

2008

Joni Iverson v. State Farms Ins. Co. : Brief of Appellant

Utah Supreme Court

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IN THE UTAH SUPREME COURT	
<p>JONI IVERSON</p> <p>Plaintiff/ Appellant,</p> <p>vs.</p> <p>STATE FARM INS. CO.,</p> <p>Defendant/ Appellee.</p>	<p>PLAINTIFFS BRIEF ON CERTIFICATION FROM FEDERAL DISTRICT COURT.</p> <p>Utah Supreme Court Case No.: 20081016-SC</p>

APPEAL ON CERTIFICATION FROM FEDERAL DISTRICT COURT
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UTAH APPELLATE COURTS

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STATEMENT OF JURISDICTION

This case comes to the Court pursuant to Utah R. App. Procedure 41 certification by Judge Dee V. Benson of the United States District Court, District of Utah. This Court accepted certification on January 23, 2009 and jurisdiction is appropriate under Utah Code Annotated § 78A-3-102(1) (West 2008).

STANDARD OF REVIEW

“A certified question from the federal district court does not present us with a decision to affirm or reverse a lower court's decision; as such, traditional standards of review do not apply. On certification, we answer the legal questions presented without resolving the underlying dispute.”¹

Question Certified for Determination

This Court accepted certification of the following question:

“Whether provision of lower limits for underinsured motorist coverage than for liability coverage, properly complies with former Utah Code Ann. §§ 31A-22-305(9)(b) and 31A-22-305(9)(g) (currently codified under Utah Code Ann. § 31A-22-305.3).”

Relevant Statutes, Rules and Constitutional Provisions

Utah Code Ann. § 31A-22-305(9):

(b) For **new policies written on or after January 1, 2001**, the limits of **underinsured motorist coverage shall be equal to** the lesser of the limits insured’s motor vehicle **liability coverage** or the maximum underinsured

¹ *Egbert v. Nissan North America, Inc.*, 2007 UT 64, ¶ 7, 167 P.3d 1058.

motorist coverage limits available² by the insurer under the insured's motor vehicle policy, **unless the insured** purchases coverage in a lesser amount by signing an acknowledgment form provided by the insurer that:

(i) **waives** the higher coverage.

(g)(i) [i]n conjunction with the **first two renewal notices sent after January 1, 2001, for policies existing on that date, the insurer shall disclose . . .** an explanation of the purpose of **underinsured motorist coverage** and the costs associated with increasing the coverage in amounts up to and including the maximum amount available by the insurer under the insured's motor vehicle policy.³

The complete statute is attached as Addendum "A."

Statement of the Case

Historical Changes To Policies Issued by State Farm Over the Course of 24 Years.

During their 24 year relationship with the Iversons State Farm issued new policy numbers at crucial points, such as: termination, time-out-of-force, changes in vehicles, and a complete substitution of one Policy Form for a new Policy Form. (Addendum "B" Table Policy Chronology). State Farm first issued a policy of insurance to Carter and Glenada Iverson in 1981. (R. 0201). State Farm's first policy provided coverage for a 1981 Pontiac Firebird and was numbered #479 7848-804-4. In 1990 State Farm State

² State Farm has not argued and it is undisputed that higher amounts were available under the policy.

³ Utah Code Ann. § 31A-22-305 (West 2001)(currently codified under Utah Code Ann. § 31A-22-305.3)(emphasis added).

Farm "replaced" policy #479 7848-804-44 and issued policy #479 7848-804-44A which governed a 1984 Dodge Van. (R. 0201).

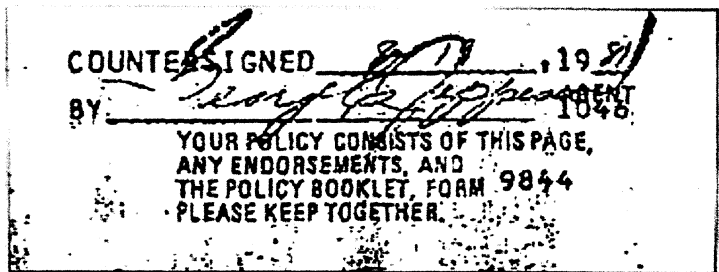
PERSON, CARTER O		479 7848-804-44A	
95 N 23 W		1379	
AR RIVER CITY UT 84301		2001 PT Chui	
POL PERIOD AUG-04-90 TO FEB-04-91		VIN. 2B7HB2379EK286712	
COVERAGES AND PREMIUM FOR POLICY PERIOD ABOVE		MEMB PAID	
A	58.60	50000	100000
P3	18.00		50000
U	3.00	20000	40000
D50	43.40		
G100	62.40		
H	2.40		
TOTAL	\$137.80		
		CLASS 1P3F3	
		TERR. 01	
		IRG. - AGE 010 6	
		4797848-44	
		25/50 D	
		10/20	

From 1991 through 2005, State Farm replaced the prior policy on numerous occasions and ultimately issued new policy numbers ranging from #479 7848-804-44A to #479 7848-804-44F. (R. 201, 228, Addendum "B" Table Policy Chronology). In 1997 the Iversons experienced a "Time Out of Force," resulting in State Farm issuing #479 7848-804-44B. Then, in 1997, State Farm terminated the policy. (R. 202, 228, 230). When reinstating coverage, State Farm issued policy #479 7848-804-44C, replacing the prior policy #479 7848-804-44B.

** AUX 30 - TERMINATION/ [REDACTED] **						
ST/ UD	POLICY NUMBER		TERM/REIN	STATUS		
	CHANGE CODE	CAR	DATE	TYPE	SO.	
443	4797848	B	08-04-97	27	C	
443	[REDACTED]				C	
443	4797848	F	07-15-05	14	C	

Similarly, whenever the Iversons acquired a new vehicle, State Farm's documentation shows that they issued new coverage. State Farm paperwork treated the policy as a 'replacement' (R. 201, 204), and issued a new policy number to coincide with the new coverage for the new vehicle (R. 201 [1984 Dodge Van para 2]; R. 203, 232 [1995 Chevy Van]; R. 204 [2001 PT Cruiser]).⁴ For example, in October 1997, State Farm issued policy #479 7848-804-44D for the newly acquired 1995 Chevy Van, replacing the previous coverage under policy #479 7848-804-44C. (R. 203, 232).

From the beginning of their relationship, State Farm told the Iversons that their policy "consists of [declarations], any endorsements and the Policy Booklet Form." (R. 65).



According to State Farm's corporate representative Tammy Chase (R. 304), in August 2001 State Farm replaced the Iverson's Policy Booklet Form 9844.3 (R. 355-377) with State Farm's new Policy

⁴ State Farm may attempt to characterize the multiple change in vehicles over the years as nothing more than providing coverage for a 'replacement' vehicle. In the Federal Court action, State Farm cited their renewal notices and argued that these were mere replacement vehicles. However, the notices lack any indication that State Farm simply added the vehicle onto an "existing policy." (R. 202).

Booklet Form 9844.4 (R. 379-408). Reflecting this change to basic terms, definitions and conditions to the Iverson's contracted coverage, State Farm replaced policy #479 7848-804-44D with #479 7848-804-44E. (R. 304). The effective date for Utah Code Ann. §31A-22-305, January 1, 2001, precedes State Farm's issuance of new terms, definitions and conditions in August of 2001. However, after issuing a new policy with altered terms, conditions and definitions for the Iverson's policy, State Farm did not obtain a written waiver of UIM coverage equal to liability limits. (R. 204).

The Policy Form issued by State Farm is an "agreement" by and between State Farm and their insured. According to State Farm: "We, the State Farm Mutual Automobile Insurance Company, agree to insure you according to the terms of this policy based: 1. on your payment of premium for the coverages you chose, and 2. in reliance on your statements in these declarations." (R. 382, 352). The Policy continues: "You agree, by acceptance of this policy that: 1. the statements in these declarations are your statements and are true; and 2. we insure you on the basis your statements are true; and 3. this policy contains all of the agreements between you and us or any of our agents." (R. 382, 352)

Further, under the Policy Form, the "terms of the policy may only be changed or waived only by: (1) an 'endorsement' ... or, (2) the revision of policy form to give *broader* coverage." (R. 404)(emphasis added). However, the new Policy Form narrowed the coverages and substantially altered the terms and conditions. First, the new policy provisions altered the definition of "bodily injury," expressly eliminating coverage for

emotional distress where no physical injury occurred. (R. 300, and Addendum “C” Table Policy Language). Other substantive changes in coverage, changes which narrowed the coverage available included: (1) redefining the nature of coverage for rental vehicles used by the insured (R. 356, 381 Addendum “C” Table Policy Language); (2) removed no-fault coverage “while operating or occupying a motorcycle” (R. 363, 389, Addendum “C” Table Policy Language); (3) eliminated ability of insured to recover attorney fees when electing arbitration for dispute over no-fault benefits (R. 389, Addendum “C” Table Policy Language); and, (4) gave State Farm right to rely on mailing as sufficient proof of notice. (R. 405, Addendum “C” Table Policy Language).

