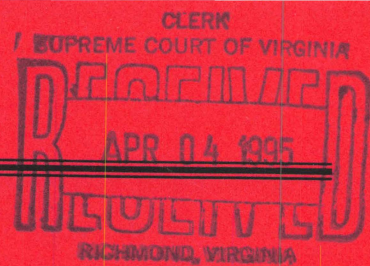


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IN THE  
**Supreme Court of Virginia**

RECORD NO. 941863

THE TRAVELERS INSURANCE COMPANY,

*Appellant,*

v.

DARYL F. LACLAIR,

*Appellee.*

RECORD NO. 941896

THE INSURANCE COMPANY OF NORTH AMERICA,

*Appellant,*

v.

DARYL F. LACLAIR,

*Appellee.*

JOINT APPENDIX

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7-27-93

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PROGRESSIVE CASUALTY INSURANCE  
COMPANY

Plaintiff

v.

MARCUS F. ARBAN, SR.,  
Administrator of the Estate of  
Marcus Francis Arban, Jr., Deceased

Serve: John F. Mardula, Esq.  
Suite 460  
2010 Corporate Ridge  
McLean, VA 22102-7804

Serve: The Travelers Insurance Co.)  
Brandon C. Martin, Esq. )  
Registered Agent )  
300 Arboretum Place )  
Richmond, VA 23261 )

Serve: County of Arlington )  
Charles G. Flinn )  
County Attorney )  
2100 Clarendon Blvd. )  
Suite 403 ' )  
Arlington, VA 22201 )

Daryl F. LaClair )  
7510 Salem Street )  
Manassas, VA 22110 )

Serve: Republic Insurance Co. )  
Thomas C. Palmer, Jr. )  
Registered Agent )  
8575 D Sudley Road, #534 )  
Manassas, VA 22110 )

Defendants

At Law No.: 125443

MOTION FOR DECLARATORY JUDGMENT

COMES NOW Progressive Casualty Insurance Company, by counsel,  
and moves this court for entry of an order declaring and

adjudicating the rights of the parties to this proceeding as more particularly set forth herein below and for entry of an order finding no duty to defend or duty to indemnify on the part of Progressive Casualty Insurance Company for certain claims arising out of an incident which occurred on November 21, 1990, and in support thereof states as follows:

1. The plaintiff, Progressive Casualty Insurance Company, is a corporation engaged in the business of selling automobile insurance policies and duly licensed to do business within the Commonwealth of Virginia.

2. The defendant, Marcus F. Arban, Sr., is the administrator of the estate of Marcus Francis Arban, Jr., deceased, against whom a lawsuit has been filed in the Circuit Court of Arlington County for damages arising out of an incident involving the deceased and defendant, Daryl S. LaClair, which occurred on November 21, 1990.

3. The Travelers Insurance Company has been served as an underinsured or uninsured motorist carrier or other insurance carrier which may have an interest or exposure in the law suit pending in the Circuit Court of Arlington County Style Law 92-1397.

4. The County of Arlington is the employer of Daryl F. LaClair, plaintiff in the underlying action pending in the Circuit Court of Arlington County arising out of the incident which occurred November 21, 1990. The County was also served in the underlying action as potential underinsured motorist carrier.

5. Upon information and belief Republic Insurance Company was the homeowners insurance carrier for Marcus F. Arban, Sr., and

has retained counsel to defend the lawsuit pending in the Circuit Court of Arlington County arising out of the incident which occurred November 21, 1990.

6. Progressive Casualty Insurance Company issued a policy of automobile insurance to Marcus Frances Arban, policy no. 048 784 99-0 which was in effect on November 21, 1990. Exhibit 1.

7. Daryl F. LaClair has filed a law suit in the Circuit Court of Arlington County alleging that on or about November 21, 1990 he was shot by Marcus F. Arban, Jr. and suffered serious and disabling injuries. See attached Exhibit 2 re: copy of Motion For Judgment filed in the Circuit Court of Arlington County.

8. The lawsuit filed against the Estate of Marcus Arban, Jr., contains two counts. Count I alleges assault and battery by decedent Arban against plaintiff LaClair. Count II alleges that defendant, Marcus F. Arban, Jr., decedent, negligently, carelessly, recklessly and wantonly discharged a fire arm at or near LaClair causing him bodily injury, and that he was a law enforcement officer engaged in the performance of his duties at the time.

9. Progressive Casualty Insurance Company, the automobile insurer for the decedent, was notified of the lawsuit on May 24, 1993, by copy of letter from counsel for plaintiff notifying Progressive of a claim. See attached Exhibit 3.

10. In response thereto, on June 4, 1993, Progressive issued a reservation of rights letter addressed to the Estate of Marcus F. Arban, Jr. Copy of the letter was sent to counsel for the estate and to counsel for claimant. See attached Exhibit 4.



11. There is no coverage for the allegations and claims made by Daryl LaClair in the underlying Motion For Judgment pending in the Circuit Court of Arlington County and therefore no duty to indemnify or pay or defend on the part of Progressive for any allegations or claims made by LaClair against the estate of Marcus F. Arban, Jr. under the terms and conditions of the policy of insurance issued by Progressive to the decedent.

12. That coverage or indemnification is precluded on the following grounds:

(a) Indemnification or coverage is only owed for sums which the insured decedent would become legally obligated to pay as damages because of bodily injury, etc. "arising out of the ownership, maintenance or use of" an automobile either owned or non-owned as defined in the policy, and the loss in question of November 21, 1990 did not arise out of the ownership, maintenance or use of an owned or non-owned automobile as defined in the policy.

(b) Progressive's policy does not apply to bodily injury or property damage caused intentionally by or at the direction of the insured. The acts complained of are intentional acts which could only have been caused by or at the direction of the insured.

(c) A condition of the policy was violated in that under Conditions 3. Notice, in the event of an accident, occurrence or loss written notice containing particulars sufficient to identify the parties involved and the circumstances thereof is to be given by or for the insured to the insurance company or any of its

authorized agents as soon as practicable. The first notice of this loss was May 24, 1993 by letter from counsel for the plaintiff, more than two and a half years after the incident.

13. An actual and justiciable controversy exists among the parties to these proceedings; and an adjudication from this court is necessary in order to define and determine the contractual rights and obligations of the parties, including but not limited to, the questions of indemnification and/or coverage under the policy of automobile insurance issued to Marcus F. Arban, Jr., and the duty to defend arising out of the law action filed by Daryl S. LaClair for the incident complained of on November 21, 1990.

WHEREFORE, Progressive Casualty Insurance Company moves this court to enter an order declaring that under the terms and conditions of the policy of insurance issued to Marcus F. Arban, effective on the date of November 21, 1990, Progressive has no duty to defend and no duty to indemnify for any claims arising out of the incident complained of in the lawsuit filed by Daryl S. LaClair, and also moves for costs arising out of these proceedings.

PROGRESSIVE CASUALTY INSURANCE COMPANY  
By Counsel


  
\_\_\_\_\_  
Julia B. Judkins, Esquire  
Virginia State Bar No. 22597  
Lewis, Trichilo, Bancroft & McGavin, P.C.  
4117 Chain Bridge Road, #400  
Fairfax, Virginia 22030  
(703) 385-1000

Exhibit 1



*progressive companies*

FAMILY  
AUTOMOBILE  
POLICY

NAME OF INSURED

EXPIRES

AGENT:

ADDRESS:

PLEASE NOTE THAT THIS POLICY APPLIES  
TO MOTORCYCLE AND MOTORHOME POLICIES

Copyright © 1991 The Progressive Corporation

## PROGRESSIVE COMPANIES

(A stockholder of Progressive Companies, Inc., hereby certifies that the company)

agrees with the insured named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to all of the terms of this policy

### PART I - LIABILITY

**Coverage A — Bodily Injury Liability; Coverage B — Property Damage Liability.** To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:

- A. bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury," sustained by any person;
- B. injury to or destruction of property, including loss of use thereof, hereinafter called "property damage"; arising out of the ownership, maintenance or use of the owned automobile or any non-owned automobile, and the company shall defend any suit alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent; but the company may make such investigation and settlement of any claim or suit as it deems expedient.

**Supplementary Payments.** To pay, in addition to the applicable limits of liability:

- (a) all expenses incurred by the company, all costs taxed against the insured in any such suit and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the company's liability thereon;
- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of an automobile insured hereunder, not to exceed \$100 per bail bond, but without any obligation to apply for or furnish any such bonds;
- (c) expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of an accident involving an automobile insured hereunder and not due to war;
- (d) all reasonable expenses, other than loss of earnings, incurred by the insured at the company's request.

**Persons Insured.** The following are insureds under Part I:

- (a) with respect to the owned automobile,

- (1) the named insured and any resident of the same household.
  - (2) any other person using such 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, and
  - (3) any other person or organization, but only with respect to his or its liability because of acts or omissions of an insured under (a) (1) or (2) above;
- (b) with respect to a non-owned automobile,
- (1) the named insured,
  - (2) any relative, but only with respect to a private passenger automobile or trailer.  
Provided his actual operation or (if he is not operating) the other actual use thereof is with the permission or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and
  - (3) any other person or organization not owning or hiring the automobile, but only with respect to his or its liability because of acts or omissions of an insured under (b) (1) or (2) above.

The insurance afforded under Part I applies separately to each insured against whom claim is made or suit is brought, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

**Definitions. Under Part I:**

**"named insured"** means the individual named in Item 1 of the declarations and also includes his spouse, if a resident of the same household;

**"insured"** means a person or organization described under "Persons Insured";

**"relative"** means a relative of the named insured who is a resident of the same household;

**"owned automobile"** means

- (a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded,
- (b) a trailer owned by the named insured,
- (c) a private passenger, farm or utility automobile, ownership of which is acquired by the named insured during the policy period, provided
  - (1) it replaces an owned automobile as defined in (a) above, or
  - (2) the company insures all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition, and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and

no other policy issued by the company applicable to such automobile, or

- (d) a temporary substitute automobile;

**"temporary substitute automobile"** means any automobile or trailer, not owned by the named insured, while temporarily used with the permission of the owner as a substitute for the owned automobile or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;

**"non-owned automobile"** means an automobile or trailer not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile;

**"private passenger automobile"** means a four wheel private passenger, station wagon or jeep type automobile;

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

**"utility automobile"** means an automobile, other than a farm automobile, with a load capacity of fifteen hundred pounds or less of the pick-up body, sedan delivery or panel truck type not used for business or commercial purposes;

**"trailer"** means a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm or utility automobile, or a farm wagon or farm implement while used with a farm automobile;

**"automobile business"** means the business or occupation of selling, repairing, servicing, storing or parking automobiles;

**"use"** of an automobile includes the loading and unloading thereof;

**"war"** means war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

**Exclusions. This policy does not apply under Part I:**

- (a) to any automobile while used as a public or livery conveyance, but this exclusion does not apply to the named insured with respect to bodily injury or property damage which results from the named insured's occupancy of a non-owned automobile other than as the operator thereof;
- (b) to bodily injury or property damage caused intentionally by or at the direction of the insured;
- (c) to injury, sickness, disease, death or destruction 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;
- (d) to bodily injury or property damage arising out of the operation of farm machinery;
  - (e) to bodily injury to any employee of the insured arising out of and in the course of (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the insured;
  - (f) to bodily injury to any fellow employee of the insured injured in the course of his employment if such injury arises out of the use of an automobile in the business of his employer, but this exclusion does not apply to the named insured with respect to injury sustained by any such fellow employee;
  - (g) to an owned automobile while used by any person while such person is employed or otherwise engaged in the automobile business, but this exclusion does not apply to the named insured, a resident of the same household as the named insured, a partnership in which the named insured or such resident is a partner, or any partner, agent or employee of the named insured, such resident or partnership;
  - (h) to a non-owned automobile while maintained or used by any person while such person is employed or otherwise engaged in (1) the automobile business of the insured or of any other person or organization, (2) any other business or occupation of the insured, but this exclusion (h) (2) does not apply to 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 an owned automobile;
  - (i) to injury to or destruction of (1) property owned or transported by the insured or (2) property rented to or in charge of the insured other than a residence or private garage;
  - (j) to the ownership, maintenance, operation, use, loading or unloading of an automobile, ownership of which is acquired by the named insured during the policy period or any temporary substitute automobile therefor, if the named insured has purchased other automobile liability insurance applicable to such automobile for which a specific premium charge has been made.

**Financial Responsibility Laws.** When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in

this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

**Limits of Liability.** The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury sustained by one person as the result of any one occurrence; the limit of such liability stated in the declarations as applicable to "each occurrence" is, subject to the above provision respecting each person, the total limit of the company's liability for all such damages arising out of bodily injury sustained by two or more persons as the result of any one occurrence.

The limit of property damage liability stated in the declarations as applicable to "each occurrence" is the total limit of the company's liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one occurrence.

**Other Insurance.** If the insured has other insurance against a loss covered by Part I of this policy, the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible insurance.

## PART II — EXPENSES FOR MEDICAL SERVICES

**Coverage C — Medical Expenses.** To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, X-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services:

**Division 1.** To or for the named insured and each relative who sustains bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury," caused by accident,

- (a) while occupying the owned automobile,
- (b) while occupying a non-owned motor vehicle, but only if such person has, or reasonably believes he has, the permission of the owner to use the motor vehicle and the use is within the scope of such permission, or

- (c) through being struck by an automobile or by a trailer of any type;

**Division 2.** To or for any other person who sustains bodily injury, caused by accident, while occupying

- (a) the owned automobile, while being used by the named insured, by any resident of the same household or by any other person with the permission of the named insured; or
- (b) a non-owned automobile, if the bodily injury results from
- (1) its operation or occupancy by the named insured or its operation on his behalf by his private chauffeur or domestic servant,
  - (2) its operation or occupancy by a relative, provided it is a private passenger automobile or trailer, but only if such operator or occupant has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission.

**Definitions.** The definitions under Part I apply to Part II, and under Part II:

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

"an automobile" includes a trailer of any type.

**Exclusions.** This policy does not apply under Part II to bodily injury:

- (a) sustained while occupying (1) an owned automobile while used as a public or livery conveyance, or (2) any vehicle while located for use as a residence or premises;
- (b) sustained by the named insured or a relative while occupying or through being struck by (1) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads, or (2) a vehicle operated on rails or crawler-treads;
- (c) sustained by any person other than the named insured or a relative, (1) while such person is occupying a non-owned automobile while used as a public or livery conveyance, or (2) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in the automobile business, or (3) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in any other business or occupation, unless the bodily injury results from the operation or occupancy of a private passenger automobile by the named insured or by his private chauffeur or domestic servant, or of a trailer used therewith or with an owned automobile;
- (d) sustained by any person who is employed in the automobile business, if the accident arises out of the

operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;

- (e) due to war.

**Limit of Liability.** The limit of liability for medical payments stated in the declarations as applicable to "each person" is the limit of the company's liability for all expenses incurred by or on behalf of each person who sustains bodily injury as the result of any one accident.

**Other Insurance.** If there is other automobile medical payments insurance against a loss covered by Part II of this policy, the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible automobile medical payments insurance; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible automobile medical expense insurance.

### PART III — PHYSICAL DAMAGE

**Coverage D (1) — Comprehensive (excluding Collision); (2) — Personal Effects.**

- (1) To pay for loss caused other than by collision to the owned automobile or to a non-owned automobile. For the purpose of this coverage, breakage of glass and loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, or colliding with a bird or animal, shall not be deemed to be loss caused by collision.
- (2) To pay for loss caused by fire or lightning to robes, wearing apparel and other personal effects which are the property of the named insured or a relative, while such effects are in or upon the owned automobile.

**Coverage E — Collision.** To pay for loss caused by collision to the owned automobile or to a non-owned automobile but only for the amount of each such loss in excess of the deductible amount stated in the declarations as applicable hereto.

**Coverage F — Fire, Lightning and Transportation.** To pay for loss to the owned automobile or a non-owned automobile, caused (a) by fire or lightning, (b) by smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises in which the automobile is located, or (c) by the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.

**Coverage G — Theft.** To pay for loss to the owned automobile or to a non-owned automobile caused by theft or larceny.

**Coverage H — Combined Additional Coverage.** To pay for loss to the owned automobile or a non-owned automobile caused by windstorm, hail, earthquake, explosion, riot or civil commotion, or the forced landing or falling of any aircraft or its parts or equipment, flood or rising waters, malicious mischief or vandalism, external discharge or leakage of water except loss resulting from rain, snow or sleet whether or not wind driven; provided, with respect to each automobile \$25 shall be deducted from each loss caused by malicious mischief or vandalism.

**Coverage I — Towing and Labor Costs.** To pay for towing and labor costs necessitated by the disablement of the owned automobile or of any non-owned automobile, provided the labor is performed at the place of disablement.

**Supplementary Payments.** In addition to the applicable limit of liability:

- (a) to reimburse the insured for transportation expenses incurred during the period commencing 48 hours after a theft covered by this policy of the entire automobile has been reported to the company and the police, and terminating when the automobile is returned to use or the company pays for the loss; provided that the company shall not be obligated to pay aggregate expenses in excess of \$10 per day or totaling more than \$300.
- (b) to pay general average and salvage charges for which the insured becomes legally liable, as to the automobile being transported.

**Definitions.** The definitions of "named insured", "relative", "temporary substitute automobile", "private passenger automobile", "farm automobile", "utility automobile", "automobile business", "war", and "owned automobile" in Part I apply to Part III, but "owned automobile" does not include, under Part III, (1) a trailer owned by the named insured on the effective date of this policy and not described herein, or (2) a trailer, ownership of which is acquired during the policy period unless the company insures all private passenger, farm and utility automobiles and trailers owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such trailer.

"Insured" means

- (a) with respect to an owned automobile
  - (1) the named insured, and

- (2) any person or organization other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee (or hire) maintaining, using or having custody of said automobile with the express or implied permission of the named insured and within the scope of such permission;

- (b) with respect to a non-owned automobile, the named insured and any relative while using such automobile, provided his actual operation or (if he is not operating) the other actual use thereof, is with the express or implied permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission;

"non-owned automobile" means a private passenger automobile or trailer not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile, while said automobile or trailer is in the possession or custody of the insured or is being operated by him;

"loss" means direct and accidental loss of or damage to (a) the automobile, including its equipment, or (b) other insured property;

"collision" means collision of an automobile covered by this policy with another object or with a vehicle to which it is attached or by upset of such automobile;

"trailer" means a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm or utility automobile, and if not a home, office, store, display or passenger trailer.

**Exclusions.** This policy does not apply under Part III:

- (a) to any automobile while used as a public or livery conveyance;
- (b) to loss due to war;
- (c) to loss to a non-owned automobile arising out of its use by the insured while he is employed or otherwise engaged in the automobile business;
- (d) to loss to a private passenger, farm or utility automobile or trailer owned by the named insured and not described in this policy or to any temporary substitute automobile therefor, if the insured has other valid and collectible insurance against such loss;
- (e) to damage which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such damage results from a theft covered by this policy;
- (f) to tires, unless damaged by fire, malicious mischief or vandalism, or stolen or unless the loss be coincident with and from the same cause as other loss covered by this policy;
- (g) to loss due to radioactive contamination;



(h) under Coverage E, to breakage of glass if insurance with respect to such breakage is otherwise afforded

**Limit of Liability.** The limit of the company's liability for loss shall not exceed the actual cash value of the property, or if the loss is of a part thereof the actual cash value of such part at time of loss, nor what it would then cost to repair or replace the property or such part thereof with other of like kind and quality, nor, with respect to an owned automobile described in this policy, the applicable limit of liability stated in the declarations; provided, however, the limit of the company's liability (a) for loss to personal effects arising out of any one occurrence is \$100, and (b) for loss to any trailer not owned by the named insured is \$500.

**Other Insurance.** If the insured has other insurance against a loss covered by Part III of this policy, the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability of this policy bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible insurance.

#### **PART IV — PROTECTION AGAINST UNINSURED MOTORISTS**

**Coverage J — Uninsured Motorists (Damages for Bodily Injury).** To pay 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 bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", sustained by the insured, caused by accident and arising out of the ownership, maintenance or use of such uninsured automobile; provided, for the purposes of this coverage, determination as to whether the insured or such representative is legally entitled to recover such damages, and if so, the amount thereof shall be made by agreement between the insured or such representative and the company or, if they fail to agree, by arbitration.

No judgment against any person or organization alleged to be legally responsible for the bodily injury shall be conclusive as between the insured and the company, of the issues of liability of such person or organization or of the amount of damages to which the insured is legally entitled unless such judgment is entered pursuant to an action prosecuted by the insured with the written consent of the company.

**Definitions.** The definitions under Part I, except the

definition of "insured" apply to Part IV and under Part IV "insured" means

- (a) the named insured and any relative,
- (b) any other person while occupying an insured automobile; and
- (c) any person with respect to damages he is entitled to recover because of bodily injury to which this Part applies sustained by an insured under (a) or (b) above.

The insurance afforded under Part IV applies separately to each insured but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

**"Insured automobile" means:**

- (a) an automobile described in the policy for which a specific premium charge indicates that coverage is afforded,
- (b) a private passenger, farm or utility automobile, ownership of which is acquired by the named insured during the policy period, provided:
  - (1) it replaces an insured automobile as defined in (a) above, or
  - (2) the company insures under this coverage all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make the Liability and Uninsured Motorist Coverage under this and no other policy issued by the company applicable to such automobile.
- (c) a temporary substitute automobile for an insured automobile as defined in (a) or (b) above, and
- (d) a non-owned automobile while being operated by the named insured; and the term "insured automobile" includes a trailer while being used with an automobile described in (a), (b), (c) or (d) above, but shall not include:
  - (1) any automobile or trailer owned by a resident of the same household as the named insured,
  - (2) any automobile while used as a public or livery conveyance, or
  - (3) any automobile while being used without the permission of the owner.

**"uninsured automobile" includes a trailer of any type and means:**

- (a) an automobile or trailer with respect to the ownership, maintenance or use of which there is, in at least the amount specified by the financial responsibility law of the state in which the insured automobile is principally garaged, no bodily injury 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 a bodily injury liability bond or insurance policy applicable at the time of the accident, but the company writing the same denies coverage thereunder, or

(b) a hit-and-run automobile,

but the term "uninsured automobile" shall not include:

- (1) an insured automobile or an automobile furnished for the regular use of the named insured or a relative,
- (2) an automobile or trailer owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law,
- (3) an automobile or trailer owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any of the foregoing,
- (4) a land motor vehicle or trailer if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle, or
- (5) a farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

"hit-and-run automobile" means an automobile which causes bodily injury to an insured arising out of physical contact of such automobile with the insured or with an automobile which the insured is occupying at the time of the accident, provided:

- (a) there cannot be ascertained the identity of either the operator or the owner of such "hit-and-run automobile";
- (b) the insured or someone on his behalf shall have reported the accident within 24 hours to a police, peace or judicial officer or to the Commissioner of Motor Vehicles, and shall have filed with the company within 30 days thereafter 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, and setting forth the facts in support thereof; and
- (c) at the company's request, the insured or his legal representative makes available for inspection the automobile which the insured was occupying at the time of the accident.

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

"state" includes the District of Columbia, a territory or possession of the United States, and a province of Canada.

**Exclusions.** This policy does not apply under Part IV:

- (a) to bodily injury to an insured while occupying an

automobile (other than an insured automobile) owned by the named insured or a relative, or through being struck by such an automobile;

- (b) to bodily injury to an insured with respect to which such insured, his legal representative or any person entitled to payment under this coverage shall, without written consent of the company, make any settlement with any person or organization who may be legally liable therefor;
- (c) so as to inure directly or indirectly to the benefit of any workmen's compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workmen's compensation or disability benefits law or any similar law.

#### **Limits of Liability.**

- (a) The limit of liability for uninsured motorists coverage stated in the declarations as applicable to "each person" is the limit of the company's 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 liability stated in the declarations as applicable to "each accident" is the total limit of the company's 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) Any amount payable under the terms of this Part because of bodily injury sustained in an accident by a person who is an insured under this Part shall be reduced by
  - (1) all sums paid on account of such bodily injury by or on behalf of (i) the owner or operator of the uninsured automobile and (ii) any other person or organization jointly or severally liable together with such owner or operator for such bodily injury, including all sums paid under Coverage A, and
  - (2) the amount paid and the present value of all amounts payable on account of such bodily injury under any workmen's compensation law, disability benefits law or any similar law.
- (c) Any payment made under this Part to or for any insured shall be applied in reduction of the amount of damages which he may be entitled to recover from any person insured under Coverage A.
- (d) The company shall not be obligated to pay under this coverage that part of the damages which the insured may be entitled to recover from the owner or operator of an uninsured automobile which represents expenses for medical services paid or payable under Part II.

**Other Insurance.** With respect to bodily injury to an insured

while occupying an automobile not owned by the named insured, the insurance under Part IV shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such automobile as primary insurance, and this insurance shall then apply only in the amount by which the limit of liability for this coverage exceeds the applicable limit of liability of such other insurance.

Except as provided in the foregoing paragraph, if the insured has other similar insurance available to him and applicable to the accident, the damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the company 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.

**Arbitration.** If any person making claim hereunder and the company do not agree that such person is legally entitled to recover damages from the owner or operator of an uninsured automobile because of bodily injury to the insured, or do not agree as to the amount of payment which may be owing under this Part, then, upon written demand of either, the matter or matters upon which such person and the company do not agree shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Such person and the company each agree to consider itself bound and to be bound by any award made by the arbitrators pursuant to this Part.

**Trust Agreement.** In the event of payment to any person under this Part:

- (a) the company shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury because of which such payment is made;
- (b) such person shall hold in trust for the benefit of the company all rights of recovery which he shall have against such other person or organization because of the damages which are the subject of claim made under this Part;
- (c) such person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;
- (d) if requested in writing by the company, such person shall take, through any representative designated by the company, such action as may be necessary or appropriate to recover such payment as damages from such other person or organization, such action to be

taken in the name of such person; in the event of a recovery, the company shall be reimbursed out of such recovery for expenses, costs and attorneys' fees incurred by it in connection therewith;

- (e) such person shall execute and deliver to the company such instruments and papers as may be appropriate to secure the rights and obligations of such person and the company established by this provision.

#### CONDITIONS

(Unless otherwise noted, conditions apply to all Parts.)

1. **Policy Period, Territory.** This policy applies only to accidents, occurrences and loss during the policy period while the automobile is within the United States of America, its territories or possessions, or Canada, or is being transported between ports thereof.
2. **Premium.** If the named insured disposes of, acquires ownership of, or replaces a private passenger, farm or utility automobile or, with respect to Part III, a trailer, any premium adjustment necessary shall be made as of the date of such change in accordance with the manuals in use by the company. The named insured shall, upon request, furnish reasonable proof of the number of such automobiles or trailers and a description thereof.
3. **Notice.** In the event of an accident, occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable. In the event of theft the insured shall also promptly notify the police. If claim is made or suit is brought against the insured, he shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

If, before the company makes payment of loss under Part IV, the insured or his legal representative shall institute any legal action for bodily injury 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 company by the insured or his legal representative.

4. **Two or More Automobiles — Parts I, II and III.** When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, but an automobile and a trailer attached thereto shall be held to be one automobile as respects limits of

liability under Part I of this policy, and separate automobiles under Part III of this policy, including any deductible provisions applicable thereto.

5. **Assistance and Cooperation of the Insured — Parts I and III.** The insured shall cooperate with the company and, upon the company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury, property damage or loss with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

6. **Action Against Company — Part I.** No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the company as a party to any action against the insured to determine the insured's liability, nor shall the company be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

**Parts II, III and IV.** No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor, under Part III, until thirty days after proof of loss is filed and the amount of loss is determined as provided in this policy.

7. **Medical Reports; Proof and Payment of Claim — Part II.** As soon as practicable, the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall

submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

The company may pay the injured person or any person or organization rendering the services, and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the company.

8. **Insured's Duties in Event of Loss — Part III.** In the event of loss the insured shall:

(a) protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to protect shall not be recoverable under this policy; reasonable expenses incurred in affording such protection shall be deemed incurred at the company's request;

(b) file with the company, within 91 days after loss, his sworn proof of loss in such form and including such information as the company may reasonably require and shall, upon the company's request, exhibit the damaged property and submit to examination under oath.

9. **Proof of Claim; Medical Reports — Part IV.** As soon as practicable, the insured or other person making claim shall give to the company 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. The insured and every other person making claim shall submit to examinations under oath by any person named by the company and subscribe the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by the company unless the company 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 company when and as often as the company 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 company execute authorization to enable the company to obtain medical reports and copies of records.

10. **Appraisal — Part III.** If the insured and the company fail to agree as to the amount of loss, either may, within 60 days after proof of loss is filed, demand an appraisal of the loss. In such event the insured and the company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. The appraisers shall state separately the actual

endorsement does not apply to the underinsured motorists coverage afforded by this endorsement.

- 5 The second paragraph of the Other Insurance Condition in the Uninsured Motorists Insurance endorsement does not apply to the underinsured motorists coverage afforded by this endorsement.

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

A939a (7-91) **RENTAL REIMBURSEMENT - OWNED PRIVATE PASSENGER AUTOMOBILES ONLY**

It is agreed that the company will provide the named insured, in the event of loss to a private passenger automobile which is designated in the declarations as subject to this endorsement, a substitute automobile, subject to the following provisions:

1. Such provision shall be made
  - (a) only if, with respect to the loss necessitating such rental
    - (i) it is caused by a covered loss and
    - (ii) such owned automobile is continuously withdrawn from normal use for a period in excess of 24 hours;
  - (b) for the period commencing with the first of the number of days for which such rental is incurred and terminating, regardless of the expiration of the policy period, at the end of the number of days which would, with the exercise of due diligence and dispatch, be required to repair or replace such owned automobile. Coverage is limited to:
    - (i) 30 days maximum if coverages D and E have been purchased for the owned automobile or
    - (ii) 15 days maximum if coverages D and E have not been purchased for the owned automobile.
  - (c) in addition to the limit of liability otherwise applicable under such insurance as is afforded by the policy with respect to loss to such owned automobile, and shall not be subject to the application of any deductible thereunder.
2. In the event of loss to which the insurance under this endorsement applies, the named insured shall give notice thereof as soon as practicable to the company or any of its authorized agents.
3. In the event of loss to a provided rental vehicle, coverage is subject to the following provisions:

(a) damages which the insured is legally obligated to pay subject to the deductibles set forth in the declarations if coverages D and E have been purchased.

- (b) damages which the insured is legally obligated to pay subject to a \$250 deductible if coverages D and E have not been purchased.

NAUA 206 (3-63) **COMPREHENSIVE COVERAGE — DEDUCTIBLE — FAMILY**

It is agreed that under the Comprehensive Coverage, the deductible amount stated in the declaration shall be deducted from the amount of each loss as to each automobile, other than loss by (a) fire or lightning, (b) smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises in which the automobile is located, or (c) the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.

If the policy affords insurance with respect to the Collision Coverage, breakage of glass caused by collision may, if the insured so elects, be treated as covered thereunder, subject to the terms thereof, instead of under the Comprehensive Coverage.

PPA940 (2-90) **LOSS OF USE — RENTAL FEE REIMBURSEMENT**

Part III — Physical Damage is amended to include:

If the automobile insured is of the private passenger or utility type, and Coverages D and E are applicable thereto, and such coverages extend to a private passenger or utility type automobile the insured rents from a licensed rental car agency, in the event of a loss or damage to such rental automobile under either of said coverages, the Company will reimburse the insured the daily or weekly rental fee which would have been paid had such rental automobile not been damaged subject to the following conditions:

1. The insured must be liable by contract to continue payment of such rental fee as a result of a covered loss that would prevent the rental of such automobile to others by the licensed rental car agency.
2. The period for which the Company shall be liable shall commence on the day following the date of the accident which resulted in such rental automobile being unavailable for use, provided the insured shall have reported as soon as practicable the loss or damage to the Company, and shall cease, regardless of the expiration of the policy:

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. The insured and the company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

11. **Payment of Loss — Part III.** The company may pay for the loss in money; or may repair or replace the damaged or stolen property; or may, at any time before the loss is paid or the property is so replaced, at its expense return any stolen property to the named insured, or at its option to the address shown in the declarations, with payment for any resultant damage thereto; or may take all or such part of the property at the agreed or appraised value but there shall be no abandonment to the company. The company may settle any claim for loss either with the insured or the owner of the property.

**Part IV.** Any amount due is payable (a) to the insured, or (b) if the insured be a minor to his parent or guardian, or (c) if the insured be deceased to his surviving spouse, otherwise (d) to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents; provided, the company may at its option pay any amount due in accordance with division (d) hereof.

12. **No Benefit to Bailee — Part III.** The insurance afforded by this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire liable for loss to the automobile.
13. **Subrogation — Parts I and III.** In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.
14. **Changes.** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by a duly authorized company representative.
15. **Assignment.** Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the insured named in Item 1 of the declarations, of his spouse if a resident of the same household, shall die, this policy shall cover

(1) the survivor as named insured (2) his legal representative as named insured but only while acting within the scope of his duties as such (3) any person having proper temporary custody of an owned automobile, as an insured, until the appointment and qualification of such legal representative, and (4) under division 1 of Part II any person who was a relative at the time of such death.

16. **Cancellation.** This policy may be cancelled by the insured named in Item 1 of the Declarations by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the company by mailing to the insured named in Item 1 of the Declarations at the address shown in this policy written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by such insured or by the company shall be equivalent to mailing.

If such insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

17. **Cancellation by Company Limited — Part I.** After this policy has been in effect for sixty days or, if the policy is a renewal, effective immediately, the company shall not exercise its right to cancel the insurance afforded under Part I unless:

- (1) the named insured fails to discharge when due any of his obligations in connection with the payment of premium for this policy or any installment thereof, whether payable directly or under any premium finance plan; or
- (2) the insurance was obtained through fraudulent misrepresentation; or
- (3) the insured violates any of the terms and conditions of the policy; or
- (4) the named insured or any other operator, either resident in the same household, or who customarily operates an automobile insured under the policy,
  - (a) has had his driver's license suspended or revoked during the policy period, or
  - (b) is or becomes subject to epilepsy or heart attacks, and such individual cannot produce

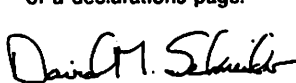
a certificate from a physician testifying to this unqualified ability to operate a motor vehicle.  
or

(c) is or has been convicted of or forfeits bail, during the 36 months immediately preceding the effective date of the policy or during the policy period, for:

- (1) any felony, or
- (2) criminal negligence resulting in death, homicide or assault, arising out of the operation of a motor vehicle, or
- (3) operating a motor vehicle while in an intoxicated condition or while under the influence of drugs, or
- (4) leaving the scene of an accident without stopping to report, or
- (5) theft of a motor vehicle, or
- (6) making false statements in an application for a driver's license, or
- (7) a third violation, committed within a period of 18 months, of (i) any ordinance or regulation limiting the 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.

18. **Declarations.** By acceptance of this policy, the insured named in Item 1 of the declarations agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

In **Witness Whereof**, the company has caused this policy to be signed by its president and secretary, but this policy shall not be valid unless completed by the attachment of a declarations page.

  
Secretary

  
President

**VIRGINIA EXCEPTION** — It is agreed that if the owned automobile is principally garaged in Virginia, the provision in the Collision Coverage that the deductible amount shall not apply to loss caused by collision with another automobile insured by the company is deleted.

Form No. 1077 (10-86) VA

Form No. 1024P (7-91) VA

*progressive companies*

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## GENERAL ATTACHMENTS

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ALL FORMS LISTED IN THE VIRGINIA PACKAGE MAY NOT PERTAIN TO YOUR POLICY. PLEASE REFER TO YOUR DECLARATIONS PAGE FOR APPLICABLE ATTACHMENTS. PLEASE NOTE ADDITIONAL MOTORCYCLE/MOTOR HOME SPECIFIC ATTACHMENTS MAY BE FOUND ON PAGES 51 TO 59.

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## IMPORTANT INFORMATION TO POLICYHOLDERS

In the event you need to contact someone about this policy for any reason, please contact your agent. If you have additional questions you may contact the Progressive Companies at the following address and phone number:

4461 Cox Road  
Glen Allen, Virginia 23060  
1-800-876-8012

If you have been unable to contact or obtain satisfaction from either your agent or us, you may contact the Virginia Bureau of Insurance at:

Property and Casualty Division  
Bureau of Insurance  
P.O. Box 1157  
Richmond, Virginia 23209  
1-800-552-7945 (in state)  
1-804-786-3471 (out of state)

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

### Form No. 8276 (7-89) **MEDICAL/INCOME DISABILITY IMPORTANT NOTICE**

**IN ADDITION TO THE MINIMUM INSURANCE REQUIRED BY LAW, YOU MAY PURCHASE ADDITIONAL INSURANCE COVERAGE FOR THE NAMED INSURED AND FOR HIS RELATIVES WHO ARE MEMBERS OF HIS HOUSEHOLD WHILE OCCUPYING A MOTOR VEHICLE, OR IF STRUCK BY A MOTOR VEHICLE WHILE NOT OCCUPYING A MOTOR VEHICLE, AND FOR OCCUPANTS OF THE INSURED MOTOR VEHICLE. THE FOLLOWING HEALTH CARE AND DISABILITY BENEFITS ARE AVAILABLE FOR EACH ACCIDENT:**

- A. PAYMENT OF UP TO \$2,000 PER PERSON FOR ALL REASONABLE AND NECESSARY EXPENSES FOR MEDICAL, CHIROPRACTIC, HOSPITAL, DENTAL, SURGICAL, AMBULANCE, PROSTHETIC AND REHABILITATION SERVICES, AND FUNERAL EXPENSES RESULTING FROM THE ACCIDENT AND INCURRED WITHIN THREE YEARS AFTER THE DATE OF THE ACCIDENT; AND
- B. AN AMOUNT EQUAL TO THE LOSS OF INCOME UP TO \$100 PER WEEK IF THE INSURED PERSON IS ENGAGED IN AN OCCUPATION FOR WHICH HE RECEIVES COMPENSATION, FROM THE FIRST

WORKDAY LOST AS A RESULT OF THE ACCIDENT UP TO THE DATE THE PERSON IS ABLE TO RETURN TO HIS USUAL OCCUPATION. SUCH PAYMENTS ARE LIMITED TO A PERIOD EXTENDING ONE YEAR FROM THE DATE OF THE ACCIDENT.

IF YOU DESIRE TO PURCHASE EITHER OR BOTH OF THESE COVERAGES AT AN ADDITIONAL PREMIUM, YOU MAY DO SO BY CONTACTING THE AGENT OR COMPANY THAT ISSUED YOUR POLICY.

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Form No. 2063 (7-86) **IMPORTANT NOTICE**

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IN ADDITION TO THE INSURANCE COVERAGE REQUIRED BY LAW TO PROTECT YOU AGAINST A LOSS CAUSED BY AN UNINSURED MOTORIST.

IF YOU HAVE PURCHASED LIABILITY INSURANCE COVERAGE THAT IS HIGHER THAN THAT REQUIRED BY LAW TO PROTECT YOU AGAINST LIABILITY ARISING OUT OF THE OWNERSHIP, MAINTENANCE OR USE OF YOUR MOTOR VEHICLES COVERED BY THIS POLICY, AND YOU HAVE NOT ALREADY PURCHASED UNINSURED MOTORIST INSURANCE COVERAGE EQUAL TO YOUR LIABILITY INSURANCE COVERAGE:

1. YOUR UNINSURED AND UNDERINSURED MOTORIST INSURANCE COVERAGE HAS INCREASED TO THE LIMITS OF YOUR LIABILITY COVERAGE AND THIS INCREASE WILL COST YOU AN EXTRA PREMIUM CHARGE; AND
2. YOUR TOTAL PREMIUM CHARGE FOR YOUR MOTOR VEHICLE INSURANCE COVERAGE WILL INCREASE IF YOU DO NOT NOTIFY YOUR AGENT OR INSURER OF YOUR DESIRE TO REDUCE COVERAGE WITHIN 20 DAYS OF THE MAILING OF THE POLICY OR THE PREMIUM NOTICE, AS THE CASE MAY BE.
3. IF THIS IS A NEW POLICY AND YOU HAVE ALREADY SIGNED A WRITTEN REJECTION OF SUCH HIGHER LIMITS IN CONNECTION WITH IT, PARAGRAPHS 1 AND 2 OF THIS NOTICE DO NOT APPLY.

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E131 (11-78) **CUSTOMIZING EQUIPMENT  
EXCLUSION — AUTOMOBILE**

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Any physical damage coverage afforded by this policy is subject to the following additional exclusion:

This insurance does not apply to loss of, or damage to, any custom furnishings or equipment including, but not limited to:

1. special carpeting and insulation, furniture, bars or television receivers;

2. facilities for cooking and sleeping including enclosures.
3. height extending roofs.
4. custom murals, paintings, or other decals or graphics, in or upon any pickup, panel truck or van.

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E104a (9-77) **SOUND RECEIVING AND TRANSMITTING EQUIPMENT EXCLUDED**

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It is agreed that any Physical Damage Insurance afforded by the policy is subject to the following additional exclusion:

This insurance does not apply to loss of, or damage to, any sound receiving or sound receiving and transmitting equipment designed for use as a citizens band radio, two-way mobile radio or telephone, or scanning monitor receiver, including any accessories and antennas unless permanently installed in the opening of the dash or console of the automobile normally used by the motor vehicle manufacturer for the installation of a radio.

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A689H (7-88) **UNINSURED MOTORISTS INSURANCE**

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(Virginia)

In consideration of the payment of premium and subject to all of the provisions of this endorsement and to the applicable provisions of the policy, the company agrees with the named insured as follows:

**I. COVERAGE UNINSURED MOTORISTS**

(Damages for Bodily Injury and Property Damage)

The company will pay in accordance with Section 38.2-2206 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 motor vehicle because of bodily injury sustained by the insured or property damage, caused by accident and arising out of the ownership, maintenance or use of such uninsured motor vehicle.

**Exclusions**

This insurance does not apply:

- (a) to bodily injury or property damage with respect to which the insured or his legal representative shall, without written consent of the company, make any settlement with any person or organization who may be legally liable therefor;
- (b) to the first two hundred dollars of the total amount of all property damage as the result of any one accident. This exclusion does not apply if the owner or operator of the uninsured motor vehicle

causing the damage can be identified:

- (c) so as to insure directly or indirectly, to the benefit of any insurer of property

## II. PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below:

- (a) the named insured and, while residents of the same household, the spouse and relatives of either;
- (b) any other person while occupying an insured motor vehicle; and
- (c) any person, with respect to damages he is entitled to recover because of bodily injury to which this insurance applies sustained by an insured under (a) or (b) above.

This insurance applies separately with respect to each insured, except with respect to the limits of the company's liability.

## III. LIMITS OF LIABILITY

Regardless of the number of (1) persons or organizations who are insureds under this insurance, (2) persons or organizations who sustain bodily injury or property damage, (3) claims made or suits brought on account of bodily injury or property damage, or (4) motor vehicles to which this insurance applies,

- (a) If the schedule or declarations indicate split limits of liability, the limit of liability for bodily injury stated as applicable to "each person" is the limit of the company's liability for all damages 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 liability for bodily injury stated as applicable to "each accident" is the total limit of the company's liability for all damages because of bodily injury sustained by two or more persons as the result of any one accident. The limit of liability for property damage stated as applicable to "each accident" is the total limit of the company's liability for all damages because of property damage to all property of one or more insureds as the result of any one accident.
- (b) If the schedule or declarations indicate a single limit of liability, the limit of liability stated as applicable to "each accident" is the total limit of the company's liability for all damages as the result of any one accident; provided such limit of liability shall first provide the separate limits required by the Virginia Motor Vehicle Safety Responsibility Act as stated in the schedule or declarations.

... shall be applied in reduction of any amount which he may be entitled to recover from any person or organization who is an insured under the bodily injury or property damage liability coverages.

- (d) Any amount payable under this insurance because of bodily injury or property damage sustained in an accident by a person who is an insured under this insurance shall be reduced by all sums paid because of such bodily injury or property damage by or on behalf of the owner or operator of an uninsured motor vehicle.
- (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 insurance shall be reduced by all sums paid because of such bodily injury or property damage by or on behalf of any person or organization jointly or severally liable together with the owner or operator of an uninsured motor vehicle for such bodily injury or property damage including all sums paid under the bodily injury or property damage coverage of the policy.

## IV. POLICY PERIOD; TERRITORY

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

## V. DEFINITIONS

When used in reference to this insurance (including endorsements forming a part of the policy):

"bodily injury" means bodily injury, sickness or disease, including death, sustained by a person who is an insured under (a) or (b) of the Persons Insured provision;

"hit-and-run vehicle" means a motor vehicle 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 motor vehicle; and
- (b) the insured or someone on his behalf shall have reported the accident promptly to either the company, or a law-enforcement officer.

"insured motor vehicle" means a motor vehicle

apply to the assignee of a contract, the assignor must except the following from the assignment: Duties in the Event of Loss; Subrogation; Changes; Assignment; Cancellation; and "Declarations."

### **B. Premium**

- If during the policy period the number of insured motor vehicles owned by the named insured or spouse and registered in Virginia changes, the named insured shall notify the company during the policy period of any changes, and the premium shall be adjusted in accordance with the manuals in use by the company. If the earned premium thus computed exceeds the advance premium paid, the named insured shall pay the excess to the company; if less, the company shall return to the named insured the unearned portion paid by such insured.

### C. Proof of Claim; Medical Reports; Proof of Loss

As soon as practicable, the insured or other person making claim shall give to the company 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 company unless the company 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 company when and as the company 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 company execute authorization to enable the company 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 company within sixty days after the occurrence of loss, unless such time is extended in writing by the company, 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 company's request, the insured shall exhibit the damaged property to the

(a) a motor vehicle with respect to the ownership, maintenance or use of which there is, in at least the amounts specified in the Virginia Motor Vehicle Safety Responsibility Act, neither (i) cash or securities on file with the Virginia Commissioner of Motor Vehicles nor (ii) 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 vehicle, 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 vehicle as defined.

### A. Policy Provisions

— 29 —

company

With respect to claims alleged to have arisen out of the ownership, maintenance or use of a hit-and-run vehicle 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 company, by filing with the company 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 vehicle involved in the accident.

**D. Notice of Legal Action**

If, before the company 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 a motor vehicle 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 company by the insured or his legal representative

**E. Other Insurance**

With respect to bodily injury to an insured while occupying a motor vehicle not owned by the named insured, this insurance shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such vehicle 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 company 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, this insurance shall apply only as excess insurance over any other valid and collectible insurance of any kind applicable to such property damage.

With respect to an accident wherein an employee of a self-insured employer receives a worker's compensation award for injuries resulting from an accident with an uninsured motor vehicle, such

award shall be set off against any judgment for damages awarded for personal injuries resulting from such accident

**F. Payment of Loss by the Company**

Any amount due hereunder is payable

- (a) to the insured, or
- (b) if the insured be a minor to his parent or guardian, or
- (c) if the insured be deceased to his surviving spouse, otherwise
- (d) to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents;

provided, the company may at its option pay any amount due hereunder in accordance with division (d) hereof.

- G.** This endorsement replaces any other provisions of the policy, including any endorsement forming a part thereof, affording similar insurance with respect to any damages arising out of the ownership, maintenance or use of an uninsured motor vehicle or a hit-and-run vehicle.

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A906G (7-87) **AMENDMENT OF TERMINATION PROVISIONS — VIRGINIA**

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It is agreed that:

- A.** The first paragraph of the "Cancellation" condition is replaced by the following:

This policy may be cancelled by the insured named in Item 1 of the declarations, or his duly constituted attorney-in-fact by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective.

This policy may be cancelled by the Company by mailing to the insured named in Item 1 of the declarations at the address shown in this policy, written notice stating when not less than forty-five days thereafter such cancellation shall be effective; except that this policy may be cancelled by the Company by mailing to the insured named in Item 1 of the declarations at the address shown in this policy written notice stating:

- 1. when not less than ten days thereafter such cancellation shall be effective, if this policy has been in effect less than sixty days and is not a renewal policy, or

- 2 when not less than fifteen days thereafter such cancellation shall be effective, if the named insured fails to discharge when due any of his obligations in connection with the payment of premium for this policy or any installment thereof, whether payable to the Company or its agent either directly or indirectly under any premium finance plan or extension of credit.

Notice to the insured named in Item 1 of the declarations shall be mailed either by certificate of mailing, provided the Company has retained a duplicate certified copy of said notice, or by registered or certified mail, pursuant to Section 38.2-2208 of the Code of Virginia. The [time of surrender or the] effective date [and hour] of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by such insured, or his duly constituted attorney-in-fact, or by the Company shall be equivalent to mailing.

- B. The following Condition is added or, if the policy contains a Condition so entitled, such Condition is replaced by the following:

**Cancellation by Company Limited**

If this policy has been in effect for sixty days at the time notice of cancellation is mailed or delivered or, if this policy is a renewal, effective immediately, the company shall not exercise its right to cancel unless:

1. the named insured fails to discharge when due any of his obligations in connection with the payment of premium for this policy or any installment thereof, whether payable to the company or its agent either directly or indirectly under any premium finance plan or extension of credit; or
2. the named insured or any other operator who either resides in the same household or customarily operates an automobile insured under this policy has had his driver's license suspended or revoked during the policy period, or, if the policy is a renewal, during its policy period or the ninety days immediately preceding the last anniversary of the effective date; provided, however, the Company shall have the right to modify any physical damage coverage afforded by this policy (except coverage for loss caused by collision) by inclusion of a deductible not exceeding \$100.

