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CLERK
SUPREME COURT OF VIRGINIA
DEC 05 1994
RICHMOND, VIRGINIA

IN THE
Supreme Court of Virginia

RECORD NO. 941263

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,**

Appellant,

v.

MARY ELLEN HAINES, et al.,

Appellees.

JOINT APPENDIX

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JOHNSON, AYERS & MATTHEWS
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Insurance Company*

(CONTINUATION OF COUNSEL ON INSIDE COVER)

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Pro se

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Covington, Virginia 24426
(703) 965-0283

Pro se

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Exhibits

Plaintiff's Exhibit No.:

1 - Copy of State Farm Insurance Company policy filed 12/2/93*	166
2 - Requests for Admission to Defendant Mary Ellen Haines filed 12/2/93	197
3 - Deposition of Daniel T. Walton filed 12/2/93	234
4 - Deposition of Jennifer H. Walton filed 12/2/93	266

Defendant's Exhibit No.:

2 - Record of Proceedings filed 12/2/93	313
3 - DMV Abstract filed 12/2/93	314

* Plaintiff's Exhibit #1 is also Defendant's Exhibit No. 1

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

STATE FARM MUTUAL AUTOMOBILE)	
INSURANCE COMPANY,)	
)	
Plaintiff)	PLAINTIFF'S MOTION
)	FOR SUMMARY JUDGMENT
v.)	
)	Chancery No. 91-363
MARY ELLEN HAINES, et al.,)	
)	
Defendants)	

COMES NOW the plaintiff, State Farm Mutual Automobile Insurance Company, by counsel, and for its motion for summary judgment, states as follows:

1. The facts material to an adjudication as requested in the plaintiff's motion for declaratory judgment are not in dispute.

2. This case arises out of an automobile accident which occurred on February 8, 1991 when Daniel T. Walton was operating a 1984 Subaru automobile owned by Mary Ellen Haines. At the time of the accident, State Farm Mutual Automobile Insurance Company ("State Farm") had in effect an automobile liability insurance policy which had been issued to Mary Ellen Haines as named insured which identified the Subaru vehicle in question as an "insured vehicle" under the policy.

3. State Farm filed this declaratory judgment action seeking an adjudication that State Farm has no duty or obligation to defend or indemnify Daniel T. Walton with respect to any claims arising out of the accident in question.

4. The legal issue in this case turns on whether Daniel T. Walton is a "person insured" under the State Farm policy. The relevant portion of the State Farm policy contained in "Part I - Liability" is as follows:

Persons Insured. The following are insureds under Part I:

- (a) with respect to the owned automobile,
 - (1) the named insured and any resident of the same household,
 - (2) any other person using such automobile with the permission of the named insured, provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission

(See copy of policy designated as "Exhibit A" to Plaintiff's Requests for Admission to Mary Ellen Haines.)

5. Daniel T. Walton was not a "named insured" under the policy, nor was he a resident of the same household of the named insured at the time of the accident.

6. State Farm alleges in paragraph 9 of the amended motion for declaratory judgment that at the time of the accident "Daniel T. Walton had no license to operate a motor vehicle and had been expressly forbidden by Mary Ellen Haines from operating the Haines vehicle. This prohibition had been directly communicated to both Daniel T. Walton and Jennifer Haines Walton prior to the accident". In her answer to the amended motion for declaratory judgment, Mary Ellen Haines admitted this allegation. Defendants Daniel T. Walton and Jennifer Haines Walton have not filed any responsive pleadings in this action and the allegations of the plaintiff are therefore taken as confessed as to them.

7. In her answers to plaintiff's requests for admission, Mary Ellen Haines admits that "at the time of the accident, Daniel T. Walton did not have permission from Mary Ellen Haines to be operating the 1984 Subaru automobile". (Answer of defendant Mary Ellen Haines to plaintiff's requests for admission, paragraph 8. These answers are attached to this motion as Exhibit 1.)

8. In his answers to plaintiff's requests for admission, Daniel T. Walton admitted that prior to the accident, Mary Ellen Haines had told him not to operate the vehicle in question. Moreover, Walton also admitted that Mary Ellen Haines did not give him permission to operate the vehicle at the time of the accident. (Answers of defendant Daniel T. Walton to plaintiff's requests for admission, paragraphs 4 and 5. These answers are attached to this motion as Exhibit 2.)

9. Although Daniel T. Walton asserts in his answer to plaintiff's requests for admission that he had been given permission from his wife to drive the vehicle in question, (answer of Daniel T. Walton to plaintiff's requests for admission, paragraph 5), such permission from the custodian of the vehicle who is not a named insured under the policy, is not relevant to a determination of the permission issue in an "owned vehicle" situation, particularly in light of the expressed denial of permission from the named insured.

WHEREFORE, based upon the foregoing allegations, State Farm Mutual Automobile Insurance Company respectfully requests the

entry of an order adjudicating that State Farm has no duty or obligation to defend or indemnify Daniel T. Walton with respect to any claims arising out of the accident in question and further declaring that State Farm has no other duty or obligation under its policy to take any action or to make any payment whatsoever arising out of the accident in question, and for any further and other appropriate relief.

Respectfully submitted,

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

By Wm P. Wallace, Jr.
Of Counsel

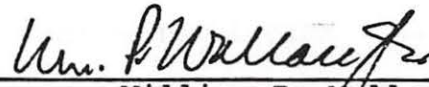
John D. Eure
William P. Wallace, Jr.
JOHNSON, AYERS & MATTHEWS
P. O. Box 2200
Roanoke, VA 24009-2200

Counsel for plaintiff

CERTIFICATE OF MAILING

I, William P. Wallace, Jr., hereby certify that a true copy of the foregoing Plaintiff's Motion for Summary Judgment was mailed to Michael McHale Collins, Esq., Collins, Crackel & Mooney, 275 W. Main Street, Covington, VA 24426, counsel of record for Mary Ellen Haines ; Daniel T. Walton, Route 1, Box 298A, Covington, VA 24426; Jennifer Haines Walton, Route 1, Box 298A, Covington, VA 24426; Jeffrey H. Krasnow, Esq., Jeffrey H. Krasnow & Associates, P. O. Box 120, Roanoke, VA 24002, counsel

of record for Karen R. Vance; Daniel S. Brown, Esq., Woods, Rogers and Hazlegrove, P. O. Box 720, Roanoke, VA 24004-0720, counsel of record for Allstate Insurance Company; Dabney L. Pasco, Esq., P. O. Box 76, Covington, VA 24426, counsel of record for Lorie A. Forbes and Paul A. Thurston, Sr., Administrator of the Estate of Paul A. Thurston, Jr., deceased; Walter H. Peake, III, Esq., Gentry, Locke, Rakes & Moore, P. O. Box 1018, Roanoke, VA 24005, counsel of record for Virginia Farm Bureau Mutual Insurance Company; and Stanley P. Wellman, Esq., Harman, Claytor, Corrigan & Wellman, P. O. Box 70280, Richmond, VA 23255, counsel of record for Colonial Insurance Company of California, this 29 day of May, 1992.



William P. Wallace, Jr.

EXHIBIT 1

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff

v.

MARY ELLEN HAINES, et al.,

Defendants

REQUESTS FOR ADMISSION
TO DEFENDANT
MARY ELLEN HAINES

Chancery No. 91-363

COMES NOW the plaintiff, State Farm Mutual Automobile Insurance Company, by counsel, and pursuant to Rule 4:11 of the Rules of Court of the Supreme Court of Virginia requests defendant Mary Ellen Haines to admit the following:

1. Mary Ellen Haines was the sole, titled owner of the 1984 Subaru automobile which was involved in the accident of February 8, 1991 on Interstate 64 in Alleghany County, Virginia, which accident is referred to in the amended motion for declaratory judgment (hereinafter "accident").

RESPONSE: Admit

2. Mary Ellen Haines purchased the 1984 Subaru in August, 1990 and was the sole, titled owner of this vehicle from the date of the purchase up to the time of the accident.

RESPONSE: Admit

3. At the time of the accident, Mary Ellen Haines resided at 2341 South Church Avenue, Covington, Virginia.

RESPONSE: Admit

4. On February 8, 1991, State Farm Mutual Automobile Insurance Company had in effect an automobile insurance policy no. 4984-126-D17-46C which had been issued to defendant Mary Ellen Haines as named insured. The 1984 Subaru automobile referred to above was an insured vehicle under the policy.

RESPONSE: Admit

5. Exhibit A attached to this request is a true and genuine copy of the State Farm policy referred to in request number four above.

RESPONSE: Admit

6. At the time of the accident, Daniel T. Walton was married to Jennifer Haines Walton, daughter of Mary Ellen Haines. Daniel T. Walton and Jennifer Haines Walton resided at that time at Route 1, Box 298A, Covington, Virginia.

RESPONSE: Admit

7. At the time of the accident, Daniel T. Walton had no license to operate a motor vehicle and had been expressly forbidden by Mary Ellen Haines from operating the 1984 Subaru automobile referred to above. This prohibition had been directly communicated to both Daniel T. Walton and Jennifer Haines Walton by Mary Ellen Haines prior to the accident.

RESPONSE: Admit

8. At the time of the accident, Daniel T. Walton did not have permission from Mary Ellen Haines to be operating the 1984 Subaru automobile.

RESPONSE: Admit

Respectfully submitted,

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

By Wm. P. Wallace, Jr.
Of Counsel

William P. Wallace, Jr.
JOHNSON, AYERS & MATTHEWS
P. O. Box 2200
Roanoke, VA 24009-2200

Counsel for Plaintiff

CERTIFICATE OF MAILING

I, William P. Wallace, Jr., hereby certify that a true copy of the foregoing Requests for Admission to Defendant Mary Ellen Haines was mailed to Michael McHale Collins, Esq., Collins, Crackel & Mooney, 275 W. Main Street, Covington, VA 24426, counsel of record for Mary Ellen Haines ; Daniel T. Walton, Route 1, Box 298A, Covington, VA 24426; Jennifer Haines Walton, Route 1, Box 298A, Covington, VA 24426; Jeffrey H. Krasnow, Esq., Jeffrey H. Krasnow & Associates, P. O. Box 120, Roanoke, VA 24002, counsel of record for Karen R. Vance; Daniel S. Brown, Esq., Woods, Rogers and Hazlegrove, P. O. Box 720, Roanoke, VA 24004-0720, counsel of record for Allstate Insurance Company; Dabney L. Pasco, Esq., P. O. Box 76, Covington, VA 24426, counsel of record for Lorie A. Forbes and Paul A. Thurston, Sr., Administrator of the Estate of Paul A. Thurston, Jr., deceased; Walter H. Peake, III, Esq., Gentry, Locke, Rakes & Moore, P. O. Box 1018, Roanoke, VA 24005, counsel of record for Virginia Farm Bureau Mutual Insurance Company; and Stanley P. Wellman, Esq., Harman, Claytor, Corrigan & Wellman, P. O. Box 70280, Richmond, VA 23255, counsel of record for Colonial Insurance Company of California, this 9 day of April, 1992.



William P. Wallace, Jr.

Mary Ellen Haines
MARY ELLEN HAINES

COMMONWEALTH OF VIRGINIA

COUNTY OF ALLEGHANY, to-wit:

This day personally appeared before me,

Peggy L. Ingram Notary Public of and for the County
aforesaid, in the State of Virginia, and made oath that the
foregoing responses to Requests for Admission are true and
correct according to the best of her knowledge, information
and belief.

Subscribed and sworn to before me this 4th day of
May, 1992.

Peggy L. Ingram
NOTARY PUBLIC

My commission expires: 9-30-94

CERTIFICATE

I, Michael McHale Collins, do hereby certify that a
true copy of the foregoing response to requests for admission
were this _____ day of May, 1992, mailed to William P. Wallace,
Jr., Esquire, Johnson, Ayers & Matthews, P.O. Box 2200, Roanoke,
VA 24009-2200.

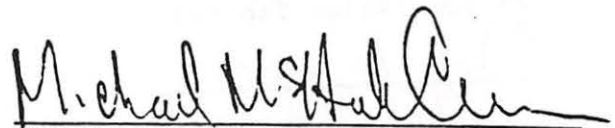
Michael McHale Collins

COLLINS, ~~McHale~~
& MOONEY
ATTORNEYS AT LAW
—
COVINGTON, VIRGINIA
&
CLIFTON FORGE, VIRGINIA

COLLINS, CRACKEL & MOONEY
Michael McHale Collins
275 W. Main Street
Covington, VA 24426

CERTIFICATE

I, Michael McHale Collins, do hereby certify that a true copy of the foregoing response to requests for admission was this 4th day of May, 1992, mailed to William P. Wallace, Jr., Esquire, Johnson, Ayers & Matthews, P.O. Box 2200, Roanoke, VA 24009-2200, counsel of record for State Farm Mutual Automobile Insurance Company; Daniel T. Walton and Jennifer Haines Walton, Route 1, Box 298A, Covington, Virginia 24426; Jeffrey H. Krasnow, Esquire, P.O. Box 120, Roanoke, Virginia 24002, counsel for Karen R. Vance; Daniel S. Brown, Esquire, Woods, Rogers & Hazlegrove, P.O. Box 720, Roanoke, Virginia 24004-0720, counsel for Allstate Insurance Company; Dabney L. Pasco, Esquire, P.O. Box 76, Covington, Virginia 24426, counsel for Lorie A. Forbes and Paul A. Thurston, Sr., Administrator of the Estate of Paul A. Thurston, Jr., deceased; Walter H. Peake, III, Esquire, Gentry, Locke, Rakes & Moore, P.O. Box 1018, Roanoke, VA 24005, counsel of record for Virginia Farm Bureau Mutual Insurance Company; and Stanley P. Wellman, Esquire, Harman, Claytor, Correigan & Wellman, P.O. Box 70280, Richmond, VA 23255, counsel of record for Colonial Insurance Company of California.


MICHAEL MCHALE COLLINS

COLLINS, CRACKEL & MOONEY
ATTORNEYS AT LAW
COVINGTON, VIRGINIA
&
CLIFTON FORGE, VIRGINIA

EXHIBIT A

State Farm Insurance Companies



CERTIFICATE

Eastern Office
1500 State Farm Boulevard
Charlottesville, Virginia 22909-0001

I, the undersigned, do hereby certify that I am custodian of the records pertaining to the issuance of policies by the Inland Virginia Division of State Farm Mutual Automobile Insurance Company of Bloomington, Illinois.

I further certify that the attached policy, number 498 4126-D17-46C, is a copy of the policy issued to Mary Ellen Haines of 2340 Church Ave, Covington, Virginia 24426-2703 together with any endorsements issued subsequently, based on our available records. The policy was in full force and effect on the accident date of February 8, 1991.

Everette Breeden
Everette Breeden
UNDERWRITING OPERATIONS SUPERINTENDENT

State of Virginia
County of Albemarle

Subscribed and sworn to before me this 26th day of June, 1991.

Shirley J. Sites
Notary Public

My Commission Expires:

July 19, 1993



STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

1500 STATE FARM BLVD. CHARLOTTESVILLE, VIRGINIA 22909-0001

NAMED INSURED

HAINES, MARY ELLEN
2340 CHURCH AVE
COVINGTON VA 24426-2703

POLICY NUMBER 498 4126-D17-46C

POLICY PERIOD AUG-20-90 TO OCT-17-90

CURRENT 6 VEHICLE 1 \$163.50
MONTH PREMIUM VEHICLE 2 \$252.10

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
SEPARATE STATEMENT ENCLOSED IF AMOUNT DUE

MONTHLY PAY PLAN NUMBER 110428

DESCRIBED VEHICLE	YEAR	MAKE	MODEL	BODY STYLE	VEHICLE IDENTIFICATION NUMBER	CLASS
1	87	HONDA	CIVIC	4DR	1HGEC4633HA063638	1B303
2	84	SUBARU	GL	STA WAG	JF1AM43B9EC422809	5B301

COVERAGES (AS DEFINED IN POLICY)
SYMBOL-PREMIUM-COVERAGE NAME-LIMITS OF LIABILITY

SEE REVERSE SIDE FOR IMPORTANT USAGE

AB LIABILITY
1 \$18.00 BODILY INJURY LIABILITY
2 \$34.94 LIMITS OF LIABILITY-COVERAGE A
EACH PERSON, EACH OCCURRENCE
100,000 300,000
PROPERTY DAMAGE LIABILITY
LIMITS OF LIABILITY-COVERAGE B
EACH OCCURRENCE
50,000

C MEDICAL PAYMENTS
1 \$3.17 LIMIT OF LIABILITY-COVERAGE C-EACH PERSON 5,000
2 \$6.21 LIMIT OF LIABILITY-COVERAGE C-EACH PERSON 5,000

D COMPREHENSIVE
1 \$6.91 D COVERAGE
2 \$7.88 D COVERAGE

G COLLISION
1 \$18.58 G100 COVERAGE-\$100 DEDUCTIBLE
2 \$26.18 G100 COVERAGE-\$100 DEDUCTIBLE
H TOWING AND LABOR COSTS

1 \$.57
2 \$.57

U UNINSURED MOTORISTS
1 \$4.60 LIMITS OF LIABILITY-U-BODILY INJURY
2 \$4.12 EACH PERSON, EACH ACCIDENT
100,000 300,000

LIMITS OF LIABILITY-U-PROPERTY DAMAGE
EACH ACCIDENT
50,000

VEHICLE 1 \$131.73 TOTAL PREMIUM FOR POLICY PERIOD AUG-20-90 TO OCT-17-90
\$51.83 VEHICLE 2 \$79.90

MEMBERSHIP \$14.00

CONTINUED

THIS IS YOUR DECLARATIONS PAGE.
PLEASE ATTACH IT TO YOUR AUTO POLICY BOOKLET.

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

=1500 STATE FARM BLVD. CHARLOTTESVILLE, VIRGINIA 22909-0001

NAMED INSURED

HAINES, MARY ELLEN
2340 CHURCH AVE
COVINGTON VA 24426-2703

POLICY NUMBER 498 4126-D17-46C

POLICY PERIOD AUG-20-90 TO OCT-17-90

CURRENT 6 MONTH PREMIUM Vehicle 1 \$163.50
Vehicle 2 \$252.10

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
SEPARATE STATEMENT ENCLOSED IF AMOUNT DU

DESCRIBED VEHICLE	YEAR	MAKE	MODEL	BODY STYLE	VEHICLE IDENTIFICATION NUMBER	CLASS
1	87	HONDA	CIVIC	4DR	1HGEC4633HA063638	1B303
2	84	SUBARU	GL	STA WAG	JF1AM43B9EC422809	5B301

COVERAGES (AS DEFINED IN POLICY)
SYMBOL-PREMIUM-COVERAGE NAME-LIMITS OF LIABILITY

SEE REVERSE SIDE FOR IMPORTANT MESSAGE

EXCEPTIONS AND ENDORSEMENTS

FINANCED-CAR 1 FIRST VIRGINIA BANK, P O BOX 7585, ROANOKE VA 24019-0585
CAR 1,2

6256W.1 SOUND RECEIVING AND TRANSMITTING EQUIPMENT EXCLUDED.

6273H.6 SUPPLEMENTARY UNINSURED MOTORISTS INSURANCE.

6520.7 UNINSURED MOTORISTS INSURANCE.

6571A.1 AMENDATORY ENDORSEMENT: CHANGE COVERAGES AND CONDITIONS.

6589 ASSISTANCE AND COOPERATION OF THE INSURED.

6778 OUT-OF-STATE INSURANCE.

6893B AMENDMENT OF COVERAGE D.

6989AS AMENDATORY ENDORSEMENT: CHANGES-NON-OWNED COVERAGE: POLICY
CONDITIONS.

AGENT: C E HUMPHRIES
PHONE: 703 962-2297

THIS IS YOUR DECLARATIONS PAGE.
PLEASE ATTACH IT TO YOUR AUTO POLICY BOOKLET.

14

YOUR POLICY CONSISTS OF THIS PAGE, ANY ENDORSEMENTS, AND THE POLICY BOOKLET, FORM
RFPI ACFD POLICY 4084126-46R

PLEASE KEEP TOGETHER

PLEASE READ YOUR POLICY CAREFULLY. IF YOU HAVE AN ACCIDENT, CONTACT YOUR STATE FARM AGENT OR ONE OF OUR CLAIM OFFICES AT ONCE.



Authorized Representative
State Farm Mutual Automobile Insurance Company, Home Office, Bloomington, Illinois
Eastern Office • 1500 State Farm Boulevard • Charlottesville, Virginia 22909-0001

YOUR
STATE FARM

**FAMILY AUTOMOBILE
POLICY**

COMBINATION FORM

DECLARATIONS

POLICY PERIOD: The policy period shall be as shown in the Declarations under "Policy Period" and for such succeeding periods of six months each thereafter as the required renewal premium is paid by the insured on or before the expiration of the current policy period. The policy period shall begin and end at 12:01 A.M., standard time at the address of the named insured as stated herein. The premium shown is for the policy period indicated in the Declarations.

COVERAGES, LIMITS OF LIABILITY, PREMIUMS: The insurance afforded is only with respect to such of the coverages as are indicated in the Declarations by specific premium charge or charges. The limit of the company's liability against each such coverage shall be as stated herein, subject to all terms of the policy having reference thereto.

GARAGED: The owned automobile will be principally garaged in the declared town and state, unless otherwise stated in the exceptions.

CANCELLATION OF PREVIOUS INSURANCE: During the past three years no insurer has canceled insurance, issued to the named insured, similar to that afforded hereunder, unless otherwise stated in the exceptions.

LOSS PAYEE: Any loss under Part III is payable as interest may appear to the named insured and the Loss Payee, if any, shown in the Declarations and this insurance as to such additional interest shall not be invalidated by any act or negligence of the mortgagor or owner, nor any change in the title or ownership, nor by any error, or inadvertence in the description of the automobile until after notice of termination of the policy shall be given to the mortgage owner, conditional vendor, mortgagee or assignee stating when not less than 10 days thereafter such termination shall be effective; provided, the lien-holder shall notify the company within 10 days of any change of interest or ownership which shall come to the knowledge of said lien-holder and failure to do so will render this policy null and void.

COVERAGE S OR T is afforded only with respect to the person or persons designated in the Declarations as insured.

UNDER COVERAGE T (a) each insured is engaged in a remunerative occupation; (b) the sum of the weekly indemnity afforded by this insurance and by all personal accident insurance carried by such person is not more than two-thirds of his average weekly earnings during the past 12 months.

2
8463F

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

BLOOMINGTON, ILLINOIS

A Mutual Insurance Company Herein Called The Company

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

PART I - LIABILITY

COVERAGE A - Bodily Injury Liability;

COVERAGE B - Property Damage Liability. To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:

A. bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", sustained by any person;

B. injury to or destruction of property, including loss of use thereof, hereinafter called "property damage";

arising out of the ownership, maintenance or use of the owned automobile or any non-owned automobile, and the company shall defend any suit alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent; but the company may make such investigation and settlement of any claim or suit as it deems expedient.

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

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

(b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of an automobile insured hereunder, not to exceed \$100 per bail bond, but without any obligation to apply for or furnish any such bonds;

(c) expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of an accident involving an automobile insured hereunder and not due to war;

(d) all reasonable expenses, other than loss of earnings, incurred by the insured at the company's request.

Persons Insured. The following are insureds under Part I:

(a) with respect to the owned automobile,

(1) the named insured and any resident of the same household,

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

(3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a)(1) or (2) above;

(b) with respect to a non-owned automobile,

(1) the named insured,

(2) any relative, but only with respect to a private passenger automobile or trailer,

provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and

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

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

Definitions. Under Part I:

"named insured" means the individual named as named insured 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";

b. ...

"relative" means a relative of 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;

named insured who is

"war" means war, whether declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

Exclusions. This policy does not apply under Part I:

(a) to any automobile while used as a public or livery conveyance, but this exclusion does not apply to the named insured with respect to bodily injury or property damage which results from the named insured's occupancy of a non-owned automobile other than as the operator thereof;

(b) to bodily injury or property damage caused intentionally by or at the direction of the insured;

(c) to injury, sickness, disease, death or destruction with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;

(d) to bodily injury or property damage arising out of the operation of farm machinery;

(e) to bodily injury to any employee of the insured arising out of and in the course of (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the insured;

(f) to bodily injury to any fellow employee of the insured injured in the course of his employment if such injury arises out of the use of an automobile in the business of his employer, but this exclusion does not apply to the named insured with respect to injury sustained by any such fellow employee;

(g) to an owned automobile while used by any person while such person is employed or otherwise engaged in the automobile business, but this exclusion does not apply to the named insured, a resident of the same household as the named insured, a partnership in which the named insured or such resident is a partner, or any partner, agent or employee of the named insured, such resident or partnership;

(h) to a non-owned automobile while maintained or used by any person while such person is employed or otherwise engaged in

(1) the automobile business of the insured or of any other person or organization;

(2) any other business or occupation of the insured, but this exclusion (h) (2) does not apply to a private passenger automobile operated or occupied by the

named insured or by his private four or domestic servant or a trailer used thereon or with an owned automobile;

(i) to injury to or destruction of (1) property owned or transported by the insured or (2) property rented to or in charge of the insured other than a residence or private garage;

(j) to the ownership, maintenance, operation, use, loading or unloading of an automobile ownership of which is acquired by the named insured during the policy period or any temporary substitute automobile therefor, if the named insured has purchased other automobile liability insurance applicable to such automobile for which a specific premium charge has been made.

Financial Responsibility Laws. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

PART II — EXPENSES FOR MEDICAL SERVICES

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

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

- (a) while occupying the owned automobile,
- (b) while occupying a non-owned automobile, but only if such person has, or reasonably believe 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;

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

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

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

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

(a) the owned automobile, while being used by the named insured, by any resident of the same household or by any other person, with the permission of the named insured; or

(b) a non-owned automobile, if the bodily injury results from

(1) its operation or occupancy by the named insured or its operation on his behalf by his private chauffeur or domestic servant, or

(2) its operation or occupancy by a relative, provided it is a private passenger automobile or trailer, but only if such operator or occupant has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission.

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

"occupying" means in or upon on entrance into or alighting from a vehicle. This policy does not apply under Part II to bodily injury:

- (a) sustained while occupying (1) an owned automobile while used as a public or livery conveyance, or (2) any vehicle while located for use as a residence or premises;
- (b) sustained by the named insured or a relative while occupying or through being struck by (1) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads, or (2) a vehicle operated on rails or crawler-treads;
- (c) sustained by any person other than the named insured or a relative:

- (1) while such person is occupying a non-owned automobile while used as a public or livery conveyance, or
- (2) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in the automobile business, or
- (3) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in any other business or occupation, unless the bodily injury results from the operation or occupancy of a private passenger automobile.

PART III - PHYSICAL DAMAGE

COVERAGE D - (1) Comprehensive - Excluding Collision, (2) Personal Effects.

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

(2) To pay for loss caused by fire or lightning to robes, wearing apparel and other personal effects which are the property of the named insured or a relative, while such effects are in or upon the owned automobile.

DEDUCTIBLE COMPREHENSIVE COVERAGE. To pay any loss payable under coverage D but it is agreed that the deductible amount, as shown on the declarations page by the number beside D, shall be deducted from the amount of each loss as to each automobile, other than loss by (a) fire or lightning, (b) smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment servicing the premises in which the automobile is located, or

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 while is employed in the automobile business, if the accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;

(e) due to war.

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

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

(c) the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.

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

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

COVERAGE H - 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. If a tire automobile has been reported to the company and the police, and terminating when the automobile is returned to use or the company pays for the loss; provided that the company shall not be obligated to pay aggregate expenses in excess of \$10 per day or totaling more than \$300;

(b) to pay general average and salvage charges for which the insured becomes legally liable, as to the automobile being transported.

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

"insured" means:

(a) with respect to an owned automobile,

(1) the named insured, and

(2) any person or organization (other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee for hire) maintaining, using or having custody of said automobile with the 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 automobile or with a vehicle to which it is attached or by upset of such automobile;

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

Exclusions. This policy does not apply under Part III:

(a) to any automobile while used as a public or livery conveyance;

(b) to loss due to war;

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

(d) to loss to a private passenger, farm or utility automobile or trailer owned by the named insured and not described in this policy or to any temporary substitute automobile therefor, if the insured has other valid and collectible insurance against such loss;

(e) to damage which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure; unless such damage results from a theft covered by this policy;

(f) to tires, unless damaged by fire, malicious mischief or vandalism, or stolen or unless the loss be coincident with and from the same cause as other loss covered by this policy;

(g) to loss due to radioactive contamination;

(h) under coverage G, 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 of personal effects arising out of any one occurrence is \$100, and (b) for loss to any trailer not owned by the named insured is \$500.

Other Insurance. If the insured has other insurance against a loss covered by Part III of this policy, the

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

PART IV — AUTOMOBILE DEATH INDEMNITY, TOTAL DISABILITY COVERAGE AND SPECIFIC DISABILITY BENEFITS

INSURING AGREEMENTS

1. COVERAGES

Division 1 — Death Indemnity

To pay the principal sum stated in the exceptions in the event of the death of the insured which shall result directly and independently of all other causes from bodily injury caused by accident and sustained by the insured while in or upon, or while entering into or alighting from, or through being struck by, an automobile, provided the death shall occur (1) within ninety days after the date of the accident, or (2) within fifty-two weeks after the date of the accident and during a period of continuous total disability of the insured for which weekly indemnity is payable under the total disability coverage.

Division 2 — (a) Dismemberment and Loss of Sight Benefits

(b) Fractures and Dislocations Benefits

To pay the highest applicable amount stated in the following Tables for loss as enumerated therein, in the event of bodily injury, caused by accident and sustained by the insured while in or upon, or while entering into or alighting from, or through being struck by, an automobile, provided loss under Table I be sustained by the insured within ninety days from such accident.

As respects any insured, (1) any amount for which the company is obligated or has made payment under Division 2 shall apply in reduction of any amount for which the company is obligated under Division 1;

(2) payment of the principal sum shall terminate all obligation of the company under coverage S.

TABLE I

	If applicable principal sum is	If applicable principal sum is
For Loss of	\$5,000.00	\$10,000.00
Both Hands or Both Feet or Sight of Both Eyes	\$5,000.00	\$10,000.00

One Hand and One Foot	5,000.00	10,000.00
Either Hand or Foot and Sight of One Eye	5,000.00	10,000.00
Either Hand or Foot	2,500.00	5,000.00
Sight of One Eye	1,750.00	3,500.00
Thumb and Index Finger of Either Hand	1,250.00	2,500.00

"Loss" shall mean with regard to hands and feet, actual severance through or above wrist or ankle joints; with regard to eyes, entire and irrecoverable loss of sight; with regard to thumb and index finger, actual severance through or above metacarpophalangeal joints.

TABLE II

	If applicable principal sum is	If applicable principal sum is
For Fracture of Bones:	\$5,000.00	\$10,000.00
Skull (except bones of face or nose)	\$175.00	\$350.00
Thigh	150.00	300.00
Arm, between elbow and shoulder	150.00	300.00
Pelvis (except coccyx)	125.00	250.00
Vertebra or Vertebrae (except coccyx and vertebral processes)	125.00	250.00
Shoulder Blade	100.00	200.00
Leg	100.00	200.00
Kneecap	100.00	200.00
Collar Bone	75.00	150.00
Forearm, between wrist and elbow	75.00	150.00
Foot (except toes)	62.50	125.00
Hand (except fingers)	62.50	125.00
Sternum	50.00	100.00

Lower Jaw (except alveolar process)	\$7.50	75.00
One or more ribs, fingers or toes	25.00	50.00
Bones of face or nose	25.00	50.00
Coccyx or Vertebral Processes	25.00	50.00
For Complete Dislocations:		
Hip Joint	\$150.00	\$300.00
Knee Joint (except patella)	75.00	150.00
Bone or Bones of Foot (except toes)	75.00	150.00
Ankle Joint	75.00	150.00
Wrist Joint	62.50	125.00
Elbow Joint	50.00	100.00
Shoulder Joint	37.50	75.00
Bone or Bones of Hand (except fingers)	25.00	50.00
Collar Bone	25.00	50.00
One or more fingers or toes	12.50	25.00
For Loss by Removal:		
Of one or more entire toes	\$100.00	\$200.00
Of one or more fingers (at least one entire phalanx)	75.00	150.00
For a Hospital-confining Injury, except as an Outpatient:	\$25.00	\$50.00

COVERAGE T — Total Disability — Maximum 200 Weeks. To pay weekly indemnity at the rate stated in the exceptions for the period of continuous total disability of the insured which shall result directly and independently of all other causes from bodily injury caused by accident and sustained by the insured while in or upon or while entering into or alighting from, or through being struck by, an automobile, provided (1) such disability shall commence within twenty days after the date of the accident, and (2) any disability during the period of fifty-two weeks from its commencement shall be deemed total disability only if it shall continuously prevent the insured from performing every duty pertaining to his occupation, and (3) any disability after said fifty-two weeks shall be deemed total disability only if it shall continuously prevent the insured from engaging in any occupation or employment for wage or profit and (4) the weekly indemnity for total disability as provided hereinabove shall in no event extend beyond a period of 200 consecutive weeks from the date of commencement of disability as provided above.

2. Definition of Insured. With respect to coverages S and T, the unqualified word "insured" means the person or

persons so designated for such coverage in the exceptions.

3. Automobile defined. With respect to this insurance the word "automobile" means a land motor vehicle or trailer not operated on rails or crawler treads, but does not mean: (1) a farm type tractor or other equipment designed for use principally off public roads, except while actually upon public roads, or (2) a land motor vehicle or trailer while located for use as a residence or premises and not as a vehicle.

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

EXCLUSIONS. This insurance does not apply:

(a) to bodily injury or death sustained in the course of his occupation by any person while engaged (1) in duties incident to the operation, loading or unloading of, or as an assistant on, a public or livery conveyance or commercial automobile, or (2) in duties incident to the repair or servicing of automobiles;

(b) to loss caused by or resulting from disease except pus forming infection which shall occur through bodily injury to which this insurance applies;

(c) to suicide, sane or insane, or to any attempt thereof;

(d) to injury or death due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing.

CONDITIONS.

1. Policy Provisions. None of the insuring agreements, exclusions or other provisions of Parts I, II and III of the policy or conditions of the policy shall apply to the insurance afforded by this Part IV except the conditions "Notice", "Action Against Company (Medical Payments)", "Changes", "Assignment", "Cancellation" and "Declarations".

2. Notice of Claim. When loss covered hereunder occurs, written notice thereof shall be given by or on behalf of the insured or the beneficiary to the company or any of its authorized agents as soon as practicable.

3. Proof of Claim; Medical Reports. As soon as practicable, the injured person, or the beneficiary in the event of death, 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.

Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to

furnish such forms within notice of claim.

days after receiving

weekly indemnity is balance at termination of the company is liable.

every four weeks and any disability period for which

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

4. Payment of Death Indemnity; Autopsy — Division 1 of Coverage S. If the decedent insured be survived by a spouse who was a resident of the same household at the time of the accident; indemnity for death is payable to such spouse; otherwise, if the decedent insured was a minor, indemnity for death is payable to any parent thereof who was a resident of the same household at the time of the accident; otherwise indemnity for death is payable to the decedent insured's estate.

The company shall have the right and opportunity to make an autopsy where it is not forbidden by law.

5. Payment of Indemnity — Coverage T. Weekly Indemnity for total disability is payable to the insured who is disabled. Subject to proof of claim, accrued

6. Beneficiary — Division 1 of Coverage S. Consent of beneficiary is not requisite to cancellation, assignment, change of beneficiary, or any other change in the policy.

7. Death of Named Insured. If the named insured dies, any insurance afforded under this Part IV with respect to any surviving insured shall be continued while the policy is in effect.

8. Other Insurance. If any insured under this Part IV also is an insured under other coverage of the same kind, issued by the company, any payment for loss under such other coverage shall serve to reduce, to the extent of such payment, the company's obligation under this Part IV as respects any loss to such insured, and the company will return the premium paid for such duplication of the insurance hereunder.

CONDITIONS

Conditions 3, 13 and 15 through 19 apply to all Parts.

Conditions 1, 2, 14 and 4 through 12, apply only to the Parts noted thereunder.

1. Policy Period, Territory (Parts I, II and III). This policy applies only to accidents, occurrences and loss during the policy period while the automobile is within the United States of America, its territories or possessions, or Canada, or is being transported between ports thereof.

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

3. Notice. In the event of an accident, occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable. In the event of theft the insured shall also promptly notify the police. If claim is made or suit is brought against the insured, he

shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

4. Two or More Automobiles (Parts I, II and III). When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, but an automobile and a trailer attached thereto shall be held to be one automobile as respects limits of liability under Part I of this policy, and separate automobiles under Part III of this policy, including any deductible provisions applicable thereto.

5. Assistance and Cooperation of the Insured (Parts I and III). The insured shall cooperate with the company and, upon the company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury, property damage or loss with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The 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

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automobile shall constitute non-compliance with the requirements of the policy that the insured shall cooperate with and assist the company. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

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

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

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

7. Medical Reports; Proof and Payment of Claim (Part II). As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

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

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

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

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

9. Appraisal (Part III). If the insured and the company fail to agree as to the amount of loss, either may, within 60 days after proof of loss is filed, demand an appraisal of the loss. In such event the insured and the company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. The appraisers shall state separately the actual cash value and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

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

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

11. No Benefit to Bailee (Part III). The insurance afforded by this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire liable for loss to the automobile.

12. Subrogation (Parts I and III). In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and

papers and do whatever rights. The insured shall do such rights.

13. Changes. Notice to any agent or knowledge possessed by any agent or by or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by an executive officer of the company.

14. Limit of Liability. Coverage H. The company's liability shall not exceed \$50.00 for each disablement.

15. Assignment. Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the insured named as named insured 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 Part II any person who was a relative at the time of such death.

16. Cancellation. This policy may be cancelled by the insured named as named insured in the declarations, or his duly constituted attorney-in-fact by mailing to the company written notice stating when thereafter the cancellation shall be effective.

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

1. when not less than ten days thereafter such cancellation shall be effective, if this policy has been in effect less than sixty days and is not a renewal policy;
2. when not less than fifteen days thereafter such cancellation shall be effective, if the named insured fails to discharge when due any of his obligations in connection with the payment of premium for this policy, or any installment thereof, whether payable to the company or its agent either directly or indirectly under any premium finance plan or extension of credit.

Notice to the insured named as named insured in the declarations shall be mailed either by certificate of mailing, provided the company has retained a duplicate certified copy of said notice, or by registered or certified mail.

pursuant to section 37-1-1 of the code of Virginia. The effective date of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by such insured, or his duly constituted attorney-in-fact, or by the company shall be equivalent to mailing.

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

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

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

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

18. Renewal. The company agrees that it will not exercise its right to refuse to renew or continue the policy, except as of the end of any six month interval of the original effective date.

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

pursuant to section 38.2-2208 of Virginia Code of Virginia.
Delivery of such written notice shall be equivalent to mailing.

Such notice shall not be required:

1. if the named insured fails to pay the premium as required by the company for renewal or continuance of this policy.
2. If the company or its agent acting on behalf of the company has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, or has manifested such intention in writing to the insured, or

3. If the named insured, his duly constituted attorney-in-fact, has notified in writing to the company or its agent that he wishes the policy to be cancelled or that he does not wish the policy to be renewed or if prior to the date of expiration he fails to accept the offer of the company.

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

MUTUAL CONDITIONS

1. **Membership.** The membership fees set out in this policy, which are in addition to the premiums, are not returnable but entitle the first insured named in the Declarations to insure one automobile for the coverages for which said fees were paid so long as this company continues to write such coverages and the insured remains a risk desirable to the company.

While this policy is in force, the first insured named in the Declarations is entitled to vote at all meetings of members and to share in the earnings and savings of the company in

accordance with the dividends declared by the Board of Directors on this and like policies.

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

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

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

Laura P. Sullivan
SECRETARY

Edward B. Rust Jr.
PRESIDENT

Note: The following endorsement applies when the endorsement number is shown

declarations page.

**6191C DISTRICT OF COLUMBIA EMPLOYEES USING
AUTOMOBILES IN GOVERNMENT BUSINESS**

It is agreed that the policy does not apply under the Liability Coverages to the following insureds:

1. The District of Columbia or any of its Agencies;
2. Any person, including the named insured, with respect to bodily injury or property damage resulting from the operation of an automobile by such person as an employee of the District of Columbia while acting within the scope of his office or employment, if such person is relieved from liability because of the provisions of Public Law 86-654 (District of Columbia Employee Non-Liability Act), as amended.

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6256W.1 SOUND RECEIVING AND TRANSMITTING EQUIPMENT EXCLUDED

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

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

Note: This endorsement replaces any endorsement providing similar coverage. It applies when the endorsement number is shown on the declarations page.

6273H.5 SUPPLEMENTARY UNINSURED MOTORISTS INSURANCE

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

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

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

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A motor vehicle is "underinsured" to the extent that, the total amount of bodily injury and property damage coverage applicable to the operation or use of the motor vehicle and "available for payment" for such bodily injury or property damage, including all bonds or deposits of money or securities made pursuant to Article 6 of Chapter 6 of Title 46.1 of the Code of Virginia (Section 46.1-467 et seq.), is less than the total amount of uninsured motorist coverage afforded any person injured as a result of the operation or use of the vehicle.

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

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

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

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

3. The company shall not be obligated to make any payment because of bodily injury or property damage to which this insurance applies and which arises out of the ownership, maintenance or use of an underinsured motor vehicle until after the limits of liability under all bodily injury and property damage liability bonds or insurance policies respectively applicable at the time of the accident to damages because of bodily injury or because of property damage have been exhausted by payment of judgments or settlements.

4. Exclusion (a) in the Uninsured Motorists Insurance endorsement does not apply to the underinsured motorists coverage afforded by this endorsement.

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

SCHEDULE - LIMIT OF LIABILITY

Split Limits see amounts in declarations

Single Limit Bodily Injury and Property Damage \$ see amount in declarations each accident, provided such limit shall first be: Bodily Injury \$25,000 each person, \$50,000 each accident, Property Damage \$10,000 each accident.

Note: This endorsement replaces any similar coverage or endorsement printed in the policy. It applies when the endorsement number is shown on the declarations page.

6520.7 UNINSURED MOTORISTS INSURANCE (Virginia)

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

I. COVERAGE U - UNINSURED MOTORISTS (Damages for Bodily Injury and Property Damage)

The company will pay in accordance with Section 38.2-2206 of the Code of Virginia and all Acts amendatory thereof or supplementary thereto, all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured or property damage, caused by accident and arising out of the

ownership, maintenance or use of such uninsured motor vehicle.

Exclusions

This insurance does not apply:

- (a) to bodily injury or property damage with respect to which the insured or his legal representative shall, without written consent of the company, make any settlement with

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any person or organization, shall be legally liable, Safety, Responsibility, stated in the schedule or therefor; declarations.

