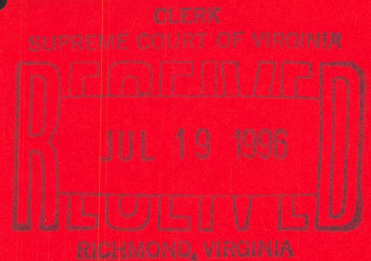


253Va12

IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 960412



THOMAS M. STONE,

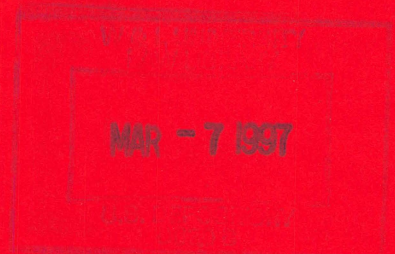
Plaintiff-Appellee,

v.

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant-Appellant.

JOINT APPENDIX



**Alan B. Rashkind
FURNISS, DAVIS, RASHKIND
and SAUNDERS, P.C.
6160 Kempsville Circle
Post Office Box 12525
Norfolk, VA 23541-0525
(757) 461-7100**

Counsel for Appellant

**Stephen C. Swain
Robert L. Samuel, Jr.
S. Geoffrey Glick
CLARK & STANT, P.C.
900 One Columbus Center
Virginia Beach, VA 23462
(757) 499-8800**

Counsel for Appellee

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APPEAL CLOSED

U.S. District Court
Eastern District of Virginia (Norfolk)

CIVIL DOCKET FOR CASE #: 94-CV-560

Stone v. Liberty Mutual Insur, et al
Assigned to: Judge Raymond A Jackson
Demand: \$225,000
Lead Docket: None
Dkt # in Va Beach Circuit Ct : is CL94-351

Filed: 06/03/94
Jury demand: Plaintiff
Nature of Suit: 110
Jurisdiction: Diversity

Cause: 28:1441 Notice of Removal-Insurance Contract

THOMAS M. STONE
plaintiff

Robert Lee Samuel, Jr.
[COR LD NTC]
Clark & Stant, P.C.
900 Sovran Bank Building
One Columbus Center
Virginia Beach, VA 23462
(804) 499-8800

Saul Geoffrey Glick
[COR LD NTC]
Clark & Stant
900 Sovran Bank Building
One Columbus Center
900 Sovran Bank Building
Virginia Beach, VA 23462

Stephen C Swain
[COR LD NTC]
Clark & Stant
One Columbus Center
900 Sovran Bank Building
Virginia Beach, VA 23462
(804) 499-8800

v.

LIBERTY MUTUAL INSURANCE
COMPANY
defendant

Richard Craig Gallagher
[COR LD NTC]
Furniss, David, Rashkind &
Saunders
P.O. Box 12525
341B Smithfield Bg., 6160
Kempsville Cir.
Norfolk, VA 23502
(804) 461-7100

Alan Brody Rashkind

INTERNAL USE ONLY: Proceedings include all events.
2:94cv560 Stone v. Liberty Mutual Insur, et al

APPEAL
CLOSED

[COR LD NTC]
Furniss, Davis, Rashkind &
Saunders
P.O. Box 12525
341B Smithfield Bg., 6160
Kempsville Cir.
Norfolk, VA 23502
(804) 461-7100

INTERNAL USE ONLY: Proceedings include all events.
2:94cv560 Stone v. Liberty Mutual Insur, et al

APPEAL
CLOSED

Thomas M. Stone

plaintiff

v.

Liberty Mutual Insurance Company

defendant

6/3/94 1 NOTICE OF REMOVAL from Virginia Beach Circuit Court by Liberty Mutual Ins.; FILING FEE \$120.00 RECEIPT #7897; motion for declaratory judgment included (ward) [Entry date 06/08/94]

6/3/94 2 ANSWER to Complaint by Liberty Mutual Ins., filed in Virginia Beach Circuit Court (ward) [Entry date 06/08/94] [Edit date 06/08/94]

6/3/94 3 MOTION by Liberty Mutual Ins., Tidewater Pizza, Inc to Dismiss and by Liberty Mutual Ins., Tidewater Pizza, Inc to Strike additional defendants, filed in Virginia Beach Circuit Court (ward) [Entry date 06/08/94]

6/8/94 -- Magistrate Judge notice, procedure for civil motions and order re briefs mailed to counsel of record. (ward)

6/15/94 4 DEMAND for jury trial by Thomas M. Stone (ward) [Entry date 06/20/94]

7/12/94 5 Copy of ORDER from the Circuit Court of Virginia Beach that the Demurrer and Motion to Strike Additional Defendants shall be and is hereby sustained; that the Motion for Declaratory Judgment shall, without further Order of the Court or pleading, be deemed to be a Motion for Judgment seeking damages against the defendant Liberty Mutual Insurance Company only for breach of contract, and that the defendants Tidewater Pizza, Inc. and Carol J. Drye shall be and are hereby dismissed as parties to this action, entered June 3, 1994 and filed July 12, 1994. (rlam)

7/12/94 -- **Terminated party Carol J. Drye, party Tidewater Pizza, Inc (rlam)

7/12/94 -- Referred for scheduling of initial pretrial conference (rlam)

7/18/94 -- Initial pretrial conference set at 2:30 7/26/94 (ahoo)

7/26/94 -- Initial pretrial conference held (rlam)

7/27/94 6 Order on Initial Pretrial Conference setting Jury Trial 10:00 a.m. on 12/8/94; and Final Pretrial conference for 11:00 a.m. on 11/23/94; all depositions shall be completed on or before October 26, 1994; Discovery cutoff for defendant is 10/12/94; and Discovery cutoff for plaintiff is 9/12/94; plaintiff shall respond to presently pending discovery on or before August 15, 1994, entered July 26, 1994 and filed July 27, 1994 (signed by Magistrate Judge William T. Prince) Copies Mailed: 7/27/94 (rlam) [Entry date 07/28/94]

10/11/94 7 MOTION by Liberty Mutual Ins. for Summary Judgment (ward) [Entry date 10/13/94]

10/11/94 8 MEMORANDUM by Liberty Mutual Ins. in support of [7-1] motion by Liberty Mutual Ins. for Summary Judgment, received (ward) [Entry date 10/13/94]

10/24/94 9 MOTION by Thomas M. Stone for Summary Judgment (ward) [Entry date 10/26/94]

10/24/94 10 MEMORANDUM by Thomas M. Stone in support of [9-1] motion by Thomas M. Stone for Summary Judgment, received (ward) [Entry date 10/26/94]

11/4/94 11 MEMORANDUM by Liberty Mutual Ins. in opposition to [9-1] motion by Thomas M. Stone for Summary Judgment, received (ward) [Entry date 11/08/94]

11/4/94 -- **Added for Liberty Mutual Ins. attorney Richard Craig Gallagher (ward) [Entry date 11/08/94]

11/9/94 12 REPLY BRIEF by Thomas M. Stone to response to [9-1] motion by Thomas M. Stone for Summary Judgment, received (ward) [Entry date 11/10/94]

11/17/94 13 NOTICE of hearing on December 8, 1994 by Thomas M. Stone (ward) [Entry date 11/21/94]

11/23/94 -- **Terminated deadlines (Jury trial - instead of trial, they are moving summary judgment motions instead) (ward) [Entry date 11/28/94]

11/23/94 -- Motion hearing re: [9-1] motion by Thomas M. Stone for Summary Judgment set at 10:00 a.m. 12/8/94, [7-1] motion by Liberty Mutual Ins. for Summary Judgment set at 10:00 a.m. 12/8/94 (ward) [Entry date 11/28/94]

11/23/94 14 Stipulations filed by Thomas M. Stone, Liberty Mutual Ins. relating to their respective motions for summary judgment (ward) [Entry date 11/28/94]

12/8/94 -- Motion hearing held re: [9-1] motion by Thomas M. Stone for Summary Judgment, [7-1] motion by Liberty Mutual Ins. for Summary Judgment (ward)

12/8/94 -- COURT PROCEEDINGS: Minute entry: RAJ, Judge. Sharon Borden, Ct. Reporter. Counsel appeared. Matter came on for hearing on cross motions for summary judgment. Arguments of counsel heard. Bayer V. Traveler's Indemnity Co. Policy filed in open court. Rebuttal heard. Court takes matter under advisement. Court will prepare written opinion. ([9-1] motion by Thomas M. Stone for Summary Judgment under advisement, [7-1] motion by Liberty Mutual Ins. for Summary Judgment under advisement) (ward)

12/8/94 15 Bayer V. Traveler's Indemnity Co. Policy, filed in open court. (ward)

12/16/94 16 ORDER granting [9-1] motion by Thomas M. Stone for Summary Judgment; denying [7-1] motion by Liberty Mutual Ins. for Summary Judgment; entered and filed December 16, 1994 (signed by Judge Raymond A. Jackson) Copies Mailed: 12/16/94 (ward) [Entry date 12/19/94]

12/21/94 17 JUDGMENT ordering and adjudging that the Court grants the motion for summary judgment filed on behalf of plaintiff Thomas M. Stone and enters judgment in favor of Thomas M. Stone against Liberty Mutual Insurance Company in the amount of \$225,000.00 plus prejudgment and post judgment interest, and his court costs; further that the Court denies the motion for summary judgment filed on behalf of defendant Libert Mutual Insurance Company; dated December 16, 1994; approved by Raymond A. Jackson, USDJ and filed on December 21, 1994 Copies Mailed: 12/21/94 O.B. (ward) [Entry date 12/22/94]

12/21/94 -- CASE assigned (statistically) to Judge Raymond A. Jackson (ward) [Entry date 12/22/94]

12/21/94 -- Case closed (ward) [Entry date 12/22/94]

1/12/95 18 NOTICE OF APPEAL by Liberty Mutual Ins. . FILING FEE \$ 105.00 RECEIPT # 9310 (edit date 1/20/95). (mgra) [Entry date 01/20/95]

1/13/95 -- Copy of Notice of Appeal, Judgment, transmittal notices and docket sheet to USCA; copy of notice of appeal, receipt, docketing statement and transcript order to Alan B. Rashkind, Esq., copy of notice of appeal mailed to all counsel of record, [18-1] appeal by Liberty Mutual Ins. (mgra) [Entry date 01/20/95]

1/20/95 19 Transcript requested [18-1] appeal by Liberty Mutual Ins. (mgra)

1/24/95 20 NOTICE OF CROSS-APPEAL by Thomas M. Stone . FILING FEE \$ 105.00 RECEIPT # 9370 (mgra) [Entry date 01/25/95] [Edit date 01/25/95]

1/25/95 -- Copy of Notice of Cross-Appeal, transmittal notices and docket sheet to USCA; copy of notice of cross-appeal, docketing statement, receipt and transcript order mailed to S. Geoffrey Glick, Esq., copy of notice cross-appeal mailed to Alan B. Rashkind, [20-1] appeal by Thomas M. Stone (mgra) [Edit date 01/25/95]

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

THOMAS M. STONE,

Plaintiff,

v.

TIDEWATER PIZZA, INC.,

Serve:

William E. McCardell, Jr.
Registered Agent
2840 S. Lynnhaven Road
Virginia Beach, VA 23452

and

CAROL J. DRYE

Serve:

2400 Glenmore Hunt Tr.
Virginia Beach, VA 23456

and

LIBERTY MUTUAL INSURANCE
COMPANY

Serve:

E. Lewis Kincer, Jr.
7th and Main Street
Suite 804
700 Building
Richmond, VA 23219

Defendants.

AT LAW NO. CL94-351

MOTION FOR DECLARATORY JUDGMENT

Thomas M. Stone ("Stone"), by counsel, for his Motion for Declaratory Judgment respectfully represents as follows:

1. Tidewater Pizza, Inc. ("Tidewater Pizza") is a corporation organized and existing under the laws of the

Commonwealth of Virginia and regularly conducts its affairs and business activities in the City of Virginia Beach, Virginia.

2. Liberty Mutual Insurance Company ("Liberty Mutual") is a corporation organized and existing under the laws of the State of Massachusetts and regularly conducts its affairs and business activities in the City of Virginia Beach, VA.

3. On or about October 30, 1992, Stone was lawfully operating his vehicle in a northerly direction on Princess Anne Road, Virginia Beach, Virginia.

4. At that time and place, Carol J. Drye ("Drye") was operating her vehicle in a southerly direction.

5. Then and there, Drye negligently and carelessly crossed the center line of the road into Stone's lane and struck him, causing serious injuries to Stone.

6. As a result of the aforesaid negligence and carelessness of Drye, Stone was severely and permanently injured of body and mind, has incurred and will continue to incur medical expenses and has been and will continue to be forbidden from transacting his business.

7. At the time of the accident, Stone was an employee of Tidewater Pizza t/a Domino's Pizza, and was acting within the scope of his employment for Tidewater Pizza.

8. As a result of the negligence of Drye, Stone filed a Motion for Judgment in the Circuit Court of the City of Virginia Beach against Drye, which was styled as "Thomas M. Stone v. Carol J. Drye, CL92-3364."

9. On September 28, 1993, the case on Stone's Motion for Judgment was tried in the Circuit Court for the City of Virginia Beach, whereupon after conclusion of the evidence, the Court ordered judgment in favor of Stone and against Drye in the amount of \$250,000 with interest thereon to be computed at the judgment rate of interest per annum from the date of entry of the judgment until paid, together with the Plaintiff's costs expended.

10. At the time of the accident, Tidewater Pizza was the holder of a commercial policy, policy no. AS1-351-407823-031 (the "Liberty Mutual Policy"), with automobile insurance coverage, issued by Liberty Mutual to Tidewater Pizza, wherein Liberty Mutual agreed to provide uninsured motorist insurance, including underinsured motorist insurance, in the amount of \$350,000 to Tidewater Pizza, which it is legally entitled to recover as damages from the owner and driver of an uninsured or underinsured motor vehicle. A copy of the Liberty Mutual Policy, which was in effect on the date of the accident, is attached hereto as Exhibit A.

11. Stone, as an employee and agent of Tidewater Pizza, was an Insured under the Uninsured Motorists insurance provisions of the Liberty Mutual Policy.

12. The only liability insurance company providing coverage to Drye while operating the automobile involved in the accident (the "Yugo") was issued by The Infinity Group in the amount of \$25,000.

13. Accordingly, the Yugo was an underinsured motor vehicle as defined in the uninsured motorist insurance endorsement

set forth in the Liberty Mutual Policy and was underinsured in the amount of \$225,000.

14. Pursuant to the underinsured motorist coverage in the Liberty Mutual Policy, Liberty Mutual is obligated to pay to Stone \$225,000, plus interest, as a result of Stone's injuries.

15. An actual controversy of a justiciable nature exists between Liberty Mutual and Stone as to the coverage of the Liberty Mutual Policy.

16. The controversies between the parties with respect to the insurance coverage has created doubt and uncertainty as to the rights and liabilities of the parties and is unlikely to be resolved unless there is a declaration by the Court of the rights and liabilities of the parties under their respective insurance policies.

WHEREFORE, Thomas M. Stone, prays that this Court take jurisdiction of the controversy; that all parties who are necessary parties to this action be made defendants; that this Court enter its declaratory Judgment that the Liberty Mutual Policy, at the time of the accident, provided underinsured motorist coverage to Thomas M. Stone in the amount of \$225,000; that this Court enter judgement in favor of Thomas M. Stone against Liberty Mutual Insurance Company in the amount of \$225,000, plus prejudgment and

post judgment interest, and his court costs; and that Plaintiff have such other and further relief as the Court shall deem necessary and proper.

THOMAS M. STONE

By


of Counsel

Stephen C. Swain, Esquire
VA State Bar # 12924
Robert L. Samuel, Jr., Esquire
VA State Bar # 18605
S. Geoffrey Glick, Esquire
VA State Bar # 28800
CLARK & STANT, P.C.
900 One Columbus Center
Virginia Beach, VA 23462
(804) 499-8800

87369001
motdj.sgg

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH
THOMAS M. STONE,

Plaintiff,

v.

AT LAW NO. CL94-351

LIBERTY MUTUAL INSURANCE
COMPANY, et al,

Defendants.

GROUND OF DEFENSE

Now comes the defendant, Liberty Mutual Insurance Company, by counsel, and for and as its Grounds of Defense to the Motion for Declaratory Judgment herein, states the following:

1. It admits the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the Motion for Declaratory Judgment.

2. It admits the material allegations of Paragraph 10 of the Motion for Declaratory Judgment, except that it does not understand what is meant by and can neither admit nor deny so much of the first sentence of Paragraph 10 as includes the words "which it is legally . . . or underinsured motor vehicle."

3. It denies the allegations of Paragraph 11 of the Motion for Declaratory Judgment.

4. It admits the allegations of Paragraph 12 of the Motion for Declaratory Judgment.

5. With respect to the allegations of Paragraph 13 of the Motion for Declaratory Judgment, it admits that the Hugo would be an underinsured motor vehicle under the definition of an uninsured motor vehicle which is contained in the uninsured motorist endorsement of its policy, but it denies that the Hugo was underinsured motor vehicle with respect to this litigation

because the plaintiff Stone is not and was not an insured under the language of that endorsement.

6. It denies the allegations of Paragraph 14 of the Motion for Declaratory Judgment.

7. It denies the allegations of Paragraphs 15 and 16 of the Motion for Declaratory Judgment, and affirmatively asserts that the issue to be resolved between the plaintiff and the defendant Liberty Mutual Insurance Company is not an issue ripe or proper for a determination by a Motion for Declaratory Judgment, but it admits that the plaintiff and Liberty Mutual do not agree as to the interpretation of the Liberty Mutual insurance policy.

8. It denies that it is indebted to the plaintiff in any sum, for any reason.

9. It denies that the plaintiff is an insured under its uninsured motorist endorsement.

10. It denies that the defendants Tidewater Pizza and Drye are necessary or proper defendants to this action.

11. It denies that this Court has the jurisdiction to handle this action as long as this action purports to be a Motion for Declaratory Judgment seeking a determination of rights and liabilities of the parties, as there is an adequate remedy at law and the rights of all parties have matured beyond the stage where it would be appropriate for a resolution by Declaratory Judgment.

12. It will rely upon any and all defenses which may arise between now and the time of trial or be justified by the evidence upon trial.

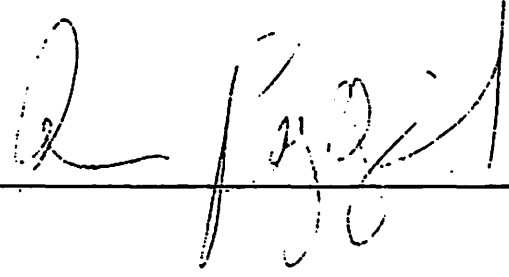
LIBERTY MUTUAL INSURANCE COMPANY

By


Of Counsel

Alan B. Rashkind, Esquire
FURNISS, DAVIS, RASHKIND and SAUNDERS, P.C.
Post Office Box 12525
Norfolk, VA 23541
(804) 461-7100

I hereby certify that a true copy of the foregoing pleading was mailed to all counsel of record on this ____ day of March, 1994.



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH
THOMAS M. STONE,

Plaintiff,

v.

AT LAW NO. CL94-351

LIBERTY MUTUAL INSURANCE
COMPANY, et al,

Defendants.

ORDER

This cause came this 11th day of May, 1994, for hearing on the Motion of the defendants Liberty Mutual Insurance Company and Tidewater Pizza, Inc. for the entry of an Order in accordance with their Demurrer and Motion to Strike Additional Defendants, and was argued by counsel, and during the course of argument, counsel for the plaintiff requested leave of Court to amend the Motion for Declaratory Judgment to make it clear that the plaintiff expressly seeks a determination that the plaintiff is provided underinsured motorist coverage by the Liberty Mutual Insurance policy at issue, and upon consideration thereof

It is ADJUDGED, ORDERED and DECREED that the Demurrer and Motion to Strike Additional Defendants shall be and is hereby sustained, to all of which such action the plaintiff, by counsel, noted due, timely and properly objection and exception.

And it is further ADJUDGED, ORDERED and DECREED that the Motion for Declaratory Judgment shall, without further Order of the Court or pleading, be deemed to be a Motion for Judgment seeking damages against the defendant Liberty Mutual Insurance Company only for breach of contract, and that the defendants

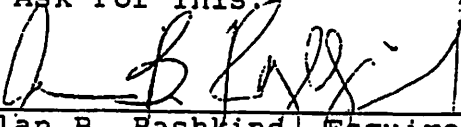
Tidewater Pizza, Inc. and Carol J. Drye shall be and are hereby dismissed as parties to this action.

To all of such action of the Court in sustaining the defendants' Demurrer and in dismissing the defendants Tidewater Pizza, Inc. and Carol J. Drye, the plaintiff noted due, timely and proper objection and exception.

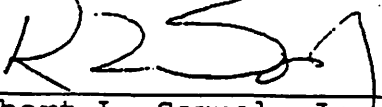
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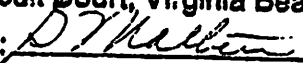
Judge

I Ask For This:


Alan B. Rashkind Esquire p.d.

Seen and Objected to for the Reasons set out herein and Stated in Open Court at the Hearing on May 11, 1994:


Robert L. Samuel, Jr., Esquire p.q.

Certified to be a TRUE & CORRECT
copy of record in my custody.
J. Curtis Fruit, Clerk
Circuit Court, Virginia Beach, Va.
BY: 
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Norfolk Division

THOMAS M. STONE,

Plaintiff,

v.

CIVIL ACTION NO. 2:94cv560

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant.

MOTION FOR SUMMARY JUDGMENT

Now comes the defendant, Liberty Mutual Insurance Company and, pursuant to Federal Rule of Civil Procedure 56, moves for summary judgment in its favor, and for the dismissal of the plaintiff's claim against it, for the reasons set out in the Brief filed herewith.

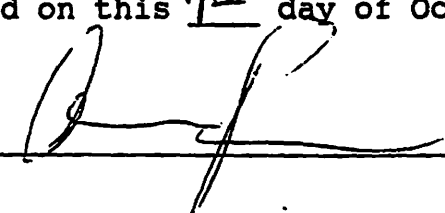
LIBERTY MUTUAL INSURANCE COMPANY

By 

Of Counsel

Alan B. Rashkind, Esquire
FURNISS, DAVIS, RASHKIND and SAUNDERS, P.C.
Post Office Box 12525
Norfolk, VA 23541
(804) 461-7100

I hereby certify that a true copy of the foregoing pleading was mailed to all counsel of record on this 7th day of October, 1994.



FURNISS, DAVIS, RASHKIND
AND SAUNDERS, P.C.
ATTORNEYS AT LAW
NORFOLK, VIRGINIA

LIBERTY
MUTUAL.

2875 BROWNS BRIDGE ROAD
P.O. BOX 2376
GAINESVILLE, GA 30503
TELEPHONE NO. (404) 536-8761

I CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL POLICY ISSUED.

A handwritten signature in cursive script, appearing to read "C. E. Edwards", written in black ink.

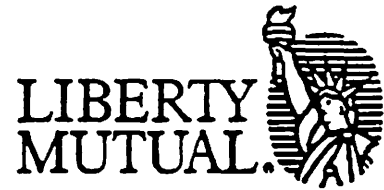
CERTIFIED

LIBERTY'S



COMMERCIAL

POLICY



NOTICE

DEAR POLICYHOLDER:

YOUR WORKERS COMPENSATION OR AUTOMOBILE POLICY IS ENCLOSED. IF YOU HAVE ANY QUESTIONS REGARDING THIS POLICY PLEASE CONTACT YOUR AGENT OF PRODUCER OF RECORD.

CLAIMS OR ACCIDENT REPORTS SHOULD BE SUBMITTED TO THE OFFICE SHOWN ON YOUR POLICY. THIS WILL APPEAR AT THE TOP OF THE DECLARATION PAGE OF YOUR POLICY.

ADDRESSES FOR EACH OF THE OFFICES ARE SHOWN ON THE REVERSE SIDE OF THIS LETTER. PLEASE RETAIN THIS FOR FUTURE REFERENCE.

PRODUCERS OF ASSIGNED RISK BUSINESS ARE NOW AUTHORIZED BY THE NCCI TO ISSUE CERTIFICATES OF WORKERS COMPENSATION INSURANCE.

THE ACCORD FORM THAT IS AVAILABLE TO YOUR AGENT IS THE ONLY FORM THAT IS USED BY LIBERTY MUTUAL. THIS FORM CAN NOT BE ALTERED IN ANY WAY SO YOUR AGENT HAS THE ABILITY TO ISSUE THE SAME FORM THAT LIBERTY MUTUAL CAN ISSUE. YOUR AGENT CAN OBTAIN THESE FORMS BY CALLING 1-800-888-4476.

**GENEVA H. ROLAND
MANAGER RESIDUAL MARKET
LIBERTY MUTUAL INSURANCE CO**

CC: PRODUCER

20

**LIBERTY MUTUAL INSURANCE GROUP/BOSTON
EQUAL OPPORTUNITY EMPLOYER**

LIBERTY MUTUAL INS. CO.
P. O. BOX 530650
BIRMINGHAM, AL 35235
TEL. 205 969 0067

LIBERTY MUTUAL INS. CO.
P. O. BOX 12575
JACKSON, MS 39236
TEL. 601 977 0814

LIBERTY MUTUAL INS. CO.
P. O. BOX 11200
MONTGOMERY, AL 28212
TEL. 205 244 6440

LIBERTY MUTUAL INS. CO.
P. O. BOX 25708
CHARLOTTE, NC 28212
TEL. 704 535 3150

LIBERTY MUTUAL INS. CO.
P. O. BOX 2521
COLUMBIA, SC 29202
TEL. 803 731 0830

LIBERTY MUTUAL INS. CO.
P. O. BOX 10500
GREENSBORO, NC 27404
TEL. 919 299 9910

LIBERTY MUTUAL INS. CO.
P. O. BOX 41930
RALEIGH, NC 27629-1930
TEL. 919 872 4700

LIBERTY MUTUAL INS. CO.
P. O. BOX 5528
SPARTANBURG, SC 29304
TEL. 803 574 8010

LIBERTY MUTUAL INS. CO.
P. O. BOX 945280
ORLANDO, FL 32794
TEL. 407 875 0880

LIBERTY MUTUAL INS. CO.
P. O. BOX 10300
JACKSONVILLE, FL 32207
TEL. 904 398 3061

LIBERTY MUTUAL INS. CO.
P. O. BOX 31204
TAMPA, FL 33631-3204
TEL. 813 932 2200

LIBERTY MUTUAL INS. CO.
P. O. BOX 407012
FT. LAUDERDALE 33340
TEL. 305 771 4010

LIBERTY MUTUAL INS. CO.
P. O. BOX 2792
NORCORSS, GA 30091-2792
TEL. 404 564 0400

LIBERTY MUTUAL INS. CO.
P. O. BOX 9457
COLUMBUS, GA 31908
TEL. 404 327 1798

LIBERTY MUTUAL INS. CO.
P. O. BOX 35220
LOUISVILLE, KY 40232
TEL. 502 425 8450

LIBERTY MUTUAL INS. CO.
P. O. BOX 14029
LEXINGTON, KY 40512
TEL. 606 269 8096

LIBERTY MUTUAL INS. CO.
P. O. BOX 300
BRENTWOOD, TN 37024-0300
TEL. 615 373 9555

LIBERTY MUTUAL INS. CO.
P. O. BOX 8339
CHATTANOOGA, TN 37411
TEL. 615 894 2620

LIBERTY MUTUAL INS. CO.
P. O. BOX 59004
KNOXVILLE, TN 37950-9004
TEL. 615 539 0039

LIBERTY MUTUAL INS. CO.
1770 KIRBY PKWY, SUITE 300
MEMPHIS, TN 38138
TEL. 901 756 7878

LIBERTY MUTUAL INS. CO.
P. O. BOX 31395
RICHMOND, VA 23294
TEL. 804 270 6222

LIBERTY MUTUAL INS. CO.
P. O. BOX 13049
NORFOLK, VA 23508
TEL. 804 461 6831

LIBERTY MUTUAL INS. CO.
P. O. BOX 44000
ROANOKE, VA 24018
TEL. 703 989 6179

LIBERTY MUTUAL INS. CO.
12011 LEE JACKSON MEM. HWY
SUITE 200
FAIRFAX, VA 22033
TEL. 703 385 4444

LIBERTY MUTUAL INS. CO.
7 WEST SEVENTH ST
SUITE 1700
CINCINNATI, OH 45202
TEL. 513 412 2441

CHANGE OF FACSIMILE SIGNATURE

The facsimile signature of Edmund F. Kelly is hereby substituted for the facsimile signature of Gary L. Countryman wherever it may appear in this policy or in any endorsement issued to form a part hereof.

The facsimile signature of Barry S. Gilvar is hereby substituted for the facsimile signature of Stephen W. Keene wherever it may appear in this policy or in any endorsement issued to form a part hereof.

- ☐ LIBERTY MUTUAL INSURANCE COMPANY
- ☐ LIBERTY MUTUAL FIRE INSURANCE COMPANY
- ☐ LIBERTY INSURANCE CORPORATION
- ☐ LM INSURANCE CORPORATION
- ☐ THE FIRST LIBERTY INSURANCE CORPORATION

2321

Gary S. Gilvar
SECRETARY

Edmund F. Kelly
PRESIDENT

VIRGINIA

IMPORTANT INFORMATION TO POLICYHOLDERS

In the event you need to contact someone about this policy for any reason, please contact your Sales Representative or Producer of Record as shown on the policy Declarations.

If you have additional questions, you may contact the company at the following address and telephone number:

**Liberty Mutual Insurance Group
175 Berkeley Street
Boston, MA 02117
Customer Relations
(617) 357-9500**

If you have been unable to contact or obtain satisfaction from the Sales Representative or company, you may contact the **Virginia Bureau of Insurance** at:

**Box 1157
Richmond, VA 23209
Telephone: 1-800-552-7945**

Written correspondence is preferable so that a record of your inquiry is maintained. When contacting your Sales Representative, company or the Bureau of Insurance, have your policy number available.



