

1989

Janet Higham vs. 350 Main Street Association, dba The Black Pearl, a non-profit corporation, Four Forty Nine, dba The Club, a non-profit corporation, and Jerome Patrick Scholtz, an individual: Brief of Respondent

Utah Court of Appeals

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UTAH COURT OF APPEALS

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DOCKET NO. 890290

IN THE SUPREME COURT OF THE STATE OF UTAH

JANET HIGHAM,

Plaintiff,

vs.

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350 MAIN STREET ASSOCIATION,
dba THE BLACK PEARL, a
non-profit corporation, FOUR
FORTY-NINE, dba THE CLUB, a
non-profit corporation, and
JEROME PATRICK SCHOLTZ, an
individual,

No. 870499

Defendants.

PROGRESSIVE INSURANCE COMPANY,

Respondent.

BRIEF OF RESPONDENT

Appeal from the Third District Court of Summit County
Honorable Homer F. Wilkinson

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FILED

JUN 3 1988

Clk. Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

JANET HIGHAM,

Plaintiff,

vs.

350 MAIN STREET ASSOCIATION,
dba THE BLACK PEARL, a
non-profit corporation, FOUR
FORTY-NINE, dba THE CLUB, a
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IN THE SUPREME COURT OF THE STATE OF UTAH

JANET HIGHAM,

Plaintiff,

vs.

350 MAIN STREET ASSOCIATION,
dba THE BLACK PEARL, a
non-profit corporation, FOUR
FORTY-NINE, dba THE CLUB, a
non-profit corporation, and
JEROME PATRICK SCHOLTZ, an
individual,

No. 870499

Defendants.

PROGRESSIVE INSURANCE COMPANY,

Respondent.

BRIEF OF RESPONDENT

ISSUES PRESENTED FOR REVIEW

1. Did the plaintiff breach the insurance policy and prejudice Progressive's subrogation rights by releasing from all liability two of the persons legally responsible for her injuries, and does that conduct require plaintiff to return the money Progressive paid her under the policy?

2. Does Progressive's subrogation right extend to claims against dram shops which are legally responsible for plaintiff's

injuries, or is Progressive restricted to recovery only from the uninsured motorist?

DETERMINATIVE AUTHORITIES

Respondent does not believe there are any authorities directly dispositive of the issues presented.

STATEMENT OF THE CASE

Nature of the Case

This is a proceeding to determine the subrogation interest of Progressive Insurance Company in the proceeds of the settlement of Higham's dram shop act claims against The Black Pearl and The Club. Higham and Progressive stipulated that the funds at issue could be paid into court and that the court could resolve entitlement to those funds without the necessity for filing a separate action. (R. 705-12.)

Course of Proceedings Below

The parties filed cross-motions for summary judgment. The court, after a hearing, granted Progressive's motion and denied Higham's motion. (R. 974-75.) Pursuant to that ruling, the funds which had been paid into court were released to Progressive. (R. 981.)

Statement of Facts

1. Progressive Insurance Company insured plaintiff under a standard automobile insurance policy issued September 13, 1982, copy attached as Appendix A.

2. Plaintiff was injured in an automobile accident with an uninsured motorist in March, 1983. Progressive paid plaintiff pursuant to the policy as follows:

Personal injury protection coverage	\$11,163
Uninsured motorist coverage	\$20,000
Collision coverage	<u>\$ 3,919</u>
TOTAL	\$35,082

3. Pursuant to the subrogation provisions of the uninsured motorist coverage (page 5, column 2, entitled "Trust Agreement"), Progressive requested that plaintiff sign a release and trust agreement agreeing to hold in trust "all rights of recovery which [she] shall have against any person or organization legally liable" for her injuries. Plaintiff accepted the money paid under the policy, but did not respond to Progressive's repeated requests that she sign and return the release and trust agreement. Although the money was paid in April of 1983, plaintiff did not respond to the requests until January of 1984, at which time she informed Progressive that her counsel had advised her not to sign the agreement.

(R. 964.)

4. After receipt of these payments, plaintiff brought suit against the uninsured motorist (Scholtz). Scholtz was intoxicated at the time of the accident, and plaintiff also sued The Black Pearl and The Club, both of which had served alcoholic beverages to Scholtz prior to the accident. The complaint alleged that The Black Pearl and The Club were jointly and severally liable with Scholtz for plaintiff's injuries. (R. 1-8, 258-66, 314-22.)

5. In August of 1983, Mr. Moore requested permission to represent Progressive's subrogation interest in the lawsuit. Because of counsel's prior unwillingness to cooperate, Progressive denied the requested permission. (R. 964.)

6. Despite this instruction, the suit filed in behalf of plaintiff included all claims of plaintiff, including the claim belonging to Progressive. Progressive was not informed of the filing of the suit. (R. 964-65.)

7. On May 29, 1985, Progressive filed a Notice of Subrogation Interest to protect its subrogation rights. (R. 243-46.)

8. On March 18, 1986, plaintiff settled her claims against The Club for \$140,000. In exchange for the payment, plaintiff released all claims against The Club, including:

claims for any personal injuries including any future or unknown injuries, claims for expenses arising to the treatment of such injuries, such as for medical, nursing, and hospital, claims for pain and suffering,

claims for loss of time, wages, income or profits and any other employment losses of any kind or character, including loss of earning capacity, and claims for Property damage of any kind and character.

(R. 464-75.)

9. In January of 1987, plaintiff settled her claims against The Black Pearl for payment of \$180,000. In exchange for that payment, plaintiff executed a "Release of All Claims" which provided that plaintiff released The Black Pearl from:

Any and all action, causes of action, claims, demands, damages, costs, loss of services, expenses and compensation, with and on account of or in any way growing out of, and any and all known and unknown personal injuries and property damage resulting or to result from [the accident].

(R. 607-18.)

10. Pursuant to stipulation, \$35,082 of the settlement was paid into court on February 11, 1987 to permit resolution of Progressive's claim while at the same time allowing plaintiff the use of the balance of the settlement amount. (R.705-12.)