(b) to the first two hundred dollars of the total amount of all property damage as the result of any one accident. This exclusion does not apply if the owner or operator of the uninsured motor vehicle causing the damage can be identified;

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

II. PERSONS INSURED

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

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

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

III. LIMITS OF LIABILITY

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

(a) If the schedule or declarations indicate split limits of liability, the limit of liability for bodily injury stated as applicable to "each person" is the limit of the company's liability for all damages because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting "each person", the limit of liability for bodily injury stated as applicable to "each accident", is the total limit of the company's liability for all damages because of bodily injury sustained by two or more persons as the result of any one accident. The limit of liability for property damage stated as applicable to each accident is the total limit of the company's liability for all damages because of property damage to all property of one or more insureds as the result of any one accident.

(b) If the schedule or declarations indicate a single limit of liability, the limit of liability stated as applicable to "each accident" is the total limit of the company's liability for all damages as the result of any one accident, provided such limit of liability shall first provide the separate limits required by the Virginia Motor Vehicle

(c) If claim is made under this insurance and claim is also made against any person or organization who is an insured under the bodily injury liability or property damage liability coverage of the policy because of bodily injury or property damage sustained in an accident by a person who is an insured under this insurance, any payment made under this insurance to or for any such person shall be applied in reduction of any amount which he may be entitled to recover from any person or organization who is an insured under the bodily injury or property damage liability coverages.

(d) Any amount payable under this insurance because of bodily injury or property damage sustained in an accident by a person who is an insured under this insurance shall be reduced by all sums paid because of such bodily injury or property damage by or on behalf of the owner or operator of an uninsured motor vehicle.

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

IV. POLICY PERIOD; TERRITORY

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

V. DEFINITIONS

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

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

hit-and-run vehicle - means a motor vehicle which causes an accident resulting in bodily injury to an insured or property damage, provided:

- (a) there cannot be ascertained the identity of either the operator or the owner of such motor vehicle; and
- (b) the insured or someone on his behalf shall have reported the accident promptly to either the company, or a law-enforcement officer.

insured motor vehicle - means a motor vehicle registered in Virginia with respect to which the bodily injury and property damage liability coverage of the policy applies but shall not

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include a vehicle while being out the permission of the owner;

motor vehicle — means a land motor vehicle or trailer other than

(a) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads;

(b) a vehicle operated on rails or crawler-treads, or

(c) a vehicle while located for use as a residence or premises;

named insured — means the person named in the declarations of this policy and includes the spouse if a resident of the same household;

occupying — means in or upon or entering into or alighting from;

property damage — means injury to or destruction of (1) an insured motor vehicle owned by the named insured or his spouse, if a resident of the same household and the contents of such motor vehicle, and (2) any other property (except a motor vehicle) owned by an insured and located in Virginia;

relative — means a person related to the named insured by blood, marriage or adoption who is a resident of the same household;

uninsured motor vehicle — means:

(a) a motor vehicle with respect to the ownership, maintenance or use of which there is, in at least the amounts specified in the Virginia Motor Vehicle Safety Responsibility Act, neither (i) cash or securities on file with the Virginia Commissioner of Motor Vehicles nor (ii) a bodily injury and property damage liability bond or insurance policy, applicable at the time of the accident with respect to any person or organization legally responsible for the use of such vehicle, or with respect to which there is such a bond or insurance policy applicable at the time of the accident but the company writing the same is or becomes insolvent or denies coverage thereunder; or

(b) a hit-and-run vehicle as defined.

VI. CONDITIONS

A. Policy Provisions. None of the Insuring Agreements, Exclusions, Conditions or other provisions of the policy shall apply to the insurance afforded by this endorsement except the Conditions "Notice", "Insured's Duties in the Event of Loss", "Subrogation", "Changes", "Assignment", "Cancellation" and "Declarations".

B. Premium. If during the policy period the number of insured motor vehicles owned by the named insured or spouse and registered in Virginia changes, the named insured shall notify the company during the policy period of any change and the premium shall be adjusted in

accordance with the manual by the company. If the earned premium thus computed exceeds the advance premium paid, the named insured shall pay the excess to the company; if less, the company shall return to the named insured the unearned portion paid by such insured.

C. Proof of Claim; Medical Reports; Proof of Loss. As soon as practicable, the insured or other person making claim shall give to the company written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable hereunder. Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to furnish such forms within 15 days after receiving notice of claim.

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

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

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

Notice of Legal Action. If, before the company makes payment of loss hereunder, the insured or his legal representative shall institute any legal action for bodily injury or property damage against any person or organization legally responsible for the use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to the company by the insured or his legal representative.

E. Other Insurance. With respect to bodily injury to an insured while occupying a motor vehicle not owned by the named insured, this insurance shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such vehicle as primary insurance.

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

With respect to property damage, this insurance shall apply only as excess insurance over any other valid and collectible insurance of any kind applicable to such property damage.

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

any judgment for damages awarded for personal injuries resulting from such accident.

F. Payment of Loss by the Company. Any amount due hereunder is payable

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

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

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

SCHEDULE LIMIT OF LIABILITY

Split Limits

Limits of Liability stated in declarations

Single Limit

Limit of Liability stated in declarations provided such limit shall first be:

Bodily Injury	\$25,000 each person
	\$50,000 each accident
Property Damage	\$10,000 each accident

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6557 FEDERAL EMPLOYEES USING AUTOMOBILES IN GOVERNMENT BUSINESS

It is agreed that the policy does not apply under the Liability Coverages to the following as insureds:

1. The United States of America or any of its agencies
2. Any person, including the named insured, with respect to bodily injury or property damage resulting from the operation of an automobile by such person as an employee of the United States Government while acting within the scope of his office or employment, if the provisions of Section 2679 of Title 28, United States Code (Federal Tort Claims Act), as amended, require the Attorney General of the United States to defend such person in any civil action or proceeding which may be brought for such bodily injury or property damage, whether or not the incident out of which such bodily injury or property damage arose has been reported by or on behalf of such person to the United States or the Attorney General.

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Note: The following endorsement applies when the endorsement number is shown on the declarations page.

**6589 ASSISTANCE AND COOPERATION OF THE INSURED
(AUTOMOBILE LIABILITY INSURANCE)
(VIRGINIA)**

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

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6778 OUT-OF-STATE INSURANCE ENDORSEMENT

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

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

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

**6822F.4 RENTAL AND TRAVEL EXPENSE REIMBURSEMENT
OWNED PRIVATE PASSENGER AUTOMOBILES ONLY
COVERAGE R1**

In consideration of the premium at which the policy is written, it is agreed that in the event of a loss to an owned private passenger automobile with respect to which insurance under the Comprehensive coverage is afforded and which is designated in the declarations as subject to this endorsement:

A. Expense for Rental of a Substitute Automobile

The company will:

1. reimburse the named insured for the expense of the rental of a substitute of equivalent type and purpose for such owned automobile for a period commencing with the first of the number of days for which expense for such rental is incurred. Reimbursement for any one such period shall not exceed the amount of such expense (exclusive of mileage charges) as is necessarily and actually incurred by the named insured nor, in any event, a total of \$16 for any one day, or

2. pay the named insured \$10 per day, if the named insured does not rent a substitute automobile during the period that begins when such owned automobile:

- (a) cannot run due to loss; or
- (b) if it can run, when it is left at the shop for agreed repairs.

This reimbursement or payment:

1. applies only if the loss to such owned automobile:
 - (a) is either caused by collision or, (except as hereinafter provided), is a loss to which the Comprehensive coverage applies; and
 - (b) results in such owned automobile being continuously withdrawn from normal use for a period in excess of 24 hours;
2. terminates, regardless of the expiration of the policy period, at the end of the number of days which would, with the exercise of due diligence

and dispatch, be . . . to repair or replace such owned automobile, and

3. applies in addition to the limits of liability otherwise applicable under such insurance as is afforded by the policy with respect to loss to such owned automobile, and shall not be subject to the application of any deductible thereunder.

B. Comprehensive or Collision Deductible

The company will reimburse the named insured for any deductible amount applicable to the Comprehensive and Collision coverages in effect on a rented substitute automobile, if the insured is legally liable for such deductible amount.

C. Travel Expense

The company will reimburse the named insured, if the loss to such owned private passenger automobile occurs more than 50 miles away from the named insured's residence, for

1. commercial transportation expense incurred by:
 - (i) the named insured,
 - (ii) his spouse, and
 - (iii) any relative,

who was occupying such owned automobile at the time of such loss, from the site of such loss to the named insured's residence or to his destination (at the option of the named insured).

2. necessary and reasonable extra expense incurred for meals and lodging by the named insured, his spouse and relatives during a period commencing on the date of such loss and ending on the date of arrival at the named insured's residence or destination or at the end of the fifth day following the date of such loss, whichever occurs first.

3. necessary and reasonable extra expense for meals, lodging, and commercial transportation incurred by the named insured or some other person designated by him for the purpose of returning such repaired owned automobile

from where it repaired to the named insured's residence or destination.

This reimbursement or payment applies only if the loss to such owned automobile is either caused by collision or is a loss to which the Comprehensive coverage applies.

LIMITS OF LIABILITY

The limit of the company's liability for reimbursement or payment to all persons for:

1. "Expense for Rental of a Substitute Automobile" and "Comprehensive or Collision Deductible" shall not exceed the total sum of \$400 for any one occurrence;
2. "Travel Expense" shall not exceed \$400 for any one occurrence.

EXCLUSIONS

Coverage R1 does not apply to the extent that any reimbursement for transportation expense is paid or payable to the named insured as a result of the theft of the entire owned private passenger automobile.

DEFINITIONS

Loss - means each direct and accidental loss of or damage to the owned private passenger automobile or its equipment.

Relative - means a person related to the named insured or his spouse by blood, marriage, or adoption, who is a resident of the same household.

Spouse - means a named insured's spouse, if a resident of the same household.

OTHER PROVISIONS

In the event of loss to which the insurance under this endorsement applies, the named insured shall

- (a) give notice thereof as soon as practicable to the company or any of its authorized agents; and
- (b) furnish the company with proof, within such period of time and in the form of such evidence as the company may reasonably require, of the amount, reasonableness and necessity of the expenses actually incurred and for which claim is made.

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6889FF AMENDMENT OF COVERAGE S

In consideration of the premium charged, it is agreed the following provision is added to Coverage S and applies to Death Indemnity and Dismemberment and Loss of Sight Benefits:

"The amount otherwise payable under Coverage S for death or loss under Table I is doubled for an insured who, at the time of the accident, is using the vehicle's complete restraint system as recommended by the vehicle's manufacturer."

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Note: The following endorsement lies when the endorsement number is shown on the declarations page.

6893B AMENDMENT OF COVERAGE D

In consideration of the premium charged, it is agreed that the following change is made in Part III - Physical Damage: Supplementary Payments.

Item (a) is replaced by the following:

"(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 \$16 per day or totaling more than \$400;"

Note: The following endorsement replaces endorsement 6571A, Virginia Amendatory Endorsement. It applies when the endorsement number is shown on the declarations page.

6571A VIRGINIA AMENDATORY ENDORSEMENT

(Virginia)

It is agreed that:

PART I

I. The first paragraph of "Persons Insured" is amended to read:

Persons Insured

The following are insureds under Part I:

(a) with respect to the owned automobile,

(1) the named insured and any resident of the same household,

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

(3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a)(1) or (2) above;

(b) with respect to a non-owned automobile,

(1) the named insured,

(2) any relative,

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 definition of "owned automobile" is amended to read:

"owned automobile" means

(a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded,

(b) a trailer owned by the named insured,

(c) a private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided

(1) it replaces an owned automobile as defined in (a) above, or

(2) the company insures all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such automobile, or

(d) a temporary substitute automobile;

The definition of "temporary substitute automobile" is amended to read:

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

4. Exclusions (g) and (h) are amended and a new exclusion is added to read:

(This policy does not apply under Part I:)

- (g) to any automobile or trailer while maintained or used by any person while such person is employed or otherwise engaged in the automobile business to the extent that the limits of liability for this policy exceed the limits of liability required by the Virginia financial responsibility law, but this exclusion (g) does not apply to the maintenance or use of an owned automobile by
 - (1) the named insured; or
 - (2) directors, stockholders, partners, agents or employees of the named insured; or
 - (3) a resident of the same household as a person described in (1) or (2) above.
- (h) to a non-owned automobile while maintained or used by any person while such person is employed or otherwise engaged in any business or occupation of the insured, except the automobile business, but this exclusion (h) does not apply to a private passenger automobile operated or occupied by the named insured or by his private chauffeur or domestic servant or a trailer used therewith or with an owned automobile.
- (i) to the ownership, maintenance, operation, use, loading or unloading of an automobile the 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.

PART II

Expenses for Medical Services of the policy is amended as follows:

1. The insuring agreement of Coverage C - Medical Payments is amended to include reasonable expenses for necessary chiropractic services incurred within one year from the date of accident.
2. Divisions 1 and 2 of Coverage C - Medical Payments are amended to read:

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

- (a) while occupying the owned automobile,
- (b) while occupying a non-owned automobile, but only if such person has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission, or
- (c) while not occupying a motor vehicle, through being struck by an automobile or trailer of any type.

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

- (a) the owned automobile, while being used by the named insured, by any resident of the same household or by any other person with the permission of the named insured; or
- (b) a non-owned automobile, if the bodily injury results from
 - (1) its operation or occupancy by the named insured or its operation on his behalf by his private chauffeur or domestic servant, or
 - (2) its operation or occupancy by a relative, provided it is a private passenger automobile or trailer,

but only if such operator or occupant has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission.

3. The following definition is added to PART II - Definitions:

"medical expense insurance" means any automobile insurance providing benefits for medical expenses payable without regard to fault.

4. Exclusions (b) and (c) are amended to read:

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

- (b) sustained by the named insured or a relative while occupying or, while not occupying a motor vehicle, through being struck by (1) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads, or (2) a vehicle operated on rails or crawler-treads;
- (c) sustained by any person other than the named insured or a relative.

(1) while such person is occupying a non-owned automobile while used as a public or livery conveyance, or

(2) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in the automobile business, or

(3) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in any other business or occupation, unless the bodily injury results from the operation or occupancy of a private passenger automobile by the named insured or by his private chauffeur or domestic servant, or of a trailer used therewith or with an owned automobile;

5. The "Limit of Liability" provision is deleted and replaced by the following:

Regardless of the number of:

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

the limit of the Company's liability for all expenses incurred by or on behalf of each person who sustains bodily injury as the result of any one accident shall not exceed:

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

6. The "Other Insurance" provision is deleted and replaced by the following:

If other valid and collectible medical expense insurance is applicable to the bodily injury of an insured person as defined in Division 1. and 2., the benefits shall be paid according to the following order of priority:

- (1) the medical expense insurance of the owner of the automobile the insured person was occupying at the time of the accident;
- (2) the medical expense insurance of the operator of the automobile the insured person was occupying at the time of the accident;

(3) the medical expense insurance of the insured person.

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

7. The following provision is added to the Notice Condition as respects Coverage C - Medical Payments only:

The failure or refusal of the injured person to give notice of an accident shall not relieve the Company of its obligation to pay unless such failure or refusal prejudices the Company in establishing the validity of any claim under this coverage.

PART III

The Comprehensive and Collision insuring agreements are amended to read as follows:

Coverage D(1) - Comprehensive (excluding Collision)

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

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

Definitions.

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

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

"insured" means:

- (a) with respect to an owned automobile
 - (1) the named insured, and
 - (2) any person or organization (other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee for hire) maintaining, using or having custody of said automobile with the express or implied permission of the named insured and within the scope of such permission;
- (b) with respect to a non-owned automobile, the named insured and any relative while using such automobile, provided his actual operation or (if he is not operating) the other actual use thereof, is with the express or implied permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission.

4. Exclusion (c) is amended to read: —

This policy does not apply under Part III

- (c) to loss to a non-owned automobile arising out of its use by the insured while he is employed or otherwise engaged in the:
 - (1) automobile business; or
 - (2) any other business or occupation of the insured, but this exclusion (c)(2) does not apply to a private passenger automobile;

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6989AS AMENDATORY ENDORSEMENT

In consideration of the premium charged, it is agreed the following changes are made in the policy:

1. PART I — LIABILITY

The definition of "non-owned automobile" is changed to read:

"non-owned automobile" means an automobile or trailer not owned by, or furnished for the regular use of:

- (a) the named insured; or
- (b) any relative unless at the time of the accident or loss:
 - (1) the automobile is or has been described on the declarations page of a liability policy within the preceding 30 days; and

CONDITIONS

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

Premium

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

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

Assistance and Cooperation of the Insured

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

- (2) the named insured or a relative who does not own such automobile is the driver.

A temporary substitute automobile is not considered a non-owned automobile.

2. PART III — PHYSICAL DAMAGE

The definition of "non-owned automobile" in Part I as amended above applies to Part III.

3. CONDITIONS

- a. The following is added to Condition 13, "Changes":

If the State Corporation Commission approves a revision which broadens the coverage of this

policy without addition. If this policy will automatically provide the broadened coverage as of the day the revision is effective.

- b. The first paragraph of Condition 16, "Cancellation", is changed to read:

16. Cancellation. This policy may be cancelled by the insured named as named insured in the declarations, or his duly constituted attorney-in-fact by mailing to the company written notice stating when thereafter the cancellation shall be effective. The company may waive these requirements by confirming the date and time of cancellation to the named insured in writing.

- c. The following Condition is added:

20. Premium Changes. The premium for this policy is based on information the company has received from the named insured or other sources. The named insured agrees that if any of this information material to the development of the policy premium is incorrect, incomplete or changed, the company may adjust the premium accordingly during the policy period; and to cooperate with the company in determining if this information is correct and complete, and to advise the company of changes in this information.

Any adjustment of this policy's premium will be made using the rules in effect at the time of the change.

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

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

- d. The following Condition is added:

21. Change of Residence. If the owned automobile becomes principally garaged in another state and the named insured is a risk still acceptable to the company at the time the company is notified of the change, the company shall replace this policy with the policy form currently in use in the new state of garaging. The word "state" means one of the United States of America, the District of Columbia, or a province of Canada.

If termination of this policy is initiated by the company, it will be done in accordance with Virginia law.

4. MUTUAL CONDITIONS

Item 1. of MUTUAL CONDITIONS is changed to read:

1. Membership. The membership fees set out in this policy, which are in addition to the premiums, are not returnable but entitle the first insured named in the declarations to insure one automobile for any applicable coverage, and to insurance for any other coverage for which said fees were paid so long as:

- a. this company continues to write such coverages;
- b. the automobile to be insured meets the eligibility requirements of the company; and
- c. the insured remains a risk desirable to the company.

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

Note: This endorsement is shown on the _____ places any endorsement providing similar coverage _____ lies when the endorsement number _____ is shown on the _____ conditions page.

6273H.6 SUPPLEMENTARY UNINSURED MOTORISTS INSURANCE
(Bodily Injury - Property Damage - Limits - Underinsured Motorists)
(Virginia)
(Coverage U)

Nothing herein contained shall be held to alter, vary, waive or extend any of the terms, conditions, agreements or limitations of the undermentioned policy other than as stated below.

Effective _____ 12:01 A.M. Standard Time. Attached to and forming a part of
policy number _____
issued to _____
by the STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY of Bloomington, Illinois, or the STATE
FARM FIRE AND CASUALTY COMPANY of Bloomington, Illinois, as indicated by the company name on the policy
of which this endorsement is a part.

(The information above is required only when this endorsement is issued subsequent to the preparation of the policy.)
Countersigned _____, 19 _____
By _____
Authorized Representative

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

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

A motor vehicle is "underinsured" when, and to the extent that, the total amount of bodily injury and property damage coverage applicable to the operation or use of the motor vehicle and "available for payment" for such bodily injury or

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6273H.6

property damage. "ing all bonds or deposits of money or securities
Title 46.2 of the Virginia (Section 46.2-435 et seq.), is less than the tot.
afforded any person injured as a result of the operation or use of the vehicle.

rsuant to Article 15 of Chapter 3 of
ount of uninsured motorist coverage

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

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

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

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

3. The company shall not be obligated to make any payment because of bodily injury or property damage to which this insurance applies and which arises out of the ownership, maintenance or use of an underinsured motor vehicle until after the limits of liability under all bodily injury and property damage liability bonds or insurance policies respectively applicable at the time of the accident to damages because of bodily injury or because of property damage have been exhausted by payment of judgments or settlements.
4. Exclusion (a) in the Uninsured Motorists Insurance endorsement does not apply to the underinsured motorists coverage afforded by this endorsement.
5. The second paragraph of the Other Insurance Condition in the Uninsured Motorists Insurance endorsement does not apply to the underinsured motorists coverage afforded by this endorsement.

SCHEDULE - LIMIT OF LIABILITY

Split Limits see amounts in declarations

Single Limit Bodily Injury and Property Damage \$ see amount in declarations each accident, provided such limit shall first be: Bodily Injury \$25,000 each person, \$50,000 each accident, Property Damage \$10,000 each accident.

Edward B. Rust, Jr.

President

6273H.6

EXHIBIT 2

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)

Plaintiff)

v.)

MARY ELLEN HAINES, et al.,)

Defendants)

REQUESTS FOR ADMISSION
TO DEFENDANT

DANIEL T. WALTON

Chancery No. 91-363

Serve: Daniel T. Walton
Route 1, Box 298A
Covington, VA 24426

COMES NOW the plaintiff, State Farm Mutual Automobile Insurance Company, by counsel, and pursuant to Rule 4:11 of the Rules of Court of the Supreme Court of Virginia requests defendant Daniel T. Walton to admit the following:

1. Daniel T. Walton was the operator of a 1984 Subaru automobile solely owned by Mary Ellen Haines when it was involved in an accident on February 8, 1991 on Interstate 64 in Alleghany County, Virginia, which accident is referred to in the amended motion for declaratory judgment (hereinafter "accident").

*RESPONSE: Admitted.

2. At the time of the accident, Daniel T. Walton lived at Route 1, Box 298A, Covington, Virginia with wife, Jennifer Haines Walton.

*RESPONSE: Admitted.

*3. Prior to the accident, Daniel T. Walton's license to operate a motor vehicle had been suspended, and at the time of the accident, his license had not been reinstated.

RESPONSE:

Denied, while it is true that Daniel Walton's license had been suspended, he is uncertain whether he had to take any action to have it reinstated.

*4. Prior to the accident, Daniel T. Walton had been expressly prohibited from operating the 1984 Subaru automobile by Mary Ellen Haines.

RESPONSE: It is admitted that on occasions prior to the accident Mary Ellen Haines had told Daniel Walton not to operate the car.

*5. At the time of the accident, Daniel T. Walton did not have permission from Mary Ellen Haines to operate the 1984 Subaru automobile, nor did he believe that he had permission from Mary Ellen Haines to operate the vehicle at the time of the accident.

RESPONSE: While it is admitted that Mary Ellen Haines did not give Daniel Walton permission to operate the vehicle at this time she had provided the vehicle to her daughter, Jennifer Walton for use as a family vehicle. Jennifer had permission to drive the car and she gave permission to Daniel Walton.

Respectfully submitted,

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

Daniel T. Walton
4-30-92

BY

Wm P Wallace Jr.
Of Counsel

William P. Wallace, Jr.
JOHNSON, AYERS & MATTHEWS
P. O. Box 2200
Roanoke, VA 24009-2200

Counsel for Plaintiff

LAW OFFICES
JOHNSON, AYERS
& MATTHEWS
P O BOX 2200
ROANOKE, VA 24009

ORIGINAL

V_I_R_G_I_N_I_A_:

IN THE CIRCUIT COURT FOR THE
COUNTY OF ROANOKE

STATE FARM MUTUAL AUTOMOBILE :
INSURANCE COMPANY, :
Plaintiff :

-vs- : Chancery No. 91-363

MARY ELLEN HAINES, et al , :
Defendants :

DECEMBER 2, 1993

9:30 A.M.

HEARD BEFORE:
THE HONORABLE KENNETH TRABUE

CENTRAL VIRGINIA REPORTERS
P.O. BOX 12628
ROANOKE, VA 24027

1 APPEARANCES:

2 JOHNSON, AYERS & MATTHEWS, ESQS.
3 Roanoke, Virginia
4 BY: DAVID B. CARSON, ESQ.

5 Counsel on behalf of State Farm Mutual
6 Automobile Insurance Company

7 COLLINS & MOONEY, ESQS.
8 Covington, Virginia
9 BY: MICHAEL M. COLLINS, ESQ.

10 Counsel on behalf of Mary Ellen Haines

11 WOODS, ROGERS & HAZLEGROVE, ESQS.
12 Roanoke, Virginia
13 BY: DANIEL S. BROWN, ESQ.

14 Counsel on behalf of Allstate
15 Insurance Company

16 CORRIGAN & WELLMAN, ESQS.
17 Richmond, Virginia
18 BY: STANLEY P. WELLMAN, ESQ.

19 Counsel on behalf of Colonial Insurance
20 Company of California

21 GENTRY, LOCKE, RAKES & MOORE, ESQS.
22 Roanoke, Virginia
23 BY: PAUL G. KLOCKENBRINK, ESQ.

24 Counsel on behalf of Virginia Farm
Bureau Mutual Insurance Company

JEFFREY H. KRASNOW & ASSOCIATES, ESQS.
Roanoke, Virginia
BY: D. REED LOMBART, ESQ.

Counsel on behalf of Karen R. Vance

DABNEY L. PASCO, ESQ.
Covington, Virginia

Counsel on behalf of Lorie A. Forbes and
Paul A. Thurston, Sr., Administrator of
the estate of Paul A. Thurston, Jr.

* * * * *

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* * * * *

1 The following cause came on to be heard before
2 the Honorable Kenneth Trabue, Judge of the Circuit Court of
3 the County of Roanoke, and a Jury of seven sitting at Salem,
4 Virginia, at 9:30 a.m., on this, the 2nd day of December,
5 1993.

6 Michele F. Minnix, Court Reporter, was duly
7 sworn.

8
9 (The following took place in the
10 Judge's Chambers outside the hearing
11 of the Jury.)
12

13 THE COURT: All right. Is everybody here now?

14 MR. BROWN: If we can get the preliminary
15 areas out of the way I think we will be fairly brief
16 this morning.

17 THE COURT: Who asked for the Jury, this is
18 a Chancery case? What is the issue? Can anybody
19 frame the issue for the Jury?

20 MR. CARSON: I will. Let me get --

21 THE COURT: Who is asking for it?

22 MR. BROWN: The Defense asked for the Jury.

23 MR. WELLMAN: I was involved in that as well.

24 MR. BROWN: The Jury issue is if it is

1 expressed or implied permission for him to drive the
2 car.

3 THE COURT: Is this correctly stated?
4 (indicating)

5 MR. BROWN: Except for the second part.

6 MR. WELLMAN: We agree to the scope.

7 MR. BROWN: The second part is what David is
8 asking to amend this morning.

9 THE COURT: The first part is correct?

10 MR. BROWN: Yes.

11 MR. CARSON: There were a few trial matters.
12 One was to amend our declaratory judgment simply to
13 be certain to preserve the scope of permission
14 issued.

15 I brought this up with the other attorneys and
16 drafted an order that has been endorsed by everyone
17 and I asked that this be filed.

18 THE COURT: No objection?

19 MR. BROWN: No.

20 MR. CARSON: The second issue, I will try
21 to be as brief as I can as not to tread on a ruling
22 that the Judge has already made, and that is dealing
23 with request for admissions.

24 The major issue to be decided is whether

1 Daniel Walton had expressed or implied permission.

2 In response to requests for admissions he
3 admits that he did not have a license to operate a
4 motor vehicle and was forbidden to operate it at the
5 time of the accident.

6 He also admits that he did not have permission
7 to operate the automobile, so it is our position that
8 that factual issue has been conclusively established
9 and we waive the conclusive effect of that admission
10 unless I introduce the request for admissions into
11 evidence, which I intend to do, and object to any
12 questions or any evidence that comes in through
13 Ms. Haines that is contrary to that admission.

14 So, I would like to file her responses to
15 the request for admissions at this time into
16 revocation.

17 I will introduce them into evidence, so as not
18 to interrupt all counsel as they go through their
19 reenactments and hypotheticals that they might do I
20 would like a standing objection to any evidence that
21 comes in contrary to her responses to request for
22 admissions are deemed objected to.

23 THE COURT: Anyone want to be heard on that?

24 MR. COLLINS: I represent Ms. Haines and that

1 was her answer to the best of her belief. I do not
2 know that that establishes that as an absolute fact.

3 She will say that when she gave that answer
4 that it was a fact, but I know that there may be
5 evidence to the contrary, but it was her
6 understanding that he did not have a license.

7 It is a truthful answer, but I do not know
8 that it makes that true that he did not have a
9 license to her best knowledge and belief.

10 THE COURT: Is it your position that the
11 answer to an interrogatory precludes adverse
12 evidence?

13 MR. CARSON: It is my position that an
14 unequivocal response to request for admissions
15 establishes the fact in issue.

16 The fact in issue for this purpose is
17 whether or not Daniel Walton had the permission and
18 she admitted that he did not.

19 I will hand you Translate Equipment and
20 pursuant to that that fact is conclusively
21 established and on other facts should be admitted
22 contrary to that.

23 This is the subject for our motion for summary
24 judgment, so I will try not to take up more time

1 rehashing that. I did not want to waive the --

2 MR. LOMBART: I think that this goes back to
3 the -- I think that it is in the opinion letter
4 that you sent to all counsel regarding State Farm's
5 motion for summary judgment --

6 You said that it was the novel issue of the
7 lady's mental impressions and that seems to me that
8 that is quite clearly a question of fact and not a
9 question of law.

10 What were her impressions at the time that she
11 gave or withheld permission to Daniel Walton to use
12 the vehicle.

13 Was this contingent with being licensed and
14 there being insurance coverage through State Farm or
15 whomever?

16 I think that justifies the matter going to the
17 Jury. At the time that she responded and gave her
18 answer it was to the best of her knowledge.

19 What we are talking about today is whether
20 somebody will be covered under the State Farm policy
21 if she gave her permission.

22 I think that all of that needs to go to the
23 Jury. I think State Farm should be permitted to
24 inquire about what this lady's mental impressions

1 were, why she did this and that.

2 MR. WELLMAN: Mary Ellen Haines has said that
3 there were two conditions placed on her restriction,
4 one that he legally be entitled to drive and, two,
5 that he be covered by an insurance policy.

6 When she answered those request for admissions
7 she did not think that he was entitled to drive and
8 she did not think that he was covered under her
9 policy.

10 In fact there will be evidence to the
11 contrary today. So, I think that it is a factual
12 issue.

13 THE COURT: Your objection is standing.

14 MR. CARSON: I consider the request for
15 admissions filed.

16 MR. BROWN: I think that the proper way to
17 handle -- I'm not sure, it depends on how it comes
18 up in the trial --

19 I do not want to agree to the request for
20 admissions and the answers becoming an Exhibit at
21 this point.

22 THE COURT: I agree, but it is proper to
23 mark them filed because they have not been filed.

24 MR. CARSON: Mr. Wellman called me last night

1 and indicated that he intended to examine Ms. Haines
2 and may exam her as an adverse witness.

3 I think in going through these hypotheticals,
4 I can imagine how that is going to take place, I told
5 Mr. Wellman that I would make my objections out of
6 the presence of the Jury.

7 It is my opinion at this point that she is a
8 co-defendant and is not an adverse witnesses.

9 I think that everyone here will agree based on
10 the Deposition that she has no adverse interest. Her
11 interest is in telling the truth and being lawful. I
12 do not think that she is an adverse witness.

13 MR. WELLMAN: My point was if she strayed from
14 the Deposition testimony I wanted to be able to bring
15 her back in.

16 THE COURT: Who is Mrs. Haines counsel?

17 MR. COLLINS: I am.

18 MR. BROWN: I think that we left something
19 out. State Farm is the Plaintiff. We have discussed
20 with counsel for State Farm about turning the parties
21 around and the Defendants putting on the case since
22 they have the burden of proof.

23 MR. CARSON: That was agreed.

24 THE COURT: You-all will open?

1 MR. BROWN: Yes, sir.

2 THE COURT: Are all of the Defendants in the
3 same position?

4 MR. BROWN: We we will have one opening
5 statement and one counsel for each witness. We will
6 stream-line it to that effect.

7 THE COURT: How many witnesses do you have?

8 MR. COLLINS: I was not involved in any of
9 those instructions. I represent Mrs. Haines and I
10 have not been approached on that. I assumed that we
11 would have an opening statement, but I do not have a
12 lot to say. That is the first that I heard of that
13 suggestion.

14 MR. BROWN: I'm sorry. You were sort of in a
15 different category.

16 THE COURT: Who represents Daniel Walton?

17 MR. BROWN: He is unrepresented in a default.

18 THE COURT: Is he a witness?

19 MR. COLLINS: I have an issue to address on
20 that subject. It is on another matter. Mr. Walton
21 is also, because of all of this dog and cat fight,
22 unrepresented in the underlying wrongful death
23 actions. Because of that I have been asked by his
24 mother-in-law to file the procedures which is as far

1 as it has gone.

2 I would like to make a motion that he not be
3 examined about any of the negligence in the operation
4 of the vehicle which would create a record.

5 He is not represented in these proceedings and
6 I do not know if it would be called for or not. I
7 have no reason to do that.

8 I do not feel that the manner by which he was
9 driving the car and the manner in which the accident
10 occurred is relevant to this until we see the scope
11 of permission and it might get into that.

12 Since I represent him in the underlying action
13 I think that it is proper for me to make that motion.

14 THE COURT: Anyone disagree with that?

15 MR. CARSON: I do. I intend to take the
16 Officer -- I'm not trying to spell out his
17 negligence, but I do intend to have at least one of
18 the witnesses describe his pre-accident activities as
19 far as it related to his route and where he was at
20 the time of the accident.

21 I have no intention of inquiring about the
22 details of the accidents or --

23 THE COURT: Or whether he breached of any
24 duties with regard to the driving?

1 MR. CARSON: No, sir.

2 MR. LOMBART: When you say that you will not
3 go into these various matters about negligence am I
4 correct that you are not going to go into the issue
5 of drinking of alcohol or speed?

6 MR. CARSON: I think that slops in, but as it
7 is, assuming Daniel Walton somehow magically is
8 deemed to have permission, what he had permission to
9 do was go home, get dressed and meet his wife at the
10 Kroger at 7:30.

11 Between 7:30 and 10:30 he was driving to Lake
12 Moomaw with various females, drinking, going the
13 wrong way down streets in Covington and his wife was
14 behind him chasing her. They got up on the highway
15 chasing each other down the highway and the accident
16 happened.

17 Insofar as that evidence needs to come in to
18 prove that even if he had this permission he was
19 beyond the scope I think that it is relevant to come
20 in and I intend to represent it for that reason.

21 My intention is not to establish his
22 negligence, but to established what this kid was
23 doing that was beyond what he was supposed to be
24 doing.

1 MR. BROWN: Do you want to get the names of
2 counsel first and I will respond to that?

3 THE COURT: Yes.

4 MR. BROWN: Jennifer Haines Walton is
5 unrepresented. She is the daughter of Mary Ellen
6 Haines. She does not need to be a party.

7 Paul A. Thurston is represented by Dabney
8 Pasco.

9 Dabney also represents Lorie Forbes who will
10 not be in the Courtroom today.

11 Karen Vance will not be in the Courtroom today
12 and she is represented by Reed Lombart.

13 MR. LOMBART: Tucker is her name now, she was
14 married. There has never been any formal pleadings
15 with regard to amending the name.

16 THE COURT: Is Nationwide in or out?

17 MR. WELLMAN: That should have been Colonial,
18 that's me.

19 THE COURT: Allstate is still in?

20 MR. BROWN: That is me.

21 THE COURT: Virginia Farm Bureau?

22 MR. KLOCKENBRINK: That is me.

23 THE COURT: Have I left anyone out?

24 MR. BROWN: That is all.

1 THE COURT: Now what about all of this
2 drinking and going the wrong way?

3 MR. BROWN: The issue in this case that is
4 framed from the pleadings is that Mrs. Haines bought
5 the car and put it in her name, the named insured.

6 Jennifer had it and married this boy and the
7 boy was using the car. Mamma tells the boy, "don't
8 drive the car" and imposes two conditions. He had
9 lost his license.

10 She says, "Don't drive while you don't have a
11 license and while we don't have insurance for you."

12 The issue is: Have those conditions been
13 satisfied? There has never been an issue in the case
14 of permission from Danny Walton's wife, Jennifer, as
15 the custodian of the car because she could not give
16 permission under Mr. Carson's insurance policy.

17 The issue is: Did he have gain permission
18 from his mother-in-law, if these conditions had been
19 satisfied, to drive the car?

20 Beyond that whether he was engaged in
21 misconduct at the time of driving the car -- whether
22 they were driving and having a great time, whether
23 the two girls in the backseat were old girlfriends of
24 him or the deceased boy are what Mr. Carson wants to

1 show to create something for State Farm to make Danny
2 Walton look like a bad actor and that is irrelevant
3 to this case.

4 THE COURT: How did this boy happen to get
5 behind the wheel of the car that evening in the first
6 place?

7 MR. BROWN: That evening Jennifer and he were
8 together and she gave him the key and put no
9 restriction on him.

10 MR. CARSON: She said, "Here are the keys and
11 I will expect to see you in an hour down at the
12 Kroger."

13 If Daniel Walton is deemed to have the
14 permission then that will somehow have flowed through
15 the first permittee, Jennifer Walton, who had the car
16 and said "Here are the keys, I will see you in an
17 hour" even though she knew that giving him the car
18 was in violation of the mother's rules.

19 When Daniel Walton took the car it was with
20 the understanding that he was to meet up with his
21 wife at 7:30, an hour later, where she would
22 subsequently take over the car and begin driving it.

23 Four hours later she is behind him in the car,
24 chasing him at 75 or 80 miles-an-hour, down the

1 highway, with her yelling out the window to stop and
2 he has the accident.

3 I think that is perfectly relevant for the
4 scope of permission. I do not need any help showing
5 what a bad apple Daniel Walton is.

6 MR. WELLMAN: The permission is from Mary
7 Ellen Haines. The restrictions upon Daniel came from
8 Mary Ellen Haines. Jennifer is not at all in the
9 picture.

10 He met Mary Ellen Haines' restrictions, A and
11 B, so there were no other restrictions placed on him.

12 MR. BROWN: Jennifer could not give her
13 permission because she is not the main insured. To
14 the same extent, Jennifer could not deny him
15 permission.

16 MR. WELLMAN: And the mother had communicated
17 directly with Mr. Walton.

18 MR. CARSON: She is the first permittee and
19 any permission that he is given is --

20 THE COURT: What I think that I will let you
21 do is I will let you make a proffer on the Record.
22 I agree with them that the scope issue is not a
23 proper issue for this Jury, but I will let you make
24 the proffer at some point.

1 MR. LOMBART: Before we leave the issue about
2 evidence about the route that Mr. Walton pursued, the
3 drinking, having a good time, the ex-girlfriends in
4 the backseat --

5 THE COURT: That is not coming in.

6 MR. LOMBART: Along those lines can the
7 investigating Virginia State Trooper testify about
8 what he found at the accident scene?

9 MR. CARSON: No, I have no intention of that.

10 MR. LOMBART: I just wanted to make sure that
11 that was not going to be brought up.

12 MR. CARSON: The final issue that I have is
13 Mr. Brown is correct that the two restrictions were
14 that he was to be licensed and insured.

15 I do not think that we need to deal with the
16 insurance, but the licensing issue may become an
17 issue.

18 You may recall from our earlier motion that
19 Daniel Walton was dealing dope in school and had his
20 license suspended for a year, got community service
21 and had a fine to pay.

22 It was suspended for 12 months. His license
23 privilege to drive was suspended for 12 months and
24 that elapsed several days before this accident.

1 What I expect the Defendants are going to do
2 is to introduce his DMV record which will show that
3 as of May of 1986 it does not reflect a suspension
4 during the period of February, 1991 when this
5 accident happened.

6 I expect that they are also going to show J&D
7 Court records showing that his license was suspended
8 for 12 months.

9 I expect that they are going to say, ergo, he
10 was licensed at the time and met the condition of
11 Mary Ellen Haines.

12 I would move in that simply because they may
13 reflect that does not mean that he is licensed
14 and has met the conditions.

15 Moreover, I would move to exclude the DMV
16 record. I agreed that it is an authentic DMV record,
17 but I believe it is inaccurate.

18 It does not reflect the suspension.
19 Subsequently, in talking to the DMV, that is because
20 they purge suspensions six months after they end, but
21 that is neither here or there.

22 Everyone here will agree, I think, that his
23 license was suspended, but it does not reflect it.
24 So, the DMV record is inaccurate and it does not show

1 the state of his license on February 8, 1991 which is
2 what we are interested in.

3 Daniel Walton, his mother-in-law and Jennifer
4 will all say that they knew that he was not licensed
5 on that day.

6 But the Defendants are going to come in with
7 this record, I expect, and say, "see it was not
8 suspended by the DMV." That does not mean that he is
9 licensed and able to drive.

10 THE COURT: Did he have a driver's license?

11 MR. CARSON: No.

12 MR. WELLMAN: He happened to lose it. On
13 February 2, 1990 the Court suspended his license for
14 one year. And February 3, 1991 he was entitled to
15 drive.

16 The accident happened five days later, so at
17 the time of the accident he was legally entitled to
18 drive, the suspension had lapsed.

19 THE COURT: But he was not licensed?

20 MR. WELLMAN: He was licensed.

21 MR. CARSON: He did not have a license.

22 MR. WELLMAN: That is unrelated to the Court
23 action.

24 MR. BROWN: He did not have a piece of paper.

1 MR. WELLMAN: As far as the Court or DMV is
2 concerned he had a license.

3 THE COURT: Had the DMV given him a license?

4 MR. WELLMAN: They never took it away.

5 THE COURT: So, he had a license?

6 MR. WELLMAN: Yes.

7 THE COURT: What was the expiration date on
8 the license?

9 MR. BROWN: He lost it himself. He lost the
10 physical license.

11 THE COURT: He lost the piece of paper?

12 MR. WELLMAN: Right, it had not expired.

13 MR. LOMBART: In J&D Court, when they said
14 they were suspending his operator's license for a
15 period of one year, the Judge asked him for the
16 physical license and he said that he did not have
17 it and had lost it.

18 The Judge told him that his license was
19 suspended and he imposed the community service work
20 and the fine.

21 THE COURT: He is legally licensed.

22 MR. CARSON: If they are going to be permitted
23 to argue that then I feel the Trooper who
24 investigated this accident, who ran his license at

1 the accident scene will be able to the testify that
2 when he ran it up it showed the state of his license
3 as eligible, but had not applied, which is what it
4 was.

5 It was suspended and he had not gone in to get
6 it. Daniel Walton's testimony is that his
7 understanding was that at the end of the one year he
8 had to go back and do something to get his license.

9 There was no question in his mind, Mary Ellen
10 Haines' mine or Jennifer's mind that he was not
11 licensed.

12 THE COURT: I will hear the evidence on that.
13 That will turn into a matter of law at some point.
14 Only the J&D Court could have done this.

15 I'm not sure once that 12 months has expired
16 -- what statute makes him have to do anything to
17 reapply?

18 I'm suggesting that if the license had not
19 been physically lost by him all he had to go was go
20 to the Clerk's office and pick it up.

