts has -- well we don't know because we haven't taken
3 the deposition of Mr. Watts yet but he hasn't alleged that he
4 knew that he was even in law school down there so I don't
5 know that it would matter. All he knew for the sake of this
6 is that he was living in Columbia which, again, we think puts
7 him on notice to, at the very least, ask questions more about
8 well is he coming back to your house, you know, what an agent
9 should ask regarding is he a resident relative, something
10 that our client would not have known about, his father
11 wouldn't have known about.

12 As far as the breach of fiduciary duty, although
13 there's nothing specifically in South Carolina, there is case
14 law that says that it is a special relationship between an
15 insured and an insurer or I mean, sorry, an agent. That's
16 furthered by North Carolina law, Georgia law and 4th Circuit
17 all say that an agent insured ---

18 THE COURT: Is there a case in South Carolina that
19 recognizes fiduciary duty?

20 MR. DICK: No, there's nothing that recognizes it.
21 Again, the closest thing we could find was it's a special
22 relationship. There's nothing that says there is not one.
23 But, in the Great -- I believe in the -- well I can't find it
24 now, in the Mills case, that Westlaw case that I cited for
25 you, I think that I actually handed it to you, I didn't know

1 if you wanted a copy of it, I've got it right here, but in
2 that case they basically said well it is -- you know, they
3 say we haven't found any South Carolina law so we're not
4 going to rule on it, but they say it is a very interesting
5 question where an agent has a long standing relationship with
6 that person. When their, you know, envelopes, all this stuff
7 that we've cited that would create this fiduciary duty.
8 Gibbs contacted the agency several times. They were on
9 notice that he was putting his confidence and trust in him.
10 I mean his insurance needs were in their hands and they knew
11 that and he contacted on several occasions and I think that
12 in itself creates that fiduciary duty.

13 As far as the unfair trade practices, we didn't brief
14 that simply because that wasn't a cause in their Motion for
15 Summary Judgment. We can brief that for you if you'd like.
16 We think there is a dispute whether an agent malpractice
17 would be covered. Certainly the coverage issue between State
18 Auto and Mr. Leaphart would have been covered under the
19 insurance rules and regulations but we don't think that an
20 insurance agent malpractices and therefore would be subject
21 to the Unfair Trade Practices Act.

22 THE COURT: All right.

23 MS. WALL: Your Honor, might I respond to that? It is
24 in our brief. Of course we did brief it but they apparently
25 didn't read our brief. Secondly, the Plaintiff here is not

1 the insured. Never was. If we look at the insurance policy
2 the insured is his father. So, that's just false. And, in
3 fact, any insurance agent -- agency issues never, as a matter
4 of law, fall under UTPA. They cannot. And going to the
5 point that he said since the Plaintiff is not the insured you
6 couldn't possibly muster up an argument that there was a
7 fiduciary relationship. This Plaintiff had no relationship
8 with the agency. It's his father who claims the relation-
9 ship. That's why they're going under this third party
10 beneficiary concept.

11 THE COURT: All right.

12 MS. WALL: Thank you, your Honor.

13 THE COURT: I thank y'all for your excellent arguments
14 on both sides and I really appreciate you being so careful
15 about the time as well and I apologize for that. I'm going
16 to take this under advisement. I will be issuing a decision
17 very shortly, though. I'd anticipate in the next two weeks.

18 MS. WALL: Would you like us to do briefs or, excuse
19 me, proposed orders? Would that be helpful to your Honor?

20 THE COURT: You can -- I certainly would take a
21 proposed order if you would like for me to sign, I'd be happy
22 to consider those.

23 MS. WALL: All right.

24 THE COURT: But, in any event, I probably will be
25 making my decision within the next two weeks, so I would sort

1 of. . .

2 MS. WALL: Should we say 10 days to get you a proposed
3 order?

4 THE COURT: I'd say within 10 days.

5 MS. WALL: Thank you, your Honor.

6 MR. DICK: And, your Honor, can I just hand up this
7 Great American case? We just realized it wasn't attached to
8 our brief.