11. On June 11, 1987, plaintiff obtained a default judgment against Scholtz in the amount of \$139,717. (R. 777-78.) All parties acknowledge that Scholtz is impecunious and that the judgment against him is uncollectible.

SUMMARY OF ARGUMENT

The issue in this case is whether an insured who received payments under an automobile insurance policy may settle and

release her entire claim against third party tortfeasors, including the portion of the claim for which the insurance company paid, and then refused to reimburse the insurance company for the double recovery she receives. In this case, Higham released the dram shops from all liability, and did not protect the portion of the claim to which Progressive was subrogated. By prejudicing the subrogation right against the persons "legally responsible for" her injuries, Higham has become liable to Progressive for the amount of its payment.

Even if the releases did not prejudice the subrogation right, plaintiff has recovered from the clubs the full value of her injuries. The clubs were jointly and severally liable for the injury caused by Scholtz, and Scholtz is impecunious. Accordingly, the settlements with the clubs took into account the full value of plaintiff's claims against all three defendants. The settlement between plaintiff and the parties who are liable for the entire loss and were able to pay is the best evidence of the full value of the plaintiff's claims.

The designations of coverage under which Progressive paid plaintiff are irrelevant. The subrogation provision of the uninsured motorist portion of the policy is unambiguous and provides for subrogation to claims against all persons "legally responsible" for the injury. Although there are no Utah cases on point, cases from other jurisdictions correctly hold that an

insurer who makes payment under uninsured motorist coverage is subrogated to claims against third party tortfeasors.

The same reasoning applies to the amount paid under the collision coverage, and Progressive is entitled to recover that amount-from Higham because Higham released all claims, including the property damage claims, in the settlements.

Finally, the Utah Automobile No-Fault Insurance Act does not prevent Progressive from receiving back the money paid under no-fault coverage. The arbitration provisions of the Act do not apply because Scholtz did not have insurance. The requirement that the insurance company arbitrate rather than subrogate applies only when the other driver has received the limited immunity which the Act provides as a reward for maintaining insurance. In the present case, Higham was not precluded from asserting the no-fault portion of the claim because Scholtz did not have immunity. She, in fact, asserted and recovered that claim and Progressive is entitled to reimbursement for the amount so recovered.

ARGUMENT

POINT I

PROGRESSIVE IS ENTITLED TO REIMBURSEMENT
PURSUANT TO THE SUBROGATION PROVISION OF THE
POLICY.

It is well settled that an insurer who pays funds to its insured pursuant to an insurance policy is entitled to be

subrogated to the position of its insured to the extent of the payment. E.g., Potomac Insurance Co. v. Nickson, 64 Utah 395, 231 P. 445, 448 (1924). The right of subrogation exists both in equity and pursuant to the applicable provisions of the policy.

In the present case, Part V of the policy, entitled "General Provisions," provided as follows in paragraph 5:

In the event of any payment under this policy, we are entitled to all the rights of recovery of the person to whom payment was made against another. That person must sign and deliver to us any legal papers relating to that recovery, do whatever else is necessary to help us exercise those rights and do nothing after loss to prejudice our rights.

When a person has been paid damages by us under this policy, and also recovers from another, the amount recovered from the other shall be held by that person in trust for us and reimbursed to us to that extent of our payment.

Plaintiff engages in a lengthy argument concerning the policy underlying the no-fault insurance statute and the insurance provisions of the motor vehicle code. This case, however, is simpler than that. The issue in this case is whether plaintiff prejudiced Progressive's subrogation rights by settling her entire claim with each club, including the portion of each claim to which Progressive was subrogated. Plaintiff wants the benefit of her insurance policy without the corresponding obligation to protect the subrogation interest of the insurer.

Progressive is entitled to payment in the present case for two reasons. First, by prejudicing Progressive's right to proceed against the clubs, plaintiff has breached the agreement under which she received payment. Second, plaintiff has recovered from the bars the damages for which Progressive initially made payment, and if the funds are not paid to Progressive the plaintiff will realize a double recovery.

A. Plaintiff Has Breached the Provisions of the Policy Under Which She Received Payment.

"The general rule is that an insurer, on paying a loss, is subrogated in a corresponding amount to the insured's right of action against any other person responsible for the loss." 6A J. Appleman, Insurance Law and Practice, § 4051 at 103 (1972). See also Potomac Insurance Co. v. Nickson, 64 Utah 395, 231 P. 445, 448 (1924). The subrogation clause in the Progressive policy expressly provides that, in consideration for payments by Progressive, the insured agrees not to prejudice Progressive's right to recover its payment from the person or persons legally responsible for the insured's injuries.

The two bars were jointly and severally liable for the conduct of Scholtz, and also bore direct responsibility for plaintiff's injuries. Accordingly, plaintiff possessed "rights of recovery" against the bars within the meaning of the policy. The policy expressly subrogated Progressive to those rights to the extent of the payment.

Despite several demands by Progressive that its subrogation interest be preserved, plaintiff entered into settlements with both bars which released all claims against the bars, including claims to which Progressive was subrogated. Because Scholtz, the only other person legally responsible for plaintiff's injuries, is impecunious, the releases prejudice Progressive's rights, constitute a breach of the insurance agreement, and entitle Progressive to return of the amount paid.

Shephard v. State Farm Mutual Automobile Insurance Co., 607 F. Supp. 75 (D. Miss. 1985), is illustrative. In that case, the insured was injured in an auto accident. In exchange for her release of the negligent driver, the insured received a payment of \$10,000. She then proceeded against her own insurance, claiming that the value of her injury exceeded \$10,000. On the basis that the insured had prejudiced the insurer's right of subrogation, the court held that the insurer had no obligation to pay under the policy. 607 F. Supp. at 76. Accord, Freed v. Inland Marine Insurance Co., 154 F. Supp. 855, 858-59 (D. Utah 1957).