The new policy also altered the definition of ‘newly acquired car.’ (R. 356, Addendum “C” Table Policy Language). Under the original terms of the contract between State Farm and the Iversons, State Farm would provide coverage for a new vehicle if “(1) [the Iversons] *tell us* about it within 30 days after its delivery to you; (2) if you or your spouse has more than one of our car policies, *tell us* which one is to apply; and, (3) pay us any added amount due.” (Id.)(emphasis added).

Under the new terms, State Farm would provide coverage for a new vehicle only if the Iversons “(1) *ask us* to insure it within 30 days after its delivery to you; and (2) pay us any added amount due.” (R. 380)(emphasis added). Under the new provisions, the Iversons had to ask State Farm for insurance coverage. State Farm could then decide whether or not to issue coverage and whether a new policy would be issued. Under the

terms of this new policy, State Farm subsequently supplied a new policy of insurance for a 2001 PT Cruiser.

In 2003 the Iversons acquired a PT Cruiser. They asked State Farm to provide coverage for the vehicle. (R. 204, 257). State Farm issued policy #479 7848-804-44F for the coverage on the PT Cruiser, replacing the prior policy #479 7848-804-44E. (R. 204, 259). State Farm sent a Declarations Page for the PT Cruiser to the Iversons. Under “IMPORTANT MESSAGES” State Farm informed the Iversons that policy #479 7848-804-44F “Replaced policy number 4797848-44E.” (R. 204, 259).

IMPORTANT MESSAGES

Your policy consists of this declarations page, the policy booklet - form 9844.4, and any endorsements that apply, including those issued to you with any subsequent renewal notice.

Replaced policy number 4797848-44E.

State Farm’s Declarations Page further juxtaposes and differentiates between ‘replacement’ insurance coverage as opposed to ‘renewal’ insurance coverage by telling the insured that future coverage under the new policy will be governed by any endorsements which apply to “subsequent renewals.” (Id.)(emphasis added). At the time State Farm replaced #479 7848-804-44E with policy #479 7848-804-44F they did not obtain a waiver for UIM coverage in an amount less than the liability policy limits.

Over the course of 24 years State Farm issued new policies when the Iversons purchased a new vehicle, experienced a “Time Out of Force” or when State Farm issued a new policy altogether. State Farm’s consistent and habitual issuance of a new policy number following a Time Out of Force, Termination/Reinstatement of coverage,

replacing policies to cover new vehicles and alteration of the contractual terms and agreement through a new Policy Booklet Form demonstrate the creation of a new policy, not a renewal of the same continuous and uninterrupted coverage.

State Farm's Corporate Representative Confirmed Policy Changes.

State Farm's designated corporate representative, Tammy Chase, testified that underwriting involves a two-step process.

Q. So it's a two-step process to go through underwriting.

A. Right.

Q. The first step is eligibility?

A. Uh-huh.

Q. Yes.

A. Yes.

Q. Thank you. And the second step is the rating of the risk.

A. Yes.

(R. 205, 238-239, 320-321).

Q. All right. So we've described two steps in the underwriting process, eligibility and then the second step is rating of placement. Are there other steps beyond those?

A. No.

(R. 205, 241, 320-321).

In the second step of underwriting, determining the rating, State Farm considers the type of vehicle, the coverages, deductibles, where the car is used, the territory, the classification of the car, how the car is used (commuter/business/pleasure etc.) and the age of the operator. (R. 205, 240). State Farm also admits that there is a difference in rating, the second step of underwriting, for a 1981 Firebird as opposed to a 2001 PT

Cruiser. “Q. So there's a change in underwriting between a 1981 Firebird and a 2003 PT Cruiser; is that accurate? A. There's a change in rating.” (Id. at 23:11-14).⁵

State Farm will likely point out that insureds derive an alleged ‘benefit’ by characterizing old policies as ‘the same’ policy even when significant rating changes result in issuance of new policy numbers. Specifically, State Farm suggests that insureds receive a lower premium rate simply by calling the policy ‘the same.’ However, contrary to a supposed ‘benefit’ to the insured in maintaining the same policy, Tammy Chase admits that there is no guarantee of continuing discounts and that, in any case, State Farm must follow the rates it has on file. (R. 205, 244-245). Ms. Chase agreed that there might, in fact, be no benefit whatsoever to the insured.

Q. Is it always the case that if State Farm writes a new policy, the premium, the cost of that policy is going to be greater than if it were simply renewed?

A. No.

Q. So the benefit that you're talking about doesn't always accompany the renewal.

A. It's possible that it wouldn't, that it could be the same.

(See, 244).

Additionally, the change in policy numbers from policy to policy is important in determining what coverages and declarations exist for the policy. State Farm admits that the issuance of a new policy number is used to “identify which declarations page would be in effect.” (R. 205, 245). Furthermore, any change in principal drivers would trigger both an eligibility and a rating review. (R. 206, 246-247). For example, a change from a

⁵ State Farm also admitted that the ‘class changes’ to the Iverson’s insurance constituted rating changes. (R. 205, 228, 242-243).

married to an unmarried male driver would reflect a change in the second step of underwriting, the rating of the policy.

Q. The underwriting risks change with age; Is that right?

A. Yes. This was an unmarried male, age 25 to 29, so that corresponds with our class 3.

Q. So it's a change in the underwriting on the policy as well as a change in principal driver.

A. It's a change in the rating of the policy. The classification is part of the rate.

Q. And then the very next page, deposition exhibit no. 3, Page number 1524, we see another change reflected in the principal driver. It says there are no male or unmarried female drivers under age 25. Is that accurate what i've just said?

A. Yes. That's what that says.

Q. And again that would affect the second step of the underwriting process, the rating.

A. It would impact the rating, the pricing of the policy, yes.

(R. 206, 248-250). Here, State Farm's policy underwent just such a change when the principal driver changed from Carter Iverson to his son, Rex Iverson in 1997-1998. (R. 88, 92) and the premium increased from \$162.90 to \$350.02.

Finally, State Farm admits that even when there is no change at all to the policy number, there may still be material changes to the policy and that material changes are those which "impact the pricing of the policy." (R. 206).

Q. You would agree that the change in principal driver is -- in fact, I think you already agreed when we were talking earlier that the changing of principal driver is a material change that's going to affect the premiums and risk involved in the policy; Isn't that true?

A. It would impact the pricing of that policy.

Q. So it's not an immaterial change.

A. Even just changing a driver, though, would not create even a change to that change code.

Q. **But if it changed in matters with respect to the cost of the policy?**

A. **To the pricing of the policy, yes.**

Q. **So it's a change that materially affects the policy then; Is that true?**

A. **Depending on the age of the driver, the driving record, it may or may not impact the pricing. It could have potential.**

Q. **So it could be a material change.**

A. **Right.**

Q. In fact, with the change of the driver in this case, it did, with the change in principal driver, it did change the costs, didn't it? I guess **that would be reflected by the documents**, wouldn't it?

A. **Yes.**

(R. 206, 254-255).

In this case, State Farm documents reflect that the change in principal drivers did, in fact, alter the pricing of the policy and hence were material to the policy. In February of 1997 the principal driver was aged 50 or older and the premium was \$162.90. (R. 207, 232-234,). Yet, one year later, the principal driver was an unmarried male age 25-29 and the premium was more than double the year before at \$350.02. (R. 207). Further, the change in vehicles also altered the pricing and, according to Ms. Chase, therefore constitutes a material change in the insurance policy. In February of 2003 the total premium for the 1995 Chevy Van was \$277.20. (R. 207, 261). Yet, after replacing #479 7848-804-44E, the policy covering the Chevy Van, with #479 7848-804-44F, the policy covering the PT Cruiser, the pricing jumped to \$379.00. (R. 207).

