

08-1911-CD

Adam Dixon vs Progressive Ins. Co.

Date: 10/14/2008  
Time: 10:20 AM

Clearfield County Court of Common Pleas  
Receipt

NO. 1926326  
Page 1 of 1

Received of: Zimmer Kunz, PLLC \$ 75.00

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Seventy-Five and 00/100 Dollars

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Case: 2008-01911-CD	Defendant: Adam Dixon vs. Progressive North	Amount
Civil Complaint - Transfer from Another County		75.00
Total:		75.00

Check: 67629

Payment Method: Check  
Amount Tendered:  
Change Returned:  
Clerk: BILLSHAW

75.00

0.00

William A. Shaw, Prothonotary/Clerk of Cou  
By: \_\_\_\_\_  
Deputy Clerk

08-1911-CD

[Home]

## Allegheny County - Department of Court Records

## Civil/Family Division Docket Report

GD-08-012081

\*\*\*\*\* CASE TRANSFERRED TO CLEARFIELD COUNTY \*\*\*\*\*

Run Date: 10/06/2008

Run Time: 02:42:25 PM

Court Type:

General Docket

Case Type:

Declaratory Judgment

Related Cases:

Judge:

No Judge

Jury Requested:

Yes

Current Status:

Case Transferred

Amount In Dispute:

\$ .00

Parties							
-- Litigants --							
ID	LName	FName	MI	Type	Address	Phone	Attorney
@1574691	Dixon	Adam	--	Plaintiff	No Default Address Available	--	Danel Cynthia M,
@1574692	Progressive Northern Insurance Company	---	--	Defendant	No Default Address Available	--	Ramaley Jeffrey A,

-- Attorney --						
ID	LName	FName	MI	Type	Address	Phone
34527	Danel	Cynthia	M	Plaintiff's Attorney	600 Grant St. Ste 10 Pittsburgh PA 15219	(412) 3941000
41559	Ramaley	Jeffrey	A	Defendant's Attorney	Zimmer Kunz P.C. 600 Grant Street 3300 USX Tower Pittsburgh PA 15219	(412) 2818000

-- Non Litigants --						
ID	LName	FName	MI	Type	Address	Phone
ACPROTH	Allegheny County Prothonotary	---	--	Prothonotary	No Default Address Available	(412) 3505729

FILED

m 11:03

OCT 08 2008

Docket Entries			
Filing Date	Docket Type	Docket Text	Filing Party
06/18/2008	Complaint		Dixon Adam
06/27/2008	Praecipe for Appearance	by Jeffrey A Ramaley Esq.	Progressive Northern Insurance Company
07/21/2008	Notice of Filing	of removal	Progressive Northern Insurance Company
08/28/2008	Copy	Of an order	Dixon Adam
09/04/2008	Response	to Affirmative Defenses filed at 2:08CV-01010.	Dixon Adam

10/06/2008	Case Transferred	As per Order of Court dated 10/03/08. Case is transferred to Clearfield County, PA. Wettick, J.	Allegheny County Prothonotary
10/06/2008	Petition & Order	Dated 10/03/08 Order that the Defts. Petition for Transfer of Venue is granted and this case is transferred to the Court of Common Pleas of Clearfield County, Pennsylvania. Wettick, J.	Progressive Northern Insurance Company

08-1911-CD<sup>9</sup>

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

ADAM DIXON,

CIVIL DIVISION

Plaintiff,

v.

No.: GD 08-0120&1

PROGRESSIVE NORTHERN INSURANCE  
COMPANY,

**PETITION FOR TRANSFER OF VENUE**

Defendant,

v.

Filed on behalf of:  
DEFENDANT,  
PROGRESSIVE NORTHERN INSURANCE  
COMPANY

OHIO CASUALTY INSURANCE  
COMPANY,

Additional Defendant.

Counsel of Record for this party:  
**JEFFREY A. RAMALEY, ESQUIRE**  
Pa. I.D. #41559

**CHRISTINA A. ROGERS, ESQUIRE**  
Pa. I.D. #200159

**ZIMMER KUNZ, P.L.L.C.**  
Firm #920  
3300 U.S. Steel Tower  
Pittsburgh, PA 15219  
(412) 281-8000

**JURY TRIAL DEMANDED**

CIVIL DIVISION  
ALLEGHENY COUNTY PA

OCT-5 AM 9:38

FILED

2008 OCT -3 PM 3:31  
COURT OF COMMON PLEAS

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ADAM DIXON,

Plaintiff,

v.

CIVIL DIVISION

PROGRESSIVE NORTHERN INSURANCE  
COMPANY,

Defendant,

v.

No.: GD 08-012081

OHIO CASUALTY INSURANCE  
COMPANY,

Additional Defendant.

**NOTICE OF PRESENTATION**

Kindly take notice that the within Petition for Transfer of Venue will be presented to the Honorable R. Stanton Wettick on Friday, October 3, 2008 at 2:00 p.m., or as soon thereafter as is convenient to the Court.

ZIMMER KUNZ, P.L.L.C.

  
CHRISTINA A. ROGERS, ESQUIRE  
ATTORNEY FOR DEFENDANT

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the within PETITION FOR TRANSFER OF VENUE was forwarded to counsel below named by United States Mail on the 19<sup>th</sup> day of September, 2008:

Cynthia M. Danel, Esquire  
Edgar Snyder & Associates LLC  
U.S. Steel Tower, Tenth Floor  
600 Grant Street  
Pittsburgh, PA 15219-2705  
(Attorney for Plaintiff)

Terry L. M. Bashline, Esquire  
Suite 3500, One Olive Plaza  
210 Sixth Ave.  
Pittsburgh, PA 15222  
(Attorney for Additional Defendant)

ZIMMER KUNZ, P.L.L.C.

  
CHRISTINA A. ROGERS, ESQUIRE  
ATTORNEY FOR DEFENDANT

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

ADAM DIXON,

CIVIL DIVISION

Plaintiff,

v.

No.: GD 08-012081

PROGRESSIVE NORTHERN INSURANCE  
COMPANY,

Defendant,

v.

OHIO CASUALTY INSURANCE  
COMPANY,

Additional Defendant.

**PETITION FOR TRANSFER OF VENUE**

AND NOW, comes the Defendant, Progressive Northern Insurance Company, by and through its attorneys, Zimmer Kunz, P.L.L.C., and files the following Petition for Transfer of Venue, and, in support thereof, avers as follows:

1. On June 18, 2008, Plaintiff initiated the instant declaratory judgment action with the filing of a Complaint, requesting, inter alia, that this Court declare that the Defendant must provide \$100,000/\$300,000 stacked uninsured motorist coverage and \$25,000 in first party benefits relative to the motor vehicle accident which occurred on August 18, 2007.

2. At all times relevant hereto, the Plaintiff lived in DuBois, Clearfield County, Pennsylvania.

3. At all times relevant hereto, the Plaintiff's mother lived in DuBois, Clearfield County, Pennsylvania.

4. The named insured on the subject policy, Paul Ellingsworth, lived in DuBois, Clearfield County, Pennsylvania both at the time of the underlying motor vehicle accident and at the time the insurance contract was entered into with the Defendant.

5. The subject insurance contract was entered into in DuBois, Clearfield County, Pennsylvania.

6. The underlying motor vehicle accident occurred in Clearfield County.

7. While venue in Allegheny County is technically proper, this matter should be transferred from Allegheny County on the basis that such venue constitutes *forum non conveniens*.

8. In this matter, the cause of action arose in Clearfield County, Pennsylvania, as the insurance contract was entered into in Clearfield County.

9. Under Pa.R.Civ.P. 1006(a), venue would be proper in Clearfield County as well as Allegheny County.

10. However, the venue of Allegheny County is more burdensome as no potential witnesses are located in Allegheny County, but rather the majority of witnesses are located in Clearfield County.

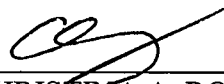
11. Moreover, the Court of Common Pleas of Allegheny County should not bear the administrative burden and financial costs of administering this case, given that another forum is more convenient and more closely related to the primary issue involved in the dispute.



WHEREFORE, the Defendant, Progressive Northern Insurance Company,  
respectfully requests that this Honorable Court enter an Order transferring venue to Clearfield  
County, Pennsylvania.

Respectfully submitted,

ZIMMER KUNZ, P.L.L.C.



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CHRISTINA A. ROGERS, ESQUIRE  
ATTORNEY FOR DEFENDANT,  
PROGRESSIVE NORTHERN  
INSURANCE COMPANY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

ADAM DIXON,

CIVIL DIVISION

Plaintiff,

v.

No.: GD 08-012081

PROGRESSIVE NORTHERN INSURANCE  
COMPANY,

**BRIEF IN SUPPORT OF PETITION FOR  
TRANSFER OF VENUE**

Defendant,

v.

Filed on behalf of:  
DEFENDANT,  
PROGRESSIVE NORTHERN INSURANCE  
COMPANY

OHIO CASUALTY INSURANCE  
COMPANY,

Additional Defendant.

Counsel of Record for this party:  
**JEFFREY A. RAMALEY, ESQUIRE**  
Pa. I.D. #41559

**CHRISTINA A. ROGERS, ESQUIRE**  
Pa. I.D. #200159

**ZIMMER KUNZ, P.L.L.C.**  
Firm #920  
3300 U.S. Steel Tower  
Pittsburgh, PA 15219  
(412) 281-8000

**JURY TRIAL DEMANDED**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

ADAM DIXON,

CIVIL DIVISION

Plaintiff,

v.

No.: GD 08-012081

PROGRESSIVE NORTHERN INSURANCE  
COMPANY,

Defendant,

v.

OHIO CASUALTY INSURANCE  
COMPANY,

Additional Defendant.

**BRIEF IN SUPPORT OF PETITION FOR TRANSFER OF VENUE**

AND NOW, comes the Defendant, Progressive Northern Insurance Company, by and through its attorneys, Zimmer Kunz, P.L.L.C., and files the following Brief in Support of Petition for Transfer of Venue, and, in support thereof, avers as follows:

Plaintiff initiated this declaratory judgment action with the filing of a Complaint on June 18, 2008. The declaratory judgment centers on an automobile insurance policy issued by the Defendant to Paul Ellingsworth and the residency of the Plaintiff on August 18, 2007, the date he was involved in a motor vehicle accident.

The subject contract of insurance was entered into between Paul Ellingsworth and the Defendant in Clearfield County. At issue in this matter is whether the Plaintiff resided with his mother or Paul Ellingsworth at the time he was involved in the motor vehicle accident. Both Mr. Ellingsworth and the Plaintiff's mother resided in Clearfield County at all times relevant hereto. Plaintiff currently resides in Espyville, Crawford County, Pennsylvania.

Therefore, while venue in Allegheny County is technically proper, this matter should be transferred from Allegheny County on the basis that such venue constitutes *forum non conveniens*.

Pennsylvania Rule of Civil Procedure 1006(d)(1) provides:

**RULE 1006. VENUE. CHANGE OF VENUE.**

(d)(1) For the convenience of the parties and witnesses the court upon petition of any party may transfer an action to the appropriate court of any other county where the action could have originally been brought.

Pennsylvania Rule of Civil Procedure 1006(a) determines the counties in which an action against an individual may be brought in the following manner:

**RULE 1006. VENUE. CHANGE OF VENUE.**

(a) Except as otherwise provided . . . an action against an individual may be brought in and only in a county in which the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law.

In the instant matter, the cause of action arose in Clearfield County, Pennsylvania, as that is where the Plaintiff resided, where the subject insurance agreement was entered into, where the Defendant was located relative to entering into such agreement with the Plaintiff, and where Paul Ellingsworth and the Plaintiff's mother resided on the date of the underlying motor vehicle accident.


Consequently, under Pa.R.Civ.P. 1006(a), venue would be proper in Clearfield County as well as Allegheny County. However, the venue of Clearfield County is more fitting as it is where the contract was entered into, and Allegheny County is a more burdensome venue as none of the potential witnesses in this matter reside in Allegheny County.

Moreover, the Court of Common Pleas of Allegheny County should not bear the administrative burden and financial costs of administering this case, given that another forum is more convenient and more closely related to the primary issue involved in the dispute.

WHEREFORE, the Defendant, Progressive Specialty Insurance Company, incorrectly named as Progressive Insurance Company, respectfully requests that this Honorable Court enter an Order transferring venue to Clearfield County, Pennsylvania.

Respectfully submitted,

ZIMMER KUNZ, P.L.L.C.



---

CHRISTINA A. ROGERS, ESQUIRE  
ATTORNEY FOR DEFENDANT,  
PROGRESSIVE NORTHERN  
INSURANCE COMPANY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

ADAM DIXON,

CIVIL DIVISION

Plaintiff,

v.

No.: GD 03-012081

PROGRESSIVE NORTHERN INSURANCE  
COMPANY,

Defendant,

v.

OHIO CASUALTY INSURANCE  
COMPANY,

Additional Defendant.

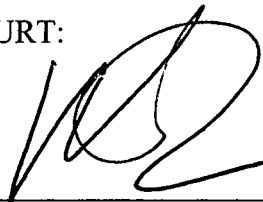
**ORDER OF COURT**

AND NOW, this 3 day of Oct, 2008, it is hereby

ORDERED, ADJUDGED, and DECREED that the Defendant's Petition for Transfer of Venue is hereby GRANTED and this case is transferred to the Court of Common Pleas of Clearfield County, Pennsylvania.

BY THE COURT:

*conceded to*

  
\_\_\_\_\_, J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ADAM DIXON,

Plaintiff,

vs.

PROGRESSIVE NORTHERN INSURANCE  
COMPANY,

Defendant.

CIVIL DIVISION

No. **GD-08-012081**

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

Code: 180

Filed on behalf of: Plaintiff, Adam Dixon

Counsel of record for this party:

CYNTHIA M. DANIEL, ESQUIRE  
PA I.D. No. 34527

Email: [cdaniel@edgarsnyder.com](mailto:cdaniel@edgarsnyder.com)

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC  
US Steel Tower, Tenth Floor  
600 Grant Street  
Pittsburgh, PA 15219-2705

(412) 394-1000

JURY TRIAL DEMANDED

**E-FILED**

**JUN 18 2008**

**ALLEGHENY CO.  
PROTHONOTARY**



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ADAM DIXON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.
	)	
vs.	)	
	)	
PROGRESSIVE NORTHERN INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER [OR CANNOT AFFORD ONE], GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW [TO FIND OUT WHERE YOU CAN GET LEGAL HELP]. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

LAWYER REFERRAL SERVICE -	LAWYER REFERRAL SERVICE
	THE ALLEGHENY COUNTY BAR ASSOC.
	11 <sup>th</sup> Floor, Koppers Building
	436 Seventh Avenue
	Pittsburgh, PA 15219
	Telephone (412) 261-5555



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ADAM DIXON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.
	)	
vs.	)	
	)	
PROGRESSIVE NORTHERN INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

**COMPLAINT FOR DECLARATORY JUDGMENT**

AND NOW, comes the Plaintiff, ADAM DIXON, by and through his attorneys, EDGAR SNYDER & ASSOCIATES, LLC and CYNTHIA M. DANIEL, ESQUIRE, and sets forth the following Complaint for Declaratory Judgment and in support thereof, avers as follows:

1. Adam Dixon is an adult citizen of the Commonwealth of Pennsylvania and has principal places of residence in Pennsylvania whose date of birth is May 22, 1990.
2. Progressive Northern Insurance Company (hereinafter 'Progressive') is a corporate citizen of the state of Ohio licensed to transact and conduct business within the Commonwealth of Pennsylvania and County of Allegheny with a registered servant agent c/o CT Corporation System, 8025 Excelsior Drive, Suite 200, Madison, Wisconsin 53717.
3. Plaintiff, Adam Dixon, suffered serious personal injuries as a result of a motor vehicle accident which occurred on August 18, 2007, on Route 36 in Westmoreland County, Pennsylvania. The accident was caused by the negligence of Richard Schultz, deceased, who was operating a 1998 Jaguar automobile owned by John Kollar, and who was proceeding in a southbound direction on Route 36.

4. At the time of the accident, Adam Dixon, was the operator of a 1992 Crown Victoria vehicle owned by Paul Ellingsworth proceeding in a southerly direction on Route 36, when Richard Schultz carelessly and negligently caused his vehicle to cross the center line of Route 36 and to collide violently with the Ellingsworth vehicle, grievously injuring Adam Dixon. Richard Schultz died of his injuries

5. Richard Schultz, deceased, was an uninsured motorist and there was no insurance on the 1998 Jaguar he was driving at the time of the accident.

6. At the time of the accident, Adam Dixon was the minor child of separated parents.

7. Deborah Dixon, is the natural mother of Adam Dixon, who on the date of the accident, resided at 910 Showers Road, DuBois, PA 15801.

8. Mr. and Mrs. Paul Ellingsworth, are blood relatives and the great aunt and uncle of Adam Dixon, who on the date of the accident resided at 515 Showers Road, DuBois, PA 15801.

9. Adam Dixon, at the time of the accident, resided with his great aunt and uncle, Mr. and Mrs. Paul Ellingsworth, at 515 Showers Road, DuBois, PA 15801.

10. At the time of the accident, the Ellingsworth vehicle operated by Adam Dixon was insured by Progressive under policy number 55517559-6 and which contained \$25,000 in first party medical benefits and \$100,000/\$300,000 in UM coverage stacked on three vehicles. The Progressive Declarations page is attached hereto Exhibit "A."

