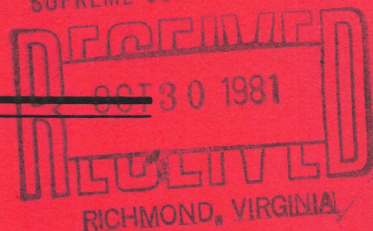


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CLERK  
SUPREME COURT OF VIRGINIA



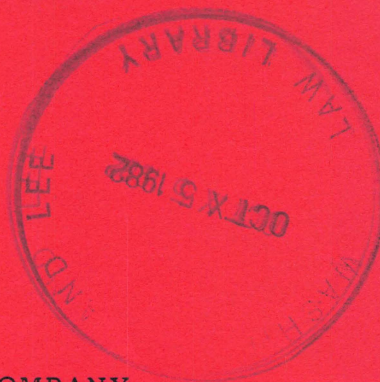
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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

---

RECORD NO. 810632

---



VIRGINIA FARM BUREAU MUTUAL INSURANCE COMPANY,  
Appellant,

v.

NATIONWIDE MUTUAL INSURANCE COMPANY, EDWARD  
JAMES BAKER, JR., and BARBARA D. STINNETT, Executrix  
of the Estate of EARL THOMAS DRUMHELLER, DR., deceased,  
Appellees.

---

JOINT APPENDIX

---

S. J. Thompson, Jr.  
Caskie, Frost, Hobbs  
& Hamblen  
2305 Atherholt Road  
Lynchburg, Virginia 24505  
Counsel for Appellant

Howard W. Rhodes, Jr.  
First & Merchants Bank Bldg.  
801 Main Street  
Lynchburg, Virginia 24505  
Counsel for Appellee -  
Nationwide Mutual Insurance Co.

Joseph Serks  
Post Office Box 354  
Lovingston, Virginia 22949

Counsel for Appellee -  
Edward James Baker

J. Michael Gamble  
Post Office Box 493  
Amherst, Virginia 23521  
Counsel for Appellee -  
Barbara D. Stinnett, Executrix  
of the Estate of Earl Thomas  
Drumheller, Sr., deceased



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## MOTION FOR DECLARATORY JUDGEMENT

Comes now Virginia Farm Bureau Mutual Insurance Company, and for its Motion for Declaratory Judgement says as follows:

1. Virginia Farm Bureau Mutual Insurance Company is a Virginia Corporation transacting insurance business in the State of Virginia and will sometimes hereinafter be referred to as "Virginia Farm Bureau". Nationwide Mutual Insurance Company is an Ohio Corporation licensed to transact business in the State of Virginia whose registered agent is David R. Smythe and will sometimes hereinafter be referred to as "Nationwide". Edward James Baker, Jr., a resident of Amherst County, Virginia, will sometimes hereinafter be referred to as "Baker". Barbara D. Stinnett is the duly qualified Executrix of the Estate of Earl Thomas Drumheller, Sr., deceased, is a resident of Nelson County, and will sometimes hereinafter be referred to as "Stinnett".

2. Virginia Farm Bureau issued a policy of automobile liability insurance to Virginia Blue Ridge Railway, Inc. which was effective at the time of the accident described below.

3. Earl Thomas Drumheller, Sr., an employee of Virginia Blue Ridge Railway, Inc. was operating a company vehicle on Friday, October 5, 1979, at approximately 6:45 a.m. on State Route 56 in Nelson County when the vehicle he was driving was involved in a collision with a vehicle operated by Baker. Drumheller died as a result of the collision and Stinnett qualified as his Executrix.

4. Virginia Farm Bureau believes and therefore alleges that the vehicle operated by Baker at the time of the collision was insured for liability by Nationwide.

5. Stinnett has filed suit against Baker in the Circuit Court for the County of Nelson for death by wrongful act in the amount of \$250,000.00.

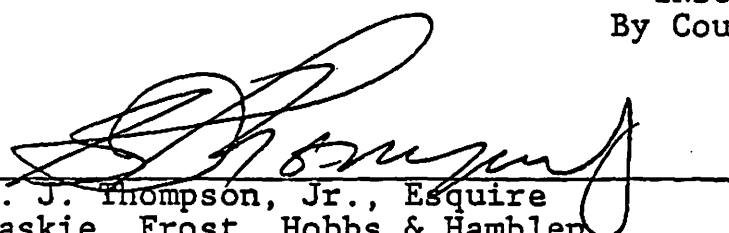
6. The Virginia Farm Bureau policy issued to Virginia Blue Ridge Railway, Inc. affords uninsured motorist coverage to Stinnett in the event that it should be determined that Baker was uninsured.

7. Nationwide has denied coverage to Baker and Stinnett has called upon Virginia Farm Bureau to pay under the uninsured motorist provisions of its policy.

8. A justiciable controversy exists between the parties hereto as to whether Nationwide owes Baker liability coverage under its policy or whether Virginia Farm Bureau owes uninsured motorist coverage to Stinnett.

WHEREFORE, Virginia Farm Bureau moves the Court to enter an Order adjudicating that Nationwide owes liability coverage to Baker for the accident in question and that Virginia Farm Bureau does not owe uninsured motorist coverage to Stinnett.

VIRGINIA FARM BUREAU MUTUAL  
INSURANCE COMPANY  
By Counsel

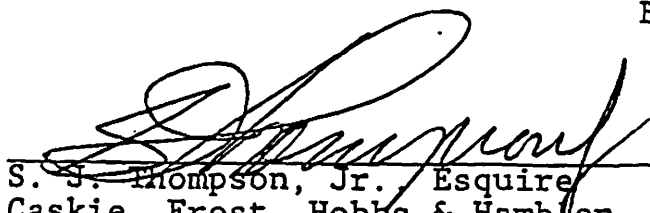


S. J. Thompson, Jr., Esquire  
Caskie, Frost, Hobbs & Hamblen  
P. O. Box 1160  
Lynchburg, Virginia 24505  
Counsel for the Plaintiff

REQUEST TO PRODUCE

Comes now Virginia Farm Bureau Mutual Insurance Company, by counsel, and requests Nationwide Mutual Insurance Company to produce at the law offices of Caskie, Frost, Hobbs & Hamblen, 2306 Atherholt Road, Lynchburg, Virginia, on Saturday, June 14, 1980, at 9:00 a.m., its underwriting file pertaining to Edward James Baker, Jr., its investigation file pertaining to the accident described in the Motion for Declaratory Judgement, and a certified copy of any automobile liability policy issued to Edward James Baker, Jr. or his spouse. At the above mentioned time and place Edward James Baker, Jr. is requested to produce any and all automobile liability policies which might afford coverage to him for the accident described in the Motion for Declaratory Judgement and any and all correspondence memoranda, or other writings relating thereto.

VIRGINIA FARM BUREAU MUTUAL  
INSURANCE COMPANY  
By Counsel



S. S. Thompson, Jr., Esquire  
Caskie, Frost, Hobbs & Hamblen  
P. O. Box 1160  
Lynchburg, Virginia 24505  
Counsel for the Plaintiff

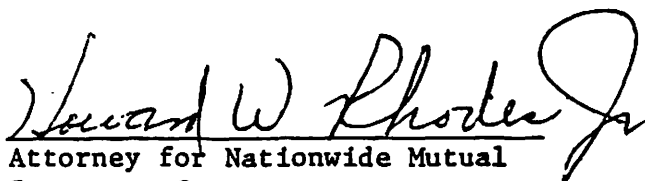
ORDER

This cause came on this day again to be heard on the papers formerly read, including a copy of the insurance policy issued by Nationwide Mutual Insurance Company to Edward James Baker, the depositions of Edward James Baker and Samuel Massie, the legal memoranda of the parties and was argued by counsel.

UPON CONSIDERATION WHEREOF, and it appearing to the Court that the motor vehicle being operated by Edward James Baker at the time of the accident on October 5, 1979, in which Earl Thomas Drumheller, Sr. received fatal injuries, was not an insured vehicle under the liability insurance policy issued by Nationwide Mutual Insurance Company to Baker for reasons stated in an opinion letter from this Court dated January 13, 1981, a copy of which is to be filed with the papers in this case.


It further appearing to the Court proper so to do, the Court doth find in favor of the defendant, Nationwide Mutual Insurance Company, and doth hereby dismiss the motion for declaratory judgment filed on behalf of the plaintiff, with prejudice.

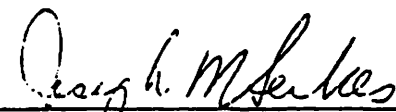
We ask for this:

  
Attorney for Nationwide Mutual  
Insurance Company

The foregoing consisting of 2 page(s) is a  
true copy of Order recorded in  
my office in Common Law Book V  
Page        on January 22, 1981  
Teste: Mary J. Hatcher Clerk  
Circuit Court of Nelson County, Va.


Seen *and objected to*

  
\_\_\_\_\_  
Attorney for Virginia Farm  
Bureau Mutual Insurance Company

  
\_\_\_\_\_  
Attorney for Edward James  
Baker, Jr.

  
\_\_\_\_\_  
Attorney for Barbara D. Stinnett,  
Executrix

ENTER:

  
\_\_\_\_\_  
1.



TWENTY-FOURTH JUDICIAL CIRCUIT  
OF VIRGINIA

O RAYMOND CUNDIFF, JUDGE  
WILLIAM W. SWEENEY, JUDGE  
LYNCHBURG CIRCUIT COURT  
LYNCHBURG, VIRGINIA 2-504



RECEIVED

JAN 14 1981

ROBERT C. GOAD, JUDGE  
LOVINGSTON VIRGINIA 22949  
NORMAN K. MOON, JUDGE  
RUSTBURG, VIRGINIA 24508

COMMONWEALTH OF VIRGINIA  
CITIES OF LYNCHBURG, BEDFORD AND WAYNESBORO  
COUNTIES OF AMHERST, BEDFORD, CAMPBELL AND NELSON

S. J. THOMPSON, JR.

January 13, 1981

Mr. S. J. Thompson, Jr.  
Attorney at Law  
P. O. Box 1160  
Lynchburg, Virginia 24505

Mr. Donald G. Pendleton  
Attorney at Law  
P. O. Box 493  
Amherst, Virginia 24521

Mr. Howard W. Rhodes, Jr.  
Attorney at Law  
First & Merchants National Bank Building  
Lynchburg, Virginia 24504

Mr. Joseph M. Serkes  
Attorney at Law  
P. O. Box 354  
Lovingston, Virginia 22949

RE: Virginia Farm Bureau Mutual Insurance Company v. Nationwide Mutual  
Insurance Company, et als, in the Circuit Court of Nelson County

Gentlemen:

On October 5, 1979 a motor vehicle operated by Earl Thomas Drumheller, Sr. collided with another motor vehicle operated by Edward Baker, the same person as Edward James Baker, Jr., in which accident Drumheller was killed. It is apparently conceded for the purposes of this case that Baker was guilty of negligence which was the sole proximate cause of the accident and Drumheller's death. Drumheller's vehicle was insured by Virginia Farm Bureau, including uninsured motorists' coverage. According to Plaintiff's Exhibit 1, Nationwide Mutual issued a policy of liability insurance and other coverage to Baker stating that the original policy period began on July 24, 1978 and ended on November 12, 1978, "but only if the required premium for this period has been paid, and for six months renewal periods, if renewal premiums are paid as required -- each period begins and ends at 12:01 A. M. Standard Time at the address of the policyholder."

The above Nationwide policy covered a 1967 BMW automobile. The BMW developed mechanical trouble and its car tags expired in April of 1978. Baker kept the BMW and purchased a Chevrolet Nova for his use in the summer of 1978. The Nova broke down later on in 1978, was junked by Baker, and in December of 1978 he purchased a Ford Falcon which he used until Oct. 5, 1979. Baker was operating this Falcon at the time of the fatal accident. He still owned the BMW which he kept at his home, although he had no tags for the BMW and it needed repairs to put it in running condition.