From 1981 through 2005 State Farm insured four different vehicles under differing policy numbers, two different principal drivers and issued new policy numbers on three different occasions following a termination, "Time Out of Force," or rewriting of the terms and conditions in the Policy Booklet Form. (Addendum "C" Table Policy

Language). State Farm admits that the insurance issued to Carter and Glenada Iverson changed frequently:

Q. Has gone through numerous changes. That's true?

A. That's correct.

Q. It's had different principal drivers.

A. Correct.

Q. It's had principal drivers who differ in terms of a risk assessment? I'm speaking to the 23 to 25 year age range and unmarried. That's correct?

A. Okay.

Q. It's had four different vehicles on it.

A. Correct.

Q. The premiums have differed for those vehicles.

A. Correct.

Q. The entire policy number itself has not remained the same over the course of the policy?

A. I would say that the policy number has and that the change code has differed.

Q. I understand the distinction but if you read the policy number as a whole, it changes over the course of time.... That last number on the policy changes, letter.

A. The last letter, the change code can change, yes.⁶

(R. 252-253)

State Farm produced no evidence that they obtained a written waiver from from Carter or Glenada Iverson allowing the UIM coverage to be less than the liability coverage.

In July of 2005, Carter and Glenada Iverson were killed in a head-on collision while driving the 2001 Chrysler PT Cruiser. Joni Iverson, as personal representative of the heirs and estate Carter and Glenada, requested that State Farm provide UIM coverage

⁶ Ms. Chase's testimony does equivocate that this is simply a 'change code' but the fact remains that the policy number, as a whole, changes to reflect the issuance of coverage for a vehicle not previously covered or to identify reinstatement/recovery from a time-out-of-force, temporary suspension of coverage or issuance of a new policy.

in an amount equal to the liability policy limits of \$50,000/\$100,000. State Farm refused to provide the higher limits. (R. 152). State Farm argues that, despite the numerous changes and passage of 24 years, the policy of insurance covering the 1981 Firebird is the 'same' policy of insurance, simply a 'renewal,' covering the 2001 PT Cruiser.

Summary of the Argument

State Farm characterizes a policy of insurance written in 1981 and covering a 1981 Firebird as the 'same' policy issued in 2003 and covering a 2001 PT Cruiser. Besides the obvious fact that neither the PT Cruiser nor the policy of insurance existed at the time State Farm wrote coverage in 1981, the myriad changes and circumstances demonstrate that the Iverson's coverage changed materially after the legislature enacted a written waiver requirement.

State Farm's Policy Did Not Exist on January 1, 2001.

The policy of insurance governing the 2001 PT Cruiser did not exist until 2003 when State Farm issued Policy #479 7848-804-44F to replace the prior policy #479 7848-804-44E. Additionally, even the preceding Policy #479 7848-804-44E did not exist until August 2001 when State Farm issued a new Policy Form. Because the policy of insurance covering the Iversons did not exist prior to January 1, 2001, Utah Code 31A-22-309(b) mandates that State Farm obtain a written waiver of UIM coverage equal to the liability coverage. State Farm never secured a written waiver from the Iversons. Accordingly, the UIM coverage must equal the liability coverage, in this case \$50,000 per person and \$100,000 per occurrence.

State Farm's Policy Is Not A 'Renewal' of Previously Existing Coverage.

The sole exception for obtaining written waivers from insureds is in the case of a renewal. However, a policy of insurance written for the first time in 2003 cannot be considered 'renewal' insurance. State Farm believes that a policy originally written in 1981, providing coverage for a 1981 Firebird, is the same policy governing a 2001 PT Cruiser, written in 2003 and in force at the time of a collision in 2005. State Farm takes this position in order to argue that the policy was simply 'renewed' over the years.

State Farm takes an extreme position that, despite four changes in automobiles, two changes in primary operator and at least two occasions where the coverage was considered to be "Time Out of Force" the policy of insurance is the 'same' and therefore simply a 'renewal.' Indeed, State Farm replaced the entire policy terms, conditions, declarations and coverage in August of 2001 and issued a new number reflecting those changes as well. Yet, State Farm cannot explain why their own written materials sent to the insureds indicate that State Farm was 'replacing,' not renewing, a policy which had lapsed or on which the vehicles had been changed.

In light of these facts, State Farm did not simply 'renew' a previously valid policy. Rather, State Farm replaced the policy in existence, with a new policy, as reflected by the policy number itself. When a light bulb burns out, the light bulb is replaced, meaning that a new lightbulb is substituted for the one which no longer functions or exists. State Farm's position, however, seems to be that so long as the power company remains the same, the light bulb never changes.

I. STATE FARM'S FAILURE TO OBTAIN A WRITTEN WAIVER WHEN ISSUING NEW COVERAGE AFTER 2001 REQUIRES THAT UIM LIMITS EQUAL THE LIABILITY LIMITS.

For all new policies written on or after January 1, 2001, underinsured motorist coverage equals the liability coverage unless the insured affirmatively waives, in writing, the right to matching UIM coverage.⁷

The operative statute provided in relevant part:

(b) For **new policies written on or after January 1, 2001**, the limits of **underinsured motorist coverage shall be equal to** the lesser of the limits insured's motor vehicle **liability coverage** or the maximum underinsured motorist coverage limits available⁸ by the insurer under the insured's motor vehicle policy, **unless the insured** purchases coverage in a lesser amount by signing an acknowledgment form provided by the insurer that:

(i) **waives** the higher coverage.⁹

State Farm issued Policy #479 7848-804-44F covering the PT Cruiser in April of 2003. State Farm "replaced" former Policy #479 7848-804-44E with #479 7848-804-44F. (R. 327).

No evidence of record indicates that State Farm obtained the written waivers after 'replacing' the prior policy as required by Utah Code Ann. § 31A-22-305. Accordingly,

⁷ Utah Code does allow an insurer to issue UIM for amounts less than liability coverage, but only so long as that amount is the maximum offered by the insurer under the policy.

⁸ State Farm has not argued and it is undisputed that higher amounts were available under the policy.

⁹ Utah Code Ann. § 31A-22-305.3(2)(b)(emphasis added). The statutory provision written in 2000 and in effect as of 2001 was numbered § 31A-22-305(9)(b) but was renumbered in 2001 without substantive change.

IMPORTANT MESSAGES

Your policy consists of this declarations page, the policy booklet - form 9844.4, and any endorsements that apply, including those issued to you with any subsequent renewal notice.

Replaced policy number 4797848-44E.

the UIM coverage under Policy #479 7848-804-44F must equal the liability coverage on the Iverson PT Cruiser, \$50,000/\$100,000.

The legislature provided a single exception to the requirement that insureds waive UIM in writing - existing policies which were renewed did not require a written waiver under the 2000 legislation. For renewal policies in existence on January 1, 2001, the insurer only needed to provide a notice to the insured explaining UIM coverage. However, the exception only applies to policies existing on January 1, 2001. State Farm relies on this exception in attempting to show compliance with the statutory requirements.

(g)(i) [i]n conjunction with the **first two renewal notices sent after January 1, 2001, for policies existing on that date**, the insurer shall disclose . . . an explanation of the purpose of underinsured motorist coverage and the costs associated with increasing the coverage in amounts up to and including the maximum amount available by the insurer under the insured's motor vehicle policy.¹⁰

Unfortunately, the policy controlling coverage over the PT Cruiser did not exist on January 1, 2001 and, therefore, any renewal notifications fail to meet the strict legislative requirements.¹¹ As demonstrated by the undisputed facts in this case, State Farm Policy #479 7848-804-44F "replaced" the prior policy #479 7848-804-44E in April 2003.

¹⁰ *Id.* (emphasis added).

¹¹ The *New Oxford American Dictionary* (Second Edition) defines existing as "in existence or operation at the time under consideration."

Accordingly, #479 7848-804-44 which insured the PT Cruiser did not exist until April of 2003, a full two years after the statute went into effect.

Further, the preceding policy, State Farm Policy #479 7848-804-44E did not exist until August of 2001. State Farm wrote policy number #479 7848-804-44E in order to establish the new terms, definitions and conditions contained in Policy Booklet Form 9844.4. The only policy of insurance “existing on [January 1, 2001]” was Policy #479 7848-804-44D. State Farm Policy #479 7848-804-44D was subject to the prior terms, conditions and definitions contained in Policy Booklet Form 9844.3. State Farm wrote a new policy by issuing #479 7848-804-44E and incorporating the new Policy Booklet Form. Because State Farm Policy #479 7848-804-44F did not exist on January 1, 2001, it cannot be considered a ‘renewal’ policy.