This Condition shall apply to each successive policy period for which the Company consents to renew or continue this policy but nothing in this Condition shall obligate the company to

renew or continue this policy

- C. The following Condition is added

**Renewal**

If this policy is written for a policy period of less than one year or without a fixed expiration date, the Company agrees that it will not exercise its right to refuse to renew or continue the insurance, except as of the end of any six-month interval of the original effective date.

The company agrees that it will not refuse to renew or continue this policy unless a written notice of its refusal to renew or continue is mailed to the insured named in Item 1 of the declarations, or the address shown in this policy, or least forty-five days prior to the expiration date. Notice to the insured named in Item 1 of the declarations shall be mailed either by certificate of mailing, provided the Company has retained a duplicate certified copy of said notice, or by registered or certified mail, pursuant to Section 38.2-2208 of the Code of Virginia. Delivery of such written notice shall be equivalent to mailing.

Such notice shall not be required:

1. if the named insured fails to pay the premium as required by the Company for renewal or continuance of this policy.
2. if the Company or its agent acting on behalf of the Company has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, or has manifested such intention in writing to the insured, or
3. if the named insured, or his duly constituted attorney-in-fact, has notified in writing to the Company or its agent that he wishes the policy to be cancelled or that he does not wish the policy to be renewed or if prior to the date of expiration he fails to accept the offer of the Company.

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A877 (6-66) **ASSISTANCE AND COOPERATION OF THE INSURED**

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(Automobile Liability Insurance)  
(Virginia)

The failure or refusal of the insured to cooperate with or assist the company which prejudices the company's 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 company.

A925 (5-70) **SOUND-REPRODUCING OR RECORD-  
ING EQUIPMENT EXCLUDED**

**It is agreed that such insurance as is afforded by the policy under the Physical Damage Coverages is subject to the following additional exclusions:**

**The insurance does not apply:**

1. to loss of or damage to any device or instrument designed for the recording, reproduction, or recording and reproduction of sound unless such device or instrument is permanently installed in the automobile.
2. to loss of or damage to any tape, wire, record disc or other medium for use with any device or instrument designed for the recording, reproduction, or recording and reproduction of sound.

A799F (7-91) **FAMILY AUTOMOBILE FORM  
VIRGINIA AMENDATORY  
ENDORSEMENT**

It is agreed that:

**PART I**

1. The first paragraph of "Persons Insured" is amended to read:  
Persons Insured  
The following are insureds under Part I  
(a) with respect to the owned automobile.
  - (1) the named insured and any resident of the same household.
  - (2) any other person using such 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, and
  - (3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a) (1) or (2) above;  
(b) with respect to a non-owned automobile.
  - (1) the named insured.
  - (2) any relative, but only with respect to a private passenger automobile or trailer,  
provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and

(3) any other person or organization not owner or having the automobile, but only with respect to his or its liability because of acts or omissions of an insured under (b) (1) or (2) above

2. The definition of "owned automobile" is amended to read.  
"owned automobile" means
  - (a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded.
  - (b) a trailer owned by the named insured.
  - (c) a private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided
    - (1) it replaces an owned automobile as defined in (a) above, or
    - (2) the company insures all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such automobile, or
  - (d) a temporary substitute automobile;
3. The definition of "temporary substitute automobile" is amended to read:  
"temporary substitute automobile" means any automobile or trailer, not owned by the named insured, while temporarily used with the permission of the owner as a substitute for the owned automobile or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;
4. The definition of "farm automobile" is amended to read:  
"farm automobile" means an automobile of the truck type not used for business or commercial purposes other than farming;
5. The definition of "utility automobile" is amended to read:  
"utility automobile" means an automobile, other than a farm automobile, of the pick-up body, sedan delivery or panel truck type not used for business or commercial purposes;
6. Exclusion (g) and (h) are amended and a new



exclusion is added to read:

(This policy does not apply under Part I.)

- (g) to any automobile or trailer while maintained or used by any person while such person is employed or otherwise engaged in the automobile business to the extent that the limits of liability for this policy exceed the limits of liability required by the Virginia financial responsibility law, but this exclusion (g) does not apply to the maintenance or use of an owned automobile by
  - (1) the named insured; or
  - (2) directors, stockholders, partners, agents or employees of the named insured; or
  - (3) a resident of the same household as a person described in (1) or (2) above.
- (h) to a non-owned automobile while maintained or used by any person while such person is employed or otherwise engaged in any business or occupation of the insured, except the automobile business, but this exclusion (h) does not apply to 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 an owned automobile.
- (j) to the ownership, maintenance, operation, use, loading or unloading of an automobile ownership of which is acquired by the named insured during the policy period or any temporary substitute automobile therefor, if the named insured has purchased other automobile liability insurance applicable to such automobile for which a specific charge has been made.

## PART II

The Expenses For Medical Services portion of the policy is deleted in its entirety and replaced by the following:

When a specific premium charge is shown in the declarations for Section I and/or Section II, the company agrees with the named insured, subject to all the provisions of the policy except as modified herein, as follows:

### Section I

#### Medical Expense Benefits

The company will pay, in accordance with Sections 38.2-2201, or 46.2-465 of the Code of Virginia, to or on behalf of each injured person, medical expense benefits as a result of bodily injury caused by accident and arising out of the ownership, maintenance or use of a motor vehicle as a motor vehicle.

#### Exclusions

This insurance does not apply:

- (a) to any benefits payable by any person or the extent that benefits therefore are in whole or in part payable under any workmen's compensation law, employer's disability benefits law or any other similar law.
- (c) to bodily injury sustained while occupying the insured motor vehicle while used as a public or livery conveyance, but this exclusion does not apply with respect to any insured motor vehicle designated in the policy as a public or livery conveyance;
- (d) to bodily injury sustained by any person while occupying a motor vehicle, unless such person has or reasonably believes he has the permission of the owner to use such motor vehicle and the use is within the scope of such permission;
- (e) to bodily injury sustained by the named insured or any relative while occupying any motor vehicle owned by or furnished or available for the regular use of such named insured or relative and which is not an insured motor vehicle;
- (f) to bodily injury due to war whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

#### Definitions

The definitions under Part I of the policy apply to Part II except as modified herein:

"bodily injury" means bodily injury, sickness or disease, including death resulting therefrom,

"injured person" means

- (a) the named insured or any relative who sustains bodily injury while occupying a motor vehicle, or if struck by a motor vehicle while not occupying a motor vehicle.
- (b) any other person who sustains bodily injury while occupying
  - (1) the insured motor vehicle;
  - (2) a non-owned automobile which the named insured or relative is operating; or
  - (3) a temporary substitute automobile;

"insured motor vehicle" means a motor vehicle with respect to which

- (a) the named insured is the owner, and
- (b) the bodily injury liability or the property damage liability insurance of the policy applies; and
- (c) the insurance under this coverage applies and for which a specific premium has been charged.

"medical expense" means all reasonable and necessary expenses for medical, hospital, chiropractic, x-ray,

professional nursing dental prosthetic and rehabilitation services and related expenses, incurred within three years after the date of the accident.

"medical expense insurance" means any motor vehicle insurance providing benefits for medical expenses without regard to fault.

"motor vehicle" means a self-propelled land motor vehicle or trailer other than (1) a farm type tractor or other self-propelled equipment designed for use principally off public roads, while not upon public roads, (2) a vehicle operated on rails or crawler treads, or (3) a vehicle located for use as a residence or premises;

"named insured" means the individual or organization named in Item 1 of the declarations.

"non-owned automobile" means a motor vehicle which is not

- (a) used as a public or livery conveyance; or
- (b) owned by or furnished or available for the regular use of either the named insured or any relative; or
- (c) a temporary substitute automobile.

"occupying" means in or upon or entering or alighting from.

"relative" means a person related to the named insured by blood, marriage or adoption, including wards or foster children, who is a resident of the same household as the named insured.

#### **Limits of Liability**

Regardless of the number of:

- 1. persons or organizations who are insureds under this policy,
- 2. persons who sustain bodily injury, or
- 3. claims made or suits brought on account of bodily injury.

the company's liability for MEDICAL EXPENSE BENEFITS to or on behalf of any one person who sustains bodily injury shall not exceed:

- (a) the limit of liability for Medical Expense Benefits stated in the declarations as applicable to each injured person when there is only one insured motor vehicle; or
- (b) the sum of the highest limits of liability for Medical Expense Benefits stated in the declarations as applicable to each injured person for each insured motor vehicle up to a maximum of 4, when the medical expense costs incurred by the injured person exceed the limit of liability for any one vehicle so insured.

If other valid and collectible medical expense insurance is applicable to the bodily injury of an injured person, the

company shall pay the lesser of the limits of liability stated in the declarations or the actual medical expense incurred.

(a) the medical expense insurance of the owner of the motor vehicle the injured person was occupying at the time of the accident

(b) the medical expense insurance of the operator of the motor vehicle the injured person was occupying at the time of the accident.

(c) the medical expense insurance of the injured person.

However, in no event shall any injured person collect more than his actual medical expense incurred as a result of an accident from this or any other motor vehicle insurance policy or combination of such policies providing medical expense insurance applicable to such accident.

#### **Section II**

##### **Income Loss Benefits**

The company will pay, in accordance with Sections 38.2-2201 or 46.2-465 of the Code of Virginia, to or on behalf of each injured person, income loss benefits as a result of bodily injury caused by accident and arising out of the ownership, maintenance or use of a motor vehicle as a motor vehicle.

##### **Exclusions**

The exclusions contained in Section I also apply to Section II and the insurance under Section II does not apply to bodily injury sustained by any person in the course of his occupation while engaged (1) in duties incident to the operation, loading or unloading of, or as an assistant on a public or livery conveyance or commercial automobile, or (2) in duties incident to the repair or servicing of automobiles

##### **Definitions**

The definitions under Section I apply to Section II and under Section II:

"income loss" means an amount equal to the loss of income incurred by an injured person usually engaged in a remunerative occupation, within one year after the date of the accident, and as a result of disability caused by the accident.

"income loss insurance" means any motor vehicle insurance providing benefits for income loss.

##### **Limits of Liability**

Regardless of the number of:

- 1. persons or organizations who are insureds under this policy,
  - 2. persons who sustain bodily injury, or
  - 3. claims made or suits brought on account of bodily injury,
- the company's liability for INCOME LOSS BENEFITS to

or on behalf of any one person who sustains bodily injury in any one motor vehicle accident shall not exceed

- (a) \$100 per week for income loss when there is only one insured motor vehicle, or
- (b) \$100 per week for income loss, multiplied by the number of insured motor vehicles up to a maximum of 4, when the income loss incurred by the injured person exceeds the limit of liability for any one vehicle so insured.

In no event shall the limit of liability exceed \$400 per week for any one injured person in any one accident. Income loss is computed from the first work day lost as a result of the accident up to the date the injured person is able to return to his usual occupation or the date of death of such injured person, whichever occurs first.

If other valid and collectible income loss insurance is applicable to an injured person, the benefits shall be paid according to the following order of priority:

- (a) the income loss insurance of the owner of the motor vehicle the injured person was occupying at the time of the accident;
- (b) the income loss insurance of the operator of the motor vehicle the injured person was occupying at the time of the accident;
- (c) the income loss insurance of the injured person.

However, in no event shall any injured person collect more than his actual income loss incurred as a result of an accident from this or any other motor vehicle insurance policy or combination of such policies providing income loss insurance applicable to such accident.

Any payments made by the company under this insurance shall be applied in reduction of the amount of damages which because of bodily injury sustained in the same accident, such injured person may be entitled to recover from the company under insurance afforded by this policy for bodily injury liability or protection against uninsured motorists.

#### CONDITIONS

The Conditions of the policy apply to Part II except as modified herein:

- 1. **Notice.** In the event of an accident, the company requires that written notice containing particulars sufficient to identify the injured person and also reasonably obtainable information respecting the time, place and circumstances of the accident shall be given by or on behalf of each injured person to the company or any of its authorized agents as soon as practicable. The failure or refusal of the injured person to give such notice shall not relieve the company of

its obligation to pay unless such failure or refusal prejudices the company in establishing the validity of any claim under this coverage. If any injured person or his legal representative shall institute legal action to recover damages for bodily injury against a person or organization who is or may be liable to in tort therefor, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded as soon as practicable to the company by such injured person or his legal representative.

- 2. **Action Against Company.** No action shall lie against the company unless as a condition precedent thereto, there shall have been full compliance with all the terms of this insurance.
- 3. **Medical Reports; Proof of Claim.** As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim under oath, if required, including full particulars of the nature and extent of the injuries and treatment received and contemplated and such other information as may assist the company in determining the amount due and payable. The injured person shall submit to physical examinations by physicians selected by the company at the expense of the company when and as often as the company may reasonably require

The injured person, or in the event of his incapacity or death, his legal representative, shall upon each request from the company execute authorization to enable the company to obtain medical reports, copies of records and information with respect to loss of income. The company may require that the injured person, as condition for receiving income loss benefits, cooperate in furnishing the company reasonable medical proof of his inability to work.

- 4. **Policy Period; Territory.** This insurance applies only to accidents which occur during the policy period within the United States of America, its territories or possessions, or Canada.
- 5. **Subrogation.** In the event of any payment under Section II - Income Loss Benefits, the company shall be subrogated to all the injured person's rights of recovery therefor against any person or organization and the injured person shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The injured person shall do nothing after loss to prejudice such rights.

### PART III

1. The Comprehensive insuring agreement is amended to read as follows:

#### Coverage D (1) - Comprehensive (excluding Collision)

To pay for loss caused other than by collision to the owned automobile or to a non-owned automobile. For the purpose of this coverage, breakage of glass and loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, or colliding with a bird or animal, shall not be deemed to be loss caused by collision.

2. The preamble to the "Definitions" provisions is amended to read:

#### Definitions.

The definitions of "named insured," "relative," "temporary substitute automobile," "private passenger automobile," "farm automobile," "utility automobile," "automobile business," "war," and "owned automobile" in Part I apply to Part III, but "owned automobile" does not include, under Part III, (1) a trailer owned by the named insured on the effective date of this policy and not described herein, or (2) a trailer ownership of which is acquired during the policy period unless the company insures all private passenger, farm and utility automobiles and trailers owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such trailer.

3. The definition of "insured" is amended to read:

"insured" means

- (a) with respect to an owned automobile

- (1) the named insured, and

- (2) any person or organization (other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee for hire) maintaining, using or having custody of said automobile with the express or implied permission of the named insured and within the scope of such permission;

- (b) with respect to a non-owned automobile, the named insured and any relative while using such automobile, provided his actual operation or (if

he is not operating) the other actual use thereof, is with the express or implied permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission.

4. Exclusion (c) is amended to read:

This policy does not apply under Part III

(c) to loss to a non-owned automobile arising out of its use by the insured while he is employed or otherwise engaged in the automobile business;

### CONDITIONS

1. The "Premium" Condition is amended to read:

#### Premium

If the named insured disposes of, acquires ownership of, or replaces a private passenger, farm or utility automobile or, with respect to Part III, a trailer, any premium adjustment necessary shall be made as of the date of such change in accordance with the manuals in use by the company. The named insured shall, upon request, furnish reasonable proof of the number of such automobiles or trailers and a description thereof.

2. The "Assistance and Cooperation" Condition is amended to read:

#### Assistance and Cooperation of the Insured

Parts I and II - The insured shall cooperate with the company and upon the company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury, property damage or loss with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

E139a (7-91)

### AUTOMOBILE

### NAMED NON-OWNER COVERAGE

This coverage is subject to all the provisions of the policy with respect to individuals and coverages indicated in the declarations except as modified below:

#### A. DEFINITIONS:

When used in this endorsement:

**"owned automobile"** means a private passenger, farm or utility automobile, ownership of which is acquired by the named insured during the policy period, provided the named insured notifies the company within 30 days after the date of acquisition, but this insurance does not apply if other insurance applies to the named insured with respect to the newly acquired automobile.

**B PART I, LIABILITY**

The definition of "Persons Insured" as used in Part I, Liability, is replaced by the following:

**"Persons Insured"** means:

- (a) the named insured or any other individual named in the declarations for the maintenance or use of any automobile or trailer,
- (b) any other person using an owned automobile with the permission of the named insured provided his or her actual operation or (if he or she is not operating) the other actual use thereof is within the scope of such permission, and
- (c) for any automobile or trailer, other than the owned automobile, any person or organization but only with respect to legal responsibility for acts or omissions of the named insured or any individual listed in the declarations for whom coverage is afforded under this Part. This provision applies only if the person or organization does not own or hire the automobile or trailer.

**C PART II, MEDICAL EXPENSE AND INCOME LOSS BENEFITS**

The definition of "injured person" is deleted and replaced by the following:

**"Injured person"** means

- (a) the named insured or any other individual named in the declarations, while occupying or as a pedestrian when struck by a motor vehicle.
- (b) any other person while occupying an insured motor vehicle.

**D. PART IV, PROTECTION AGAINST UNINSURED MOTORISTS**

- 1. The definition of Insured as used in Part IV, Protection Against Uninsured Motorists, is replaced by the following:

**"Insured"** means:

- (a) the named insured or any other individual listed in the declarations,
- (b) any other person while occupying an insured automobile,

- (c) any person with respect to damages he or she is entitled to recover because of bodily injury to which this coverage applies sustained by a person described in (a) or (b) above.

- 2. The definition of "uninsured automobile" as used in Part IV, Protection Against Uninsured Motorists, is replaced by the following:

**"uninsured automobile"** means a land motor vehicle or trailer of any type:

- (a) to which there is no bodily injury liability bond or policy applicable at the time of the accident or to which there is, in at least the amounts specified by the financial responsibility law of the state in which the insured resides, no bodily injury 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 a bodily injury liability bond or insurance policy applicable at the time of the accident but the company writing the same denies coverage thereunder or is or becomes insolvent;
- (b) which is a hit-and-run vehicle whose owner or operator cannot be identified and which hits: (1) the named insured or any other individual named in the declarations; (2) an automobile which the named insured or any other individual named in the declarations is occupying, or (3) the owned automobile.

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A979a (6-73) **OUT-OF-STATE  
INSURANCE ENDORSEMENT**

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It is agreed that, subject to all the provisions of the policy except where modified herein, the following provision is added:

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 Company's liability and the 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.

**E053d (7-89) SUPPLEMENTARY UNINSURED  
MOTORISTS INSURANCE**

(Bodily Injury - Property Damage - Limits -  
Underinsured Motorists)

(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, subdivision (1) 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 the schedule of this endorsement or in the declarations, and subject to 2. below:
  - (a) the split limits so stated as applicable to bodily injury for "each person"/"each accident" and property damage for "each accident" 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 Company's liability for all damages because of bodily injury and property damage as the result of any one accident arising out of the ownership, maintenance or use of uninsured motor vehicles; or
  - (b) the single limit so stated as applicable to bodily injury and property damage for "each accident" shall apply in lieu of any limit 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 Company's liability for all damages as the result of any one accident arising out of the ownership, maintenance or use of uninsured motor vehicles; provided such limit of liability shall first provide the separate limits required by the Virginia Motor Vehicle Safety Responsibility Act as stated in the schedule of this endorsement or in the declarations.
2. When used in reference to this insurance (including this and other endorsements forming a part of the policy):

A motor vehicle is "underinsured" if the total amount of bodily injury and property damage coverage applicable to the operation or use of the motor vehicle and "available for payment" for such bodily injury or property damage, including all bonds or deposits of money or securities made pursuant to Article 15 of Chapter 3 of Title 46.2 of the Code of Virginia (Section 46.2-435 et. seq.), is less than the total amount of uninsured motorist coverage afforded any person injured as a result of the operation or use of such vehicle.

"Available for payment" means the amount of liability insurance coverage applicable to the claim of the injured person for bodily injury or property damage reduced by the payment of any other claims arising out of the same occurrence.

If an injured person is entitled to underinsured motorist coverage under more than one policy, the following order of priority of policies applies, and any amount available for payment shall be credited against such policies in the following order of priority:

1. The policy covering a motor vehicle occupied by the injured person at the time of the accident.
2. The policy covering a motor vehicle not involved in the accident under which the injured person is a named insured.
3. The policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.

Where there is more than one insurer providing coverage under one of the payment priorities set forth, their liability shall be proportioned as to their respective underinsured motorist coverages.

3. The Company 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.
4. Exclusion (a) in the Uninsured Motorists Insurance

- a. on the day the repairs are completed, or
- b. the day the Company makes payment for replacement of the rental automobile, or
- c. thirty (30) days after the date this coverage period begins;

whichever comes first, provided, however, coverage shall be limited to the length of time required with the exercise of due diligence and dispatch to repair or replace such rental automobile.

The insured shall submit the proper receipts to the Company for expenses claimed under this agreement.

All other terms and conditions of the policy apply.

*progressive companies*

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**VIRGINIA MOTORCYCLE/  
MOTOR HOME  
ATTACHMENTS ONLY**

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IF THE VEHICLE ON YOUR DECLARATIONS PAGE IS A MOTORCYCLE OR MOTOR HOME, THE FOLLOWING ENDORSEMENTS MAY APPLY. PLEASE REFER TO YOUR DECLARATIONS PAGE FOR APPLICABLE ATTACHMENTS.

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### EEA (7-89) EMERGENCY EXPENSE ALLOWANCE

The Company agrees with the named insured, subject to the provisions of this endorsement and to all the provisions of the policy except as modified herein, as follows:

If an insured

- (1) Has a covered loss of or damage to the insured motor home; and
- (2) The insured motor home is more than fifty (50) miles from its usual storage place; and
- (3) The loss makes the insured motor home inoperable;

the Company will pay for any of an insured's expenses for:

1. Reasonable temporary living facilities;
2. Transportation back to the insured's residence; and
3. The cost of returning the insured motor home, repaired or not, to its usual storage place, if the Company has not declared it a total loss.

But, for any loss,

1. The payment will not be more than the per day Limit of Liability or the maximum aggregate Limit of Liability shown in the Declarations;
2. The insured must give the Company all receipts that apply; and
3. If there is a theft of the insured motor home, the Company will pay only for expenses incurred from 48 hours after the theft until the earlier of:
  - a. When the insured motor home is returned to its usual storage place;

- b. Thirty (30) days after the theft; or
- c. When the Limit of Liability shown in the Declarations has been paid.

### Definitions

In this section, the term "insured" is defined as the named insured and, while resident of the same household, the spouse of the named insured.

All other definitions in the policy remain unchanged.

### E140f (6-80) MISCELLANEOUS TYPE VEHICLE ENDORSEMENT

This coverage is subject to all the provisions of the policy with respect to the miscellaneous type vehicles and coverages described in the Declarations or in the Schedule except as modified as follows:

#### A. Definitions

For the purpose of the coverage provided by this endorsement:

The reference to Declarations in the Limit of Liability provisions with respect to a miscellaneous type vehicle includes Schedule.

"Miscellaneous type vehicle" means:

- (a) a motorcycle, motor home, golf cart or other similar type vehicle.
- (b) a private passenger automobile owned jointly by two or more resident relatives other than husband and wife.

"Owned automobile" means:

- (a) any miscellaneous type vehicle described in the Declarations or in the Schedule for which a specific premium charge either in the Declarations or in the Schedule indicates that coverage is afforded.
- (b) any miscellaneous type vehicle of the same type described in the Declarations or in the Schedule or a private passenger, farm or utility automobile, ownership of which is acquired by the named insured during the policy period, provided:
  - (1) it replaces an owned automobile as defined in (a) above, or
  - (2) the Company insures all miscellaneous type vehicles, private passenger, farm or utility automobiles owned by the named

insured on the date of such acquisition and the named insured notifies the Company within 30 days after the date of such acquisition of his or her election to make this and no other policy issued by the Company applicable to such automobile or vehicle.

(c) any trailer.

(d) any miscellaneous type vehicle or automobile while temporarily used with the permission of the owner as a substitute for the owned automobile or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction.

#### B. Part I—Liability

1. For purposes of this endorsement, references to the term "non-owned automobile" in Part I—Liability are deleted.

2. The provision entitled "Persons Insured" as used in Part I—Liability is replaced by the following:

##### "Persons Insured"

The following are insureds under Part I:

(a) the named insured,

(b) any other person using the owned automobile with the permission of the named insured, provided his or her actual operation or (if he or she is not operating) his or her other actual use thereof is within the scope of such permission, and

(c) any other person or organization but only with respect to his, her or its liability because of acts or omissions of an insured under (a) or (b) above.

#### 3. Exclusions

a. Exclusion (k) under Part I—Liability is newly added:

(k) to the ownership, maintenance or use of a motorized vehicle having less than 4 wheels other than a motorized vehicle having less than 4 wheels which is insured for Liability Coverage under this endorsement.

b. The following exclusion applies to any vehicle for which the Schedule or Declara-

tions indicates that the passenger hazard is excluded

(l) to bodily injury sustained by any person while occupying the described miscellaneous type vehicle.

#### C. Part II—Expenses for Medical Services

1. Paragraph (b) under Division 2, Expenses for Medical Services is deleted.

#### 2. Exclusions

Exclusion (f) under Part II—Expenses for Medical Services is newly added:

(f) sustained while occupying a motorized vehicle having less than 4 wheels other than a motorized vehicle having less than 4 wheels which is insured for Expenses for Medical Services Coverage under this endorsement.

#### D. Part III—Physical Damage

For the purposes of this endorsement, references to the term "non-owned automobile" in Part III—Physical Damage are deleted and the definition of "owned automobile" is replaced by the following:

"owned automobile" means:

(a) any miscellaneous type vehicle or trailer described in the Declarations or in the Schedule for which a specific premium charge either in the Declarations or in the Schedule indicates that coverage is afforded.

(b) any miscellaneous type vehicle of the same type described in the Declarations or in the Schedule, a trailer, or a private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided:

(1) it replaces an owned automobile as defined in (a) above, or the Company insures all miscellaneous type vehicles, trailers, private passenger, farm or utility automobiles owned by the named insured on the date of such acquisition, and

(2) the named insured notifies the Company within 30 days after the date of such acquisition of his or her election to make this and no other policy issued by the Company applicable to such automobile, vehicle or trailer.

1667 (8-80) **OPTIONAL PERSONAL EFFECTS  
ENDORSEMENT**

(Theft Coverage Included)

- A. In consideration of the payment of the premium stated on the Declaration page, it is understood and agreed that Personal Effects, as defined herein, are covered for the perils described herein with a limit of liability as stated on the Declarations page. This coverage expires with the expiration of the policy to which this endorsement is attached.
- B. Personal Effects shall mean personal property belonging to the Owner of the Insured Unit, or to a member of his family, and usually in, on, or in connection with the Insured Unit. Intended to be included, for example, are such items as clothing, jewelry, watches, cameras, radios, guns, fishing equipment, sporting and vacation equipment, furnishings not included as part of the Insured Unit, linens, dishes, glassware, cooking utensils, foodstuffs, tools and the like. **Not** included as personal effects, and specifically excluded from coverage under this policy are any self-propelled vehicles, watercrafts, salesmen's samples, merchandise for sale or exhibitions, theatrical wardrobes, deeds, documents and records, bills, money, notes, securities or other evidences of debt; property pertaining to a business or occupation of an insured; property of guests, borders or employees; animals; birds; and property otherwise covered by insurance.
- C. Personal Effects Coverage Defined.

The Company will pay for loss of or damage to personal effects occurring during this endorsement period while such personal effects are within the Insured Unit(s), when such loss or damage is caused directly, suddenly or accidentally by:

1. Fire or Lightning, except that damage which is confined to scorching is not covered.
2. Explosion; smoke or smudge resulting from any sudden, unusual, and unexpected event.
3. Stranding, sinking, falling, burning, collision or derailment of any conveyance in or upon which the Insured Unit is being transported.
4. Windstorm, (including tornado, hurricane, cyclone and typhoon), hail, earthquake, landslide, flood or other water rising from

outside the Insured Unit, or smoke or steam driven through roof or wall openings made by direct action of wind or hail. Except as specifically included heretofore in this paragraph 4, damage from rain, sleet, or snow, whether or not wind driven, is not covered.

5. Riot or civil commotion; malicious mischief and vandalism, perpetrated by a person or persons other than a member of the Owner's household.
6. Missiles or objects falling from outside the Insured Unit; forced landing of aircraft.
7. Collision of the Insured Unit with another object outside the Insured Unit, except that damage caused by collision between a Camper body and any vehicle, including the carrying vehicle, which is owned by the Named Insured is not covered.
8. Theft, including larceny, robbery, burglary or pilferage, all subject to the following additional conditions and limitations.
  - a. Theft must be a result of forcible entry of which there is evidence by visible marks of said entry made by tools, electricity, explosives or chemicals, or other physical damage.
  - b. A deductible of \$50.00 shall apply to each occurrence.
  - c. This endorsement does not cover theft perpetrated or caused by an insured or by a member of his household or by a relative of an insured or by any person(s) residing in or in lawful possession of the insured unit.
  - d. Each such loss must be reported promptly to appropriate police authorities.
  - e. The Company may, at any time before settlement of a loss under this coverage, return any stolen property to the Owner with payment for any damage resulting from the theft.

In addition, Personal Effects coverage outside the Insured Unit shall not exceed 10% of the dollar limit applicable to Personal Effects. Theft shall not apply to Personal Effects outside the Insured Unit.

D. Amount and Method of Settlement

1. The amount of the Company's liability for Personal Effects shall not exceed the lowest of:

- a. The actual cash value is immediately preceding the loss, of the Personal Effects damaged, stolen or destroyed, or
  - b. The cost of repairing the damage
  - c. The cost of replacing the Personal Effects damaged or destroyed with other Personal Effects of like description, condition, quality and value.
2. In addition to the foregoing general limitations, the Company shall not be liable on any one loss with respect to Personal Effects:
    - a. For more than \$100 on coin collections or other numismatic property and paraphernalia, railroad and other tickets, passports, manuscripts, stamps and other philatelic property and paraphernalia.
    - b. For more than \$250 on any single article of jewelry (including, but without being limited to, watches, necklaces, bracelets, gems, precious and semi-precious stones, and articles of gold and platinum); art, (including but without being limited to, paintings, sculptures, drawings and etchings, ceramics and china); heirlooms, antiques, fur (including an article containing fur which represents its principal value).
    - c. Cameras and camera equipment, guns, fishing and golf equipment are covered for no more than \$100 individually or in the aggregate.
  3. The Company may, at its discretion, determine in which of the following ways it will settle the loss:
    - a. By paying the amount of the Company's liability in money; or
    - b. By paying the cost of repairing the damage; or
    - c. By replacing the damaged Personal Effects with other Personal Effects of like description, condition, quality and value.

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1738 (8-77) **VIRGINIA MOTOR HOME  
ENDORSEMENT**

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**DEFINITION:**

When used in this policy (including endorsements forming a part hereof); the term "automobile" means "motor home".

"Motor home" means a self-propelled land motor vehicle designed and constructed to provide at least facilities for cooking and sleeping and used principally for recreational purposes and includes a pickup truck to which is attached a camper body so designed, constructed and used.

**Part I - Liability (THIS DOES NOT APPLY TO UNINSURED MOTORISTS COVERAGE)**

The section under Coverage A - Bodily Injury Liability, and Coverage B - Property Damage Liability, is hereby amended to include in addition to what is stated:

The insurance does not apply to punitive damages which the insured shall become legally obligated to pay.

All other terms, limits and provisions remain unchanged.

*David M. Schuler*      *Arthur Blewett*  
Secretary                      President

---

## 24-HOUR CLAIMS SERVICE

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IF YOU ARE INVOLVED IN AN ACCIDENT, CALL PROGRESSIVE  
IMMEDIATELY — FROM THE SCENE OF THE ACCIDENT IF  
AT ALL POSSIBLE.

Through our nationwide network, the Progressive claims staff can help you arrange for towing services and a rental car as well as explain coverages and what to expect during the claims process. We can also suggest reputable facilities for vehicle repairs. We will contact your insurance agency to inform them of the accident.

One phone call to **1-800-274-4499**, anytime from anywhere, and we will start processing your claim immediately.

Your policy includes **FREE Rental Car Coverage**. If you are involved in a loss which results in your car being out of service, we don't want you to be inconvenienced — so we'll provide you with a FREE rental car! All we ask is that you call us directly within 3 hours, from the scene of the accident if possible.

OUR 24-HOUR, TOLL-FREE NUMBER MEANS WE ARE ALWAYS AVAILABLE TO HELP YOU. SO CALL US RIGHT AWAY WHEN YOU HAVE A LOSS. WE CAN HELP IN LOTS OF WAYS!

**1-800-274-4499**

Exhibit 2

V I R G I N I A:

IN THE CIRCUIT COURT FOR ARLINGTON COUNTY

DARYL F. LACLAIR,  
9510 Salem Street  
Manassas, VA 22110

Plaintiff,

v.

MARCUS F. ARBAN, SR.,  
Administrator of the Estate of  
Marcus Francis Arban, Jr., Deceased

SERVE: John F. Mardula, Esq.  
Suite 460  
2010 Corporate Ridge  
McLean, VA 22102-7804

and

SERVE: The Travelers Insurance Company  
Brandon C. Martin, Esq.  
Registered Agent  
300 Arboretum Place  
Richmond, VA 23261

and

SERVE: County of Arlington  
William T. Newman, Jr.  
Chairman, Arlington Board of  
Supervisors  
2100 Clarendon Blvd.  
Suite 300  
Arlington, VA 22201

and

SERVE: County of Arlington  
Charles G. Flinn  
County Attorney  
2100 Clarendon Blvd.  
Suite 403  
Arlington, VA 22201

Defendant.

AT LAW NUM: 92-1397

**RECEIVED**

NOV 12 1992

DAVID A. BELL, CLERK  
Arlington County Circuit Court  
By BK Deputy Clerk

L. MCKENNEY,  
DEPAULIS, P.C.  
SUITE 400  
BROAD STREET  
URCH, VA 22046

1) 237-9300



MOTION FOR JUDGMENT

COMES NOW the plaintiff, Daryl F. LaClair, and respectfully moves for judgment against the above-named defendant, Marcus F. Arban, Sr., Administrator of the Estate of Marcus Francis Arban, Jr., deceased, on the grounds and in the amount hereinafter set forth:

1. At all times material hereto, the plaintiff Daryl F. LaClair, was employed as a deputy sheriff with the Arlington County Sheriff's Department and was performing his duties and responsibilities in accordance with and duly authorized by the Commonwealth of Virginia and Arlington County.

2. At all times material hereto, the defendant's decedent, Marcus Francis Arban, Jr., (hereinafter Arban) was a resident of the Commonwealth of Virginia.

3. On or about Wednesday, November 21, 1990, at approximately 11:55 p.m. the plaintiff was on-duty as a deputy sheriff operating a marked sheriff's vehicle westbound on Lee Highway (Route 29) in the area of Sycamore Street in the County of Arlington.

4. At the same time and directly in front of the plaintiff, defendant Arban was operating a motor vehicle in an erratic or suspicious manner.

5. When the plaintiff drove to the area just to the rear of the vehicle operated by defendant Arban, he switched to the left lane and slowed until the plaintiff's vehicle was parallel with his vehicle.

6. Defendant Arban suddenly accelerated and drove to the right lane just in front of the plaintiff where he slowed and stopped his vehicle in the roadway just east of Sycamore Street.

7. The plaintiff drove to the area just to the rear of the vehicle defendant Arban was operating where he stopped his sheriff's vehicle to properly protect and mark the scene and, thereafter, activated his emergency equipment.

8. When the plaintiff exited his sheriff's vehicle and began to walk to the driver's side of the vehicle defendant Arban was occupying, the defendant opened the vehicle driver's side door and leaned out where he, suddenly and without warning and without just cause or provocation, assaulted and battered or otherwise injured the plaintiff by discharging a firearm at him causing a very serious and disabling injury.

#### COUNT I

(Assault and Battery of Defendant Marcus F. Arban, Jr.)

The plaintiff incorporates by reference each and every allegation set forth in paragraphs 1 through 8 , inclusive, in the same force and effect as though they were fully and specifically set forth in detail, and further alleges as follows:

9. At the time and place aforesaid, it was the duty of the defendant, Marcus F. Arban, Jr., to refrain from assaulting and battering the plaintiff during the lawful performance of his official duties.

10. Notwithstanding said duties, the defendant, Marcus F. Arban, Jr., did then and there intentionally, deliberately, and

maliciously attack and cause bodily injury to a law enforcement officer during the lawful performance of his official duties.

11. As a direct and proximate result of defendant Arban's attack upon the plaintiff, the plaintiff was caused to suffer serious injuries to his body and was caused to suffer great pain and mental anguish.

12. As a further direct and proximate result of the defendant's attack upon the plaintiff, the plaintiff has incurred hospital and physician bills and has suffered a loss of earnings.

#### COUNT II

(Negligence of Defendant Marcus F. Arban, Jr.)

The plaintiff incorporates by reference each and every allegation set forth in paragraphs 1 through 12, inclusive, in the same force and effect as though they were fully and specifically set forth in detail, and further alleges as follows:

13. At the time and place aforesaid, it was the duty of the defendant, Marcus F. Arban, Jr., to use due care in the handling and discharge of firearms and to refrain from negligently causing injury to the plaintiff during the lawful performance of his official duties.

14. Notwithstanding said duties, the defendant, Marcus F. Arban, Jr., did then and there negligently, carelessly, recklessly and wantonly discharge a firearm at or near plaintiff and negligently caused bodily injury to a law enforcement officer during the lawful performance of his official duties.

15. As a direct and proximate result of defendant Arban's

negligence, the plaintiff was caused to suffer serious injuries to his body and was caused to suffer great pain and mental anguish.

16. As a further direct and proximate result of the defendant's negligence as aforesaid, the plaintiff has incurred hospital and physician bills and has suffered a loss of earnings.

WHEREFORE, the plaintiff demands judgment against the named defendant's decedent, in the full and just amount of ONE MILLION DOLLARS (\$1,000,000.00), plus interest and costs on this behalf expended, for compensatory damages.

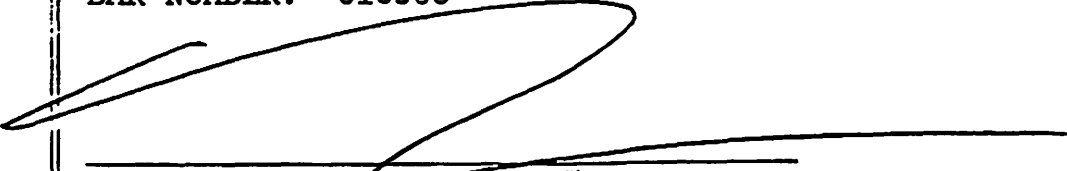
Plaintiff respectfully requests a trial by jury.

Daryl F. LaClair  
By Counsel

KOONZ, MCKENNEY, JOHNSON & DePAOLIS, P.C.



Peter C. DePaolis  
BAR NUMBER: 016368



Michael A. Kernbach, Esquire  
BAR NUMBER: 025722  
103 W. Broad Street, Suite 400  
Falls Church, VA 22046  
(703) 237-9300

EX-51

Exhibit 3

8

45

LAW OFFICES  
COHEN, DUNN & SINCLAIR  
A PROFESSIONAL CORPORATION  
221 SOUTH ALFRED STREET  
P. O. BOX 117  
ALEXANDRIA, VIRGINIA 22313-0117  
(703) 836-9000

BERNARD S. COHEN \*\*  
THOMAS J. CURCIO  
ROBERT C. DUNN  
THOMAS RAWLES JONES, JR.  
SANDRA M. ROHRSTAFF  
J. FREDERICK SINCLAIR \*

\* MEMBER OF D. C. AND VA. BARS  
\*\* CERTIFIED AS A CIVIL TRIAL ADVOCATE  
BY THE NATIONAL BOARD OF TRIAL ADVOCACY

OF COUNSEL  
JOY CHAMBERS  
JAMES E. MCCOLLUM, JR.\*  
FACSIMILE (703) 684-0204  
MCI MAIL 303-8284

\* MEMBER OF D. C. AND MD. BARS ONLY

AIRFAX CLAIMS  
May 21, 1993

Progressive Casualty Insurance Company  
Mid-Atlantic Office  
P.O. Box 27334  
Richmond, VA 23260

930932621

RE: Claimant: Daryl F. LaClair  
Your insured: Marcus F. Arban, Jr.  
Date of Loss: 11/21/90  
Policy #: 4878499

Dear Sir or Madam:

Please be advised that we represent Daryl F. LaClair in his claim for personal injuries arising out of a negligent shooting accident which occurred on November 21, 1990. Enclosed please find a copy of a Motion for Judgment which was recently filed and will be served upon the administrator of the Estate for Marcus F. Arban, Jr. You should immediately open a file and take whatever steps necessary to protect your interests in this claim. This correspondence constitutes the first notice to your insured concerning this claim and you should contact the appropriate attorney representing the estate to insure that you respond to this claim in a timely fashion.

I look forward to hearing from you soon.

Very truly yours,

  
Michael A. Kernbach

MAK:ciw  
Enclosure  
cc: Daryl F. LaClair

Exhibit 4

9  
47

LEW  
P.O. BOX 2.

MA-GAVIN, P.C.  
(703) 385-1000

CERTIFIED MAIL RETURN RECEIPT REQUESTED

June 4, 1993

Estate of Marcus F. Arban, Jr.  
14764 Dodson Drive  
Woodbridge, Virginia 22192

RE:            Our Insured:    Marcus F. Arban, Jr.  
                 Claim Number:    930932621  
                 Date of Loss:    November 21, 1990  
                 Claimant:       Daryl F. Laclair

To Whom It May Concern:

Please be advised that we are investigating the above-captioned accident loss which was reported to the Progressive Insurance claims office.

Our records do not reflect that this loss was previously reported. Under the terms of your policy in the Notice section, "In the event of an accident, occurrence, or loss, notice must be given to Progressive as soon as practicable." Failure to report this claim after the date of loss appears to be a violation of the Notice provision of this policy.

Please also be advised there is a potential coverage problem in regard to this loss. It does appear that this loss will be in violation of the policy exclusion in reference to intentional acts. Additionally, it does not appear that this loss arised as a result of an accident. It also does not appear that this loss resulted from the operation, maintenance, or use of an insured vehicle.

Handling of this claim is being conducted under a Reservation of Rights. No action taken to date, nor any action we take in the future, to investigate, explore settlement, or defend a lawsuit arising out of the above-captioned claim should be deemed an admission of coverage under Policy Number 04878499-0 issued by this company.



Estate of Marcus F. Arban, Jr.  
June 4, 1993  
page 2

Progressive Insurance expressly reserves all rights of denial under the policy and in no way waives any of your rights. The investigation of this matter has been, and is being, conducted with full and complete reservation of all rights afforded us under policy of insurance issued to Marcus F. Arban, Jr.

Please contact this office at your earliest possible convenience so that we may discuss this matter in more detail.

PROGRESSIVE CASUALTY INSURANCE COMPANY

Eric G. Francis  
Senior Claims Representative  
by Jennifer M. Harris

cc: Cohen, Dunn, & Sinclair  
ATTN: Michael J. Kernback  
221 S. Alfred Street  
P.O. Box 117  
Alexandria, Virginia 22313-0117

John F. Mardula  
Attorney at Law  
2010 Corporate Ridge  
Suite 460  
McLean, Virginia 22102-7804

8-1993

FILED  
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CLERK OF COURT  
FAIRFAX COUNTY, VA

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PROGRESSIVE CASUALTY INSURANCE  
COMPANY,

Plaintiff,

v.

At Law No. 125443

MARCUS F. ARBAN, SR.,  
Administrator of the Estate of  
Marcus Francis Arban, Jr.,  
Deceased, et al.,

Defendants.


ANSWER AND RESPONSE OF DEFENDANT/RESPONDENT  
DARYL F. LaCLAIR TO MOTION FOR DECLARATORY JUDGMENT

COMES NOW the defendant/respondent, Daryl F. LaClair, by counsel and files this answer and response to the motion for declaratory judgment filed herein by plaintiff/petitioner, Progressive Casualty Insurance Company, and states as follows:

1. This Circuit Court is without authority and jurisdiction to order equitable relief in an at law action.
2. The allegations contained in Paragraph numbers 1 through 10 are admitted.
3. The allegations contained in Paragraph numbers 11 through 13 are specifically denied.

WHEREFORE, the defendant/respondent, Daryl F. LaClair respectfully requests that the motion for declaratory judgment be dismissed, with costs and reasonable attorney's fees awarded to defend all parties named in the aforementioned at-law motion for judgment and, further, that the policy of insurance be held to be specifically applicable to the losses incurred by Daryl F. LaClair.

DARYL F. LaCLAIR  
By Counsel

  
MICHAEL A. KERNBACH, Esquire  
Cohen, Dunn & Sinclair, P.C.  
221 South Alfred Street, P.O. Box 117  
Alexandria, Virginia 22313-0117  
(703) 836-9000

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer and Response of Defendant/Respondent Daryl F. LaClair was mailed, postage prepaid, this 18<sup>th</sup> day of August 1993, to the following:

Julia B. Judkins, Esquire  
Lewis, Trichilo, Bancroft & McGavin, P.C.  
4117 Chain Bridge Road, #400  
Fairfax, Virginia 22030

John F. Mardula, Esquire  
Suite 460  
2010 Corporate Ridge  
McLean, Virginia 22102-7804

Brandon C. Martin, Esquire  
Registered Agent  
The Travelers Insurance Co.  
300 Arboretum Place  
Richmond, Virginia 23261

Charles G. Flinn  
County Attorney  
County of Arlington  
2100 Clarendon Boulevard  
Suite 403  
Arlington, Virginia 22201

Thomas C. Palmer, Jr.  
Registered Agent  
Republic Insurance Co.  
8575 D Sudley Road, #534  
Manassas, Virginia 22110

  
Michael A. Kernbach

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PROGRESSIVE CASUALTY INSURANCE  
COMPANY,

Plaintiff,

v.

MARCUS F. ARBAN, SR., et al.,

Defendants.

At Law No. 125443

ANSWER OF DEFENDANT/RESPONDENT  
MARCUS F. ARBAN, SR., ADMINISTRATOR OF  
THE ESTATE OF MARCUS F. ARBAN, JR., DECEASED  
TO MOTION FOR DECLARATORY JUDGMENT

COMES NOW the defendant, Marcus F. Arban, Sr., Administrator of the Estate of Marcus F. Arban, Jr., Deceased, by counsel and files this Answer to the Motion for Declaratory Judgment filed hereby by plaintiff/petitioner, Progressive Casualty Insurance Company, and states as follows:

1. Admitted.
2. Admitted.
3. Defendant is without sufficient information or belief to either admit or deny this allegation and therefore denies same and demands strict proof.
4. Defendant is without sufficient information or belief to either admit or deny this allegation and therefore denies same and demands strict proof.
5. Defendant is without sufficient information or belief to either admit or deny this allegation and therefore denies same and

demands strict proof.

6. Admitted.

7. Admitted.

8. The allegations of the lawsuit speak for themselves and any allegation inconsistent therewith is denied and strict proof thereof is demanded.

9. Admitted that attached Exhibit 3 is a letter to Progressive Casualty Insurance Company dated May 21, 1993. The letter speaks for itself and any allegations inconsistent therewith are denied and strict proof thereof is demanded.

10. Admitted that attached Exhibit 4 is a letter from Progressive Casualty Insurance Company dated June 4, 1993. The letter speaks for itself and any allegations inconsistent therewith are denied and strict proof thereof is demanded.

11. This allegation states a legal conclusion for which no answer is required, but to the extent that an answer is required, this allegation is denied and strict proof thereof is demanded.

12. This allegation states a legal conclusion for which no answer is required, but to the extent that an answer is required, this allegation is denied and strict proof thereof is demanded. In addition, Progressive Casualty Insurance Company has not been prejudiced in any way in its ability to defend its interests in this action.

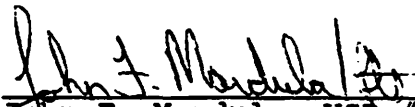
13. This allegation states a legal conclusion for which no answer is required, but to the extent that an answer is required, this allegation is denied and strict proof thereof is demanded.

WHEREFORE, Marcus F. Arban, Sr., Administrator of the Estate

of Marcus F. Arban, Jr., deceased, respectfully requests the Motion for Declaratory Judgment be dismissed, with costs and reasonable attorney's awarded to him, and that the plaintiff be required to defend and protect his interests in the Motion for Judgment.

MARCUS F. ARBAN

By Counsel

  
John F. Mardula, VSB #15606  
MARDULA & DAUGHTREY, P.C.  
2010 Corporate Ridge, Suite 460  
McLean, Virginia 22102-7804  
(703) 749-3850  
Counsel for Marcus F. Arban, Sr.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, first class postage prepaid, this 20th day of August, 1993, to:


Julia B. Judkins, Esquire  
Lewis, Trichilo, Bancroft & McGavin, P.C.  
4117 Chain Bridge Road, #400  
Fairfax, Virginia 22030

Brandon C. Martin, Esquire  
Registered Agent  
The Travelers Insurance Co.  
300 Arboretum Place  
Richmond, Virginia 23261

Charles G. Flinn  
County Attorney  
County of Arlington  
2100 Clarendon Boulevard, Suite 403  
Arlington, Virginia 22201

Thomas C. Palmer, Jr.  
Registered Agent  
Republic Insurance Co.  
8575 D Sudley Road, #534  
Manassas, Virginia 22110

Michael A. Kernbach, Esquire  
Cohen, Dunn & Sinclair, P.C.  
221 South Alfred Street, P.O. Box 117  
Alexandria, Virginia 22313-0117

  
\_\_\_\_\_  
John F. Mardula

JFM:Arban8

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

- - - - -x

PROGRESSIVE CASUALTY INSURANCE CO.  
and REPUBLIC INSURANCE COMPANY,

Plaintiffs,

-vs-

AT LAW  
NO. 125443

MARCUS F. ARBAN, SR.,  
ADMINISTRATOR OF THE ESTATE OF  
MARCUS FRANCIS ARBAN, JR.,  
DECEASED, et al.,

Defendants.