21 MR. CARSON: Agreed, which he did not do. At
22 the very least he would have had to do that, ergo, he
23 was licensed and, ergo, had not met that one
24 condition.

1 THE COURT: He was driving without a license
2 as the law requires means that he did not have the
3 license on him.

4 MR. CARSON: Correct.

5 THE COURT: But he is not an unlicensed
6 driver, there is a big difference. If I came to the
7 Courthouse this morning without my license in my
8 pocket I violated the law, but it does not mean that
9 I was an unlicensed driver.

10 MR. CARSON: I understood.

11 THE COURT: It sounds to me like he was a
12 licensed driver, but he just did not have the license
13 on him at the time. Is that the way the evidence is
14 probably going to come out?

15 MR. BROWN: Yes, sir.

16 MR. CARSON: I will disagree based on the
17 Trooper's testimony, but I believe that it needs to
18 come in.

19 THE COURT: At some point I will have to make
20 a ruling on the matter -- the Trooper can say, "I got
21 this transmission", but that is not proof of whether
22 he is licensed or unlicensed.

23 MR. PASCO: I object to the Trooper's
24 testimony to that.

1 THE COURT: We will have to wait and see.
2 The Trooper can testify that he did not have a
3 license on him at the time, but that does not answer
4 the question.

5 MR. CARSON: Will the DMV record come in? I
6 believe that the argument is going to be that because
7 he was shown suspended he was licensed.

8 I think that is improper and prejudicial based
9 on that record because it is of July of 1993 and not
10 February of 1991.

11 MR. KLOCKENBRINK: That reflects his record
12 from the date that he was originally licensed -- that
13 reflects a statement of what his --

14 THE COURT: I will let you put this in, but
15 don't display it to the Jury. At some point --

16 MR. KLOCKENBRINK: I will introduce it as an
17 Exhibit.

18 THE COURT: Subject to it being edited before
19 being shown to the Jury.

20 MR. WELLMAN: We also may introduce the
21 J&D record.

22 THE COURT: The whole thing.

23 MR. BROWN: The back.

24 THE COURT: Just the order?

1 MR. CARSON: My objection will be the same.
2 This does not show that he was licensed.

3 MR. WELLMAN: It shows that it was suspended
4 for a year. As long as it is not representing -- it
5 shows that the suspension had lapsed.

6 THE COURT: It is like you put somebody on
7 probation for a year. At the end of the year the
8 year is up.

9 MR. CARSON: This is a little different. It
10 is their burden to show what he had to go do to have
11 to be licensed. It is their burden to show he was
12 licensed and insured.

13 MR. PASCO: You are talking about the piece of
14 paper and we are talking about the legal thing.

15 THE COURT: The date issued is the material
16 part of this document. This has nothing to do with
17 that.

18 MR. CARSON: It is my position that this does
19 not show that he was licensed at that time.

20 THE COURT: Yes, it does. It shows that he
21 had a license. This shows that it was suspended for
22 a period of a year.

23 MR. KLOCKENBRINK: Which portion are you going
24 to allow in? Do you want to redact certain parts of

1 this?

2 MR. CARSON: That is all of the things that I
3 have.

4 THE COURT: The only part of this is his name
5 and previous license. That is the only thing that I
6 think is material on this whole page.

7 I will let you introduce it for what is on
8 there. The name, the previous license and the
9 suspension date --

10 MR. KLOCKENBRINK: Do you want me to read that
11 to the Jury?

12 THE COURT: Right.

13 MR. CARSON: Would you note my objection for
14 the Record that that does not show the state of his
15 license on February 8, 1991.

16 I think that that is unduly prejudicial in
17 that it does not show the state of his license on the
18 day of the accident.

19 THE COURT: You can introduce it for the proof
20 that the DMV issued a license on 7-19-89 which
21 expired on 8-31-92.

22 MR. KLOCKENBRINK: Okay. That is all that I
23 will state.

24 MR. LOMBART: The balance of the issues will

1 be addressed through the issue of license was
2 suspended because of the J&D Court order.

3 THE COURT: Okay.

4 THE COURT: Will we finish the evidence this
5 morning?

6 MR. LOMBART: I expect that we will.

7 THE COURT: How many jurors do you think that
8 you are entitled to?

9 MR. PASCO: Seven, isn't it?

10 THE COURT: If the amount sued for is under
11 \$5,000 then it is five.

12 MR. BROWN: Have you ever tried one with other
13 than seven.

14 MR. LOMBART: The limits of coverage exceed
15 \$5,000 in the underlying cases potentially, so --

16 MR. COLLINS: Judge, as a rule of thumb I
17 think that you ought to have more jurors than you do
18 lawyers.

19 THE COURT: All right. Are you all ready to
20 get started now?

21 MR. BROWN: Yes, sir.

22 MR. CARSON: Yes.

23 THE COURT: Then let's go.
24

* * *

* * *

1 people that pay premiums is to make sure that it is
2 not paying out claims for traffic accidents where
3 somebody is killed or injured when it has not agreed
4 to pay for those losses and that is why we are here.

5 There is a reason that I'm going second.
6 Mr. Brown has mentioned it to you and I think that it
7 is worth repeating.

8 The evidence will show that the burden is on
9 those persons who would claim to be insured, so the
10 burden is on Mr. Walton and all of the other
11 insurance companies who are trying to make State Farm
12 insure the liability arising out of this accident.

13 There is a good reason for that, that is that
14 if State Farm does not, then may have to. What
15 is fair is that State Farm pay what it was contracted
16 to do and what is fair is that you decide if State
17 Farm contracted to pay for this loss.

18 You will make the determination by deciding if
19 Mary Ellen Haines had given permission to Daniel
20 Walton to drive the automobile.

21 That sounds overly simplistic and it should
22 be. Don't get swayed one way or the other or don't
23 get caught up in a lot of paper, just listen to
24 everybody.

* * *

* * *

1 In October or November of 1990, after the
2 purchase of the car, she saw Daniel Walton driving
3 this automobile.

4 You will hear from her that her daddy brought
5 her up from day one to do things the right way. She
6 did not want anybody to be breaking any law.

7 When she saw Daniel Walton driving that car
8 she told Jennifer and Daniel Walton, there is no
9 dispute that she told both of them, "I do not want
10 you driving that car until you have a license and
11 until you are insured."

12 To be insured, according to her, meant taking
13 him down to the insurance man and putting him down on
14 the policy.

15 That, as Mr. Brown correctly explained, is not
16 quite how it works. If you give somebody your
17 permission then you can be insured under certain
18 circumstances.

19 But her understanding was that that was not
20 the case. You needed to take them down and put them
21 on the insurance policy and then they were insured.

22 There is no doubt that in this case that that
23 did not happen at the time of the accident.

24 On the licensing, she did not want Daniel

* * *

* * *

1 It should come in quickly, but use your common sense.

2 Thank you for your attention.

3 THE COURT: That concludes the opening
4 statements. Call your first Witness.

5 MR. BROWN: We have filed the State Farm
6 policy in the file of the case. I think that we
7 should make it an Exhibit.

8
9 (The State Farm Policy was marked as
10 Defendants Exhibit Number One and
11 was entered into the Record.)
12

13 MR. BROWN: I offer now the record of the
14 Alleghany County Juvenile and Domestic District Court
15 that I referred to in opening statement.

16 MR. CARSON: Note my objection that, I
17 believe, I had on the record earlier.

18 THE COURT: All right.

19
20 (The Alleghany County Juvenile and Domestic
21 District Court record was marked as
22 Defendants Exhibit Number Two and was
23 entered into the Record.)
24

1 MR. KLOCKENBRINK: This is a DMV record for
2 Daniel Walton and I would move to introduce this as
3 the next Exhibit.

4 THE COURT: This will be Defendant's Exhibit
5 Three with the objection as stated in the pre-trial.
6

7 (The DMV record was marked as Defendant's
8 Exhibit Number Three and was entered into
9 the record.)
10

11 MR. KLOCKENBRINK: Note that it states under
12 previous license that the original license was issued
13 on July 19, 1989 and that it expired, according to
14 this record, on August 21, 1992.

15 THE COURT: Is that the only material part of
16 that?

17 MR. KLOCKENBRINK: That is correct.

18 MR. BROWN: To put it before the Jury,
19 Daniel Walton was driving the 1984 Subaru station
20 wagon at the time of the automobile accident on
21 February 8, 1991; is that correct?

22 MR. CARSON: Yes. Along those lines I believe
23 there that is no dispute that the Subaru was the
24 automobile under the State Farm policy and Mary Ellen

Mary Ellen Haines - Direct

1 Haines was the named insured in that policy.

2 MR. WELLMAN: We call Mary Ellen Haines.

3

4

MARY ELLEN HAINES

5 was called as a witness and after having first been duly
6 sworn to tell the truth, the whhole truth, and nothing but
7 the truth, was examined and testified as follows:

8

9

DIRECT EXAMINATION

10

11 BY MR. WELLMAN:

12

Q State your full name.

13

A Mary Ellen Haines.

14

Q Where do you reside?

15

A 2340 South Church Avenue.

16

Q Do you have any children?

17

A Two. Jennifer is 20 and Jessica is 18.

18

Q Are you employed?

19

A Yes, Covington City Schools.

20

Q What grade do you teach?

21

A Sixth and seventh.

22

Q At the time of this accident on February 8,

23

1991 were you the registered owner of a 1984 Subaru station
24 wagon?

- 1 A Yes.
- 2 Q Who was that car insured with?
- 3 A State Farm.
- 4 Q Did you also have another vehicle?
- 5 A Yes.
- 6 Q Was that vehicle also insured with State Farm?
- 7 A Yes.
- 8 Q How long have you been State Farm insured?
- 9 A Since I was 16 years of age.
- 10 Q Are you with State Farm currently?
- 11 A Yes.
- 12 Q There came a time when you and Jennifer went
- 13 looking for a car.
- 14 A Yes.
- 15 Q And it was the 1984 station wagon that you
- 16 purchased?
- 17 A Yes.
- 18 Q And that vehicle was purchased for Jennifer's
- 19 car?
- 20 A Yes.
- 21 Q Give the Jury the history on the purchase of
- 22 that car.
- 23 A Jennifer put the down payment down on the car
- 24 and we financed the rest of the car. The financing was in

Mary Ellen Haines - Direct

1 my name, but I made half of the car payment and she made the
2 other half.

3 When it came time for the insurance she paid
4 her portion of the insurance on that car.

5 Q And it was purchased roughly in August of
6 1990; is that correct?

7 A Yes.

8 Q Did Jennifer pay for the gas, upkeep and
9 maintenance on that car?

10 A Yes.

11 Q When it came time you got insurance on that
12 vehicle as well?

13 A Yes.

14 Q Who was the named insured on that State Farm
15 policy?

16 A I was the insured with Jennifer as the primary
17 driver of the car.

18 Q At the time of that purchase did you place any
19 restrictions on the use of that vehicle?

20 A No.

21 Q I understood that there was a time when
22 Jennifer left home?

23 A Yes.

24 Q When was that?

1 A About two months later.

2 Q Where did she move? --

3 A She moved to Mount Pleasant which is an area
4 outside the city limits.

5 Q And she moved in with Daniel Walton?

6 A Yes.

7 Q Did she take your car with her?

8 A Yes.

9 Q At the time that Jennifer left your home and
10 moved in with Daniel did you place any restrictions on the
11 use of that vehicle?

12 A No.

13 Q I understood that when Jennifer moved in with
14 Daniel Walton that you were aware that he had a run-in with
15 the law earlier that year; is that right?

16 A Yes.

17 Q Were you aware that his license was suspended
18 by the J&D Judge for a year?

19 A Yes.

20 Q Do you know when that suspension would have
21 lapsed?

22 A No.

23 Q In light of that knowledge did there come a
24 time after Jennifer moved out that you did place a

Mary Ellen Haines - Direct

1 restriction on her use of the vehicle?

2 A Yes.

3 Q Tell the Jury about that.

4 A I passed Danny one day driving the car. I was
5 not quite sure that it was him, but I knew that it was the
6 car.

7 I went down to where my daughter was working
8 and found that she was working. Therefore, it had to be
9 someone else driving the car.

10 She later informed me that it was Danny. I
11 said that Danny had to be an licensed driver and that he had
12 to have insurance to drive the car.

13 Q And you expressed that prohibition directly to
14 Daniel as well as your daughter?

15 A Yes.

16 Q The specific restriction was that he was not
17 to drive that car until he was legally entitled to drive --

18 MR. CARSON: I object. That is a
19 mischaracterization of her testimony.

20

21 BY MR. WELLMAN:

22 Q The first restriction was that had to be
23 licensed to drive; is that correct?

24 A Yes.

1 Q And second he had to have insurance?

2 A Yes.

3 Q So, in other words, once Mr. Walton was
4 licensed and was covered by an insurance policy he could
5 drive the car?

6 A Yes.

7 Q Other than that one occasion in October or
8 November of 1990 when you placed that restriction directly
9 to Daniel Walton did you ever say anything about that, any
10 other restrictions?

11 A No.

12 Q Were any other restrictions placed on his use
13 or Jennifer's use of the car after that discussion?

14 A No.

15 Q I understand that Jennifer and Danny were
16 married in January of 1991; is that right?

17 A Yes.

18 Q This accident happened in February of 1991; is
19 that right?

20 A Right.

21 Q At any point between the time that Jennifer
22 moved in with Daniel, back in November of 1990, and the date
23 of this accident, February of 1991, did they have any other
24 motor vehicle in their household to use?

Mary Ellen Haines - Direct

1 A No.

2 Q Mr. Carson made a reference in his opening
3 statement -- you were in the Courtroom, did you hear that
4 opening statement?

5 A Yes.

6 Q He pointed out that at some date in the course
7 of this litigation you signed responses to requests for
8 admissions where you admitted a request that he made that
9 Mr. Walton did not have your permission to drive the car at
10 the time of the accident. Do you recall signing that
11 pleading?

12 A I signed a bunch of papers, I will be honest.
13 Exactly which one that is, I cannot say that for sure.

14 Q At the time that litigation was instituted
15 were you aware or was it your understanding that Daniel
16 Walton had been legally entitled to drive or licensed at the
17 time of the accident?

18 A Will you repeat that?

19 Q When this suit was filed and it was begun was
20 it your understanding that Daniel Walton at the time of this
21 accident was licensed or not licensed?

22 A At the time of the accident was he licensed or
23 not licensed?

24 Q Let me try it this way.

Mary Ellen Haines - Direct

1 MR. CARSON: She can answer that question just
2 the way that it is.

3 MR. WELLMAN: If she can that is great.

4 THE COURT: Do you understnad the question?
5 He is asking you what your knowledge was at the time
6 that the suit was filed, not what your knowledge was
7 at the time of the accident.

8 THE WITNESS: At the time that the suit was
9 filed when I talked -- may I say this? When I talked
10 to the State Trooper the night of the accident my
11 first question was -- I said, "Did Danny have his
12 license with him?" And the State Trooper said, "No."

13
14 BY MR. WELLMAN:

15 Q Was it your understanding at the time of the
16 accident that if he was driving your car that he would be
17 covered by your insurer, State Farm?

18 A Repeat that.

19 Q Was it your understanding at the time of the
20 accident that if Daniel Walton was driving your car he
21 automatically would be covered with State Farm?

22 A No.

23 Q Is it your understanding that he would be
24 insured if you had given him permission to drive it?

1 A No.

2 Q At the time of the accident had you known that
3 the one-year suspension on Daniel Walton's license had
4 lapsed, and if it turns out that he was licensed at the time
5 of the accident, and if you had known that he would have
6 been covered under your State Farm policy, would you have
7 given him permission to drive the car?

8 A If he is licensed and has insurance, yes, he
9 may drive.

10 MR. WELLMAN: That is all that I have.

11

12 CROSS EXAMINATION

13

14 BY MR. CARSON:

15 Q Let me get right to this paper that Mr.
16 Wellman was asking you to identify.

17 A May I see this. (indicating)

18 Q Sure. Does that represent a copy of the
19 answers that you sent to us, Mrs. Haines?

20 A Yes.

21 MR. CARSON: I would move that this be our
22 next Exhibit and admitted into evidence.

23 THE COURT: The whole set?

24 MR. CARSON: Yes, sir.

1 MR. BROWN: If your Honor please, on behalf of
2 my client at least, this is a request of admissions
3 submitted to Mrs. Haines.

4 MR. CARSON: That is correct.

5 MR. BROWN: In as such it constitutes evidence
6 in the case, but I think putting that whole set of
7 written questions and answers in for the Jury to
8 consider as an Exhibit elevates that particular
9 portion of the evidence over all of the evidence that
10 they will hear.

11 THE COURT: I do not know what other questions
12 and answers may be relevant. Ask her about the ones
13 that you are addressing and we will decide later
14 about whether the rest of it is proper to come in.

15 MR. CARSON: I represent for the Court that at
16 this time we will make specific reference to her
17 responses to Paragraphs Seven and Eight and have
18 those portions moved into evidence.

19 THE COURT: Do you know what these paragraphs
20 are?

21 MR. BROWN: No, do you?

22 MR. CARSON: I was going to read those into
23 evidence.

24 THE COURT: All right.

1 MR. CARSON: In response to Paragraph Seven
2 Mary Ellen Haines admitted that at the time of the
3 accident Daniel Walton had no license to operate a
4 motor vehicle and had been expressly forbidden by Mary
5 Ellen Haines from operating the 1984 Subaru
6 automobile referred to above.

7 This prohibition had been directly
8 communicated to both Daniel Walton and Jennifer
9 Haines Walton by Mary Ellen Haines prior to the
10 incident.

11 Mary Ellen Haines has admitted in response to
12 Paragraph Eight that at the time of the accident
13 Daniel Walton did not have permission from Mary Ellen
14 Haines to be operating the 1984 Subaru automobile.

15
16 BY MR. CARSON:

17 Q Danny did not have your permission to operate
18 your car because your rules were that he needed to be
19 licensed and insured before he could drive the car, right?

20 A Right.

21 Q Prior to the date of the accident you
22 communicated to Danny and Jennifer that he needed to get
23 his license?

24 A Yes.

1 Q And the rule that he needed to have a license
2 never changed before the accident?

3 A No.

4 Q And your understanding at the time of the
5 accident with respect to Danny being insured is that he
6 would have to have his own insurance before he had your
7 permission to drive your car?

8 MR. WELLMAN: I object to that. That is not
9 what she said.

10 MR. CARSON: We will go straight to the
11 Deposition, Page 11.
12

13 BY MR. CARSON:

14 Q I'm looking at your answer that starts on
15 Line 7.

16 A He would have to have insurance, that is not
17 what you asked me.

18 Q My question was: Is it your understanding at
19 the time of the accident with respect to Danny being insured
20 that he would have to have his own insurance to be able to
21 drive?

22 A Not his own insurance. He would have to be
23 insured. My plan was that he would be placed on the policy
24 that I had.

Mary Ellen Haines - Cross

1 Q And you were going to go down and place him on
2 that policy?

3 A Right.

4 Q And you would have to do that, in your mind,
5 before he would be insured?

6 A Yes.

7 Q And you wanted Danny to be licensed and
8 insured because you did not want him to be driving your car
9 unlawfully?

10 A Right.

11 Q I think that you indicated earlier that you
12 are aware that a driver of a car in Virginia must have in
13 his possession a driver's license or he is guilty of a
14 traffic infraction.

15 A Yes.

16 Q And you are further aware that a driver in
17 Virginia must have applied for it and have a license.

18 MR. BROWN: I did not understand that, I do
19 not know how she can.
20

21 BY MR. CARSON:

22 Q Did you know that you have to go get a license
23 before you can drive a car?

24 A You have to pass a test and get a license. Is

1 that applying for a license?

2 Q That is fine. If you do not understand let us
3 know.

4 A All right.

5 Q Because you do not want somebody driving your
6 car unlawfully, in this case Danny, that is one of the
7 reasons that you wanted him to have a license before he
8 operated your car; is that right?

9 A Yes, sir.

10 Q It is your understanding that Danny was not
11 licensed at the time of the accident; is that right?

12 A Again, I will state that when you I talked
13 with the State Trooper the first question that I asked him
14 was about if he had his license and the State Trooper
15 informed me that he did not.

16 Q Turn to Page 31, if you will, starting on
17 Line 6. Did I ask you at the time if it was your
18 understanding that he, meaning Danny, was not licensed or
19 insured at the time of the accident and your answer was,
20 "Right" and that is still your testimony today?

21 A Yes. He was not licensed and was not insured
22 at the time.

23 Q In fact, as far as you know, at the time of
24 the accident the Court still had Danny's license, right?

1 A Repeat that, please.

2 Q As far as you know, at the time of the
3 accident the Court still had Danny's license, right?

4 A I'm not sure that the Court had the license.

5 Q Turn to Page 32. I'm looking at Line 14. Did
6 you answer that as far as you knew the Court had and has
7 Danny's license?

8 A Yes.

9 Q And that is still your testimony today?

10 A Yes.

11 MR. BROWN: Is that offered to introduce what
12 the thinking is. If the facts are she does not know
13 it I believe that and it speaks for itself.

14

15 BY MR. CARSON:

16 Q Since January of 1990 as far as you know Danny
17 has not even asked for his license back; isn't that right?

18 A I'm sorry.

19 Q Since January of 1990, when his license was
20 suspended, Danny has not even asked for his license back,
21 even to the present day; is that right?

22 A I'm sorry.

23 Q That's okay.

24 A I am just not following.

Mary Ellen Haines - Cross

1 Q As far as you know, since January of 1990,
2 Danny has not even asked for his license back?

3 A I do not know that. I do not know whether he
4 has or has not.

5 Q Turn to Page 15. I'm looking at Line 21. Did
6 I ask you at the time, "So, he has never gotten his license
7 back since January of 1990?" Your answer was, "He has not
8 even asked for it. We have taken him everywhere that he
9 needs to go."

10 A That is the statement as of the day that I gave
11 this Deposition.

12 Q Right.

13 A As of the day of this Deposition, yes.

14 Q Since the day of the Deposition he may have
15 asked for his license back?

16 A Yes.

17 Q As of the time of the accident as far as you
18 are concerned he had not asked for his license back; is that
19 right?

20 A Not that I know of.

21 MR. CARSON: Thank you.
22
23
24

CROSS EXAMINATION CONTINUED

BY MR. COLLINS:

Q You said that this was your testimony on the date of this Deposition, when was that?

A May 29, 1992.

Q That is a year-and-a-half ago?

A Yes.

Q You were asked about whether you had agreed that he did not have a license and did not have permission to drive and some other questions that you answered, what is the date of that?

A May 4, 1992.

Q That is within a few days or a couple of weeks of when you gave the Deposition?

A Yes.

Q That is a year-and-a-half ago?

A Yes.

Q As of this day have you reviewed the J&D records or read what the Judge said about whether he is entitled to drive or not?

A No.

Q Have you read any of the insurance policy or made any independent investigation to find out whether he

1 was insured?

2 A No.

3 Q If he was driving with insurance and had a
4 license did he have your permission?

5 A Yes.

6 MR. COLLINS: That is all that I have.

7

8 REDIRECT EXAMINATION

9

10 BY MR. WELLMAN:

11 Q The point that you made about Daniel Walton
12 having to be licensed, the reason that you said that was
13 directed to the suspension of the license by the Court; is
14 that correct?

15 MR. CARSON: I object on the grounds that it
16 is leading.

17 MR. BROWN: This lady is a party to the
18 litigation and I suggest that every party should be
19 allowed to answer the questions as to --

20 THE COURT: The objection is overruled.

21

22 BY MR. WELLMAN:

23 Q Did you understand the question?

24 A Repeat it, please.

Mary Ellen Haines - Redirect

1 Q You have testified previously that there were
2 two parts to the restriction on his driving.

3 A Right.

4 Q The first part was that he needed to be
5 licensed and the reason that you said that is because of the
6 Court suspension of his license?

7 A Yes.

8 Q So, your comments related directly to the one-
9 year suspension of that license by the Court?

10 A Yes.

11 MR. CARSON: Same objection.

12 THE COURT: Overruled.

13

14 BY MR. WELLMAN:

15 Q The second part of that restriction was that
16 you wanted him to be covered by insurance?

17 A Yes.

18 Q That was the extent of that restriction, you
19 wanted him to be covered by insurance?

20 A Yes.

21 Q It did not have to be his own insurance or his
22 own policy, did it?

23 A No.

24 Q I was confused. Mr. Carson made that

Mary Ellen Haines - Redirect

1 statement and said that you made that statement and
2 referenced Page 11, Line 7 of your Deposition and I read
3 that as saying he would have to have insurance --

4 MR. CARSON: I'm not sure if this is a
5 question or not.

6 THE COURT: You may have to clear that up.
7

8 BY MR. WELLMAN:

9 Q It was never your intent to say to him that he
10 had to get his own insurance; is that right?

11 A No.

12 Q Next was Page 31, Line 6. It is your
13 understanding now that he wasn't licensed or insured at the
14 time of the accident, that was your understanding; is that
15 right?

16 A Right.

17 Q If, in fact, he was licensed at the time of
18 the accident and if, in fact, he would be covered by your
19 policy when he was, did have your permission to drive the
20 car?

21 A If he is licensed and if he has insurance he
22 may drive the car, yes.

23 MR. WELLMAN: That is all that I have, thank
24 you.

RECROSS EXAMINATION

BY MR. CARSON:

Q Being licensed in your mind included having a license; is that right?

A To me that is what having a license is.

Q That is right because you would not want to be unlawful and subject to being ticketed.

MR. LOMBART: I will object. I do not think that it is a proper question. It does not deal with the issue presented to the Jury.

THE COURT: Objection sustained.

BY MR. CARSON:

Q Is it your understanding that you at least have to have a license, isn't that correct?

A Yes.

Q And if Danny did not have his license then he did not have your permission?

A Right.

MR. CARSON: Thank you.

THE COURT: Anything further?

REDIRECT EXAMINATION CONTINUED

BY MR. WELLMAN:

Q There has been no testimony here -- You are not saying that the Court physically took Mr. Walton's license, are you?

A I do not know what the Court did except what the children told me happened.

Q And your testimony has been that all you know is that the Court said that he could not drive for a year?

A That is my understanding.

Q And you do not have any knowledge whether he had his physical driver's license in his pocket on the date that action was imposed or whether he lost it before, you have no knowledge as to any of those issues, right?

A No.

Q That first part of your restriction was related to what the Court ordered with the suspension to occur for one year, right?

A Right.

Q And during that year he was not to drive the car?

A Right.

MR. WELLMAN: Thank you.

1 RECROSS EXAMINATION CONTINUED
2

3 BY MR. CARSON:

4 Q You also wanted him to have a license when he
5 drove the car, didn't you?

6 A Yes.

7 MR. CARSON: Thank you.

8 THE COURT: You may stand aside.
9

10 (The Witness was excused from
11 the Witness Stand.)
12

13 THE COURT: Any further evidence?

14 MR. WELLMAN: I think that the Defense rests
15 with that testimony and the DMV records.

16 MR. CARSON: I would like to make a motion out
17 of the presence of the Jury.

18 THE COURT: Please go back to the Jury room.
19 Do not discuss the case among yourselves.
20

21 (The Jury was excused from
22 the Courtroom.)
23

24 THE COURT: All right. The Jury is now out.

1 MR. CARSON: Your Honor, at this time on
2 behalf of State Farm I would move to strike the
3 Plaintiffs' evidence and have judgment entered for
4 State Farm.

5 The sole factual issue presented is whether or
6 not Daniel Walton had the permission of Mrs. Haines.
7 As I indicated prior to Court, and I do not intend to
8 go into it in detail right, but that issue is
9 established by her response to the request for
10 admissions.

11 I realize that the Court granted me a
12 standing objection, but I reiterate that at
13 this time.

14 Even if that sole factual issue is not
15 conclusively established, Daniel Walton did not have
16 Mary Ellen Haines' permission to operate the car at
17 the time of the accident.

18 We have gone back today two-and-a-half years
19 after the accident and said, "Had you known this or
20 that would he have had your permission?"

21 Her answer is, "Given these hypotheticals,
22 yes, perhaps, he would."

23 First, I would say that the fact remains that
24 right, wrong or indifferent, at the time of this

1 accident Daniel Walton did not have permission,
2 expressed certainly. There is no evidence here
3 today that she told him expressly that he may drive
4 the car.

5 There can be no argument regarding expressed
6 permission.

7 Right, wrong or indifferent Daniel Walton did
8 not have her permission. If we are going to get into
9 these hypotheticals I think that the fact remains
10 that there is no mistake that the licensure --

11 Mary Ellen Haines just testified unequivocally
12 that it was her understanding that he was not
13 licensed. Everyone can try to argue that to the
14 contrary, but that is her understanding.

15 So, there can be no permission flowing from
16 her. At best what it shows is that he may have been
17 eligible to have gotten the license because Mary
18 Ellen Haines testified or she agreed that it was a
19 traffic infraction not to have a license.

20 THE COURT: Can you define for me what license
21 to drive means?

22 MR. CARSON: I think, Your Honor, that is
23 precisely what the Defendants are trying to argue,
24 that according to the DMV records he had a legal

1 entitlement to drive, but it is our position that
2 that shows that he may have been eligible to drive,
3 but did not have a license.

4 Moreover he did not physically possess a
5 license, so even under Mary Ellen Haines' rule that
6 he had to have a license, because he did not
7 physically possess one, he still would have been
8 driving unlawfully, ergo, did not have her permission
9 at that time.

10 THE COURT: If he had been speeding he would
11 have committed an unlawfully act and that is a
12 proximate cause problem.

13 MR. CARSON: All this lady is asking is that
14 he have a license. There is no question in his mind
15 that he did not have one. Had not gone back to Court
16 to get one.

17 THE COURT: If you are stopped by the Trooper
18 and he asked you to see your license and you do not
19 have it then it is true that you are driving without
20 a license under your theory.

21 MR. CARSON: Unlawfully.

22 THE COURT: Whether it is unlawfully or not,
23 that does not take away the fact that if you left
24 your license at home or if you lost it and if you

1 apply for it and have been granted a license by the
2 DMV you are a licensed driver, but you just do not
3 have the proof of it with you.

4 When you asked the question of her in an
5 Interrogatory to admit that he had no license what
6 was the purpose of your question?

7 Did you mean to ask her does she admit that he
8 had not been given a license by the DMV or were you
9 asking her to admit that even if he was duly licensed
10 by the DMV to admit that he did not have the proof of
11 it with him? What was the intent of that question?

12 MR. CARSON: I think that it speaks for itself
13 that he did not have his license. In either event in
14 her mind what is established by her response is that
15 he did not have a license and thus did not have her
16 permission.

17 THE COURT: Any other grounds?

18 MR. CARSON: No, sir.

19 THE COURT: Response.

20 MR. WELLMAN: Factually, Mr. Carson stated
21 that she thought at the time of the accident that he
22 was not licensed and did not have a license.

23 That is not true. She said that she asked the
24 State Trooper if he had his license. She did not

1 know whether he was licensed or not.

2 All of these issues are questions of fact for
3 the Jury. I hesitate to say that because after
4 haring Mrs. Haines testify I may be moving to strike
5 after he is done. At least this has to go to the
6 Jury at this point.

7 He said there is no expressed permission and I
8 disagree strongly. She expressly said to him "you
9 cannot drive this car until you are licensed and
10 covered by a policy."

11 Our argument is that at the time of this
12 accident, based on Mrs. Haines' testimony, he was
13 licensed and covered under her policy, so there is
14 the expressed permission in this case.

15 If it is not expressed permission it is at
16 least implied and we oppose the motion to strike.

17 MR. LOMBART: The question about Mary Ellen
18 Haines question to the investigating State Trooper
19 regarding the accident --

20 Correct me if I am wrong, but my understanding
21 is that the lady posed the following question to the
22 Trooper: "Did Danny have his driver's license with
23 him?"

24 The question was not, "was he licensed to

1 drive?" Did he have his driver's license was the
2 question and that is the document.

3 THE COURT: The motion to strike is overruled.
4 What is your time table on your evidence?

5 MR. CARSON: It depends on how long the
6 Defense takes with the Troper, but an hour, maybe
7 less.

8 THE COURT: Do you want to recess for lunch
9 now or keep going?

10 MR. CARSON: I would prefer to keep going.

11 MR. BROWN: That is fine.

12 THE COURT: Bring in the Jury.

13
14 (The Jury returned to the Courtroom
15 and the following proceedings were
16 had in the presence of the Court and
17 Jury.)

18
19 THE COURT: If it is all right with you we
20 have one more witness and we will finish the evidence
21 in this case before lunch.

22 MR. CARSON: We call Steve Cooper.
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STEVE COOPER

was called as a witness and after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

MR. LOMBART: For the Record I would like the record to reflect that this witness has been present in this Courtroom throughout the entire case.

MR. CARSON: No one asked that he be excluded.

THE COURT: There were no motions to exclude, that is right.

DIRECT EXAMINATION

BY MR. CARSON:

Q State your name.

A Steven Larry Cooper.

Q Where do you live?

A 102 Wine Sap Road, Madison Heights, Virginia.

Q What is your present occupation?

A I'm a claims representative trainee with State Farm Insurance Company.

Q How long have you been with State Farm?

A Since October 11th of this year.

1 Q As a State Farm employee have you worked on
2 the case involving this litigation in any way, shape or
3 form?

4 A No.

5 Q Let me take you back to February 8, 1991. By
6 whom were you employed at that time?

7 A Commonwealth of Virginia, Department of State
8 Police.

9 Q Were you a Trooper?

10 A Yes, sir.

11 Q How long had you been a Trooper?

12 A At that time just a few days short of three
13 years.

14 Q Did you leave the Trooper's office to go to
15 State Farm? Was there any period in between?

16 A I left the State Police a week before I went
17 to State Farm.

18 Q Were you on duty as a State Trooper on
19 February 8, 1991 around 10:00 p.m.?

20 A Yes.

21 Q Did you investigate an accident that evening?

22 A Yes.

23 Q What was the approximate time that the
24 accident happened?

Steve Cooper - Direct

1 A 10:30 p.m.

2 Q What car was involved in that accident?

3 A A 1984 Subaru station wagon.

4 Q Who was the owner of the car?

5 A Mary Ellen Haines.

6 Q And the driver of the car at the time of the
7 accident?

8 A Daniel Todd Walton.

9 Q Did you speak with Daniel Walton at the
10 accident or following the accident?

11 A Yes.

12 Q When and where?

13 A If I spoke to him at the scene it was briefly
14 and I made no note of it. There were rescue people trying
15 to attend to the injured and I do not like to interfere with
16 that.

17 I did travel to Roanoke Memorial hospital on
18 the 11th of February in the evening of the 11th to interview
19 him.

20 Q Three days after the accident?

21 A Yes.

22 Q Did you record your investigation or interview
23 at that time?

24 A Yes.

Steve Cooper - Direct

1 Q Mr. Cooper, will you recount for us Daniel
2 Walton's statements, if any, about his understanding of his
3 licensure at that time?

4 MR. LOMBART: For the Record I object to this
5 as being irrelevant. Mr. Walton's understanding is
6 not the issue to be decided by the Jury. The issue
7 is Mary Ellen Haines' understanding or her
8 impression.

9 THE COURT: The objection is overruled.

10 MR. BROWN: If I may, Mr. Walton is present in
11 the Courtroom and counsel can call him. Are we
12 trying to impeach Mr. Walton here? This is a
13 question of permissive use and Mr. Walton has not
14 been called as a witness and I do not --

15 THE COURT: I think that it is relevant.

16
17 BY MR. CARSON:

18 Q Go ahead, Mr. Cooper.

19 A Between the time of the accident and the time
20 that I interviewed Mr. Walton in Roanoke Memorial I found
21 out that his license status by DMV was licensed --

22 MR. LOMBART: That is hearsay and irrelevant.

23 THE COURT: I sustain.

24 THE WITNESS: When I interviewed him at

Steve Cooper - Direct

1 Roanoke Memorial I asked him if he knew that he was
2 not licensed to drive a vehicle and I told him --

3 I asked him if he knew that he was not
4 licensed and he said that he knew that he was not
5 licensed and that he had not even known that he was
6 eligible and that he was under the belief that he
7 still owned money for a fine to the Court and the
8 only reason that he was driving the vehicle that
9 night was because Paul Thurston --
10

11 BY MR. CARSON:

12 Q Let me stop you right there. How did Daniel
13 Walton learn that he was eligible?

14 A I told him.

15 Q What did you tell him?

16 A I told him that he was eligible for a license,
17 but was unlicensed. It had been my understanding -- I do
18 not know what to say.

19 Q Tell us your understanding.

20 A It had been my understanding that he was
21 eligible but not licensed and I asked him if he was aware of
22 that.

23 MR. CARSON: Thank you.
24

Steve Cooper - Cross

CROSS EXAMINATION

BY MR. WELLMAN:

Q Currently you are a State Farm employee?

A Yes.

Q What is your title?

A Claims representative trainee.

Q And you are not involved in this case?

A No, sir.

Q Your superiors know that you are here today,
right?

A Yes.

Q And they know what you are testifying to,
right?

A Yes.

Q And they know what your position is?

A They know what case I'm testifying in, that is
all.

Q Isn't it true also that they generally
understand what your testimony will be?

A It depends on who my superiors -- the people
with State Farm have been dealing with me on the case since
a few months after it happened or from the time they have
been aware of it.

Steve Cooper - Cross

1 Q Prior to coming into this Courtroom you have
2 discussed your testimony with Mr. Carson; is that right?

3 A Yes.

4 Q Did you charge Mr. Walton with driving on a
5 suspended license?

6 A No.

7 Q Did you charge him with driving while not
8 being licensed?

9 A No, sir.

10 Q What are you reading from? When you were
11 answering something you were reading, what are you reading?

12 A That is the copy of the accident report that I
13 issued.

14 Q Okay.

15 A These are my handwritten notes that I had to
16 turn in on the investigation, they consist of records of
17 interviews.

18 Q Do you still have the tape recording of your
19 interview with Daniel Walton?

20 A No, I did not record it.

21 Q You recorded it by hand?

22 A Yes, sir.

23 MR. WELLMAN: That is all that I have.
24

REDIRECT EXAMINATION

BY MR. CARSON:

Q Were you subpoenaed to be here, sir?

A Yes, sir.

Q The notes from which you reviewed and testified from, when were they recorded in reference to the notes of your interview with Daniel Walton?

A Let me look for the date on here. I do not see a date. Was your question when the notes were written?

Q What I'm getting at, was it around the time that you interviewed Daniel Walton?

A Yes, it was that same day.

Q Who were you employed by at that time?

A Virginia State Police.

Q Had you made any arrangements or had any connections at all with State Farm at the time that you were doing your investigation of Daniel Walton?

A No, sir.

Q You were asked by Mr. Wellman if you had charged Daniel Walton with failure to have a license or failure to have a license in his possession. Could you have charged him?

A Yes.

1 Q Why didn't you?

2 A For several reasons. First of all, I did not
3 deal with him at the scene because I did not want to
4 interfere with the rescue people and for a misdemeanor
5 offense if you do not ticket them at the scene of the
6 accident or at the hospital when you go there after the
7 accident you have to get a warrant and have it served on
8 them later.

9 Since I did not do it immediately my chance
10 to do that immediately was gone, but I had a year to do
11 that.

12 After I finished my investigation I called the
13 Commonwealth Attorney on something this big and we both
14 decided --

15 MR. LOMBART: Objection, I think that is going
16 too far.

17 THE WITNESS: I can shorten it.

18 MR. CARSON: The question was: Why did you
19 not charge him?

20 MR. LOMBART: He answered the question.

21 THE WITNESS: My own reason for not piling a
22 misdemeanor on top of a felony is that it seemed kind
23 of Mickey Mouse to me.
24

Steve Cooper - Recross

1 BY MR. CARSON:

2 Q Why could you have charged him if you had
3 chosen to?

4 MR. LOMBART: Objection. This whole thing is
5 going far-field. Most of this has already been
6 responed to.

7 THE COURT: That would have been up to the
8 Court to decide whether or not he had a valid
9 license.

10 I think that this Jury sometime is going to be
11 told the difference between being licensed and not
12 having your license with you.

13 MR. CARSON: I would not have gone into this
14 at all if Mr. Wellman had not opened the door in
15 this respect.

16 THE COURT: I think that you have gone far
17 enough on any reason as to why he was or was not
18 charged with the misdemeanor.

19 MR. CARSON: All right. Note my exception.

20

21 RECROSS EXAMINATION CONTINUED

22

23 BY MR. BROWN:

24 Q When you are talking about charging somebody

Steve Cooper - Recross

1 with not having a license you are talking about whether the
2 man physically has the license, the piece of paper or piece
3 of plastic in his possession at the time, are you not?

4 A No, sir.

5 Q You have no knowledge of your own whether this
6 man was legally entitled to drive at the time of the
7 accident, do you?

8 A Yes.

9 Q You did based on something that you read on a
10 computer?

11 A Based upon something that I saw on a
12 transcript.

13 THE COURT: What piece of paper did you see?
14 Which piece of paper?

15 THE WITNESS: The driving record.

16 THE COURT: May I see that transcript of the
17 driving record? Show this to the Witness and ask him
18 if that is the document that he was referring to.

19

20 REDIRECT EXAMINATION CONTINUED

21

22 BY MR. CARSON:

23 Q I will ask hand you a document and ask you if
24 this is the document that you are referring to?

1 A Yes, sir, it is. This is not the specific
2 document, it was one that I had at the time.

3 Q But you pulled it up at the time of the
4 accident and not on July 15, 1993 as this document was
5 pulled up?

6 A Correct.

7 THE COURT: Do you have the document with you
8 that you are referring to?

9 THE WITNESS: No. The document that I saw is
10 not here.

11 MR. CARSON: I further move that that is
12 admissible as it goes to his state of mind. If the
13 objection is hearsay I move that it goes to state of
14 mind as to the charging or his ability to charge.

15 THE COURT: The issue is whether or not he was
16 validly licensed, not whether or not this witness had
17 a license.

18 MR. CARSON: May I ask him that question?

19 THE COURT: What?

20 MR. CARSON: Was Mr. Walton validly licensed?

21 THE COURT: That is a valid question if he has
22 a document from the DMV that might have an answer to
23 that.
24

Steve Cooper - Recross

1 BY MR. CARSON:

2 Q And you do not have such a document?

3 A No.

4 MR. CARSON: Thank you.

5 THE COURT: Anything further?

6
7 RECROSS EXAMINATION CONTINUED

8
9 BY MR. COLLINS:

10 Q You are familiar with these because you have
11 seen many of these, I'm sure, right?

12 A Yes.

13 Q The date of this was February of 1991?

14 A Correct.

15 Q It was February 11th when you were
16 interviewing Mr. Walton?

17 A Yes.

18 Q This document indicates that the previous
19 license was issued July 19, 1989; is that right?

20 A Yes.

21 Q It indicated that the previous license expired
22 August 31, 1992; is that correct?

23 A Yes.

24 MR. COLLINS: Thank you.

1 MR. CARSON: I renew any pre-trial objections
2 because they have done exactly what I expected that
3 they would and this does not show that that is quite
4 the case as of February 8, 1991.