State Farm told insureds in the declaration under “IMPORTANT MESSAGES” that policy #479 7848-804-44F “Replaced policy number 4797848-44E.” (See, 204, 258-259). If the policy did not previously exist and was written as a replacement policy, then it can be nothing other than a new policy. By contrast, State Farm does not tell the Iversons that the PT Cruiser replaced a Chevy Van. Holding that the policy issued in 1982 governing a Firebird is the same policy of insurance governing a 2001 PT Cruiser and issued in 2003 grants State Farm the power to wholly dictate the characterization of its insurance without deference to the legislative requirements or the undisputed facts.

When an insurer writes insurance for new circumstances, or writes an insurance contract to alter the terms of the original contract, the insurer has created a ‘new’ policy,

not a renewal policy, and must therefore obtain the statutorily mandated written waiver from the insured regarding the amount of accepted UIM coverage.¹² An insurance policy written to provide coverage on a new vehicle, a new principal driver or to alter the substantive terms of the agreement is not a ‘renewal,’ but rather a replacement policy as demonstrated by State Farm’s identification of a new policy number and express characterization of the policy as “replacement.”¹³

Renewal is commonly defined as “the action of extending the period of validity of a license, subscription, or contract.”¹⁴ In other words, ‘renewal’ assumes that the original contract was in existence and simply “came up for renewal.”¹⁵ By contrast, replace is defined as “take the place of: provide or find a substitute for (something that is broken, old, or inoperative).”¹⁶ When writing the contract for purposes of a new vehicle, State Farm’s own records and documents describe the coverage provided to the Iversons as ‘replacement’ coverage, not renewal coverage. Because the insurance contract between the Iversons and State Farm was written on several occasions, it simply cannot be said that the contract that existed between the Iversons and State Farm in 1981 is the same continuous renewal contract of insurance covering their collision in 2005.

¹² Utah Code Ann. § 31A-22-305.3(2)(b) (West 2008).

¹³ See, Statement of Facts, *supra* ¶¶ 2, 21.

¹⁴ *New Oxford American Dictionary* (Second Edition)

¹⁵ *Id.*

¹⁶ *Id.*

II. THE PLAIN LANGUAGE OF THE STATUTE REQUIRES THAT STATE FARM'S POLICY BE CONSIDERED NEW, NOT A RENEWAL.

When interpreting statutory insurance requirements the primary goal is “to evince the true intent and purpose of the Legislature... by first looking to the statute's plain language, and giving effect to the plain language unless the language is ambiguous.”¹⁷ The plain language approach also requires that this Court must “presume that the legislature used each word in a statute advisedly and we give effect to each term according to its ordinary and accepted meaning.”¹⁸ In matters of insurance coverage, Utah Courts give deference to the public policy and compensatory goals of insurance by requiring that any exceptions to coverage be strictly and narrowly construed. UIM “statutes are remedial in nature, requiring that they be liberally construed in favor of coverage, with strict and narrow construction given to exclusions.”¹⁹

The plain language of the statute requires waivers for “new policies written on or after January 1, 2001.” However, in order to avoid the statutory requirements of providing higher UIM coverage, State Farm reads words into the statute which do not exist. State Farm reads the statute as “for all new policies *underwritten*.” No such language exists in the statute and this Court would go well beyond the plain language of the statute in construing it to include such language. The legislature carefully chose that

¹⁷ *Li v. Enterprise Rent-A-Car Co.*, 2006 UT 80 ¶ 9, 150 P.3d 471.

¹⁸ *Id.* at ¶ 21.

¹⁹ *General Security Indem. Co. of Arizona v. Tipton*, 2007 UT App 109 ¶ 13, 158 P.3d 1121.

the policy need only be ‘written,’ not underwritten, in order to require insurers provide higher UIM coverage or obtain a waiver. Because the legislature chose the word ‘written’ over ‘underwritten,’ State Farm’s position that this is not a new policy quickly loses viability.

Additionally, the plain language of Utah’s statute provides a single narrow exception to obtaining a waiver from an insured. Under the statute, renewal policies existing at the time of January 1, 2001 only needed to provide an additional notice to insureds regarding UIM coverage. No policy of insurance existed which governed the PT Cruiser until April of 2003. State Farm’s approach would read out of existence the ‘existing at the time’ language of Utah’s statute. Courts must “avoid interpretations that will render portions of a statute superfluous or inoperative.”²⁰ Despite this firmly entrenched principle of statutory construction, State Farm attempts to read out the ‘existing at the time’ phrase in Utah Code Ann. § 31A-22-305.3.

In order to fit within the renewal exception, State Farm’s interpretation expands renewal to include substitution, reinstatement, replacement or any number of other forms a new policy might take, so long as some vague “internal operation” of the insurance company considered the policy as a renewal. It is highly unlikely that the legislature intended to leave it to the discretion of individual insurance companies to brand their policies as ‘new’ or ‘renewal’ based solely on internal operations. In briefing to the Federal District Court, State Farm cited authority allegedly supporting their broad

²⁰ *Grappendorf v. Pleasant Grove City*, 2007 UT 84, ¶ 9, 173 P.3d 166.

interpretation of the statute. However, that authority cannot guide this Court due to the disparate differences in statutory language addressed in those decisions.

For example, *Millet v. Imperial Fire and Casualty Insurance* interpreted a much different statute. There, the statute addressed increased UIM requirements “when a renewal, reinstatement, substitute, or amended policy is issued to the same named insured by the same insurer or any of its affiliates.”²¹ Clearly, this statute is much broader than Utah’s - the Utah legislature chose to allow an exception to written waivers only for renewals, not for ‘reinstatements, substitutes, amendments.’ Not surprisingly, the *Millet* court found in favor of the insurance company under the Louisiana statute. Indeed, each authority relied upon by State Farm similarly dealt with such broad statutory language.²²

Utah law requires that the construction and application of the ‘renewal’ exception to written waiver be done narrowly, giving full effect to each word used, including the “then existing” language. Because Policy #479 7848-804-44F did not exist until 2003, it

²¹ *Millet v. Imperial Fire and Casualty Insurance*, 887 So.2d 603, 605 (La. Ct. App.)

²² *See, Gasch v. Harris*, 808 So.2d 1260 (Fla. Ct. App. 2002)(UIM “coverage or such higher uninsured motorist limits need not be provided in or supplemental to any other policy which renews, extends, changes, supersedes, or replaces an existing policy with the same bodily injury liability limits when an insured or lessee had rejected the coverage.” Florida Statutes Ann. § 627.727 (West 2008)); *and, Dodd v. Allstate Ins. Co.*, 99 P.3d 1219, 1222, n. 4 (Okla. Civ. App. 204)(no written waiver required for UIM “in or supplemental to any renewal, reinstatement, substitute, amended or replacement policy.”); *and, Johnson v. Farmers Ins. Co. of Washington*, 817 P.2d 841, 843, n. 2 (Wash 1991)(“such coverage shall not be included in any supplemental or renewal policy unless a named insured or spouse subsequently requests such coverage in writing.”); *and, Wells v. Detroit Auto. Inter-Insurance Exchange*, 185 N.W.2d 147, 149 (Mich. Ct. App. 1970) (UIM coverage “need not be provided in or supplemental to a renewal policy” but also refusing to address issue under a constitutional *ex post facto* analysis).

cannot be considered a ‘renewal’ policy. The Utah legislature, unlike other states, chose to narrowly define the circumstances under which an insurer may simply give notice to the insured regarding UIM benefits. Other states broadly defined the notice circumstances as including any supplemental, replacement, or superseding policies and did not even specify that those policies needed to be “then existing.”²³ If the state legislature desired to allow replacement policies to be subject to the simple notice procedure, the legislature could have adopted language identical to that in other state systems. Utah requires that insurers obtain a written waiver for all new policies written after January 1, 2001 and the policy covering the PT Cruiser, being written in 2003, is such a policy. Because Policy #479 7848-804-44F was written in 2003, State Farm must provide coverage equal to the liability limits of \$50,000/\$100,00.

III. PUBLIC POLICY AND OTHER STATE COURTS REQUIRE THAT STATE FARM PROVIDE UIM COVERAGE EQUAL TO THE LIABILITY COVERAGE.

A. Legislative History and the Underlying Public Policy Require Any Ambiguity Between ‘Renewal’ and ‘New’ Construed In Favor of Coverage Equaling the Liability Limits.

“When interpreting a statute, our goal is to give effect to the legislature's intent and purpose.”²⁴ “If we find the provision ambiguous, we then seek guidance from the legislative history and relevant policy considerations.”²⁵ Even if the statute contained some ambiguity sufficient to raise a question whether or not State Farm’s policy is a

²³ *Id.*

²⁴ *Grappendorf v. Pleasant Grove City*, 2007 UT 84, ¶ 9, 173 P.3d 166.