- - - - -x

Fairfax, Virginia

Tuesday, March 8, 1994

The above-entitled action came on to be  
heard before the Honorable Thomas A. Fortkort, a  
Judge in and for the Circuit Court of Fairfax  
County, Virginia, in Courtroom 4H, the Jennings  
Judicial Center, 4110 Chain Bridge Road, Fairfax,  
Virginia, beginning at 10:27 o'clock a.m.

**CASAMO & ASSOCIATES**

Alexandria (703) 765-9257

Culpeper (703) 825-7482



**APPEARANCES:**

For the Progressive Casualty Insurance Company:

JULIA B. JUDKINS, ESQUIRE  
Lewis, Trichilo, Bancroft, McGavin &  
Horvath  
Suite 400  
4117 Chain Bridge Road  
Fairfax, Virginia 22030

For the Republic Insurance Company:

PAT H. HARRINGTON, JR., ESQUIRE  
4160 Chain Bridge Road  
Fairfax, Virginia 22030

For the Travelers Insurance Company:

TERESA G. FAY, ESQUIRE  
Carr, Goodson & Lee  
Suite 400  
1301 K Street, Northwest  
Washington, DC 20005

For the Insurance Company of North America:

LAWRENCE R. BERGER, III, ESQUIRE  
Suite 1350  
1616 North Fort Myer Drive  
Arlington, Virginia 22209

For Daryl F. LaClair:

MICHAEL A. KERNBACH, ESQUIRE  
Cohen, Dunn & Sinclair  
221 South Alfred Street  
Alexandria, Virginia 22313

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# C O N T E N T S

<u>WITNESS</u>	<u>JUDKINS</u>	<u>KERNBACH</u>	<u>BERGER</u>	<u>FAY</u>	<u>HARRINGTON</u>
Eric G. Francis	23	27	--	--	--
James J. Collins	36	40	42	--	--
	44	--	--	--	--
Kurt D. Gottschalk					
	45	52	50	--	--
Daryl F. LaClair	72	59	78	77	81
	83	--	--	--	--

# E X H I B I T S

## IDENTIFICATION - EVIDENCE

Plaintiff's Exhibit No. 7	27	27
--Letter to Arban Estate from Eric Francis of Progressive Dated 6/4/93		
Plaintiff's Exhibit No. 1	36	36
--Progressive's Insurance Policy and Declaration Sheet		
Plaintiff's Exhibit No. 2	55	55
--Portion of Daryl F. LaClair's Answers to Interrogatories Describing Incident		
Plaintiff's Exhibit No. 3	55	55
--Report of Police Investigation of Incident		
Plaintiff's Exhibit No. 4	55	55
--Report of Lieutenant Panther of Arlington County Police		
Plaintiff's Exhibit No. 5	55	55
--Typed Statements of Eyewitnesses		
Plaintiff's Exhibit No. 6	55	55
--Certified Copies of Letters of Administration Assigning Decedent's Parents as Administrators of Estate, Dated 12/5/90		
Plaintiff's Exhibit No. 8	55	55
--Motion for Judgment in Arlington County Circuit Court		

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# E X H I B I T S

## IDENTIFICATION - EVIDENCE

INA's Exhibit No. 1	56	56
--INA's Auto Insurance Policy and Declaration Sheet		
Traveler's Exhibit No. 1	56	56
--Traveler's Auto Insurance Policy		
Republic's Exhibit No. 1	57	57
--Republic's Homeowner's Insurance Policy		
Defendant's Exhibit No. 1	68	--
--Photograph (Withdrawn)		
Defendant's Exhibit No. 2	68	68
--Photograph		
Defendant's Exhibit No. 3	68	68
--Photograph		
Defendant's Exhibit No. 4	68	68
--Photograph		
Defendant's Exhibit No. 5	68	68
--Photograph		
Defendant's Exhibit No. 6	68	68
--Photograph		
Defendant's Exhibit No. 7	68	68
--Photograph		
INA Exhibit No. 2	86	86
--Excerpt of Deposition of Daryl F. LaClair Dated 2/4/94		

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

2                                    (The Court Reporter was sworn.)

3                                    MS. JUDKINS: Your Honor, Julia Judkins  
4                                    for Progressive Casualty Insurance Company.  
5                                    Michael Kernbach represents Daryl LaClair, who is  
6                                    one of the defendants, I guess, in this  
7                                    declaratory judgment action. He is the plaintiff  
8                                    in an underlying suit in Arlington County. Teresa  
9                                    Fay is here for Travelers Insurance Company. And  
10                                   Mr. Berger -- Lawrence Berger -- is here for  
11                                   Insurance Company of North America.

12                                   MR. BERGER: Good morning, Your Honor.

13                                   MS. JUDKINS: And Pat Harrington is here  
14                                   for Republic Insurance Company. And I believe  
15                                   that addresses all of the parties in the case.

16                                   This is a declaratory judgment action  
17                                   which Progressive has filed. And during the  
18                                   course of the pendency of the action, other  
19                                   insurance companies have either filed a cross  
20                                   claim or received authority to join in as  
21                                   plaintiffs under 8.01-184, asking the Court to  
22                                   find or declare the rights of the parties under  
23                                   various insurance policies arising out of a

1 shooting incident which occurred November 21st,  
2 1990, in Arlington County, Virginia.

3 Mr. LaClair -- Daryl LaClair -- was a  
4 captain in the Arlington County Sheriff's  
5 Department. And he was proceeding down Lee  
6 Highway sometime after 11:00 o'clock at night when  
7 he noticed that a vehicle driven by Marcus F.  
8 Arban, Jr., who is my insured -- Progressive  
9 Casualty Insurance Company had issued to him an  
10 automobile liability policy which was in effect at  
11 the time of the accident, a standard automobile  
12 policy which will be presented into evidence.

13 Our insured was driving in a manner that  
14 led Captain LaClair to conclude that maybe the  
15 gentleman was lost. He might have been looking at  
16 a map or something like that, jerking a little bit  
17 here and there. Captain LaClair -- Mr. Arban was  
18 in the left-hand lane of Lee Highway. Captain  
19 LaClair was in the right-hand lane. He came up  
20 alongside of him.

21 At that point Mr. Arban sped, got in  
22 front of Captain LaClair, and stopped his vehicle.  
23 Lee Highway does not have a shoulder at that

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1 point, so they were in the right-hand lane of Lee  
2 Highway, Mr. LaClair -- Captain LaClair thinking  
3 Mr. Arban was lost and needed some directions. It  
4 was not a traffic stop per se.

5 But thinking he needed some directions,  
6 he activated his emergency equipment, according to  
7 Captain LaClair, got out of his vehicle to  
8 approach Mr. Arban. And when he reached the front  
9 part of the Sheriff's Department -- He was in a  
10 Sheriff's Department vehicle. He had his  
11 emergency equipment activated and a light shining  
12 into the rear of Mr. Arban's vehicle.

13 When he reached the front part of his  
14 car, he noticed the door to Mr. Arban's vehicle  
15 began to open. And Captain LaClair's testimony  
16 will be that he told Mr. Arban, sir, stay in your  
17 vehicle. And as he kept walking, he noticed it  
18 opened a little bit more. He said, sir, stay in  
19 your vehicle.

20 And Captain LaClair then -- I think he  
21 will say he did not see a gun, but he felt the  
22 impact of the bullet to his left elbow. And then  
23 as he turned to look at that wound or to see what

1 had happened, a bullet grazed his right eye and  
2 his forehead. He was injured. He threw himself  
3 between both of the vehicles and pulled his own  
4 revolver and shot at the Arban vehicle and shot  
5 out the back window of that car is it fled the  
6 scene.

7 There are three eyewitnesses -- There  
8 were four, but I believe we only have three here  
9 today, one by deposition. He is in Blacksburg,  
10 Virginia, attending school there and working.  
11 College students who were driving by at the time,  
12 Mr. Collins, Mr. -- I'll try to pronounce his name  
13 correctly -- Gottschalk, and Mr. Fabini. They are  
14 all three witnesses to the incident. And one is  
15 by deposition. Two are live.

16 They will say that they were driving by  
17 at the time they saw the gentleman, Mr. Arban,  
18 either partially out of his vehicle, halfway out  
19 of his vehicle, some part of him outside of his  
20 vehicle, pointing a gun towards Captain LaClair  
21 and looking towards Captain LaClair and shooting  
22 Captain LaClair. All or one saw him shooting.

23 They naturally ducked down at some part

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1 of that exchange, but then they saw the Arban  
2 vehicle eventually drive by. And they got the tag  
3 number. As a result of their getting the tag  
4 number, they gave that information to Arlington  
5 County Police, who traced the vehicle to Marcus F.  
6 Arban, Jr., who resided in Dale City.

7 And that night the Arlington County  
8 Police, in coordination with the Prince William  
9 County Police, were getting together the  
10 information to serve a search warrant on Mr. Arban  
11 in order to search the house to find the gun that  
12 shot Captain LaClair.

13 In the morning hours that next day,  
14 November 22nd, 1990, the Prince William County  
15 SWAT team went to serve the search warrant on Mr.  
16 Arban. And there was a gunfight at that  
17 residence, as a result of which Officer Pennington  
18 of Prince William County was shot and killed. And  
19 then Mr. Arban was shot and killed by one of the  
20 members or more than one member of the Prince  
21 William County SWAT team. So the insured is  
22 deceased. He died the next day in the morning.

23 And Mr. LaClair -- Captain LaClair has

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1 filed a personal injury lawsuit in Arlington  
2 County Circuit Court, alleging that count 1 -- And  
3 that is attached to our motion for declaratory  
4 judgment -- that Mr. Arban intentionally inflicted  
5 the injuries upon him by intentionally shooting  
6 him. And count 2 is a somewhat -- is a negligence  
7 count. I will characterize it. But he has tried  
8 to allege negligence against Mr. Arban.

9 Progressive, Mr. Arban's insurer, has  
10 filed this declaratory judgment action. And we  
11 are seeking an order stating that there is no  
12 coverage under three grounds. The first is the  
13 incident did not arise out of the ownership,  
14 maintenance, or use of a motor vehicle. The  
15 second is that this injury to Captain LaClair was  
16 expected or intended by the insured, in other  
17 words, an intentional act, for which there is no  
18 coverage under the policy. And third is that  
19 Progressive did not receive notice of the incident  
20 for two and a half years until Mr. Kernbach or  
21 another lawyer in his firm wrote and indicated  
22 they had a claim or the suit was filed.

23 Now at first flush the notice incident

1 may seem somewhat moot, because the insured was  
2 shot and killed the next day. We do intend to  
3 introduce evidence that his parents were appointed  
4 -- Mr. Arban's parents were appointed as  
5 administrators on December 8th, 1990, within two  
6 or three weeks of the decedent's death. And they  
7 at no time gave any notice. And under the  
8 fiduciary statutes, I mean, they are in charge of  
9 the estate, and they have a duty to marshal all  
10 the assets and to administer the estate. And  
11 under those circumstances we are claiming a  
12 violation of the notice provision.

13 But also, as an inferential deduction  
14 from that evidence, that the insured did not  
15 believe that there was coverage for this incident.  
16 And at no point has the insured actually made  
17 demand of the estate at this point. I guess the  
18 insured is the estate.

19 THE COURT: The insured's belief in the  
20 past has not made any --

21 MS. JUDKINS: The insured -- It's moot.  
22 But the estate at this point, as the insured, has  
23 not made any demand for coverage. And that will

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1 be Progressive's position.

2 THE COURT: I think on your notice  
3 provision you are probably riding a dead horse.  
4 But certainly the other two are --

5 MS. JUDKINS: It's mostly for the  
6 inferential argument that the estate --

7 THE COURT: It should have been.

8 MS. JUDKINS: Nobody believed there was  
9 going to be coverage, so that's why they didn't  
10 give notice. That's Progressive's position, Your  
11 Honor.

12 THE COURT: Okay. Ms. Fay, do you want  
13 to go next?

14 MS. FAY: Good morning, Your Honor.

15 THE COURT: Whom do you represent now?

16 MS. FAY: Teresa Fay on behalf of the  
17 Travelers Insurance Company.

18 THE COURT: Okay.

19 MS. FAY: I won't repeat the facts and  
20 area that Ms. Judkins just made, because basically  
21 that is what the evidence is going to show today.  
22 Travelers is the carrier that issued an insurance  
23 policy to Mr. LaClair. And as defendants in the

1 declaratory judgment action that Progressive  
2 filed, we have filed cross claims and counter  
3 claims to say that we want our rights adjudicated  
4 as well in this action. And that would be under  
5 the only portion of our policy --

6 THE COURT: You have an automobile  
7 policy?

8 MS. FAY: Yes, we have an automobile  
9 policy that provides coverage to Mr. LaClair. And  
10 in this incident it would provide coverage  
11 potentially under the UM portion of that policy,  
12 the uninsured motorist portion of the policy. We  
13 have filed cross claims, counter claims to have  
14 our right adjudicated on the grounds that there is  
15 no coverage provided by Travelers -- there should  
16 be no coverage provided by Travelers for this loss  
17 on basically two grounds, which are similar to Ms.  
18 Judkins' grounds. Number one is that the  
19 policy provides coverage for bodily injury caused  
20 by accident and arising out of the use of a motor  
21 vehicle. The evidence will show that this was no  
22 accident that's termed under the policy. And, in  
23 addition, the incident did not arise out of the

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1 use of a motor vehicle. The policy also says  
2 ownership, maintenance, or use of a vehicle.  
3 Ownership or maintenance clearly would not apply,  
4 and any argument would possibly be to use. And  
5 the evidence today will show that -- and the law  
6 as well, that there is no coverage under that  
7 ground.

8 THE COURT: Okay.

9 MR. BERGER: Good morning, Your Honor.  
10 Lawrence Berger on behalf of the Insurance Company  
11 of North America. I guess it would be easiest to  
12 just say me too. The --

13 THE COURT: How do you -- Or what policy  
14 do you have?

15 MR. BERGER: Your Honor, we have the  
16 policy for the 1988 Chevy Caprice that Officer  
17 LaClair was driving at the time under a policy  
18 which insured all constitutional officers of the  
19 County of Arlington, Virginia. The policy  
20 language, of course, in all of the policies  
21 involved here is identical.

22 It is our position as well that, as  
23 stated by counsel for Travelers, that this was, A,

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1 no accident and also that this did not arise out  
2 of the ownership, use, or maintenance of the  
3 uninsured vehicle.

4 THE COURT: Do you have the same  
5 exclusion in your contract as they have in theirs?

6 MR. BERGER: That is correct, Your Honor.  
7 Both insurance policies provide language that they  
8 will pay, in accordance with the Virginia  
9 Uninsured Motorist Insurance Law, all sums the  
10 insured is legally entitled to recover from the  
11 owner or driver of an uninsured motor vehicle. It  
12 goes on to say that the damages must result from  
13 bodily injuries sustained by the insured or  
14 property damage caused by an accident. It goes on  
15 to say that owner or driver's liability for these  
16 damages must result from the ownership,  
17 maintenance, or use of the uninsured vehicle.

18 THE COURT: All right. Mr. Harrington.

19 MR. HARRINGTON: Good morning, Your  
20 Honor. Pat Harrington for Republic Insurance  
21 Company, the homeowner's insurance company for  
22 Marcus Arban, Jr. Your Honor, there should be an  
23 order up there Mr. Kernbach and I have endorsed.

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1 And it was sent to Mary Mathalon yesterday, and  
2 she said she would try to attach it to the file.

3 THE COURT: It is, and I entered that  
4 this morning.

5 MR. HARRINGTON: All I intend to do, Your  
6 Honor, is just -- Sitting back there is kind of  
7 intentional. I am kind of in the background of  
8 the case. I'm just going to introduce my policy.  
9 And if I ask five questions, stop me, because that  
10 is too many questions.

11 THE COURT: And you have already  
12 partially settled, is that it?

13 MR. HARRINGTON: Yes, sir, with Mr.  
14 Kernbach.

15 THE COURT: Okay. All right, Mr.  
16 Kernbach. What is your theory against these three  
17 auto insurers?

18 MR. KERNBACH: Well, in my continuing  
19 efforts, I suppose, to dismantle the insurance  
20 industry, I have several points that need to be  
21 made. Number one, with respect to the Progressive  
22 policy which insured Mr. Arban, I don't have any  
23 dispute with Ms. Judkins that if the evidence --

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1 Well, if we prove or prevail on account of an  
2 assault and battery, then that is obviously an  
3 excludable act under the Progressive policy. And,  
4 therefore, Progressive has not obligation to pay.  
5 I am not so sure whether or not they lose their  
6 obligation to defend, but we will get to that  
7 later on.

8 My theory in terms of the insurance issue  
9 is this: Travelers and INA cannot get out of the  
10 case for intentional conduct on the part of Mr.  
11 Arban. You can't impute intentional conduct of an  
12 uninsured motorist, so there is going to be  
13 coverage that way.

14 The only question really to be answered  
15 in these proceedings is whether or not this is an  
16 insurable risk for all the policies, whether or  
17 not this incident arose out of the use of the  
18 automobile. Each insurance policy that's the  
19 subject of review here today has a different  
20 definition of, A, what an automobile accident is  
21 and, B, what an insurable risk is. Some of the  
22 policies are quite specific in what they are going  
23 to categorize as an insurable risk. Others, like



1 the INA policy, for example, don't really have any  
2 clear definition of any exclusions.

3 We are alleging -- and on the basis of  
4 the case law that has developed -- that Mr.  
5 LaClair gets the benefit of the INA policy,  
6 because the police car itself was a part and  
7 parcel of the scene itself. And there is a  
8 Supreme Court case right on point, dealing with a  
9 fire fighter who had been struck and killed at a  
10 fire scene. And the Supreme Court ruled that if  
11 you use public safety equipment, you get the  
12 coverage there.

13 THE COURT: Well, the person who was  
14 struck and killed, I take it, there was some  
15 allegation that he was accidentally struck and  
16 killed?

17 MR. KERNBACH: Right. It was basically a  
18 rubberneck at an accident scene, who went along  
19 and ran over fire fighters. And she killed a fire  
20 captain near a fire apparatus. And the issue in  
21 that case was whether or not you get the benefit  
22 of the uninsured motorist or underinsurance on the  
23 fire truck. And the Supreme Court said as long as

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1 the fire truck was a part of the scene itself,  
2 placed to protect the fire fighters as well as  
3 mark the scene, you get the coverage. So I don't  
4 think there is going to be any dispute here.

5 This Court can answer all of the issues  
6 here of whether or not it's an insurable risk.  
7 And we maintain that it was, based on the policy  
8 definitions that are in effect here. And I assume  
9 that we'll be given some time to submit  
10 memorandums of law and give you an overview of how  
11 this issue has been dealt with in Virginia, as  
12 well as around the country, construing identical  
13 policy provisions.

14 We maintain that when Mr. Arban took the  
15 car that night and shot Mr. LaClair, he was using  
16 the car. And that falls within the definition of  
17 the use of the automobile. The definition of  
18 accident is ambiguous under some of the policy  
19 provisions. But we clearly maintain that he is  
20 entitled to coverage here.

21 THE COURT: Is there any question of the  
22 facts as related by Ms. Judkins?

23 MR. KERNBACH: There is some caveat on

1       some of the factual allegations. I don't know if  
2       we disagree with about 90 percent of what she  
3       said.

4               Let me throw this out to the Court, and  
5       then they can respond to it. I think the evidence  
6       is clear that Mr. Arban shot Daryl LaClair from  
7       the inside of his car. Either he had part of his  
8       body leaning out of the car or his arm at least  
9       out of the car when he shot the deputy sheriff.  
10      But there is no evidence that I know of that  
11      anyone can testify that Mr. LaClair had actually  
12      taken steps away from the -- that Mr. Arban had  
13      taken steps away from the vehicle and shot Deputy  
14      LaClair. There is no evidence of that.

15             And I think that, you know, hopefully we  
16      can agree that the shooting at least -- the gun  
17      was transported to the scene in the automobile and  
18      that the shooting occurred while Mr. Arban was  
19      seated either wholly within the automobile or  
20      partially leaning out of the vehicle looking back.  
21      We can also agree, I believe, that Mr. LaClair  
22      used the deputy sheriff's vehicle to pull behind  
23      the Arban vehicle. He placed it in such a

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1 position to protect himself, mark the accident  
2 scene.

3 And so I don't think there is any  
4 question that the INA policy is going to apply  
5 here, because Mr. LaClair took the benefit of the  
6 deputy sheriff vehicle to mark the accident scene  
7 and seek the protection of it. After he was shot  
8 he used both vehicles for cover while he was  
9 returning fire.

10 THE COURT: What is the accident scene?  
11 There wasn't any accident, was there?

12 MR. KERNBACH: Well, all right, the  
13 shooting scene. Now we have pled alternatively  
14 here too, Your Honor. So we are in a position  
15 here where I have pled two counts in a motion for  
16 judgment. And so whether or not this was  
17 intentional or not really doesn't get to the heart  
18 of the matter. It's whether or not it's an  
19 insurable risk. That's the real question to be  
20 answered here looking at these policies.

21 But I maintain that Mr. Arban wasn't out  
22 of the vehicle. He shot the deputy from within  
23 the vehicle and leaned back. And those are the

1       operative facts as to whether or not the  
2       automobile policies at least arguably apply at  
3       that point. Now whether or not it's an insurable  
4       risk or not is something that Your Honor is going  
5       to have to read the policies, look at the case  
6       law, and make a decision.

7               THE COURT: Okay. Thank you.

8               MS. JUDKINS: Are we ready for the  
9       evidence?

10              THE COURT: Yes, ma'am.

11              MS. JUDKINS: I call first Eric Francis  
12       from Progressive Insurance Company. And does Your  
13       Honor have the original exhibits which I submitted  
14       to the Court in a binder?

15              THE COURT: I do.

16              MS. JUDKINS: If he could use those for  
17       purposes of identification?

18              (Counsel was provided with the exhibit  
19       binder.)

20              MS. JUDKINS: Thank you.

ERIC G. FRANCIS - DIRECT

1 Whereupon,

2 ERIC GENE FRANCIS

3 a witness, was called for examination by counsel  
4 for Progressive Insurance, and, having been duly  
5 sworn by the Court, was examined and testified as  
6 follows:

7 DIRECT EXAMINATION

8 BY MS. JUDKINS:

9 Q Would you state your full name, please?

10 A Eric Gene Francis.

11 Q And by whom are you employed?

12 A Progressive Casualty Insurance Company.

13 Q Were you employed with them in 1993?

14 A Yes, I was.

15 Q Are you a senior claims representative?

16 A Yes, I am.

17 Q Are you familiar with the file and the  
18 claim of Daryl F. LaClair versus Marcus F. Arban?

19 A Yes, I am.

20 Q Is that your file?

21 A Yes, it is.

22 Q I would like you to look in that book at  
23 Exhibit 1, if you would, please. Can you identify

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1 both of those documents that have been identified  
2 as one exhibit but two different documents? Can  
3 you identify them?

4 A Yes.

5 Q What are they?

6 A The first would be a copy of the  
7 declarations page policy of Marcus F. Arban, Jr.  
8 And the second would be the insurance policy or  
9 the contract that corresponds to the declarations  
10 page.

11 Q Was this policy in effect in November of  
12 1990?

13 A Yes, it was.

14 Q Are those two documents true and accurate  
15 copies of the declarations sheet and the policy  
16 itself?

17 A Yes, they are.

18 Q And the insured was Marcus F. Arban, Jr.?

19 A Correct.

20 Q When was the first notice that  
21 Progressive received of this incident on November  
22 21st, 1990?

23 A It was May of 1993.

ERIC G. FRANCIS - DIRECT

1 Q Do you remember the date?

2 A May 26, 1993. I believe the letter is  
3 dated May 21, 1993.

4 Q And from whom did the notice come?

5 A It came from counsel for Mr. LaClair,  
6 signed by Mr. Kernbach.

7 Q And had there ever been any communication  
8 to you from the administrators of the estate  
9 notifying you of the incident?

10 A No, there hasn't.

11 Q Any communication from them with  
12 discussions of coverage?

13 A No, there hasn't.

14 Q And did you send out a reservation of  
15 rights letter?

16 A Yes, I did.

17 Q And what is the date of that letter? I  
18 could show you -- It's not an exhibit. But I'll  
19 show you a document. If you could identify that,  
20 please?

21 A Yes, I had this sent out on June 4th,  
22 1993.

23 Q And to whom was it sent?

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1           A     It was addressed to the estate of Marcus  
2     F. Arban, Jr. I also sent carbon copies to  
3     Michael Kernbach and John Wadula.

4           THE COURT: When did you get Mr.  
5     Kernbach's letter?

6           THE WITNESS: It was dated the 21st of  
7     May, and I believe it actually came to our office  
8     on the 26th of May. We also received it by fax on  
9     the 26th, of 1993.

10          BY MS. JUDKINS:

11          Q     And what are the grounds of the  
12     reservation of rights, or what does the  
13     reservation of rights in there state?

14          A     I indicated in the reservation of rights  
15     letter that, first, that the loss had not been  
16     reported to us before and it appeared to be a  
17     violation of the contract. The second point, I  
18     indicated that there appeared to be a potential  
19     coverage problem in regard to the policy  
20     exclusion, in reference to intentional acts. And  
21     then lastly I indicated that it did not appear  
22     that the loss arose as a result of an accident.  
23     And it did not appear that it resulted from the

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1 operation, maintenance, or use of an insured  
2 vehicle.

3 MS. JUDKINS: I would like to move the  
4 introduction of this letter into evidence. Does  
5 anyone have any -- All right. This then should be  
6 marked as Defendant's Exhibit Number 7. Your  
7 Honor, it's not -- I mean, you can rule on it, but  
8 it's not properly marked.

9 THE COURT: All right, Ms. Judkins.

10 MS. JUDKINS: Thank you.

11 (The document referred to above was  
12 marked for identification as  
13 Plaintiff's Exhibit Number 7 and was  
14 received into evidence.)

15 MS. JUDKINS: And now I would also move  
16 into evidence Defendant's Exhibit Number 1, which  
17 is contained in the book, which is the policy and  
18 the declaration sheet.

19 MR. KERNBACH: Well, I would just like to  
20 do some brief voir dire before we actually move it  
21 in.

22 MS. JUDKINS: I don't have any further  
23 questions.

ERIC G. FRANCIS - VOIR DIRE

1                   THE COURT: All right. Go ahead, Mr.  
2                   Kernbach.

3                   VOIR DIRE EXAMINATION

4                   BY MR. KERNBACH:

5                   Q     Mr. Francis, I would like to just take a  
6                   moment to look at that book on the policy that you  
7                   have there. And I ask you this: The copyright on  
8                   this particular policy was 1988, is that right?

9                   A     I would need to take a look.

10                  (The witness reviewed the exhibit.)

11                  THE WITNESS: That's correct.

12                  BY MR. KERNBACH:

13                  Q     And when your attorney filed this lawsuit  
14                  to determine the rights and obligations of the  
15                  policy, there was a policy that was attached to  
16                  the motion -- well, the declaratory judgment  
17                  action that was copyrighted in 1991. And let me  
18                  just show you face sheet of that.

19                  Do you have a copy of the policy that the  
20                  estate or Mr. Arban received during the time that  
21                  the policy was actually in effect, from the date  
22                  that he renewed his policy to the time that that  
23                  renewal period lapsed, which would have been

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1       sometime in 1990? Now just for the record, Mr.  
2       Francis, you are looking at --

3               THE COURT: Well, is there any  
4       disagreement that the policy was in effect?

5               MR. KERNBACH: Well, I don't think there  
6       is any disagreement as to the policy was in  
7       effect. But we don't know which policy we are  
8       talking about here. Because we have a dec. sheet  
9       -- Inside this book is --

10              BY MR. KERNBACH:

11             Q       Mr. Francis, you tell us. Defendant's  
12       Exhibit Number 1, is that a dec. sheet?

13             A       Yes, it is.

14             Q       And what was the policy period in effect  
15       for the period of time for this loss? What were  
16       the dates?

17             A       November 29, 1989, to November 29, 1990.

18             Q       Now do we have a policy in that book that  
19       covers that period of time?

20             A       This is the policy. (Indicating)

21             Q       The one --

22             A       In 1988.

23             Q       Can you tell us under oath today whether

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1 or not there were any changes made to the policy  
2 that was issued in 1988 to the policy that was  
3 reissued to Mr. Arban in 1989?

4 A The way the policy -- These policies are  
5 not printed every year. This policy would have  
6 been the policy that he would have received as a  
7 result of his 1989 application. So it would not  
8 have been a 1989 copyrighted policy.

9 Q Do you know for a fact under oath here  
10 today whether or not any changes were made to the  
11 policy when it was reviewed -- Excuse me --  
12 renewed in 1989, dealing with any definitions or  
13 exclusions?

14 A No, I do not.

15 Q You can't answer that question, right?

16 A I don't understand your question. Would  
17 you restate it for me?

18 Q Well, could you tell me -- Mr. Arban was  
19 provided with a policy with a copyright of 1988.  
20 And we agree that he renewed the policy in  
21 November of 1989, is that correct?

22 A No, I don't know if we agree with that or  
23 not. Let's see what he has here. This is his

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1 original policy, so it was not taken -- This is a  
2 dash-zero policy. This was his very first policy.

3 Q His very first policy?

4 A Right. It had not been renewed.

5 Q And can you tell me under oath whether or  
6 not this policy which you have been referring to  
7 now, the one copyrighted 1988, was the one that  
8 was provided to Mr. Arban and provided to the  
9 Commissioner of Insurance for the period of time  
10 in 1989?

11 A Right, that's correct.

12 Q So there were no changes made at all?

13 A Well, this is a corresponding policy.  
14 Correct.

15 Q Right. So the policy which was  
16 copyrighted and began in 1991 was not technically  
17 the policy which was in effect in 1989?

18 A No, that's correct.

19 Q Now let me just ask you something. Why  
20 don't you turn to -- I believe it might be page 15  
21 of that policy, dealing with conditions. Well,  
22 see if you can find the part of the policy dealing  
23 with conditions.

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1           A     Sure.

2           Q     Now can you find the paragraph where it  
3 refers to notice?

4                     (The witness reviewed the policy.)

5           MS. JUDKINS: He might not be able to see  
6 the top because of the binder.

7           THE WITNESS: Yes, I do see it. I see it  
8 now. It's number 3.

9           MR. KERNBACH: Can I just take a moment  
10 to look at that? Unfortunately, Your Honor, I was  
11 provided with the 1991 policy. I've never seen  
12 the 1988 one. So I'll just take a look --

13           MS. JUDKINS: Your Honor, it was part of  
14 my pre-trial statement. He didn't file an  
15 objection to it. It is in the pre-trial statement  
16 which I provided to him, that policy.

17           MR. KERNBACH: All right. I just need to  
18 --

19           MS. JUDKINS: And it was provided in  
20 discovery too to the various parties, because I  
21 obtained a certified copy.

22           MR. BERGER: Your Honor, if I might  
23 interject --

ERIC G. FRANCIS - VOIR DIRE

1 THE COURT: So the policy -- Excuse me  
2 just a second. The policy that was in effect was  
3 the 1989 policy, and that's the one that's in your  
4 exhibits?

5 MR. KERNBACH: That's 1989.

6 MS. JUDKINS: Yes, it's -- Yes.

7 MR. KERNBACH: It's not the one that was  
8 attached to the declaratory judgment action.

9 THE COURT: Go ahead.

10 MR. BERGER: Your Honor, it's my  
11 understanding that the Court's scheduling order in  
12 this matter indicated that any exhibits that were  
13 provided would be admitted unless there was some  
14 objection.

15 It is my understanding, Your Honor, there  
16 has been no objection to any of the policies that  
17 have been submitted or are going to be submitted  
18 as exhibits in this particular matter. And so I  
19 would suggest, Your Honor, as to whether or not  
20 that's the policy or not at this point is really  
21 kind of moot.

22 MR. KERNBACH: Well, that's why I was  
23 conducting my voir dire, to straighten out what



ERIC G. FRANCIS - VOIR DIRE

1 was attached to the D.J., to what was attached to  
2 the exhibit here. And I have got just a few more  
3 questions on the notice.

4 THE COURT: Go ahead.

5 BY MR. KERNBACH:

6 Q Now is there any provision in there, in  
7 the notice provisions, dealing with when your  
8 insured is deceased and how notice should be given  
9 then? And if you need to open that up to see the  
10 top if it, go ahead.

11 THE COURT: Can you refer him to a  
12 section?

13 MR. KERNBACH: Yes.

14 BY MR. KERNBACH:

15 Q We are looking at the notice section  
16 under "Conditions" on page 15 at the top of that  
17 policy.

18 MS. JUDKINS: Your Honor, I will  
19 stipulate the policy doesn't provide for that.

20 THE COURT: Okay.

21 MR. KERNBACH: Well, then with that  
22 stipulation that answers my question. I don't  
23 think there is anything further. And I don't have

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ERIC G. FRANCIS - VOIR DIRE

1 an objection to that policy coming in. Thank you.

2 THE COURT: Thank you.

3 DIRECT EXAMINATION RESUMED

4 BY MS. JUDKINS:

5 Q Mr. Francis --

6 MS. JUDKINS: Oh, I'm sorry. Does  
7 anybody have any questions?

8 MR. BERGER: No.

9 MS. FAY: No.

10 BY MS. JUDKINS:

11 Q I would like you to look at the 1991 form  
12 policy, if you will. Is there any change between  
13 the 1991 --

14 THE COURT: Why do we care about that if  
15 that --

16 MS. JUDKINS: Well, I am just concerned.  
17 Is there going to be an argument later that the  
18 wrong policy was attached to the motion for  
19 declaratory judgment?

20 MR. KERNBACH: No, because you are  
21 relying on the 1988.

22 MS. JUDKINS: Oh, okay. All right. If  
23 that's not an issue, then I don't have any further

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JAMES JEREMIAH COLLINS - DIRECT

1 questions. I just would move Exhibit 1 in at this  
2 point, the policy and the declarations.

3 MR. KERNBACH: That's fine.

4 THE COURT: It will be received.

5 (The document described above was  
6 marked for identification as  
7 Plaintiff's Exhibit Number 1 and  
8 was received into evidence.)

9 THE COURT: Thank you, sir.

10 MS. JUDKINS: I would call now Mr.  
11 Collins, please.

12 Whereupon,

13 JAMES JEREMIAH COLLINS

14 a witness, called for examination by counsel for  
15 Progressive, and, having been duly sworn by the  
16 Court, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. JUDKINS:

19 Q Would you state your full name, please?

20 A James Jeremiah Collins.

21 A And on November 21st, 1990, did you  
22 witness an incident which occurred on Lee Highway?

23 A Yes, I did.

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## JAMES JEREMIAH COLLINS - DIRECT

1 Q About what time?

2 A Around midnight.

3 Q Pardon?

4 A Midnight.

5 Q And where were you at the time you  
6 witnessed it, your physical location?

7 A My physical location at the time of the  
8 shooting was we were in the left lane. And the  
9 police car and the car stopped in front of it were  
10 in the right lane.

11 Q You were in a car?

12 A Correct.

13 Q Were you the driver of that car?

14 A I was driving the car.

15 Q And where had you come from before you  
16 entered Lee Highway?

17 A I was on North Potomac Street, which runs  
18 perpendicular to Lee Highway.

19 Q And who else was in the vehicle with you?

20 A It was Kurt Gottschalk, Ann Rashidi, and  
21 Brendan Fabini -- or Collin Fabini. Sorry.

22 Q Now I want you to describe for the Court,  
23 if you will, exactly what you saw from the time

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1 you first saw the Sheriff's Department vehicle to  
2 the conclusion of the incident.

3 A Okay. We were on Potomac Street pulling  
4 up to Lee Highway when we saw the sheriff's car  
5 behind another car with the emergency lights on.  
6 We turned right onto Lee Highway, got into the  
7 left lane, and continued approaching where the car  
8 had been pulled over at a slow speed. I would say  
9 under 30 miles an hour.

10 As we were approaching the scene, the  
11 sheriff's deputy got out of the car and started to  
12 approach the car in front of it. I would say they  
13 were approximately ten yards apart. At that point  
14 as he was approaching the car, the car door opened  
15 of the car that had been pulled over. And we saw  
16 a figure with a gun kind of turn, swivel -- I  
17 guess is a good term to use -- and open fire. And  
18 at the time of the gun -- while it started going  
19 off, I did not see the flame from the gun, because  
20 I was also watching the road.

21 Q What did you see the other driver do, the  
22 one whom you later learned was firing the gun?  
23 What did you see the other driver do? Could you

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1 see him?

2 A Yes. Yes, I could see him. I saw him  
3 open the door. He turned out of the car. And  
4 that's when he -- You know, I could see the gun.  
5 And that's when he pulled the trigger.

6 Q Where did you see the gun vis-a-vis the  
7 car?

8 A The gun was in front of the driver  
9 between the door and the car. So he was, you  
10 know, crept -- like turned out of the car.

11 Q In what position did you see the other  
12 driver?

13 A In a crouched position is the best way to  
14 say.

15 Q And which direction was he facing?

16 A He was facing back towards the sheriff's  
17 car.

18 Q In which hand did he have the gun?

19 A I couldn't say for sure if it was both or  
20 one hand.

21 Q And then after that what did you do?

22 A There was a red light, so we stopped  
23 there. And then we heard the -- I only heard the

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## JAMES JEREMIAH COLLINS - CROSS

1     gunshots. Then I heard a car tearing up behind  
2     me. And I stepped on the gas as soon as the light  
3     turned green. So as he passed me I got a really  
4     good view of the license plate. And then we went  
5     back to the scene after that.

6           Q     Did you give statements to the police  
7     officers who were investigating the incident?

8           A     Yes.

9           MS. JUDKINS: I don't have any further  
10    questions of Mr. Collins.

11           THE COURT: Anybody else?

12           MR. BERGER: Yes, Your Honor.

## 13                   CROSS EXAMINATION

14           BY MR. BERGER:

15           Q     As you are sitting there in your chair,  
16    if you would just demonstrate the swiveling motion  
17    that you saw this individual -- If you just assume  
18    that that's the position of the individual in the  
19    car and you are going to be exiting the vehicle,  
20    if you could just demonstrate the swivel motion  
21    that you saw this individual undertake?

22           A     Okay. It was to the left. So it was  
23    more something -- The door opened like this, and

## JAMES JEREMIAH COLLINS - CROSS

1 it was like a turn like this. (Indicating)

2 Q Now you also talked about the two  
3 vehicles and the sheriff's vehicle behind the  
4 other vehicle. Could you tell the Court whether  
5 or not these two vehicles were still moving when  
6 you viewed the police vehicle with its lights on?

7 A I believe the sheriff's car was moving  
8 when the lights were on. And then as the point  
9 when that car came -- I don't know -- The car that  
10 was being pulled over, I don't know if that was,  
11 you know, moving. I do not -- I couldn't say.

12 Q Now you said you gave a description to  
13 the police after the fact of the individual who  
14 was driving the car. Do you recall the  
15 description that you gave to them?

16 A Jeans, he had a jacket on. And he was  
17 wearing glasses. It was three and a half years  
18 ago. When I was questioned before, you read back  
19 my statement to the police about how he had brown  
20 hair and was over five-eight to five-ten. But I  
21 am remembering because it was read to me.

22 MR. BERGER: I have nothing further.

23 THE COURT: Thank you. Okay. Mr.



## JAMES JEREMIAH COLLINS - CROSS

1 Kernbach.

2 CROSS EXAMINATION

3 BY MR. KERNBACH:

4 Q Mr. Collins, let me just back up a little  
5 bit. You were driving the car that was  
6 approaching from behind?

7 A Right.

8 Q And when you saw the car door open, did  
9 you actually see the gun at that point, a few  
10 seconds later?

11 A Yes.

12 Q And as you were driving your car, wasn't  
13 your attention really fixated on the gun? Did you  
14 know something bad was going to happen?

15 A As soon as he opened the door and the gun  
16 was drawn, that's the only thing, you know, that I  
17 saw. I saw the gun and, you know, his face.

18 Q And that's what you kept your attention  
19 focused on the entire time that you were driving  
20 by, right?

21 A Correct, and the -- you know, trying to  
22 not hit anything in front of me.

23 Q So when you talk about Mr. Arban actually

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JAMES JEREMIAH COLLINS - CROSS

1 making other additional physical movements, are  
2 you just guessing because in your own mind  
3 physically that's what he would have to do in  
4 order to shoot the deputy?

5 A Well, as soon as the door opened on the  
6 car, I was fixated on that. Because, I mean, I  
7 don't know if it's common knowledge or not. You  
8 don't open the door when you're being pulled over.  
9 You wait until the person comes up.

10 Q Okay. We are only interested in what you  
11 actually saw, though.

12 A Well, I saw the door open. I saw --

13 MR. BERGER: Your Honor, I would ask that  
14 he be allowed to finish his response before  
15 counsel asks his next question.

16 THE COURT: Okay. Go ahead. Answer that  
17 question.

18 BY MR. KERNBACH:

19 Q Go ahead.

20 A All right. So he opened the door. And,  
21 yes, I saw him turn and open fire.

22 Q Now when you saw him turn --

23 A Now I'm talking like waist up.

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## JAMES JEREMIAH COLLINS - CROSS

1 Q Waist up?

2 A Where I am focused.

3 Q So you don't know at all, from your  
4 position and your recollection that night, where  
5 his feet were at that --

6 A I could not say if both of his feet were  
7 out of the car or not, no. I don't know if he was  
8 standing in the car or part in or part out.

9 Q And you don't have any knowledge at all  
10 of where the lower part of his body was during the  
11 entire time that the scene unfolded as you passed  
12 by?

13 A I couldn't swear to it, no.

14 Q So when you testified about the turning  
15 around and what you described for Ms. Judkins,  
16 that was from the waist up?

17 A Yes, watching his upper body move.

18 MR. KERNBACH: Thank you. I have nothing  
19 further, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. JUDKINS:

22 Q Did you see his face or his head looking  
23 or pointed toward the direction of Captain

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KURT D. GOTTSCHALK - DIRECT

1 LaClair?

2 A Yes.

3 Q Did you see the gun pointed in that  
4 direction?

5 A Yes.

6 MS. JUDKINS: I don't have any further  
7 questions.

8 THE COURT: Thank you, sir. You may step  
9 down.

10 MS. JUDKINS: I would call my next  
11 witness, Mr. Gottschalk.

12 Whereupon,

13 KURT DAVID GOTTSCHALK  
14 a witness, was called for examination by counsel  
15 for Progressive, and, having been duly sworn by  
16 the Court, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. JUDKINS:

19 Q Would you state your full name, please?

20 A Kurt David Gottschalk.

21 Q And how do you spell your last name?

22 A That's G-O-T-T-S-C-H-A-L-K.

23 Q On November 21st, 1990, were you a

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1 passenger in a vehicle driven by Mr. Collins, a  
2 witness also to the incident?

3 A Yes, I was.

4 Q Where were you seated in the vehicle?

5 A I was in the front right passenger seat.

6 Q Could you tell the Court what you  
7 observed about the incident from the time you  
8 first saw the Sheriff's Department vehicle or the  
9 other vehicle?

10 A Sure. As we were coming over the hill on  
11 Lee Highway, I noticed two vehicles, a police  
12 vehicle in the rear with the lights on and in  
13 front of that another vehicle, both at the time  
14 stopped. It was, I he said, 12:00 midnight as  
15 well, so you couldn't really -- I guess the  
16 sketchiness for me.

17 I was sitting there. And the first thing  
18 I noticed -- Since I wasn't the driver, I wasn't  
19 paying attention far down the road. I noticed  
20 both vehicles stopped. And as we started  
21 approaching them, I guess the first thing that I  
22 noticed -- We were pretty much in line with the  
23 police vehicle.

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1           I noticed the door of Mr. Arban open up.  
2   And within a split second, the gun was pointed  
3   back towards our direction at this time. And we  
4   were heading down, you know, past his car at a  
5   slow speed, because we were approaching a red  
6   light. And being in my front right seat  
7   perspective, I noticed the hand come -- extend  
8   outside the car door, pointing back. And from my  
9   angle right there, I am sitting -- I see the  
10   flashes of the gun, at least two to three. I was  
11   kind of getting nervous at the time, and I went  
12   down below the seat level.

13           Q     You ducked down?

14           A     Yes, I did.

15           Q     Did you see the individual who was  
16   holding the gun? Did you get a look at him?

17           A     When we were approaching towards him, I  
18   got to see the shadow of his face, I guess.  
19   Because there were both the flashing lights and  
20   plus the police car's headlights. And so I could  
21   see the make of him. I mean, it was a dark-  
22   complexioned man with dark hair. And that's about  
23   the extent of it.

KURT D. GOTTSCHALK - DIRECT

1 Q Where was the deputy sheriff, if you  
2 know, when you saw the gentleman fire the gun?

3 A From my perspective he was coming --  
4 Since I was looking predominantly straight ahead  
5 toward the side of where Mr. Arban was, I could  
6 see out of the rear of my eye the police officer  
7 walking down towards the vehicle. But, I mean, it  
8 was between the two cars.

9 Q What movements, if any, did you see Mr.  
10 Arban make from the time he opened the door?

11 A From the time he opened --

12 Q What did you see his body do?

13 A I saw his body turn back. You know, and  
14 the thing is my perspective at a sitting level --  
15 His car door was open halfway, give or take a few.  
16 And I sat there, and I saw a rotating motion. And  
17 then I could see the end of the gun, the barrel.  
18 I could see his hand. I could see the top third  
19 of his body.

20 Q Where did you see the end of the gun as  
21 it relates to the car door? Where was it  
22 positioned at the time it was fired?

23 A It was somewhere in line where you

KURT D. GOTTSCHALK - DIRECT

1 consider the break between the glass and the metal  
2 of the door. I mean, yes, no higher than that.  
3 Because it was pretty much at my sitting level, so  
4 it was three and a half feet high.

5 Q Do you know whether the driver was  
6 partially in or out of the car or whether he had  
7 any feet on the ground?

8 A As we approached, you know, I noticed the  
9 driver starting to turn backwards. But then as we  
10 actually hit the actual line of Mr. Arban, I mean,  
11 his door was in my way. So there might have been  
12 feet down. There might not have been feet down.

13 Q Did you see in which direction his head  
14 was facing?

15 A It was definitely pointed back towards  
16 Mr. LaClair.

17 Q And the direction he was looking could  
18 you see?

19 A Towards the rear as well.

20 Q And the gun, in which direction was it  
21 pointed?

22 A Towards the rear of the vehicle.

23 Q And what happened next after you ducked

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1 down?

2 A Well, after the point of seeing the  
3 flashes out of the gun, I crouched down a bit, and  
4 we continued proceeding past the two vehicles. At  
5 this time we were near the red light, so we slowed  
6 down. And just for, I guess, the scared factor, I  
7 did look back to see if any of the shots were  
8 fired. And, you know, I heard gunshots.

9 And the light turned. We started going  
10 through it. And then the next motion was Mr.  
11 Arban's vehicle coming at a high speed from the  
12 rear. And it just came to all of us at the same  
13 time, let's get the license plate number. So we  
14 all kind of peaked our heads over and just did our  
15 best job right then.

16 Q And you went back to the scene and gave  
17 that information to the police?

18 A Yes, we did.

19 MS. JUDKINS: I don't have any further  
20 questions.

21 CROSS EXAMINATION

22 BY MR. BERGER:

23 Q Mr. Gottschalk, you said something about

KURT D. GOTTSCHALK - DIRECT

1       -- I believe you said something about seeing the  
2       gun itself above the window level, where the  
3       window meets the metal?

4           A     Yes. I mean, his hand might have been  
5       through the window for all I knew.

6           Q     As far as his position relative to the  
7       end of the door, the edge of the door, where was  
8       that? Where had it extended, if you were able to  
9       tell?

10          A     If, I mean, the edge of the car door is  
11       something to this effect, it might have just been  
12       a hand. It might have been -- Or, you know, it  
13       was just a split second -- Everything was  
14       happening -- As we were approaching down, I had a  
15       better perspective from ten feet behind. You  
16       know, I could see the gun. I could see him. But  
17       as we approached to the same general level as he  
18       was, then I kind of lost the view that I had and I  
19       just was more focusing on seeing the flashes  
20       coming out of the gun.

21          Q     As you got to the point where you were  
22       directly in line with the individual that you saw  
23       with the gun -- By the way, were you able to tell

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1 if the gun was fired?

2 A I could see red -- reddish/orangish  
3 flashes coming out of the end of the gun.

4 Q As you got in line with that individual,  
5 from your vantage point -- well, can you tell the  
6 Court how he was facing, what portion of his face  
7 at that point you were able to view?

8 A My sight was purely the side of his head  
9 by that time. I mean, it was just --

10 MR. BERGER: I don't have anything  
11 further.

12 MR. KERNBACH: Very brief.

13 CROSS EXAMINATION

14 BY MR. KERNBACH:

15 Q Mr. Gottschalk, as you were actually  
16 riding in the car and you saw these events  
17 unfolding, would it be fair to say that you were  
18 basically concentrating on essentially those parts  
19 of the body and the gun that were evolving as the  
20 incident transpired?