5 THE COURT: Overruled.

6 MR. CARSON: No further questions.

7 THE COURT: Thank you. You may stand down.
8

9 (The Witness was excused
10 from the Witness stand.)
11

12 MR. CARSON: I have two witnesses by
13 Deposition.

14 THE COURT: Okay.

15 MR. BROWN: Who are the witnesses?

16 MR. CARSON: The first one is Daniel Walton.

17 MR. BROWN: He is right here.

18 MR. CARSON: He was there during your case
19 also, but I have decided to call him by Deposition.

20 THE COURT: Unless he is unavailable -- you
21 can put a Deposition in.

22 MR. CARSON: That is what I intend to do.

23 THE COURT: Members of the Jury go back to the
24 Jury room, please. Let's go ahead and break for

1 lunch. Do not discuss this case at all while you are
2 out.

3
4 (The Jury was excused
5 from the Courtroom.)
6

7 MR. CARSON: It is my understanding that I'm
8 permitted to introduce those parts of the party's
9 Deposition that I deem proper.

10 THE COURT: That is correct, but you said that
11 you were going to read the whole thing.

12 MR. CARSON: No, I intend to read limited
13 portions which would last under one minute.

14 THE COURT: Tell them what it is. Let's take
15 a break for lunch.

16 MR. CARSON: Will you tell the members of the
17 Jury that it is proper and that I'm not required to
18 call the individual.

19 THE COURT: I will tell them that.

20 MR. BROWN: By so doing he may be able to do
21 it, but for the Court to tell the Jury that it is
22 proper to do it when the witness is sitting in the
23 Courtroom is the Court committing to the conduct --

24 THE COURT: I will say that any side is

1 entitled to read into evidence portions of the
2 Deposition that have been offered.

3 What you need to do is go over that and
4 Mr. Carson can tell you what he wants in it. Is
5 there another Deposition that you plan to refer to?

6 MR. CARSON: I may read a portion of Jennifer
7 Walton's Deposition which may be under 60 seconds.

8 THE COURT: Tell us the page and the lines.

9 MR. CARSON: Page 29, lines 5 through 12; Page
10 7, lines 20 through Page 8, line 2.

11 MR. LOMBART: I'm objecting as being
12 irrelevant. That is not the issue to be presented to
13 this Jury --

14 THE COURT: I do not know what you are talking
15 about. I do not have the Deposition.

16 MR. LOMBART: I am sorry.

17 THE COURT: The problem that I'm having is
18 there is no evidence that he was not licensed to
19 drive or that he was suspended on that day.

20 There is no evidence as to licensing except he
21 did not have his permit with him.

22 MR. CARSON: I think that therein is precisely
23 the issue. They are the proponents of that evidence.
24 What I made the subject of my motion is that that

1 driving record shows his record as of July of 1993
2 and there are all kinds of good reasons why a
3 suspension on February 8, 1991 might not show up.

4 As the proponents of the evidence I think that
5 burden is on them to show the state of his license on
6 February 8, 1991.

7 I can represent to the Court and having
8 spoken with the DMV they say that every six months,
9 if a suspension is up and satisfied, it is purged
10 administratively.

11 I know that, but I believe that it is their
12 burden to show what the state of his license was on
13 February 8, 1991 and I do not believe this record --

14 THE COURT: But you are offering into
15 evidence -- your questions are addressed to the
16 witness based upon a fact not in evidence and that is
17 that he was suspended.

18 Where is the evidence that that question is
19 based upon? That is your whole case or a portion of
20 your case.

21 His license having been suspended on the date
22 of the accident, all of your questions are predicated
23 on that fact and that fact is not in evidence.

24 He may not have known that he was not

1 suspended and that is a different issue, but where is
2 the proof that he was suspended.

3 The Court order is in evidence. It terminated
4 by operation of law. He lost his license, physically
5 lost his license.

6 MR. CARSON: But shouldn't the burden be on
7 the proponents of that evidence to show what he had
8 to do to get his license back whether it is reapply
9 or satisfy financial disclosure law or satisfaction
10 laws or file a reapplication or do something to get
11 his license back.

12 The testimony from the Trooper is that he was
13 eligible, but not licensed.

14 THE COURT: You have to have a good faith
15 basis for your questions. You are the one that says
16 that he was suspended.

17 MR. CARSON: I'm saying that he was not
18 licensed.

19 THE COUR: He did not have his operator's
20 license with him, that is the only thing in evidence.

21 MR. CARSON: And the Trooper's testimony.

22 THE COURT: The Trooper does not know.

23 MR. CARSON: He testified to what he knew.

24 There is also the testimony of Mrs. Haines and what

1 will be Jennifer and Daniel Walton and their
2 understanding was that they were going to have to go
3 back and do something. That is what we intend to put
4 in.

5 THE COURT: Maybe he was supposed to go back
6 to the Clerk and get the license, but the Judge did
7 not have it in the first place.

8 So, the suspension was in order which
9 terminated in 12 months. It was not conditioned on
10 community service or paying the fines.

11 MR. CARSON: He further said that he thought
12 that he had to pay a fine to the Court. Our evidence
13 through him will be that he has not paid that fine.

14 THE COURT: That is correct, but that does not
15 answer the fact of what is the truth of his status of
16 the license.

17 MR. CARSON: That is the burden on them.

18 THE COURT: If you want to ask him about that
19 and the predicate of your question is the legal
20 assumption that he was, in fact, suspended then there
21 has to be evidence that he was suspended before you
22 ask him "were you suspended or didn't you know it".

23 MR. CARSON: Where does that fit in with
24 Daniel Walton's knowledge along with everyone else's

1 that he was driving the car and he knew that he was
2 not licensed so he knew that he did not have the
3 permission to operate the automobile.

4 THE COURT: That is for the Jury. The
5 question is whether or not there was permission. The
6 mother says that if he had been licensed he could
7 have driven and had her permission. Maybe he did
8 think that he was suspended or did not know --

9 MR. CARSON: So, he knew that he did not have
10 permission, so why is there an issue there?

11 MR. LOMBART: Mr. Walton's state of mind is
12 not the relevant issue for the Jury's consideration.
13 It is the state of mind of the one individual who
14 could give or withhold permission to operate the 1984
15 Subaru, Mary Ellen Haines.

16 Secondly, I do not believe that Mr. Carson can
17 prove the status of Daniel Walton's driver's license
18 on February 8, 1991 through the testimony or through
19 the Deposition testimony of Daniel Walton or Jennifer
20 Walton.

21 Their testimony, either memorialized in the
22 Deposition or alive today, cannot prove or disprove
23 the issue of the status of his license on the day of
24 this accident, therefore, it is irrelevant and it is

1 inadmissible.

2 MR. CARSON: Mr. Lombart, Mary Ellen Haines at
3 the time of the accident stated this kid did not have
4 her permission.

5 Only after everyone has beat her over the head
6 and said, "Had you known this would he have had
7 permission?" She now might be able to say that even
8 though I think that she believes that he was not
9 licensed at the time.

10 THE COURT: Maybe she does, but it is clear
11 from her testimony that if he did have a valid
12 license he had implied permission to drive.

13 MR. CARSON: And if it was in his possession.

14 MR. LOMBART: She never said that.

15 THE COURT: That is factual in issue. There
16 is no evidence that he was suspended at all or that
17 his license was suspended.

18 MR. CARSON: It is my position that that DMV
19 abstract does not show that and it is the burden on
20 these gentleman to show that it was not suspended.
21 It is not my burden to show that it was.

22 THE COURT: The abstract speaks for itself and
23 it does not show that there was a suspension. If
24 there is another abstract that is in conflict

1 somebody ought to produce it.

2 The only grounds for the suspension is the
3 Court order and that is all that I have heard. It
4 was not for not having insurance or not having
5 financial responsibility or anything like that. It
6 is just a Court order. J&D Courts do it every day.

7 MR. CARSON: What would you have me do with
8 the proffered testimony of Daniel Walton and
9 Jennifer Walton on the issue that Daniel Walton and
10 Jennifer knew and understood that he was not licensed
11 at the time of the accident and they were under the
12 understanding that in order to get it back they had
13 to do something whether that be pay the fine, go back
14 and talk to the Judge or something.

15 So, in other words, neither of them were under
16 the impression that he was licensed and that will be
17 the purpose of that Deposition testimony.

18 THE COURT: Any response?

19 MR. BROWN: It is the same thing. What in the
20 world does Jennifer's impression have to do with
21 this, nothing at all. I object to the admission of
22 that testimony.

23 THE COURT: The objection is sustained. State
24 for the Court Reporter the Deposition page and line

1 numbers that you want.

2 MR. CARSON: This is Daniel Walton: Page 29,
3 lines 5 through 12; Page 7, lines 20 through 24; Page
4 8, lines 1 through 2; Page 8, lines 11 through 18.

5 This now is Jennifer Walton: Page 8, lines 3
6 through 19; Page 7, lines 6 through 18; Page 14,
7 lines 18 through 20; Page 10, lines 4 through 18.

8 THE COURT: Do you want to file the
9 Depositions?

10 MR. CARSON: Yes, sir.

11 THE COURT: You may.

12
13 (Daniel Walton's Deposition was marked
14 as Plaintiff's Exhibit Number Three and
15 was filed with the Court.)

16
17 (Jennifer Walton's Deposition was marked
18 as Plaintiff's Exhibit Number Four and
19 was filed with the Court.)

20
21 THE COURT: Is there any proffer by any of the
22 Defendants.

23 MR. WELLMAN: I will suggest that we proffer
24 both Depositions in their entirety. They are not

1 very long or very thick.

2 THE COURT: Is that all right?

3 MR. CARSON: That is fine. If we are not
4 permitted to read the Deposition that is the extent
5 of our case.

6 THE COURT: Any rebuttal evidence?

7 MR. BROWN: No.

8 MR. CARSON: So it is clear and I understood
9 the ruling I will renew the motion to strike
10 specifically on the grounds that I stated earlier.

11 THE COURT: Any response?

12 MR. WELLMAN: I respond by making a motion to
13 strike on behalf of the Defendants. What is the
14 evidence in this case so far and the evidence is
15 concluded?

16 Mary Ellen Haines is saying that Daniel Walton
17 had her permission to drive that car if he was
18 licensed and if he would be covered under an
19 insurance policy.

20 We have submitted the DMV record and the Court
21 record and put on evidence that at the time of the
22 accident he was licensed to drive in the Commonwealth
23 of Virginia.

24 Maybe he did not have his physical license

1 with him, that is not the issue, he was licensed to
2 drive.

3 There is also evidence that based on the State
4 Farm policy that he was covered as an insured under
5 their policy. If he drives her car he is covered.

6 Mary Ellen Haines has said that if he met
7 those two conditions, and he did, then he had
8 coverage. It was not he would have had.

9 It was an expressed statement to him that when
10 he had his license -- that was related directly to
11 the Court's one-year suspension and when that was
12 over and he was licensed to drive again and if he was
13 covered by an insurance policy he could drive the
14 car. I see that as expressed permission.

15 That was expressed permission with two
16 restrictions. If he met those restrictions then he
17 could drive the car and they had been met. I do not
18 think there is any dispute as to any of those facts.

19 THE COURT: All motions to strike are
20 overruled. I will let it go to the Jury. Anything
21 further?

22 MR. CARSON: At some point proffer on the
23 scope as well as -- before the instructions are
24 argued I will need to make a motion to be sure that

1 there is no waiver.

2 I think that I need to make a proffer to the
3 evidence to that respect. Let's do that after we do
4 the instructions.

5 THE COURT: Do you want to go to lunch and do
6 the instructions later?

7 MR. BROWN: That is fine.

8 THE COURT: Is half-hour enough time?

9 MR. BROWN: Yes, sir.

10 THE COURT: We will recess until 1:30.

11 MR. REED: One housekeeping matter. The Court
12 Reporter brought it to our attention that there are
13 two Defense Exhibits, one is the J&D records and one
14 is the DMV record, but there is not Defendant's
15 Exhibit Number One.

16 What was a joint exhibit, the policy, was
17 marked as Plaintiff's Exhibit One. We will need to
18 change this to Defendant's Exhibit One and Two.

19 THE COURT: Any objection or can we leave it
20 -- let's just mark the policy as Plaintiff's Exhibit
21 One and Defendant's Exhibit One.

22 MR. CARSON: That is fine.

23 THE COURT: Let's go to lunch.
24

1 (A lunch recess was taken.)

2

3 (The Court and opposing Counsel
4 retired to the Judge's Chambers
5 and the Instructions of Law were
6 considered.)

7

8 (The Court and opposing Counsel
9 returned to the Courtroom and
10 the following took place.)

11

12 THE COURT: Bring in the Jury.

13

14 (The Jury returned to the Courtroom.)

15

16 THE COURT: Any objection to putting your
17 objections on the record after the Jury is out with
18 the understanding, of course, that all objections are
19 timely made?

20 MR. BROWN: That is fine.

21 MR. CARSON: All right. Including our
22 objections on the grounds of the request for
23 admissions?

24 THE COURT: Yes. There are eight instructions

1 of law that I will read to you. You need not
2 memorize them because you will have them with you in
3 the Jury room with you.

4
5 (The Court's instructions were
6 read to the Jury at this time.)
7

8 THE COURT: All right. Who is going first?

9 MR. WELLMAN: My name is Stan Wellman. I have
10 not yet introduced myself. I am here on behalf of
11 Colonial Insurance Company.

12 First of all, on behalf of all of us we want
13 to thank you for the time and attention that you have
14 given this case.

15 We are now finally at the end of the case and
16 I will be very brief and it will be in your good
17 hands, so to speak.

18 This is a simple case as Mr. Carson and Mr.
19 Brown said in their opening statements. There is one
20 single issue. Do we have the instructions?

21 THE COURT: I just sent them to be copied, I'm
22 sorry.

23 MR. WELLMAN: I will go by memory. The single
24 issue in the case is whether Daniel Walton had the

* * *

* * *

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1 We also have the Court record which shows that
2 a year and six days before this accident the J&D
3 Court suspended the license for a period of one year
4 and that had lapsed at the time of this accident.
5 There is no evidence here to the contrary.

6 He was licensed to drive at the time of this
7 accident. Mr. Carson has done a very good job of
8 trying to confuse the issue.

9 Did he have physical possession and what did
10 she mean by that? What did the Trooper see on the
11 screen? What did he ask him about if he had a
12 license?

13 None of that is relevant. He was a licensed
14 driver at the time of this accident. Therefore, he
15 met the first condition of the restriction.

16 Secondly, is the insurance question. Mrs.
17 Haines testified clearly all she wanted was to make
18 sure that whoever was driving that car was insured.

19 She does not know about DMV and licensing.
20 She also does not know a lot about how insurance
21 policies work, who is covered and who is not, who
22 does?

23 She thought that perhaps she had to have him
24 on the policy to have him covered and that is not

* * *

* * *

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1 that.

2 THE COURT: The transcripts from Daniel and
3 Jennifer do not go in and only Number Seven and Eight
4 on the request for admissions.

5 THE COURT: Do you want to bring the Jury back
6 in or not?

7 MR. COLLINS: I think that we ought to leave
8 it alone.

9 MR. BROWN: I think that you said that that is
10 not an issue and he accepted that.

11 MR. PASCO: I will defer to these older
12 gentleman.

13 THE COURT: Let's get some things on the
14 record. The Instructions Number One through Eight.
15 Is there any objection to them as given by any
16 parties?

17 MR. WELLMAN: Not from the defense.

18 MR. CARSON: I'm not sure if this is the time
19 to make this or not. This will be to all objections
20 --

21 THE COURT: First Instructions One through
22 Eight. State Farm does not objection to the form of
23 them, your objection is addressed to the issue of
24 whether the Plaintiff's Instructions A, B or C should

1 have been given?

2 MR. CARSON: Correct. Also, the Instruction
3 on the licensure.

4 THE COURT: Instruction Seven.

5 MR. CARSON: Yes. I believe that should not
6 have been given. I do not believe that evidence
7 presented by the Defendants supports that in that the
8 DMV history upon which it relies is as of July 15,
9 1993 and is not indicitive of the state of the
10 license as of February 8, 1991. For that reason I
11 think that it is unduly prejudicial.

12 THE COURT: Any response in support of
13 Instruction Seven.

14 MR. BROWN: All of the evidence before the
15 Court at this point is that his license was not
16 suspended as of the date of the accident. There is
17 no question about it.

18 We have the Court order from J&D Court. We
19 have offered the DMV record and I think that it is
20 proper to so instruct the Jury.

21 THE COURT: Those arguments were timely made
22 prior to the Jury being instructed and are being made
23 for the purposes of the Record.

24 MR. CARSON: I will further object to those

1 Instructions in so far as they did not obtain
2 instructions on the scope of permission. I believe
3 that Your Honor did invite a proffer in that regard.

4 THE COURT: That objection was timely made.
5 The Court had an opportunity to have ruled
6 differently in a timely manner.

7 Do you wish to make a proffer? We have
8 proffered the Deposition of Daniel Walton and
9 Jennifer Walton.

10 MR. CARSON: Correct. Those Depositions both
11 of Jennifer of Daniel would have shown that the
12 permission given to Daniel, if any, was to change his
13 clothes and meet back at the Kroger at 7:30.

14 In this case that was not the fact. That
15 would have come from Trooper Cooper that it was his
16 understanding that there was going to be a meeting at
17 the Kroger at 7:30 and the car was given to Daniel
18 for that purpose.

19 Instead Daniel went in the car, picked up
20 three girls, offered them rides, drove up to Lake
21 Moomaw, purchased alcohol, drove back down to
22 Covington, several hours after the time that he was
23 supposed to be where he had permission to be and was
24 spotted by his wife in a following car and a chase

1 began.

2 That chase ensued through Covington that
3 included the subject to be driving the wrong way down
4 a one-way street. They then ended up on the highway
5 with speeds in excess of 70 miles-an-hour.

6 At the time of the accident they were 16 miles
7 away from the spot where they were to have met.
8 While on the highway, it would have been the
9 Trooper's understanding, that Jennifer was yelling
10 at Daniel, out the car, to stop.

11 Based on that proffer we argue that any
12 permissions that Daniel might have received was
13 exceeded in scope and we proffer that evidence.

14 THE COURT: I ask this as a matter of inquiry
15 just for my information. Is there a Supreme Court
16 decision that suggests that under the facts and
17 circumstances in this case that Jennifer could have
18 limited the scope of the permission?

19 MR. CARSON: Yes, sir. Under the APCO case a
20 car that is left by the named insured with the first
21 permittee for their general use, any permission
22 granted by that first permittee would then be extended
23 to the second permittee, in this case, Daniel Walton.

24 It is our contention that the car given to

1 Jennifer Walton was not given to her for general use,
2 but with restricted use and thus any permission that
3 Daniel Walton received flowed through Jennifer Walton
4 when she gave him the keys.

5 As a result of that when he was driving he was
6 he was in excess of the permission granted to him.

7 THE COURT: Anybody wish to respond for the
8 Defense for the Record?

9 MR. BROWN: I was listening carefully to the
10 explanation given by Mr. Carson of the APCO case. It
11 is our position in this case that the issue is the
12 expressed or implied permission of Mrs. Haines. She
13 is the named insured.

14 The insurance policy says there will be
15 insurance coverage to anyone driving the vehicle with
16 the expressed or implied permission of the named
17 insured. That has been the issue in the case from
18 the word "go".

19 Permission from Jennifer Haines Walton has
20 never been an issue in the case and therefore any
21 question about her giving the keys to her husband and
22 him driving off and not coming back at the time
23 expected is totally irrelevant to all of the issues
24 in this case.

1 The permission given by Mrs. Haines when she
2 turned over to car to Jennifer was a general
3 permission. It was not a restricted permission. I'm
4 not sure that that makes any difference as I analyze
5 the case.

6 You do not have to get any -- the car was
7 titled in the name of Mrs. Haines, owned by Mrs.
8 Haines and it was up to her to give the permission.

9 THE COURT: Your objection was timely made.

10 MR. CARSON: Finally, Your Honor, solely for
11 the Record, in light of the Court's rulings on our
12 motion to strike and with respect to the request for
13 admissions, I want to make it clear on the Record
14 that we continue to believe that the issue of
15 permission should not have been submitted to the
16 Jury, but rather that the Court decided to submit the
17 issue to the Jury.

18 We want to preserve our legal theory and
19 inform the Court that we object to the Court having
20 submitting it to the Jury despite our motions to
21 strike.

22 We offered instructions essential to our
23 case. The Court determined to submit it to Jury
24 despite our motions to strike and we are not

1 objecting to otherwise proffer instructions on those
2 issues offered by opposing counsel.

3 THE COURT: Any response to that?

4 MR. BROWN: We do not take the position that
5 he has waived any objection.

6 THE COURT: All objections were timely made
7 and preserved.

8 MR. CARSON: Thank you.

9 THE COURT: It is a close, novel, interesting
10 issue and I think that you all have presented the
11 cases well.

12 I appreciate the manner that you worked in
13 handling this. It could have been a nightmare. We
14 will recess now.

15
16 (A recess was taken.)

17
18 (The Jury returned to the Courtroom
19 with its Verdict at 3:10 p.m.)

20
21 THE COURT: Members of the Jury, have you
22 reached a verdict? We the Jury on the issues find
23 that Daniel T. Walton did have the expressed or
24 implied permission of Mary Ellen Haines to drive the

1 1984 station wagon at the time of the subject
2 accident, John D. Mayhew Jr., foreperson. Is this
3 your verdict lady and gentlemen?

4 THE JURY: Yes.

5 THE COURT: Does the Plaintiff wish to poll
6 the Jury?

7 MR. CARSON: Yes, sir.

8 THE COURT: The purpose of polling the Jury is
9 to be sure that your verdict is unanimous.

10

11 (The Jury was polled by the Judge.)

12

13 THE COURT: Did I call each of your names?
14 Any further questions of the Jury? Thank you very
15 much for service in this case.

16 This is an important case to both sides.
17 Thank you for serving on this Jury. The return date
18 is December 13th, call the answering service the
19 evening before, thank you.

20

21 (The Jury was excused
22 from the Courtroom.)

23

24 THE COURT: Any motions?

1 MR. CARSON: We will have motions and if I may
2 have a brief period of time to confer with the client
3 and determine how they could like to proceed I would
4 like that time to file any motions in writing.

5 THE COURT: How much time would you like?

6 MR. CARSON: Ten days.

7 THE COURT: Any objections to that?

8 MR. BROWN: No.

9 THE COURT: Five days for a reply.

10 MR. BROWN: Do you want an order prepared
11 according to the Jury verdict?

12 THE COURT: Give Mr. Carson a chance to confer
13 with the client and then when the time limits have
14 run we will do the order then.

15 MR. BROWN: Okay.

16 THE COURT: Will you be responsible for
17 drawing the order, Mr. Brown?

18 MR. BROWN: We will be happy to.

19 THE COURT: Thank you. You were well prepared
20 and the case was well tried.

21
22 (The proceedings were concluded.)
23
24

Instruction No. 1

Your verdict must be based on the facts as you find them and on the law contained in all of these instructions.

The issue in this case is:

- (1) Did Daniel T. Walton have the express or implied permission of Mary Ellen Haines to operate the 1984 Subaru station wagon at the time of the subject accident?

On this issue the defendants have the burden of proof.

Your decision on this issue must be governed by the instructions that follow.

8
12/2/93
KE

Instruction No. 2

You shall find your verdict for the defendants if they have proved by the greater weight of the evidence that Daniel T. Walton was operating the 1984 Subaru station wagon with the express or implied permission of Mary Ellen Haines at the time of the subject accident.

If this has not been proved by the defendants, you shall find your verdict for the plaintiff.

8/12/2/93
KCF

Instruction No. 3

The greater weight of all the evidence is sometimes called the preponderance of the evidence. It is that evidence which you find more persuasive. The testimony of one witness whom you believe can be the greater weight of the evidence.

Summit
12/2/93
RF7

Instruction No. 4

The permission of a named insured may be either expressed or implied. To be expressed, it must be of an affirmative character, directly and distinctly stated, clear and outspoken, and not merely implied or left to inference.

On the other hand, implied means inferential or tacitly conceded. It involves an inference arising from a course of conduct or relationship between the parties, in which there is material acquiescence or lack of objection under circumstances signifying assent.

Given
8/2/93
1(8)

INSTRUCTION NO. 5

The Court instructs the jury that you must not base your verdict in any way upon sympathy, bias, guesswork or speculation. Your verdict must be based solely upon the evidence and instructions of the Court.

Sumner
8/2/2/93
KCC

INSTRUCTION NO. 6

The Court instructs the jury that any fact that may be proved by direct evidence may be proved by circumstantial evidence; that is, you may draw all reasonable and legitimate inferences and deductions from the evidence.

Summit
8/2/93
KEG

INSTRUCTION NO. 7

The Court instructs the jury that at the time of the accident, February 8, 1991, Daniel Walton's privilege to drive was not suspended.

Sumner
8/21/93
R7

INSTRUCTION NO. 8

The Court instructs the jury that you are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or disregard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

Sever
12/2/93
147

177
INSTRUCTION NO. _____

The Court instructs the jury that State Farm Mutual Automobile Insurance Company ("State Farm") had a policy of insurance with Mary Ellen Haines on February 8, 1991, which provided that certain persons were considered to be insured under the terms of the policy.

In this case, the vehicle in question was owned by Mary Ellen Haines and she had purchased liability insurance from State Farm. The vehicle was being operated by Daniel Todd Walton. The purpose of this trial is to determine if Daniel Todd Walton was an insured under the policy of Mary Ellen Haines. The Defendants must prove this fact by the greater weight of the evidence.

In order to find that Daniel Todd Walton was an insured under the policy of Mary Ellen Haines, the jury must find that the Defendants have proved by the greater weight of the evidence that Daniel Todd Walton was using the vehicle with the permission, expressed or implied, of Mary Ellen Haines, [and that his actual operation was within the scope of such permission.]

repeated
FO
12/2/19

INSTRUCTION NO. ITB

The Court instructs the jury that if someone drives a vehicle with the express or implied permission of the insured, in this case Mary Ellen Haines, then the policy covers the driver so long as he uses the vehicle for the permitted purpose. Daniel Walton had express permission if Mary Ellen Haines directly stated that he could drive the vehicle; Daniel Walton had implied permission if there was a course of conduct between Mary Ellen Haines and Daniel Walton from which you can fairly infer Mary Ellen Haines' consent to the operation.

Permission, express or implied, to use a vehicle for a particular purpose may not be unreasonably exceeded.

INSTRUCTION NO. 7C

The Court instructs the jury that when one of the parties testifies unequivocally to facts within his own knowledge, those statements of fact and the necessary inferences from them are binding upon him. He cannot rely on other evidence in conflict with his own testimony to strengthen his case.

However, you must consider his testimony as a whole, and you must consider a statement made in one part of his testimony in the light of any explanation or clarification made elsewhere in his testimony.

repeated
12/2/97
597

VIRGINIA:

IN THE CIRCUIT COURT OF ROANOKE COUNTY

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)

Plaintiff,)

v.)

MARY ELLEN HAINES, et al.,)

Defendants.)

SECOND AMENDED MOTION
FOR DECLARATORY JUDGMENT

Chancery No. 91-363

The Plaintiff, State Farm Mutual Automobile Insurance Company (hereinafter "State Farm"), pursuant to Section 8.01-184 of the 1950 Code of Virginia, as amended, sets forth the following grounds in support of its Second Amended Motion for Declaratory Judgment:

1. State Farm is a corporation duly qualified to transact business in the Commonwealth of Virginia.

2. On February 8, 1991, State Farm had in effect an automobile insurance policy no. 4984-126-D17-46C, which had been issued to Defendant, Mary Ellen Haines, as named insured. A 1984 Subaru station wagon (hereinafter "the Haines automobile"), owned by Mary Ellen Haines, was an insured vehicle under the policy.

3. On February 8, 1991, Defendant, Daniel T. Walton, was operating the Haines automobile when it was involved in a single-car accident on Interstate 64 approximately .5 miles west of Route 42 in Alleghany County, Virginia.

4. At the time of the accident, three (3) other persons were passengers in the Haines automobile, namely, Paul A. Thurston, Jr., Karen R. Vance, and Lorie A. Forbes.

5. As a result of the accident, Paul A. Thurston, Jr. was killed, and Daniel T. Walton, Karen R. Vance and Lorie A. Forbes suffered personal injuries.

6. Paul A. Thurston, Sr. qualified on February 19, 1991 in Circuit Court for the City of Roanoke as Administrator of the Estate of Paul A. Thurston, Jr., deceased.

7. State Farm has received written notice from counsel for the Estate of Paul A. Thurston, Jr., Karen R. Vance and Lorie A. Forbes indicating an intention on behalf of each to assert a claim against Daniel T. Walton arising out of the accident in question.

8. At the time of the accident, Daniel T. Walton was married to Jennifer Haines Walton, daughter of Mary Ellen Haines. Daniel T. Walton and Jennifer Haines Walton resided at that time at Route 1, Box 298A, Covington, Virginia.

9. At the time of the accident, Daniel T. Walton had no license to operate a motor vehicle and had been expressly forbidden by Mary Ellen Haines from operating the Haines automobile. This prohibition had been directly communicated to both Daniel T. Walton and Jennifer Haines Walton prior to the accident.

10. At the time of the accident, Daniel T. Walton had no permission, expressed or implied, to operate the Haines automobile.

11. On the basis of the foregoing, the State Farm policy issued to Mary Ellen Haines provides no liability coverage to Daniel T. Walton with respect to his operation of the Haines

automobile at the time of the accident, nor does it provide any benefit to any of the other Defendants.

12. On information and belief, Allstate Insurance Company (hereinafter "Allstate") issued an automobile insurance policy under which the Estate of Paul A. Thurston, Jr. is asserting a claim for damages suffered as a consequence of the accident. Allstate is a corporation duly qualified to transact business in the Commonwealth of Virginia.


13. On information and belief, Colonial Insurance Company of California (hereinafter "Colonial Insurance") issued an automobile policy under which Lorie A. Forbes is asserting a claim for damages suffered as a consequence of the accident. Colonial Insurance is a corporation duly qualified to transact business in the Commonwealth of Virginia.

14. On information and belief, Virginia Farm Bureau Mutual Insurance Company (hereinafter "Farm Bureau") issued one (1) or more automobile insurance policies under which Karen R. Vance is asserting a claim for damages suffered as a consequence of the accident. Farm Bureau is a corporation duly qualified to transact business in the Commonwealth of Virginia.

WHEREFORE, State Farm moves the Court to enter a judgment or decree declaring that it has no duty or obligation to defend or indemnify Daniel T. Walton with respect to any claims, actions or judgments arising out of the accident in question, declaring that State Farm has no other duty or obligation under its policy to take any action or to make any payment whatsoever arising out of the accident in question; and to further adjudge or declare the

rights and obligations of the Defendants herein as may be appropriate to a complete adjudication of the rights of the parties in this action.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

By  _____
Of Counsel

William P. Wallace, Jr., Esquire
David B. Carson, Esquire
Johnson, Ayers & Matthews
P. O. Box 2200
Roanoke, Virginia 24009
Counsel for Plaintiff

LAW OFFICES
JOHNSON, AYERS
& MATTHEWS
P O BOX 2200
ROANOKE VA 24009

CERTIFICATE

The undersigned hereby certifies that a true copy of the foregoing Second Amended Motion for Declaratory Judgment was mailed or delivered to Stanley P. Wellman, Esquire, Harman, Claytor, Corrigan & Wellman, P. O. Box 70280, Richmond, Virginia, 23255, counsel of record for Colonial Insurance Company of California; Michael McHale Collins, Esquire, Collins & Mooney, P. O. Box 59, Covington, Virginia 24426, counsel of record for Mary Ellen Haines; D. Reed Lombart, Esquire, Jeffrey H. Krasnow & Associates, P. O. Box 120, Roanoke, Virginia 24002, counsel of record for Karen R. Vance; Daniel S. Brown, Esquire, Woods, Rogers and Hazlegrove, P. O. Box 14125, Roanoke, Virginia 24038-4125, counsel of record for Allstate Insurance Company; Dabney L. Pasco, Esquire, P. O. Box 76, Covington, Virginia 24426, counsel of record for Lorie A. Forbes and Paul A. Thurston, Sr., Administrator of the Estate of Paul A. Thurston, Jr., deceased; and Walter H. Peake, III, Esquire, Gentry, Locke, Rakes & Moore, P. O. Box 1018, Roanoke, Virginia 24005, counsel of record for Virginia Farm Bureau Mutual Insurance Company, this 2nd day of December, 1993.



*100 to
Dr. Carson
S. Williams
Mr. Collins
Q. Rescort
S. Brown
S. Farrow
W. Farrow
4-26-94*

VIRGINIA:

IN THE CIRCUIT COURT OF ROANOKE COUNTY

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff,

v.

MARY ELLEN HAINES, et al.

Defendants.

FINAL DECREE

Chancery No. 91-363

On December 2, 1993, came the Plaintiff, in person and by counsel, and came also the Defendants, in person and by counsel, and all parties announced they were ready for trial upon the pleadings filed in this suit, including, but not limited to, the Plaintiff's Second Amended Motion for Declaratory Judgment, and upon the issues joined.

Prior to the commencement of the trial, the Plaintiff, by counsel, moved the Court in limine for a standing objection to any trial testimony from Defendant Mary Ellen Haines that was contrary to her Responses to Plaintiff's Requests for Admission, with the grounds for said objection being set forth in the record. Upon consideration, the Court agreed that the Plaintiff's objection would be treated as a standing objection at trial. The Plaintiff, by counsel, further moved the Court in limine to exclude from the trial of this case Defendants' Exhibit 2 (Alleghany County Juvenile and Domestic Court Record) and Exhibit 3 (DMV record dated July 15, 1993), with the grounds for said motion being set forth in the record. Upon consideration, the Court denied the Plaintiff's motion. The Plaintiff, by counsel, objected to this ruling of the Court, on the grounds set

forth in the record. Finally, the Defendants, by counsel, moved the Court in limine to exclude from the trial of this case any evidence that Defendant Daniel Walton's operation of Defendant Mary Ellen Haines' automobile was beyond the scope of any permission he might have received from Jennifer Haines Walton. Upon consideration, the Court granted the Defendants' motion, to which action the Plaintiff, by counsel, duly objected. The Court further ruled that the Plaintiff would be permitted to proffer evidence on the scope of permission issue.

A request for trial by jury of the factual issues in this suit having been made, the Court called a venire of thirteen (13) persons, and each side having struck off three (3) of said jurors, the remaining seven (7), Karl K. Anderson, John M. Duckworth, John D. Mayhew, Jr., William H. Overstreet, Loretta Q. Simpkins, Gerald E. St. Clair, and Allen J. Vanliere, were sworn to well and truly try the issues joined and a true verdict render according to the law and the evidence.

WHEREUPON, it appearing to the Court that the Defendants bear the burden of proof with respect to the issue of insurance coverage afforded by Plaintiff to Defendant Daniel T. Walton, and the parties having agreed to a realignment of parties for the purpose of trial, the Defendants first presented their evidence on the issue of insurance coverage afforded by State Farm to Daniel T. Walton and rested their case. Plaintiff, by counsel, moved the Court to strike the Defendants' evidence and to enter summary judgment in its favor for the reasons stated on the record, which motion was denied. The Plaintiff, by counsel, duly

objected to this ruling of the Court, on the grounds set forth in the record.

The Plaintiff then presented its evidence on the issue of insurance coverage, proffered its evidence on the scope of permission issue, and rested its case. The Defendants, by counsel, moved the Court to strike the Plaintiff's evidence and to enter summary judgment in their favor on the grounds set forth in the record, which motion was denied. The Defendants, by counsel, duly objected to this ruling of the Court, on the grounds set forth in the record.

There being no rebuttal evidence on behalf of the Defendants, the Plaintiff, by counsel, renewed its motion to strike the Defendants' evidence and to enter summary judgment in its favor on the grounds set forth in the record, which motion was denied. The Plaintiff, by counsel, duly objected to this ruling of the Court, on the grounds set forth in the record.

Thereupon the Court instructed the jury. The Plaintiff, by counsel, duly noted its objections to the Court's rulings on the instructions, both those given and those refused by the Court, with the grounds for said objections being set forth in the record. After hearing the arguments of counsel, the jury retired to consider its verdict. The jury returned with the following special verdict:

"We the jury, on the issues joined, find that
Daniel T. Walton

 X did
 did not

have the express or implied permission of Mary Ellen
Haines to operate the 1984 Subaru station wagon at the time
of the subject accident.

John D. Mayhew, Jr.
Foreperson"

WHEREUPON, the Plaintiff, by counsel, orally moved the Court
to set aside the verdict and requested leave to file a written
motion. The Court granted Plaintiff leave to file a written
motion, and that motion was filed with the Court on or about
December 10, 1993.

The Court, having duly considered the motion of Plaintiff to
set aside the jury verdict, and having heard the arguments of
counsel on January 25, 1994, denied the Plaintiff's motion and
confirmed the verdict of the jury, to which action the Plaintiff,
by counsel, duly objected.


It is accordingly ORDERED, ADJUDGED, and DECREED that
Plaintiff State Farm Mutual Automobile Insurance Company is
obligated under its contract of insurance to provide a defense
and coverage to Daniel T. Walton in accordance with the terms of
the State Farm policy with respect to the claims of Lorie A.
Forbes; Karen R. Vance, and Paul A. Thurston, Sr., Administrator
of the Estate of Paul A. Thurston, Jr., deceased, for personal
injuries or death by wrongful act arising out of the automobile
accident on February 8, 1991.

It is further ADJUDGED and ORDERED that Virginia Farm Bureau Mutual Insurance Company's cross-motion for declaratory judgment against co-Defendant, Karen R. Vance, is stayed pending the disposition of the appeal, if any, of this Order.

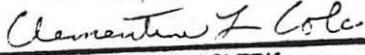
4/26/94

JUDGE

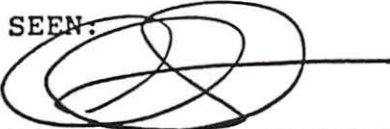
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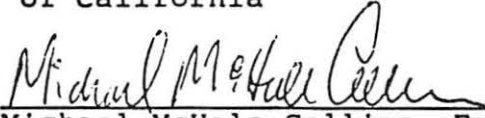

David B. Carson, Esquire
Johnson, Ayers & Matthews
P. O. Box 2200
Roanoke, Virginia 24009
Counsel for Plaintiff

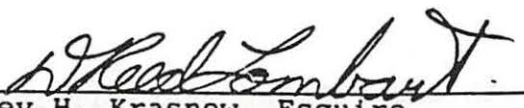
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CIRCUIT COURT, ROANOKE COUNTY, VA.


BY 
DEPUTY CLERK

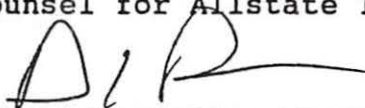
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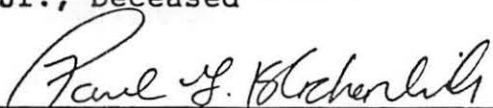

Stanley P. Wellman, Esquire
Harman, Claytor, Corrigan & Wellman
P. O. Box 70280
Richmond, Virginia, 23255
Counsel for Colonial Insurance Company
of California

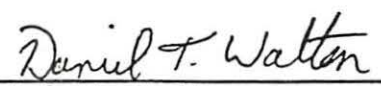

Michael McHale Collins, Esquire
Collins & Mooney
275 W. Main Street
Covington, Virginia 24426
Counsel for Mary Ellen Haines

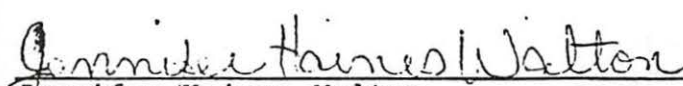

Jeffrey H. Krasnow, Esquire
D. Reed Lombart, Esquire
Jeffrey H. Krasnow & Associates
P. O. Box 120
Roanoke, Virginia 24002
Counsel for Karen R. Vance


Daniel S. Brown, Esquire
Woods, Rogers and Hazlegrove
P. O. Box 14125
Roanoke, Virginia 24038-4125
Counsel for Allstate Insurance Company


Dabney L. Pasco, Esquire
P. O. Box 76
Covington, Virginia 24426
Counsel for Lorie A. Forbes and
Paul A. Thurston, Sr., Administrator
of the Estate of Paul A. Thurston,
Jr., Deceased


Walter H. Peake, III, Esquire
Paul G. Klockenbrink, Esquire
Gentry Locke Rakes & Moore
P. O. Box 1018
Roanoke, Virginia 24005
Counsel for Virginia Farm Bureau
Mutual Insurance Company


Daniel T. Walton


Jennifer Haines Walton

ASSIGNMENTS OF ERROR

1. The trial court erred in a series of rulings relating to Mary Ellen Haines' unqualified responses to State Farm's Requests for Admissions, namely: (1) in failing to give conclusive effect to these responses; (2) in failing to exclude testimony from Mrs. Haines offered to undermine her admissions; (3) in failing to grant State Farm's motions to strike the evidence, made at the close of the Defendants' evidence and again at the close of all the evidence; and (4) in failing to grant State Farm's post-trial motion to set aside the verdict, all of which motions were made on the ground that Mary Ellen Haines' unqualified responses to State Farm's requests for admission conclusively establish, as a matter of law, that Daniel Walton did not have the express or implied permission of Mary Ellen Haines to operate her automobile at the time of the accident.
2. The trial court erred in excluding from this case the issue of whether Daniel Walton's operation of Mary Ellen Haines' automobile at the time of the accident was beyond the scope of any express or implied permission he may have had, and in refusing to admit evidence establishing as a matter of law that Daniel had exceeded the scope of any such permission.
3. The trial court erred in a series of rulings relating to the licensure of Daniel Walton at the time of the accident, namely: (1) in admitting Daniel Walton's current driving record; (2) in refusing to admit proffered evidence showing that Daniel Walton was not licensed to drive at the time of the accident; (3) in giving a peremptory instruction to the jury that Daniel Walton was licensed to drive at the time of the accident; and (4) in failing to set aside the verdict and enter judgment for State Farm because the admitted and proffered evidence establishes as a matter of law that Daniel Walton had not fulfilled Mary Ellen Haines' condition precedent that he be licensed, and thus Daniel did not have the express or implied permission of Mary Ellen Haines to operate her automobile.
4. The trial court erred in failing to grant State Farm's motions to strike the evidence, made at the close of Defendants' evidence and again at the close of all the evidence, because, as a matter of law, Daniel Walton had not fulfilled Mary Ellen Haines' condition precedent that he have insurance at the time of the accident and thus Daniel did not have the express or implied permission of Mary Ellen Haines to operate her automobile.

State Farm Insurance Companies



CERTIFICATE

Eastern Office
1500 State Farm Boulevard
Charlottesville, Virginia 22909-0001

I, the undersigned, do hereby certify that I am custodian of the records pertaining to the issuance of policies by the Inland Virginia Division of State Farm Mutual Automobile Insurance Company of Bloomington, Illinois.

