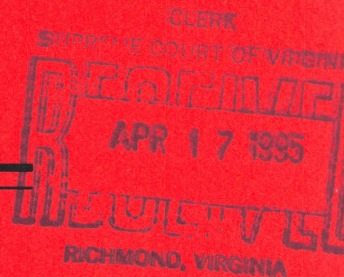


250 Va 232



IN THE
Supreme Court of Virginia

AT RICHMOND

RECORD NO. 941858

BARBARA E. COTCHAN, et al.,

Appellants,

v.

STATE FARM FIRE & CASUALTY COMPANY,

Appellee.

JOINT APPENDIX

**J. Thomas McGrath
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Counsel for Appellants

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V I R G I N I A:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

STATE FARM FIRE & CASUALTY
COMPANY,

Plaintiff,

vs.

AT LAW NO:

Serve: BARBARA E. COTCHAN
2494 Linwood Lane
Woodbridge, VA 22192

and

Serve: WESLEY S. COTCHAN
2494 Linwood Lane
Woodbridge, VA 22192

and

Serve: CHRISTOPHER J. COTCHAN
2494 Linwood Lane
Woodbridge, VA 22192

Defendants.

MOTION FOR DECLARATORY JUDGMENT

COMES NOW Plaintiff, State Farm Fire & Casualty Company, (hereinafter State Farm), pursuant to Section 8.01-184, et seq., of the Code of Virginia, 1950, as amended, and moves this Honorable Court for a Declaratory Judgment on the grounds and for the reasons hereinafter stated:

1. That at all times mentioned herein plaintiff, State Farm, was and now is an insurance company, organized and existing under the laws of the state of Illinois and authorized and licensed in this state to write and deliver liability automobile insurance.

2. State Farm issued an automobile insurance policy (Form 9946F.8 including Virginia Amendatory Endorsement 6571A.2) to the defendants, Barbara Cotchan and Wesley Cotchan, as the named insureds providing among other coverages, coverage for medical expenses as provided by Sections 38.2-2201 and 46.2-465 of the Code of Virginia and such policy was in effect on November 24, 1992 and listed as the only insured vehicle a 1987 Chevrolet Cavalier.

3. That on the 24th day of November, 1992, defendant, Christopher Cotchan, son of defendants Barbara Cotchan and Wesley Cotchan, was operating a motorcycle owned by him and insured by Progressive Insurance Company, on Occoquan Road near the intersection of G Street in Prince William County, Virginia, at approximately 6:30 p.m.

4. At that time and place aforesaid, Christopher Cotchan was involved in an accident with a vehicle owned and operated by Mohammad Younis and sustained personal injuries.

5. As a result of the aforesaid accident, the defendants have filed a claim with the plaintiff requesting medical payments coverage for payment of medical bills for treatment of personal injuries suffered by their son, Christopher Cotchan, who is a resident in their home.

6. A controversy exists between State Farm and the defendants, Wesley and Barbara Cotchan, in that State Farm has

denied medical expense coverage to Christopher Cotchan for the following reason:

1) The medical expense benefits provision of the policy issued to the defendants, Barbara Cotchan and Wesley Cotchan, specifically excludes coverage for "bodily injury sustained by the named insured or any relative while occupying any motor vehicle owned by or furnished or available for the regular use of such named insured or relative and which is not an insured motor vehicle."

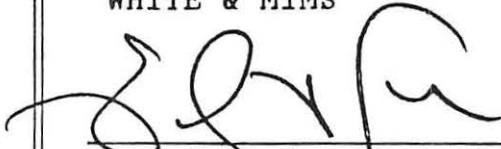
7. At the time of the accident, the defendant, Christopher Cotchan, was operating a motorcycle owned by him and insured by Progressive Insurance Company and was not an insured motor vehicle under the provisions of the policy issued by State Farm.

WHEREFORE, the above premises considered, State Farm Fire & Casualty Company, pursuant to Section 8.01-184, requests this Honorable Court to adjudicate and determine the respective rights and duties of the parties named in this action as to insurance coverage under the provisions of the enumerated insurance policy, and to declare that State Farm Fire and Casualty Company would have no obligation to honor the claim for medical payments coverage under the terms of its policy as set forth above and to declare such other relief as the Court may deem just and proper under the circumstances.

STATE FARM FIRE & CASUALTY COMPANY

BY: 
Counsel

BRAULT, PALMER, GROVE, ZIMMERMAN,
WHITE & MIMS



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Fairfax, VA 22030-1010
703/273-6400
Counsel for Plaintiff

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF PRINCE WILLIAM

Law No. LA 31102

STATE FARM FIRE & CASUALTY COMPANY,

Plaintiffs,

v.

BARBARA E. COTCHAN, et al.,

Defendants.

GROUND OF DEFENSE

The defendants, Barbara E. Cotchan, Wesley S. Cotchan and Christopher J. Cotchan, by counsel, for their Grounds of Defense, state:

1. The defendants admit the factual allegations set forth in the Motion for Declaratory Judgment.

2. The defendants assert that Christopher J. Cotchan is entitled to medical payments coverage under the policy of insurance issued by the plaintiff for medical expenses arising from the motor vehicle collision on November 24, 1992.

WHEREFORE, the defendants request that this Court declare that State Farm Fire & Casualty Company must honor the claim of Christopher J. Cotchan for medical payments coverage.

BARBARA E. COTCHAN
WESLEY S. COTCHAN
CHRISTOPHER J. COTCHAN

By  7/1/92

Counsel

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2619 W. Cary Street
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Richmond, VA 23220
(804) 355-7505

V I R G I N I A:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

STATE FARM FIRE & CASUALTY *
COMPANY, *

Plaintiff, *

vs. *

AT LAW NO: 31102

BARBARA COTCHAN, et al., *

Defendants. *

STIPULATION OF FACTS

The parties, by counsel, for the purpose of this action, stipulate as follows:

1. Defendant Christopher Cotchan sustained bodily injury as a result of a motor vehicle collision which occurred while he was operating a motorcycle on November 24, 1992. The motor vehicle collision occurred on Occoquan Road near the intersection of G Street in Prince William County, Virginia at approximately 6:30 p.m.

2. The motorcycle operated by Defendant Christopher Cotchan was owned by and registered to Christopher Cotchan. The motorcycle was insured for liability by Progressive Insurance Company. The policy of insurance issued by Progressive Insurance Company provided no medical payment or medical expense coverages pursuant to Virginia Code Section 38.2-124(B) or Virginia Code Section 38.2-2201(A).

3. That on November 20, 1992, Christopher Cotchan rejected medical payments coverage on his motorcycle under his policy with Progressive Insurance Company.

4. State Farm Insurance company issued an automobile

LAW OFFICES

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AIRFAX VIRGINIA 22030 1010

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insurance policy (Form 9946F.8 including Virginia Amendatory Endorsement 6571A.2) to the defendants, Barbara and Wesley Cotchan, as the named insureds providing among other coverages, coverage for medical expenses as provided by Sections 38.2-2201 and 46.2-465 of the Code of Virginia and such policy was in effect on November 24, 1992 and listed as their only insured vehicle a 1987 Chevrolet Cavalier.

5. The relevant language applicable to the medical payments coverage as contained on page 23 in the policy issued by State Farm Insurance Company to Barbara and Wesley Cotchan is as follows:

PART II - SECTION I: MEDICAL EXPENSE BENEFITS

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

EXCLUSIONS - This insurance does not apply:

(e) to bodily injury sustained by the named insured or any relative while occupying any motor vehicle owned by or furnished or available for the regular use of such named insured or relative and which is not an insured motor vehicle.

6. On November 24, 1992, the motorcycle operated by Christopher Cotchan was not listed on nor insured under the provisions of the policy issued to Barbara and Wesley Cotchan by State Farm Insurance Company.

7. The medical expenses incurred by Christopher Cotchan for bodily injuries sustained as a result of the motor vehicle

accident on November 24, 1992 are \$1,010.26. On January 18, 1993, Christopher Cotchan, acting through his counsel, submitted to the State Farm Insurance Company a claim for medical payment benefits in the sum of \$1,010.26.