21 A Yes, I mean, just from this area. I am  
22 not typically used to seeing handguns being  
23 pointed everywhere. So, yes, I was more concerned

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1 about the upper body of him and the amazement of  
2 seeing the gun.

3 Q And you don't have any knowledge at all  
4 of where his feet were, do you, any personal  
5 knowledge?

6 A My best perspective was as we were  
7 approaching, and at that time just the car door  
8 was opening. And as I came in line with him, as I  
9 said, I was slouching down and I'm looking at the  
10 gun.

11 Q And so the best that you could tell us is  
12 gun level and upper body and up, right?

13 A Yes. It was definitely pointed out of  
14 the vehicle, back towards the officer -- I mean,  
15 you know.

16 Q Towards the deputy sheriff, right?

17 A Yes.

18 MR. KERNBACH: Thank you. I have nothing  
19 further, Your Honor.

20 THE COURT: Thank you, Mr. Gottschalk.

21 MS. JUDKINS: The next witness is by de  
22 bene esse deposition. I don't know if you want me  
23 to read it. We don't have a jury. But it

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1 shouldn't --

2 THE COURT: Just pass it up, and I'll  
3 read it.

4 MS. JUDKINS: Okay. We can agree that it  
5 will be part of the record if there is a record?  
6 Okay.

7 (The Court was provided with the  
8 deposition.)

9 MS. JUDKINS: The next thing would be --  
10 We have attached Exhibit 2, which is a portion of  
11 Captain LaClair's answers to interrogatories, the  
12 one that contains his statement of how the  
13 incident occurred. We would like that into  
14 evidence.

15 I suppose technically all of these -- All  
16 of these I am just officially moving in at this  
17 point: Two, which is the answers to  
18 interrogatories; three, which is a report from an  
19 investigator who also interviewed Captain LaClair,  
20 and it has got the version of how the incident  
21 occurred; four, Exhibit 4, a report from  
22 Lieutenant Panther of the Arlington County Police  
23 Department.

1           And Exhibit 5 is the typewritten  
2 statements of the various witnesses who just  
3 testified. And 6, in your copy, Your Honor, you  
4 have a certified copy from Prince William County  
5 of the letters of administration when the parents  
6 were appointed as administrators, December 5th,  
7 1990.

8           And finally, I guess, this is attached to  
9 the motion for declaratory judgment. I didn't  
10 necessarily know that it needed to be an exhibit,  
11 but it's probably a good idea, the motion for  
12 judgment that Captain LaClair filed in Arlington  
13 County, which should be Defendant's Exhibit 8 --  
14 Or no, not the defendant's -- Plaintiff's Exhibit  
15 8, yes. And that would conclude Progressive's  
16 evidence, Your Honor.

17                   (The documents described above  
18 were marked for identification  
19 as Plaintiff's Exhibit Numbers  
20 2 through 6 and Plaintiff's  
21 Exhibit Number 8, respectively,  
22 and were received into evidence.)

23           MR. BERGER: Your Honor, we would look to

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1 joining introduction of those exhibits identified  
2 by Ms. Judkins and in addition, Your Honor, would  
3 look to move in the declaration sheet and business  
4 auto policy covering the vehicle that was  
5 identified in our witness list.

6 THE COURT: All right, sir. Thank you.

7 (The document described above was  
8 marked for identification as  
9 INA Exhibit Number 1 and was  
10 received into evidence.)

11 (Brief Interruption)

12 THE COURT: Go ahead, Ms. Fay.

13 MS. FAY: Your Honor, at this time I  
14 would like to move the Travelers insurance policy  
15 which covered Mr. LaClair at the time of this  
16 incident. May I approach?

17 THE COURT: Yes, ma'am. Thank you.

18 (The document described above was  
19 marked for identification as  
20 Travelers Exhibit Number 1 and  
21 was received into evidence.)

22 MS. FAY: And I do have a representative  
23 from Travelers, but I understand that there is no

1 -- Mr. Kernbach has no objection to the policy.

2 THE COURT: Okay.

3 MR. HARRINGTON: Your Honor, just to add  
4 to your reading material, this is the Republic  
5 policy. And I understand there is no objection to  
6 it.

7 (The document described above was  
8 marked for identification as  
9 Republic Exhibit Number 1 and was  
10 received into evidence.)

11 THE COURT: Do we have all the policies?  
12 Do we have your policy?

13 MR. BERGER: I'm sorry, Your Honor. I  
14 thought mine was in the --

15 THE COURT: Yours may be attached in the  
16 file?

17 MR. BERGER: I thought it was, Your  
18 Honor.

19 THE COURT: In any event, it's not.

20 (The Court was provided with INA's  
21 policy.)

22 THE COURT: Okay. Thank you. Any  
23 evidence you wish to put on? I take it you've

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1       rested?

2                   MS. JUDKINS:  Oh, yes, sir.

3                   MR. KERNBACH:  I don't have any  
4       objections to all of the policies coming in.  I  
5       know that we frequently reserve ruling on the  
6       relevancy of documents that are submitted with  
7       these status conference orders.  I am not quite  
8       sure what we gain with the police reports that are  
9       being put in.  I mean, I'll leave it up to the  
10      Court.  I don't think they are relevant.  We have  
11      heard the testimony live of two witnesses.  The de  
12      bene esse of another witness was put in.

13                   What the testimony that they gave to a  
14      police officer -- And it has been documented -- I  
15      think it's duplicative.  And I don't know -- I  
16      mean, they haven't really been impeached.  And I  
17      don't know if you can impeach your own witnesses.

18                   THE COURT:  Well, Ms. Judkins likes the  
19      report that says that he was crouched outside the  
20      car.

21                   MR. KERNBACH:  Right.  Well, I guess so.  
22      But it's not -- Well, you've heard the testimony  
23      of the witnesses.  But, I mean, just for the

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1 record I don't think the police reports themselves  
2 are relevant. You've got actual live testimony  
3 here, and I think just for -- I'll let the Court  
4 make its ruling, but I don't think they should be  
5 admitted because they are duplicative and  
6 irrelevant. But as to the insurance policies, I  
7 have no objection.

8 That being said, are you going to let all  
9 the exhibits in?

10 THE COURT: Yes, sir, I am.

11 MR. KERNBACH: All right. I just want  
12 the record clear. I will just call one witness,  
13 Mr. LaClair, and then that will be it.

14 THE COURT: Captain LaClair, would you  
15 step forward, please, sir?  
16 Whereupon,

17 DARYL F. LACLAIR  
18 a defendant, was called for examination by counsel  
19 in his own behalf, and, having been duly sworn by  
20 the Court, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. KERNBACH:

23 Q Sir, would you please state your full

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1 name for the record?

2 A Daryl Francis LaClair.

3 Q And in November of 1990, with which law  
4 enforcement agency were you employed?

5 A The Arlington County Sheriff's Office.

6 Q And what rank did you have at that time?

7 A Captain.

8 Q Let me direct your attention to the  
9 evening hours of November 21st, 1990. Can you  
10 tell His Honor how it is that you came to be  
11 operating a vehicle belonging to the Arlington  
12 County Sheriff's Department and what put you in  
13 the general area where you encountered Mr. Arban?

14 A I was en route to Sheriff Foust's  
15 personal residence to deliver an item to him.

16 Q The Sheriff?

17 A The Sheriff lives right around the corner  
18 from where the incident occurred.

19 Q And were you operating the vehicle in  
20 your official capacity as a deputy sheriff?

21 A Yes, sir, I was the director on standby  
22 that week.

23 Q And the vehicles were given to you to

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1 take home because of the standby status?

2 A I had a take-home vehicle all the time  
3 regardless of whether I was on standby or not.

4 Q Now on that particular evening, were you  
5 wearing a uniform of the Arlington County  
6 Sheriff's Department?

7 A No, sir, I was not.

8 Q And can you describe your attire that  
9 evening to His Honor?

10 A I was wearing a tan corduroy jacket --  
11 sports coat, a shirt, and a brown pair of slacks.  
12 I don't remember whether I had a tie on or not.

13 Q Nothing that identified you as a member  
14 of the Sheriff's Department at least attire-wise?

15 A No, sir.

16 Q Now let me bring you up to the time where  
17 you encountered Mr. Arban. Can you tell His Honor  
18 just exactly where you were when you first  
19 observed the vehicle that was later to be  
20 identified as being driven by the decedent, Mr.  
21 Arban?

22 A I was eastbound on Lee Highway. I can't  
23 give you an exact location where I spotted his

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1 vehicle. It was probably a mile and a half to two  
2 miles before the actual place of occurrence.

3 Q And what was it that attracted your  
4 attention as you were operating your vehicle at  
5 that time?

6 A I noticed that the vehicle was driving  
7 semi-erratically. It wasn't a drunken kind of  
8 driving where he was swaying. It was like I'm  
9 looking at a map, oops, I've got to get back on  
10 the road, kind of like a jerking action. At that  
11 point in time, he was, you know, a good distance  
12 ahead of me.

13 Q And what happened as you were following  
14 this vehicle -- actually observed and not  
15 specifically following. But let's take us up to  
16 the point where he actually pulled over.

17 A Because of the way he was driving, I knew  
18 -- I said in my mind that he wasn't drunk, so I  
19 wasn't going to do any enforcement action on him.  
20 I just continued on my way down Lee Highway. The  
21 vehicle just happened to still be in front of me.  
22 We were both in the same lane, the right-hand lane  
23 of eastbound Lee Highway. I noticed as I got

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1 closer to the vehicle that the vehicle slowed  
2 down, allowing me to gain on it. As I approached  
3 -- Do you want me to continue?

4 Q Sure.

5 THE COURT: Go ahead.

6 THE WITNESS: As I got closer to the  
7 vehicle, when I came up behind him, he slowed  
8 almost to a crawl and put himself into the left-  
9 hand lane and came to almost a stop, allowing my  
10 cruiser to pull up beside him. In my mind I  
11 thought he was going to roll down his window and  
12 ask me for directions.

13 As I got almost even with him, he sped up  
14 his car a little bit, pulled in front of me, and  
15 stopped. I thought to myself the man is using his  
16 head, he's not going to block both lanes of Lee  
17 Highway to ask me directions. I positioned my  
18 vehicle as I was trained in the academy, turned on  
19 my emergency equipment, stepped out of my vehicle  
20 and began to approach Mr. Arban's vehicle.

21 BY MR. KERNBACH:

22 Q Now when you say you positioned your  
23 vehicle, can you describe specifically for His

1 Honor what actions you took with respect to the  
2 position of the vehicle and what equipment you  
3 activated and why you activated it?

4 A My vehicle was approximately four to five  
5 feet to the rear of Mr. Arban's bumper. My  
6 vehicle was positioned in such a way that probably  
7 about three feet of my vehicle was beyond the  
8 outside of his vehicle where his driver's door  
9 would be. I activated my bar lights. My  
10 headlights were put on high-beam. And I shone my  
11 spotlight into his rear-view mirror.

12 Q Now when you say you put it about three  
13 feet in a distance relative to the Arban vehicle,  
14 what was the purpose in positioning your vehicle  
15 exactly that way?

16 A I was trained that way in the academy.  
17 And the reason for the training is that a lot of  
18 times people will fixate on police vehicles, and  
19 they will hit the police vehicle or they will wipe  
20 out a police officer that's standing next to a  
21 vehicle talking to a subject. And the reason for  
22 doing that is so if they hit the car, it sends  
23 them away from the car that you pulled over. So

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1 if anyone hits you.

2 Q Now why don't you tell His Honor just  
3 exactly what happened after you stopped,  
4 positioned your car, and activated your emergency  
5 equipment?

6 A I stepped out of my vehicle. I began  
7 walking toward Mr. Arban's vehicle. As I got near  
8 my front tire of my cruiser, I saw his door begin  
9 to open. I said sir, stay in your car. I  
10 continued approaching his vehicle. His door  
11 continued to open. Again I said sir, I told you  
12 to remain in your car.

13 At that time I saw his hand come up  
14 between the door and the door frame. I never saw  
15 a weapon. I never heard a shot. The next thing I  
16 knew it felt like somebody punched me in my left  
17 elbow. At that point I turned and I looked at my  
18 left elbow. As I did a second shot struck me in  
19 the corner of my eye. At that time --

20 Q Which eye was that?

21 A I'm sorry?

22 Q The right eye?

23 A The right eye, yes, the corner of my



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1 right eye. Of course it closed both of my eyes,  
2 this one because the bullet had entered and this  
3 one because of the tearing. (Indicating) And I  
4 didn't know whether Mr. Arban was going to  
5 continue to come out of the vehicle or what. So I  
6 threw myself between his rear bumper and my front  
7 bumper, thinking that if he continued to come out  
8 of his vehicle at me, I could roll under my car or  
9 roll under his car and use it for cover. Or if he  
10 came around the corner of his vehicle, I might be  
11 able to get a shot at him.

12 Q Now do you have any recollection at all  
13 of whether or not, when you felt the impact on the  
14 left elbow and the right side of your head near  
15 your eye, whether or not Mr. Arban had ever gotten  
16 out of the vehicle at that point?

17 A Mr. Arban did not -- I never saw Mr.  
18 Arban out of the vehicle. All I saw was his hand  
19 come up between the door and the door frame.

20 Q Now why did you throw yourself on the  
21 ground between the rear of his car and the front  
22 of your car?

23 A To use the vehicles as cover, so that he

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1       couldn't see me.

2               Q       And what happened after you threw  
3       yourself to the ground?

4               A       As I hit the ground on my back, my  
5       service weapon was in my hand. I have no idea  
6       when I pulled my gun. But when I hit the ground,  
7       it was in my hand. I knew that I had to look to  
8       see if he was coming. I brought my head up, at  
9       the same time bringing my gun up. I forced my  
10      left eye open so that I could see if he was coming  
11      at me. And as I did that, I saw his vehicle start  
12      to pull away. And I delivered five rounds to the  
13      back of the vehicle to mark the vehicle, so that  
14      another law enforcement officer would see it.

15              Q       Now where were you in relation to your  
16      car when those shots were fired?

17              A       I was on the ground in front of my car on  
18      my back.

19              Q       And after you fired those shots, how did  
20      you make it back to your car?

21              A       I went down the passenger side to the  
22      rear right-hand corner. I looked to make sure  
23      that he wasn't coming back, proceeded across the

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1 trunk, stopped again to look to make sure that  
2 there wasn't anybody coming. And then I proceeded  
3 up to the driver's door of my vehicle.

4 Q Let me just show you seven photographs,  
5 which we will just have marked as Plaintiff's  
6 Exhibits 1 through 7.

7 COURT REPORTER: Judge, are these going  
8 to be plaintiff's exhibits?

9 MR. KERNBACH: I mean -- I'm sorry. This  
10 is what happens when you do too many plaintiffs'  
11 work.

12 THE COURT: Defendant's.

13 MR. KERNBACH: It's Defendant's Exhibits  
14 1 through 7.

15 (The items described above were  
16 marked for identification as  
17 Defendant's Exhibits 1 through  
18 7.)

19 BY MR. KERNBACH:

20 Q Mr. LaClair, if you could just briefly go  
21 through the photographs. Let me just put them in  
22 order here. And we will begin with Photographs 1  
23 through 7. And just briefly describe for His

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1 Honor what area is depicted in the photographs.

2 You know, Photograph Number 1 is a photograph of a  
3 roadway area.

4 A I can't tell you exactly where on the  
5 roadway that is.

6 Q Would that be the area just directly in  
7 front of the patrol car, if you looked at the  
8 other photographs to kind of fix the area?

9 A I can't say for sure that it is.

10 Q All right. Let's do Photograph Number 2.

11 A That's a picture of my cruiser as I  
12 positioned it in the roadway.

13 Q And that's relative to where you said you  
14 stopped in the roadway when you first met with Mr.  
15 Arban?

16 A Yes, sir.

17 Q And Number 3?

18 A Again, that's a side view of my cruiser  
19 as it was positioned.

20 Q And, again, you never moved your cruiser  
21 up to the time that the investigators from the  
22 police department arrived on the scene, did you?

23 A No, I never moved it.

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1 Q And the position of the spotlight in  
2 Photographs Number 3 and 4, was that equipment  
3 left activated and positioned the way you did at  
4 the time of the traffic stop?

5 A Yes, sir.

6 Q And what photograph are we looking at  
7 now, Numbers 5 and 6?

8 A Those are shots of the side and interior  
9 of my vehicle after the incident had occurred.

10 Q And that blood that is there on the  
11 scene, is that from you?

12 A That's correct.

13 Q And then the last photograph, Number 7,  
14 is that a photograph of the rear of your car?

15 A It appears to be, yes, sir.

16 Q And those blood splatters on the bumper  
17 and the rubber part there, are those from you  
18 also?

19 A I would it is, yes, sir.

20 MR. KERNBACH: At this time I would just  
21 like to move 2 through 7 into evidence, and we'll  
22 withdraw 1.

23 MS. JUDKINS: No objection.

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1 THE COURT: All right, sir.

2 (The items previously marked as  
3 Defendant's Exhibit Numbers 2  
4 through 7 for identification were  
5 received into evidence, and  
6 Defendant's Exhibit Number 1 was  
7 withdrawn.)

8 BY MR. KERNBACH:

9 Q Finally, Mr. LaClair, do you remember Mr.  
10 Arban saying anything to you up to the time that  
11 you either got out of your vehicle to the time  
12 that you felt the impact to your elbow and head?

13 A Mr. Arban did not say anything to me.

14 Q And do you have any direct knowledge at  
15 all of whether or not -- why the shooting took  
16 place? Were there any movements or anger or  
17 anything displayed that you could see non-verbal-  
18 wise towards you?

19 A Not to my knowledge.

20 Q And to this day you don't have any  
21 knowledge at all about whether or not he intended  
22 to shoot you or whether or not it was an  
23 accidental discharge, do you?

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1           A     No.

2           MR. KERNBACH:   Okay.   I have nothing  
3 further.

4                           CROSS EXAMINATION

5           BY MS. JUDKINS:

6           Q     Captain LaClair, you normally worked the  
7 daytime shift during this period of time, correct?

8           A     That's correct.

9           Q     You got off at 5:00 o'clock?

10          A     That's correct.

11          Q     And that happened that day, you got off  
12 around 5:00 o'clock, correct?

13          A     Around that time.

14          Q     You also have a private interest you  
15 pursued during that time of flying?

16          A     That's correct.

17          Q     And you had been there that evening  
18 before this incident happened, correct?

19          A     I had been at a ground school.

20          Q     The vehicle you were driving was one you  
21 drove in any event, even if you weren't on call?  
22 True, you were given a vehicle to drive to and  
23 from work?

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1 A Yes, ma'am.

2 Q And that's the vehicle you drove at home  
3 and parked?

4 A Yes, ma'am.

5 Q And the reason you were going to the  
6 Sheriff's house is he had asked you to bring by  
7 some targets that he was going to take with him up  
8 to the country to practice some shooting, I  
9 assume, correct?

10 A That's correct.

11 Q You were not officially on call or on  
12 patrol or anything like that, correct?

13 A I am officially on call 24 hours a day, 7  
14 days a week.

15 Q That's true. But you were not in the  
16 process of responding to a call or reporting for  
17 duty at the time of this incident, correct?

18 A That would be a correct statement.

19 Q And you did not pull Mr. Arban over? You  
20 did not initiate the traffic stop with Mr. Arban,  
21 correct?

22 A That's correct.

23 Q You stopped because you thought he needed

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1 some assistance and he stopped first?

2 A That's correct.

3 Q Now the reason you pulled your own  
4 service revolver after you were initially shot by  
5 Mr. Arban was -- I am going to ask you this. You  
6 tell me if it's true or not -- you were going to  
7 shoot him if he had come completely out of the  
8 car, correct?

9 A That's right.

10 Q You were back behind -- in between both  
11 vehicles with your revolver drawn. If he had come  
12 around there, you were not going to ask him any  
13 questions first, were you?

14 A No, ma'am.

15 Q And if you did get a good shot at him,  
16 you would have shot --

17 THE COURT: Excuse me just a moment.

18 (Brief Interruption)

19 BY MS. JUDKINS:

20 Q I was asking you the reason you pulled  
21 your revolver. And if he had come around the  
22 vehicle, you would have shot him if you could  
23 have, correct?

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1           A     That's correct.

2           Q     And asked no questions first?

3           A     That's correct.

4           Q     You did not believe that he accidentally  
5 shot you, did you?

6           A     I can't tell you if he accidentally shot  
7 me or not. All I know is he shot me.

8           Q     He shot you. And the reason you shot at  
9 him was both for your own protection and to mark  
10 his vehicle, so somebody else could identify that  
11 as the same vehicle that was involved -- the  
12 driver of the same vehicle involved in the  
13 incident with you, correct?

14          A     That's correct.

15          Q     You in fact shot out the back window,  
16 correct?

17          A     That's correct.

18          Q     And later on you were shown photographs  
19 of Mr. Arban by some detectives for Arlington  
20 County, and you positively identified him as the  
21 individual involved in your incident, correct?

22          A     That's correct.

23          Q     So you were able to see him enough to

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1 identify him later from the photographs as the  
2 same individual?

3 A Yes, ma'am.

4 Q You never saw the gun that night either,  
5 did you, the gun that shot you?

6 A No.

7 Q But you do know you were shot, correct?

8 A I know that.

9 Q Yes. And you were shot by Mr. Arban,  
10 correct?

11 A Yes, ma'am.

12 Q And the next day Mr. Arban was shot and  
13 killed in Prince William County, correct?

14 A That's correct.

15 Q And he before being killed shot and  
16 killed a police officer in Prince William County,  
17 correct?

18 A That's correct.

19 Q At his home, Mr. Arban's home?

20 A Yes.

21 MS. JUDKINS: I don't have any further  
22 questions.

23 THE COURT: Ms. Fay.

1 CROSS EXAMINATION

2 BY MS. FAY:

3 Q Mr. LaClair, you testified before that  
4 you told Mr. Arban to stay in his car. That's  
5 because that's part of your training to do so,  
6 correct?

7 A That's correct.

8 Q And that's for safety reasons?

9 A Yes, ma'am.

10 Q And you personally don't know whether or  
11 not Mr. Arban was out of his car when he shot you,  
12 do you?

13 A I did not see him out of the vehicle.

14 Q So you don't know?

15 A I would say that he was not.

16 Q And it's the procedure always when you  
17 are pulling someone over or approaching a vehicle  
18 on the road, as you did in this case, to act with  
19 caution on your side, correct?

20 A That's correct.

21 Q Because you never know what's going to  
22 happen?

23 A That's correct.

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1 MS. FAY: Thanks.

2 THE COURT: Mr. Berger.

3 CROSS EXAMINATION

4 BY MR. BERGER:

5 Q Deputy LaClair, how far did the door open  
6 of the suspect's vehicle?

7 A When I observed it, I would say  
8 approximately a foot.

9 Q Pardon me?

10 A Approximately a foot when I observed it.  
11 It would have been just enough to where you could  
12 put your hand up through the door frame, is when I  
13 saw it.

14 Q Do you recall giving a deposition in this  
15 matter on Friday, February 4th, 1994?

16 A Yes, sir.

17 Q And do you recall being asked that  
18 question?

19 A No, sir.

20 Q Do you recall that when you were asked  
21 that question -- Let me just read you the  
22 question. "Question: How far wide did he open  
23 the car door?" Your answer was, "I would say no

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1 more than four or five inches."

2 A About a foot, I mean, enough to get his  
3 arm up through. I mean, I did not have a ruler to  
4 measure how far the door was open.

5 Q Well, isn't it true that you were asked  
6 on a couple of occasions during that deposition to  
7 -- about the distance; and each time that you were  
8 asked a question, you went back and said four or  
9 five inches?

10 A I may have.

11 Q Isn't it true that following this that  
12 you gave a description of this individual?

13 A That's correct.

14 Q And despite the door only opening four or  
15 five inches, you were able to give a description  
16 of the individual as a white male with brown hair  
17 and glasses, weren't you?

18 A That's correct.

19 Q And in addition to that, isn't it true  
20 that the interior light of that vehicle never came  
21 on?

22 A I can't answer that question.

23 THE COURT: You don't recall either way?

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1 THE WITNESS: No, sir.

2 THE COURT: Okay.

3 BY MR. BERGER:

4 Q When you stopped your vehicle, you put  
5 your vehicle in park, didn't you?

6 A Yes, sir.

7 Q And you closed the door of your vehicle?

8 A Yes, sir.

9 Q And you were walking, and you had exited  
10 -- fully exited and were walking outside of your  
11 vehicle approaching the other vehicle at the time  
12 that you saw the door swing open?

13 A That's correct.

14 Q The other vehicle, that vehicle was  
15 completely stopped, wasn't it?

16 A Which vehicle?

17 Q The other vehicle, the suspect's vehicle,  
18 that was completely stopped, wasn't it?

19 A Yes, sir.

20 Q And you don't know one way or another  
21 whether the engine had been turned off, do you?

22 A No, sir, I don't.

23 Q But the vehicle would have been put in

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1 park, wouldn't it?

2 A I can't say for sure that it would.

3 Q Well, you couldn't say for sure despite  
4 the fact that you've testified that the individual  
5 had stopped his vehicle, opened the door, aimed a  
6 gun at you? You can't say one way or another  
7 whether or not that vehicle would have been in  
8 park?

9 A No, sir. I can hold my foot on the brake  
10 and turn around in the manner that I saw the  
11 subject.

12 MR. BERGER: I have nothing further.

13 MR. HARRINGTON: I have my one question,  
14 Your Honor.

15 THE COURT: Go ahead, Mr. Harrington.

16 MR. HARRINGTON: Thank you.

17 CROSS EXAMINATION

18 BY MR. HARRINGTON:

19 Q Captain LaClair, referring to this letter  
20 sent by your attorney in May of 1993 to  
21 Progressive Casualty, are you aware of any other  
22 notice prior to this with any insurance company  
23 sent by either you or a representative of you



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1 prior to May of 1993?

2 A No, I don't have any knowledge of it,  
3 sir.

4 MR. HARRINGTON: Thanks.

5 THE COURT: Captain LaClair, you told  
6 this gentleman twice to stay in his car?

7 THE WITNESS: Yes, sir.

8 THE COURT: What happened after the first  
9 time you told him?

10 THE WITNESS: His door was still opening  
11 a little bit further. His door continued on  
12 opening.

13 THE COURT: So the four to five inches  
14 wide was not as wide as it ever got?

15 THE WITNESS: I'm not really sure, Your  
16 Honor. I mean, all I saw was the door was  
17 opening. And then I saw a hand come up between  
18 the door and the door frame. So, I mean, looking  
19 from my angle, it was probably about like that.  
20 (Indicating)

21 THE COURT: All right. Now what caused  
22 you to tell him the second time?

23 THE WITNESS: Because the door was

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1 continuing to open. When I first said it, the  
2 door had cracked and was beginning to open. And  
3 as soon as I saw --

4 THE COURT: So it was just barely open  
5 the first time?

6 THE WITNESS: Yes, sir. As soon as I saw  
7 the door beginning to open, I told him, sir, stay  
8 in your car. And then when it continued to open,  
9 I again said, sir, stay in your car.

10 THE COURT: How close was the closest  
11 point you got to him?

12 THE WITNESS: I got to just beyond the  
13 front bumper of my vehicle.

14 THE COURT: And there was about five feet  
15 between your vehicle and his?

16 THE WITNESS: Three to five feet, yes,  
17 sir.

18 THE COURT: Thank you.

19 RECROSS EXAMINATION

20 BY MS. JUDKINS:

21 Q Just based on the Judge's questions, when  
22 you told Mr. Arban to stay in his vehicle, how  
23 loud -- Did you say it in the same tone of voice

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1     you're saying it to us here today? Or how did you  
2     actually say it back then, do you remember?

3             A     I wouldn't call it a holler, but it would  
4     have been sir, remain in your vehicle.

5             Q     Presumably loud enough for him to hear  
6     you?

7             A     Yes, ma'am.

8             MS. JUDKINS: I don't have any further  
9     questions.

10            MR. KERNBACH: Nothing further.

11            THE COURT: Thank you, sir.

12            MR. KERNBACH: That's it for the evidence  
13     that we will present, Your Honor. So I think the  
14     only thing to be determined -- I don't know if  
15     there is any rebuttal evidence. And then we would  
16     just need schedules, I guess, for briefs.

17            MR. BERGER: Your Honor, the only thing  
18     that we would offer in rebuttal, Your Honor, would  
19     be a portion of the deposition transcript of Daryl  
20     LaClair on Friday, February 4th, wherein he was  
21     asked, "My vehicle continued to run, yes."

22     "Question: As you got out of your car and you  
23     were approaching the other vehicle, you indicated

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1 that he opened the door four or five inches. Was  
2 that your --" "Answer: I would say in the end he  
3 was probably four or five inches." "Question: In  
4 the end?" "Yes." "Question: And at any time did  
5 he open -- where your viewing was going on, did he  
6 open it any further than four or five inches?"  
7 "Answer: No, sir."

8 THE COURT: All right.

9 (The document described above was  
10 marked for identification as  
11 INA Exhibit Number 2 and was  
12 received into evidence.)

13 THE COURT: Any other evidence anybody  
14 wants to put in? Okay, Ms. Judkins.

15 MS. JUDKINS: Under the Progressive  
16 policy we are primarily seeking an order that  
17 there is no coverage. Because it didn't arise out  
18 of the ownership, maintenance, or use of the motor  
19 vehicle. And if you read the first page of the  
20 Progressive policy, this is the first provision we  
21 are relying upon. This is Mr. Arban's policy.

22 THE COURT: Let me just catch up with  
23 you.

1 MS. JUDKINS: I'm sorry. Page 1, Exhibit  
2 1.

3 (The Court reviewed the exhibits.)

4 THE COURT: Okay. I've got your policy.

5 MS. JUDKINS: Coverage arises for -- We  
6 have a duty to pay on behalf of the insured, Mr.  
7 Arban, all sums which the insured will become  
8 legally obligated to pay as damages because of  
9 bodily injury arising out of the ownership,  
10 maintenance, or use of the owned automobile,  
11 etcetera. There is no dispute that this was the  
12 vehicle for which the insurance policy was issued.  
13 It was an owned automobile by Mr. Arban.

14 THE COURT: Okay. That's --

15 MS. JUDKINS: Page 1 under part 1,  
16 "Liability Coverage", (a).

17 THE COURT: Coverage, (a), okay.

18 MS. JUDKINS: The second grounds for no  
19 coverage is on page 3 under "Exclusions". It  
20 states this policy does not apply under part 1 --  
21 then to subsection (b) -- to bodily injury or  
22 property damage caused intentionally by or at the  
23 direction of the insured. Those are the two

1 primary bases of no coverage in this case that we  
2 are arguing.

3 THE COURT: That's page 3, exclusion  
4 which?

5 MS. JUDKINS: Subsection (b), little b in  
6 parentheses.

7 Now for the ownership, maintenance or use  
8 of the motor vehicle, we rely on the Virginia  
9 Supreme Court case of State Farm Mutual versus  
10 Powell at 227 Virginia 492. You have in evidence  
11 the motion for judgment that he filed in Arlington  
12 County. And that's important too, because it does  
13 set forth the allegations upon which he is relying  
14 in that suit.

15 In the Powell case it was an accidental  
16 shooting. In fact, there was never any evidence  
17 presented as to how the decedent was -- how the  
18 gun fired. There was a rack for rifles in the  
19 back of his pickup truck. And these two different  
20 parties had driven to a park in two different  
21 vehicles, and the decedent had not been a  
22 passenger in the insured's vehicle -- in that  
23 case, State Farm's insured.

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1 But he had come up and at one point been  
2 on the driver's side. At one point they were  
3 socializing on the passenger's side. And he was  
4 accidentally killed when for some reason the gun  
5 discharged on the rack which was behind the  
6 individuals in the truck. It shot and killed the  
7 person whose estate was -- they were suing.

8 The Supreme Court went through an  
9 analysis of when in an accidental shooting -- And  
10 that was an accidental shooting case -- when  
11 something may have arisen out of the ownership,  
12 maintenance, or use of the automobile policy. And  
13 the first thing they said is, "Consideration must  
14 given to the intention of the parties to the  
15 insurance agreement in determining the scope of  
16 the coverage afforded."

17 Well, I don't think anyone could argue  
18 that insurance companies intend to provide  
19 coverage for shooting someone, whether you're in  
20 or out of your automobile. Now that would be the  
21 first thing, shooting someone.

22 The second one is, "It should be  
23 construed in light of the subject matter, the

1 ownership, maintenance, or use with which the  
2 parties are dealing. The terms of the policy  
3 should be given their natural and ordinary  
4 meaning. And there must be a causal relationship  
5 between the accident and employment of the insured  
6 motor vehicle as a vehicle. Finally,  
7 consideration must be given to what the injured  
8 person was doing when he was injured, as well as  
9 his purpose and intent, in determining whether the  
10 person was in such a position in relation to the  
11 vehicle to be injured in its use."

12 Now a few years after that, the Supreme  
13 Court decided another shooting -- hunting accident  
14 case. And that was State Farm versus Rice at 239  
15 Virginia at 646. In that case they did find that  
16 it arose out of the ownership, maintenance, or use  
17 of the motor vehicle. But the facts were  
18 different. And one of the important facts in that  
19 case was the party who had been shot in Rice had  
20 been a passenger in the insured's vehicle. They  
21 had ridden together to go hunting.

22 And they said that the gentleman who did  
23 the accidental shooting -- Again it was an



1 accidental discharge of a firearm, a hunting rifle  
2 -- had not finished using the vehicle, because he  
3 was getting his coffee and things out of the  
4 vehicle before they each went their separate ways.  
5 But it was important in that case, because the  
6 injured party had been -- It was a joint venture.  
7 It was a trip. And they had used the vehicle to  
8 get where they were going.

9 Now in this case you have Mr. Arban. He  
10 is in a car, and he -- I don't care whether he is  
11 out of the car, in all honesty. I still don't  
12 think it's something that arises out of the  
13 ownership, maintenance, or use of the motor  
14 vehicle.

15 Because the vehicle is not the  
16 instrumentality here. The instrumentality is he  
17 shot the man. He shot the man. He could have  
18 stood at the side of the road and flagged him  
19 down, and the same thing would have happened. And  
20 actually the same thing did happen or worse the  
21 next day.

22 And this is why it's important what  
23 happened in Prince William County. The next day

1 Mr. Arban shot and killed a police officer in his  
2 home. He was not in a vehicle. It had nothing to  
3 do with the use of a vehicle. He did the same  
4 thing he tried to do to Captain LaClair the night  
5 before. He just happened to have been in his car  
6 at one point or another. But that was not the  
7 instrumentality of what happened that night.

8 The witnesses put him at least partially  
9 out of the vehicle. It is not a drive-by  
10 shooting. It's a situation where the gentleman  
11 has at least got his head out and a gun out and is  
12 looking back, pointing the gun, and shooting at  
13 somebody. There is no question about that.

14 Under the State Farm-Powell analysis,  
15 Deputy LaClair was never going to be a passenger  
16 in Mr. Arban's vehicle. He had not come from Mr.  
17 Arban's vehicle. And he was going over there only  
18 to answer any questions he thought Mr. Arban may  
19 have because he thought he was lost. It wasn't  
20 even technically a traffic stop.

21 So for those purposes we think that the  
22 Virginia Supreme Court case in Powell reflects  
23 more accurately the facts in this case than in the

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1 Rice case, where they were actually together in  
2 the car and had gone hunting and that type of  
3 thing.

4 And the gun was resting on the seat in  
5 the Rice case and was accidentally discharged when  
6 he was getting his coffee in and out or putting  
7 something back in the car. And that's where the  
8 actual discharge occurred, not because the man had  
9 pulled the trigger and intentionally shot anybody  
10 or even shot him by pulling the trigger at all.

11 There are some circuit court decisions  
12 upon which we are also relying, which I realize  
13 don't have any precedential importance to the  
14 Court. But they are instructive. There is the  
15 case of Bell versus State Farm out of Virginia  
16 Beach, which was decided April 4th, 1990, where a  
17 doctor had his car advertised for sale and a  
18 gentleman showed up and pretended to be interested  
19 in purchasing the car. And they went for a test  
20 drive. During the course of the test drive, the  
21 so-called purchaser shot and killed the doctor who  
22 owned the car and dumped his body in a ditch and  
23 drove away.

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1           And the Court said in that case this does  
2 not arise out of the ownership, maintenance, or  
3 use of the motor vehicle. As in the Powell case,  
4 it happened to be the situs of where the incident  
5 occurred. But it didn't arise out of the  
6 ownership, maintenance, or use of the motor  
7 vehicle.

8           Then there is a drive-by shooting case on  
9 Interstate 64 that was decided by the Circuit  
10 Court of the City of Norfolk on October 6, 1992,  
11 Hartford Accident Indemnity Company versus Weaver,  
12 in which the court said that the injuries  
13 sustained by the injured person did not arise out  
14 of the ownership, maintenance, or use of the  
15 vehicle. And it was an uninsured motorist case.  
16 He was not entitled to recovery under the  
17 uninsured motorist provisions of his policy.

18           What the court found in that case,  
19 whether it was an intentional act of shooting was  
20 not a risk that was contemplated by the parties to  
21 the contract. And I think that you can glean the  
22 intention of the parties by reading the contract.  
23 It is a family automobile insurance policy. Mr.

1 Arban wasn't married, but it was an automobile  
2 insurance policy designed to provide coverage in  
3 the event that there is an incident arising out of  
4 the ownership, maintenance, or use of the motor  
5 vehicle. It is not an insurance policy designed  
6 to provide coverage in the event that someone is  
7 shot by the insured.

8 And if you take that to its logical  
9 conclusion and decide there is coverage for this,  
10 well, then there is going to be coverage anytime  
11 the bank robbers jump in their car and drive away  
12 from where they have robbed the bank and shoot at  
13 somebody as they are leaving. There is going to  
14 be coverage for every drive-by shooting there is.

15 I know there is a Richmond Circuit Court  
16 decision on drive-by shooting. I disagree with  
17 it, for whatever it's worth. But I know that it's  
18 in there. There is no Virginia Supreme Court  
19 deciding this exact case.

20 In some of the other circuit court  
21 opinions, they do talk about a New Jersey case in  
22 which the higher court there found that a  
23 gentleman who is at his phone booth -- And

1     somebody came up and shot him in order to steal  
2     his car. They said that was not something that  
3     arose out of the ownership, maintenance, or use of  
4     the motor vehicle.

5             That's about as close as I could find to  
6     this particular incident, although I know this  
7     incident has arisen before, the same type of  
8     factual pattern. But I could find no cases where  
9     there was a question of whether there was  
10    insurance coverage for it.

11            So that is the first grounds that we  
12    argue that there is no -- It was not within the  
13    contemplation of the parties, certainly not this  
14    incident, and there is no coverage.

15            But Progressive also relies on the fact  
16    that this was an intentional act, that this was  
17    conduct expected -- or damage expected or intended  
18    by the insured. Now Mr. Kernbach has asked  
19    Captain LaClair, well, you don't really know what  
20    was in Mr. Arban's mind? Well, we don't have to  
21    know what was in Mr. Arban's mind at this point.

22            We do know that all the witnesses have  
23    seen him looking toward Captain LaClair, pointing

1 a gun toward Captain LaClair, and shooting -- and  
2 shot. And he was shot. We know that happened.  
3 We know that he was told twice by Captain LaClair,  
4 sir, do not get out of your vehicle. And he told  
5 him that so he wouldn't get out of the car, for  
6 that purpose.

7 We know that Captain LaClair pulled his  
8 gun and would have shot Mr. Arban in a minute if  
9 he had come around the car and not asked any  
10 questions, and did shoot out the back window of  
11 his car. And Mr. Arban still drove away and fled  
12 the scene. We also noted the next day he shot and  
13 killed another police officer and was himself shot  
14 and killed during that gun fight.

15 So I would rely on a number of cases. I  
16 don't think -- Given the evidence, there is not a  
17 shred of evidence that this was an accidental  
18 shooting. None. I don't think you can even infer  
19 from the circumstances it's accidental.

20 Captain LaClair has filed in his motion  
21 for judgment in Arlington County, before you get  
22 to count 1 or 2, a number of introductory  
23 paragraphs. Number 8 states that when the

1 plaintiff exited his sheriff's vehicle and began  
2 to walk on the driver's side of the vehicle  
3 defendant Arban was occupying, the defendant  
4 opened the vehicle's driver's side door and leaned  
5 out, where he suddenly and without warning and  
6 without just cause or provocation assaulted and  
7 battered or otherwise injured the plaintiff by  
8 discharging a firearm at him, causing a very  
9 serious and disabling injury.

10 That paragraph is incorporated into count  
11 1 and count 2. Count 1 is entitled "Assault and  
12 Battery" and incorporates all of them. Then you  
13 go to count 2, which he has entitled "Negligence".  
14 But it incorporates all of the previous paragraphs  
15 in their entirety.

16 We have chosen basically today to  
17 litigate that factual issue as to whether or not  
18 it was an intentional act or a negligent act. Now  
19 we are entitled to do that under the Virginia  
20 Supreme Court case of Reisen -- R-E-I-S-E-N --  
21 versus Aetna Life and Casualty Company at 225  
22 Virginia 327.

23 In that case there was a lawsuit which

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1     arose out of an incident in which the plaintiff  
2     drove his truck intentionally into somebody else  
3     because they had a dispute. In the lawsuit that  
4     was filed, there were allegations of negligence  
5     and intentional conduct. The insurance company  
6     had a claim that they were dealing with which  
7     exceeded their policy limits. There was a demand  
8     for their policy limits.

9             They filed a declaratory judgment action,  
10    saying look, if this is an intentional act, there  
11    is no coverage. And we don't have to wait until  
12    the conclusion of the tort case to find out  
13    whether the jury is going to think it's  
14    intentional or negligent if there is absolutely no  
15    evidence of negligence and we can prove it was  
16    intentional.

17            And the Supreme Court of Virginia agreed  
18    with the insurance company in that case. The  
19    plaintiff raised, as an argument against the  
20    action in its entirety, that the tort case was  
21    where this fact had to be determined. And the  
22    Virginia Supreme Court said we are not going to do  
23    this, because otherwise the insurance company is

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1 at the mercy of whatever allegations are made in  
2 the suit. A person can file a lawsuit and allege  
3 negligence when there is absolutely no negligence.

4 And you are entitled to go behind those  
5 allegations in the pleadings, present the evidence  
6 here, and make the determination at this point.  
7 And that is why we have presented the evidence.  
8 Because even though there are allegations in the  
9 motion for judgment, there is clearly no  
10 negligence here. It's an intentional act.

11 And we also rely on Citizens Home versus  
12 Nelson at 218 Virginia 216, which is a life  
13 insurance case. But it's interesting, because it  
14 does involve the shooting death of an individual  
15 in a parking lot where the shooter was never  
16 apprehended and the person died.

17 So nobody knew exactly what happened  
18 between these two in the parking lot. Except some  
19 witnesses were inside the little shop, the coffee  
20 shop, saw these two shadowy figures out there, saw  
21 the guy get shot, heard some argument between  
22 them. There was one witness who heard the  
23 argument. And then the person fled.

1           They were never able to determine what  
2       was inside the mind of the person who did the  
3       shooting, what was inside the mind of the decedent  
4       because he was dead. And the Court concluded  
5       there is just no evidence of any accidental  
6       shooting here. It was clearly intentional under  
7       that case.

8           And I would also rely on Johnson versus  
9       Insurance Company of North America at 232 Virginia  
10      340, which was a homeowner's case. But in that  
11      case the insured had suffered from delusions and  
12      actually was found to have suffered from mental  
13      illness in the criminal case, which sort of -- I  
14      don't know that he was completely exonerated, but  
15      he went through whatever you go through when you  
16      are found mentally incapacitated in a criminal  
17      case. And he didn't have to go to prison, that  
18      type of thing.

19           The Supreme Court said it doesn't matter.  
20      This guy was suffering from delusions, but this is  
21      still an intentional act for purposes of exclusion  
22      under the homeowner's policy. He went to his  
23      friend's house. He shot and killed him, because

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1 he thought God was telling him to do that.

2 And yes, he was -- there was evidence of  
3 a mental incapacity, which we don't have in this  
4 case. We couldn't have at this point. But we  
5 don't have. And there was in that case, and the  
6 Supreme Court of Virginia still said that it's an  
7 intentional act.

8 So for those reasons we would ask the  
9 Court to find that there is no coverage under the  
10 Progressive policy and no duty to defend. Thank  
11 you.

12 MR. BERGER: Your Honor, counsel for  
13 Progressive used -- Just before I get into the  
14 rest of my final argument -- mentioned that there  
15 was a case involving a drive-by shooting. And  
16 just so the record is crystal clear, that  
17 particular case, which is Hartfield, I believe --  
18 Hartfield versus Liberty Mutual, Circuit Court for  
19 Richmond Case Number LS40381, is not -- We would  
20 not call that a drive-by situation.

21 The facts in that case were that the  
22 plaintiff was operating a rental vehicle on  
23 Interstate 95 in Richmond. And while travelling

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1 on that road at a high speed, another vehicle  
2 approached from the rear, got alongside that  
3 vehicle, turned, aimed a gun, and shot the  
4 individual in the other car. So as far as it  
5 being a drive-by situation, it's not a situation  
6 where someone is operating an automobile going  
7 down the street and aims a gun out the window at  
8 some pedestrian. So I just want to make that  
9 clear. In fact, there is no such case that we  
10 have been able to discover which would provide for  
11 coverage in such an event.

12 The other thing that I wanted to touch on  
13 is something that Mr. Kernbach mentioned right  
14 from the get go regarding the INA policy, and  
15 suggested that the Great American Insurance  
16 Company versus Cassel -- He didn't give a name to  
17 it. He just said that it was a case involving a  
18 fireman struck while standing in the middle of the  
19 street, was using his vehicle at the time of the  
20 injury. The cite for that case is 389 Southeast  
21 2nd at 476.

22 But, Your Honor, that is a red herring  
23 here. The question in that particular case was

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1 whether the injured party was an insured under the  
2 UM policy. There has not been any suggestion that  
3 Captain LaClair was not an insured under the  
4 Insurance Company of North America policy. The  
5 question that is being presented and the question  
6 that we're litigating here was whether the user of  
7 the uninsured vehicle was -- whether the injuries  
8 that were sustained by him were as a result of the  
9 operation, maintenance, or use of the uninsured  
10 vehicle. So it has no applicability to this  
11 particular matter.

12 With respect to the other comments of  
13 counsel in this matter, we would just say what we  
14 said previously, that's it's kind of a me too  
15 situation.

16 We would say that there is also, in  
17 addition to the arguments made by counsel, that  
18 there is kind of a public policy situation here.  
19 If the Court were to extend coverage in facts such  
20 as this, what you would have is a situation where  
21 anyone -- And it wouldn't even need to be the bank  
22 robber scenario that counsel described -- anyone,  
23 including someone who was on the street, who was

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1 an innocent victim of a drive-by shooting, would -  
2 - the insurance company that covered an automobile  
3 owned by that individual would be on the hook for  
4 UM benefits. That certainly is not within the  
5 contemplation of any insurance carrier.

6 Now as far as the evidence in the case,  
7 what we have is a situation where Mr. LaClair has  
8 suggested that although he didn't see the -- He  
9 didn't see gun come up. Yet the eyewitnesses to  
10 the accident who were in a moving automobile were  
11 able to see not only the gun come up, see the  
12 individual swivel, as described on the stand  
13 there, turn and fire towards him.

14 Mr. LaClair's testimony is that he only  
15 opened the door some four or five inches. Yet he  
16 later was able to give a statement as to the  
17 description of the individual, including his hair,  
18 the fact that he was wearing glasses, and the  
19 remainder.

20 We would suggest that what happened here  
21 is a situation where the evidence shows that the  
22 driver of the suspect vehicle, Mr. Arban, actually  
23 did in fact exit the vehicle, pointed his weapon,

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1 and was squatting beside the vehicle and shot back  
2 at Officer LaClair.

3 But we would agree that even if you would  
4 find that he was in the vehicle or partially in  
5 the vehicle, that it would be of no moment for the  
6 various reasons that counsel has stated, that  
7 there has been -- that there is absolutely no  
8 precedent for such a finding. In addition to  
9 that, it would not be within the contemplation of  
10 the parties that a shooting such as this would be  
11 something covered under an insurance policy.

12 THE COURT: Thank you, sir.

13 MS. FAY: Your Honor, obviously I'll try  
14 not to repeat what has already been argued by  
15 counsel. Obviously we have policies of insurance  
16 which have essentially the same language.  
17 Obviously our arguments are quite similar. If I  
18 may just tender to the Court the cases that were  
19 cited by Ms. Judkins in her argument, and indicate  
20 to you that all counsel rely on these cases.

21 THE COURT: Okay. Thank you.

22 MS. FAY: I just point out to Your Honor  
23 that the policy of insurance which would afford

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1 coverage to Mr. LaClair in this incident  
2 essentially says that coverage will be provided to  
3 an insured for bodily injury caused by accident  
4 and arising out of the ownership, maintenance, or  
5 use of such uninsured motor vehicle. Clearly it  
6 cannot be disputed in this case that this is not  
7 an accident.

8 Your Honor has before you the Bell case,  
9 which is a circuit court case, which discusses  
10 whether or not there is coverage provided under  
11 the uninsured motorist portion of a policy for a  
12 driver when they are shot by a passenger in a  
13 vehicle. And in that case the court mentioned the  
14 issue of whether it's an accident under the terms  
15 of a policy.

