IN THE COURT OF APPEALS
STATE OF GEORGIA

TERRY E. DEES and FRETA G. DEES,	)	
	)	Appeal Case No.
Appellants,	)	
	)	A06A0929
vs.	)	
	)	
SHIRLEY A. LOGAN,	)	
	)	
Appellee.	)	

BRIEF FOR AMICUS CURIAE GEORGIA TRIAL LAWYERS ASSOCIATION IN THE CASE WHERE THE COLLATERAL SOURCE REDUCTION PROVISION IN AN UNINSURED/UNDERINSURED MOTORIST ("U/M") INSURANCE POLICY IS UNENFORCEABLE BECAUSE IT CONFLICTS WITH GEORGIA'S U/M STATUTE AND GEORGIA'S PUBLIC POLICY

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1. Statement of Interest.

The Georgia Trial Lawyer's Association ("GTLA") is a membership association composed of lawyers who are committed to preserving the jury system and representing those injured by the wrongdoing of others. The issues in the instant case affect more than just these litigants. The individual consumer lacks the bargaining power to negotiate provisions in an uninsured/underinsured motorist ("U/M") insurance policy.

2. Georgia's U/M Statute Prohibits Any Collateral Source Reduction Provision for an Insured's Bodily Injury.

The first place to look for guidance on whether a collateral source reduction provision is permitted is Georgia's U/M Statute. Is Georgia's U/M Statute silent on this issue? No, it is not silent. It is specifically addressed in Georgia's U/M statute itself.

Does Georgia's U/M Statute allow a collateral source reduction provision for the insured's bodily injury? The answer to this question is found in Georgia's U/M Statute, O.C.G.A. Section 33-7-11 (i). The statute reads:

> *The endorsement or provisions of the [u/m] policy providing the coverage required by this Code section may contain provisions which exclude any liability of the insurer for injury or destruction of property of the insured for which*

> *he has been compensated by other property or physical damage insurance.* (Emphasis Added)

Here is the answer to the question. Georgia's U/M policy may only contain a collateral source reduction provision for the injury or destruction of property of the insured and not for the bodily injury of the insured. No where in Georgia's U/M Statute does it authorize a collateral source reduction provision for bodily injury.

State Farm's collateral source reduction provision reads:

> *any amounts payable under this coverage shall be reduced by any amount paid or payable to or for the insureds: (a) under any workers' compensation, disability benefits or other similar law (R. 906).* (Emphasis Added)

Workers' compensation and disability benefits compensate for the bodily injury of the insured and not property damage of the insured. It is clear that a collateral source reduction provision is only allowed for property damage and not for bodily injury.

Where there is a conflict between an insurance policy and Georgia's U/M Statute, the U/M statute controls. Hartford Accident, etc. Co. vs. Booker, 140 Ga. App. 3, 4 (1), 230 S.E. 2d 70 (1976). Since there is a direct conflict between State Farm's collateral source reduction provision for bodily injury and Georgia's U/M Statute, the U/M

statute controls. State Farm's collateral source reduction provision is unenforceable because it is contrary to Georgia's U/M Statute. The Georgia Court of Appeals opinion in our case ignores the language in Georgia's U/M Statute on this important point.

3. The Principle of Statutory Construction - Expressio Unius Est Exclusio Alterius - Applies in this Case.

The goal in construing any Georgia statute is to ascertain the intent of the Georgia Lawmakers. In doing so Georgia Courts have applied the "venerable principle of statutory construction - expressio unius est exclusio alterius: the express mention of one thing implies the exclusion of another; ..." C. Brown Trucking, Inc. vs. Rushing, 265 Ga. App. 676, 595 S.E. 2d 346 (2004). (Emphasis Added) In Georgia's U/M Statute the Georgia Lawmakers have expressly allowed a collateral source reduction provision for property damage. The Georgia Lawmakers did not expressly allow a collateral source reduction provision for bodily injury. The omission of any such reference to bodily injury from Georgia's U/M Statute must be regarded as deliberate. If Georgia Lawmakers intended to include bodily injury as well as property damage they certainly would have said so.