8. State Farm Insurance Company, for purposes of this action only, does not challenge or contest the reasonableness of the medical expenses incurred by Christopher Cotchan.

9. State Farm Insurance Company has denied payment to Christopher Cotchan.

STATE FARM FIRE & CASUALTY COMPANY

BY: 

Counsel

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BARBARA COTCHAN, WESLEY COTCHAN &
CHRISTOPHER COTCHAN

BY: 

Counsel

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Richmond, Virginia 23220-0424
(804) 355-7505
Counsel for Defendants

STATE FARM FIRE AND CASUALTY COMPANY

BLOOMINGTON, ILLINOIS

A Stock Insurance Company Herein Called The Company

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

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.

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";

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

"owned automobile" means

- (a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded,
- (b) a trailer owned by the named insured,
- (c) a private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided

- (1) it replaces an owned automobile as defined in (a) above, or
 - (2) the company insures all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such automobile, or
- (d) a temporary substitute automobile;

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

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

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

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

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

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

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

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

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

Exclusions. This policy does not apply under Part I:

- (a) to any automobile while used as a public or livery conveyance, but this exclusion does not apply to the named insured with respect to bodily injury or property damage which results from the named insured's occupancy of a non-owned automobile other than as the operator thereof;
- (b) to bodily injury or property damage caused intentionally by or at the direction of the insured;
- (c) to injury, sickness, disease, death or destruction with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;
- (d) to bodily injury or property damage arising out of the operation of farm machinery;
- (e) to bodily injury to any employee of the insured arising out of and in the course of (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the insured;
- (f) to bodily injury to any fellow employee of the insured injured in the course of his employment if such injury arises out of the use of an automobile in the business of his employer, but this exclusion does not apply to the named insured with respect to injury sustained by any such fellow employee;

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

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

- (1) the automobile business of the insured or of any other person or organization,
 - (2) any other business or occupation of the insured, but this exclusion (h)(2) does not apply to a private passenger automobile operated or occupied by the named insured or by his private chauffeur or domestic servant or a trailer used therewith or with an owned automobile;
- (i) to injury to or destruction of (1) property owned or transported by the insured or (2) property rented to or in charge of the insured other than a residence or private garage;
 - (j) to the ownership, maintenance, operation, use, loading or unloading of an automobile ownership of which is acquired by the named insured during the policy period or any temporary substitute automobile therefor, if the named insured has purchased other automobile liability insurance applicable to such automobile for which a specific premium charge has been made.

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

Limits of Liability. The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury sustained by one person as the result

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

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

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

- (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

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.

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 entering into 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 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 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.

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 (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

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.

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.

The company's liability shall not exceed \$50.00 for each 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 object or with a vehicle to which it is attached or by upset of such automobile;

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

Exclusions. This policy does not apply under Part III:

- (a) to any automobile while used as a public or livery conveyance;
- (b) to loss due to war;
- (c) to loss to a non-owned automobile arising out of its use by the insured while he is employed or otherwise engaged in the automobile business;
- (d) to loss to a private passenger, farm or utility automobile or trailer owned by the named insured and not described in this policy or to any temporary

substitute automobile therefor, if the insured has other valid and collectible insurance against such loss;

- (e) to damage which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such damage results from a theft covered by this policy;
- (f) to tires, unless damaged by fire, malicious mischief or vandalism, or stolen or unless the loss be coincident with and from the same cause as other loss covered by this policy;
- (g) to loss due to radioactive contamination;
- (h) under coverage 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 to personal effects arising out of any one occurrence is \$100, and (b) for loss to any trailer not owned by the named insured is \$500.

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

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

INSURING AGREEMENTS

1. COVERAGE S

Division 1 - Death Indemnity

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

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	\$10,000
Both Hands or Both Feet or		
Sight of Both Eyes	\$5,000	\$10,000
One Hand and One Foot	5,000	10,000
Either Hand or Foot and		
Sight of One Eye	5,000	10,000
Either Hand or Foot	2,500	5,000
Sight of One Eye	1,750	3,500
Thumb and Index Finger of		
Either Hand	1,250	2,500

"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	\$10,000
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

	If applicable principal sum is	If applicable principal sum is
<u>For Complete Dislocations:</u>	<u>\$ 5.000</u>	<u>\$ 10.000</u>
Collar Bone	\$ 25.00	\$ 50.00
One or more fingers or toes	12.50	25.00
<u>For Loss by Removal:</u>		
Of one or more entire toes	\$100.00	\$ 200.00
Of one or more fingers (at least one entire phalanx)	75.00	150.00
<u>For a Hospital-confining Injury, except as an Outpatient:</u>	<u>\$ 25.00</u>	<u>\$ 50.00</u>

COVERAGE T- Total Disability - Maximum 200 Weeks. To pay weekly indemnity at the rate stated under "Amount" in the declarations for the period of continuous total disability of the insured which shall result directly and independently of all other causes from bodily injury caused by accident and sustained by the insured while in or upon or while entering into or alighting from, or through being struck by, an automobile, provided (1) such disability shall commence within twenty days after the date of the accident, and (2) any disability during the period of fifty-two weeks from its commencement shall be deemed total disability only if it shall continuously prevent the insured from performing every duty pertaining to his occupation, and (3) any disability after said fifty-two weeks shall be deemed total disability only if it shall continuously prevent the insured from engaging in any occupation or employment for wage or profit and (4) 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 each such coverage under "Persons Insured" in the declarations.
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 Expense and Income Loss Benefits)", "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 is 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 the 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 14 through 18 apply to all Parts.

Conditions 1, 2 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 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 nothing after loss to prejudice such rights.
13. **Changes.** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by an executive officer of the company.
14. **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.
15. **Cancellation.** This policy may be canceled 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 canceled 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 canceled 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 38.2-2208 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.

16. 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.

17. 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 canceled 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.

18. 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.

In Witness Whereof, the State Farm Fire and Casualty 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 appears on the declarations page.

6328U AMENDATORY ENDORSEMENT

It is agreed the following condition is added:

Participating Policy – The named insured shall be entitled to participate in a distribution of the earnings of the company as determined by its Board of Directors in accordance with the company's Articles of Incorporation, as amended.

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: The following endorsement applies 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)**

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 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 \$20,000 each accident.

Note: The following endorsement 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 any person or organization who may be legally liable therefor;
- (b) to the first two hundred dollars of the total amount of all property damage as the result of any one accident. This exclusion does not apply if the owner or operator of the uninsured motor vehicle causing the damage can be identified;
- (c) so as to inure directly or indirectly to the benefit of any insurer of property.

II. PERSONS INSURED

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

- (a) the named insured and, while residents of the same household, the spouse and relatives of either;
- (b) any other person while occupying an insured motor vehicle; and

- (c) any person, with respect to 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 Act as stated in the schedule or declarations.

- (c) If claim is made under this insurance and claim is also made against any person or organization who is an insured under the bodily injury liability or property damage liability coverage of the policy because of bodily injury or property damage sustained in an accident by a person who is an insured under this insurance, any payment made under this insurance to or for any such person shall be applied in reduction of any amount which he may be entitled to recover from any person or organization who is an insured under the bodily injury or property damage liability coverages.
- (d) Any amount payable under this insurance because of bodily injury or property damage sustained in an accident by a person who is an insured under this insurance shall be reduced by all sums paid because of such bodily injury or property damage by or on behalf of the owner or operator of an uninsured motor vehicle.
- (e) Any amount recoverable as damages because of bodily injury or property damage sustained in an accident by a person who is an insured under this insurance shall be reduced by all sums paid because of such bodily injury or property damage by or on behalf of any person or organization jointly or severally liable together with the owner or operator of an uninsured motor vehicle for such bodily injury or property damage including all sums paid under the bodily injury or property damage coverage of the policy.