In the present case, plaintiff has prejudiced Progressive's subrogation rights against the parties legally responsible for her injuries. Such conduct constitutes a breach of the insurance contract. Accordingly, Progressive is entitled to return of the funds paid pursuant to the policy.

B. Plaintiff Has Recovered the Damages for Which Progressive Initially Made Payment.

Even if plaintiff's release of the only defendants with any ability to pay did not prejudice the subrogation right, Progressive was still entitled to judgment because plaintiff has recovered from the bars the full value of her injuries. With respect to the injuries for which Progressive made payment, plaintiff has received a double payment, and reimbursement is appropriate. State Farm Mutual Insurance Co. v. Farmers Insurance Exchange, 22 Utah 2d 183, 450 P.2d 458, 458 (1969).

Plaintiff claims that she has not received a double recovery because she obtained a default judgment against Scholtz. Plaintiff did not, however, pursue the Scholtz claim until after Progressive's portion of the settlement proceeds had been paid into court. The default hearing against Scholtz was intended solely as a last-ditch effort to establish additional damage in order to bolster plaintiff's position against the Progressive claim. At the default hearing, Mr. Moore, counsel for plaintiff, acknowledged in response to an objection by Progressive's counsel that Progressive was not bound by the proceeding. (R. 934.)

All parties to the case have been aware from the outset that Scholtz was and is impecunious. Because Scholtz could not pay, the claim against Scholtz was of no value except to the

extent that the joint and several liability of the bars for Scholtz's share increased the value of the claims against the bars. The arms-length settlement between plaintiff and those parties who were (1) able to pay, and (2) liable for the entire loss, is the best evidence of the full value of plaintiff's claims and thus is the value of her injury.

Plaintiff has recovered the full value of her injury. The recovery includes compensation for the same injuries for which Progressive made payment, as evidenced by her release of all claims against the only parties able to make payment. Accordingly, Progressive is now entitled to receive back the money it paid.¹

POINT II

THE DESIGNATIONS OF COVERAGE UNDER WHICH PROGRESSIVE PAID PLAINTIFF ARE IRRELEVANT.

Progressive paid plaintiff money under three separate policy coverages: Uninsured motorist, personal injury protection and collision. Plaintiff argues that these coverage designations impair Progressive's subrogation rights.

¹Pursuant to Rule 56(f), U.R.C.P., Progressive also submitted the affidavit of Christine Amini (R. 967-69) which states that if the court rules that the value of the injury must be determined by expert testimony rather than by reference to the settlement amount, Progressive needs an opportunity to engage in discovery going to that issue.

The subrogation right, however, is set forth in the "General Provisions" section of the policy. It expressly provides that the subrogation right arises "[i]n the event of any payment under this policy" (emphasis added). The right of subrogation does not depend upon the designation of coverage under which the funds were paid.

A. Subrogation Under the Uninsured Motorist Coverage Is Not Dependent on Recovery from the Uninsured Motorist.

Plaintiff argues that Progressive may not recover the money it paid under the uninsured motorist coverage because plaintiff did not recover from the uninsured motorist. Both the policy language and the case law defeat that contention.

The uninsured motorist portion of the policy is not ambiguous. It provides specifically for subrogation to claims against all persons "legally responsible" for the injury. The right is not restricted to claims against the uninsured motorist. The uninsured motorist coverage provides, under the heading "Trust Agreement," as follows:

If we pay you for a loss under this coverage:

1. We are entitled to recover from you an amount equal to such payment if there is a legal settlement made on your behalf against the person or organization legally responsible for the bodily injury.
2. You must hold in trust for us all rights to recover money which you have against the person or organization legally responsible for bodily injury.

3. You must do everything proper to secure our rights and do nothing to prejudice these rights.

The two bars from which plaintiff recovered, and which she released from all liability, were "persons or organizations legally responsible for the bodily injury." Thus, Progressive was subrogated to the claims against the bars, and is entitled to reimbursement of the money paid under the uninsured motorist coverage.

Plaintiff accepted payment of the money under this provision, but did not refuse to sign the release and trust agreement referred to in the policy until some nine months later. Plaintiff's conduct constitutes an implicit agreement to hold her rights against all persons legally responsible for her injury in trust for the benefit of Progressive.

Moreover, the case law supports the proposition that subrogation under uninsured motorist coverage is not restricted to claims against the uninsured motorist.

In Farmers Insurance Exchange v. Christensen, 683 P.2d 1319 (Mont. 1984), the Montana Supreme Court upheld the right of an insurer which had paid under the uninsured motorist coverage to subrogation where recovery is obtained from a tortfeasor other than the uninsured motorist. The court held:

We hold that an uninsured motorist carrier can make payment to an insured, and when the insured settles his claim or obtains a judgment against a third party, the carrier can subrogate and collect back the amount paid to the insured.

683 P.2d at 1332. Similarly, in Ackermann v. Prudential Property & Casualty Co., 83 Ill. App. 3d 590, 404 N.E.2d 534 (1980), the Illinois Court of Appeals upheld an insurer's entitlement to subrogation to the extent of payment made under uninsured motorist coverage to proceeds received by the insured from either the uninsured motorist or any other tortfeasor.

The cases of Glidden v. Farmers Automobile Insurance Association, 57 Ill. 2d 330, 312 N.E.2d 247 (1974), and Remsen v. Midway Liquors, Inc., 30 Ill. App. 2d 132, 174 N.E.2d 7 (1961), are significant in that in both cases plaintiff made dram shop claims against joint tortfeasors for the death of the plaintiff's decedent at the hands of an uninsured motorist. Even though the dram shop actions were filed as separate suits, the courts in both instances found that the insurance company which had paid benefits under the uninsured motorist provision was entitled to be subrogated to the extent of its payment.

The present case is not distinguishable from the authorities cited above. Plaintiff has recovered from the persons legally responsible for her injuries, and Progressive is entitled to reimbursement from that recovery.