4. State Farm Wants to Rewrite Georgia's U/M Statute O.C.G.A. Section 33-7-11 (I) to Include Bodily Injury.

If State Farm had its way Georgia's U/M Statute O.C.G.A. Section 33-7-11 (i) would be rewritten to include "bodily injury" as follows:

> *The endorsement or provisions of the policy providing the coverage required by this Code section may contain provisions which exclude any liability of the insurer for injury or destruction of property or bodily injury of the insured for which he has been compensated by other property or physical damage insurance or insurance for the insured's bodily injury. (Emphasis Added - underlined parts inserted.)*

Georgia Lawmakers did not write Georgia's U/M Statute to include any collateral source reduction provision for bodily injury of the insured. State Farm does not have the power to rewrite Georgia's U/M statute. The limiting language of "by other property or physical damage insurance" is not surplusage. It was intended to be a meaningful limiting phrase. "Where possible, effect is to be given to all words of a statute, and it is firmly established that courts should not interpret a statute so as to render parts of it surplusage or meaningless." Jordan vs. State, 223 Ga. App. 176, 477 S.E. 2d 583 (1996). (Emphasis Added)

> *This Court may construe statutes to avoid absurd results... [Cit.] However, under our system of separation of powers this Court does not have the authority to rewrite statutes. "(T)he doctrine of separation of powers is an immutable constitutional principle which must be strictly enforced. Under that doctrine, statutory construction belongs to the courts, legislation to the legislature. We cannot add a line to the law."* [Cit.] State vs. Fielden, 280 Ga. 444, 448, 629S.E.2d 252 (2006). (Emphasis Added)

This Court does not have the authority to rewrite Georgia's U/M Statute to add the words "or bodily injury" or " or insurance for the insured's bodily injury" to Georgia's U/M Statute, O.C.G.A. Section 33-7-11 (i).

5. Subrogation/Reimbursement by the Workers' Compensation Insurer and Disability Benefits Provider Prevents Double Recovery of the Same Categories of Damages by the Insured.

The Court of Appeals opinion in our case ignores the impact of subrogation/reimbursement. Subrogation/Reimbursement prevents double recovery of the same category of damages by the insured. In the 1990's the Georgia General Assembly passed a new statute allowing workers' compensation insurers to seek subrogation/reimbursement for benefits paid to its injured employee if

the injured employee has a tort action. O.C.G.A. Section 34-9-11.1 (b) reads in pertinent part:

> *In the event an employee has a right of action against such other person as contemplated in subsection (a) of this code section and the employer's liability under this chapter has been fully or partially paid, then the employer or such employer's insurer shall have a subrogation lien, not to exceed the actual amount of compensation paid pursuant to this chapter, against such recovery.* (Emphasis Added)

The employer or the employer's workers' compensation insurer has a subrogation lien against any such recovery. The employer or insurer may intervene in any action to protect and enforce such lien. O.C.G.A. Section 33-9-11.1 (b). The injured employee is not going to have a double recovery for the categories of damages paid by workers' compensation insurance.

Appellee wrote, in her Brief on page 10, "Georgia… has always prohibited a plaintiff from a double recovery of damages…" Under the Georgia's Workers' Compensation Subrogation Statute an employee is not entitled to double recovery for the same category of damages.

In disability benefits insurance policies there are subrogation/ reimbursement provisions that give the insurer a subrogation or reimbursement lien on any recovery.

There is a specific Georgia Statute on this subrogation/reimbursement issue. O.C.G.A. Section 33-24-56.1 (b) reads in pertinent part, "In the event of recovery for personal injury... the benefit provider for the person injured may require reimbursement from the injured party of benefits it has paid on account of the injury..." (Emphasis Added) Georgia's Reimbursement Statute defines a benefits provider to include health insurers and disability insurers. This prevents double recovery for the same categories of damages.

Federal law gives subrogation/reimbursement rights to Medicare and Medicaid for any personal injury recovery. This prevents double recovery.

There are ample contractual and statutory safeguards to prevent double recovery. The U/M insurer should pay "all sums" and then any collateral source benefits provider can seek subrogation/reimbursement from a tort recovery or U/M recovery.

6. The Insured must Be Placed in the Same Position That He Would Have Been If the U/M Tortfeasor Had Liability Limits Equal to the U/M Limits of the Insured.

Georgia's U/M Statute O.C.G.A. Section 33-7-11 (a)(1) (in effect at the time this tort cause of action accrued) read in pertinent part that motor vehicle liability policies must contain a provision

undertaking "to pay the insured all sums which said insured shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, ..." (Emphasis Added) The insured is, in essence, buying liability insurance for an U/M tortfeasor. In this case State Farm became the adversary of its insured and litigated the case with the same tenacity as if it were the liability insurer of the tortfeasor. State Farm defended in the name of the Uninsured Motorist and not in the name of State Farm, the U/M insurer.