11. The undersigned counsel, on behalf of Adam Dixon, a minor, demanded UM benefits from Progressive, the first named insured being Paul Ellingsworth.

12. Progressive tendered to Adam Dixon the UM policy limits of \$100,000 under the aforementioned policy of insurance covering the 1992 Crown Victoria owned by Paul Ellingsworth and operated by Adam Dixon at the time of the accident. Said offer was accepted on June 13, 2008.

13. Under the policy of uninsured/underinsured motorist coverage issued by Progressive to Paul Ellingsworth and Elizabeth Ellingsworth, the term "insured person" is defined as follows:

- a. **you or a relative;**
- b. any person while operating a **covered auto** with the permission of **you or a relative;**
- c. any person **occupying**, but not operating, a **covered auto**; and
- d. any person who is entitled to recover damages covered by the Part III because of bodily injury sustained by a person described in a, b. or c above.

See excerpt from Progressive Policy #55517559-6 attached hereto as Exhibit "B."

14. Under the policy of auto coverage issued by Progressive to Paul Ellingsworth and Elizabeth Ellingsworth, the term "relative" is defined as follows:

- a. a person residing in the same household as **you**, and related to **you** by blood, marriage, or adoption, and includes a ward, stepchild, or foster child;
- b. a minor child in the custody of:
  - (i) **you**; or
  - (ii) a person residing in **your** household who is related to **you**; and
- c. **your** unmarried dependent children who are temporarily away from home if they intend to continue to reside in **your** household.

See excerpt from Progressive Policy #55517559-6 attached hereto as Exhibit "C"

15. The undersigned counsel, on behalf of Adam Dixon, a minor, demanded stacked UM benefits from Progressive under Progressive Policy #55517559-6, and provided proof to Progressive of Adam Dixon's residency in the household of Paul Ellingsworth and Elizabeth Ellingsworth at 515 Showers Road, DuBois, PA 15801.

16. Progressive has denied and continues to deny that Adam Dixon was a resident relative in the household of Paul Ellingsworth and Elizabeth Ellingsworth at 515 Showers Road, DuBois, PA 15801 and has refused to acknowledge that Adam Dixon is entitled to stacked UM benefits under Progressive Policy #55517559-6 in the amount of \$100,000/\$300,000 on three vehicles.

17. The undersigned counsel, on behalf of Adam Dixon, a minor, demanded first party medical benefits of \$25,000 from Progressive under Progressive Policy #55517559-6, and provided proof of Adam Dixon's residency in the household of Paul Ellingsworth and Elizabeth Ellingsworth at 515 Showers Road, DuBois, PA 15801.

18. Progressive has denied and continues to deny that Adam Dixon was a resident relative in the household of Paul Ellingsworth and Elizabeth Ellingsworth at 515 Showers Road, DuBois, PA 15801 and has refused to acknowledge that Adam Dixon is entitled to \$25,000 in first party medical benefits under Progressive Policy #55517559-6.

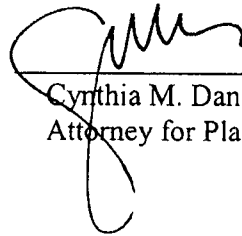
WHEREFORE, the Plaintiff, Adam Dixon, respectfully requests that this Honorable Court enter a declaratory judgment in his favor and enter an order and declaration providing as follows:

- (a) That on August 18, 2007 Adam Dixon was a resident relative of Paul Ellingsworth and Elizabeth Ellingsworth as defined within the Progressive Policy #55517559-6;
- (b) That Adam Dixon is entitled to stacked UM benefits under Progressive Policy #55517559-6 in the amount of \$100,000/\$300,000 on three vehicles of which he has already received \$100,000 from Progressive; and
- (c) That Adam Dixon is entitled to \$25,000 in first party medical benefits under Progressive Policy #55517559-6.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

By:



Cynthia M. Danel, Esquire  
Attorney for Plaintiff

**Outline of coverage****2003 Buick Lesabre Custom 4D**

VIN 1G4HP54K834131020	Limits	Deductible	Premium
Liability To Others			\$126
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident		
Property Damage Liability	\$100,000 each accident		
First Party Benefits			22
Medical Expenses	\$25,000 each person		
Funeral Benefit	\$2,500 each person		1
Accidental Death	\$5,000		1
Uninsured Motorist - Stacked	\$100,000 each person/\$300,000 each accident		9
Underinsured Motorist - Stacked	\$100,000 each person/\$300,000 each accident		19
Comprehensive	Actual Cash Value	\$100	35
Collision	Actual Cash Value	\$250	127
Total premium for 2003 Buick			<b>\$340</b>

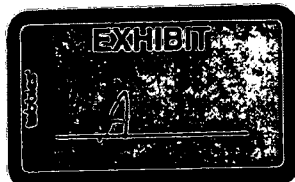
**2007 Chevrolet K1500 Silverado 4C**

VIN 1GCEK19087E503085	Limits	Deductible	Premium
Liability To Others			\$187
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident		
Property Damage Liability	\$100,000 each accident		
First Party Benefits			21
Medical Expenses	\$25,000 each person		
Funeral Benefit	\$2,500 each person		1
Accidental Death	\$5,000		1
Uninsured Motorist - Stacked	\$100,000 each person/\$300,000 each accident		9
Underinsured Motorist - Stacked	\$100,000 each person/\$300,000 each accident		19
Comprehensive	Actual Cash Value	\$100	41
Collision	Actual Cash Value	\$250	169
Total premium for 2007 Chevrolet			<b>\$448</b>

**1992 Ford Crown Victoria**

VIN 21ACP74W3NX132698	Limits	Deductible	Premium
Liability To Others			\$143
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident		
Property Damage Liability	\$100,000 each accident		
First Party Benefits			34
Medical Expenses	\$25,000 each person		
Funeral Benefit	\$2,500 each person		1
Accidental Death	\$5,000		1
Uninsured Motorist - Stacked	\$100,000 each person/\$300,000 each accident		9
Underinsured Motorist - Stacked	\$100,000 each person/\$300,000 each accident		19
Total premium for 1992 Ford			<b>\$207</b>

**Total 6 month policy premium** **\$995**



### Premium discounts

Policy	55517559-6	home owner, multi-car and paid in full
Vehicle	2003 Buick Lesabre Custom 4D	airbag
	2007 Chevrolet K1500 Silverado 4C	vehicle tracking system and airbag
	1992 Ford Crown Vito4d	airbag

### Lienholder information

Lienholder:	NUVELL FIN SVCS, LLC PO BOX 7199 LITTLE ROCK, AR 72223 2007 Chevrolet K1500 Silverado 4C (1GCEK19087E503085)
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### Tort Option

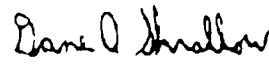
This policy provides limited tort insurance.

### COLLISION COVERAGE FOR RENTAL VEHICLES

IF THIS POLICY PROVIDES COLLISION COVERAGE, IT WILL APPLY TO VEHICLES YOU RENT, BUT NOT TO VEHICLES RENTED FOR 6 MONTHS OR MORE.

### Company officers

  
President

  
Secretary

### **PART III - UNINSURED/UNDERINSURED MOTORIST COVERAGE**

#### **INSURING AGREEMENT - UNINSURED MOTORIST COVERAGE**

If **you** pay the premium for this coverage, **we** will pay for damages that an **insured person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of **bodily injury**:

1. sustained by an **insured person**;
2. caused by an accident; and
3. arising out of the ownership, maintenance, or use of an **uninsured motor vehicle**.

#### **INSURING AGREEMENT - UNDERINSURED MOTORIST COVERAGE**

If **you** pay the premium for this coverage, **we** will pay for damages that an **insured person** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of **bodily injury**:

1. sustained by an **insured person**;
2. caused by an accident; and
3. arising out of the ownership, maintenance, or use of an **underinsured motor vehicle**.

An **insured person** must notify **us** in writing at least 30 days before entering into any settlement with the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle**, or any liability insurer. In order to preserve **our** right of subrogation, **we** may elect to pay any sum offered in settlement by, or on behalf of, the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle**. If **we** do this, the **insured person** shall assign to **us** all rights that **insured person** has against the owner or operator of the **uninsured motor vehicle** or **underinsured motor vehicle**, to the extent of **our** payment.

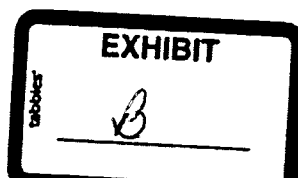
No judgment or settlement for damages arising out of a lawsuit brought against an owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle** shall be binding on **us** unless **we** have:

1. received reasonable notice of the filing of the lawsuit resulting in the judgment; and
2. had a reasonable opportunity to protect **our** interests in the lawsuit.

#### **ADDITIONAL DEFINITIONS**

When used in this Part III:

1. "**Insured person**" means:
  - a. **you** or a **relative**;
  - b. any person while operating a **covered auto** with the permission of **you** or a **relative**;
  - c. any person **occupying**, but not operating, a **covered auto**; and
  - d. any person who is entitled to recover damages covered by this Part III because of **bodily injury** sustained by a person described in a, b, or c above.
2. "**Noneconomic loss**" means pain and suffering and other non-monetary detriment.





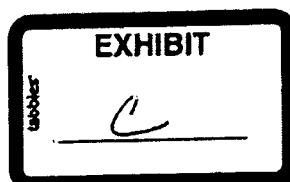
6. **"Declarations page"** means the document showing **your** coverages, limits of liability, **covered autos**, premium, and other policy-related information. The **declarations page** may also be referred to as the Auto Insurance Coverage Summary.
7. **"Occupying"** means in, on, entering, or exiting.
8. **"Property damage"** means physical damage to, destruction of, or loss of use of, tangible property.
9. **"Relative"** means:
- a. a person residing in the same household as **you**, and related to **you** by blood, marriage, or adoption, and includes a ward, stepchild, or foster child;
  - b. a minor child in the custody of:
    - (i) **you**; or
    - (ii) a person residing in **your** household who is related to **you**; and
  - c. **your** unmarried dependent children who are temporarily away from home if they intend to continue to reside in **your** household.
10. **"Replacement auto"** means an **auto** that permanently replaces an **auto** shown on the **declarations page**. A **replacement auto** will have the same coverage as the **auto** it replaces if the **replacement auto** is not covered by any other insurance policy. However, if the **auto** being replaced had coverage under Part IV - Damage To A Vehicle, such coverage will apply to the **replacement auto** only during the first 30 days after **you** become the owner unless **you** notify **us** within that 30-day period that **you** want **us** to extend coverage beyond the initial 30 days. If the **auto** being replaced did not have coverage under Part IV - Damage To A Vehicle, such coverage may be added, but the **replacement auto** will have no coverage under Part IV until **you** notify **us** of the **replacement auto** and ask **us** to add the coverage.
11. **"Trailer"** means a non-motorized trailer, including a farm wagon or farm implement, designed to be towed on public roads by an **auto** and not being used:
- a. for commercial purposes;
  - b. as an office, store, or for display purposes; or
  - c. as a passenger conveyance.
12. **"We", "us", and "our"** mean the underwriting company providing the insurance, as shown on the **declarations page**.
13. **"You" and "your"** mean:
- a. a person shown as a named insured on the **declarations page**; and
  - b. the spouse of a named insured if residing in the same household at the time of the loss.

## **PART I - LIABILITY TO OTHERS**

### **INSURING AGREEMENT**

If **you** pay the premium for this coverage, **we** will pay damages for **bodily injury** and **property damage** for which an **insured person** becomes legally responsible because of an accident.

**We** will settle or defend, at **our** option, any claim for damages covered by this Part I.



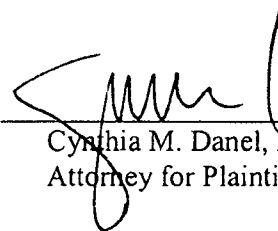
**VERIFICATION OF COUNSEL**

CYNTHIA M. DANIEL, ESQUIRE, says that she is the attorney for the Plaintiff, that she is authorized to make this statement and that the facts contained herein are true and correct to the best of her information, knowledge and belief. The verification of counsel is being attached hereto in lieu of that of Plaintiff, Adam Dixon, because of the inability to obtain a Verification from Plaintiff in the time required to file this Complaint for Declaratory Judgment. A Verification of Plaintiff will be provided if requested.

This statement is made subject to the penalties of 18 Purdon's Consolidated Statutes Section 4904 relating to unsworn falsification to authorities.

EDGAR SNYDER & ASSOCIATES, LLC

By: \_\_\_\_\_

  
Cynthia M. Daniel, Esquire  
Attorney for Plaintiff

Date: June 17, 2008

IN THE COMMON PLEAS COURT OF ALLEGHENY COUNTY,  
PENNSYLVANIA

ADAM DIXON,

CIVIL ACTION

Plaintiff,

No.: GD 08-012081

vs.

**PRAECIPE FOR APPEARANCE**

PROGRESSIVE NORTHERN  
INSURANCE COMPANY,

Defendant.

Filed on behalf of: **DEFT.**

Counsel of Record for this party:  
**JEFFREY A. RAMALEY, ESQUIRE**  
Pa. I.D. #41559

**ZIMMER KUNZ  
PROFESSIONAL LIMITED  
LIABILITY COMPANY**

Firm #920  
3300 USX Tower  
Pittsburgh, PA 15219  
(412) 281-8000

**JURY TRIAL DEMANDED**

IN THE COMMON PLEAS COURT OF ALLEGHENY COUNTY,  
PENNSYLVANIA

ADAM DIXON,

CIVIL ACTION

Plaintiff,

vs.

No.: GD 08-012081

PROGRESSIVE NORTHERN  
INSURANCE COMPANY,

Defendant.

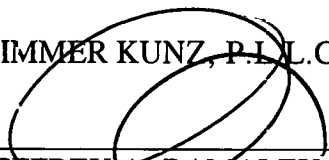
**PRAECIPE FOR APPEARANCE**

TO: THE PROTHONOTARY OF ALLEGHENY COUNTY

Kindly enter my appearance on behalf of the Defendant, PROGRESSIVE  
NORTHERN INSURANCE COMPANY, in the civil action listed above.

Respectfully submitted,

ZIMMER KUNZ, P.L.L.C.

  
\_\_\_\_\_  
JEFFREY A. RAMALEY, ESQUIRE  
ATTORNEY FOR DEFENDANT,  
PROGRESSIVE NORTHERN  
INSURANCE COMPANY

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the within PRAECIPE FOR  
APPEARANCE was forwarded to counsel below named by United States Mail on the 27<sup>th</sup> day of  
June, 2008:

Cynthia M. Danel, Esquire  
Edgar Snyder & Associates, LLC  
U.S. Steel Tower, Tenth Floor  
600 Grant Street  
Pittsburgh, PA 15219-2705  
(Attorney for Plaintiff)

ZIMMER KUNZ, P.L.L.C.

JEFFREY A. RAMALEY, ESQUIRE  
ATTORNEY FOR DEFENDANT,  
PROGRESSIVE NORTHERN  
INSURANCE COMPANY

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

ADAM DIXON,

CIVIL DIVISION

Plaintiff,

v.

No.: GD 08-012081

PROGRESSIVE NORTHERN INSURANCE  
COMPANY,

**NOTICE OF FILING OF REMOVAL**

Defendant.

Filed on behalf of:  
DEFENDANT,  
PROGRESSIVE NORTHERN INSURANCE  
COMPANY

Counsel of Record for this party:  
**JEFFREY A. RAMALEY, ESQUIRE**  
Pa. I.D. #41559

**CHRISTINA A. ROGERS, ESQUIRE**  
Pa. I.D. #200159

**ZIMMER KUNZ, P.L.L.C.**  
Firm #920  
3300 U.S. Steel Tower  
Pittsburgh, PA 15219  
(412) 281-8000

**JURY TRIAL DEMANDED**

08 JUL 21 PM 3:37  
DEPT. OF COMMON RECORDS  
CIVIL/FAMILY DIVISION  
ALLEGHENY COUNTY PA

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

DOREEN A. ROTH,

CIVIL DIVISION

Plaintiff,

v.

No.: GD 08-012081

PROGRESSIVE INSURANCE COMPANY,

Defendant.


**NOTICE OF FILING OF REMOVAL**

TO: Prothonotary's Office

Please take notice that a Notice of Removal was filed in the United States District Court for the Western District of Pennsylvania at Civil Action No. 2:08-cv-01010 on July 18, 2008. I certify that the attached copy of the Notice of Removal is a true and correct copy of the original, which was filed in the Office of the Clerk of the United States District Court for the Western District of Pennsylvania.

Respectfully submitted,

ZIMMER KUNZ, P.L.L.C.


  
\_\_\_\_\_  
CHRISTINA A. ROGERS, ESQUIRE  
ATTORNEY FOR DEFENDANT,  
PROGRESSIVE NORTHERN  
INSURANCE COMPANY

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the within NOTICE OF FILING OF REMOVAL was forwarded to counsel below named by United States Mail on the 18th day of July, 2008:

Cynthia M. Danel, Esquire  
Edgar Snyder & Associates, LLC  
U.S. Steel Tower, Tenth Floor  
600 Grant Street  
Pittsburgh, PA 15219-2705  
(Attorney for Plaintiff)

ZIMMER KUNZ, P.L.L.C.