IV. POLICY PERIOD: TERRITORY

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

V. DEFINITIONS

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

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

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

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

insured motor vehicle – means a motor vehicle registered in Virginia with respect to which the bodily injury and property damage liability coverage of the policy applies but shall not include a vehicle while being used without the permission of the owner;

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

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

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

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

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

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

uninsured motor vehicle – means:

- (a) a motor vehicle with respect to the ownership, maintenance or use of which there is, in at least the amounts specified in the Virginia Motor Vehicle Safety Responsibility Act, neither (i) cash or securities on file with the Virginia

Commissioner of Motor Vehicles nor (ii) a bodily injury and property damage liability bond or insurance policy, applicable at the time of the accident with respect to any person or organization legally responsible for the use of such vehicle, or with respect to which there is such a bond or insurance policy applicable at the time of the accident but the 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 in use by the company. If the earned premium thus computed exceeds the advance premium paid, the named insured shall pay the excess to the company; if less, the company shall return to the named insured the unearned portion paid by such insured.

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

The injured person shall submit to physical examinations by physicians selected by the company when and as the company may reasonably require and he, or in the event of his incapacity his legal

representative, or in the event of his death his legal representative or the person or persons entitled to sue therefor, shall upon each request from the company execute authorization to enable the company to obtain medical reports and copies of records.

The insured or other person making claim for damage to property shall file proof of loss with the company within sixty days after the occurrence of loss, unless such time is extended in writing by the company, in the form of a sworn statement setting forth the interest of the insured and of all others in the property affected, any encumbrances thereon, the actual cash value thereof at time of loss, the amount, place, time and cause of such loss, and the description and amounts of all other insurance covering such property. Upon the company's request the insured shall exhibit the damaged property to the 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	\$20,000 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.

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

6571A.2 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.
2. The definition of "owned automobile" is amended to read:
- "owned automobile" means
- (a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded,
 - (b) a trailer owned by the named insured,
 - (c) a private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided
 - (1) it replaces an owned automobile as defined in (a) above, or
 - (2) the company insures all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such automobile, or
 - (d) a temporary substitute automobile;
3. The definition of "temporary substitute automobile" is amended to read:
- "temporary substitute automobile" means any automobile or trailer, not owned by the named insured, while temporarily used with the permission of the owner as a substitute for the owned automobile or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;
4. The definition of "farm automobile" is amended to read:
- "farm automobile" means an automobile of the truck type not used for business or commercial purposes other than farming;
5. The definition of "utility automobile" is amended to read:
- "utility automobile" means an automobile, other than a farm automobile, of the pick-up body, sedan

delivery or panel truck type not used for business or commercial purposes;

6. 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.

- (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.

PART II

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

The company agrees with the named insured, subject to all the provisions of the policy except as modified herein, as follows:

Coverage Designations

C1 - Medical Expense Benefits

P3 - Income Loss Benefits

The coverage designation entered on the declarations page indicates the benefits applicable.

Section I

Medical Expense Benefits

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

Exclusions

This insurance does not apply:

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

Definitions

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

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

"injured person" means

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

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

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

"medical expense" means all reasonable and necessary expenses for medical, hospital, chiropractic, x-ray, professional nursing, dental, surgical, ambulance, prosthetic and rehabilitation services, and funeral expenses, incurred within three years after the date of the accident;

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

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

"named insured" means the individual or organization named as named insured in the declarations.

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

- (a) used as a public or livery conveyance; or

- (b) owned by or furnished or available for the regular use of either the named insured or any relative; or

- (c) a temporary substitute automobile;

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

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

Limits of Liability

Regardless of the number of:

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

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

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

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

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

However, in no event shall any injured person collect more than his actual medical expense incurred as a result of an accident from this or any other motor vehicle

insurance policy or combination of such policies providing medical expense insurance applicable to such accident.

Section II

Income Loss Benefits

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

Exclusions

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

Definitions

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

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

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

Limits of Liability

Regardless of the number of:

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

the company's liability for INCOME LOSS BENEFITS to or on behalf of any one person who sustains bodily injury in any one motor vehicle accident shall not exceed:

- (a) \$100 per week for income loss when there is only one insured motor vehicle, or
- (b) \$100 per week for income loss, multiplied by the number of insured motor vehicles up to a

maximum of 4, when the income loss incurred by the injured person exceeds the limit of liability for any one vehicle so insured.

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

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

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

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

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

CONDITIONS

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

1. Notice. In the event of an accident, the company requires that written notice containing particulars sufficient to identify the injured person and also reasonably obtainable information respecting the time, place and circumstances of the accident shall be given by or on behalf of each injured person to the company or any of its authorized agents as soon as practicable. The failure or refusal of the injured person to give such notice shall not relieve the company of its obligation to pay unless such failure or refusal prejudices the company in establishing the validity of any claim under this coverage. If any

injured person or his legal representative shall institute legal action to recover damages for bodily injury against a person or organization who is or may be liable to in tort therefor, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded as soon as practicable to the company by such injured person or his legal representative.

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

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

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

PART III

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

Coverage D(1) - Comprehensive (excluding Collision)

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

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

Definitions.

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

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

"insured" means:

- (a) with respect to an owned automobile

- (1) the named insured, and
- (2) any person or organization (other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee

for hire) maintaining, using or having custody of said automobile with the express or implied permission of the named insured and within the scope of such permission;

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

4. Exclusion (c) is amended to read:

This policy does not apply under Part III

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

- (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;

CONDITIONS

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

Premium

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

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

Assistance and Cooperation of the Insured

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

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
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 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."

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 applies when the endorsement number is shown on the declarations page.

6989AG 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 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 15., "Cancellation", is changed to read:

15. Cancellation. This policy may be canceled 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:

30
9468F

19. **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:

20. **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.

CASH
#523304
AMOUNT
\$318-8.5

16/C
75.00
VIRGINIA
MOTORCYCLE
APPLICATION
Virginia 23285-0030

Policy # 27118700
Quote # 1120JT194

Applicant's Name Christopher J. Cotchan Phone (703) 491-3032
Additional Insured (only spouse or resident relatives) N/A Relationship ---
Residence Address 2494 LINWOOD Lane Woodbridge VA 22191
POLICY PERIOD FOR 12 MONTHS BEGINNING ON 11/20/92 ☒ NO LAY-A-WAY ☐ NO SUSPENSION ☐ 3 MONTHS LAY-A-WAY ... DECEMBER 1 TO MARCH 1
APPLICANT'S Social Security # 222366828
Fill in the following for each person who will operate cycle:
APPLICANT Christopher 4/1/62 222366828 VA S 13 2
YOUNGEST OPERATOR (if same as applicant, write "SAME") --- --- --- --- --- ---
OTHER OPERATOR --- --- --- --- --- ---
OWNER'S FILING REQUIRED? ☒ YES ☐ NO CASE NO. N/A STATE: VA NAME OF PERSON (REQUIRED): Christopher Cotchan
A DRIVING RECORD SURCHARGE applies to drivers with 3 or more minor violations or 1 or more major violations/at-fault accidents.

PLEASE CHECK THE BOX BY THE DESIRED PROGRAM:

☒ ☐ ☐ ☐
RM (R) 26 HIGH PERFORMANCE MOTORCYCLE RM (P) 33 DEFERRED MOTORCYCLE RM (B) 11 ALL-TERRAIN VEHICLES HM (A) 27

VEHICLE AND RATING INFORMATION (ONLY 1 MOTORCYCLE MAY BE LISTED ON EACH POLICY. USE SEPARATE APP FOR EACH CYCLE.)

YEAR TRADE NAME MODEL TYPE SERIAL NUMBER (FRAME) C.C.'s AGE OF YOUNGEST DRIVER YERR.
11 82 Yamaha Seca 5G2102660 750 30 1

IS THIS A SPECIAL HAZARD CYCLE? ☐ YES ☐ NO Yes if: a) modified or homemade b) used for business or parades c) all Harley Davidsons except those listed in the rate guide.

LOOK FAYEE ONLY AVAILABLE IF COMPREHENSIVE AND COLLISION COVERAGES ARE PURCHASED.