Virginia Farm Bureau filed this Motion for a Declaratory Judgment seeking to have the Court declare that Nationwide Mutual had liability insurance in effect covering Baker's Falcon at the time of the accident, so that Virginia Farm Bureau would have no liability to Drumheller's Estate under the uninsured motorists' coverage in its policy. Nationwide claims that they did not have a valid liability coverage on Baker and the Falcon at the time of the accident. The parties agree that the evidence in the case consists of the depositions taken on July 14, 1980 and filed as a part of the record in this case, together with the insurance policy involved issued by Nationwide, which policy is Plaintiff's Exhibit 1. According to the evidence Baker never reported to Nationwide that he had stopped using the BMW, and he never reported that he purchased and used the Nova nor that he had purchased and used the Falcon up until the time of the accident. It is stipulated that all of the required premiums were paid by Baker, and that Baker did not give notice to Nationwide as required in Part II, Definition (c) (2) of the above policy.

The sole issue in the case is whether or not the Falcon was covered in Part II, Definition (c) (1) of the Nationwide policy, since neither the Falcon nor the Nova were ever named in the policy. The above Definition provides coverage for a motor vehicle not named in the policy if it is a private passenger automobile, the ownership of which was acquired by Baker during the policy period, provided that it replaced the BMW named in the policy.

The first consideration is whether or not the Falcon involved in the accident was acquired by Baker during the policy period. According to Item II of the policy, setting forth the policy periods, part of which is quoted above, the policy period in which the accident occurred began at 12:01 A.M. Standard Time on May 12, 1979 and ended at 12:01 A.M. Standard Time on November 12, 1979. It is undisputed in the evidence that neither the Falcon nor the Nova were purchased by Baker during this particular policy period as required in the above Definition. Therefore, neither the Falcon nor the Nova replaced the BMW during the relevant policy period in accordance with the terms of the policy, and the result is that Nationwide had no liability insurance coverage on the Falcon and Baker at the time of the accident.

The next point is whether or not the Falcon replaced the BMW which would give the Falcon coverage under Part II, Definition (c) (1) of the policy. The Court finds from the evidence that the insured, Baker, intended to keep the BMW and intended that the insurance coverage under the policy remain in effect on the BMW. He ran the engine of the BMW after the tags expired and intended to have the wiring on the BMW repaired in the future. He considered the BMW to be a unique and unusual car. The insurance policy in question provided not only liability coverage on the BMW (in case the car rolled down a hill before the wiring was repaired), but also collision, fire, theft, explosion, flood, vandalism, etc. coverage under Part I. Baker would like for Nationwide to insure the BMW and the Falcon for a premium charged only for the BMW. He obviously cannot have two cars insured for the price of one. The Court finds that the Falcon did not replace the BMW under Part II, Definition (c) (1) of the policy. During how many policy

periods, covering how many automobiles, and for what length of time would the Plaintiff argue that this insurance policy would remain in effect? To accept the Plaintiff's argument three policy periods and three automobiles are not too many for coverage to be claimed. How about six policy periods and six automobiles? How about twelve policy periods and twelve automobiles? How long would he get by with defrauding the Commonwealth of Virginia out of the uninsured motorists' fee?

Since the Falcon did not replace the BMW, it was an additional motor vehicle for which no coverage is provided by the policy because the notice to the company was not given by the insured under Part II, Definition (c) (2) of the policy.

Mr. Rhodes will prepare the final order in accordance with the above ruling of the Court, incorporating this letter opinion.

Yours very truly,

A handwritten signature in cursive script, reading "Robert C. Goad". The signature is written in dark ink and is positioned above a horizontal line.

Robert C. Goad, Judge

RCG:rsp

ASSIGNMENT OF ERROR

The Court erred as follows:

1. The Court erred in finding that the Ford Falcon automobile driven by Baker at the time of the accident was not acquired by him during the policy period.

2. The Court erred in finding that the Ford Falcon automobile was not a replacement automobile for the 1967 BMW automobile described in the policy.

3. The Court erred in finding that the Nationwide policy did not afford liability coverage to Baker for the accident.

1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE COUNTY OF NELSON

3  
4 VIRGINIA FARM BUREAU )  
MUTUAL INSURANCE, )  
5 Plaintiff, )

6 vs. )

7 NATIONWIDE MUTUAL )  
INSURANCE COMPANY, )  
8 Defendant. )  
9

10  
11  
12 Lynchburg, Virginia

13 July 14, 1980

14 1:00 o'clock P. M.  
15  
16  
17

18 -----  
19 DEPOSITIONS

20 OF

21 EDWARD JAMES BAKER  
22 AND  
SAM MASSEY  
23 -----  
24  
25

011



1 APPEARANCES:

2 S. J. THOMPSON, JR., Esq.  
3 of the firm of Caskie, Frost, Hobbs & Hamblen  
4 appearing on behalf of Plaintiff

5 HOWARD W. RHODES, JR., Esq.  
6 of the firm of Rhodes, Jennings & Livingston  
7 appearing on behalf of Defendant

8 J. MICHAEL GAMBLE, Esq.  
9 of the firm of Pendleton & Gamble  
10 appearing on behalf of Barbara D. Stinnett,  
11 Executrix of the Estate of Earl Thomas Drumheller

12 JOSEPH M. SERKES, Esq.  
13 of the firm of Farrar & Serkes  
14 appearing on behalf of James Edward Baker  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
EDWARD JAMES BAKER			
By Mr. Thompson	3		
By Mr. Rhodes		31	
SAM MASSEY			
By Mr. Thompson	37		48, 54
By Mr. Gamble		47	
By Mr. Serkes		47	
By Mr. Rhodes		53	

1           The depositions of EDWARD JAMES BAKER and SAM  
 2       MASSEY were taken by Plaintiff in the within cause pending  
 3       in the Circuit Court for Nelson County, Virginia, before  
 4       Sandra S. Bullock, Court Reporter and Notary Public in and  
 5       for the State of Virginia at Large, in the offices of Caskie,  
 6       Frost, Hobbs & Hamblen, Attorneys at Law, 2306 Atherholt Road,  
 7       Lynchburg, Virginia, on the 14th day of July, 1980,  
 8       commencing at 1:00 o'clock P. M.

9           - - - - -

10           IT IS HEREBY STIPULATED AND AGREED by and between  
 11       the parties hereto, through their counsel, that filing and  
 12       notice of filing of the within depositions are hereby waived,  
 13       provided counsel for defendant is furnished a copy of the same;  
 14       however, the said depositions may be used for any lawful  
 15       purposes set forth in the Rules of the Supreme Court as though  
 16       duly filed.

17           It is further stipulated and agreed that the reading  
 18       and signing of the within deposition may be waived.

19           - - - - -

20       Whereupon:

21                       EDWARD JAMES BAKER

22       was called as a witness, and having been first duly sworn, was  
 23       examined and testified upon his oath as follows:

24                       DIRECT EXAMINATION

25       BY MR. THOMPSON:

014

1 Q Mr. Baker, would you state your full name, please, sir?

2 A Edward James Baker, Jr.

3 Q Your age?

4 A 32.

5 Q Where do you live?

6 A Box 318, Route 3, Amherst, Virginia. That's the  
7 mailing address.

8 Q And where is that?

9 A It's in Tye River, Nelson County.

10 Q Tye River?

11 A Yes.

12 Q You actually live in Nelson County, don't you?

13 A Yes.

14 Q But your address is Amherst?

15 A Right.

16 Q How do you get to where you live?

17 A From here?

18 Q Yeah. Go to Amherst and take a left on 151?

19 A Oh, no. You would go out 29 North until you would  
20 come to Route 739, and you would turn right east off of 29  
21 into 739. And then a couple of miles down 739 bears off to the  
22 right and comes back to Amherst, but if you're not noticing  
23 the signs you would just go straight there. The road actually  
24 changes to 657 without much of a notification. And it's on  
25 657, the house.

015

1 Q Do you live on the eastern side of 29 or the western  
2 side?

3 A The east.

4 Q East side of 29?

5 A Yes.

6 Q Where do you work?

7 A At the present time I'm not working anywhere.

8 Q How long have you lived in Virginia?

9 A About two and a half years.

10 Q Where did you live before that?

11 A Pennsylvania.

12 Q When did you move to Virginia?

13 A I moved here in January of '78.

14 Q Now, this accident happened on October 5 of '79, is  
15 that correct?

16 A Yes.

17 Q What did you do when you moved here? I mean, where  
18 were you working?

19 A When I first moved here I was helping a friend to  
20 build a house on speculation, and when that was completed I was  
21 working at Wintergreen. And then the company I was working  
22 for went bankrupt.

23 Q What's the name of the company?

24 A It was Tally and Associates. And then after that I  
25 worked in Lynchburg for Robin Wayne.

016



1 Q Did you tell me you are unemployed now?

2 A Yes, I am.

3 Q Are you married?

4 A Separated.

5 Q Where did you live when you first moved to Virginia?

6 A When I first moved to Virginia I lived in Lovington,  
7 but that was only about - just a little over a month.

8 Q Then where did you move to?

9 A To my present address.

10 Q Do you own your own home?

11 A No, I don't. I rent.

12 Q Do you live by yourself?

13 A Yes.

14 Q Do you rent a home or...?

15 A Rent a home. Yes.

16 Q Who do you rent from?

17 A From St. Stephens Baptist Church.

18 Q Nobody lives there with you?

19 A No.

20 Q You don't have anybody that has any cars that you  
21 live with?

22 A Has any cars?

23 Q Yes.

24 A Well, I have a friend that drives me around  
25 occasionally when I need to.

017

1 Q Who is that?

2 A My girlfriend, Lynn Hilbert.

3 Q Does she live there with you?

4 A She stays occasionally. She has a house over in

5 Roseland.

6 Q Now, when you moved here did you have an automobile?

7 A Yes.

8 Q What kind?

9 A 1967 BMW.

10 Q Did you have any insurance on it?

11 A Yes.

12 Q Who was the insurance with?

13 A Nationwide.

14 Q And where was that policy issued?

15 A In Pennsylvania. Trucksville, Pennsylvania.

16 Q Issued where?

17 A Trucksville, Pennsylvania. Just like it sounds.

18 T-r-u-c-k-s-v-i-l-l-e.

19 Q Who was your agent there?

20 A Vern Pritchard.

21 Q Now, I am looking at a declaration section of a

22 family automobile policy issued to Edward Baker.

23 A The car was registered in my wife's name.

24 Q But the policy seems to have been issued in your

25 name.

1 A Right. We had two cars at the time, and the whole  
2 policy for both cars at that particular time was in my name.

3 Q Have you given your policy to your attorney Mr. Serkes?

4 A Yes.

5 Q Let me see that, Joe.

6 A That may be changed since we separated. I'm not  
7 sure.

8 MR. RHODES: Let me clarify that. You said  
9 you had two cars. Were both cars in your wife's  
10 name, or was one car in your name and one in your  
11 wife's name?

12 THE WITNESS: No. One car was in my name and  
13 one car was in my wife's name.

14 MR. RHODES: What car was in your name?

15 THE WITNESS: It was a 1969 Alfa Romeo.

16 Q 1969 Alfa Romeo was in your name, right?

17 A Yes.

18 MR. RHODES: And the BMW was in your wife's  
19 name?

20 THE WITNESS: Yes.

21 MR. RHODES: And the insurance was in your name  
22 individually?

23 THE WITNESS: Yes.

24 MR. RHODES: Her name was not on the insurance  
25 policy?

1 THE WITNESS: No, I don't believe it was.

2 MR. RHODES: Thank you.

3 Q You've got two cars. A 1969 Alfa Romeo in your  
4 name and what else?

5 A 1967 BMW.

6 Q BMW, was that in your wife's name?

7 A That was in my wife's name, yes.

8 Q Both insured with Nationwide on separate policies?

9 A No, they were on the same policy. In fact, I think  
10 at one time there was even three cars on that policy. I'm  
11 trying to remember what the other one - I think it was a  
12 Volkswagen. I think there was a Volkswagen on there, too, I  
13 believe.