  
\_\_\_\_\_  
JEFFREY A. RAMALEY, ESQUIRE  
ATTORNEY FOR DEFENDANT,  
PROGRESSIVE NORTHERN  
INSURANCE COMPANY



9

UNITED STATES DISTRICT COURT  
OFFICE OF THE CLERK  
WESTERN DISTRICT OF PENNSYLVANIA  
P. O. BOX 1805  
PITTSBURGH, PA 15230  
WWW.PAWD.USCOURTS.GOV

ROBERT V. BARTH, JR.  
CLERK OF COURT  
412-208-7500

IN REPLYING, GIVE NUMBER  
OF CASE AND NAMES OF PARTIES

DATE: August 27, 2008

Court of Common Pleas of Allegheny County  
City-County Building, 1<sup>st</sup> Floor  
414 Grant Street  
Pittsburgh PA 15219

Attn: Prothonotary

IN RE: Dixon v. Progressive Northern Insurance Company

CIVIL ACTION NO. 2:08-1010

STATE COURT NO. GD 08-012081

Dear Sir or Madam:

I am enclosing herewith a certified copy of the order entered by the Honorable Terrence F. McVerry in the above entitled case on August 27, 2008, which remands the matter to your court.

Very truly yours,

ROBERT V. BARTH, JR.  
CLERK OF COURT

By: J. Berch

J. Berch  
Deputy Clerk

Enclosure

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ADAM DIXON, )  
)  
Plaintiff, )  
)  
v. ) 02: 08cv1010  
)  
PROGRESSIVE NORTHERN INSURANCE )  
COMPANY, )  
)  
Defendant. )

DEPT. CLERK  
CIVIL  
ALLEGHENY COUNTY  
PA

**MEMORANDUM ORDER**

Presently pending before the Court for disposition is the MOTION TO REMAND filed by Plaintiff, Adam Dixon (Document No. 7) and the RESPONSE in opposition filed by Defendant, Progressive Northern Insurance Company (Document No. 10). For the reasons stated below, the Court will decline to exercise its discretionary jurisdiction over this declaratory judgment action, and it will order that the case be remanded to the Court of Common Pleas of Allegheny County, PA forthwith.

The plaintiff, Adam Dixon, commenced this declaratory judgment action in the Court of Common Pleas of Allegheny County, PA at docket number GD 08-012081, in which he seeks a determination that defendant Progressive Northern Insurance Company ("Progressive") is obligated to pay him stacked uninsured motorist benefits and first party medical benefits for injuries he sustained in an automobile accident. Progressive, at the time of the accident, had issued a policy of insurance to Paul Ellingsworth and Elizabeth Ellingsworth, the great uncle and great aunt of Plaintiff, which insured three (3) vehicles in the Ellingsworth household, including the vehicle involved in the accident. At the time of the accident, Plaintiff was operating a vehicle owned by his great uncle, Paul Ellingsworth.

The central issue to be decided in this case is whether, under Pennsylvania law, the Plaintiff was a “resident” relative in the household of Paul Ellingsworth and Elizabeth Ellingsworth, the policy holders.

Progressive filed a timely notice of removal to this Court, in which it asserted that the Court has diversity citizenship over this matter pursuant to 28 U.S.C. § 1332. Thereafter, Plaintiff timely moved to remand this action on the grounds that the state law question of insurance coverage is more properly a matter for the state court to resolve.

The Declaratory Judgment Act provides, in relevant part, that a court “*may* declare the rights and other legal relations of any interested party.” 28 U.S.C. § 2201 (emphasis added)<sup>1</sup>. The jurisdiction conferred by the Declaratory Judgment Act is discretionary, and district courts are under no compulsion to exercise it. *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995) (holding that the Declaratory Judgment Act affords district courts “unique and substantial discretion in deciding whether to declare the rights of litigants.”); *State Auto Ins. Companies v. Summy*, 234 F.3d 131, 133 (3d Cir. 2000) (citing *Brillhart v. Excess Insurance Co. of America*, 316 U.S. 491, 494 (1942)).

The United States Court of Appeals for the Third Circuit has counseled that “federal courts should hesitate to entertain a declaratory judgment action where the action is restricted to

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<sup>1</sup> In pertinent part, the Declaratory Judgment Act provides:

In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201(a).

issues of state law.” *Atlantic Mutual Ins. Co. v. Gula*, 84 Fed. Appx. 173, 2003 WL 22962947, \*2 (3d Cir., Dec. 17, 2003) (citing *Summy*, 234 F.3d at 134-35). However, district courts do “not have open-ended discretion to decline jurisdiction over a declaratory judgment action when the issues include[] federal statutory interpretation, the government’s choice of a federal forum, an issue of sovereign immunity, or inadequacy of the state proceedings.” *Summy*, 234 F.3d at 134. None of these exceptions are present here.

In *Summy*, our Court of Appeals stated that “[t]he desire of insurance companies and their insureds to receive declarations in federal court on matters of purely state law has no special call on the federal forum.” *Id.* at 136. Indeed,

the state’s interest in resolving its own law must not be given short shrift simply because one party . . . perceive[s] some advantage in the federal forum. When the state law is firmly established, there would seem to be even less reason for the parties to resort to the federal courts.

*Id.*

Significantly, the sole issue of insurance coverage in this case presents no federal questions, nor promotes any federal interest. The requested relief would require the Court to apply well-settled state law. This weighs heavily against the Court exercising jurisdiction over this declaratory judgment action. *Allstate Insurance Co. v. Seelye*, 198 F. Supp. 2d 629, 631 (W. D. Pa. 2002). In addition, “the state’s interest in determining issues of state law also weighs against exercising jurisdiction in declaratory judgment actions.” *Gula*, 84 Fed. Appx. at 174. Further, since state law on the issue of insurance coverage is well settled, there is even less reason for the parties to litigate their dispute in federal court. *Summy*, 234 F.3d at 136; *Seelye*, 198 F. Supp.2d at 631.

Plaintiff's objection to this Court's exercise of jurisdiction is a factor that supports a decision to decline jurisdiction, although it is not a necessary one, as a district court may decline jurisdiction in a declaratory judgment *sua sponte*. *Summy*, 234 F.3d at 136; *Seelye*, 198 F. Supp.2d at 632. When a federal court declines to entertain a declaratory judgment action that was removed from state court, it has authority to remand the matter back to state court. *McDowell Oil Service, Inc. v. Interstate Fire and Casualty Co.*, 817 F. Supp. 538, 546 (M.D. Pa. 1993).

There is, however, a salient factor in *Wilton* and *Summy* not present in this case, namely a parallel action pending in the state court. Both the Supreme Court in *Wilton* and our appellate court in *Summy* reasoned that a pending parallel state court action is one of the facts that favor declining jurisdiction in declaratory judgment actions. The Supreme Court in *Wilton* did not explicitly address the issue of whether a district court should decline jurisdiction in declaratory judgment actions in the absence of parallel state court proceedings. *Wilton*, 515 U.S. at 290. The *Wilton* court implicitly indicated, however, that there are other factors, besides the existence of parallel state proceedings, that call for declining to exercise jurisdiction in a declaratory judgment action. *Id.* at 288 n.2.

Thus, although there is no parallel state court proceeding pending in this case, the Court finds that factor is not determinative and the absence of a parallel state proceeding is clearly outweighed by the lack of any federal interest in this case.

In conclusion, this dispute is not governed by federal law and there are no federal interests at stake. The state law to be applied is well settled. The Court finds and rules that the state court is more than capable of resolving this dispute in accordance with its own law.

Accordingly, under the circumstances of this case, and in the exercise of the discretion of the Court, the Court will not exercise jurisdiction over this declaratory judgment action.

AND NOW, this 27th day of August, 2008, it is hereby **ORDERED** that the Motion to Remand filed by Plaintiff is **GRANTED** and that this matter is **REMANDED** to the Court of Common Pleas of Allegheny County, PA forthwith.

The Clerk is directed to mark this case closed.

BY THE COURT:

s/Terrence F. McVerry  
United States District Court Judge

cc: Cynthia M. Danel, Esquire  
Edgar Snyder & Associates  
Email: cdanel@edgarsnyder.com

Christina Rogers, Esquire  
Zimmer Kunz  
Email: rogers@zklaw.com

Jeffrey A. Ramaley, Esquire  
Zimmer Kunz  
Email: ramaley@zklaw.com

CERTIFIED FROM THE RECORD	
Date	<u>8/27/08</u>
ROBERT V. BARTH, JR., CLERK	
By	<u><i>J. Kunz</i></u>
Deputy Clerk	

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ADAM DIXON,

Plaintiff,

vs.

PROGRESSIVE NORTHERN INSURANCE  
COMPANY,

Defendant.

CIVIL DIVISION

No. GD-08-012081

**Plaintiff's Response to Affirmative Defenses  
Filed at 2:08-CV-01010**

Code: 180

Filed on behalf of: Plaintiff, Adam Dixon

E-FILED

SEP 04 2008

CIVIL/PARTY DIVISION  
DEPT. OF COURT RECORDS  
ALLEGHENY COUNTY, PA

Counsel of record for this party:

CYNTHIA M. DANIEL, ESQUIRE  
PA I.D. No. 34527

Email: [cdaniel@edgarsnyder.com](mailto:cdaniel@edgarsnyder.com)

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC  
US Steel Tower, Tenth Floor  
600 Grant Street  
Pittsburgh, PA 15219-2705

(412) 394-1000

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ADAM DIXON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No.
	)	
vs.	)	
	)	
PROGRESSIVE NORTHERN INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

**PLAINTIFF'S REPLY TO AFFIRMATIVE DEFENSES FILED AT  
CIVIL ACTION FEDERAL DISTRICT COURT NO. 2:08-CV-01010**

AND NOW, comes the Plaintiff, ADAM DIXON, by and through his attorneys, EDGAR SNYDER & ASSOCIATES, LLC, and CYNTHIA M. DANIEL, ESQUIRE and sets forth the following Reply to Defendant's Affirmative Defenses filed in the United States District Court for the Western District of Pennsylvania at Civil Action No. 2:08-CV-01010, remanded by Order of Court dated August 27, 2008 as follows:

1. The averment contained in Paragraph 19 of Defendant's Affirmative Defenses is admitted.
2. The averment contained in Paragraph 20 of Defendant's Affirmative Defenses is specifically denied. On the contrary, as set forth in Plaintiff's Complaint, Adam Dixon, who was a minor at the time of the accident, resided with and was in the custody of his great uncle and great aunt, Paul Ellingsworth and Elizabeth Ellingsworth, at the time of the accident.
3. The averment contained in Paragraph 21 of Defendant's Affirmative Defenses is admitted.



4. The averment contained in Paragraph 22 of Defendant's Affirmative Defenses is specifically denied. On the contrary, Progressive Northern is obligated to provide first party benefits and uninsured motorist benefits to the Plaintiff, Adam Dixon.

WHEREFORE, the Plaintiff, Adam Dixon, respectfully requests this Honorable Court to enter a Declaration that Adam Dixon is entitled to first party benefits and further uninsured motorist benefits from the Defendant, Progressive Northern Insurance Company, as a result of injuries he sustained in a motor vehicle accident on August 18, 2007.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

By: 

Cynthia M. Danel, Esquire  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 3 day of September, 2008, a true and correct copy of the within **Plaintiff's Response to Affirmative Defenses Filed at 2:08-CV-01010** was served by first class mail, postage prepaid, upon counsel as follows:

Jeffrey A. Ramaley, Esquire  
Zimmer Kunz  
3300 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219

EDGAR SNYDER & ASSOCIATES, LLC

By: 

Cynthia M. Danel, Esquire

PLEASE REMIT:

Bill for service –

October 8, 2008

Case Transferred from Allegheny County,  
Re: A. Dixon vs. Progressive Northern  
Insurance Company and Ohio Casualty  
Insurance Company  
Clearfield Co. Case No.: 08-1911-CD

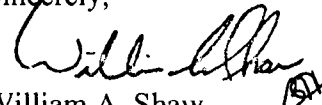
Cost: \$75.00

Remit to: Clearfield County Prothonotary, PO Box 549, Clearfield, PA 16830

Christina A. Rogers, Esq:

Please remit \$75.00 for the transfer of the above-referenced civil case at your earliest convenience. If you have any questions, please contact my office at (814) 765-2641, ext. 1330. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Shaw", with a small circular mark to the right.

William A. Shaw  
Prothonotary

Enclosures

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

ADAM DIXON,

Plaintiff,

v.

PROGRESSIVE NORTHERN INSURANCE  
COMPANY,

Defendant,

v.

OHIO CASUALTY INSURANCE  
COMPANY,

Additional Defendant.

CIVIL DIVISION

No.: 08-1911-CD

**ANSWER AND NEW MATTER**

Filed on behalf of:  
DEFENDANT,  
PROGRESSIVE NORTHERN INSURANCE  
COMPANY

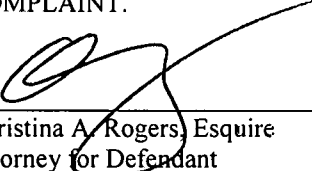
Counsel of Record for this party:  
**JEFFREY A. RAMALEY, ESQUIRE**  
Pa. I.D. #41559

**CHRISTINA A. ROGERS, ESQUIRE**  
Pa. I.D. #200159

**ZIMMER KUNZ, P.L.L.C.**  
Firm #920  
3300 U.S. Steel Tower  
Pittsburgh, PA 15219  
(412) 281-8000

NOTICE TO PLEAD: PLAINTIFF

YOU ARE HEREBY NOTIFIED TO FILE A  
RESPONSIVE PLEADING TO THE WITHIN  
ANSWER TO PLAINTIFF'S AMENDED  
COMPLAINT.

  
Christina A. Rogers, Esquire  
Attorney for Defendant

**JURY TRIAL DEMANDED**

**FILED**

NOV 20 2008

11/10/08  
William A. Shaw  
Prothonotary/Clerk of Courts  
60 c/c

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA

ADAM DIXON,

CIVIL DIVISION

Plaintiff,

v.

No.: 08-1911-CD

PROGRESSIVE NORTHERN INSURANCE  
COMPANY,

Defendant,

v.

OHIO CASUALTY INSURANCE  
COMPANY,

Additional Defendant.

**ANSWER AND NEW MATTER**

AND NOW, comes the Defendant, Progressive Northern Insurance Company, by and through its attorneys, Zimmer Kunz, P.L.L.C., and files the following Answer and New Matter, and, in support thereof, avers as follows:

1. After reasonable investigation, the Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 1 of Plaintiff's Complaint, and as such, same are deemed to be denied and strict proof thereof is demanded.

2. The averments contained in paragraph 2 are admitted.

3. The averments contained in paragraph 3 of Plaintiff's Complaint are admitted in part. It is admitted that the Plaintiff sustained personal injuries as a result of an August 18, 2007 motor vehicle accident. As to the remainder of the averments in paragraph 3,

after reasonable investigation, the Defendant is without knowledge or information sufficient to form a belief as to their truth, and therefore, same are deemed to be denied and strict proof thereof is demanded.

4. The averments contained in paragraph 4 of Plaintiff's Complaint are admitted in part. It is admitted that at the time of the motor vehicle accident, the Plaintiff was operating a 1992 Crown Victoria owned by Paul Ellingsworth. As to the remainder of the averments in paragraph 4, after reasonable investigation, the Defendant is without knowledge or information sufficient to form a belief as to their truth, and therefore, same are deemed to be denied and strict proof thereof is demanded.

5. The averments contained in paragraph 5 are admitted.

6. After reasonable investigation, the Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 6 of Plaintiff's Complaint, and as such, same are deemed to be denied and strict proof thereof is demanded.

7. The averments contained in paragraph 7 are admitted.

8. After reasonable investigation, the Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 8 of Plaintiff's Complaint, and as such, same are deemed to be denied and strict proof thereof is demanded.

9. The averments contained within paragraph 9 of Plaintiff's Complaint are denied.

10. The averments contained within paragraph 10 are admitted.

11. The averments contained within paragraph 11 are admitted.

12. The averments contained within paragraph 12 are admitted.

13. The averments contained within paragraph 13 are admitted.

14. The averments contained within paragraph 14 are admitted.

15. The averments contained within paragraph 15 of Plaintiff's Complaint are admitted in part and denied in part. It is admitted that Plaintiff's counsel, on behalf of the Plaintiff, demanded stacked UM benefits from Progressive under the subject policy. It is denied that the Plaintiff provided proof that he resided with Paul Ellingsworth at the time of the accident. By way of further response, see Defendant's New Matter.

16. The averments contained within paragraph 16 of Plaintiff's Complaint are admitted. By way of further response, see Defendant's New Matter.

17. The averments contained within paragraph 17 of Plaintiff's Complaint are admitted in part and denied in part. It is admitted that Plaintiff's counsel, on behalf of the Plaintiff, demanded first party medical benefits from Progressive under the subject policy. It is denied that the Plaintiff provided proof that he resided with Paul Ellingsworth at the time of the accident. By way of further response, see Defendant's New Matter.

18. The averments contained within paragraph 18 of Plaintiff's Complaint are admitted. By way of further response, see Defendant's New Matter.