NAME N/A ADDRESS N/A reviewed by SP-22

ACCESSORIES AND ADD-ON EQUIPMENT (Equipment not factory standard on basic cycle must be listed for coverage.) N/A ACTUAL CASH VALUE OF ACCESSORIES Ordered PREMIUM Ordered
TOTAL PREMIUM Ordered

ATTACHMENTS --- NAME OF OUTSIDE PREMIUM FINANCE COMPANY N/A

COMPLETE THIS BLOCK
SELECT ONE: ☐ PAID-IN-FULL 100% DOWNPAYMENT 100% ☐ CREDIT CARD PAID-IN-FULL 100% ☒ 3-PAY PLAN* 40% ☐ CREDIT CARD 3-PAY PLAN* 40%
TOTAL GROSS PREMIUM \$177
TOTAL ENCLOSED \$21
PMT --- FORC ---
CREDIT CARD NUMBER ---
PLAINTIFF'S EXHIBIT B
AGENCY BLOCK MUST BE COMPLETED IN FULL
Agency Name All Drivers, Inc.
City Stafford State VA Zip 22554
Agency Code # 5662179 Phone 703 7200100
Signature of Producing Agent [Signature]
Date 11/20/92 Time 12:15 P.M.

READ YOUR POLICY. THE POLICY OF INSURANCE FOR WHICH THIS APPLICATION IS BEING MADE, IF ISSUED, MAY BE CANCELLED WITHOUT CAUSE AT ANY TIME OF THE INSURER AT ANY TIME IN THE FIRST 60 DAYS DURING WHICH IT IS IN EFFECT, AND AT ANY TIME THEREAFTER FOR REASONS STATED IN THE POLICY.

REGULAR
MOTORCYCLESALL-TERRAIN
VEHICLESHIGH
PERFORMANCE
CYCLES

16	COVERAGE	PREMIUM
(1)	LIABILITY ONLY - Liability 25/50/25, Guest Liability 25/50	89
(2)	PACKAGE I - Includes all coverages under LIABILITY ONLY plus COMPREHENSIVE and COLLISION	
(3)	PACKAGE II - Includes all coverages under LIABILITY ONLY plus COMPREHENSIVE	
(4)	ACCESSORIES AND ADD-ON EQUIPMENT	
(5)	MEDICAL PAYMENTS - \$1000 Limit Sign rejection below if not selected. (Not available if Medical Expense Benefits are purchased)	
(6)	MEDICAL EXPENSE BENEFITS - \$2000 Limit	
(7)	INCOME LOSS BENEFITS Limit \$100 per week for 52 weeks	
(8)	INCREASED LIMITS OF LIABILITY □ 50/100/25 (4) □ 100/300/50 (6) (7)	
A	SUBTOTAL OF ABOVE COVERAGE PREMIUMS	A \$
SURCHARGES:		
DRIVING RECORD SURCHARGE		
25	0% - 0-2 pts Minor - 1 pt	
	25% - 3-4 pts Major - 3 pts	
	50% - 5-6 pts At-Fault	
	100% - 7+ pts Accident - 3 pts	
50	50% Filing Surcharge	
	50% Special Hazard Surcharge	
	8% \$100 Deductible Surcharge (1)	
	Sum of Surcharges	
30	DISCOUNTS:	
	5% Senior Citizen Safe Driver Discount	
	8% \$500 Deductible Discount (2)	
	10% Married Discount 26 & older	
	20% Married Discount 27 & younger	
	10% Transfer Discount (Copy of Declarations or Renewal Quote must be attached or discount will not apply.)	
23	Sum of Discounts	
	Net Surcharge/Discount	
B	MULTIPLY LINE A BY NET SURCHARGE/DISCOUNT	B \$
	SUBTOTAL (Add A + B)	\$156
UNINSURED MOTORISTS (MANDATORY) (Limits selected cannot exceed BI/PPD limits) \$200 UM/PPD Deductible Applies Sign rejection below if limits selected are lower than BI/PPD limits. □ 25/50/20 (3) □ 50/100/25 (4) □ 100/300/50 (6) (7)		
	(\$50 min. earned premium)	
	TOTAL PREMIUM	20 \$177

PREFERRED MOTORCYCLES



16	COVERAGE	PREMIUM
(1)	PACKAGE PROTECTION INCLUDES: BI/PPD 25/50/20 SURF-PT PROTECTION LIABILITY 25/50	
(2)	COMPREHENSIVE COLLISION	
(3)	ACCESSORIES AND ADD-ON EQUIPMENT	
(4)	MEDICAL PAYMENTS - \$1,000 Limit Sign rejection below if not selected. (Not available if Medical Expense Benefits is purchased)	
(5)	MEDICAL EXPENSE BENEFITS - \$2,000 Limit	
(6)	INCOME LOSS BENEFITS - Limit \$100 per week for 52 weeks	
(7)	INCREASED LIMITS OF LIABILITY □ 50/100/25 (4) □ 100/300/50 (6) (7)	
A	SUBTOTAL OF ABOVE COVERAGE PREMIUMS	A \$
SURCHARGES:		
30	8% \$100 Deductible Surcharge (1)	
DISCOUNTS:		
	5% Senior Citizen Safe Driver Discount	
	8% \$500 Deductible Discount (2)	
	10% Married Discount 26 & older	
	10% Transfer Discount (Copy of Declarations or Renewal Quote must be attached or discount will not apply.)	
23	Net Surcharge/Discount	
B	MULTIPLY LINE A BY NET SURCHARGE/DISCOUNT	B \$
	SUBTOTAL (Add A + B)	\$
UNINSURED MOTORISTS (MANDATORY) (Limits selected cannot exceed BI/PPD limits) \$200 UM/PPD Deductible Applies Sign rejection below if limits selected are lower than BI/PPD limits. □ 25/50/20 (3) □ 50/100/25 (4) □ 100/300/50 (6) (7)		
	(\$50 min. earned premium)	
	TOTAL PREMIUM	20 \$

APPLICANT MUST READ INITIAL AND SIGN BELOW. FAILURE TO DO SO WILL
RESULT IN CANCELLATION. INITIAL FOR PREFERRED PROGRAM ONLY.

I hereby certify that:

- I have at least 10 yrs. licensed driving experience. Initials _____
- In the past three years, I have had no more than 1 minor moving violation and no at-fault accidents (either auto or cycle). Initials _____
- No one with less than 10 years driving experience will drive my cycle. Initials _____
- My cycle is kept in a garage at my residence or I am a homeowner. Initials _____
- I have ridden motorcycles for at least two years or have had prior motorcycle insurance. Initials _____
- My motorcycle is neither chopped nor otherwise physically altered. Initials _____

CREDIT CARD

The quoted premium is based upon information I have provided to my agent. Any change in premium resulting from verification of information, or policy changes requested by me, can be charged directly to my credit card account. Any refund of premium will be credited directly to my credit card account. If a credit card transaction is denied on the downpayment, coverage will be null and void from inception. If I choose to have my downpayment and installments charged to my credit card, I authorize charges for subsequent policy periods to be charged to my credit card unless I specifically request cancellation of payment by another method.

Please check ONE box: ☐ Charge downpayment and subsequent installment payments. ☐ Charge premium in full. ☐ Charge downpayment only.

Check one: ☐ VISA ☐ MASTERCARD

Credit Card

Exp.

Date:

MO. YR.

Bank

Name:

SIGNATURE OF INSURED-APPLICANT X

Date

MEDICAL PAYMENTS REJECTION

I understand that Medical Coverages can be included in the Motorcycle Liability Insurance Policy for which I am applying, but I DO NOT WANT THIS COVERAGE. See Rate Guide for details.

SIGNATURE OF INSURED-APPLICANT X

Date

OPTIONAL UNINSURED MOTORISTS COVERAGE

I understand that the state permits me to select Uninsured Motorists Coverage at limits lower than the Bodily Injury Liability Limits afforded.

