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1. STATEMENT OF INTEREST

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

2. GEORGIA'S U/M STATUTE PROHIBITS ANY COLLATERAL SOURCE REDUCTION PROVISION FOR AN INSURED=S BODILY INJURY

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

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

> *The endorsement or provisions of the [u/m] policy providing the coverage required by this Code section may contain provisions which exclude any liability of the insurer for injury or destruction of property of the insured for which he has been compensated by other property or physical damage insurance.* (Emphasis Added)

Here is the answer to the question. A Georgia U/M policy may only contain a collateral

source reduction provision for the injury or destruction of property of the insured and not for the bodily injury of the insured. No where in Georgia=s U/M Statute does it authorize a collateral source reduction provision for bodily injury.

State Farm=s collateral source reduction provision reads:

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

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

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

3. THE PRINCIPLE OF STATUTORY CONSTRUCTION - EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS APPLIES IN THIS CASE

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

4. STATE FARM WANTS TO REWRITE GEORGIA=S U/M STATUTE O.C.G.A. SECTION 33-7-11 (i) TO INCLUDE BODILY INJURY

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

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

Georgia Lawmakers did not write Georgia=s U/M Statute to include any collateral source

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

5. THE INSURED MUST BE PLACED IN THE SAME POSITION THAT HE WOULD HAVE BEEN IF THE U/M TORTFEASOR HAD LIABILITY LIMITS EQUAL TO THE U/M LIMITS OF THE INSURED

Georgia=s U/M Statute O.C.G.A. Section 33-7-11 (a)(1) reads in pertinent part that, motor vehicle liability policies must contain a provision Aundertaking to pay the insured all sums which said insured shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, ...@ (Emphasis Added) The insured is, in essence, buying liability insurance for an U/M tortfeasor that must pay the insured for all sums of his damages. In this case State Farm became the adversary of its insured and litigated the case with the same tenacity as if it were the liability insurer of the tortfeasor.

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

> *The Legislative purpose behind the enactment of such statutory provisions on >uninsured motorist= coverage is equally clear. It is*

> *simply to place the injured policy holder in the same position he would have been if the uninsured motorist had liability insurance and, accordingly, the amount of plaintiff=s recovery from >uninsured motorist= coverage can not be reduced by any workers= compensation benefits received by him.* (Emphasis Added)

The Montana Supreme Court held that other sources of insurance of the insured such as health insurance are not deductible for the same reason as workers= compensation benefits are not deductible. AThe non-deductibility of other insurance benefits applies for the same reasons that workman=s benefits are not deductible. The majority of jurisdictions outside Montana declare void these clauses which purport to limit liability not expressly authorized by statute.@ Id at 63.

6. THE U/M TORTFEASOR IS NOT ENTITLED TO ANY OFFSET OF THE INSURED'S COLLATERAL SOURCES AND NEITHER IS THE U/M INSURER

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

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

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

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

The New Jersey U/M statute Acontains no suggestion of relief from its undertaking in favor of an issuing insurer merely because the insured, may also have a right to recover benefits under Our Workers= Compensation Act for the same injury... Consequently any attempt by the

insurer to limit his liability under this [U/M] coverage by providing for reduction in the amount due thereunder by the amount of workers= compensation benefits received by or awarded to the insured violates the clear mandate of the statute and is against the public policy of the State. We therefore hold that the workers= compensation setoff provision of the U/M endorsement is void and unenforceable.@ Id at 445. (Emphasis Added)

7. ALTHOUGH THERE MAY BE A POSSIBILITY THAT IN SOME CASES THE INSURED WILL RECOVER TWICE FOR THE SAME INJURY (DOUBLE RECOVERY) AS BETWEEN THE INSURED AND THE INSURER THE MORE EQUITABLE RESULT IS TO PERMIT THE INSURED, WHO PAID THE PREMIUMS FOR THE U/M COVERAGE, TO RECOVER UNDER THE U/M ENDORSEMENT WITHOUT ANY REDUCTION FOR WORKERS= COMPENSATION BENEFITS

State Farm has complained that a collateral source reduction provision is necessary to prevent a possible double recovery by their insureds.