9 MS. WALL: And, your Honor, of course on the record I'm
10 going to object to considering any unpublished case.

11 THE COURT: I understand.

12 MS. WALL: And I'm handing up the published cases that
13 I cited.

14 THE COURT: Thank you. And I'm not entirely sure
15 exactly what, what portions of it but it might be something
16 that gives me some guidance if it's unpublished nonetheless.
17 All right. Thank y'all so much. All right. Y'all have a
18 safe trip back.

19 MS. WALL: Thank you.

20 ---END OF REQUESTED TRANSCRIPT OF RECORD---

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STATE OF SOUTH CAROLINA :

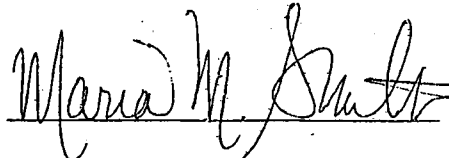
CERTIFICATE OF REPORTER

COUNTY OF GREENVILLE :

I, the undersigned Maria M. Smith, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record, of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal in the Court of Common Pleas for Greenville County, South Carolina, on the 15th day of February, 2012.

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

May 30, 2012



Maria M. Smith, RPR

Official Court Reporter

*

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAY 02 2012

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2011-CP-23-03347

B. Gibbs Leaphart, Jr.,Appellant,

v.

J.B. Watts Company, Inc. and

J.B. Watts,.....Respondents.

NOTICE OF APPEAL

B. Gibbs Leaphart, Jr. appeals the Order granting Defendants J.B. Watts Company, Inc. and J.B. Watts' Motion for Summary Judgment issued by the Honorable Letitia H. Verdin dated April 11, 2012 and filed April 12, 2012, and the Form 4 Order denying Plaintiff's Motion for Reconsideration issued by the Honorable Letitia H. Verdin dated April 26, 2012 and filed April 27, 2012. Appellant received written notice of the entry of the final order on May 1, 2012. A copy of each of the Orders is attached hereto.

[Signature page follows]

SOWELL GRAY STEPP & LAFFITTE, LLC

By:



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1310 Gadsden Street (29201)
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Attorneys for Appellant

Columbia, South Carolina
May 2, 2012

Other Counsel of Record:

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Charleston, South Carolina 29402

Attorneys for Respondent

FORM 4

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

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP2303347

RECEIVED
SCCA Court of Appeals
APR 2 2012

B Gibbs Leaphart Jr	2012 APR 27 P 12:17	J B Watts Company Inc	J B Watts
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
This matter comes before the Court on Plaintiff's Motion to Reconsider pursuant to SCRPC Rule 59(e). Plaintiff's Motion to Reconsider is denied.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

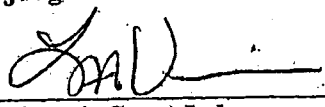
INFORMATION FOR THE PUBLIC INDEX

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

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

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



Circuit Court Judge

2162

Judge Code

4/26/2012

Date

For Clerk of Court Office Use Only

This judgment was entered on 4/27/12, and a copy mailed first class or placed in the appropriate attorney's box on 4/27/12, to attorneys of record or to parties (when appearing pro se) as follows:

Thornwell F. Sowell III Sowell Gray Stepp & Laffitte, LLC
 P.O. Box 11449 Columbia, SC 29211
 David C Dick Jr Sowell Gray Stepp & Laffitte, L.L.C. P.O.
 Box 11449 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

Susan Taylor Wall Mcnair Law Firm P O Box 1431
 Charleston, SC 29402
 Jennifer Dunlap Parker Poe Adams & Bernstein Llp 200
 Meeting Street Suite 301 Charleston, SC 29401

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of
 Court - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA 2012 APR 12 AM 9:00 JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

FILED-CLERK OF COURT CASE NO: 2011CP2303347

IN THE COURT OF COMMON PLEAS

GREENVILLE CO S.C.
PAUL B. WICKENSIMER

B Gibbs Leaphart Jr vs. JB Watts Company Inc

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED:

See attached order;

Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE

This judgment was entered on the 12th day of April, 2012, and a copy mailed first class this 12th day of April, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Thornwell F. Sowell III Sowell Gray Stepp & Laffitte, LLC P.O. Box 11449 Columbia, SC 29211
David C Dick Jr Sowell Gray Stepp & Laffitte, L.L.C. P.O. Box 11449 Columbia, SC 29211

Susan Taylor Wall Mcnair Law Firm P O Box 1431 Charleston, SC 29402
Jennifer Dunlap Parker Poe Adams & Bernstein LLP 200 Meeting Street Suite 301 Charleston, SC 29401

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

B. GIBBS LEAPHART, JR.,

Plaintiff,

vs.