I further certify that the attached policy, number 498 4126-D17-46C, is a copy of the policy issued to Mary Ellen Haines of 2340 Church Ave, Covington, Virginia 24426-2703 together with any endorsements issued subsequently, based on our available records. The policy was in full force and effect on the accident date of February 8, 1991.

Everette Breeden
Everette Breeden
UNDERWRITING OPERATIONS SUPERINTENDENT

State of Virginia
County of Albemarle

Subscribed and sworn to before me this 26th day of June, 1991.

Shirley J. Sites
Notary Public

My Commission Expires:

July 19, 1993

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DEFENDANT'S
EXHIBIT

#1

12-2-9

PLAINTIFF'S
EXHIBIT

#1

12-2-9

State Farm Insurance Companies



CERTIFICATE

Eastern Office
1500 State Farm Boulevard
Charlottesville, Virginia 22909-0001

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Everette Breeden
Everette Breeden
UNDERWRITING OPERATIONS SUPERINTENDENT

State of Virginia
County of Albemarle

Subscribed and sworn to before me this 26th day of June, 1991.

Shirley J. Sits
Notary Public

My Commission Expires:

July 19, 1993



STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

1500 STATE FARM BLVD. CHARLOTTESVILLE, VIRGINIA 22909-0001

NAMED INSURED

HAINES, MARY ELLEN
2340 CHURCH AVE
COVINGTON VA 24426-2703

POLICY NUMBER 498 4126-D17-46C

POLICY PERIOD AUG-20-90 TO OCT-17-90

CURRENT 6 VEHICLE 1 \$163.50
MONTH PREMIUM VEHICLE 2 \$252.10

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
SEPARATE STATEMENT ENCLOSED IF AMOUNT DUE.

MONTHLY PAY PLAN NUMBER 110428

DESCRIBED VEHICLE	YEAR	MAKE	MODEL	BODY STYLE	VEHICLE IDENTIFICATION NUMBER	CLASS
1	87	HONDA	CIVIC	4DR	1HGEC4633HA063638	1B303
2	84	SUBARU	GL	STA WAG	JF1AM43B9EC422809	5B301

COVERAGES (AS DEFINED IN POLICY)
SYMBOL-PREMIUM-COVERAGE NAME-LIMITS OF LIABILITY

SEE REVERSE SIDE FOR IMPORTANT MESSAGE

AB LIABILITY
1 \$18.00 BODILY INJURY LIABILITY
2 \$34.94 LIMITS OF LIABILITY-COVERAGE A
EACH PERSON, EACH OCCURRENCE
100,000 300,000
PROPERTY DAMAGE LIABILITY
LIMITS OF LIABILITY-COVERAGE B
EACH OCCURRENCE
50,000

C MEDICAL PAYMENTS
1 \$3.17 LIMIT OF LIABILITY-COVERAGE C-EACH PERSON 5,000
2 \$6.21 LIMIT OF LIABILITY-COVERAGE C-EACH PERSON 5,000

D COMPREHENSIVE
1 \$6.91 D COVERAGE
2 \$7.88 D COVERAGE

G COLLISION
1 \$18.58 G100 COVERAGE-\$100 DEDUCTIBLE
2 \$26.18 G100 COVERAGE-\$100 DEDUCTIBLE

H TOWING AND LABOR COSTS
1 \$.57
2 \$.57

U UNINSURED MOTORISTS
1 \$4.60 LIMITS OF LIABILITY-U-BODILY INJURY
2 \$4.12 EACH PERSON, EACH ACCIDENT
100,000 300,000

LIMITS OF LIABILITY-U-PROPERTY DAMAGE
EACH ACCIDENT
50,000

\$131.73 TOTAL PREMIUM FOR POLICY PERIOD AUG-20-90 TO OCT-17-90
VEHICLE 1 \$51.83 VEHICLE 2 \$79.90

MEMBERSHIP \$14.00

CONTINUED

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THIS IS YOUR DECLARATIONS PAGE.
PLEASE ATTACH IT TO YOUR AUTO POLICY BOOKLET.



STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

=1500 STATE FARM BLVD. CHARLOTTESVILLE, VIRGINIA 22909-0001

NAMED INSURED

HAINES, MARY ELLEN
2340 CHURCH AVE
COVINGTON VA 24426-2703

POLICY NUMBER 498 4126-D17-46C

POLICY PERIOD AUG-20-90 TO OCT-17-90

CURRENT 6 MONTH PREMIUM Vehicle 1 \$163.50
Vehicle 2 \$252.10

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
SEPARATE STATEMENT ENCLOSED IF AMOUNT DUE.

DESCRIBED VEHICLE	YEAR	MAKE	MODEL	BODY STYLE	VEHICLE IDENTIFICATION NUMBER	CLASS
1	87	HONDA	CIVIC	4DR	1HGEC4633HA063638	1B303
2	84	SUBARU	GL	STA WAG	JF1AM43B9EC422809	5B301

COVERAGES (AS DEFINED IN POLICY)
SYMBOL-PREMIUM-COVERAGE NAME-LIMITS OF LIABILITY

SEE REVERSE SIDE FOR IMPORTANT MESSAGE

EXCEPTIONS AND ENDORSEMENTS

FINANCED-CAR 1 FIRST VIRGINIA BANK, P O BOX 7585, ROANOKE VA 24019-0585

CAR 1,2

6256W.1 SOUND RECEIVING AND TRANSMITTING EQUIPMENT EXCLUDED.

6273H.6 SUPPLEMENTARY UNINSURED MOTORISTS INSURANCE.

6520.7 UNINSURED MOTORISTS INSURANCE.

6571A.1 AMENDATORY ENDORSEMENT: CHANGE COVERAGES AND CONDITIONS.

6589 ASSISTANCE AND COOPERATION OF THE INSURED.

6778 OUT-OF-STATE INSURANCE.

6893B AMENDMENT OF COVERAGE D.

6989AS AMENDATORY ENDORSEMENT: CHANGES-NON-OWNED COVERAGE: POLICY CONDITIONS.

AGENT: C E HUMPHRIES
PHONE: 703 962-2297

169

THIS IS YOUR DECLARATIONS PAGE.
PLEASE ATTACH IT TO YOUR AUTO POLICY BOOKLET.

YOUR POLICY CONSISTS OF THIS PAGE, ANY ENDORSEMENTS, AND THE POLICY BOOKLET, FORM
REPLACED POLICY 4984126-46C

00466 7

PLEASE KEEP TOGETHER

PLEASE READ YOUR POLICY CAREFULLY. IF YOU HAVE AN ACCIDENT, CONTACT YOUR STATE FARM AGENT OR ONE OF OUR CLAIM OFFICES AT ONCE.



State Farm Mutual Automobile Insurance Company, Home Office, Bloomington, Illinois
Eastern Office • 1500 State Farm Boulevard • Charlottesville, Virginia 22909-0001

Authorized Representative

YOUR
STATE FARM
FAMILY AUTOMOBILE
POLICY

COMBINATION FORM

170

DECLARATIONS

POLICY PERIOD: The policy period shall be as shown in the Declarations under "Policy Period" and for such succeeding periods of six months each thereafter as the required renewal premium is paid by the insured on or before the expiration of the current policy period. The policy period shall begin and end at 12:01 A.M., standard time at the address of the named insured as stated herein. The premium shown is for the policy period indicated in the Declarations.

COVERAGES, LIMITS OF LIABILITY, PREMIUMS: The insurance afforded is only with respect to such of the coverages as are indicated in the Declarations by specific premium charge or charges. The limit of the company's liability against each such coverage shall be as stated herein, subject to all terms of the policy having reference thereto.

GARAGED: The owned automobile will be principally garaged in the declared town and state, unless otherwise stated in the exceptions.

CANCELLATION OF PREVIOUS INSURANCE: During the past three years no insurer has canceled insurance, issued to the named insured, similar to that afforded hereunder, unless otherwise stated in the exceptions.

LOSS PAYEE: Any loss under Part III is payable as interest may appear to the named insured and the Loss Payee, if any, shown in the Declarations and this insurance as to such additional interest shall not be invalidated by any act or negligence of the mortgagor or owner, nor any change in the title or ownership, nor by any error, or inadvertence in the description of the automobile until after notice of termination of the policy shall be given to the mortgage owner, conditional vendor, mortgagee or assignee stating when not less than 10 days thereafter such termination shall be effective; provided, the lien-holder shall notify the company within 10 days of any change of interest or ownership which shall come to the knowledge of said lien-holder and failure to do so will render this policy null and void.

COVERAGE S OR T is afforded only with respect to the person or persons designated in the Declarations as insured.

UNDER COVERAGE T (a) each insured is engaged in a remunerative occupation; (b) the sum of the weekly indemnity afforded by this insurance and by all personal accident insurance carried by such person is not more than two-thirds of his average weekly earnings during the past 12 months.

2
8463F

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

BLOOMINGTON, ILLINOIS

A Mutual Insurance Company Herein Called The Company

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

PART I — LIABILITY

COVERAGE A — Bodily Injury Liability;

COVERAGE B — Property Damage Liability. To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:

A. bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", sustained by any person;

B. injury to or destruction of property, including loss of use thereof, hereinafter called "property damage";

arising out of the ownership, maintenance or use of the owned automobile or any non-owned automobile, and the company shall defend any suit alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent; but the company may make such investigation and settlement of any claim or suit as it deems expedient.

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

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

(b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of an automobile insured hereunder, not to exceed \$100 per bail bond, but without any obligation to apply for or furnish any such bonds;

(c) expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of an accident involving an automobile insured hereunder and not due to war;

(d) all reasonable expenses, other than loss of earnings, incurred by the insured at the company's request.

Persons Insured. The following are insureds under Part I:

(a) with respect to the owned automobile,

(1) the named insured and any resident of the same household,

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

(3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a)(1) or (2) above;

(b) with respect to a non-owned automobile,

(1) the named insured,

(2) any relative, but only with respect to a private passenger automobile or trailer,

provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and

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

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

Definitions. Under Part I:

"named insured" means the individual named as named insured 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";

b. ...

"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 declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

Exclusions. This policy does not apply under Part I:

(a) to any automobile while used as a public or livery conveyance, but this exclusion does not apply to the named insured with respect to bodily injury or property damage which results from the named insured's occupancy of a non-owned automobile other than as the operator thereof;

(b) to bodily injury or property damage caused intentionally by or at the direction of the insured;

(c) to injury, sickness, disease, death or destruction with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;

(d) to bodily injury or property damage arising out of the operation of farm machinery;

(e) to bodily injury to any employee of the insured arising out of and in the course of (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the insured;

(f) to bodily injury to any fellow employee of the insured injured in the course of his employment if such injury arises out of the use of an automobile in the business of his employer, but this exclusion does not apply to the named insured with respect to injury sustained by any such fellow employee;

(g) to an owned automobile while used by any person while such person is employed or otherwise engaged in the automobile business, but this exclusion does not apply to the named insured, a resident of the same household as the named insured, a partnership in which the named insured or such resident is a partner, or any partner, agent or employee of the named insured, such resident or partnership;

(h) to a non-owned automobile while maintained or used by any person while such person is employed or otherwise engaged in

(1) the automobile business of the insured or of any other person or organization;

(2) any other business or occupation of the insured, but this exclusion (h) (2) does not apply to a private passenger automobile operated or occupied by the

named insured or, by his private chauffeur or domestic servant, or a trailer used thereon or with an owned automobile;

(i) to injury to or destruction of (1) property owned or transported by the insured or (2) property rented to or in charge of the insured other than a residence or private garage;

(j) to the ownership, maintenance, operation, use, loading or unloading of an automobile ownership of which is acquired by the named insured during the policy period or any temporary substitute automobile therefor, if the named insured has purchased other automobile liability insurance applicable to such automobile for which a specific premium charge has been made.

Financial Responsibility Laws. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

To maintain the insured's financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insured shall maintain the minimum limits of liability required by such law.

PART II — EXPENSES FOR MEDICAL SERVICES

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

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

- (a) while occupying the owned automobile,
- (b) while occupying a non-owned 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;

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

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

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

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

(a) the owned automobile, while being used by the named insured, by any resident of the same household or by any other person with the permission of the named insured; or

(b) a non-owned automobile, if the bodily injury results from

- (1) its operation or occupancy by the named insured or its operation on his behalf by his private chauffeur or domestic servant, or
- (2) its operation or occupancy by a relative, provided it is a private passenger automobile or trailer, but only if such operator or occupant has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission.

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

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"occupying" means in or upon on entrance into or alighting from a vehicle, vehicle, or trailer.

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

(a) sustained while occupying (1) an owned automobile while used as a public or livery conveyance, or (2) any vehicle while located for use as a residence or premises;

(b) sustained by the named insured or a relative while occupying or through being struck by (1) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads, or (2) a vehicle operated on rails or crawler-treads;

(c) sustained by any person other than the named insured or a relative,

(1) while such person is occupying a non-owned automobile while used as a public or livery conveyance, or

(2) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in the automobile business, or

(3) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in any other business or occupation, unless the bodily injury results from the operation or occupancy of a private passenger automobile.

PART III - PHYSICAL DAMAGE

COVERAGE D - (1) Comprehensive - Excluding Collision, (2) Personal Effects.

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

(2) To pay for loss caused by fire or lightning to robes, wearing apparel and other personal effects which are the property of the named insured or a relative, while such effects are in or upon the owned automobile.

DEDUCTIBLE COMPREHENSIVE COVERAGE. To pay any loss payable under coverage D but it is agreed that the deductible amount, as shown on the declarations page by the number beside D, shall be deducted from the amount of each loss as to each automobile, other than loss by (a) fire or lightning, (b) smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment, servicing the premises in which the automobile is located, or

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 while is employed in the automobile business, if the accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;

(e) due to war.

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

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

(c) the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.

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

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

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

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

(a) to reimburse the insured for transportation expenses incurred during the period commencing 48 hours after a

theft covered by this policy of the entire automobile has been reported to the company and the police, and terminating when the automobile is returned to use or the company pays for the loss; provided that the company shall not be obligated to pay aggregate expenses in excess of \$10 per day or totaling more than \$300;

(b) to pay general average and salvage charges for which the insured becomes legally liable, as to the automobile being transported.

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

"insured" means:

- (a) with respect to an owned automobile,
- (1) the named insured, and
 - (2) any person or organization (other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee for hire) maintaining, using or having custody of said automobile with the 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 or with a vehicle to which it is attached or by upset of such automobile;

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

Exclusions. This policy does not apply under Part III:

(a) to any automobile while used as a public or livery conveyance;

(b) to loss due to war;

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

(d) to loss to a private passenger, farm or utility automobile or trailer owned by the named insured and not described in this policy or to any temporary substitute automobile therefor, if the insured has other valid and collectible insurance against such loss;

(e) to damage which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure; unless such damage results from a theft covered by this policy;

(f) to tires, unless damaged by fire, malicious mischief or vandalism, or stolen or unless the loss be coincident with and from the same cause as other loss covered by this policy;

(g) to loss due to radioactive contamination;

(h) under coverage G, 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 of personal effects arising out of any one occurrence is \$100, and (b) for loss to any trailer not owned by the named insured is \$500.

Other Insurance. If the insured has other insurance against a loss covered by Part III of this policy, the

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

PART IV — AUTOMOBILE DEATH INDEMNITY, TOTAL DISABILITY COVERAGE AND SPECIFIC DISABILITY BENEFITS

INSURING AGREEMENTS

1. COVERAGE'S

Division 1 — Death Indemnity

To pay the principal sum stated in the exceptions in the event of the death of the insured which shall result directly and independently of all other causes from bodily injury caused by accident and sustained by the insured while in or upon, or while entering into or alighting from, or through being struck by, an automobile, provided the death shall occur (1) within ninety days after the date of the accident, or (2) within fifty-two weeks after the date of the accident and during a period of continuous total disability of the insured for which weekly indemnity is payable under the total disability coverage.

Division 2 — (a) Dismemberment and Loss of Sight Benefits

(b) Fractures and Dislocations Benefits

To pay the highest applicable amount stated in the following Tables for loss as enumerated therein, in the event of bodily injury, caused by accident and sustained by the insured while in or upon, or while entering into or alighting from, or through being struck by, an automobile, provided loss under Table I be sustained by the insured within ninety days from such accident.

As respects any insured, (1) any amount for which the company is obligated or has made payment under Division 2 shall apply in reduction of any amount for which the company is obligated under Division 1;

(2) payment of the principal sum shall terminate all obligation of the company under coverage S.

TABLE I

For Loss of	If applicable principal sum is	If applicable principal sum is
Both Hands or Both Feet or Sight of Both Eyes	\$5,000.00	\$10,000.00

One Hand and One Foot	5,000.00	10,000.00
Either Hand or Foot and Sight of One Eye	5,000.00	10,000.00
Either Hand or Foot and Sight of One Eye	2,500.00	5,000.00
Thumb and Index Finger of Either Hand	1,250.00	2,500.00

"Loss" shall mean with regard to hands and feet, actual severance through or above wrist or ankle joints; with regard to eyes, entire and irrecoverable loss of sight; with regard to thumb and index finger, actual severance through or above metacarpophalangeal joints.

TABLE II

	If applicable principal sum is	If applicable principal sum is
For Fracture of Bones:	\$5,000.00	\$10,000.00
Skull (except bones of face or nose)	\$175.00	\$350.00
Thigh	150.00	300.00
Arm, between elbow and shoulder	150.00	300.00
Pelvis (except coccyx)	125.00	250.00
Vertebra or Vertebrae (except coccyx and vertebral processes)	125.00	250.00
Shoulder Blade	100.00	200.00
Leg	100.00	200.00
Kneecap	100.00	200.00
Collar Bone	75.00	150.00
Forearm, between wrist and elbow	75.00	150.00
Foot (except toes)	62.50	125.00
Hand (except fingers)	62.50	125.00
Sternum	50.00	100.00

Lower Jaw (except alveolar process)	\$7.50	75.00
One or more ribs, fingers or toes	25.00	50.00
Bones of face or nose	25.00	50.00
Coccyx or Vertebral Processes	25.00	50.00
For Complete Dislocations:		
Hip Joint	\$150.00	\$300.00
Knee Joint (except patella)	75.00	150.00
Bone or Bones of Foot (except toes)	75.00	150.00
Ankle Joint	75.00	150.00
Wrist Joint	62.50	125.00
Elbow Joint	50.00	100.00
Shoulder Joint	37.50	75.00
Bone or Bones of Hand (except fingers)	25.00	50.00
Collar Bone	25.00	50.00
One or more fingers or toes	12.50	25.00
For Loss by Removal:		
Of one or more entire toes	\$100.00	\$200.00
Of one or more fingers (at least one entire phalanx)	75.00	150.00
For a Hospital-confining Injury, except as an Outpatient:	\$25.00	\$50.00

COVERAGE T — Total Disability — Maximum 200 Weeks. To pay weekly indemnity at the rate stated in the exceptions for the period of continuous total disability of the insured which shall result directly and independently of all other causes from bodily injury caused by accident and sustained by the insured while in or upon or while entering into or alighting from, or through being struck by, an automobile, provided (1) such disability shall commence within twenty days after the date of the accident, and (2) any disability during the period of fifty-two weeks from its commencement shall be deemed total disability only if it shall continuously prevent the insured from performing every duty pertaining to his occupation, and (3) any disability after said fifty-two weeks shall be deemed total disability only if it shall continuously prevent the insured from engaging in any occupation or employment for wage or profit and (4) the weekly indemnity for total disability as provided hereinabove shall in no event extend beyond a period of 200 consecutive weeks from the date of commencement of disability as provided above.

2. Definition of Insured. With respect to coverages S and T, the unqualified word "insured" means the person or

persons so designated for such coverage in the exceptions.

3. Automobile defined. With respect to this insurance the word "automobile" means a land motor vehicle or trailer not operated on rails or crawler treads, but does not mean: (1) a farm type tractor or other equipment designed for use principally off public roads, except while actually upon public roads, or (2) a land motor vehicle or trailer while located for use as a residence or premises and not as a vehicle.

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

EXCLUSIONS. This insurance does not apply:

(a) to bodily injury or death sustained in the course of his occupation by any person while engaged (1) in duties incident to the operation, loading or unloading of, or as an assistant on, a public or livery conveyance or commercial automobile, or (2) in duties incident to the repair or servicing of automobiles;

(b) to loss caused by or resulting from disease except pus forming infection which shall occur through bodily injury to which this insurance applies;

(c) to suicide, sane or insane, or to any attempt thereof;

(d) to injury or death due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing.

CONDITIONS.

1. Policy Provisions. None of the insuring agreements, exclusions or other provisions of Parts I, II and III of the policy or conditions of the policy shall apply to the insurance afforded by this Part IV except the conditions "Notice", "Action Against Company (Medical Payments)", "Changes", "Assignment", "Cancellation" and "Declarations".

2. Notice of Claim. When loss covered hereunder occurs, written notice thereof shall be given by or on behalf of the insured or the beneficiary to the company or any of its authorized agents as soon as practicable.

3. Proof of Claim; Medical Reports. As soon as practicable, the injured person, or the beneficiary in the event of death, 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.

Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to

furnish such forms within 10 days after receiving notice of claim.

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

4. Payment of Death Indemnity; Autopsy — Division 1 of Coverage S. If the decedent insured be survived by a spouse who was a resident of the same household at the time of the accident; indemnity for death is payable to such spouse; otherwise, if the decedent insured was a minor, indemnity for death is payable to any parent thereof who was a resident of the same household at the time of the accident; otherwise indemnity for death is payable to the decedent insured's estate.

The company shall have the right and opportunity to make an autopsy where it is not forbidden by law.

5. Payment of Indemnity — Coverage T. Weekly Indemnity for total disability is payable to the insured who is disabled. Subject to proof of claim, accrued

weekly indemnity is payable every four weeks and any balance at termination of disability period for which the company is liable.

6. Beneficiary — Division 1 of Coverage S. Consent of beneficiary is not requisite to cancellation, assignment, change of beneficiary, or any other change in the policy.

7. Death of Named Insured. If the named insured dies, any insurance afforded under this Part IV with respect to any surviving insured shall be continued while the policy is in effect.

8. Other Insurance. If any insured under this Part IV also is an insured under other coverage of the same kind, issued by the company, any payment for loss under such other coverage shall serve to reduce, to the extent of such payment, the company's obligation under this Part IV as respects any loss to such insured, and the company will return the premium paid for such duplication of the insurance hereunder.

CONDITIONS

Conditions 3, 13 and 15 through 19 apply to all Parts.

Conditions 1, 2, 14 and 4 through 12, apply only to the Parts noted thereunder.

1. Policy Period, Territory (Parts I, II and III). This policy applies only to accidents, occurrences and loss during the policy period while the automobile is within the United States of America, its territories or possessions, or Canada, or is being transported between ports thereof.

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

3. Notice. In the event of an accident, occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable. In the event of theft the insured shall also promptly notify the police. If claim is made or suit is brought against the insured, he

shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

4. Two or More Automobiles (Parts I, II and III). When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, but an automobile and a trailer attached thereto shall be held to be one automobile as respects limits of liability under Part I of this policy, and separate automobiles under Part III of this policy, including any deductible provisions applicable thereto.

5. Assistance and Cooperation of the Insured (Parts I and III). The insured shall cooperate with the company and, upon the company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury, property damage or loss with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The 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

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automobile shall constitute non-compliance with the requirements of the policy that the insured shall cooperate with and assist the company. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

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

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

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

7. Medical Reports; Proof and Payment of Claim (Part II). As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

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

Continued on back of this document. See back of document for continuation of terms and conditions of insurance. This document is subject to the terms and conditions of the policy.

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

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

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

9. Appraisal (Part III). If the insured and the company fail to agree as to the amount of loss, either may, within 60 days after proof of loss is filed, demand an appraisal of the loss. In such event the insured and the company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. The appraisers shall state separately the actual cash value and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

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

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

11. No Benefit to Bailee (Part III). The insurance afforded by this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire liable for loss to the automobile.

12. Subrogation (Parts I and III). In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and

papers and do whatever is necessary to secure such rights. The insured shall do no after, loss to prejudice such rights.

13. Changes. Notice to any agent or knowledge possessed by any agent or by or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by an executive officer of the company.

14. Limit of Liability - Coverage H. The company's liability shall not exceed \$50.00 for each disablement.

15. Assignment. Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the insured named as named insured 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 Part II any person who was a relative at the time of such death.

16. Cancellation. This policy may be cancelled by the insured named as named insured in the declarations, or his duly constituted attorney-in-fact by mailing to the company written notice stating when thereafter the cancellation shall be effective.

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

1. when not less than ten days thereafter such cancellation shall be effective, if this policy has been in effect less than sixty days and is not a renewal policy;
2. when not less than fifteen days thereafter such cancellation shall be effective, if the named insured fails to discharge when due any of his obligations in connection with the payment of premium for this policy or any installment thereof, whether payable to the company or its agent either directly or indirectly under any premium finance plan or extension of credit.

Notice to the insured named as named insured in the declarations shall be mailed either by certificate of mailing, provided the company has retained a duplicate certified copy of said notice, or by registered or certified mail,

pursuant to section 38 of the code of Virginia. The effective date of cancel, stated in the notice shall become the end of the policy period. Delivery of such written notice either by such insured, or his duly constituted attorney-in-fact, or by the company, shall be equivalent to mailing.

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

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

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

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

18. Renewal. The company agrees that it will not exercise its right to refuse to renew or continue the policy, except as of the end of any six month interval of the original effective date.

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

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pursuant to section 38.2-2208, of the Code of Virginia.
Delivery of such written notice shall be equivalent to mailing.

Such notice shall not be required:

1. if the named insured fails to pay the premium as required by the company for renewal or continuance of this policy.
2. If the company or its agent acting on behalf of the company has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, or has manifested such intention in writing to the insured, or

3. If the named insured, his duly constituted attorney-in-fact, has notified in writing to the company, or its agent that he wishes the policy to be cancelled or that he does not wish the policy to be renewed or if prior to the date of expiration he fails to accept the offer of the company.

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

MUTUAL CONDITIONS

1. **Membership.** The membership fees set out in this policy, which are in addition to the premiums, are not returnable but entitle the first insured named in the Declarations to insure one automobile for the coverages for which said fees were paid so long as this company continues to write such coverages and the insured remains a risk desirable to the company.

While this policy is in force, the first insured named in the Declarations is entitled to vote at all meetings of members and to share in the earnings and savings of the company in

accordance with the dividends declared by the Board of Directors on this and like policies.

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

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

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

SECRETARY

Laura P. Sullivan

Edward B. Rust Jr.

PRESIDENT

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6191C DISTRICT OF COLUMBIA EMPLOYEES USING AUTOMOBILES IN GOVERNMENT BUSINESS

It is agreed that the policy does not apply under the Liability Coverages to the following insureds:

1. The District of Columbia or any of its Agencies;

2. Any person, including the named insured, with respect to bodily injury or property damage resulting from the operation of an automobile by such person as an employee of the District of Columbia while acting within the scope of his office or employment, if such person is relieved from liability because of the provisions of Public Law 86-654 (District of Columbia Employee Non-Liability Act), as amended.

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6256W.1 SOUND RECEIVING AND TRANSMITTING EQUIPMENT EXCLUDED

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

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

Note: This endorsement replaces any endorsement providing similar coverage. It applies when the endorsement number is shown on the declarations page.

6273H.5 SUPPLEMENTARY UNINSURED MOTORISTS INSURANCE

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

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

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

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10 A motor vehicle is "underinsured" with respect to the extent that, the total amount of bodily injury and property damage coverage applicable to the operation or use of the motor vehicle and "available for payment" for such bodily injury or property damage, including all bonds or deposits of money or securities made pursuant to Article 6 of Chapter 6 of Title 46.1 of the Code of Virginia (Section 46.1-467 et seq.), is less than the total amount of uninsured motorist coverage afforded any person injured as a result of the operation or use of the vehicle.

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

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

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

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

17 3. The company shall not be obligated to make any payment because of bodily injury or property damage to which this insurance applies and which arises out of the ownership, maintenance or use of an underinsured motor vehicle until after the limits of liability under all bodily injury and property damage liability bonds or insurance policies respectively applicable at the time of the accident to damages because of bodily injury or because of property damage have been exhausted by payment of judgments or settlements.

18 4. Exclusion (a) in the Uninsured Motorists Insurance endorsement does not apply to the underinsured motorists coverage afforded by this endorsement.

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

20 SCHEDULE - LIMIT OF LIABILITY

21 Split Limits see amounts in declarations

22 Single Limit Bodily Injury and Property Damage \$ see amount in declarations each accident, provided such limit shall first be: Bodily Injury \$25,000 each person, \$50,000 each accident, Property Damage \$10,000 each accident.

23 Note: This endorsement replaces any similar coverage or endorsement printed in the policy. It applies when the endorsement number is shown on the declarations page.

24 6520.7 UNINSURED MOTORISTS INSURANCE (Virginia)

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

26 L COVERAGE U - UNINSURED MOTORISTS (Damages for Bodily Injury and Property Damage)

27 The company will pay in accordance with Section 38.2-2206 of the Code of Virginia and all Acts amendatory thereof or supplementary thereto, all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured or property damage, caused by accident and arising out of the

28 ownership, maintenance or use of such uninsured motor vehicle.

29 Exclusions

30 This insurance does not apply:

- 31 (a) to bodily injury or property damage with respect to which the insured or his legal representative shall, without written consent of the company, make any settlement with

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any person or organization, shall be legally liable therefor; Safety Responsibility stated in the schedule or declarations.

(b) to the first two hundred dollars of the total amount of all property damage as the result of any one accident. This exclusion does not apply if the owner or operator of the uninsured motor vehicle causing the damage can be identified;

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

II. PERSONS INSURED

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

(a) the named insured and, while residents of the same household, the spouse and relatives of either;

(b) any other person while occupying an insured motor vehicle; and

(c) any person, with respect to damage he is entitled to recover because of bodily injury to which this insurance applies sustained by an insured under (a) or (b) above.

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

III. LIMITS OF LIABILITY

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

(a) If the schedule or declarations indicate split limits of liability, the limit of liability for bodily injury stated as applicable to "each person" is the limit of the company's liability for all damages because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting "each person", the limit of liability for bodily injury stated as applicable to "each accident", is the total limit of the company's liability for all damages because of bodily injury sustained by two or more persons as the result of any one accident. The limit of liability for property damage stated as applicable to each accident is the total limit of the company's liability for all damages because of property damage to all property of one or more insureds as the result of any one accident.

(b) If the schedule or declarations indicate a single limit of liability, the limit of liability stated as applicable to "each accident" is the total limit of the company's liability for all damages as the result of any one accident; provided such limit of liability shall first provide the separate limits required by the Virginia Motor Vehicle

IV. POLICY PERIOD; TERRITORY

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

V. DEFINITIONS

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

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

hit-and-run vehicle — means a motor vehicle which causes an accident resulting in bodily injury to an insured or property damage, provided:

(a) there cannot be ascertained the identity of either the operator or the owner of such motor vehicle; and

(b) the insured or someone on his behalf shall have reported the accident promptly to either the company, or a law-enforcement officer.

insured motor vehicle — means a motor vehicle registered in Virginia with respect to which the bodily injury and property damage liability coverage of the policy applies but shall not

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include a vehicle while being used without the permission of the owner;

motor vehicle — means a land motor vehicle or trailer other than

(a) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads;

(b) a vehicle operated on rails or crawler-treads, or

(c) a vehicle while located for use as a residence or premises;

named insured — means the person named in the declarations of this policy and includes the spouse if a resident of the same household;

occupying — means in or upon or entering into or alighting from;

property damage — means injury to or destruction of (1) an insured motor vehicle owned by the named insured or his spouse, if a resident of the same household and the contents of such motor vehicle, and (2) any other property (except a motor vehicle) owned by an insured and located in Virginia;

relative — means a person related to the named insured by blood, marriage or adoption who is a resident of the same household;

uninsured motor vehicle — means:

(a) a motor vehicle with respect to the ownership, maintenance or use of which there is, in at least the amounts specified in the Virginia Motor Vehicle Safety Responsibility Act, neither (i) cash or securities on file with the Virginia Commissioner of Motor Vehicles nor (ii) a bodily injury and property damage liability bond or insurance policy, applicable at the time of the accident with respect to any person or organization legally responsible for the use of such vehicle, or with respect to which there is such a bond or insurance policy applicable at the time of the accident but the company writing the same is or becomes insolvent or denies coverage thereunder; or

(b) a hit-and-run vehicle as defined.

VI. CONDITIONS

A. Policy Provisions. None of the Insuring Agreements, Exclusions, Conditions or other provisions of the policy shall apply to the insurance afforded by this endorsement except the Conditions "Notice", "Insured's Duties in the Event of Loss", "Subrogation", "Changes", "Assignment", "Cancellation" and "Declarations".

B. Premium. If during the policy period the number of insured motor vehicles owned by the named insured or spouse and registered in Virginia changes, the named insured shall notify the company during the policy period of any change and the premium shall be adjusted in

accordance with the manual by the company. If the earned premium thus computed exceeds the advance premium paid, the named insured shall pay the excess to the company; if less, the company shall return to the named insured the unearned portion paid by such insured.

C. Proof of Claim; Medical Reports; Proof of Loss. As soon as practicable, the insured or other person making claim shall give to the company written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable hereunder. Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to furnish such forms within 15 days after receiving notice of claim.

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

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

With respect to claims alleged to have arisen out of the ownership, maintenance or use of a hit-and-run vehicle if the insured has not obtained a judgment against John Doe, the liability of the uninsured motorist may be established, as between the insured and the company, by filing with the company within a reasonable time after the accident a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, setting forth the 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.

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E. Other Insurance. With respect to bodily injury to an insured while occupying a motor vehicle not owned by the named insured, this insurance shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such vehicle as primary insurance.

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

With respect to property damage, this insurance shall apply only as excess insurance over any other valid and collectible insurance of any kind applicable to such property damage.

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

any judgment for damages awarded for personal injuries resulting from such accident.

F. Payment of Loss by the Company. Any amount due hereunder is payable

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

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

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

SCHEDULE

LIMIT OF LIABILITY

Split Limits

Limits of Liability stated in declarations

Single Limit

Limit of Liability stated in declarations provided such limit shall first be

Bodily Injury	\$25,000 each person
	\$50,000 each accident
Property Damage	\$10,000 each accident

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6557 FEDERAL EMPLOYEES USING AUTOMOBILES IN GOVERNMENT BUSINESS

It is agreed that the policy does not apply under the Liability Coverages to the following as insureds:

1. The United States of America or any of its agencies;
2. Any person, including the named insured, with respect to bodily injury or property damage resulting from the operation of an automobile by such person as an employee of the United States Government while acting within the scope of his office or employment, if the provisions of Section 2679 of Title 28, United States Code (Federal Tort Claims Act), as amended, require the Attorney General of the United States to defend such person in any civil action or proceeding which may be brought for such bodily injury or property damage, whether or not the incident out of which such bodily injury or property damage arose has been reported by or on behalf of such person to the United States or the Attorney General.

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Note: The following endorsement applies when the endorsement number is shown on the declarations page.

**6589 ASSISTANCE AND COOPERATION OF THE INSURED
(AUTOMOBILE LIABILITY INSURANCE)
(VIRGINIA)**

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

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6778 OUT-OF-STATE INSURANCE ENDORSEMENT

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

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

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

**6822F.4 RENTAL AND TRAVEL EXPENSE REIMBURSEMENT
OWNED PRIVATE PASSENGER AUTOMOBILES ONLY
COVERAGE RI**

In consideration of the premium at which the policy is written, it is agreed that in the event of a loss to an owned private passenger automobile with respect to which insurance under the Comprehensive coverage is afforded and which is designated in the declarations as subject to this endorsement:

A. Expense for Rental of a Substitute Automobile:

The company will:

1. reimburse the named insured for the expense of the rental of a substitute of equivalent type and purpose for such owned automobile for a period commencing with the first of the number of days for which expense for such rental is incurred. Reimbursement for any one such period shall not exceed the amount of such expense (exclusive of mileage charges) as is necessarily and actually incurred by the named insured nor, in any event, a total of \$16 for any one day; or

pay the named insured \$10 per day, if the named insured does not rent a substitute automobile during the period that begins when such owned automobile:

- (a) cannot run due to loss; or
- (b) if it can run, when it is left at the shop for agreed repairs.

This reimbursement or payment:

1. applies only if the loss to such owned automobile:
 - (a) is either caused by collision or, (except as hereinafter provided), is a loss to which the Comprehensive coverage applies; and
 - (b) results in such owned automobile being continuously withdrawn from normal use for a period in excess of 24 hours;
2. terminates, regardless of the expiration of the policy period, at the end of the number of days which would, with the exercise of due diligence

and dispatch, be required to repair or replace such owned automobile, and

3. applies in addition to the limits of liability otherwise applicable under such insurance as is afforded by the policy with respect to loss to such owned automobile, and shall not be subject to the application of any deductible thereunder.

B. Comprehensive or Collision Deductible

The company will reimburse the named insured for any deductible amount applicable to the Comprehensive and Collision coverages in effect on a rented substitute automobile, if the insured is legally liable for such deductible amount.

C. Travel Expense

The company will reimburse the named insured, if the loss to such owned private passenger automobile occurs more than 50 miles away from the named insured's residence, for

1. commercial transportation expense incurred by:
 - (i) the named insured,
 - (ii) his spouse, and
 - (iii) any relative,

who was occupying such owned automobile at the time of such loss, from the site of such loss to the named insured's residence or to his destination (at the option of the named insured).

2. necessary and reasonable extra expense incurred for meals and lodging by the named insured, his spouse and relatives during a period commencing on the date of such loss and ending on the date of arrival at the named insured's residence or destination or at the end of the fifth day following the date of such loss, whichever occurs first.

3. necessary and reasonable extra expense for meals, lodging, and commercial transportation incurred by the named insured or some other person designated by him for the purpose of returning such repaired owned automobile

from where it was repaired to the named insured's residence or destination.

This reimbursement or payment applies only if the loss to such owned automobile is either caused by collision or is a loss to which the Comprehensive coverage applies.

LIMITS OF LIABILITY

The limit of the company's liability for reimbursement or payment to all persons for:

1. "Expense for Rental of a Substitute Automobile" and "Comprehensive or Collision Deductible" shall not exceed the total sum of \$400 for any one occurrence;
2. "Travel Expense" shall not exceed \$400 for any one occurrence.

EXCLUSIONS

Coverage R1 does not apply to the extent that any reimbursement for transportation expense is paid or payable to the named insured as a result of the theft of the entire owned private passenger automobile.

DEFINITIONS

Loss — means each direct and accidental loss of or damage to the owned private passenger automobile or its equipment.

Relative — means a person related to the named insured or his spouse by blood, marriage, or adoption, who is a resident of the same household.

Spouse — means a named insured's spouse, if a resident of the same household.

OTHER PROVISIONS

In the event of loss to which the insurance under this endorsement applies, the named insured shall

- (a) give notice thereof as soon as practicable to the company or any of its authorized agents; and
- (b) furnish the company with proof, within such period of time and in the form of such evidence as the company may reasonably require, of the amount, reasonableness and necessity of the expenses actually incurred and for which claim is made.

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6889FF AMENDMENT OF COVERAGE S

In consideration of the premium charged, it is agreed the following provision is added to Coverage S and applies to Death Indemnity and Dismemberment and Loss of Sight Benefits:

"The amount otherwise payable under Coverage S for death or loss under Table I is doubled for an insured who, at the time of the accident, is using the vehicle's complete restraint system as recommended by the vehicle's manufacturer."

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Note: The following endorsement applies when the endorsement number is shown on the declarations page:

6893B AMENDMENT OF COVERAGE D

In consideration of the premium charged, it is agreed that the following change is made in Part III - Physical Damage: Supplementary Payments.

Item (a) is replaced by the following:

- (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 \$16 per day or totaling more than \$400;

Note: The following endorsement replaces endorsement 6571A, Virginia Amendatory Endorsement. It applies when the endorsement number is shown on the declarations page.

6571A VIRGINIA AMENDATORY ENDORSEMENT

(Virginia)

It is agreed that:

PART I

- I. The first paragraph of "Persons Insured" is amended to read:

Persons Insured

The following are insureds under Part I:

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

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 definition of "owned automobile" is amended to read:

"owned automobile" means

- (a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded,
- (b) a trailer owned by the named insured,
- (c) a private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided
 - (1) it replaces an owned automobile as defined in (a) above, or
 - (2) the company insures all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such automobile, or
- (d) a temporary substitute automobile;

The definition of "temporary substitute automobile" is amended to read:

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8467F

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

4. Exclusions (g) and (h) are amended and a new exclusion is added to read:

(This policy does not apply under Part I:)

(g) to any automobile or trailer while maintained or used by any person while such person is employed or otherwise engaged in the automobile business to the extent that the limits of liability for this policy exceed the limits of liability required by the Virginia financial responsibility law, but this exclusion (g) does not apply to the maintenance or use of an owned automobile by

- (1) the named insured; or
- (2) directors, stockholders, partners, agents or employees of the named insured; or
- (3) a resident of the same household as a person described in (1) or (2) above.

(h) to a non-owned automobile while maintained or used by any person while such person is employed or otherwise engaged in any business or occupation of the insured, except the automobile business, but this exclusion (h) does not apply to a private passenger automobile operated or occupied by the named insured or by his private chauffeur or domestic servant or a trailer used therewith or with an owned automobile.

- (i) to the ownership, maintenance, operation, use, loading or unloading of an automobile ownership of which is acquired by the named insured during the policy period or any temporary substitute automobile therefor, if the named insured has purchased other automobile liability insurance applicable to such automobile for which a specific premium charge has been made.

PART II

Expenses for Medical Services of the policy is amended as follows:

1. The insuring agreement of Coverage C - Medical Payments is amended to include reasonable expense for necessary chiropractic services incurred within one year from the date of accident.
2. Divisions 1 and 2 of Coverage C - Medical Payments are amended to read:

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

- (a) while occupying the owned automobile;
- (b) while occupying a non-owned automobile, but only if such person has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission; or
- (c) while not occupying a motor vehicle, through being struck by an automobile or trailer of any type.

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

- (a) the owned automobile, while being used by the named insured, by any resident of the same household or by any other person with the permission of the named insured; or
- (b) a non-owned automobile, if the bodily injury results from
 - (1) its operation or occupancy by the named insured or its operation on his behalf by his private chauffeur or domestic servant, or
 - (2) its operation or occupancy by a relative, provided it is a private passenger automobile or trailer,

but only if such operator or occupant has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission.

3. The following definition is added to PART II - Definitions:

"medical expense insurance" means any automobile insurance providing benefits for medical expenses payable without regard to fault.

4. Exclusions (b) and (c) are amended to read:

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

- (b) sustained by the named insured or a relative while occupying or, while not occupying a motor vehicle, through being struck by (1) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads, or (2) a vehicle operated on rails or crawler-treads;
- (c) sustained by any person other than the named insured or a relative.