16 And the court said in this case yes,  
17 we're going to go with that it's an accident,  
18 because the event was unexpected and unforeseen  
19 and, therefore, was an accident under the terms of  
20 the policy.

21 I think easily in this case it can be  
22 seen that Mr. LaClair, in making his stop and in  
23 taking the precautions he did, knew that what

1 happened was always a potential. He himself  
2 indicated that he took these safety precautions,  
3 because you never know what is going to happen in  
4 such a scenario.

5 Therefore, I would argue that this is not  
6 an accident as termed by the policy. But, more  
7 importantly, it does not arise out of the use of a  
8 motor vehicle.

9 The cases that have been relied on by  
10 counsel are as close as we have found. And  
11 specifically this Bell versus State Farm case, the  
12 facts are extremely similar to this case. The  
13 vehicle itself, the uninsured vehicle that Mr.  
14 Arban was driving, had nothing to do with the fact  
15 that he shot the officer. His shooting was a  
16 separate act entirely different from the vehicle.  
17 And, therefore, we would ask that it be determined  
18 that there is no coverage under the Travelers  
19 policy. Thank you.

20 MR. HARRINGTON: Your Honor, on behalf of  
21 Republic, we just adopt the arguments of all  
22 counsel.

23 THE COURT: All right, sir. Mr.

1 Kernbach.

2 MR. KERNBACH: Your Honor, there are two  
3 ways to approach this. The first thing is in  
4 dealing with whether or not it's an intentional or  
5 not an intentional act, I would agree with Ms.  
6 Judkins that if the Court were to find that as a  
7 matter of law, listening to the uncontradicted  
8 evidence, that this was an intentional act, then  
9 you don't even have to worry about Ms. Judkins  
10 anymore because it's not an insurable risk. And  
11 the Progressive policy is out, and you don't even  
12 get to the question of whether or not you have to  
13 deal with the Progressive allegations that it  
14 doesn't meet within the definition of whether or  
15 not, if it wasn't an intentional act, that it's an  
16 accident.

17 And I don't think anybody is suggesting,  
18 from INA or Travelers, that they don't cover  
19 intentional acts by other individuals. In  
20 uninsured and underinsurance motorist situations,  
21 they pay all the time. When individuals are  
22 deliberately run over or subject to injuries  
23 involving the use of automobiles. You can't

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1 impute the conduct of an uninsured tort feisor to  
2 the terms and conditions of the policy which was  
3 insuring Mr. LaClair on the date of the shooting.

4 So whether or not it was an intentional  
5 act or not becomes irrelevant for the purposes of  
6 the INA and Travelers policies. They would be  
7 liable. Because Mr. LaClair is not the one who  
8 did anything intentionally. And if you look at  
9 the definitions under those policies -- Because  
10 you have to read the whole policy in its entirety.  
11 They have sections set out, definitions, what we  
12 mean in terms of defining the conduct of the  
13 insured and not. But nobody is suggesting here  
14 today that the Arban intentional conduct, if the  
15 Court were to so rule, has any applicability under  
16 the INA or Travelers policy.

17 That gets us to whether or not this is a  
18 definition -- this case falls within the  
19 definition of an insurable risk for the purposes  
20 of the INA and Travelers policies. Now, granted  
21 the Travelers policy is fairly detailed in its  
22 definition of what they are going to consider an  
23 insurable risk for the purposes of uninsured or

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1 underinsurance motorists. They have a lot of  
2 definitions and statutory references there. Okay?

3 Now, however, if you look at the INA  
4 policy, there are absolutely no exclusions written  
5 anywhere under their UM/UI policy. It's devoid of  
6 excluding any conduct. All they say is that the  
7 injuries have to arise out of the scope of an  
8 accident.

9 So you look at the INA policy and you  
10 look at the definition of "accident" here. Their  
11 definition on page 1 of the business auto policy  
12 is, "Accident includes continuous or repeated  
13 exposure to the same conditions resulting in  
14 bodily injury or property damage the insured  
15 neither expected nor intended." Well, that is the  
16 only definition they have of "accident".

17 And they are only describing the accident  
18 as it applies to the conduct of the insured. But  
19 there is no definition about what kind of conduct  
20 an uninsured motorist would result in an exclusion  
21 under the UM/UI policy. As a matter of fact, you  
22 won't find it either in the Travelers policy.

23 So we are stuck with the policies that

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1 were written and delivered in the Commonwealth of  
2 Virginia as these companies set up. There is no  
3 equality of bargaining power here. First off, Mr.  
4 LaClair was not privy with any of the policies  
5 that covered the sheriff's vehicle. All right?  
6 So we don't have any evidence at all of what INA  
7 and the Sheriff's Office -- or the constitutional  
8 offices of Arlington County ever intended, because  
9 nobody testified from Arlington County. We don't  
10 know what they intended.

11 And since Mr. LaClair wasn't privy there,  
12 you don't have to worry about what they meant to  
13 say. It's what the policy says. And the rule in  
14 Virginia is that if the policies are ambiguous,  
15 coverage applies unless it is excluded.

16 Now there are a number of cases from the  
17 Supreme Court that don't deal directly with this  
18 issue. Because the Supreme Court just hasn't been  
19 hit with this fact pattern yet. The Circuit Court  
20 opinions go either way. Nothing remotely close to  
21 this other than the City of Richmond's Circuit  
22 Court opinion.

23 However, this issue has been addressed

1 time and time again in other jurisdictions around  
2 the country. And it has been visited by a number  
3 of supreme court jurisdictions up and down the  
4 east coast as well as out in the west. And the  
5 overwhelming rule has been that unless the policy  
6 specifically excluded it, it's covered.

7 Now I will agree with Ms. Judkins that  
8 you are going to have to make a decision here as  
9 to whether or not the evidence here supports the  
10 negligent discharge of the firearm or intentional  
11 act. Of course that brings up another problem,  
12 whether or not these carriers are going to be  
13 bound by that finding, because it would be res  
14 judicata under the same proceedings.

15 What happens to the Arlington proceeding  
16 if you make a finding here that Mr. Arban's  
17 conduct was intentional and he intended to assault  
18 and batter Mr. LaClair? I'm going to take the  
19 position that that's res judicata as to the  
20 pending motion for judgment in Arlington County  
21 Circuit Court. It would have been the same  
22 evidence anyway. We probably would have won on a  
23 summary judgment. But that issue would have been

1 solved.

2 But the more important issue here is, you  
3 know, all the arguments that have been made about  
4 whether or not this was an intended -- an  
5 insurable risk.

6 And the fact is, Your Honor, if they  
7 write automobile policies that aren't clear and  
8 exclude this stuff, it's a covered loss. We are  
9 not here to rewrite the contracts. And I can  
10 guarantee you, every time the Supreme Court finds  
11 a problem with an insurance policy and they find  
12 coverage for somebody, they go back and rewrite  
13 their policies. They do it all the time. And we  
14 are not here to revisit whether or not they made  
15 an equitable arrangement with their insureds at  
16 the time these policies were written.

17 The question here becomes whether or not  
18 it's an insurable risk. And I take the position  
19 here that it's not excluded. This contract falls  
20 within the very gray and ambiguous area of the  
21 definition of accidental injury here in terms of  
22 at least the Travelers policy.

23 The INA policy has nothing they can hang

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1     their hat on, nothing. There are no exclusions  
2     under the uninsured motorist endorsement. The  
3     only definition there is of accident is what they  
4     cross-reference to on page 1. And they never  
5     bother to define accidents meaning uninsured  
6     motorist conduct. It's missing. So at least as  
7     to INA policy, this is going to be an insurable  
8     risk, because they didn't exclude it.

9             Now the one thing that I will ask the  
10    Court is I don't know whether or not you want to  
11    rely on the cases that have been submitted to you.  
12    I had thought that we would do a briefing  
13    schedule. And I would be happy, since I wasn't  
14    provided with a copy of the opinions that were  
15    tendered to the Court, I would like at least five  
16    days to prepare a memorandum in response and get  
17    you the cases after reading those to distinguish  
18    them and give you the other cases.

19            But, you know, traditionally I was under  
20    the impression -- The way I've handled DJ's before  
21    is that at the close of the evidence, the Court  
22    will ask for memorandums and then you make a  
23    decision on the evidence that you have heard. I

1 would still like an opportunity to submit a  
2 memorandum of law in order to respond to those  
3 cases.

4 THE COURT: All right, sir.

5 MS. JUDKINS: The only thing I would add  
6 is I didn't point out in my -- The only thing I  
7 would add is as to the intentional act, there is a  
8 case that was handed up to you, Norman versus  
9 Insurance Company of North America, where the  
10 Supreme Court of Virginia said that it doesn't  
11 matter how -- In that case it was the insured  
12 arguing that it was accidental, what he did. He  
13 shot somebody.

14 They said we're not going to rely on his  
15 own interpretation of what his actions were. You  
16 know, the facts speak for themselves. And I think  
17 the same argument would apply on their  
18 interpretation of the pleadings as to what the  
19 facts were as opposed to what the evidence has  
20 shown here. And the Reisen case -- R-E-I-S-E-N --  
21 that 225 Virginia addresses --

22 THE COURT: Well, there is a mild  
23 distinction between those two, because the insured

1 has something to gain.

2 MS. JUDKINS: Oh, that's true. Well, he  
3 too. I mean, he is seeking coverage obviously.  
4 He is seeking coverage for an incident that  
5 perhaps may have no coverage. So the insured in  
6 this instance is seeking to make sure he doesn't  
7 have to pay the money out of his pocket. In this  
8 instance the plaintiff is seeking coverage so that  
9 there will be some money from someplace obviously.  
10 So it is a different perspective, but in the end  
11 they each have their own reasons for wanting to  
12 obtain coverage. And that's really the only thing  
13 I have to add.

14 MR. BERGER: Your Honor, counsel  
15 mentioned the policy -- He said that the policy  
16 language was ambiguous and suggested that there  
17 was --

18 THE COURT: Not on yours. He said you  
19 didn't have any language.

20 MR. BERGER: Yes, he said that there was  
21 a gray area. Well, Your Honor, I would suggest  
22 that all the Court has to do is look at page 1 of  
23 the UM endorsements, which reads that they will --

1 THE COURT: What page are you on?

2 MR. BERGER: Your Honor, it's at the end  
3 of page -- It's the page after page 505. I'm  
4 sorry.

5 THE COURT: 105, 305, 405, 505.

6 MR. BERGER: If I may approach, Your  
7 Honor? It's this one here. It's this page.  
8 (Indicating)

9 THE COURT: This guy?

10 MR. BERGER: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. BERGER: And in very unambiguous  
13 language, it indicates that they will pay, in  
14 accordance with the Virginia Uninsured Motorist  
15 Insurance Law, all sums the insured is legally  
16 entitled to recover from the owner or driver of an  
17 uninsured motor vehicle. The damages must result  
18 from bodily injuries sustained by the insured or  
19 property damage caused by an accident.

20 Now if we stop here for a second, counsel  
21 said well, jeez, there are no exclusions; the only  
22 exclusion we have in the policy is the one that  
23 turns up on page 1. And that page 1 exclusion

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1     that he referred to is under (c), which says, "An  
2     accident includes continuous or repeated exposure  
3     to the same conditions resulting in bodily injury  
4     or property damage that the insured...."

5             Now in this case the insured is Mr.  
6     LaClair. Under the policy of Progressive, the  
7     insured that they are looking to is the insured  
8     being Mr. Arban. So with that in mind, it goes on  
9     to say the insured neither expected nor intended.  
10    Expected.

11            Now you heard counsel for the Travelers  
12    go over the testimony, the evidence that we have  
13    heard. That in fact Mr. LaClair, when he  
14    approached the vehicle, approached it in a  
15    cautious manner. He made sure -- He attempted to  
16    make sure that the individual didn't exit his  
17    vehicle. And the reason he said that he did that  
18    was because of safety reasons. It was something  
19    that they had to expect as part of their job. So  
20    we would suggest on that basis alone there  
21    wouldn't be any coverage.

22            But more importantly and the real crux of  
23    our argument, Your Honor --

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1           THE COURT: Well, the "accident" here is  
2 really strange language, because it really looks  
3 like it's talking about some kind of industrial  
4 type coverage. I mean, most accidents aren't  
5 continuous or repeated exposure to the same  
6 conditions, are they?

7           MR. BERGER: Well, unfortunately, Your  
8 Honor, this is what has come to be known as these  
9 Virginia uninsured -- The insurance policies in  
10 Virginia are pretty much mandated, Your Honor, by  
11 the laws of Virginia. And this definition is a  
12 definition that is one that apparently has been  
13 accepted by the courts as being --

14          THE COURT: Because it's an attempt to  
15 broaden what "accident" is?

16          MR. BERGER: Exactly, Your Honor. But  
17 the more important portion of the uninsured  
18 motorist provision that I was reading from  
19 earlier, that part (b), is that the owner or  
20 driver's liability for these damages -- And that's  
21 referring to Mr. Arban's liability -- must result  
22 from the ownership, maintenance, or use of the  
23 uninsured vehicle. Now there has been no

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1       indication that this incident arose out of the  
2       ownership or the maintenance of the vehicle. It  
3       is alleged that it somehow has arisen out of  
4       the --

5               THE COURT: Use.

6               MR. BERGER: -- out of the use of the  
7       vehicle.

8               And counsel, in talking about Virginia  
9       cases, referred to this Circuit Court of Richmond  
10      case, the Hartfield versus Liberty Mutual case.  
11      Your Honor, I think the Court needs to know what  
12      the factual allegations in that particular case  
13      were, so that it will be easy for the Court to see  
14      how distinguishable that particular case is.  
15      In that case the plaintiff was operating a rental  
16      vehicle on Interstate 95 in Richmond while  
17      travelling on that road at a highway speed. An  
18      unknown driver came alongside the plaintiff's  
19      vehicle. The driver of this other vehicle fired a  
20      shot, striking the plaintiff in the head. The  
21      other vehicle then left the scene.

22              The Court found that the vehicle operated  
23      by the unknown driver was "more than a mere situs

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1 of the injury," citing State Farm versus Bell.  
2 The Court's conclusion -- And I quote -- was,  
3 "Because John Doe's vehicle came alongside the  
4 plaintiff's vehicle and a shot came from the  
5 vehicle and the John Doe vehicle left the scene  
6 immediately thereafter, shows that the vehicle was  
7 the instrumentality through and by which the  
8 shooting occurred. Both the plaintiff and John  
9 Doe were occupying the vehicles separately,  
10 travelling on the highway when the shooting  
11 occurred."

12 Now that case distinguished the Bell  
13 case, which was one that we had referred to. And  
14 in distinguishing Bell, it suggested -- And how it  
15 did this I'm not quite sure -- said that the  
16 Court's denial of UM benefits in that particular  
17 case was as a result of the use of the vehicle not  
18 being causally connected to the use of the  
19 vehicle.

20 But in the Bell case, an individual named  
21 Carver had posed as a potential driver of Bell's  
22 car. While on a test drive with Bell, Carver shot  
23 and killed Bell, disposed of his body from the car



1 in a ditch, and then stole the car.

2 Both of those cases are factually  
3 dissimilar to the case that we have here. In  
4 Hartfield, as well as the other cases which we  
5 expect will be submitted in the event that the  
6 Court would allow some sort of briefing schedule -  
7 - Which we would certainly object to, since  
8 counsel was well aware that this was going to be a  
9 trial.

10 But in any event, in Hartfield both  
11 vehicles were travelling at highway speeds. In  
12 LaClair both vehicles were stopped and out of  
13 gear.

14 In Hartfield the victim, while injured,  
15 was injured while driving his car. In LaClair the  
16 victim was out of his parked car, the vehicle was  
17 stopped, and he was walking towards the rear of  
18 another vehicle at the time.

19 In Hartfield the John Doe was driving  
20 alongside the Hartfield vehicle when he fired his  
21 weapon. In LaClair the driver opened his door  
22 and, depending on who you believe, was either out  
23 of the car or partially out of the vehicle before

1     aiming and firing at LaClair.

2             We would suggest, Your Honor, that not  
3     only is the policy language unambiguous, the case  
4     itself is clearly one in which no one would have  
5     contemplated that such a shooting was to be  
6     covered under the policy as arising out of the  
7     maintenance or use of the uninsured vehicle.  
8     Thank you.

9             MS. FAY: Just briefly. Mr. Kernbach in  
10    his argument touched on two aspects and focused  
11    basically on the accident and whether this was an  
12    accident. He said that UM coverage universally  
13    across Virginia provides coverage when someone is  
14    deliberately run over by a car, was his example,  
15    or if someone is injured by a motor vehicle. That  
16    is not the case here. There is an argument that  
17    it's not an accident.

18            But, more importantly, in the second part  
19    of the portion of the Travelers policy, which is  
20    on page 9 of the policy, the bottom right-hand  
21    side, the last paragraph states that the company  
22    will pay, in accordance with the applicable  
23    sections of Virginia Code, bodily injuries

1 sustained by the insured caused by accident and  
2 arising out of the ownership, maintenance, or use  
3 of the motor vehicle.

4 That's not ambiguous at all. That's  
5 language that's used in the Virginia Uninsured  
6 Motorist Statute, ownership, maintenance, or use  
7 of the vehicle. The ownership, maintenance, or  
8 use of the vehicle had nothing to do with the fact  
9 that Mr. Arban chose to shoot Mr. LaClair.

10 THE COURT: Well, I take it that it  
11 didn't have anything to do with the lady that was  
12 shot either by the driving in one car and shooting  
13 into the next.

14 MS. FAY: Well, that's a different  
15 factual scenario, Your Honor, because there are  
16 two vehicles travelling. In this case there --

17 THE COURT: No, I understand what you're  
18 saying. But the mere fact -- You're saying that  
19 that doesn't arise from the use of the vehicle.  
20 That doesn't answer the question. I agree with  
21 you that there may be a question  
22 -- And certainly Mr. Berger argued it very  
23 coherently -- that this didn't occur in the car,

1 this occurred out in the street; that there is a  
2 difference.

3 But trying to match the statement that  
4 the use of the car didn't cause anybody to get  
5 shot runs contrary to some cases where they seem  
6 to find that. I think it defies logic, but those  
7 cases seem to find that, I suppose.

8 MS. FAY: And, Your Honor, one of the  
9 most recent Supreme Court cases discuss and define  
10 use of a vehicle. And the Powell case  
11 specifically defines that. And in that case they  
12 set it out. And it's clear that under the fact  
13 scenario in this case, use is not going to apply  
14 and coverage wouldn't be provided.

15 THE COURT: Okay. For the purpose of --  
16 I will give you the opportunity, Mr. Kernbach, to  
17 file a brief and obviously for you folks to  
18 respond.

19 For the purpose of the factual  
20 determinations, the Court determines that this was  
21 a deliberate shooting. There is no evidence of  
22 any accident, particularly the fact that the  
23 perpetrator fired more than one shot.

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1           The Court finds as a matter of fact -- I  
2 think you have the burden of showing that he was  
3 totally out of his car. I don't find that he was  
4 totally out of the car. I find that he was  
5 partially in the car when the shooting occurred.  
6 Those, I think, are the only two facts that I've  
7 been asked to resolve.

8           MS. JUDKINS: So Your Honor is concluding  
9 that this was a deliberate shooting. Are you  
10 finding that it was an intentional act?

11          THE COURT: Yes, ma'am. And you are out.  
12 But they are not, yet.

13          MS. JUDKINS: So I can draft an order  
14 that it wasn't necessary, for purpose of  
15 determining Progressive's response, to even  
16 address the issue of -- We're out on the  
17 intentional act and that's it, and to go on with  
18 the rest of them. Okay.

19          THE COURT: The primary insurers, if they  
20 have that clause, it's going to be out on an  
21 intentional act. And there was no evidence that  
22 this act was not intentional. The other two, it's  
23 a question of this use of the vehicle and how the

1 courts have looked at that.

2 MS. JUDKINS: All right. Thank you, Your  
3 Honor.

4 THE COURT: Mr. Kernbach, I will give you  
5 a week from today to file your brief. And then I  
6 will give Ms. Fay and Mr. Berger another week  
7 after that. And then -- So let's see. We're  
8 talking about the 15th for yours, the 22nd for Ms.  
9 Fay and Ms. Berger, and the 25th for yours. And I  
10 will render a decision before the end of the  
11 month.

12 MR. KERNBACH: You said the 25th for  
13 rebuttal?

14 THE COURT: Rebuttal.

15 MS. JUDKINS: Thank you, Your Honor.

16 MR. KERNBACH: Just for the record, note  
17 my exception to the finding of deliberate shooting  
18 just for the record, to protect myself.

19 THE COURT: All right.

20 MR. KERNBACH: Thank you.

21 THE COURT: Any questions?

22 MR. BERGER: No, Judge. Thank you, Your  
23 Honor.

1 MS. FAY: Thank you.

2 (Whereupon, at 12:36 o'clock p.m., the  
3 hearing set forth in the caption above was  
4 concluded.)

**CASAMO & ASSOCIATES**

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CERTIFICATE OF COURT REPORTER

I, HERMENEGILDO A. ISIDRO, a Verbatim Reporter, do hereby certify that I took the notes of the foregoing hearing by Stenomask and reduced the same to typewriting; that the foregoing is a true record of said hearing to the best of my knowledge and ability; that I am neither related to nor employed by any attorney or counsel employed by the parties thereto; nor financially or otherwise interested in the action.

**COPY**

---

HERMENEGILDO A. ISIDRO  
Court Reporter



bc

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PROGRESSIVE CASUALTY INSURANCE  
COMPANY

Plaintiff

v.

MARCUS F. ARBAN, SR.,  
Administrator of the Estate of  
Marcus Francis Arban, Jr.,  
deceased, et al.

Defendant

AT LAW # 125443

ORDER

THIS CAUSE came on to be heard on the joint Motion of  
Republic Insurance Company and Daryl F. LaClair, and

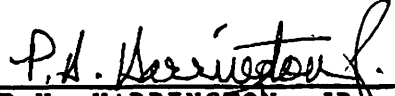
IT APPEARING to the Court that Republic Insurance Company  
and Daryl F. LaClair have reached a compromise in this cause as  
regards the payment of any money judgment entered in favor of  
Daryl F. LaClair in the underlying cause (Law No. 92-1397,  
Circuit Court for Arlington County), it is, hereby


ORDERED that Republic Insurance Company shall not be  
required to pay any portion of any money judgment entered in  
favor of Daryl F. LaClair in Law No. 92-1397, Circuit Court for  
Arlington County.

ENTERED THIS 8<sup>th</sup> DAY OF March, 1994.

Thomas Lockhart  
JUDGE

WE ASK FOR THIS:

  
P.H. HARRINGTON, JR., ESQ.  
Counsel for Republic Insurance Company  
4160 Chain Bridge Road  
Fairfax, VA 22030  
(703)385-7300

  
MICHAEL A. KERNBACH, ESQ.  
Counsel for Daryl F. LaClair  
221 S. Alfred Street  
P.O. Box 117  
Alexandria, VA 22313-0117

4-8-94

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PROGRESSIVE CASUALTY INSURANCE  
COMPANY

Plaintiff,

v.

At Law No. 125443

MARCUS F. ARBAN, SR.,  
Administrator of the Estate of  
Marcus Francis Arban, Jr.,  
Deceased, et al.

Defendant.

ORDER

THIS MATTER CAME ON TO BE HEARD upon declaratory judgment action filed by Progressive Casualty Insurance Company and joined in by Republic Insurance Company, Insurance Company of North America and the Travelers Insurance Company, before The Honorable Thomas A. Fortkort on Tuesday, March 8, 1994, sitting without a jury; and

IT APPEARING TO THE COURT after hearing the evidence in the form of testimony of witnesses, reviewing the exhibits submitted by each of the parties, and hearing argument of counsel, the court made the following factual findings:

1. That Marcus F. Arban, Jr. intentionally shot Daryl F. LaClair on November 21, 1990; and that

2. Marcus F. Arban, Jr. was partially in his vehicle at the time of the shooting of November 21, 1990; it is therefore

ORDERED that there is no coverage for the claims of Daryl F. LaClair against Marcus F. Arban on the policy of insurance issued by Progressive Casualty Insurance Company to Marcus F. Arban, Jr.

because the bodily injury sustained by Daryl F. LaClair was bodily injury that was intended or expected by the insured, coverage for which is specifically excluded by the terms and conditions of the policy issued by Progressive and Progressive Casualty Insurance Co. owes no duty to defend Marcus F. Arban, Jr., or his estate for any claim arising out of the shooting of November 21, 1991; and it is further

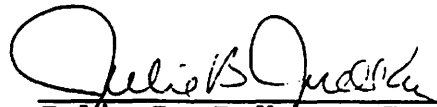
ORDERED that there is no coverage for the claims of Daryl F. LaClair against Marcus F. Arban, Jr. on the policy of insurance issued by Republic Insurance Company because the bodily injury sustained by Daryl F. LaClair was injury expected or intended by Marcus F. Arban, Jr., Republic's insured, and by the terms and conditions of the policy, coverage is excluded; and there is also no duty to defend; and it is further

ORDERED that as to the issue of whether the incident of November 21, 1990 arose out of the ownership, maintenance or use of a motor vehicle, the remaining parties, Insurance Company of North America, Travelers Insurance Company and Daryl F. LaClair will submit briefs in accordance with the court's briefing schedule announced at the hearing and the court hereby takes the matter under advisement and will render an opinion once all briefs have been submitted and reviewed.

ENTERED this 8<sup>th</sup> day of April, 1994.

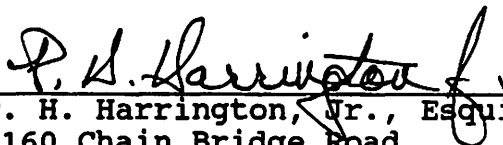
Thomas Fortkort  
The Honorable Thomas A. Fortkort

WE ASK FOR THIS:



Julia B. Judkins, Esquire  
Virginia State Bar No. 22597  
Lewis, Trichilo, Bancroft, McGavin & Horvath, P.C.  
4117 Chain Bridge Road, #400  
Fairfax, Virginia 22030

WE ASK FOR THIS:

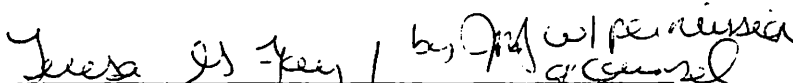


P. H. Harrington, Jr., Esquire  
4160 Chain Bridge Road  
Fairfax, Virginia 22030

SEEN:


Lawrence Berger, III, Esquire  
1616 North Fort Meyer Drive, Suite 1350  
Arlington, Virginia 22209

SEEN:



Teresa G. Fay  
Carr, Goodson & Lee  
3923 Old Lee Highway, Suite 62B  
Fairfax, Virginia 22030

SEEN: AND OBJECTED TO AS TO FINDING OF Intentional Conduct by  
DECEASED, MARCUS F. ARBAN, JR.



Michael A. Kernbach, Esquire  
Cohen, Dunn & Sinclair  
221 South Alfred  
P. O. Box 117  
Alexandria, Virginia 22313-0117

SEEN:

---

John F. Mardula, Esquire  
Mardula & Daugherty  
2010 Corporate Ridge, Suite 460  
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NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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GERALD BRUCE LEE  
STANLEY P. KLEIN  
ROBERT W. WOOLDRIDGE, JR.  
ARTHUR B. VIEREGG, JR.  
JANE MARUM ROUSH  
JUDGES

COUNTY OF FAIRFAX

CITY OF FAIRFAX

DR. MARK A. ZAFFARANO  
DIRECTOR, JUDICIAL OPERATIONS

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WILLIAM G. PLUMMER  
THOMAS J. MIDDLETON  
RETIRED JUDGES

April 22, 1994

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Arlington, VA 22209

Re: Progressive Casualty Insurance v. Arban  
At Law No. 125443

Dear Counsel:

This case came to be heard on plaintiff Progressive Casualty Insurance Company's petition for declaratory relief. Three other companies (Republic Insurance Company, Travelers Insurance Company, and Insurance Company of North America) joined in the petition.

On November 22, 1990 defendant Captain Daryl F. LaClair, an Arlington County Deputy Sheriff, was driving his marked vehicle on Lee Highway in Arlington County. A car in front of him was driving erratically. Captain LaClair supposed that the driver of the car was attempting to read a map and that he was probably lost. The car driven by the decedent, Marcus Arban, was in the left hand lane. As Captain LaClair began to overtake the vehicle and pulled along side the vehicle in the right lane, the vehicle sped up, moved in front of Captain LaClair's vehicle in the right lane and stopped. Captain LaClair assumed that Arban was stopping for

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directions. He turned his wheels to the curb, switched on his emergency bar flashers, turned his headlights onto high beam and projected his spotlight into Arban's rear view mirror. Each of these procedures is standard for sheriff's vehicles making a traffic stop.

Captain LaClair stepped out of his vehicle and began to approach Arban. When Arban began to open his door, Captain LaClair cautioned him to remain in his car. The door continued to open wider and Arban was again told to remain in the car. Suddenly, Captain LaClair felt a blow to his elbow. As he turned to examine his elbow a bullet grazed his head cutting through his eye lid and exiting his eye brow. Captain LaClair dove between Arban's car and his sheriff's vehicle to avoid further shots. As the Arban car began to leave the scene, Captain LaClair, partially blinded, managed to fire five shots into the rear of Arban's car. He was taken to Arlington Hospital where he ultimately recovered from his wounds.

Prince William County Police attempted to serve a search warrant on Arban the following day. He resisted the police entry into his home. Arban and Prince William Police Officer Pennington died during an exchange of gunfire.

Captain LaClair instituted a civil suit in Arlington County against Arban's estate. Petitioner Progressive is the primary carrier of Arban's automobile insurance. Travelers Insurance Company [Travelers] is the carrier for Captain LaClair's personal automobile insurance. The Insurance Company of North America [INA] is the automobile carrier for the Arlington Sheriff's Department. Republic Insurance carries Arban's homeowner's policy.

Progressive seeks a declaratory judgment that it is not liable to cover Arban's estate in the Arlington tort action on three grounds. The first ground is that there is no coverage; the incident did not arise out of the ownership, maintenance or use of an automobile. Secondly, Progressive argues that its policy excludes intentional torts by its insured. Lastly, Progressive contends that it did not receive notice of the law suit from the insured's estate. INA and Travelers have joined Progressive on issues one and two above. Both Travelers' and INA's liability would rest on underinsured or uninsured claims under their policies.

After hearing testimony the Court determined as a matter of fact that the shooting of Captain La Clair was an intentional, not



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an accidental act, and that Arban was still partially inside his car at the time he fired the shots at Captain La Clair. Finding Arban's actions to be intentional, the Court determined that Progressive's policy excluded coverage as a matter of law under the terms of its policy exclusions. Additionally, a compromise was achieved between Captain LaClair and Republic Insurance, reflected in an order of this court on March 8, 1994, effectively relieving Republic of any further liability flowing from this incident.

Following argument by counsel, the Court took under advisement whether the policies of INA or Travelers covered the actions of Arban. The remaining legal issue is whether the circumstances of this case constitute "use" of an automobile as that term is employed in the insurance policies as interpreted by the case law of this Commonwealth.

Virginia courts first explored this issue in State Farm Mutual v. Powell, 227 Va. 492 (1984). Powell involved a man who drove in a pickup truck to a park where he was to meet a group of friends. A loaded gun rested in a permanently-affixed gun rack behind the seat. As the man remained in the driver's seat, a friend approached the passenger side door. The gun accidentally discharged, killing the friend. Applying basic insurance principles, the Virginia Supreme Court held that "even though ownership, maintenance or use of the vehicle need not be the direct, proximate cause of the injury in the strict legal sense, nevertheless, there must be a causal relationship between the accident and employment of the insured motor vehicle as a vehicle." Powell, 227 Va. at 500, citing to 12 G. Couch, Insurance 2d §45:56 (2d ed. 1981); 6B J. Appleman, Insurance Law and Practice §4317 (R. Buckley ed. 1979;); and 8 D. Blashfield, Automobile Law and Practice §317.1, at 506 (3d ed. 1966).

With this, the Virginia Supreme Court established the standard for future "ownership, maintenance or use" cases. Denying coverage, the court failed to find a causal relationship, instead finding the pickup truck to be the "mere situs" of the incident. Powell, 227 Va. at 501. "The vehicle was equivalent to a park bench, a picnic shelter, a tent, or a shed in that it was being employed as a gathering place for friends and not for any specific enterprise usually associated with use of a passenger, farm utility vehicle." Id. Further, the decedent's relationship to the vehicle -- he was not, nor did he intend to become, a passenger -- also contributed to the Court's decision:

Employing the Powell analysis in a more recent decision, the

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Virginia Supreme Court reached the opposite conclusion on similar facts. In State Farm Mutual v. Rice, 239 Va. 646 (1990), two men drove in a Jeep to a site from which they intended to commence their hunting expedition. One man exited the vehicle and began to walk away. The driver remained in the vehicle, emptying his thermos and loading his rifle. He placed the rifle on the seat beside him and the rifle discharged, injuring the first man. The court found that a "sufficient nexus existed between the [injured], who was a passenger in the Jeep, and the Jeep itself, which had transported the men and their equipment to the hunting site." Rice, 239 Va. at 650. Distinguishing Powell, the Rice court decided that the driver "had not completed his use of the Jeep when the rifle discharged," and therefore, coverage was afforded under the Jeep's liability insurance policy. Id.

The Virginia Circuit Courts have also recently grappled with the "ownership, maintenance or use" fact patterns. The Richmond Circuit Court in Hartfield v. Liberty Mutual Insurance, Case No. LS-4038-1 (Richmond Circuit Court, June 28, 1993), held that a shooting from one car into another when both were travelling on Interstate 95 provided the requisite causal nexus. Finding the vehicle to be "the accessory for inflicting the injury," the court indicated that "the shooting would not have occurred but for the placement of the vehicles then moving...and the vehicle provided the means to leave the scene." Hartfield at 3.

From the abundance of cases outside the Commonwealth which purport to illuminate this issue, one decision of the Oklahoma Supreme Court is based on a set of facts substantially similar to the case at bar. In Willard v. Kelley, 803 P.2d 1124 (Okla. 1990), a police officer on patrol spotted a suspected armed robber in another vehicle. The officer began to chase the suspect and the suspect's car collided with two other vehicles before coming to rest. The officer exited his vehicle and approached the suspect's car. Still seated in his vehicle, the suspect shot the officer. The Oklahoma high court reversed and remanded, stating that the trial court had erroneously entered summary judgment without allowing the trier of fact to determine whether the officer's injuries arose from "use" of the suspect's vehicle. Important to this analysis, the court indicated, were certain facts of the incident, several of which are also present in the instant case. These include the fact that 1) the shooter rested his gun on the car's "window sill" as he opened fire; 2) the shooter remained in his car; and 3) the shooter left the scene by driving away. Willard, 803 P.2d at 1131. In light of these circumstances, the court continued, "the purpose of the gun's use might be viewed by

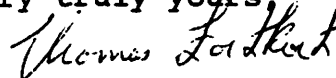
Michael A. Kernbach, Esq.  
Theresa G. Fay, Esq.  
Lawrence R. Berger, III, Esq.  
RE: Progressive Casualty v. Arban  
At Law No. 125443  
April 22, 1994  
Page 5

the trier of fact as identical to that for which the car was used -  
- to impede [the officer's] pursuit and to facilitate [the  
shooter's] effective getaway." Id. Significantly, the court  
reminded the trial court that, "UM-covered use is limited neither  
to the car's driving operation nor to the lawfulness of the use."  
Id. (emphasis in original).

Against this framework of case law, it is apparent that while  
the "sufficient nexus" standard is simply described, its  
application proves to be more complex. Indeed, few definitive  
rules have emerged from the cases which would mandate this Court's  
decision. Accordingly, this Court finds that the particulars of  
this case satisfy the sufficient nexus test. "Nexus" has been  
described by Webster's New Collegiate Dictionary as a "means of  
connection between things" or a "link." Certainly Captain LaClair's  
injuries were linked to the "use" of the vehicle by Arban. Arban's  
vehicle, in a fundamental way, was used to facilitate the act which  
produced the injury to Captain LaClair. Arban used his vehicle  
first to lure Captain LaClair into stopping behind him, then as a  
shield, from behind which the shots were fired, and finally as a  
swift means of escape.

Like the vehicle in Hartfield, Arban's car was the  
instrumentality and the accessory for inflicting Captain LaClair's  
injuries. This court finds that Arban's vehicle was more than the  
mere situs of the incident, and that Captain LaClair's injuries are  
covered under the uninsured motorist provisions of both INA's and  
Travelers' policies. Mr. Kernbach will please prepare an order on  
the basis of this letter opinion, forward it to counsel for  
endorsement as to form, and forward it to this Court for entry.

Very truly yours,



Thomas A. Fortkort

TAF/mlm  
cc: Julia B. Judkins, Esq.  
P.H. Harrington, Esq.

V I R G I N I A:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

PROGRESSIVE CASUALTY INSURANCE  
COMPANY,

Plaintiff,

v.

MARCUS F. ARBAN, SR.,  
Administrator of the Estate of  
Marcus Francis Arban, Jr.,  
deceased, et al.,

Defendants.

At Law No. 125443

ORDER

THIS CASE CAME TO BE HEARD on March 8, 1994, before the Honorable Thomas A. Fortkort on motion for a declaratory judgment pursuant to Section 8.01-184, Code of Virginia, (1950), as amended, seeking a determination from the Court as to the responsibilities of Progressive Casualty Insurance Company, Insurance company of North America and the Travelers Insurance Company to provide primary liability and uninsured/underinsured motorist coverage to Daryl F. LaClair, plaintiff in a personal injury action arising out of a shooting incident which occurred on November 21, 1990; and

IT APPEARING TO THE COURT, after consideration of the evidence heard on March 8, 1994; and in consideration of the facts and after hearing argument of counsel, reviewing the memoranda and attachments submitted by the parties, the Court issued a letter opinion dated April 22, 1994, all of which is

COPY

incorporated herein by reference as if set forth verbatim; in which letter opinion the Court set forth its findings in the case; it is therefore

ORDERED, as follows:

1. The Progressive Casualty Insurance Company policy which insured defendant Marcus F. Arban, Jr., contains clear and unambiguous language which excluded liability coverage for intentional conduct and, therefore, in accordance with the Order entered April 1, 1994, Progressive owes no duty to indemnify or defend.


2. The discharge of the firearm by defendant Arban arose out of the use of the vehicle, and, therefore, Insurance Company of North America and Traveler's Insurance Company must indemnify and may defend.

3. All provisions, statements, ruling and matters set forth in the letter opinion of April 22, 1994, issued by the Honorable Thomas A. Fortkort are fully incorporated herein by reference as if set forth verbatim.

ENTERED this \_\_\_\_ day of August 1994.

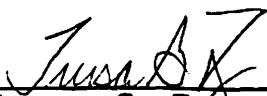
The Honorable Thomas A. Fortkort

SEEN AND AGREED:

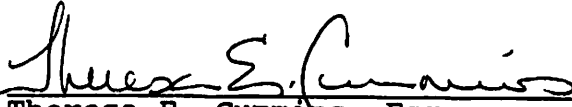


Michael A. Kernbach  
COHEN DUNN & SINCLAIR  
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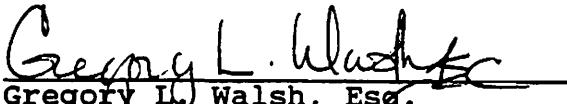
SEEN AND EXCEPTED TO AS TO THE FOLLOWING:

  
\_\_\_\_\_  
Teresa G. Fay  
CARR, GOODSON & LEE  
VA Bar No. 31115  
3923 Old Lee Highway  
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Fairfax, VA 22030  
(703) 691-8818

SEEN AND EXCEPTED TO AS TO THE FOLLOWING:



Theresa E. Cummins, Esq.  
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1616 North Fort Myer Drive  
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Arlington, VA 22209  
(703) 522-2552



Gregory L. Walsh, Esq.  
Law Office of Theresa E. Cummins  
Attorney for Defendant  
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Arlington, VA 22209  
(703) 522-2552

*progressive companies*

FAMILY  
AUTOMOBILE  
POLICY

NAME OF INSURED:

EXPIRES:

AGENT:

ADDRESS:

PLEASE NOTE THAT THIS POLICY APPLIES  
TO MOTORCYCLE AND MOTORHOME POLICIES

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## PROGRESSIVE COMPANIES

(A stock insurance company, herein called the company)

agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to all of the terms of this policy

### PART I - LIABILITY

**Coverage A — Bodily Injury Liability; Coverage B — Property Damage Liability.** To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of

- A. bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury," sustained by any person;
- B. injury to or destruction of property, including loss of use thereof, hereinafter called "property damage"; arising out of the ownership, maintenance or use of the owned automobile or any non-owned automobile, and the company shall defend any suit alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent; but the company may make such investigation and settlement of any claim or suit as it deems expedient.

**Supplementary Payments.** To pay, in addition to the applicable limits of liability:

- (a) all expenses incurred by the company, all costs taxed against the insured in any such suit and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the company's liability thereon;
- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of an automobile insured hereunder, not to exceed \$100 per bail bond, but without any obligation to apply for or furnish any such bonds;
- (c) expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of an accident involving an automobile insured hereunder and not due to war;
- (d) all reasonable expenses, other than loss of earnings, incurred by the insured at the company's request.

**Persons Insured.** The following are insureds under Part I:

- (a) with respect to the owned automobile.

- (1) the named insured and any resident of the same household.
  - (2) any other person using such 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, and
  - (3) any other person or organization, but only with respect to his or its liability because of acts or omissions of an insured under (a) (1) or (2) above;
- (b) with respect to a non-owned automobile,
- (1) the named insured,
  - (2) any relative, but only with respect to a private passenger automobile or trailer.  
Provided his actual operation or (if he is not operating) the other actual use thereof is with the permission or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and
  - (3) any other person or organization not owning or hiring the automobile, but only with respect to his or its liability because of acts or omissions of an insured under (b) (1) or (2) above.

The insurance afforded under Part I applies separately to each insured against whom claim is made or suit is brought, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

**Definitions. Under Part I:**

- "named insured"** means the individual named in Item 1 of the declarations and also includes his spouse, if a resident of the same household;
- "insured"** means a person or organization described under "Persons Insured";
- "relative"** means a relative of the named insured who is a resident of the same household;
- "owned automobile"** means
- (a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded,
  - (b) a trailer owned by the named insured,
  - (c) a private passenger, farm or utility automobile, ownership of which is acquired by the named insured during the policy period, provided
    - (1) it replaces an owned automobile as defined in (a) above, or
    - (2) the company insures all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition, and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and

no other policy issued by the company applicable to such automobile, or

- (d) a temporary substitute automobile;
- "temporary substitute automobile"** means any automobile or trailer, not owned by the named insured, while temporarily used with the permission of the owner as a substitute for the owned automobile or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;
- "non-owned automobile"** means an automobile or trailer not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile;
- "private passenger automobile"** means a four wheel private passenger, station wagon or jeep type automobile;
- "farm automobile"** means an automobile of the truck type with a load capacity of fifteen hundred pounds or less not used for business or commercial purposes other than farming;
- "utility automobile"** means an automobile, other than a farm automobile, with a load capacity of fifteen hundred pounds or less of the pick-up body, sedan delivery or panel truck type not used for business or commercial purposes;
- "trailer"** means a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm or utility automobile, or a farm wagon or farm implement while used with a farm automobile;
- "automobile business"** means the business or occupation of selling, repairing, servicing, storing or parking automobiles;
- "use"** of an automobile includes the loading and unloading thereof;
- "war"** means war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

**Exclusions. This policy does not apply under Part I:**

- (a) to any automobile while used as a public or livery conveyance, but this exclusion does not apply to the named insured with respect to bodily injury or property damage which results from the named insured's occupancy of a non-owned automobile other than as the operator thereof;
- (b) to bodily injury or property damage caused intentionally by or at the direction of the insured;
- (c) to injury, sickness, disease, death or destruction 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;
- (d) to bodily injury or property damage arising out of the operation of farm machinery;
  - (e) to bodily injury to any employee of the insured arising out of and in the course of (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the insured;
  - (f) to bodily injury to any fellow employee of the insured injured in the course of his employment if such injury arises out of the use of an automobile in the business of his employer, but this exclusion does not apply to the named insured with respect to injury sustained by any such fellow employee;
  - (g) to an owned automobile while used by any person while such person is employed or otherwise engaged in the automobile business, but this exclusion does not apply to the named insured, a resident of the same household as the named insured, a partnership in which the named insured or such resident is a partner, or any partner, agent or employee of the named insured, such resident or partnership;
  - (h) to a non-owned automobile while maintained or used by any person while such person is employed or otherwise engaged in (1) the automobile business of the insured or of any other person or organization, (2) any other business or occupation of the insured, but this exclusion (h) (2) does not apply to 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 an owned automobile;
  - (i) to injury to or destruction of (1) property owned or transported by the insured or (2) property rented to or in charge of the insured other than a residence or private garage;
  - (j) to the ownership, maintenance, operation, use, loading or unloading of an automobile, ownership of which is acquired by the named insured during the policy period or any temporary substitute automobile therefor, if the named insured has purchased other automobile liability insurance applicable to such automobile for which a specific premium charge has been made.

**Financial Responsibility Laws.** When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in

this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

**Limits of Liability.** The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury sustained by one person as the result of any one occurrence; the limit of such liability stated in the declarations as applicable to "each occurrence" is, subject to the above provision respecting each person, the total limit of the company's liability for all such damages arising out of bodily injury sustained by two or more persons as the result of any one occurrence.

The limit of property damage liability stated in the declarations as applicable to "each occurrence" is the total limit of the company's liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one occurrence.

**Other Insurance.** If the insured has other insurance against a loss covered by Part I of this policy, the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible insurance.

## PART II — EXPENSES FOR MEDICAL SERVICES

**Coverage C — Medical Expenses.** To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, X-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services:

**Division 1.** To or for the named insured and each relative who sustains bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury," caused by accident,

- (a) while occupying the owned automobile,
- (b) while occupying a non-owned motor vehicle, but only if such person has, or reasonably believes he has, the permission of the owner to use the motor vehicle and the use is within the scope of such permission, or

- (c) through being struck by an automobile or by a trailer of any type;

**Division 2.** To or for any other person who sustains bodily injury, caused by accident, while occupying

- (a) the owned automobile, while being used by the named insured, by any resident of the same household or by any other person with the permission of the named insured; or
- (b) a non-owned automobile, if the bodily injury results from
- (1) its operation or occupancy by the named insured or its operation on his behalf by his private chauffeur or domestic servant,
  - (2) its operation or occupancy by a relative, provided it is a private passenger automobile or trailer, but only if such operator or occupant has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission.

**Definitions.** The definitions under Part I apply to Part II, and under Part II:

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

"an automobile" includes a trailer of any type.

**Exclusions.** This policy does not apply under Part II to bodily injury:

- (a) sustained while occupying (1) an owned automobile while used as a public or livery conveyance, or (2) any vehicle while located for use as a residence or premises;
- (b) sustained by the named insured or a relative while occupying or through being struck by (1) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads, or (2) a vehicle operated on rails or crawler-treads;
- (c) sustained by any person other than the named insured or a relative, (1) while such person is occupying a non-owned automobile while used as a public or livery conveyance, or (2) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in the automobile business, or (3) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in any other business or occupation, unless the bodily injury results from the operation or occupancy of a private passenger automobile by the named insured or by his private chauffeur or domestic servant, or of a trailer used therewith or with an owned automobile;
- (d) sustained by any person who is employed in the automobile business, if the accident arises out of the

operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;

- (e) due to war.

**Limit of Liability.** The limit of liability for medical payments stated in the declarations as applicable to "each person" is the limit of the company's liability for all expenses incurred by or on behalf of each person who sustains bodily injury as the result of any one accident.

**Other Insurance.** If there is other automobile medical payments insurance against a loss covered by Part II of this policy, the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible automobile medical payments insurance; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible automobile medical expense insurance.

### PART III — PHYSICAL DAMAGE

**Coverage D (1) — Comprehensive (excluding Collision); (2) — Personal Effects.**

- (1) To pay for loss caused other than by collision to the owned automobile or to a non-owned automobile. For the purpose of this coverage, breakage of glass and loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, or colliding with a bird or animal, shall not be deemed to be loss caused by collision.
- (2) To pay for loss caused by fire or lightning to robes, wearing apparel and other personal effects which are the property of the named insured or a relative, while such effects are in or upon the owned automobile.

**Coverage E — Collision.** To pay for loss caused by collision to the owned automobile or to a non-owned automobile but only for the amount of each such loss in excess of the deductible amount stated in the declarations as applicable hereto.

**Coverage F — Fire, Lightning and Transportation.** To pay for loss to the owned automobile or a non-owned automobile, caused (a) by fire or lightning, (b) by smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises in which the automobile is located, or (c) by the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.

**Coverage G — Theft.** To pay for loss to the owned automobile or to a non-owned automobile caused by theft or larceny.

**Coverage H — Combined Additional Coverage.** To pay for loss to the owned automobile or a non-owned automobile caused by windstorm, hail, earthquake, explosion, riot or civil commotion, or the forced landing or falling of any aircraft or its parts or equipment, flood or rising waters, malicious mischief or vandalism, external discharge or leakage of water except loss resulting from rain, snow or sleet whether or not wind driven; provided, with respect to each automobile \$25 shall be deducted from each loss caused by malicious mischief or vandalism.