The New Jersey Court in Walkowitz vs. Royal Globe Insurance Company, 149 N.J. Super 442, 374 A. 2d 40 (1997) addressed the possibility of a double recovery. It wrote:

> *Furthermore, although there is the possibility that in certain instances the insured will recover twice for the same injury, we are convinced that as between the insured and the insurer the more equitable result is to permit the insured, who paid the premium for U/M coverage, to recover under the U/M endorsement without any deduction for the workers= compensation award. Enforcement of the setoff provision would result in an unwarrantable windfall to the insurer and relieve it of a financial obligation for which it charged and was paid a premium.* (Emphasis Added)

The same applies in the instant case. State Farm=s insured paid the premium for uninsured motorist coverage. State Farm should not be allowed to rewrite Georgia U/M statutory law to permit a reduction that would deny benefits for which State Farm=s insured paid a premium. The New Jersey court in Walkowitz held that the workers= compensation setoff provision in the U/M endorsement was unenforceable.

8. WHAT ARE THE MANDATORY LIMITS OF U/M COVERAGE UNDER GEORGIA'S U/M STATUTE?

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

The Supreme Court of Mississippi has issued an opinion that is persuasive legal authority. The Mississippi Supreme Court in Nationwide Mutual Insurance Company vs. Garriga, 636 So. 2d. 658 (1994) wrote, AThe question before the court is essentially one of statutory interpretation. That is what is the minimum coverage prescribed by statute?... We now overrule Koesler and hold that the minimum required coverage which may not be offset by clauses such that as here involved is the coverage that the insured chooses up to that amount

equal to the liability amount acquired.@ (Emphasis Added)

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

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

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

This statutory right of the insured at his option to purchase U/M coverage up to the limits of his liability coverage is not a form of excess coverage. The Mississippi amendment made clear that such coverage is controlled by the statutory scheme and is not an un-governed excess U/M coverage. This is not excess U/M coverage. This is mandatory minimum U/M coverage

that the insured can select-the limits of U/M bodily injury can equal the limits of the liability bodily injury policy.

In conclusion, the Mississippi Supreme Court wrote, AThe correct interpretation of the statutory scheme as it developed and in its present form is that carriers are commanded by statute to provide [U/M] coverage up to the amount of liability insurance purchased where the insured so desires and can not reduce this amount by exception of the type here involved [workers= compensation benefits].@ Id at 665. In that Mississippi case the U/M collateral source reduction was for a workers= compensation benefits paid to the Plaintiff.

9. IF THE COLLATERAL SOURCE REDUCING PROVISION FOR WORKERS' COMPENSATION, SOCIAL SECURITY DISABILITY OR OTHER SIMILAR LAWS IS PERMITTED THERE IS NOTHING STOPPING U/M INSURERS FROM ADDING REDUCTIONS FOR THEIR INSURED=S HEALTH INSURANCE

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

U/M insurers could simply provide U/M coverage that would in reality be an illusion. An

illusion because the U/M limits could be reduced to zero such as in the instant case.

10. SISTER STATES PROVIDE PERSUASIVE LEGAL AUTHORITY TO SUPPORT GTLA'S POSITION

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

The Alabama Supreme Court in State Farm continued, A..., a breadwinner [State Farm=s Insured] has the right to supplement any benefits to which he may be entitled under the Workers= Compensation Act, by procuring and paying whatever premiums he can squeeze out of his budget for an independent policy with an independent carrier in as large an amount as he can afford, without giving up any workers= compensation benefits.@ Id at 469. That logic applies in the instant case. The Dees, with their own money purchased U/M coverage from State Farm. The Dees= employer did not purchase it. The Dees squeezed out of their budget money to purchase U/M coverage from State Farm. The U/M limits chosen by the Dees are the

mandated limits under Georgia=s U/M Statute. O.C.G.A. Section 33-7-11 (a)(1)(B) reads in pertinent part, AIn any event, the insured may affirmatively choose uninsured motorist limits in any amount less than the limits of liability.@ This mandatory U/M coverage was selected at the option of the insured.