The Montana courts have held a similar collateral source reduction provision to be unenforceable. The Montana Supreme Court in Sullivan vs. Doe, et al., 159 Mont. 50, 495 P2d 193 (1972) wrote:

> *The Legislative purpose behind the enactment of such statutory provisions on 'uninsured motorist' coverage is equally clear. It is simply to place the injured policy holder in the same position he would have been if the uninsured motorist had liability insurance and, accordingly, the amount of plaintiff's recovery from 'uninsured motorist' coverage can not be reduced by any workers' compensation benefits received by him.* (Emphasis Added)

The Montana Supreme Court held that other sources of insurance of the insured such as health insurance are not deductible for the same reason as workers' compensation benefits are not

deductible. The non-deductibility of other insurance benefits applies for the same reasons that workman's benefits are not deductible. The majority of jurisdictions outside Montana declare void these clauses which purport to limit liability not expressly authorized by statute. Id at 63.

7. The U/M Tortfeasor Is Not Entitled to Any Offset of the Insured's Collateral Sources and Neither Is the U/m Insurer.

"As a general rule, it has been held that the fact that a person receives from a collateral source payments which have a tendency to mitigate the consequences of his injury, which he suffered as a result of the Defendant's tort, may not be appropriated by the Defendant as an offset to damages which Defendant would otherwise be required to pay. There has always been a widespread judicial refusal to credit to the benefit of the wrongdoer money received in reparation of the victim's injuries from sources other than the wrongdoer himself." See Maxwell, The Collateral Source Rule in the American Law on Damages, 46 Minn. Law Revue 669; Annotations, 75 A.L.R. 2d 885 and 4 A.L.R. 3d 535. (Emphasis Added)

The Collateral Source Rule is alive and well in the State of Georgia The Georgia Supreme Court in the landmark case of

Denton vs. Con-Way Southern Express, Inc., et al., 261 Ga. 41, 402 S.E. 2d 269 (1991) addressed the Collateral Source Rule in the State of Georgia. The Georgia Supreme Court declared unconstitutional O.C.G.A. Section 51-12-1 that allowed collateral sources to be admitted as evidence to a jury and permitted the jury to reduce the Plaintiff's recovery based on the Plaintiff's collateral sources. The Georgia Supreme Court wrote in pertinent part, "Our tort law allows every person to recover the damage that resulted from torts committed to them." Id at 42.

New Jersey Courts have held that provisions of their uninsured motorists endorsements that provided for reduction in an amount payable for bodily injury by an amount of any workers' compensation award were void and unenforceable. Walkowitz v. Royal Globe Insurance Company, 142 N.J. Super 442, 374 A.2d 40 (1974)

New Jersey's U/M statute was similar to Georgia's U/M statute. The New Jersey U/M statute mandated the offer of U/M coverage. It required U/M coverage for payment of sums "which the insured or his legal representative shall be legally entitled to recover for damages from the operator or owner of an uninsured automobile." Id at 445.

The New Jersey U/M statute "contains no suggestion of relief from its undertaking in favor of an issuing insurer merely because the insured may also have a right to recover benefits under Our Workers' Compensation Act for the same injury... Consequently any attempt by the insurer to limit his liability under this [U/M] coverage by providing for reduction in the amount due thereunder by the amount of workers' compensation benefits received by or awarded to the insured violates the clear mandate of the statute and is against the public policy of the State. We therefore hold that the workers' compensation setoff provision of the U/M endorsement is void and unenforceable." Id at 445. (Emphasis Added)

8. Georgia's Collateral Source Rule Does Apply to this Tort Case.

Appellee, in her Brief on page 7, argues that Georgia's Collateral Source Rule does not apply because this pending case is a contract claims case, but not a tort case. This is incorrect.

In our case State Farm elected to defend in the name of the uninsured motorist, and not in its name as the U/M Insurer. "When the U/M/C [Uninsured Motorist Carrier] files pleadings in the name of the tortfeasor, only tort liability is at issue; when it files pleadings in its own name, the questions of tort liability as well as coverage are in

issue. (Tenn. Farmers, etc., Ins. Co. vs. Wheeler, 170 Ga. App. 380, 317 S.E. 2d 269 (1984); Moss vs. Cincinnati Ins. Co. 154 Ga. App. 165, 268 S.E. 2d 676 (1980); Employers, etc. Assur. Corp. vs. Berryman, 123 Ga. App. 71, 179 S.E. 2d 646 (1970); Smith vs. Phillips, 172 Ga. App. 459, 323 S.E. 2d 669 (1984)). (Emphasis Added)

This pending case is a tort case and not a breach of contract case.