Lima v. Chambers, 657 P.2d 279 (Utah 1982), cited by plaintiff, is not on point. That case addressed the right of the insurer to intervene and defend the damage claim for the uninsured motorist. It does not purport to decide whether the

insurer's subrogation right is limited to pursuit of the uninsured motorist.

Thamert v. Continental Casualty Co., 621 P.2d 702 (Utah 1980), is also inapposite. That case merely holds that uninsured motorist coverage is not excess to worker's compensation. The case does not even address the question of subrogation, and the conclusion plaintiff advocates does not follow from the case.

Christensen, Ackerman, Glidden and Remsen are well-reasoned and directly address the issue before this court. The public policy behind the statutory provisions governing uninsured motorist coverage is not furthered by limiting the insurer to subrogation against the uninsured motorist. In this case, the clubs were "legally responsible" for plaintiff's injuries and Progressive was subrogated to plaintiff's claims against the clubs to the extent of its payment.

B. The Arbitration Provisions of the No-Fault Insurance Act Do Not Preclude Progressive from Asserting Its Right of Subrogation.

Plaintiff next contends that Progressive cannot obtain reimbursement by subrogation for amounts paid under no-fault (personal injury protection) coverage. Plaintiff asserts that the exclusive remedy available to an insurer for reimbursement of no-fault payments is arbitration with the other driver's insurance company. The argument is inapposite here because

Scholtz did not have insurance. The Utah Automobile No-Fault Insurance Act provides that a motorist who is injured in an accident is entitled to reimbursement from his or her own insurance company for the cost of medical services incurred as a result of the accident. The Act then provides that the insurance company paying the claim, and not the injured person, is entitled to proceed against the negligent driver's insurance company, through arbitration, to obtain reimbursement.

Plaintiff relies on the case of Allstate Insurance Co. v. Ivie, 606 P.2d 1197 (Utah 1980), which held that an insurance company's remedy with respect to no-fault payments is arbitration with the other driver's insurer. Examination of the reasoning of the court in Ivie, however, reveals that the No-Fault Act does not take away the insurer's right to subrogation to claims against third-party tortfeasors.

In Ivie, the court explained that the no-fault statute operates by giving the negligent motorist a limited immunity from suit to the extent that the other driver has received no-fault payments. 606 P.2d at 1201. Because of that immunity, the injured driver cannot recover from the negligent driver for the no-fault portion of his or her loss. This prevents the injured driver from receiving a double recovery. Id. at 1202. The no-fault portion of the loss is simply shifted to the insurance companies, to be handled by arbitration or otherwise. Id. at 1201.

In the present case, however, Scholtz did not have insurance, and thus did not have immunity. Utah Code Ann. § 31-41-9(2) (1974) (this section was replaced in 1985 by new code section 41-12a-304, to the same effect). Plaintiff claimed and recovered all her damages from the clubs and Scholtz, including the amount paid by Progressive under the no-fault coverage. Accordingly, plaintiff has in fact received a double recovery and Progressive is entitled to payment pursuant to its rights of subrogation.

C. Progressive is Entitled to Reimbursement For the Amount Paid Under Collision Coverage.

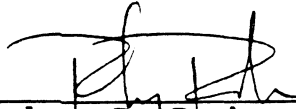
Plaintiff's argument with respect to the collision coverage is the same as her argument with respect to the uninsured motorist coverage. The settlement with The Black Pearl and The Club, however, released all of plaintiff's claims, including her claims for property damage, and Progressive is entitled to reimbursement accordingly.

CONCLUSION

Progressive Insurance Company requests that the court affirm the order of the district court.

DATED this 1st day of June, 1988.

SNOW, CHRISTENSEN & MARTINEAU

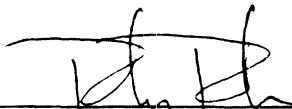
By 
Rodney R. Parker
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CERTIFICATE OF SERVICE

I certify that four copies of the foregoing Brief of Respondent were served upon the following by first class mail on June 1, 1988:

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SCMRRP357

APPENDIX A - INSURANCE POLICY

Progressive Casualty Insurance Company
 Progressive American Insurance Company
 Progressive Atlantic Insurance Company
 Progressive Gulf Insurance Company
 Progressive Northern Insurance Company
 Progressive Preferred Insurance Company
 Progressive Southeastern Insurance Company
 Progressive Southern Insurance Company
 Progressive Specialty Insurance Company

progressive companies

COMBINATION CAR POLICY AGREEMENT

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WE, The Progressive Insurance Companies, agree with you, in return for your premium payment, to insure you subject to all the terms of this policy.

We will insure you for the coverages and the Limits of Liability for which premium is shown in the Declarations of this policy.

DEFINITIONS USED THROUGHOUT THIS POLICY

As used throughout this policy:

1. **"We", "us" and "our"** mean the Company providing this insurance.
 2. **"You" and "your"** mean the Policyholder named in the Declarations and spouse if living in the same household.
 3. **"Bodily Injury"** means bodily injury to or sickness, disease or death of any person.
 4. **"Property Damage"** means damage to or destruction of tangible property, including loss of its use.
 5. **"Private Passenger Car"** means a four-wheeled car of the private passenger type.
 6. **"Utility car"** means, if not used in any business or occupation, a car with a rated load capacity of 1500 pounds or less of the pick-up, sedan delivery or panel truck type.
 7. **"Utility trailer"** means a vehicle designed to be towed by a private passenger car and includes a farm wagon or farm implement while being towed by a private passenger car or utility car. Utility trailer does not mean a mobile home.
 8. **"Farm Automobile"** means a truck with a rated load capacity of 1500 pounds or less, not used in any business or occupation except farming.
 9. **"Your Insured Car"** means:
 - a. Any car described in the Declarations and any private passenger car or utility car you replace it with. If you want Coverage to apply to the replacement you must notify us within 30 days of its acquisition.
 - b. Any additional private passenger car or utility car of which you acquire ownership during the policy period provided we insure all private passenger cars and utility cars you own. You must, however, notify us within 30 days of its acquisition. Car Damage Coverage does not apply until you have notified us and paid the premium.
 - c. Any utility trailer you own. Car Damage Coverage does not apply unless applicable premium has been paid.
 - d. Any car or utility trailer not owned by you while being driven temporarily as a substitute for any other vehicle described in this definition, because of its withdrawal from normal use due to breakdown, repair, servicing, loss or destruction. Car Damage Coverage and Medical Payment Coverage do not apply to these temporary substitute autos.
 10. **"Relative"** means a person living in your household, related to you by blood, marriage or adoption, including a ward or foster child.
 11. **"Occupying"** means in, on, getting into or getting out of.
 12. **"Driving"** includes getting into or getting out of.
 13. **"State"** means the District of Columbia, and any state, territory or possession of the United States and any province of Canada.
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WHAT TO DO IN CASE OF AN AUTO ACCIDENT OR LOSS