Telephone: (404) 536-8761
1-800-432-7171

Tidewater Pizza, Inc.
529 Viking Drive
Virginia Beach, VA 23452

RE: AUTOMOBILE RENEWAL PROPOSAL

Policy Number: AS1-351-407823-031 Account Number: 40 78 23
Expiration Date: 12/3/91 Invoice Number: 4400

Your Automobile insurance coverage, as afforded under the VA Automobile Insurance Plan, will terminate on the expiration date noted above. Assuming that continuous coverage is needed, a renewal policy has been issued, based on the expiring policy classifications and coverages.

Your renewal deposit premium is \$ 1,647.

THIS RENEWAL WILL ONLY TAKE EFFECT IF THE INDICATED
RENEWAL DEPOSIT PREMIUM IS RECEIVED PRIOR TO THE
EXPIRATION DATE OF YOUR EXISTING POLICY.

Your payment and a copy of this letter must be sent directly to:

Liberty Mutual Insurance Co.
P.O. Box 101339
Atlanta, GA 30392

If this coverage is not needed, please sign and return one copy of the letter to the address below.

Signature _____

Title _____

Very truly yours,

Geneva H. Roland

Geneva H. Roland
Business Residual Market

cc: Producer of Record

24

RM023

CERTIFIED

LIBERTY MUTUAL



BUSINESS AUTO POLICY DECLARATIONS

ACCOUNT NO. 407823	SUB-ACCT NO. 0001	Liberty Mutual Insurance Group/Boston LIBERTY MUTUAL INSURANCE COMPANY						
POLICY NO. AS1-351-407823-031		TD/CD 11/ 0	SALES OFFICE NORFOLK	CODE 535	SALES REPRESENTATIVE ASSIGNED	CODE 8004	N/R 2	1ST YR 87

ITEM ONE

Named Insured
and
Mailing Address

TIDEWATER PIZZA, INC.
529 VIKING DRIVE
VIRGINIA BEACH, VA 23452

WELTON, DUKE, & HAWKS, INC.
P.O. BOX 40
PORTSMOUTH, VA 23705

TAX ID NO. 54-0429550

Named Insured is **CORPORATION** and occupation or business is **PIZZA SALES**

Policy Period: From **12/03/91** To **12/03/92**
12:01 A.M. Standard Time at the address of the named insured indicated in Item One.

ITEM TWO

SCHEDULE OF COVERAGES AND COVERED AUTOS

This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those autos shown as covered autos. Autos are shown as covered autos for a particular coverage by the entry of one or more of the symbols from ITEM THREE next to the name of the coverage.

COVERAGES	COVERED AUTOS (ENTRY OF ONE OR MORE OF THE SYMBOLS FROM ITEM THREE SHOWS WHICH AUTOS ARE COVERED AUTOS)	LIMIT THE MOST WE WILL PAY FOR ANY ONE ACCIDENT OR LOSS	PREMIUM
LIABILITY INSURANCE	07, 08, 09	\$ 350,000	\$ 1,208
PERSONAL INJURY PROTECTION (OR EQUIVALENT NO-FAULT COVERAGE)		SEPARATELY STATED IN EACH P.I.P. ENDORSEMENT.	\$
ADDED PERSONAL INJURY PROTECTION (OR EQUIVALENT ADDED NO-FAULT COVERAGE)		SEPARATELY STATED IN EACH ADDED P.I.P. ENDORSEMENT.	\$
PROPERTY PROTECTION INSURANCE (MICHIGAN ONLY)		SEPARATELY STATED IN THE P.P.I. ENDORSEMENT.	\$
AUTO MEDICAL PAYMENTS INSURANCE		\$	\$
UNINSURED MOTORISTS INSURANCE	06	SEPARATELY STATED IN THE SCHEDULE OF LIMITS FOR UNIN- SURED MOTORISTS INSURANCE.	\$ 30
PHYSICAL DAMAGE INSURANCE COMPREHENSIVE COVERAGE	07	ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS. MINUS DEDUCTIBLE FOR EACH COVERED AUTO AS STATED IN ITEM FOUR FOR ALL LOSS EXCEPT FIRE OR LIGHTNING.	\$ 78
PHYSICAL DAMAGE INSURANCE SPECIFIED PERILS COVERAGE		ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS. MINUS \$25 DED FOR EACH COVERED AUTO. FOR LOSS CAUSED BY MISCHIEF OR VANDALISM.	\$
PHYSICAL DAMAGE INSURANCE COLLISION COVERAGE	07	ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS. MINUS DEDUCTIBLE FOR EACH COVERED AUTO AS STATED IN ITEM FOUR.	\$ 331
PHYSICAL DAMAGE INSURANCE TOWING AND LABOR		\$25 FOR EACH DISABLEMENT OF A PRIVATE PASSENGER AUTO.	\$
2PP			PREMIUM FOR ENDORSEMENTS \$
			TOTAL POLICY ADVANCE PREMIUM \$ 1,647

The estimated total premium for this policy is based on the exposures you told us you would have when this policy began. We will compute your final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and you will be billed for the balance, if any. If the estimated total premium exceeds the final premium due you will get a refund. To determine your final premium due we may examine your records at any time during the period of coverage and up to three years afterward. If this policy is issued for more than one year, the premium shall be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

This Policy is not valid unless countersigned
by our Authorized Representative

By [Signature] Authorized Representative

C10	RENEWAL OF AS1-351-407823-030	DATE ISSUED LOC-1 10/29/91	POL HG NO	AUDIT BASIS 1	AUDIT SYMBOLS Owned Hired	RATING BASIS Exp Rated NO	Retro NO	ACCT ENTRY Div. on Exp Policy 165
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***6N00*

ITEM THREE

AS1-351-407823-031

DESCRIPTION OF COVERED AUTO DESIGNATION SYMBOLS

<u>SYMBOL</u>	<u>DESCRIPTION</u>
1 =	ANY AUTO.
2 =	OWNED AUTOS ONLY. Only those autos you own (and for liability coverage any Trailers you don't own while attached to power units you own). This includes those autos whose ownership you acquire after the policy begins.
3 =	OWNED PRIVATE PASSENGER AUTOS ONLY. Only the private passenger autos you own. This includes those private passenger autos whose ownership you acquire after the policy begins.
4 =	OWNED AUTOS OTHER THAN PRIVATE PASSENGER AUTOS ONLY. Only those autos you own which are not of the private passenger type (and for liability coverage any trailers you don't own while attached to power units you own). This includes those autos not of the private passenger type, whose ownership you acquire after the policy begins.
5 =	OWNED AUTOS SUBJECT TO NO-FAULT. Only those autos you own which are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes those autos whose ownership you acquire after the policy begins provided they are required to have No-Fault benefits in the state where they are licensed or principally garaged.
6 =	OWNED AUTOS SUBJECT TO COMPULSORY UNINSURED MOTORISTS LAW. Only those autos you own which, because of the law in the state where they are licensed or principally garaged, are required to have and cannot reject uninsured motorists insurance. This includes those autos whose ownership you acquire after the policy begins provided they are subject to the same state uninsured motorists requirement.
7 =	SPECIFICALLY DESCRIBED AUTOS. Only those autos described in ITEM FOUR for which a premium charge is shown (and for liability coverage any trailers you don't own while attached to any power unit described in ITEM FOUR).
8 =	HIRED AUTOS ONLY. Only those autos you lease, hire, rent or borrow, including temporary substitutes. This does not include any auto you lease, hire, rent, or borrow from any of your employees or members of their households.
9 =	NONOWNED AUTOS ONLY. Only those autos you do not own, lease, hire or borrow which are used in connection with your business. This includes autos owned by your employees or members of their households but only while used in your business or your personal affairs.

RATING SUMMARY

SYS NO.	USE YR	MAKE	COV	EXP MOD	SCHED MOD	DEV	DED CR	SL DISC	FLEET CR	LIMITS FACTORS	ADJ FAC-TORS
VA											
	3 P	87 FORD TEMPO	LIAB							01.590	01.590
			COLL								01.000
			O/T COLL								01.000
	HC		LIAB							01.590	01.590
	NO		LIAB							01.590	01.590

TIDEWATER PIZZA, INC.
529 VIKING DRIVE
VIRGINIA BEACH, VA 23452

12/03/91

AS1-351-407823-031

SCHEDULE OF ENDORSEMENTS ATTACHED TO THIS COVERAGE FORM

POLICY NO. AS1-351-407823-031

CA99210178 - END-NUCLEAR ENERGY LIAB EXCL
IL0406 - END-AMEND-NUCLEAR EXCLUSION
2340A - END-COMP(INCL COLL) COV
CA21210183 - END-VA UM
CC01161189 - END-CHANGES IN POLICY-VA
AIP4683 - END-VA AUTO INS PLAN
AIP125085 - END-PREMIUM AND COV CHANGES
AP900782 - END-MANDATORY ENDORSEMENT
CA20011280 - END-ADDITIONAL INSURED-LESSOR

ITEM FOUR--SCHEDULE OF COVERED AUTOS YOU OWN

POLICY NO. AS1-351-407823-031

COVERED AUTO NO SYS NO	YR SYM BOL	TRADE NAME AND BODY TYPE VEHICLE ID NO.	TOWN & STATE OF PRINCIPAL GARAGING *ZIP CODE STATE RATE TERR CODE	COST NEW	MO/YR PURCH	AGE CODE	USE*	RADIUS+	ACV OR STATED AMOUNT	CLASS CODE
0001 00003)	87 8	FORD TEMPO 1FABP33S8HX249414	VIRGINIA BEACH VA 4502	9800		6	P		ACV	3

PREMIUMS

COVERED AUTO NO	LIAB	NO FAULT	ADDED NO FAULT	(MICH) P.P.I.	MED PAY	UNINSURED MOTORIST	UNDER- INSURED MOTORIST	TOWING & LABOR	COMP	SPECIFIED PERILS	COLL	TOTAL ESTIMATED PREMIUM
									DEDUCTIBLES			
									COMP	SPECIFIED PERILS	COLL	
0001	1038					30			78 100		331 250	1477

P PLEASURE & BUSINESS
C COMMERCIAL
S SERVICE
R RETAIL
O OTHER

+1 LOCAL
2 INTERMEDIATE
3 LONG HAUL

W=WAIVED
I=INCLUDED

TOTAL ESTIMATED PREMIUM: 1,4

DECLARATIONS-BUSINESS AUTO POLICY(Continued)

ITEM FIVE

SCHEDULE OF HIRED OR BORROWED COVERED AUTO COVERAGE AND PREMIUMS

POLICY NO. AS1-351-407823-031

LIABILITY INSURANCE-RATING BASIS, COST OF HIRE

ESTIMATED COST OF HIRE	STATE	RATE PER EACH \$100	ADVANCE PREMIUMS
IF ANY	VA	LIAB 1.7170	49.M
Cost of Hire means the total amount you incur for the hire of autos you don't own (not including autos you borrow or rent from your employees or their family members). Cost of hire does not include charges for services performed by motor carriers of property or passengers.			
TOTAL ADVANCE PREMIUM			\$ 49

PHYSICAL DAMAGE INSURANCE

COVERAGES	LIMIT OF LIABILITY/DEDUCTIBLE	RATE	MINIMUM PREMIUM	ADVANCE PREMIUMS
COMPREHENSIVE	ACTUAL CASH VALUE, COST OF REPAIRS OR \$ WHICHEVER IS LESS, MINUS \$ DED. FOR EACH COVERED AUTO, FOR ALL LOSS EXCEPT FIRE OR LIGHTNING			
SPECIFIED PERILS	ACTUAL CASH VALUE, COST OF REPAIRS OR \$ WHICHEVER IS LESS, MINUS \$25 DED. FOR EACH COVERED AUTO, FOR LOSS CAUSED BY MALICIOUS MISCHIEF OR VANDALISM.			
COLLISION	ACTUAL CASH VALUE, COST OF REPAIRS OR \$ WHICHEVER IS LESS, MINUS \$ DED. FOR EACH COVERED AUTO.			
PHYSICAL DAMAGE INSURANCE for covered autos you hire or borrow is excess unless indicated below by <input checked="" type="checkbox"/> "X". <input type="checkbox"/> If this box is checked, PHYSICAL DAMAGE INSURANCE applies on a direct primary basis and for purposes of the condition entitled OTHER INSURANCE, any covered auto you hire or borrow is deemed to be a covered auto you own.				
TOTAL ADVANCE PREMIUM				\$

ITEM SIX

SCHEDULE FOR NON-OWNERSHIP LIABILITY

INSURED'S BUSINESS	RATING BASIS	ESTIMATED NUMBER	CLASS CODE	ADVANCE PREMIUMS
<input checked="" type="checkbox"/> OTHER THAN A SOCIAL SERVICE AGENCY	NUMBER OF EMPLOYEES	100	6602	121
<input type="checkbox"/> SOCIAL SERVICE AGENCY	NUMBER OF EMPLOYEES			
	NUMBER OF VOLUNTEERS			
TOTAL ADVANCE PREMIUM				\$ 121

30

POLICY NO. AS1-351-407823-031

ITEM EIGHT

SCHEDULE OF LIMIT OF LIABILITY FOR UNINSURED MOTORISTS INSURANCE

The limit of liability referred to in the UNINSURED MOTORISTS INSURANCE endorsement under OUR LIMIT OF LIABILITY is as scheduled below.

VA 350,000



AMENDATORY ENDORSEMENT

IT IS AGREED THAT THE POLICY IS CHANGED PER THE ATTACHED SCHEDULE:

DELETE SYSTEM #00003.
ADD SYSTEM #00004.

Premium \$ 13 ADD-L
Effective Date 07/08/92 Expiration Date 12/03/92
For attachment to Policy No. AS1-351-407823-031 11 0
Audit Basis
Issued To TIDEWATER PIZZA, INC.
529 VIKING DRIVE
VIRGINIA BEACH, VA 23452

ARC 1.00
This endorsement is executed by the company designated below.
LIBERTY MUTUAL INSURANCE COMPANY

 
SECRETARY PRESIDENT

Countersigned by
Authorized Representative

Form No./RACF I.D.
C18

Issued
08/07/92 LOC-1

Sales Office NORFOLK	Code 535	Sales Representative ASSIGNED	Code 8004	N/R 2	1st Year 87	End Serial No. 0010
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TEM FOUR--SCHEDULE OF COV. 2D AUTOS YOU OWN

POLICY NO. AS1-351-407823-031

COVERED AUTO NO SYS NO	YR SYM BOL	TRADE NAME AND BODY TYPE VEHICLE ID NO.	TOWN & STATE OF PRINCIPAL GARAGING ZIP CODE STATE RATE TERR CODE	COST NEW	MO/YR PURCH	AGE CODE	USE*	RADIUS+	ACV OR STATED AMOUNT	CLASS CODE
0001 (00003)	87 8	FORD TEMPO 1FABP33S8HX249414	VIRGINIA BEACH VA 4502	9800		6	P		ACV	3
CANCEL VEHICLE PERIOD FROM 07/08/92 TO 12/03/92 PRO-RATA FACTOR 0.405										
0002 (00004)	86 8	HONDA 24393	VIRGINIA BEACH VA 4502	8500		7	P		ACV	3
ADD VEHICLE PERIOD FROM 07/08/92 TO 12/03/92 PRO-RATA FACTOR 0.405										

PREMIUMS

COVERED AUTO NO	LIAB	NO FAULT	ADDED NO FAULT	(MICH) P.P.I.	MED PAY	UNINSURED MOTORIST	UNDER- INSURED MOTORIST	TOWING & LABOR	COMP	SPECIFIED PERILS	COLL	TOTAL ESTIMATED PREMIUM
									DEDUCTIBLES			
									COMP	SPECIFIED PERILS	COLL	
0001	-420					-12			-32 100		-134 250	-598
0002	420					12			34 100		145 250	611

P PLEASURE & BUSINESS C COMMERCIAL S SERVICE R RETAIL O OTHER	+1 LOCAL 2 INTERMEDIATE 3 LONG HAUL	W = WAIVED I = INCLUDED	TOTAL ESTIMATED PREMIUM:	13
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33

ENDORSEMENT NO 0010--0001

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED — LESSOR

A. PHRASE WITH SPECIAL MEANING

In addition to the WORDS AND PHRASES WITH SPECIAL MEANING in the policy, the following phrase has special meaning in this endorsement.

"Leased auto" means an auto leased to you for one year or more, including any substitute, replacement or extra auto needed to meet seasonal or other needs, under a leasing agreement which requires you to provide direct primary insurance for the lessor.

B. Any leased auto designated or described in this endorsement will be considered a covered auto you own and not a covered auto you hire or borrow. For a covered auto which is a leased auto WHO IS INSURED is changed to include as an insured the lessor named in this endorsement. However, the lessor is an insured only for bodily injury or property damage resulting from the acts or omissions of:

1. You.
2. Any of your employees or agents.
3. Any person, except the lessor or any employee or agent of the lessor, operating a leased auto with the permission of any of the above.

C. LOSS PAYABLE CLAUSE

1. We will pay you and the lessor named in this endorsement for loss to a leased auto, as interest may appear.
2. The insurance covers the interest of the lessor unless the loss results from fraudulent acts or omissions on your part.
3. If we make any payment to the lessor, we will obtain his rights against any other party.

D. CANCELLATION

1. If we cancel the policy, we will mail notice to the lessor in accordance with CANCELLING THIS POLICY DURING THE POLICY PERIOD.
2. If you cancel the policy, we will mail notice to the lessor.
3. Cancellation ends this agreement.

E. The lessor is not liable for payment of your premiums.

Additional Insured (Lessor): George and Kathryn Hazzis
529 Viking Drive
Virginia Beach, VA 23452

Designation or Description of Leased Autos:

As Their Interest May Appear

This endorsement is executed by the company below designated by an entry in the box opposite its name.

Premium \$

Effective Date

For attachment to Policy or Bond No.

Audit Basis

Issued to

Expiration Date

AS1-351-407823-031

☒ LIBERTY MUTUAL INSURANCE COMPANY

☐ LIBERTY MUTUAL FIRE INSURANCE COMPANY

Stephen W. Keene *Ray L. Contrym*
2 SECRETARY PRESIDENT

LOC-1

Countersigned by

Authorized Representative

Issued

Sales Office and No.

End. Serial No. 0009

34

COMMERCIAL AUTOMOBILE INSURANCE PROCEDURE

MANDATORY ENDORSEMENT

This policy is issued on behalf of the VIRGINIA Auto Insurance Plan.
(STATE)

Premium \$



Effective Date 12/03/91 Expiration Date 12/03/92

For attachment to Policy No. AS1-351-407823-031 11 0

Audit Basis

Issued To TIDEWATER PIZZA, INC.
529 VIKING DRIVE
VIRGINIA BEACH, VA 23452

This endorsement is executed by the company designated below.
LIBERTY MUTUAL INSURANCE COMPANY

 
SECRETARY PRESIDENT

Countersigned by
Authorized Representative

Form No./RACF I.D.
C10

Issued
10/29/91 LOC-1

Sales Office NORFOLK	Code 535	Sales Representative ASSIGNED	Code 8004	N/R 2	1st Year 87	End Serial No. 0008
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PREMIUM AND COVERAGE CHANGES ENDORSEMENT

The provision applicable to Changes is deleted and replaced by the following:

CHANGES:

A. Premium Changes

The premium for this policy is based on information we have received from you or other sources. You agree:

1. that if any of this information material to the development of the policy premium is incorrect, incomplete or changed, we may adjust the premium accordingly during the policy period.
2. to cooperate with us in determining if this information is correct and complete, and to advise us of changes in this information.

Any adjustment of your premium will be made using the rules in effect at the time of the change.

Premium adjustment may be made as the result of a change in:

1. autos insured by the policy, including changes in use.
2. drivers, driver's age or driver's marital status.
3. coverages or coverage limits.
4. rating territory.
5. eligibility for discounts or other premium credits.

B. Coverage Changes

We may revise your policy coverages to provide more protection without additional premium charge. If we do this and you have the coverage which is changed, your policy will automatically provide the additional coverage as of the date the revision is effective in your state. Otherwise, this policy contains all of the coverage agreements between you and us. Its terms may not be changed or waived except by an endorsement issued by us.

This endorsement is executed by the company designated below.
LIBERTY MUTUAL INSURANCE COMPANY

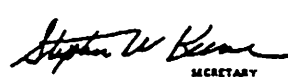

Premium \$

Effective Date 12/03/91 Expiration Date 12/03/92

For attachment to Policy No. AS1-351-407823-031 11 0

Audit Basis

Issued To TIDEWATER PIZZA, INC.
529 VIKING DRIVE
VIRGINIA BEACH, VA 23452

 
SECRETARY PRESIDENT

Countersigned by
Authorized Representative

Form No./RACF I.D.
C10

Issued
10/29/91 LOC-1

Sales Office NORFOLK	Code 535	Sales Representative ASSIGNED	Code 8004	N/R 2	1st Year 87	End Serial No. 0007
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AIP-1250
(10/85)

VIRGINIA AUTOMOBILE INSURANCE PLAN

It is understood and agreed that in the event of cancellation of this policy by either the insured or the company, the earned premium calculated in accordance with the cancellation condition of the policy, shall be subject to a minimum of \$25.00 as provided in Section 18 of the Virginia Automobile Insurance Plan.

Premium \$



Effective Date 12/03/91 Expiration Date 12/03/92

For attachment to Policy No. AS1-351-407823-031 11 0

Audit Basis

Issued To TIDEWATER PIZZA, INC.
529 VIKING DRIVE
VIRGINIA BEACH, VA 23452

This endorsement is executed by the company designated below.
LIBERTY MUTUAL INSURANCE COMPANY

 
SECRETARY PRESIDENT

Countersigned by
Authorized Representative

Form No./RACF I.D.
C10

Issued
10/29/91 LOC-1

Sales Office NORFOLK	Code 535	Sales Representative ASSIGNED	Code 8004	N/R 2	1st Year 87	End Serial No. 0006
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CHANGES IN POLICY - VIRGINIA

For a covered auto principally located or principally used in, or garage operations conducted in, Virginia, the policy is changed as follows:

A. CHANGES IN LIABILITY INSURANCE

1. If the policy provides LIABILITY INSURANCE only for owned autos, a temporary substitute for one of these will also be considered a covered auto subject to the following provisions:
 - a. The owned auto must be out of service because of it breakdown, repair, servicing, loss or destruction.
 - b. The temporary substitute must be owned by someone other than you or a member of your household.
 - c. The temporary substitute must be used with the permission of the owner.
 - d. The LIABILITY INSURANCE for the temporary substitute is excess over any other collectible insurance.
2. OUR LIMIT OF LIABILITY applies except that we will apply the limit shown in the declarations to first provide the separate limits required by Virginia law as follows:

- a. \$25,000 for bodily injury to any one person caused by any one accident
- b. \$50,000 for bodily injury to two or more persons caused by any one accident, and
- c. \$20,000 for property damage caused by any one accident.

This provision will not change our limit of liability.

B. CHANGES IN MEDICAL PAYMENTS INSURANCE

Medical services includes chiropractic services.

C. CHANGES IN CONDITIONS

YOUR DUTIES AFTER ACCIDENT OR LOSS is changed for LIABILITY INSURANCE by adding the following:

The insured will be deemed not to have cooperated with us only if his failure or refusal to do so harms our defense of an action for damages.

YOUR DUTIES AFTER ACCIDENT OR LOSS is changed for AUTO MEDICAL PAYMENTS INSURANCE by adding the following:

The failure or refusal of the insured to notify us of any accident will relieve us of our obligation to pay only if his failure or refusal prejudices us in establishing the validity of any claim.

This endorsement is executed by the company designated below.

Premium \$

Effective Date

Expiration Date

For attachment to Policy No. AS1-351-407823-031

Audit Basis

Issued To

- ☒ LIBERTY MUTUAL INSURANCE COMPANY
☐ LIBERTY MUTUAL FIRE INSURANCE COMPANY
☐ LIBERTY INSURANCE CORPORATION

 
SECRETARY

Countersigned by

Authorized Representative

Form # / Term I.D.

Issued

Sales Office	Code	Sales Representative	Code	N/R	1st Year	End Serial No. 0005
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CC 01 16 11 89

Copyright, Insurance Services Office, Inc., 1989

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNINSURED MOTORISTS INSURANCE

(VIRGINIA)

A. WORDS AND PHRASES WITH SPECIAL MEANING

In addition to the WORDS AND PHRASES WITH SPECIAL MEANING in the policy, the following words and phrases have special meaning for UNINSURED MOTORISTS INSURANCE:

1. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.
2. "Occupying" means in, upon, getting in, on, out or off.
3. "Property damage" means injury or destruction of:
 - a. A covered auto, or
 - b. Property contained in the covered auto, or
 - c. Any other property (except an auto) owned by an insured and located in Virginia.
4. "Uninsured motor vehicle" means a land motor vehicle or trailer:
 - a. For which neither a liability bond or policy nor cash or securities on file with the Virginia Commission of Motor Vehicles at the time of an accident provides at least the amounts required by the Virginia Motor Vehicle Safety Responsibility Act, or
 - b. Which is an underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle for which the sum of all liability bonds or policies at the time of an accident provides at least the amounts required by the Virginia Motor Vehicle Safety Responsibility Act but their limits are less than the limits of this insurance, or
 - c. For which an insuring or bonding company denies coverage or is or becomes insolvent, or
 - d. Which is a hit-and-run vehicle and neither the driver nor owner is identifiable.

B. WE WILL PAY

1. We will pay in accordance with the Virginia Uninsured Motorists Insurance Law all sums the insured is legally entitled to recover as damages from the owner or driver of an uninsured motor vehicle. The damages must result from bodily injury sustained by the insured, or property damage, caused by an accident. The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the uninsured motor vehicle.
2. If this insurance provides a limit in excess of the amounts required by the Virginia Motor Vehicle Safety Responsibility Act, we will pay only after all liability bonds or policies have been exhausted by judgments or payments.

C. WE WILL NOT COVER - EXCLUSIONS

This insurance does not apply to:

1. Any claim settled without our consent.
2. The direct or indirect benefit of any insurer of property.
3. The first \$200 of the total amount of property damage as the result of any one accident involving an unidentifiable driver or owner of an uninsured motor vehicle.
4. Anyone using a vehicle without a reasonable belief that the person is entitled to do so.

D. WHO IS INSURED

You or any family member.

1. Anyone else occupying a covered auto or a temporary substitute for a covered auto. The covered auto must be out of service because of its breakdown, repair, servicing, loss or destruction.
2. Anyone for damages he is entitled to recover because of bodily injury sustained by another insured.

E. OUR LIMIT OF LIABILITY

1. Regardless of the number of covered autos, insureds, claims made or vehicles involved in the accident, the most we will pay for all damages resulting from any one accident is

the limit of UNINSURED MOTORISTS INSURANCE shown in the declarations. Such limit of liability shall first provide the separate limits required by the Virginia Motor Vehicle Safety Responsibility Act.

2. Except for a vehicle described in paragraph b. of the definition of uninsured motor vehicle, any amounts otherwise payable for damages under this insurance shall be reduced by all sums paid by or for anyone who is legally responsible, including all sums paid under the policy's LIABILITY INSURANCE.
3. For a vehicle described in paragraph b. of the definition of uninsured motor vehicle, our limit of liability shall be reduced by all sums paid by or for anyone who is legally responsible, including all sums paid under the policy's LIABILITY INSURANCE.

F. CHANGES IN CONDITIONS

The CONDITIONS of the policy are changed for UNINSURED MOTORISTS INSURANCE as follows:

1. Except for property damage, the reference in OTHER INSURANCE to "other collectible in-

surance" applies only to other collectible uninsured motorists insurance. For property damages, UNINSURED MOTORISTS INSURANCE is excess to all other collectible insurance of any kind applicable to the property damage.

2. YOUR DUTIES AFTER ACCIDENT OR LOSS is changed by adding the following:
 - a. Promptly send us copies of the legal papers if a suit is brought, and
 - b. If there is no direct contact between the insured or the covered auto and a hit-and-run vehicle, promptly notify us, the police or the Division of Motor Vehicles as soon as practicable of the hit-and-run vehicle involved. If the insured has not obtained a judgment against John Doe, his liability may be established as between the insured and us by filing a statement with us that there is a cause of action against anyone who cannot be identified. Set forth the facts and present clear and convincing evidence that there was a hit-and-run vehicle involved in the accident.

Premium \$

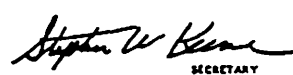
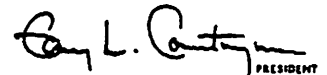
Effective Date 12/03/91 Expiration Date 12/03/92

For attachment to Policy No. AS1-351-407823-031 11 0

Audit Basis

Issued To TIDEWATER PIZZA, INC.
529 VIKING DRIVE
VIRGINIA BEACH, VA 23452

This endorsement is executed by the company designated below.
LIBERTY MUTUAL INSURANCE COMPANY

 SECRETARY  PRESIDENT

Countersigned by

Form No./RACF I.D.
C10

Issued
10/29/91 LOC-1

Authorized Representative

Sales Office NORFOLK	Code 535	Sales Representative ASSIGNED	Code 8004	N/R 2	1st Year 87	End Serial No. 0004
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NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (Broad Form)

It is agreed that:

A. The policy does not apply:

1. Under any Liability Coverage, to bodily injury or property damage
 - a. with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - b. resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
2. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
3. Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if
 - a. the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
 - b. the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
 - c. the bodily injury or property damage arises out of the furnishing by an insured of services, materials, parts or equip-

ment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion c. applies only to property damage to such nuclear facility and any property thereat.

B. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (a) containing byproduct material and (b) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph 1 or 2 thereof;

"nuclear facility" means

1. any nuclear reactor,
2. any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing spent fuel, or (c) handling, processing or packaging waste,
3. any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
4. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

This endorsement modifies the provisions of the Broad Form Nuclear
Exclusion used in connection with any liability policy

**AMENDMENT TO THE BROAD FORM NUCLEAR EXCLUSION
(DEFINITION OF WASTE)**

It is agreed that the definition of "**Waste**" contained in the Nuclear Energy Liability Exclusion (Broad Form)
is amended to read as follows:

"Waste" means any waste material

- (a) containing **by-product material** other than the tailings or **wastes** produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content, and
- (b) resulting from the operation by any person or organization of any **nuclear facility** included under the first two paragraphs of the definition of **nuclear facility**.

This endorsement is executed by the company below designated by an entry in the box opposite its name.

Premium \$
Effective Date Expiration Date
For attachment to Policy or Bond No. AS1-351-407823-031
Audit Basis
Issued to

☒ LIBERTY MUTUAL INSURANCE COMPANY
☐ LIBERTY MUTUAL FIRE INSURANCE COMPANY

Stephen W. Keene *Gay L. Canty*
SECRETARY PRESIDENT

LOC-1

Countersigned by
Authorized Representative

Issued

Sales Office and No.

End. Serial No. 0002

IL 04 06
(ED. 06 79)

COMPREHENSIVE (INCLUDING COLLISION) COVERAGE
Automobile Insurance Plan

It is agreed that:

1. Coverages C and D in the Automobile Physical Damage Coverage Agreements are replaced by the following:

Coverage C — Comprehensive (Including Collision) Coverage

To pay for direct and accidental loss of or damage to any "covered automobile," — hereinafter called loss, but with respect to each "covered automobile" such payment for loss shall be only for the amount of each loss in excess of \$_____*

and all references in the policy (or in any endorsement forming a part thereof) to the Coverages so replaced shall be to the above-stated Coverage C.

2. The following exclusions are added:

This policy does not apply under Coverage C:

- (a) to loss to the "covered automobile" while being operated in any prearranged or organized racing or speed contest or in practice or preparation for any such contest;
- (b) to any loss to the "covered automobile" arising out of or during the use of such automobile for the transportation of any explosive substance, flammable liquid, or similarly hazardous materials, except such transportation as is incidental to ordinary household or farm activities of the named insured.

* \$100. Deductible Comprehensive
\$250. Deductible Collision

This endorsement is executed by the company below designated by an entry in the box opposite its name.

Premium \$

Effective Date

Expiration Date

For attachment to Policy or Bond No.

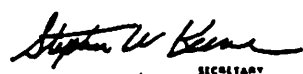
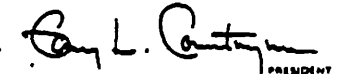
AS1-351-407823-031

Audit Basis

Issued to

☒ LIBERTY MUTUAL INSURANCE COMPANY

☐ LIBERTY MUTUAL FIRE INSURANCE COMPANY

 
SECRETARY PRESIDENT

LOC-1

Countersigned by

Authorized Representative

Issued

Sales Office and No.

End. Serial No. 0003

2340A
(AIP-1)
(Ed. 1-75)

BUSINESS AUTO POLICY



You are a member of the Liberty Mutual Insurance Company while this policy is in force. Membership entitles you to vote in person or by proxy at meetings of the company.

The annual meeting is in Boston, Massachusetts on the third Wednesday in April each year at 10 o'clock in the morning.

LIBERTY MUTUAL INSURANCE COMPANY, BOSTON

FOR PROMPT INSURANCE SERVICE – CALL YOUR
SERVICE OFFICE

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

PART I – WORDS AND PHRASES WITH SPECIAL MEANING – READ THEM CAREFULLY

The following words and phrases have special meaning throughout this policy and appear in boldface type when used:

- A. **"You" and "your"** mean the person or organization shown as the named insured in ITEM ONE of the declarations.
- B. **"We", "us" and "our"** mean the company providing the insurance.
- C. **"Accident"** includes continuous or repeated exposure to the same conditions resulting in **bodily injury or property damage** the insured neither expected nor intended.
- D. **"Auto"** means a land motor vehicle, trailer or semitrailer designed for travel on public roads but does not include **mobile equipment**.
- E. **"Bodily injury"** means bodily injury, sickness or disease including death resulting from any of these.
- F. **"Insured"** means any person or organization qualifying as an insured in the WHO IS INSURED section of the applicable insurance. Except with respect to our limit of liability, the insurance afforded applies separately to each insured who is seeking coverage or against whom a claim is made or suit is brought.
- G. **"Loss"** means direct and accidental damage or loss.
- H. **"Mobile equipment"** means any of the following type of land vehicles:
 - 1. Specialized equipment such as: Bulldozers; Power shovels; Rollers, graders or scrapers; Farm machinery; Cranes; Street sweepers or other cleaners; Diggers; Forklifts; Pumps; Generators; Air Compressors; Drills; Other similar equipment.
 - 2. Vehicles designed for use principally off public roads.
 - 3. Vehicles maintained solely to provide mobility for such specialized equipment when permanently attached.
 - 4. Vehicles not required to be licensed.
 - 5. Autos maintained for use solely on your premises or that part of roads or other accesses that adjoin your premises.
- I. **"Property damage"** means damage to or loss of use of tangible property.
- J. **"Trailer"** includes semitrailer.

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property.

Premium \$

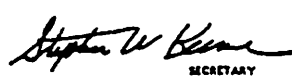
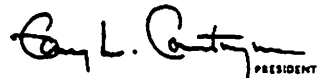
Effective Date 12/03/91 Expiration Date 12/03/92

For attachment to Policy No. AS1-351-407823-031 11 0

Audit Basis

Issued To TIDEWATER PIZZA, INC.
529 VIKING DRIVE
VIRGINIA BEACH, VA 23452

This endorsement is executed by the company designated below.
LIBERTY MUTUAL INSURANCE COMPANY

 
SECRETARY PRESIDENT

Countersigned by
Authorized Representative

Form No./RACF I.D.
C10

Issued
10/29/91 LOC-1

Sales Office NORFOLK	Code 535	Sales Representative ASSIGNED	Code 8004	N/R 2	1st Year 87	End Serial No. 0001
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PART II – WHICH AUTOS ARE COVERED AUTOS

- A. ITEM TWO of the declarations shows the autos that are covered autos for each of your coverages. The numerical symbols explained in ITEM THREE of the declarations describe which autos are covered autos. The symbols entered next to a coverage designate the only autos that are covered autos.
- B. OWNED AUTOS YOU ACQUIRE AFTER THE POLICY BEGINS
1. If symbols "1", "2", "3", "4", "5", or "6" are entered next to a coverage in ITEM TWO, then you already have coverage for autos of the type described until the policy ends.
 2. But, if symbol "7" is entered next to a coverage in ITEM TWO, an auto you acquire will be a covered auto for the coverage only if:
 - a. WE already insure all autos that you own for that coverage or it replaces an auto you previously owned that had that coverage; and
 - b. You tell us within 30 days after you acquire it that you want us to insure it for that coverage.
- C. CERTAIN TRAILERS AND MOBILE EQUIPMENT.
- If the policy provides liability insurance, the following types of vehicles are covered autos for liability insurance:
1. Trailers with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
 2. Mobile equipment while being carried or towed by a covered auto.

PART III – WHERE AND WHEN THIS POLICY COVERS

We cover accidents or losses which occur during the policy period:

- A. In the United States of America, its territories or possessions, Puerto Rico or Canada; or
- B. While the covered auto is being transported between any of these places.

PART IV – LIABILITY INSURANCE

- A. WE WILL PAY.
1. We will pay all sums the insured legally must pay as damages because of bodily injury or property damage to which this insurance applies, caused by an accident and resulting from the ownership, maintenance or use of a covered auto.
 2. We have the right and duty to defend any suit asking for these damages. However, we have no duty to defend suits for bodily injury or property damage not covered by this policy. We may investigate and settle any claim or suit as we consider appropriate. Our payment of the LIABILITY INSURANCE limit ends our duty to defend or settle.
 3. Premiums on bonds to release attachments in a suit we defend but only for bonds up to our limit of liability.
 4. All costs taxed to the insured in a suit we defend.
 5. All interest accruing after the entry of the judgment in a suit we defend. Our duty to pay interest ends when we pay or tender our limit of liability.
 6. Up to \$50 a day for loss of earnings (but not other income) because of attendance at hearings or trials at our request.
 7. Other reasonable expenses incurred at our request.
- B. WE WILL ALSO PAY.
- In addition to our limit of liability, we will pay for the insured:
1. Up to \$250 for cost of bail bonds (including bonds for related traffic law violations) required because of an accident we cover. We do not have to furnish these bonds.
 2. Premiums on appeal bonds in any suit we defend.
- C. WE WILL NOT COVER – EXCLUSIONS.
- This insurance does not apply to:
1. Liability assumed under any contract or agreement.
 2. Any obligation for which the insured or his or her insurer may be held liable under any workers' compensation or disability benefits law or under any similar law.

3. Any obligation of the insured to indemnify another for damages resulting from bodily injury to the insured's employee.
4. Bodily injury to any fellow employee of the insured arising out of and in the course of his or her employment.
5. Bodily injury to any employee of the insured arising out of and in the course of his or her employment by the insured. However, this exclusion does not apply to bodily injury to domestic employees not entitled to workers' compensation benefits.
6. Property damage to property owned or transported by the insured or in the insured's care, custody, or control.
7. Bodily injury or property damage resulting from the handling of property:
 - a. Before it is moved from the place where it is accepted by the insured for movement into or onto the covered auto, or
 - b. After it is moved from the covered auto to the place where it is finally delivered by the insured.
8. Bodily injury or property damage resulting from the movement of property by a mechanical device (other than a hand truck) not attached to the covered auto.
9. Bodily injury or property damage caused by the dumping, discharge or escape of irritants, pollutants or contaminants. This exclusion does not apply if the discharge is sudden and accidental.

D. WHO IS INSURED.

1. You are an insured for any covered auto.
2. Anyone else is an insured while using with your permission a covered auto you own, hire or borrow except:
 - a. The owner of a covered auto you hire or borrow from one of your employees or a member of his or her household.

- b. Someone using a covered auto while he or she is working in a business of selling, servicing, repairing or parking autos unless that business is yours.
- c. Anyone other than your employees, a lessee or borrower or any of their employees, while moving property to or from a covered auto.

3. Anyone liable for the conduct of an insured described above is an insured but only to the extent of that liability. However, the owner or anyone else from whom you hire or borrow a covered auto is an insured only if that auto is a trailer connected to a covered auto you own.

E. OUR LIMIT OF LIABILITY.

1. Regardless of the number of covered autos, insureds, claims made or vehicles involved in the accident, the most we will pay for all damages resulting from any one accident is the LIABILITY INSURANCE limit shown in the declarations.
2. All bodily injury and property damage resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one accident.

F. OUT OF STATE EXTENSIONS OF COVERAGE

1. While a covered auto is away from the state where it is licensed we will:
 - a. Increase this policy's liability limits to meet those specified by a compulsory or financial responsibility law in the jurisdiction where the covered auto is being used.
 - b. Provide the minimum amounts and types of other coverages, such as "No-Fault", required of out of state vehicles by the jurisdiction where the covered auto is being used.
2. We will not pay anyone more than once for the same elements of loss because of these extensions.

PART V – PHYSICAL DAMAGE INSURANCE

A. WE WILL PAY.

1. We will pay for loss to a covered auto or its equipment under:
 - a. Comprehensive Coverage. From any cause except the covered auto's collision with another object or its overturn.

b. Specified Perils Coverage. Caused by.

- (1) Fire or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism;

(6) The sinking, burning, collision or derailment of any conveyance transporting the covered auto.

c. **Collision Coverage.** Caused by the covered auto's collision with another object or its overturn.

2. Towing.

We will pay up to \$25 for towing and labor costs incurred each time a covered auto of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

B. WE WILL ALSO PAY.

We will also pay up to \$10 per day to a maximum of \$300 for transportation expense incurred by you because of the total theft of a covered auto of the private passenger type. We will pay only for those covered autos for which you carry either Comprehensive or Specified Perils Coverage. We will pay for transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered auto is returned to use or we pay for its loss.

C. WE WILL NOT COVER – EXCLUSIONS.

This insurance does not apply to:

1. Wear and tear, freezing, mechanical or electrical breakdown unless caused by other loss covered by this policy.
2. Blowouts, punctures or other road damage to tires unless caused by other loss covered by this policy.
3. Loss caused by declared or undeclared war or insurrection or any of their consequences.
4. Loss caused by the explosion of a nuclear weapon or its consequences.
5. Loss caused by radioactive contamination.
6. Loss to tape decks or other sound reproducing equipment not permanently installed in a covered auto.
7. Loss to tapes, records or other sound reproducing devices designed for use with

sound reproducing equipment not permanently installed in a covered auto.

8. **Loss to any sound receiving equipment designed for use as a citizens' band radio, two-way mobile radio or telephone or scanning monitor receiver, including its antennas and other accessories, unless permanently installed in the dash or console opening normally used by the auto manufacturer for the installation of a radio.**

D. HOW WE WILL PAY FOR LOSSES – THE MOST WE WILL PAY.

1. At our option we may:
 - a. Pay for, repair or replace damaged or stolen property; or
 - b. Return the stolen property, at our expense. We will pay for any damage that results to the auto from the theft.
2. The most we will pay for loss is the smaller of the following amounts:
 - a. The actual cash value of the damaged or stolen property at the time of loss.
 - b. The cost of repairing or replacing the damaged or stolen property with other of like kind or quality.
3. For each covered auto, our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the declarations. Any Comprehensive Coverage deductible shown in the declarations does not apply to loss caused by fire or lighting.
4. **GLASS BREAKAGE – HITTING A BIRD OR ANIMAL – FALLING OBJECTS OR MISSILES.**

We will pay for glass breakage, loss caused by hitting a bird or animal or by falling objects or missiles under Comprehensive Coverage if you carry Comprehensive Coverage for the damaged covered auto. However, you have the option of having glass breakage caused by a covered auto's collision or overturn considered a loss under Collision Coverage.

PART VI – CONDITIONS

The insurance provided by this policy is subject to the following conditions:

A. YOUR DUTIES AFTER ACCIDENT OR LOSS.

1. You must promptly notify us or our agent of any accident or loss. You must tell us how, when and where the accident or loss happened. You must assist in obtaining the

names and addresses of any injured persons and witnesses.

2. Additionally, you and other involved insureds must:

- a. Cooperate with us in the investigation, settlement or defense of any claim or suit. No insured shall, except at his or her own cost, voluntarily make any payment, assume any obligation or incur any expense.
- b. Immediately send us copies of any notices or legal papers received in connection with the accident or loss.
- c. Submit at our expense and as often as we require to physical examinations by physicians we select.
- d. Authorize us to obtain medical reports and other pertinent medical information.

3. Additionally, to recover for loss to a covered auto or its equipment you must do the following:

- a. Permit us to inspect and appraise the damaged property before its repair or disposition.
- b. Do what is reasonably necessary after loss at our expense to protect the covered auto from further loss.
- c. Submit a proof of loss when required by us.
- d. Promptly notify the police if the covered auto or any of its equipment is stolen.

B. OTHER INSURANCE.

1. For any covered auto you own this policy provides primary insurance. For any covered auto you don't own, the insurance provided by this policy is excess over any other collectible insurance. However, while a covered auto which is a trailer is connected to another vehicle the liability coverage this policy provides for the trailer:
 - a. Is excess while it is connected to a motor vehicle you don't own.
 - b. Is primary while it is connected to a covered auto you own.
2. When two or more policies cover on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the limit of our policy bears to the

total of the limits of all the policies covering on the same basis.

C. OUR RIGHT TO RECOVER FROM OTHERS.

If we make any payment, we are entitled to recover what we paid from other parties. Any person to or for whom we make payment must transfer to us his or her rights of recovery against any other party. This person must do everything necessary to secure these rights and must do nothing that would jeopardize them.

D. CANCELLING THIS POLICY DURING THE POLICY PERIOD.

1. You may cancel the policy by returning it to us or by giving us advance notice of the date cancellation is to take effect.
2. We may cancel the policy by mailing you at least 10 days notice at your last address known by us. We may deliver any notice instead of mailing it. Proof of mailing of any notice will sufficient proof of notice.
3. The effective date of cancellation stated in the notice shall become the end of the policy period.
4. If this policy is cancelled, you may be entitled to a premium refund. If so, we will send you the refund. However, making or offering to make the refund is not a condition of cancellation. If you cancel, the refund, if any, will be computed in accordance with the customary short rate procedure. If we cancel, the refund, if any, will be computed pro rata.

E. LEGAL ACTION AGAINST US.

No legal action may be brought against us until there has been full compliance with all the terms of this policy. In addition, under LIABILITY INSURANCE, no legal action may be brought against us until we agree in writing that the insured has an obligation to pay or until the amount of that obligation has been finally determined by judgment after trial. No person or organization has any right under this policy to bring us into any action to determine the liability of the insured.

F. INSPECTION.

At our option we may inspect your property and operations at any time. These inspections are for our benefit only. By our right to inspect or by our making any inspection we make no representation that your property or operations are safe, not harmful to health or comply with any law, rule or regulation.

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

H. TRANSFER OF YOUR INTEREST IN THIS POLICY.

Your rights and duties under this policy may not be assigned without our written consent.

I. NO BENEFIT TO BAILEE - PHYSICAL DAMAGE INSURANCE ONLY.

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this policy.

J. BANKRUPTCY.

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



K. APPRAISAL FOR PHYSICAL DAMAGE LOSSES.

1. If you and we fail to agree as to the amount of loss either may demand an appraisal of the loss. In such event, you and we shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. The appraisers shall state separately the actual cash value and the amount of loss, and, failing to agree, shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. You and we shall each pay the chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.
2. We shall not be held to have waived any of our rights by any act relating to appraisal.

L. TWO OR MORE POLICIES ISSUED BY US.

If this policy and any other policy issued to you by us or any company affiliated with us apply to the same accident, the aggregate maximum limit of liability under all the policies shall not exceed the highest applicable limit of liability under any one policy. This condition does not apply to any policy issued by us or an affiliated company specifically to apply as excess insurance over this policy.

This policy has been signed by our President and Secretary at Boston, Massachusetts, and countersigned on the declarations page by an authorized representative.

 
SECRETARY PRESIDENT

BUSINESS AUTO POLICY



THIS POLICY IS CLASSIFIED IN ONE OR MORE OF THE FOLLOWING DIVIDEND CLASSES:

North Carolina	When your auto is principally garaged in	Class V-A
Texas	When your auto is principally garaged in	Class V-B
North Carolina or Texas	When your auto is principally garaged elsewhere than in Massachusetts,	Class V-C

THIS POLICY IS NONASSESSABLE.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

THOMAS M. STONE,

Plaintiff,

v.

Civil Action No. 2:94 CV 560

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant.

MOTION FOR SUMMARY JUDGMENT

Plaintiff, Thomas M. Stone, by counsel, pursuant to Rule 56 of the Federal Rules of Civil Procedure requests that this Court enter summary judgment in his favor against Liberty Mutual Insurance Company in the amount of \$225,000, plus pre-judgment and post-judgment interest, and his court costs for the reasons stated in the attached Brief in Support of Plaintiff's Motion for Summary Judgment.

THOMAS M. STONE

By 
Of Counsel

Stephen C. Swain, Esquire
Virginia State Bar #12924
Robert L. Samuel, Jr., Esquire
Virginia State Bar #18605
S. Geoffrey Glick, Esquire
Virginia State Bar #28800
Clark & Stant, P.C.
900 One Columbus Center
Virginia Beach, VA 23462
(804) 499-8800

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion for Summary Judgment was mailed, first class, postage prepaid, to all Alan B. Rashkin, Esquire, Furniss, Davis, Rashkind & Saunders, P.C., Post Office Box 12525, Norfolk, Virginia 23541-0525, this 24th day of October, 1994.



for Stephen C. Swain

87369001
mfsj.sgg

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

THOMAS M. STONE,

Plaintiff,

v.

Civil Action No. 2:94cv560

LIBERTY MUTUAL INSURANCE
COMPANY,

Defendant.

STIPULATIONS OF THE PLAINTIFF AND
DEFENDANT RELATING TO THEIR RESPECTIVE
MOTIONS FOR SUMMARY JUDGMENT

Plaintiff, Thomas M. Stone ("Stone"), and Defendant, Liberty Mutual Insurance Company ("Liberty Mutual") stipulate to the following:

1. That this matter is ripe for summary judgment and that there are no genuine issues of material fact that exist.
2. That their respective rights to a jury trial are waived.
3. That on October 30, 1992, Stone was lawfully operating a motor vehicle owned by him when he was involved in a collision with a motor vehicle negligently operated by Carol J. Drye ("Drye"), who crossed the center line of the road into Stone's lane.
4. That as a result of the accident, Stone incurred serious injuries.
5. That at the time of the accident, Stone was a member of the United States Navy who was working part time for Tidewater Pizza, Inc. t/a Dominos Pizza ("Tidewater Pizza") as a pizza delivery person.

6. That at the time of the accident, Stone was acting within the scope of his employment for Tidewater Pizza; Stone's motor vehicle was being used in connection with Tidewater Pizza's business; Stone was responsible for providing his own transportation to and from deliveries.

7. That Stone subsequently filed a Motion for Judgment in the Circuit Court for the City of Virginia Beach against Drye, which was styled as "Thomas M. Stone v. Carol J. Drye, CL92-3364."

8. That on September 28, 1993, the case on Stone's Motion for Judgment was tried in the Virginia Beach Circuit Court, whereupon after conclusion of the evidence, the Court ordered judgment in favor of Stone and against Drye in the amount of \$250,000 plus interest and court costs.

9. That on October 9, 1993, the Virginia Beach Circuit Court entered an Order incorporating its award. A copy of the October 9, 1993 Judgment Order which is attached to Stone's Brief in Support of his Motion for Summary Judgment, previously filed in this case, is authentic.

10. That at the time of the accident, Tidewater Pizza was the holder of a commercial policy, policy no. AS1-351-407823-031 (the "Liberty Mutual Policy"), with automobile insurance coverage, issued by Liberty Mutual to Tidewater Pizza. The copy of the Liberty Mutual Policy which is attached to Liberty Mutual's Brief in Support of its Motion for Summary Judgment previously filed in this case is an accurate and complete copy of the Liberty Mutual Policy in force and effect on October 30, 1992.

11. That the Liberty Mutual Policy contained an Uninsured Motorists Insurance Endorsement, which includes coverage for underinsured motor vehicles, with limits of \$350,000.00. At the time of the accident, there was only \$25,000.00 of liability or other coverage applicable to Drye's operation and use of her vehicle and available for payment on Stone's bodily injury claim.

12. That on October 30, 1992, at the time of the accident, Stone was neither an officer, director, shareholder, nor owner of Tidewater Pizza.

13. That on October 30, 1992, at the time of the accident, Stone was not occupying a 1986 Honda automobile or a 1987 Ford Tempo automobile.

14. That on October 30, 1992, at the time of the accident, Stone was not occupying a motor vehicle owned by or leased to Tidewater Pizza or hired or borrowed by Tidewater Pizza.

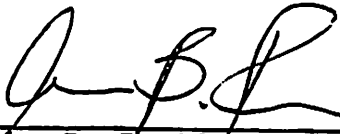
15. That on October 30, 1992, at the time of the accident, Stone was neither related to or residing in the household of George or Katheryn Hazzis.

SEEN AND AGREED:



Stephen C. Swain, Esquire
Virginia State Bar #12924
Robert L. Samuel, Jr., Esquire
Virginia State Bar #18605
S. Geoffrey Glick, Esquire
Virginia State Bar #28800
Counsel for Thomas M. Stone,
Plaintiff

CLARK & STANT, P.C.
900 One Columbus Center
Virginia Beach, Virginia 23462
(804) 499-8800



Alan B. Rashkind, Esquire
Counsel for Liberty Mutual
Insurance Company, Defendant
Furniss, Davis, Rashkind
and Saunders, P.C.
Post Office Box 12525
Norfolk, Virginia 23541

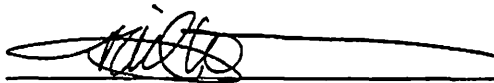
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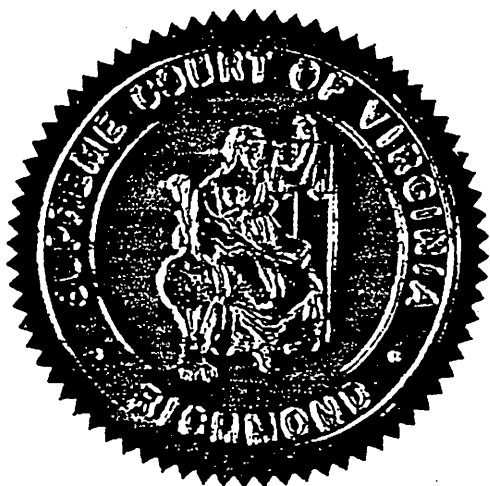
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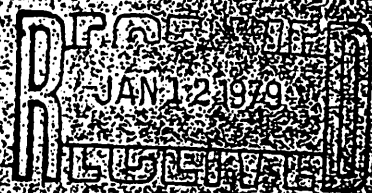
I, Gail Warren, State Law Librarian, Supreme Court of Virginia, do hereby certify that attached hereto is a true copy of pages 40 through 73 of the Joint Appendix for *Michael Martin Bayer v. Travelers Indemnity Company*, Record #781067.

Given under my hand and seal of said Court this seventh day of December 1994.



State Law Librarian





IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 781067

MICHAEL MARTIN BAYER

APPELLANT

v.

TRAVELERS INDEMNITY COMPANY

APPELLEE

JOINT APPENDIX

Benjamin H. Woodbridge, Jr.
Counsel for Appellant
620 Princess Anne Street
Fredericksburg, Virginia 22401

John C. Easton
Counsel for Appellee
4084 University Drive
Fairfax, Virginia 22030

1. Policy No: **650-237A174-2-IND-76** Issue Date:
2. Forms Applicable - COMPREHENSIVE AUTOMOBILE FORM ☒ SCHEDULE LIABILITY FORM ☐
AUTOMOBILE PHYSICAL DAMAGE FORM ☐
3. Coverage Afforded and Limits of Liability - Insurance is afforded for such of the following coverages for which a limit of liability or an "X" is inserted. The limit of The Travelers' liability for each such coverage shall be as stated herein or as shown in SECTIONS III AND IV COVERAGE DECLARATIONS B.

Coverage		Limits of Liability	
Liability - Section III		each person	each occurrence
C. Bodily Injury Liability		\$ 25,000	\$ 50,000
D. Property Damage Liability			\$ 10,000
C. Bodily Injury Liability	} Single Limit	\$	each occurrence
and			
D. Property Damage Liability			
F. Automobile Medical Payments		\$ 1,000	
U. Uninsured Motorists (See Item 6c herein.)			

Physical Damage - Section IV

- O - Comprehensive ☐
- P - Collision ☐
- Q - Fire, Lightning or Transportation ☐
- R - Theft ☐
- S - Combined Additional ☐

TT - Towing - subject to a limit of \$25 for each disablement ☐

4. Liability - Section III
- a. Bodily Injury Liability and Property Damage Liability Coverages - SCHEDULE AUTOMOBILE LIABILITY FORM - Insurance is afforded for only such automobile hazards for which an "X" is inserted.

☐ Owned Automobile ☐ Hired Automobiles ☐ Non-owned Automobiles

b. Automobile Medical Payments

1. Division 1 - Insurance is afforded only with respect to the type of automobile for which an "X" is inserted.

- ☐ Any owned automobile ☐ Any licensed owned private passenger automobile
- ☐ Any hired automobile
- ☐ Any automobile with Coverage F designated in the SECTIONS III AND IV COVERAGE DECLARATIONS B ☐ Any non-owned automobile
- ☐ Other - describe:

2. Designated Person Insured - Division 2: (Insurance does not apply in the absence of a specific entry.)

c. Uninsured Motorists

1. Description of Insured Highway Vehicles - Insurance is afforded only with respect to the insured highway vehicles for which an "X" is inserted.

- ☐ Any automobile owned by the Named Insured.
- ☐ Any private passenger automobile owned by the Named Insured.
- ☐ Any highway vehicle described with Coverage U designated in the SECTIONS III AND IV COVERAGE DECLARATIONS B and a highway vehicle ownership of which is acquired during the period Section III is in effect by the Named Insured as a replacement therefore.
- ☐ Any mobile equipment owned or leased by and registered in the name of the Named Insured.
- ☐ Other - Describe:

2. Designated Insured:

61

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3. Applicable Endorsement: The limit of liability indicated for Coverage U is indicated below. Insurance for property damage shall be subject to any deductible as stated in the applicable state endorsement.

State or Jurisdiction	Endorsement Symbol	Limits of Liability		
		Each Person	Bodily Injury Each Occurrence	Property Damage Each Occurrence
VA	AC-327	\$ 25,000	\$ 50,000	\$ 5,000

5. Physical Damage - Section IV

a. Newly Acquired Automobiles -

1. Coverages - With respect to automobiles newly acquired during the period Section IV is in effect, the coverages afforded are those for which an "X" is inserted.

A coverage is subject to any deductible amount shown. The limit of liability is actual cash value.

Coverages		Deductible Amount
O - Comprehensive	<input type="checkbox"/>	\$
P - Collision	<input type="checkbox"/>	\$
Q - Fire, Lightning or Transportation	<input type="checkbox"/>	xxxxx
R - Theft	<input type="checkbox"/>	\$
S - Combined Additional	<input type="checkbox"/>	\$25 (Malicious Mischief or Vandalism)
TT - Towing - subject to a limit of \$25 for each disablement	<input type="checkbox"/>	xxxxx

2. Types of Newly Acquired Automobiles - Each such coverage shall apply only to those types of newly acquired automobiles for which an "X" is inserted.