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

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

Ala -- Preferred Risk Mut. Ins. Co. v Holmes (1971) 287 Ala 251, 251 So 2d 213

(construing Code of Alabama title 36, § 74(62a))

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mo -- For Missouri cases, see § 6[b]

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

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

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

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

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

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

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

NM -- Continental Ins. Co. v Fahey (1987) 106 NM 603, 747 P2d 249 (construing

NMSA 1978 §§ 66-5-215, 66-5-301)

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

NC -- Sproles v Greene (1990) 100 NC App 96, 394 SE2d 691, review gr (NC) 402 SE2d 420 and review gr 328 NC 93, 402 SE2d 419 and affd in part and revd in part on other grounds, remanded 329 NC 603, 407 SE2d 497 (construing N.C.G.S. § 20-279.21)

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

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

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

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

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

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

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

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

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

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

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

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

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

Va -- Travelers Indem. Co. v Wells (1962, WD Va) 209 F Supp 784, revd on other

grounds (CA4, Va) 316 F2d 770 (construing Va. Code Ann. § 38.1-381 (recodified as § 38.2-2206))

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

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

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

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

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

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

11. THIS COURT SHOULD RE EXAMINE AND OVERRULE LANGUAGE THAT PERMITTED A COLLATERAL SOURCE REDUCTION FOR WORKER'S

COMPENSATION BENEFITS IN A GEORGIA U/M POLICY

GTLA is aware of the contrary language in the case of Northbrook Property & Casualty Insurance Company v. Merchant, 215 Ga. App. 273, 450 S.E. 2d 425 (1994).

> *Georgia's legislature and appellate courts have not addressed an insurer's liability for the payment of uninsured motorist benefits to be offset by an individual's entitlement to workers' compensation benefits. However, in Dacosta v. Allstate Ins. Co., 188 Ga.App. 10, 372 S.E.2d 7 (1988), we held that the enforcement of a Tennessee statute which provided for a setoff of uninsured motorist benefits based upon the payment of workers' compensation benefits would not frustrate our State's public policy....The unambiguous terms of the policy at issue provide for the offset of uninsured motorist benefits based upon the workers' compensation benefits to which the insureds are entitled, and this limitation in liability is not precluded by statute or contrary to the public policy of this State.* Id at 275. (Emphasis Added)

Although in 1994 Georgia's U/M statute may not have precluded a collateral source reduction provision in an U/M policy, the current Georgia U/M statute found in O.C.G.A. section 33-7-11(i) does not permit such a collateral source reduction provision in an U/M policy. Such a collateral source reduction provision in an U/M policy violates Georgia's public policy found in Georgia's Collateral Source Rule.

The language in the more recent 2001 Georgia Court of Appeals case of Hudson v. Whited, 250 Ga. App. 451, 552 S.E. 2d 447 (2001) supports GTLA's position that any collateral source reduction provision that hinders the insured's ability to recover all sums which the insured is entitled to is unenforceable.

> *Here, in contrast, enforcing the provision would not protect the insured as to his actual losses, and, as a result, the provision is precluded by statute and is contrary to the public*

> *policy of this State. In addition, the Johnson court considered Northbrook, along with the other Georgia cases which have dealt with the issue herein, and thereafter concluded that any provision which hinders the insured's ability to recover all sums which the insured is entitled to is unenforceable.* Id. at 454. (Emphasis Added)

Enforcing the collateral source reduction provision in the instant case has reduced a valid jury verdict in favor of the insured, a sum that the insured was entitled to recover, to zero.

12. CONCLUSION

Georgia's U/M statute found in O.C.G.A. Section 33-7-11(i) only permits a collateral source reduction provision for property damage of the insured and not for bodily injury of the insured. State Farm wants to rewrite Georgia's U/M Statute to permit a collateral source reduction provision for bodily injury of the insured.

This Court should overrule the contrary language in Northbrook Property & Casualty Insurance Company v. Merchant, 215 Ga. App. 273, 450 S.E. 2d 425 (1994) and its progeny. Such a collateral source reduction provision in an U/M policy violates Georgia's public policy found in Georgia's Collateral Source Rule.

This the ____ day of _____, 2006.

Respectfully submitted:

_____

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel of record in the foregoing matter with the attached document by depositing in the United States Mail copies of same in an envelope with sufficient postage thereon:

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This the ____ day of _____, 2006.

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