WHEREFORE, for the reasons set forth above, Plaintiff requests that this Court enter a declaration that the Defendant, Adam M. Dixon, is not entitled to any first party medical benefits from the Plaintiff, and that Dixon is not entitled to any further uninsured motorist coverage from the Plaintiff as a result of injuries he may have sustained from the motor vehicle accident of August 18, 2007.

**NEW MATTER**

19. On or about May 24, 2007, Progressive sold a policy of automobile insurance to Paul R. Ellingsworth. Said policy provided, inter alia, uninsured motorist coverage, stacked, in the amount of \$100,000.00 for each person. The policy insured three vehicles. In addition, said policy provided \$25,000.00 in first party benefit medical expenses. Attached hereto and marked as Exhibit "A" is a true and correct copy of the declaration page and a full copy of the policy of insurance in effect as of August 18, 2007.

20. In applying for the policy, Paul R. Ellingsworth did not reveal any residents of his household other than a Elizabeth M. Ellingsworth. Attached hereto and marked as Exhibit "B" is a true and correct copy of an excerpt from Paul R. Ellingsworth's insurance application confirming this fact.

21. Said policy was in full force and effect on or about August 18, 2007.

22. Progressive conducted an investigation into this accident and, because Dixon was occupying the motor vehicle listed under the aforementioned policy of insurance, has paid Dixon \$100,000.00 in uninsured motorist coverage as a result of the motor vehicle accident.

23. Progressive believes and therefore avers that Dixon was residing with his mother, Debcrach Dixon, at 910 Showers Road, DuBois, PA, and that Dixon was not residing with Progressive's named insured, Paul R. Ellingsworth.

24. It is further averred that Deborah Dixon had car insurance of her own through Ohio Casualty, and, therefore, under the Pennsylvania Motor Vehicle Financial Responsibility Law, first party medical benefits are to be provided by Ohio Casualty and Plaintiff has no obligation to provide first party medical benefits to Dixon.



25. With regard to first party medical benefits, the insurance policy sold by the Plaintiff provides as follows:

#### **PRIORITY OF POLICIES**

If there is other First Party Benefits Coverage, we will pay benefits under this Part II in accordance with the order of priorities set forth by the Pennsylvania Motor Vehicle Financial Responsibility Law, as amended. We will not pay benefits if there is another insurer at a higher level of priority. The order of priority is:

- First The insurer providing benefits to the **insured person** as a named insured.
- Second The insurer providing benefits to the **insured person** as a **relative** who is not a named insured under another policy providing coverage under the Pennsylvania Motor Vehicle Financial Responsibility Law.
- Third The insurer of the **motor vehicle** which the **insured person** is **occupying** at the time of the accident.
- Fourth The insurer providing benefits on any **motor vehicle** involved in the accident if the **insured person** is:
  - a. not **occupying** a **motor vehicle**; and
  - b. not entitled to payment of first party benefits under any other **motor vehicle** policy.

See Exhibit "A", page 10 (emphasis in original).

26. Regarding the source of first party benefits and the priority of recovery, 75 Pa.C.S.A. § 1713 provides that "a person who suffers injury arising out of the maintenance or use of a motor vehicle shall recover first party benefits against applicable insurance coverage":

- (1) For a named insured, the policy on which he is the named insured.
- (2) For an insured, the policy covering the insured.
- (3) For occupants of an insured motor vehicle, the policy on that motor vehicle.
- (4) For a person who is not the occupant of a motor vehicle, the policy on any motor vehicle involved in the accident... ..

75 Pa.C.S.A. § 1713(a).

27. With regard to the stacking of uninsured motorist coverage, the insurance policy, attached hereto and marked as Exhibit "A", at page 14, provides as follows:

**Stacked Limits of Liability**

If **you** have selected stacked coverage under this Part III, the following shall also apply to **bodily injury** sustained by **you** or a **relative**:

1. If **you** or a **relative** sustain **bodily injury** while **occupying a covered auto**, the limit of liability shall be the limit available under Nonsacked Limits of Liability described above and the limit shown on the **declarations page** multiplied by the number of **covered autos** that are not involved in the **accident**.

2. If **you** or a **relative** sustain **bodily injury** while not **occupying a covered auto**, the limit of liability shall be the limit shown on the **declarations page** multiplied by the number of **covered autos**.

Stacked Limits of Liability shall not increase the limit of liability applicable to any **insured person** other than **you** or a **relative**. The nonstacked limits of liability will apply to any **insured person** other than **you** or a **relative**.

Id. at Page 14 (emphasis in original).


28. Because the Plaintiff did not reside with Progressive's named insured at the time of the motor vehicle accident but instead resided with his mother, he is not entitled to stacked uninsured motorist coverage or first party benefits from Progressive.

WHEREFORE, for the reasons set forth above, Plaintiff requests that this Court enter a declaration that the Defendant, Adam M. Dixon, is not entitled to any first party medical benefits from the Plaintiff, and that Dixon is not entitled to any further uninsured motorist

coverage from the Plaintiff as a result of injuries he may have sustained from the motor vehicle accident of August 18, 2007.

Respectfully submitted,

ZIMMER KUNZ, P.L.L.C.



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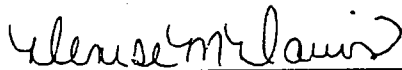
CHRISTINA A. ROGERS, ESQUIRE  
ATTORNEY FOR DEFENDANT,  
PROGRESSIVE NORTHERN  
INSURANCE COMPANY

**VERIFICATION**

I, DENISE DAVIS, of Progressive Northern Insurance Co., have read the foregoing ANSWER AND NEW MATTER. The statements contained therein are true and correct to the best of my personal knowledge, information and belief.

These statements and verification are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Date: 11/13/08

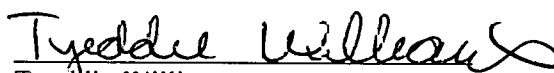
  
\_\_\_\_\_  
Denise Davis

### VERIFICATION

I, TYEDDIE WILLIAMS, of Progressive Northern Insurance Co., have read the foregoing ANSWER AND NEW MATTER. The statements contained therein are true and correct to the best of my personal knowledge, information and belief.

These statements and verification are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Date: 11-13-08

  
Tyeddie Williams


**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the within ANSWER AND NEW MATTER was forwarded to counsel below named by United States Mail on the 18 day of November, 2008:

Cynthia M. Danel, Esquire  
Edgar Snyder & Associates, LLC  
U.S. Steel Tower, Tenth Floor  
600 Grant Street  
Pittsburgh, PA 15219-2705  
(Attorney for Plaintiff)

Terry L. M. Bashline, Esquire  
Suite 3500, One Olive Plaza  
210 Sixth Ave.  
Pittsburgh, PA 15222  
(Attorney for Additional Defendant)

ZIMMER KUNZ, P.L.L.C.

  
\_\_\_\_\_  
CHRISTINA A. ROGERS, ESQUIRE  
ATTORNEY FOR DEFENDANT

FILED

NOV 20 2008

WILLIAM A. STACY  
PROBATE CLERK OF COURT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

ADAM DIXON,

CIVIL DIVISION

Plaintiff,

v.

No.: 08-1911-CD

PROGRESSIVE NORTHERN INSURANCE  
COMPANY,

Defendant,

**EXHIBITS TO ANSWER, NEW MATTER  
AND COUNTERCLAIM**

v.

OHIO CASUALTY INSURANCE  
COMPANY,

Additional Defendant.

Filed on behalf of:  
DEFENDANT,  
PROGRESSIVE NORTHERN INSURANCE  
COMPANY

Counsel of Record for this party:  
**JEFFREY A. RAMALEY, ESQUIRE**  
Pa. I.D. #41559

**CHRISTINA A. ROGERS, ESQUIRE**  
Pa. I.D. #200159

**JURY TRIAL DEMANDED**

**ZIMMER KUNZ, P.L.L.C.**  
Firm #920  
3300 U.S. Steel Tower  
Pittsburgh, PA 15219  
(412) 281-8000

S  
**FILED** NO CC  
m18:3782  
DEC 01 2008  
William A. Shaw  
Prothonotary/Clerk of Courts



SMITH GARY INS  
PO BOX 373  
DUBOIS, PA 15801

PAUL R ELLINGSWORTH  
515 SHOWERS RD  
DU BOIS, PA 15801

**Policy number: 55517559-6**

Underwritten by:  
Progressive Northern Insurance Co  
June 8, 2007  
Policy Period: May 24, 2007 - Nov 24, 2007  
Page 1 of 3

**814-371-2953**

**SMITH GARY INS**  
Contact your agent for personalized service.

**driveinsurance.com**

**Online Service**  
Make payments, check billing activity, update  
policy information or check status of a claim

**800-925-2886**

To report a claim

## Auto Insurance Coverage Summary

### This is your Declarations Page

### Your coverage has changed

Your coverage began on May 24, 2007 at 12:01 a.m. This policy expires on November 24, 2007 at 12:01 a.m.

This coverage summary replaces your prior one. Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy limits shown for a vehicle may not be combined with the limits for the same coverage on another vehicle unless the policy contract or endorsements indicate otherwise. The policy contract is form 9610A PA (05/06).

#### Policy changes effective June 7, 2007

Changes requested on:	Jun 7, 2007 06:06 p.m.
Requested by:	PAUL R ELLINGSWORTH
Premium change:	\$191.00
Changes:	The 1992 Ford Crown Victor4d has been added.

#### Underwriting Company

Progressive Northern Insurance Co  
P.O. Box 6807  
Cleveland, OH 44101  
800-925-2886

#### Drivers and household residents

PAUL R ELLINGSWORTH  
ELIZABETH M ELLINGSWORTH

#### Additional information

First Named insured



## Outline of coverage

### 2003 Buick Lesabre Custom 4D

VIN 1G4HP54K834131020	Limits	Deductible	Premium
Liability To Others			\$126
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident		
Property Damage Liability	\$100,000 each accident		
First Party Benefits			22
Medical Expenses	\$25,000 each person		
Funeral Benefit	\$2,500 each person		1
Accidental Death	\$5,000		1
Uninsured Motorist - Stacked	\$100,000 each person/\$300,000 each accident		9
Underinsured Motorist - Stacked	\$100,000 each person/\$300,000 each accident		19
Comprehensive	Actual Cash Value	\$100	35
Collision	Actual Cash Value	\$250	127
Total premium for 2003 Buick			<b>\$340</b>

### 2007 Chevrolet K1500 Silverado 4C

VIN 1GCEK19087E503085	Limits	Deductible	Premium
Liability To Others			\$187
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident		
Property Damage Liability	\$100,000 each accident		
First Party Benefits			21
Medical Expenses	\$25,000 each person		
Funeral Benefit	\$2,500 each person		1
Accidental Death	\$5,000		1
Uninsured Motorist - Stacked	\$100,000 each person/\$300,000 each accident		9
Underinsured Motorist - Stacked	\$100,000 each person/\$300,000 each accident		19
Comprehensive	Actual Cash Value	\$100	41
Collision	Actual Cash Value	\$250	119
Total premium for 2007 Chevrolet			<b>\$448</b>

### 1992 Ford Crown Victoria

VIN 21ACP74W3NX132698	Limits	Deductible	Premium
Liability To Others			\$143
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident		
Property Damage Liability	\$100,000 each accident		
First Party Benefits			34
Medical Expenses	\$25,000 each person		
Funeral Benefit	\$2,500 each person		1
Accidental Death	\$5,000		1
Uninsured Motorist - Stacked	\$100,000 each person/\$300,000 each accident		9
Underinsured Motorist - Stacked	\$100,000 each person/\$300,000 each accident		19
Total premium for 1992 Ford			<b>\$237</b>

### Total 6 month policy premium

**\$995**

### Premium discounts

Policy	
55517559-6	home owner, multi-car and paid in full
Vehicle	
2003 Buick Lesabre Custom 4D	airbag
2007 Chevrolet K1500 Silverado 4C	vehicle tracking system and airbag
1992 Ford Crown Victo4d	airbag

### Lienholder information

Lienholder: NUVELL FIN SVCS,LLC  
PO BOX 7199 LITTLE ROCK, AR 72223  
2007 Chevrolet K1500 Silverado 4C (1GCEK19087E503085)


### Tort Option

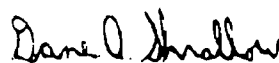
This policy provides limited tort insurance.

### COLLISION COVERAGE FOR RENTAL VEHICLES

IF THIS POLICY PROVIDES COLLISION COVERAGE, IT WILL APPLY TO VEHICLES YOU RENT, BUT NOT TO VEHICLES RENTED FOR 6 MONTHS OR MORE.

### Company officers

  
President

  
Secretary

# Pennsylvania

Auto Policy

**drive**

INSURANCE FROM *PROGRESSIVE*

This policy, the **declarations page**, **your** insurance application, and any applicable endorsements contain the terms of the contract of insurance between us and the policyholder.

**NOTICE: IF YOU BUY COLLISION COVERAGE, IT DOES NOT APPLY TO AUTOS RENTED FOR SIX MONTHS OR MORE.**

Form 9610A PA (05/06)  
version 2.0

\*9610A PA 0506\*



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## PENNSYLVANIA AUTO POLICY

### INSURING AGREEMENT

In return for **your** payment of the premium, **we** agree to insure **you** subject to all the terms, conditions, and limitations of this policy. **We** will insure **you** for the coverages and the limits of liability shown on this policy's **declarations page**. **Your** policy consists of the policy contract, **your** insurance application, the **declarations page**, and all endorsements to this policy.

### GENERAL DEFINITIONS

The following definitions apply throughout the policy. Defined terms are printed in boldface type and have the same meaning whether in the singular, plural, or any other form.

1. **"Additional auto"** means an **auto you** become the owner of during the policy period that does not permanently replace an **auto** shown on the **declarations page** if:
  - a. **we** insure all other **autos you** own;
  - b. the **additional auto** is not covered by any other insurance policy;
  - c. **you** notify **us** within 30 days of becoming the owner of the **additional auto**; and
  - d. **you** pay any additional premium due.An **additional auto** will have the broadest coverage **we** provide for any **auto** shown on the **declarations page**. If **you** ask **us** to insure an **additional auto** more than 30 days after **you** become the owner, any coverage **we** provide will begin at the time **you** request coverage.
2. **"Auto"** means a land motor vehicle:
  - a. of the private passenger, pickup body, or cargo van type;
  - b. designed for operation principally upon public roads;
  - c. with at least four wheels; and
  - d. with a gross vehicle weight rating of 12,000 pounds or less, according to the manufacturer's specifications.However, **"auto"** does not include step-vans, parcel delivery vans, or cargo cut-away vans or other vans with cabs separate from the cargo area.
3. **"Auto business"** means the business of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles.
4. **"Bodily injury"** means bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease.
5. **"Covered auto"** means:
  - a. any **auto** or **trailer** shown on the **declarations page** for the coverages applicable to that **auto** or **trailer**;
  - b. any **additional auto**;
  - c. any **replacement auto**; or
  - d. a **trailer** owned by **you**.

6. **"Declarations page"** means the document showing **your** coverages, limits of liability, **covered autos**, premium, and other policy-related information. The **declarations page** may also be referred to as the Auto Insurance Coverage Summary.
7. **"Occupying"** means in, on, entering, or exiting.
8. **"Property damage"** means physical damage to, destruction of, or loss of use of, tangible property.
9. **"Relative"** means:
  - a. a person residing in the same household as **you**, and related to **you** by blood, marriage, or adoption, and includes a ward, stepchild, or foster child;
  - b. a minor child in the custody of:
    - (i) **you**; or
    - (ii) a person residing in **your** household who is related to **you**; and
  - c. **your** unmarried dependent children who are temporarily away from home if they intend to continue to reside in **your** household.
10. **"Replacement auto"** means an **auto** that permanently replaces an **auto** shown on the **declarations page**. A **replacement auto** will have the same coverage as the **auto** it replaces if the **replacement auto** is not covered by any other insurance policy. However, if the **auto** being replaced had coverage under Part IV - Damage To A Vehicle, such coverage will apply to the **replacement auto** only during the first 30 days after **you** become the owner unless **you** notify **us** within that 30-day period that **you** want **us** to extend coverage beyond the initial 30 days. If the **auto** being replaced did not have coverage under Part IV - Damage To A Vehicle, such coverage may be added, but the **replacement auto** will have no coverage under Part IV until **you** notify **us** of the **replacement auto** and ask **us** to add the coverage.
11. **"Trailer"** means a non-motorized trailer, including a farm wagon or farm implement, designed to be towed on public roads by an **auto** and not being used:
  - a. for commercial purposes;
  - b. as an office, store, or for display purposes; or
  - c. as a passenger conveyance.
12. **"We", "us", and "our"** mean the underwriting company providing the insurance, as shown on the **declarations page**.
13. **"You" and "your"** mean:
  - a. a person shown as a named insured on the **declarations page**; and
  - b. the spouse of a named insured if residing in the same household at the time of the loss.

## **PART I - LIABILITY TO OTHERS**

### **INSURING AGREEMENT**

If **you** pay the premium for this coverage, **we** will pay damages for **bodily injury** and **property damage** for which an **insured person** becomes legally responsible because of an accident.