I have accepted limits for Uninsured Motorists Coverage of \$ _____

SIGNATURE OF INSURED-APPLICANT X

Date

I hereby apply to Company for a policy of insurance as set forth in this application on the basis of the statements, representations, and promises contained herein. I declare that these statements, representations, and promises are true to the best of my knowledge. I affirm that my vehicle is registered in Virginia of which I am a resident and it is garaged in Virginia for a minimum of 10 months per year. I agree that such policy shall be null and void if such information is false, or misleading, or would materially affect acceptance of the risk by Company. I agree that if I pay my initial premium by check or credit card, the coverage provided by this policy is conditional upon the check or credit card being honored by the bank when presented for payment. If the check or credit card is not honored, then Company shall be deemed not to have accepted the check or credit card, and this policy shall be void from inception. I understand a routine inquiry may be made which will provide applicable information concerning character, general reputation, personal characteristics, mode of living, and credit history. I authorize Company to obtain such reports for this policy, renewals, or any claim. Upon written request, additional information as to the nature and scope of the report, if one is made, will be provided. I have fully disclosed on this application the names of all persons (licensed or not), age 14 or over, who live in my household or who drive my vehicles. I understand Physical Damage coverage (if afforded) is based on actual cash value of the factory standard motorcycle and no coverage exists for customizing, add-on equipment, or accessories (unless factory standard) unless listed above. I understand that if my policy cancels, the minimum earned premium is \$50.

READ BEFORE SIGNING

SIGNATURE OF INSURED-APPLICANT X

Christopher J. Gtaha

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Date 11/20/92 12:00 PM

Ask your agent for your copy of the Progressive Promise.

1 V I R G I N I A

2 IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

3 - - - - - X

4 STATE FARM FIRE AND CASUALTY
5 COMPANY,

6 Plaintiff,

7 -VS-

8 BARBARA COTCHAN, et al.

9 Defendants.

10 - - - - - X

11 Circuit Courtroom 3
12 Prince William County Courthouse
13 Manassas, Virginia

14 Friday, March 25, 1994

15 The above-entitled matter came on to be heard
16 before the HONORABLE RICHARD B. POTTER, Judge, in and for
17 the Circuit Court of Prince William County, in the
18 Courthouse, 9311 Lee Avenue, Manassas, Virginia, beginning
19 at 10:25 o'clock a.m.

20 APPEARANCES:

21 On Behalf of the Plaintiff:

22 EDWARD H. GROVE, III, ESQUIRE

23 On Behalf of the Defendant:

THOMAS McGRATH, ESQUIRE

1 E X T R A C T O F P R O C E E D I N G S

2 *
3 *
4 *
5 *
6 *

7 THE COURT: All right. Well, let me tell you
8 what my decision is and I want to review my analysis as
9 best I can from the case law having reviewed the case law.

10 This case is proceeding pursuant to the motion
11 for declaratory judgment that was filed on March 8th,
12 1994. I assume we're proceeding under Section 801.184
13 seeking a declared judgment from this Court and asking
14 this Court to interpret the statute, equivocal statute in
15 the insurance policy.

16 Both the parties have moved for summary
17 judgment in this case and the Court has considered the
18 pleadings together with the legal memorandums and
19 stipulations filed by counsel in this case. And I'll
20 proceed under Rule 318. There appears to me to be no
21 material facts generally in dispute, so I think it's safe
22 for the Court to proceed in summary judgment in this
23 matter.

24 First of all, as to the finding of facts, the
25 Court accepts the stipulations filed by the parties on

1 March 17th, 1994. Secondly, as to the finding of law,
2 pass it on the validity of exclusion E contained in the
3 policy, the Court, it seems to me, pursuant to the Gandy
4 case, should really take a three step analysis.

5 The first is whether or not the exclusion or
6 exclusionary provision is clear and unambiguous as counsel
7 has argued. Here, obviously, what it excludes is the
8 uninsured motor vehicle from the statutory mandate of
9 quote "a motor vehicle". The Court finds that in its
10 terms, the exclusion is clear and unambiguous.

11 The second test is whether the exclusion
12 applies factually to this case. And the Court finds,
13 after reviewing the stipulation and argument of counsel
14 that, in fact, the answer to that question or test is also
15 in the affirmative. The motor cycle in the case would
16 clearly be an uninsured motor vehicle as defined by the
17 exclusion.

18 The third test is whether the exclusion is
19 valid. It seems to me this might be a two part test.
20 One, as counsel has argued -- and he hit one part of the
21 argument but not the other, and that is, is it reasonable,
22 and secondly, is it allowed under the statute?

23 And perhaps the biggest portion of that test,

1 it seems to me, is whether or not it is contrary to the
2 statute or to public policy as some cases have said. If
3 so, clearly, the minimum requirements required in
4 38.2-2201 must apply.

5 The test is -- what is contrary or contrasting
6 or in conflict with the statute, it seems to me, is
7 defined by the Jerrell case where the Court says if the
8 statute provisions would provide coverage, but the policy
9 provisions would not, there could be no greater conflict.

10 So, the test may well be whether or not
11 coverage is allowed or not, but as I said before, I have a
12 problem with that definition of the test because whenever
13 you have an exclusion, you're limiting the coverage.
14 Judge Johnson said in the Traveler case the test is, as
15 stated in the Saey case, is whether the exclusion lessens
16 the coverage below the minimum of the statutes.

17 If the test is of this conflict, is coverage
18 or non-coverage or lessening or non-lessening, then it
19 seems to me that Gandy would not be an appropriate
20 decision, that case would be in error. There clearly was
21 in conflict, they admitted on the one hand that a forklift
22 was a motor vehicle, but on the other hand said that well,
23 this exclusion was appropriate and reasonable in this

1 case. And the exclusion, of course, would mean no
2 coverage in that case, even given the statute.

3 I think the real reason, as counsel has
4 pointed out, as stated in that case was in a simple
5 sentence where they said, "The insurer, in writing a
6 contract, indemnify and reimburse for misfortunes of the
7 highway travelers is the basis of this statute." In that
8 case, of course, the accident involved a forklift on
9 private property.

10 Seems to me the test then is not so much
11 whether it's in conflict with the statute, but does the
12 exclusion affect the very purpose of the indemnity
13 contract or the indemnity covered by the statute.

14 The Baker case also does not pass the test
15 because in that case it was clearly in contrast, but they
16 said well, you've got workmen's comp. available and
17 therefore, you've got conditional remedies. And again, I
18 think in terms of Gandy and Baker, we have to note that
19 they're not passing directly on 38.2-201 exclusively.
20 But, still, I think to try to determine what the test is
21 makes it very difficult given these cases.

22 In the Carey case, which is noted by the
23 parties, the Court said that I interpret that the

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1 statutory language to mean a minimum coverage for those
2 risks not clearly excluded by the policy language. And
3 the test of conflict, as I've said, it seems to me is not
4 just one of coverage versus non-coverage or lessening or
5 non-lessening, but whether the exclusion is reasonable in
6 light of the public policy, if you will, or the basic
7 principle that underlines the statutory provisions.

8 In other words, will the exclusion
9 substantially affect the underlying purpose of the policy?
10 Clearly, it will not for forklifts on private properties,
11 it will not where there is other protection available,
12 especially statutory protection like workmen's comp.

13 The test then, it seems to me, is the intent
14 of the legislature in creating this statute. Where the
15 language is clear, as you know -- and the Courts have
16 repeatedly said where the language is clear, and then we
17 can look solely to the statute itself.

18 I have a great deal of problems with the
19 language in this statute. In fact, I find the language in
20 this statute is not clear.

21 The test for ambiguity, as pointed out in
22 Moore versus Gelles at 239 Va., 239, is where the language
23 is difficult to comprehend, is of doubtful import, or

1 lacks clearness and definiteness -- and I think that's the
2 best description of this clause of the statute I've ever
3 seen.

4 I think it is ambiguous. If it is ambiguous,
5 the Court then can look to extrinsic evidence of
6 legislative history. However, in this case I've had no
7 evidence offered. I cannot conclude and I cannot decide
8 why the legislature has not acted, quite frankly, since
9 Judge Johnson's case, but they have not.