14 Q So you may have had as many as three cars on this  
15 policy at one time?

16 A Yes.

17 Q Issued by Vern Pritchard, who is the agent?

18 A Yes.

19 Q In Trucksville, Pennsylvania?

20 A Right.

21 Q Now, I hold here the declaration of a family  
22 automobile policy issued in your name, Edward Baker, Box 318,  
23 Route 3, Amherst, Virginia, zip 24521, on a 1967 BMW.

24 A Yes. Well, it was transferred down here after I  
25 moved.

1 Q It was?

2 A Yes.

3 Q It shows a policy period of 7/24/78 to 11/24/78.

4 MR. RHODES: 11/12/78.

5 MR. THOMPSON: Yes. 11/12/78.

6 A The policy didn't run out until November of '79,  
7 because I was making payments up until that time.

8 Q You're saying this policy was renewed?

9 A Yes. I was making payments.

10 Q So this policy would not have expired until 11/12/79?

11 A I'm not sure of the exact date, but it was in  
12 November of '79. Yes.

13 Q Is that right, Howard?

14 MR. RHODES: I think the policy is written for  
15 a six-months period. The policy that you hold there  
16 would have expired 11/12/78. It was renewed from  
17 11/12/78 to 5/12/79, and was again renewed from  
18 5/12/79 to 11/12/79.

19 Q What happened? Did you and your wife separate and  
20 have a separation agreement? Something like that?

21 A Well, we moved down here and she didn't like  
22 Virginia, so she moved back to Pennsylvania.

23 Q You and your wife moved down together?

24 A Yes.

25 Q She didn't like Virginia, so she went back when?

021



1 A About two weeks after we got here.

2 Q When would that have been?

3 A It would have been - let's see - I guess late  
4 January of '78.

5 Q All right. Did she take the Alfa Romeo?

6 A We'd never brought that - we'd never moved that  
7 down. That was still in Pennsylvania, and she sold that  
8 eventually in Pennsylvania.

9 Q Did you keep the BMW?

10 A Yes.

11 Q And so although it was in her name, you kept it,  
12 right?

13 A Yes.

14 Q Do you still have it?

15 A I still have it. It's still sitting in my driveway.

16 Q What's wrong with it?

17 A It's got an electrical problem of some sort.

18 Q Can't you fix it?

19 A I don't have the knowledge to do it, you know. It's  
20 sort of a rare car. There wasn't anybody around here that I  
21 was really sure, that, you know, that I trusted to work on it,  
22 because it was kind of an odd ball.

23 Q The car is an odd ball?

24 A Well, it was, like, it was a special model that they  
25 made that year. It was like a European rally car.

022

1 Q Looks like you've got a bunch of cars and none of  
2 them want to run.

3 A That's about the size of it.

4 Q Was the BMW operating when you brought it down here?

5 A Yes.

6 Q How long did it operate?

7 A Well, I drove it around, and then the registration  
8 expired in April of '78. And then after that I never, you  
9 know - I didn't drive it except I started it up occasionally  
10 to keep, you know, the engine going, and all. And then  
11 briefly I rode with someone else to work, but since we were,  
12 you know - we didn't want to burn his family car up, so then  
13 I acquired another car to use for work.

14 Q You required another car to replace the BMW?

15 A Yes. At the time I was just figuring on using it  
16 temporarily until I could get the BMW running and get it back  
17 on the road.

18 Q The registration ran out, is that right?

19 A On the BMW. Yes.

20 Q So you parked that?

21 A Yes.

22 Q Why didn't you just go ahead and get new tags for it?

23 A Well, because - you know, because it was registered  
24 in my wife's name.

25 Q It was registered in your wife's name so you couldn't

023

1 get tags in Virginia?

2 A Well, at the time I didn't - at the time, you know,  
3 we had just separated and I didn't know what was going on.

4 You know, she took the Alfa and I had the BMW, and everything,  
5 and I didn't know what was going on. So I just held on to it. //

6 Q You held on to it.

7 A She took mine and I took hers.

8 Q Originally what did you have, a Pennsylvania  
9 registration?

10 A Yes.

11 Q So when your Pennsylvania tags ran out, what did you  
12 do then? Park it?

13 A Yes.

14 Q And then you got another car to replace it?

15 A Not immediately.

16 \* Q Let me ask you this. Did you park it because it was  
17 inoperable, or did you park it because the tags had run out?

18 A At that point I parked it because the tags had run  
19 out.

20 Q Did it become inoperable?

21 A Did it?

22 Q Yes.

23 A Eventually yes. It developed a short in the ignition  
24 system.

25 Q When did it develop a short in the ignition system?

024

1 A That would have been - let's see - probably sometime  
2 in the summer - during the summer of '78. I'm not sure  
3 exactly when.

4 Q When did your registration run out?

5 A The registration ran out in April.

6 Q April of '78?

7 A (Witness nods yes.)

8 Q So you parked it.

9 A Right.

10 Q Did you drive it any after that?

11 A No. I ran it. Started it up and ran it occasionally  
12 so the engine wouldn't....

13 Q Then you bought another car, is that right?

14 A Yes.

15 Q And this car was to take the place of the BMW?

16 MR. RHODES: I object to the form of that  
17 question.

18 // Q Was this new car that you bought to take the place  
19 of the BMW which you parked?

20 A I guess in a sense it was. I needed it for work.

21 Q And what kind of car was this that you bought?

22 A It was a Chevy Nova.

23 Q Chevy Nova? Okay. Who did you buy it from?

24 A It was a private owner. I don't remember the  
25 person's name.

1 Q Did you have tags?

2 A Yes. I applied for Virginia tags. //

3 Q Did you transfer the policy from the VMW to the  
4 Nova?

5 A No, I didn't.

6 Q Why didn't you?

7 A Well, at that point I was still figuring on using  
8 the BMW and driving it around when I could get it fixed.  
9 So I never transferred it.

10 Q Now, your name was sent to Sam Massey, wasn't it?

11 A Pardon?

12 Q Didn't Sam Massey send you a letter, or something?

13 A He sent me a letter when they transferred my  
14 Nationwide - the policy on the BMW. When they transferred it  
15 down here they transferred it to Sam Massey, and he sent me a  
16 letter notifying me.

17 Q Did you go to the Nationwide office in Trucksville  
18 and tell them you were moving to Virginia?

19 A I don't remember if I did or not. My wife did, I  
20 believe, after I was gone.

21 Q I see here an interregional transfer form where the  
22 insured is shown as Edward Baker, and your new address is shown  
23 as Route 3, Amherst, Virginia. You've got a cancellation date  
24 of 7/24/78. It looks like they might have been going to cancel  
25 your policy for nonpayment of premium. Did you receive this?

026



1 MR. RHODES: I think I might....

2 MR. MASSEY: I think they cancelled it in  
3 Pennsylvania and transferred it to Virginia. It's  
4 an interregion transfer.

5 Q Were you advised that Sam Massey was your agent?

6 A Yes.

7 Q Did you go to see Sam?

8 A No, I didn't.

9 Q Why not?

10 A I don't know. I probably figured he was going to  
11 try and want to sell me some more insurance, or something.

12 Q Now, you're driving around now in a Chevrolet, right?

13 A Yes.

14 Q Did you get insurance?

15 A No. At that point I probably was interpreting  
16 everything wrong, but there was a clause in my insurance that  
17 I interpreting that if I had to obtain other transportation that  
18 wasn't covered by any other policy, that it would be covered  
19 by that policy, and since I was figuring on getting the BMW  
20 running and back on the road I was just assuming, you know,  
21 that I was covered under the policy.

22 Q You assumed that you were covered under the policy  
23 because you were using this other vehicle to replace the BMW,  
24 is that right?

25 A Well, at that point I was considering it. It wasn't

027

1 to replace it. It was just to use until I could get the BMW  
2 running again.

3 Q This car, your BMW, was not running?

4 A Right.

5 Q You got the Chevrolet Nova to replace the BMW, and  
6 you figured that the new car would be covered under your Nationwide  
7 policy that covered the BMW since the Chevrolet replaced the  
8 Bmw at least for the time being?

9 A Yes. Temporarily.

10 Q How long did you run that Chevrolet Nova?

11 A Oh, let's see. About four months, five months.

12 Q What happened to it?

13 A Something gave in the engine. I just had it hauled  
14 off to a junkyard.

15 Q So then what did you do?

16 A Then I bought a Ford Falcon.

17 Q Now, this was to replace the Chevrolet Nova, is that  
18 right?

19 A Yes.

20 Q Who did you buy that from?

21 A It was a private owner up by Wintergreen.

22 Q How did you get tags for that?

23 A I transferred the tags from the Chevy.

24 Q When you transferred the tags did you put on there  
25 that you had insurance or didn't have insurance?

1 A I put down that I had insurance.

2 Q You put down that you had insurance, and who did  
3 you put down as your insurance carrier?

4 A Nationwide.

5 Q Nationwide? You were still relying on the fact that  
6 you had insurance on that BMW which this car was replacing, is  
7 that right?

8 A Yes.

9 Q Now, you did keep this policy in effect, didn't you?

10 A Yes.

11 Q And you paid the premiums?

12 A Yes.

13 Q And you weren't running the BMW?

14 A No.

15 Q You see, Nationwide takes the position that since  
16 you had two automobiles, that they don't owe you coverage for  
17 the additional automobile because you kept the BMW. But as I  
18 understand it, you parked that and didn't drive it, is that  
19 correct?

20 A Yes.

21 Q And you parked it because it was disabled?

22 A Yes.

23 Q Originally you parked it because the registration  
24 had run out?

25 A Yes.

1 Q But then it became disabled, is that correct?

2 A Yes.

3 Q Now, when did the registration run out?

4 A April of '78.

5 Q April of '78, and when did it become disabled?

6 A I think around the end of June or July - beginning  
7 of July in '78.

8 Q So then you couldn't run it if you wanted to on the  
9 highway.

10 A No.

11 Q When did you buy the Falcon?

12 A The Falcon was bought in December of '78.

13 MR. RHODES: What month?

14 THE WITNESS: December.

15 Q And when you got your tags for the Falcon you indicated  
16 that you had insurance with Nationwide, right?

17 A Yes.

18 Q Did you give them your policy number?

19 A I don't remember if the policy number was - I don't  
20 think they asked for it.

21 Q But you ran the Falcon and you paid your insurance,  
22 and everything, on around till the time this accident happened,  
23 is that right?

24 A Yes.

25 Q Now, this accident happened when, October 5, '79?

030

1 A Yes.

2 Q Tell me about that accident. How did the accident  
3 happen?

4 A Well, it was - I had spent the night at a friend's  
5 house and I was on my way back to my house to get ready to go  
6 to work and to pick up a friend of mine.

7 Q You spent the night at a friend's house?

8 A Yes.

9 Q Who was that?

10 A Lynn Hilbert.

11 Q That was your girlfriend, right?

12 A Yes. And I was on my way home to get ready to go to  
13 work and pick up a friend of mine who worked with me. And it  
14 was raining very hard, and foggy that morning, and the right--  
15 well, my right side dropped off the edge of the pavement, and  
16 was - apparently the shoulder of the road there was very low,  
17 and I could not get the car to come back onto the road. I kept  
18 trying to work it back on, and finally, when the wheel caught,  
19 it just shot the car straight across the road, and just at that  
20 time Mr. Drumheller came over the crest of the hill which I  
21 could not see him up until that time. I didn't know that he  
22 was there, or that he was coming.