- (1) while such person is occupying a non-owned automobile while used as a public or livery conveyance, or;
- (2) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in the automobile business, or
- (3) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in any other business or occupation, unless the bodily injury results from the operation or occupancy of a private passenger automobile by the named insured or by his private chauffeur or domestic servant, or of a trailer used therewith or with an owned automobile;

5. The "Limit of Liability" provision is deleted and replaced by the following:

Regardless of the number of:

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

the limit of the Company's liability for all expenses incurred by or on behalf of each person who sustains bodily injury as the result of any one accident shall not exceed:

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

6. The "Other Insurance" provision is deleted and replaced by the following:

If other valid and collectible medical expense insurance is applicable to the bodily injury of an insured person as defined in Division 1. and 2., the benefits shall be paid according to the following order of priority:

- (1) the medical expense insurance of the owner of the automobile the insured person was occupying at the time of the accident;
- (2) the medical expense insurance of the operator of the automobile the insured person was occupying at the time of the accident;

- (3) the medical expense insurance of the insured person.

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

7. The following provision is added to the Notice Condition as respects Coverage C - Medical Payments only:

The failure or refusal of the injured person to give notice of an accident shall not relieve the Company of its obligation to pay unless such failure or refusal prejudices the Company in establishing the validity of any claim under this coverage.

PART III

The Comprehensive and Collision insuring agreements are amended to read as follows:

Coverage D(1) - Comprehensive (excluding Collision)

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

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

Definitions.

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

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

"insured" means:

- (a) with respect to an owned automobile
 - (1) the named insured, and
 - (2) any person or organization (other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee for hire) maintaining, using or having custody of said automobile with the express or implied permission of the named insured and within the scope of such permission;
- (b) with respect to a non-owned automobile, the named insured and any relative while using such automobile, provided his actual operation or (if he is not operating) the other actual use thereof, is with the express or implied permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission.

4. Exclusion (c) is amended to read: —

This policy does not apply under Part III

- (c) to loss to a non-owned automobile arising out of its use by the insured while he is employed or otherwise engaged in the:
 - (1) automobile business; or
 - (2) any other business or occupation of the insured, but this exclusion (c)(2) does not apply to a private passenger automobile;

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6989AS AMENDATORY ENDORSEMENT

In consideration of the premium charged, it is agreed the following changes are made in the policy:

1. PART I — LIABILITY

The definition of "non-owned automobile" is changed to read:

"non-owned automobile" means an automobile or trailer not owned by, or furnished for the regular use of:

- (a) the named insured; or
- (b) any relative unless at the time of the accident or loss:
 - (1) the automobile is or has been described on the declarations page of a liability policy within the preceding 30 days; and

- (2) the named insured or a relative who does not own such automobile is the driver.

A temporary substitute automobile is not considered a non-owned automobile.

2. PART III — PHYSICAL DAMAGE

The definition of "non-owned automobile" in Part I as amended above applies to Part III.

3. CONDITIONS

- a. The following is added to Condition 13, "Changes":

If the State Corporation Commission approves a revision which broadens the coverage of this

CONDITIONS

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

Premium

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

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

Assistance and Cooperation of the Insured

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

policy without additional premium, this policy will automatically provide the broadened coverage as of the day the revision is effective.

- b. The first paragraph of Condition 16., "Cancellation", is changed to read:

16. **Cancellation.** This policy may be cancelled by the insured named as named insured in the declarations, or his duly constituted attorney-in-fact by mailing to the company written notice stating when thereafter the cancellation shall be effective. The company may waive these requirements by confirming the date and time of cancellation to the named insured in writing.

- c. The following Condition is added:

20. **Premium Changes.** The premium for this policy is based on information the company has received from the named insured or other sources. The named insured agrees that if any of this information material to the development of the policy premium is incorrect, incomplete or changed, the company may adjust the premium accordingly during the policy period; and to cooperate with the company in determining if this information is correct and complete, and to advise the company of changes in this information.

Any adjustment of this policy's premium will be made using the rules in effect at the time of the change.

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

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

- d. The following Condition is added:

21. **Change of Residence.** If the owned automobile becomes principally garaged in another state and the named insured is a risk still acceptable to the company at the time the company is notified of the change, the company shall replace this policy with the policy form currently in use in the new state of garaging. The word "state" means one of the United States of America, the District of Columbia, or a province of Canada.

If termination of this policy is initiated by the company, it will be done in accordance with Virginia law.

4. MUTUAL CONDITIONS

Item 1. of MUTUAL CONDITIONS is changed to read:

1. **Membership.** The membership fees set out in this policy, which are in addition to the premiums, are not returnable but entitle the first insured named in the declarations to insure one automobile for any applicable coverage, and to insurance for any other coverage for which said fees were paid so long as:

- a. this company continues to write such coverages;
- b. the automobile to be insured meets the eligibility requirements of the company; and
- c. the insured remains a risk desirable to the company.

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

Note: This endorsement replaces any endorsement providing similar coverage. It lies when the endorsement number is shown on the declarations page.

6273H.6 SUPPLEMENTARY UNINSURED MOTORISTS INSURANCE
(Bodily Injury - Property Damage - Limits - Underinsured Motorists)
(Virginia)
(Coverage U)

Nothing herein contained shall be held to alter, vary, waive or extend any of the terms, conditions, agreements or limitations of the undermentioned policy other than as stated below.

Effective _____ 12:01 A.M. Standard Time. Attached to and forming a part of
policy number _____
issued to _____

by the STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY of Bloomington, Illinois, or the STATE
FARM FIRE AND CASUALTY COMPANY of Bloomington, Illinois, as indicated by the company name on the policy
of which this endorsement is a part.

(The information above is required only when this endorsement is issued subsequent to the preparation of the policy.)
Countersigned _____, 19 _____
By _____
Authorized Representative

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

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

A motor vehicle is "underinsured" when, and to the extent that, the total amount of bodily injury and property damage coverage applicable to the operation or use of the motor vehicle and "available for payment" for such bodily injury or

CP 04 79 (Ed. July 1989)
E053d (Ed. July 1989)

6273H.6

property damage (including all bonds or deposits of money or securities in Virginia (Section 46.2-435 et seq.)), is less than the total amount of uninsured motorist coverage afforded any person injured as a result of the operation or use of the vehicle.

According to Article 15 of Chapter 3 of the Code of Virginia, the amount of uninsured motorist coverage

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

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

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

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

3. The company shall not be obligated to make any payment because of bodily injury or property damage to which this insurance applies and which arises out of the ownership, maintenance or use of an underinsured motor vehicle until after the limits of liability under all bodily injury and property damage liability bonds or insurance policies respectively applicable at the time of the accident to damages because of bodily injury or because of property damage have been exhausted by payment of judgments or settlements.
4. Exclusion (a) in the Uninsured Motorists Insurance endorsement does not apply to the underinsured motorists coverage afforded by this endorsement.
5. The second paragraph of the Other Insurance Condition in the Uninsured Motorists Insurance endorsement does not apply to the underinsured motorists coverage afforded by this endorsement.

SCHEDULE - LIMIT OF LIABILITY

Split Limits see amounts in declarations

Single Limit Bodily Injury and Property Damage \$ see amount in declarations each accident, provided such limit shall first be: Bodily Injury \$25,000 each person, \$50,000 each accident, Property Damage \$10,000 each accident.

Edward B. Rust Jr.

President

6273H.6

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)

Plaintiff)

v.)

MARY ELLEN HAINES, et al.,)

Defendants)

REQUESTS FOR ADMISSION
TO DEFENDANT
MARY ELLEN HAINES

Chancery No. 91-363

COMES NOW the plaintiff, State Farm Mutual Automobile Insurance Company, by counsel, and pursuant to Rule 4:11 of the Rules of Court of the Supreme Court of Virginia requests defendant Mary Ellen Haines to admit the following:

1. Mary Ellen Haines was the sole, titled owner of the 1984 Subaru automobile which was involved in the accident of February 8, 1991 on Interstate 64 in Alleghany County, Virginia, which accident is referred to in the amended motion for declaratory judgment (hereinafter "accident").

RESPONSE: Admit

2. Mary Ellen Haines purchased the 1984 Subaru in August, 1990 and was the sole, titled owner of this vehicle from the date of the purchase up to the time of the accident.

RESPONSE: Admit

LAW OFFICES
JOHNSON, AYERS
& MATTHEWS
P. O. BOX 2200
ROANOKE, VA. 24009

filed
12/17/93
RP7
197

**PLAINTIFF'S
EXHIBIT**

#2 507
12-2-93

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)

Plaintiff)

v.)

MARY ELLEN HAINES, et al.,)

Defendants)

REQUESTS FOR ADMISSION
TO DEFENDANT
MARY ELLEN HAINES

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RESPONSE: Admit

2. Mary Ellen Haines purchased the 1984 Subaru in August, 1990 and was the sole, titled owner of this vehicle from the date of the purchase up to the time of the accident.

RESPONSE: Admit

3. At the time of the accident, Mary Ellen Haines resided at 2341 South Church Avenue, Covington, Virginia.

RESPONSE: Admit

4. On February 8, 1991, State Farm Mutual Automobile Insurance Company had in effect an automobile insurance policy no. 4984-126-D17-46C which had been issued to defendant Mary Ellen Haines as named insured. The 1984 Subaru automobile referred to above was an insured vehicle under the policy.

RESPONSE: Admit

5. Exhibit A attached to this request is a true and genuine copy of the State Farm policy referred to in request number four above.

RESPONSE: Admit

6. At the time of the accident, Daniel T. Walton was married to Jennifer Haines Walton, daughter of Mary Ellen Haines. Daniel T. Walton and Jennifer Haines Walton resided at that time at Route 1, Box 298A, Covington, Virginia.

RESPONSE: Admit

7. At the time of the accident, Daniel T. Walton had no license to operate a motor vehicle and had been expressly forbidden by Mary Ellen Haines from operating the 1984 Subaru automobile referred to above. This prohibition had been directly communicated to both Daniel T. Walton and Jennifer Haines Walton by Mary Ellen Haines prior to the accident.

RESPONSE: Admit

8. At the time of the accident, Daniel T. Walton did not have permission from Mary Ellen Haines to be operating the 1984 Subaru automobile.

RESPONSE: Admit

Respectfully submitted,

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

By Wm. P. Wallace, Jr.
Of Counsel

William P. Wallace, Jr.
JOHNSON, AYERS & MATTHEWS
P. O. Box 2200
Roanoke, VA 24009-2200

Counsel for Plaintiff

CERTIFICATE OF MAILING

I, William P. Wallace, Jr., hereby certify that a true copy of the foregoing Requests for Admission to Defendant Mary Ellen Haines was mailed to Michael McHale Collins, Esq., Collins, Crackel & Mooney, 275 W. Main Street, Covington, VA 24426, counsel of record for Mary Ellen Haines ; Daniel T. Walton, Route 1, Box 298A, Covington, VA 24426; Jennifer Haines Walton, Route 1, Box 298A, Covington, VA 24426; Jeffrey H. Krasnow, Esq., Jeffrey H. Krasnow & Associates, P. O. Box 120, Roanoke, VA 24002, counsel of record for Karen R. Vance; Daniel S. Brown, Esq., Woods, Rogers and Hazlegrove, P. O. Box 720, Roanoke, VA 24004-0720, counsel of record for Allstate Insurance Company; Dabney L. Pasco, Esq., P. O. Box 76, Covington, VA 24426, counsel of record for Lorie A. Forbes and Paul A. Thurston, Sr., Administrator of the Estate of Paul A. Thurston, Jr., deceased; Walter H. Peake, III, Esq., Gentry, Locke, Rakes & Moore, P. O. Box 1018, Roanoke, VA 24005, counsel of record for Virginia Farm Bureau Mutual Insurance Company; and Stanley P. Wellman, Esq., Harman, Claytor, Corrigan & Wellman, P. O. Box 70280, Richmond, VA 23255, counsel of record for Colonial Insurance Company of California, this 9 day of April, 1992.



William P. Wallace, Jr.

Mary Ellen Haines
MARY ELLEN HAINES

COMMONWEALTH OF VIRGINIA

COUNTY OF ALLEGHANY, to-wit:

This day personally appeared before me,

Peggy L. Ingram a Notary Public of and for the County
aforesaid, in the State of Virginia, and made oath that the
foregoing responses to Requests for Admission are true and
correct according to the best of her knowledge, information
and belief.

Subscribed and sworn to before me this 4th day of
May, 1992.

Peggy L. Ingram
NOTARY PUBLIC

My commission expires: 9-30-94

CERTIFICATE

I, Michael McHale Collins, do hereby certify that a
true copy of the foregoing response to requests for admission
were this _____ day of May, 1992, mailed to William P. Wallace,
Jr., Esquire, Johnson, Ayers & Matthews, P.O. Box 2200, Roanoke,
VA 24009-2200.

Michael McHale Collins

COLLINS, ~~McHale~~
& MOONEY
ATTORNEYS AT LAW
COVINGTON, VIRGINIA
&
CLIFTON FORGE, VIRGINIA

COLLINS, CRACKEL & MOONEY
Michael McHale Collins
275 W. Main Street
Covington, VA 24426

CERTIFICATE

I, Michael McHale Collins, do hereby certify that a true copy of the foregoing response to requests for admission was this 4th day of May, 1992, mailed to William P. Wallace, Jr., Esquire, Johnson, Ayers & Matthews, P.O. Box 2200, Roanoke, VA 24009-2200, counsel of record for State Farm Mutual Automobile Insurance Company; Daniel T. Walton and Jennifer Haines Walton, Route 1, Box 298A, Covington, Virginia 24426; Jeffrey H. Krasnow, Esquire, P.O. Box 120, Roanoke, Virginia 24002, counsel for Karen R. Vance; Daniel S. Brown, Esquire, Woods, Rogers & Hazlegrove, P.O. Box 720, Roanoke, Virginia 24004-0720, counsel for Allstate Insurance Company; Dabney L. Pasco, Esquire, P.O. Box 76, Covington, Virginia 24426, counsel for Lorie A. Forbes and Paul A. Thurston, Sr., Administrator of the Estate of Paul A. Thurston, Jr., deceased; Walter H. Peake, III, Esquire, Gentry, Locke, Rakes & Moore, P.O. Box 1018, Roanoke, VA 24005, counsel of record for Virginia Farm Bureau Mutual Insurance Company; and Stanley P. Wellman, Esquire, Harman, Claytor, Correigan & Wellman, P.O. Box 70280, Richmond, VA 23255, counsel of record for Colonial Insurance Company of California.


MICHAEL MCHALE COLLINS

COLLINS, CRACKEL & MOONEY
ATTORNEYS AT LAW
COVINGTON, VIRGINIA
CLIFTON FORGE, VIRGINIA

EXHIBIT A

State Farm Insurance Companies



CERTIFICATE

Eastern Office
1500 State Farm Boulevard
Charlottesville, Virginia 22909-0001

I, the undersigned, do hereby certify that I am custodian of the records pertaining to the issuance of policies by the Inland Virginia Division of State Farm Mutual Automobile Insurance Company of Bloomington, Illinois.

I further certify that the attached policy, number 498 4126-D17-46C, is a copy of the policy issued to Mary Ellen Haines of 2340 Church Ave, Covington, Virginia 24426-2703 together with any endorsements issued subsequently, based on our available records. The policy was in full force and effect on the accident date of February 8, 1991.

Everette Breeden
Everette Breeden
UNDERWRITING OPERATIONS SUPERINTENDENT.

State of Virginia
County of Albemarle

Subscribed and sworn to before me this 26th day of June, 1991.

Shirley L. Sits
Notary Public

My Commission Expires:

July 19, 1993

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**

1500 STATE FARM BLVD. CHARLOTTESVILLE, VIRGINIA 22909-0001

NAMED INSURED

HAINES, MARY ELLEN
2340 CHURCH AVE
COVINGTON VA 24426-2703

POLICY NUMBER 498 4126-D17-46C

POLICY PERIOD AUG-20-90 TO OCT-17-90

CURRENT 6 VEHICLE 1 \$163.50
MONTH PREMIUM VEHICLE 2 \$252.10DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
SEPARATE STATEMENT ENCLOSED IF AMOUNT DUE.

MONTHLY PAY PLAN NUMBER 110428

DESCRIBED VEHICLE	YEAR	MAKE	MODEL	BODY STYLE	VEHICLE IDENTIFICATION NUMBER	CLASS
1	87	HONDA	CIVIC	4DR	1HGEC4633HA063638	1B303
2	84	SUBARU	GL	STA WAG	JF1AM43B9EC422809	5B301

COVERAGES (AS DEFINED IN POLICY)
SYMBOL-PREMIUM-COVERAGE NAME-LIMITS OF LIABILITY

SEE REVERSE SIDE FOR IMPORTANT MESSAGE

AB LIABILITY
1 \$18.00 BODILY INJURY LIABILITY
2 \$34.94 LIMITS OF LIABILITY-COVERAGE A
EACH PERSON, EACH OCCURRENCE
100,000 300,000
PROPERTY DAMAGE LIABILITY
LIMITS OF LIABILITY-COVERAGE B
EACH OCCURRENCE
50,000

C MEDICAL PAYMENTS
1 \$3.17 LIMIT OF LIABILITY-COVERAGE C-EACH PERSON 5,000
2 \$6.21 LIMIT OF LIABILITY-COVERAGE C-EACH PERSON 5,000

D COMPREHENSIVE
1 \$6.91 D COVERAGE
2 \$7.88 D COVERAGE

G COLLISION
1 \$18.58 G100 COVERAGE-\$100 DEDUCTIBLE
2 \$26.18 G100 COVERAGE-\$100 DEDUCTIBLE

H TOWING AND LABOR COSTS
1 \$.57
2 \$.57

U UNINSURED MOTORISTS
1 \$4.60 LIMITS OF LIABILITY-U-BODILY INJURY
2 \$4.12 EACH PERSON, EACH ACCIDENT
100,000 300,000

LIMITS OF LIABILITY-U-PROPERTY DAMAGE
EACH ACCIDENT
50,000

VEHICLE 1 \$131.73 TOTAL PREMIUM FOR POLICY PERIOD AUG-20-90 TO OCT-17-90
VEHICLE 2 \$51.83 \$79.90

MEMBERSHIP \$14.00

CONTINUED



STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

=1500 STATE FARM BLVD. CHARLOTTESVILLE, VIRGINIA 22909-0001

NAMED INSURED

HAINES, MARY ELLEN
2340 CHURCH AVE
COVINGTON VA 24426-2703

POLICY NUMBER 498 4126-D17-46C

POLICY PERIOD AUG-20-90 TO OCT-17-90

CURRENT 6 MONTH PREMIUM Vehicle 1 \$163.50
Vehicle 2 \$252.10

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
SEPARATE STATEMENT ENCLOSED IF AMOUNT DUE

DESCRIBED VEHICLE	YEAR	MAKE	MODEL	BODY STYLE	VEHICLE IDENTIFICATION NUMBER	CLASS
1	87	HONDA	CIVIC	4DR	1HGE4633HA063638	1B303
2	84	SUBARU	GL	STA WAG	JF1AM43B9EC422809	5B301

COVERAGES (AS DEFINED IN POLICY)
SYMBOL-PREMIUM-COVERAGE NAME-LIMITS OF LIABILITY

SEE REVERSE SIDE FOR IMPORTANT MESSAGE

EXCEPTIONS AND ENDORSEMENTS

FINANCED-CAR 1 FIRST VIRGINIA BANK, P O BOX 7585, ROANOKE VA 24019-0585
CAR 1,2

6256W.1 SOUND RECEIVING AND TRANSMITTING EQUIPMENT EXCLUDED.

6273H.6 SUPPLEMENTARY UNINSURED MOTORISTS INSURANCE.

6520.7 UNINSURED MOTORISTS INSURANCE.

6571A.1 AMENDATORY ENDORSEMENT: CHANGE COVERAGES AND CONDITIONS.

6589 ASSISTANCE AND COOPERATION OF THE INSURED.

6778 OUT-OF-STATE INSURANCE.

6893B AMENDMENT OF COVERAGE D.

6989AS AMENDATORY ENDORSEMENT: CHANGES-NON-OWNED COVERAGE: POLICY
CONDITIONS.

AGENT: C E HUMPHRIES
PHONE: 703 962-2297

THIS IS YOUR DECLARATIONS PAGE.
PLEASE ATTACH IT TO YOUR AUTO POLICY BOOKLET.

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YOUR POLICY CONSISTS OF THIS PAGE, ANY ENDORSEMENTS, AND THE POLICY BOOKLET, FORM
PEPI ACED POLICY 4984126-46B

9846F.7

PLEASE KEEP TOGETHER

PLEASE READ YOUR POLICY CAREFULLY. IF YOU HAVE AN ACCIDENT, CONTACT YOUR STATE FARM AGENT OR ONE OF OUR CLAIM OFFICES AT ONCE.

Authorized Representative



State Farm Mutual Automobile Insurance Company, Home Office, Bloomington, Illinois
Eastern Office • 1500 State Farm Boulevard • Charlottesville, Virginia 22909-0001

YOUR STATE FARM FAMILY AUTOMOBILE POLICY

COMBINATION FORM

DECLARATIONS

POLICY PERIOD: The policy period shall be as shown in the Declarations under "Policy Period" and for such succeeding periods of six months each thereafter as the required renewal premium is paid by the insured on or before the expiration of the current policy period. The policy period shall begin and end at 12:01 A.M., standard time at the address of the named insured as stated herein. The premium shown is for the policy period indicated in the Declarations.

COVERAGES, LIMITS OF LIABILITY, PREMIUMS: The insurance afforded is only with respect to such of the coverages as are indicated in the Declarations by specific premium charge or charges. The limit of the company's liability against each such coverage shall be as stated herein, subject to all terms of the policy having reference thereto.

GARAGED: The owned automobile will be principally garaged in the declared town and state, unless otherwise stated in the exceptions.

CANCELLATION OF PREVIOUS INSURANCE: During the past three years no insurer has canceled insurance, issued to the named insured, similar to that afforded hereunder, unless otherwise stated in the exceptions.

LOSS PAYEE: Any loss under Part III is payable as interest may appear to the named insured and the Loss Payee, if any, shown in the Declarations and this insurance as to such additional interest shall not be invalidated by any act or negligence of the mortgagor or owner, nor any change in the title or ownership, nor by any error, or inadvertence in the description of the automobile until after notice of termination of the policy shall be given to the mortgage owner, conditional vendor, mortgagee or assignee stating when not less than 10 days thereafter such termination shall be effective; provided, the lien-holder shall notify the company within 10 days of any change of interest or ownership which shall come to the knowledge of said lien-holder and failure to do so will render this policy null and void.

COVERAGE S OR T is afforded only with respect to the person or persons designated in the Declarations as insured.

UNDER COVERAGE T (a) each insured is engaged in a remunerative occupation; (b) the sum of the weekly indemnity afforded by this insurance and by all personal accident insurance carried by such person is not more than two-thirds of his average weekly earnings during the past 12 months.

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

BLOOMINGTON, ILLINOIS

A Mutual Insurance Company Herein Called The Company

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

PART I — LIABILITY

COVERAGE A — Bodily Injury Liability;

COVERAGE B — Property Damage Liability. To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:

A. bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", sustained by any person;

B. injury to or destruction of property, including loss of use thereof, hereinafter called "property damage";

arising out of the ownership, maintenance or use of the owned automobile or any non-owned automobile, and the company shall defend any suit alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent; but the company may make such investigation and settlement of any claim or suit as it deems expedient.

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

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

(b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of an automobile insured hereunder, not to exceed \$100 per bail bond, but without any obligation to apply for or furnish any such bonds;

(c) expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of an accident involving an automobile insured hereunder and not due to war;

(d) all reasonable expenses, other than loss of earnings, incurred by the insured at the company's request.

Persons Insured. The following are insureds under Part I:

(a) with respect to the owned automobile,

(1) the named insured and any resident of the same household,

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

(3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a)(1) or (2) above;

(b) with respect to a non-owned automobile,

(1) the named insured,

(2) any relative, but only with respect to a private passenger automobile or trailer,

provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and

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

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

Definitions. Under Part I:

"named insured" means the individual named as named insured 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";

b. ...

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"relative" means a relative of the 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 declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

Exclusions. This policy does not apply under Part I:

(a) to any automobile while used as a public or livery conveyance, but this exclusion does not apply to the named insured with respect to bodily injury or property damage which results from the named insured's occupancy of a non-owned automobile other than as the operator thereof;

(b) to bodily injury or property damage caused intentionally by or at the direction of the insured;

(c) to injury, sickness, disease, death or destruction with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;

(d) to bodily injury or property damage arising out of the operation of farm machinery;

(e) to bodily injury to any employee of the insured arising out of and in the course of (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the insured;

(f) to bodily injury to any fellow employee of the insured injured in the course of his employment if such injury arises out of the use of an automobile in the business of his employer, but this exclusion does not apply to the named insured with respect to injury sustained by any such fellow employee;

(g) to an owned automobile while used by any person while such person is employed or otherwise engaged in the automobile business, but this exclusion does not apply to the named insured, a resident of the same household as the named insured, a partnership in which the named insured or such resident is a partner, or any partner, agent or employee of the named insured, such resident or partnership;

(h) to a non-owned automobile while maintained or used by any person while such person is employed or otherwise engaged in

(1) the automobile business of the insured or of any other person or organization;

(2) any other business or occupation of the insured, but this exclusion (h) (2) does not apply to a private passenger automobile operated or occupied by the

named insured or by his private chauffeur or domestic servant or a trailer used thereon or with an owned automobile;

(i) to injury to or destruction of (1) property owned or transported by the insured or (2) property rented to or in charge of the insured other than a residence or private garage;

(j) to the ownership, maintenance, operation, use, loading or unloading of an automobile ownership of which is acquired by the named insured during the policy period or any temporary substitute automobile therefor, if the named insured has purchased other automobile liability insurance applicable to such automobile for which a specific premium charge has been made.

Financial Responsibility Laws. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

PART II — EXPENSES FOR MEDICAL SERVICES

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

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

(a) while occupying the owned automobile,

(b) while occupying a non-owned automobile, but only if such person has, or reasonably believe 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;

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

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

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

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

(a) the owned automobile, while being used by the named insured, by any resident of the same household or by any other person with the permission of the named insured; or

(b) a non-owned automobile, if the bodily injury results from

(1) its operation or occupancy by the named insured or its operation on his behalf by his private chauffeur or domestic servant, or

(2) its operation or occupancy by a relative, provided it is a private passenger automobile or trailer,

but only if such operator or occupant has, or reasonably believes he has, the permission of the owner to use the automobile, and the use is within the scope of such permission.

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

"occupying" means in or upon on entrance to or alighting from.

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

- (a) sustained while occupying (1) an owned automobile while used as a public or livery conveyance, or (2) any vehicle while located for use as a residence or premises;
- (b) sustained by the named insured or a relative while occupying or through being struck by (1) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads, or (2) a vehicle operated on rails or crawler-treads;
- (c) sustained by any person other than the named insured or a relative:

- (1) while such person is occupying a non-owned automobile while used as a public or livery conveyance, or
- (2) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in the automobile business, or
- (3) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in any other business or occupation, unless the bodily injury results from the operation or occupancy of a private passenger automobile.

PART III - PHYSICAL DAMAGE

COVERAGE D - (1) Comprehensive - Excluding Collision, (2) Personal Effects.

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

(2) To pay for loss caused by fire or lightning to robes, wearing apparel and other personal effects which are the property of the named insured or a relative, while such effects are in or upon the owned automobile.

DEDUCTIBLE COMPREHENSIVE COVERAGE. To pay any loss payable under coverage D but it is agreed that the deductible amount, as shown on the declarations page by the number beside D, shall be deducted from the amount of each loss as to each automobile, other than loss by (a) fire or lightning, (b) smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment servicing the premises in which the automobile is located, or

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 while is employed in the automobile business, if the accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;
- (e) due to war.

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

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

(c) the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.

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

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

COVERAGE H - 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 automobile has been reported to the company, the police, and terminating when the automobile is returned to use or the company pays for the loss; provided that the company shall not be obligated to pay aggregate expenses in excess of \$10 per day or totaling more than \$300;

(b) to pay general average and salvage charges for which the insured becomes legally liable, as to the automobile being transported.

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

"insured" means:

(a) with respect to an owned automobile,

(1) the named insured, and

(2) any person or organization (other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee for hire) maintaining, using or having custody of said automobile with the 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 automobile or with a vehicle to which it is attached or by upset of such automobile;

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

Exclusions. This policy does not apply under Part III:

(a) to any automobile while used as a public or livery conveyance;

(b) to loss due to war;

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

(d) to loss to a private passenger, farm or utility automobile or trailer owned by the named insured and not described in this policy or to any temporary substitute automobile therefor, if the insured has other valid and collectible insurance against such loss;

(e) to damage which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure; unless such damage results from a theft covered by this policy;

(f) to tires, unless damaged by fire, malicious mischief or vandalism, or stolen or unless the loss be coincident with and from the same cause as other loss covered by this policy;

(g) to loss due to radioactive contamination;

(h) under coverage G, 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, (a) limit of the company's liability (a) for loss of personal effects arising out of any one occurrence is \$100, and (b) for loss to any trailer not owned by the named insured is \$500.

Other Insurance. If the insured has other insurance against a loss covered by Part III of this policy, the

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

PART IV — AUTOMOBILE DEATH INDEMNITY, TOTAL DISABILITY COVERAGE AND SPECIFIC DISABILITY BENEFITS

INSURING AGREEMENTS

1. COVERAGE'S

Division 1 — Death Indemnity

To pay the principal sum stated in the exceptions in the event of the death of the insured which shall result directly and independently of all other causes from bodily injury caused by accident and sustained by the insured while in or upon, or while entering into or alighting from, or through being struck by, an automobile, provided the death shall occur (1) within ninety days after the date of the accident, or (2) within fifty-two weeks after the date of the accident and during a period of continuous total disability of the insured for which weekly indemnity is payable under the total disability coverage.

Division 2 — (a) Dismemberment and Loss of Sight Benefits

(b) Fractures and Dislocations Benefits

To pay the highest applicable amount stated in the following Tables for loss as enumerated therein, in the event of bodily injury, caused by accident and sustained by the insured while in or upon, or while entering into or alighting from, or through being struck by, an automobile, provided loss under Table I be sustained by the insured within ninety days from such accident.

As respects any insured, (1) any amount for which the company is obligated or has made payment under Division 2 shall apply in reduction of any amount for which the company is obligated under Division 1.

(2) payment of the principal sum shall terminate all obligation of the company under coverage S.

TABLE I

	If applicable principal sum is	If applicable principal sum is
For Loss of	\$5,000.00	\$10,000.00
Both Hands or Both Feet or		
Sight of Both Eyes	\$5,000.00	\$10,000.00

One Hand and One Foot	5,000.00	10,000.00
Either Hand or Foot and		
Sight of One Eye	5,000.00	10,000.00
Either Hand or Foot	2,500.00	5,000.00
Sight of One Eye	1,750.00	3,500.00
Thumb and Index Finger of		
Either Hand	1,250.00	2,500.00

"Loss" shall mean with regard to hands and feet, actual severance through or above wrist or ankle joints; with regard to eyes, entire and irrecoverable loss of sight; with regard to thumb and index finger, actual severance through or above metacarpophalangeal joints.

TABLE II

	If applicable principal sum is	If applicable principal sum is
For Fracture of Bones:	\$5,000.00	\$10,000.00
Skull (except bones of face or nose)	\$175.00	\$350.00
Thigh	150.00	300.00
Arm, between elbow and shoulder	150.00	300.00
Pelvis (except coccyx)	125.00	250.00
Vertebra or Vertebrae (except coccyx and vertebral processes)	125.00	250.00
Shoulder Blade	100.00	200.00
Leg	100.00	200.00
Kneecap	100.00	200.00
Collar Bone	75.00	150.00
Forearm, between wrist and elbow	75.00	150.00
Foot (except toes)	62.50	125.00
Hand (except fingers)	62.50	125.00
Sternum	50.00	100.00

Lower Jaw (except alveolar process)	37.50	75.00
One or more ribs, fingers or toes	25.00	50.00
Bones of face or nose	25.00	50.00
Coccyx or Vertebral Processes	25.00	50.00
For Complete Dislocations:		
Hip Joint	\$150.00	\$300.00
Knee Joint (except patella)	75.00	150.00
Bone or Bones of Foot (except toes)	75.00	150.00
Ankle Joint	75.00	150.00
Wrist Joint	62.50	125.00
Elbow Joint	50.00	100.00
Shoulder Joint	37.50	75.00
Bone or Bones of Hand (except fingers)	25.00	50.00
Collar Bone	25.00	50.00
One or more fingers or toes	12.50	25.00
For Loss by Removal:		
Of one or more entire toes	\$100.00	\$200.00
Of one or more fingers (at least one entire phalanx)	75.00	150.00
For a Hospital-confining Injury, except as an Outpatient:		
	\$25.00	\$50.00

COVERAGE T — Total Disability — Maximum 200 Weeks. To pay weekly indemnity at the rate stated in the exceptions for the period of continuous total disability of the insured which shall result directly and independently of all other causes from bodily injury caused by accident and sustained by the insured while in or upon or while entering into or alighting from, or through being struck by, an automobile, provided (1) such disability shall commence within twenty days after the date of the accident, and (2) any disability during the period of fifty-two weeks from its commencement shall be deemed total disability only if it shall continuously prevent the insured from performing every duty pertaining to his occupation, and (3) any disability after said fifty-two weeks shall be deemed total disability only if it shall continuously prevent the insured from engaging in any occupation or employment for wage or profit and (4) the weekly indemnity for total disability as provided hereinabove shall in no event extend beyond a period of 200 consecutive weeks from the date of commencement of disability as provided above.

2. Definition of Insured. With respect to coverages S and T, the unqualified word "insured" means the person or

persons so designated for such coverage in the exceptions.

3. Automobile defined. With respect to this insurance the word "automobile" means a land motor vehicle or trailer not operated on rails or crawler treads, but does not mean: (1) a farm type tractor or other equipment designed for use principally off public roads, except while actually upon public roads, or (2) a land motor vehicle or trailer while located for use as a residence or premises and not as a vehicle.

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

EXCLUSIONS. This insurance does not apply:

(a) to bodily injury or death sustained in the course of his occupation by any person while engaged (1) in duties incident to the operation, loading or unloading of, or as an assistant on, a public or livery conveyance or commercial automobile, or (2) in duties incident to the repair or servicing of automobiles;

(b) to loss caused by or resulting from disease except pus forming infection which shall occur through bodily injury to which this insurance applies;

(c) to suicide, sane or insane, or to any attempt thereof;

(d) to injury or death due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing.

CONDITIONS.

1. Policy Provisions. None of the insuring agreements, exclusions or other provisions of Parts I, II and III of the policy or conditions of the policy shall apply to the insurance afforded by this Part IV except the conditions "Notice", "Action Against Company (Medical Payments)", "Changes", "Assignment", "Cancellation" and "Declarations".

2. Notice of Claim. When loss covered hereunder occurs, written notice thereof shall be given by or on behalf of the insured or the beneficiary to the company or any of its authorized agents as soon as practicable.

3. Proof of Claim; Medical Reports. As soon as practicable, the injured person, or the beneficiary in the event of death, 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.

Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to

furnish such forms within fifteen days after receiving notice of claim.

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

4. Payment of Death Indemnity; Autopsy — Division 1 of Coverage S. If the decedent insured be survived by a spouse who was a resident of the same household at the time of the accident; indemnity for death is payable to such spouse; otherwise, if the decedent insured was a minor, indemnity for death is payable to any parent thereof who was a resident of the same household at the time of the accident; otherwise indemnity for death is payable to the decedent insured's estate.

The company shall have the right and opportunity to make an autopsy where it is not forbidden by law.

5. Payment of Indemnity — Coverage T. Weekly Indemnity for total disability is payable to the insured who is disabled. Subject to proof of claim, accrued

weekly indemnity is payable every four weeks and any balance at termination of disability period for which the company is liable.

6. Beneficiary — Division 1 of Coverage S. Consent of beneficiary is not requisite to cancellation, assignment, change of beneficiary, or any other change in the policy.

7. Death of Named Insured. If the named insured dies, any insurance afforded under this Part IV with respect to any surviving insured shall be continued while the policy is in effect.

8. Other Insurance. If any insured under this Part IV also is an insured under other coverage of the same kind, issued by the company, any payment for loss under such other coverage shall serve to reduce, to the extent of such payment, the company's obligation under this Part IV as respects any loss to such insured, and the company will return the premium paid for such duplication of the insurance hereunder.

CONDITIONS

Conditions 3, 13 and 15 through 19 apply to all Parts.

Conditions 1, 2, 14 and 4 through 12, apply only to the Parts noted thereunder.

1. Policy Period, Territory (Parts I, II and III). This policy applies only to accidents, occurrences and loss during the policy period while the automobile is within the United States of America, its territories or possessions, or Canada, or is being transported between ports thereof.

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

3. Notice. In the event of an accident, occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable. In the event of theft the insured shall also promptly notify the police. If claim is made or suit is brought against the insured, he

shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

4. Two or More Automobiles (Parts I, II and III). When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, but an automobile and a trailer attached thereto shall be held to be one automobile as respects limits of liability under Part I of this policy, and separate automobiles under Part III of this policy, including any deductible provisions applicable thereto.

5. Assistance and Cooperation of the Insured (Parts I and III). The insured shall cooperate with the company and, upon the company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury, property damage or loss with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The 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

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automobile shall constitute non-compliance with the requirements of the policy that the insured shall cooperate with and assist the company. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

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

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

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

7. Medical Reports; Proof and Payment of Claim (Part II). As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

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

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

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

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

9. Appraisal (Part III). If the insured and the company fail to agree as to the amount of loss, either may, within 60 days after proof of loss is filed, demand an appraisal of the loss. In such event the insured and the company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. The appraisers shall state separately the actual cash value and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

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

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

11. No Benefit to Bailee (Part III). The insurance afforded by this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire liable for loss to the automobile.

12. Subrogation (Parts I and III). In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and

papers and do whatever else is necessary to secure such rights. The insured shall do no after loss to prejudice such rights.

13. Changes. Notice to any agent or knowledge possessed by any agent or by or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by an executive officer of the company.

14. Limit of Liability - Coverage H. The company's liability shall not exceed \$50.00 for each disablement.

15. Assignment. Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the insured named as named insured 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 I of Part II any person who was a relative at the time of such death.

16. Cancellation. This policy may be cancelled by the insured named as named insured in the declarations, or his duly constituted attorney-in-fact by mailing to the company written notice stating when thereafter the cancellation shall be effective.

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

1. when not less than ten days thereafter such cancellation shall be effective, if this policy has been in effect less than sixty days and is not a renewal policy; or
2. when not less than fifteen days thereafter such cancellation shall be effective, if the named insured fails to discharge when due any of his obligations in connection with the payment of premium for this policy, or any installment thereof, whether payable to the company or its agent either directly or indirectly under any premium finance plan or extension of credit.

Notice to the insured named as named insured in the declarations shall be mailed either by certificate of mailing, provided the company has retained a duplicate certified copy of said notice, or by registered or certified mail,

pursuant to section 38.2-27 of the code of Virginia. The effective date of cancel, stated in the notice shall become the end of the policy period. Delivery of such written notice either by such insured, or his duly constituted attorney-in-fact, or by the company shall be equivalent to mailing.

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

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

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

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

18. Renewal. The company agrees that it will not exercise its right to refuse to renew or continue the policy, except as of the end of any six month interval of the original effective date.

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

pursuant to section 38.2-2208 of the Code of Virginia. Delivery of such written notice shall be equivalent to mailing.

Such notice shall not be required:

1. if the named insured fails to pay the premium as required by the company for renewal or continuance of this policy.
2. If the company or its agent acting on behalf of the company has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, or has manifested such intention in writing to the insured, or

3. If the named insured or his duly constituted attorney-in-fact, has notified in writing to the company or its agent that he wishes the policy to be cancelled or that he does not wish the policy to be renewed or if prior to the date of expiration he fails to accept the offer of the company.

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

MUTUAL CONDITIONS

1. **Membership.** The membership fees set out in this policy, which are in addition to the premiums, are not returnable but entitle the first insured named in the Declarations to insure one automobile for the coverages for which said fees were paid so long as this company continues to write such coverages and the insured remains a risk desirable to the company.

While this policy is in force, the first insured named in the Declarations is entitled to vote at all meetings of members and to share in the earnings and savings of the company in

accordance with the dividends declared by the Board of Directors on this and like policies.

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

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

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

Laura P. Sullivan

SECRETARY

Edward B. Rust Jr.

PRESIDENT

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6191C DISTRICT OF COLUMBIA EMPLOYEES USING AUTOMOBILES IN GOVERNMENT BUSINESS

It is agreed that the policy does not apply under the Liability Coverages to the following insureds:

1. The District of Columbia or any of its Agencies;
2. Any person, including the named insured, with respect to bodily injury or property damage resulting from the operation of an automobile by such person as an employee of the District of Columbia while acting within the scope of his office or employment, if such person is relieved from liability because of the provisions of Public Law 86-654 (District of Columbia Employee Non-Liability Act), as amended.

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6256W.1 SOUND RECEIVING AND TRANSMITTING EQUIPMENT EXCLUDED

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

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

Note: This endorsement replaces any endorsement providing similar coverage. It applies when the endorsement number is shown on the declarations page.

6273H.5 SUPPLEMENTARY UNINSURED MOTORISTS INSURANCE

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

(Virginia)

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

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

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A motor vehicle is "underinsured" with respect to the extent that, the total amount of bodily injury and property damage coverage applicable to the operation of use of the motor vehicle and "available for payment" for such bodily injury or property damage, including all bonds or deposits of money or securities made pursuant to Article 6 of Chapter 6 of Title 46.1 of the Code of Virginia (Section 46.1-467 et seq.), is less than the total amount of uninsured motorist coverage afforded any person injured as a result of the operation or use of the vehicle.

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

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

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

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

3. The company shall not be obligated to make any payment because of bodily injury or property damage to which this insurance applies and which arises out of the ownership, maintenance or use of an underinsured motor vehicle until after the limits of liability under all bodily injury and property damage liability bonds or insurance policies respectively applicable at the time of the accident to damages because of bodily injury or because of property damage have been exhausted by payment of judgments or settlements.

4. Exclusion (a) in the Uninsured Motorists Insurance endorsement does not apply to the underinsured motorists coverage afforded by this endorsement.

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

SCHEDULE - LIMIT OF LIABILITY

Split Limits see amounts in declarations

Single Limit Bodily Injury and Property Damage \$ see amount in declarations each accident, provided such limit shall first be: Bodily Injury \$25,000 each person, \$50,000 each accident, Property Damage \$10,000 each accident.

Note: This endorsement replaces any similar coverage or endorsement printed in the policy. It applies when the endorsement number is shown on the declarations page.

6520.7 UNINSURED MOTORISTS INSURANCE

(Virginia)

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

I. COVERAGE U - UNINSURED MOTORISTS (Damages for Bodily Injury and Property Damage)

The company will pay in accordance with Section 38.2-2206 of the Code of Virginia and all Acts amendatory thereof or supplementary thereto, all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured or property damage, caused by accident and arising out of the

ownership, maintenance or use of such uninsured motor vehicle.