10 Therefore, while the Plaintiff's assessment of
11 the intent of the statute may be correct, that is that
12 this exclusion may be reasonable, may be clear, as I say,
13 it may, in fact, be reasonable, it is clearly in conflict
14 with the purpose of the statute to limit a motor vehicle
15 to a uninsured -- or insured motor vehicle.

16 I do find it hard to believe that the
17 legislature intended that such a vehicle would be covered
18 by insurance, that such an exclusion is in conflict with
19 the statute and without any kind of reasonable or rational
20 basis based on any kind of legislative intent, I'll have
21 to assume that the legislature, especially after the
22 recent litigation, is aware of the status of this statute,
23 has taken no further action. And, in fact, any further

1 clarification of this statute, it seems to me, is going to
2 have to come from the legislature.

3 Having said all that, I think the motion for
4 summary judgment of the plaintiffs must be denied, and the
5 motion for summary judgment, it seems to me, must be
6 granted in this case.

7 I will ask you, Mr. McGrath, to prepare an
8 order reflecting the Court's decision, if you will, and
9 circulate that for endorsement.

10 MR. McGRATH: Yes, Your Honor.



V I R G I N I A

IN THE CIRCUIT COURT OF PRINCE WILLIAM

- - - - - X

STATE FARM FIRE & CASUALTY CO., :

Plaintiff, :

-VS- :

LAW NO. 31599

BARBARA E. COTCHAN, :

Defendant. :

- - - - - X

Circuit Courtroom No. 3
Prince William County
Courthouse
Manassas, Virginia

Friday, May 27, 1994

The above-entitled matter came on to be heard
before the HONORABLE RICHARD B. POTTER, Judge, in and for
the Circuit Court of Prince William County, in the
Courthouse, Manassas, Virginia, beginning at 10:30 o'clock
a.m.



THE COURT: Well, as counsel has stated, we start with the given facts that were stipulated by counsel and filed herein, I believe, dated March 17th, 1994 and it started from that position.

The issue before this Court, in this case, is whether or not Exclusion E contained in the Cotchan policy is directly contrary to the minimum requirements mandated by Section 38.2-2201 of the Code of Virginia.

This Court had reviewed, as Judge Johnson had in the Wells case previously, the law of Virginia in trying to make a determination as to what the ultimate issue or test would be in answering that issue. And the Court determined that there were, in essence, three tests,

1 somewhat related tests, but three tests.

2 The first one was whether or not the exclusion, in
3 this case Exclusion E of the policy, was clear,
4 unambiguous and reasonable. The Court found last time
5 based on the evidence I had before me, that this initial
6 test, which has three parts to it, should be answered that
7 it was, and the provision as clear, that the provision is
8 unambiguous, and that the provision is reasonable.

9 The second test was whether or not the exclusion
10 applies factually to this case, and I hear no dispute from
11 either counsel that that's the case under these
12 circumstances, if, in fact, that the exclusion applies,
13 this particular individual riding a motorcycle would not
14 be covered. It would be an exclusion that applies to this
15 individual. So I think, factually, it's applicable in
16 this case we can eliminate the second test because that
17 seems to be conceded.

18 And the third test, is whether or not the exclusion
19 is contrary to the statute. As I say these tests are
20 somewhat interrelated. It seems to me the argument can be
21 made that the reasonable tests and contrary tests are
22 clearly related.

23 The Court ruled, at that time, that having found it

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1 was clear, unambiguous and reasonable, it still was
2 contrary to the statute, and I tried to go through and
3 recite what I thought was the background for what the
4 actual test is, in terms of the contrariness.

5 I want to go through and review what my finding is
6 today because I'm going to change my position today and
7 reverse my holding from that March hearing. And I'm going
8 to do that for several reasons which I will recite to you,
9 and I'll also recite for the record so you might use it,
10 but it's important to point out that my reasoning is not
11 based solely on Judge Johnson's case.

12 While I certainly respect Judge Johnson, he's
13 clearly given it a review, he's struggling with the same
14 issues that I've got to struggle with in this process.
15 But I want to go through as best I can why I've reached
16 the change in this decision so you understand where --
17 what the basis of my decision is.

18 First of all with regards to the clearness and
19 whether or not the revision is ambiguous, I think that we
20 have to agree that the provision is not ambiguous. It
21 speaks of -- it excludes uninsured motor vehicles, and if
22 this is an uninsured motor vehicle then, as I say, this
23 policy would not cover this individual in this case. I

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1 think it's clear and unambiguous.

2 The third test of this, the third consideration of
3 this first test, is that of reasonableness and whether or
4 not this is a reasonable exclusion.

5 Now Judge Johnson struggles with reasonableness, as
6 I do. But he concludes in his case, in his second case,
7 that it is a reasonable exclusion of medical payments.
8 The Court finds, as I said earlier, that this is a clear
9 and unambiguous exclusion and it is a reasonable exclusion
10 that reasonably excludes medical payments where the
11 vehicle is not an insured motor vehicle.

12 The question, of course, is why is this particular
13 provision reasonable. We really didn't get into that in
14 great detail last time but I find four reasons for that.

15 Number one, I agree with Judge Johnson's conclusion
16 that this finding of a reasonable provision is as
17 reasonable -- I think that was his language -- is as
18 reasonable as the exclusion in the case of Baker vs. State
19 Farm which is found at 242 VA7 4, 405 SE2d 624, 1991 case.

20 The second reason I think it's reasonable is the
21 purpose of this statute. And in reviewing this, the
22 language of the statute itself, it's clear that the
23 statute begins with the following language: "Upon request

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1 of an insured, each insurer licensed in this Commonwealth
2 issuing or delivering any policy or contract of bodily
3 injury or property damage, liability insurance covering
4 liability arising from the ownership, maintenance or use
5 of any motor vehicle shall provide on payment of the
6 premium, as a minimum coverage", little i, "to persons
7 occupying the insured motor vehicle", and double i, "to
8 the named insured and while resident of the named
9 insured's household, the spouse and relatives of the named
10 insured, while in or upon, entering or alighting from, or
11 through being struck by a motor vehicle while not
12 occupying a motor vehicle, the following health care and
13 disability benefits for each accident", colon, and then it
14 lists the different benefits.

15 The purpose of the statute, it seems to me, is
16 conditioned on the request of the insured. There's no
17 doubt that under these circumstances, if the vehicle in
18 this case was covered, it was not at the request of the
19 insured. In fact, here you have a vehicle that was not,
20 clearly not covered by the insured's policy or at his
21 request.

22 What the statute says, it seems to me, is, if the
23 insured requests these things, here's the bare minimum

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1 that the insurance company may offer the insured.

2 It is also clear by the case law, and that's the
3 third reasonableness, it seems to me -- that the exclusion
4 is permitted under case law for several reasons. It's
5 permitted first of all because there's no express
6 exclusion provision or prohibition, if you will, for
7 exclusion in this particular statute and it's also then
8 recognized by case law, both in the case of State Farm
9 Mutual Auto Insurance Company versus Gandy at 238 VA 257,
10 383 SE 717, a 1989 case, and in the case of Baker, which
11 I've just cited, and which Judge Johnson took into
12 consideration in his last opinion.

13 There's no doubt that an exclusion is allowed. The
14 exclusion must meet the three tests of being clear,
15 unambiguous, and reasonable. And the final test that it
16 must not be contrary to the statute. So I think, given
17 the purpose of this statute, I think it makes this
18 particular exclusion reasonable.

19 As I said the third reason is, I think the exclusion
20 is easily identifiable. It's clear to everyone that
21 what's excluded here is the nature of the motor vehicle.
22 That is, that it must be an insured motor vehicle,
23 otherwise it's not going to be covered. Exclusion applies

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to it.

1 The fourth reason, I think, is the practical effect
2 of the exclusion which, I believe, Counsel argued last
3 time. and which is the simple and practical argument that
4 if an insured owns five -- well, let me put it another
5 way.