9. If the Collateral Source Reduction Provision for Workers' Compensation, Social Security Disability or Other Similar Law Is Permitted There Is Nothing Stopping U/M Insurers from Adding Reductions for Their Insured's Health Insurance.

State Farm's current U/M collateral source reduction provision applies to "workers' compensation benefits, disability benefits or similar law." If that is not stopped State Farm and other U/M insurers in Georgia could easily amend their current auto U/M policies to expand these collateral sources. State Farm could add "the health insurance" of their insured to the reduction provision. State Farm could even expand it beyond collateral sources of insurance. State Farm could expand it to any collateral source of its insured that could include, but is not limited to, the payment of its insured's medical expenses by a wealthy uncle of its insured.

U/M insurers could sell U/M coverage that would in reality be an illusion. An illusion because the U/M limits could be reduced to zero such as in the instant case.

10. Contrary Language in the Northbrook Case and its Progeny must Be Overruled Because the Conclusion Is Flawed.

The Georgia Court of Appeals relies upon a small part of the opinions found in Northbrook Properties and Casualty Insurance Company vs. Merchant, 251 Ga. App. 273, 450 S.E. 2d 425 (1994) and Ferqueron vs. State Farm Casualty Insurance Company, 271 Ga. App. 572, 610 S.E. 2d 184 (2005). The Court of Appeals in our case wrote on page 5 of its opinion, "In Georgia, U/M insurance policy language that provides for a setoff for damages awarded to the extent that workers' compensation has paid benefits to the insured is proper." (Emphasis Added) That conclusion is flawed.

A close reading of the opinions in Northbrook and Ferqueron show that there was no in depth analysis of Georgia's U/M Statute and Georgia public policy on this issue. The critical subsection of Georgia's U/M Statute, O.C.G.A. Section 33-7-11 (i) is ignored. The critical distinction between the permitted collateral source reduction

provision for property damage verses the prohibited collateral source reduction provision for an insured's bodily injury is totally absent from the analysis of Northbrook and Ferqueron.

Contrary parts of Northbrook and Ferqueron should be specifically overruled because the collateral source reduction provision in an U/M insurance policy conflicts with Georgia's U/M statute and Georgia's public policy. No collateral source reduction for bodily injury is permitted by Georgia's U/M statute.

11. 2006 Amendment to Georgia's U/M Statute Did Not Authorize or Permit a Collateral Source Reduction Provision in a U/M Insurance Policy.

Appellee in her Brief in footnote 1, on page 6, wrote, "An action controlling here, the General Assembly has eliminated the very language cited by Appellants in respect to 'all' sums. O.C.G.A. Section 33-7-11. The word 'all' has been withdrawn."

The 2006 Amendment did nothing to change the critical subsection of Georgia's U/M Statute that is applicable to our case. That critical subsection is subsection (i). Georgia's U/M Statute, O.C.G.A. subsection 33-7-11 (i) permits a collateral source reduction provision for the injury or destruction of property of the insured and not for the bodily injury of the insured.

The 2006 Amendment did not change subsection (i) at all. The 2006 Amendment was contained in Senate Bill 531. The purpose of Senate Bill 531 was to modify the statute as so that U/M coverage only applies to the injuries or death of an insured and not to a non-covered person. Senate Bill 531 was specifically enacted as a result of the opinion of Gordon, et al. vs. Atlanta Casualty Company, 279 Ga. 148, 611 S.E. 2d 24 (2005). In that case this Court granted a writ of certiorari to determine whether Georgia's U/M Statute "requires an insurer to pay damages for the death of an insured's son when the insured's son is not a 'covered person' under the terms of the insurance policy." Id at 148.

In the Gordon case the insured's son, James M. O'Neal, Jr. was killed in an automobile accident when he was struck by an uninsured motorist. At the time of his death, the insured's son was living with his mother because his mother and father were separated. The parents sued the uninsured owner and driver for the wrongful death of their son. They served Atlanta Casualty as the uninsured motorist carrier. Atlanta Casualty moved for summary judgment, asserting the insured son was not a covered person of the insurance policy. Id at 148. This Court stated, "It clearly states that the insurer

is to pay 'all sums which [the] insured shall be legally entitled to recover as damages from the owner or operator of the uninsured motor vehicle." Id at 149. The father as an insured was legally entitled to recover damages for his son's death even though the father was not the person who suffered the physical injuries.

The 2006 Amendment had nothing to do with any collateral source reduction provisions in U/M policies.