NOTICE OF ACCIDENT, OR LOSS

In the event of an accident or loss, you must report it to us immediately by contacting our nearest authorized claim adjuster. The report must give the time, place and circumstances of the accident, or loss, including the names and addresses of injured persons and witnesses.

OTHER DUTIES

A person claiming any coverage under this policy must:

1. Cooperate with us and assist us in any matter concerning a claim or suit.
2. Send us promptly any legal papers received relating to any claim or suit.
3. Submit to physical examination at our expense by doctors we select as often as we may reasonably require.
4. Authorize us to obtain medical and other records.
5. Provide any written proofs of loss that we require.
6. Attend hearings and trials as required.
7. Refuse to, except at your own expense, assume any obligation or incur any expense other than medical and surgical care imperative at the time of the accident.

A person claiming Uninsured Motorists Coverage must also notify the police within 24 hours of the accident if a hit-and-run driver is involved.

A person claiming Car Damage Coverage must:

1. Take reasonable steps after loss to protect the vehicle and its equipment from further loss. We will pay reasonable expenses incurred in providing that protection.
 2. Report the theft or vandalism of the vehicle to the police within 24 hours of the occurrence.
 3. Allow us to inspect and appraise the damaged vehicle before its repair or disposal.
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ART I — LIABILITY TO OTHERS

Coverage A — Bodily Injury Coverage B — Property Damage

We will pay, on behalf of an insured person, damages, other than punitive damages, for which any insured person is legally liable because of bodily injury and property damage caused by accident and arising out of the ownership, maintenance or use of your insured car or utility trailer.

We will defend any suit or settle any claim for these damages, as we think appropriate. We will not, however, be responsible to pay any amount over the limit of liability as defined in this part.

Additional Definition Used in this Part Only
When used in Part I "insured person" or "insured persons" means

1. You or a relative while driving your insured car.
2. You while driving any private passenger car other than your insured car.
3. Any other person driving your insured car.
4. Any other person or organization with respect only to legal liability of that person or organization for acts or omissions of
 - a. any person covered under this Part while driving your insured car; or
 - b. you while driving any private passenger car or utility trailer other than your insured car if the car or utility trailer is not owned or hired by that person or organization or furnished for your regular or frequent use

However, no person shall be considered an insured person if the person drives a vehicle without the owner's expressed permission

Additional Payments

For an insured person, we will pay, in addition to our limit of liability

1. All costs we incur in the settlement of any claim or defense of any suit
2. Interest on damages awarded in any suit we defend accruing after judgment is entered and before we have paid, offered to pay, or deposited in court that portion of the judgment which is not more than our limit of liability
3. Premiums on appeal bonds and attachment bonds required in any suit we defend. But, we will not pay the premium for attachment bonds that are more than our limit of liability
4. Any charge not exceeding \$100 for a bail bond required due to a traffic law violation or auto accident producing bodily injury or property damage covered by this Part. We have no obligation to apply for or furnish a bond.
5. Reasonable expenses, other than loss of earnings, when we ask you to attend trials or hearings.
6. Expenses incurred by you for immediate medical and surgical treatment for others necessary at the time of an accident resulting in bodily injury covered by this Part.
7. Any other reasonable expenses incurred at our request.

Exclusions

Liability coverage does not apply to

1. Bodily injury or property damage arising out of the ownership, maintenance or use of a vehicle when used to carry person(s) or property for a fee. This exclusion does not apply to shared-expense car pools whose members are on the way to or from the same place of employment.
2. Bodily injury or property damage caused intentionally by or at the direction of an insured person.

3. Bodily injury or property damage with respect to which any person is an insured under nuclear energy liability insurance. This exclusion applies even if the limits of that insurance are exhausted.
4. Bodily injury to an employee of an insured person arising in the course of employment. But, coverage does apply to a domestic employee unless benefits are payable or are required to be provided for the domestic employee under a workers' compensation law or similar law.
5. Bodily injury or property damage arising out of auto business operations, including, but not limited to, the selling, repairing, servicing, storing or parking of private passenger cars, or utility cars.
6. Bodily injury or property damage arising out of the ownership, maintenance or use of any vehicle, except a private passenger car, by you while employed or otherwise engaged in a business.
7. Damage to property owned or being transported by an insured person.
8. Damage to property rented to, or in charge of, an insured person except a residence or private garage.
9. Bodily injury or property damage arising out of the ownership, maintenance or use of any motorized vehicle with less than four wheels.
10. Bodily injury or property damage arising out of the ownership, maintenance or use of any vehicle, other than your insured car, which is owned by or furnished or available for regular use by you or a relative.
11. Bodily injury to you, a relative, or an insured person.
12. Bodily injury or property damage arising out of the operation of farm machinery.
13. Any liability assumed by an insured person under any contract or agreement.
14. Bodily injury or property damage caused by a motor vehicle driven by a person
 - a. Under the minimum age to obtain a license to operate a private passenger car in the state in which the motor vehicle is licensed
 - b. Under fourteen years of age
15. Your insured car or any private passenger or utility car while used in or preparing for any prearranged or organized race, speed contest or performance contest.
16. Bodily injury to a fellow employee of the insured person injured by a car in the course of their employment. This does not apply to injuries for which the insured person is legally liable.
17. Bodily injury to the owner of any vehicle while the person is a passenger in a vehicle driven by an insured person.