J.B. WATTS COMPANY, INC., AND J.B. WATTS,

Defendants.

) IN THE COURT OF COMMON PLEAS
2012 APR 12 AM 9:02
) THIRTEENTH JUDICIAL CIRCUIT
FILED-CLERK OF COURT
GREENVILLE CO S C.
PAUL B. WICKENS
) C/A No.: 2011-CP-23-03347

ORDER

This matter comes before the Court on Defendants J.B. Watts Company, Inc. and J.B. Watts' Motion for Summary Judgment. A hearing on this motion was held on February 15, 2012. Present at the hearing were counsel for Plaintiff, David Dick, Esq. and Thornwell Sowell, Esq. Also present at the hearing was Susan Taylor Wall, Esq., counsel for Defendants. After considering the law, the briefs filed by both parties, the arguments of counsel, and all matters submitted in support of and in opposition to Defendants' Motion, this Court GRANTS Defendants' motion on all causes of action.

FACTS PRESENTED

This case arises out of an insurance coverage dispute concerning a policy covering the Plaintiff's Father and procured by the Defendants. The Plaintiff's father, Ben Leaphart, has a long-standing relationship with the Defendants, having purchased numerous insurance policies through them. For much of his life, the Plaintiff was covered under his father's automobile insurance policy. Plaintiff, at the time of the following events, was a resident of Columbia, South Carolina.

On May 5, 2004, Plaintiff was a passenger in a vehicle driven by Tara Louise Austin and owned by her father. This vehicle was involved in an accident in Jasper County, South Carolina and Plaintiff was injured as a result. The Plaintiff and Ms. Austin's provider, State Farm, settled the matter. On October 26, 2004, the Plaintiff signed a "Covenant Not to Execute" ("Covenant") as part of this settlement with State Farm. This document allowed Plaintiff to retain his rights to proceed against Ms. Austin in the event that the Plaintiff could not recover by agreement or settlement against the underinsured motorist carrier. (Def. Ex. 4, ¶ 1). After settling with State Farm, the Plaintiff sought Underinsured Motorist ("UIM") coverage through his father's policy with State Auto. Suit was filed in Circuit Court in Jasper County, South Carolina to recover and State Auto answered on September 28, 2007, reserving its rights to deny coverage and arguing that he was not a "named insured," the "spouse" of a named insured, nor a "family member." At some point during this litigation, and for reasons not presented to the Court, the case was transferred to Richland County, South Carolina. On October 20, 2008, the Richland County Circuit Court held that Plaintiff was not entitled to UIM benefits under his father's policy with State Auto because he did not meet any of the applicable covered categories¹, and therefore that State Auto was not required to provide UIM benefits to Plaintiff for the injuries sustained in the accident.²

On October 13, 2010, Plaintiff filed this action in Richland County against the Defendants, who had procured the policy with State Auto for the Plaintiff's father, alleging breach of implied contract, negligence, breach of fiduciary duty, and violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"). Defendants answered on January 7, 2011

¹ The Richland County Circuit Court also noted that, while the Plaintiff was a listed driver on the policy, this was insufficient to provide coverage under the Policy. This Court only references this finding in the Richland County Order to provide context of the underlying litigation.

² For reference, the Richland County Action was B. Gibbs Leaphart, Jr. v. Tara Lee Louise Austin, C/A #: 2008-CP-40-00010.

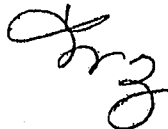


with a denial of all of the Plaintiff's causes of action and raised the affirmative defense of statute of limitations on all causes of action. On April 19, 2011 and by consent order, this case was transferred to Greenville County for adjudication. Defendants filed this Motion for Summary Judgment on October 10, 2011 claiming that summary judgment should be granted because the statute of limitations has run and for other reasons. Because this Court finds that the statute of limitations on all of Plaintiff's causes of action has run, we do not reach Defendants' other arguments.