12. What Are the Mandatory Limits of U/M Coverage under Georgia's U/M Statute?

U/M insurers are required by Georgia's U/M Statute to provide coverage, at the option of the insured, up to the amount of liability insurance purchased by the insured. The key Georgia U/M statutory language is found in O.C.G.A. Section 33-7-11 (a)(1). It reads, "at the option of the insured shall be". The insured under the mandate of Georgia's U/M Statute determines what the mandatory statutory limits of U/M coverage are as long as the U/M limits do not exceed the limits of the insured's liability coverage.

The Supreme Court of Mississippi has issued an opinion that is persuasive legal authority. The Mississippi Supreme Court in

Nationwide Mutual Insurance Company vs. Garriga, 636 So. 2d. 658 (1994) wrote, “The question before the court is essentially one of statutory interpretation. That is what is the minimum coverage prescribed by statute?... We now overrule Koesler and hold that the minimum required coverage which may not be offset by clauses such that as here involved is the coverage that the insured chooses up to that amount equal to the liability amount acquired.” (Emphasis Added)

This logic applies to Georgia’s U/M Statute. The Georgia insured has the absolute statutory right to purchase U/M limits up to an amount equal to his liability limits. The Dees chose to spend their personal money to buy U/M coverage with State Farm. This is the amount that the Dees contracted for with State Farm. That is the mandatory U/M coverage under Georgia law.

Georgia’s U/M Statute is similar to Mississippi’s U/M Statute. In 1974 a bill entitled “An Act to Amend Section 83-11-101, Mississippi Code of 1972, to provide that uninsured motorist coverage limits may be increased, at the option of the insured, to equal limits of bodily injury liability of the insured; ...” was passed. Mississippi Laws of 1974, Chapter 393.

The Mississippi Supreme Court wrote, “It is significant that the section amended is that which requires that the uninsured motorist coverage be and offered which establishes its minimum Mississippi Code Annotated Section 83-11-101 (Supp.1993). ...It must be read for what it plainly imports, an option given the insured to increase coverage, over which the insurer has no control...” Id at 664. (Emphasis Added)

This statutory right of the insured at his option to purchase U/M coverage up to the limits of his liability coverage is not a form of excess coverage. The Mississippi amendment made clear that such coverage is controlled by the statutory scheme and is not an un-governed excess U/M coverage. This is not excess U/M coverage. This is mandatory minimum U/M coverage where the insured can select the limits of U/M bodily injury as long as they do not exceed the limits of the liability bodily injury policy.

In conclusion, the Mississippi Supreme Court wrote, “The correct interpretation of the statutory scheme as it developed and in its present form is that carriers are commanded by statute to provide [U/M] coverage up to the amount of liability insurance purchased

where the insured so desires and can not reduce this amount by exception of the type here involved [workers' compensation benefits]." Id at 665. (Emphasis Added) In that Mississippi case the U/M collateral source reduction was for a workers' compensation benefits paid to the Plaintiff.

In our case State Farm is using collateral source reductions to lower the statutorily mandated U/M limits that were selected and paid for by the Dees, State Farm's insureds.

13. Sister States Provide Persuasive Legal Authority to Support GTLA's Position.

Alabama courts have rejected the validity of a similar U/M collateral source reduction provision for workers' compensation benefits. The Alabama Supreme Court in State Farm Mutual Automobile Insurance Company vs. Cahoon, 287 ALA. 462, 252 So. 2d 619 (1971) wrote, in pertinent part, "The provisions for setoff, or for a showing of un-reimbursed loss rather than legal damages..., is in our opinion in conflict with both express and implied requirements of the law." (Emphasis Added) The Alabama Supreme Court was dealing with a collateral source reduction provision in a State Farm

U/M policy for workers' compensation benefits received by its insured.

The Alabama Supreme Court in State Farm continued, "..., a breadwinner [State Farm's Insured] has the right to supplement any benefits to which he may be entitled under the Workers' Compensation Act, by procuring and paying whatever premiums he can squeeze out of his budget for an independent policy with an independent carrier in as large an amount as he can afford, without giving up any workers' compensation benefits." Id at 469. (Emphasis Added) That logic applies in the instant case. The Dees, with their own money, purchased U/M coverage from State Farm. The Dees' employer did not purchase it. The Dees squeezed out of their budget money to purchase U/M coverage from State Farm. The U/M limits chosen by the Dees are the statutorily mandatory limits under Georgia's U/M Statute. O.C.G.A. Section 33-7-11 (a)(1)(B) reads in pertinent part, "In any event, the insured may affirmatively choose uninsured motorist limits in any amount less than the limits of liability." (Emphasis Added) This statutorily mandatory U/M coverage was selected at the option of the Dees.