Conformity with Financial Responsibility Laws

When we certify this policy as proof under any financial responsibility law, it will comply with the law to the extent of the coverage required by the law, subject to the limits of this policy. You must reimburse us for any payment we make which we 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 limits of liability shown in the Declarations apply subject to the following

1. The bodily injury liability limit for "each person" the maximum for bodily injury sustained by one person in any one accident.

2. Subject to the bodily injury liability limit for "each person", the bodily injury liability limit for "each accident" is the maximum for bodily injury sustained by two or more persons in any one accident.
3. The property damage liability limit for "each accident" is the maximum for all damages to all property in any one accident.

We will pay no more than these maximums regardless of the number of vehicles described in the Declarations, insured persons, claims, claimants or policies, or vehicles involved in the accident. Any amount payable under this coverage to or for an injured person

will be reduced by any payment made to that person under the Uninsured Motorists Coverage of this policy.

Other Insurance

If there is other applicable auto liability insurance on a loss covered by this Part, we will pay our proportionate share as our limits of liability bear to the total of all applicable liability limits. Any insurance afforded under this Part for a vehicle you do not own, including a temporary, substitute car, however, is excess over any other collectible auto liability insurance.

No insurance is afforded on newly acquired vehicles if there is other valid and/or collectible insurance.

PART II — EXPENSES FOR MEDICAL SERVICES TO INSURED

Coverage C — Medical Payments Coverage

We will pay reasonable expenses incurred within one year from the date of accident for necessary medical and funeral services because of bodily injury sustained by an insured person.

Additional Definition Used in this Part Only

As used in this Part "insured person" or "insured persons" mean:

1. Any person while occupying your insured car while the car is being driven by you, a relative or another person if that person drives your insured car with your expressed permission.

Exclusions

This coverage does not apply for bodily injury to any person:

1. sustained while occupying your insured car when used to carry persons for a fee. This exclusion does not apply to shared-expense car pools whose members are on the way to or from the same place of employment.
2. sustained while occupying any vehicle while located for use as a residence or premises.
3. sustained while occupying a motorized vehicle with less than four wheels.
4. sustained while occupying or through being struck by any vehicle, other than your insured car, which is owned by or furnished or available for regular use by you or a relative.
5. sustained while occupying a vehicle other than a private passenger car while the vehicle is being used in the business or occupation of an insured person.
6. occurring during the course of employment if benefits are payable or must be provided under a Workers' Compensation Law or similar law.
7. caused by war (declared or undeclared), civil war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination, or any consequence of any of these.

8. caused by the insured person's commission or attempt to commit a felony, or by the insured person being involved in an illegal occupation.

9. sustained while your insured car is being operated by a person:

- a. under the minimum age to obtain a license to operate a private passenger car in the state in which the car is licensed.
- b. under fourteen years of age.

10. sustained while your insured car is driven in or preparing for any prearranged or organized race, speed contest or performance contest.

Limits of Liability

Regardless of the number of vehicles described in the Declarations, insured persons, claims or policies, or vehicles involved in the accident, we will pay no more than the Limit of Liability shown for this coverage in the Declarations for one or more persons injured in any one accident.

Any amount paid or payable for medical expenses under the Liability or Uninsured Motorists Coverages of this policy shall be deducted from the amounts payable under this Part.

Other Insurance

If there is other auto medical payments insurance on a loss covered by this Part, we will pay our proportionate share as our Limit of Liability bears to the total of all applicable auto medical payments limits.

We will not be liable under this policy for any medical expense paid or payable under the provisions of any:

1. premises insurance providing coverage for medical expenses.
2. individual, blanket, or group accident, disability or hospitalization.
3. medical, surgical, hospital or funeral services, benefit or reimbursement plan, or
4. workers' compensation or disability benefits law or any similar law.

PART III — DAMAGE TO YOUR CAR

If you pay a specific premium for the coverage, we will pay for loss or damage to your insured car

1. (Coverage E — Collision) caused by collision; or
2. (Coverage D — Comprehensive) not caused by collision; or
3. (Coverage F — Fire) caused by:
 - a. fire or lightning
 - b. smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises on 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; or

4. (Coverage G — Theft) caused by theft, larceny, robbery or pilferage.

less any applicable deductibles for each separate loss.

(Coverage H — Towing and Labor) If this coverage is purchased, we will pay for towing and labor required by disablement of your insured car if the labor is performed at the time of disablement and if the disablement does not occur at your residence. Receipted bills must be presented to us for payment.

We may pay the loss in money or repair or replace the damaged or stolen property. We may, at any time before the loss is paid or the property is replaced, return, at our expense, any stolen property either to you or to the

the resulting damage. We may keep all or part of the property at the agreed or appraised value, but there shall be no abandonment to the company.

Additional Definitions Used in this Part Only

1. "Collision" means collision of your insured car with another object or overturn of your insured car. Loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, colliding with a bird or animal, or breakage of glass is not considered loss by "collision".
2. "Loss" means direct and accidental loss of or damage to your insured car, including its equipment.