²⁵ *Wilcox v. CSX Corp.*, 2003 UT 21, ¶8, 70 P.3d 85.

“renewal” policy or a “new” policy, the legislative history and public policy undermine any finding that State Farm can escape providing hiring limits under the renewal exception.

The public policy underlying the legislative mandate of UIM limits equal to, at the very least, the liability limits was intended to eliminate confusion and provide the greatest coverage possible for insureds. In a 2007 Utah Court of Appeals case, the opinion undertook a review of the legislative history and policy giving rise to the requirement that insurers such as State Farm obtain a written waiver for lower UIM limits. “The legislative policy reflected [by Uninsured/Underinsured coverage] is to ensure that consumers make fully informed decisions about UM coverage, not to give insurers an out.”²⁶ The Utah Court of Appeals recognized that the statutory changes in 2000 cured a legislative concern: consumers lacked adequate information and understanding regarding their underinsured and uninsured coverages. According to Representative Koehn:

When we buy insurance for our cars, and we purchase the amount that we can refer to as the “liability amount,” ... consumers generally don't understand that that's a package that you buy, and they believe that when they're buying that coverage, that's taking care of themselves or their family. That's not the case.... What this bill does is says, when you're purchasing insurance ... the underinsured coverage will be the same as the liability coverage you have, unless you choose not to take that. But what [the bill] presumes, is that the levels will be the same, so that the consumer gets what they believe they're buying, or they understand what they're buying, and ... it provides a way that if you don't want that, then you can

²⁶ *General Security Indem. Co. of Arizona v. Tipton*, 2007 UT App 109 ¶ 9, n. 4 (construing Utah’s *uninsured* provisions by reference to legislative debate regarding Utah’s *underinsured* statutes).

sign a waiver saying “I recognize I'm taking a lesser amount of underinsured coverage.”²⁷

When the Iversons purchased insurance in April of 2003 for their 2001 PT Cruiser, they purchased liability coverage in an amount of \$50,000/\$100,000.

State Farm ignores the legislative finding that insureds must be protected by mandating the higher limits absent a written acceptance of lower limits because the insureds simply didn't know what they were getting when purchasing insurance. State Farm should not be allowed to so easily skirt legislative intent by portraying a policy written after this legislative amendment as a renewal based on nothing more than reference to State Farm's own internal procedures. “To allow a statutory exemption on the basis of the form of the transaction and the documentation involved - matters solely within the control of the insurer - is to allow the application of the statute to be controlled by the insurer.”²⁸

Underinsured and uninsured statutes:

are designed to protect insureds by providing compensation to those who are injured or killed by uninsured motorists or other financially irresponsible motorists. Such statutes are remedial in nature, requiring that they be liberally construed in favor of coverage, with strict and narrow construction given to exclusions. UM statutes are designed for the benefit of insureds and not insurers. They are adopted to benefit the insured motorist, and are not intended to relieve ... insurers of primary

²⁷ *Id.* at ¶ 11.

²⁸ *Folstad v Farmers Insurance*, 210 N.W.2d 238, 240 (Minn. 1973)(refusing to allow insurer to characterize policy as ‘renewal’ where changes in driver and insured vehicles occur).

responsibility ... or to benefit them in any way.²⁹

State Farm did not cite a single decision in the Federal briefing where an insurance coverage lapsed or experienced a “Time Out of Force,” and was reissued and replaced, but was still considered as a ‘renewal’ policy. Further, State Farm cites no authority wherein the insurer expressly defined and identified the new policy as “replacing” a prior policy and, thereafter, the policy was considered a renewal. Finally, and as noted above, those few decisions cited by State Farm are distinguishable based on broad statutory language which excepted the policy from mandatory higher UIM coverage. In light of the Utah legislature’s expressed public policy to ‘protect insureds’ and the very narrow use of language allowing insurers to escape a written waiver, State Farm’s position that they need not obtain a written waiver for lapsed coverage and replacement policies fails.

Other courts examining the issue readily conclude that a replacement policy is the equivalent of a ‘new’ policy. In *Whaley v. Allstate Ins. Co.*, the court held that “the Policy was not a ‘renewal’ but a new or replacement policy on October 9, 1981, when Mr. Whaley substituted a 1981 Chevette for a 1980 Chevette.”³⁰ Similarly, in *Withrow v. Pickard*, the court recognized “that the addition of a vehicle to an existing policy constitutes a new policy distinct from the original... We also agree with Withrow that a new policy was created when he added a third vehicle to his original policy.”³¹ Here,

²⁹ *General Security Indem. Co. of Arizona v. Tipton*, 2007 UT App 109 ¶ 13, 158 P.3d 1121 (citation and quotation omitted).

³⁰ *Whaley v. Allstate Ins. Co.*, 595 F.Supp. 1023, 1026 (D.C. Del. 1984).

³¹ *Withrow v. Pickard*, 905 P.2d 800, 803 (Okla. 1995).

State Farm's own documents indicate that the insurance policies have replaced each other on several occasions when bringing coverage to a new vehicle. The final policy governing the PT Cruiser did not exist prior to April of 2003 and, because it cannot be a renewal if it did not previously exist, it must therefore be considered a new policy under Utah law.

Because a 'renewal' is to be strictly and narrowly construed in light of public policy considerations requiring a broad construction advancing coverage for benefit of insureds, other jurisdictions reject contentions that would take a recently issued policy outside of increased coverage. For instance, in *Beauchamp v. Southwestern Nat'l Ins. Co.*, the court ruled that a similar statutory scheme is "strictly limited to true renewals of existing insurance policies, that is, situations where such renewals are made without effecting a material change or departure from the provisions of the original policy."³² *Beauchamp* concluded that, as a necessary result of the public policy in favor of coverage, the addition of a 1974 Jeep took the coverage outside a 'true renewal' and imposed statutory requirements for UIM. Relying on *Beauchamp*, the Tenth Circuit Court of Appeals paid heed to the "admonition to read [renewal exception] narrowly."³³ In *May*, the court found that a *reduction* in liability coverage amount took the insurance coverage outside the scope of a mere 'renewal.'³⁴ Adopting State Farm's attempt to

³² *Beauchamp v. Southwestern Nat'l Ins. Co.*, 746 P.2d 673, 676 (Okla. 1987).

³³ *May v. National Union Fire Insurance Company*, 84 F.3d 1342, 1346 (10th Cir. 1996).

³⁴ *Id.*

characterize the 24 year old policy as a mere renewal would frustrate the important policy considerations that prompted the Utah legislature to abolish the written rejection exception.

The express public policy of the State of Utah is that UIM statutes are designed for the benefit of insureds and not insurers. Mandatory UIM equal to the liability limits, absent written waiver, is adopted to benefit the insured motorist, and should not be construed to relieve insurers of primary responsibility or to benefit them in any way. Any construction of the statutes must be done liberally in favor of coverage, with strict and narrow construction given to exclusions. Accordingly, State Farm cannot dictate the basis on which policies will be considered 'new' or 'renewal' based on their own internal procedures and classification. An appropriate construction of the statute requires that the replacement policy covering the PT Cruiser be considered a new policy of insurance which did not exist prior to its creation in April of 2003. Accordingly, because it was a new policy and because State Farm did not obtain a written waiver, the UIM coverage must equal the liability limits.

IV. VEHICLE CHANGES, A CHANGE IN THE POLICY ITSELF AND STATE FARM'S ADMISSION TO MATERIAL CHANGES SHOW THE COVERAGE FOR THE IVERSONS TO BE NEW, NOT RENEWAL.

When significant changes occur to a policy, courts find that the subsequent policy is new and not a mere renewal. In *Arms v. State Farm Mut. Auto. Ins. Co.*, the court confronted an issue strikingly similar to that in this case. The insured had purchased several vehicles over the life of the relationship with his insurer, State Farm. In *Arms*

state statutory law imposed “the duty to offer to its insured the option to purchase additional uninsured motorist coverage.”³⁵ Similar to this case, the statutory scheme provided that “where the policy in issue is a renewal policy and the option to purchase additional coverage has been articulated by the insurer when issuing the original policy, no subsequent offer is required by the statute.”³⁶ Just as in this case, State Farm “seized upon” the renewal exception.³⁷ Accordingly, the court found that the issue, as here, “reduces itself to whether or not the policy in effect at the time of the collision was a renewal of prior coverage.”³⁸

Also there as here, the insured had replaced his vehicle on three separate occasions. State Farm contended that the issuance of a policy for each vehicle was “merely a renewal of the initial coverage; therefore, the duty to offer the option to plaintiff did not attach beyond the offer made in connection with the purportedly original policy.”³⁹ The court rejected this argument and agreed with the insured that the subsequent policies were “replacement and, therefore, [the insured] should have been offered the option of increasing his uninsured motorist limits.” The outcome should be no different in this case. State Farm themselves characterized the policies as ‘replacement’ and the changes reflect the fact that their policies with the Iversons were

³⁵ *Arms v. State Farm Mut. Auto. Ins. Co.*, 465 A.2d 360, 361 (Del. Super. 1984)

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 362.