	Coverage Applicable
<input type="checkbox"/>	all covered automobiles
<input type="checkbox"/>	all registered covered automobiles
<input type="checkbox"/>	all covered automobiles of the private passenger type
<input type="checkbox"/>	all covered automobiles of the commercial type

When so entered, in addition:

- ☐ when reported by the Named Insured to The Travelers within 30 days after their delivery
☐ excluding vehicles leased to the Named Insured
☐ excluding under Coverage P (Collision) any vehicle not having an actual cash value of at least \$ _____
☐ describe: _____

- b. Maximum Limit of Liability - The Travelers shall not be liable for more:

than \$25,000 for any one covered automobile unless a higher limit is stated hereafter:

\$ _____

than \$100,000 for all covered automobiles at any one location unless a higher limit is stated hereafter:

\$ _____

than \$250,000 for all covered automobiles unless a higher limit is stated hereafter:

\$ _____

SEC-237A174-2-IND-76

1: **BRUCE LEWIS WITAKER**

ed by: _____ Policy expires 03 77
Month Year
of exposure: TRIANGLE VA.
City State

TRAVELERS INDEMNITY COMPANY
TRAVELERS INDEMNITY COMPANY OF AMERICA
TRAVELERS INDEMNITY COMPANY OF ILLINOIS
TRAVELERS INDEMNITY COMPANY OF RHODE ISLAND

THE TRAVELERS INSURANCE COMPANY
THE PHOENIX INSURANCE COMPANY
THE CHARTER OAK FIRE INSURANCE COMPANY

These declarations are effective: **3-29-76**

2. Provisional Premium due under these declarations: \$ NIL ☐ additional ☐ return

3. Changes: — It is agreed that the policy is amended as described below.

AMEND SYMBOL 3078 TO INCLUDE COV. F, MEDICAL PAYMENTS, LIMIT OF LIABILITY \$1,000. PREMIUM IS INCLUDED.

1. Policy No: **650-237A174-2-INDO 76**

Issue Date:

2. **Scheduled Automobiles and Coverages Afforded** — The following discloses all the automobiles as of the effective date of these declarations (a) owned by the Named Insured or (b) leased to the Named Insured under a written agreement for a term not less than one year. Insurance is afforded only for such coverages as are indicated by an "X" or for which deductible amount inserted in the coverage column below:

Auto No.	Description or No. of Automobiles by Class	Coverages (See "NOTES" on reverse side)										
		C	N/F	D	F	U	Limit of Liability	O Ded.	P	R Ded.	S	TT
1	71 FORD MAVERICK 1X91P4035	X		X	X	X						
2	69 FORD ECONO E14AHC70194	X		X	X	X						

3. **Loss Payee** — Any loss under Coverages O, P, Q, R and S to an automobile described or designated below is payable as interest may appear to the Named Insured and the Loss Payee named below.

Description or Designation of Automobile

Name and Address of Loss Payee

4. **Interest of Named Insured in Covered Automobiles** — Except with respect to bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance, the Named Insured is the sole owner of all covered automobiles unless otherwise stated herein:

5. **Premiums** — The premiums stated below are included in the total premium for the policy as shown in the GENERAL DECLARATION: are subject to adjustments as described in the GENERAL PROVISIONS FORM.

Premiums stated below are as designated: ☒ Provisional ☐ Non-Provisional

Owned Automobiles, including automobiles leased for a term not less than one year	Bodily Injury	Property Damage	*Annual Premiums		Uninsured Motorist
			Medical Payments		
	\$ 80	\$ 50	\$ 13		\$ 12
Total premium for all Section IV coverages	\$				
Hired Automobiles					

Types Hired	Town & State of Principal Use	Estimated Cost of Hire	*Rates Per \$100 Cost of Hire		*Annual Premiums	
			Bodily Injury	Property Damage	Bodily Injury	Property Damage
					\$	\$

EXCLUDED
Non-Owned Automobiles

Tot. Empl. Headquarters Town and State

*Rates Per Person	Bodily Injury	Property Damage	*Annual Premiums	
			Bodily Injury	Property Damage
			\$	\$

EXCLUDED

*If a single rate or premium applies to bodily injury and to property damage, such rate or premium is included under bodily injury and "INCL" indicated under property damage.

SECTIONS III AND IV COVERAGE DECLARATIONS D

Policy No: 650-237A174-2-IND-76

Issue Date:

2. **Effective Date** — These declarations are effective on the policy's effective date stated in the GENERAL DECLARATIONS unless otherwise stated hereafter: These declarations are effective _____ and replace any SECTIONS III and IV COVERAGE DECLARATIONS D of a prior effective date.

3. **Applicable Endorsements** — Only an endorsement for which an "X" is inserted applies.

"X"

Provision Title and Entries

(1) ☒ **LIMITATION OF AUTOMOBILE LIABILITY INSURANCE ENDORSEMENT** — With respect to bodily injury liability and property damage liability coverages, the COMPREHENSIVE AUTOMOBILE LIABILITY FORM does not apply to such of the following as are indicated by an "X".

☐ any owned automobile;

☒ any hired automobile;

☒ any non-owned automobile.

(2) ☐ **USE OF OTHER AUTOMOBILES COVERAGE ENDORSEMENT**

a. This endorsement applies only to the coverage for which an "X" is inserted:

☐ Bodily Injury Liability;

☐ Comprehensive;

☐ Property Damage Liability;

☐ Collision, \$50 Deductible;

☐ Automobile Medical Payments;

b. This endorsement applies only to the individual named hereunder:

A. Insuring Agreements

1. Comprehensive Automobile Liability — Coverage C (Bodily Injury) and Coverage D (Property Damage) — The Travelers will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of:

(a) bodily injury; or

(b) property damage;

to which this insurance applies, caused by an occurrence and arising out of the ownership, maintenance or use, including loading and unloading, of any automobile.

The Travelers shall have the right and duty to defend any suit against the Insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but The Travelers shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of The Travelers' liability has been exhausted by payment of judgments or settlements.

2. Automobile Medical Payments — Coverage F — The Travelers will pay all reasonable medical expense incurred within one year from the date of the accident:

(a) under Division 1 — *per car* to or for each person who sustains bodily injury, caused by accident, while occupying a designated automobile which is being used by a person for whom bodily injury liability insurance is afforded under this form with respect to such use; and

(b) under Division 2 — to or for each Insured who sustains bodily injury, caused by accident, while occupying or while a pedestrian, through being struck by a highway vehicle.

3. Supplementary Payments — Coverages C and D — The Travelers will pay, in addition to the applicable limit of liability:

(a) all expenses incurred by The Travelers, all costs taxed against the Insured in any suit defended by The Travelers and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before The Travelers has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of The Travelers' liability thereon;

(b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this insurance, and the cost of bail bonds required of the Insured because of accident or traffic law violation arising out of the use of any vehicle to which this insurance applies, not to exceed \$250 per bail bond, but The Travelers shall have no obligation to apply for or furnish any such bonds;

(c) expenses incurred by the Insured for first aid to others at the time of an accident, for bodily injury to which this insurance applies; and

(d) reasonable expenses incurred by the Insured at The Travelers' request in assisting The Travelers in the investigation or defense of any claim or suit, including actual loss of earnings, not to exceed \$25 per day.

B. Exclusions

1. Coverages C and D do not apply to:

(a) liability assumed by the Insured under any contract or agreement;

(b) any obligation for which the Insured or any carrier as his insurer may be held liable under any workmen compensation, unemployment compensation or disability benefits law, or under any similar law; 46

COMPREHENSIVE AUTOMOBILE LIABILITY FORM
(Forming part of Section III)

Page 2 of 6

- (c) bodily injury to any employer of the Insured arising out of and in the course of his employment by the Insured or to any obligation of the Insured to indemnify another because of damages arising out of such injury;

but this exclusion does not apply to any such injury arising out of and in the course of domestic employment by the Insured unless benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;

- (d) property damage to:

(1) property owned or being transported by the Insured; or

(2) property rented to or in the care, custody or control of the Insured, or as to which the Insured is for any purpose exercising physical control, other than property damage to a residence or private garage by a private passenger automobile covered by this insurance;

- (e) bodily injury due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to expenses for first aid under Insuring Agreement A. 3. (Supplementary Payments);

- (f) bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental.

2. Coverage F does not apply:

- (a) to bodily injury to any person or Insured while employed or otherwise engaged in duties in connection with an automobile business, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;
- (b) to bodily injury due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;
- (c) under Division 1, to bodily injury to any employee of the Named Insured arising out of and in the course of employment by the Named Insured, but this exclusion does not apply to any such bodily injury arising out of and in the course of domestic employment by the Named Insured unless benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law; or
- (d) under Division 2, to bodily injury sustained while occupying a highway vehicle owned by any Insured, or furnished for the regular use of any Insured by any person or organization other than the Named Insured.

Persons Insured

1. Coverages C and D

- a. Each of the following is an Insured to the extent set forth below:

(1) the Named Insured;

(2) any partner or executive officer thereof, but with respect to a non-owned automobile only while such automobile is being used in the business of the Named Insured;

(3) any other person while using an owned automobile or a hired automobile with the permission of the Named Insured, provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission, but with respect to bodily injury or property damage arising out of the loading or unloading thereof, such other person shall be an Insured only if he is:

(i) a lessee or borrower of the automobile; or

(ii) an employee of the Named Insured or of such lessee or borrower;

(4) any other person or organization but only with respect to his or its liability because of acts or omissions of an Insured under (1), (2) or (3) preceding.

None of the following is an Insured:

- (1) any person while engaged in the business of his employer with respect to bodily injury to any fellow employee of such person injured in the course of his employment;
- (2) the owner or lessee (of whom the Named Insured is a sub-lessee) of a hired automobile or the owner of non-owned automobile, or any agent or employee of any such owner or lessee;
- (3) an executive officer with respect to an automobile owned by him or by a member of his household;
- (4) any person or organization, other than the Named Insured, with respect to:
 - (i) a motor vehicle while used with any trailer owned or hired by such person or organization and not covered by like insurance in The Travelers (except a trailer designed for use with a private passenger automobile and not being used for business purposes with another type motor vehicle); or
 - (ii) a trailer while used with any motor vehicle owned or hired by such person or organization and not covered by like insurance in The Travelers;
- (5) any person while employed in or otherwise engaged in duties in connection with an automobile business other than an automobile business operated by the Named Insured.

This insurance does not apply to bodily injury or property damage arising out of: (a) a non-owned automobile used in the conduct of any partnership or joint venture of which the Insured is a partner or member and which is not designated in the GENERAL DECLARATIONS as a Named Insured; or (b) if the Named Insured is a partnership, an automobile owned by or registered in the name of a partner thereof.

2. Coverage F — Division 2 — Each of the following is an Insured to the extent set forth below:

- a. any person indicated as "Designated Person Insured" in SECTION III COVERAGE DECLARATIONS A;
- b. while residents of the same household as such designated person, his spouse and the relatives of either;

and if such designated person shall die, any person who was an Insured at the time of such death shall continue to be an Insured.

D. Limits of Liability

1. Coverages C and D — For the purposes of determining the limit of The Travelers' liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

Regardless of the number of: (a) Insureds under this insurance; (b) persons or organizations who sustain bodily injury or property damage; (c) claims made or suits brought on account of bodily injury or property damage; or (d) automobiles to which this insurance applies, The Travelers' liability is limited as described below.

- (a) Single Limit of Liability — If a single limit of liability is stated in SECTION III COVERAGE DECLARATION A for Coverages C and D, the limit stated in such declarations as applicable to "each occurrence" is the total limit of The Travelers' liability limited as described below.

The limit of The Travelers' liability for all damages:

- (1) because of bodily injury sustained by one person as the result of any one occurrence; and
- (2) because of bodily injury sustained by two or more persons as the result of any one occurrence; and
- (3) because of property damage sustained by one or more persons or organizations as the result of any one occurrence;

... first for the respective amounts of bodily injury and property damage liability insurance specified in the motor vehicle financial responsibility law of the state in which the automobile is principally garaged, and such amounts shall then be supplemented by any amount remaining within the single limit of liability stated in SECTION III COVERAGE DECLARATIONS A, which limit is the total limit of The Travelers' liability for all damages sustained by one or more persons or organizations because of bodily injury and property damage as the result of any one occurrence.

(b) **Separate Limits of Liability** — If separate limits of liability are stated in SECTION III COVERAGE DECLARATIONS A for Coverages C and D, the following applies:

- (1) **Coverage C** — The limit of bodily injury liability stated in SECTION III COVERAGE DECLARATIONS A as applicable to "each person" is the limit of The Travelers' liability for all damages, including damages for care and loss of services, because of bodily injury sustained by one person as the result of any one occurrence; but subject to the above provision respecting "each person", the total liability of The Travelers for all damages, including damages for care and loss of services, because of bodily injury sustained by two or more persons as the result of any one occurrence shall not exceed the limit of bodily injury liability stated in such declarations as applicable to "each occurrence".
- (2) **Coverage D** — The total liability of The Travelers for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated in SECTION III COVERAGE DECLARATIONS A as applicable to "each occurrence".

Coverage F — The limit of liability for Coverage F stated in SECTION III COVERAGE DECLARATIONS A as applicable to "each person" is the limit of The Travelers' liability for all medical expense for bodily injury to any person, including any Insured, as the result of any one accident.

When more than one medical payments coverage afforded by the policy applies to the loss, The Travelers shall not be liable for more than the amount of the highest applicable limit of liability.

Definitions

"Automobile" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment.

"Automobile business" means the business or occupation of selling, repairing, servicing, storing or parking automobiles.

"Bodily injury" means bodily injury, sickness or disease sustained by any person which occurs during the period this insurance is in effect, including death at any time resulting therefrom.

"Designated automobile" as used under Coverage F means an automobile designated in the declarations and includes:

- (a) an automobile not owned by the Named Insured while temporarily used as a substitute for an owned automobile designated in the declarations when withdrawn from normal use for servicing or repair or because of its breakdown, loss or destruction; and
- (b) a trailer designed for use with a private passenger automobile, if not being used for business purposes with another type automobile and if not a home, office, store, display or passenger trailer.

"Highway vehicle" as used under Coverage F means a land motor vehicle or trailer other than:

- (a) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads;
- (b) a vehicle operated on rails or crawler-treads; or
- (c) a vehicle while located for use as a residence or premises.

"Hired automobile" means an automobile not owned by the Named Insured which is used under contract in behalf of, or loaned to, the Named Insured, provided such automobile is not owned by or registered in the name of: (a) a partner or executive officer of the Named Insured; or (b) an employee or agent of the Named Insured who is granted an operating allowance of any kind for the use of such automobile.

"Insured" means any person or organization qualifying as an Insured under Part C. (Persons Insured).

The insurance afforded applies separately to each Insured against whom claim is made or suit is brought except with respect to the limits of The Travelers' liability.

11. "Medical expense" as used under Coverage F means expense for necessary medical, surgical, X-ray and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services.
9. "Mobile equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled: (a) not subject to motor vehicle registration; (b) maintained for use exclusively on premises owned by or rented to the Named Insured, including the ways immediately adjoining; (c) designed for use principally off public roads; or (d) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment.
10. "Named Insured" means the person or organization named in the GENERAL DECLARATIONS.
11. "Non-owned automobile" means an automobile which is neither an owned automobile nor a hired automobile.
12. "Occupying" as used under Coverage F means in or upon or entering into or alighting from.
13. "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the Insured.
14. "Owned automobile" means an automobile owned by the Named Insured.
15. "Private passenger automobile" means a four-wheel private passenger or station wagon type automobile.
16. "Property damage" means (a) physical injury to or destruction of tangible property which occurs during the period this insurance is in effect, including the loss of use thereof at any time resulting therefrom, or (b) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the period this insurance is in effect.
17. "Trailer" includes semi-trailer but does not include mobile equipment.

F. Additional Conditions

1. Coverages C and D — Excess Insurance — Hired and Non-Owned Automobiles — With respect to a hired automobile or a non-owned automobile, this insurance shall be excess insurance over any other valid and collectible insurance available to the Insured.
2. Coverage F — Excess Insurance — Automobile Medical Payments — Except with respect to an owned automobile, the insurance under Division 1 shall be excess insurance over any other valid and collectible automobile medical payments or automobile medical expense insurance.

The insurance under Division 2 shall be excess insurance over any other valid and collectible automobile medical payments or automobile medical expense insurance available to the Insured under any other policy.
3. Coverage F — Non-Applicability of Subrogation Condition — Automobile Medical Payments — General Condition A.16. (Subrogation) does not apply to Coverage F — Automobile Medical Payments.
4. Out of State Insurance — If, under the provisions of the motor vehicle financial responsibility law or the motor vehicle compulsory insurance law or any similar law of any state or province, a non-resident is required to maintain insurance with respect to the operation or use of a motor vehicle in such state or province and such insurance requirements are greater than the insurance provided by the policy, the limits of The Travelers' liability and kinds of coverage afforded by the policy shall be as set forth in such law, in lieu of the insurance otherwise provided by the policy, but only to the extent required in such law and only with respect to the operation or use of a motor vehicle in such state or province;

COMPREHENSIVE AUTOMOBILE LIABILITY FORM
(Forming part of Section III)

provided that the insurance under this provision shall be reduced to the extent that there is other valid and collectible insurance under this or any other motor vehicle insurance policy. In no event shall any person be entitled to receive duplicate payments for the same elements of loss.

5. This form is subject to:

- (a) any declarations or endorsements indicated as applicable to it; and
- (b) the GENERAL PROVISION FORM as amended above.

Special State Provisions — Any automobile principally garaged in a state listed below is subject to the exception applicable to that state.

- 1. Maryland, New Hampshire, North Carolina, Vermont — Contamination or Pollution — It is agreed that with respect to bodily injury and property damage the exclusions relating to any emission, discharge, seepage, release or escape of any liquid, solid, gaseous or thermal waste or pollutant are hereby deleted.
- 2. Virginia — The failure or refusal of the Insured to cooperate with or assist The Travelers which prejudices The Travelers' defense of an action for damages arising out of the operation or use of an automobile shall constitute non-compliance with the requirements of the policy that the Insured shall cooperate with and assist The Travelers.

To be used with Dec. 307A.

This endorsement modifies such insurance as is afforded by the COMPREHENSIVE AUTOMOBILE LIABILITY FORM.

It is agreed that the insurance applies with respect to the individual named in Item 2. of the GENERAL DECLARATIONS, as to the following:

1. **Additional Definitions** — When used in reference to such insurance (including this and other endorsements forming a part of Section III):

"Farm automobile" means an automobile of the truck type with a load capacity of 1500 pounds or less not used for business or commercial purposes other than farming;

"Individual Named Insured" means the person named in Item 2. of the GENERAL DECLARATIONS and, except with respect to notice of cancellation, includes his spouse if a resident of the same household; provided that, if the person named shall die, the insurance afforded by this endorsement shall apply to the surviving spouse (if a resident of the household at the time of such death), as Individual Named Insured;

"Relative" means a relative of the Individual Named Insured who is a resident of the same household; and

"Utility automobile" means an automobile, other than a farm automobile, with a load capacity of 1500 pounds or less, with a pick-up body, sedan delivery or panel truck type not used for business or commercial purposes.

2. **Liability Coverages**

A. **Use of Non-Owned Automobiles** — The insurance does not apply to bodily injury or property damage arising out of the use of any non-owned automobile in a business of which the Individual Named Insured (or exclusively a combination of Named Insureds) is not the sole owner, unless the bodily injury or property damage results from the actual operation or occupancy of the automobile by the Individual Named Insured or his private chauffeur or domestic servant.

B. **Fellow Employees** — The insurance also applies to the Individual Named Insured while engaged in the business of his employer with respect to bodily injury to any fellow employee of such Individual Named Insured injured in the course of his employment.

C. **Family Automobile Extensions** — If the Individual Named Insured owns during the policy period a private passenger, farm or utility automobile which is maintained or used principally for purposes other than the automobile business:

(1) The insurance also applies to a relative, as Insured, while using a private passenger automobile (or trailer designed for use therewith) not owned by or furnished or available for the regular use of any relative; provided his operation or (if he is not operating) the other actual use of such automobile is with the permission or reasonable belief to be with the permission, of the owner and is within the scope of such permission, and provided that such use is not in any business or occupation of the relative.

(2) Provision 1. (a) of Part B. (Exclusions) of the COMPREHENSIVE AUTOMOBILE LIABILITY FORM does not apply to liability assumed with respect to the operation or occupancy by the Individual Named Insured or relative of:

(a) a private passenger, farm or utility automobile (or a trailer used therewith) not furnished for the regular use of any such person, except while such automobile or trailer is being used as a public or livery conveyance; or

(b) any other automobile except while being maintained or used in any business or occupation.

INDIVIDUAL NAMED INSURED ENDORSEMENT
(Forming part of Section III)

Form 3370A
Page 2 of 3

Medical Payments Coverage

Persons Insured - Division 2 - The Individual Named Insured and any relative shall be an Insured under this insurance. If the Individual Named Insured shall die, any person who was an Insured at the time of such death shall continue to be an Insured.

Use of Non-Owned Automobiles - If insurance is afforded under Division 1 with respect to any automobile owned by the Individual Named Insured, the insurance also applies to any other automobile not owned by the Individual Named Insured, if the bodily injury results from its operation or occupancy by the Individual Named Insured or its operation on his behalf by his private chauffeur or domestic servant, subject to paragraph D. below.

C. Family Automobile Extensions

- (1) If such owned automobile is a private passenger, farm or utility automobile which is maintained or used principally for purposes other than automobile business, the insurance also applies, under Division 1, to any other private passenger, farm or utility automobile or home, office, store, display or passenger trailer which is not owned by, or furnished for the regular use of, or used in the business or occupation of any relative, provided the bodily injury results from the operation or occupancy of such automobile by the relative and such operation or occupancy is with the permission, or reasonably believed to be with the permission, of the owner.
- (2) The exclusion under Division 1 of Coverage F of the COMPREHENSIVE AUTOMOBILE LIABILITY FORM with respect to bodily injury arising out of and in the course of employment by the Named Insured does not apply to bodily injury resulting from the operation or occupancy of an automobile by the Individual Named Insured or a relative, unless the injured person is employed or otherwise engaged in the automobile business and benefits for such injury are in whole or in part either payable or required to be paid under any workmen's compensation law.

D. Additional Limitations

- (1) The insurance under Division 1 does not apply to bodily injury to any person while occupying a trailer located for use as a residence or premises.
- (2) If insurance is not afforded with respect to hired automobiles, the insurance under Division 1 does not apply to bodily injury to any person injured:
 - (a) while occupying a vehicle used as a public or livery conveyance; or
 - (b) while such person is employed or otherwise engaged in any business or occupation, unless the bodily injury results from operation or occupancy of a private passenger automobile by the Individual Named Insured or by his private chauffeur or domestic servant, or of a trailer used therewith or with a private passenger or utility automobile owned by the Individual Named Insured.

Exclusions

The insurance afforded by this endorsement:

- (1) does not apply to bodily injury or property damage with respect to which an Insured under Section III of the policy is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability;
- (2) is not subject to Provision 1. (f) of Part B. (Exclusions) of the COMPREHENSIVE AUTOMOBILE LIABILITY FORM or to Provision 2. (Sections II and III) of Part B. (Nuclear Energy Provisions) of the GENERAL PROVISIONS FORM.

5. Cancellation by The Travelers Limited — After Section III of the policy has been in effect for 60 days or, if the insurance under Section III is a renewal, effective immediately. The Travelers shall not exercise its right to cancel the insurance afforded to the Individual Named Insured with respect to private passenger, farm or utility automobiles for bodily injury liability and property damage liability unless:
- A. The Individual Named Insured fails to discharge when due any of his obligations in connection with the payment of premium for the policy or any instalment thereof whether payable directly or under any premium finance plan;
 - B. The insurance was obtained through fraudulent misrepresentation;
 - C. The Insured violates any of the terms and conditions pertaining to Section III;
 - D. The Individual Named Insured or any other operator, either resident in the same household or who customarily operates an automobile insured under Section III:
 - (1) has had his driver's license suspended or revoked during the period Section III coverage is in effect;
 - (2) is or becomes subject to epilepsy or heart attacks, and such individual cannot produce a certificate from a physician testifying to his unqualified ability to operate a motor vehicle;
 - (3) is or has been convicted of or forfeits bail, during the 36 months immediately preceding the effective date of this endorsement or during the period this endorsement is in effect, for:
 - (a) any felony;
 - (b) criminal negligence resulting in death, homicide or assault, arising out of the operation of a motor vehicle;
 - (c) operating a motor vehicle while in an intoxicated condition or while under the influence of drugs;
 - (d) leaving the scene of an accident without stopping to report;
 - (e) theft of a motor vehicle;
 - (f) making false statements in an application for a driver's license;
 - (g) a third violation, committed within a period of 18 months, of: (i) any ordinance or regulation limiting speed of motor vehicles; or (ii) any of the provisions in the motor vehicle laws of any state, the violation of which constitutes a misdemeanor, whether or not the violations were repetitions of the same offense or were different offenses; or
 - E. The Travelers issues to the Individual Named Insured a Family Automobile Policy affording bodily injury liability and property damage liability coverage with limits of liability equal to those afforded herein and applicable to those private passenger, farm or utility automobiles to which the policy applies. Such Family Automobile Policy shall commence on the effective date of cancellation of Section III and expire on the next anniversary of the effective date of Section III or on the policy's expiration date, whichever is the earlier date, and shall contain an agreement that The Travelers shall not exercise its right to cancel the insurance afforded under such policy unless one or more of the events designated in Paragraph A., B., C. or D. of this Provision 5. occurs.

FOR USE IN STATES OF ALASKA,
HAWAII, PUERTO RICO, TEXAS
AND VIRGINIA

SECTIONS II AND III COVERAGE DECLARATIONS LL
(Applicable to Coverage Liability Form)
(Virginia)

1. Policy No: **650-237A714-2-IND-76**

Issue Date:

2. **Effective Date** — These declarations are effective on the policy's effective date stated in the GENERAL DECLARATIONS unless otherwise stated hereafter. These declarations are effective _____ and replace any SECTIONS II AND III COVERAGE DECLARATIONS LL of a prior effective date.

3. **Coverage Afforded and Limits of Liability** — Insurance is afforded for such of the following coverages for which limits of liability are inserted. The limit of The Travelers' liability for each such coverage shall be as stated herein.

Coverage	Limits of Liability	
	Single Limit	Separate Limits
G. Bodily Injury	100,000 { \$ each occurrence \$ aggregate	{ \$ each person \$ each occurrence \$ aggregate
H. Property Damage		{ \$ each occurrence \$ aggregate
Expenses for Medical Services		
I. Automobile Medical Payments \$		each person
J. Premises Medical Payments \$	each person	

Garagekeepers' Legal Liability

	Limits of Liability			
	Location #1	Location #2	Location #3	Location #4
K-1. Fire and Explosion	\$ 12,000	\$	\$	\$
K-2. Theft	\$ 12,000	\$	\$	\$
K-3. Riot, Civil Commotion, Malicious Mischief or Vandalism	\$ 12,000	\$	\$	\$
K-4. Collision or Upset	\$ 12,000	\$	\$	\$

U. Uninsured Motorists

Limits of Liability	
Damages for Bodily Injury	{ \$ each person \$ each accident
Damages for Property Damage —	
Applicable only as indicated in Item 7.c. herein	{ \$ each accident

4. Deductibles

- a. Coverage H - \$100 deductible applies to the completed operations hazard in absence of an entry hereafter: \$_____ deductible applies.
- b. Coverage K-3 - \$25 deductible applies to loss by malicious mischief or vandalism in absence of an entry hereafter: \$_____ deductible applies.
- c. Coverage K-4 - \$50 deductible applies in absence of an entry hereafter: \$_____ deductible applies.

5. Coverages K-1, K-2, K-3 and K-4

- a. Maximum number of customers' automobiles stored: _____ Location No. _____ Number _____

6. Coverages G and H

- a. Automobile Hazard - Insertion of an "X" below designates the automobile hazard for garage operation insurance is afforded.

☐ Automobile Hazard 1

☒ Automobile Hazard 2

- b. Automobiles Furnished for Regular Use - Applicable when Automobile Hazard 1 applies

- (1) All automobiles owned by the Named Insured are used principally in garage operations of the Named Insured except automobiles: (a) assigned to the Named Insured, a partner therein or a member thereof, or an officer thereof, or, if a resident of the same household, the spouse of any of them; or (b) furnished to any person or organization named in paragraph (2) below.
- (2) Automobiles owned by the Named Insured are furnished to the following persons or organizations for regular use for other business purposes or for non-business purposes. (This list does not include the Named Insured, any partner, member, executive officer or, if a resident of the same household, the spouse of any of them. If more than one automobile is furnished concurrently to such person and then shows only the number of automobiles so furnished in excess of one):

Name of Person or Organization

Number of
Such Automobiles

7. Coverage U

- a. Designated Insured:

SECTIONS II AND III COVERAGE DECISIONS LL
(Applicable to Garage Liability Policy)
(Virginia)

b. Description of Insured Highway Vehicles — Insurance is afforded only with respect to the insured highway vehicles for which an "X" is inserted:

- (1) ☐ Any Automobile owned by the Named Insured.
- (2) ☐ Any private passenger automobile owned by the Named Insured.
- (3) ☐ Any highway vehicle to which are attached dealer's license plates issued to the Named Insured.
- (4) ☐ Any mobile equipment owned or leased by and registered in the name of the Named Insured.
- (5) ☐ Other — describe:

c. Applicable Endorsement — Insurance with respect to Coverage U is provided by the endorsement applying to the state where the insured highway vehicle is principally garaged or registered, as indicated below. Insurance for property damage is afforded only when an asterisk is indicated opposite the symbol of an endorsement.