Exclusions

This coverage does not apply to loss:

1. To your insured car while used to carry persons or property for a fee. This exclusion does not apply to shared-expense car pools whose members are on the way to or from the same place of employment.
2. Caused by war (declared or undeclared), civil war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination, or any consequence of any of these.
3. To any sound equipment installed in your insured car or to tapes, records, or similar items used with sound equipment, except permanently installed AM/FM radios.
4. To sound receiving equipment or transmitting equipment designed for use as telephones, scanning monitor receivers, television sets, or their accessories or antennas, and home high fidelity equipment.
5. To a camper body or utility trailer owned by you or a relative and not described in the Declarations. But, coverage does apply to a camper body or utility trailer ownership of which you acquire during the policy period if you ask us to insure it within 30 days after you acquire it.
6. To awnings, cabanas or equipment designed to provide additional living facilities.
7. Resulting from manufacturers defects, wear and tear, freezing, mechanical or electrical breakdown or failure. But, coverage does apply if the damage is the result of other loss covered by this policy.
8. To a vehicle when used in auto business operations, including the selling, repairing, servicing, storing or parking of private passenger cars or utility cars.
9. To wearing apparel or personal effects.
10. To tires unless damaged by fire or stolen or unless

- same cause, other loss covered by this policy.
11. While the automobile is used in any illicit trade or transportation.
 12. Arising out of or due to the use of the automobile for transportation of any explosive substance, flammable liquid, or similarly hazardous material.
 13. While the automobile is driven in or preparing for any prearranged or organized race, speed contest or performance contest.
 14. While the auto is subject to any bailment lease, conditional sale, mortgage or other encumbrance not specifically declared and described on this policy.
 15. Under Coverage D to secretion, conversion or embezzlement by any person in lawful possession of the automobile under a bailment lease mortgage, conditional sale or other encumbrance.
 16. Under Coverage E if due to riot or civil commotion.

Limits of Liability

Our Limit of Liability for loss shall not exceed the less of

- a. the actual cash value of the stolen or damaged property
- b. the amount necessary to repair or replace the property with other of the like kind and quality, or
- c. the applicable Limit of Liability stated in the Declarations.

reduced by the applicable deductible.

No Benefit to Bailee

This coverage shall not directly or indirectly benefit any carrier or other bailee for hire liable for loss to your insured car.

Appraisal

Both you/we may demand appraisal of the loss. Each will appoint and pay a competent and disinterested appraiser and will share equally other appraisal expenses. The appraisers will select an umpire to decide any differences. Each appraiser will state separately the actual cash value and the amount of loss. An award in writing by any two appraisers will determine the amount payable.

Payment of Loss

We may make payment for a loss to you or to the owner of the property. Payment for a loss is required only (1) if you have fully complied with this contract and (2) within sixty days after proof of loss.

Other Insurance

If there is other applicable similar insurance on a loss covered by this Part, we will pay only that proportion of the loss that our Limit of Liability bears to the total limits of all applicable similar insurance.

PART IV — UNINSURED MOTORISTS

Coverage I — Uninsured Motorists Coverage

We will pay damages for bodily injury which an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle up to the limit of liability as defined in this part. The bodily injury must be caused by accident and arise out of the ownership, maintenance or driving of the uninsured motor vehicle.

Determination whether an insured person is legally entitled to recover damages or the amount of damages shall be made by agreement between the insured person and us. If no agreement is reached, the decision will be made by arbitration. Such arbitration must be demanded within one year after the date of the accident.

If suit is brought to determine legal liability or damages without our written consent, we are not bound by any resulting judgment.

Additional Definitions Used in this Part Only

As used in this Part:

1. "Insured person" means:
 - a. You or a relative.
 - b. Any other person occupying your insured car.
 - c. Any person for damages that person is entitled to recover because of bodily injury to you, relative, or another occupant of your insured car.

However, no person shall be considered an insured person if the person driving your insured car without your expressed permission.

2. "Motor vehicle" means a land motor vehicle or trailer but does not mean a vehicle:
 - a. operated on rails or crawler-treads
 - b. which is a farm type tractor or equipment

while not on public roads

c. located for use as a residence or premises.

3. "Uninsured motor vehicle" means a motor vehicle which is:

a. not insured by a bodily injury liability bond or policy at the time of the accident.

b. insured by a liability bond or policy at the time of the accident which provides bodily injury liability limits less than the minimum limits required by the financial responsibility law of the state in which your insured car is principally garaged. This coverage only extends coverage up to the required limits of the state in which your insured car is garaged.

c. insured by a bodily injury liability bond or policy at the time of the accident but the company denies coverage or is or becomes insolvent.

d. "hit-and-run motor vehicle"

"Uninsured motor vehicle", however, does not mean a vehicle:

a. Owned by or furnished or available for regular use by you or a relative.

b. Owned and operated by a self-insurer as contemplated by any financial responsibility law, motor carrier law, or similar law.

c. Owned by a governmental unit or agency.

4. "Hit-and-run motor vehicle" means vehicle whose operator and owner are unknown, which strikes

a. you or a relative; or

b. your insured car, or a vehicle which you or a relative is occupying, resulting in injury to an insured person.

You or your relative or someone on your behalf must have reported the accident within 24 hours to a police, peace or judicial officer or the Commissioner of Motor Vehicles.

Exclusions

This coverage does not apply to bodily injury sustained by a person:

1. While occupying a motor vehicle owned by you or a relative for which insurance is not afforded under this Part, or through being struck by the motor vehicle.

2. If that person or the legal representative of that person makes a settlement without our written consent.

3. While occupying your insured car when used to carry persons or property for a fee. This exclusion does not apply to shared-expense car pools whose members are on the way to or from the same place of employment.

4. While occupying a motorized vehicle with less than four wheels.

5. While occupying a vehicle driven without the owner's permission.

Uninsured Motorists Coverage shall not apply to the benefit of any insurer or self-insurer under any workers' compensation or disability benefits law or any similar law.

Limits of Liability

The limits of liability shown in the Declarations apply, subject to the following:

1. The limit for "each person" is the maximum for bodily injury sustained by any person in any one accident.

2. Subject to the limit for "each person", the limit for "each accident" is the maximum for bodily injury sustained by two or more persons in any one accident.

We will pay no more than the coverage purchased for one car for any one accident regardless of the number of vehicles described in the Declarations, insured persons,

accident.