³⁹ *Id.*

not mere renewals. Therefore, under Utah's statutory scheme, State Farm should have obtained a written waiver electing to maintain the lower UIM coverage.

Similarly, a Hawaii court considered even a few changes, such as a change to the named insured and a newly acquired vehicle, to be 'material.' Based on public policy, removing and replacing the named insured and adding a vehicle, "taken together, constituted a material change to the pre-existing policy... and, therefore, Allstate was required to make a new offer of UM/UIM coverage."⁴⁰ The multitude of changes in this case involved changes in principal driver, vehicles, and even issuance of a new Policy Booklet Form. Certainly these changes present material changes sufficient to trigger the requirement that State Farm obtain a written waiver because the policy is no longer a 'renewal' of a prior policy.

The numerous changes over the 24 years of providing insurance to the Iversons represent material and significant changes both cumulatively and standing on their own. However, State Farm's corporate representative admitted that the change in principal drivers was a material change as reflected by the change in pricing. State Farm's corporate representative also admitted that changes in pricing reflect material changes to the policy. If the change "impact[s] the pricing, [i]t could have potential. Q: So it could be a material change? A: Right. Q: ... [T]hat would be reflected by the documents, wouldn't it? A: Yes." (R. 235, 254-255).

⁴⁰ *Allstate Ins. Co. v. Kaneshiro*, 998 P.2d 490 (Hawaii 2000)

The documents reflect that the change in vehicles altered the pricing and, by Ms. Chase's definition of material, therefore constitutes a material change in the insurance. In February of 2003 the total premium for the 1995 Chevy Van was \$277.20. (R. 261). Yet, after replacing #479 7848-804-44E, the policy covering the Chevy Van, with #479 7848-804-44F, the policy covering the PT Cruiser, the pricing jumped to \$379.00. (R. 119). Despite these admittedly material changes, State Farm failed to obtain a written waiver for the lower UIM limits.

State Farm wrote two new policies following the 2001 legislation. First, State Farm wrote a new policy to reflect the narrowing of coverage offered under their new Policy Booklet Form. Second, State Farm wrote a new policy to provide coverage for the 2001 PT Cruiser. State Farm must admit the materiality of both the alteration of the basic agreement and contract for insurance as well as the issuance of coverage for the PT Cruiser. If either of these events were 'immaterial,' State Farm would not issue coverage at different premiums to reflect the change in risk insured or cause the policy number to change. In short, both events constitute material and significant departures from the prior policy as reflected by State Farm's own handling of each event, namely issuance of a new policy to reflect the event as well as an alteration to the pricing of the policy.

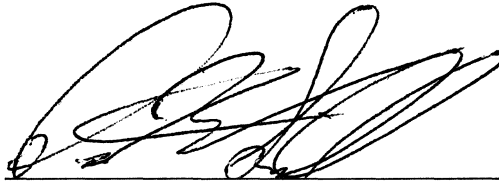
The coverage at issue in this case came about as a result of issuing a policy of insurance in April 2003. State Farm offers no evidence that the insureds waived the higher limits. Accordingly, it is appropriate to require that the UIM coverage in this case equal the liability limits of \$50,000/\$100,000.

Conclusion

Because State Farm's own documentation characterizes Policy #479 7848-804-44F as a 'replacement' policy, because that policy did not exist on January 1, 2001 and because the policy changed in several material respects, State Farm must obtain a written waiver for the higher UIM limits. State Farm offers no real explanation as to how a policy covering a 2001 PT Cruiser and written for the first time in April 2003 can be characterized as a 'renewal' a policy "then existing" in January of 2001. The sum of changes affected the pricing on the policy and involved rating aspects of underwriting as admitted by Ms. Chase.

Utah law requires insurers to provide UIM limits equivalent to the liability limits on a policy unless a written waiver is obtained from the insured. There is only a single and very narrow exception to the mandate that UIM limits equal liability limits - that exception only applies to a policy of insurance existing on January 1, 2001. Because the policy at issue came into existence in April of 2003, State Farm must demonstrate they obtained a waiver of higher UIM from the Iversons. State Farm offers no written waiver. Further, the undisputed facts in this case show that the policy covering the Iversons in 2005 for their 2001 PT Cruiser was not a mere renewal of the same policy governing the Iversons 1981 Firebird and written in 1981. Accordingly, Plaintiff respectfully requests that State Farm be required to provide the UIM equaling the liability limits in this case as mandated by Utah Code Ann. § 31A-22-305.

RESPECTFULLY submitted this 4th day of June, 2009

A handwritten signature in black ink, appearing to read 'Peter W. Summerill', written over a horizontal line.

PETER W. SUMMERILL
Attorney for the Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on this 8 day of June, 2009, a true and correct
copy of the foregoing PLAINTIFF'S BRIEF ON CERTIFICATION FROM FEDERAL
DISTRICT COURT was mailed, prepaid 1st class to:

Andrew D. Wright
Strong & Hanni
3 Triad Center Suite 500
Salt Lake City, UT 84180

Erin D. Morrow

Addendum A

UTAH CODE, 1953
TITLE 31A. INSURANCE CODE
CHAPTER 22. CONTRACTS IN SPECIFIC LINES
PART III. MOTOR VEHICLE INSURANCE

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31A-22-305 Uninsured and underinsured motorist coverage.

(1) As used in this section, "covered persons" includes:

(a) the named insured;

(b) persons related to the named insured by blood, marriage, adoption, or guardianship, who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere;

(c) any person occupying or using a motor vehicle referred to in the policy or owned by a self-insurer; and

(d) any person who is entitled to recover damages against the owner or operator of the uninsured or underinsured motor vehicle because of bodily injury to or death of persons under Subsection (1)(a), (b), or (c).

(2) As used in this section, "uninsured motor vehicle" includes:

(a) (i) a vehicle, the operation, maintenance, or use of which is not covered under a liability policy at the time of an injury-causing occurrence; or

(ii) (A) a vehicle covered with lower liability limits than required by Section 31A-22-304;

(B) the vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of the deficiency;

(b) an unidentified vehicle that left the scene of an accident proximately caused by the vehicle operator;

(c) a vehicle covered by a liability policy, but coverage for an accident is disputed by the liability insurer for more than 60 days or, beginning with the effective date of this act, continues to be disputed for more than 60 days; or

(d) (i) an insured vehicle if, before or after the accident, the liability insurer of the vehicle is declared insolvent by a court of competent jurisdiction;

(ii) the vehicle described in Subsection (2)(d)(i) is uninsured only to the extent that the claim against the insolvent insurer is not paid by a guaranty association or fund.

(3) (a) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides coverage for covered persons who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.

(b) For new policies written on or after January 1, 2001, the limits of uninsured motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser amount by signing an acknowledgment form provided by the insurer that:

(i) waives the higher coverage;

(ii) reasonably explains the purpose of uninsured motorist coverage; and

(iii) discloses the additional premiums required to purchase uninsured motorist coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

(c) Uninsured motorist coverage may not be sold with limits that are less than the minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

(d) The acknowledgment under Subsection (3)(b) continues for that issuer of the uninsured motorist coverage until the insured, in writing, requests different uninsured motorist coverage from the insurer.

(e) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for policies existing on that date, the insurer shall disclose in the same medium as the premium renewal notice, an explanation of the purpose of uninsured motorist coverage and the costs associated with increasing the coverage in amounts up to and including the maximum amount available by the insurer under the insured's motor vehicle policy.

(ii) The disclosure shall be sent to all insureds that carry uninsured motorist coverage limits in an amount less than the insured's motor vehicle liability policy limits or the maximum uninsured motorist coverage limits available by the insurer under the insured's motor vehicle policy.

(4) (a) (i) Except as provided in Subsection (4)(b), the named insured may reject uninsured motorist coverage by an express writing to the insurer that

provides liability coverage under Subsection 31A-22-302(1)(a).

(ii) This rejection shall be on a form provided by the insurer that includes a reasonable explanation of the purpose of uninsured motorist coverage.