6 If a person owns five automobiles, why should he
7 provide this coverage on all five automobiles, if he's
8 going to be covered by this provision. Why not provide
9 the insurance and elect it only on one automobile, and
10 then argue that the other four automobiles are covered by
11 this particular provision.

12 But what that does is deprive the insurance company
13 of its ability to negotiate this policy provision, and
14 clearly is contrary to the purpose of this statute which
15 turns upon the request of an insured.

16 Because in that situation, you have no requests to
17 cover the additional four vehicles and yet the net and
18 practical effect is, according to the person and according
19 to the defendant in this case, is there coverage? And so,
20 I think for that reason, this is a reasonable exclusion of
21 the type of vehicle and therefore is a reasonable
22 provision in the policy. That was my reasoning before and
23

1 it continues to be my reasoning today for finding that
2 it's a reasonable exclusion.

3 In terms of the Court's decisions on exclusions,
4 I've already referred to the Gandy case in 1989. Clearly,
5 that's one of the first cases which allowed the insured to
6 exclude, in that case, a forklift, as part of the
7 definition of, quote, "a motor vehicle," closed quote, and
8 the Court said the basis of the exclusion was clear and
9 unambiguous and it was reasonable in view of the purpose
10 of the statute which it found to be -- to afford both
11 indemnity and reimbursement for misfortunes on the
12 highways, closed quote. Unlike the use of a forklift the
13 type of vehicle involved in that case, which is primarily
14 used on private property. After all, we don't see a lot
15 of forklifts driving down the road.

16 And I think the Court reasoned that that's a
17 reasonable exclusion. It's a type of vehicle that may be
18 excluded.

19 So the Court has already dealt with whether or not
20 the insurance company can limit the definition of a motor
21 vehicle.

22 The second exclusion came in the Baker case and was
23 really an expansion of this exclusion determination,

1 because it included cases in which workmen's compensation
2 was available for reimbursement.

3 This is the third case, it seems to me, this in
4 Judge Johnson's case, which addresses the expansion of the
5 exclusionary law and whether or not the Court should
6 accrue a limitation on the definition of a motor vehicle
7 under Section 2201. That was 38.2-2201.

8 Now, having addressed that, you get to the final
9 test which is that of whether or not it is contrary to the
10 law. And, as I said before, in trying to define what that
11 test is, I think the case law indicates that that test is
12 in at least three parts.

13 The first part is defined in the case of Virginia
14 Farm Bureau versus Jerrell at 236 VA 261, 373 SE2d 913, a
15 1988 case, where the Court concluded and found a conflict,
16 quote, "if the statutory provision would provide coverage
17 but the policy provision would not, there can be no
18 greater conflict," closed quote.

19 So the test as far as that case was concerned was
20 whether or not it could provide coverage.

21 At the same time, as pointed out in the Wells versus
22 Traveler's Insurance case at 26 Virginia Circuit 296 1992,
23 which was Judge Johnson's first consideration of this

1 matter, the test presented in the case of State Farm
2 versus Seay, S-E-A-Y, at 236 VA 275, 373 SE2d 910, a 1988
3 case, is whether the exclusionary provision of the policy,
4 quote "lessened the coverage", close quote, below the
5 minimum established by the statutes.

6 As I've said before, if these two tests were the
7 sole tests for whether or not it would be contrary, then
8 neither the Gandy case nor the Baker case would apply.
9 Because, clearly, both Gandy and Baker would deny coverage
10 where the statutes might provide coverage. At the same
11 time, they would lessen the coverage below the minimum
12 established by the statute in effect.

13 So, I think the third test and the ultimate test is
14 the test of whether or not the provision is contrary to
15 the overall purpose of this statute. And that turns on
16 the issue of whether or not it's an ambiguous statute.

17 I ruled last time that I felt it was ambiguous. The
18 sole finding I'm going to change this time is on that
19 ruling.

20 The final test of whether or not it conflicts with
21 the statute then is really the intent of the statute
22 itself when compared to the provision, that is, the
23 exclusion, in this case, Exclusion E. Where the intent is

1 clear in the statute and unambiguous we may look to the
2 letter of the statute.

3 What is clear in this statute, as the Court has
4 pointed out, both in Gandy and Baker, is that there is no
5 prohibition to exclusion in this particular statute. And
6 it's compared this statute with other statutes in the
7 insurance provisions of the state code.

8 And as I say, the second test, it seems to me, is
9 the Court's interpretations of this statute in the past in
10 both Gandy and Baker.

11 If you find this statute to be clear, then such an
12 exclusion as this one, that is, according to the finding
13 of this Court, clear, unambiguous, and reasonable would be
14 a valid exclusion.

15 If you find the language of 38.2-2201 to be
16 ambiguous as I did initially, as defined in the case of
17 Moore versus Gillis at 239 VA 239, that indicates that
18 it's ambiguous by definition or it's difficult to
19 comprehend, and is of doubtful import or lacks a clearness
20 and definiteness, then you may look to the legislative
21 history and the legislature intent on the creation of this
22 statute.

23 Well, this Court finds that with regard to this

1 particular statute, it's what I would describe as a
2 grammatical disaster. But that doesn't mean it's
3 ambiguous.

4 It's very difficult, quite frankly to understand, if
5 you reawho'as trying to interpret this statute what double
6 ii means, what "a motor vehicle," which "a motor vehicle"
7 applies to the subject or rather the initial portion of
8 the phrase.

9 In any event, I don't think it's ambiguous. I think
10 the intent of this statute is clear.

11 The argument could be made, it seems to me, that if
12 we take -- and here's the argument that I'm sure can and
13 will be made. If we take little i and exclude or define a
14 motor vehicle by an insured motor vehicle, then why do we
15 need single i? Because single i provides to persons
16 occupying the insured motor vehicle.

17 Well, if a motor vehicle includes an uninsured motor
18 vehicle then you really don't need the double ii; single i
19 would cover it all. But that's not the case. There is a
20 clear distinction in the meaning and the import of the
21 single i and double i. Single i covers persons occupying
22 an insured motor vehicle. Double i, according to the
23 exclusion, would cover not only people who occupy the

1 motor vehicle but people who are in, on, entering or
2 alighting from, or being struck, by a motor vehicle.

3 The interesting thing in this case is that a motor
4 vehicle, the insurance carrier would say, seems to me,
5 doesn't have to be an insured motor vehicle that you're
6 struck by. But it then goes on to say while not occupying
7 a motor vehicle, and that particular definition of a motor
8 vehicle must be, according to this exclusion, an insured
9 motor vehicle. And that's what makes it complicated to
10 understand and complicated to interpret.

11 But I think the intent of this statute is clear, and
12 that was to afford an individual the option to select this
13 insurance and then present a minimum if the person does.
14 The Courts have allowed exclusions and allowed limitations
15 including the limitations of the definition of a motor
16 vehicle and this is just another limitation to that
17 definition of a motor vehicle.

18 I find, therefore, that it's not contrary to the
19 legislative purpose and the overall intent of this statute
20 or contrary to the statute. And that decision is
21 different from my last finding.

22 So, the net effect is, I'm going to grant the motion
23 for summary judgment that was entered in this action for

1 declaratory judgment.

2 Now, the final statement I would make is, the final
3 thing quite frankly that persuaded me, is the language
4 used by the courts in the dissent in the Baker case. And
5 I think this may have been argued to me last time. I'm
6 really not clear, I don't have that full transcript before
7 me. But I'll make reference to the dissent which took
8 issue with whether or not the availability of workmen's
9 compensation was a valid exclusion.

10 The dissent in this case said, a policy holder may
11 decline to purchase any coverage offered under 38.2-2201.
12 Nevertheless, the insurer must offer the option to buy the
13 coverage. And it's the next sentence that I think is
14 persuasive to the Court. The judge very carefully
15 selected the terminology in this sentence, I would submit
16 to you, which indicated to me that the way that she
17 interpreted this provision of the statute is that a motor
18 vehicle means an insured motor vehicle and let me point
19 out why.