23 Q Did you hit Mr. Drumheller on the wrong side of the  
24 road?

25 A Yes.

031

1 Q You say that the right...?

2 A The right side of my car dropped off the pavement.

3 Q The right side of your car dropped off the pavement?

4 A Yes.

5 Q And you were trying to get it back up?

6 A Yes.

7 Q The right front wheel caught and shot you across the  
8 road?

9 A Yes. The shoulder was real low, and when it finally  
10 caught it just shot the car across the road.

11 Q So you were on the wrong side of the road when you  
12 hit Mr. Drumheller?

13 A Yes.

14 Q There's not much question about whose fault it was,  
15 is there?

16 A Well, it was - there was - according to the Court  
17 there was no fault. The only charge against me was a reckless  
18 driving charge which was dismissed saying, you know, ruling to  
19 the effect that road conditions and the shoulder being low when  
20 it shouldn't have been, and, you know, the whole conditions....

21 Q Who represented you in the traffic court?

22 A Mr. Serkes.

23 Q I believe you had a good lawyer. From a civil end  
24 there's not any question about liability. Do you agree with  
25 that, Joe?

032

1 MR. SERKES: I agree with that.

2 Q The question in this case, Mr. Baker, is whether or  
3 not your Nationwide policy was your coverage. You thought you  
4 had insurance with Nationwide under the policy issued to cover  
5 the BMW, is that right?

6 A Yes.

7 Q And this is your copy, right? This is what you gave  
8 Mr. Serkes?

9 A Yes.

10 Q Could you tell us the clause that you were relying  
11 on to give you coverage?

12 A I can't say exactly. It was a clause that said that  
13 if some reason if my car - that I can't use my car, that I have  
14 to obtain other transportation, if it is not covered under any  
15 other policy it will be covered under that policy.

16 Q Did you notify the company that you had acquired a  
17 new automobile?

18 A No, I didn't.

19 Q You never notified Nationwide that you had acquired  
20 a Chevrolet Nova or the Ford Falcon?

21 A No.

22 Q Was this Ford Falcon titled in your name?

23 A Yes.

24 Q You are afforded coverage if you acquire an automobile  
25 during the policy period provided that it replaces the owned

033

1 automobile. And in this case it would afford you coverage  
2 provided that the automobile replaced the BMW. Did this  
3 Falcon replace the BMW?

4 A The Falcon or the Chevy?

5 Q Well, let's take the Chevy first.

6 A The Chevy?

7 Q Yes.

8 A Well, at that point yes, it did. It replaced it  
9 because I couldn't use the BMW.

10 Q You parked the BMW and didn't drive it anymore, is  
11 that right?

12 A Yes.

13 Q And then the Chevy Nova became inoperable, and then  
14 you junked that and replaced that with the Ford Falcon?

15 A Yes.

16 Q And in both cases, when you got the title to the  
17 Chevrolet Nova and when you got the title to the Ford Falcon,  
18 you put down that you had insurance with Nationwide, and you  
19 were relying on the Nationwide policy on this BMW automobile,  
20 is that right?

21 A Yes.

22 Q And you paid the premium on the BMW?

23 A Yes.

24 Q And you were only operating one automobile, is that  
25 correct?

034



1 A Yes.

2 Q So you weren't defrauding Nationwide by operating  
3 two automobiles under the same policy.

4 A No.

5 Q What did you do with the Ford Falcon?

6 A What did I do with it?

7 Q Yes.

8 A That was totaled in the accident.

9 Q Did you notify Nationwide that you'd been in this  
10 accident?

11 A Yes.

12 Q What did Nationwide do?

13 A They sent - while I was still in the hospital they  
14 sent somebody over to see me.

15 Q How did you notify Nationwide that you'd been in an  
16 accident?

17 A I believe my parents notified them while I was in  
18 the hospital.

19 Q Who came to see you?

20 A Oh, what was his name. Masencup, I believe his name  
21 was.

22 Q Masencup?

23 A Yes.

24 Q And what did he do, come in and tell you that you  
25 were in good hands? And they were going to give you coverage?

035

1 What did Mr. Masencup tell you?

2 A Well, he told me that he didn't think that I was  
3 covered.

4 Q He didn't think you were covered?

5 A Right.

6 Q Well, did they ever write you and tell you that you  
7 were not covered?

8 A I believe I did get a letter from Nationwide at  
9 some point along the line saying that I wasn't covered.

10 MR. THOMPSON: I don't see any letters in this  
11 that you gave me, Howard.

12 MR. RHODES: I have a note that a letter was  
13 written to Baker from Nationwide on 11/9/79.

14 Q Did you tell Wally Masencup that you thought you  
15 were covered?

16 A I probably did. I don't remember. I was under  
17 medication at the time and I'm not sure about things - I'm not  
18 too clear about things, but I believe I did.

19 Q But he told you you were not covered, is that right?

20 A Well, actually, he said he couldn't make the  
21 statement. He said it was - the decision, you know, was up to  
22 Nationwide. He didn't think that I would be, but, you know, the  
23 decision wasn't his.

24 Q Anyway, they did interview you in the hospital, right?

25 A Yes.

036

1 Q Well, now, it seems here that on November 9, 1979,  
2 Mr. Masencup wrote you a letter saying that: "At the time of  
3 the above captioned accident you were driving a 1965 Ford. This  
4 vehicle was acquired by you in the fall of 1978. In order for  
5 this vehicle to have been added to your policy and for coverage  
6 to apply you were required to give notice to the company in the  
7 specified time of thirty days from date of acquisition. No  
8 notice was given, and for this reason we regret to inform you  
9 that we must deny coverage for this accident." Did you receive  
10 that?

11 A Yes.

12 Q You did. When you were sued did you let Nationwide  
13 know that you were being sued?

14 A I believe that there was - I don't know - I mean,  
15 contact between Mr. Serkes and Nationwide. I mean, there's  
16 something - I don't really know.

17 MR. SERKES: The suit was filed before I was  
18 retained.

19 MR. THOMPSON: You represented him in traffic  
20 court, right?

21 MR. SERKES: Right.

22 MR. THOMPSON: Then the suit was filed and he  
23 brought....

24 MR. SERKES: The suit was filed I think before  
25 we went to traffic court because he was in the

037

1 hospital. He wasn't released from the hospital until  
2 February.

3 MR. THOMPSON: I see. The suit was filed before  
4 you went to traffic court.

5 Q Now, did you take the suit papers to Mr. Serkes  
6 when you got sued?

7 A Yes.

8 Q Did you deliver them to Nationwide, Joe?

9 MR. SERKES: No. At that time I think Nationwide  
10 had already - by the time I got into the matter  
11 answers had been filed by Nationwide, and then I came  
12 into the picture.

13 MR. THOMPSON: I filed under the uninsured  
14 motorist.

15 MR. GAMBLE: Nationwide never filed an answer.

16 MR. THOMPSON: Howard, is Nationwide's sole  
17 defense in this case that this does not qualify as  
18 a replaced automobile?

19 MR. RHODES: At this stage I can't tell you  
20 what - whether or not they'll rely on the fact that  
21 there was no coverage.

22 MR. THOMPSON: I know that, but there will be  
23 coverage if it replaced the BMW. I just want to  
24 know if you're relying on any notice provisions, or  
25 anything like that.

1 MR. RHODES: I am not prepared to answer because  
2 I was not in the original case. I have not been  
3 retained by Nationwide to represent them in the  
4 death claim. I'm representing them solely in this  
5 declaratory judgment action. And our defense will be  
6 based on the fact that this was a temporary  
7 substitute automobile, and not a replacement vehicle,  
8 or even if it was a replacement vehicle it does not  
9 qualify as a replacement vehicle. And even if it  
10 were he did not give the notice as required.  
11 And therefore there have been policy violations that  
12 would justify the denial of coverage.

13 MR. THOMPSON: Well, as I see it, the sole  
14 question is whether or not there's coverage under  
15 Part Two dealing with liability. Referring to  
16 definitions under Part Two, where it defines an  
17 owned automobile, in Part C, as "a private passenger,  
18 farm or utility automobile, ownership of which is  
19 acquired by the named insured during the policy  
20 period provided that it replaces an owned automobile  
21 as defined in Subparagraph a above". Now, if it  
22 replaced the BMW then it's covered, and if it did not  
23 replace the BMW it would not be covered.

24 MR. RHODES: I think there may be some other  
25 issues involved. This BMW was in his wife's name,

1 not in his name; that after they separated they were  
2 not residents of the same household; he was never  
3 the owner of the BMW; the other automobiles were  
4 acquired in his name; the agent was never notified  
5 of these additional acquisitions; the agent wrote  
6 him a letter asking him to come in and bring his  
7 title, his driver's permit and other information so  
8 that the proper policy could be prepared; he failed  
9 to comply with the request of the agent. So there  
10 may be some other matters other than this particular  
11 section to which you have referred, and at this time  
12 I will not commit myself as to exactly what the policy  
13 defenses will be.

14 Q Did you and your wife have any understanding about  
15 your automobiles? Did you own the BMW, or did you let her have  
16 the Alfa Romeo and you kept the BMW? What were you...?

17 A Well, she never really liked the BMW much. I drove  
18 it most of the time. The Alfa had - I'd had trouble with that  
19 shortly before we moved and separated, so I left it there when  
20 we moved down there, and then when she went back up she sold it.  
21 And she took it and apparently she must have signed my name to  
22 the title and sold the Alfa Romeo, and so I kept the BMW.

23 MR. RHODES: Let me interrupt you one time.

24 When she sold the Alfa, that was in your name.

25 THE WITNESS: Yes.

1 MR. RHODES: How did she transfer the title to  
2 that if it was in your name? Did you sign the title  
3 for it?

4 THE WITNESS: No. She probably signed it, I  
5 imagine.

6 MR. RHODES: Did you give her authority to sign  
7 your name to the Alfa?

8 THE WITNESS: Not really. No.

9 MR. RHODES: Then the BMW was in your wife's  
10 name, and did she give you authority to transfer the  
11 title to your name, or obtain new tags in your name?

12 THE WITNESS: She said - yes, she did. She told  
13 me on the phone, "Well, go ahead and sign my name  
14 to it", but that's the extent of it, you know.

15 MR. RHODES: She never assigned the title to  
16 you.

17 THE WITNESS: No. She never did. I have to  
18 admit I signed her name on the title, but then I  
19 never transferred - but then I never changed it. The  
20 Pennsylvania title is still there. I never transferred  
21 it to Virginia, or into my name.

22 MR. RHODES: Do you still have the BMW?

23 THE WITNESS: Yes.

24 MR. RHODES: Do you have a Virginia title for  
25 it?

041

1 THE WITNESS: No, I don't.

2 MR. RHODES: Have you ever gotten it back into  
3 operation?

4 THE WITNESS: No.

5 MR. RHODES: So it's still registered in  
6 Pennsylvania in her name?

7 THE WITNESS: Well, yes. With the old -  
8 the Pennsylvania title. It's still under  
9 Pennsylvania title.

10 MR. RHODES: And you've never had the title  
11 transferred into your name?

12 THE WITNESS: No.

13 Q (By Mr. Thompson) But there was an understanding  
14 between you and your wife that you were going to keep the BMW  
15 and she kept the Alfa Romeo, is that right?

16 A Yes.

17 Q All right. Answer any questions any of these  
18 other gentlemen might have.

19 CROSS EXAMINATION

20 BY MR. RHODES:

21 Q Let me just ask, Mr. Baker, I'm not sure I know just  
22 when you first acquired the Nova.

23 A The Nova? Let's see. I believe it was August '78,  
24 I believe.

25 Q Between the time the tags ran out on the BMW in

042



1 April of '78, did you continue to drive it on up until you had  
2 your electrical problem with it?

3 A No. I was working - at that point I was working  
4 locally, very close to my house, and I didn't really need it  
5 that much. But a friend of mine was there, and if I had to go  
6 to the store, or something like that....