Any amounts payable will be reduced by:

1. A payment made by the owner or operator of the uninsured motor vehicle or organization which may be legally liable;

2. A payment under the Liability Coverage of this policy;

3. A payment under the Medical Payments coverage of this policy;

4. A payment made or amount payable because of the bodily injury under any workers' compensation law or disability benefits law or similar law;

5. A payment made under any other provision of this contract.

Proof of Claim

Each person making claim under this part must give us full details of their injuries and treatment. Proof of claim shall be submitted on our forms unless we fail to provide them within 15 days after notice of the claim.

Other Insurance

If there is other similar insurance on a loss covered by this Part we will pay our proportionate share as our limit of liability bears to the total limits of all applicable similar insurance. But, coverage for a vehicle you do not own is excess over any other applicable similar insurance.

Arbitration

If an insured person and we do not agree (1) that the person is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle, or (2) as to the amount of payment under this Part, either that person or we may demand that the issue be determined by arbitration.

In that event, the insured person will select an arbitrator and we will select another. The two arbitrators will select a third. If they cannot agree on the third arbitrator within 30 days, the judge of a court having jurisdiction will appoint the third arbitrator. The insured person will pay the arbitrator selected by that person. We will pay the arbitrator we select. The expense of the third arbitrator and all other expenses of arbitration will be shared equally. Attorney fees and fees paid to medical and other expert witnesses are not expenses of arbitration and will be paid by the persons incurring them.

Unless otherwise agreed upon, arbitration will take place in the county and state where the insured person lives. Local court rules governing procedures and evidence will apply. The decision in writing of any two arbitrators will be binding on both you and us subject to the terms of this insurance.

Trust Agreement

If we pay you for a loss under this coverage:

1. We are entitled to recover from you an amount equal to such payment if there is a legal settlement made on your behalf against the person or organization legally responsible for the bodily injury.

2. You must hold in trust for us all rights to recover money which you have against the person or organization legally responsible for bodily injury.

3. You must do everything proper to secure our rights and do nothing to prejudice these rights.

4. If we ask you in writing, you will take necessary or appropriate action, through a representative designated by us, to recover payment as damages from the responsible person or organization; if there is a recovery, then we shall be reimbursed out of the recovery for expenses, costs and attorney's fees incurred in connection with this recovery.

5. You must execute and deliver to us any legal instruments or papers necessary to secure the rights and obligations of you and us as established here.

PART V — GENERAL PROVISIONS

1. Policy Period, Territory

This policy applies only to accidents, occurrences and losses during the policy period shown in the Declarations while the auto is within the United States, its territories or possessions, or Canada, or between their ports.

2. Changes

This policy and the Declarations include all the agreements between you and us relating to this insurance. No change or waiver may be effected in this policy except by endorsement issued by us. If a premium adjustment is necessary we will make the adjustment as of the effective date of the change. When we broaden coverage during the policy period without charge, the policy will automatically provide the broadened coverage when effective in your state.

3. Two or More Cars Insured

With respect to any accident or occurrence to which this and any other auto policy issued to you by us applies, the total limit of our liability under all the policies shall not exceed the highest applicable Limit of Liability under any one policy.

4. Suit Against Us

We may not be sued unless there is full compliance with all the terms of this policy. We may not be sued under the Liability Coverage until the obligation of an insured person to pay is finally determined either by judgment against the person after actual trial or by written agreement of the person, the claimant and us. No one shall have any right to make us a party to a suit to determine the liability of an insured person.

5. Our Recovery Rights (Subrogation)

In the event of any payment under this policy, we are entitled to all the rights of recovery of the person to whom payment was made against another. That person must sign and deliver to us any legal papers relating to that recovery, do whatever else is necessary to help us exercise those rights and do nothing after loss to prejudice our rights.

When a person has been paid damages by us under this policy and also recovers from another, the amount recovered from the other shall be held by that person in trust for us and reimbursed to us to that extent of our payment.

6. Assignment

Interest in this policy may not be assigned without our written consent. If the Policyholder named in the Declarations or the spouse of the Policyholder resident in the same household dies, the policy will cover:

- a. the survivor;
- b. the legal representative of the deceased person while acting within the scope of duty of a legal representative; and

c. any person having proper custody of your insured car until a legal representative is appointed, but in no event, for more than 30 days after the date of such death.

7. Changes

Notice to any agent or knowledge possessed by any agent or other person shall not change or effect a waiver on any portion of this policy nor stop us from exerting any of our rights under this policy. This policy can only be changed by an endorsement we issue which is signed by our authorized representative.

8. Bankruptcy

We are not relieved of any obligation under this policy because of the bankruptcy or insolvency of any insured person.

9. Cancellation or Nonrenewal of This Policy

You may cancel this policy by returning it to us or by advising us in writing when at a future date the cancellation is to be effective.

We may cancel by mailing notice of cancellation to you at the address shown in the Declarations or by delivering the notice.

If different requirements for cancellation and non-renewal or termination of policies are applicable because of the laws of your state, we will comply with those requirements.

Proof of mailing of a notice of cancellation shall be proof of cancellation.

Upon cancellation you may be entitled to a premium refund; if so, we will send it to you but our making or offer of a refund is not a condition of cancellation. If you cancel, the refund will be computed in accordance with the customary short rate table and procedure. If cancellation is for non-payment of premium, you have cancelled the policy. If we cancel, the refund will be computed on a pro rata basis.

The effective date of cancellation stated in a notice is the end of the policy period.

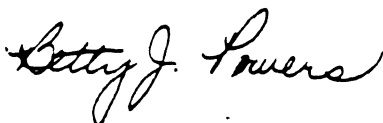
10. Fraud and Misrepresentation

This policy shall be void if you or an insured person has cancelled or misrepresented any material fact or in case of any fraud or attempted fraud touching any matter regarding this policy, whether before or after a loss.

11. Terms of Policy Conformed to Statutes

Terms of this policy which are in conflict with the statutes of the state in which this policy is issued are hereby amended to conform to the statutes.

In Witness Whereof, the company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned on the declarations page by a duly authorized agent of the company.



SECRETARY



PRESIDENT