In addition to Alabama there are many other sister states that have provided persuasive legal authority that supports GTLA's position. It should be noted that all sister states may not have Appellate case law on this subject. Why? First, their U/M insurers may issue U/M policies without any collateral source reduction provisions. Therefore, there would be no reason for their Appellate Courts to address this issue. Second, a sister state's U/M statute may expressly permit a collateral source reduction provision for workers' compensation benefits, disability benefits, or other collateral sources of its insured. If it is expressly permitted by statute then there would be no need for an Appellate Court to address it.

The researchers at the American Law Report have provided a list of states whose Appellate Courts have supported GTLA's position that similar collateral source reduction provisions in a U/M policy are invalid and unenforceable. The Courts in the following sister states have held that similar collateral source reduction provisions were invalid and unenforceable where the sister states' U/M statute did not expressly permit or prohibit them.

Ala -- Preferred Risk Mut. Ins. Co. v Holmes (1971) 287 Ala 251, 251 So 2d 213 (construing Code of Alabama title 36, § 74(62a))

Ala -- State Farm Mut. Auto. Ins. Co. v Cahoon (1971) 287 Ala 462, 252 So 2d 619 (construing Code of Alabama title 36, § 74(62a))

Ala -- Rohleder v Family Shows, Inc. (1983, Ala App) 435 So 2d 95

Ariz -- Allied Mut. Ins. Co. v Larriva (1973) 19 Ariz App 385, 507 P2d 997 (construing A.R.S. §§ 20-259.01, 23-1023, 28-1170)

Ariz -- State Farm Mut. Auto. Ins. Co. v Karasek (1974) 22 Ariz App 87, 523 P2d 1324 (construing A.R.S. §§ 20-259.01, 23-1023[C], 28-1170[E]). [FN19]

Ark -- Courson v Maryland Casualty Co. (1973, CA8 Ark) 475 F2d 1030 (applying Arkansas law)

Ark -- Carter v St. Paul Fire & Marine Ins. Co. (1968, ED Ark) 283 F Supp 384, affd 413 F2d 539 (CA8 Ark) (applying Arkansas law) (construing Ark. Stat. Ann. § 66-4003)

Ark -- Jones v Morrison (1968, WD Ark) 284 F Supp 1016 (applying Arkansas law) (construing Ark. Stat. Ann. § 81-1340).[FN20]

Ark -- Travelers Ins. Co. v National Farmers Union Property & Casualty Co. (1972) 252 Ark 624, 480 SW2d 585 (construing Ark. Stat. Ann. §§ 66-4003, 75-1427)

Colo -- Nationwide Mut. Ins. Co. v Hillyer (1973) 32 Colo App 163, 509 P2d 810 (construing C.R.S. 1963 §§ 13-7-3(11), 72-12-19, 72-12-20)

Del -- Jeanes v Nationwide Ins. Co. (1987, Del Ch) 532 A2d 595 (construing 18 Del.C. § 3902)

Haw -- Caberto v National Union Fire Ins. Co. (1994) 77 Hawaii 39, 881 P2d 526 (construing H.R.S. § 431:10C-302)

Ind -- Leist v Auto Owners Ins. Co. (1974) 160 Ind App 322, 311 NE2d 828 (construing IC 1971 §§ 9-2-1-15, 27-7-5-1; Ind. Ann. Stat. §§ 39-4310, 47-1057 (Burns))

Ky -- State Farm Mut. Ins. Co. v Fireman's Fund American Ins. Co. (1977, Ky) 550 SW2d 554 (construing KRS §§ 187.330(3), 304.20-020, 342.055)

La -- Williams v Becklew (1970, La App 2d Cir) 246 So 2d 58 (overruling Allen v United States Fidelity & Guaranty Co. (La App 2d Cir) 188 So 2d 741 writ refused 249 La 743, 190 So 2d 909) (construing La. R.S. § 22:1406(D)(1))

La -- Landry v State Farm Mut. Auto. Ins. Co. (1975, La App 3d Cir) 320 So 2d 254 (construing La. R.S. § 22:1406(D)(1))

La -- Brown v Southern Farm Bureau Ins. Co. (1982, La App 1st Cir) 426 So 2d 684

La -- Monnier v Lawrence (1985, La App 4th Cir) 467 So 2d 35, cert den (La) 472 So 2d 37 (construing LSA-R.S. § 22:1406(D)(1)(a))

La -- Williams v Thonn (1986, La App 4th Cir) 487 So 2d 619 (construing LSA-R.S. § 22:1406(D)(1)(a))