State or Jurisdiction

Symbol of Endorsement

A. INSURING AGREEMENTS

1. Garage Liability — Coverage G (Bodily Injury) and Coverage H (Property Damage) — The Travelers will pay on behalf of the *Insured* all sums which the *Insured* shall become legally obligated to pay as damages because of: (a) *bodily injury*; (b) *property damage*; to which this insurance applies, caused by an *occurrence* and arising out of *garage operations* including only the *automobile hazard* for which insurance is afforded indicated in the declarations.

The Travelers shall have the right and duty to defend any suit against the *Insured* seeking damages on account of such *bodily injury* or *property damage*, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of a claim or suit as it deems expedient, but The Travelers shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of The Travelers' liability has been exhausted by payment of judgments or settlements.

2. Expenses For Medical Services — The Travelers will pay all reasonable *medical expense* incurred within one year from the date of accident:
- (a) under Coverage I (Automobile Medical Payments) — to or for each person who sustains *bodily injury*, caused by accident, while occupying any *automobile* which is being used by a person for whom *bodily injury* liability insurance is afforded under Coverage G with respect to such use;
 - (b) under Coverage J (Premises Medical Payments) — to or for each person who sustains *bodily injury*, caused by accident, and arising out of the ownership, maintenance or use of the *premises* for the purposes of a *garage* and all operations necessary or incidental thereto.
3. Garagekeepers' Insurance — The Travelers will pay on behalf of the *Insured* all sums which the *Insured* shall become legally obligated to pay as damages because of:

- (a) Coverage K-1 (Comprehensive) — *loss* to an *automobile* from any cause except collision; but, for the purpose of this coverage, breakage of glass and *loss* caused by missiles, falling objects, fire, theft or larceny, windstorm, hail, earthquake, explosion, riot or civil commotion, malicious mischief or vandalism, water, flood or colliding with a bird or animal, shall not be deemed *loss* caused by collision;

- (b) Coverage K-2 (Specified Perils) — *loss* to an *automobile* caused by:

- (a) fire or explosion; or
- (b) theft or larceny; or
- (c) riot or civil commotion; or
- (d) malicious mischief or vandalism

- (c) Coverage K-3 (Collision or Upset) — *loss* to an *automobile* or other property of a kind customarily left in the care or custody of a *garage* caused by *collision*;

occurring while such *automobile* or other property is in the custody of the *Insured* for safekeeping, storage, service or repair: (1) at a location stated in the declarations or while temporarily removed therefrom in the ordinary course of the *Insured's* business; or (2) away from the premises if the *Insured* is attending such *automobile* or property.

The Travelers shall have the right and duty to defend any suit against the *Insured* seeking damages on account of such *loss*, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but The Travelers shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of The Travelers' liability has been exhausted by payment of judgments or settlements.

When coverage is indicated for "Direct Coverage — Excess or Primary" in the declarations, The Travelers will pay for *loss* or *damage* under the coverage provided above regardless of the *Named Insured's* legal liability.

4. Supplementary Payments — Coverages G, H and P — The Travelers will pay, in addition to the applicable limit of liability:

- (a) all expenses incurred by The Travelers, all costs taxed against the *Insured* in any suit defended by The Travelers and all interest on the amount of any judgment therein which accrues after entry of the judgment and before The Travelers has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of The Travelers' liability thereon;
- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this insurance and the cost of bail bonds required of the *Insured* because of accident or traffic violation arising out of the use of any vehicle to which this insurance applies, not to exceed \$250 per bail bond, but The Travelers shall have no obligation to apply for or furnish any such bonds;
- (c) expenses incurred by the *Insured* for first aid to others at the time of an accident, for *bodily injury* to which this insurance applies;
- (d) reasonable expenses incurred by the *Insured* at The Travelers' request in assisting The Travelers in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed \$25 per day.

5. Supplementary Payments — Coverages K-1, K-2 and K-3 — The Supplementary Payments provisions for Coverages G, H and P are applicable to the insurance afforded for Coverages K-1, K-2 and K-3 except for the provisions of paragraph (b) which apply to bail bonds and of paragraph (c), which apply to first aid.

B. EXCLUSIONS

1. Coverages G and H do not apply:

- (a) to liability assumed by the *Insured* under any contract or agreement except an *incidental contract*; but this exclusion does not apply to a warranty of fitness or quality of the *Named Insured's* products or a warranty that work performed by or on behalf of the *Named Insured* will be done in a workmanlike manner;

- b) to any obligation for which the *Insured* or any carrier as his insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
- c) to *bodily injury* to any employee of the *Insured* arising out of and in the course of his employment by the *Insured* or to any obligation of the *Insured* to indemnify another because of damages arising out of such injury; but this exclusion does not apply to: (1) any such injury arising out of and in the course of domestic employment by the *Insured* unless benefits therefor are in whole or in part either payable or required to be provided under any workers' compensation law; or (2) liability assumed by the *Insured* under an *Incidental contract*;
- d) with respect to a *garage operation*, to *bodily injury* or *property damage* arising out of the ownership, maintenance, operation, use, loading or unloading of any: (1) haulaway, tank truck or tank trailer (or any vehicle used therewith) owned, hired or held for sale by the *Named Insured* and not being delivered, demonstrated or tested; (2) *automobile*: (i) while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity; (ii) while rented to others by the *Named Insured* unless to a salesman for use principally in the business of the *Named Insured*; or (iii) while being used by the *Insured* as a public or livery conveyance or for carrying property for a charge; (3) aircraft;
- e) to *bodily injury* or *property damage* arising out of the ownership, maintenance, operation, use, loading or unloading of: (1) any watercraft owned or operated by, or rented or loaned to any *Insured*; or (2) any other watercraft operated by any person in the course of his employment by any *Insured*; but this exclusion does not apply to watercraft while ashore on *premises* owned by, rented to or controlled by the *Named Insured*;
- f) to *property damage* to: (1) property owned by, rented to or held for sale by the *Insured*; or (2) property in the care, custody or control of or being transported by the *Insured* or property as to which the *Insured* is for any purpose exercising physical control; but part (2) of this exclusion does not apply to *property damage* arising out of the ownership, maintenance or use at the *premises* of any automobile servicing hoist designed to raise the entire *automobile* or of any elevator;
- g) to *property damage* to *premises* alienated by the *Named Insured* arising out of such *premises* or any part thereof;
- h) to *loss of use* of tangible property which has not been physically injured or destroyed resulting from: (1) a delay in or lack of performance by or on behalf of the *Named Insured* of any contract or agreement; or (2) the failure of the *Named Insured's products* or work performed by or on behalf of the *Named Insured* to meet the level of performance, quality, fitness or durability warranted or represented by the *Named Insured*; but this exclusion does not apply to *loss of use* of other tangible property resulting from the sudden and accidental physical injury to or destruction of the *Named Insured's products* or work performed by or on behalf of the *Named Insured* after such products or work have been put to use by any person or organization other than an *Insured*;
- i) to *property damage* to any of the *Named Insured's products* if such *property damage* results from a condition existing in such product or any part thereof at the time possession is relinquished to the purchaser thereof;
- j) to *property damage* to work performed by or on behalf of the *Named Insured* arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;
- k) to damages claimed for the withdrawal, inspection, repair, replacement, or *loss of use* of the *Named Insured's products* or work completed by or for the *Named Insured* or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
- l) to *bodily injury* or *property damage* due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to: (1) liability assumed by the *Insured* under an *incidental contract*; or (2) expenses for first aid under Insuring Agreement A. 5. (Supplementary Payments);
- m) to *bodily injury* or *property damage* for which the *Insured* or his indemnitee may be held liable: (1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages; or (2) if not so engaged, as an owner or lessor of *premises* used for such purposes; if such liability is imposed: (i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage; or (ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person; but part (ii) of this exclusion does not apply with respect to liability of the *Insured* or his indemnitee as an owner or lessor described in (2) above;
- n) to *bodily injury* or *property damage* arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;
- o) to *bodily injury* or *property damage* arising out of the ownership, maintenance, operation, use, loading or unloading of any escalator at *premises* owned, rented or controlled by the *Named Insured*; but this exclusion does not apply to an escalator at *premises* which the *Named Insured* owns, rents or controls only in part unless the *Named Insured* operates, maintains or controls the escalator;
- p) to *bodily injury* or *property damage* arising out of and occurring in the course of structural alterations, new construction or demolition operations performed for the *Named Insured* by independent contractors, or acts or omissions of the *Named Insured* in connection with his general supervision of any such operations; but this exclusion does not apply to operations of which The Travelers has written notice within 30 days after the commencement thereof.

Coverage I does not apply — to *bodily injury* sustained by any employee of an *Insured* under the *bodily injury* liability insurance arising out of and in the course of his employment by such *Insured*.

Coverage J does not apply to:

- a) *bodily injury* sustained by any person while *occupying* or through being struck by an *automobile* away from the *premises*;

- (b) *bodily injury* sustained by any person practicing, instructing or participating in any physical training, sport, athletic activity or game;
 - (c) *bodily injury* sustained by the *Named Insured*, any partner therein or member thereof, or any employee of the *Named Insured* arising out of and in the course of his employment by the *Named Insured*;
 - (d) *bodily injury* sustained by any person while engaged in maintenance, alteration, demolition or new construction operations for the *Named Insured* or for any lessor of the *premises*;
 - (e) *bodily injury* resulting from the selling, serving or giving of any alcoholic beverage: (1) in violation of any statute, ordinance or regulation; (2) to a minor, (3) to a person under the influence of alcohol or (4) which causes or contributes to the intoxication of any person, *Named Insured* is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages not so engaged, is an owner or lessor of *premises* used for such purposes but only part (1) of this exclusion applies when the *Named Insured* is such an owner or lessor;
 - (f) any *medical expense* for services by the *Named Insured*, any employee thereof, or any person or organization under contract to the *Named Insured* to provide such services;
 - (g) *bodily injury* arising out of: (1) the ownership, maintenance, operation, use, loading or unloading of any escalator at *premises* owned, rented or controlled by the *Named Insured*; but this exclusion (g) (1) does not apply to an escalator at *premises* which the *Named Insured* owns, rents or controls only in part unless the *Named Insured* operates, maintains or controls the escalator; (2) structural alterations, construction or demolition operations for the *Named Insured* by independent contractors or their subcontractors, or omissions or negligent acts of the *Insured* in connection therewith.
4. Coverages I and J do not apply:
- (a) as respects a *garage operation*, to *bodily injury* sustained by an employee of any *garage* if the accident arises out of the operation thereof and if benefits therefor, are either payable or required to be provided under any workers' compensation law; or
 - (b) to *bodily injury* due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing.
5. Coverages K-1, K-2 and K-3 do not apply:
- (a) to liability of the *Insured* under any agreement to be responsible for *loss*;
 - (b) to an *automobile* or other property: (1) owned by or rented to (i) the *Named Insured* or a partner therein or a member thereof, or spouse of any one of them if a resident of the same household; (ii) an employee of the *Named Insured* or his spouse if a resident of the same household, unless the *automobile* or other property is in the custody of the *Named Insured* under an agreement for which a specific premium charge has been made; (2) in the custody of the *Named Insured* for demonstration or sale;
 - (c) to *loss* by theft due to any fraudulent, dishonest or criminal act by the *Named Insured*, a partner therein, a member thereof or employee, trustee or authorized representative thereof, whether working or otherwise and whether acting alone or in collusion with others;
 - (d) to *loss* arising out of the use of any elevator, or any automobile servicing hoist designed to raise an entire *automobile*;
 - (e) to defective parts, accessories or materials furnished or to faulty work performed on an *automobile*, out of which *loss* arises;
 - (f) to an *automobile* or other property while the *automobile* is being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity;
 - (g) to *loss* due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;
 - (h) to *loss* due to radioactive contamination; and
 - (i) with respect to the Comprehensive Coverage or Specified Perils Coverage to damages for *loss* of use of an *automobile* resulting from explosion or malicious mischief or vandalism.

C. PERSONS INSURED

1. Coverages G and H

- a. Each of the following is an *Insured* to the extent set forth below:

(1) the *Named Insured*;

(2) with respect to the *garage operations* other than the *automobile hazard*:

- (a) any employee, director or stockholder of the *Named Insured* while acting within the scope of his duties as such;
- (b) if the *Named Insured* is designated in the GENERAL DECLARATIONS as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the spouse of the *Named Insured* with respect to the conduct of such a business;
- (c) if the *Named Insured* is designated in the GENERAL DECLARATIONS as a partnership or joint venture, any partner or member thereof but only with respect to his liability as such; or
- (d) any person or organization having a financial interest in the business operations of the *Named Insured*;

(3) with respect to the *automobile hazard*:

- (a) any person while using, with the permission of the *Named Insured*, any *automobile* to which the insurance applies under the *automobile hazard*, provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission.

GARAGE LIABILITY FORM
Forming part of Sections II and III)
(Virginia)

Symbol: 1-2-1000
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3. but with respect to *bodily injury* or *property damage* arising out of the loading or unloading of an *automobile*, such person shall be an *Insured* only if he is: (i) a borrower of the *automobile*; or (ii) a partner, member or employee of the *Named Insured* or of such borrower; or

(b) any other person or organization but only with respect to his or its liability because of acts or omissions of the *Named Insured* or an *Insured* under (a) above.

b. None of the following is an Insured:

(1) any person while engaged in the business of his employer with respect to *bodily injury* to any fellow employee of such person injured in the course of his employment;

(2) any person or organization, other than the *Named Insured* or its directors, stockholders, partners, members or employees while acting within the scope of their duties as such, with respect to operations performed by independent contractors for the *Named Insured*;

(3) any person or organization, other than the *Named Insured*, with respect to any *automobile*:

(a) owned by such person or organization or by a member (other than the *Named Insured*) of the same household; or

(b) possession of which has been transferred to another by the *Named Insured* pursuant to an agreement of sale;

(4) any partner, member or employee of the *Named Insured* or the spouse of such person, with respect to *property damage* to property owned by, rented to or held for sale by the *Named Insured*, or property in the care, custody or control of or transported by the *Named Insured*.

This insurance does not apply to *bodily injury* or *property damage* arising out of the conduct of any partnership or joint venture of which the *Insured* is a partner or member and which is not designated in Item 2. of the GENERAL DECLARATIONS as a *Named Insured*.

Coverages K-1, K-2 and K-3 — Each of the following is an *Insured* to the extent set forth below:

(a) the *Named Insured*;

(b) if the *Named Insured* is designated in the GENERAL DECLARATIONS as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the spouse of the *Named Insured* with respect to the conduct of such a business;

(c) any employee, director or stockholder of the *Named Insured* while acting within the scope of his duties as such;

(d) if the *Named Insured* is designated in the GENERAL DECLARATIONS as a partnership or joint venture, any partner or member thereof but only with respect to his liability as such.

This insurance does not apply to *property damage* arising out of the conduct of any partnership or joint venture of which the *Insured* is a partner or member and which is not designated in Item 2. of the GENERAL DECLARATIONS as a *Named Insured*.

DEDUCTIBLES

Coverage H — With respect to *property damage* to any *automobile* arising out of work completed by or for the *Named Insured*, upon such *automobile* or part thereof, the deductible amount stated in the declarations shall be deducted from the total amount of all sums which the *Insured* shall become legally obligated to pay as damages on account of *property damage* to such *automobile* as a result of any one *occurrence*, and the limit of The Travelers' liability shall be the difference between such deductible amount and the limit of liability for Coverage H stated in such declarations.

Coverages K-1 and K-2 — With respect to each *automobile* the deductible amount stated in the declarations shall be deducted from each *loss* caused by theft or malicious mischief or vandalism.

Coverage K-3 — The deductible amount stated in the declarations shall be deducted from the total amount of all sums which the *Insured* shall become legally obligated to pay as damages because of each *loss*, and the limit of The Travelers' liability shall be the difference between such deductible amount and the limit of liability stated in such declarations.

All of the provisions of this insurance apply irrespective of the application of any deductible amount and The Travelers may pay any part or all of the deductible amount to effect settlement of any claim or suit and, upon notification of the action taken, the *Insured* shall promptly reimburse The Travelers for such part of the deductible amount as has been paid by The Travelers.

LIMITS OF LIABILITY

Regardless of the number of: (a) *Insureds* under the policy; (b) persons or organizations who sustain *bodily injury*, *property damage* or *loss*; (c) claims made or suits brought on account of *bodily injury*, *property damage* or *loss*; or (d) *automobiles* to which this form applies, The Travelers' liability is limited as described below:

1. Coverage G — With respect to a *garage operation*, the limit of *bodily injury* liability stated in the declarations as applicable to "each person" is the limit of The Travelers' liability for all damages, including damages for care and loss of services, because of *bodily injury* sustained by one person as the result of any one *occurrence*; but subject to the above provisions respecting "each person", the total liability of The Travelers for all damages, including damages for care and loss of services, because of *bodily injury* sustained by two or more persons as the result of any one *occurrence* shall not exceed the limit of *bodily injury* liability stated in the declarations as applicable to "each occurrence".

2. Coverage H — Subject to application of any deductible stated in the declarations, the total liability of The Travelers for all damages because of all *property damage* sustained by one or more persons or organizations as the result of any one *occurrence* shall not exceed the limit of *property damage* liability stated in the declarations as applicable to "each occurrence".

Repairs by the *Named Insured* shall be adjusted at actual cost to him of labor and materials.

3. Coverages G and H — For the purpose of determining the limit of The Travelers' liability, all *bodily injury* and *property damage* arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one *occurrence*.
4. Coverages I and J — The limit of liability for medical payments stated in the declarations as applicable to "each person" is the limit of The Travelers' liability for all *medical expense* incurred by or on behalf of each person who sustains *bodily injury* as the result of any one accident.
5. Coverages K-1, K-2 and K-3 —
- (a) *Loss to Automobiles* — The limit of the company's liability for *loss* at each location is the limit stated in the schedule as applicable to that location less the applicable deductible stated in the schedule for *loss* caused by *collision*, theft, malicious mischief or vandalism. The maximum deductible stated in the schedule is the most that will be deducted for *loss* caused by theft, malicious mischief or vandalism.
- If, however, at the time of *loss*, at the location where the *loss* occurred there were more *automobiles* than the maximum number stated in the schedule for such location the company shall not be liable for a greater proportion of the amount for which it otherwise would be liable than the maximum number of such *automobiles* stated for such location bears to the number of *automobiles* at such location at the time the *loss* occurred.
- (b) *Collision Loss to Other Property* — Subject to the application of the deductible amount stated in the schedule, the limit of liability applicable to the Collision Coverage for *loss* to property of a kind customarily left in the custody or care of a *garage*, other than *automobiles*, is \$5,000 which sum is included in the applicable limit of liability for *loss* at that location.
- Repairs by the *Named Insured* shall be adjusted at actual cost to him of labor and materials.

F. DEFINITIONS

- "Automobile" means a land motor vehicle or trailer, other land equipment capable of moving under its own power, equipment for use therewith and animal drawn equipment.
- "Automobile Hazard" means *Automobile Hazard 1* or *Automobile Hazard 2*, whichever is shown as applicable in the declarations.
Automobile Hazard 1 means: (a) the ownership, maintenance or use (including loading and unloading) of any *automobile* for the purpose of *garage operations*; (b) the occasional use for other business purposes and the use for non-business purposes of any *automobile* owned by or in charge of the *Named Insured* and used principally in *garage operations*; and (c) the ownership, maintenance or use of any *automobile* owned by the *Named Insured* while furnished for the use of any person.
Automobile Hazard 2 means the use in connection with *garage operations* of any *automobile* which is neither owned nor hired by the *Named Insured*, a partner therein or a member thereof, or a member of the same household as any such person.
- "Bodily injury" means *bodily injury*, sickness or disease sustained by any person which occurs during the period this insurance is in effect, including death at any time resulting therefrom.
- "Completed operations hazard" includes *bodily injury* and *property damage* arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the *bodily injury* or *property damage* occurs after such operations have been completed or abandoned and occurs away from *premises* owned by or rented to the *Named Insured*. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:
 - when all operations to be performed by or on behalf of the *Named Insured* under the contract have been completed;
 - when all operations to be performed by or on behalf of the *Named Insured* at the site of the operations have been completed; or
 - when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project.Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.
The completed operations hazard does not include *bodily injury* or *property damage* arising out of:
 - operations in connection with the transportation of property, unless the *bodily injury* or *property damage* arises out of a condition in or on a vehicle created by the loading or unloading thereof; or
 - the existence of tools, uninstalled equipment or abandoned or unused materials; or
 - operations for which the classification stated in the policy or in the manuals in use by The Travelers specifies "including completed operations."
- "Elevator" means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including but not limited to shaft, hoistway, stairway, runway, power equipment and machinery; but does not include an automobile carrying hoist, a dumbwaiter, a platform scale or a building hoist without mechanical power or if not attached to the building walls, or a hoist or material hoist used exclusively for construction operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying food and having a compartment height not exceeding four feet.
- "Garage" means an automobile sales agency, repair shop, service station, storage garage or public parking place.
- "Garage operations" means the ownership, maintenance or use of the premises for the purposes of a *garage* and all operations necessary or incidental thereto.
- "Lease of premises" means any written: (a) lease of premises; (b) easement agreement, except in connection with construction or demolition operations; (c) agreement to indemnify a municipality required by municipal ordinance, except in connection with construction operations; (d) license agreement; or (e) elevator maintenance agreement.

GARAGE LIABILITY FORM
Forming part of Sections II and III
(Virginia)

Symbol TLL-240B
Page 6 of 6

"Insured" means any person or organization qualifying as an *Insured* under Part C. (Persons Insured). The insurance afforded applies separately to each *Insured* against whom claim is made or suit is brought, except with respect to the limits of The Travelers' liability.

"Loss" means direct and accidental *loss* of or damage to property which occurs during the period this insurance is in effect.

"Medical expense" as used under Coverages I and J means expenses for necessary medical, surgical, x-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services.

"Mobile equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled; (a) not subject to motor vehicle registration; (b) maintained for use exclusively on *premises* owned by or rented to the *Named Insured*, including the ways immediately adjoining; (c) designed for use principally off public roads; or (d) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment.

"Named Insured" means the person or organization named in Item 2. of the GENERAL DECLARATIONS.

"Named Insured's products" means goods or products manufactured, sold, handled or distributed by the *Named Insured* or by others trading under his name, including any container thereof (other than a vehicle), but **"Named Insured's products"** shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold.

"Occupying" means in or upon or entering into or alighting from.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in *bodily injury* or *property damage* neither expected nor intended from the standpoint of the *Insured*.

"Premises" means *premises* where the *Named Insured* conducts *garage operations*, and includes the ways immediately adjoining but does not include any portion of such *premises* upon which business operations are conducted by any other person or organization.

"Products hazard" includes *bodily injury* and *property damage* arising out of the *Named Insured's products* or reliance upon a representation or warranty made at any time with respect thereto, but only if the *bodily injury* or *property damage* occurs away from *premises* owned by or rented to the *Named Insured* and after physical possession of such products has been relinquished to others.

"Property damage" means: (a) physical injury to or destruction of tangible property which occurs during the period this insurance is in effect, including the *loss* of use thereof at any time resulting therefrom; or (b) *loss* of use of tangible property which has not been physically injured or destroyed provided such *loss* of use caused by an *occurrence* during the period this insurance is in effect.

"Trailer" includes semi-trailer.

ADDITIONAL OR AMENDED CONDITIONS

Limitation of Coverage Under Any Other Liability Insurance — The insurance afforded under any other liability insurance made a part of the policy does not apply to business operations, including the *automobile hazard*, for which insurance is afforded herein.

Insured's Duties in the Event of Loss — Coverages K-1, K-2 and K-3 — The *Insured's* duties in the event of *loss* shall be as provided in that part of General Condition A. 12. (*Named Insured's* or *Insured's* Duties in the Event of Loss or an Occurrence or Suit which may Give Rise to Claim) of the GENERAL PROVISIONS FORM applicable to Sections II and III. In the event of theft or larceny, the *Insured* shall also promptly notify the police.

Coverages I and J — Non-Applicability of Subrogation Condition — General Condition A. 16. (Subrogation) of the GENERAL PROVISIONS FORM applicable to Sections II and III does not apply to Coverages I and J.

Out of State Insurance — If, under the provisions of the motor vehicle financial responsibility law or the motor vehicle compulsory insurance law or any similar law of any state or province, a non-resident is required to maintain insurance with respect to the operation or use of a motor vehicle in such state or province and such insurance requirements are greater than the insurance provided by the policy, the limits of The Travelers' liability and kinds of coverage afforded by the policy shall be as set forth in such law, in lieu of the insurance otherwise provided by the policy, but only to the extent required by such law and only with respect to the operation or use of a motor vehicle in such state or province; provided that the insurance under this provision shall be reduced to the extent that there is other valid and collectible insurance under this or any other motor vehicle insurance policy. In no event shall any person be entitled to receive duplicate payments for the same elements of *loss*.

This form is subject to:

- (a) any declarations or endorsements indicated as applicable to it; and
- (b) the GENERAL PROVISIONS FORM as amended herein.

LIMITATION OF AUTOMOBILE LIABILITY INSURANCE ENDORSEMENT
(Forming part of Section III)

Symbol D-309
Page 1 of 1

to SECTION III COVERAGE DECLARATIONS D, this endorsement modifies such insurance as is afforded by the COM-
PREHENSIVE AUTOMOBILE LIABILITY FORM.

It is agreed that:

1. The insurance does not apply with respect to the type of automobiles for which an "X" is inserted in the declarations.
2. If insurance is afforded with respect to non-owned automobiles, such insurance applies only to the use, including loading and unloading, by any person other than the Named Insured, of any non-owned private passenger automobile in the business of the Named Insured, and the use in such business, by any employee of the Named Insured, of any non-owned automobile of the commercial type if such use of such automobile is occasional and infrequent.
3. If coverage for any hired automobile is shown as excluded in the declarations and an INDIVIDUAL NAMED INSURED ENDORSEMENT forms a part of Section III, Provision 2. C. (1) of such endorsement does not apply to a vehicle furnished or available for the regular use of the Named Insured and the following is added to Provision 2. C. thereof:
 - (3) The insurance also applies to the Named Insured, as Insured, while using a four wheel land motor vehicle designed for use principally upon public roads or a trailer, provided his actual operation or (if he is not operating) the other actual use of such vehicle or trailer is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and provided further the insurance for the Named Insured does not apply with respect to a vehicle or trailer:
 - (a) owned by or furnished or available for the regular use of the Named Insured or any relative;
 - (b) while maintained or used by the Named Insured while employed or otherwise engaged in the automobile business;
or
 - (c) while maintained or used by the Named Insured while employed or otherwise engaged in any other business or occupation, unless the vehicle is a private passenger automobile operated or occupied by the Named Insured or by his private chauffeur or domestic servant, or a trailer used therewith or with a private passenger or utility automobile owned by the Named Insured.

Replacement of Prior Insurance — If this policy replaces another policy previously issued by The Travelers and listed below, the Named Insured, by acceptance of this policy, delivers notice to The Travelers to cancel such other policy. Such cancellation will become effective at the time this policy becomes effective, with premium adjustment (if any) on a pro rata basis.

Policy Number:

Named Insured's Business: **AUTOMOBILE REPAIR SHOP**

0. Addresses of Locations and Buildings

Loc. No.	Bldg. No.	Address <i>Same as mailing address unless otherwise specified</i>	Occupancy
1	1	E/S U.S. HWY #1 STAFFORD COUNTY VA	AUTO REPAIR SHOP

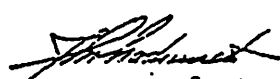
1. Declarations, Forms and Endorsements — The declarations bearing the same year code as these GENERAL DECLARATIONS and forms and endorsements made a part of this policy are those for which symbols are entered below.

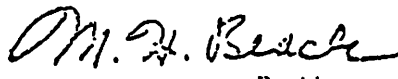
Section	Declarations	Forms and Endorsements
General	001	0130 0230
I		
II		
III	301-2973, 3086, 3104, 3266	AB-304B AC-327, D-363, 3370A, TLL-340
IV	(1,2,3,4,6,10) 354	X7-357C (1,2,3,4,6,10)
V		

Issue Date: _____

IN WITNESS WHEREOF, each company designated in Item 5. for the sections of this policy for which such company is designated as insurer has executed and attested these presents, but this policy shall not be valid unless countersigned by the duly authorized Agent of such company at the agency hereinbefore mentioned.

THE TRAVELERS INDEMNITY COMPANY
THE CHARTER OAK FIRE INSURANCE COMPANY
THE TRAVELERS INDEMNITY COMPANY OF RHODE ISLAND


Secretary


President

85

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SECTIONS II, III AND IV COVERAGE DECLARATIONS X7

(Applicable to Virginia - Sections II,
III and IV Special Provisions Endorsement X7)

Symbol 33
Page 1

1. Policy No: 650-237A174-2-IND-76

Issue Date:

2. Effective Date - These declarations are effective on the policy's effective date stated in the GENERAL DECLARATIONS unless otherwise stated hereafter: These declarations are effective _____ and replace any SECTIONS II AND IV COVERAGE DECLARATIONS X7 of a prior effective date.