7 Q Did you use it occasionally after the tags ran out?

8 A I ran the motor occasionally to run through the  
9 oil through it, and stuff like that, but that's....

10 Q Mr. Baker, Mr. Thompson attempted to put words in  
11 your mouth that the automobile that you purchased, the  
12 Chevrolet Nova, replaced the BMW, but I believe actually that  
13 was merely a temporary substitute automobile, was it not?  
14 That you intended to use the Chevrolet Nova until you could get  
15 the BMW repaired?

16 A Yes. That was my initial intention.

17 Q At the time you bought the Nova you intended to have  
18 the BMW repaired, and the BMW would be your principal automobile?

19 A Yes.

20 Q Did you intend to keep the Nova after the BMW was  
21 repaired, or would you then dispose of the Nova?

22 A At that point I wasn't really sure. I really hadn't  
23 thought much about that. I maybe could have kept it for work,  
24 or I could have sold it again. I hadn't really thought about  
25 that too much at the time.

043

1 Q But at the time you bought the Nova you still had the  
2 BMW, and it was your intent to keep the BMW was it not?

3 A Yes.

4 Q And was it also your intent to have the BMW repaired  
5 and put back in service?

6 A Yes.

7 Q So the Chevrolet Nova was, in fact, a temporary  
8 substitute automobile, while the BMW was out of service due to  
9 mechanical breakdown?

10 A Yes.

11 Q And the Nova being a temporary substitute automobile  
12 was, in fact, registered in your name?

13 A Yes, it was registered in my name.

14 Q And the BMW was withdrawn from normal service merely  
15 because of the mechanical problem with the electrical system.

16 A Well, originally because of the expired registration,  
17 but at that time I didn't really need it because I was working  
18 so close to the house.

19 Q But then you and your wife agreed after she left that  
20 you would have ownership of the BMW, and I assume from that that  
21 she was prepared to sign the certificate of title if necessary  
22 to transfer it into your name.

23 A Well, she told me one time on the phone, she said,  
24 "Go ahead and sign my name on it", you know, to transfer it.

25 Q To your name?

044

1 A Yes.

2 Q And she - in fact, you told her the same thing about  
3 the Alfa, and she did, in fact, sign your name to the title to  
4 the Alfa and transfer it into her name?

5 A Yeah. I don't remember ever saying that to her, but...

6 Q But she did, in fact, sign your name and transfer the  
7 title to the Alfa?

8 A Yes.

9 Q Did you have any other vehicle, other than the  
10 Alfa and the BMW when you moved? When you moved to Virginia.

11 A Yes. There was another car. There was three cars,  
12 I believe, on the policy at that particular point when we moved  
13 to town. There was a Volkswagen on there, too.

14 Q Were all these cars on the same policy?

15 A Yes.

16 Q Then after you got to Virginia the Alfa was dropped  
17 from the policy, was it not?

18 A I'm not sure exactly at what point. My wife  
19 probably, whatever she did up in Pennsylvania, I'm not really  
20 sure of when she did it, or anything else. I'd imagine she  
21 probably dropped it.

22 Q I notice on the policy issued by Nationwide on  
23 7/24/78 it lists only the one automobile. That's the BMW.

24 A Yes. I'm sure she took care of it by that time. Yes.

25 Q And I understand you still have the BMW.

045

1 A Yes, I still have it.

2 Q And you still plan to have it repaired and use it?

3 A Yes. Eventually.

4 Q So the other cars that you have purchased, the Nova  
5 and the Falcon, were both purchased by you to use as a  
6 temporary vehicle until you could get the BMW repaired and back  
7 in service?

8 A Yes. That, and I wasn't really sure about transferring  
9 the title, you know, and stuff from her name, too. I was kind  
10 of leery about that at first.

11 Q Are you and your wife divorced now?

12 A No. I've applied for a divorce, but it hasn't been  
13 final.

14 Q Was the Ford Falcon destroyed in the accident?

15 A Yes, it was.

16 Q Do you have an automobile now?

17 A No. Well, the BMW, but, of course, that's....

18 Q Have you owned any other automobiles since the time  
19 of the accident?

20 A No.

21 Q After you received the letter from Mr. Massey  
22 requesting that you stop by his office, I believe you stated  
23 that you have never been to his office, you've never notified  
24 him by mail or by phone of the acquisition of the Nova or the  
25 Falcon?

046

1 A No.

2 Q Am I right in concluding then that at no time did  
3 you have any communication with Mr. Massey after you got his  
4 letter until after the accident occurred, at which time either  
5 you or someone on your behalf did notify his office of the  
6 accident?

7 A That's right.

8 Q And I believe in response to a statement or to a  
9 question directed to you by Mr. Thompson that you planned to use  
10 the Nova until the BMW was working?

11 A Yes.

12 Q That's all I have.

13 MR. THOMPSON: Do you authorize the Notary  
14 to sign your name to this deposition after it has  
15 been typed, and do you waive reading, signing and  
16 inspecting your deposition?

17 THE WITNESS: Yes.

18 AND FURTHER DEPONENT SAITH NOT.

19 \_\_\_\_\_  
Edward James Baker

20 By \_\_\_\_\_  
21 Notary Public

22 Whereupon:

23 SAM MASSEY

24 was called as a witness, and having been first duly sworn, was  
25 examined and testified upon his oath as follows:

047

## DIRECT EXAMINATION

BY MR. THOMPSON:

Q Would you state your full name, please, sir?

A Samuel Preston Massey.

Q And you are a Nationwide agent?

A Yes.

Q You are a Nationwide general agent?

A Yes.

Q You sell all kinds of Nationwide insurance?

A Yes.

Q Where is your office?

A Main Street, Amherst, Virginia.

Q How long have you been a Nationwide agent?

A Twenty-seven years.

Q Did you receive a notification from Nationwide that a Nationwide insured by the name of Edward Baker was transferring into your area?

A I did.

Q And what form did that notification take? How were you notified?

A Well, it was a form of this type here that was sent to me on September the 15th, advising me that an IRT, inter-region transfer, that he had moved into the State of Virginia, and for us to contact him and transfer his insurance into our office. I wrote him a letter on September the 18th, 1978,

1 requesting him to come into my office, as I needed some additional  
2 information such as driver's license, his wife's driver's license,  
3 and license of any other drivers he would have. Really what  
4 this was was to have him come in. We was transferring his  
5 insurance from July the 24th, '78. His due date was November  
6 the 12th, 1978. And this was just to get him in. So I  
7 received - this come out on the 15th. I wrote him a letter on  
8 the 18th.

9 Q Mr. Massey, he did keep this policy in full force  
10 and effect on the BMW up until the accident, didn't he?

11 A Right. Yes.

12 Q He paid his premium? Paid his premium through your  
13 office?

14 A No. It was mailed in.

15 Q He mailed it in?

16 A To Lynchburg Region Office.

17 Q Well, now, Mr. Massey, why do you think he was paying  
18 a premium on that BMW if he didn't expect to be covered?

19 MR. RHODES: I object to the form of the  
20 question, asking for a conclusion. I don't think  
21 it's proper for the witness to answer it.

22 Q Did you know him?

23 A First time I've ever seen him was today.

24 Q Did you have any telephone contact with him?

25 A No.

1 Q Any letter contact with him other than the letter  
2 that you wrote?

3 A No.

4 Q Why didn't you call him and tell him, "You better  
5 come in here and renew this policy"?

6 A We was waiting for him to respond to my letter.

7 Q You wrote him on September the 18th?

8 A Right.

9 Q And you never did anything else?

10 A No.

11 Q You mean you had an insured out there that you  
12 didn't make any contact with?

13 A Well, I wrote him a letter and requested him to  
14 come in, and after thirty days the company went ahead and sent  
15 out this declaration to him that he had a 1967 BMW insured,  
16 ID number so-and-so. So after he didn't respond with that, I  
17 assumed everything was okay.

18 Q When was the declaration - when did that declaration  
19 go out?

20 A It was issued on October the 6th, 1978.

21 Q And you got a copy of that, didn't you?

22 A Right. Uh, huh.

23 Q So you knew he had insurance.

24 A Far as we were concerned he had insurance on the  
25 BMW.



1 Q So you didn't think you needed to do any more, is that  
2 right?

3 A Right.

4 Q Let me ask you this. What is your construction on  
5 that - on the replacing an automobile?

6 MR. RHODES: I object to the form of the  
7 question. It calls for a conclusion. I don't think  
8 the witness should be required to answer it. That's  
9 a legal conclusion, interpretation of a policy  
10 provision.

11 MR. THOMPSON: But he's an expert.

12 MR. RHODES: He hasn't been qualified as an  
13 expert.

14 Q How long have you been in the automobile insurance  
15 business, Mr. Massey?

16 A Twenty-seven years.

17 Q And is Nationwide saying he's not an expert in the  
18 automobile insurance business?

19 MR. RHODES: In sales he is an expert in the  
20 field of sales. He is not an expert when it comes  
21 to legal interpretation of policy provisions. They  
22 are legal conclusions that the witness is not  
23 qualified to answer, and I'm going to direct him  
24 not to answer.

25 Q Well, you sell policies, Mr. Massey. Don't you tell

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1 people what's covered and what's not covered?

2 A Certainly. Yes. But you have some technicalities  
3 of the policies that takes time to explain in very detail.

4 Q You as a salesman ought to know more about insurance  
5 than anybody else, isn't that right?

6 A We know the coverages on the policies. Right. The  
7 coverages, you know - the physical and liability section of the  
8 coverage.

9 Q And if an automobile is bought that replaced the  
10 automobile named in the policy during the policy period, then  
11 doesn't the insurance attach itself to that replacement  
12 automobile?

13 A Restate your question again.

14 Q The policy provides that if an automobile is  
15 purchased during the policy period that replaces the insured  
16 automobile which is the automobile named in the policy, then  
17 the insurance attaches to that replacement automobile, isn't  
18 that right?

19 MR. RHODES: I'm going to object to the form  
20 of the question because the evidence here is that  
21 the new car did not replace the BMW, but it was  
22 merely a temporary substitute vehicle waiting for  
23 the BMW to be repaired. So I don't think the  
24 question is appropriate to the evidence in this  
25 case.

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1 MR. THOMPSON: Well, now, we just don't believe  
2 that Mr. Rhodes can testify in this case.

3 MR. RHODES: I'm not testifying. I'm merely  
4 restating the evidence.

5 Q Isn't it a fact that if an automobile is purchased  
6 during the policy period to replace the automobile named in the  
7 policy, then the insurance attaches to that, isn't that correct?

8 A Under certain circumstances. Certain circumstances,  
9 generally within the thirty days from acquisition.

10 Q Thirty days doesn't have anything to do with that.

11 MR. RHODES: Yes, it does.

12 MR. THOMPSON: No. Not under the replacement.

13 A During the term of the policy it does, and the  
14 policy term of this policy was a six month policy, automatically  
15 renewable.

16 Q If it's a replacement automobile, it does not have  
17 to - you do not have to give notice, right?

18 A Give me that again.

19 Q If it replaces the automobile named in the policy  
20 you don't have to give any notice.

21 A Sure you do.

22 Q If it's an additional automobile, then you have to  
23 give notice so you get the premium, but if it replaces the  
24 automobile named in the policy, then you don't have to give  
25 notice because you don't have any different premium, isn't that

1 right?

2 A You have to change the type of car because it could  
3 be an addition charged because of the model of the vehicle.  
4 It could be trading in an old car for a new car.

5 Q Now, Mr. Massey, I know you're a good insurance man  
6 because you have my insurance. Isn't it a fact that if it just  
7 a replacement that replaces the named automobile you don't have  
8 to give notice, but if it's an additional automobile, in other  
9 words if you have one insured and you're going to keep that one  
10 and operate it and you want another car, then you've got to  
11 give notice, isn't that correct? So that you can get that  
12 additional premium.