Exclusions

This insurance does not apply:

- (a) to bodily injury or property damage with respect to which the insured or his legal representative shall, without written consent of the company, make any settlement with

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any person or organization, who shall be legally liable therefor;

(b) to the first two hundred dollars of the total amount of all property damage as the result of any one accident. This exclusion does not apply if the owner or operator of the uninsured motor vehicle causing the damage can be identified;

(c) so as to inure directly or indirectly to the benefit of any insurer of property.

II. PERSONS INSURED

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

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

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

III. LIMITS OF LIABILITY

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

(a) If the schedule or declarations indicate split limits of liability, the limit of liability for bodily injury stated as applicable to "each person" is the limit of the company's liability for all damages because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting "each person", the limit of liability for bodily injury stated as applicable to "each accident", is the total limit of the company's liability for all damages because of bodily injury sustained by two or more persons as the result of any one accident. The limit of liability for property damage stated as applicable to each accident is the total limit of the company's liability for all damages because of property damage to all property of one or more insureds as the result of any one accident.

(b) If the schedule or declarations indicate a single limit of liability, the limit of liability stated as applicable to "each accident" is the total limit of the company's liability for all damages as the result of any one accident; provided such limit of liability shall first provide the separate limits required by the Virginia Motor Vehicle

Safety, Responsibility & declarations.

stated in the schedule or

(c) If claim is made under this insurance and claim is also made against any person or organization who is an insured under the bodily injury liability or property damage liability coverage of the policy because of bodily injury or property damage sustained in an accident by a person who is an insured under this insurance, any payment made under this insurance to or for any such person shall be applied in reduction of any amount which he may be entitled to recover from any person or organization who is an insured under the bodily injury or property damage liability coverages.

(d) Any amount payable under this insurance because of bodily injury or property damage sustained in an accident by a person who is an insured under this insurance shall be reduced by all sums paid because of such bodily injury or property damage by or on behalf of the owner or operator of an uninsured motor vehicle.

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

IV. POLICY PERIOD; TERRITORY

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

V. DEFINITIONS

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

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

hit-and-run vehicle - means a motor vehicle which causes an accident resulting in bodily injury to an insured or property damage, provided;

(a) there cannot be ascertained the identity of either the operator or the owner of such motor vehicle; and

(b) the insured or someone on his behalf shall have reported the accident promptly to either the company, or a law-enforcement officer.

insured motor vehicle - means a motor vehicle registered in Virginia with respect to which the bodily injury and property damage liability coverage of the policy applies but shall not

include a vehicle while being used with the permission of the owner;

motor vehicle — means a land motor vehicle or trailer other than

(a) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads,

(b) a vehicle operated on rails or crawler-treads, or

(c) a vehicle while located for use as a residence or premises;

named insured — means the person named in the declarations of this policy and includes the spouse if a resident of the same household;

occupying — means in or upon or entering into or alighting from;

property damage — means injury to or destruction of (1) an insured motor vehicle owned by the named insured or his spouse, if a resident of the same household and the contents of such motor vehicle, and (2) any other property (except a motor vehicle) owned by an insured and located in Virginia;

relative — means a person related to the named insured by blood, marriage or adoption who is a resident of the same household;

uninsured motor vehicle — means:

(a) a motor vehicle with respect to the ownership, maintenance or use of which there is, in at least the amounts specified in the Virginia Motor Vehicle Safety Responsibility Act, neither (i) cash or securities on file with the Virginia Commissioner of Motor Vehicles nor (ii) a bodily injury and property damage liability bond or insurance policy, applicable at the time of the accident with respect to any person or organization legally responsible for the use of such vehicle, or with respect to which there is such a bond or insurance policy applicable at the time of the accident but the company writing the same is or becomes insolvent or denies coverage thereunder; or

(b) a hit-and-run vehicle as defined.

VI. CONDITIONS

A. Policy Provisions. None of the Insuring Agreements, Exclusions, Conditions or other provisions of the policy shall apply to the insurance afforded by this endorsement except the Conditions "Notice", "Insured's Duties in the Event of Loss", "Subrogation", "Changes", "Assignment", "Cancellation" and "Declarations".

B. Premium. If during the policy period the number of insured motor vehicles owned by the named insured or spouse and registered in Virginia changes, the named insured shall notify the company during the policy period of any change and the premium shall be adjusted in

accordance with the manuals by the company. If the earned premium thus corrected exceeds the advance premium paid, the named insured shall pay the excess to the company; if less, the company shall return to the named insured the unearned portion paid by such insured.

C. Proof of Claim; Medical Reports; Proof of Loss. As soon as practicable, the insured or other person making claim shall give to the company written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable hereunder. Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to furnish such forms within 15 days after receiving notice of claim.

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

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

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

D. Notice of Legal Action. If, before the company makes payment of loss hereunder, the insured or his legal representative shall institute any legal action for bodily injury or property damage against any person or organization legally responsible for the use of a motor vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to the company by the insured or his legal representative.

E. Other Insurance. With respect to bodily injury to an insured while occupying a motor vehicle not owned by the named insured, this insurance shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such vehicle as primary insurance.

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

With respect to property damage, this insurance shall apply only as excess insurance over any other valid and collectible insurance of any kind applicable to such property damage.

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

any judgment for damages awarded for personal injuries resulting from such accident.

F. Payment of Loss by the Company. Any amount due hereunder is payable

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

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

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

SCHEDULE

LIMIT OF LIABILITY

Split Limits

Limits of Liability stated in declarations

Single Limit

Limit of Liability stated in declarations provided such limit shall first be:

Bodily Injury	\$25,000 each person
	\$50,000 each accident
Property Damage	\$10,000 each accident

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6557 FEDERAL EMPLOYEES USING AUTOMOBILES IN GOVERNMENT BUSINESS

It is agreed that the policy does not apply under the Liability Coverages to the following as insureds:

1. The United States of America or any of its agencies;
2. Any person, including the named insured, with respect to bodily injury or property damage resulting from the operation of an automobile by such person as an employee of the United States Government while acting within the scope of his office or employment, if the provisions of Section 2679 of Title 28, United States Code (Federal Tort Claims Act), as amended, require the Attorney General of the United States to defend such person in any civil action or proceeding which may be brought for such bodily injury or property damage, whether or not the incident out of which such bodily injury or property damage arose has been reported by or on behalf of such person to the United States or the Attorney General.

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Note: The following endorsement : when the endorsement number is shown on the declarations page.

**6589 ASSISTANCE AND COOPERATION OF THE INSURED
(AUTOMOBILE LIABILITY INSURANCE)
(VIRGINIA)**

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

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6778 OUT-OF-STATE INSURANCE ENDORSEMENT

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

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

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

**6822F.4 RENTAL AND TRAVEL EXPENSE REIMBURSEMENT
OWNED PRIVATE PASSENGER AUTOMOBILES ONLY
COVERAGE R1**

In consideration of the premium at which the policy is written, it is agreed that in the event of a loss to an owned private passenger automobile with respect to which insurance under the Comprehensive coverage is afforded and which is designated in the declarations as subject to this endorsement:

A. Expense for Rental of a Substitute Automobile

The company will:

1. reimburse the named insured for the expense of the rental of a substitute of equivalent type and purpose for such owned automobile for a period commencing with the first of the number of days for which expense for such rental is incurred. Reimbursement for any one such period shall not exceed the amount of such expense (exclusive of mileage charges) as is necessarily and actually incurred by the named insured nor, in any event, a total of \$16 for any one day; or

pay the named insured \$10 per day, if the named insured does not rent a substitute automobile during the period that begins when such owned automobile:

- (a) cannot run due to loss; or
- (b) if it can run, when it is left at the shop for agreed repairs.

This reimbursement or payment:

1. applies only if the loss to such owned automobile:
 - (a) is either caused by collision or, (except as hereinafter provided), is a loss to which the Comprehensive coverage applies; and
 - (b) results in such owned automobile being continuously withdrawn from normal use for a period in excess of 24 hours;
2. terminates, regardless of the expiration of the policy period, at the end of the number of days which would, with the exercise of due diligence

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and dispatch, be required to repair or replace such owned automobile, and

3. applies in addition to the limits of liability otherwise applicable under such insurance as is afforded by the policy with respect to loss to such owned automobile, and shall not be subject to the application of any deductible thereunder.

B. Comprehensive or Collision Deductible

The company will reimburse the named insured for any deductible amount applicable to the Comprehensive and Collision coverages in effect on a rented substitute automobile, if the insured is legally liable for such deductible amount.

C. Travel Expense

The company will reimburse the named insured, if the loss to such owned private passenger automobile occurs more than 50 miles away from the named insured's residence, for

1. commercial transportation expense incurred by

- (i) the named insured,
- (ii) his spouse, and
- (iii) any relative,

who was occupying such owned automobile at the time of such loss, from the site of such loss to the named insured's residence or to his destination (at the option of the named insured).

2. necessary and reasonable extra expense incurred for meals and lodging by the named insured, his spouse and relatives during a period commencing on the date of such loss and ending on the date of arrival at the named insured's residence or destination or at the end of the fifth day following the date of such loss, whichever occurs first.

3. necessary and reasonable extra expense for meals, lodging, and commercial transportation incurred by the named insured or some other person designated by him for the purpose of returning such repaired owned automobile

from where it repaired to the named insured's residence or destination.

This reimbursement or payment applies only if the loss to such owned automobile is either caused by collision or is a loss to which the Comprehensive coverage applies.

LIMITS OF LIABILITY

The limit of the company's liability for reimbursement or payment to all persons for:

1. "Expense for Rental of a Substitute Automobile" and "Comprehensive or Collision Deductible" shall not exceed the total sum of \$400 for any one occurrence;
2. "Travel Expense" shall not exceed \$400 for any one occurrence.

EXCLUSIONS

Coverage R1 does not apply to the extent that any reimbursement for transportation expense is paid or payable to the named insured as a result of the theft of the entire owned private passenger automobile.

DEFINITIONS

Loss — means each direct and accidental loss of or damage to the owned private passenger automobile or its equipment.

Relative — means a person related to the named insured or his spouse by blood, marriage, or adoption, who is a resident of the same household.

Spouse — means a named insured's spouse, if a resident of the same household.

OTHER PROVISIONS

In the event of loss to which the insurance under this endorsement applies, the named insured shall

- (a) give notice thereof as soon as practicable to the company or any of its authorized agents; and
- (b) furnish the company with proof, within such period of time and in the form of such evidence as the company may reasonably require, of the amount, reasonableness and necessity of the expenses actually incurred and for which claim is made.

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6889FF AMENDMENT OF COVERAGE S

In consideration of the premium charged, it is agreed the following provision is added to Coverage S and applies to Death Indemnity and Dismemberment and Loss of Sight Benefits:

"The amount otherwise payable under Coverage S for death or loss under Table I is doubled for an insured who, at the time of the accident, is using the vehicle's complete restraint system as recommended by the vehicle's manufacturer."

Note: The following endorsement applies when the endorsement number is shown on the declarations page:

6893B AMENDMENT OF COVERAGE D

In consideration of the premium charged, it is agreed that the following change is made in Part III - Physical Damage: Supplementary Payments.

Item (a) is replaced by the following:

"(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 \$16 per day or totaling more than \$400;"

Note: The following endorsement replaces endorsement 6571A, Virginia Amendatory Endorsement. It applies when the endorsement number is shown on the declarations page.

6571A VIRGINIA AMENDATORY ENDORSEMENT

(Virginia)

It is agreed that:

PART I

1. The first paragraph of "Persons Insured" is amended to read:

Persons Insured

The following are insureds under Part I:

- (a) with respect to the owned automobile,
 - (1) the named insured and any resident of the same household,
 - (2) any other person using such automobile with the permission of the named insured, provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission, and
 - (3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a)(1) or (2) above;
 - (b) with respect to a non-owned automobile,
 - (1) the named insured,
 - (2) any relative,
- 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 definition of "owned automobile" is amended to read:

"owned automobile" means

- (a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded,
- (b) a trailer owned by the named insured,
- (c) a private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided
 - (1) it replaces an owned automobile as defined in (a) above, or
 - (2) the company insures all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such automobile, or
- (d) a temporary substitute automobile;

The definition of "temporary substitute automobile" is amended to read:

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

4. Exclusions (g) and (h) are amended and a new exclusion is added to read:

(This policy does not apply under Part I:)

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

PART II

Expenses for Medical Services of the policy is amended as follows:

1. The insuring agreement of Coverage C - Medical Payments is amended to include reasonable expenses for necessary chiropractic services incurred within one year from the date of accident.
2. Divisions 1 and 2 of Coverage C - Medical Payments are amended to read:

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

- (a) while occupying the owned automobile,
- (b) while occupying a non-owned automobile, but only if such person has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission, or
- (c) while not occupying a motor vehicle, through being struck by an automobile or trailer of any type.

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

- (a) the owned automobile, while being used by the named insured, by any resident of the same household or by any other person with the permission of the named insured; or
- (b) a non-owned automobile, if the bodily injury results from
 - (1) its operation or occupancy by the named insured or its operation on his behalf by his private chauffeur or domestic servant, or
 - (2) its operation or occupancy by a relative, provided it is a private passenger automobile or trailer,

but only if such operator or occupant has, or reasonably believes he has, the permission of the owner to use the automobile and the use is within the scope of such permission.

3. The following definition is added to PART II - Definitions:

"medical expense insurance" means any automobile insurance providing benefits for medical expenses payable without regard to fault.

4. Exclusions (b) and (c) are amended to read:

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

- (b) sustained by the named insured or a relative while occupying or, while not occupying a motor vehicle, through being struck by (1) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads, or (2) a vehicle operated on rails or crawler-treads;
- (c) sustained by any person other than the named insured or a relative.

- (1) while such person is occupying a non-owned automobile while used as a public or livery conveyance, or
- (2) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in the automobile business, or
- (3) resulting from the maintenance or use of a non-owned automobile by such person while employed or otherwise engaged in any other business or occupation, unless the bodily injury results from the operation or occupancy of a private passenger automobile by the named insured or by his private chauffeur or domestic servant, or of a trailer used therewith or with an owned automobile;

5. The "Limit of Liability" provision is deleted and replaced by the following:

Regardless of the number of:

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

the limit of the Company's liability for all expenses incurred by or on behalf of each person who sustains bodily injury as the result of any one accident shall not exceed:

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

6. The "Other Insurance" provision is deleted and replaced by the following:

If other valid and collectible medical expense insurance is applicable to the bodily injury of an insured person as defined in Division 1. and 2., the benefits shall be paid according to the following order of priority:

- (1) the medical expense insurance of the owner of the automobile the insured person was occupying at the time of the accident;
- (2) the medical expense insurance of the operator of the automobile the insured person was occupying at the time of the accident;

- (3) the medical expense insurance of the insured person.

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

7. The following provision is added to the Notice Condition as respects Coverage C - Medical Payments only:

The failure or refusal of the injured person to give notice of an accident shall not relieve the Company of its obligation to pay unless such failure or refusal prejudices the Company in establishing the validity of any claim under this coverage.

PART III

The Comprehensive and Collision insuring agreements are amended to read as follows:

Coverage D(1) - Comprehensive (excluding Collision)

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

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

Definitions.

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

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

"insured" means:

- (a) with respect to an owned automobile
 - (1) the named insured, and
 - (2) any person or organization (other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee for hire) maintaining, using or having custody of said automobile with the express or implied permission of the named insured and within the scope of such permission;
- (b) with respect to a non-owned automobile, the named insured and any relative while using such automobile, provided his actual operation or (if he is not operating) the other actual use thereof, is with the express or implied permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission.

4. Exclusion (c) is amended to read: --

This policy does not apply under Part III

- (c) to loss to a non-owned automobile arising out of its use by the insured while he is employed or otherwise engaged in the:
 - (1) automobile business; or
 - (2) any other business or occupation of the insured, but this exclusion (c)(2) does not apply to a private passenger automobile;

Note: The following endorsement applies when the endorsement number is shown on the declarations page.

6989AS AMENDATORY ENDORSEMENT

In consideration of the premium charged, it is agreed the following changes are made in the policy:

1. PART I - LIABILITY

The definition of "non-owned automobile" is changed to read:

"non-owned automobile" means an automobile or trailer not owned by, or furnished for the regular use of:

- (a) the named insured; or
- (b) any relative unless at the time of the accident or loss:
 - (1) the automobile is or has been described on the declarations page of a liability policy within the preceding 30 days; and

CON JNS

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

Premium

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

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

Assistance and Cooperation of the Insured

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

- (2) the named insured or a relative who does not own such automobile is the driver.

A temporary substitute automobile is not considered a non-owned automobile.

2. PART III - PHYSICAL DAMAGE

The definition of "non-owned automobile" in Part I as amended above applies to Part III.

3. CONDITIONS

- a. The following is added to Condition 13, "Changes":

If the State Corporation Commission approves a revision which broadens the coverage of this

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policy without additional premium, this policy will automatically provide the broadened coverage as of the day the revision is effective.

- b. The first paragraph of Condition 16, "Cancellation", is changed to read:

16. **Cancellation.** This policy may be cancelled by the insured named as named insured in the declarations, or his duly constituted attorney-in-fact by mailing to the company written notice stating when thereafter the cancellation shall be effective. The company may waive these requirements by confirming the date and time of cancellation to the named insured in writing.

- c. The following Condition is added:

20. **Premium Changes.** The premium for this policy is based on information the company has received from the named insured or other sources. The named insured agrees that if any of this information material to the development of the policy premium is incorrect, incomplete or changed, the company may adjust the premium accordingly during the policy period; and to cooperate with the company in determining if this information is correct and complete, and to advise the company of changes in this information.

Any adjustment of this policy's premium will be made using the rules in effect at the time of the change.

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

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

- d. The following Condition is added:

21. **Change of Residence.** If the owned automobile becomes principally garaged in another state and the named insured is a risk still acceptable to the company at the time the company is notified of the change, the company shall replace this policy with the policy form currently in use in the new state of garaging. The word "state" means one of the United States of America, the District of Columbia, or a province of Canada.

If termination of this policy is initiated by the company, it will be done in accordance with Virginia law.

4. MUTUAL CONDITIONS

Item 1. of MUTUAL CONDITIONS is changed to read:

1. **Membership.** The membership fees set out in this policy, which are in addition to the premiums, are not returnable but entitle the first insured named in the declarations to insure one automobile for any applicable coverage, and to insurance for any other coverage for which said fees were paid so long as:

- a. this company continues to write such coverages;
- b. the automobile to be insured meets the eligibility requirements of the company; and
- c. the insured remains a risk desirable to the company.

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

Note: This endorsement is shown on the d s any endorsement providing similar coverage. It , when the endorsement number

6273H.6 SUPPLEMENTARY UNINSURED MOTORISTS INSURANCE
(Bodily Injury - Property Damage - Limits - Underinsured Motorists)
(Virginia)
(Coverage U)

Nothing herein contained shall be held to alter, vary, waive or extend any of the terms, conditions, agreements or limitations of the undermentioned policy other than as stated below.

Effective _____ 12:01 A.M. Standard Time. Attached to and forming a part of
policy number _____

issued to _____
by the STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY of Bloomington, Illinois, or the STATE
FARM FIRE AND CASUALTY COMPANY of Bloomington, Illinois, as indicated by the company name on the policy
of which this endorsement is a part.

(The information above is required only when this endorsement is issued subsequent to the preparation of the policy.) Countersigned _____, 19 _____
By _____
Authorized Representative

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

1. If limits of liability for such insurance are stated in the schedule of this endorsement or in the declarations, and subject to 2. below:

(a) the split limits so stated as applicable to bodily injury for "each person"/"each accident" and property damage for "each accident" shall apply in lieu of any limits therefor stated elsewhere in the policy, and subject to all the terms of the policy having reference thereto, shall be the total limit of the company's liability for all damages because of bodily injury and property damage as the result of any one accident arising out of the ownership, maintenance or use of uninsured motor vehicles; or

(b) the single limit so stated as applicable to bodily injury and property damage for "each accident" shall apply in lieu of any limit therefor stated elsewhere in the policy, and subject to all the terms of the policy having reference thereto, shall be the total limit of the company's liability for all damages as the result of any one accident arising out of the ownership, maintenance or use of uninsured motor vehicles; provided such limit of liability shall first provide the separate limits required by the Virginia Motor Vehicle Safety Responsibility Act as stated in the schedule of this endorsement or in the declarations.

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

A motor vehicle is "underinsured" when, and to the extent that, the total amount of bodily injury and property damage coverage applicable to the operation or use of the motor vehicle and "available for payment" for such bodily injury or

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6273H.6

property damage, including all bonds or deposits of money or securities made pursuant to Article 15 of Chapter 3 of Title 46.2 of the Code of Virginia (Section 46.2-435 et seq.), is less than the total amount of uninsured motorist coverage afforded any person injured as a result of the operation or use of the vehicle.

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

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

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

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

3. The company shall not be obligated to make any payment because of bodily injury or property damage to which this insurance applies and which arises out of the ownership, maintenance or use of an underinsured motor vehicle until after the limits of liability under all bodily injury and property damage liability bonds or insurance policies respectively applicable at the time of the accident to damages because of bodily injury or because of property damage have been exhausted by payment of judgments or settlements.
4. Exclusion (a) in the Uninsured Motorists Insurance endorsement does not apply to the underinsured motorists coverage afforded by this endorsement.
5. The second paragraph of the Other Insurance Condition in the Uninsured Motorists Insurance endorsement does not apply to the underinsured motorists coverage afforded by this endorsement.

SCHEDULE - LIMIT OF LIABILITY

Split Limits see amounts in declarations

Single Limit Bodily Injury and Property Damage see amount in declarations each accident, provided such limit shall first be: Bodily Injury \$25,000 each person, \$50,000 each accident, Property Damage \$10,000 each accident.

Edward B. Rust Jr.

President

6273H.6

ORIGINAL

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
COUNTY OF ROANOKE

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff

-vs-

MARY ELLEN HAINES, et al

Defendants

May 29, 1992
4:15 P.M.

DEPOSITION OF:

DANIEL T. WALTON

CENTRAL VIRGINIA REPORTERS
P.O. BOX 12628
ROANOKE, VIRGINIA 24027
(703) 380-5017

PLAINTIFF'S
EXHIBIT

#3 12-2-93

ORIGINAL

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE
COUNTY OF ROANOKE

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff

-vs-

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Defendants

May 29, 1992
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DEPOSITION OF:

DANIEL T. WALTON

CENTRAL VIRGINIA REPORTERS
P.O. BOX 12628
ROANOKE, VIRGINIA 24027
(703) 380-5017

1
2 APPEARANCES:

3 JOHNSON, AYERS & MATTHEWS, ESQS.
4 Roanoke, Virginia
BY: DAVID B. CARSON, ESQ.

5 Counsel on behalf of the Plaintiff

6 COLLINS & MOONEY, ESQS.
7 Covington, Virginia
8 BY: MICHAEL McHALE COLLINS, ESQ.

9 Counsel on behalf of Mary Ellen Haines

10 GENTRY, LOCKE, RAKES & MOORE, ESQS.
11 Roanoke, Virginia
BY: PAUL G. KOCKENBRINK, ESQ.

12 Counsel on behalf of Virginia Farm Bureau

13 HARMAN, CLAYTOR, CORRIGAN & WELLMAN, ESQS.
14 Richmond, Virginia
15 BY: STANLEY P. WELLMAN, ESQ.

16 Counsel on behalf of Colonial Insurance
Company

17 WOODS, ROGERS & HAZLEGROVE, ESQS.
18 Roanoke, Virginia
19 BY: DANIEL S. BROWN, ESQ.

20 Counsel on behalf of Allstate Insurance
Company

21 DABNEY L. PASCO, ESQ.
22 Covington, Virginia

23 Counsel on behalf of Lorrie Forbes
24

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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DANIEL T. WALTON				
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By Mr. Carson	5	--	28	--
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By Mr. Wellman	--	9	--	--
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By Mr. Pasco	--	19,27	--	--
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By Mr. Klockenbrink	--	24	--	--
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By Mr. Brown	--	26	--	--
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E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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1	Sworn Statement	5
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1 The Deposition of DANIEL TODD WALTON, was
2 taken at the Law Offices of Collins & Mooney, Esqs.,
3 Covington, Virginia, on the 29th day of May, 1992, in the
4 presence of the aforelisted attorneys on behalf of their
5 respective clients.

6 All formalities as to caption, certificate
7 and Notice of Filing were waived. It was agreed that
8 Deborah P. West, Notary Public in and for the Commonwealth
9 of Virginia, at Large, would take said Deposition in machine
10 shorthand and transcribe the same to writing by means of
11 computer-aided transcription.

12 Said Deposition was taken subject alone to
13 objections that are required by the Rules of the Supreme
14 Court of Virginia, to be made at the time the deposition is
15 taken. All other objections are reserved until the Trial.

16
17
18 DANIEL T. WALTON
19 was called as a witness, and after having first been duly
20 affirmed to tell the truth, the whole truth and nothing but
21 the truth, was examined and testified as follows:
22
23
24

(4:15 P.M.)

DIRECT EXAMINATION

BY MR. CARSON:

Q State your full name for the Record.

A Daniel Todd Walton.

Q I am David Carson and I represent State Farm Mutual Automobile Insurance Company. Do you remember giving a sworn statement in this case in April of 1991, a little over a year ago?

A Yes.

Q At that time did you testify truthfully to everything that was asked of you?

A Yes.

Q I am going to make your sworn statement an exhibit and point out that it was taken before suit was filed. Is there anything else you would like to add to that?

MR. WELLMAN: No.

(The sworn statement of Daniel T. Walton, taken on 4-11-91, was marked as Exhibit Number One and entered into the Deposition.)

1 BY MR. CARSON:

2 Q At the time of this accident on February
3 8th, 1991 you were living at Route 1, Box 298-A?

4 A That is right.

5 Q And you lived there for several months?

6 A Yes.

7 Q And your mother-in-law, Mrs. Haines, lived
8 at 2340 South Church Avenue?

9 A Yes.

10 Q You had lost your driver's license around
11 January of 1990?

12 A Yes.

13 Q After you lost your license and before the
14 accident in February of 1991, you used the Subaru that had
15 been purchased by Mrs. Haines and Jennifer to go home on one
16 occasion; is that right?

17 A Yes.

18 Q And do you know that your mother-in-law had
19 spoken to Jennifer about that?

20 A Yes.

21 Q Did you understand that you weren't to drive
22 that Subaru until you were licensed?

23 A Yes.

24 Q Did you know that your mother-in-law,

1 Mrs. Haines, told your wife that you weren't to drive until
2 you had gotten your license?

3 A Yes.

4 Q Did your mother-in-law speak to you after
5 speaking with Jennifer on that one time you had driven home
6 from McDonald's?

7 A Yes.

8 Q Was it a face-to-face meeting?

9 A I believe it was on the telephone.

10 Q On the telephone?

11 A Yes.

12 Q And at that time she told you that you
13 weren't to drive until you were licensed?

14 A That is right.

15 Q After she had spoken to you that one time,
16 if it was on the phone and before the accident, she had
17 never told you anything different about that, about that
18 rule; is that right?

19 A That is correct.

20 Q So at the time of the accident that was
21 still a rule, that you weren't supposed to be driving until
22 you got your license?

23 A Right.

24 Q But at the time of the accident you hadn't

1 gotten your license back yet, had you?

2 A No.

3 Q On the night of the accident -- in fact, I
4 need to ask Paul Thurston, I guess your brother-in-law, to
5 drive because you didn't have a license. Isn't that right?

6 A That is right.

7 Q At the time of the accident you had only
8 operated it two times, once being the night of the accident
9 and once that time when Mrs. Haines had spoken to you?

10 A Yes.

11 Q And on the date of the accident Jennifer had
12 given you the keys to use the car for about an hour and then
13 meet you at the Kroger's?

14 A Yes.

15 Q When you were going to meet up with Jennifer
16 and Dana, you had assumed, hadn't you, that Jennifer or Dana
17 would drive the car once you all met up?

18 A Yes.

19 MR. CARSON: I have nothing further at this
20 time.

CROSS EXAMINATION

BY MR. WELLMAN:

Q Mr. Walton, my name is Stan Wellman and I represent Colonial Insurance Company in this lawsuit.

You understand that you have just been sworn in here before you started talking and you swore to tell the truth?

A Yes.

Q And do you understand that that oath that you have just taken is the same as if we were in trial in front of a Jury and a trial and you were sworn in as well?

A Yes.

Q And the penalty is the same, too; if at any point you don't tell the truth you understand that is perjury. Do you understand that?

A Yes.

Q Tell me what you were charged with back in January of '90 and the reason you lost your license in the first place.

A Possession of marijuana.

Q And your hearing or trial was across the street here; is that correct?

A That is correct.

1 Q And the sentence was by the judge to turn in
2 your driver's license to the DMV for one year?

3 A Turn it into him.

4 Q To him?

5 A To him.

6 Q And you said, "Judge, I haven't got it."

7 A It was lost.

8 Q And what did he say in response to that?

9 A "When you find it, bring it to me."

10 Q But the instructions to you were do not
11 drive for a year?

12 A Yes, sir.

13 Q What was your understanding as to what
14 should happen once that year lapsed. In other words, fast
15 forward to January of '91, what were you thinking would
16 happen at that point?

17 A I was going to go back and talk to the
18 judge.

19 Q All right. Is that right, was there a
20 hearing scheduled or going to be scheduled?

21 A No.

22 Q Did you think at the time or any time that
23 year that when January '91 came that you could start driving
24 again?

1 A I really didn't know. I just wanted to be
2 safe and go and talk with the judge to be sure.

3 Q What was that?

4 A I was just going to go and talk to the judge
5 and ask him before I drove.

6 Q Did you have a lawyer for that hearing?

7 A No.

8 Q Was anyone present with you?

9 A When I went to trial?

10 Q Yes.

11 A Mooney, I believe.

12 Q Mooney was your lawyer?

13 A Yes.

14 Q Did you ever find your license?

15 A No.

16 Q How long had it been lost prior to January
17 of '90?

18 A Four months, maybe more.

19 Q When were you first licensed?

20 A Excuse me?

21 Q When did you first get your driver's
22 license?

23 A I don't even remember.

24 Q What is your date of birth?

1 A 8/8/72.

2 Q So it would have been before '78?

3 A I didn't get my license until I was 17.

4 Q So some time in '89 -- did I say '78, I
5 meant '88/1989 some time you got your license?

6 A Yes.

7 Q Had you turned 17 before you got your
8 license?

9 A Yes.

10 Q So we are just talking about a few months
11 ago, right, August of '89? At some point thereafter you got
12 your license and you were convicted in January of '90?

13 A Yes.

14 Q Did you ever have a license?

15 A No. Just then, that was the first time I
16 had a learner's permit and that was it.

17 Q Do you remember getting a license, a
18 driver's license?

19 A Yes.

20 Q Were you aware of any kind of restrictions
21 that were put on your use of that vehicle either by your
22 girlfriend and then wife or by her mother before that phone
23 call from Mrs. Haines?

24 A I don't understand the question.

1 Q At some point you used the Subaru and you
2 got a phone call, I think you said from Mrs. Haines, saying
3 "don't use it anymore until you get your license back." Is
4 that correct?

5 A That is correct.

6 Q At any point prior to that phone call had
7 you been made aware by anybody that you couldn't use that
8 car?

9 A No, just Jennifer.

10 Q So Jennifer told you before that phone call
11 from Mrs. Haines that you couldn't use the car?

12 A Yes.

13 Q When did Jennifer tell you that?

14 A I don't remember.

15 Q Do you recall when the phone call came from
16 Mrs. Haines?

17 A The same night or the night after that I had
18 taken the car from McDonald's.

19 Q Is that roughly November of 1990?

20 A Yes, that is right.

21 Q And you and Jennifer got in your apartment
22 and she moved out of your mom's house in October of '90; is
23 that right?

24 A Yes.

1 Q Do you recall if it was a few weeks before
2 when Jennifer told you that you couldn't use the car or a
3 month before?

4 A I believe it was right when we got the car.
5 I don't remember when that was.

6 Q You don't remember when that was?

7 A No.

8 Q But you weren't living together yet or were
9 you?

10 A When we got the car?

11 Q Yes.

12 A No, I don't think we were.

13 Q Tell me again exactly what you remember
14 Mrs. Haines telling you as to why you couldn't use the car.

15 A I didn't have a driver's license.

16 Q Did she mention anything about insurance?

17 A That I wasn't covered.

18 Q Was it your understanding that she was more
19 concerned if you -- did she give you any indication she was
20 more concerned with the fact that you wouldn't be covered by
21 insurance if there was an accident or that you didn't have
22 your license?

23 A It was so long ago, I just remember her
24 telling me I couldn't drive it.

1 Q Did Jennifer or her mother ever tell you
2 that once you got your license and you were able to have
3 some insurance then you could drive the car?

4 A Yes.

5 Q Did they mention both of those?

6 A Yes.

7 Q Things that had to happen first, get your
8 license and get some insurance on it?

9 A Yes.

10 Q Was it your understanding that if at the
11 time of the accident you qualified for insurance coverage
12 under Mrs. Haines' policy that you would be able to drive
13 the car?

14 A Yes.

15 Q At the time of the accident did you think
16 you would qualify for coverage under her policy if you were
17 driving the car?

18 A I never thought about it.

19 Q Throughout this period of October when you
20 first got your apartment through the date of the accident in
21 February of '91, did you have access to any other vehicles?

22 A No.

23 Q And you worked where?

24 A At the Comfort Inn Restaurant.

1 Q Tell me how you got to and from work.

2 A Jennifer.

3 Q Always Jennifer?

4 A Or my mom or my brother or her mom.

5 Q Did you ever drive the Subaru to work?

6 A No.

7 Q Did you ever drive the Subaru from work?

8 A Once when I picked it up from McDonald's.

9 Q That was the very first time that you ever
10 drove that Subaru in the three or four months that Jennifer
11 had had it that you got caught by her mom?

12 A That is right.

13 Q And the second time you ever drove it?

14 A McDonald's is right down the road from where
15 I work and she was at work and I didn't have a way home, so
16 I walked down to McDonald's and picked the car up and went
17 to my mom's.

18 Q And that is the first time that that
19 happened?

20 A Yes, first time.

21 Q And the second time you ever used that
22 Subaru you were involved in this accident?

23 A Yes.

24 Q Bad luck?

1 A Yes.

2 Q Give me the names of some close friends of
3 yours or your closest friends back in that time period of
4 October of '90 through February of '91.

5 I asked your wife that question and she
6 mentioned Jay Potter, your boss, A.R. Francis, Wayne Walton,
7 your brother, I think. Somebody else mentioned Mike Martin
8 at one point. Who is Mike Martin?

9 A He is a friend of mine.

10 Q Have you ever heard of him?

11 A I have heard of him.

12 Q Anybody else that is not listed there?

13 A I didn't have much social time, I was always
14 working or at home.

15 Q Who else did you work with besides Kevin
16 Cook and Jay Potter?

17 A There were several waitresses.

18 Q Give me their names, if you could.

19 A Suzanne Gregory. I believe that is the only
20 original up there now. They change the staff all of the
21 time.

22 Q Is Suzanne still there?

23 A Yes.

24 Q Do you recall any other names?

1 A Donna Weikel.

2 Q Do you know where Donna is now?

3 A No.

4 Q Is she in Covington?

5 A Yes, she still works there.

6 Q Okay. Anybody else?

7 A No, not that I remember.

8 Q Did you ever take the car this short trip to
9 get gas for your wife?

10 A No.

11 Q The time that Mrs. Haines put the
12 restriction on your use of the vehicle, directed it to you
13 in the conversation she had, you said it was a phone call?

14 A I believe it was a phone call.

15 Q You don't recall it being a face-to-face
16 meeting?

17 A No.

18 MR. WELLMAN: That is all I have. Thank
19 you.

20 MR. BROWN: No questions.

21

22

23

24

CROSS EXAMINATION CONTINUED

BY MR. PASCO:

Q Mr. Walton, when Mary Ellen Haines told you over the phone that you weren't supposed to drive the car, the rule that has been referred to, what was your understanding at that point?

I think you said you didn't have a very good recollection. What is your recollection of what she said to you?

A Not to drive the car, that I didn't have a driver's license.

Q Okay. Do you remember any conversation, any comment from her that you don't have any insurance?

A She may have mentioned it, but it has been almost two years ago and I don't remember that phone call.

Q So you don't remember the phone call?

A I remember the call, but I don't remember everything that was said.

Q You and Jennifer had been dating for a length of time, moved in together in October of '90 and lived together from the date of this accident and subsequently.

You didn't seek permission from Mrs. Haines

1 about when you could go anywhere, where you could work and
2 what you could do, did you?

3 A No, she is not my mother.

4 Q You are your own man and you do what you
5 want to do?

6 A Right.

7 Q And you didn't ask her how you should act or
8 what you should do or what clothes to buy, where you should
9 go and what hours you should keep and things like that?

10 A No.

11 Q She exercised no control over you?

12 A To a point she did have some control. If I
13 wanted to go somewhere and she didn't want me to go, then I
14 didn't go.

15 Q Can you give me an example of that?

16 A If it was twelve in the morning and I just
17 got off from work and a friend wanted me to go out and she
18 said no, then I didn't go.

19 Q Your mother-in-law or your wife?

20 A My wife. You were talking about we were
21 married.

22 Q I am talking about Mary Ellen Haines, your
23 mother-in-law. Did your mother-in-law exercise any
24 control.

1 I hope you do what your wife says. If you
2 do, you have learned that at a very young age and it took me
3 a lot more years. I am talking about your mother-in-law.

4 A Yes, somewhat.

5 Q You didn't ask her what you could do and
6 where you could go and what hours to keep?

7 A No.

8 Q You had been living with Jennifer from
9 October of '90 and you and she felt you were grown and had
10 your own life?

11 A Yes.

12 Q And you were aware that Jennifer had paid
13 the down payment for this car and was making a portion of
14 the monthly payments?

15 A Yes.

16 Q And you considered it her car?

17 A Yes.

18 Q So when she told you on February the 8th of
19 '91, here are the keys, be careful, you figured you had
20 permission to drive since it was Jennifer's car and she told
21 you you could have it; is that right?

22 A I didn't really think it all through like
23 that.

24 Q Let me ask you, what was your understanding

1 about the benefits, if there are any benefits, to Mary Ellen
2 Haines or your wife if you were an unauthorized user of that
3 car? Do you understand what my question is?

4 A No.

5 Q What is your understanding -- are there any
6 benefits -- if it is established that you were using that
7 car without permission of the owner and were an unauthorized
8 user, what is your understanding about how that would
9 benefit your mother-in-law or your wife?

10 A I don't know.

11 Q You have no thoughts on that?

12 A No, I never thought about it.

13 Q Never been discussed with you?

14 A No.

15 Q You have been convicted of a felony as a
16 result of this wreck; is that right?

17 A Yes.

18 Q What other felonies have you been convicted
19 of?

20 A Just that one other one, I believe. I
21 believe that was a felony. I was a minor and they were
22 going to take it from my records when I turned 18.

23 Q What was that, no use of marijuana?

24 A Yes.

1 Q Was it use of marijuana or sale of
2 marijuana?

3 A Possession.

4 Q So no other convictions on your record other
5 than this felony and the possession of marijuana?

6 A That is right.

7 Q You mentioned Gregory and Donna Weikel.
8 Was Laurie Hicks working up there when you were there?

9 A Yes.

10 Q She was another person that was working?

11 A Yes.

12 Q Your testimony, and after Mr. Wellman
13 explained to you that you were under oath and perjury was a
14 criminal charge and you understood the oath and telling the
15 truth, you are saying you never drove to your place of
16 employment yourself other than that one time?

17 A That I remember, no.

18 Q That is what I am concerned about, what you
19 remember. You could have driven on other occasions, but you
20 just don't remember?

21 A It is doubtful that I did, but I don't
22 remember doing it.

23 Q So it is possible that you could have, it is
24 just the length of time has clouded your memory?

1 A Say that one more time.

2 Q You don't remember a specific time, but the
3 length of time has been so long your memory is clouded?

4 A It is possible. Anything is possible, but
5 to my knowledge, no, I didn't.

6 Q To your knowledge you can't remember any
7 times that you drove?

8 A No.

9 Q If somebody saw you drive up on an occasion
10 in December and January, would that refresh your
11 recollection and you would say, yeah, I remember that?

12 A Depends on who it was.

13 Q But you certainly wouldn't dispute them if
14 they saw you drive up and refreshed your memory in such a
15 way, would you?

16 A No.

17 MR. PASCO: That is all I have.

18

19 CROSS EXAMINATION CONTINUED

20

21 BY MR. KLOCKENBRINK:

22 Q My name is Paul Klockenbrink. After the
23 accident did anyone talk to you about you shouldn't have
24 been using the car?

1 A No.

2 Q Did your mother-in-law ever talk to you,
3 give you a lecture of any sort to say you shouldn't have
4 have been using the car?

5 A No.

6 Q Did this issue about whether you should have
7 been using the car or not ever come up until State Farm
8 contacted you?

9 A That is right.

10 Q That was the first time it came up?

11 A Yes.

12 Q Do you know Karen Vance?

13 A Yes.

14 Q Did you, prior to the accident or within six
15 months prior to the accident, did you have any occasion to
16 get together with her?

17 A No.

18 Q Do you have any idea where she was living at
19 that time?

20 A No.

21 Q Do you have any idea where she was living on
22 the night of the accident?

23 A No.

24 MR. KLOCKENBRINK: I don't have anything

1 further.

2 MR. PASCO: Just one follow up.

3 MR. BROWN: Let me go first.

4

5 CROSS EXAMINATION CONTINUED

6

7 BY MR. BROWN:

8 Q Were you charged with driving without a
9 license as a result of this accident?

10 A No, just involuntary manslaughter.

11 MR. BROWN: That is all.

12 MR. PASCO: What is your recollection on
13 February 8th about who asked, did you ask to borrow
14 the car, did you go to your wife and ask to borrow
15 the car?

16 THE WITNESS: No.

17 MR. PASCO: She volunteered the car?

18 THE WITNESS: (Witness moves head up and
19 down.)

20 MR. PASCO: So she said, you take care, here
21 are the keys and be careful?

22 THE WITNESS: Yes.

23 MR. BROWN: For clarification, when you were
24 in Juvenile Court for possession of marijuana, who

1 was the judge?

2 THE WITNESS: Judge Curry, I think. That
3 was two years ago.

4 MR. BROWN: He said you couldn't drive for a
5 year, right?

6 THE WITNESS: (Witness moves head up and
7 down.)

8 MR. BROWN: What other penalty did he
9 impose?

10 THE WITNESS: A \$500 fine and 50 hours of
11 community service

12 MR. BROWN: Had you paid the \$500 fine by
13 the time of this accident in February of 1991?

14 THE WITNESS: No.

15 MR. BROWN: Had you done the 50 hours of
16 community service?

17 THE WITNESS: Yes.

18 MR. BROWN: Thank you.

19 MR. PASCO: I do have a follow-up on that.

20 CROSS EXAMINATION CONTINUED

21

22 BY MR. PASCO:

23 Q In Juvenile Court, were you found guilty or
24 was it taken under advisement? Were you actually fined?

1 A Yes, I was fined.

2 Q Were there any motions that you be treated
3 as a first offender?

4 A I don't remember. I think it was, because
5 that is not a very severe penalty.

6 Q The reason I am asking, a juvenile offender
7 charged with possession of marijuana, that is pretty severe.
8 That was the first time you had been in Court?