3. Applicable Provisions - Only a provision for which an "X" is inserted applies.

"X"

Provision Title and Entries

(1) ☒ ASSISTANCE AND COOPERATION OF THE INSURED

X7-357C (1)

(2) ☒ AMENDMENT OF DECLARATIONS TITLE

X7-357C (2)

(3) ☐ AMENDMENT OF MEDICAL PAYMENT LIMIT OF LIABILITY - INDIVIDUAL NAMED INSURED ENDORSEMENT

X7-357C (3)

(4) ☐ CANCELLATION BY THE TRAVELERS LIMITED

X7-357C (4)

(5) ☐ FIRE DEPARTMENT AND LAW ENFORCEMENT AGENCIES

(6) ☐ RENEWAL

X7-357C (6)

(7) ☐ SCHOOL BUS

(8) ☐ UNINSURED MOTORISTS ENDORSEMENT - INCREASED LIMITS OF LIABILITY -

☐ Damages for Bodily Injury: \$ each person
\$ each accident

☐ Damages for Property Damage: \$ each accident

(9) ☐ GARAGEKEEPERS' LEGAL LIABILITY - VOLUNTARY PAYMENTS

(10) ☐ SINGLE LIMIT OF LIABILITY - GARAGE LIABILITY FORM (VIRGINIA)

X7-357C (10)

- A. Application of this Endorsement - This endorsement applies to an automobile principally garaged in the State of Virginia.
- B. Application of Provisions - Each of the provisions contained in this endorsement applies as indicated herein, and amends such insurance as is specified.

C. Provisions

- (1) 1. ASSISTANCE AND COOPERATION OF THE INSURED - As respects Section III, the following is added to General Condition A. 12. (Named Insured's or Insured's Duties in the Event of Loss or an Occurrence or Suit which may Give Rise to Claim):

"The failure or refusal of the Insured to cooperate with or assist The Travelers which prejudices The Travelers' defense of an action for damages arising out of the operation or use of an automobile shall constitute non-compliance with the requirements of the policy that the Insured shall cooperate with and assist The Travelers."

- (2) 2. AMENDMENT OF DECLARATIONS TITLE - Wherever reference is made in the policy to SECTIONS II AND III COVERAGE DECLARATIONS C, such reference is amended to read SECTIONS II AND III COVERAGE DECLARATIONS LL.

- (3) 3. AMENDMENT OF MEDICAL PAYMENT LIMIT OF LIABILITY - INDIVIDUAL NAMED INSURED ENDORSEMENT - This provision applies when the INDIVIDUAL NAMED INSURED ENDORSEMENT forms part of Section III.

As respects Family Automobile Coverage, Automobile Medical Payments Coverage of the INDIVIDUAL NAMED INSURED ENDORSEMENT is amended to include the following:

"If such owned automobile is a private passenger, farm or utility automobile which is maintained or used principally for purposes other than garage operations, and is subject to the provisions of the INDIVIDUAL NAMED INSURED ENDORSEMENT, then with respect to the insurance afforded under Automobile Medical Payments Division 1 for such automobile the limit of liability for bodily injury sustained by the Named Insured or any relative shall be twice the amount stated in the declarations for Automobile Medical Payments, if a properly installed seat belt was being used by the injured person at the time of the accident.

The provisions of this endorsement do not apply with respect to bodily injury, caused by accident while occupying any owned automobile principally garaged in any state other than the State of Virginia."

- (4) 4. BUS - The provision titled "BUS", of SECTION III SPECIAL PROVISIONS ENDORSEMENT J, is amended as follows:

"If the policy to which the provisions endorsement is attached is issued in Virginia, or is issued elsewhere and applies to an automobile principally garaged or used in Virginia, paragraph 1. of the provision does not apply."

- (5) 5. CAMP, COUNTRY CLUB OR GOLF CLUB BUS - Paragraph 1. of the endorsement titled "CAMP, COUNTRY CLUB OR GOLF CLUB BUS", does not apply if the endorsement is issued in Virginia, or, if the endorsement is issued elsewhere and applies to an automobile principally garaged or used in Virginia, paragraph 1. does not apply to such automobile.

- (6) 6. CANCELLATION BY THE TRAVELERS LIMITED - This provision applies when the INDIVIDUAL NAMED INSURED ENDORSEMENT forms part of Sections III and IV:

Cancellation by The Travelers Limited — After Sections III and IV have been in effect for 60 days or, if Sections III and IV are a renewal, effective immediately, The Travelers shall not during the period such form is in effect exercise its right to cancel unless:

- (a) the Named Insured fails to discharge when due any of his obligations in connection with the payment of premium for the policy or any instalment thereof, whether payable to The Travelers or its agent either directly or indirectly under any premium finance plan or extension of credit; or
- (b) the Named Insured or any other operator who either resides in the same household or customarily operates an automobile insured under Sections III and IV has had his driver's license suspended or revoked after the effective date of Sections III and IV if such Section or Sections have been in effect less than one year or within 90 days prior to the last anniversary of the effective date if such Section or Sections have been in effect longer than one year; or
- (c) The Travelers issues to the Individual Named Insured with respect to whom this endorsement is stated to apply a Family Automobile Policy containing the otherwise applicable provisions of this endorsement which:
 - (1) affords insurance, with respect to those types of automobiles and under coverages and at limits of liability, at least equal to that afforded such Named Insured under Sections III and IV; and
 - (2) commences on the effective date of cancellation of such Named Insured's insurance under Sections III and IV and expires on the next anniversary of the effective date of Sections III and IV or the expiration date, whichever is the earlier date;

provided, however, The Travelers shall have the right to modify any physical damage coverage afforded by the Family Automobile Policy (except coverage for loss caused by collision) by inclusion of a deductible not exceeding \$100 and, if such policy is written for a policy period longer than one year, such policy may be canceled by The Travelers for any cause effective as of any anniversary of the effective date.

This Condition shall apply to each successive policy period for which The Travelers consents to renew or continue Sections III and IV but nothing in this Condition shall obligate The Travelers to renew or continue this insurance.

(7) 7. FIRE DEPARTMENT AND LAW ENFORCEMENT AGENCIES

- a. The insurance under the bodily injury liability coverage of Section III is provided for volunteer firemen and other volunteer workers engaged in rescue squad and ambulance operations with respect to bodily injury to or sickness, disease or death of other volunteer firemen and volunteer workers engaged in rescue squad and ambulance corps operations.
- b. The insurance provided by this provision applies only with respect to bodily injury to another volunteer fireman or volunteer worker arising out of the ownership, maintenance or use of an owned automobile.
- c. Except as stated in paragraphs a. and b. above the insurance does not apply to bodily injury to any volunteer fireman or volunteer worker of the Named Insured while such fireman or worker is engaged in the course of his duties as a volunteer fireman or volunteer worker or while engaged in the maintenance or use of the automobile.

(8) 8. MOVING VANS OR TRUCKS—AGENT — The provision titled "MOVING VANS OR TRUCKS—AGENT", of SECTION III SPECIAL PROVISIONS ENDORSEMENT J is amended as follows:

"When Section III applies to an automobile principally garaged in Virginia, paragraph 1. of the provision does not apply to such automobile."

(9) 9. ORGANIZATION BUS — Paragraph 1. of the ORGANIZATION BUS ENDORSEMENT does not apply if the endorsement is issued in Virginia, or, if the endorsement is issued elsewhere and applies to an automobile principally garaged or used in Virginia, paragraph 1. does not apply to such automobile.

- (10) 10. **PRIVATE LIVERY** — Paragraph 2. of the PRIVATE LIVERY ENDORSEMENT does not apply if the endorsement is issued in Virginia, or, if the endorsement is issued elsewhere and applies to an automobile principally garaged or used in Virginia, paragraph 2. does not apply to such automobile.
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- (11) 11. **PUBLIC LIVERY OR TAXICAB** — Paragraph 2. of the PUBLIC LIVERY OR TAXICAB ENDORSEMENT does not apply if the endorsement is issued in Virginia, or, if the endorsement is issued elsewhere and applies to an automobile principally garaged or used in Virginia, paragraph 2. does not apply to such automobile.
-

- (12) 12. **RENEWAL** — The following provision applies if the INDIVIDUAL NAMED INSURED ENDORSEMENT forms a part of Sections III and IV.

Renewal — The Travelers agrees that it will not refuse to renew or continue Sections III or IV unless a written notice of its intention not to renew or continue is mailed to the Insured named in Item 2. of the GENERAL DECLARATIONS at the address shown in such declarations at least 30 days prior to the expiration date. The mailing of notice as aforesaid shall be sufficient proof of notice. Delivery of such written notice shall be equivalent to mailing. Such notice shall not be required:

- (a) if the Named Insured has failed to discharge when due any of his obligations in connection with the payment of premium for this policy or any instalment thereof, whether payable to The Travelers or its agent either directly or indirectly under any premium finance plan or extension of credit; or
- (b) if the Named Insured fails to pay the premium required by The Travelers for renewal or continuance of this policy.

Notwithstanding this agreement, with respect to any automobile designated in any other automobile insurance policy insurance with respect thereto under any renewal or continuance of the policy shall terminate as of the effective date of such other insurance.

- (13) 13. **SCHOOL BUS**

- a. Paragraph 1. of the SCHOOL BUS ENDORSEMENT does not apply if the endorsement is issued in Virginia, or, if the endorsement is issued elsewhere and applies to an automobile principally garaged or used in Virginia, paragraph 1. does not apply to such automobile.

- b. The following is added to the SCHOOL BUS ENDORSEMENT as paragraph 6.:

"6. Exclusion 1. (c) under Part B. (Exclusions) of the COMPREHENSIVE AUTOMOBILE LIABILITY FORM does not apply to bodily injury to school personnel, except the driver of the automobile when not a pupil."

- (14) 14. **SPECIAL BUS** — Paragraph 1. of the SPECIAL BUS ENDORSEMENT does not apply if the endorsement is issued in Virginia, or, if the endorsement is issued elsewhere and applies to an automobile principally garaged or used in Virginia, paragraph 1. does not apply to such automobile.
-

- (15) 15. **SUPPLEMENTARY UNINSURED MOTORISTS INSURANCE — VIRGINIA**

It is agreed that, with respect to such insurance as is afforded by the policy for damages because of bodily injury and property damage caused by accident and arising out of the ownership, maintenance or use of an uninsured motor vehicle, paragraph (a) of the definition of "uninsured motor vehicle" is amended to include "underinsured motor vehicle", subject to the following provisions:

- (1) If limits of liability for such insurance are stated in SECTIONS II, III AND IV COVERAGE DECLARATIONS X7:

- (a) the limits so stated as applicable to "Bodily Injury" shall apply, in lieu of any limits therefor stated elsewhere in the policy and, subject to all the terms of the policy having reference thereto, shall be the total limit of The Travelers liability for all damages because of bodily injury as the result of any one accident arising out of the ownership, maintenance or use of uninsured motor vehicles:

- (b) the limits so stated as applicable to "Property Damage" shall apply in lieu of any limits therefor stated elsewhere in the policy and, subject to all the terms of the policy having reference thereto, shall be the total limit of The Travelers liability for all damages because of property damage as the result of any one accident arising out of the ownership, maintenance or use of uninsured motor vehicles.
- (2) When used in reference to this insurance (including this and other endorsements forming a part of the policy):
- "underinsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance or use of which, as respects damages because of bodily injury or property damage or both, the sum of the limits of liability under all bodily injury and property damage liability bonds and insurance policies respectively applicable to bodily injury or property damage at the time of the accident is less than the applicable limits of liability under this insurance.
- (3) The Travelers shall not be obligated to make any payment because of bodily injury or property damage to which this insurance applies and which arises out of the ownership, maintenance or use of an underinsured motor vehicle until after the limits of liability under all bodily injury and property damage liability bonds or insurance policies respectively applicable at the time of the accident to damages because of bodily injury or because of property damage have been exhausted by payment of judgments or settlements.
-


(16) 16. GARAGEKEEPERS' LEGAL LIABILITY - VOLUNTARY PAYMENTS

At the request of the Named Insured The Travelers will pay for loss or damage under Coverages K-1, K-2, K-3 and K-4 regardless of the Named Insured's legal liability.

Exclusion 5 (a) of Garage Liability Form (Virginia) is amended to read: to Liability of the Insured under any agreement to be responsible for loss except when "Voluntary Payments" is provided and then only for a covered loss.

Coverages K-1, K-2, K-3 and K-4 do not apply under "Voluntary Payments" to an automobile or other property which is not customers' property in the custody of the Insured for safekeeping, storage or service or repair.

(17) 17. SINGLE LIMIT OF LIABILITY - GARAGE LIABILITY FORM (VIRGINIA)

 Single Limit of Liability - With respect to Automobile Hazards 1 and 2, if a single limit of liability is stated in SECTIONS II AND III COVERAGE DECLARATIONS T or SECTIONS II AND III COVERAGE DECLARATIONS LL for Coverages G and H, the limit stated in the declarations as applicable to "each occurrence" is the total limit of The Travelers' liability stated as described below.

The limit of The Travelers' liability for all damages, including damages for care and loss of services, because of:

- (1) bodily injury sustained by one person as the result of any one occurrence;
- (2) bodily injury sustained by two or more persons as the result of any one occurrence; and
- (3) property damage subject to application of any deductible stated in the declarations, sustained by one or more persons or organizations as the result of any one occurrence;

shall first be the respective amounts of bodily injury and property damage liability insurance specified in the motor vehicle financial responsibility law of the state where the automobile is principally garaged and such amounts shall then be supplemented by any amount remaining within the single limit of liability stated in the declarations, which limit is the total limit of The Travelers' liability for all damages, including damages for care and loss of services, sustained by one or more persons or organizations because of bodily injury and property damage as the result of any one occurrence.

PROTECTION AGAINST UNINSURED MOTORISTS INSURANCE ENDORSEMENT
(Automobile Bodily Injury Liability and Property Damage Liability)
(Virginia)

endorsement in subject to SECTION III COVERAGE DECLARATIONS A and the COMPREHENSIVE AUTOMOBILE LIABILITY FORM or to SECTIONS II AND III COVERAGE DECLARATIONS C and the GARAGE LIABILITY FORM whichever

ect to all of the provisions of this endorsement and to the applicable provisions of the policy The Travelers agree with the
ed Insured as follows:

Insuring Agreement

Coverage U - Damages for Bodily Injury and Property Damage Caused by Uninsured Automobiles - The Travelers will pay, in accordance with Section 38.1-391 of the Code of Virginia and all Acts amendatory thereof or supplementary thereto, all sums which the Insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured automobile because of:

1. bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", sustained by the Insured;
2. injury to or destruction of (a) an insured automobile owned by the Named Insured or his spouse if a resident of the same household and the contents of such automobile, and (b) any other property (except an automobile) owned by an Insured and located in Virginia, hereinafter called "property damage";

caused by accident and arising out of the ownership, maintenance or use of such uninsured automobile.

Additional Definitions

1. "Insured" - The unqualified word "Insured" means:
 - (a) the Named Insured and, while residents of the same household, his spouse and the relatives of either;
 - (b) any other person while occupying an insured automobile; and
 - (c) any person, with respect to damages he is entitled to recover for care or loss of services because of bodily injury to which this endorsement applies.

The insurance applies separately with respect to each Insured hereunder, but neither this provision nor application of the insurance to more than one Insured shall operate to increase the limits of The Travelers' liability.

2. "Insured automobile" - The term "insured automobile" means an automobile registered in Virginia with respect to which the bodily injury and property damage liability coverages of the policy apply.
3. "Uninsured automobile" - The term "uninsured automobile" means:
 - (a) an automobile with respect to the ownership, maintenance or use of which there is, in the amounts specified in the Virginia Motor Vehicle Safety Responsibility Act, neither: (1) cash or securities on file with the Virginia Commissioner of Motor Vehicles; nor (2) a bodily injury and property damage liability bond or insurance policy, applicable at the time of the accident with respect to any person or organization legally responsible for the use of such automobile, or with respect to which there is such a bond or insurance policy applicable at the time of the accident but the company writing the same is or becomes insolvent or denies coverage thereunder; or
 - (b) a hit-and-run automobile as defined;

but the term "uninsured automobile" shall not include:

- (1) an automobile which is owned or operated by a self-insurer within the meaning of the Virginia Motor Vehicle Safety Responsibility Act or any motor carrier law or similar law;

- (2) an automobile which is owned by the United States of America, the State of Virginia, a political subdivision thereof, or an agency of any of the foregoing;
 - (3) a vehicle operated on rails or while located for use as a residence or premises and not as a vehicle; or
 - (4) a vehicle or other equipment designed for use principally off public roads, except while actually upon public roads.
4. "Hit-and-run automobile" - The term "hit-and-run automobile" means an automobile which causes an accident resulting in bodily injury to an Insured or property damage, provided: (a) there cannot be ascertained the identity of either the operator or the owner of such "hit-and-run automobile"; and (b) the Insured or someone on his behalf shall have reported the accident within five days or as soon as practicable to the Commissioner of Motor Vehicles.
 5. "Occupying" - The word "occupying" means in or upon or entering into or alighting from.

C. Policy Period; Territory

This endorsement applies only to accidents which occur during the period this insurance is in effect and within the United States of America, its territories or possessions, or Canada.

D. Exclusions

This endorsement does not apply:

1. to bodily injury to an Insured while occupying an automobile (other than an insured automobile) owned by the Named Insured or his spouse, if a resident of the same household, or through being struck by such an automobile;
2. to bodily injury to an Insured, care or loss of services recoverable by an Insured or injury to or destruction of property of an Insured, with respect to which such Insured or his legal representative shall, without written consent of The Travelers, make any settlement with any person or organization who may be legally liable therefor;
3. to the first \$200 of the total amount of all property damage as the result of any one accident;
4. so as to inure directly or indirectly to the benefit of any insurer of property.

E. Additional or Amended Conditions

1. **Policy Provisions** - None of the Insuring Agreements, Exclusions, Conditions or other provisions of the policy shall apply to the insurance afforded by this endorsement except the Conditions with respect to giving notice of an "Occurrence"; "Subrogation"; "Changes"; "Assignment"; "Cancellation"; "Concealment or Fraud" and any applicable declarations.
2. **Premium** - If during the policy period the number of automobiles owned by the Named Insured or spouse and registered in Virginia or the number of Virginia dealer's license plates issued to the Named Insured changes, the Named Insured shall notify The Travelers during the policy period of any change and the premium shall be adjusted in accordance with the manuals in use by The Travelers. If the earned premium thus computed exceeds the advance premium paid, the Named Insured shall pay the excess to The Travelers; if less, The Travelers shall return to the Named Insured the unearned portion paid by such Insured.
3. **Proof of Claim** - As soon as practicable, the Insured or other person making claim shall give to The Travelers written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable hereunder. Proof of claim shall be made upon forms furnished by The Travelers unless The Travelers shall have failed to furnish such forms within 15 days after receiving notice of claim.

The injured person shall submit to physical examinations by physicians selected by The Travelers when and as The Travelers may reasonably require and he, or in the event of his incapacity his legal representative, or in the event of his death his legal representative or the person or persons entitled to sue therefor shall upon each request from The Travelers execute authorization to enable The Travelers to obtain medical reports and copies of records.

The Insured or other person making claim for damage to property shall file proof of loss with The Travelers within 60 days after the occurrence of loss, unless such time is extended in writing by The Travelers in the form of a sworn statement setting forth the interest of the Insured and of all others in the property affected, any encumbrances thereon, the actual cash value thereof at time of loss, the amount, place, time and cause of such loss, and the description and amounts of all other insurance covering such property. Upon The Travelers' request, the Insured shall exhibit the damaged property to The Travelers.

With respect to claims alleged to have arisen out of the ownership, maintenance or use of a hit-and-run automobile if the Insured has not obtained a judgment against John Doe, the liability of the uninsured motorist may be established, as between the Insured and The Travelers, by filing with The Travelers within a reasonable time after the accident a statement under oath that the Insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, setting forth the facts in support thereof, and shall present clear and convincing evidence that there was a hit-and-run automobile involved in the accident.

4. **Notice of Legal Action** -- If, before The Travelers makes payment of loss hereunder, the Insured or his legal representative shall institute any legal action for bodily injury or property damage against any person or organization legally responsible for the use of an automobile involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to The Travelers by the Insured or his legal representative.
5. **Limits of Liability**
 - (a) The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of The Travelers' liability for all damages, including damages for care or loss of services, because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting each person, the limit of such liability stated in the declarations as applicable to "each accident" is the total limit of The Travelers' liability for all damages, including damages for care or loss of services, because of bodily injury sustained by two or more persons as the result of any one accident.
 - (b) The limit of property damage liability stated in the declarations as applicable to "each accident" is the total limit of The Travelers' liability for all damages arising out of injury to or destruction of all property of one or more Insureds as a result of any one accident.
 - (c) If claim is made hereunder and claim is also made against any person who is an Insured under the bodily injury liability or property damage liability coverages of the policy because of bodily injury or property damage sustained in an accident by a person who is an Insured hereunder, any payment made hereunder to or for any such person shall be applied in reduction of any amount which he may be entitled to recover from any person who is an Insured under the bodily injury liability or property damage liability coverages.
 - (d) Any amount payable hereunder because of bodily injury or property damage sustained in any accident by a person who is an Insured under this coverage shall be reduced by all sums paid on account of such injury, or damage by or on behalf of the owner or operator of the uninsured automobile.
 - (e) Any amount recoverable as damages because of bodily injury or property damage sustained in an accident by a person who is an Insured under this coverage shall be reduced by all sums paid on account of such injury or damage by or on behalf of any person or persons jointly or severally liable together with the owner or operator of the uninsured automobile for such injury or damage including all sums paid under the bodily injury liability or property damage liability coverages of the policy.
6. **Other Insurance** -- With respect to bodily injury to an Insured while occupying an automobile not owned by the Named Insured, the insurance hereunder shall apply only as excess insurance over any other similar insurance available to such Insured and applicable to such automobile as primary insurance.

Except as provided in the foregoing paragraph, if the Insured has other similar bodily injury insurance available to him and applicable to the accident, The Travelers shall not be liable for a greater proportion of any loss to which this coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this insurance and such other insurance.

With respect to property damage, the insurance hereunder shall apply only as excess insurance over any other valid and collectible insurance of any kind applicable to such property damage.
7. **Payment of Loss by The Travelers** -- Any amount due hereunder is payable to the Insured or his legal representative.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

THOMAS M. STONE

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE COMPANY

Defendant.

CIVIL ACTION

NO. 2:94cv560

TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia

December 8, 1994

Before: THE HONORABLE RAYMOND A. JACKSON
United States District Judge

Appearances:

CLARK & STANT

By: ROBERT L. SAMUEL, JR.
and S. GEOFFREY GLICK
Counsel for the Plaintiff

FURNISS, DAVIS, RASHKIND AND SAUNDERS

By: ALAN B. RASHKIND
Counsel for the Defendant

COPY

1 THE DEPUTY CLERK: In case number 2:94cv560, Thomas
2 M. Stone versus Liberty Mutual Insurance Company. Are counsel
3 ready to proceed?

4 MR. SAMUEL: Yes, Your Honor.

5 MR. RASHKIND: Yes, Your Honor.

6 THE COURT: Good morning, gentlemen.

7 MR. SAMUEL: Good morning, Your Honor.

8 MR. RASHKIND: Good morning, Your Honor.

9 THE COURT: We are here on the cross-motions of the
10 parties in this case. We are prepared to go forward. It's my
11 understanding this case was taken off the docket because
12 you-all have agreed there's no genuine issue of material fact
13 in dispute. Basically, we have a question of contractual
14 interpretation. I am prepared to hear -- I believe the
15 defendant filed the first motion for summary judgment,
16 Mr. Rashkind?

17 MR. RASHKIND: Yes, sir. Your Honor, before we
18 begin, it may, depending upon your view of this case, be
19 important to know what the policy language was in a case
20 decided by the Supreme Court in 1980. That's the Bayer versus
21 Travelers case that's referred to in our brief.

22 THE COURT: I will be candid with you, Mr. Rashkind.
23 I have gone back and looked at Bayer and Nationwide since the
24 parties talked about it so much. I believe Bayer and
25 Nationwide both are factually distinguishable from this case.

1 If you want to point the language out to me, fine, but I think
2 they are factually distinguishable from this case at hand. I
3 will hear whatever you have. You may change my mind.

4 MR. RASHKIND: What I was going to give the court,
5 and I have already given to counsel, is a true copy of the
6 pages from the appendix in Bayer which give the policy
7 language.

8 THE COURT: Just have it filed and the clerk will
9 pass it up to me to include it in the record.

10 MR. RASHKIND: Thank you, Your Honor.

11 As Your Honor has read the briefs and is familiar
12 with the stipulated facts and the arguments, I will not repeat
13 the brief. I want to address the essential argument of the
14 plaintiff. There are two and only two under which they could
15 have coverage. One is if their client, Mr. Stone, is an
16 insured in the First Class, and the second is if he's insured
17 of the Second Class. He would be an insured of the First Class
18 if he was either within the policy definition of you or a
19 family member.

20 I am, frankly, largely content to rely upon the brief
21 with respect to that argument. There's no question that
22 Mr. Stone is not you, that is Tidewater Pizza, and
23 notwithstanding some decisions from other jurisdictions, I know
24 of no Virginia decision which has ever held a term defined in
25 an insurance policy, and here I am talking about family member,

1 to be ambiguous.

2 THE COURT: What do you think they put that in their
3 policy for in view of the fact they were dealing with a
4 corporation and the corporation didn't have any family members?

5 MR. RASHKIND: It was a form that is required they
6 use in order to insure Virginia insureds, and Your Honor has
7 looked at the policy, I know, on what I have numbered page 7,
8 the declaration pages --

9 THE COURT: Right.

10 MR. RASHKIND: -- you will see there's a definition
11 there to describe what the insured is, whether it's an
12 individual or a corporation.

13 THE COURT: All right.

14 MR. RASHKIND: If it, in fact, turns out to be an
15 individual, then that language would apply to family members,
16 whereas here it's a corporation. Even though the Code of
17 Virginia requires that definition, that's what the statutory
18 definition of an insured is, it doesn't apply to any insureds
19 in this case, unless, and I add this possibility, you will see
20 elsewhere in the policy that George and Katheryn Hazzis are
21 added as additional insureds, I think, with respect to leased
22 vehicles. I suppose, though I haven't studied this issue, that
23 there are circumstances under which they might be deemed an
24 insured for the purposes of the leased vehicle, an insured of
25 the First Class. I am not really aware of whether that's the

1 case or not, but perhaps it would include that. But I think
2 this is a form policy which suits corporate and individual
3 insureds and tracks the statutory language. That's our
4 position on that.

5 THE COURT: Okay.

6 MR. RASHKIND: I will say that even many of the cases
7 from other jurisdictions which have determined the language
8 that I have just been focusing on to be ambiguous have said
9 that it is ambiguous as to family members of the principal
10 officer of the corporation, something like that, but even many
11 of those cases say but certainly it doesn't apply to an
12 employee, and I say certainly it doesn't apply to a part-time
13 employee here. I am willing to rely upon the brief on that
14 point.

15 Then we get to the second argument. Now, I think
16 what Your Honor said at the outset of my argument is absolutely
17 accurate. This is a question of contract interpretation. Now,
18 what does the contract say? Everybody knows there's not a
19 question about what the language is. You are an insured of the
20 Second Class if you are an occupant of a covered auto.

21 Now, the policy again, I would say, unmistakably says
22 that a covered auto for uninsured motorist coverage is only an
23 owned auto subject to compulsory auto insurance.

24 What the plaintiff argues is that, and this is a
25 relatively new argument, one they adopted after I filed the

1 motion for summary judgment. What they argue is that you
2 occupy a covered vehicle under the uninsured motorist coverage
3 if you occupy a covered vehicle under the liability coverage.
4 Now, that isn't what the policy says. The only way the policy
5 can be made to say -- I'm sorry. The only way the policy can
6 be made to mean other than what it says is if the Virginia Code
7 imposes some greater requirement. So the question then becomes
8 in interpreting this contract does it mean what it says, that
9 is, that it has separate covered autos for uninsured motorist
10 coverage and liability, or does something in the Code require
11 that one is an insured who occupies a vehicle which is a
12 covered auto for any coverage under the policy?

13 Now, I know of no case that says you have that
14 requirement other than the recently decided Moody versus
15 Federated in the western district of Virginia, which ironically
16 the appeal of that case was argued on Monday before the Fourth
17 Circuit. I have no idea how that did come out or how that will
18 come out. However, even if you, and let me stop also and say I
19 have cited in my brief cases which I think stand for the
20 proposition that Moody versus Federated is wrong in saying
21 that, and I will get to that in a minute, but I just want to
22 jump on Moody for a second. Even if Moody is right, Moody
23 versus Federated, even if the plaintiff can make an argument
24 that if he's occupying a vehicle that is insured under
25 liability, then he is an insured under uninsured motorist, even

1 if he can make that, he can't win that argument here. Here's
2 why I say that. The plaintiff was not an insured under
3 liability either. If you go to that portion of the liability
4 policy which, again, I am relying upon the numbered pages that
5 I used on the exhibit, which is page 29, you see who is an
6 insured under liability. Number one is you are an insured for
7 any covered auto. This is on page 29, item D, left-hand margin
8 near the bottom.

9 Number one, you are an insured for any covered auto.
10 Now, again, for liability, auto includes certain non-owned
11 vehicle. That's number 9 on the symbol, but the you, again,
12 only refers to Tidewater Pizza. There's not even any family
13 member written down here.

14 Number 2 is anyone else is an insured while using
15 with your permission a covered auto you own, hire or borrow,
16 except. Subsequent to our filing of our briefs we entered into
17 a stipulation that was submitted to the court in which it was
18 stipulated that the vehicle that Stone was operating was not
19 hired or borrowed. So, therefore, 2 doesn't cover him. He's
20 not an insured under 2 either.

21 THE COURT: Let's go back to the definition of
22 covered auto.

23 MR. RASHKIND: Yes, sir.

24 THE COURT: What are covered autos within the meaning
25 of this policy? Go back to that provision that defines covered

1 autos.

2 MR. RASHKIND: All right. Covered autos --

3 THE COURT: That was on page --

4 MR. RASHKIND: 28?

5 THE COURT: Page 28.

6 MR. RASHKIND: Yes, sir. And up at part 2A, item 2
7 of the declaration shows the autos that are covered for each of
8 your coverages, and I will point also if you go to page 7.