**We** will settle or defend, at **our** option, any claim for damages covered by this Part I.



## ADDITIONAL DEFINITION

When used in this Part I:

**"Insured person"** means:

1. **you** or a **relative** with respect to an accident arising out of the ownership, maintenance, or use of an **auto** or **trailer**;
2. any person with respect to an accident arising out of that person's use of a **covered auto** with the permission of **you** or a **relative**;
3. any person or organization with respect only to vicarious liability for the acts or omissions of a person described in 1. or 2. above; and
4. any Additional Interest shown on the **declarations page** with respect only to its liability for the acts or omissions of a person described in 1. or 2. above.

## ADDITIONAL PAYMENTS

In addition to **our** limit of liability, **we** will pay for an **insured person**:

1. all expenses **we** incur in the settlement of any claim or defense of any lawsuit;
2. the premium on any appeal bond or attachment bond required in any lawsuit **we** defend. **We** have no duty to purchase a bond in an amount exceeding **our** limit of liability, and **we** have no duty to apply for or furnish these bonds;
3. up to \$250 for a bail bond required because of an accident resulting in **bodily injury** or **property damage** covered under this Part I. **We** have no duty to apply for or furnish this bond; and
4. reasonable expenses, including loss of earnings up to \$200 per day, incurred at **our** request.

## **EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART I.**

Coverage under this Part I, including **our** duty to defend, will not apply to any **insured person** for:

1. **bodily injury** or **property damage** arising out of the ownership, maintenance, or use of any vehicle or trailer while being used to carry persons or property for compensation or a fee, including, but not limited to, pickup or delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools;
2. any liability assumed under any contract or agreement by **you** or a **relative**;
3. **bodily injury** to an employee of that **insured person** arising out of or within the course of employment. This exclusion does not apply to domestic employees if benefits are neither paid nor required to be provided under workers' compensation, disability benefits, or similar laws;
4. **bodily injury** or **property damage** arising out of an accident involving any vehicle while being maintained or used by a person while employed or engaged in any **auto business**. This exclusion does not apply to **you**, a **relative**, or an agent or employee of **you** or a **relative**, when using a **covered auto**;

5. **bodily injury or property damage** resulting from, or sustained during practice or preparation for:
  - a. any pre-arranged or organized racing, stunting, speed, or demolition contest or activity; or
  - b. any driving activity conducted on a permanent or temporary racetrack or race-course;
6. **bodily injury or property damage** due to a nuclear reaction or radiation;
7. **bodily injury or property damage** for which insurance:
  - a. is afforded under a nuclear energy liability insurance contract; or
  - b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
8. any obligation for which the United States Government is liable under the Federal Tort Claims Act;
9. **bodily injury or property damage** caused by an intentional act of that **insured person**, or at the direction of that **insured person**, even if the actual injury or damage is different than that which was intended or expected;
10. **property damage** to any property owned by, rented to, being transported by, used by, or in the charge of that **insured person**. This exclusion does not apply to a rented residence or a rented garage;
11. **bodily injury or property damage** arising out of the ownership, maintenance, or use of any vehicle owned by **you** or furnished or available for **your** regular use, other than a **covered auto** for which this coverage has been purchased;
12. **bodily injury or property damage** arising out of the ownership, maintenance, or use of any vehicle owned by a **relative** or furnished or available for the regular use of a **relative**, other than a **covered auto** for which this coverage has been purchased. This exclusion does not apply to **your** maintenance or use of such vehicle;
13. **bodily injury or property damage** arising out of **your** or a **relative's** use of a vehicle, other than a **covered auto**, without the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
14. **bodily injury or property damage** arising out of the use of a **covered auto** while leased or rented to others or given in exchange for any compensation. This exclusion does not apply to the operation of a **covered auto** by **you** or a **relative**;
15. punitive or exemplary damages; or
16. **bodily injury or property damage** caused by, or reasonably expected to result from, a criminal act or omission of that **insured person**. This exclusion applies regardless of whether that **insured person** is actually charged with, or convicted of, a crime. For purposes of this exclusion, criminal acts or omissions do not include traffic violations.

#### **LIMITS OF LIABILITY**

The limit of liability shown on the **declarations page** for liability coverage is the most we will pay regardless of the number of:

1. claims made;
2. **covered autos**;
3. **insured persons**;
4. lawsuits brought;

5. vehicles involved in the accident; or
6. premiums paid.

If **your declarations page** shows a split limit:

1. the amount shown for "each person" is the most **we** will pay for all damages due to **bodily injury** to one person resulting from any one accident;
2. subject to the "each person" limit, the amount shown for "each accident" is the most **we** will pay for all damages due to **bodily injury** sustained by two or more persons in any one accident; and
3. the amount shown for "property damage" is the most **we** will pay for the total of all **property damage** resulting from any one accident.

The "each person" limit of liability applies to the total of all claims made for **bodily injury** to a person and all claims of others derived from such **bodily injury**, including, but not limited to, emotional injury or mental anguish resulting from the **bodily injury** of another or from witnessing the **bodily injury** to another, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

If the **declarations page** shows that "combined single limit" or "CSL" applies, the amount shown is the most **we** will pay for the total of all damages resulting from any one accident. However, without changing this limit of liability, **we** will comply with any law that requires **us** to provide any separate limits.

No one is entitled to duplicate payments for the same elements of damages.

Any payment to a person under this Part I will be reduced by any payment to that person under Part III - Uninsured/Underinsured Motorist Coverage.

If multiple auto policies issued by **us** are in effect for **you**, **we** will pay no more than the highest limit of liability for this coverage available under any one policy.

An **auto** and attached **trailer** are considered one **auto**. Therefore, the limits of liability will not be increased for an accident involving an **auto** that has an attached **trailer**.

#### **FINANCIAL RESPONSIBILITY LAWS**

When **we** certify this policy as proof of financial responsibility, this policy will comply with the law to the extent required. The **insured person** must reimburse **us** if **we** make a payment that **we** would not have made if this policy was not certified as proof of financial responsibility.

#### **OTHER INSURANCE**

If there is any other applicable liability insurance or bond, **we** will pay only **our** share of the damages. **Our** share is the proportion that **our** limit of liability bears to the total of all appli-

cable limits. However, any insurance **we** provide for a vehicle or trailer, other than a **covered auto**, will be excess over any other collectible insurance, self-insurance, or bond.

#### **OUT-OF-STATE COVERAGE**

If an accident to which this Part I applies occurs in any state, territory, or possession of the United States of America or any province or territory of Canada, other than the one in which a **covered auto** is principally garaged, and the state, province, territory, or possession has:

1. a financial responsibility or similar law requiring limits of liability for **bodily injury** or **property damage** higher than the limits shown on the **declarations page**, this policy will provide the higher limits; or
2. a compulsory insurance or similar law requiring a non-resident to maintain insurance whenever the non-resident uses an **auto** in that state, province, territory, or possession, this policy will provide the greater of:
  - a. the required minimum amounts and types of coverage; or
  - b. the limits of liability under this policy.

#### **PART II - FIRST PARTY BENEFITS COVERAGE**

##### **INSURING AGREEMENT - FIRST PARTY BENEFITS COVERAGE**

If **you** pay the premium for this coverage, **we** will pay the following First Party Benefits, subject to the limit of liability shown on **your declarations page**, for loss or expense sustained by an **insured person** because of **bodily injury** caused by an accident and arising out of the maintenance or use of a **motor vehicle**:

1. **medical expenses**;
2. **income loss**;
3. **funeral benefit**; and
4. **accidental death benefit**.

##### **INSURING AGREEMENT - COMBINATION FIRST PARTY BENEFITS COVERAGE**

If **you** pay the premium for this coverage, **we** will pay **medical expenses**, **income loss**, **funeral benefit**, and **accidental death benefit**, subject to the combined single limit of liability shown on **your declarations page**, for each **insured person** who sustains **bodily injury** caused by an accident and arising out of the maintenance or use of a **motor vehicle**. Subject to the combined single limit of liability, the most **we** will pay as the **funeral benefit** for an **insured person** is \$2,500, and the most **we** will pay as the **accidental death benefit** for an **insured person** is \$25,000. **We** will only pay for expenses or loss incurred within three years from the date of the accident.

##### **INSURING AGREEMENT - EXTRAORDINARY MEDICAL BENEFITS COVERAGE**

If **you** pay the premium for this coverage, subject to the limit of liability shown on **your declarations page**, **we** will pay **medical expenses** incurred by an **insured person** in

excess of the aggregate of \$100,000 that result from **bodily injury** caused by an accident and arising out of the maintenance or use of a **motor vehicle**, subject to the following:

1. The limit of liability shown on the **declarations page** for Extraordinary Medical Benefits Coverage is the most **we** will pay for **medical expenses** incurred by an **insured person** as the result of an accident to which this Extraordinary Medical Benefits Coverage applies, and is subject to the following additional limits:
  - a. an annual limit of \$50,000 for **medical expenses** incurred by an **insured person**; and
  - b. a lifetime aggregate limit of \$1,000,000 for **medical expenses** incurred by an **insured person**.

However, the \$50,000 annual limit shall not apply to **medical expenses** covered by Extraordinary Medical Benefits Coverage that are incurred during the first 18 months of eligibility.

2. Any amounts payable by **us** as Extraordinary Medical Benefits will be excess to any amounts available to an **insured person** for **medical expense** under any First Party Benefits Coverage provided in accordance with the Pennsylvania Motor Vehicle Financial Responsibility Law.
3. If an **insured person** is eligible for Extraordinary Medical Benefits Coverage and is also eligible for benefits under the Pennsylvania Catastrophic Loss Trust Fund, the combined total recovery under Extraordinary Medical Benefits Coverage and the Pennsylvania Catastrophic Loss Trust Fund for **medical expenses** incurred by an **insured person** as the result of an accident shall not exceed \$1,000,000.

#### **ADDITIONAL DEFINITIONS**

When used in this Part II:

1. "**Accidental death benefit**" means a death benefit paid to the personal representative of the **insured person**, should injury caused by a **motor vehicle** accident result in death within 24 months from the date of the accident.
2. "**Funeral benefit**" means the reasonable and necessary expenses directly related to the funeral, burial, cremation, or other form of disposition of the remains of a deceased **insured person**, incurred due to the death of the **insured person** if death:
  - a. results from a **motor vehicle** accident; and
  - b. occurs within 24 months from the date of the accident.
3. "**Income loss**" means 80% of actual loss of gross income of an **insured person**. It also includes reasonable expenses actually incurred for:
  - a. hiring a substitute to perform services the **insured person** would have performed in connection with self-employment, in order to mitigate or reduce loss of gross income; or
  - b. hiring special help to enable the **insured person** to work and mitigate loss of gross income.

**We** will not pay for "**income loss**" for:

- a. loss of income during any period following the death of an **insured person**;
- b. expenses incurred for services performed following the death of an **insured person**; or

- c. any loss of income during the first five days the **insured person** did not work after the accident due to the **bodily injury** caused by the accident.
- 4. "**Insured person**" means:
  - a. with respect to **medical expenses, income loss, and funeral benefit**:
    - (i) **you** or any **relative**; and
    - (ii) any other person:
      - (a) while **occupying your covered auto** with the express or implied permission of **you** or a **relative**; or
      - (b) while not **occupying a motor vehicle** if injured as a result of an accident which occurs in Pennsylvania involving **your covered auto**. This does not apply if **your covered auto** is parked and unoccupied at the time of the accident unless it was parked in a manner as to create an unreasonable risk of injury; and
  - b. with respect to an **accidental death benefit, you** or any **relative**.
- 5. "**Medical expense**" means the reasonable charge for necessary medical treatment and rehabilitative services, including, but not limited to:
  - a. hospital, dental, surgical, psychiatric, psychological, osteopathic, ambulance, chiropractic, and nursing services;
  - b. licensed physical therapy, vocational rehabilitation, occupational therapy, speech pathology and audiology therapy, and optometric services; and
  - c. medications, medical supplies, and prosthetic devices;
 all without limitation as to time, provided that, within 18 months from the date of the accident causing **bodily injury**, it is ascertainable, with reasonable medical probability, that further **medical expense** may be incurred as a result of the **bodily injury**. "**Medical expense**" may include any non-medical remedial care and treatment rendered in accordance with a recognized religious method of healing.
- 6. "**Motor vehicle**" means a self-propelled vehicle, operated or designed for use upon public roads. However, **motor vehicle** does not include a vehicle operated:
  - a. by muscular power; or
  - b. on rails or tracks.
- 7. "**Your covered auto**" means a **motor vehicle** for which **you** have purchased:
  - a. Part I - Liability To Others Coverage if the **motor vehicle** is:
    - (i) owned by **you**; or
    - (ii) shown on the **declarations page**; and
  - b. First Party Benefits Coverage as required under the Pennsylvania Motor Vehicle Financial Responsibility Law.

**EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART II.**

**We do not provide any First Party Benefits under this Part II for **bodily injury**:**

- 1. sustained by any person while intentionally causing or attempting to cause **bodily injury** to:
  - a. himself or herself; or
  - b. any other person;

2. sustained by any person while committing a felony;
3. sustained by any person while seeking to elude lawful apprehension or arrest by a law enforcement official;
4. sustained by any person while maintaining or using a **motor vehicle** knowingly converted by that person. However, this exclusion does not apply to **you**;
5. sustained by any person who, at the time of the accident:
  - a. is the owner of one or more registered **motor vehicles** that do not have in effect the security required by the Pennsylvania Motor Vehicle Financial Responsibility Law; or
  - b. is **occupying** a **motor vehicle** owned by that person for which the financial responsibility required by the Pennsylvania Motor Vehicle Financial Responsibility Law is not in effect;
6. sustained by any person maintaining or using a **motor vehicle** while located for use as a residence or premises;
7. sustained by any person while **occupying**:
  - a. a recreational vehicle designed for use off public roads; or
  - b. a motorcycle, moped, or similar type vehicle;
8. caused by or as a consequence of:
  - a. any discharge of a nuclear weapon;
  - b. war (whether declared or undeclared);
  - c. civil war;
  - d. insurrection; or
  - e. rebellion or revolution; or
9. from or as a consequence of the following whether controlled or uncontrolled or however caused:
  - a. nuclear reaction;
  - b. radiation; or
  - c. radioactive contamination.

### **LIMITS OF LIABILITY**

The limit of liability shown on the **declarations page** for each First Party Benefit under this Part II is the most **we** shall pay for that benefit to or for each **insured person** as the result of any one accident, regardless of the number of:

1. claims made;
2. **covered autos**;
3. lawsuits brought;
4. vehicles involved in the accident;
5. premiums paid; or
6. insurers providing first party benefits.

### **OTHER INSURANCE**

No one will be entitled to recover duplicate payments for the same elements of loss under this or any other similar automobile insurance, including self-insurance.

Any amount payable under this Part II shall be excess over any amounts paid, payable or required to be provided to an **insured person** under any workers' compensation law or similar law. Consistent with the duty of an **insured person** to cooperate with **us** in any matter concerning a claim, an **insured person** presenting a claim under this Part II shall, when eligible for workers' compensation benefits, make application for same with both the **insured person's** employer and workers' compensation insurer.

#### **PRIORITY OF POLICIES**

If there is other First Party Benefits Coverage, **we** will pay benefits under this Part II in accordance with the order of priorities set forth by the Pennsylvania Motor Vehicle Financial Responsibility Law, as amended. **We** will not pay benefits if there is another insurer at a higher level of priority. The order of priority is:

- First The insurer providing benefits to the **insured person** as a named insured.
- Second The insurer providing benefits to the **insured person** as a **relative** who is not a named insured under another policy providing coverage under the Pennsylvania Motor Vehicle Financial Responsibility Law.
- Third The insurer of the **motor vehicle** which the **insured person** is **occupying** at the time of the accident.
- Fourth The insurer providing benefits on any **motor vehicle** involved in the accident if the **insured person** is:
  - a. not **occupying** a **motor vehicle**; and
  - b. not entitled to payment of first party benefits under any other **motor vehicle** policy.

An unoccupied parked **motor vehicle** is not a **motor vehicle** involved in an accident within this Fourth priority unless it was parked in a manner as to create an unreasonable risk of injury.

If two or more policies have equal priority within the highest applicable priority level:

1. The insurer against whom the claim is first made shall process and pay the claim as if wholly responsible. The insurer is thereafter entitled to recover contribution on a pro rata basis from any other insurer for the benefits paid and the costs of processing the claim. If contribution is sought among insurers responsible under the Fourth priority, proration shall be based on the number of involved **motor vehicles**.
2. If **we** are the insurer against whom the claim is first made, **our** payment to or for an **insured person** will not exceed the applicable limit of liability for coverage under this Part II shown on the **declarations page**, or if **you** have purchased Extraordinary Medical Benefits Coverage, the applicable limit of liability.
3. The maximum recovery under all policies may not exceed the amount payable under the policy with the highest dollar limits of benefits.



### **PART III - UNINSURED/UNDERINSURED MOTORIST COVERAGE**

#### **INSURING AGREEMENT - UNINSURED MOTORIST COVERAGE**

If **you** pay the premium for this coverage, **we** will pay for damages that an **insured person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** because of **bodily injury**:

1. sustained by an **insured person**;
2. caused by an accident; and
3. arising out of the ownership, maintenance, or use of an **uninsured motor vehicle**.

#### **INSURING AGREEMENT - UNDERINSURED MOTORIST COVERAGE**

If **you** pay the premium for this coverage, **we** will pay for damages that an **insured person** is legally entitled to recover from the owner or operator of an **underinsured motor vehicle** because of **bodily injury**:

1. sustained by an **insured person**;
2. caused by an accident; and
3. arising out of the ownership, maintenance, or use of an **underinsured motor vehicle**.