**Coverage I — Towing and Labor Costs.** To pay for towing and labor costs necessitated by the disablement of the owned automobile or of any non-owned automobile, provided the labor is performed at the place of disablement.

**Supplementary Payments.** In addition to the applicable limit of liability:

- (a) to reimburse the insured for transportation expenses incurred during the period commencing 48 hours after a theft covered by this policy of the entire automobile has been reported to the company and the police, and terminating when the automobile is returned to use or the company pays for the loss; provided that the company shall not be obligated to pay aggregate expenses in excess of \$10 per day or totaling more than \$300.
- (b) to pay general average and salvage charges for which the insured becomes legally liable, as to the automobile being transported.

**Definitions.** The definitions of "named insured", "relative", "temporary substitute automobile", "private passenger automobile", "farm automobile", "utility automobile", "automobile business", "war", and "owned automobile" in Part I apply to Part III, but "owned automobile" does not include, under Part III, (1) a trailer owned by the named insured on the effective date of this policy and not described herein, or (2) a trailer, ownership of which is acquired during the policy period unless the company insures all private passenger, farm and utility automobiles and trailers owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such trailer.

"Insured" means

- (a) with respect to an owned automobile
  - (1) the named insured, and

- (2) any person or organization (other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee for hire) maintaining, using or having custody of said automobile with the express or implied permission of the named insured and within the scope of such permission;

- (b) with respect to a non-owned automobile, the named insured and any relative while using such automobile, provided his actual operation or (if he is not operating) the other actual use thereof, is with the express or implied permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission;

"non-owned automobile" means a private passenger automobile or trailer not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile, while said automobile or trailer is in the possession or custody of the insured or is being operated by him;

"loss" means direct and accidental loss of or damage to (a) the automobile, including its equipment, or (b) other insured property;

"collision" means collision of an automobile covered by this policy with another object or with a vehicle to which it is attached or by upset of such automobile;

"trailer" means a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm or utility automobile, and if not a home, office, store, display or passenger trailer.

**Exclusions.** This policy does not apply under Part III:

- (a) to any automobile while used as a public or livery conveyance;
- (b) to loss due to war;
- (c) to loss to a non-owned automobile arising out of its use by the insured while he is employed or otherwise engaged in the automobile business;
- (d) to loss to a private passenger, farm or utility automobile or trailer owned by the named insured and not described in this policy or to any temporary substitute automobile therefor, if the insured has other valid and collectible insurance against such loss;
- (e) to damage which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such damage results from a theft covered by this policy;
- (f) to tires, unless damaged by fire, malicious mischief or vandalism, or stolen or unless the loss be coincident with and from the same cause as other loss covered by this policy;
- (g) to loss due to radioactive contamination;

(h) under Coverage E, to breakage of glass if insurance with respect to such breakage is otherwise afforded.

**Limit of Liability.** The limit of the company's liability for loss shall not exceed the actual cash value of the property, or if the loss is of a part thereof the actual cash value of such part at time of loss, nor what it would then cost to repair or replace the property or such part thereof with other of like kind and quality, nor, with respect to an owned automobile described in this policy, the applicable limit of liability stated in the declarations; provided, however, the limit of the company's liability (a) for loss to personal effects arising out of any one occurrence is \$100, and (b) for loss to any trailer not owned by the named insured is \$500.

**Other Insurance.** If the insured has other insurance against a loss covered by Part III of this policy, the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability of this policy bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible insurance.

#### **PART IV — PROTECTION AGAINST UNINSURED MOTORISTS**

**Coverage J — Uninsured Motorists (Damages for Bodily Injury).** To pay 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 bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", sustained by the insured, caused by accident and arising out of the ownership, maintenance or use of such uninsured automobile; provided, for the purposes of this coverage, determination as to whether the insured or such representative is legally entitled to recover such damages, and if so, the amount thereof shall be made by agreement between the insured or such representative and the company or, if they fail to agree, by arbitration.

No judgment against any person or organization alleged to be legally responsible for the bodily injury shall be conclusive as between the insured and the company, of the issues of liability of such person or organization or of the amount of damages to which the insured is legally entitled unless such judgment is entered pursuant to an action prosecuted by the insured with the written consent of the company.

**Definitions.** The definitions under Part I, except the

definition of "insured", apply to Part IV, and under Part IV: "Insured" means:

- (a) the named insured and any relative;
- (b) any other person while occupying an insured automobile; and
- (c) any person with respect to damages he is entitled to recover because of bodily injury to which this Part applies sustained by an insured under (a) or (b) above.

The insurance afforded under Part IV applies separately to each insured but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

**"Insured automobile" means:**

- (a) an automobile described in the policy for which a specific premium charge indicates that coverage is afforded,
- (b) a private passenger, farm or utility automobile, ownership of which is acquired by the named insured during the policy period, provided:
  - (1) it replaces an insured automobile as defined in (a) above, or
  - (2) the company insures under this coverage all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make the Liability and Uninsured Motorist Coverage under this and no other policy issued by the company applicable to such automobile.
- (c) a temporary substitute automobile for an insured automobile as defined in (a) or (b) above, and
- (d) a non-owned automobile while being operated by the named insured; and the term "insured automobile" includes a trailer while being used with an automobile described in (a), (b), (c) or (d) above, but shall not include:
  - (1) any automobile or trailer owned by a resident of the same household as the named insured,
  - (2) any automobile while used as a public or livery conveyance, or
  - (3) any automobile while being used without the permission of the owner.

**"uninsured automobile" includes a trailer of any type and means:**

- (a) an automobile or trailer with respect to the ownership, maintenance or use of which there is, in at least the amount specified by the financial responsibility law of the state in which the insured automobile is principally garaged, no bodily injury 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 a bodily injury liability bond or insurance policy applicable at the time of the accident, but the company writing the same denies coverage thereunder, or

(b) a hit-and-run automobile,

but the term "uninsured automobile" shall not include:

- (1) an insured automobile or an automobile furnished for the regular use of the named insured or a relative,
- (2) an automobile or trailer owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law,
- (3) an automobile or trailer owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any of the foregoing,
- (4) a land motor vehicle or trailer if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle, or
- (5) a farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

"hit-and-run automobile" means an automobile which causes bodily injury to an insured arising out of physical contact of such automobile with the insured or with an automobile which the insured is occupying at the time of the accident, provided:

- (a) there cannot be ascertained the identity of either the operator or the owner of such "hit-and-run automobile";
- (b) the insured or someone on his behalf shall have reported the accident within 24 hours to a police, peace or judicial officer or to the Commissioner of Motor Vehicles, and shall have filed with the company within 30 days thereafter 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, and setting forth the facts in support thereof; and
- (c) at the company's request, the insured or his legal representative makes available for inspection the automobile which the insured was occupying at the time of the accident.

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

"state" includes the District of Columbia, a territory or possession of the United States, and a province of Canada.

**Exclusions.** This policy does not apply under Part IV:

- (a) to bodily injury to an insured while occupying an

automobile (other than an insured automobile) owned by the named insured or a relative, or through being struck by such an automobile;

- (b) to bodily injury to an insured with respect to which such insured, his legal representative or any person entitled to payment under this coverage shall, without written consent of the company, make any settlement with any person or organization who may be legally liable therefor;
- (c) so as to inure directly or indirectly to the benefit of any workmen's compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workmen's compensation or disability benefits law or any similar law.

#### **Limits of Liability.**

- (a) The limit of liability for uninsured motorists coverage stated in the declarations as applicable to "each person" is the limit of the company's 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 liability stated in the declarations as applicable to "each accident" is the total limit of the company's 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) Any amount payable under the terms of this Part because of bodily injury sustained in an accident by a person who is an insured under this Part shall be reduced by
  - (1) all sums paid on account of such bodily injury by or on behalf of (i) the owner or operator of the uninsured automobile and (ii) any other person or organization jointly or severally liable together with such owner or operator for such bodily injury, including all sums paid under Coverage A, and
  - (2) the amount paid and the present value of all amounts payable on account of such bodily injury under any workmen's compensation law, disability benefits law or any similar law.
- (c) Any payment made under this Part to or for any insured shall be applied in reduction of the amount of damages which he may be entitled to recover from any person insured under Coverage A.
- (d) The company shall not be obligated to pay under this coverage that part of the damages which the insured may be entitled to recover from the owner or operator of an uninsured automobile which represents expenses for medical services paid or payable under Part II.

**Other Insurance.** With respect to bodily injury to an insured

while occupying an automobile not owned by the named insured, the insurance under Part IV shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such automobile as primary insurance, and this insurance shall then apply only in the amount by which the limit of liability for this coverage exceeds the applicable limit of liability of such other insurance.

Except as provided in the foregoing paragraph, if the insured has other similar insurance available to him and applicable to the accident, the damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the company 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.

**Arbitration.** If any person making claim hereunder and the company do not agree that such person is legally entitled to recover damages from the owner or operator of an uninsured automobile because of bodily injury to the insured, or do not agree as to the amount of payment which may be owing under this Part, then, upon written demand of either, the matter or matters upon which such person and the company do not agree shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Such person and the company each agree to consider itself bound and to be bound by any award made by the arbitrators pursuant to this Part.

**Trust Agreement.** In the event of payment to any person under this Part:

- (a) the company shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury because of which such payment is made;
- (b) such person shall hold in trust for the benefit of the company all rights of recovery which he shall have against such other person or organization because of the damages which are the subject of claim made under this Part;
- (c) such person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;
- (d) if requested in writing by the company, such person shall take, through any representative designated by the company, such action as may be necessary or appropriate to recover such payment as damages from such other person or organization, such action to be

taken in the name of such person, in the event of a recovery, the company shall be reimbursed out of such recovery for expenses, costs and attorneys' fees incurred by it in connection therewith;

- (e) such person shall execute and deliver to the company such instruments and papers as may be appropriate to secure the rights and obligations of such person and the company established by this provision.

#### CONDITIONS

(Unless otherwise noted, conditions apply to all Parts.)

1. **Policy Period, Territory.** This policy applies only to accidents, occurrences and loss during the policy period while the automobile is within the United States of America, its territories or possessions, or Canada, or is being transported between ports thereof.
2. **Premium.** If the named insured disposes of, acquires ownership of, or replaces a private passenger, farm or utility automobile or, with respect to Part III, a trailer, any premium adjustment necessary shall be made as of the date of such change in accordance with the manuals in use by the company. The named insured shall, upon request, furnish reasonable proof of the number of such automobiles or trailers and a description thereof.
3. **Notice.** In the event of an accident, occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable. In the event of theft the insured shall also promptly notify the police. If claim is made or suit is brought against the insured, he shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

If, before the company makes payment of loss under Part IV, the insured or his legal representative shall institute any legal action for bodily injury 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 company by the insured or his legal representative.

4. **Two or More Automobiles — Parts I, II and III.** When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, but an automobile and a trailer attached thereto shall be held to be one automobile as respects limits of



liability under Part I of this policy, and separate automobiles under Part III of this policy, including any deductible provisions applicable thereto.

5. **Assistance and Cooperation of the Insured — Parts I and III.** The insured shall cooperate with the company and, upon the company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury, property damage or loss with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

6. **Action Against Company — Part I.** No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the company as a party to any action against the insured to determine the insured's liability, nor shall the company be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

**Parts II, III and IV.** No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor, under Part III, until thirty days after proof of loss is filed and the amount of loss is determined as provided in this policy.

7. **Medical Reports; Proof and Payment of Claim — Part II.** As soon as practicable, the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall

submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

The company may pay the injured person or any person or organization rendering the services, and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the company.

8. **Insured's Duties in Event of Loss — Part III.** In the event of loss the insured shall:

(a) protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to protect shall not be recoverable under this policy; reasonable expenses incurred in affording such protection shall be deemed incurred at the company's request;

(b) file with the company, within 91 days after loss, his sworn proof of loss in such form and including such information as the company may reasonably require and shall, upon the company's request, exhibit the damaged property and submit to examination under oath.

9. **Proof of Claim; Medical Reports — Part IV.** As soon as practicable, the insured or other person making claim shall give to the company 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. The insured and every other person making claim shall submit to examinations under oath by any person named by the company and subscribe the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by the company unless the company 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 company when and as often as the company 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 company execute authorization to enable the company to obtain medical reports and copies of records.

10. **Appraisal — Part III.** If the insured and the company fail to agree as to the amount of loss, either may, within 60 days after proof of loss is filed, demand an appraisal of the loss. In such event the insured and the company 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. The insured and the company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

11. **Payment of Loss — Part III.** The company may pay for the loss in money; or may repair or replace the damaged or stolen property; or may, at any time before the loss is paid or the property is so replaced, at its expense return any stolen property to the named insured, or at its option to the address shown in the declarations, with payment for any resultant damage thereto; or may take all or such part of the property at the agreed or appraised value but there shall be no abandonment to the company. The company may settle any claim for loss either with the insured or the owner of the property.

**Part IV.** Any amount due is payable (a) to the insured, or (b) if the insured be a minor to his parent or guardian, or (c) if the insured be deceased to his surviving spouse, otherwise (d) to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents; provided, the company may at its option pay any amount due in accordance with division (d) hereof.

12. **No Benefit to Bailee — Part III.** The insurance afforded by this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire liable for loss to the automobile.
13. **Subrogation — Parts I and III.** In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.
14. **Changes.** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by a duly authorized company representative.
15. **Assignment.** Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the insured named in Item 1 of the declarations, of his spouse if a resident of the same household, shall die, this policy shall cover

(1) the survivor as named insured, (2) his legal representative as named insured but only while acting within the scope of his duties as such, (3) any person having proper temporary custody of an owned automobile, as an insured, until the appointment and qualification of such legal representative, and (4) under division 1 of Part II any person who was a relative at the time of such death.

16. **Cancellation.** This policy may be cancelled by the insured named in Item 1 of the Declarations by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the company by mailing to the insured named in Item 1 of the Declarations at the address shown in this policy written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by such insured or by the company shall be equivalent to mailing.

If such insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

17. **Cancellation by Company Limited — Part I.** After this policy has been in effect for sixty days or, if the policy is a renewal, effective immediately, the company shall not exercise its right to cancel the insurance afforded under Part I unless:

- (1) the named insured fails to discharge when due any of his obligations in connection with the payment of premium for this policy or any installment thereof, whether payable directly or under any premium finance plan; or
- (2) the insurance was obtained through fraudulent misrepresentation; or
- (3) the insured violates any of the terms and conditions of the policy; or
- (4) the named insured or any other operator, either resident in the same household, or who customarily operates an automobile insured under the policy,
  - (a) has had his driver's license suspended or revoked during the policy period, or
  - (b) is or becomes subject to epilepsy or heart attacks, and such individual cannot produce

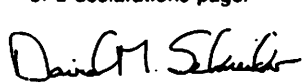
a certificate from a physician testifying to this unqualified ability to operate a motor vehicle, or


(c) is or has been convicted of or forfeits bail, during the 36 months immediately preceding the effective date of the policy or during the policy period, for:

- (1) any felony, or
- (2) criminal negligence resulting in death, homicide or assault, arising out of the operation of a motor vehicle, or
- (3) operating a motor vehicle while in an intoxicated condition or while under the influence of drugs, or
- (4) leaving the scene of an accident without stopping to report, or
- (5) theft of a motor vehicle, or
- (6) making false statements in an application for a driver's license, or
- (7) a third violation, committed within a period of 18 months, of (i) any ordinance or regulation limiting the 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.

18. **Declarations.** By acceptance of this policy, the insured named in Item 1 of the declarations agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

**In Witness Whereof,** the company has caused this policy to be signed by its president and secretary, but this policy shall not be valid unless completed by the attachment of a declarations page.

  
Secretary

  
President

**VIRGINIA EXCEPTION** — It is agreed that if the owned automobile is principally garaged in Virginia, the provision in the Collision Coverage that the deductible amount shall not apply to loss caused by collision with another automobile insured by the company is deleted.

Form No. 1077 (10-86) VA

Form No. 1024P (7-91) VA

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## GENERAL ATTACHMENTS

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ALL FORMS LISTED IN THE VIRGINIA PACKAGE MAY NOT PERTAIN TO YOUR POLICY. PLEASE REFER TO YOUR DECLARATIONS PAGE FOR APPLICABLE ATTACHMENTS. PLEASE NOTE ADDITIONAL MOTORCYCLE/MOTOR HOME SPECIFIC ATTACHMENTS MAY BE FOUND ON PAGES 51 TO 59.

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## IMPORTANT INFORMATION TO POLICYHOLDERS

In the event you need to contact someone about this policy for any reason, please contact your agent. If you have additional questions you may contact the Progressive Companies at the following address and phone number.

4461 Cox Road  
Glen Allen, Virginia 23060  
1-800-876-8012

If you have been unable to contact or obtain satisfaction from either your agent or us, you may contact the Virginia Bureau of Insurance at:

Property and Casualty Division  
Bureau of Insurance  
P.O. Box 1157  
Richmond, Virginia 23209  
1-800-552-7945 (in state)  
1-804-786-3471 (out of state)

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

### Form No. 8276 (7-89) **MEDICAL/INCOME DISABILITY IMPORTANT NOTICE**

**IN ADDITION TO THE MINIMUM INSURANCE REQUIRED BY LAW, YOU MAY PURCHASE ADDITIONAL INSURANCE COVERAGE FOR THE NAMED INSURED AND FOR HIS RELATIVES WHO ARE MEMBERS OF HIS HOUSEHOLD WHILE OCCUPYING A MOTOR VEHICLE, OR IF STRUCK BY A MOTOR VEHICLE WHILE NOT OCCUPYING A MOTOR VEHICLE, AND FOR OCCUPANTS OF THE INSURED MOTOR VEHICLE. THE FOLLOWING HEALTH CARE AND DISABILITY BENEFITS ARE AVAILABLE FOR EACH ACCIDENT:**

- A. PAYMENT OF UP TO \$2,000 PER PERSON FOR ALL REASONABLE AND NECESSARY EXPENSES FOR MEDICAL, CHIROPRACTIC, HOSPITAL, DENTAL, SURGICAL, AMBULANCE, PROSTHETIC AND REHABILITATION SERVICES, AND FUNERAL EXPENSES RESULTING FROM THE ACCIDENT AND INCURRED WITHIN THREE YEARS AFTER THE DATE OF THE ACCIDENT; AND
- B. AN AMOUNT EQUAL TO THE LOSS OF INCOME UP TO \$100 PER WEEK IF THE INSURED PERSON IS ENGAGED IN AN OCCUPATION FOR WHICH HE RECEIVES COMPENSATION, FROM THE FIRST

WORKDAY LOST AS A RESULT OF THE ACCIDENT UP TO THE DATE THE PERSON IS ABLE TO RETURN TO HIS USUAL OCCUPATION. SUCH PAYMENTS ARE LIMITED TO A PERIOD EXTENDING ONE YEAR FROM THE DATE OF THE ACCIDENT.

IF YOU DESIRE TO PURCHASE EITHER OR BOTH OF THESE COVERAGES AT AN ADDITIONAL PREMIUM, YOU MAY DO SO BY CONTACTING THE AGENT OR COMPANY THAT ISSUED YOUR POLICY.

Form No. 2063 (7-86) **IMPORTANT NOTICE**

IN ADDITION TO THE INSURANCE COVERAGE REQUIRED BY LAW TO PROTECT YOU AGAINST A LOSS CAUSED BY AN UNINSURED MOTORIST:

IF YOU HAVE PURCHASED LIABILITY INSURANCE COVERAGE THAT IS HIGHER THAN THAT REQUIRED BY LAW TO PROTECT YOU AGAINST LIABILITY ARISING OUT OF THE OWNERSHIP, MAINTENANCE OR USE OF YOUR MOTOR VEHICLES COVERED BY THIS POLICY, AND YOU HAVE NOT ALREADY PURCHASED UNINSURED MOTORIST INSURANCE COVERAGE EQUAL TO YOUR LIABILITY INSURANCE COVERAGE,

1. YOUR UNINSURED AND UNDERINSURED MOTORIST INSURANCE COVERAGE HAS INCREASED TO THE LIMITS OF YOUR LIABILITY COVERAGE AND THIS INCREASE WILL COST YOU AN EXTRA PREMIUM CHARGE; AND
2. YOUR TOTAL PREMIUM CHARGE FOR YOUR MOTOR VEHICLE INSURANCE COVERAGE WILL INCREASE IF YOU DO NOT NOTIFY YOUR AGENT OR INSURER OF YOUR DESIRE TO REDUCE COVERAGE WITHIN 20 DAYS OF THE MAILING OF THE POLICY OR THE PREMIUM NOTICE, AS THE CASE MAY BE.
3. IF THIS IS A NEW POLICY AND YOU HAVE ALREADY SIGNED A WRITTEN REJECTION OF SUCH HIGHER LIMITS IN CONNECTION WITH IT, PARAGRAPHS 1 AND 2 OF THIS NOTICE DO NOT APPLY.

E131 (11-78) **CUSTOMIZING EQUIPMENT EXCLUSION — AUTOMOBILE**

Any physical damage coverage afforded by this policy is subject to the following additional exclusion:

This insurance does not apply to loss of, or damage to, any custom furnishings or equipment including, but not limited to:

1. special carpeting and insulation, furniture, bars or television receivers;

2. facilities for cooking and sleeping, including enclosures;
3. height extending roofs;
4. custom murals, paintings, or other decals or graphics, in or upon any pickup, panel truck or van.

E104a (9-77) **SOUND RECEIVING AND TRANSMITTING EQUIPMENT EXCLUDED**

It is agreed that any Physical Damage Insurance afforded by the policy is subject to the following additional exclusion:

This insurance does not apply to loss of, or damage to, any sound receiving or sound receiving and transmitting equipment designed for use as a citizens band radio, two-way mobile radio or telephone, or scanning monitor receiver, including any accessories and antennas unless permanently installed in the opening of the dash or console of the automobile normally used by the motor vehicle manufacturer for the installation of a radio.

A689H (7-88) **UNINSURED MOTORISTS INSURANCE**

(Virginia)

In consideration of the payment of premium and subject to all of the provisions of this endorsement and to the applicable provisions of the policy, the company agrees with the named insured as follows:

I. **COVERAGE UNINSURED MOTORISTS**

(Damages for Bodily Injury and Property Damage)

The company will pay in accordance with Section 38.2-2206 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 motor vehicle because of bodily injury sustained by the insured or property damage caused by accident and arising out of the ownership, maintenance or use of such uninsured motor vehicle.

**Exclusions**

This insurance does not apply:

- (a) to bodily injury or property damage with respect to which the insured or his legal representative shall, without written consent of the company, make any settlement with any person or organization who may be legally liable therefor;
- (b) to the first two hundred dollars of the total amount of all property damage as the result of any one accident. This exclusion does not apply if the owner or operator of the uninsured motor vehicle

causing the damage can be identified.

- (c) so as to inure directly or indirectly to the benefit of any insurer of property

## II. PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below

- (a) the named insured and, while residents of the same household, the spouse and relatives of either,
- (b) any other person while occupying an insured motor vehicle, and
- (c) any person, with respect to damages he is entitled to recover because of bodily injury to which this insurance applies sustained by an insured under (a) or (b) above

This insurance applies separately with respect to each insured, except with respect to the limits of the company's liability.

## III. LIMITS OF LIABILITY

Regardless of the number of (1) persons or organizations who are insureds under this insurance, (2) persons or organizations who sustain bodily injury or property damage, (3) claims made or suits brought on account of bodily injury or property damage, or (4) motor vehicles to which this insurance applies,

- (a) If the schedule or declarations indicate split limits of liability, the limit of liability for bodily injury stated as applicable to "each person" is the limit of the company's liability for all damages 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 liability for bodily injury stated as applicable to "each accident" is the total limit of the company's liability for all damages because of bodily injury sustained by two or more persons as the result of any one accident. The limit of liability for property damage stated as applicable to "each accident" is the total limit of the company's liability for all damages because of property damage to all property of one or more insureds as the result of any one accident
- (b) If the schedule or declarations indicate a single limit of liability, the limit of liability stated as applicable to "each accident" is the total limit of the company's liability for all damages as the result of any one accident; provided such limit of liability shall first provide the separate limits required by the Virginia Motor Vehicle Safety Responsibility Act as stated in the schedule or declarations.

- (c) If claim is made under this insurance and claim is also made against any person or organization who is an insured under the bodily injury liability or property damage liability coverage of the policy because of bodily injury or property damage sustained in an accident by a person who is an insured under this insurance, any payment made under this insurance to or for any such person shall be applied in reduction of any amount which he may be entitled to recover from any person or organization who is an insured under the bodily injury or property damage liability coverages.
- (d) Any amount payable under this insurance because of bodily injury or property damage sustained in an accident by a person who is an insured under this insurance shall be reduced by all sums paid because of such bodily injury or property damage by or on behalf of the owner or operator of an uninsured motor vehicle.
- (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 insurance shall be reduced by all sums paid because of such bodily injury or property damage by or on behalf of any person or organization jointly or severally liable together with the owner or operator of an uninsured motor vehicle for such bodily injury or property damage including all sums paid under the bodily injury or property damage coverage of the policy.

## IV. POLICY PERIOD; TERRITORY

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

## V. DEFINITIONS

When used in reference to this insurance (including endorsements forming a part of the policy):

"bodily injury" means bodily injury, sickness or disease, including death, sustained by a person who is an insured under (a) or (b) of the Persons Insured provision;

"hit-and-run vehicle" means a motor vehicle 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 motor vehicle; and
- (b) the insured or someone on his behalf shall have reported the accident promptly to either the company, or a law-enforcement officer.

"insured motor vehicle" means a motor vehicle

registered in Virginia with respect to which the bodily injury and property damage liability coverage of the policy applies, but shall not include a vehicle while being used without the permission of the owner.

"motor vehicle" 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;

"named insured" means the person named in the declarations of this policy and includes the spouse if a resident of the same household;

"occupying" means in or upon, or entering into or alighting from;

"property damage" means injury to or destruction of (1) an insured motor vehicle owned by the named insured or his spouse, if a resident of the same household, and the contents of such motor vehicle, and (2) any other property (except a motor vehicle) owned by an insured and located in Virginia;

"relative" means a person related to the named insured by blood, marriage or adoption who is a resident of the same household;

"uninsured motor vehicle" means:

- (a) a motor vehicle with respect to the ownership, maintenance or use of which there is, in at least the amounts specified in the Virginia Motor Vehicle Safety Responsibility Act, neither (i) cash or securities on file with the Virginia Commissioner of Motor Vehicles nor (ii) 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 vehicle or with respect to which there is such a bond or insurance policy applicable at the time of the accident; but the policy shall not apply if the owner of the motor vehicle had at the time of the accident a valid license to drive a motor vehicle in Virginia;

- (b) a hit and run vehicle as defined

## VI. CONDITIONS

### A. 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 "Notice," "Insured's Duties in the Event of Loss," "Subrogation," "Changes," "Assignment," "Cancellation" and "Declarations."

### B. Premium

If during the policy period the number of insured motor vehicles owned by the named insured or spouse and registered in Virginia changes, the named insured shall notify the company during the policy period of any changes, and the premium shall be adjusted in accordance with the manuals in use by the company. If the earned premium thus computed exceeds the advance premium paid, the named insured shall pay the excess to the company; if less, the company shall return to the named insured the unearned portion paid by such insured.

### C. Proof of Claim; Medical Reports; Proof of Loss

As soon as practicable, the insured or other person making claim shall give to the company 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 company unless the company 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 company when and as the company 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 company execute authorization to enable the company 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 company within sixty days after the occurrence of loss, unless such time is extended in writing by the company in the form of a sworn statement signed both by the insured and by all others in the property affected, or, in the absence of such statement, 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 company's request, the insured shall exhibit the damaged property to the

- 2 when not less than fifteen days thereafter such cancellation shall be effective; if the named insured fails to discharge when due any of his obligations in connection with the payment of premium for this policy or any installment thereof, whether payable to the Company or its agent either directly or indirectly under any premium finance plan or extension of credit

Notice to the insured named in Item 1 of the declarations shall be mailed either by certificate of mailing, provided the Company has retained a duplicate certified copy of said notice, or by registered or certified mail, pursuant to Section 38.2-2208 of the Code of Virginia. The [time of surrender or the] effective date [and hour] of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by such insured, or his duly constituted attorney-in-fact, or by the Company shall be equivalent to mailing.

- B The following Condition is added or, if the policy contains a Condition so entitled, such Condition is replaced by the following

**Cancellation by Company Limited**

If this policy has been in effect for sixty days at the time notice of cancellation is mailed or delivered or, if this policy is a renewal, effective immediately, the company shall not exercise its right to cancel unless

- 1 the named insured fails to discharge when due any of his obligations in connection with the payment of premium for this policy or any installment thereof, whether payable to the company or its agent either directly or indirectly under any premium finance plan or extension of credit, or
  - 2 the named insured or any other operator who either resides in the same household or customarily operates an automobile insured under this policy has had his driver's license suspended or revoked during the policy period, or, if the policy is a renewal, during its policy period or the ninety days immediately preceding the last anniversary of the effective date, provided, however, the Company shall have the right to modify any physical damage coverage afforded by this policy (except coverage for loss caused by collision) by inclusion of a deductible not exceeding \$100.
- This Condition shall apply to each successive policy period for which the Company consents to renew or continue this policy but nothing in this Condition shall obligate the company to

renew or continue this policy

- C The following Condition is added

**Renewal**

If this policy is written for a policy period of less than one year or without a fixed expiration date, the Company agrees that it will not exercise its right to refuse to renew or continue the insurance, except as of the end of any six-month interval of the original effective date.

The company agrees that it will not refuse to renew or continue this policy unless a written notice of its refusal to renew or continue is mailed to the insured named in Item 1 of the declarations, or the address shown in this policy or least forty-five days prior to the expiration date. Notice to the insured named in Item 1 of the declarations shall be mailed either by certificate of mailing, provided the Company has retained a duplicate certified copy of said notice, or by registered or certified mail, pursuant to Section 38.2-2208 of the Code of Virginia. Delivery of such written notice shall be equivalent to mailing.

Such notice shall not be required

- 1 if the named insured fails to pay the premium as required by the Company for renewal or continuance of this policy
- 2 if the Company or its agent acting on behalf of the Company has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, or has manifested such intention in writing to the insured, or
- 3 if the named insured, or his duly constituted attorney-in-fact, has notified in writing to the Company or its agent that he wishes the policy to be cancelled or that he does not wish the policy to be renewed or if prior to the date of expiration he fails to accept the offer of the Company

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A877 (6-66) **ASSISTANCE AND COOPERATION OF THE INSURED**

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(Automobile Liability Insurance)  
(Virginia)

The failure or refusal of the insured to cooperate with or assist the company which prejudices the company's 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 company



A925 (5 70) **SOUND-REPRODUCING OR RECORD-  
ING EQUIPMENT EXCLUDED**

It is agreed that such insurance as is afforded by the policy under the Physical Damage Coverages is subject to the following additional exclusions:

The insurance does not apply.

- 1 to loss of or damage to any device or instrument designed for the recording, reproduction, or recording and reproduction of sound unless such device or instrument is permanently installed in the automobile.
- 2 to loss of or damage to any tape, wire, record disc or other medium for use with any device or instrument designed for the recording, reproduction, or recording and reproduction of sound

A799F (7-91) **FAMILY AUTOMOBILE FORM  
VIRGINIA AMENDATORY  
ENDORSEMENT**

It is agreed that.

**PART I**

- 1 The first paragraph of "Persons Insured" is amended to read:  
Persons Insured  
The following are insureds under Part I
  - (a) with respect to the owned automobile.
    - (1) the named insured and any resident of the same household.
    - (2) any other person using such 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, and
    - (3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a) (1) or (2) above;
  - (b) with respect to a non-owned automobile.
    - (1) the named insured.
    - (2) any relative, but only with respect to a private passenger automobile or trailer, provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and

- (3) any other person or organization not owning or hiring the automobile but only with respect to his or its liability because of acts or omissions of an insured under (b) (1) or (2) above

- 2 The definition of "owned automobile" is amended to read  
"owned automobile" means
  - (a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded.
  - (b) a trailer owned by the named insured.
  - (c) a private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided
    - (1) it replaces an owned automobile as defined in (a) above, or
    - (2) the company insures all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such automobile, or
  - (d) a temporary substitute automobile.
- 3 The definition of "temporary substitute automobile" is amended to read  
"temporary substitute automobile" means any automobile or trailer, not owned by the named insured, while temporarily used with the permission of the owner as a substitute for the owned automobile or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction.
- 4 The definition of "farm automobile" is amended to read  
"farm automobile" means an automobile of the truck type not used for business or commercial purposes other than farming.
- 5 The definition of "utility automobile" is amended to read  
"utility automobile" means an automobile, other than a farm automobile, of the pick-up body, sedan delivery or panel truck type not used for business or commercial purposes.
- 6 Exclusion (g) and (h) are amended and a new

exclusion is added to read

(This policy does not apply under Part I)

- (g) to any automobile or trailer while maintained or used by any person while such person is employed or otherwise engaged in the automobile business to the extent that the limits of liability for this policy exceed the limits of liability required by the Virginia financial responsibility law, but this exclusion (g) does not apply to the maintenance or use of an owned automobile by
  - (1) the named insured, or
  - (2) directors, stockholders, partners, agents or employees of the named insured, or
  - (3) a resident of the same household as a person described in (1) or (2) above
- (h) to a non-owned automobile while maintained or used by any person while such person is employed or otherwise engaged in any business or occupation of the insured, except the automobile business, but this exclusion (h) does not apply to 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 an owned automobile
- (i) to the ownership, maintenance, operation, use, loading or unloading of an automobile ownership of which is acquired by the named insured during the policy period or any temporary substitute automobile therefor, if the named insured has purchased other automobile liability insurance applicable to such automobile for which a specific charge has been made

## PART II

The Expenses For Medical Services portion of the policy is deleted in its entirety and replaced by the following

When a specific premium charge is shown in the declarations for Section I and/or Section II, the company agrees with the named insured, subject to all the provisions of the policy except as modified herein, as follows

### Section I

#### Medical Expense Benefits

The company will pay, in accordance with Sections 38.2-2201, or 46.2-465 of the Code of Virginia, to or on behalf of each injured person, medical expense benefits as a result of bodily injury caused by accident and arising out of the ownership, maintenance or use of a motor vehicle as a motor vehicle.

#### Exclusions

This insurance does not apply.

- (a) to bodily injury sustained by any person who intentionally causes injury to himself,
- (b) to bodily injury sustained by any person to the extent that benefits therefor are in whole or in part payable under any workmen's compensation law, employer's disability benefits law or any other similar law,
- (c) to bodily injury sustained while occupying the insured motor vehicle while used as a public or livery conveyance, but this exclusion does not apply with respect to any insured motor vehicle designated in the policy as a public or livery conveyance,
- (d) to bodily injury sustained by any person while occupying a motor vehicle, unless such person has or reasonably believes he has the permission of the owner to use such motor vehicle and the use is within the scope of such permission,
- (e) to bodily injury sustained by the named insured or any relative while occupying any motor vehicle owned by or furnished or available for the regular use of such named insured or relative and which is not an insured motor vehicle,
- (f) to bodily injury due to war whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing

#### Definitions

The definitions under Part I of the policy apply to Part II except as modified herein.

"bodily injury" means bodily injury, sickness or disease, including death resulting therefrom,

"injured person" means

- (a) the named insured or any relative who sustains bodily injury while occupying a motor vehicle, or if struck by a motor vehicle while not occupying a motor vehicle,
- (b) any other person who sustains bodily injury while occupying
  - (1) the insured motor vehicle,
  - (2) a non-owned automobile which the named insured or relative is operating, or
  - (3) a temporary substitute automobile,

"insured motor vehicle" means a motor vehicle with respect to which

- (a) the named insured is the owner, and
- (b) the bodily injury liability or the property damage liability insurance of the policy applies, and
- (c) the insurance under this coverage applies and for which a specific premium has been charged,

"medical expense" means all reasonable and necessary expenses for medical, hospital, chiropractic, x-ray,

professional nursing, dental, surgical, ambulance, prosthetic and rehabilitation services, and funeral expenses, incurred within three years after the date of the accident.

"medical expense insurance" means any motor vehicle insurance providing benefits for medical expenses without regard to fault.

"motor vehicle" means a self-propelled land motor vehicle or trailer other than (1) a farm type tractor or other self-propelled equipment designed for use principally off public roads, while not upon public roads, (2) a vehicle operated on rails or crawler treads, or (3) a vehicle located for use as a residence or premises.

"named insured" means the individual or organization named in Item 1 of the declarations.

"non-owned automobile" means a motor vehicle which is not

- (a) used as a public or livery conveyance, or
- (b) owned by or furnished or available for the regular use of either the named insured or any relative, or
- (c) a temporary substitute automobile.

"occupying" means in or upon or entering or alighting from.

"relative" means a person related to the named insured by blood, marriage or adoption, including wards or foster children, who is a resident of the same household as the named insured.

#### **Limits of Liability**

Regardless of the number of

- 1 persons or organizations who are insureds under this policy,
- 2 persons who sustain bodily injury, or
- 3 claims made or suits brought on account of bodily injury.

the company's liability for MEDICAL EXPENSE BENEFITS to or on behalf of any one person who sustains bodily injury shall not exceed:

- (a) the limit of liability for Medical Expense Benefits stated in the declarations as applicable to each injured person when there is only one insured motor vehicle, or
- (b) the sum of the highest limits of liability for Medical Expense Benefits stated in the declarations as applicable to each injured person for each insured motor vehicle up to a maximum of 4, when the medical expense costs incurred by the injured person exceed the limit of liability for any one vehicle so insured

If other valid and collectible medical expense insurance is applicable to the bodily injury of an injured person, the

benefits shall be paid according to the following order of priority

- (a) the medical expense insurance of the owner of the motor vehicle the injured person was occupying at the time of the accident
  - (b) the medical expense insurance of the operator of the motor vehicle the injured person was occupying at the time of the accident
  - (c) the medical expense insurance of the injured person.
- However, in no event shall any injured person collect more than his actual medical expense incurred as a result of an accident from this or any other motor vehicle insurance policy or combination of such policies providing medical expense insurance applicable to such accident.

#### **Section II**

##### **Income Loss Benefits**

The company will pay, in accordance with Sections 38.2-2201 or 46.2-465 of the Code of Virginia, to or on behalf of each injured person, income loss benefits as a result of bodily injury caused by accident and arising out of the ownership, maintenance or use of a motor vehicle as a motor vehicle

##### **Exclusions**

The exclusions contained in Section I also apply to Section II and the insurance under Section II does not apply to bodily injury sustained by any person in the course of his occupation while engaged (1) in duties incident to the operation, loading or unloading of, or as an assistant on a public or livery conveyance or commercial automobile, or (2) in duties incident to the repair or servicing of automobiles

##### **Definitions**

The definitions under Section I apply to Section II and under Section II

"income loss" means an amount equal to the loss of income incurred by an injured person usually engaged in a remunerative occupation, within one year after the date of the accident, and as a result of disability caused by the accident.

"income loss insurance" means any motor vehicle insurance providing benefits for income loss.

##### **Limits of Liability**

Regardless of the number of.

- 1 persons or organizations who are insureds under this policy,
  - 2 persons who sustain bodily injury, or
  - 3 claims made or suits brought on account of bodily injury.
- the company's liability for INCOME LOSS BENEFITS to

or on behalf of any one person who sustains bodily injury in any one motor vehicle accident shall not exceed

- (a) \$100 per week for income loss when there is only one insured motor vehicle, or
- (b) \$100 per week for income loss, multiplied by the number of insured motor vehicles up to a maximum of 4, when the income loss incurred by the injured person exceeds the limit of liability for any one vehicle so insured

In no event shall the limit of liability exceed \$400 per week for any one injured person in any one accident. Income loss is computed from the first work day lost as a result of the accident up to the date the injured person is able to return to his usual occupation or the date of death of such injured person, whichever occurs first.

If other valid and collectible income loss insurance is applicable to an injured person, the benefits shall be paid according to the following order of priority:

- (a) the income loss insurance of the owner of the motor vehicle the injured person was occupying at the time of the accident;
- (b) the income loss insurance of the operator of the motor vehicle the injured person was occupying at the time of the accident;
- (c) the income loss insurance of the injured person.

However, in no event shall any injured person collect more than his actual income loss incurred as a result of an accident from this or any other motor vehicle insurance policy or combination of such policies providing income loss insurance applicable to such accident.

Any payments made by the company under this insurance shall be applied in reduction of the amount of damages which because of bodily injury sustained in the same accident, such injured person may be entitled to recover from the company under insurance afforded by this policy for bodily injury liability or protection against uninsured motorists.

#### CONDITIONS

The Conditions of the policy apply to Part II except as modified herein:

- 1. **Notice.** In the event of an accident, the company requires that written notice containing particulars sufficient to identify the injured person and also reasonably obtainable information respecting the time, place and circumstances of the accident shall be given by or on behalf of each injured person to the company or any of its authorized agents as soon as practicable. The failure or refusal of the injured person to give such notice shall not relieve the company of

its obligation to pay unless such failure or refusal prejudices the company in establishing the validity of any claim under this coverage. If any injured person or his legal representative shall institute legal action to recover damages for bodily injury against a person or organization who is or may be liable to in tort therefor, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded as soon as practicable to the company by such injured person or his legal representative.

- 2. **Action Against Company.** No action shall lie against the company unless as a condition precedent thereto, there shall have been full compliance with all the terms of this insurance.
- 3. **Medical Reports; Proof of Claim.** As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim under oath, if required, including full particulars of the nature and extent of the injuries and treatment received and contemplated and such other information as may assist the company in determining the amount due and payable. The injured person shall submit to physical examinations by physicians selected by the company at the expense of the company when and as often as the company may reasonably require.

The injured person, or in the event of his incapacity or death, his legal representative, shall upon each request from the company execute authorization to enable the company to obtain medical reports, copies of records and information with respect to loss of income. The company may require that the injured person, as condition for receiving income loss benefits, cooperate in furnishing the company reasonable medical proof of his inability to work.

- 4. **Policy Period; Territory.** This insurance applies only to accidents which occur during the policy period within the United States of America, its territories or possessions, or Canada.
- 5. **Subrogation.** In the event of any payment under Section II - Income Loss Benefits, the company shall be subrogated to all the injured person's rights of recovery therefor against any person or organization and the injured person shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The injured person shall do nothing after loss to prejudice such rights.

### PART III

- 1 The Comprehensive insuring agreement is amended to read as follows:

#### Coverage D (1) - Comprehensive (excluding Collision)

To pay for loss caused other than by collision to the owned automobile or to a non-owned automobile. For the purpose of this coverage, breakage of glass and loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, or colliding with a bird or animal, shall not be deemed to be loss caused by collision.

- 2 The preamble to the "Definitions" provisions is amended to read:

#### Definitions.

The definitions of "named insured," "relative," "temporary substitute automobile," "private passenger automobile," "farm automobile," "utility automobile," "automobile business," "war," and "owned automobile" in Part I apply to Part III, but "owned automobile" does not include, under Part III, (1) a trailer owned by the named insured on the effective date of this policy and not described herein, or (2) a trailer ownership of which is acquired during the policy period unless the company insures all private passenger, farm and utility automobiles and trailers owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such trailer.

- 3 The definition of "insured" is amended to read:

"insured" means

- (a) with respect to an owned automobile

- (1) the named insured, and
- (2) any person or organization (other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee for hire) maintaining, using or having custody of said automobile with the express or implied permission of the named insured and within the scope of such permission,

- (b) with respect to a non-owned automobile, the named insured and any relative while using such automobile, provided his actual operation or (if

he is not operating) the other actual use thereof, is with the express or implied permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission.

4. Exclusion (c) is amended to read.

This policy does not apply under Part III

- (c) to loss to a non-owned automobile arising out of its use by the insured while he is employed or otherwise engaged in the automobile business;

### CONDITIONS

1. The "Premium" Condition is amended to read:

#### Premium

If the named insured disposes of, acquires ownership of, or replaces a private passenger, farm or utility automobile or, with respect to Part III, a trailer, any premium adjustment necessary shall be made as of the date of such change in accordance with the manuals in use by the company. The named insured shall, upon request, furnish reasonable proof of the number of such automobiles or trailers and a description thereof.

2. The "Assistance and Cooperation" Condition is amended to read:

#### Assistance and Cooperation of the Insured

Parts I and II - The insured shall cooperate with the company and upon the company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury, property damage or loss with respect to which insurance is afforded under this policy, and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

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### AUTOMOBILE NAMED NON-OWNER COVERAGE

This coverage is subject to all the provisions of the policy with respect to individuals and coverages indicated in the declarations except as modified below.

#### A. DEFINITIONS:

When used in this endorsement:

**"owned automobile"** means a private passenger, farm or utility automobile, ownership of which is acquired by the named insured during the policy period, provided the named insured notifies the company within 30 days after the date of acquisition, but this insurance does not apply if other insurance applies to the named insured with respect to the newly acquired automobile.

#### B **PART I, LIABILITY**

The definition of "Persons Insured" as used in Part I, Liability, is replaced by the following

**"Persons Insured"** means

- (a) the named insured or any other individual named in the declarations for the maintenance or use of any automobile or trailer,
- (b) any other person using an owned automobile with the permission of the named insured provided his or her actual operation or (if he or she is not operating) the other actual use thereof is within the scope of such permission, and
- (c) for any automobile or trailer, other than the owned automobile, any person or organization but only with respect to legal responsibility for acts or omissions of the named insured or any individual listed in the declarations for whom coverage is afforded under this Part. This provision applies only if the person or organization does not own or hire the automobile or trailer

#### C **PART II, MEDICAL EXPENSE AND INCOME LOSS BENEFITS**

The definition of "injured person" is deleted and replaced by the following:

**"injured person"** means

- (a) the named insured or any other individual named in the declarations, while occupying or as a pedestrian when struck by a motor vehicle
- (b) any other person while occupying an insured motor vehicle.

#### D **PART IV, PROTECTION AGAINST UNINSURED MOTORISTS**

- 1 The definition of Insured as used in Part IV, Protection Against Uninsured Motorists, is replaced by the following

**"Insured"** means

- (a) the named insured or any other individual listed in the declarations,
- (b) any other person while occupying an insured automobile,

- (c) any person, with respect to damages he or she is entitled to recover because of bodily injury to which this coverage applies sustained by a person described in (a) or (b) above

- 2 The definition of "uninsured automobile" as used in Part IV, Protection Against Uninsured Motorists, is replaced by the following

**"uninsured automobile"** means a land motor vehicle or trailer of any type

- (a) to which there is no bodily injury liability bond or policy applicable at the time of the accident or to which there is, in at least the amounts specified by the financial responsibility law of the state in which the insured resides, no bodily injury 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 a bodily injury liability bond or insurance policy applicable at the time of the accident but the company writing the same denies coverage thereunder or is or becomes insolvent;
- (b) which is a hit-and-run vehicle whose owner or operator cannot be identified and which hits (1) the named insured or any other individual named in the declarations, (2) an automobile which the named insured or any other individual named in the declarations is occupying, or (3) the owned automobile.

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#### A979a (6-73) **OUT-OF-STATE INSURANCE ENDORSEMENT**

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It is agreed that, subject to all the provisions of the policy except where modified herein, the following provision is added

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 Company's liability and the 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.

**E053d (7-89) SUPPLEMENTARY UNINSURED  
MOTORISTS INSURANCE**

(Bodily Injury - Property Damage - Limits -  
Underinsured Motorists)

(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, subdivision (1) 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 the schedule of this endorsement or in the declarations, and subject to 2. below:
  - (a) the split limits so stated as applicable to bodily injury for "each person"/"each accident" and property damage for "each accident" 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 Company's liability for all damages because of bodily injury and property damage as the result of any one accident arising out of the ownership, maintenance or use of uninsured motor vehicles; or
  - (b) the single limit so stated as applicable to bodily injury and property damage for "each accident" shall apply in lieu of any limit 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 Company's liability for all damages as the result of any one accident arising out of the ownership, maintenance or use of uninsured motor vehicles, provided such limit of liability shall first provide the separate limits required by the Virginia Motor Vehicle Safety Responsibility Act as stated in the schedule of this endorsement or in the declarations
2. When used in reference to this insurance (including this and other endorsements forming a part of the policy).

A motor vehicle is "underinsured" when, and to the extent that, the total amount of bodily injury and property damage coverage applicable to the operation or use of the motor vehicle and "available for payment" for such bodily injury or property damage, including all bonds or deposits of money or securities made pursuant to Article 15 of Chapter 3 of Title 46.2 of the Code of Virginia (Section 46.2-435 et seq.), is less than the total amount of uninsured motorist coverage afforded any person injured as a result of the operation or use of such vehicle.

"Available for payment" means the amount of liability insurance coverage applicable to the claim of the injured person for bodily injury or property damage reduced by the payment of any other claims arising out of the same occurrence.

If an injured person is entitled to underinsured motorist coverage under more than one policy, the following order of priority of policies applies, and any amount available for payment shall be credited against such policies in the following order of priority:

1. The policy covering a motor vehicle occupied by the injured person at the time of the accident.
2. The policy covering a motor vehicle not involved in the accident under which the injured person is a named insured.
3. The policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.

Where there is more than one insurer providing coverage under one of the payment priorities set forth, their liability shall be proportioned as to their respective underinsured motorist coverages.