Minn -- Brunmeier v Farmers Ins. Exchange (1973) 296 Minn 328, 208 NW2d 860 (construing Minn. St. 1967, §§ 72A.149(1) (amended and renumbered as part of § 65B.22), 170.25(3), 176.061)

Minn -- Fryer v National Union Fire Ins. Co. (1985, Minn) 365 NW2d 249

Minn -- Wills v State Farm Mut. Auto. Ins. Co. (1985, Minn App) 364 NW2d 504 (construing Minn. St. § 65B.49(4)(1), (4))

Minn -- Kostrzewski v Pennsylvania General Ins. Co. (1985, Minn App) 364 NW2d 910

Minn -- Murphy v Milbank Mut. Ins. Co. (1985, Minn App) 368 NW2d 753, affd in part, revd in part on other grounds, en banc (Minn) 388 NW2d 732, appeal after remand (Minn App) 438 NW2d 390 (construing Minn. St. § 65B.42(5))

Minn -- Rayford v Metropolitan Transit Com. (1985, Minn App) 379 NW2d 161

Minn -- Austin v State Farm Mut. Auto. Ins. Co. (1992, Minn App) 486 NW2d 457

Minn -- Richter v State of Minnesota (1993, Minn App) 1993 Minn App LEXIS 1103, review den (Minn) 1994 Minn LEXIS 59.[FN21]

Miss -- Preferred Risk Ins. Co. v Insurance Co. of N. Am. (1993, SD Miss) 824 F Supp 614 (construing Miss. Code Ann. § 83-11-111)

Miss -- Nationwide Mut. Ins. Co. v Garriga (1994, Miss) 636 So 2d 658, 31 ALR5th 797 (construing Miss. Code Ann. §§ 83-11-101, 83-11-111)

Mo -- For Missouri cases, see § 6[b]

Mont -- Sullivan v Doe (1972) 159 Mont 50, 495 P2d 193 (construing R.C.M. 1947 §§ 40-4403, 53-422)

Neb -- Booth v Seaboard Fire & Marine Ins. Co. (1970, CA8 Neb) 431 F2d 212 (applying Nebraska law) (construing Neb. R.S. § 60-509.01)

Neb -- Stephens v Allied Mut. Ins. Co. (1968) 182 Neb 562, 156 NW2d 133, 26 ALR3d 873 (construing Neb. R.S. § 60-509.01)

NH -- Merchants Mut. Ins. Group v Orthopedic Professional Ass'n (1984) 124 NH 648, 480 A2d 840 (ovrld in part on other grounds by Empire Ins. Cos. v National Union Fire Ins. Co., 128 NH 171, 512 A2d 1100) and (ovrld in part on other grounds by Rooney v Fireman's Fund Ins. Co. (NH) 645 A2d 52) (construing NHRSA §§ 264:15, 281:14)

NH -- Anderson v Fidelity & Casualty Co. (1991) 134 NH 513, 594 A2d 1293 (construing NHRSA § 264:15, IV)

NJ -- Sweeney v Hartford Acci. & Indem. Co. (1975) 136 NJ Super 591, 347 A2d 380 (construing N.J.S.A. § 17:28-1.1)

NJ -- Walkowitz v Royal Globe Ins. Co. (1977) 149 NJ Super 442, 374 A2d 40, petition dismd 75 NJ 584, 384 A2d 815 (construing N.J.S.A. § 17:28-1.1). [FN22]

NM -- Continental Ins. Co. v Fahey (1987) 106 NM 603, 747 P2d 249 (construing NMSA 1978 §§ 66-5-215, 66-5-301)

NC -- Ohio Casualty Group v Owens (1990) 99 NC App 131, 392 SE2d 647, review den 327 NC 484, 396 SE2d 614 (construing N.C.G.S. §§ 20-279.21(b)(4), 20-279.21(e), 97-10.1(f, g, h), 97-10.2)

NC -- Sproles v Greene (1990) 100 NC App 96, 394 SE2d 691, review gr (NC) 402 SE2d 420 and review gr 328 NC 93, 402 SE2d 419 and affd in part and

revd in part on other grounds, remanded 329 NC 603, 407 SE2d 497 (construing N.C.G.S. § 20-279.21)

NC -- Bowser v Williams (1992) 108 NC App 8, 422 SE2d 355, review gr 333 NC 343, 426 SE2d 703 and app dismd, app withdrawn 333 NC 789, 433 SE2d 170 (construing N.C.G.S. § 20-279.21)