LEGAL STANDARD

In ruling on a summary judgment motion, this Court must determine whether a genuine issue of material fact exists. S.C. R. Civ. P. 56. A party seeking summary judgment bears the burden of identifying those portions of the pleadings, depositions, answers to interrogatories, any admissions on file, together with the affidavits, if any, which show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Bravis v. Dunbar, 316 S.C. 263, 449 S.E.2d 495 (Ct. App. 1994).

Although the burden is on the party seeking summary judgment, the non-moving party must point to specific facts showing that there is a genuine issue for trial, rather than resting on the assertions of its pleadings. Id. Thus, a court must grant summary judgment if the non-movant fails to make a showing sufficient to establish there is a genuine issue of material fact for trial. Dickert v. Metropolitan Life Ins. Co., 306 S.C. 311, 411 S.E.2d 672 (Ct. App. 1991) *Rev. 'd* in part on other grounds 311 S.C. 218, 428 S.E.2d. 700 (1992). A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for the purposes of resisting summary judgment. German v. New York Life Ins. Co., 286 S.C. 34, 331 S.E.2d. 385 (Ct.App. 1985); Shupe v. Settle, 315 S.C. 510, 445 S.E.2d 651 (Ct.App. 1994). "In cases



applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hutchinson v. Liberty Life Ins. Co., 393 S.C. 19, 24, 709 S.E.2d 130, 133 (S.C. Ct. App. 2011).

CONCLUSIONS OF LAW

The applicable duration of the statute of limitations for all Plaintiff's claims is three years. See S.C. Code §15-3-530(5) and S.C. Code §15-3-535 (as to breach of implied contract, negligence and breach of fiduciary duty); S.C. Code § 39-5-150 (as to SCUTPA actions). Plaintiff's cause of action for breach of implied contract, negligence and breach of fiduciary duty are subject to the "discovery rule", as explained *infra*. See Holy Loch Distributors, Inc. v. Hitchcock, 332 S.C. 247, 503 S.E.2d 787 (S.C. Ct. App. 1998); Witt v. American Trucking Associations, 860 F. Supp. 295 (D. S.C. 1994); S.C. Code § 15-3-535. The statute of limitations for Plaintiff's SCUTPA cause of action begins to run "after discovery of the unlawful conduct which is the subject of the suit." S.C. Code § 39-5-150. The question presented before this Court is when the causes of action above begin to accrue against an Insurance Agent where the coverage the Agent purported to convey is denied by the Insurance Company. Because there is no genuine issue of material fact as to the dates mentioned above, the time when the statute of limitations began to run is a question of law for the court. For the following reasons, this Court finds that the statute of limitations began to run when the insurance company answered with a denial of coverage in the Richland County action.

I. Plaintiff's Breach of Implied Contract, Negligence and Breach of Fiduciary Duty Claims

Under the discovery rule, the statute begins to run on the date "the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from

the wrongful conduct [of another]." S.C. Code § 15-3-535; Kimmer v. Wright, 396 S.C. 53, 58, 719 S.E.2d 265, 268 (S.C. Ct. App. 2011). "Reasonable diligence", as explained by the supreme court, means that an injured party "must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some rights of his have been invaded or that some claim against another party might exist." Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (S.C. 2005). The statute of limitations is triggered "not merely by knowledge of an injury, but by facts, diligently acquired, sufficient to put an injured person on *notice* of the existence of a cause of action against another." Id. (emphasis added). The standard as to when the limitations period begins to run is objective, rather than subjective. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995).

Three important dates were presented to the Court by the parties: October 26, 2004, the date the Plaintiff signed the Covenant, September 28, 2007, the date that State Auto answered with a denial in the Richland County action, and October 20, 2008, the date the Richland County action found for State Auto and denied Plaintiff UIM coverage.

This Court finds that State Auto's answer of September 28, 2007 in the Richland County action was sufficient to put Plaintiff Leaphart on notice that "a cause of action arose from the [alleged] wrongful conduct" of J.B. Watts Co., Inc. Kimmer, 396 S.C. at 58, 719 S.E.2d at 268. In its answer, State Auto unequivocally reserved its right to deny coverage and stated its reasons for doing so. At that point, through the exercise of reasonable diligence, the Plaintiff should have been aware that the causes of action above may exist against the Defendants for failing to obtain the UIM coverage which the Plaintiff and his father thought they had.