13 A Well, every time you trade automobiles it is the  
14 responsibility of the policy holder to notify the agent that he's  
15 traded cars to replace the car that he traded.

16 Q Why don't you look at that policy there that Mr.  
17 Rhodes has got and look under definition of "automobile" and  
18 see if it isn't a fact that you don't have to give notice if  
19 it's a replaced automobile.

20 MR. RHODES: I'm going to object to that  
21 because the policy is being filed as an exhibit  
22 and it speaks for itself.

23 MR. THOMPSON: Have you filed it as an exhibit?

24 MR. RHODES: You may. A copy is being furnished  
25 to you and you may file it as an exhibit.

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1 Q When was this accident reported to you, Mr. Massey?

2 A Well, it wasn't reported to me. My secretary took  
3 the claim from the policy holder's parents.

4 Q And when was this?

5 A I've got the accident report here, and I'm trying to  
6 look on it and see what day it came in. See we have it through  
7 our WATS line system. It was reported into the region office.  
8 It was after October the 5th of 1979.

9 Q I figured that, but can you tell me when it was  
10 reported to the company. All I want to do is make sure it was  
11 timely.

12 A It was reported, completed 10/10/79.

13 Q It was reported to the company on 10/10/79?

14 A Right.

15 Q So you don't have any late filing defense.

16 A No.

17 Q Were the suit papers ever sent to you, Sam?

18 A Not to my knowledge.

19 Q Did you all ever send any suit papers into Nationwide?

20 MR. SERKES: Jimmy, by the time I got the  
21 suit papers and had looked at everything, I think  
22 Nationwide had been notified about the suit being  
23 filed. As I said, I came in on the tail end of  
24 this.

25 MR. THOMPSON: And Nationwide denied coverage.

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1 MR. SERKES: Nationwide had denied coverage  
2 at that time.

3 MR. THOMPSON: So there wasn't any point in  
4 sending them any suit papers, was there.

5 MR. SERKES: Well, before we did anything we  
6 researched the whole area of whether to bring a suit  
7 against Nationwide or not.

8 Q Now, Sam, what were the limits of this policy?

9 A There was property damage of \$25,000 for an accident;  
10 bodily injury for one person, \$25,000; bodily injury for one  
11 or more persons would be \$50,000.

12 Q Why didn't you all write more than minimum limits  
13 on this policy?

14 A Because I wrote the insured and asked him to come into  
15 my office to transfer his insurance to the area, and at that  
16 time I was going to suggest to him to increase his limits to  
17 give him the proper coverage that he would need for today.

18 Q But he never came in.

19 A He never came into my office, so I never had the  
20 opportunity to increase his limits.

21 Q Now, what about the underinsured motorist coverage?  
22 Do you all include that on your policy?

23 A Right. The uninsured motorist is mandatory, and it  
24 is included in every automobile policy issued.

25 Q What about the underinsured? Do you know what the

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1 underinsured motorist is?

2 A That's the....

3 Q That's where the fellow has insurance, but doesn't  
4 have enough to cover the judgment.

5 A Right. That's where he doesn't have enough insurance  
6 to cover him for his limits of liability.

7 Q Is the underinsured insurance provided in a standard  
8 Nationwide policy?

9 MR. RHODES: I advise the witness not to answer  
10 that because once again the policy and the provisions  
11 of the policy have been furnished to you, and the  
12 policy and the declaration sheet speaks for itself.

13 Q I'm asking this gentleman as an expert. I know he's  
14 an expert. I just want to get his interpretation.

15 MR. RHODES: This is not the subject of the  
16 lawsuit.

17 MR. THOMPSON: This is for my own information.

18 MR. RHODES: I know, and I'm going to advise  
19 the witness not to answer.

20 Q Well, Sam, you all are denying coverage based on the  
21 fact that this automobile was not a replacement automobile, is  
22 that right? As defined in the policy.

23 MR. RHODES: I'm going to advise once again not  
24 to answer that because he is not in a position to -  
25 he's not a lawyer, he's not in the claims department,

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1 he's not in a position to know the grounds on which  
2 the company is denying coverage.

3 Q That's all the questions I have.

4 CROSS EXAMINATION

5 BY MR. GAMBLE:

6 Q Is the premium on the policy increased by every  
7 vehicle that's included on the policy?

8 A Yes.

9 Q Why is that?

10 A Because each additional vehicle that's added onto the  
11 policy creates more exposure for the company, and therefore you  
12 have to pay additional premium.

13 CROSS EXAMINATION

14 BY MR. SERKES:

15 Q Mr. Massey, are you familiar with the billing  
16 statement that went out to Mr. Baker for each renewal period?

17 A Uh, huh.

18 Q Do you know what the billing statement had on there?

19 A Yeah. I have the billing statements here, and they  
20 show the one that went out for November 1978 was for a 1967  
21 BMW.

22 Q What was the next statement you have?

23 A Then one went out six months later, May the 12th,  
24 1979, for a 1967 BMW. And, of course, that was for May the  
25 12th of '79, and that paid the premium until November the 12th

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1 of 1979. On a 1967 BMW. That was written on the statement.  
2 I get a copy of the original of whatever the insured's getting.

3 Q I have no further questions.

4 REDIRECT EXAMINATION

5 BY MR. THOMPSON:

6 Q Now, Sam, suppose he called you - what model Falcon  
7 was that you had, Mr. Baker?

8 MR. BAKER: What year?

9 MR. THOMPSON: Yes.

10 MR. BAKER: 1965.

11 Q Suppose he called you and said, "Listen, I've parked  
12 this BMW, and I've bought me a Falcon. I want to transfer  
13 the insurance to this Falcon." What would you have done?

14 A We would have transferred it.

15 Q Wouldn't have been any more premium, would it?

16 A No. Huh, uh. Not to the age of the car. See, your  
17 insurance is based on physical damage and liability. The  
18 liability wouldn't be any more, but on the physical part of the  
19 car, the comprehensive and collision, you trade an older car in  
20 for a newer car, you pay more for your comprehensive and  
21 collision because the valuation of the car is more.

22 Q But in this case - how old was that car?

23 MR. BAKER: 1965.

24 Q So the Falcon was older than the BMW, so there wouldn't  
25 have been any additional premium, would there.

1 A Chances are he would have gotten a refund back. //

2 Q And suppose he called you and said, "Mr. Massey, now  
3 listen, I have - I parked this BMW, I'm not going to drive it,  
4 am I covered under my policy?" What would you have said?

5 A Give me that again.

6 Q Suppose he called you and said, "Mr. Massey, I've  
7 parked this BMW, it won't work, it won't run, got something  
8 wrong with it. Now, I've replaced it with this 1965 Falcon.  
9 Am I covered?" What would you have told him?

10 MR. RHODES: Once again I object to the  
11 question. That's a hypothetical question that is  
12 not applicable to this case. I think we've got to  
13 limit the questions to the actual facts and not to  
14 a hypothetical question.

15 MR. THOMPSON: Well, this is discovery and I  
16 can ask anything that's likely to lead to discovery.

17 Q Now, what would have been your answer?

18 A Are you saying that if he had called me and wanted  
19 to transfer it from one car to another what would I have  
20 answered?

21 A No. Supposed he said, "Mr. Massey, I have parked  
22 this BMW. It won't run. And I have replaced it with a 1965  
23 Falcon. Am I covered in that '65 Falcon?"

24 A We would have transferred the insurance - we would  
25 transfer the insurance from the BMW over to the Falcon. We

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1 would have.

2 Q You would have.

3 A If he had notified me to that effect.

4 Q So the only thing we have here is he just failed to  
5 call you and tell you.

6 A He failed to respond to my letter and to notify me  
7 of this coverage.

8 Q Breakdown in communication, in other words.

9 A Failure of the responsibility of the policy holder  
10 to the company.

11 Q But you never wrote him but one letter. Did you get  
12 that letter that Sam Massey sent you?

13 MR. BAKER: Yes.

14 MR. THOMPSON: Why didn't you go up there, Ed?

15 MR. BAKER: I just figured he was going to try  
16 to sell me some more insurance.

17 Q That's what you all were willing to do, wasn't it,  
18 Sam?

19 A Well, not only that, but we would have updated his  
20 limits, because we recognized his limits were low. We would  
21 have updated his limits to what they should have had.

22 Q You would have called him in and updated his limits  
23 and increased his limits, and you'd have sold him some more  
24 insurance, wouldn't you?

25 A Not necessarily. We would have sold him for his

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1 needs. If he needed any more.

2 Q Do you sell life insurance?

3 A Yes.

4 Q Now, he needs life insurance, doesn't he?

5 A Possibly. But we needed to get his driver's license  
6 number, you know, Virginia license, and I think I wrote in his  
7 letter to bring your driver's license or your wife's driver's  
8 license, or the license of anyone else driving your car.  
9 So we have to have every driver driving your vehicle listed on  
10 the policy.

11 Q Did they have that information in Pennsylvania?

12 A When a policy is being interregionally transferred,  
13 our underwriting department underwrites the policy again to see  
14 what type of people we are insuring. We may want to continue  
15 him, and we may not want to continue him. Maybe he's had  
16 things to develop in his driving habits that we - other things  
17 could take place that maybe we don't want to continue.

18 Q Maybe he's had a claim made against him, or something,  
19 and you don't want him!

20 A Oh, yeah. That's what we stay in business for is to  
21 pay claims. Couldn't stay in the insurance business - couldn't  
22 sell insurance if we didn't pay some claims.

23 Q Sam, there's no question about but that he was  
24 insurable, and you would have transferred this Chevrolet Nova  
25 and onto the Falcon if he had notified you, is that right?

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1 A Rephrase that again.

2 Q He was insurable. By that I mean you were willing  
3 to insure him.

4 MR. RHODES: I think this calls for a  
5 conclusion....

6 A I don't know whether he was insurable or not  
7 insurable, because he didn't come in and respond to my  
8 underwriting - the letter, like I asked, because we wanted to  
9 check him out with the underwriting department. Maybe the  
10 company would have checked him out and they might write a  
11 letter back and say he was an undesirable risk. So I couldn't  
12 answer that question yes or no.

13 Q Nationwide did keep him insured, didn't they?

14 A Well, after we didn't get a response, according to  
15 our system they went on and sent him out a declaration and  
16 sent him out a policy and continued to bill him. But the  
17 policy holder does have a responsibility to come in and  
18 notify the company of an accident, to notify the company when  
19 they transfer cars or trade cars, or replacement. That's your  
20 responsibility of the policy holder to the company, because we  
21 have no way of knowing when people trade cars or transfer cars  
22 or substituting cars.

23 Q The car does not have to be titled in his name for  
24 him to get insurance on it, does he?

25 A Yes, with the exception of husband and wife.

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1 Q Well, if it's titled in her name....

2 A In other words, you cannot title - I can't insure  
3 a car in your name in my name. They have to coincide.

4 Q Let's say you got a car in your wife's name, but you  
5 can get the insurance on it and have it insured in your name,  
6 can't you?

7 A If you're married and living in the same household,  
8 yes.

9 Q That's all I wanted to know. And that's what they  
10 did up in Pennsylvania. They had this car titled in her name,  
11 but insured in his name, didn't they?

12 A As a family policy.

13 Q All right, Mr. Massey. You've been very helpful.

14 CROSS EXAMINATION

15 BY MR. RHODES:

16 Q But so far as you know, they were not residents of  
17 the same household according to the evidence that has produced  
18 here today.

19 A That's right.

20 Q And had this information been disclosed to you,  
21 would you have renewed the policy if it had been disclosed that  
22 this car actually belonged to the wife and she was not a  
23 resident of his household nor a resident of Virginia?

24 A The car would have had to have been transferred into  
25 his name before we could have insured it after they had become

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1 separated and she lived in another state. We would have had to  
2 have rewritten it.