NC -- Bailey v Nationwide Mut. Ins. Co. (1993) 112 NC App 47, 434 SE2d 625 (construing N.C.G.S. § 20-279.21)

NC -- Hieb v St. Paul Fire & Marine Ins. Co. (1993) 112 NC App 502, 435 SE2d 826 (construing N.C.G.S. § 20-279.21(e)).[FN23]

Okla -- Chambers v Walker (1982, Okla) 653 P2d 931 (construing 36 O.S. § 3636)

Pa -- For Pennsylvania cases, see § 5[a]

RI -- Aldcroft v Fidelity & Casualty Co. (1969) 106 RI 311, 259 A2d 408 (construing R.I.G.L. 1956 §§ 27-7-2.1, 27-7-3, 31-31-7, 45-19-1)

RI -- Lombardi v Merchants Mut. Ins. Co. (1981, RI) 429 A2d 1290 (construing R.I.G.L. 1956 §§ 27-7-2.1, 31-31-7).[FN24]

SC -- Ferguson v State Farm Mut. Auto. Ins. Co. (1973) 261 SC 96, 198 SE2d 522 (construing S.C. Code §§ 46-750.32, 46-750.33, the predecessors to S.C. Code § 38-77-220).[FN25]

SD -- Isaac v State Farm Mut. Auto. Ins. Co. (1994, SD) 522 NW2d 752 (construing SDCL § 58-11-9)

SD -- National Farmers Union Property & Casualty Co. v Bang (1994, SD) 516 NW2d 313 (construing SDCL §§ 32-35-113, 58-11-9)

Tex -- Fidelity & Casualty Co. v McMahon (1972, Tex Civ App Beaumont) 487 SW2d 371, writ ref n r e (Feb 14, 1973) and rehg of writ of error overr (Mar 21, 1973) (construing Vernon's Ann. Civ. St., art. 8307, § 6a)

Tex -- Hamaker v American States Ins. Co. (1973, Tex Civ App Houston (1st Dist)) 493 SW2d 893, writ ref n r e (Jul 11, 1973) and rehg of writ of error overr (Sep 25, 1973) (construing V.A.T.S. Insurance Code, arts. 5.06-1, 5.35, 5.36)

Utah -- Thamert v Continental Casualty Co. (1980, Utah) 621 P2d 702 (construing U.C.A. 1953 §§ 41-12-5, 41-14-21.1)

Va -- Travelers Indem. Co. v Wells (1962, WD Va) 209 F Supp 784, revd on other grounds (CA4, Va) 316 F2d 770 (construing Va. Code Ann. § 38.1-381 (recodified as § 38.2-2206))

Va -- National Union Fire Ins. Co. v Binker (1991, DC Dist Col) 774 F Supp 15 (applying Virginia law) (construing Va. Code Ann. § 38.2-2206 A (formerly § 38.1-381(b)))

Wash -- Britton v Safeco Ins. Co. of America (1985) 104 Wash 2d 518, 707 P2d 125 (construing RCW § 48.22.030)

Wash -- Allstate Ins. Co. v Welch (1986) 45 Wash App 740, 727 P2d 268, review den 107 Wash 2d 1033 (construing RCW § 48.22.030)

Wis -- Neimann v Badger Mut. Ins. Co. (1988, App) 143 Wis 2d 73, 420 NW2d 378 (construing W.S.A. § 632.32(4))

Wis -- United Fire & Casualty Co. v Kleppe (1993) 174 Wis 2d 637, 498 NW2d 226 (construing W.S.A. § 632.32(4))

The above list of 56 sister State's cases was printed in the 31 ALR 5th 116 Section 5. The above list of 56 sister state court cases is not an exhaustive list. There may be more cases that support GTLA's position. These 56 state court opinions provide valuable persuasive legal authority to support GTLA's position.

14. Conclusion.

The purpose of U/M coverage is to protect innocent occupants of motor vehicles from wrongdoers who have no auto liability insurance or low auto liability insurance. The insured must be placed in the same position that he would have been if the U/M tortfeasor had liability limits equal to the U/M limits of the insured.

State Farm's collateral source reduction provision is unenforceable because it conflicts directly with Georgia's U/M Statute O.C.G.A. Section 33-7-11 (i), and Georgia's public policy as expressed in Georgia's Collateral Source Rule. Contrary parts of the opinions of the Georgia Court of Appeals contained in the Northbrook

case and its progeny should be overruled since they conflict directly with Georgia's U/M Statute and Georgia's public policy.

This the ____ day of _____, 200__.

Respectfully submitted:

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CERTIFICATE OF SERVICE

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