(iii) This rejection continues for that issuer of the liability coverage until the insured in writing requests uninsured motorist coverage from that liability insurer.

(b) (i) All persons, including governmental entities, that are engaged in the business of, or that accept payment for, transporting natural persons by motor vehicle, and all school districts that provide transportation services for their students, shall provide coverage for all vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance, uninsured motorist coverage of at least \$25,000 per person and \$500,000 per accident.

(ii) This coverage is secondary to any other insurance covering an injured covered person.

(c) Uninsured motorist coverage:

(i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers' Compensation Act;

(ii) may not be subrogated by the Workers' Compensation insurance carrier;

(iii) may not be reduced by any benefits provided by Workers' Compensation insurance; and

(iv) may be reduced by health insurance subrogation only after the covered person has been made whole.

(d) As used in this Subsection (4):

(i) "Governmental entity" has the same meaning as under Section 63-30- 2.

(ii) "Motor vehicle" has the same meaning as under Section 41-1a-102.

(5) When a covered person alleges that an uninsured motor vehicle under Subsection (2)(b) proximately caused an accident without touching the covered person or the vehicle occupied by the covered person, the covered person must show the existence of the uninsured motor vehicle by clear and convincing evidence consisting of more than the covered person's testimony.

(6) (a) The limit of liability for uninsured motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident.

(b) (i) Subsection (6)(a) applies to all persons except a covered person as

defined under Subsection (7)(b)(ii).

(ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest limits of uninsured motorist coverage afforded for any one vehicle that the covered person is the named insured or an insured family member.

(iii) This coverage shall be in addition to the coverage on the vehicle the covered person is occupying.

(iv) Neither the primary nor the secondary coverage may be set off against the other.

(c) Coverage on a motor vehicle occupied at the time of an accident shall be primary coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall be secondary coverage.

(7) (a) Uninsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of covered persons while occupying or using a motor vehicle only if the motor vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly acquired or replacement vehicle covered under the terms of the policy. Except as provided in Subsection (6) or (7), a covered person injured in a vehicle described in a policy that includes uninsured motorist benefits may not elect to collect uninsured motorist coverage benefits from any other motor vehicle insurance policy under which he is a covered person.

(b) Each of the following persons may also recover uninsured motorist benefits under any other policy in which they are described as a "covered person" as defined in Subsection (1):

(i) a covered person injured as a pedestrian by an uninsured motor vehicle;
and

(ii) a covered person injured while occupying or using a motor vehicle that is not owned by, furnished, or available for the regular use of the covered person, the covered person's resident spouse, or the covered person's resident relative.

(c) A covered person in Subsection (7)(b) is not barred against making subsequent elections if recovery is unavailable under previous elections.

(8) (a) As used in this section, "underinsured motor vehicle" includes a vehicle, the operation, maintenance, or use of which is covered under a liability policy at the time of an injury-causing occurrence, but which has insufficient liability coverage to compensate fully the injured party for all special and general damages.

(b) The term "underinsured motor vehicle" does not include:

(i) a motor vehicle that is covered under the liability coverage of the same policy that also contains the **underinsured** motorist coverage; or

(ii) an uninsured motor vehicle as defined in Subsection (2).

(9) (a) **Underinsured** motorist coverage under Subsection 31A-22-302(1)(c) provides coverage for covered persons who are legally entitled to recover damages from owners or operators of **underinsured** motor vehicles because of bodily injury, sickness, disease, or death.

(b) For new policies written on or after January 1, 2001, the limits of **underinsured** motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum **underinsured** motorist coverage limits available by the insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser amount by signing an acknowledgment form provided by the insurer that:

(i) waives the higher coverage;

(ii) reasonably explains the purpose of **underinsured** motorist coverage; and

(iii) discloses the additional premiums required to purchase **underinsured** motorist coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability coverage or the maximum **underinsured** motorist coverage limits available by the insurer under the insured's motor vehicle policy.

(c) **Underinsured** motorist coverage may not be sold with limits that are less than \$10,000 for one person in any one accident and at least \$20,000 for two or more persons in any one accident.

(d) The acknowledgment under Subsection (9)(b) continues for that issuer of the **underinsured** motorist coverage until the insured, in writing, requests different **underinsured** motorist coverage from the insurer.

(e) The named insured's **underinsured** motorist coverage, as described in Subsection (9)(a), is secondary to the liability coverage of an owner or operator of an **underinsured** motor vehicle, as described in Subsection (8). **Underinsured** motorist coverage may not be set off against the liability coverage of the owner or operator of an **underinsured** motor vehicle, but shall be added to, combined with, or stacked upon the liability coverage of the owner or operator of the **underinsured** motor vehicle to determine the limit of coverage available to the injured person.

(f) (i) A named insured may reject **underinsured** motorist coverage by an express writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a).

(ii) This written rejection shall be on a form provided by the insurer that includes a reasonable explanation of the purpose of **underinsured** motorist coverage

and when it would be applicable.

(iii) This rejection continues for that issuer of the liability coverage until the insured in **writing** requests **underinsured** motorist coverage from that liability insurer.

(g) (i) In conjunction with the first two renewal notices sent after **January 1, 2001**, for **policies** existing on that date, the insurer shall disclose in the same medium as the premium renewal notice, an explanation of the purpose of **underinsured** motorist coverage and the costs associated with increasing the coverage in amounts up to and including the maximum amount available by the insurer under the insured's motor vehicle **policy**.

(ii) The disclosure shall be sent to all insureds that carry **underinsured** motorist coverage limits in an amount less than the insured's motor vehicle liability **policy** limits or the maximum **underinsured** motorist coverage limits available by the insurer under the insured's motor vehicle **policy**.

(10) (a) **Underinsured** motorist coverage under this section applies to bodily injury, sickness, disease, or death of an insured while occupying or using a motor vehicle owned by, furnished, or available for the regular use of the insured, a resident spouse, or resident relative of the insured, only if the motor vehicle is described in the **policy** under which a claim is made, or if the motor vehicle is a **newly** acquired or replacement vehicle covered under the terms of the **policy**. Except as provided in this Subsection (10), a covered person injured in a vehicle described in a **policy** that includes **underinsured** motorist benefits may not elect to collect **underinsured** motorist coverage benefits from any other motor vehicle insurance **policy** under which he is a named insured.

(b) (i) The limit of liability for **underinsured** motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any **one** accident.

(ii) Subsection (10)(b)(i) applies to all persons except a covered person as defined under Subsection (10)(d)(i)(B).

(iii) Coverage on a motor vehicle occupied at the time of an accident shall be primary coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall be secondary coverage.

(c) Underinsured motorist coverage:

(i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers' Compensation Act;

(ii) may not be subrogated by the Workers' Compensation insurance carrier;

(iii) may not be reduced by any benefits provided by Workers' Compensation insurance; and

(iv) may be reduced by health insurance subrogation only after the covered person has been made whole.

(d) (i) Each of the following persons may also recover underinsured motorist coverage benefits under any other policy in which they are described as a "covered person" as defined under Subsection (1):

(A) a covered person injured as a pedestrian by an underinsured motor vehicle; or

(B) a covered person injured while occupying or using a motor vehicle that is not owned by, furnished, or available for the regular use of the covered person, the covered person's resident spouse, or the covered person's resident relative.

(ii) This coverage shall only be available as a secondary source of coverage.

(iii) A covered person as defined under Subsection (10)(d)(i)(B) is entitled to the highest limits of underinsured motorist coverage afforded for any one vehicle that the covered person is the named insured or an insured family member.

(iv) This coverage shall be in addition to the coverage on the vehicle the covered person is occupying.

(v) Neither the primary nor the secondary coverage may be set off against the other.

(e) A covered injured person is not barred against making subsequent elections if recovery is unavailable under previous elections.

(11) A claim may not be brought by a covered person against a motor vehicle **underinsured** motorist **policy** more than three years after the date of the last liability **policy** payment.

(12) (a) Within five business days after notification in a manner specified by the department that all liability insurers have tendered their liability **policy** limits, the **underinsured** carrier shall either:

(i) waive any subrogation claim the **underinsured** carrier may have against the person liable for the injuries caused in the accident; or

(ii) pay the insured an amount equal to the **policy** limits tendered by the liability carrier.

(b) If neither option is exercised under Subsection (12)(a), the subrogation claim is deemed to be waived by the **underinsured** carrier.