An **insured person** must notify **us** in writing at least 30 days before entering into any settlement with the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle**, or any liability insurer. In order to preserve **our** right of subrogation, **we** may elect to pay any sum offered in settlement by, or on behalf of, the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle**. If **we** do this, the **insured person** shall assign to **us** all rights that **insured person** has against the owner or operator of the **uninsured motor vehicle** or **underinsured motor vehicle**, to the extent of **our** payment.

No judgment or settlement for damages arising out of a lawsuit brought against an owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle** shall be binding on **us** unless **we** have:

1. received reasonable notice of the filing of the lawsuit resulting in the judgment; and
2. had a reasonable opportunity to protect **our** interests in the lawsuit.

#### **ADDITIONAL DEFINITIONS**

When used in this Part III:

1. "**Insured person**" means:
  - a. **you** or a **relative**;
  - b. any person while operating a **covered auto** with the permission of **you** or a **relative**;
  - c. any person **occupying**, but not operating, a **covered auto**; and
  - d. any person who is entitled to recover damages covered by this Part III because of **bodily injury** sustained by a person described in a, b, or c above.
2. "**Noneconomic loss**" means pain and suffering and other non-monetary detriment.

3. **"Serious injury"** means **bodily injury** resulting in death, serious impairment of a bodily function, or permanent serious disfigurement.
4. **"Underinsured motor vehicle"** means a land motor vehicle or trailer of any type to which a bodily injury liability bond or policy applies at the time of the accident, but the sum of all applicable limits of liability for **bodily injury** is less than the damages that an **insured person** is entitled to recover from the owner or operator of the motor vehicle because of **bodily injury**.  
An **"underinsured motor vehicle"** does not include any vehicle or equipment:
  - a. owned by **you** or a **relative** or furnished or available for the regular use of **you** or a **relative**;
  - b. operated on rails or crawler treads;
  - c. designed mainly for use off public roads, while not on public roads;
  - d. while used as a residence or premises and not as a vehicle;
  - e. that is a **covered auto**; or
  - f. that is an **uninsured motor vehicle**.
5. **"Uninsured motor vehicle"** means a land motor vehicle or trailer of any type:
  - a. to which no bodily injury liability bond or policy applies at the time of the accident;
  - b. to which a bodily injury liability bond or policy applies at the time of the accident, but the bonding or insuring company:
    - (i) denies coverage; or
    - (ii) is insolvent, or becomes insolvent within six years after the accident occurs;
  - c. to which a bodily injury liability bond or policy applies at the time of the accident, but its limit of liability for bodily injury is less than the minimum limit of liability for bodily injury specified by the financial responsibility law of the state in which the **covered auto** is principally garaged; or
  - d. whose owner or operator cannot be identified and that causes an accident resulting in **bodily injury** to an **insured person**, provided that the **insured person**, or someone on his or her behalf:
    - (i) reports the accident to the police or civil authority within 24 hours or as soon as practicable after the accident; and
    - (ii) notifies **us** within 30 days, or as soon as practicable thereafter, that the **insured person** has a cause of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and sets forth the facts in support thereof.  
An **"uninsured motor vehicle"** does not include any vehicle or equipment:
  - a. owned by **you** or a **relative** or furnished or available for the regular use of **you** or a **relative**;
  - b. owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer that is or becomes insolvent;
  - c. operated on rails or crawler treads;
  - d. designed mainly for use off public roads, while not on public roads;
  - e. while located for use as a residence or premises and not as a vehicle;
  - f. that is a **covered auto**; or
  - g. that is an **underinsured motor vehicle**.

**EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART III.**

Coverage under this Part III will not apply:

1. to **bodily injury** sustained by any person while using or **occupying**:
  - a. a **covered auto** while being used to carry persons or property for compensation or a fee, including, but not limited to, pickup or delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools; or
  - b. a motor vehicle that is owned by or available for the regular use of **you** or a **relative**. This exclusion does not apply to a **covered auto** that is insured under this Part III;
2. to **noneconomic loss** sustained by any person to whom a limited tort option applies unless the **bodily injury** sustained by the **insured person** is a **serious injury**;
3. to **bodily injury** sustained by **you** or a **relative** while using any vehicle, other than a **covered auto**, without the permission of the owner of the vehicle or the person in lawful possession of the vehicle;
4. directly or indirectly to benefit any insurer or self-insurer under any of the following or similar laws:
  - a. workers' compensation law; or
  - b. disability benefits law;
5. to any punitive or exemplary damages; or
6. to **bodily injury** sustained by any person if that person or the legal representative of that person settles without **our** written consent.

**LIMITS OF LIABILITY**

The limit of liability shown on the **declarations page** for Uninsured/Underinsured Motorist Coverage is the most **we** will pay regardless of the number of:

1. claims made;
2. **covered autos**, unless **you** have selected stacked coverage;
3. **insured persons**;
4. lawsuits brought;
5. vehicles involved in the accident; or
6. premiums paid.

**Nonstacked Limits of Liability**

If **you** have selected nonstacked coverage under this Part III, the following shall also apply:

If the **declarations page** shows a split limit:

1. the amount shown for "each person" is the most **we** will pay for all damages due to **bodily injury** to one person; and

2. subject to the "each person" limit, the amount shown for "each accident" is the most **we** will pay for all damages due to **bodily injury** sustained by two or more persons in any one accident.

The "each person" limit of liability includes the total of all claims made for **bodily injury** to an **insured person** and all claims of others derived from such **bodily injury**, including, but not limited to, emotional injury or mental anguish resulting from the **bodily injury** of another or from witnessing the **bodily injury** to another, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

If the **declarations page** shows that "combined single limit" or "CSL" applies, the amount shown is the most **we** will pay for the total of all damages resulting from any one accident. However, without changing this total limit of liability, **we** will comply with any law that requires **us** to provide any separate limits.

### **Stacked Limits of Liability**

If **you** have selected stacked coverage under this Part III, the following shall also apply to **bodily injury** sustained by **you** or a **relative**:

1. If **you** or a **relative** sustain **bodily injury** while **occupying a covered auto**, the limit of liability shall be the limit available under Nonstacked Limits of Liability described above and the limit shown on the **declarations page** multiplied by the number of **covered autos** that are not involved in the **accident**.
2. If **you** or a **relative** sustain **bodily injury** while not **occupying a covered auto**, the limit of liability shall be the limit shown on the **declarations page** multiplied by the number of **covered autos**.

Stacked Limits of Liability shall not increase the limit of liability applicable to any **insured person** other than **you** or a **relative**. The nonstacked limits of liability will apply to any **insured person** other than **you** or a **relative**.

As with nonstacked limits, the "each person" stacked limit of liability includes the total of all claims made for **bodily injury** to an **insured person** and all claims of others derived from such **bodily injury**, including, but not limited to, emotional injury or mental anguish resulting from the **bodily injury** of another or from witnessing the **bodily injury** to another, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

### **Limits of Liability Applicable to Stacked and Nonstacked Coverage**

In determining the amount payable under this Part III, the amount of damages that an **insured person** is entitled to recover for **bodily injury** will be reduced by all sums:

1. paid because of **bodily injury** by or on behalf of any persons or organizations that may be legally responsible; and
2. paid or payable because of **bodily injury** under any of the following or similar laws:
  - a. workers' compensation law; or
  - b. disability benefits law.

However, if an **insured person** enters into a settlement agreement for an amount less than the sum of the limits of liability under all applicable bodily injury liability bonds and policies, **our** limit of liability for Underinsured Motorist Coverage shall not exceed the difference between the damages sustained by the **insured person** and the sum of the applicable bodily injury liability limits.

The limits of liability under this Part III shall be reduced by all sums paid under Part I - Liability To Others.

No one will be entitled to duplicate payments for the same elements of damages.

If multiple auto policies issued by **us** are in effect for **you**, **we** will pay no more than the highest limit of liability for this coverage available under any one policy.

### **OTHER INSURANCE**

If there is other applicable similar insurance available under more than one policy or provision of coverage, the following priorities of recovery apply:

- First The uninsured or underinsured motorist coverage applicable to the motor vehicle the **insured person** was **occupying** at the time of the accident.
- Second Any other policy affording uninsured or underinsured motorist coverage to the **insured person**.

If two or more policies have equal priority, the insurer against whom the claim is first made shall process and pay the claim as if wholly responsible. The insurer is thereafter entitled to recover contribution on a pro rata basis from any other insurer for the benefits paid and the costs of processing the claim.

If nonstacked coverage is shown on the **declarations page**, the following additional provisions apply:

- 1. When there is insurance available under the First priority:
  - a. the limit of liability applicable to the motor vehicle the **insured person** was **occupying**, under the policy in the First priority, shall first be exhausted; and
  - b. the maximum recovery under all policies in the Second priority shall not exceed the amount by which the highest limit for any one motor vehicle under any one policy in the Second priority exceeds the limit applicable under the policy in the First priority; and
- 2. When there is no applicable insurance available under the First priority, the maximum recovery under all policies in the Second priority shall not exceed the highest applicable limit for any one motor vehicle under any one policy.

## **PART IV - DAMAGE TO A VEHICLE**

### **INSURING AGREEMENT - COLLISION COVERAGE**

If **you** pay the premium for this coverage, **we** will pay for sudden, direct, and accidental loss to a:

1. **covered auto**, including an attached **trailer**; or
2. **non-owned auto**;  
and its **custom parts or equipment**, resulting from **collision**.

In addition, **we** will pay the reasonable cost to replace any child safety seat damaged in an accident to which this coverage applies.

### **INSURING AGREEMENT - COMPREHENSIVE COVERAGE**

If **you** pay the premium for this coverage, **we** will pay for sudden, direct, and accidental loss to a:

1. **covered auto**, including an attached **trailer**; or
2. **non-owned auto**;  
and its **custom parts or equipment**, that is not caused by **collision**.

A loss not caused by **collision** includes:

1. contact with an animal (including a bird);
2. explosion or earthquake;
3. fire;
4. malicious mischief or vandalism;
5. missiles or falling objects;
6. riot or civil commotion;
7. theft or larceny;
8. windstorm, hail, water, or flood; or
9. breakage of glass not caused by **collision**.

In addition, **we** will pay for:

1. reasonable transportation expenses incurred by **you** if a **covered auto** is stolen;  
and
2. loss of use damages that **you** are legally liable to pay if a **non-owned auto** is stolen.

A combined maximum of \$900, not exceeding \$30 per day, will apply to these additional benefits. The additional benefit for transportation expenses will not apply if **you** purchased Rental Reimbursement Coverage for the stolen **covered auto**.

Coverage for transportation expenses and loss of use damages begins 48 hours after **you** report the theft to **us** and ends the earliest of:

1. when the **auto** has been recovered and returned to **you** or its owner;
2. when the **auto** has been recovered and repaired;
3. when the **auto** has been replaced; or

4. 72 hours after **we** make an offer to settle the loss if the **auto** is deemed by **us** to be a total loss.

**We** must receive written proof of transportation expenses and loss of use damages.

#### **INSURING AGREEMENT - ADDITIONAL CUSTOM PARTS OR EQUIPMENT COVERAGE**

**We** will pay for sudden, direct, and accidental loss to **custom parts or equipment** on a **covered auto** for which this coverage has been purchased. This coverage applies only if **you** have purchased both Comprehensive Coverage and Collision Coverage for that **covered auto** and the loss is covered under one of those coverages. This coverage applies in addition to any coverage automatically provided for **custom parts or equipment** under Comprehensive Coverage or Collision Coverage.

#### **INSURING AGREEMENT - RENTAL REIMBURSEMENT COVERAGE**

**We** will reimburse rental charges incurred when **you** rent an **auto** from a rental agency or auto repair shop due to a loss to a **covered auto** for which Rental Reimbursement Coverage has been purchased. This coverage applies only if **you** have purchased both Comprehensive Coverage and Collision Coverage for that **covered auto** and the loss is covered under one of those coverages.

Additional fees or charges for insurance, damage waivers, optional equipment, fuel, or accessories are not covered.

This coverage is limited to the each day limit shown on the **declarations page** for a maximum of 30 days.

If Rental Reimbursement Coverage applies, no other coverage under this policy for rental expenses will apply.

Rental charges will be reimbursed beginning:

1. when the **covered auto** cannot be driven due to a loss; or
2. if the **covered auto** can be driven, when **you** deliver the **covered auto** to an auto repair shop or one of **our** Claims Service Centers for repairs due to the loss;

and ending the earliest of:

1. when the **covered auto** has been returned to **you**;
2. when the **covered auto** has been repaired;
3. when the **covered auto** has been replaced;
4. 72 hours after **we** make an offer to settle the loss if the **covered auto** is deemed by **us** to be a total loss; or
5. when **you** incur 30 days worth of rental charges.

**You** must provide **us** written proof of **your** rental charges to be reimbursed.

## INSURING AGREEMENT - LOAN/LEASE PAYOFF COVERAGE

If **you** pay the premium for this coverage, and the **covered auto** for which this coverage was purchased is deemed by **us** to be a total loss, **we** will pay, in addition to any amounts otherwise payable under this Part IV, the difference between:

1. the actual cash value of the **covered auto** at the time of the total loss; and
2. any greater amount the owner of the **covered auto** is legally obligated to pay under a written loan or lease agreement to which the **covered auto** is subject at the time of the total loss, reduced by:
  - a. unpaid finance charges or refunds due to the owner for such charges;
  - b. excess mileage charges or charges for wear and tear;
  - c. charges for extended warranties or refunds due to the owner for extended warranties;
  - d. charges for credit insurance or refunds due to the owner for credit insurance;
  - e. past due payments and charges for past due payments; and
  - f. collection or repossession expenses.

However, **our** payment under this coverage shall not exceed the limit of liability shown on the **declarations page**. The limit of liability is a percentage of the actual cash value of the **covered auto** at the time of the loss.

This coverage applies only if **you** have purchased both Comprehensive Coverage and Collision Coverage for that **covered auto** and the loss is covered under one of those coverages.

## ADDITIONAL DEFINITIONS

When used in this Part IV:

1. "**Collision**" means the upset of a vehicle or its impact with another vehicle or object.
2. "**Custom parts or equipment**" means equipment, devices, accessories, enhancements, and changes, other than those that are offered by the manufacturer specifically for that **auto** model, or that are installed by the auto dealership as part of the original sale of a new **auto**, that:
  - a. are permanently installed or attached; and
  - b. alter the appearance or performance of the **auto**.
3. "**Mechanical parts**" means operational parts on a vehicle that wear out over time or have a finite useful life or duration typically shorter than the life of the vehicle as a whole. **Mechanical parts** do not include external crash parts, wheels, paint, or windshields and other glass.
4. "**Non-owned auto**" means an **auto** that is not owned by or furnished or available for the regular use of **you** or a **relative** while in the custody of or being operated by **you** or a **relative** with the permission of the owner of the **auto** or the person in lawful possession of the **auto**.



**EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART IV.**

Coverage under this Part IV will not apply for loss:

1. to any vehicle while being used to carry persons or property for compensation or a fee, including, but not limited to, pickup or delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools;
2. to a **non-owned auto** while being maintained or used by a person while employed or engaged in any **auto business**;
3. to any vehicle resulting from, or sustained during practice or preparation for:
  - a. any pre-arranged or organized racing, stunting, speed, or demolition contest or activity; or
  - b. any driving activity conducted on a permanent or temporary racetrack or race-course;
4. to any vehicle for which insurance:
  - a. is afforded under a nuclear energy liability insurance contract; or
  - b. would be afforded under a nuclear energy liability insurance contract but for its termination upon exhaustion of its limit of liability;
5. to any vehicle caused by an intentional act committed by or at the direction of **you**, a **relative**, or the owner of a **non-owned auto**, even if the actual damage is different than that which was intended or expected;
6. to a **covered auto** while it is leased or rented to others or given in exchange for compensation. This exclusion does not apply to the operation of a **covered auto** by **you** or a **relative**;
7. due to destruction or confiscation by governmental or civil authorities of any vehicle because **you** or any **relative** engaged in illegal activities;
8. to any vehicle that is due and confined to:
  - a. wear and tear;
  - b. freezing;
  - c. mechanical, electrical, or electronic breakdown or failure; or
  - d. road damage to tires.

This exclusion does not apply if the damage results from the theft of a vehicle;
9. to portable equipment, devices, accessories, and any other personal effects that are not permanently installed. This includes, but is not limited to:
  - a. tapes, compact discs, cassettes, DVDs, and other recording or recorded media;
  - b. any case or other container designed for use in storing or carrying tapes, compact discs, cassettes, DVDs, or other recording or recorded media;
  - c. any device used for the detection or location of radar, laser, or other speed measuring equipment or its transmissions; and
  - d. CB radios, telephones, two-way mobile radios, DVD players, personal computers, personal digital assistants, or televisions;
10. to any vehicle for diminution of value;
11. to any vehicle caused directly or indirectly by:
  - a. war (declared or undeclared) or civil war;

- b. warlike action by any military force of any government, sovereign or other authority using military personnel or agents. This includes any action taken to hinder or defend against an actual or expected attack; or
  - c. insurrection, rebellion, revolution, usurped power, or any action taken by a governmental authority to hinder or defend against any of these acts;
12. to any vehicle caused directly or indirectly by:
- a. any accidental or intentional discharge, dispersal or release of radioactive, nuclear, pathogenic or poisonous biological material; or
  - b. any intentional discharge, dispersal or release of chemical or hazardous material for any purpose other than its safe and useful purpose; or
13. to any vehicle caused by, or reasonably expected to result from, a criminal act or omission of **you**, a **relative**, or the owner of a **non-owned auto**. This exclusion applies regardless of whether **you**, the **relative**, or the owner of the **non-owned auto** is actually charged with, or convicted of, a crime. For purposes of this exclusion, criminal acts or omissions do not include traffic violations.