3. The Company 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
4. Exclusion (a) in the Uninsured Motorists Insurance

endorsement does not apply to the underinsured motorists coverage afforded by this endorsement

- 5 The second paragraph of the Other Insurance Condition in the Uninsured Motorists Insurance endorsement does not apply to the underinsured motorists coverage afforded by this endorsement

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

A939a (7-91) **RENTAL REIMBURSEMENT - OWNED PRIVATE PASSENGER AUTOMOBILES ONLY**

It is agreed that the company will provide the named insured, in the event of loss to a private passenger automobile which is designated in the declarations as subject to this endorsement, a substitute automobile, subject to the following provisions

- 1 Such provision shall be made
  - (a) only if, with respect to the loss necessitating such rental
    - (i) it is caused by a covered loss and
    - (ii) such owned automobile is continuously withdrawn from normal use for a period in excess of 24 hours.
  - (b) for the period commencing with the first of the number of days for which such rental is incurred and terminating, regardless of the expiration of the policy period, at the end of the number of days which would, with the exercise of due diligence and dispatch, be required to repair or replace such owned automobile. Coverage is limited to
    - (i) 30 days maximum if coverages D and E have been purchased for the owned automobile or
    - (ii) 15 days maximum if coverages D and E have not been purchased for the owned automobile
  - (c) in addition to the limit of liability otherwise applicable under such insurance as is afforded by the policy with respect to loss to such owned automobile, and shall not be subject to the application of any deductible thereunder.
- 2 In the event of loss to which the insurance under this endorsement applies, the named insured shall give notice thereof as soon as practicable to the company or any of its authorized agents
- 3 In the event of loss to a provided rental vehicle, coverage is subject to the following provisions

- (a) damages which the insured is legally obligated to pay subject to the deductibles listed in the declarations if coverages D and E have been purchased
- (b) damages which the insured is legally obligated to pay subject to a \$250 deductible if coverages D and E have not been purchased

NAUA 206 (3-63) **COMPREHENSIVE COVERAGE — DEDUCTIBLE — FAMILY**

It is agreed that under the Comprehensive Coverage, the deductible amount stated in the declaration shall be deducted from the amount of each loss as to each automobile, other than loss by (a) fire or lightning, (b) smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises in which the automobile is located, or (c) the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.

If the policy affords insurance with respect to the Collision Coverage, breakage of glass caused by collision may, if the insured so elects, be treated as covered thereunder, subject to the terms thereof, instead of under the Comprehensive Coverage

PPA940 (2-90) **LOSS OF USE — RENTAL FEE REIMBURSEMENT**

Part III — Physical Damage is amended to include:

If the automobile insured is of the private passenger or utility type, and Coverages D and E are applicable thereto, and such coverages extend to a private passenger or utility type automobile the insured rents from a licensed rental car agency, in the event of a loss or damage to such rental automobile under either of said coverages, the Company will reimburse the insured the daily or weekly rental fee which would have been paid had such rental automobile not been damaged subject to the following conditions:

- 1 The insured must be liable by contract to continue payment of such rental fee as a result of a covered loss that would prevent the rental of such automobile to others by the licensed rental car agency.
- 2 The period for which the Company shall be liable shall commence on the day following the date of the accident which resulted in such rental automobile being unavailable for use, provided the insured shall have reported as soon as practicable the loss or damage to the Company, and shall cease, regardless of the expiration of the policy:



- a on the day the repairs are completed, or
- b the day the Company makes payment for replacement of the rental automobile, or
- c thirty (30) days after the date this coverage period begins.

whichever comes first, provided, however, coverage shall be limited to the length of time required with the exercise of due diligence and dispatch to repair or replace such rental automobile

The insured shall submit the proper receipts to the Company for expenses claimed under this agreement.

All other terms and conditions of the policy apply.

*progressive companies*

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**VIRGINIA MOTORCYCLE/  
MOTOR HOME  
ATTACHMENTS ONLY**

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IF THE VEHICLE ON YOUR DECLARATIONS PAGE IS A MOTORCYCLE OR MOTOR HOME, THE FOLLOWING ENDORSEMENTS MAY APPLY. PLEASE REFER TO YOUR DECLARATIONS PAGE FOR APPLICABLE ATTACHMENTS.

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### EEA (7-89) EMERGENCY EXPENSE ALLOWANCE

The Company agrees with the named insured, subject to the provisions of this endorsement and to all the provisions of the policy except as modified herein, as follows:

If an insured

- (1) Has a covered loss of or damage to the insured motor home; and
- (2) The insured motor home is more than fifty (50) miles from its usual storage place; and
- (3) The loss makes the insured motor home inoperable;

the Company will pay for any of an insured's expenses for:

1. Reasonable temporary living facilities;
2. Transportation back to the insured's residence; and
3. The cost of returning the insured motor home, repaired or not, to its usual storage place, if the Company has not declared it a total loss.

But, for any loss,

1. The payment will not be more than the per day Limit of Liability or the maximum aggregate Limit of Liability shown in the Declarations;
2. The insured must give the Company all receipts that apply; and
3. If there is a theft of the insured motor home, the Company will pay only for expenses incurred from 48 hours after the theft until the earlier of:
  - a. When the insured motor home is returned to its usual storage place;

- b. Thirty (30) days after the theft; or
- c. When the Limit of Liability shown in the Declarations has been paid.

#### Definitions

In this section, the term "insured" is defined as the named insured and, while resident of the same household, the spouse of the named insured.

All other definitions in the policy remain unchanged.

### E140f (6-80) MISCELLANEOUS TYPE VEHICLE ENDORSEMENT

This coverage is subject to all the provisions of the policy with respect to the miscellaneous type vehicles and coverages described in the Declarations or in the Schedule except as modified as follows:

#### A. Definitions

For the purpose of the coverage provided by this endorsement:

The reference to Declarations in the Limit of Liability provisions with respect to a miscellaneous type vehicle includes Schedule.

"Miscellaneous type vehicle" means:

- (a) a motorcycle, motor home, golf cart or other similar type vehicle.
- (b) a private passenger automobile owned jointly by two or more resident relatives other than husband and wife.

"Owned automobile" means:

- (a) any miscellaneous type vehicle described in the Declarations or in the Schedule for which a specific premium charge either in the Declarations or in the Schedule indicates that coverage is afforded.
- (b) any miscellaneous type vehicle of the same type described in the Declarations or in the Schedule or a private passenger, farm or utility automobile, ownership of which is acquired by the named insured during the policy period, provided:
  - (1) it replaces an owned automobile as defined in (a) above, or
  - (2) the Company insures all miscellaneous type vehicles, private passenger, farm or utility automobiles owned by the named

insured on the date of such acquisition and the named insured notifies the Company within 30 days after the date of such acquisition of his or her election to make this and no other policy issued by the Company applicable to such automobile or vehicle.

(c) any trailer.

(d) any miscellaneous type vehicle or automobile while temporarily used with the permission of the owner as a substitute for the owned automobile or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction.

#### B. Part I—Liability

1. For purposes of this endorsement, references to the term "non-owned automobile" in Part I—Liability are deleted.

2. The provision entitled "Persons Insured" as used in Part I—Liability is replaced by the following:

##### "Persons Insured"

The following are insureds under Part I:

(a) the named insured,

(b) any other person using the owned automobile with the permission of the named insured, provided his or her actual operation or (if he or she is not operating) his or her other actual use thereof is within the scope of such permission, and

(c) any other person or organization but only with respect to his, her or its liability because of acts or omissions of an insured under (a) or (b) above.

#### 3. Exclusions

a. Exclusion (k) under Part I—Liability is newly added:

(k) to the ownership, maintenance or use of a motorized vehicle having less than 4 wheels other than a motorized vehicle having less than 4 wheels which is insured for Liability Coverage under this endorsement.

b. The following exclusion applies to any vehicle for which the Schedule or Declara-

tions indicates that the passenger hazard is excluded.

(l) to bodily injury sustained by any person while occupying the described miscellaneous type vehicle.

#### C. Part II—Expenses for Medical Services

1. Paragraph (b) under Division 2, Expenses for Medical Services is deleted.

#### 2. Exclusions

Exclusion (f) under Part II—Expenses for Medical Services is newly added:

(f) sustained while occupying a motorized vehicle having less than 4 wheels other than a motorized vehicle having less than 4 wheels which is insured for Expenses for Medical Services Coverage under this endorsement.

#### D. Part III—Physical Damage

For the purposes of this endorsement, references to the term "non-owned automobile" in Part III—Physical Damage are deleted and the definition of "owned automobile" is replaced by the following:

"owned automobile" means:

(a) any miscellaneous type vehicle or trailer described in the Declarations or in the Schedule for which a specific premium charge either in the Declarations or in the Schedule indicates that coverage is afforded.

(b) any miscellaneous type vehicle of the same type described in the Declarations or in the Schedule, a trailer, or a private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided:

(1) it replaces an owned automobile as defined in (a) above, or the Company insures all miscellaneous type vehicles, trailers, private passenger, farm or utility automobiles owned by the named insured on the date of such acquisition, and

(2) the named insured notifies the Company within 30 days after the date of such acquisition of his or her election to make this and no other policy issued by the Company applicable to such automobile, vehicle or trailer.

RECEIVED

V I R G I N I A:

JAN 26 1994

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

LEWIS, TRICHILO, BANCROFT,  
McGAVIN & HORVATH P.C.

PROGRESSIVE CASUALTY INSURANCE  
COMPANY,

Plaintiff ,

v.

AT LAW NO. 125443

MARCUS F. ARBAN, SR.,  
Administrator of the Estate of  
Marcus Francis Arban, Jr., Deceased  
et al.,

Defendant.

PLAINTIFF'S ANSWERS TO PROGRESSIVE CASUALTY  
INSURANCE COMPANY'S INTERROGATORIES

COMES NOW the Plaintiff, DARRYL F. LaCLAIR, in response to  
Interrogatories served by the Defendant, Marcus F. Arban, Sr.,  
and states as follows:

(a) The information supplied in the Answers is not based  
solely on the knowledge of the executing party, but includes  
knowledge of the party, agents, representatives and attorneys,  
unless privileged.

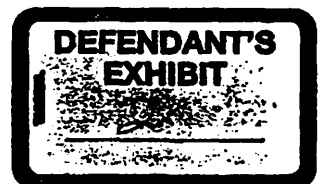
(b) The word usage and sentence structure may be that of  
the attorney assisting in the preparation of these Answers and,  
thus, does not necessarily purport to be the precise language of  
the executing party.

(c) Answers to Interrogatories are attached hereto. The  
executing party hereby states and affirms that the attached  
Answers are true and accurate to the best of the knowledge and  
belief of the executing party.

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(d) Objection is hereby made to any definitions and instructions contained in the subject Interrogatories, to the extent that said definitions and instructions exceed the scope and limits of the Rules of the Supreme Court of Virginia.

INTERROGATORIES

1. Identify all persons having knowledge of the facts or allegations referred to in the underlying Motion for Judgment filed by you in the Circuit Court of Arlington County, Law No. 92-1397, or referred to in the pleadings file in this case, and any eyewitnesses to the underlying occurrence. Please identify what knowledge or facts and allegations you understand these persons to have.

ANSWER: Attached please find copies of the investigative records of the Arlington County Police Department and Prince William County Police Department. They are not complete as the records for the internal investigation continue to be withheld based on an amended privilege. Records from the Office of the Sheriff for Arlington County are also attached.

Witnesses that are identified in these documents are as follows:

I. Arlington Sheriff's Office

Thomas N. Faust, Sheriff  
Elizabeth F. Arthur, Director of Administration  
Investigator C.M. Weishuhn  
Lt. Black

II. County of Arlington

Office Gigi Moore--investigating officer  
Chris Bryson--witness  
Sean Hager--witness  
Officer A.J. Baciow--police agent  
Officer R.J. Paquin  
Detective Steven R. Carter  
Detective Shelton  
Lt. Ken Madden  
Detective Horgas

Detective Hanrahan  
Lt. Tom Panther  
James Collins--witness  
Colin Faberry--witness  
Gladys Thomas-Strother--workers' compensation  
specialist  
Irwin Marzin--Arlington Retirement Board

III. County of Prince William

Chief Charles Deane

2. Please state in detail how the incident of November 21, 1990 occurred, including but not limited to, description of all actions taken on your part, all actions taken on part of the deceased, Marcus F. Arban, Jr., description of each and every act or omission by the deceased which you contend contributed to or caused the incident complained of.

**ANSWER:** At approximately 11:50 p.m. on November 21, 1990, I was in my marked police vehicle travelling westbound on Lee Highway in the County of Arlington. I observed a vehicle traveling in front of me in the same lane. As I observed this vehicle, it appeared to me that the driver was not paying full attention to the road. The vehicle would wander in the lane and jerk back to straighten out. The vehicle then slowed down and my vehicle got closer to his. As my vehicle got closer he moved over into the left lane and slowed down. As my vehicle got alongside his vehicle, he sped up and moved in front of me in the right lane.

At this time, I thought the driver needed directions or something and he was pulling over in front of me so the two lanes would not be blocked by our vehicles. After stopping my vehicle behind his, I positioned my vehicle so as to protect myself and the other driver while I conducted a traffic stop. I activated my emergency equipment and shined my spotlight into the rear window of the subject vehicle. I then exited my vehicle and began to approach the subject's vehicle. As I reached the front tire of my vehicle, I saw the subject's door begin to open. I informed the subject to remain in his vehicle. The subject continued to open his door and I again advised the subject to remain in his vehicle.

As I neared the rear bumper of the subject's vehicle, I saw his hand come up between the door and the door frame of his vehicle and immediately felt a pounding sensation in my left

elbow. At that time I turned my head to look at my elbow and a second shot was fired by the subject which struck me in my right eye.

Not being able to see and not sure if the subject was going to exit his vehicle and continue to shoot at me, I threw myself between the rear bumper of his vehicle and the front bumper of my cruiser in order to take advantage of the cover both vehicles afforded me. I landed on my back with my revolver in my hand. I was uncertain if the subject had exited his vehicle. I forced my left eye open and saw the subject's vehicle pulling away. I fired five shots into the back the subject's vehicle. I then radioed for assistance .

3. Identify each person whom you expect to call as an expert witness at the trial of this case and for each person state the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; and a summary of the grounds of each opinion.

**ANSWER:** As to this Motion for Declaratory Judgment, no expert witnesses will be called.

4. Name all persons who were at or near the scene of the accident or incident complained of on November 21, 1990 or who arrived at the scene within one hour after the occurrence, specifying which persons were at or near the scene, the location of such persons at the time of the incident and whether any of the said individuals were eyewitnesses.

**ANSWER:** James Collins  
4729 N. 16th Street  
Arlington, VA

Colin Fabeny  
5020 N. 23rd Street  
Arlington, VA

Chris Bryson

ARLINGTON COUNTY, VIRGINIA  
INTER-DEPARTMENTAL MEMORANDUM

DATE: November 30, 1990

TO: T. N. Faust, Sheriff

FROM: Investigator C.M. Weishuhn #051 *0005* *0005*

SUBJECT: Attempted Capital Murder Captain Darryl LaClair #138

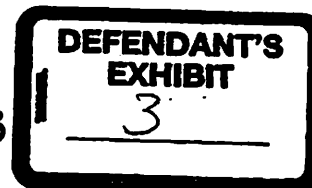
On November 22, 1990 at approximately *0005* ~~1205~~ hours I was contacted by Lt. Black to respond to Arlington Hospital. He stated Capt. D. LaClair #138 had been shot. Lt. Black had no further details. I arrived at Arlington Hospital at approximately 1215 hours. Captain LaClair had been shot twice. Once in the left elbow and once over the right eye. Although his injuries did not appear to be life threatening, he was seriously injured and visibly shaken. Therefore, I felt it would be inappropriate to attempt to interview him at that time.

The Arlington County Police Robbery/Homicide unit responded to Arlington Hospital at approximately 0100 hours. They obtained all the information needed from Captain LaClair for an arrest warrant and a search warrant. The Arlington County Police Robbery/Homicide unit handled all criminal aspects of the shooting.

On Saturday November 24, 1990 I went to Captain LaClairs home to interview him in reference to the shooting. Captain LaClair told me that at approximately 1150 hours on November 21, 1990 he was driving in the right lane west bound on Lee Highway. He noticed a car traveling in front of him, also in the right lane. It appeared the driver was not paying complete attention to the road. The car would move to one side or another then jerk back. Captain LaClair thought possibly the driver was looking at a map or attempting to read directions. This would be consistent with the jerking movement of the vehicle. At some point in time Captain La Clair believes the driver looked up and saw the marked cruiser in his rearview mirror. The driver then started to slow down Capt. LaClair also slowed down. The driver then moved to the left lane. Capt. LaClair still in the right lane started to pull alongside of the vehicle. He was under the assumption the driver needed assistance. Before he could get alongside the car the driver sped up and pulled back into the right lane in front of Capt. LaClair. The driver then came to a complete stop. Capt. LaClair stopped behind the vehicle still believing the driver needed assistance. At this time Capt. LaClair activated his emergency lights and turned on his spot light. He exited the Sheriff's vehicle and started to approach the other vehicle. He noticed the drivers door start to open. Capt. LaClair instructed the occupant of the vehicle to stay in the car. The door continued opening and Capt. LaClair repeated for the occupant to stay in the car. At this point Capt. LaClair was located somewhere towards the rear quarter panel of the other car. It was at this point Capt LaClair saw the occupants hand come up between the door and the frame of the car. Capt. LaClair did not see a gun. The occupant immediately started shooting at Capt. LaClair. The first shot struck him in the left elbow. Capt. LaClair then

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turned his head to the left to look at his elbow. A second shot was fired striking him above the right eyebrow. Because his head was turned the trajectory of the second bullet appeared to start on the right side of his head halfway down his eye. Then traveled across the eyelid penetrating the left side of his eyebrow and exiting.

After being struck the second time Capt. LaClair temporarily lost his sight. He was not sure if the occupant of the vehicle was advancing towards him. Capt. LaClair immediately sought cover by throwing himself on his back between the back bumper of the suspects car and the front bumper of the Sheriffs vehicle. Capt. LaClair is not sure exactly when he brought out his weapon. He does know it was in his hand by the time he landed on his back. Capt. LaClair then regained vision out of his left eye. He could see the suspect pulling off. He emptied his service revolver firing five shots at the suspects car in an attempt to stop the suspect. The suspect continued westbound on Lee Highway. Capt. LaClair then maintaining cover went around the Sheriff's vehicle on the passengers side, then back up the drivers side to call for help. Captain LaClair contacted Arlington E.C.C. on the police primary channel to report a 10-13, officer shot. Arlington Police, Falls Church Police, and Rescue responded to the scene.

It was later confirmed the incident took place at approximately the 6400 block of Lee Highway in Arlington, Va.

Incident or Offense Attempted Capital Murder Case Number 901121301

Victim Captain Darryl LaClair Address Arl. Co. Sheriff's Office

Additional details of incident and progress of investigation:

At approximately 0010 hours, November 22, 1990, I was called at home by Deputy Chief Boring and informed that Captain LaClair of the Sheriff's Department had been shot in the face by a motorist at Lee Highway and Sycamore Street. Further, the decision had been made that this would be handled as a police shooting and my services were needed. I was also told that LaClair had already been transported to Arlington Hospital and was still alive.

At 0036 hours, 11-22-90, I arrived at the scene and was met by Lt. Madden and Chief Stover. In Sgt. Gabrielson's absence (he was out of town on leave) Madden and Detective Joe Horgas would assist me in the investigation.

The crime scene had been protected and LaClair's marked Sheriff's car was still parked in the curb lane westbound. The driver's door was open and the spotlight and emergency lights were on. The radio microphone was laying on the floorboard and blood could be seen on the pavement and inside the car.

Broken automobile glass could be seen laying on the street approximately 15 feet in front of the Sheriff's car (which had all of its glass intact).

At this time I was informed that passersby had seen a shootout between LaClair and a suspect and that the suspect's tag number was obtained. Further, I was told the tag was listed to a Mark Arban in Dale City, Virginia and that the Prince William County Police had located the vehicle at the listed address. As of that time, PW CO. had not been able to determine if the suspect vehicle bore any bullet holes.

Summarize and Code Property Stolen/Recovered and NOT Previously Reported.

S/R CODES: 1. Stolen Local 2. Stolen Local/Recover Local  
 3. Stolen Local/Recover Elsewhere  
 4. Stolen Elsewhere/Recover Local

S/R CODES		STOLEN		RECOVERED	
		#	\$ Value	#	\$ Value
	(A) Currency, Notes, Etc.				
	(B) Jewelry & Precious Metals				
	(C) Clothing & Furs				
	(D) Locally Stolen Motor Vehicles				
	(E) Office Equipment				
	(F) T.V., Radios, Cameras, Etc.				
	(G) Firearms				
	(H) Household Goods				
	(I) Consumable Goods				
	(J) Livestock				
	(K) Miscellaneous				
TOTALS					

CASE STATUS (Must be indicated for All Cases)

☐ 2. Open/Pending ☐ 3. Suspended ☒ 4. Closed

Case Disposition (To be indicated for Criminal Cases as appropriate)

- ☐ 1. Unfounded  
☐ 2. Cleared by Arrest - Adult  
☐ 3. Cleared by Arrest - Juvenile  
☒ 4. Cleared Exceptionally - Adult  
☐ 5. Cleared Exceptionally - Juvenile

Signature of Investigator

*St. T.M. Pante* #514

Admin. No.

514

Suppl. No.

1

Date Written

1-9-91

Signature of Supervisor

*St. T.M. Pante* #514

Date Reviewed

1-9-91 3894

**DEFENDANT'S  
 EXHIBIT**

Arlington County, Virginia  
POLICE DEPARTMENT  
ARLINGTON, VIRGINIA

Supplementary Incident Report

Incident or Offense Attempted Capital Murder

Case Number 901121301

Victim Captain Darryl LaClair

Address Arl. Co. Sheriff's Office

Additional details of incident and progress of investigation:

Page Two

I left the scene and drove to Arlington Hospital where I observed LaClair sitting upright and conscious being tended to by a doctor in the emergency room. LaClair had an obvious wound to his left elbow and another one over his right eye. LaClair was lucid and was able to respond to questions from the doctor.

At this point it was decided that a search warrant would be obtained for the suspect's home in PW CO and Lt. Madden and Det. Horgas would coordinate that at the ACPD. Chief Stover, myself and Det. Hanrahan would go to PW CO to assist them in their portion of this investigation.

At approximately 0200 the three of us arrived at the Contel building on Dale Blvd. near the suspect's home. We were met there by Lt. Jim Weakland of the PW CO PD Major Crimes Division. I briefed Weakland on the Arlington incident and our intent to present them with a search warrant for the suspect's car and house located at 14764 Dodson Drive, Dale City, Va. The suspect vehicle was a yellow or gold colored Buick with Va. tags QIT-304, which was listed to Mark Arban at that address. Weakland indicated that their SWAT Team was being activated to serve any papers we might obtain in this case.

At this time, no one had yet been able to get close enough to the suspect vehicle to see if it bore any damage that might have been inflicted by LaClair. PW CO authorities then discussed techniques on checking on the car safely.

Shortly thereafter, the decision was made that all of us could move over to the local firehouse to await the search warrant. After our arrival at the firehouse we were informed that a PW Co officer had been able to sneak up to the suspect car and determine that the right side of the rear window and the right rear side vent window on the car were broken out and appeared to have been shot out. I relayed this information to Lt. Madden in Arlington for inclusion in the search warrant affidavit.

At that point we waited for the search warrant affidavit to be brought to a PW CO magistrate for obtaining a search warrant. When Lt. Madden advised me that he, Horgas and Media Officer Bell were leaving the ACPD I informed Weakland. At this time, Chief Stover, myself, Hanrahan, Weakland and other PW CO personnel left the firehouse to return to the Contel building where PW Co's SWAT Team had staged. We arrived at Contel at approximately 0500 on 11-22 and the SWAT Team was inside "gearing up". Lt Weakland introduced me to the team and I gave them a briefing on what had happened in LaClair's incident. I told the team that we believed the suspect had used a .25 cal. automatic as we had found shell casings of that caliber laying on Lee Highway.

Signature of Investigator

*St. T. R. Pamm* #514

Admin. No. 514

Suppl. No.

1

Date Written

1-9-91

Signature of Supervisor

Date Reviewed

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Victim Captain Darryl LaClair Address Arl. CO. Sheriff's Office

Additional details of incident and progress of investigation:

Page Three

After my briefing, the PW CO SWAT Team continued their planning for the search warrant execution. They announced to us they were going to knock and enter the house to serve the warrant.

Once Horgas and Madden arrived with the Prince William search warrant the SWAT Team and everyone else moved out at approximately 0600 for the suspect's house.

After gaining entry to the suspect's home, the PW CO SWAT Team was engaged in a gun battle with a lone white male. During that encounter the white male shot and killed Officer Pennington of the PW CO SWAT Team. Subsequently, a PW CO SWAT sniper shot and killed the white male who was identified as Mark Francis Arban of that residence. A subsequent search of the home produced a .25 cal. automatic pistol. No one else was present in the house upon the PW CO arrival.

On November 26, 1990, Captain LaClair was shown two photographs of Mark Francis Arban by Det. Horgas and myself. Without any doubt or equivocation, LaClair positively identified Mark Francis Arban as the person who had shot him. Further, LaClair indicated that he had seen news footage shot at the suspect's home and he was able to positively identify the vehicle shown on the news as the same one that the suspect had been in when he shot LaClair.

This investigation has not produced any information or evidence that anyone else was involved with Arban in any of the violence he perpetrated against either law enforcement officer. Therefore, based on the positive identification by Captain LaClair of Mark Francis Arban this case is CLOSED - CLEARED EXCEPTIONALLY - with the death of the suspect - Mark Francis Arban.

Signature of Investigator

*G. T. M. Patten #514*

Admin. No. 514

Suppl. No. 1

Date Written 1-9-91

Signature of Supervisor


Date Reviewed

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## ADDITIONAL INFORMATION

FRONT

page 1 of 2 pages

Incident or Offense <b>Attempt Cap. Murder</b>	REPORT NUMBER 	Year <b>90</b>	Month <b>11</b>	Day <b>21</b>	Number <b>301</b>
Victim or complaint <b>Daryl Laclair</b>					

If this is additional information to a previously submitted report, include date, time and how information was received (telephone, letter, in person, etc.).

November 22, 1990

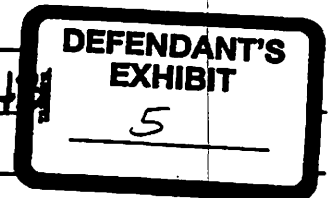
Upon arrival at the Arlington Hospital I met with Detective Shelton at 0100hrs. Capt. Laclair had been shot at Lee Hwy. and N. Sycamore St. We met with Lt. Madden, Det. Horgas, Det. Hanranan and Lt. Panther. Detective Shelton and I were assigned to interview the four persons that saw the incident, the subjects were taken to the police station.

0200hrs- A taped interview was done with;  
COLLINS, James J. W/M Goes by Jerry 1/29/71  
4729 N. 16th St.

Arl. Va. 522-9038 School #764-5153

James Collins was with three other males on Lee Highway westbound towards North Sycamore St. They were going back to Jerry's dorm room at "George Mason University". As they turned on Lee Highway from N. Potomac St they saw the police car with its emergency lights on pulling to the right behind a car. They went into the left lane and slowed down to pass and saw the officer get out of the car. The driver of the other car was still in the car. Jerry saw the officer walk towards the car and then the driver opened his door and squat down. Jerry did not see any shots but he heard them. He heard three or four "pops"; they got down in the car and stopped at the light at N. Sycamore St. Jerry then heard four more "pops". They started forward and the car went by them and they all got the tag number. The car went into the left lane, passed another car. They turned around and went back.

71#5  
3894  
L12544  
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(USE THIS SIDE FIRST)

236


RECEIVED 11/23/90

Date <b>11/23/90</b>	Reporting Officer(Print) <b>Det. Carter</b>	Signature <i>SR Carter</i>	Admin. No. <b>325</b>
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## ADDITIONAL INFORMATION

FRONT

page 2 of 2 pages

Incident or Offense Attempt Cap. Murder	REPORT NUMBER 	Year 90	Month 11	Day 21	Number 301
Victim or complaint Daryl Laclair					

If this is additional information to a previously submitted report, include date, time and how information was received (telephone, letter, in person, etc.).

Jerry describes the car and subject as;

W/M med. build, dark brown or black hair, no facial hair, 5'9" to 5'10"  
150lbs. He had on a brown jacket and blue jeans and no hat. He thinks  
he can identify. The car was a dark color American made car a possible  
Buick sedan. Virginia tags QIT-304.

0216hrs. An interview was started with;

Colin Fabeny W/M

6020 N.23rd St.

Arl. Va. 538-4641 School 232-6165

A taped statement was taken at 0218hrs. Colin stated that they  
left a friends house around 11:45pm. They pulled onto Lee Highway  
towards Falls Church. They saw the police car and pulled into the left  
lane and passed them. As they passed he heard several shots, he counted  
six, he looked back and saw the officer go in front of his car. They  
came up to the light and the car went by them.

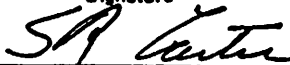
The vehicle was an American made car, he thinks a Buick, dark color  
with Va. Tags QIT-304. The subject was a W/M with glasses, dark hair and  
clothing, late 20's early 30's, 5'6" 150lbs.

Colin stated that he saw the subject by the open door bent over, the  
shots he heard were in two groups, three shots slight pause then three  
more.

RECORDED 6-26

SEE THE TAPE OR TRANSCRIPT FOR FULL DETAILS.

237

Date 11/23/90	Reporting Officer(Print) Det. Carter	Signature 	Admin. No. 325
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COMMONWEALTH OF VIRGINIA:

IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE COUNTY  
OF PRINCE WILLIAM, FEBRUARY 9, 1994.

TO WHOM IT MAY CONCERN:

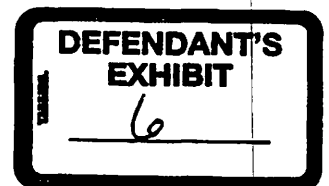
This is to certify that on December 5, 1990, Marcus F. Arban, Sr. and Joan M. Arban were by the Clerk of the Circuit Court of Prince William County, Virginia, appointed Co-Administrators of the personal estate of Marcus F. Arban, Jr., deceased, and they qualified as such Co-Administrators by entering into bond, in the penalty of Two Hundred Twenty Thousand Dollars (\$220,000.00), with Section 64.1-121, 1950 Code of Virginia, as amended, as their surety, and by taking the oaths of office prescribed by law and that no order has been entered revoking or annulling said qualification and that the said Marcus F. Arban, Sr. and Joan M. Arban are still the duly appointed and qualified Co-Administrators of the said Marcus F. Arban, Jr., deceased.

David C. Mabie, Clerk

By *Mary E. I. I. I. I.*  
Deputy Clerk

238

71#6  
3.894  
4125443  
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## CERTIFIED MAIL RETURN RECEIPT REQUESTED

June 4, 1993

Estate of Marcus F. Arban, Jr.  
14764 Dodson Drive  
Woodbridge, Virginia 22192

RE: Our Insured: Marcus F. Arban, Jr.  
Claim Number: 930932621  
Date of Loss: November 21, 1990  
Claimant: Daryl F. Laclair

To Whom It May Concern:

Please be advised that we are investigating the above-captioned accident loss which was reported to the Progressive Insurance claims office.

Our records do not reflect that this loss was previously reported. Under the terms of your policy in the Notice section, "In the event of an accident, occurrence, or loss, notice must be given to Progressive as soon as practicable." Failure to report this claim after the date of loss appears to be a violation of the Notice provision of this policy.

Please also be advised there is a potential coverage problem in regard to this loss. It does appear that this loss will be in violation of the policy exclusion in reference to intentional acts. Additionally, it does not appear that this loss arised as a result of an accident. It also does not appear that this loss resulted from the operation, maintenance, or use of an insured vehicle.

Handling of this claim is being conducted under a Reservation of Rights. No action taken to date, nor any action we take in the future, to investigate, explore settlement, or defend a lawsuit arising out of the above-captioned claim should be deemed an admission of coverage under Policy Number 04878499-0 issued by this company.



Estate of Marcus F. Arban, Jr.  
June 4, 1993  
page 2

Progressive Insurance expressly reserves all rights of denial under the policy and in no way waives any of your rights. The investigation of this matter has been, and is being, conducted with full and complete reservation of all rights afforded us under policy of insurance issued to Marcus F. Arban, Jr.

Please contact this office at your earliest possible convenience so that we may discuss this matter in more detail.

PROGRESSIVE CASUALTY INSURANCE COMPANY

Eric G. Francis  
Senior Claims Representative  
by Jennifer M. Harris

cc: Cohen, Dunn, & Sinclair  
ATTN: Michael J. Kernback  
221 S. Alfred Street  
P.O. Box 117  
Alexandria, Virginia 22313-0117

John F. Mardula  
Attorney at Law  
2010 Corporate Ridge  
Suite 460  
McLean, Virginia 22102-7804

V I R G I N I A:

IN THE CIRCUIT COURT FOR ARLINGTON COUNTY

DARYL F. LACLAIR,  
9510 Salem Street  
Manassas, VA 22110

Plaintiff,

v.

MARCUS F. ARBAN, SR.,  
Administrator of the Estate of  
Marcus Francis Arban, Jr., Deceased

SERVE: John F. Mardula, Esq.  
Suite 460  
2010 Corporate Ridge  
McLean, VA 22102-7804

and

SERVE: The Travelers Insurance Company  
Brandon C. Martin, Esq.  
Registered Agent  
300 Arboretum Place  
Richmond, VA 23261

and

SERVE: County of Arlington  
William T. Newman, Jr.  
Chairman, Arlington Board of  
Supervisors  
2100 Clarendon Blvd.  
Suite 300  
Arlington, VA 22201

and

SERVE: County of Arlington  
Charles G. Flinn  
County Attorney  
2100 Clarendon Blvd.  
Suite 403  
Arlington, VA 22201

Defendant.

AT LAW NUM:

92-1397

**RECEIVED**

NOV 12 1993

DAVID A. BELL, CLERK  
Arlington County Circuit Court  
By BK Deputy Clerk

JONEL MCKENNEY,  
ION & DEPAOLIS, P.C.  
SUITE 400  
W. BROAD STREET  
E CHURCH, VA 22046

(703) 287-8900

PL DEF EX #8  
DATE 3-8-94  
JUDGE AF  
425443

MOTION FOR JUDGMENT

COMES NOW the plaintiff, Daryl F. LaClair, and respectfully moves for judgment against the above-named defendant, Marcus F. Arban, Sr., Administrator of the Estate of Marcus Francis Arban, Jr., deceased, on the grounds and in the amount hereinafter set forth:

1. At all times material hereto, the plaintiff Daryl F. LaClair, was employed as a deputy sheriff with the Arlington County Sheriff's Department and was performing his duties and responsibilities in accordance with and duly authorized by the Commonwealth of Virginia and Arlington County.

2. At all times material hereto, the defendant's decedent, Marcus Francis Arban, Jr., (hereinafter Arban) was a resident of the Commonwealth of Virginia.

3. On or about Wednesday, November 21, 1990, at approximately 11:55 p.m. the plaintiff was on-duty as a deputy sheriff operating a marked sheriff's vehicle westbound on Lee Highway (Route 29) in the area of Sycamore Street in the County of Arlington.

4. At the same time and directly in front of the plaintiff, defendant Arban was operating a motor vehicle in an erratic or suspicious manner.

5. When the plaintiff drove to the area just to the rear of the vehicle operated by defendant Arban, he switched to the left lane and slowed until the plaintiff's vehicle was parallel with his vehicle.

6. Defendant Arban suddenly accelerated and drove to the right lane just in front of the plaintiff where he slowed and stopped his vehicle in the roadway just east of Sycamore Street.

7. The plaintiff drove to the area just to the rear of the vehicle defendant Arban was operating where he stopped his sheriff's vehicle to properly protect and mark the scene and, thereafter, activated his emergency equipment.

8. When the plaintiff exited his sheriff's vehicle and began to walk to the driver's side of the vehicle defendant Arban was occupying, the defendant opened the vehicle driver's side door and leaned out where he, suddenly and without warning and without just cause or provocation, assaulted and battered or otherwise injured the plaintiff by discharging a firearm at him causing a very serious and disabling injury.

#### COUNT I

(Assault and Battery of Defendant Marcus F. Arban, Jr.)

The plaintiff incorporates by reference each and every allegation set forth in paragraphs 1 through 8, inclusive, in the same force and effect as though they were fully and specifically set forth in detail, and further alleges as follows:

9. At the time and place aforesaid, it was the duty of the defendant, Marcus F. Arban, Jr., to refrain from assaulting and battering the plaintiff during the lawful performance of his official duties.

10. Notwithstanding said duties, the defendant, Marcus F. Arban, Jr., did then and there intentionally, deliberately, and

maliciously attack and cause bodily injury to a law enforcement officer during the lawful performance of his official duties.

11. As a direct and proximate result of defendant Arban's attack upon the plaintiff, the plaintiff was caused to suffer serious injuries to his body and was caused to suffer great pain and mental anguish.

12. As a further direct and proximate result of the defendant's attack upon the plaintiff, the plaintiff has incurred hospital and physician bills and has suffered a loss of earnings.

#### COUNT II

(Negligence of Defendant Marcus F. Arban, Jr.)

The plaintiff incorporates by reference each and every allegation set forth in paragraphs 1 through 12, inclusive, in the same force and effect as though they were fully and specifically set forth in detail, and further alleges as follows:

13. At the time and place aforesaid, it was the duty of the defendant, Marcus F. Arban, Jr., to use due care in the handling and discharge of firearms and to refrain from negligently causing injury to the plaintiff during the lawful performance of his official duties.

14. Notwithstanding said duties, the defendant, Marcus F. Arban, Jr., did then and there negligently, carelessly, recklessly and wantonly discharge a firearm at or near plaintiff and negligently caused bodily injury to a law enforcement officer during the lawful performance of his official duties.

15. As a direct and proximate result of defendant Arban's

negligence, the plaintiff was caused to suffer serious injuries to his body and was caused to suffer great pain and mental anguish.

16. As a further direct and proximate result of the defendant's negligence as aforesaid, the plaintiff has incurred hospital and physician bills and has suffered a loss of earnings.

WHEREFORE, the plaintiff demands judgment against the named defendant's decedent, in the full and just amount of ONE MILLION DOLLARS (\$1,000,000.00), plus interest and costs on this behalf expended, for compensatory damages.

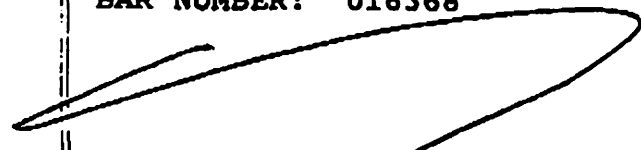
Plaintiff respectfully requests a trial by jury.

Daryl F. LaClair  
By Counsel

KOONZ, MCKENNEY, JOHNSON & DePAOLIS, P.C.



Peter C. DePaolis  
BAR NUMBER: 016368



Michael A. Kernbach, Esquire  
BAR NUMBER: 025722  
103 W. Broad Street, Suite 400  
Falls Church, VA 22046  
(703) 237-9300

→ 834-9200



# INSURANCE BINDER

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

Binder No.

4635

NAME AND ADDRESS OF AGENCY

☐ MARSH & MCLENNAN, INC.  
1155 CONNECTICUT AVE., N.W.  
SUITE 1000  
WASHINGTON, D.C. 20036

COMPANY

INSURANCE COMPANY OF NORTH AMERICA

Effective 12:01 am March 2, 1990

Expires ☒ 12:01 am ☐ Noon June 2, 1990

☒ This binder is issued to extend coverage in the above named company per expiring policy # **H00582396**  
(except as noted below)

NAME AND MAILING ADDRESS OF INSURED

ALL CONSTITUTIONAL OFFICERS OF ARLINGTON  
COUNTY, VIRGINIA  
c/o MR. S. MIDDLETON  
COURTHOUSE - ROOM 12  
ARLINGTON, VA 22201

Description of Operation/Vehicles/Property

Type and Location of Property

Coverage/Perils/Forms

Amt of Insurance

Ded.

Coins

PROPERTY

Type of Insurance

Coverage/Forms

Limits of Liability

Each Occurrence

Aggregate

☐ Scheduled Form ☐ Comprehensive Form  
☐ Premises/Operations  
☐ Products/Completed Operations  
☐ Contractual  
☐ Other (specify below)  
☐ Med. Pay. \$ Per Person \$ Per Accident  
☐ Personal Injury

Bodily Injury

\$

\$

Property Damage

\$

\$

Bodily Injury &  
Property Damage  
Combined

\$

\$

Personal Injury

\$

Limits of Liability

Bodily Injury (Each Person)

\$

Bodily Injury (Each Accident)

\$

Property Damage

\$

Bodily Injury & Property Damage  
Combined

\$ 1,000,

AUTOMOBILE

☒ Liability ☐ Non-owned ☐ Hired  
☐ Comprehensive-Deductible \$  
☐ Collision-Deductible \$  
☒ Medical Payments \$ 1,000.  
☒ Uninsured Motorist \$ 1,000,000.  
☐ No Fault (specify):  
☐ Other (specify):

☐ WORKERS' COMPENSATION — Statutory Limits (specify states below)

☐ EMPLOYERS' LIABILITY — Limit \$

SPECIAL CONDITIONS/OTHER COVERAGES

ESTIMATED AUTO PREMIUM - \$26,553.

**RENEWED**

POLICY # **H00582396**

NAME AND ADDRESS OF

☐ MORTGAGEE

☐ LOSS PAYEE

☐ ADD'L INSURED

**DEFENDANT'S  
EXHIBIT**

LOAN NUMBER

246

Signature of Authorized Representative

#1  
38.94  
L125443  
3/1/90



# BUSINESS AUTO POLICY

CA 00 01  
(Ed. 01 80)

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.

## 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 that 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.

### 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.
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.

### 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.

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 lightning.

### **E. 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

ment 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 be 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 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 its 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. \$10,000 for **property damage** caused by any one accident.

This provision will not change our limit of liability.

**B. CHANGES IN CONDITIONS**

**YOUR DUTIES AFTER ACCIDENT OR LOSS** is changed 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.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****UNINSURED MOTORISTS INSURANCE  
(VIRGINIA)****A. WORDS AND PHRASES WITH SPECIAL MEANING**

The following words and phrases have special meaning for UNINSURED MOTORISTS INSURANCE (VIRGINIA):

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**

1. You or any family member.
2. 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.
3. 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 insurance" applies only to other collectible uninsured motorists insurance. For **property damage**, **UNINSURED MOTORISTS INSURANCE** is excess to all other collectible insur-

ance 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.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**AUTO MEDICAL PAYMENTS INSURANCE**

**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 AUTO MEDICAL PAYMENTS 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.

**B. WE WILL PAY**

We will pay reasonable expenses incurred for necessary medical and funeral services to or for an insured who sustains bodily injury caused by accident. We will pay only those expenses incurred within three years from the date of the accident.

**C. WE WILL NOT COVER — EXCLUSIONS**

This insurance does not apply to:

1. Bodily injury sustained by an insured while occupying a vehicle located for use as a premises.
2. Bodily injury sustained by you or any family member while occupying or struck by any vehicle (other than a covered auto) owned by you or furnished or available for your regular use.
3. Bodily injury sustained by any family member while occupying or struck by any vehicle (other than a covered auto) owned by or furnished or available for the regular use of any family member.
4. Bodily injury to your employee arising out of and in the course of employment by you. However, we will cover bodily injury to your domestic

employees if not entitled to workers' compensation benefits.

5. Bodily injury to an insured while working in a business of selling, servicing, repairing or parking autos unless that business is yours.
6. Bodily injury caused by declared or undeclared war or insurrection or any of their consequences.
7. Bodily injury to anyone using a vehicle without a reasonable belief that the person is entitled to do so.

**D. WHO IS INSURED**

1. You or any family member while occupying or, while a pedestrian, when struck by any auto.
2. 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.

**E. OUR LIMIT OF LIABILITY**

Regardless of the number of covered autos, insureds, claims made or vehicles involved in the accident, the most we will pay for bodily injury for each insured injured in any one accident is the limit of AUTO MEDICAL PAYMENTS shown in the declarations.

**F. CHANGES IN CONDITIONS**

The CONDITIONS of the policy are changed for AUTO MEDICAL PAYMENTS INSURANCE as follows:

1. OUR RIGHT TO RECOVER FROM OTHERS does not apply.
2. The reference in OTHER INSURANCE to "other collectible insurance" applies only to other collectible auto medical payments insurance.





**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**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 equipment 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

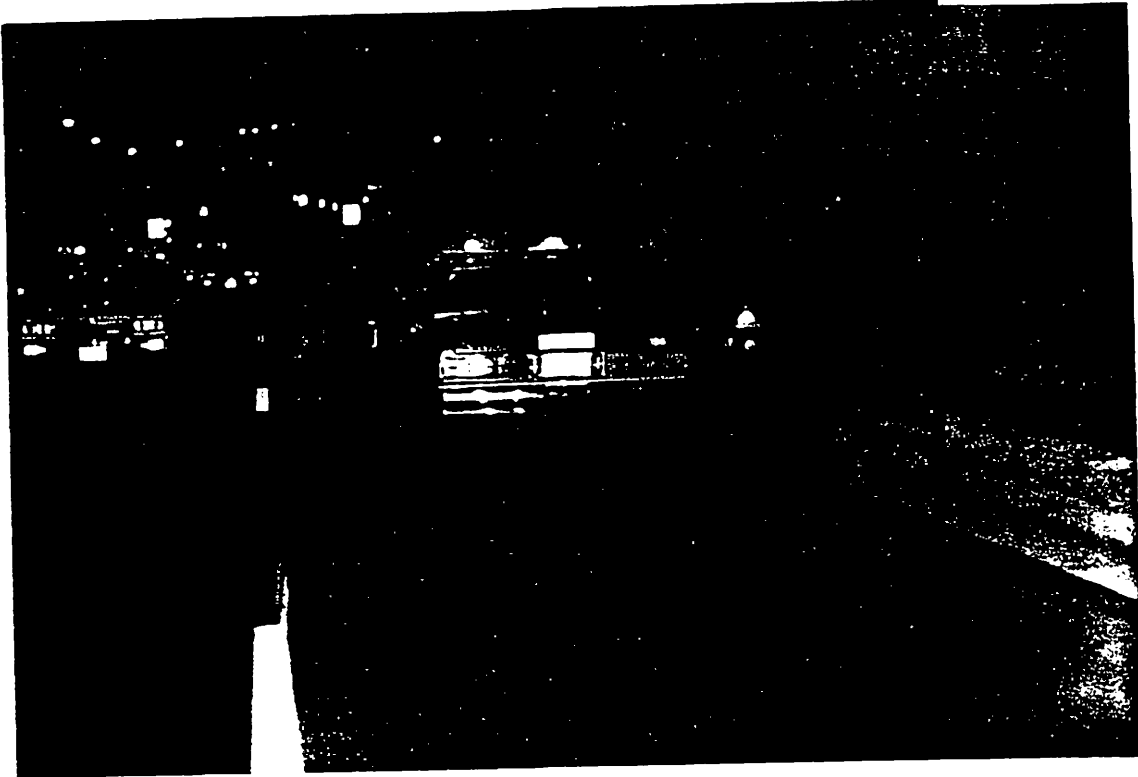
1. any **nuclear reactor**,
2. any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing **spent fuel**, or (c) handling, processing or packaging **waste**,
3. any equipment or device used for the processing, fabricating or alloying 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;

**"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;

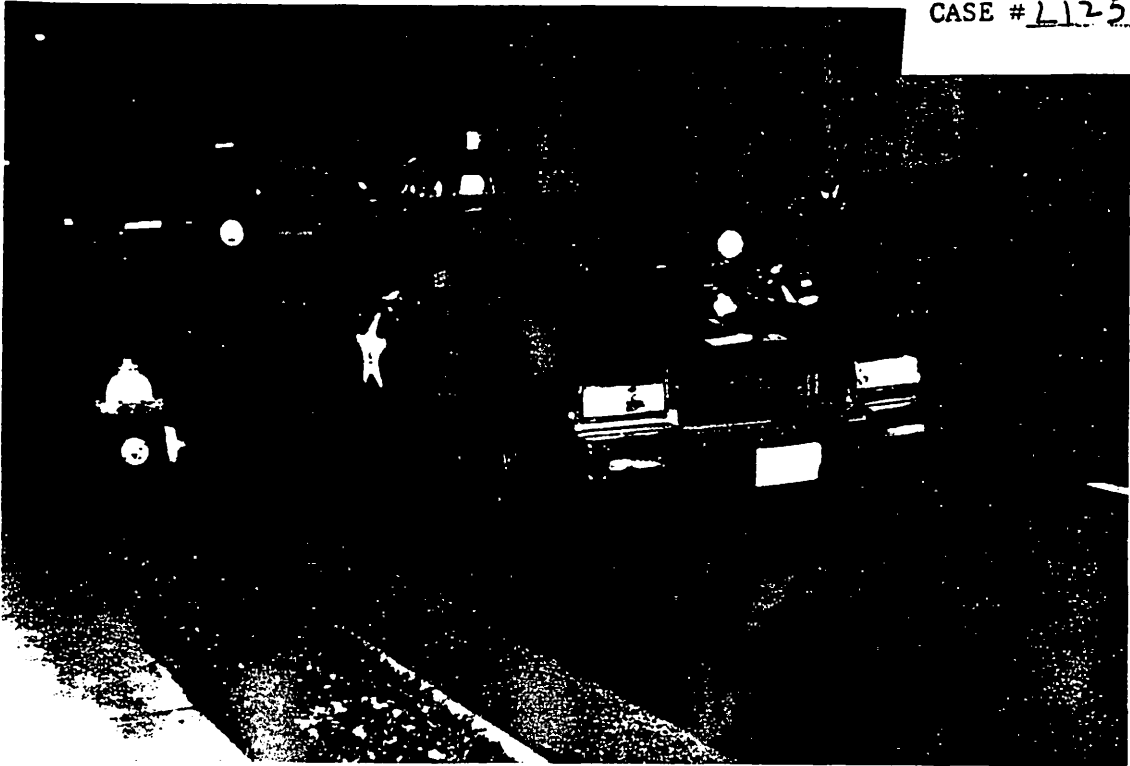
**"property damage"** includes all forms of radioactive contamination of property.