9 THE COURT: That's right, but go to page 8.

10 MR. RASHKIND: All right. I will do so.

11 THE COURT: And look at the definitions they give for
12 covered autos under liability.

13 MR. RASHKIND: Yes, sir. I see that.

14 THE COURT: You are telling me, Mr. Rashkind, that
15 Dominos Pizza that advertises for drivers who have cars because
16 they are clearly going to use their cars in delivery of pizza
17 and they are dependent upon them, they didn't intend to do
18 something to cover all of these drivers that they have out
19 there delivering pizzas for them?

20 MR. RASHKIND: That's exactly right, and, Your Honor,
21 there's a case on point which will show you that. There's a
22 Virginia case which I could find for you in a minute where a
23 coverage issue involving Tidewater Pizza at a time when it was
24 insured by Travelers was before the court. I think the name of
25 the case was USAA versus Travelers. I can find the cite if you

1 want it. That's exactly what it says, Your Honor. In other
2 words, Your Honor, this policy as to non-owned vehicles insures
3 only Tidewater Pizza and certain individuals listed on page 29
4 who are using certain covered autos, but not the owner of the
5 vehicle.

6 THE COURT: Look at number 9, now. The language
7 plainly says only those autos you do not own, lease, hire or
8 borrow which are used in connection with your business. This
9 includes auto owned by your employees or members of their
10 household while used in your business or your personal affairs.

11 MR. RASHKIND: Yes, sir.

12 THE COURT: There's no question Stone was using his
13 vehicle --

14 MR. RASHKIND: That's correct.

15 THE COURT: -- in the business affairs of Tidewater
16 Pizza.

17 MR. RASHKIND: Yes, sir.

18 THE COURT: So it appears to me that the liability
19 certainly covered Mr. Stone here.

20 MR. RASHKIND: I disagree, Your Honor, and I see the
21 error.

22 THE COURT: I know what you contend is the error.
23 Maybe I disagree with you.

24 MR. RASHKIND: Yes, sir. Perhaps I shouldn't say it
25 that way, but I think Your Honor is assuming that the term

1 covered auto is synonymous with autos to which -- autos which
2 are insured. The term covered auto is just a term used in
3 determining who is an insured. You must be operating a covered
4 auto, but not all covered autos are insured, nor is the
5 operation of all covered autos insured, and I think, and I
6 apologize for saying error, but I think it's easy to skip over
7 that.

8 THE COURT: Okay.

9 MR. RASHKIND: We are used to hearing insured
10 automobile and then thinking, obviously, all insured
11 automobiles must be insured. It makes sense to it. There's a
12 ring to it. But, again, I refer you back to page 29.

13 THE COURT: Who is an insured, I remember.

14 MR. RASHKIND: Who is an insured. And let me go back
15 to 28. The insuring agreement right in the middle of the page,
16 left column, part 4, liability insurance, what we will pay. A
17 (1), we will pay all sums that the insured legally must pay as
18 damages because of bodily injury or property damage to which
19 this insurance applies caused by an accident and resulting from
20 the ownership, maintenance or use of a covered auto. So you
21 have got to have several things before there's insurance. One
22 of them has to be it has to arise out of the operation,
23 maintenance or use of a covered auto. The other is it has to
24 be that operation by an insured. You follow what I am saying
25 there?

1 THE COURT: Yes, I follow your argument,
2 Mr. Rashkind.

3 MR. RASHKIND: Well, my position is, quite frankly,
4 that there is no coverage for Mr. Stone under the liability
5 portion of this policy, notwithstanding that the vehicle he was
6 operating fits the definition of the term covered auto, and if
7 the policy were to be read as the plaintiff argues, and perhaps
8 you feel it was intended to argue, then the insuring agreement
9 that I pointed out on page 28 would say -- or the who is
10 insured language on page 29 would say anyone who uses a covered
11 auto is insured, or we will pay for anyone who uses a covered
12 auto.

13 THE COURT: How about this, Mr. Rashkind. Go back
14 over to page 29. They are talking about who is an insured?

15 MR. RASHKIND: Yes, sir.

16 THE COURT: Anyone is an insured while using with
17 your permission a covered auto you own, hire or borrow.

18 MR. RASHKIND: Yes, sir.

19 THE COURT: Somehow you make the argument for the
20 purposes of running his business he's certainly borrowing or
21 using the cars of his employees.

22 MR. RASHKIND: There's a stipulation that's not the
23 case.

24 THE COURT: He did not do that.

25 MR. RASHKIND: That's correct.

1 THE COURT: You did stipulate, you are correct, he
2 did not do that.

3 MR. RASHKIND: But, Your Honor, let me ask you to go
4 a step farther, please. Assume that he had not stipulated that
5 and you had determined this was borrowing the vehicle.

6 THE COURT: Okay.

7 MR. RASHKIND: Then you have got to go a little
8 farther on page 29 because you have got that except language
9 and except is going to jump up and bite Mr. Stone a second
10 time. You see there, except, A, the owner of a covered auto
11 you hire or borrow from one of your employees or a member of
12 his household. Well, Mr. Stone is the owner of the vehicle.
13 So even if it was borrowed, then he would be excepted under 2A,
14 he would not be an insured. Further proof of the proposition
15 that Mr. Stone was not intended to and did not get on this
16 particular occasion on this operation of his own car coverage
17 under Tidewater Pizza's policy with Liberty Mutual:

18 Are there any other questions that you have for me on
19 the interpretation on whether or not he is an insured under the
20 policy?

21 THE COURT: No. I am prepared to hear whatever else
22 you want to tell me.

23 MR. RASHKIND: With respect to -- let me back up a
24 second. What I have been saying is that even if the argument
25 made by the plaintiff in Moody versus Federated and accepted by

1 Judge Wilson in Moody versus Federated is correct, it doesn't
2 apply in this situation because Stone is not an insured.

3 However, it is also my position, as I know Your Honor
4 knows, that Moody versus Federated is not correct, that there
5 is no requirement that all vehicles which are insured under
6 liability must also be insured under uninsured motorist
7 coverage, and I fear that I did not do as good a job as should
8 have been done in the briefs that I filed explaining that.

9 THE COURT: You relied on Nationwide for that
10 proposition. Is there any other authority other than
11 Nationwide that you read to say that is the case?

12 MR. RASHKIND: Yes, sir. Nationwide versus
13 Harleysville, as well as Nationwide versus Hill, and if I could
14 point Your Honor's attention to the language in those cases
15 that I particularly want to focus on, I think you will see that
16 I didn't do as good a job as I should have, referring first to
17 Nationwide versus Hill.

18 You will recall, as I know Your Honor has read that
19 case closely, in Nationwide versus Hill Justice Lacey was
20 distinguishing Bayer versus Travelers from Nationwide versus
21 Hill and she did so for several reasons and she said that there
22 were two bases, and one of them was the actual policy language
23 used in Bayer versus Travelers, and she points out, and now I
24 am reading from Nationwide versus Hill. I am actually looking
25 at the Southeast cite at page 337. Justice Lacey said the

1 declaration page of Whitaker's policy contained a specific
2 section addressing vehicles included for the purposes of UM
3 coverage. Only, quote, automobiles owned by the named insured,
4 close quote, were designated for insurance coverage under the
5 UM endorsement and, therefore, the policy did not cover a
6 vehicle owned by Bayer, end of quote.

7 Then skipping a paragraph, the court contrasts State
8 Farm's policy with the Traveler's policy in Bayer. This is at
9 the bottom of page 337 in the Southeastern series.

10 In this case State Farm did not limit the definition
11 of the vehicle to one owned by the named insured as the policy
12 did in Bayer, and here's the language that's critical now, nor
13 did it include any language which would restrict the definition
14 of, quote, insured vehicle, close quote, to a vehicle
15 identified or described in the policy provisions.

16 Now, what the difference Justice Lacey said, the
17 difference between Bayer and Nationwide was that in the Bayer
18 policy they limited the number of vehicles which were covered
19 under UM, but they didn't do that in the Nationwide versus
20 Hill.

21 Well, in Stone versus Liberty Mutual, Liberty Mutual
22 did do that. That's why it has those separate numbers
23 identifying different covered vehicles for UM and liability.
24 Justice Lacey is impliedly saying that if a carrier does that,
25 we have a different outcome than we had in Nationwide versus

1 Hill. So I think to argue, as plaintiff does, that you must
2 insure both -- I'm sorry. That you must insure all the same
3 vehicles under both liability and uninsured motorist is to fly
4 in the face of the language of Justice Lacey's opinion.

5 Now, I will also point out the language in
6 Harleysville to the court, Nationwide versus Harleysville.
7 That was a case, as Your Honor may recall, where Nationwide
8 actually listed the vehicle -- I'm sorry. Not Nationwide,
9 Harleysville. Harleysville listed the car that was involved in
10 a one-car accident as the insured vehicle under their policy,
11 under the liability portion of the policy. The daughter took
12 the mother's car listed on the policy. In other words, the
13 insured vehicle. If you want, you could call it the covered
14 vehicle. Took it out with the express instructions don't let
15 your boyfriend drive that car.

16 You know what happens, it always does, the daughter
17 let her boyfriend drive the car, and so when he went off the
18 road on a trip to North Carolina and they had an accident,
19 there was no liability coverage because the use was
20 nonpermissive use, and the Supreme Court said that even though
21 the plaintiff was a passenger in that insured vehicle, it
22 wasn't an insured vehicle -- I'm sorry. It wasn't a vehicle to
23 which the policy applies for the purposes of 38.2-2206(b)
24 defining insureds. I think that's further support for the
25 argument that you don't have to cover under UM all vehicles

1 which are also listed under liability. Also, in Nationwide
2 versus Harleysville there was language I am trying desperately
3 to put my hand on now that I think was repeated in Nationwide
4 versus Hill. I'm sorry. It was repeated in Bayer versus
5 Travelers. Here's the language from Nationwide versus
6 Harleysville. Uninsured motorist coverage is meant to protect
7 an insured motorist and permissive -- I'm sorry, is meant to
8 protect an insured motorist, his family and permissive users of
9 his vehicle, and then the court went on to say not every
10 uninsured motor vehicle resulting in injury results in
11 coverage.

12 Now, again, if the Supreme Court of Virginia is
13 correctly reading the intent of the General Assembly that
14 uninsured motorist coverage be to cover only the named insured
15 family members and occupants of his vehicle, the implication is
16 that you do not need to provide uninsured motorist coverage for
17 non-owned vehicles which are not his vehicles, their vehicles,
18 not the insured's vehicles. So I think the argument that that
19 was accepted in Moody versus Federated is not supported by
20 Virginia authority or the language of the statute in question.

21 The language of the statute in question says you are
22 an insured if you are the occupant of the vehicle to which the
23 policy applies, and the Supreme Court has not read that statute
24 to mean that the carrier cannot limit the definition of the
25 uninsured motorist endorsement insured vehicles to vehicles

1 that are owned, but that's exactly what was done in the policy
2 before you, that's exactly what was done in the Bayer policy
3 that you now have before you, and that is what the Supreme
4 Court is saying, I am reading this from January, '94,
5 Nationwide, that you can still do. If you don't do it, when I
6 say you, if an insured doesn't so limit the vehicles which are
7 insured vehicles or covered vehicles for the purposes of
8 uninsured motorist coverage, then the Supreme Court is not
9 going to allow the carrier to come in later and say we didn't
10 mean to cover those vehicles or people in them.

11 THE COURT: Doesn't that appear to fly into the face
12 of the plain language of the statute?

13 MR. RASHKIND: No, sir, not at all, because the plain
14 language of the statute says and motor vehicles to which the
15 policy applies. It doesn't say to which the liability portion
16 of the policy applies, and I submit that the Virginia Supreme
17 Court's reading of the statute is when the UM statute talks
18 about policies to which the UM statute -- I'm sorry. I am
19 repeating myself, but what I meant to say was the Virginia
20 Supreme Court is reading the plain language of the statute not
21 to mean something more than what is said in there. And so when
22 the definition of insured under 38.2-2206(b) uses this
23 language, quote, and a guest in the motor vehicle to which the
24 policy applies, close quote, the statute is not using the
25 language and a guest in the motor vehicle to which the

1 liability portion of the policy applies; it just says to which
2 the policy applies, and the Virginia Supreme Court has said as
3 recently as Nationwide versus Hill not less than a year ago
4 that you can, as they did in Bayer, limit the definition of
5 those vehicles which are covered for uninsured motorist
6 coverage.

7 Now, when I say the Supreme Court said you can do
8 that, that issue wasn't before the Supreme Court in Nationwide
9 versus Hill. However, for the Supreme Court to have decided
10 Nationwide versus Hill by going to such great lengths to
11 distinguish Bayer, the Supreme Court must not recognize what
12 Your Honor has suggested may be the case, that is that the
13 language of the statute flies in the face of a policy which
14 would so restrict uninsured motorist coverage.

15 I would remind the court, as I know Your Honor knows,
16 that it's your duty to determine what the Virginia Supreme
17 Court thinks the law of Virginia is, and I don't know how you
18 get a better read on whether or not the Virginia Supreme Court
19 would think it all right to limit uninsured motorist coverage
20 to certain vehicles such as owned vehicles than you do with
21 language in the recent case Nationwide, in which Justice Lacey
22 said this case is different because they didn't do what was
23 done there, which to me unmistakably implies that it's
24 permissible to do that. It just wasn't done here. Another way
25 of saying that is if it was not permissible to do that, Justice

1 Lacey would have said instead we should have never decided
2 Bayer that way because it wasn't right to do that and we
3 recognize that.

4 As Your Honor probably knows, Mr. Samuel was the
5 prevailing counsel in Nationwide versus Hill. He may have some
6 background which would explain away why that wasn't argued,
7 but, nevertheless, the Supreme Court doesn't seem from its
8 decisions to take the position that the language in the
9 statute, the motor vehicle to which the policy applies means
10 the motor vehicle to which the liability portion of the policy
11 applies.

12 I will add and then sit down, that several policies,
13 insurance policies written to individuals, say that, say that
14 an insured vehicle for the purposes of this coverage is a
15 vehicle to which the liability portion of the policy applies,
16 but that's not required under the Code section, and Justice
17 Lacey's opinion on that is to that effect.

18 I will conclude my argument by saying that the Bayer
19 versus Travelers policy that I handed you that I got
20 yesterday -- by the way, Your Honor, I got it when I was up at
21 the Fourth Circuit. I was up at the Fourth Circuit arguing
22 Buetner versus Martin, the ironer case, but at any rate, I went
23 next door to the Virginia Supreme Court and got that policy. I
24 got back to the office about four and it took me about an hour
25 to go through the policy, but here's in a nutshell what that

1 policy does. It says at the outset that only owned autos are
2 insured for uninsured motorist coverage. There are three types
3 of liability coverage under the policy, a comprehensive auto
4 liability form, a garage liability form and an individual named
5 insured endorsement.

6 Under the comprehensive automobile liability form
7 there is no liability insurance for non-owned vehicles, but
8 under the individual named insurance form and under the garage
9 operations form there is liability coverage for non-owned
10 vehicles. Looking at that allowed me to explain in my mind
11 what appeared to be some confusion when you read Bayer and
12 Nationwide as to exactly what non-owned coverage there was or
13 wasn't in the Bayer case, so that's why I brought that policy.
14 That's my position, Your Honor, and I will respond to
15 Mr. Samuel when he completes his argument. Thank you.

16 MR. SAMUEL: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. SAMUEL: Your Honor, there's a good reason why
19 Nationwide and Bayer don't address, as Mr. Rashkind indicates
20 they would have, any conflict in the statute because in Bayer
21 and Nationwide the court held that there was no liability
22 coverage so there would be no conflict in the statute. In
23 other words, in both Bayer and Nationwide -- well, not
24 Nationwide for other reasons, but in Bayer the court simply
25 held, rightly or wrongly in construing the policy, their

1 conclusion was there was no liability coverage available;
2 therefore, there's no conflict. So Bayer is, in my estimation,
3 easily distinguishable from this case because, and I said it to
4 one of my colleagues, in the head notes, and, of course, that's
5 a dangerous thing to say because what about the rest of the
6 case, but it's in the head notes and it's in the body of the
7 case, they held that the liability provisions of the policy did
8 not apply.

9 In looking at this case, it's never a simple
10 proposition to analyze a policy and determine whether or not
11 there's coverage because there's so much doggone much language
12 and so many doggone aspects of coverage that apply to a vehicle
13 driven by anybody, but what you have to do is look at the
14 factual case you have and go to that portion of the policy
15 where there's coverage and basically backtrack and figure out
16 what you have. And in this case what Mr. Stone is urging is
17 that he is covered under the uninsured motorist provisions of
18 the policy of Tidewater Pizza. So, first you go to the
19 uninsured motorist provisions and you look and see who is an
20 insured, and it's you or any family member and then it's anyone
21 else occupying a covered auto.

22 Now, we can get into a lot of semantics and talk
23 about, well, what does this really mean, but if you try to look
24 at it at least initially simply, you determine what is a
25 covered auto.

1 Now, I am going to leave aside for a second the
2 statutory conflict and assume arguendo there has to be the same
3 coverage under liability as there has to do for uninsured
4 motorist, meaning that in this policy because it's in violation
5 of the statute for uninsured motorist coverage, you would have
6 to have the same coverages available as you would for the
7 liability, meaning there would be coverage for non-owned
8 vehicles which includes an auto owned by your employees or
9 members of their household only when used in your business,
10 which is stipulated to.

11 So, in that context, Stone is certainly occupying a
12 covered vehicle, different from Bayer because in Bayer the
13 vehicle was not a covered vehicle. There might be coverage
14 that would apply if the policyholder was in an accident, but
15 the vehicle was not a covered vehicle in Bayer, absolutely not.

16 In this case the vehicle was a covered auto. I mean,
17 and it's listed on the declaration page that you have gone over
18 with Mr Rashkind both on pages 7 and 8, liability insurance, 7,
19 8 and 9. 9 describes, again, that non-owned vehicles are
20 covered.

21 So, it seems to me the heart of the issue in this
22 case is does this policy contravene the statute, because if it
23 does and non-owned vehicles are covered vehicles, reading from
24 their own policy, then you have got Stone who is occupying a
25 covered auto. It doesn't matter whether he's an insured under

1 the liability provisions of the policy. That's immaterial. I
2 know Mr. Rashkind feels differently, but the reason it's
3 immaterial is you look at the plain language, which he's asking
4 you to do, of the policy. The plain language is anyone is an
5 insured under the uninsured motorist provisions of the policy
6 if they are occupying a covered auto. He's occupying a
7 vehicle, so you decide is it covered.

8 You go to the coverages available, and I know
9 Mr. Rashkind was urging that there's a difference between a
10 covered auto and an insured automobile, but this policy talks
11 about covered autos. It says anyone else occupying a covered
12 auto.

13 If you go to the policy itself under covered autos, a
14 non-owned vehicle is a covered auto. That's what the policy
15 says. So if you are looking at the policy and following the
16 plain language of the policy, then Stone is occupying a covered
17 auto if the court agrees that the uninsured motorist
18 classification in this case is insufficient because it does not
19 match the coverages available under liability. I acknowledge
20 and admit that under the covered auto provisions of the policy
21 under uninsured motorist it does not include non-owned
22 vehicles. In fact, it only includes owned autos subject to
23 compulsory uninsured motorist laws. But the simple fact
24 remains, Your Honor -- the word simple is a bad word to use,
25 Your Honor, because I don't think there's anything simple when

1 you are analyzing these things -- is that the statute indicates
2 that this is in violation of the statute.

3 To put it again in my simple terms, the statute
4 indicates that the bodily injury and the uninsured motorist
5 coverages must be the same. It can be different limits if you
6 elect to have different limits, but, in other words, it's got
7 to be the same. The plain language of the statute says that.
8 It indicates that there has to be the same coverages, and an
9 insured under the statute indicates that any person who uses
10 the motor vehicle to which the policy applies with the express
11 or implied consent of the named insured and a guest in the
12 motor vehicle to which the policy applies are insureds under
13 uninsured motorist coverage. So, both under the statute and
14 under the policy Mr. Stone is an insured.

15 So, let's take just a little bit different angle.
16 Instead of looking at the first paragraphs talking about the
17 coverages have to be the same, the statute itself, if it is in
18 contradiction of the policy, would control. The statute,
19 again, says that a person who uses the motor vehicle to which
20 the policy applies is an insured.

21 The motor vehicle that Mr. Stone was operating does
22 come under the policy. Here they are not even distinguishing
23 between uninsured motorists provisions of the policy or
24 liability provisions of the policy. They are merely saying
25 anyone who uses the motor vehicle to which the policy applies.

1 Well, clearly under this policy there's coverage under the
2 liability section for the vehicle in which Mr. Stone was
3 operating. There can be no dispute about that, and it just so
4 happens that Bayer and Nationwide were a different situation.
5 The vehicle was not listed as a covered vehicle. The insured
6 was driving a non-owned vehicle, but there was no coverage on
7 the vehicle listed in the policy, so it didn't come into play,
8 and that's why the Supreme Court didn't even address the issue
9 of a conflict because how could they, there was none. If
10 there's no liability coverage, then there's no conflict with
11 what you do under the uninsured motorist provisions of the
12 statute.

13 I will mention one other thing, and that's the
14 Harleysville case that Mr. Rashkind cites. If you look at
15 that, a distinguishing factor about that case is the reason
16 there was no coverage is because the vehicle wasn't being
17 operated with permission of the insured. Well, in this case
18 it's stipulated not only was the vehicle being operated with
19 the permission of the insured, that's what the insured wanted.
20 I mean, these employees use their vehicles in delivering pizza
21 so the insured, I guess, didn't have to have a fleet of
22 vehicles.

23 Your Honor, I don't have anything to add to my
24 argument. I made the argument I made as far as the language
25 family members. I don't have anything to add to that in oral

1 argument today unless the court has some questions, and I don't
2 have any additional argument on the other aspects of the case
3 that we have been spending most of the time discussing, unless
4 the court has questions.

5 THE COURT: You used the language an insured if
6 anyone uses an occupied vehicle. You quoted that section. Go
7 back to page 29.

8 MR. SAMUEL: Yes, sir. Oh, Your Honor, I am not
9 referring to the liability provisions of the policy.

10 THE COURT: Where are you?

11 MR. SAMUEL: I am referring to the uninsured motorist
12 provisions of the policy on page 21.

13 THE COURT: I lost that for a few seconds there.

14 MR. SAMUEL: Yes, sir.

15 THE COURT: Okay.

16 MR. SAMUEL: And that is the part of the policy that
17 Mr. Stone is seeking coverage under, and under that, under D,
18 who is an insured.

19 THE COURT: D-1.

20 MR. SAMUEL: Yes, sir, anyone occupying a covered
21 auto. Contravention of the statute, meaning that the liability
22 provisions have to be the same for the uninsured motorist
23 provisions. Therefore, a non-owned automobile specifically is
24 listed as a covered vehicle in the very policy that the court
25 is construing.

1 THE COURT: They seem to broaden a very narrow point
2 as Mr. Rashkind takes the view for the purposes of this policy
3 non-owned vehicles are not covered vehicles because it's not
4 listed there. The only thing listed there are owned vehicles.

5 MR. SAMUEL: That's his view, but I think if you
6 analyze the policy as I have discussed with you, that's just
7 incorrect. I say that with respect to Mr. Rashkind because I
8 respect him. I just think it's an incorrect interpretation of
9 this policy.

10 If we look at the policy and say, okay, what are we
11 looking at? We are looking at a person with a vehicle. What's
12 he trying to get? Uninsured motorist coverage. Okay. Let's
13 see if it's a covered vehicle. You go to the provisions of the
14 policy that indicate where the coverages are available and you
15 see if there has to be similar coverage. There's always
16 implicit in the argument that it's a violation of the Virginia
17 Code not to have the same coverages.

18 THE COURT: What is your viewpoint on Mr. Rashkind's
19 analysis of Nationwide to read that you can have this exclusion
20 as Liberty Mutual has tried to do here by limiting it to
21 non-owned vehicles?

22 MR. SAMUEL: Judge, my view is, one, the court wasn't
23 addressing that issue because it didn't exist in talking about
24 the Bayer case because there was no liability coverage. That's
25 what the court said, and, secondly, I don't think that's what

1 the court means at all.

2 An insurance company can do whatever it wants in an
3 insurance contract unless it's in violation of the policy.
4 Nationwide, the Henley versus Nationwide or Nationwide versus
5 Henley case, it's funny because in the Nationwide portion of
6 the opinion what Mr. Rashkind and I are focusing on here are
7 the State Farm portions of the opinion because that deals with
8 the uninsured motorist, but in the Nationwide portion of the
9 opinion the court reaffirms again that an insurance company can
10 do whatever it wants as to its policy. That's why cases can be
11 distinguishable because you have to look at the policy and the
12 facts and make that analysis. You can't just say, well, one
13 case applies. But the court says clearly that if there's a
14 violation of the statute, then the statute controls.

15 Now, in that portion of the Henley versus Nationwide
16 case they were talking about trying to limit the amount of
17 money that could be recovered. As you will probably recall,
18 Nationwide was trying to limit that, and our position was, no,
19 you have got two separate coverages and the statute says you
20 can't limit it, so you have got to pay it out, and the Supreme
21 Court agreed because it was violating the statute. No
22 different than this case. It's the same general provisions,
23 except instead of just looking at the amount of the coverage
24 available, we are just looking at you have got to make the
25 coverage available to both, what coverages you have.

1 So, that's my answer. I hope I have answered. I mean, that's
2 my answer, but it's a difficult question to answer because the
3 Supreme Court wasn't addressing that question because they
4 couldn't. Even though we always say, well, the courts try not
5 to address any more than they have to, it would have been
6 difficult for them to address that principle because the same
7 Supreme Court, maybe a few different members, in Bayer said
8 there was no liability coverage. So, there's no conflict.

9 Thank you, Your Honor.

10 THE COURT: All right. Mr. Rashkind.

11 MR. RASHKIND: Your Honor, I will respond briefly
12 since we have gone over everything. When I was arguing to you
13 at the very outset of my argument that this policy was not
14 intended to provide coverage for the drivers, I mentioned to
15 you that there's already been a case where I think that was an
16 issue. The case I was referring to is USAA versus Travelers
17 Indemnity Company. The citation is 240 VA 214. The secondary
18 citation is 396 S.E.2d 658. That's a 1990 case.

19 The issue in that case was whether the pizza company
20 was an insured under the driver's policy, which is the
21 flip-flop of what we are talking about, and if so, whose policy
22 was primary. But I think in the course of discussing that case
23 they will touch upon the fact that the driver was not an
24 insured under the pizza company's policy. That's sort of a
25 sideline just to show you the policy says what it means and

1 what I say it means.

2 THE COURT: That's, again, going to depend upon what
3 they had in those policies.

4 MR. RASHKIND: Absolutely correct.

5 THE COURT: I wouldn't know what was in that policy
6 until I read the case.

7 MR. RASHKIND: I think that's true, but I am
8 suggesting to you, and I realize that you were hesitate to
9 accept this, that the Tidewater Pizza policy that you have
10 before you in this case was not and did not intend to provide
11 insurance coverage to Mr. Stone when he's riding in his own
12 car.

13 Now, I do not argue, I would be foolish to attempt to
14 argue with the proposition that if Liberty Mutual has written a
15 policy which violates Virginia Code Section 38.2-2206, the
16 policy must be read as it should have been written. I cannot
17 argue that. My argument with the plaintiff's case is that the
18 policy that you have in front of you here does not violate a
19 single provision of 38.2-2206.

20 THE COURT: And that argument is based primarily on
21 your reading of Nationwide.

22 MR. RASHKIND: Not only that, also the statute.

23 THE COURT: That's right, and the statute.

24 MR. RASHKIND: There's one other thing that I left
25 out when I was arguing, and I don't think this was in the brief

1 either. I heard Mr. Samuel saying something which triggered
2 this thought in my mind. He said, I think, twice that the
3 statute, talking about 38.2-2206, says that the coverages must
4 be the same under liability and under uninsured motorist.

5 Now let's look at what the statute actually says.
6 38.2-2206(a), that big, long paragraph at the start. Those
7 limits shall equal, but not exceed, the limits of liability
8 insurance. Nowhere in this statute, A, B, C, D, E, F, G, H, I,
9 J, K, and I don't think there's an L, but if there is an L,
10 nowhere does it say that liability and uninsured motorist
11 coverages must be co-extensive, that the same vehicles must be
12 insured. It says that the limits of liability must be the same
13 unless you comply.

14 THE COURT: No. Those limits shall equal, but not
15 exceed.

16 MR. RASHKIND: That's correct, shall equal, but not
17 exceed, unless you are in compliance with another section
18 that's not relevant here, reject those limits, and that's fine.
19 We are not arguing about that here. There is no assertive
20 violation of this policy providing lesser limits. The
21 assertion is that you cannot insure some vehicles under
22 liability, but fewer under uninsured motorist coverage, and I
23 submit that an argument that the plain language of this statute
24 requires that is not supported by the plain language of this
25 statute.

1 Indeed I would argue that the language of the statute
2 which says the limits shall be equal to but not -- whatever we
3 just read -- implies that they are not saying the coverages
4 must be the same. It's just the limits.

5 I think it would be very unusual for the Virginia
6 Supreme Court to have missed in the several cases it has
7 discovered on this point and alleged invalidity of a policy
8 provision pursuant to or when compared to 38.2-2206.

9 THE COURT: You would have to concede, wouldn't you,
10 Mr. Rashkind, that the specific problem that we are faced with
11 in this case was not squarely before the Supreme Court in Bayer
12 nor Nationwide that you have relied on?