#### LIMITS OF LIABILITY

1. The limit of liability for loss to a **covered auto**, **non-owned auto**, or **custom parts or equipment** is the lowest of:
  - a. the actual cash value of the stolen or damaged property at the time of the loss reduced by the applicable deductible;
  - b. the amount necessary to replace the stolen or damaged property reduced by the applicable deductible;
  - c. the amount necessary to repair the damaged property to its pre-loss condition reduced by the applicable deductible; or
  - d. the Stated Amount shown on the **declarations page** for that **covered auto**. However, the most **we** will pay for loss to:
    - a. **custom parts or equipment** is \$1,000 unless **you** purchased Additional Custom Parts or Equipment Coverage ("ACPE"). If **you** purchased ACPE, the most **we** will pay is \$1,000 plus the amount of ACPE **you** purchased;
    - b. a **trailer** is the limit of liability shown on the **declarations page** for that **trailer**. If the **trailer** is not shown on the **declarations page**, the limit of liability is \$500.
2. Payments for loss to a **covered auto**, **non-owned auto**, or **custom parts or equipment** are subject to the following provisions:
  - a. If coverage applies to a **non-owned auto**, **we** will provide the broadest coverage applicable to any **covered auto** shown on the **declarations page**.
  - b. If **you** have elected a Stated Amount for a **covered auto**, the Stated Amount is the most **we** will pay for all loss to that **covered auto**, including its **custom parts or equipment**.
  - c. Coverage for **custom parts or equipment** will not cause **our** limit of liability for loss to an **auto** under this Part IV to be increased to an amount in excess of the actual cash value of the **auto**, including its **custom parts or equipment**.
  - d. In determining the amount necessary to repair damaged property to its pre-loss condition, the amount to be paid by **us**:
    - (i) will not exceed the prevailing competitive labor rates charged in the area

- where the property is to be repaired and the cost of repair or replacement parts and equipment, as reasonably determined by us; and
- (ii) will be based on the cost of repair or replacement parts and equipment which may be new, reconditioned, remanufactured, or used, including, but not limited to:
    - (a) original manufacturer parts or equipment; and
    - (b) nonoriginal manufacturer parts or equipment.
  - e. To determine the amount necessary to repair or replace the damaged property as referred to in subsection 1, the total cost of necessary repair or replacement may be reduced by unrepaired prior damage. Unrepaired prior damage includes broken, cracked, or missing parts; rust; dents; scrapes; gouges; and peeling paint. The reduction for unrepaired prior damage is the cost of labor, parts, and materials necessary to repair or replace damage, deterioration, defects, or wear and tear on exterior body parts, windshields and other glass, wheels, and paint, that existed prior to the accident and that is eliminated as a result of the repair or replacement of property damaged in the loss.
  - f. To determine the amount necessary to repair or replace the damaged property as referred to in subsection 1, an adjustment may be made for betterment or depreciation and physical condition on:
    - (i) batteries;
    - (ii) tires;
    - (iii) engines and transmissions, if the engine has greater than 80,000 miles; and
    - (iv) any other **mechanical parts** that are nonfunctioning or inoperative.

**We** will not make an adjustment for the labor costs associated with the replacement or repair of these parts.
  - g. The actual cash value is determined by the market value, age, and condition of the vehicle at the time the loss occurs.
- 3. No deductible will apply to a loss to window glass when the glass is repaired instead of replaced.
  - 4. Duplicate recovery for the same elements of damages is not permitted.

#### **PAYMENT OF LOSS**

**We** may, at **our** option:

- 1. pay for the loss in money; or
- 2. repair or replace the damaged or stolen property.

At **our** expense, **we** may return any recovered stolen property to **you** or to the address shown on the **declarations page**, with payment for any damage resulting from the theft. **We** may keep all or part of the property at the agreed or appraised value.

**We** may settle any loss with **you** or the owner or lienholder of the property.

#### **NO BENEFIT TO BAILEE**

Coverage under this Part IV will not directly or indirectly benefit any carrier or other bailee for hire.

## LOSS PAYABLE CLAUSE

Payment under this Part IV for a loss to a **covered auto** will be made according to **your** interest and the interest of any lienholder shown on the **declarations page** or designated by **you**. At **our** option, payment may be made to both jointly, or to either separately. Either way, **we** will protect the interest of both. However, if the **covered auto** is not a total loss, **we** may make payment to **you** and the repairer of the **auto**.

Protection of the lienholder's financial interest will not be affected by any act or omission by any person entitled to coverage under this policy. However, protection under this clause does not apply:

1. in any case of conversion, embezzlement, secretion, or willful damaging or destruction, of the **covered auto** by or at the direction of **you**, a **relative**, or the owner of the **covered auto**; or
2. to any loss caused by, or reasonably expected to result from, a criminal act or omission of **you**, a **relative**, or the owner of the **covered auto**. This applies regardless of whether **you**, the **relative**, or the owner of the **covered auto** is actually charged with, or convicted of, a crime.

If this policy is cancelled, nonrenewed, or voided, the interest of any lienholder under this agreement will also terminate.

When **we** make payment to a lienholder for loss under this policy, **we** will be subrogated to the rights of the party **we** pay, to the extent of **our** payment. When **we** pay a lienholder for a loss for which **you** are not covered, **we** are entitled to the lienholder's right of recovery against **you** to the extent of **our** payment. **Our** right to subrogation will not impair the lienholder's right to recover the full amount of its claim.

## OTHER SOURCES OF RECOVERY

If other sources of recovery also cover the loss, **we** will pay only **our** share of the loss. **Our** share is the proportion that **our** limit of liability bears to the total of all applicable limits. However, any insurance **we** provide for a **non-owned auto**, or **trailer** not shown on the **declarations page**, will be excess over any other collectible source of recovery including, but not limited to:

1. any coverage provided by the owner of the **non-owned auto** or **trailer**;
2. any other applicable physical damage insurance; and
3. any other source of recovery applicable to the loss.

## APPRAISAL

If **we** cannot agree with **you** on the amount of a loss, then **we** or **you** may demand an appraisal of the loss. Within 30 days of any demand for an appraisal, each party shall appoint a competent and impartial appraiser and shall notify the other party of that appraiser's identity. The appraisers will determine the amount of loss. If they fail to agree, the disagreement will be submitted to a qualified and impartial umpire chosen by the

appraisers. If the two appraisers are unable to agree upon an umpire within 15 days, **we** or **you** may request that a judge of a court of record, in the county where **you** reside, select an umpire. The appraisers and umpire will determine the amount of loss. The amount of loss agreed to by both appraisers, or by one appraiser and the umpire, will be binding. **You** will pay **your** appraiser's fees and expenses. **We** will pay **our** appraiser's fees and expenses. All other expenses of the appraisal, including payment of the umpire if one is selected, will be shared equally between **us** and **you**. Neither **we** nor **you** waive any rights under this policy by agreeing to an appraisal.

## **PART V - ROADSIDE ASSISTANCE COVERAGE**

### **INSURING AGREEMENT**

If **you** pay the premium for this coverage, **we** will pay for **our** authorized service representative to provide the following services when necessary due to a **covered emergency**:

1. towing of a **covered disabled auto** to the nearest qualified repair facility; and
2. labor on a **covered disabled auto** at the place of disablement.

If a **covered disabled auto** is towed to any place other than the nearest qualified repair facility, **you** will be responsible for any additional charges incurred.

### **ADDITIONAL DEFINITIONS**

When used in this Part V:

1. "**Covered disabled auto**" means a **covered auto** for which this coverage has been purchased that sustains a **covered emergency**.
2. "**Covered emergency**" means a disablement that is a result of:
  - a. mechanical or electrical breakdown;
  - b. battery failure;
  - c. insufficient supply of fuel, oil, water, or other fluid;
  - d. flat tire;
  - e. lock-out; or
  - f. entrapment in snow, mud, water, or sand, within 100 feet of a road or highway.

### **EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART V.**

Coverage under this Part V will not apply to:

1. the cost of purchasing parts, fluid, lubricants, fuel, or replacement keys, or the labor to make replacement keys;
2. installation of products or material not related to the disablement;
3. labor not related to the disablement;
4. labor on a **covered disabled auto** for any time period in excess of 60 minutes per disablement;
5. towing or storage related to impoundment, abandonment, illegal parking, or other violations of law;

6. assistance with jacks, levelers, airbags, or awnings;
7. towing from a service station, garage, or repair shop;
8. labor or repair work performed at a service station, garage, or repair shop;
9. auto storage charges;
10. a second service call or tow for a single disablement;
11. disablement that occurs on roads not regularly maintained, sand beaches, open fields, or areas designated as not passable due to construction, weather, or earth movement;
12. mounting or removing of snow tires or chains;
13. tire repair;
14. repeated service calls for a **covered disabled auto** in need of routine maintenance or repair;
15. disablement that results from an intentional or willful act or action by **you**, a **relative**, or the operator of a **covered disabled auto**; or
16. a trailer.

#### **UNAUTHORIZED SERVICE PROVIDER**

When service is rendered by a provider in the business of providing roadside assistance and towing services, other than one of **our** authorized service representatives, **we** will pay only reasonable charges, as determined by **us**, for:

1. towing of a **covered disabled auto** to the nearest qualified repair facility; and
  2. labor on a **covered disabled auto** at the place of disablement;
- which is necessary due to a **covered emergency**.

#### **OTHER INSURANCE**

Any coverage provided under this Part V for service rendered by an unauthorized service provider will be excess over any other collectible insurance or towing protection coverage.

#### **PART VI - DUTIES IN CASE OF AN ACCIDENT OR LOSS**

For coverage to apply under this policy, **you** or the person seeking coverage must promptly report each accident or loss even if **you** or the person seeking coverage is not at fault. **You** or the person seeking coverage must provide **us** with all accident/loss information including time, place, and how the accident or loss happened. **You** or the person seeking coverage must also obtain and provide **us** the names and addresses of all persons involved in the accident or loss, the names and addresses of any witnesses, and the license plate numbers of the vehicles involved.

If **you** or the person seeking coverage cannot identify the owner or operator of a vehicle involved in the accident, or if theft or vandalism has occurred, **you** or the person seeking coverage must notify the police within 24 hours or as soon as practicable.

A person seeking coverage must:

1. cooperate with **us** in any matter concerning a claim or lawsuit;

2. provide any written proof of loss **we** may reasonably require;
3. allow **us** to take signed and recorded statements, including sworn statements and examinations under oath, which **we** may conduct outside the presence of **you** or any other person claiming coverage, and answer all reasonable questions **we** may ask as often as **we** may reasonably require;
4. promptly call to notify **us** about any claim or lawsuit and send **us** any and all legal papers relating to the claim or suit;
5. attend hearings and trials as **we** require;
6. take reasonable steps after a loss to protect the **covered auto**, or any other vehicle for which coverage is sought, from further loss. **We** will pay reasonable expenses incurred in providing that protection. If failure to provide such protection results in further loss, any additional damages will not be covered under this policy;
7. allow **us** to have the damaged **covered auto**, or any other damaged vehicle for which coverage is sought, inspected and appraised before its repair or disposal;
8. submit to medical examinations at **our** expense by doctors **we** select as often as **we** may reasonably require;
9. submit to vocational rehabilitation examinations at **our** expense by rehabilitation specialists **we** select as often as **we** may reasonably require; and
10. authorize **us** to obtain medical and other records.

## **PART VII - GENERAL PROVISIONS**

### **POLICY PERIOD AND TERRITORY**

This policy applies only to accidents and losses occurring during the policy period shown on the **declarations page** and that occur within a state, territory, or possession of the United States of America, or a province or territory of Canada, or while a **covered auto** or **trailer** shown on the **declarations page** is being transported between their ports.

### **CHANGES**

This policy contract, **your** insurance application (which is made a part of this policy as if attached hereto), the **declarations page**, and all endorsements to this policy issued by **us**, contain all the agreements between **you** and **us**. Subject to the following, the terms of this policy may not be changed or waived except by an endorsement issued by **us**.

The premium for this policy is based on information **we** received from **you** and other sources. **You** agree to cooperate with **us** in determining if this information is correct and complete, and to notify **us** if it changes during the policy period. If this information is incorrect, incomplete, or changes during the policy period, **you** agree that **we** may adjust **your** premium accordingly. Changes that may result in a premium adjustment are contained in **our** rates and rules. These include, but are not limited to, **you** or a **relative** obtaining a driver's license or operator's permit, or changes in:

1. the number, type, or use classification of **covered autos**;
2. operators using **covered autos**;
3. an operator's marital status;

4. the place of principal garaging of any **covered auto**;
5. coverage, deductibles, or limits of liability; or
6. rating territory or discount eligibility.

The coverage provided in **your** policy may be changed only by the issuance of a new policy or an endorsement by **us**. However, if during the policy period **we** broaden any coverage afforded under the current edition of **your** policy without additional premium charge, that change will automatically apply to **your** policy as of the date the coverage change is implemented in **your** state.

If **you** ask **us** to delete a vehicle from this policy, no coverage will apply to that vehicle as of the date and time **you** ask **us** to delete it.

### **DUTY TO REPORT CHANGES**

**You** must promptly notify **us** when:

1. **your** mailing or residence address changes;
2. the principal garaging address for a **covered auto** or a **trailer** shown on the **declarations page** changes;
3. there is a change with respect to the residents in **your** household or the persons who regularly operate a **covered auto**;
4. an operator's marital status changes; or
5. **you** or a **relative** obtain a driver's license or operator's permit.

### **SETTLEMENT OF CLAIMS**

**We** may use estimating, appraisal, or injury evaluation systems to assist **us** in adjusting claims under this policy and to assist **us** in determining the amount of damages, expenses, or loss payable under this policy. Such systems may be developed by **us** or a third party and may include computer software, databases, and specialized technology.

### **TERMS OF POLICY CONFORMED TO STATUTES**

If any provision of this policy fails to conform to the statutes of the state listed on **your** application as **your** residence, the provision shall be deemed amended to conform to such statutes. All other provisions shall be given full force and effect. Any disputes as to the coverages provided or the provisions of this policy shall be governed by the law of the state listed on **your** application as **your** residence.

### **TRANSFER**

This policy may not be transferred to another person without **our** written consent. However, if a named insured shown on the **declarations page** dies, this policy will provide coverage until the end of the policy period for the legal representative of the named insured, while acting as such, and for persons covered under this policy on the date of the named insured's death.



## **FRAUD OR MISREPRESENTATION**

This policy was issued in reliance upon the information provided on **your** insurance application. **We** may void this policy at any time during the first 59 days, including after the occurrence of an accident or loss, if **you**:

1. made incorrect statements or representations to **us** with regard to any material fact or circumstance;
2. concealed or misrepresented any material fact or circumstance; or
3. engaged in fraudulent conduct;

at the time of application. This means that **we** will not be liable for any claims or damages that would otherwise be covered.

**We** may deny coverage for an accident or loss if **you** or a person seeking coverage has knowingly concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, at the time of application, at any time during the policy period, or in connection with the presentation or settlement of a claim.

## **PAYMENT OF PREMIUM AND FEES**

If **your** initial premium payment is by check, draft, electronic funds transfer, or similar form of remittance, coverage under this policy is conditioned on payment to **us** by the financial institution. If the financial institution upon presentment does not honor the check, draft, electronic funds transfer, or similar form of remittance, this policy may, at **our** option, be deemed void from its inception. This means **we** will not be liable under this policy for any claims or damages that would otherwise be covered if the check, draft, electronic funds transfer, or similar form of remittance had been honored by the financial institution. Any action by **us** to present the remittance for payment more than once shall not affect **our** right to void this policy.

In addition to premium, fees may be charged on **your** policy. **We** may charge fees for installment payments, late payments, and other transactions. Payments made on **your** policy will be applied first to fees, then to premium due.

## **CANCELLATION**

**You** may cancel this policy during the policy period by calling or writing **us** and stating the future date **you** wish the cancellation to be effective.

**We** may cancel this policy during the policy period by mailing a notice of cancellation to the named insured shown on the **declarations page** at the last known address appearing in **our** records.

**We** will give at least 15 days notice of cancellation if:

1. **we** cancel during the first 59 days of the initial policy period; or
2. the policy is cancelled for nonpayment of premium.

**We** will give at least 60 days notice of cancellation in all other cases.

**We** may cancel this policy for any reason if the notice is mailed within the first 59 days of the initial policy period.