History: C. 1953, 31A-22-305, enacted by L. 1985, ch. 242, § 27; 1986, ch. 204, § 157; 1987, ch. 162, § 1; 1992, ch. 1, § 4; 1992, ch. 132, § 3; 1993, ch. 271, § 2; 1994, ch. 316, § 15; 1995, ch. 294, § 1; 1996, ch. 240, § 12; 1997, ch. 375, § 14; 1999, ch. 158, § 1; 2000, ch. 188, § 1; 2001, ch. 59, § 1.

NOTES, REFERENCES, AND ANNOTATIONS

Amendment Notes. --The 1995 amendment, effective May 1, 1995, designated Subsection (6)(a) and added Subsections (6)(b) and (6)(c); substituted "Subsection (6) or (7)" for "Subsection (7)(b)" in the second sentence of Subsection (7)(a); added Subsections (10)(b)(ii) through (c)(v) and made related changes; redesignated former Subsection (10)(c) as (10)(d) and deleted the first sentence authorizing elections of underinsured motorist coverage under specified circumstances; and made stylistic changes.

The 1996 amendment, effective July 1, 1997, substituted "Title 35A, Chapter 3" for "Title 35, Chapter 1" in Subsection (4)(b)(ii) and added "(10)" in Subsections (10)(b)(ii) and (10)(c)(iii).

The 1997 amendment, effective July 1, 1997, substituted "Title 34A, Chapter 2" for "Title 35A, Chapter 3" in Subsection (4)(b)(ii).

The 1999 amendment, effective March 18, 1999, added Subsection (2)(c), redesignating former Subsection (2)(c) as (2)(d), and made related and stylistic changes in the section.

The 2000 amendment, effective May 1, 2000, added Subsections (3)(b) to (3)(e), (4)(a)(ii), (4)(c)(ii) to (4)(c)(iv), (9)(b) to (9)(d), (9)(f)(ii), (10)(c), and (11), and made related changes; deleted "For new policies or contracts written after January 1, 1993" from the beginning of Subsection (9)(f)(i); rewrote Subsection (9)(g), revising the provisions for notice and disclosure; and made stylistic changes.

The 2001 amendment, effective April 30, 2001, corrected a subsection reference in Subsection (10)(b)(ii) and added Subsection (12).

Compiler's Notes. --The phrase "the effective date of this act" in Subsection (2)(c) means March 18, 1999, the effective date of Laws 1999, ch. 158, which added that subsection.

NOTES TO DECISIONS

Construction with other statutes.

The Workers' Compensation Act is not the exclusive remedy for injured employees who seek to recover from someone who is not their employer, or an officer, agent, or employee of the employer, and these employees do have viable claims against

Addendum B

Change Prompting New Policy Number	Policy Number	Date	Record Citation
First Policy: State Farm Issued Coverage For 1981 Firebird	#479 7848-804-44	August 1981	R. 201
New Vehicle: State Farm Replaced Prior Policy For 1984 Dodge Van	#479 7848-804-44A	August 1990	R. 201
Time Out of Force: State Farm Issued New Policy Number	#479 7848-804-44B	March 1997	227-228; 350-351
Termination: Prior Policy "Terminated" State Farm Issues This Policy as Replacement	#479 7848-804-44C	August 1997	R. 202, 227-228; 202, 229-230
New Vehicle: State Farm Issued Policy To Cover 1995 Chevy Van	#479 7848-804-44D	October 1997	R. 203, 85-95; 93
Changed Policy Form: State Farm Changed Their Agreement/Policy Form	#479 7848-804-44E	August 2001	303, 355, 379, 86
New Vehicle: State Farm Issued Coverage for 2001 PT Cruiser "Replaced" Prior Policy	#479 7848-804-44F	April 2003	204, 357, 359

Addendum C

Provision	Old Policy 9844.3	New Policy 9844.4
Non-owned car	<p>Non-owned car does not include a car:</p> <ol style="list-style-type: none"> 1. Which is not in the lawful possession of the person operating it; or 2. Which has been operated by, rented by or in the possession of an insured during any part of each of the preceding 21 days; or 3. Operated by an insured who has operated or rented any car otherwise qualifying as a non-owned car during any part of more than 45 days in the 365 days preceding the date of the accident or loss. <p>(R. 356).</p>	<p>Non-owned car does not include a:</p> <ol style="list-style-type: none"> 1. rented car while it is used in connection with the insured's employment or business; or 2. car which has been operated or rented by or in the possession of an insured during any part of each of the last 21 or more consecutive days. <p>If the insured is an insured under one or more other car policies issued by us, the 21 day limit is increased by an additional 21 days for each such additional policy.</p> <p>A Non-owned car must be a car in lawful possession of the person operating.</p> <p>(R. 381).</p>
No-Fault	<p>excluded coverage "while operating or occupying a motor vehicle owned by you, your spouse or any relative if it is not insured for this coverage under this policy." (R. 363). Paragraph 4</p>	<p>excludes coverage "while operating or occupying a motorcycle." (R. 389). Paragraph 3</p> <p>goes on to exclude "coverage under this policy for bodily injury to any person who is injured.</p> <ol style="list-style-type: none"> a. While occupying a motor vehicle which is <ol style="list-style-type: none"> (1) owned by or furnished for the regular use of you or any relative; and (2) not insured for no-fault coverage under this policy. b. When struck by a motor vehicle which is <ol style="list-style-type: none"> (1) owned by the injured person, and (2) not insured for no-fault coverage under this policy. <p>(Id.).</p>
No-Fault Settlement of Loss		<p>If the insured elects to pursue arbitration the policy now eliminates attorney fees. "An insured is not entitled to attorney fees if the insured elects arbitration as provided for by this policy." This language is missing in policy number 8443. (R. 389).</p>

Provision	Old Policy 9844.3	New Policy 9844.4
Newly acquired car	<p>Newly Acquired Car - means a car newly owned by you or your spouse if it:</p> <ol style="list-style-type: none"> 1. Replaces your car; or 2. Is an added car and: <ol style="list-style-type: none"> a. If it is a private passenger car, we insure all other private passenger cars, or b. If it is other than a private passenger car, we insure all cars <p>owned by you and your spouse on the date of its delivery to you or your spouse;</p> <p>but only if you or your spouse:</p> <ol style="list-style-type: none"> 1. Tell us about it within 30 days after its delivery to you or your spouse and 2. If you or your spouse has more than one of our car policies tell us which one is to apply; and 3. Pay us any added amount due. <p>(R. 356).</p>	<p>Newly Acquired Car - means a replacement car or an additional car.</p> <p>Replacement Car- means a car newly owned by or newly leased to you or your spouse that replaces your car. This policy will only provide coverage for the replacement car if you or your spouse:</p> <ol style="list-style-type: none"> 1. Ask us to insure it within 30 days after its delivery to you or your spouse; and 2. Pay us any added amount due. <p>Additional car - means an added car newly owned by or newly leased to you or your spouse this policy will only provide coverage for the additional car you:</p> <ol style="list-style-type: none"> 1. It is a private passenger car and we insure all other private passenger cars; or 2. It is other than a private passenger car and we insure all cars <p>owned by or leased to you or your spouse on the date of its delivery to you or your spouse. This policy provides coverage for the additional car only until the earlier of:</p> <ol style="list-style-type: none"> 1. 12:01 a.m. standard time at the address shown on the declarations page on the 31st day after the delivery of the car to you or your spouse; or 2. The effective date and time of a policy issued by us or any other company that describes the car on its declarations page. <p>You or your spouse may apply for a policy that will provide coverage beyond the 30th day for the additional car. Such policy will be issued only if both the applicant and the vehicle are eligible for coverage of the time of application. If the newly acquired car is not otherwise afforded comprehensive or collision coverage by this or any other policy, this policy will provide the comprehensive or collision coverage not otherwise provided for the newly acquired car. If such coverage is provided by this paragraph it will apply only until 12:01 a.m. standard Time at the address shown on the declarations page on the sixth day after the delivery of the car to you or your spouse. Any comprehensive or collision coverage provided by this paragraph is subject to a deductible of \$500.</p> <p>(R. 380).</p>

Provision	Old Policy 9844.3	New Policy 9844.4
Conditions		Right of State Farm to cancel. Policy number 9844.4 includes new language that "the mailing of the notice shall be sufficient proof of notice." (R. 405).

Provision	Old Policy 9844.3	New Policy 9844.4
Bodily Injury	Means "bodily injury to a person and sickness, disease or death which results from it." (R. 356)	Means "physical bodily injury to a person and sickness, disease or death which results from it. A person does not sustain bodily injury if that person suffers emotional distress in the absence of physical bodily injury." (R. 380).