PLF-DEF EX. # 2  
DATE 3-8-94  
JUDGE A  
CASE # L125443



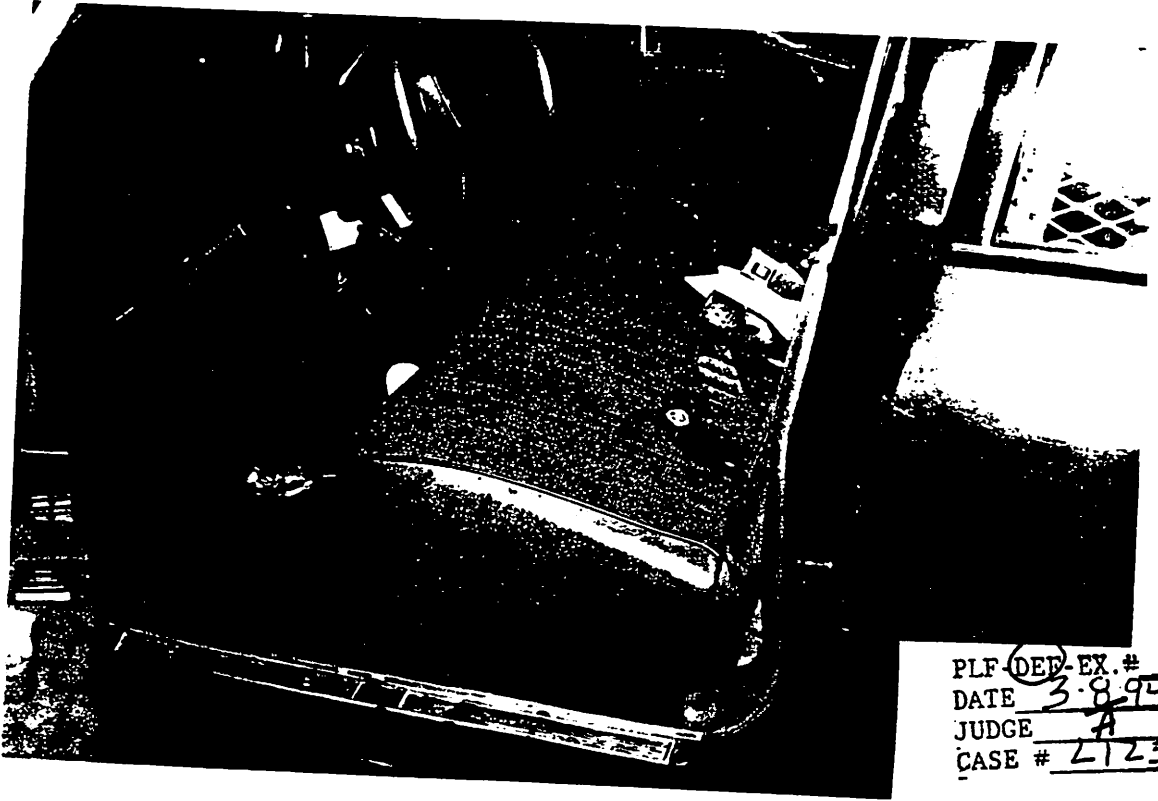
PLF-DEF EX. # 3  
DATE 3-8-94  
JUDGE A  
CASE # L125443

PLF DEE EX # 4  
DATE 3-8-94  
JUDGE A  
CASE # L125443

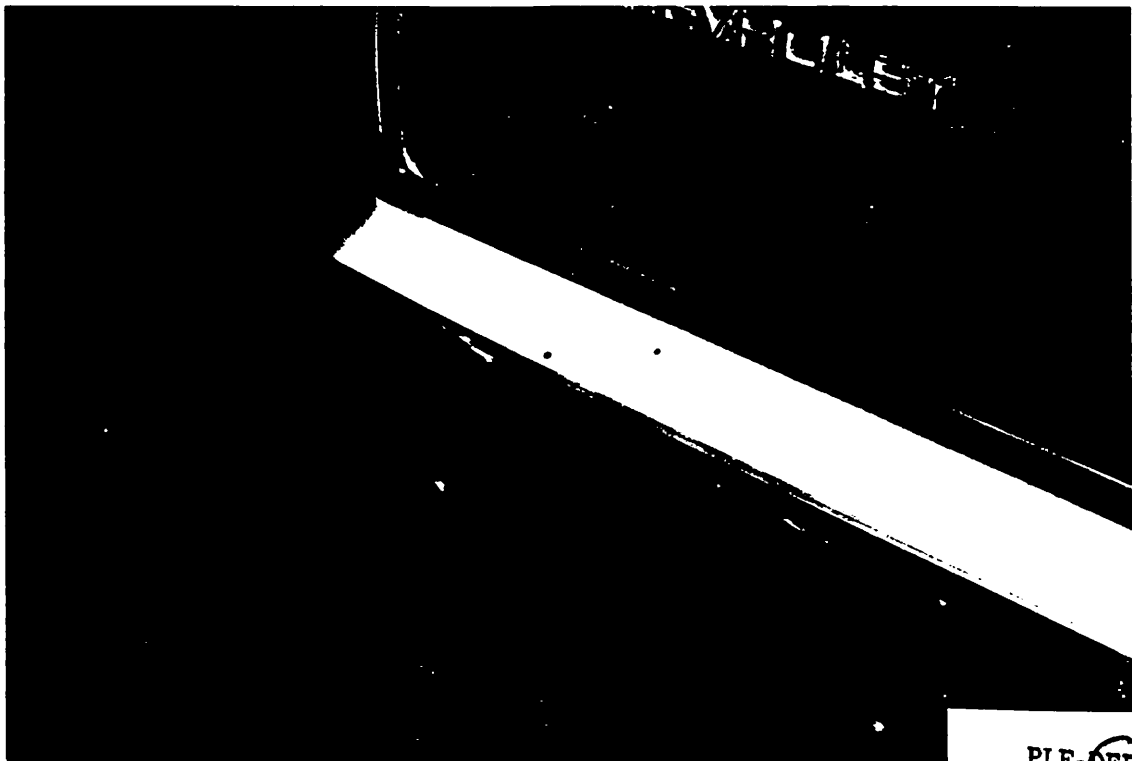


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PLF DEE EX # 5  
DATE 3-8-94  
JUDGE A  
CASE # L125443



PLF-DEF-EX.# 10  
DATE 3-8-94  
JUDGE A  
CASE # L123443



PLF-DEF-EX.# 7  
DATE 3-8-94  
JUDGE A  
CASE # L123443

**TheTravelers** 

**Family**  
**Automobile**  
**Policy**

A Policy  
From One  
of Your  
Travelers  
Companies

**TheTravelers** 

PL-5689 8-86 Printed in U S A

## YOUR AUTOMOBILE POLICY QUICK REFERENCE

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Edition 1 of Policy Forms 120 and MP  
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## Family Automobile Policy

### The Travelers Insurance Companies

Hartford, Connecticut  
(Each a Stock Insurance Company)

In consideration of the payment of the premium, in reliance upon the statements in the declarations made a part hereof and subject to all the terms of this policy, the member of The Travelers Insurance Companies designated in Item 6 of the declarations as the "insurer" (herein called "the Company") agrees with the insured named in the declarations as follows, provided the insurance afforded is only with respect to such of the coverages as are indicated by specific premium charge or charges in Item 4 of the declarations:

#### PART I—LIABILITY

##### COVERAGE A—BODILY INJURY LIABILITY; COVERAGE B—PROPERTY DAMAGE LIABILITY

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:

- A. bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", sustained by any person;
- B. injury to or destruction of property, including loss of use thereof, hereinafter called "property damage";

arising out of the ownership, maintenance or use of the owned automobile or any non-owned automobile, and the Company shall defend any suit alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent; but the Company may make such investigation and settlement of any claim or suit as it deems expedient.

## **SUPPLEMENTARY PAYMENTS**

To pay, in addition to the applicable limits of liability:

- (a) all expenses incurred by the Company, all costs taxed against the insured in any such suit and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of an automobile insured hereunder, not to exceed \$100 per bail bond, but without any obligation to apply for or furnish any such bonds;
- (c) expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of an accident involving an automobile insured hereunder and not due to war;
- (d) all reasonable expenses, other than loss of earnings, incurred by the insured at the Company's request.

## **PERSONS INSURED**

The following are insureds under Part I:

- (a) with respect to the owned automobile.
  - (1) the named insured and any resident of the same household.
  - (2) any other person using such 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, and
  - (3) any other person or organization but only with respect to his or its liability

because of acts or omissions of an insured under (a) (1) or (2) above:

- (b) with respect to a non-owned automobile.
  - (1) the named insured.
  - (2) any relative, but only with respect to a private passenger automobile or trailer, provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and
  - (3) any other person or organization not owning or hiring the automobile, but only with respect to his or its liability because of acts or omissions of an insured under (b) (1) or (2) above.

The insurance afforded under Part I applies separately to each insured against whom claim is made or suit is brought, but the inclusion herein of more than one insured shall not operate to increase the limits of the Company's liability.

"If FE is shown below any vehicle description in Item 3 of the Declarations, the following are not insureds under this coverage for all vehicles in Item 3 of the Declarations:

- 1. The United States of America or any of its agencies;
- 2. Any person, including the named insured, with respect to bodily injury or property damage resulting from the operation of an automobile by such person as an employee of the United States Government while acting within the scope of his office or employment, if the provisions of Section 2679 of Title 28, United States Code (Federal Tort Claims Act), as amended, require the Attorney General of the United States to defend such person in any civil action or proceeding which may be brought for such bodily injury or property damage, whether or not the incident out of which such bodily injury or property damage arose has been reported by or on behalf of such per-

son to the United States or the Attorney General.

## DEFINITIONS

### Under Part I:

"named insured" means the individual named in Item 1 of the declarations and also includes his spouse, if a resident of the same household;

"insured" means a person or organization described under "Persons Insured";

"relative" means a relative of the named insured who is a resident of the same household;

"owned automobile" means

(a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded,

(b) a trailer owned by the named insured,

(c) a private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided

(1) it replaces an owned automobile as defined in (a) above, or

(2) the Company insures all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the Company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the Company applicable to such automobile, or

(d) a temporary substitute automobile.

"temporary substitute automobile" means any automobile or trailer, not owned by the named insured, while temporarily used with the permission of the owner as a substitute for the owned automobile or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction

"non-owned automobile" means an automobile or trailer not owned by or furnished for the regular use of either the named insured or any

relative, other than a temporary substitute automobile;

"private passenger automobile" means a four wheel private passenger, station wagon or jeep type automobile;

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

"utility automobile" means an automobile, other than a farm automobile, with a load capacity of fifteen hundred pounds or less of the pick-up body, sedan delivery or panel truck type not used for business or commercial purposes;

"trailer" means a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm or utility automobile, or a farm wagon or farm implement while used with a farm automobile;

"automobile business" means the business or occupation of selling, repairing, servicing, storing or parking automobiles;

"use" of an automobile includes the loading and unloading thereof;

"war" means war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

## EXCLUSIONS

This policy does not apply under Part I:

(a) to any automobile while used as a public or livery conveyance, but this exclusion does not apply to the named insured with respect to bodily injury or property damage which results from the named insured's occupancy of a non-owned automobile other than as the operator thereof;

(b) to bodily injury or property damage caused intentionally by or at the direction of the insured;

(c) to injury, sickness, disease, death or destruction 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;

- (d) to bodily injury or property damage arising out of the operation of farm machinery;
- (e) to bodily injury to any employee of the insured arising out of and in the course of
  - (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or
  - (2) other employment by the insured;
- (f) to bodily injury to any fellow employee of the insured injured in the course of his employment if such injury arises out of the use of an automobile in the business of his employer, but this exclusion does not apply to the named insured with respect to injury sustained by any such fellow employee;
- (g) to an owned automobile while used by any person while such person is employed or otherwise engaged in the automobile business, but this exclusion does not apply to the named insured, a resident of the same household as the named insured, a partnership in which the named insured or such resident is a partner, or any partner, agent or employee of the named insured, such resident or partnership.
- (h) to a non-owned automobile while maintained or used by any person while such person is employed or otherwise engaged in
  - (1) the automobile business of the insured or of any other person or organization
  - (2) any other business or occupation of the insured, but this exclusion (h) (2) does not apply to 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 an owned automobile;

- (i) to injury to or destruction of (1) property owned or transported by the insured or (2) property rented to or in charge of the insured other than a residence or private garage;
- (j) to the ownership, maintenance, operation, use, loading or unloading of an automobile ownership of which is acquired by the named insured during the policy period or any temporary substitute automobile therefor, if the named insured has purchased other automobile liability insurance applicable to such automobile for which a specific premium charge has been made.

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## **PART II—EXPENSES FOR MEDICAL SERVICES**

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### **COVERAGE C—MEDICAL PAYMENTS**

To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, chiropractic, X-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services:

Division 1. To or for the named insured and each relative who sustains bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", caused by accident,

- (a) while occupying the owned automobile,
- (b) while occupying a non-owned automobile, but only if such person has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission, or
- (c) while not occupying a motor vehicle, through being struck by an automobile or trailer of any type.

Division 2. To or for any other person who sustains bodily injury, caused by accident, while occupying

- (a) the owned automobile, while being used by the named insured, by any resident of the same household or by any other person with the permission of the named insured; or
- (b) a non-owned automobile, if the bodily injury results from
  - (1) its operation or occupancy by the named insured or its operation on his behalf by his private chauffeur or domestic servant, or
  - (2) its operation or occupancy by a relative, provided it is a private passenger automobile or trailer,
 but only if such operator or occupant has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission.

### DEFINITIONS

The definitions under Part I apply to Part II, and under Part II.

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

"medical expense insurance" means any automobile insurance providing benefits for medical expenses payable without regard to fault.

### EXCLUSIONS

This policy does not apply under Part II to bodily injury:

- (a) sustained while occupying
  - (1) an owned automobile while used as a public or livery conveyance, or
  - (2) any vehicle while located for use as a residence or premises
- (b) sustained by the named insured or a relative while occupying or while not occupying a motor vehicle, through being struck by
  - (1) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads, or
  - (2) a vehicle operated on rails or crawler treads.

- (c) sustained by any person other than the named insured or a relative,
  - (1) while such person is occupying a non-owned automobile while used as a public or livery conveyance, or
  - (2) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in the automobile business, or
  - (3) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in any other business or occupation, unless the bodily injury results from the operation or occupancy of a private passenger automobile by the named insured or by his private chauffeur or domestic servant, or of a trailer used therewith or with an owned automobile;
- (d) sustained by any person who is employed in the automobile business, if the accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;
- (e) due to war.

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## PART III—PROTECTION AGAINST UNINSURED MOTORISTS

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### COVERAGE D—UNINSURED MOTORISTS (DAMAGES FOR BODILY INJURY)

### COVERAGE D2—UNINSURED MOTORISTS (DAMAGES FOR PROPERTY DAMAGE)

The Company will pay in accordance with Section 38.1-381 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 motor vehicle because of bodily injury sustained by the insured or property damage, caused by accident and arising out of the ownership, maintenance or use of such uninsured motor vehicle.

## **PERSONS INSURED**

Each of the following is an insured under this insurance to the extent set forth below:

- (a) the named insured and, while residents of the same household, the spouse and relatives of either;
- (b) any other person while occupying an insured motor vehicle; and
- (c) any person, with respect to damages he is entitled to recover because of bodily injury to which this insurance applies sustained by an insured under (a) or (b) above.

The insurance applies separately with respect to each insured, except with respect to the limits of the Company's liability.

## **DEFINITIONS**

When used in reference to this insurance (including endorsements forming a part of the policy):

- (a) "bodily injury" means bodily injury, sickness or disease, including death, sustained by a person who is an insured under (a) or (b) of the Persons Insured provision;
- (b) "motor vehicle" means a land motor vehicle or trailer other than
  - (1) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads,
  - (2) a vehicle operated on rails or crawler-treads, or
  - (3) a vehicle while located for use as a residence or premises;
- (c) "named insured" means the person named in the declarations of this policy and includes the spouse if a resident of the same household;
- (d) "relative" means a person related to the named insured by blood, marriage or adoption who is a resident of the same household;
- (e) "hit-and-run vehicle" means a motor vehicle which causes an accident resulting in bodily injury to an insured or property damage, provided:

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- (1) there cannot be ascertained the identity of either the operator or the owner of such motor vehicle; and
- (2) the insured or someone on his behalf shall have reported the accident promptly to either the Company, the Division of Motor Vehicles or the police.

- (f) "insured motor vehicle" means a motor vehicle registered in Virginia with respect to which the bodily injury and property damage liability coverage of the policy applies but shall not include a vehicle while being used without the permission of the owner;
- (g) "occupying" means in or upon or entering into or alighting from;
- (h) "property damage" means injury to or destruction of (1) an insured motor vehicle owned by the named insured or his spouse, if a resident of the same household and the contents of such motor vehicle, and (2) any other property (except a motor vehicle) owned by an insured and located in Virginia;
- (i) "uninsured motor vehicle" means:
  - (1) a motor vehicle with respect to the ownership, maintenance, or use of which there is, in at least the amount specified in the Virginia Motor Vehicle Safety Responsibility Act, neither (i) cash or securities on file with the Virginia Commissioner of Motor Vehicles nor (ii) 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 vehicle, 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
  - (2) a hit-and-run vehicle as defined;
  - (3) an "underinsured motor vehicle" which is a motor vehicle that is "under-

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insured" when, and to the extent that the total amount of bodily injury and property damage coverage applicable to the operation or use of such vehicle, including all bonds or deposits of money or securities made pursuant to Article 6 of Chapter 6 of the Code of Virginia (Section 46.1-467 et seq.), is less than the total amount of uninsured motorists coverage afforded any person insured as a result of the operation or use of such vehicle under this insurance.

but the term "uninsured motor vehicle" shall not include:

- (i) a motor vehicle 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;
- (ii) a motor vehicle 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;

#### **EXCLUSIONS**

This insurance does not apply:

- (a) to bodily injury or property damage with respect to which the insured or his legal representative shall, without written consent of the Company, make any settlement with any person or organization who may be legally liable therefor;
- (b) to the first two hundred dollars of the total amount of all property damage as the result of any one accident. This exclusion does not apply if the owner or operator of the uninsured motor vehicle causing the damage can be identified.
- (c) so as to inure directly or indirectly to the benefit of any insurer of property

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### **PART IV—MOTORISTS PERSONAL PROTECTION**

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#### **COVERAGE E1—TOTAL DISABILITY—UNLIMITED PERIOD;**

#### **COVERAGE E2—TOTAL DISABILITY—MAXIMUM 200 WEEKS**

To pay weekly indemnity at the rate stated in the declarations for the period of continuous total disability of the insured which shall result directly and independently of all other causes from bodily injury caused by accident and sustained by the insured while in or upon or while entering into or alighting from, or through being struck by, an automobile, provided (1) such disability shall commence within twenty days after the date of the accident, and (2) any disability during the period of fifty-two weeks from its commencement shall be deemed total disability only if it shall continuously prevent the insured from performing every duty pertaining to his occupation, and (3) any disability after said fifty-two weeks shall be deemed total disability only if it shall continuously prevent the insured from engaging in any occupation or employment for wage or profit, and (4) as respects Coverage E2, the weekly indemnity for total disability as provided herein above shall in no event extend beyond a period of 200 consecutive weeks from the date of commencement of disability as provided above.

It is agreed that each insured under Coverage E1 or E2 is engaged in a remunerative occupation, and (2) the sum of the weekly indemnity afforded by this insurance and by all personal accident insurance carried by such person is not more than two thirds of his average weekly earnings during the past 12 months.

#### **COVERAGE F—DEATH INDEMNITY**

To pay the principal sum stated in the declarations in the event of the death of the insured which shall result directly and independently of all other causes from bodily injury caused by accident and sustained by the insured while in or upon or while entering into or alighting from, or through being struck by, an automobile, provided

the death shall occur (1) within ninety days after the date of the accident, or (2) within fifty-two weeks after the date of the accident and during a period of continuous total disability of the insured for which weekly indemnity is payable under the Total Disability Coverage.

### DEFINITIONS

The definition of "war" under Part I applies to Part IV, and under Part IV: the unqualified word "insured" means the person or persons so designated for each Part IV coverage in the declarations;

"automobile" means a land motor vehicle or trailer not operated on rails or crawler-treads, but does not mean: (1) a farm type tractor or other equipment designed for use principally off public roads, except while actually upon public roads, or (2) a land motor vehicle or trailer while located for use as a residence or premises and not as a vehicle.

### EXCLUSIONS

This policy does not apply under Part IV:

- (a) to bodily injury or death sustained in the course of his occupation by any person while engaged (1) in duties incident to the operation, loading or unloading of, or as an assistant on, a public or livery conveyance or commercial automobile, or (2) in duties incident to the repair or servicing of automobiles;
- (b) to loss caused by or resulting from disease except pus forming infection which shall occur through bodily injury to which this insurance applies;
- (c) to suicide, sane or insane, or to any attempt thereat;
- (d) to injury or death due to war

## PART V—PHYSICAL DAMAGE

### COVERAGE G—COMPREHENSIVE (EXCLUDING COLLISION)

- (1) To pay for loss caused other than by collision to the owned automobile or to a non-

owned automobile but only for the amount of each such loss in excess of the deductible amount stated in the declarations or endorsement as applicable hereto. The deductible amount shall not apply to loss by (a) theft or larceny of the entire automobile, (b) fire or lightning, (c) smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises in which the automobile is located, or (d) the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.

If the policy affords insurance with respect to the Collision Coverage, breakage of glass caused by collision may, if the insured so elects, be treated as covered thereunder, subject to the terms thereof, instead of under the Comprehensive Coverage.

For the purpose of this coverage, breakage of glass and loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, or colliding with a bird or animal, shall not be deemed to be loss caused by collision.

- (2) To pay for loss caused by fire or lightning to robes, wearing apparel and other personal effects which are the property of the named insured or a relative, while such effects are in or upon the owned automobile.

### COVERAGE H—COLLISION

To pay for loss caused by collision to the owned automobile or to a non-owned automobile but only for the amount of each such loss in excess of the deductible amount stated in the declarations as applicable hereto.

### COVERAGE I—TOWING AND LABOR COSTS

To pay for towing and labor costs necessitated by the disablement of the owned automobile or of any non-owned automobile, provided the labor is performed at the place of disablement.

## **COVERAGE M—RENTAL REIMBURSEMENT**

The company will reimburse the named insured in the event of direct and accidental loss of or damage to an owned automobile, for expense incurred for the rental of a substitute or equivalent type and purpose for such automobile, provided that such reimbursement shall be payable.

(a) only if, with respect to such loss or damage necessitating such rental,

(i) it is either caused by collision of such owned automobile with another object or by upset of such automobile, or (except as hereinafter provided) is loss or damage to which such Comprehensive Coverage applies; and

(ii) as a result thereof such owned automobile is continuously withdrawn from normal use for a period in excess of 24 hours;

(b) for the period commencing with the first of the number of days for which expense for such rental is incurred and terminating, regardless of the expiration of the policy period, at the end of the number of days which would, with the exercise of due diligence and dispatch, be required to repair or replace such owned automobile; provided, however, such reimbursement for any one such period shall not exceed the amount of such expense (exclusive of mileage charges) as is necessarily and actually incurred by the named insured nor, in any event, a total amount of

(1) \$10 for any one day or of \$300 for any one such period or

(2) the amount per one day or for any one such period as represented in the limits of liability on the declarations page, if greater than (1)

(c) in addition to the limit of liability otherwise applicable under such insurance as is afforded by the policy with respect to direct and accidental loss of or damage to such owned automobile and shall not be

subject to the application of any deductible thereunder.

## **SUPPLEMENTARY PAYMENTS**

In addition to the applicable limit of liability:

(a) to reimburse the insured for transportation expenses incurred during the period commencing 48 hours after a theft covered by this policy of the entire automobile has been reported to the Company and the police, and terminating when the automobile is returned to use or the Company pays for the loss; provided that the Company shall not be obligated to pay aggregate expenses in excess of \$10 per day or totaling more than \$300.

(b) to pay general average and salvage charges for which the insured becomes legally liable, as to the automobile being transported.

## **DEFINITIONS**

The definitions of "named insured", "relative", "temporary substitute automobile", "private passenger automobile", "farm automobile", "utility automobile", "automobile business", "war", and "owned automobile" in Part I apply to Part V, but "owned automobile" does not include, under Part V, (1) a trailer owned by the named insured on the effective date of this policy and not described herein, or (2) a trailer ownership of which is acquired during the policy period unless the Company insures all private passenger, farm and utility automobiles and trailers owned by the named insured on the date of such acquisition and the named insured notifies the Company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the Company applicable to such trailer.

"insured" means

(a) with respect to an owned automobile,

(1) the named insured, and

(2) any person or organization (other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee for hire) maintaining, using or having

custody of said automobile with the permission of the named insured and within the scope of such permission;

- (b) with respect to a non-owned automobile, the named insured and any relative while using such automobile, provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission.

"non-owned automobile" means a private passenger automobile or trailer not owned by or furnished for the regular use of either the named insured or any relative, other than a temporary substitute automobile, while said automobile or trailer is in the possession or custody of the insured or is being operated by him;

"loss" means direct and accidental loss of or damage to (a) the automobile, including its equipment, or (b) other insured property;

"collision" means collision of an automobile covered by this policy, with another object or with a vehicle to which it is attached or by upset of such automobile;

"trailer" means a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm or utility automobile, and if not a home, office, store, display or passenger trailer

## EXCLUSIONS

This policy does not apply under Part V

- (a) to any automobile while used as a public or livery conveyance.
- (b) to loss due to war.
- (c) to loss to a non-owned automobile arising out of its use by the insured while he is employed or otherwise engaged in the automobile business.
- (d) to loss to a private passenger, farm or utility automobile or trailer owned by the named insured and not described in this policy or to any temporary substitute auto-

mobile therefor, if the insured has other valid and collectible insurance against such loss;

- (e) to damage which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such damage results from a theft covered by this policy;
- (f) to tires, unless damaged by fire, malicious mischief or vandalism, or stolen or unless the loss be coincident with and from the same cause as other loss covered by this policy;
- (g) to loss due to radioactive contamination;
- (h) under Coverage H, to breakage of glass if insurance with respect to such breakage is otherwise afforded;
- (i) to loss of or damage to any device or instrument designed for the recording, reproduction, or recording and reproduction of sound unless such device or instrument is permanently installed in the automobile;
- (j) to loss of or damage to any tape, wire, record disc, or other medium for use with any device or instrument designed for the recording, reproduction, or recording and reproduction of sound;
- (k) to loss of, or damage to any sound receiving or sound receiving and transmitting equipment designed for use as citizen's band radio, two-way mobile radio or telephone, or scanning monitor receiver, including any accessories and antennas unless permanently installed in the opening of the dash or console of the automobile normally used by the motor vehicle manufacturer for the installation of a radio;
- (l) Under Coverage M, to loss if the loss or damage necessitating such rental is due to theft of the entire automobile.

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## CONDITIONS

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Conditions 1, 4, 25, 26, 27, 28, 29, 30 and 31 apply to all Parts. The other conditions apply only to the Parts noted thereunder.

### 1. POLICY PERIOD, TERRITORY.

#### Parts I, II, IV, and V

This policy applies only to accidents, occurrences and loss during the policy period while the automobile is within the United States of America, its territories or possessions, or Canada, or is being transported between ports thereof.

This policy shall expire as shown in Item 2 of the Declarations except that it may be continued in force for successive policy periods by the payment of the required renewal premium in advance of each such period and the acceptance of such premium by a duly authorized representative of the Company. Each such policy period shall be for the number of months stated in Item 2 of the Declarations, and each shall begin and expire at 12:01 A.M., standard time at the address of the named insured. The premium shown in the policy is for the stated policy period.

#### Part III

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

### 2. PREMIUM.

#### Parts I, II and V

If the named insured disposes of, acquires ownership of, or replaces a private passenger, farm or utility automobile or, with respect to Part V, a trailer, any premium adjustment necessary shall be made as of the date of such change in accordance with the manuals in use by the Company. The named insured shall, upon request, furnish reasonable proof of the number of such automobiles or trailers and a description thereof.

#### Part III

If during the policy period the number of insured motor vehicles owned by the named insured or spouse and registered in Virginia changes, the named insured shall notify the Company during the policy period of any change and the premium shall be adjusted in accordance with the manuals in use by the Company. If the earned premium thus computed exceeds the advance premium paid, the named insured shall pay the excess to the Company; if less, the Company shall return to the named insured the unearned portion paid by such insured.

### 3. TWO OR MORE AUTOMOBILES.

#### Parts I, II and V

When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, but an automobile and a trailer attached thereto shall be held to be one automobile as respects limits of liability under Part I of this policy, and separate automobiles under Part V of this policy, including any deductible provisions applicable thereto.

### 4. NOTICE.

In the event of an accident, occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the Company or any of its authorized agents as soon as practicable. With respect to Part II, the failure or refusal of the injured person to give notice of an accident shall not relieve the Company of its obligation to pay unless such failure or refusal prejudices the Company in establishing the validity of any claim under this coverage. In the event of theft the insured shall also promptly notify the police. If claim is made or suit is brought against the insured, he shall immediately forward to the Com-



pany every demand, notice, summons or other process received by him or his representative.

If, before the Company makes payment of loss under Part III, the insured or his legal representative shall institute any legal action for bodily injury 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 be forwarded immediately to the Company by the insured or his legal representative.

## **5. NOTICE OF CLAIM.**

### **Part IV**

When total disability or death covered hereunder occurs, written notice thereof shall be given by or on behalf of the insured or the beneficiary to the Company or any of its authorized agents as soon as practicable.

## **6. MEDICAL REPORTS; PROOF AND PAYMENT OF CLAIM.**

### **Parts II and IV**

As soon as practicable the injured person, or under Coverage F the beneficiary, or someone on his behalf shall give to the Company written proof of claim, under oath if required, and shall, after each request from the Company, execute authorization to enable the Company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the Company when and as often as the Company may reasonably require.

Under Part II, the Company may pay the injured person or any person or organization rendering the services and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the Company. Under Part IV, proof of claim shall be made upon forms furnished by the Company un-

less the Company shall have failed to furnish such forms within fifteen days after receiving notice of claim.

## **7. PROOF OF CLAIM.**

### **Part III**

As soon as practicable, the insured or other person making claim shall give to the Company 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 Company unless the Company shall have failed to furnish such forms within fifteen days after receiving notice of claim.

The injured person shall submit to physical examinations by physicians selected by the Company when and as often as the Company 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 Company execute authorization to enable the Company 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 Company within sixty days after the occurrence of loss, unless such time is extended in writing by the Company, 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 Company's request, the insured shall exhibit the damaged property to the Company.

With respect to claims alleged to have arisen out of the ownership, maintenance, or use of a hit-and-run vehicle 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 Company, by filing with the Company 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 fact in support thereof, and shall present clear and convincing evidence that there was a hit-and-run vehicle involved in the accident.

## **8. PAYMENT OF INDEMNITY.**

### **Part IV-Coverages E1 and E2**

Weekly indemnity for total disability is payable to the insured who is disabled. Subject to proof of claim, accrued weekly indemnity is payable every four weeks and any balance at termination of the disability period for which the Company is liable.

## **9. PAYMENT OF DEATH INDEMNITY; AUTOPSY.**

### **Part IV-Coverage F**

If the decedent insured be survived by a spouse who was a resident of the same household at the time of the accident, indemnity for death is payable to such spouse; otherwise, if the decedent insured was a minor, indemnity for death is payable to any parent thereof who was a resident of the same household at the time of the accident; otherwise indemnity for death is payable to the decedent insured's estate.

The Company shall have the right and opportunity to make an autopsy where it is not forbidden by law.

## **10. BENEFICIARY.**

### **Part IV-Coverage F**

Consent of beneficiary is not requisite to cancellation, assignment, change of beneficiary, or any other change in the policy.

## **11. INSURED'S DUTIES IN EVENT OF LOSS.**

### **Parts III and V**

In the event of loss the insured shall:

- (a) protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to protect shall not be recoverable under this policy; reasonable expenses incurred in affording such protection shall be deemed incurred at the Company's request;
- (b) file with the Company, within 91 days after loss, his sworn proof of loss in such form and including such information as the Company may reasonably require and shall, upon the Company's request, exhibit the damaged property and submit to examination under oath.

## **12. ASSISTANCE AND COOPERATION OF THE INSURED.**

### **Parts I and V**

The insured shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury, property damage or loss with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident. Further with respect to Part I, the failure or refusal of the insured to cooperate with or assist the Company which prejudices the Company's defense of an action for damages arising out of the operation or use of an automobile shall constitute noncompliance with the requirements of the policy that the in-

sured shall cooperate with and assist the Company.

### **13. FINANCIAL RESPONSIBILITY LAWS.**

#### **Part I**

When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the Company for any payment made by the Company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

### **14. LIMITS OF LIABILITY.**

#### **Part I**

Regardless of the number of (1) persons or organizations who are insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, (3) claims made or suits brought on account of bodily injury or property damage, or (4) automobiles or trailers to which this policy applies, the limit for Part I - Liability is as follows:

If separate limits are stated in the declarations:

1. The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the Company's liability for all damages including damages for care and loss of services, arising out of bodily injury sustained by one person as the result of any one occurrence, the limit of such liability stated in the declarations as applicable to "each occurrence" is subject to the above provisions respecting each person, the total limit of the Com-

pany's liability for all such damages arising out of bodily injury sustained by two or more persons as the result of any one occurrence.

2. The limit of property damage liability stated in the declarations as applicable to "each occurrence" is the total limit of the Company's liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one occurrence.

If a single limit of liability is stated in the declarations, the total limit of the Company's liability for all damages as a result of any one occurrence shall first be the amounts required by the automobile financial responsibility or compulsory insurance law of Virginia and then such limits shall be supplemented by any amount remaining within the limit stated in the declarations, which limit is the total amount of the Company's liability under Coverages A and B combined for all damages as the result of any one occurrence.

### **15. LIMIT OF LIABILITY.**

#### **Part II**

Regardless of the number of:

1. persons or organizations who are insureds under this policy;
2. persons who sustain bodily injury; or
3. claims made or suits brought on account of bodily injury;

the limit of the Company's liability for all expenses incurred by or on behalf of each person who sustains bodily injury as the result of any one accident shall not exceed:

- (a) the limit of liability stated in the declarations as applicable to "each person" when there is only one "owned automobile", or
- (b) the sum of the highest limits of liability stated in the declarations as applicable to "each person" for each "owned automobile" up to a maximum of 4, when the

medical expense costs incurred by the insured person exceed the limit of liability for any one vehicle so insured.

## **16. LIMITS OF LIABILITY.**

### **Part III**

Regardless of the number of (1) persons or organizations who are insureds under this insurance, (2) persons or organizations who sustain bodily injury or property damage, (3) claims made or suits brought on account of bodily injury or property damage, or (4) motor vehicles to which this insurance applies, the limit for Part III-Protection Against Uninsured Motorists is as follows:

(a) If separate limits are stated in the declarations:

1. The limit of liability for bodily injury stated in the declarations with respect to Coverage D as applicable to "each person" is the limit of the Company's liability for all damages 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 liability stated in the declarations with respect to Coverage D as applicable to "each accident" is the total limit of the Company's liability for all damages because of bodily injury sustained by two or more persons as the result of any one accident
2. The limit of liability for property damage is the limit stated in the declarations with respect to Coverage D2 as applicable hereto for each accident. Such limit is the total limit of the Company's liability for all damages because of property damage to all property of one or more insureds as the result of any one accident

(b) If a single limit of liability is stated in the declarations, the total limit of the Company's liability for all damages as a result of any one occurrence shall first be

the amounts required by the automobile financial responsibility or compulsory insurance law of Virginia and then such limits shall be supplemented by any amount remaining within the limit stated in the declarations, which limit is the total amount of the Company's liability under Coverages D and D2 combined for all damages as a result of any one occurrence.

- (c) If claim is made under this insurance and claim is also made against any person or organization who is an insured under the bodily injury liability or property damage liability coverage of the policy because of bodily injury or property damage sustained in an accident by a person who is an insured under this insurance, any payment made under this insurance to or for any such person shall be applied in reduction of any amount which he may be entitled to recover from any person or organization who is an insured under the bodily injury or property damage liability coverages.
- (d) Any amount payable under this insurance because of bodily injury or property damage sustained in an accident by a person who is an insured under this insurance shall be reduced by all sums paid because of such bodily injury or property damage by or on behalf of the owner or operator of an insured motor vehicle.
- (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 insurance shall be reduced by all sums paid because of such bodily injury or property damage by or on behalf of any person or organization jointly or severally liable together with the owner or operator of an uninsured motor vehicle for such bodily injury or property damage including all sums paid under the bodily injury or property damage coverage of the policy.

## **17. APPRAISAL.**

### **Part V**

If the insured and the Company fail to agree as to the amount of loss, either may, within 60 days after proof of loss is filed, demand an appraisal of the loss. In such event the insured and the Company 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. The insured and the Company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The Company shall not be held to have waived any of its rights by any act relating to appraisal.

## **18. LIMIT OF LIABILITY.**

### **Part V**

The limit of the Company's liability for loss shall not exceed the actual cash value of the property, or if the loss is of a part thereof the actual cash value of such part, at time of loss, nor what it would then cost to repair or replace the property or such part thereof with other of like kind and quality, nor, with respect to an owned automobile described in this policy, the applicable limit of liability stated in the declarations, provided, however, the limit of the Company's liability (a) for loss to personal effects arising out of any one occurrence is \$100, and (b) for loss to any trailer not owned by the named insured is \$500.

## **19. PAYMENT OF LOSS.**

### **Part III**

Any amount due is payable (a) to the insured, or (b) if the insured be a minor to his parent or guardian, or (c) if the insured be deceased to his surviving spouse, otherwise

(d) to a person authorized by law to receive such payment or to a person legally entitled to recover the damages which the payment represents; provided, the Company may at its option pay any amount due in accordance with division (d) hereof.

### **Part V**

The Company may pay for the loss in money; or may repair or replace the damaged or stolen property; or may, at any time before the loss is paid or the property is so replaced, at its expense return any stolen property to the named insured, or at its option to the address shown in the declarations, with payment for any resultant damage thereto; or may take all or such part of the property at the agreed or appraised value but there shall be no abandonment to the Company. The Company may settle any claim for loss either with the insured or the owner of the property.

## **20. NOTICE OF LEGAL ACTION**

### **Part III**

If, before the Company 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 a motor vehicle 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 Company by the insured or his legal representative.

## **21. NO BENEFIT TO BAILEE.**

### **Part V**

The insurance afforded by this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire liable for loss to the automobile.

## **22. OTHER INSURANCE.**

### **Part I**

If the insured has other insurance against a loss covered by Part I of this policy the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible insurance.

### **Part II**

If other valid and collectible medical expense insurance is applicable to the bodily injury of an insured person as defined in Divisions 1 and 2, the benefits shall be paid according to the following order of priority:

- (1) the medical expense insurance of the owner of the automobile the insured was occupying at the time of the accident;
- (2) the medical expense insurance of the operator of the automobile the insured person was occupying at the time of the accident;
- (3) the medical expense insurance of the insured person.

However, in no event shall any insured person collect more than his actual medical expense incurred as a result of any accident from this or any other automobile insurance policy or combination of such policies providing medical expense insurance applicable to such accident

### **Part III**

With respect to bodily injury to an insured while occupying a motor vehicle not owned by the named insured, this insurance shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such vehicle 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 Company 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, this insurance shall apply only as excess insurance over any other valid and collectible insurance of any kind applicable to such property damage.

### **Part IV**

If any insured under this Part also is an insured under another coverage of the same kind, issued by the company under a liability policy, any payment for loss under such coverage shall serve to reduce, to the extent of such payment, the Company's obligation under this Part as respects any loss to such insured and the Company return the premium paid for such duplication of insurance hereunder.

### **Part V**

If the insured has other insurance against a loss covered by Part V of this policy, the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability of this policy bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible insurance.

## **23. ACTION AGAINST COMPANY.**

### **Part I**

No action shall lie against the Company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have

been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the insured to determine the insured's liability, nor shall the Company be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Company of any of its obligations hereunder.

#### **Part II, IV and V**

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor, under Parts IV and V, until thirty days after proof of loss is filed and, under Part V, the amount of loss is determined as provided in this policy.

### **24. SUBROGATION.**

#### **Parts I, III and V**

In the event of any payment under this policy, the Company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

### **25. CHANGES.**

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the Company from asserting any right under the terms of this policy, nor shall the terms of this policy be waived or

changed, except by endorsement issued to form a part of this policy; provided, however, changes may be made in the written portion of the declarations by a manager of the Company when initialed by such manager.

### **26. ASSIGNMENT.**

Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; if, however, the insured named in Item 1 of the declarations, or his spouse if a resident of the same household, shall die, this policy shall cover (1) the survivor as named insured, (2) his legal representative as named insured but only while acting within the scope of his duties as such, (3) any person having proper temporary custody of an owned automobile, as an insured, until the appointment and qualification of such legal representative, (4) under division 1 of Part II any person who was a relative at the time of such death, and (5) under Part IV, any other person who had been designated as an insured thereunder.

### **27. CANCELLATION.**

This policy may be cancelled by the insured named in Item 1 of the declarations or his duly constituted attorney-in-fact by mailing to the Company written notice stating when thereafter the cancellation shall be effective.

This policy may be cancelled by the Company by mailing to the insured named in Item 1 of the declarations at the address shown in this policy, written notice stating when not less than forty-five days thereafter such cancellation shall be effective; except that this policy may be cancelled by the Company by mailing to the insured named in Item 1 of the declarations at the address shown in this policy written notice stating:

- a. when not less than ten days thereafter such cancellation shall be effective if this policy has been in effect less than sixty days and is not a renewal policy; or

- b. when not less than fifteen days thereafter such cancellation shall be effective, if the named insured fails to discharge when due any of his obligations in connection with the payment of premium for this policy or any installment thereof, whether payable to the Company or its agent either directly or indirectly under any premium finance plan or extension of credit.

Notice to the insured named in Item 1 of the declarations shall be mailed either by certificate of mailing, provided the Company has retained a duplicate certified copy of said notice, or by registered or certified mail, pursuant to Section 38.1-381 of the Code of Virginia. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by such insured or his duly constituted attorney-in-fact or by the Company shall be equivalent to mailing.

If such insured or his duly constituted attorney-in-fact cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

## **28. CANCELLATION BY COMPANY LIMITED.**

If this policy has been in effect for sixty days at the time notice of cancellation is mailed or delivered or, if this policy is a renewal, effective immediately, the Company shall not 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 this policy or any installment thereof, whether payable to the Company 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 a motor vehicle insured under this policy has had his driver's license suspended or revoked during the policy period or if the policy is a renewal, during its policy period or the ninety days immediately preceding the last anniversary date;

provided, however, the Company shall have the right to modify any physical damage coverage afforded by this policy (except coverage for loss caused by collision) by inclusion of a deductible not exceeding \$100 and, if this policy is written without a fixed expiration date or for a policy period longer than one year, this policy may be canceled by the Company for any cause effective as of any anniversary of the effective date.

This Condition shall apply to each successive policy period for which the Company consents to renew or continue this policy but nothing in this Condition shall obligate the Company to renew or continue this policy.

## **29. DECLARATIONS.**

By acceptance of this policy, the insured named in Item 1 of the declarations agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the Company or any of its agents relating to this insurance.

## **30. RENEWAL.**

If this policy is written for a policy period of less than one year, the Company agrees that it will not exercise its right to refuse to renew or continue the insurance, except as of the end of each twelve month period following the effective date of the first of the successive policy periods in which any such insurance was afforded.

The Company agrees that it will not refuse to renew or continue this policy unless a writ-



ten notice of its refusal to renew or continue is mailed to the insured named in Item 1 of the declarations, at the address shown in this policy, at least forty-five days prior to the expiration date. Notice to the insured named in Item 1 of the declarations shall be mailed either by certificate of mailing, provided the Company has retained a duplicate certified copy of said notice, or by registered or certified mail, pursuant to Section 38.1-381 of the Code of Virginia. Delivery of such written notice shall be equivalent to mailing. Such notice shall not be required:

- a. if the named insured fails to pay the premium as required by the Company for renewal or continuance of this policy,
- b. if the Company or its agent acting on behalf of the Company has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate, or other evidence of renewal, or has manifested such intention in writing to the insured, or
- c. if the named insured or his duly constituted attorney-in-fact has notified in writing to the Company or its agent that he wishes the policy to be canceled or that he does not wish the policy to be renewed or if he fails prior to the date of expiration to accept the offer of the Company

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 this policy shall terminate as of the effective date of such other insurance

### **31. OUT OF STATE INSURANCE.**

If, under the provision 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 Company's liability and the kinds of coverage afforded by the policy shall be 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.

### **32. LOSS PAYABLE CLAUSE**

#### **Part V except Coverage M**

Loss or damage, if any, under the policy shall be payable as interest may appear to the Lienholder stated in the policy and this insurance as to the interest of the Bailment Lessor, Conditional Vendor, Mortgagee or other secured party or Assignee of Bailment Lessor, Conditional Vendor, Mortgagee or other secured party (herein called the lienholder) shall not be invalidated by any act or neglect of the Lessee, Mortgagor, Owner of the within described automobile or other Debtor nor by any change in the title or ownership of the property; provided, however, that the conversion, embezzlement or secretion by the Lessee, Mortgagor, Purchaser or other Debtor in possession of the property insured under a bailment lease, conditional sale, mortgage or other security agreement is not covered under such policy, unless specifically insured against and premium paid therefor; and provided, also, that in case the Lessee, Mortgagor, Owner or other Debtor shall neglect to pay any premium due under such policy the Lienholder shall, on demand, pay the same.

Provided also, that the Lienholder shall notify the Company of any change of ownership or increase of hazard which shall come to the knowledge of said Lienholder and, unless permitted by such policy, it shall be

noted thereon and the Lienholder shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise such policy shall be null and void.

The Company reserves the right to cancel such policy at any time as provided by its terms, but in such case the Company shall notify the Lienholder when not less than ten days thereafter such cancellation shall be effective as to the interest of said Lienholder therein and the Company shall have the right, on like notice, to cancel this agreement.

If the insured fails to render proof of loss within the time granted in the policy conditions, such Lienholder shall do so within sixty days thereafter, in form and manner as provided by the policy, and further, shall be subject to the provisions of the policy relating to appraisal and time of payment and of bringing suit.

Whenever the Company shall pay the Lienholder any sum for loss or damage under such policy and shall claim that, as to the Lessee, Mortgagor, Owner or other Debtor, no liability therefore existed, the Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the debt, or may at its option, pay to the Lienholder the whole principal due or to grow due on the mortgage or other security agreement with interest, and shall thereupon receive a full assignment and transfer of the mortgage or other security agreement and of all such other securities, but no subrogation shall impair the right of the Lienholder to recover the full amount of its claim.

Whenever a payment of any nature becomes due under the policy, separate payment may be made to each party at interest provided the Company protects the equity of all parties.

This policy is signed for the member company of the Travelers Insurance Companies which is the insurer under this policy.

  
Secretary

  
President

### **ASSIGNMENTS OF ERROR**

- I. THE TRIAL COURT ERRED IN RULING THAT THE INTENTIONAL SHOOTING OF A POLICE OFFICER BY A PERSON WHO ONLY PARTIALLY OCCUPIED A STOPPED VEHICLE BOUND THE OFFICER'S INSURER TO PROVIDE UNINSURED MOTORIST COVERAGE UNDER PROVISIONS OF AN AUTOMOBILE POLICY WHICH PROVIDES COVERAGE FOR "ACCIDENTS" ARISING OUT OF "USE" OF THE VEHICLE.
- II. THE LOWER COURT ERRED IN RULING THAT AN UNINSURED MOTORIST ENDORSEMENT, PROVIDING COVERAGE ONLY FOR INJURIES CAUSED BY AN ACCIDENT, REQUIRES COMPENSATION FOR INJURIES THE INSURED SUSTAINED IN AN INTENTIONAL SHOOTING.
- III. THE LOWER COURT ERRED IN RULING THAT AN UNINSURED MOTORIST ENDORSEMENT, PROVIDING COVERAGE FOR INJURES ARISING OUT OF THE "USE" OF AN UNINSURED VEHICLE, REQUIRES COMPENSATION FOR INJURES RESULTING FROM THE INTENTIONAL SHOOTING OF THE INSURED BY A PERSON MERELY PARTIALLY OCCUPYING A STOPPED, UNINSURED VEHICLE.