3 REDIRECT EXAMINATION

4 BY MR. THOMPSON:

5 Q But you all never sent out any questionnaires, or  
6 anything like that, asking if he was still married, if the  
7 car was still in his name or her name, or anything like that,  
8 did you? You just continued the policy in effect.

9 A They continued renewing the policy. Right. Assuming  
10 that they were living as a family, and in the same household,  
11 assuming that there wasn't any separation.

12 Q You can't assume that this day and time, can you?

13 A Well, he didn't respond to the letter that we sent  
14 out, and so we went along on that basis. We have two thousand  
15 policies and we can't run up and down the road chasing every  
16 individual as to what coverage and what vehicle he wants to  
17 insure. We have to rely upon them to give us the information  
18 we want and need when we request it.

19 Q But you only sent him one letter, and he didn't respond  
20 to that, so you just treated him like an unwashed Mexican, and  
21 didn't have anything to do with him.

22 A No. We continued to bill him - we sent him a new  
23 declaration and continued to bill him showing a '67 BMW on  
24 every billing. In other words, as far as he was concerned the  
25 BMW was the vehicle we were insuring, as well as the one I

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1 thought I had insured.

2 Q Thank you, Mr. Massey. You've been very helpful.

3 MR. RHODES: Do you authorize the Notary to  
4 sign your name to the deposition after it's been  
5 transcribed and typed, and do you waive inspecting  
6 and signing it?

7 THE WITNESS: I will.

8 AND FURTHER DEPONENT SAITH NOT.

9 \_\_\_\_\_  
Sam Massey

10 By \_\_\_\_\_  
11 Notary Public

12 - - - - -  
13 STATE OF VIRGINIA:

14 :

15 I, SANDRA S. BULLOCK, Court Reporter and Notary  
16 Public in and for the State of Virginia at Large, do hereby  
17 certify that EDWARD JAMES BAKER and SAM MASSEY each personally  
18 appeared before me at the time and place hereinbefore set forth;  
19 that each of them was duly sworn and were thereupon examined  
20 upon their oath; that their examinations were reported and  
21 carefully reduced to writing by me; and that the depositions  
22 herein represent an accurate transcript of the testimony given  
23 by the witnesses to the best of my ability.

24 I further certify that the reading and signing of  
25 the within depositions were waived, with the same being signed

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1 by me for the witnesses with their approval.

2 My commission expires January 7, 1983.

3 IN WITNESS WHEREOF, I have hereunto set my hand and  
4 seal this the 30th day of July, 1980.

5 Sandra S. Bullock, Notary Public  
6 State of Virginia at Large  
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067

*Plaintiff Exhibit 1*

number.  
Tourists' financial responsibility laws of your state  
e Liability and Bodily Injury Liability.

EDWARD BAKER  
BX 318 RT 3  
AMHERST  
VA 24521

**NATIONWIDE'S**

## **FAMILY AUTOMOBILE POLICY**

### **A FEW LINES ABOUT YOUR POLICY**

Welcome to the Nationwide Family of Policyholders.

To acquaint yourself fully with the coverages and protection features built into your policy for the benefit of you and your family, we suggest you read your policy through before filing it with your other important papers.

Your Nationwide representative can provide just about any form of insurance you want... tailored to your exact needs. By dealing with him for all your insurance requirements... auto, fire, life, homeowner, accident and sickness... you have the advantage of doing business with just one agent. His advice, based on his sound insurance training coupled with his knowledge of your needs, assures you of proper insurance coverage in an efficient and economical manner.

While we hope no accidents will befall you through use of your automobile, we want you to know that your agent and your company are ready to serve you if the need should arise.



Nationwide Mutual Insurance Company • Home Office: Columbus, Ohio

rev. 1-1-63

Auto 4817-E - 10-75

# FAMILY AUTOMOBILE POLICY DECLARATIONS

These Declarations together with the Insuring Agreements, Exclusions and Conditions of the Automobile Policy named above form the policy identified by the policy number shown below, and supersede any Declarations having an earlier inception date with the same policy number.

This policy does not comply with motorists' financial responsibility laws of your state unless there is a premium charge /liability limit shown for Property Damage Liability and Bodily Injury Liability.

## ITEM 1. POLICYHOLDER: (NAMED INSURED)

EDWARD BAKER  
BX 318 RT 3  
AMHERST  
VA 24521

Principally garaged at (if different  
from Policyholder's Address):



MODE 02

STATE	POLICY NUMBER
45	53 B 724397

NAME	ID	TIME	DIST	COUNTY	TERM	AGENT
BAK				005	17	2413

The Policyholder is the first individual named for the purposes of  
**NOT APPLICABLE**

## ITEM 2. POLICY PERIOD:

FROM

MO	DAY	YEAR
07	24	1978

TO

MO	DAY	YEAR
11	12	1978

BUT ONLY IF THE REQUIRED  
PREMIUM FOR THIS PERIOD HAS  
BEEN PAID, AND FOR SIX MONTHS RENEWAL PERIODS, IF RENEWAL  
PREMIUMS ARE PAID AS REQUIRED. EACH PERIOD BEGINS AND ENDS AT  
12:01 A.M. STANDARD TIME AT THE ADDRESS OF THE POLICYHOLDER.

## ITEM 3. AUTOMOBILE(S) DESCRIPTION

AUTO NO.	YEAR	MAKE OF VEHICLE	SERIES	CYLINDER	HORSE- POWER	CUBIC INCHES	IDENTIFICATION NUMBER
1	1967	BMW	XXXXXXXX	099	XXX	XXX	995091

ITEM 4. COVERAGES: The insurance afforded is only with respect to such of the following coverages for the indicated automobile for which a specific premium/liability limit is shown in Item 6 — Schedule of Coverages. The limit of the Company's liability under each such coverage and for the indicated automobile shall be as stated herein, subject to all the terms of this policy having reference thereto. The premium, if any, for attached endorsement(s) is included in the premium shown for the respective Coverages.

LEGEND OF ABBREVIATIONS			
COVERAGES		OTHER ABBREVIATIONS	
ADI TD	— Automobile Death Indemnity Total Disability	ACV	Actual Cash Value
A PIP	— Additional Personal Injury Protection	ACC	Accident
BI	— Bodily Injury	ADDL	Additional
BPP	— Basic Property Protection	AGG	Aggregate
COLL	— Collision	COV	Coverages
DTOP	— Damage to Other Property (Other Than Motor Vehicle)	DED	Deductible
EX PIP	— Excess Personal Injury Protection	DIST	District
IAM COMP	— Family Compensation Uninsured Motorist	EA ACC	Each Accident
FPUM	— Family Protection Uninsured Motorist	EA OCC	Each Occurrence
FT-CA	— Fire, Theft-Combined Additional	EA PER	Each Person
ME LIP	— Medical Expense - Loss of Income Payments	EA REL	Each Relative
MED PAY	— Medical Payments	END	Endorsement
NYAAI	— New York Automobile Accident Indemnification (Uninsured Motorist)	EXT.	Extended
PERS EFF	— Personal Effects	ID	Identification
PD	— Property Damage	INCL	Included
PIP	— Personal Injury Protection	LIAB	Liability
PPI	— Property Protection Insurance	LTD	Limited
PROP DAM LIAB	— Property Damage Liability	MUN TAX	Municipal Tax
UMC	— Uninsured Motorists Coverage	N	No
UMI	— Uninsured Motorists Insurance	NI	Named Insured
	— Supersedes Limits Shown on FPUM, UMC, or UMI Endorsement	POL	Policy
	— 20% But not to Exceed \$50	TERR	Territory
		VOL	Voluntary
		Y	Yes
CLASSIFICATIONS			
RF	Rate Factor	TD	Trained Driver Discount/
CL	Bureau Class		Good Student Discount
TY	Type	MC	Multi-car Discount
DE	Driver Experience	BM	Birth Month
US	Use (General Class)	BY	Birth Year
PV	Performance Vehicle	SC	Sub Classification
CC	Cost Class	SR	Surcharge
DC	Driver Class (Casualty Class)	SA	Stated Amount
		BT	Bumper Type Discount
		FR	Financial Responsibility Certificate
		AG	Age Group

## ITEM 5. LIENHOLDER

# FORM 6 SCHEDULE OF COVERAGES

AUTO NO. ( 1 ) 1967 314

COVERAGES	LIMITS OF LIAB.	PREMIUM
A1. Comprehensive ACV NO DED		
P.R.S. EFF.		\$100
B. Collision or Upset ACV LESS		\$100
Prop. Dam. Liab. ea. Occ.		\$25,000
Bodily Injury { ea. Per.		\$25,000
Liability { ea. Occ.		\$50,000
Auto Med. Pay. ea. Per.		
Towing and Labor		\$25
C. UMI END 1297		
BI EA PER		\$25,000
DI EA ACC		\$50,000
PD EA ACC		\$5,000

CLASSIFICATION											
1	1	1	1	1	1	1	1	1	1	1	1

ENDORSEMENTS

AUTO NO. ( )

COVERAGES	LIMITS OF LIAB.	PREMIUM
Comprehensive		
Collision or Upset		
Prop. Dam. Liab. ea. Occ.		
Bodily Injury { ea. Per.		
Liability { ea. Occ.		
Auto Med. Pay. ea. Per.		
Towing and Labor		

CLASSIFICATION											

ENDORSEMENTS

AUTO NO. ( )

COVERAGES	LIMITS OF LIAB.	PREMIUM
Comprehensive		
Collision or Upset		
Prop. Dam. Liab. ea. Occ.		
Bodily Injury { ea. Per.		
Liability { ea. Occ.		
Auto Med. Pay. ea. Per.		
Towing and Labor		

CLASSIFICATION											

ENDORSEMENTS

COVERAGES	LIMITS OF LIAB.	PREMIUM
Liab. Not Auto. Ea. Occ.		
Med. Pay. Not Auto. Ea. Per.		
Physical Damage to Property		

AUTO NO. ( )

COVERAGES	LIMITS OF LIAB.	PREMIUM
Comprehensive		
Collision or Upset		
Prop. Dam. Liab. ea. Occ.		
Bodily Injury { ea. Per.		
Liability { ea. Occ.		
Auto Med. Pay. ea. Per.		
Towing and Labor		

CLASSIFICATION											

ENDORSEMENTS

OFFICE USE → 45 B 724397 01 NEW

POLICY FORM: AUTO 4817 ISSUED ON: #10-06-78  
POLICY END: 1479

ISSUED BY: NATIONWIDE MUTUAL INSURANCE COMPANY

070

LYNCHBURG, VA.

BY S. P. MASSIE

AUTHORIZED REPRESENTATIVE

2413

## LOSS PAYABLE CLAUSE ENDORSEMENT

If a Lienholder is named in Item 5 of the Declarations, the following conditions apply as respects any Comprehensive, Fire, Theft or Collision coverage provided by the policy:

- (a) Loss or damage, if any, under the policy shall be payable as interest may appear to the Policyholder (Named Insured) and the Lienholder.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) If the Policyholder (Named 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.
- (f) 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 therefor 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.
- (g) 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 endorsement is executed by Nationwide Mutual Insurance Company if said Company has issued the policy to which this endorsement is attached; it is executed by Nationwide Mutual Fire Insurance Company if said Company has issued the policy to which this endorsement is attached.

NATIONWIDE MUTUAL INSURANCE COMPANY  
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY

Columbus, Ohio

*W. E. Fitzgerald*  
President

071

*John E. Fisher*  
President

Wide Mutual Insurance Company agrees with the Insured, named in the declarations made a part hereof, in consideration of payment of the premium and in reliance upon the statements in the declarations and subject to the limits of liability, conditions, conditions and other terms of this policy:

## PART I - PHYSICAL DAMAGE

### COVERAGE A (1) - Comprehensive - Excluding Collision (2) - Personal Effects

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.