9 A I was inside of the school when I was
10 caught, they just brought out that new law and I was inside
11 of the school.

12 Q But your testimony, and we can check the
13 records, that you were charged with simple possession and
14 that is the first time?

15 A It may have been with intent to distribute.
16 I don't remember which one it was.

17 Q I believe I can refresh your recollection.
18 Thank you.

19

20 REDIRECT EXAMINATION

21

22 BY MR. CARSON:

23 Q Danny, Mr. Wellman indicated that your
24 testimony here is under oath and when you gave that

1 testimony it was under oath the same way and you were
2 obligated to tell the truth as you knew it, isn't that
3 right?

4 A Yes.

5 Q And at the time of this accident you
6 knew the rule from your mother-in-law and in fact, your wife
7 told you as well, that you weren't to drive the Subaru until
8 you got your license?

9 A Yes.

10 Q And at the time of the accident you didn't
11 have your license?

12 A That is right.

13 MR. CARSON: Nothing further. Danny, as
14 with your wife -- and I am not sure if you were
15 here or not -- you have the right to read your
16 deposition for accuracy and sign it or you can
17 waive that and trust the expertise of the Court
18 Reporter. That is entirely up to you.

19 THE WITNESS: I would like to have a copy
20 available to me.

21 MR. CARSON: And sign it.

22 THE WITNESS: Then if anything is wrong, I
23 will get in touch.

24 MR. WELLMAN: For the Record, how does that

1 work?

2 MR. COLLINS: Just send it to me and I will
3 see that he comes by and reads it.

4

5 FURTHER THE DEPONENT SAITH NOT.

6 (4:45 P.M.)

7

8

9

WITNESS

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C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA


CITY OF ROANOKE

I, Deborah P. West, Notary Public in and for the Commonwealth of Virginia, at Large, do hereby certify that the Deposition of DANNY T. WALTON was by me reduced to machine shorthand in the presence of the witness, afterwards transcribed under my direction by means of computer, and that to the best of my ability the foregoing is a true and correct transcript of the Deposition so given by him as aforesaid.

I further certify that this Deposition was taken at the time and place specified in the foregoing caption.

I further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand at Roanoke, Virginia, on this the 8th day of July, 1992.


DEBORAH P. WEST
Notary Public

My Commission expires July 12, 1992.

ORIGINAL

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
COUNTY OF ROANOKE

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff

-vs-

MARY ELLEN HAINES, et al

Defendants

May 29, 1992

DEPOSITION OF:

JENNIFER H. WALTON

CENTRAL VIRGINIA REPORTERS
P.O. BOX 12628
ROANOKE, VIRGINIA 24027
(703) 380-5017

PLAINTIFF'S
EXHIBIT

#4 12-2-93

ORIGINAL

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE
COUNTY OF ROANOKE

STATE FARM MUTUAL AUTOMOBILE :
INSURANCE COMPANY, :
 :
Plaintiff :
 :
-vs- :
 :
MARY ELLEN HAINES, et al :
 :
Defendants :
 :

May 29, 1992

DEPOSITION OF:

JENNIFER H. WALTON

CENTRAL VIRGINIA REPORTERS
P.O. BOX 12628
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(703) 380-5017

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BY: MICHAEL McHALE COLLINS, ESQ.

Counsel on behalf of Mary Ellen Haines

GENTRY, LOCKE, RAKES & MOORE, ESQS.
Roanoke, Virginia
BY: PAUL G. KOCKENBRINK, ESQ.

Counsel on behalf of Virginia Farm Bureau

HARMAN, CLAYTOR, CORRIGAN & WELLMAN, ESQS.
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Company

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Counsel on behalf of Allstate Insurance
Company

DABNEY L. PASCO, ESQ.
Covington, Virginia

Counsel on behalf of Lorrie Forbes

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
JENNIFER H. WALTON				
By Mr. Carson	5	--	--	--
By Mr. Wellman	--	12	--	40
By Mr. Pasco	--	27	--	--
By Mr. Klockenbrink	--	39	--	--
By Mr. Brown	--	23	--	--

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9 of Virginia, at Large, would transcribe said tape-recorded
10 deposition by means of computer-aided transcription.

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12
13
14
15
16 JENNIFER H. WALTON
17 was called as a witness, and after having first been duly
18 affirmed to tell the truth, the whole truth and nothing but
19 the truth, was examined and testified as follows:
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21
22
23
24

1 MR. COLLINS: These are the depositions of,
2 in our file case, of Haines versus State Farm. The
3 first witness has been put under oath by Peggy
4 Ingram.

5
6 DIRECT EXAMINATION

7
8 BY MR. CARSON:

9 Q Go ahead and state your name for the Record.

10 A Jennifer Haines Walton.

11 Q Jennifer, I am David Carson and I am here
12 representing State Farm Mutual Automobile Insurance
13 Company.

14 I will be asking you some questions, and
15 please let us know if you can't understand it or if you want
16 it repeated and we will repeat it for you. If you need to
17 take a break, let us know that as well.

18 Jennifer, did you give a sworn statement in
19 this case on April 11th, 1991?

20 A I don't remember the date, but I remember
21 giving one.

22 Q At that time did you testify truthfully to
23 the questions that were asked of you?

24 A Yes.

1 MR. WELLMAN: Let me state for the Record
2 that I think that statement was given prior to the
3 filing of the declaratory judgment action.

4 MR. CARSON: That is right.

5 MR. WELLMAN: And it was taken by
6 Mr. Wallace from your office, Mrs. Haines was
7 present and the Court Reporter was present

8 MR. CARSON: That is correct. And I will
9 make her prior sworn statement an exhibit to her
10 deposition
11

12 BY MR. CARSON:

13 Q The automobile that was involved in the
14 accident on February 8th of 1991, it was a 1984 Subaru?

15 A Yes.

16 Q And that Subaru was purchased in August of
17 1990; is that right?

18 A Yes.

19 Q Was it titled solely in your mother's name?

20 A I think so, because I wasn't old enough to
21 get a loan.

22 Q At the time of the accident your mother
23 lived at 2341 South Church Avenue, Covington?

24 A It is 2340, not 2341.

1 Q At that time your husband and your son lived
2 at Route 1, Box 298-A?

3 A Yes.

4 Q And you had lived there for several months?

5 A Yes.

6 Q Danny lost his license in January or
7 somewhere in January of 1990; is that right?

8 A Yes.

9 Q And he might have been able to get his
10 license back at the time of the accident in February of
11 1991?

12 A Right.

13 Q But you all hadn't gotten his license back;
14 is that right?

15 A Right.

16 Q So at the time of the accident he did not
17 have his license?

18 A Right.

19 Q At one point before the February 1991
20 accident Danny had driven the Subaru and your mother had
21 seen him; is that right?

22 A She came to where I worked and the car
23 wasn't there, so I told her that Danny had it.

24 Q Okay. And she told you at that time that

1 Danny was not to drive the car?

2 A Right.

3 Q It was your understanding that Danny was not
4 to drive the car under any circumstances until he got his
5 license back?

6 A Right.

7 Q And this is what you understood to be your
8 mother's rule?

9 A Right.

10 Q And you were never told anything different
11 about this rule by your mother?

12 A No.

13 Q And even at the time of the accident you
14 weren't under any different understanding?

15 A No.

16 Q You had never told Danny that this rule had
17 been changed because your mother had never told you that
18 this rule had changed?

19 A No.

20 Q You understood that your mom spoke to Danny
21 and told him not to drive the car until he had his license
22 back?

23 A Afterward, after they talked I think he told
24 me or my mom told me, one.

1 Q Was that the same day or the day after she
2 had spoken to you?

3 A Probably.

4 Q Danny only used the car, and we are talking
5 about the Subaru, on two occasions, once when she had come
6 in to speak to you and once at the time of the accident?

7 A Right.

8 Q Now, on the date of the accident itself, if
9 I understand correctly, and you make sure you correct me if
10 I am wrong, it was yourself and Danny and Dana Thurston and
11 Paul Thurston and you were all at Paul's house and it was
12 about 5:30?

13 A We were at my grandmother's house.

14 Q When you were all at your grandmother's
15 house, you decided to split up, with Danny and Paul taking
16 the Subaru?

17 A Right.

18 Q And you and Dana were going to go in a
19 separate vehicle?

20 A Right, because she had her car packed with
21 clothes and stuff and her car seat was in there, so Paul and
22 Danny were going to take the Subaru.

23 Q And the four of you were to meet back up at
24 the Kroger at 7:30?

1 A Right.

2 Q A couple of hours later?

3 A Right.

4 Q And you had given Danny the keys to the
5 Subaru with the understanding you all were to meet at the
6 Kroger at about 7:30?

7 A Right.

8 Q And you really only discussed with Danny or
9 had given him permission to go to the apartment to change
10 clothes and meet you back at the Kroger?

11 A Right.

12 Q But you missed each other at the Kroger
13 later?

14 A Yes.

15 Q You next saw each other, albeit in separate
16 cars, at about 10:30 that night?

17 A I don't remember the exact time, but it was
18 right before the accident.

19 Q The car that you were in with Dana, I guess,
20 following Danny and Paul and the other girls through town
21 and then ended up on the highway; is that right?

22 A Right.

23 Q And that following ended up becoming kind of
24 a chase?

1 A Right.

2 Q Once you were on the highway you pulled up
3 beside the car and your window was down and you yelled to
4 Danny to pull over?

5 A Right.

6 Q At that time he initially slowed down but
7 then sped up, passed you and ended up going about 70 miles
8 an hour?

9 A Seventy-five maybe. He was going downhill
10 about 45 or 50 and we went past him, we thought that he was
11 going to stop and then he just went past us and we followed
12 him again.

13 Q Okay. At that time preceding this accident,
14 at the time of the accident and the injury, you knew that
15 Danny didn't have your mother's permission to use the car
16 and Danny knew that?

17 A Right.

18 Q Didn't he?

19 MR. BROWN: I object to the form of the
20 question. She can't speak to what Danny didn't
21 do.

22
23 BY MR. CARSON:

24 Q You knew that Danny was breaking your

1 mother's rule about not driving until he got his license?

2 A Well, I mean at that time you don't think.
3 I never really thought about that, I just gave him the keys
4 and told him to be careful.

5 Q But you knew your mother had told you not to
6 let him drive the car until he got his license?

7 A Right.

8 Q And he didn't have his license, did he?

9 A No.

10 MR. CARSON: At this time I think that is
11 all I have.

12

13 CROSS EXAMINATION

14

15 BY MR. WELLMAN:

16 Q My name is Stanley Wellman and I represent
17 Colonial Insurance Company in its insurance coverage lawsuit
18 that we have here. I am going to start on a few things that
19 I need to talk to you about.

20 Give me some detail about why Danny lost his
21 license.

22 A When he was a juvenile he was involved in a
23 situation where he went to Court and lost his license for
24 the year and had a fine. Do you want to know why?

1 Q Yes.

2 A He had possession of marijuana.

3 Q Do you know which Juvenile Domestic Relation
4 Court he went to?

5 A No.

6 Q Did you go with him?

7 A No.

8 Q Was it here?

9 A No, I didn't.

10 Q Do you recall exactly what the sentence was;
11 in other words, did he physically have to turn his license
12 over to the DMV?

13 A They asked him for it, but Danny didn't have
14 it, he didn't know where it was at. He was told by the
15 judge that he would have to turn it over to DMV and I think
16 at that time -- well, I remember he told me he told the
17 judge he didn't know where it was at to give to him.

18 Q Do you recall when this was?

19 A I believe it was like the 30th or the 31st
20 of January.

21 Q Of 1990?

22 A 1990.

23 Q I guess then really the next year, it is my
24 understanding, that one-year-lost-license which was to

1 expire in January of '91?

2 A Right.

3 Q Did you have an understanding as to what
4 Danny would have to do to get his license back?

5 A The only thing that we knew was the
6 remainder of his fine had to be paid off with community
7 service, which we got all of that out of the way and
8 finished that.

9 Q That was done by January '91?

10 A Yes.

11 Q At the time of this accident did Daniel
12 think that he had to do anything else to get his license
13 back, do you know?

14 A He thought he had to go and reinstate it.

15 Q That is what he thought?

16 A I thought. I wasn't real sure what he had
17 to do either way.

18 Q At the time of the accident did you think
19 that Daniel was licensed?

20 A No.

21 Q It wasn't your understanding that it had
22 kicked back in somehow?

23 A No.

24 Q Was it the Alleghany Court that he went to?

1 A It was across the street.

2 Q Right here across the street?

3 A Yes.

4 Q Do you recall the year or what month the
5 vehicle was purchased, the Subaru?

6 A It was purchased in August of 1990.

7 Q Did you and your mom go shopping for cars?

8 A Yes, we went and looked around and I had a
9 thousand dollars in a certificate of deposit and we put that
10 as a down payment, which was my money, and then she got the
11 remainder of the loan which was another twenty-two hundred,
12 and we would go half and half on the payments.

13 Q The car was purchased for your use?

14 A Right.

15 Q Did she ever use it at all?

16 A I used her car and went to Roanoke once
17 because hers was a little safer than mine and she drove that
18 the week I was in Roanoke.

19 If she wanted to go to the grocery store and
20 my car was in the driveway, she would take it. It was my
21 car.

22 Q She had her own car?

23 A She had her own car.

24 Q What kind of car did she have?

1 A Honda Civic.

2 Q And where were you living at the time you
3 purchased that vehicle?

4 A I lived with my mom until October of '91.

5 Q At which time what happened?

6 A Danny and I found an apartment and I moved
7 out.

8 Q When did you marry Danny?

9 A January of '91.

10 Q Who paid for the gas on the vehicle?

11 A I did.

12 Q And the maintenance?

13 A I did.

14 Q Tell me where you and Danny were living.

15 A It was in Mount Pleasant, Route 1, Box
16 298-A. It was just a little garage apartment behind a
17 lady's house.

18 Q Were you living there at the time of the
19 accident?

20 A Yes, sir.

21 Q Now, you mentioned the situation where your
22 mother came to your workplace, is that McDonald's?

23 A Yes.

24 Q And she noticed the car wasn't there and

1 found out what the deal was and she found out that Danny had
2 been using it and she got upset?

3 A Right.

4 Q When was that?

5 A Maybe November, I guess. It was about
6 November, it was around the end of 1990.

7 Q It is my understanding that you had left
8 your mother's home at the time of that incident?

9 A I wasn't living with her, I was living in an
10 apartment.

11 Q From that point backwards to when the car
12 was purchased, had your mother at any point restricted your
13 use to that vehicle in any way?

14 A Just when I lived with her she said, "If you
15 go to Roanoke or if you go out to Covington, let me know
16 where you are at."

17 And after we moved out if I had a doctor's
18 appointment in Roanoke I didn't have to call her and tell
19 her where I was going.

20 When I lived with her, it wasn't that much
21 of a restriction on the car, it was more of a restriction on
22 me, you know, wanting to know where I was.

23 Q Was it your understanding, then, that
24 whatever restrictions may have been placed on you and the

1 car at that time, those were then waived in essence when you
2 moved out?

3 A Yes.

4 Q So until that November when your mom
5 confronted you about Danny using the car, there were no
6 additional restrictions placed on the use of the car?

7 A No.

8 Q She never mentioned Danny using the vehicle
9 before that, had she?

10 A No.

11 Q Did your mother ever discuss with you the
12 reasons she didn't want Danny driving that car?

13 A Because he didn't have a license and her
14 insurance would probably not cover him.

15 Q Was the understanding that until Danny got
16 his license, if Danny was to be insured for the use of that
17 vehicle he could use it?

18 A Yes.

19 Q Did your mother ever say that to you?

20 A Just that when he got his license --
21 eventually we would have to come off of my mom's insurance
22 and then when he got his license we could insure ourselves,
23 and whether or not we would turn the title over into my
24 name, that would be, you know, my car.

1 Q Who paid the premium for the insurance?

2 A It was in her name, but I paid her monthly
3 whatever my price of it was.

4 Q Your mom wrote a check to State Farm and you
5 wrote a check to your mom?

6 A Check or cash or however I had the money.

7 Q Were you with your mother when she got
8 insurance on that vehicle, the Subaru?

9 A I can't remember. I don't think so.

10 Q Do you recall filling out any kind of
11 application for State Farm?

12 A I don't think so. I think she just added me
13 on.

14 Q To her existing policy?

15 A Right.

16 Q The only payments then that were paid on
17 that your mother was making of any kind on that vehicle were
18 every other month or what?

19 A Once a month. Oh, on the loan, she paid
20 half of that, half each month. I paid half and she paid
21 half and hers totaled out to be maybe \$200, but I total put
22 in like \$1,200.

23 Q At the point that you and Danny moved to
24 your apartment, did Danny have access to any other vehicle?

1 A No.

2 Q Did he go to school or did he work?

3 A He worked.

4 Q Where did he work?

5 A The Comfort Center Restaurant.

6 Q How far is that from where you lived?

7 A From where we were living it was about 15
8 minutes or more.

9 Q How did he get to and from work?

10 A I took him.

11 Q What were you doing at the time?

12 A I worked at McDonald's until probably the
13 end of November, early December maybe, and then I stopped
14 working since I was pregnant.

15 And I went on and after I had the baby I
16 didn't start working until after the accident. I was just
17 taking him to and from work.

18 Q Was there ever a time that he drove the
19 vehicle to and from work?

20 A He drove it from work one time while I was
21 working at McDonald's.

22 Q That was when your mother caught you?

23 A Right.

24 Q That is the only time he ever drove it, to

1 your knowledge, before the accident?

2 A Yeah.

3 Q Did he ever catch a ride with a friend?

4 A Yeah, sometimes a friend of his or his boss
5 or somebody would take him.

6 Q Back in this time frame of October of '90
7 through February of '91, tell me again who most of his
8 friends were.

9 A William Bowling, he lived in Eagle Rock. He
10 would come in a couple of nights a week and hang around at
11 our apartment and watch TV.

12 Q Do you know his phone number or have an
13 address on him?

14 A 703-884-2314, I think is his phone number.

15 Q Were you close friends?

16 A After we got married all of our close
17 friends just kind of left. They didn't care to hang around
18 with somebody married with children, we didn't do the same
19 things they did. But other than that, no.

20 Q Did you have any friends in the apartment
21 complex?

22 A It wasn't a complex, it was just a garage
23 apartment.

24 Q Any neighbors that you would come out with

1 and socialize?

2 A No.

3 Q Do you know any of Dan's co-workers at the
4 time?

5 A His boss was Kevin Cook and he worked with
6 Jay Potter, but he has moved out of town now.

7 Q Do you know where that is?

8 A I have no idea.

9 Q What is the name of that workplace?

10 A Comfort Center Restaurant.

11 Q Where is that?

12 A Mallow Road in Covington.

13 Q Anybody else you can think of?

14 A That he worked with, A.R. Francis, Wayne
15 Walton, which was his brother, he worked with him at the
16 time of the accident.

17 Q Do you know where Wayne works now?

18 A He doesn't work, he just lives with his mom.

19 Q Do you know his phone number?

20 A 962-0988.

21 Q Do you have any phone numbers of any of his
22 friends?

23 A No.

24 Q Do you have any close friends or people that

1 you socialized with at the time?

2 A Not at the time.

3 Q How about Karen Vance or Lorrie Forbes?

4 A Well, Karen Vance was Danny's ex-girlfriend
5 and we had previously had problems between the two of us.

6 Lorrie Forbes, she was kind of somebody
7 everybody knew as a trouble maker, anybody that I knew knew
8 her as a trouble maker.

9 They were friends of Danny's cousins,
10 Stephanie Graham, who initially got them into the car, from
11 what I understand.

12 Q Is it possible that, I need to ask you this,
13 that Danny could have had access to your car without you
14 knowing it? Was the vehicle gone at any special time in
15 respect to the time he wasn't in?

16 A No.

17 MR. CARSON: Object to the form of that
18 question.

19 MR. WELLMAN: That is all I have.

20
21 CROSS EXAMINATION CONTINUED

22
23 BY MR. BROWN:

24 Q My name is Dan Brown and I am from Roanoke

1 and I am going to ask you a couple of questions. I think
2 you already gave it, but what was the date your child was
3 born?

4 A January 10th of '91.

5 Q Prior to the time your child was born, you
6 hadn't worked since the end of November or the first of
7 December, 1990, and after the child was born did you stay
8 home with the child every day or was there anybody helping
9 you with the child?

10 A Until the accident I was at home. Danny was
11 there during the day and he worked at night and other than
12 that it was just the three of us.

13 Q Was he working at night?

14 A Like six in the evenings to about two in the
15 morning and I would go out and pick him up from work.

16 Q How did he get there?

17 A I would take him.

18 Q So you would take the baby and him and drop
19 him off at work and go back at 2:00 in the morning with the
20 baby?

21 A A lot of times I would go to my mom's house
22 until two in the morning, leave Matthew at my mom's house
23 and pick Danny up and then go back and pick Matthew up and
24 go back home.

1 It saves that way on gas mileage. And plus,
2 I don't know if you know anything about after you have a
3 baby, but you get kind of depressed, and I had somebody
4 there with me. So I stayed in town until Danny got off
5 work.

6 Q You had somebody with you, living at home
7 with you?

8 A No, it was just me and Danny and the baby at
9 the apartment, but I would go and stay at my mom's house
10 while he worked until he got off.

11 Q I thought you said you had somebody staying
12 with you, though.

13 A No.

14 Q Up to the time of the accident, and the
15 accident date is February 4?

16 A 8th.

17 Q Did you ever leave the baby with anybody to
18 look after him?

19 A I am sure I did. My mom would watch him if
20 Danny and I wanted to go out.

21 Q Anybody else?

22 A Danny's mom.

23 Q Did Danny ever drive the child over to his
24 mom's house?

1 A Not that I know of.

2 Q If I understood what you said earlier, and
3 correct me, your mother first spoke to you about Danny not
4 driving the car and she had seen him drive it one day when
5 she came to see you --

6 A She didn't see him driving it. She came
7 down to where I worked and asked where the car was, and I
8 told her that he had it.

9 Q Okay. That discussion with your mother was
10 in about October of 1990, your best estimate?

11 A October or November. She would probably
12 know better. October or November.

13 Q Up to that time you had not had any
14 discussions about Danny driving the car?

15 A Not really. I knew that he should have a
16 license.

17 Q But he hadn't driven it at that time, you
18 say?

19 A No.

20 Q Because he didn't have a license?

21 A Right.

22 Q And your mother explained to you that she
23 didn't want him driving it because Danny was not licensed?

24 A Right.

1 Q And what was said about the insurance?

2 A She just said that she thought that maybe
3 her insurance probably wouldn't cover it and cover him if
4 anything happened.

5 MR. BROWN: Those are all of the questions
6 I have.

7

8 CROSS EXAMINATION CONTINUED

9

10 BY MR. PASCO:

11 Q For the Record, I am Dabney Pasco and let
12 the Record show that Danny Walton and Mary Ellen Haines have
13 just arrived, all three of them are present.

14 Jennifer, I don't want to repeat too much of
15 this, but tell me what your understanding was about the loss
16 of license of Danny Walton.

17 And I understand from your answers to the
18 questions of Mr. Carson, that in January of 1990 the judge
19 has told him that he was going to suspend his license, the
20 J&D judge?

21 A Right.

22 Q His license was never turned in?

23 A Right.

24 Q Do you know whether he drove during that

1 period of the year regularly or do you know?

2 A Not that I know of. We were seeing each
3 other at the time.

4 Q And so some time in January of 1991 the
5 suspension was up and he had his license?

6 A Right.

7 Q And to your knowledge he never turned in his
8 operator's license?

9 A Right. He couldn't find it to turn it in at
10 the time.

11 Q Do you know if he ever showed his license
12 during that year period to a policeman that stopped him for
13 any identification or anything?

14 A No. He went down and got an ID, but he
15 didn't have a license.

16 Q But you are saying to your knowledge you
17 don't know of him using that license for that year, whether
18 for driving or showing to a policeman for identification?

19 A Right.

20 Q When did you all start seeing each other,
21 approximately what date?

22 A October of '89.

23 Q If you don't know, say you don't.

24 A It was around October of '89.

1 Q And then you had been seeing each other
2 regularly up until the time you got married?

3 A Yes.

4 Q When did you all move in together?

5 A October of '90.

6 Q So October of 1990 is when you all moved
7 into this apartment in Mount Pleasant?

8 A Right.

9 Q And this car was purchased in --

10 A August of '90.

11 Q All right. Did you ever talk to your mother
12 about the status of Danny Walton's license with her?

13 A What do you mean?

14 Q How did she know that he had one, didn't
15 have one, it was suspended?

16 A I told her. She was concerned about what
17 happened when he went to Court when he was a juvenile and I
18 told her what happened.

19 Q That he lost his license in January of '90?

20 A Yes, that he had a fine.

21 Q I guess you lived with your mother up until
22 October of 1990?

23 A Yes.

24 Q Then from October of 1990 you lived with

1 Danny Walton?

2 A Yes.

3 Q How often on a weekly basis did you see your
4 mother from October of '90 to the time of the accident,
5 February of '91, did you see each other every day?

6 A Yes, basically.

7 Q So your mother was very familiar with your
8 work habits and what you were doing?

9 A Yes.

10 Q And she knew that you and Danny and the
11 child were living together?

12 A Right.

13 Q And that you as a couple, you and Danny, had
14 one car to use?

15 A Right.

16 Q And you worked at McDonald's I guess here in
17 Covington up until you say some time in December?

18 A November or early December.

19 Q And then from then on you were either at
20 your mother's house, slept at your mother's house or at the
21 Mount Pleasant apartment?

22 A I wouldn't spend the whole night at my
23 mother's house, just until Danny got off work.

24 Q You say Danny was working at the Comfort

1 Inn, and when did he start?

2 A October of '90, at the same time I moved
3 into the apartment.

4 Q Was he working at the time of the accident?

5 A Yes, and he is still working there.

6 Q So some time after you moved in together at
7 Mount Pleasant, your mother came to McDonald's and asked
8 where the car was?

9 A Right.

10 Q And you said Danny had it?

11 A Right.

12
13 (The tape recording device ended and there
14 was a temporary lapse in recording the
15 testimony.)
16

17 BY MR. PASCO:

18 Q The question I was asking you, your
19 testimony is all through November, December, January and up
20 to February the 8th of '91 you had contact with your mother
21 every day and your mother knew what you and Danny were doing
22 and where the baby was, she had no knowledge that Danny was
23 driving that car periodically?

24 A He had driven it just that one time in

1 November and February.

2 Q He never drove it during these other periods
3 of time. You were listing who he worked with and was close
4 friends with, was there somebody named Martin, Martin Boyd?

5 A Martin, Mike Martin. He was my brother's
6 best friend.

7 Q What is your relationship with Mike Martin?

8 A We just know each other.

9 Q If he said that he saw Danny driving that
10 car on a fairly regular basis during that period of time,
11 are you testifying that he is just mistaken?

12 A Danny didn't drive the car on a regular
13 basis, he drove it twice.

14 Q Where was the car when you were at work?

15 A Usually parked at McDonald's.

16 Q Usually. If it wasn't parked there, where
17 was it?

18 A That one time with Danny, that was all.
19 Paul came and got it one time and him and Danny went to a
20 football game.

21 Q And who drove it then?

22 A Paul.

23 Q Did Paul tell you that or --

24 A Paul came and got the keys and they went to

1 a football game.

2 Q During a four-month period of time when it
3 was fairly inconvenient for Mr. Walton not to drive, he
4 didn't drive. But all of a sudden on February 8th you said,
5 "Here are the keys, be careful."

6 Can you explain why on that one occasion you
7 just decided?

8 A Well, Dana had decided she -- we pulled up
9 and Dana said, she said, "The two of us will go, I am going
10 to take my car because I have the clothes in my car since I
11 am washing clothes, I have Amanda's car seat in my car."
12 And I said -- well, I gave Danny the keys.

13 Q You knew at that point that his license
14 suspension was up?

15 A I knew that he could get his license back.
16 I knew he didn't have a license, though.

17 Q Was it your understanding that he had his
18 license withheld by the Court from January of '90 to January
19 of '91?

20 A Right.

21 Q This is in February?

22 A Right. I knew that we hadn't got his
23 license back at that time.

24 Q So what was the reason for all of a sudden

1 in not driving for all of these many months you say, "Here
2 are the keys, be careful"?

3 A Because Dana said she wanted to take her
4 car.

5 Q It was convenient?

6 A It was convenient at the time.

7 Q And you say on no other occasions when it
8 was convenient that he take that car and drive?

9 A Not that I know of.

10 Q Never went to pick the child up after the
11 child was born using the car?

12 A Pick him up from where?

13 Q Either at your mother's house or his
14 mother's house?

15 A No.

16 Q What babysitter other than Mrs. Walton and
17 your mother did you all use to babysit?

18 A Nobody until recently.

19 Q Up until the time of the accident nobody
20 else?

21 A No.

22 Q What were your working hours, was it
23 daylight?

24 A Usually.

1 Q And at 6:00 p.m. when Danny went to work, he
2 didn't take the car and leave you and the baby at home and
3 come back at 2:00, you would take him to work every day and
4 then pretty much stay with your mother at night?

5 A Either that or we came back up to my
6 apartment.

7 Q As opposed to letting you stay at home and
8 letting him take the car?

9 A I didn't want to be left up in Mount
10 Pleasant without a car.

11 Q Did you and your mother ever discuss after
12 November of '90 Danny driving the car?

13 A Not after that one time she said not to let
14 him drive it.

15 Q And there was no other discussion between
16 you and your mother?

17 A Not that I can recall.

18 Q And you say that the car basically was paid
19 for, a down payment by you, you and your mother split the
20 monthly payments and it was purchased for your use, under
21 your control, she didn't tell you where you could drive it,
22 what to do with it, how to keep it clean or anything like
23 that?

24 A She said to try to keep in a half a tank of

1 gas.

2 Q She didn't exercise any control over it?

3 A No.

4 Q You are saying after you moved out in
5 October of '91, the restrictions on how you could use it
6 pretty much vanished when you were on your own?

7 A Yes.

8 Q So your testimony is you really had no
9 restrictions on your car after you moved out in '91?

10 A I guess, except for not letting Danny drive
11 it.

12 Q And she told you that in November of '90?

13 A Right.

14 Q And only on that one occasion?

15 A Right.

16 Q I don't want to keep asking you the same
17 questions, but your sworn testimony is that you don't
18 remember Danny Walton driving that car from November of '90
19 up to this accident, the date of this accident, or you just
20 don't know that he drove it?

21 A I don't remember him driving it.

22 Q You don't remember him driving it?

23 A No.

24 Q So if you are confronted with two or three

1 different other occasions that other people saw him driving,
2 that might refresh your recollection and you say, oh, yeah,
3 I forgot?

4 A I don't know. That I can remember or know
5 of that he only drove the car one time, he came down and got
6 it from where I worked so he could get home and then when
7 the accident happened.

8 Q He never took the car to Roanoke or took the
9 car out with friends, never took the baby to the doctor?

10 A No. I did that. Usually he was with me or
11 at work.

12 Q Your testimony is you don't have any
13 recollection of him using that car?

14 A No.

15 Q When were you first approached about the
16 issue of whether or not he had permission to use the car,
17 who first approached you?

18 A What do you mean?

19 Q I have been asking you and all of these
20 other gentlemen have been asking you a lot of questions
21 about when Danny drove your car and whether you knew he was
22 driving, and when was the first time somebody came to you
23 and started asking you questions about that, did Danny have
24 his license and did he have authority to drive the car?

1 A I guess after the accident happened. Is
2 that what you mean?

3 Q Who was that?

4 A I don't know.

5 Q Do you know it was Mr. Wallace; was he the
6 first one that approached you?

7 A When we gave the depositions, I guess.

8 Q Who was present when you gave those
9 depositions, do you know?

10 A My mom and then Danny and other than that,
11 some lawyers. Other than that, I don't know. I don't know
12 names.

13 Q Where were those depositions given?

14 A It was in a building kind of like where the
15 old Sidney's is at.

16 Q You started living with Danny in October of
17 '90 and you all got married what date in January?

18 A January 7th.

19 Q Did you consider that your car?

20 A Yes

21 MR. PASCO: That is all I have.

22

23

24

1 CROSS EXAMINATION CONTINUED

2

3 BY MR. KLOCKENBRINK:

4 Q My name is Paul Klockenbrink and I represent
5 Virginia Farm Bureau, one of the insurance carriers involved
6 in the lawsuit.

7 How many sets of keys did you have to the
8 car?

9 A Two, I believe.

10 Q Did Danny have one of those sets?

11 A No.

12 Q On the night that you let him drive the car
13 on the day of the accident, I guess, was there any reason
14 you didn't let Paul drive the car?

15 A I didn't really think about it.

16 Q But you had felt comfortable giving
17 permission and letting other people drive the car?

18 A Yes.

19 Q Did you feel comfortable enough that it was
20 your car and that you could have given permission to somebody
21 else to drive?

22 A Yes.

23 Q Now, when your mom came to McDonald's, do
24 you know what the reason was she came to McDonald's that

1 day?

2 A She dropped by every now and then to see me
3 or get an ice cream or something.

4 Q What was the reason Danny was driving the
5 car that day?

6 A Because he didn't have a ride home and I had
7 worked an odd schedule that day.

8 Q You just gave him the keys and let him drive
9 home that day?

10 A He was going to drive to his mom's house and
11 then wait for me. I would have been off like an hour later.

12 Q Did anything happen, did he get a ticket
13 when he drove that day?

14 A Not that I know of.

15 MR. KLOCKENBRINK: I don't have any other
16 questions.

17

18 RECROSS EXAMINATION

19

20 BY MR. WELLMAN:

21 Q Mr. Pasco was asking you about why after
22 four months of Danny never using the vehicle and you felt
23 comfortable enough in handing him the keys the day of the
24 accident, did the fact that one year's suspension of his

1 license had lapsed enter your mind at all when you gave him
2 the keys that evening?

3 Did you think it was okay for him to drive
4 now because his license is no longer suspended?

5 A No.

6 Q You also spoke to Mr. Pasco about whether
7 you simply didn't recall Danny driving or he didn't drive.

8 You are not saying, are you, that the car
9 from October to February was always in your sight?

10 A Pretty much it was. When I was at work and
11 it was parked beside McDonald's, but pretty much it was
12 always within my sight.

13 Q Then it is not possible that Danny could
14 have driven the car without you knowing it?

15 A Well, if I was asleep and he snuck out and
16 did it, but ususally he was right there beside me in the
17 bed.

18 MR. BROWN: I would like to ask one
19 question, if I may.

20 Earlier in your deposition I understood you
21 to say "me and Paul's grandmother."

22 THE WITNESS: Mine and Paul's grandmother.

23 MR. BROWN: You and Paul Thurston --

24 THE WITNESS: We are step brother and

1 sister. That was his blood grandmother, but she
2 was my grandmother, too, in a step sort of way.
3

4 RECROSS EXAMINATION CONTINUED
5

6 BY MR. PASCO:

7 Q You worked at McDonald's and you worked
8 shift work. What were your shifts?

9 A Usually I would work the day shift or I
10 would work after he was working.

11 Q Tell me what the hours of those shifts were.

12 A I really don't remember, it has been a long
13 time ago.

14 Q Was it seven to three, eleven to three?

15 A It was like seven to eleven --

16 Q Seven in the morning?

17 A No, seven at night.

18 Q Seven at night to eleven to when?

19 A I worked to whenever they closed, they
20 closed at twelve.

21 Q Okay. What were the other shifts? What
22 time did you go early in the morning?

23 A If I went in on the day shift I probably
24 went around -- I don't even remember.

1 Q Eight, nine o'clock, ten o'clock?

2 A Yeah, and then I would get off maybe a few
3 hours late. I never worked more than three or four hour
4 shifts and five at the most.

5 Q Did you ever have any shifts starting in the
6 afternoon extending into the early evening?

7 A Not really.

8 Q On the occasions when you were working seven
9 p.m. or when you were working during the period of five or
10 six o'clock, how would he get to work?

11 A His mom or my mom would do it. They always
12 offered to pick him up or take him.

13 Q Are you sure during that period of time when
14 you are both working that he didn't drive himself to work
15 occasionally when it wasn't convenient for you or you were
16 working?

17 A If I was working and I had the car, I would
18 drop him off at his mom's house, she would take him to work
19 or my mom would take him to work or his brother would take
20 him to work.

21 I am very selfish, I don't like to be left
22 without a car. I do not like to be left anywhere without a
23 car for any period of time.

24 Q When you gave him the car on February the

1 8th and said, "Here are the keys, be careful," did you know
2 that he was going to be with Lorrie Forbes and Karen Vance?

3 A No.

4 Q Do you know when he had been with them
5 before that?

6 A No.

7 Q You are not aware that he had been in that
8 car before that date?

9 A No.

10 MR. PASCO: That is all I have.

11 MR. CARSON: Jennifer, the fact remains that
12 you knew that Danny didn't have his license on the
13 day of this accident?

14 THE WITNESS: Right.

15 MR. WELLMAN: You have the right to read
16 this when it is typed up and sign it or you can
17 waive that right.

18 THE WITNESS: I guess I would like to look
19 at it.

20 MR. COLLINS: I will take the responsibility
21 to notify her when it is typed and let her just
22 come by here and read it and sign it
23
24

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FURTHER THE DEPONENT SAITH NOT

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WITNESS

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C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA

CITY OF ROANOKE

I, Deborah P. West, Notary Public in and for the Commonwealth of Virginia, at Large, do hereby certify that the tape-recorded deposition of JENNIFER HAINES WALTON was by me reduced to typewriting and that to the best of my ability, the foregoing is a true and correct transcript of the Deposition so given by her as aforesaid.

I further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand at Roanoke, Virginia, on this the 7TH day of July, 1992.



DEBORAH P. West
Notary Public

My Commission expires June 12, 1992.

RECORD OF PROCEEDINGS

Case No. J-4411-01

Alleghany County

Juvenile and Domestic Relations District Court

CITY OR COUNTY

COMMONWEALTH OF VA

In re/v DANIEL TODD WALTON

1. Type of Hearing: Adjudication
2. Person(s) Present: ☒ father ☒ mother ☒ juvenile
3. Reports Received and Filed:
4. Attorney(s) of Record: G. Mooney R ☐ present ☐ not present
☐ present ☐ not present
☐ present ☐ not present
5. Plea: Not guilty
6. Findings of Court: Guilty as charged
7. Disposition: The defendant's privilege to operate a motor vehicle is suspended for 12 months. He is fined \$500.00 and ordered to perform a community service work project of 50 hours duration. Final disposition is taken under advisement for 12 months. He is ordered to surrender his operator's license by 4:00 P.M. on February 2, 1990.
- 6-8-92 No further action - placed among ended causes.

January 31, 1990
DATE:

[Signature]

313

JUL 91

DEFENDANT'S
EXHIBIT

#2



Virginia Department of Motor Vehicles
P.O. Box 27412 Richmond, Va. 23269-0001

ABSTRACT OF DRIVER HISTORY RECORD AS OF 07/15/93
LAW ENFORCEMENT

PAGE 1

TRIAL DATE 00/00/00 REQUEST RECEIVED 07/15/93 REQUESTED BY: 9000
COURT UNIT REPRESENTATIVE
2300 WEST BROAD STREET
RM 412/402
RICHMOND, VA 23220

WALTON, DANIEL TODD
1116 JACKSON STREET
COVINGTON, VA 24426
RESIDENT JURISDICTION: COVINGTON CITY

BIRTH DATE: 08/08/72 SEX: MALE
WEIGHT: 175 HEIGHT: 6 01
EYES: BLUE HAIR: BROWN

CUSTOMER NUMBER: 225-47-6418

DRIVER LICENSE STATUS: LICENSED
COMMERCIAL DRIVER STATUS: NOT LICENSED

DRIVER POINT BALANCE: 0

PRIOR ADDRESS 07/17/89 2316 GRASS ST
COVINGTON, VA 24426
RESIDENT JURISDICTION: COVINGTON

*** COMPLETED APPROVED DRIVER EDUCATION COURSE ***

CURRENT LICENSE DATE ISSUED: 04/15/93 EXPIRES: 08/31/97
LICENSE TYPE: DRIVERS LICENSE ISSUE TYPE: ORIGINAL
CLASS: NONE
ENDORSEMENTS: NONE
RESTRICTIONS: CORRECTIVE LENSES

PREVIOUS LICENSE DATE ISSUED: 07/19/89 EXPIRES: 08/31/92
LICENSE TYPE: DRIVERS LICENSE ISSUE TYPE: ORIGINAL
CLASS: NONE
ENDORSEMENTS: H HAZARDOUS MATERIALS
RESTRICTIONS: CORRECTIVE LENSES

CONVICTED ON 02/28/92 INVOLUNTARY MANSLAUGHTER
OFFENSE DATE: 02/08/91
CIRCUIT CT ALLEGHANY COUNTY
DEMERIT PTS: 0 CODE SECTION: 18.2-36
COUNSEL: INFO NOT AVAILABLE DEFENDANT: INFO NOT AVAILABLE
SUSP PERIOD: 12 MONTHS

REVOCATION EFF: 04/21/92 TERM: 02/26/93 FOR INVOLUNTARY MANSLAUGHTER
CONVICTION: 02/28/92 CIRCUIT CT ALLEGHANY COUNTY
ORDER DELIVERY DATE: ORDER MAILED/PENDING RESPONSE
SHERIFF SERVICE DATE: 05/28/92 POSTED TO DOOR
COMPLIED WITH THIS ORDER: 04/15/93

DEFENDANT'S
EXHIBIT

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#3



Virginia Department of Motor Vehicles
P.O. Box 27412 Richmond, Va. 23269-0001

PAGE 2

CUSTOMER NUMBER: 225-47-6418 NAME: WALTON, DANIEL TODD

ACCIDENT ON 02/08/91 IN ALLEGHANY COUNTY RESULTING
IN FATALITY OWNER/OPERATOR: DRIVER - NON OWNER

THIS IS TO CERTIFY, IN ACCORDANCE WITH SECTION 46.2-215 OF THE CODE OF VIRGINIA, THAT THIS MACHINE PRODUCED TRANSCRIPT, TRANSMITTED BY ELECTRONIC MEANS TO COURT UNIT REPRESENTATIVE IS AN ACCURATE DEPICTION OF THE DRIVING RECORD OF WALTON, DANIEL TODD, DL NO, 225-47-6418, AS MAINTAINED BY THE VIRGINIA DEPARTMENT OF MOTOR VEHICLES AS OF THE DATE PRINTED ABOVE.

DONALD E. WILLIAMS,
COMMISSIONER

THIS ENDS TRANSMISSION.