After this policy is in effect for more than 59 days, or if this is a renewal or continuation policy, **we** may cancel only for one or more of the following reasons:

1. nonpayment of premium;
2. material misrepresentation or fraud by **you** with respect to any material fact in the procurement or renewal of this policy;
3. loss of driving privileges through suspension or revocation of an operator's license or motor vehicle registration issued to the named insured;
4. **your** place of residence or the state of registration or license of a **covered auto** is changed to a state or country in which **we** do not accept applications for the insurance provided by this policy;
5. **we** have agreed to issue a new policy within the same or an affiliated company; or
6. any other reason permitted by law.

Proof of mailing will be sufficient proof of notice. If this policy is cancelled, coverage will not be provided as of the effective date and time shown in the notice of cancellation. For purposes of cancellation, this policy is neither severable nor divisible. Any cancellation will be effective for all coverages for all persons and all vehicles.

#### **CANCELLATION REFUND**

Upon cancellation, **you** may be entitled to a premium refund. However, **our** making or offering of a refund is not a condition of cancellation.

If this policy is cancelled, any refund due will be computed on a daily pro rata basis. However, **we** will retain a cancellation fee if this policy is cancelled at **your** request or if cancellation is for nonpayment of premium. A cancellation fee will be charged only during the initial policy period.

#### **NONRENEWAL**

If neither **we** nor one of **our** affiliates offers to renew or continue this policy, **we** will mail notice of nonrenewal to the named insured shown on the **declarations page** at the last known address appearing in **our** records. Proof of mailing will be sufficient proof of notice. If nonrenewal is due to nonpayment of premium or loss of driving privileges through suspension or revocation of the named insured's operator's license or motor vehicle registration, notice will be mailed at least 15 days before the end of the policy period. If nonrenewal is due to any other reason, notice will be mailed at least 60 days before the end of the policy period.

## **AUTOMATIC TERMINATION**

If **we** or an affiliate offers to renew or continue this policy and **you** or **your** representative does not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due will mean that **you** have not accepted **our** offer.

If a **covered auto** is sold or transferred to someone other than **you** or a **relative**, any insurance provided by this policy will terminate as to that **covered auto** on the effective date of the sale or transfer.

## **LEGAL ACTION AGAINST US**

**We** may not be sued unless there is full compliance with all the terms of this policy.

Any action brought against **us** pursuant to coverage under Part III - Uninsured/Underinsured Motorist Coverage must be brought in the county in which the person seeking benefits resides, or in the United States District Court serving that county.

**We** may not be sued for payment under Part I - Liability To Others until the obligation of an insured person under Part I to pay is finally determined either by judgment after trial against that person or by written agreement of the insured person, the claimant, and **us**. No one will have any right to make **us** a party to a lawsuit to determine the liability of an insured person.

If **we** retain salvage, **we** have no duty to preserve or otherwise retain the salvage for any purpose, including evidence for any civil or criminal proceeding.

## **OUR RIGHTS TO RECOVER PAYMENT**

**We** are entitled to the rights of recovery that the insured person to whom payment was made has against another, to the extent of **our** payment. That insured person may be required to sign documents related to the recovery and must do whatever else **we** require to help **us** exercise those recovery rights, and do nothing after an accident or loss to prejudice those rights.

When an insured person has been paid by **us** and also recovers from another, the amount recovered will be held by the insured person in trust for **us** and reimbursed to **us** to the extent of **our** payment. However, this shall not apply to amounts paid by **us** under Part II - First Party Benefits Coverage unless the payments are subject to the Workers' Compensation Act. If **we** are not reimbursed, **we** may pursue recovery of that amount directly against that insured person.

If an insured person recovers from another without **our** written consent, the insured person's right to payment under any affected coverage will no longer exist.

If **we** elect to exercise **our** rights of recovery against another, **we** will also attempt to recover any deductible incurred by an insured person under this policy unless **we** are specifically instructed by that person not to pursue the deductible. **We** have no obligation to pursue recovery against another for any loss not covered by this policy.

**We** reserve the right to compromise or settle the deductible and property damage claims against the responsible parties for less than the full amount. **We** reserve the right to incur reasonable expenses and attorney fees in pursuit of the recovery.

If the total recovery is less than the total of **our** payment and the deductible, **we** will reduce reimbursement of the deductible based on the proportion that the actual recovery bears to the total of **our** payment and the deductible. Reimbursement of the deductible will also be reduced by a proportionate share of collection expenses and attorney fees incurred in connection with these recovery efforts.

These provisions will be applied in accordance with state law.

#### **JOINT AND INDIVIDUAL INTERESTS**

If there is more than one named insured on this policy, any named insured may cancel or change this policy. The action of one named insured will be binding on all persons provided coverage under this policy. Any rejection of coverage available under Part III - Uninsured/Underinsured Motorist Coverage should be made by the first named insured.

#### **BANKRUPTCY**

The bankruptcy or insolvency of an insured person will not relieve **us** of any obligations under this policy.

\*\*\*\*\*  
 5/15/02 RR:11/01 V03.27 PENNSYLVANIA PAGE 1  
 PAUL R ELLINGSWORTH POLICY #: 55517559-0 S:UL:2  
 \*\*\*\*\*

UPLOAD MESSAGE: Upload Successful on 05/15/2002 03:58PM ref. 0523  
 COMPANY INFORMATION:

Progressive Northern Insurance Company  
 P.O. BOX 94625 Cleveland OH 44101  
 AGENT INFORMATION: TOTAL PREMIUM: 543.00 POLICY #: 55517559-0  
 GARY L. SMITH INSURANCE DOWN PAYMENT: 543.00 LEVEL: SUPERSAVER  
 P.O. BOX 373 BALANCE DUE: 0.00 MARKET: ULTRA-PREFERRED  
 DUBOIS, PA 15801 DOWNPAY REQ: 543.00  
 (814)371-2953 CS-51100 PAY PLAN: 1-PAY  
 DOWNPAY METH: EXPRESS MONEY  
 TORT OPTION: LIMITED

PRODUCER LICENSE NUMBER: 123959  
 PRODUCER NAME: SMITH, GARY

(Do Not Retain Commission)

----- GENERAL INFORMATION -----  
 PAUL R ELLINGSWORTH HOME PHONE: (814)371-7636 EFF DATE: 05/15/02  
 RD# 2 BOX 202 WORK PHONE: EFF TIME: 03:55PM  
 DUBOIS, PA 15801- POLICY TERM: 6 MONTHS  
 PRIMARY RESIDENCE: OWN HOME/CONDO  
 ASSOCIATION: NONE  
 MEMBERSHIP #:  
 FR VENDOR(S): EXPERIAN  
 1-888-397-3742

----- DRIVER INFORMATION -----  
 Complete for Applicant, Spouse, and all persons age 16 and over residing  
 with Applicant (licensed or not). Also list any operators.

DR#	DRIVER'S NAME	BIRTH DATE	AGE	SEX	MARITAL STATUS	RELATION
1	PAUL R ELLINGSWORTH	11/21/32	69	M	MARRIED	INSURED
2	ELIZABETH M ELLINGSWORTH	08/17/34	67	F	MARRIED	SPOUSE

DR#	LIC	STATUS	LICENSE NUMBER	ST	SECURITY #	STATUS	PRINCIPAL/ OCCASIONAL
1	VALID		08249160	PA	166-26-0888	RATED	P
2	VALID		23026837	PA	282-30-0319	RATED	P



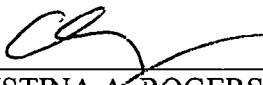
**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the within EXHIBITS TO ANSWER, NEW MATTER AND COUNTERCLAIM was forwarded to counsel below named by United States Mail on the 25th day of November, 2008:

Cynthia M. Darel, Esquire  
Edgar Snyder & Associates, LLC  
U S. Steel Tower, Tenth Floor  
600 Grant Street  
Pittsburgh, PA 15219-2705  
(Attorney for Plaintiff)

Terry L. M. Bashline, Esquire  
Suite 3500, One Olive Plaza  
210 Sixth Ave.  
Pittsburgh, PA 15222  
(Attorney for Additional Defendant)

ZIMMER KUNZ, P.L.L.C.

  
\_\_\_\_\_  
CHRISTINA A. ROGERS, ESQUIRE  
ATTORNEY FOR DEFENDANT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ADAM DIXON,

Plaintiff,

vs.

PROGRESSIVE NORTHERN INSURANCE  
COMPANY,

Defendant.

CIVIL DIVISION

No. 08-1911-CD

**PLAINTIFF'S REPLY TO NEW MATTER**

Code: 180

Filed on behalf of: Plaintiff, Adam Dixon

Counsel of record for this party:

CYNTHIA M. DANIEL, ESQUIRE  
PA. I.D. No. 34527

Email: [cdaniel@edgarsnyder.com](mailto:cdaniel@edgarsnyder.com)

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC  
US Steel Tower, Tenth Floor  
600 Grant Street  
Pittsburgh, PA 15219-2705

(412) 394-1000

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ADAM DIXON,	)	CIVIL DIVISION
	)	
Plaintiff,	)	No. 08-1911-CD
	)	
vs.	)	
	)	
PROGRESSIVE NORTHERN INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

**PLAINTIFF'S REPLY TO NEW MATTER**

AND NOW, comes the Plaintiff, ADAM DIXON, by and through his attorneys, EDGAR SNYDER & ASSOCIATES, LLC, and CYNTHIA M. DANIEL, ESQUIRE and sets forth the following Reply to New Matter of Defendant, PROGRESSIVE NORTHERN INSURANCE COMPANY, and to set forth in support thereof the following:

1. The averment contained in Paragraph 19 of Defendant's New Matter is admitted.
2. The averment contained in Paragraph 20 of Defendant's New Matter is admitted in part. It is denied that the document attached as Exhibit "B" to Defendant's New Matter requires the identification of all residents of the Paul R. Ellingsworth household. On the contrary, Exhibit "B" requires a listing of "all persons age 16 and over residing with Applicant." Exhibit "B" is dated May 15, 2002 and on that date Adam Dixon was twelve years of age and Paul Ellingsworth was not required to list Adam Dixon under driver information.
3. The averment contained in Paragraph 21 is admitted.



4. The averment contained in Paragraph 22 is admitted.

5. The averments contained in Paragraph 23 are admitted in part and denied in part. It is admitted that Progressive has denied that Adam Dixon was residing with Paul Ellingsworth. It is unknown as to what Progressive's position is on where Adam Dixon resided and, therefore, the averment that Progressive believes Adam Dixon was residing with his mother is deemed to be denied.

6. The averments contained in Paragraph 24 are admitted in part and denied in part. It is admitted that Deborah Dixon was insured with Ohio Casualty and it is admitted that Ohio Casualty provided first party benefits to Adam Dixon. It is denied that the Pennsylvania MVRFL states that first party benefits are to be provided solely by Ohio Casualty and it is denied that Progressive has no obligation to provide first party medical benefits to Adam Dixon.

7. The averments contained in Paragraph 25 are admitted.

8. The averments contained in Paragraph 26 are admitted.

9. The averments contained in Paragraph 27 are admitted.

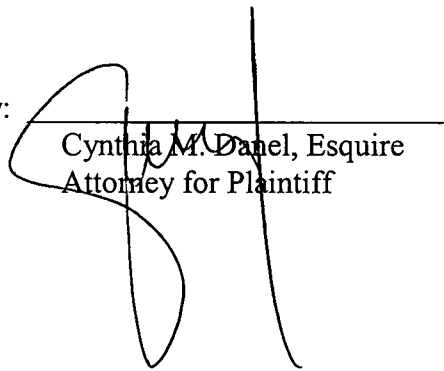
10. The averments contained in Paragraph 28 are specifically denied. On the contrary, on the day of the accident and for a long time prior thereto, the Plaintiff, Adam Dixon, resided with Paul R. Ellingsworth and is entitled to stacked underinsured motorist coverage and first party benefits from Progressive.

WHEREFORE, Adam Dixon demands a judgment against the Defendant, Progressive Northern Insurance Company, declaring that Adam Dixon was a resident relative of Paul Ellingsworth on August 18, 2007 and is entitled to stacked underinsured motorist coverage and first party benefits from Progressive.

Respectfully submitted,

EDGAR SNYDER & ASSOCIATES, LLC

By:



Cynthia M. Danel, Esquire  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 11 day of December, 2008, a true and correct copy of the within **Plaintiff's Reply to New Matter** was served by first class mail, postage prepaid, upon counsel as follows:

Christina Rogers, Esquire  
Zimmer Kunz  
3300 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219

EDGAR SNYDER & ASSOCIATES, LLC

By: \_\_\_\_\_

Cynthia M. Danel, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

ADAM DIXON,

CIVIL DIVISION

Plaintiff,

v.

No.: 08-1911-CD

PROGRESSIVE NORTHERN INSURANCE  
COMPANY,

Defendant,

**STIPULATION**

v.

OHIO CASUALTY INSURANCE  
COMPANY,

Additional Defendant.

Filed on behalf of:  
DEFENDANT,  
PROGRESSIVE NORTHERN INSURANCE  
COMPANY

Counsel of Record for this party:  
**JEFFREY A. RAMALEY, ESQUIRE**  
Pa. I.D. #41559

**CHRISTINA A. ROGERS, ESQUIRE**  
Pa. I.D. #200159

**ZIMMER KUNZ, P.L.L.C.**  
Firm #920  
3300 U.S. Steel Tower  
Pittsburgh, PA 15219  
(412) 281-8000

**JURY TRIAL DEMANDED**

**FILED** *no cc*  
*110:3601*  
**APR 01 2009**  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

ADAM DIXON,

CIVIL DIVISION

Plaintiff,

v.

PROGRESSIVE NORTHERN INSURANCE      No.: C8-1911-CD  
COMPANY,

Defendant,

v.

OHIO CASUALTY INSURANCE  
COMPANY,

Additional Defendant.

**STIPULATION**

It is hereby stipulated that Ohio Casualty Insurance Company agrees to waive and forego any and all rights or potential rights that may arise in the future, including, but not limited to the right of contribution and/or indemnification, with regard to the above-captioned matter and the motor vehicle accident involving Adam Dixon on August 18, 2007.

By 

TERRY L.M. BASELINE, ESQUIRE

Attorney for Ohio Casualty Insurance Company


**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the within STIPULATION was forwarded to counsel below named by United States Mail on the 30th day of March, 2009:

Cynthia M. Danel, Esquire  
Edgar Snyder & Associates, LLC  
U.S. Steel Tower, Tenth Floor  
600 Grant Street  
Pittsburgh, PA 15219-2705  
(Attorney for Plaintiff)

Terry L. M. Bashline, Esquire  
Suite 3500, One Olive Plaza  
210 Sixth Ave.  
Pittsburgh, PA 15222  
(Attorney for Additional Defendant)

ZIMMER KUNZ, P.L.L.C.

  
\_\_\_\_\_  
CHRISTINA A. ROGERS, ESQUIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ADAM DIXON,

CIVIL DIVISION

Plaintiff,

No. 08-1911-CD

vs.

PROGRESSIVE NORTHERN  
INSURANCE COMPANY,

**PRAECIPE TO SETTLE AND  
DISCONTINUE**

Defendant.

Code: 180

**FILED** *EW*  
SEP 11 2009  
10:30  
William A. Shaw  
Prothonotary/Clerk of Courts  
i sent to Harry  
w/ cert. of Disc.

Filed on behalf of: Plaintiff, Adam Dixon

Counsel of record for this party:

CYNTHIA M. DANIEL, ESQUIRE  
PA I.D. No. 34527

Email: [cdaniel@edgarsnyder.com](mailto:cdaniel@edgarsnyder.com)

Firm No. 1605

EDGAR SNYDER & ASSOCIATES, LLC  
US Steel Tower, Tenth Floor  
600 Grant Street  
Pittsburgh, PA 15219-2705

(412) 394-1000

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ADAM DIXON,

CIVIL DIVISION

Plaintiff,

No. 08-1911-CD

vs.

PROGRESSIVE NORTHERN INSURANCE  
COMPANY,

Defendant.

**PRAECIPE TO SETTLE AND DISCONTINUE**

TO: PROTHONOTARY

Please satisfy, settle and discontinue the within matter.

EDGAR SNYDER & ASSOCIATES, LLC

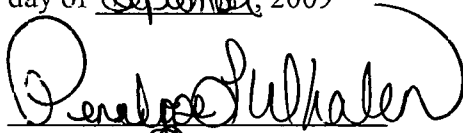
By

Cynthia M. Danel  
Attorney for Plaintiff

Sworn to and subscribed

before me, this 9<sup>th</sup>

day of September, 2009

  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Penelope L. Whalen, Notary Public  
City Of Pittsburgh, Allegheny County  
My Commission Expires March 24, 2011  
Member, Pennsylvania Association of Notaries



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 1 day of Sept, 2009, a true and correct copy of the within **Praeipie to Settle and Discontinue** was served by first class mail, postage prepaid, upon counsel as follows:

Christina Rogers, Esquire  
Zimmer Kunz  
3300 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219

EDGAR SNYDER & ASSOCIATES, LLC

By: 

Cynthia M. Danel, Esquire

**IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA**

**CIVIL DIVISION**

**Adam Dixon**

**Vs.**

**No. 2008-01911-CD**

**Progressive Northern Insurance Company  
Ohio Casualty Insurance Company**

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on September 11, 2009, marked:

Satisfy, settle and discontinue

Record costs in the sum of \$75.00 have been paid in full by Edgar Snyder & Associates, LLC.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 11th day of September A.D. 2009.

---

William A. Shaw, Prothonotary