Provided the Limit of Liability, as stated in the declarations, is Actual Cash Value less \$50 deductible, the following provisions also apply:

- (i) under the Comprehensive Coverage, \$50 shall be deducted from the amount of each loss as to each automobile, other than loss by (i) fire or lightning, (ii) 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 (iii) the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.
- (j) 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 hereof, instead of under the Comprehensive Coverage.

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 B - Collision

For loss caused by collision to the owned automobile or non-owned automobile but only for the amount of such loss in excess of the deductible amount stated in the declarations as applicable hereto.

### COVERAGE C - 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 II apply to Part I, but "owned automobile" does not include, under Part I, (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.

#### CONCLUSIONS

This policy does not apply under Part I:

- (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 B, 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.

#### 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 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 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 II - LIABILITY

### GE D - Property Damage Liability

### GE E - Bodily Injury Liability

on behalf of the Insured all sums which the Insured  
ome legally obligated to pay as damages because of:

e D: injury to or destruction of property, including  
e thereof, hereinafter called "property damage;"

e E: bodily injury, sickness or disease, including  
ulting therefrom, hereinafter called "bodily injury,"  
by any person;

ut of the ownership, maintenance or use of the owned  
ile or any non-owned automobile, and the Company  
nd any suit alleging such bodily injury or property  
and seeking damages which are payable under the  
this policy, even if any of the allegations of the suit  
ndless, false or fraudulent; but the Company may  
ch investigation and settlement of any claim or suit  
ns expedient.

### GE F - Medical Payments

in addition to the applicable limits of liability:

l expenses incurred by the Company, all costs taxed  
against the Insured in any such suit and all interest on  
e entire amount of any judgment therein which ac-  
ues after entry of the judgment and before the Com-  
any has paid or tendered or deposited in court that  
art of the judgment which does not exceed the limit  
the Company's liability thereon;

remiums on appeal bonds required in any such suit,  
remiums on bonds to release attachments for an  
mount not in excess of the applicable limit of liability  
this policy, and the cost of bail bonds required of  
e Insured because of accident or traffic law violation  
sing out of the use of an automobile insured here-  
der, not to exceed \$100 per bail bond, but without  
y obligation to apply for or furnish any such bonds;

enses incurred by the Insured for such immediate  
dical and surgical relief to others as shall be im-  
ative at the time of an accident involving an auto-  
bile insured hereunder and not due to war;

reasonable expenses, other than loss of earnings,  
urred by the Insured at the Company's request.

### Persons Insured

The following are Insureds under Part II:

- (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 II 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 II

"Named Insured" means the individual named in 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 II:

- (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 bodily injury or property damage 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;

1) 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;

) 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;

) 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**

In this policy is certified as proof of financial responsibility in 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**

**Coverage D:** 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.

**Coverage E:** 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.

#### **Other Insurance**

If the Insured has other 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 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 III — EXPENSES FOR MEDICAL SERVICES**

#### **COVERAGE F — Medical Payments**

Pay all reasonable expenses incurred within one year from date of accident for necessary medical, surgical, X-ray, dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral expenses.

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

Section 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

Definitions under Part II apply to Part III, and under Part III:

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

#### Exclusions

This policy does not apply under Part III to bodily injury:

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;

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 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 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 payments insurance.

## Policy Period, Territory

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 on, or is being transported between ports thereof.

## Premium

Named Insured disposes of, acquires ownership of, or is as a private passenger, farm or utility automobile or, in respect to Part I, a trailer, any premium adjustment shall be made as of the date of such change in accordance with the manuals in use by the Company. The Insured shall, upon request, furnish reasonable proof of the number of such automobiles or trailers and a portion thereof.

## Notice

In the event of an accident, occurrence or loss, written notice giving particulars sufficient to identify the Insured and reasonably obtainable information with respect to the 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 the Insured shall also promptly notify the police. If a suit 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.

## Two or More Automobiles

If two or more automobiles are insured hereunder, the provisions 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 II of this policy, and separate automobiles under Part I of this policy, including any deductible provisions applicable thereto.

## 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.

## (Part II)

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 this policy that the Insured shall cooperate with and assist the Company.

## 6 Action Against Company (Part III)

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 I and III)

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 I, 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 III)

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 elected 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.

#### **Insured's Duties in Event of Loss (Part I)**

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.

#### **Appraisal (Part I)**

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.

#### **Payment of Loss (Part I)**

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.

#### **11 No Benefit to Bailee (Part I)**

The insurance afforded by this policy shall not enure directly or indirectly to the benefit of any carrier or other bailee for hire liable for loss to the automobile.

#### **12 Subrogation (Parts I and II)**

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.

#### **13 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.

#### **14 Assignment**

Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; if, however, the Insured named in 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, and (4) under Division 1 of Coverage F, any person who was a relative at the time of such death.

#### **15 Cancellation**

This policy may be cancelled by the Insured named in the declarations 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 the declarations at the address shown in this policy, written notice stating when not less than



thereafter such cancellation shall be effective; policy may be cancelled by the Company by insured named in the declarations at the time this policy written notice stating:

more than ten days thereafter such cancellation shall be effective, if this policy has been in effect less than one year; or

more than fifteen days thereafter such cancellation shall be effective, if the Named Insured fails to discharge 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 directly or indirectly under any premium extension of credit.

Notice as aforesaid shall be sufficient proof of the date and hour of cancellation stated in the notice. Delivery of notice either by such Insured or by the Company shall be equivalent to mailing.

When a policy is cancelled, earned premium shall be computed on the basis of the customary short rate table and proportion. When a policy is not cancelled, earned premium shall be computed on the basis of the full premium. Premium adjustment may be made either when the policy is cancelled or as soon as practicable thereafter. Payment of premium is not a condition of cancellation.

#### Company Limited

When a policy has been in effect for sixty days at the time the notice is mailed or delivered or, if this policy is not cancelled immediately, the Company shall not be liable for cancellation unless:

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 extension of credit; or

the Named Insured or any other operator who either resides in the household or customarily operates a motor vehicle under this policy has had his driver's license suspended or revoked after the effective date of the policy has been in effect less than one year; or

the effective date if this policy has been in effect longer than one year;

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 cancelled 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.

#### 17 Renewal

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 the declarations, at the address shown in this policy, at least forty-five days prior to the expiration date. The mailing of notice as aforesaid shall be sufficient proof of notice. Delivery of such written notice shall be equivalent to mailing. Such notice shall not be required:

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 intentions in writing to the Insured, or
3. if the Named Insured 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.

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.

#### 18 Declarations

By acceptance of this policy, the Insured named in the declarations

ns agrees that the statements in the declarations are his  
ements and representations, that this policy is issued in  
nce upon the truth of such representations and that this  
y embodies all agreements existing between himself and  
company or any of its agents relating to this insurance.

#### Out-of-State Insurance

licable to motor vehicles for which the policy affords  
mobile Bodily Injury and Property Damage Liability In-  
ce) If, under the provisions of the motor vehicle financial  
nsibility law or the motor vehicle compulsory insurance  
or any similar law of any state or province, a non-resident  
quired to maintain insurance with respect to the opera-

tion 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 pro-  
vided 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.

### MUTUAL POLICY CONDITIONS

1. **MUTUALITY.** The Named Insured is a member of the Company so long as this policy is in force. The Named Insured is entitled to one vote, either in person or by proxy, at meetings of members of the Company and such dividends as may be declared by the Board of Directors. Upon cancellation or other termination of the policy, the Named Insured ceases to be a member.
2. **NO CONTINGENT LIABILITY.** The policy is non-assessable.
3. **PREMIUM NOTICE.** Prior to the expiration of the term for which a premium has been paid, a notice of the premium required to renew or maintain this policy in effect will be mailed to the Named Insured at the address last known to the Company.
4. **DATE OF ANNUAL MEETING.** The annual meeting of the members of the Company shall be held at the Home Office at Columbus, Ohio, on the first Thursday of April at 10:00 A.M. In case the Board of Directors shall elect to change the time and place of such meeting, due notice shall be mailed or delivered to each member at the address last known to the Company at least 10 days prior thereto.

WITNESS WHEREOF: Nationwide Mutual Insurance Company has caused this policy to be signed by its President and  
ary at Columbus, Ohio, and countersigned by a duly authorized representative of the Company.  
EST:

*Mr. E. Fitzpatrick*  
Secretary

*John E. Fisher*  
President

# ENDORSEMENT

1297

## UNINSURED MOTORISTS INSURANCE (Virginia)

of the payment of premium and subject to all of the provisions of this endorsement and to the applicable policy, the Company agrees with the Named Insured as follows:

### — UNINSURED MOTORISTS

or Bodily Injury and Property Damage)

ny will pay in accordance with Section 38.1-Code of Virginia and all Acts amendatory supplementary thereto, all sums which the his legal representative shall be legally en- over as damages from the owner or operator ured motor vehicle because of bodily injury the Insured or property damage, caused by arising out of the ownership, maintenance ch uninsured motor vehicle.

S  
ce does not apply:

dily injury or property damage with respect hich the Insured or his legal representative without written consent of the Company, any settlement with any person or organi- 1 who may be legally liable therefor;

e first two hundred dollars of the total nt of all property damage as the result of ne accident;

to inure directly or indirectly to the benefit y insurer of property.

### INSURED

ollowing is an Insured under this insurance set forth below:

Named Insured and, while residents of the household, the spouse and relatives of

other person while occupying an insured r vehicle; and

person, with respect to damages he is en- 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.

### 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) The limit of liability for bodily injury stated in the schedule 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 schedule 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.
- (b) The limit of liability for property damage stated in the schedule 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.
- (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

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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 coverage.

- (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.

#### **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.

#### **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;

"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 decla-

rations of this policy and includes the spouse if a resident of the same household;

"relative" means a person related to the Named Insured by blood, marriage or adoption who is a resident of the same household;

"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 within 5 days or as soon as practicable to the Commissioner of Motor Vehicles;

"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;

"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;

"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 company writing the same is or becomes insolvent or denies coverage thereunder; or
- (b) a hit-and-run vehicle as defined.

## Provisions

insuring Agreements, Exclusions, Conditions of the policy shall apply to the insured by this endorsement except the "Conditions", "Insured's Duties in the Event of an Accident", "Changes", "Assignment", and "Declarations".

policy period the number of insured motor vehicles owned by the Named Insured or spouse and dependent children. If the Named Insured changes, the Named Insured shall notify the Company during the policy period of any change. The premium shall be adjusted in accordance with the rates in use by the Company. If the earned premium exceeds the advance premium, the Named Insured shall pay the excess to the Company. If not, the Company shall return to the Named Insured the unearned portion paid by such

## Claim; Medical Reports; Proof of Loss.

If a claim is made, the Insured or other person making the claim shall give to the Company written proof of loss, including full particulars of the extent of the injuries, treatment, and expenses incurred in the determination of the claim hereunder. Proof of claim shall be made by the Company unless the Company has failed to furnish such forms within 15 days of notice of claim.

The Insured shall submit to physical examinations requested by the Company when and as the Company reasonably require and he, or in the event of his death, his legal representative, or in the event of his disability, his legal representative or the person or persons who sue therefor, shall upon each request execute authorization to enable the Company to obtain medical reports and copies of records.

Any person making claim for damage to property shall give proof of loss with the Company within 60 days of occurrence of loss, unless such time is extended by the Company, in the form of a statement setting forth the interest of the Insured in the property affected, any encumbrances, and 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 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.

Ohio

**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 re-

cover 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.

**SCHEDULE**

LIMITS OF LIABILITY — See Declarations

Additional premium for this endorsement is shown on the Declarations.

**NATIONWIDE MUTUAL INSURANCE COMPANY**

Columbus, Ohio

*M. E. Fitzpatrick*  
Secretary

*John E. Fisher*  
President