20 She says, and I quote, "The coverage offered must
21 apply to the occupants of the insured motor vehicle",
22 that's single i, "as well as to the named insured and
23 members of his household when using the motor vehicle."

1 Now the motor vehicle would be the insured motor
2 vehicle which has been referred to in the first portion of
3 that sentence. "Or if struck by a motor vehicle while not
4 in a motor vehicle." That's the dissents own inter-
5 pretation of that portion of the section, and I would
6 argue to you that is clear indication to me, that at least
7 for that case, by that interpretation, they felt that the
8 second instance in which the named insured members of the
9 household were using an automobile referred to an insured
10 motor vehicle. I think that's interesting because that's
11 the exact issue I had before me today and that was her
12 conclusion. At least, that's my inference from the way
13 she's framed that statement.

14 Now that's not automatically persuasive, obviously.
15 My decision is based on the totality of all these
16 arguments and all the evidence I had before me. But it's
17 a good indication it seems to me that they should not be
18 shocked. Even the dissenting justices should not be
19 shocked by interpretation of a motor vehicle in this
20 situation as an insured motor vehicle. That's
21 additionally persuasive to me.

22 I think that covers all the rulings I wanted to make
23 at this time.

1 The only thing I would say to you is obviously my
2 factual findings do not have to be placed in the order but
3 if you're going to make reference in these orders to a
4 transcript, I think it should be a complete transcript.
5 The transcript copies that were supplied to me as part of
6 these arguments were only partial transcripts. And my
7 argument is disjointed enough. When you leave out pages,
8 it makes it even more difficult for me to understand.

9 So I'd appreciate it, if you're going to attach a
10 transcript to this order, to attach the full transcript.

11 MR. GROVE: We certainly will. The reference in the
12 order to the transcript was for the purposes of a
13 potential appeal, Your Honor.

14 THE COURT: Right.



VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

STATE FARM FIRE & CASUALTY
COMPANY,

Plaintiff,

vs.

BARBARA COTCHAN, et al.,

Defendants.

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AT LAW NO: 31102

JUDGMENT ORDER

Came the parties, by counsel, upon the Motion for Declaratory Relief filed pursuant to Va. Code Section 8101-184 (Repl. Vol. 1992), upon Grounds of Defense filed herein by the defendants, upon Stipulation of Facts agreed upon by the parties, upon cross motions for summary judgment filed by the plaintiff and by the defendants pursuant to Rule 3:18, and upon the argument of counsel presented at the hearing before the Court on March 25, 1994.

NAME FINDINGS AS
Upon consideration thereof, the Court ~~finds as follows:~~
STATED IN OPEN COURT.
RBP
(1) ~~There are no material facts in dispute and,~~
~~therefore, summary judgment is appropriate.~~
(2) ~~The facts set forth in the Stipulation of Facts~~
~~agreed upon by the parties are adopted by the~~
~~Court.~~
(3) ~~The exclusion relied upon by the plaintiff as set~~
~~forth in paragraph 5 of the Stipulation of Facts~~
~~applies to the facts of the motor vehicle~~
~~collision which occurred on November 24, 1992.~~

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~~(4) The exclusion relied upon by the plaintiff is clear and unambiguous..~~

~~(5) The exclusion relied upon by the plaintiff conflicts with the statutory provision of Va. Code Section 38.2-2201 (Cumm. Supp. 1993).~~

~~(6) The plaintiff is not entitled to summary judgment..~~

~~(7) The defendants are entitled to summary judgment.~~

Rbf
Accordingly, it ^{WAS ON MARCH 25, 1994} ~~is~~ ORDERED that:

(a) the plaintiff's motion for summary judgment is hereby DENIED; (b) the defendants motion for summary judgment is hereby GRANTED; and (c) the plaintiff, State Farm Fire & Casualty Company, must provide medical payments coverage to the defendant, Christopher J. Cotchan, for all reasonable and necessary medical expenses arising from the motor vehicle collision which occurred on November 24, 1992.

THEREAFTER this cause came to be heard upon the 27th day of May, 1994 on Plaintiff State Farm Fire & Casualty Company's Motion to Reconsider the above ruling granting Defendant's Motion for Summary Judgment; and

After reviewing the Memorandum filed herein and hearing oral argument of counsel, it was the Court's Opinion that this Motion should be granted; it is hereby

ORDERED AND ADJUDGED that this Court's previous ruling

OF MARCH 25, 1994

granting Defendant's Motion for Summary Judgment is reversed and Plaintiff State Farm Fire & Casualty Company's Motion for Summary Judgment is hereby granted.

The transcript of the two proceedings set forth above are made a part of the record for any appeal and no appeal bond is required; and

It is further ORDERED that upon payment of the appropriate fee a certified copy of this Order shall be sent to all counsel of record.

ENTERED this 1ST day of August, 1994



JUDGE RICHARD B. POTTER


A COPY-TESTE:

DAVID C. MARIE, CLERK

BY: 
Deputy Clerk

I ASK FOR THIS AS TO THE RULING ON MAY 27, 1994 GRANTING PLAINTIFF STATE FARM FIRE & CASUALTY COMPANY'S MOTION FOR SUMMARY JUDGMENT:

BRAULT, PALMER, GROVE, ZIMMERMAN,
WHITE & MIMS


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703/273-6400
Counsel for Plaintiff

THE FOLLOWING OBJECTIONS AND EXCEPTIONS WERE PREVIOUSLY TAKEN TO THE COURT'S RULING OF MARCH 25, 1994 BY PLAINTIFF STATE FARM FIRE & CASUALTY COMPANY:

The trial Court clearly followed the rationale set forth in State Farm Mutual Automobile Insurance Co. v. Gandy, 238 Va. 257, 383 S.E.2d 717 (1989) and found that the exclusion relied upon by State Farm Mutual Automobile Insurance Company applies to the facts of the motor vehicle collision occurring on November 24, 1992 and that the exclusion relied upon by the plaintiff is clear and unambiguous and that the exclusion relied upon by the plaintiff is reasonable. The Court finds that the statute requiring medical expense coverage, Section 38.2-2201 Code of Virginia, 1950 (Cum. Supp. 1993) is ambiguous and therefore it is submitted by the plaintiff that the exclusions set forth in the policy should be allowed. The Court further seemingly gives unwarranted weight to the Circuit Court case of Wells v. Travellers, Circuit Court for the City of Richmond, Law No. LT-4086-4 (Feb. 7, 1992), which completely ignored the holding of the Virginia Supreme Court in the case of Baker v. State Farm Mutual Automobile Insurance Company, 242 Va. 74, (1991).

Finally, the Court's ruling was partially based upon the absence of legislative history concerning the adoption of Section 38.2-2201. A fair idea of legislative intent can be drawn by a reading of 38.2-2204 (the omnibus statute) wherein the General Assembly specifically stated that no exclusions to this section would be valid unless set forth therein. It is submitted that had the legislature intended that no exclusions be allowed to the provisions of 38.2-2201 that language would also have been incorporated into this statute at the time of its adoption by the legislature.

BRAULT, PALMER, GROVE, ZIMMERMAN,
WHITE & MIMS



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SEEN AND AGREED TO AS TO THE COURT'S RULING OF MARCH 25, 1994 AND
OBJECTED TO AND THE FOLLOWING EXCEPTIONS ARE TAKEN AS TO THE
RULING ON MAY 27, 1994 WHICH GRANTS PLAINTIFF STATE FARM FIRE &
CASUALTY COMPANY'S MOTION FOR SUMMARY JUDGMENT:



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P. O. Box 5424
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(804) 355-7505
Counsel for Defendants

ASSIGNMENTS OF ERROR

1. The circuit court erred by declaring that Christopher J. Cotchan was not entitled to medical payment benefits under the State Farm policy.
2. The circuit court erred by declaring that the State Farm policy exclusion was not in direct conflict with Va. Code § 38.2-2201 (Cumm. Supp. 1994).
3. The circuit court erred by misapplying the decision in Baker v. State Farm Mutual Automobile Insurance Co., 242 Va. 74 (1991).