13 MR. RASHKIND: I agree that it was not squarely
14 before the court, yes, sir, I do.

15 THE COURT: So there's a possibility they wouldn't
16 certainly discuss it.

17 MR. RASHKIND: It seems implausible, but possible,
18 that they might not discuss it, but I mention that the Virginia
19 Supreme Court is not shy about invalidating policies because of
20 conflict with Virginia Code Section 38.2-2206 or their
21 predecessors. They would withhold decisions on a lot of
22 things, but not that one. So I think it unlikely, but
23 certainly I cannot disagree with your position that it's not
24 squarely before the court. That's my argument, Your Honor.

25 THE COURT: I appreciate it. Anything else you want

1 to say, Mr. Samuel? We are going backwards and forwards here.
2 If you are finished, that's fine.

3 MR. SAMUEL: Your Honor, I don't have anything
4 further.

5 THE COURT: Okay. Well, gentlemen, I tell you what
6 we are going to do. You have cited some additional authority
7 to me here that you didn't cite until you came in this morning.
8 The court is going to take your oral arguments on the matter
9 and your additional submissions under consideration, and I will
10 have to issue a written opinion on the matter in due time here.
11 I thank you for your able oral arguments.

12 MR. SAMUEL: Your Honor, may I say one further thing?
13 I apologize.

14 THE COURT: Yes, sir.

15 MR. SAMUEL: You mentioned additional authority. I
16 don't dispute for a second that the intention of Tidewater
17 Pizza may very well have been not to provide my client with
18 coverage, but the fact of the matter is the way in which they
19 tried to do that violated the statute and so the additional
20 case that Mr. Rashkind cited does not address the issues in
21 this case.

22 THE COURT: All right.

23 MR. RASHKIND: Nothing further.

24 THE COURT: Okay. I think I fully comprehend both
25 parties' positions in the case, and I thank you.

1 MR. RASHKIND: Thank you, Your Honor.

2 (Whereupon, this hearing concluded at 10:55 a.m.)

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4
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6 * * *

7
8 CERTIFICATION

9 I certify that the foregoing is a correct
10 transcript from the record of proceedings in the
11 above-entitled matter.

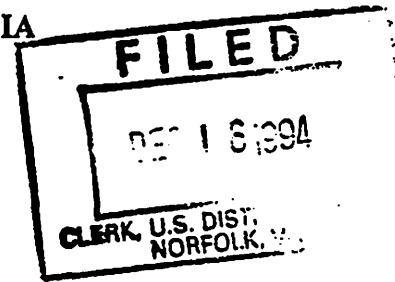
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13 x Sharon B. Borden x

14 Sharon B. Borden

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16 x January 27, 1995 x

17 Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



THOMAS M. STONE,

Plaintiff,

v.

CIVIL ACTION NO. 2:94cv560

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant.

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

The question before the Court is one of interpretation of an insurance policy. Liberty Mutual Insurance Company (Liberty Mutual) claims that plaintiff Stone was not an "insured" under the policy's Uninsured Motorist Insurance Endorsement at the time he was injured in an automobile accident; Stone maintains he was. The parties have filed cross motions for summary judgment, and waived their rights to a jury trial. Because the Court finds that the policy as written violates Virginia Code §38.2-2206, and when brought into compliance with the statute plaintiff Stone was an "insured" under the policy, the Court **GRANTS** plaintiff's motion for summary judgment, and **DENIES** defendant's motion for summary judgment.

II. STANDARD OF REVIEW

Rule 56(c) provides that a moving party is entitled to summary judgment "if the pleading, 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 a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment is initially responsible for identifying those portions of the factual record which it believes establish that there are no genuine issues of material fact. Once the moving party has made this showing, the opposing party must demonstrate, by reference to affidavits, depositions, answers to interrogatories, or admissions, that a triable issue of fact exists. See Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). In deciding a motion for summary judgment, the Court is required to view the facts and draw reasonable inferences in a light most favorable to the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

In this case, the parties stipulate that there are not genuine issues of material fact, and both have waived their rights to a jury trial. The question before the Court is which party's interpretation of the contract is correct under the law.

III. FACTS

On October 30, 1992, Plaintiff Stone was lawfully operating a motor vehicle, which he owned, when he was involved in a collision with another motor vehicle, which was negligently operated by Carol J. Drye (Drye). Drye crossed the road's center line into Stone's lane. The accident caused Stone serious injuries.

On September 28, 1993, the Circuit Court for the City of Virginia Beach ordered judgment in favor of Stone and against Drye in the amount of \$250,000 plus interest and court costs. On October 9, 1993, the Circuit Court entered an order incorporating its award.

At the time of the accident, Stone worked part-time for Tidewater Pizza, Inc. t/a Dominos

Pizza (Tidewater Pizza) as a delivery person, and was acting within the scope of his employment. On the date of the accident, Tidewater Pizza was the holder of a commercial business automobile insurance policy issued by Liberty Mutual. That policy contained an Uninsured Motorists Insurance Endorsement, which included coverage for underinsured motor vehicles, with limits of \$350,000. Drye had only \$25,000 of coverage applicable to the payment of Stone's bodily injury claim.

On January 31, 1994, Stone filed a Motion for Declaratory Judgment against Liberty Mutual, Tidewater Pizza and Drye in Virginia Beach Circuit Court, asking the Court to declare that the Liberty Mutual policy provided underinsured motorists coverage to Stone in the amount of \$225,000. In response, Liberty Mutual filed a Grounds of Defense, a Demurrer, and a Motion to Strike the additional parties, Tidewater Pizza and Drye, on the grounds that Stone's cause of action was a breach of contract action and the declaratory judgment action was improper. The Circuit Court sustained the Demurrer and struck the addition defendants, leaving a breach of contract action between Stone and Liberty Mutual, on May 11, 1994. On June 3, 1994, Liberty Mutual removed this matter to this Court.

Liberty Mutual filed its motion for Summary Judgment on October 11, 1994. Stone filed his motion for Summary Judgment on October 24, 1994. The parties waived their respective rights to a jury trial and stipulated that there are no genuine issues of material fact existing in a factual stipulations memorandum, filed November 23, 1994.

IV. DISCUSSION

There are two ways in which Stone may have coverage as an "insured" under the Uninsured Motorists Endorsement. First, he may have policy coverage as a driver of an automobile insured under the liability provisions of the policy, because the policy had to also insure the automobile under the uninsured motorist provisions to be in accordance with Va. Code § 38.2-2206. Second, he has coverage as an employee of Tidewater Pizza, if he qualifies as a "family member" of the corporation.

A. Liberty Mutual Is Required Under The Virginia Code To Provide Uninsured Motorists Coverage To The Same Cars It Provides Liability Insurance To, In Amounts That Equal But Do Not Exceed The Limits Of Liability Insurance.

The policy in effect at the time of the accident was between Tidewater Pizza and Liberty Mutual. The policy contains numerical symbols to indicate the extent of coverage for the different types of insurance provided. The policy provides liability insurance for specifically described autos, hired autos, and nonowned autos (those not owned, leased, hired or borrowed by the insured, but which the insured uses in connection with its business, including autos owned by its employees while used in its business or personal affairs). Stone's motor vehicle was, therefore, a "covered auto" under the liability provisions. The policy provides uninsured motorists insurance to owned autos subject to compulsory uninsured motorists law ("Only those autos you own which, because of the law in the state where they are licensed or principally garaged, are required to have and cannot reject uninsured motorists insurance." (emphasis in original)).

Stone argues that although Liberty Mutual has attempted to limit its uninsured motorist coverage to "owned autos only", it can not do so under Va. Code § 38.2-2206.¹ In relevant part, § 38.2-2206(A) provides that:

no policy or contract of bodily injury or property damage liability insurance relating to the . . . use of a motor vehicle shall be issued . . . by any insurer licensed in this Commonwealth upon any motor vehicle principally garaged or used in this Commonwealth unless in contains an endorsement or provisions undertaking to pay the insured all sums that he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits [that] shall equal, but not exceed, the limits of the liability insurance provided by the policy, unless the insured rejects the additional insured motorist coverage . . . Id.

There is no question in this case that Liberty Mutual issued an insurance policy to Tidewater Pizza that undertook to provide liability insurance to the automobile Stone owns and uses in the course of Tidewater Pizza's business. Therefore, under Va. Code § 38.2-2206, Liberty Mutual also had to insure Tidewater Pizza for any damages it incurred from Stone's use of the automobile in the course of its business under the uninsured motorist provision, up to but not exceeding the limits of the liability insurance. To cover Tidewater Pizza for the use of a car in one area and not in the other violates the plain language and purposes of the statute. For a similar holding, see, Clifton Scott Moody v. Federated Mutual Insurance Co., Civil Action No 93-0084-B (W.D. Va. June 29, 1994).

Similarly to this case, the plaintiff in Moody was acting in the scope of his employment (test driving an automobile left for repair) when he was injured. In Moody, the covered autos for liability insurance was "any auto", while the covered autos for uninsured motorists insurance was "owned autos only". Moody, at 2. The Court found that since "the automobile that Moody

¹The statute applies equally to underinsured and uninsured motorists.

was driving at the time of the accident would have been covered under the liability portion of the Federated policy, the statute mandates that the policy provide uninsured motorist coverage as well." Id. at 4. The Court went on to state that "[s]ince the limitation on uninsured motorist coverage in the policy conflicts with the statute, it is void." Id. citing State Farm Mut. Auto. Ins. Co. v. United Services. Auto. Ass'n, 176 S.E.2d 327 (Va. 1970). The Court found, therefore, that Moody was driving a "covered auto" at the time of the accident and was insured under the terms of the policy.

Since this Court finds that the Liberty Mutual policy violates Va. Code § 38-2-2206, the statute overrides the policy, and the Court will interpret the contract as if it complied with the law, by providing Tidewater Pizza with uninsured motorist coverage equal to its liability coverage.

Defendant argues that Moody was falsely decided, and in conflict with two Virginia Supreme Court cases, Nationwide Mutual Ins. Co. v. Hill, 247 Va. 78, 439 S.E.2d 335 (1994) and Bayer v. Travelers Indemnity Co., 221 Va. 5, 267 S.E.2d 91 (1980). The Court disagrees.

Both Bayer and Nationwide are factually and logically distinguishable from the case at hand, and defendant admits that the question this Court must decide was not squarely before the Virginia Supreme Court in either of these cases. The insurance policy considered in Bayer and discussed in Nationwide was found to not provide coverage under the liability portion of that policy; hence, there was no issue of conflict with the statutory requirements under the Virginia Code to provide uninsured motorist coverage equal to the limits of the liability coverage. In this case, however, Liberty Mutual provides liability insurance to owned and non-owned automobiles if they are driven by employees for business purposes. The named insured does not have to be

operating the non-owned vehicle for liability coverage to apply. The automobile Stone was driving at the time of the accident was a "covered auto" under the liability provisions of the policy, and therefore Liberty Mutual must, under the Virginia Code, provide uninsured motorist coverage to that automobile, identical to the liability coverage.

B. Stone Is An "Insured" Under The Uninsured Motorist Endorsement, As The Policy Defines That Term, And Under The Requirements Of Virginia Code § 38.2-2206.

Virginia Code § 38.2-2206(B) defines "insured" as the named insured and "any person who uses the motor vehicle to which the policy applies, with the expressed or implied consent of the named insured, and a guest in the motor vehicle to which the policy applies. . . ." *Id.* At the time of the accident, Stone was a person using a motor vehicle to which the policy applied, with the express consent of Tidewater Pizza, the named insured. Liberty Mutual is, therefore, required to cover Stone under the requirements set out in the Virginia Code. In fact, the Court believes that the case before the Court is exactly the kind that the Virginia legislature was enacting laws to cover, and Stone is exactly the kind of individual Va. Code § 38.2-2206 was designed to protect.

In addition, the language of the policy itself makes clear that Stone was an "insured" at the time of the accident. The policy states with regard to uninsured motorists insurance that "you or any family member" or "anyone else occupying a covered auto" is insured. Since the automobile Stone was using to deliver pizzas for Tidewater Pizza had to be covered under the policy in order for the policy to comply with Virginia law, Stone qualified as "anyone else occupying a covered auto."

C. Stone Is Not A "Family Member" Under The Liberty Mutual Policy.

As previously stated, the uninsured motorist provisions of the Liberty Mutual Policy, in addition to providing uninsured motorist coverage to "anyone occupying a covered," automobile, provides coverage to "You or any family member." Both parties agree that the term "You" refers solely to Tidewater Pizza, and does not include Stone as an employee of Tidewater Pizza. However, Stone contends that including the phrase "any family member" creates an ambiguity that the Court should construe in favor of providing coverage to Tidewater Pizza's employees.

Stone has provided this Court no authority from the State of Virginia that would support his contention. The term "family member" is expressly defined in the uninsured motorist endorsement itself as meaning "a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child." Neither the language of the policy, as defined by the policy, nor the accepted meanings of the terms allows any basis for finding Stone to be a family member of Tidewater Pizza.

A corporate entity is a distinct legal being, and cannot have personal injuries or family members. Insurance Company of North America v. Perry, 204 Va. 833, 134 S.E.2d 418 (1964) is a case directly on point. The plaintiff in Perry contended that the City of Norfolk could not fall victim to bodily injury or death, which the policy insured against, so the policy must refer to and cover the employees of the city. Perry, at 420. The Court rejected this argument as one that "would extend the benefits granted and broaden the risks imposed to a degree obviously never contemplated by the parties to the insurance contract nor intended by the legislature." Id. The Court further held that "[t]he proper construction . . . is that the city is insured against damage to its property resulting from the negligence of uninsured motorists and that those who

use, with permission, or occupy its insured vehicles are insured against damages for bodily injury or death . . ." Id.²

Furthermore, the language Liberty Mutual used in the policy arguably was mandated by Va. Code § 38.2-2206(B), despite the fact that it would not apply to the policy in question. The Court finds that there was no intent among the parties to include Tidewater Pizza's employees under the term "family member", and to construe the policy in such a way would "broaden the risks imposed to a degree obviously never contemplated by the parties to the insurance contract nor intended by the legislature." Perry, at 420.

IV. CONCLUSION

For the reasons stated above, the Court concludes that Stone was covered by the insurance policy in effect between Liberty Mutual and Tidewater Pizza at the time of his accident. Therefore, the Court **GRANTS** plaintiff's motion for summary judgement and **DENIES** defendant's motion for summary judgment.

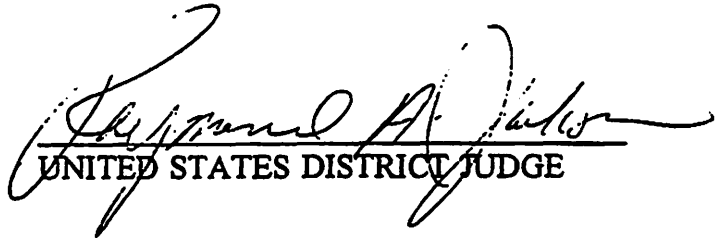
²The Court notes that this quote from Perry lends further support to its earlier findings that Stone was insured under the policy as the user of a covered automobile. Similarly to the situation in Perry, Tidewater Pizza was "insured against damage to its property resulting from the negligence of uninsured motorists and those who use, with permission, or occupy its insured vehicles are insured against damages for bodily injury or death . . ." Id. at 420. As a permissive user, Stone was insured against damages for bodily injury.

The Clerk is **DIRECTED** to send a copy of this order to counsel for the plaintiff and to counsel for the defendant.

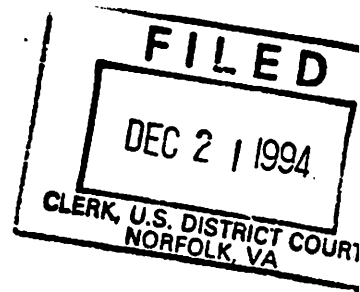
It is so **ORDERED**.

Norfolk, Virginia

December 16, 1994


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION



THOMAS M. STONE,

PLAINTIFF(S)

v.

CIVIL ACTION NO.
2:94cv560

LIBERTY MUTUAL INSURANCE COMPANY,

DEFENDANT(S)

JUDGMENT

[] Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

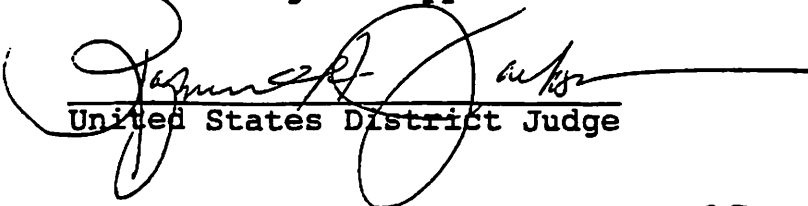
[x] Decision by the Court. This action was decided by the Court. The issues have been decided and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the Court grants the motion for summary judgment filed on behalf of plaintiff Thomas M. Stone and enters judgment in favor of Thomas M. Stone against Liberty Mutual Insurance Company in the amount of \$225,000.00 plus prejudgment and post judgment interest, and his court costs; further that the Court denies the motion for summary judgment filed on behalf of defendant Liberty Mutual Insurance Company.

December 16, 1994

Date

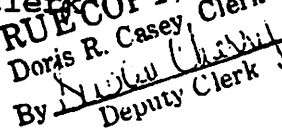
form of Judgment approved


United States District Judge

Doris R. Casey

Clerk


(By) Deputy Clerk

ATRUE COPY, TESTE
Doris R. Casey, Clerk
By  Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 95-1110

THOMAS STONE,

Plaintiff - Appellee,

versus

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant - Appellant.

No. 95-1148

THOMAS STONE,

Plaintiff - Appellant,

versus

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant - Appellee.

ORDER OF CERTIFICATION TO THE SUPREME COURT OF VIRGINIA

This is an appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Resolution of the question set forth below is dispositive of this appeal and requires interpretation and application of Virginia substantive law

in circumstances not addressed in published opinions of the Virginia courts. Accordingly, we request that the Supreme Court of Virginia exercise its certification jurisdiction pursuant to article VI, section 1 of the Virginia Constitution and Rule 5:42 of the Rules of the Supreme Court of Virginia and decide the issue presented.

I. Nature of the Controversy

Thomas M. Stone brought a declaratory judgment action against Liberty Mutual Insurance Company seeking a declaration that Liberty was liable for \$225,000 under an uninsured¹ liability policy issued to Stone's employer, Tidewater Pizza, Incorporated, t/a Domino's Pizza (Tidewater). The case was removed to federal district court on the basis of diversity of citizenship, and the parties stipulated to the facts, waived the right to jury trial, and submitted the issue of coverage to the district court on cross-motions for summary judgment. The district court concluded that the policy Liberty issued to Tidewater violated subsection 38.2-2206A of the Code of Virginia, see Va. Code Ann. § 38.2-2206A (Michie Supp. 1995), by failing to provide to Stone uninsured motorist coverage equal to the liability coverage that extended to Stone's automobile, see Va. Code Ann. § 38.2-2206B (Michie Supp. 1995). Accordingly, the district court held that Stone was entitled to uninsured coverage in the amount of \$225,000 plus costs and interest, and thus granted Stone's motion for

¹ The parties use the term "uninsured" to refer to both underinsured and uninsured drivers. For the sake of consistency, we shall do likewise.

making his deliveries, Stone used his own automobile and was responsible for providing his own transportation. Stone's automobile was not owned, leased, hired, or borrowed by Tidewater, nor was Stone's automobile specifically listed on Tidewater's policy. On October 30, 1992, while Stone was lawfully operating his automobile in the scope of his employment, he was struck by an automobile driven by Carol Drye. As a result of this collision, Stone suffered serious physical injuries. Thereafter, he successfully sued Drye in state court and obtained a judgment of \$250,000 plus interest and costs.

At the time of Stone's collision with Drye, there was only \$25,000 of liability or other coverage applicable to Drye's use of her automobile and available to satisfy Stone's judgment. Consequently, Stone filed a declaratory judgment action in Virginia state court against Liberty seeking a declaration that he was entitled to uninsured motorist coverage under Tidewater's policy with Liberty, specifically seeking \$225,000 plus interest and costs.

Liberty issued a commercial business automobile policy to Tidewater, naming Tidewater as the insured and insuring two automobiles, a Honda and a Ford, both of which were owned by Tidewater; the liability provisions also insured, under certain circumstances, those who operate or are liable for the use of non-owned vehicles. The policy provided uninsured motorist coverage with limits up to \$350,000 to two classes of potential insureds:

(1) Tidewater and its family members; and (2) persons who occupied a "covered auto."

For purposes of liability coverage, the term "covered auto" was defined to include certain non-owned automobiles, which included automobiles Tidewater "d[id] not own, lease, hire or borrow which [were] used in connection with [Tidewater's] business." But for purposes of uninsured motorist coverage the term "covered auto" was defined to include "[o]nly those autos you own which, because of the law in the state where they are licensed or principally garaged, are required to have and cannot reject uninsured motorists insurance." (J.A. at 26.) The liability provisions of the policy provided liability coverage, up to \$350,000, for amounts Tidewater was legally liable to pay because of injury caused by accident and resulting from the ownership, maintenance, or use of a "covered auto." The term "insured" in the liability provisions of the policy was defined as:

1. You are an insured for any covered auto.
2. Anyone else is an insured while using with your permission a covered auto you own, hire or borrow except:
 - a. The owner of a covered auto you hire or borrow from one of your employees or a member of his or her household.
 - b. Someone using a covered auto while he or she is working in a business of selling, servicing, repairing or parking autos unless that business is yours.
 - c. Anyone other than your employees, a lessee or borrower or any of their employees, while moving property to or from a covered auto.

3. Anyone liable for the conduct of an insured described above is an insured but only to the extent of that liability. However, the owner or anyone else from whom you hire or borrow a covered auto is an insured only if that auto is a trailer connected to a covered auto you own.

(J.A. at 47.) The policy also provided with respect to liability coverage that non-owned automobiles are "those autos you do not own, lease, hire or borrow which are used in connection with your business. This includes autos owned by your employees or members of their households but only while used in your business or your personal affairs." (J.A. at 26.) Stone stipulated that he "was not occupying a motor vehicle owned by or leased to [Tidewater] or hired or borrowed by [Tidewater]." (J.A. at 56.) Stone also stipulated that he is not covered under the liability provisions of the policy, and indeed, the exclusions defining the term "insured" clearly operate to exclude him.

The parties do not dispute that Stone's automobile is not a "covered auto" under the uninsured motorist provisions of the policy because the only automobiles covered under those provisions are those vehicles that are owned by Tidewater. Stone argues, however, that because he was driving an automobile for which Liberty allegedly provided liability coverage under the policy, Liberty was required by subsection 38.2-2206A² to provide uninsured motorist coverage to Stone, since, according to Stone, he was an insured under subsection 38.2-2206B. Stone asserts that the policy violates subsection 38.2-2206A because although it specifically

² Subsection 38.2-2206A is quoted infra at 8.

insures non-owned automobiles under the liability provisions of the policy, it does not provide uninsured motorist coverage to anyone occupying the same non-owned automobiles.

According to Liberty, it must provide uninsured motorist insurance pursuant to subsection 38.2-2206A, but it can limit who is an insured without violating that subsection, and here, Stone was not an "insured" because he was neither the named insured, nor a "family member" of the named insured, nor was he using the vehicles to which the policy applied, i.e., the Honda and the Ford. Alternatively, Liberty maintains that Stone is not entitled to benefits under the policy because benefits were excluded under the liability provisions of the policy given that Stone was not liable for the collision with Drye.

IV. & V. Names of the Parties and the Names,
Addresses, and Telephone Numbers of Their
Counsel

Counsel for Thomas M. Stone:

Steven C. Swain, Esq.
Robert L. Samuel, Jr., Esq.
S. Geoffrey Glick, Esq.
CLARK & STANT, P.C.
900 One Columbus Center
Virginia Beach, VA 23462
(804) 499-8800

Counsel for Liberty Mutual Insurance Company:

Alan B. Rashkind, Esq.
FURNISS, DAVIS, RASHKIND, and SAUNDERS, P.C.
6160 Kempsville Circle
Smithfield Building, 341-B
Norfolk, VA 23502
(804) 461-7100

VI. The Certified Question is Determinative of the
Proceeding in this Court

The issue to be decided in this appeal is whether, under these facts, Tidewater's policy with Liberty violated subsection 38.2-2206A, as the district court concluded, because Stone is an "insured" under subsection 38.2-2206B. If Stone is an insured, then he is entitled to receive uninsured benefits under the policy. If the policy does not violate subsection 38.2-2206A and Stone is not, therefore, entitled to receive uninsured motorist benefits under the policy, then the judgment of the district court will be reversed.

VII. Relevant Decisions of the Supreme Court of Virginia

The Virginia uninsured motorist insurance statute provides in pertinent part:

[N]o policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance, or use of a motor vehicle shall be issued or delivered . . . to the owner of such vehicle or shall be issued or delivered by any insurer licensed . . . upon any motor vehicle principally garaged or used in this Commonwealth unless it contains an endorsement or provisions undertaking to pay the insured all sums that he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits not less than [those provided by statute]. Those limits shall equal but not exceed the limits of the liability insurance provided by the policy, unless any one named insured rejects the additional uninsured motorist insurance coverage The endorsement or provisions shall also obligate the insurer to make payment for bodily injury or property damage caused by the operation or use of an underinsured motor vehicle to the extent the vehicle is underinsured, as defined in subsection B of this section. . . .

Va. Code Ann. § 38.2-2206A (Michie Supp. 1995). According to Liberty, the intent of the General Assembly of Virginia in enacting subsection 38.2-2206A "was to provide benefits and protection against the peril of injury by an uninsured motorist to an insured motorist, his family and permissive users of his vehicle." Nationwide Mut. Ins. v. Harleysville Mut. Casualty, 125 S.E.2d 840, 843 (Va. 1962). Relying on this precept from Nationwide, Liberty maintains subsection 38.2-2206A is not a general panacea for curing all insurance ills, but is specifically tailored to provide insurance coverage for limited classes of insureds. Liberty contends that subsection 38.2-2206B, not subsection 38.2-2206A, resolves this appeal. According to Liberty, only its named insureds and the permissive users or guests of the specifically described owned automobiles are required to be included as insureds of the second class under subsection 38.2-2206B. Alternatively, Liberty asserts that even if subsection 38.2-2206B applies to certain non-owned automobiles, Stone's automobile was not an automobile to which the policy applies because Stone was not an insured under the liability provisions of the policy and because Stone was not nor could he have been legally liable for the collision with Drye.

Asserting that he is an insured under subsection 38.2-2206B, Stone argues that because Liberty insured Tidewater pursuant to the liability provisions of the policy, Liberty must also provide uninsured motorist coverage to those occupying that automobile. Additionally, Stone contends that subsection 38.2-2206

trumps the policy and the statute must be liberally construed, see *Nationwide Mut. Ins. v. Hill*, 439 S.E.2d 335, 338 (Va. 1994); *Storm v. Nationwide Mut. Ins.*, 97 S.E.2d 759, 762 (Va. 1957). These principles serve as a hallmark of Stone's contention that the policy here violates subsection 38.2-2206A because although the policy provides him liability coverage on his automobile while he is delivering pizzas for Tidewater, it purports to deny him uninsured motorist coverage while occupying that same automobile, even though, according to Stone, subsection 38.2-2206A demands coverage for him as an insured under subsection 38.2-2206B.

We find that the general propositions in the cases cited by the parties do not resolve the issue of whether Stone is covered under Tidewater's policy. For instance, in Bayer, only owned vehicles were covered by the policy, see Bayer, 267 S.E.2d at 93, as opposed to the policy here, which covers some non-owned vehicles. Additionally, the policy under which Bayer sought to recover only applied if the insured was legally liable for the injury Bayer sustained, but, as the court noted, "[t]here was no allegation that [the insured under whose policy Bayer attempted to recover] was at fault in the accident sued upon." Id. Bayer, therefore, is not a ground for a decision in this case. Likewise, Harleysville does not resolve the issues presented here because the Harleysville court expressly stated that there was "no conflict or inconsistency" between the policy being sued on and the predecessor statute to subsection 38.2-2206. See Harleysville, 125 S.E.2d at 843. Thus, the court did not need to address the issue presented

here. Hill also provides no direct guidance to resolving this appeal because in Hill none of the insurers disputed that the party seeking to recover under the uninsured motorist provision of the policy was an "insured" under the policy. See Hill, 439 S.E.2d at 338. Because no published decisions of the Virginia courts resolve the issue presented here, we certify the question to the Supreme Court of Virginia.

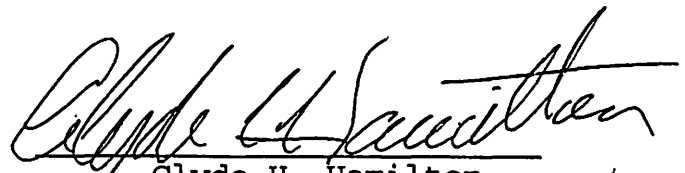
VIII. Transmittal of Record

The Clerk of this Court shall forward to the Supreme Court of Virginia a copy of this order, certified under seal of this Court and, in addition, the original or copies of all or any portions of the record in this case that the Supreme Court of Virginia may require. The Supreme Court of Virginia retains discretion to reformulate the question of law certified and may request from the United States Court of Appeals for the Fourth Circuit such clarification of the question certified or facts as the Supreme Court of Virginia may require.

IX. Costs of Certification

Each party will pay its own fees and costs for the expenses of certifying the question to the Supreme Court of Virginia.

This order is entered with the concurrences of Judge Williams and Judge Motz.


Clyde H. Hamilton
United States Circuit Judge

QUESTION OF LAW CERTIFIED

Whether, under the[] facts [of this case], Stone was an insured as defined in [Virginia Code] subsection 38.2-2206B; that is, does [Virginia Code] subsection 38.2-2206B mandate that Stone is an insured under the uninsured motorist endorsement of Tidewater's automobile policy [issued by Liberty Mutual] notwithstanding the policy's language?