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Plaintiff argues that his claims against the Defendants were not ripe prior to the final adjudication of the coverage dispute in Richland County on October 20, 2008. As support for this argument, Plaintiff cites Webb v. Greenwood County, 229 S.C. 267, 279, 92 S.E.2d 688, 693 (1956), a takings case, where it was held that "[t]he Statute of Limitations begins to run from the time of the first injury or damage." As such, Plaintiff argues that until final adjudication of the Richland County action, no injury had occurred for the Plaintiff to seek redress against the Defendants.

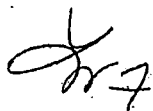
This Court agrees that the Plaintiff must have an injury to be discovered for the statute to run, but the Court finds that Plaintiff's alleged injury occurred even before the UIM suit was filed. Viewing the facts alleged by the Plaintiff in a light most-favorable to the non-moving party, Plaintiff's injury occurred when he moved from his father's home, he was no longer covered under his father's insurance policy, the Defendants knew the Plaintiff's residence and failed to apprise the Plaintiff and his father that he was no longer covered, and the Plaintiff was injured in an accident. At this point, Plaintiff had no insurance to cover the full extent of his damages resulting from the accident and he was injured by the Defendants' alleged negligence.

This position is supported by Riddle-Duckworth, Inc. v. Sullivan, 253 S.C. 411, 171 S.E.2d 486 (S.C. 1969). In Sullivan, the Respondent, Riddle-Duckworth, Inc., was a home and auto appliance business. Sullivan, 253 S.C. at 417, 171 S.E.2d at 488. The Appellant was an insurance agency who procured an insurance policy on behalf of the Respondent covering an elevator in the Respondent's place of business. Id. This policy was renewed yearly through the insurance agency. Id. When there was a change in conditions at the Respondent's place of business, they would notify the Appellant, and the appellant would report the changes to the insurance company. Sullivan, 253 S.C. at 418, 171 S.E.2d at 488. The Respondent also asked

the Appellant upon each change if the elevator maintained coverage after the change in conditions. Id. This continued from 1956 until 1962, when a change in the policy language led the Respondent to doubt that he had coverage. Id. The Appellant stated that the Respondent was still covered, and nothing further was done. Id. Subsequently, the elevator fell and injured a passenger. Sullivan, 253 S.C. at 419, 171 S.E.2d at 488. The injured passenger sued the Respondent for negligence in maintaining the elevator and was awarded damages in the amount of \$7,500.00. Id. The Respondent then filed suit against the Appellant for negligent procurement of the insurance policy. Id. The jury found for the Respondent and awarded damages as a result. Id.

On appeal, the Appellant argued, in addition to other points, that the trial court erred in failing to hold that Respondent's claim was barred by the six-year statute of limitations that was applicable at the time. Sullivan, 253 S.C. at 424-25, 171 S.E.2d at 492. Specifically, Appellant argued that the time at which the Respondent's cause of action arose was 1956, when the policy was first procured. Id. The supreme court rejected this argument on the basis that the Respondent filed suit for negligent procurement of the specific 1962 policy and also because the loss was sustained when the elevator fell. Sullivan, 253 S.C. at 425, 171 S.E.2d at 492-93. Since the lawsuit against the Appellant was filed within the same year as the policy was procured, the court held the suit was timely. Id.

While not specifically on point with the facts of this case, this Court believes that Sullivan provides guidance on the issue of when an injury is sustained by an insured where a policy that is negligently procured does not provide coverage. Sullivan also involved an action for the negligent procurement of an insurance policy by an insurance agent. The supreme court clearly held that the Respondent's claim could not have been brought until the issuance of the



policy, a representation of coverage that did not exist had been made, and a loss had been sustained. Sullivan, 253 S.C. at 425, 171 S.E.2d at 493. In the present case, Plaintiff's argument is that no loss was sustained as a result of the alleged negligent procurement of his UIM policy until the Richland County action was resolved in favor of the provider of the UIM policy. However, Plaintiff's loss as a result of the negligent procurement occurred on the date he sustained injury and damage that was not covered by his policy, May 5, 2004.

The primary distinction between the present case and Sullivan is that the Court did not have an issue involving the discovery rule due to the remarkable rapidity of the claim. Here, though the Plaintiff's causes of action arose at the date of the accident, it was not discovered until September 28, 2007, when State Auto answered with a general denial of UIM coverage. At this point, Plaintiff should have known through the exercise of reasonable diligence that he had a claim for recovery due to the alleged wrongful conduct of the Defendants. Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (S.C. 2005). This is so even though the suit against the insurance company had not been resolved. While Plaintiff may not have known if the Circuit Court would find in his favor and therefore know the extent of his injury, that is immaterial to a cause of action against the insurance agent. "[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial." Dean v. Ruscon Corp., 321 S.C. 360, 364, 468 S.E.2d 645, 648 (S.C. 1996).

This Court briefly addresses Defendants' argument that the Plaintiff's signing of the Covenant as part of a settlement with Ms. Austin's insurance company is the date the statute began to run on all of Plaintiff's causes of action. Defendant argues that this document acts as an acknowledgement that the Plaintiff knew his UIM coverage would be contested, and therefore proves that Plaintiff knew he had no coverage, and should have known of a cause of action



against the Defendants'. This Court does not interpret the document as an acknowledgement that the Plaintiff knew his coverage was likely to be contested. The Court notes that the Plaintiff reserved his rights to proceed against Ms. Austin in the event of a failure to settle or to agree on UIM benefits. However, this Court finds this reservation of rights is insufficient to show that the Plaintiff affirmatively knew of the contested coverage at that date. The Court stands on its determination that State Auto's answer in the Richland County action was the applicable date when the Plaintiff "knew or should have known through the exercise of reasonable diligence that a cause of action arose from the wrongful conduct of another." Epstein, 363 S.C. at 376, 610 S.E.2d at 818. Therefore, September 28, 2007 is the date when the statute of limitation began to run on Plaintiff's causes of action for breach of implied contract, negligence, and breach of fiduciary duty.

II. Plaintiff's SCUTPA Action

This Court also finds that the Plaintiff's SCUTPA action is barred by the statute of limitations. A SCUTPA action must be brought within three years of the Plaintiff's discovery of the unlawful conduct which was the subject of the suit. S.C. Code § 39-5-150.

Much like Plaintiff's other causes of action, this Court finds that State Auto's answer on September 28, 2007 triggered the statute of limitations on Plaintiff's SCUTPA claim. At that point, the alleged unlawful misrepresentations of coverage highlighted in the complaint clearly became known to the Defendants, as State Auto unequivocally denied coverage and stated the reasons therefore. As a result, Plaintiff's claim is also barred by a three-year statute of limitations imposed on SCUTPA claims. S.C. Code § 39-5-150.

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Conclusion

For the foregoing reasons, this Court finds as a matter of law that the statute of limitations on all of Plaintiff's causes of action began to run on September 28, 2007. This action was filed on October 13, 2010, outside of the applicable three-year statute of limitations for each claim. There is no genuine issue of material fact as to the dates mentioned above. Therefore, Defendants' motion for summary judgment is GRANTED as to all causes of action.

IT IS SO ORDERED.



LETITIA H. VERDIN
Presiding Judge

Greenville, South Carolina
April 11, 2012



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2011-CP-23-03347

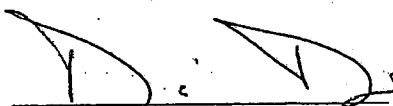
B. Gibbs Leaphart, Jr.,Appellant,

v.

J.B. Watts Company, Inc. and
J.B. Watts,.....Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal upon Respondents J.B. Watts Company, Inc. and J.B. Watts by depositing a copy of it in the United States Mail, postage prepaid, on May 2, 2012, addressed to their attorney of record, Susan Taylor Wall, Esquire, McNair Law Firm, PA, P.O. Box 1431, Charleston, South Carolina 29402.



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May 2, 2012

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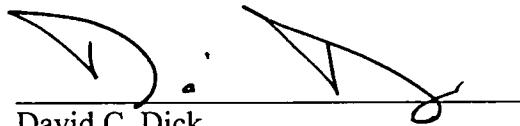
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CERTIFICATE OF COUNSEL

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

November 26, 2012



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