

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**JAMES P. BROWN and
LYNN BROWN,**

Appellant,

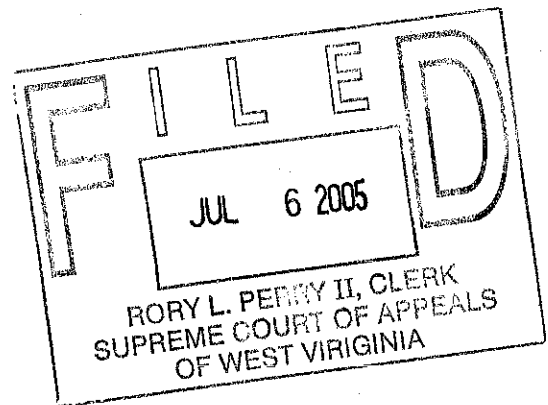
v.

APPEAL NO. 32566

SHELBY CASUALTY INSURANCE COMPANY,

Appellee.

APPELLEE'S BRIEF



Respectfully submitted by:

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I. STATEMENT OF THE CASE

On July 22, 2000, Dr. James P. Brown and Lynn Brown (collectively the "Appellants") were injured in an automobile accident in Fayette County, West Virginia (the "Accident"). At the time of the Accident, Dr. Brown maintained two insurance policies with Shelby Casualty Insurance Company ("Shelby"): 1) a \$100,000 / \$300,000 automobile liability policy with like amounts of uninsured and underinsured motorist coverage (the "Automobile Policy"), and 2) a \$1,000,000 personal liability umbrella policy (the "Umbrella Policy"). Notably, the Umbrella Policy provided coverage from April 15, 2000, to April 15, 2001, while the Automobile Policy provided coverage beginning just nine days before the Accident – from July 13, 2000, to January 13, 2001. See Personal Liability Umbrella Policy Renewal Declarations (attached as "Exhibit A") and Personal Auto Traditional Policy Renewal Declaration (attached as "Exhibit B"). At the time the Umbrella Policy was renewed, additional uninsured motorist ("UM") coverage and underinsured motorist ("UIM") coverage were not offered. UM and UIM coverage was, however, offered and accepted roughly three months later when the Automobile Policy was renewed.

Following the Accident, the Appellants received a pro-rata share of the \$100,000 available under the insurance policy covering the vehicle with which the Appellants collided. Additionally, the Appellants received the full \$100,000 available under the UIM provisions of the Automobile Policy. Notwithstanding these settlements, Dr. Brown brought suit against Shelby asserting his damages surpassed the amounts received and that, pursuant to West Virginia Code Section 33-6-31(b), Shelby was required to offer him like amounts of UM and UIM coverage at the time he purchased the Umbrella Policy. Thus, Dr. Brown asserted that his Automobile Policy should be revised to include up to \$1,000,000 of UM and UIM coverage. On

cross motions for summary judgment, the Circuit Court of Fayette County determined that Shelby had no duty to offer additional UM and UIM coverage at the time the Umbrella Policy was purchased. In so ruling, Judge Rowe relied on both the plain language of Section 33-6-31(b) and its legislative history.

II. DISCUSSION

At the time of the Accident, West Virginia Code Section 33-6-31 provided, in pertinent part, as follows:

(a) No policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle, shall be issued or delivered in this state to the owner of such vehicle, or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle for which a certificate of title has been issued by the division of motor vehicles of this state, . . . Provided, that in any such automobile liability insurance policy or contract, or endorsement thereto, if coverage resulting from the use of a non-owned automobile is conditioned upon the consent of the owner of such motor vehicle, . . .

(b) Nor shall any such policy or contract be so issued or delivered unless it shall contain an endorsement or provisions undertaking to pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, . . . Provided, that such policy or contract shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured or underinsured vehicle . . . Provided further, that such policy or contract shall provide an option to the insured with appropriately adjusted premiums to pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle up to an amount not less than limits of bodily injury liability insurance and property damage liability insurance purchased by the insured without setoff against the insured's policy or any other policy.¹

W. VA. CODE § 33-6-31.

¹ Although the latter portion of Section 33-6-31(b) was inadvertently excluded from the Appellee's Response to the Petition for Appeal, the oversight is insignificant for purposes of interpreting the statute. More specifically, the omitted section, like the remainder of subsection (b), refers to "such policy or contract" and is, therefore, analytically equivalent.

With their appeal, the Appellants contend that a personal liability umbrella policy falls within the rubric of § 33-6-31(b), thereby requiring Shelby to have offered UM and UIM coverage.² This Court, however, should affirm the Circuit Court's conclusion for six interrelated reasons. First, the plain language of West Virginia Code Section 33-6-31(b) does not apply to personal liability umbrella policies. This section applies only to an "automobile liability insurance policy or contract," which does not include a personal liability umbrella policy. Second, Section 33-6-31(b) is a "minimum liability" statute, meaning that it only requires insurers to provide minimum UM and UIM coverage and was not intended to provide an injured party with "full recovery." Thus, according to the analysis of outside jurisdictions that have considered this issue, Section 33-6-31(b) should not be construed to provide UM or UIM coverage here. Third, the legislative history of Section 33-6-31 reveals that subsection (b) did not and does not apply to personal liability umbrella policies. Fourth, the subsequent enactment of Section 33-6-31f, providing the exact requirements that the Appellants seek to impose here through Section 33-6-31(b), reveals that no such duty previously existed. Fifth, the authority advanced by the Appellants in the Petition for Appeal is legally deficient, and, as such, cannot justify the reversal of Judge Rowe's well-reasoned Order. Sixth and finally, the coverage Dr. Brown sought when purchasing the Umbrella Policy was never intended to provide a means of recovery for his personal injuries. For each of the foregoing reasons, the decision of the Circuit Court of Fayette County granting summary judgment in the Appellee's favor should be affirmed. Shelby will address each in turn.

² Pursuant to Bias v. Nationwide Mut. Ins. Co., where an insurer is required to offer optional UM or UIM coverage, such coverage "is included in the policy by operation of law when the insurer fails to prove an effective offer and a knowing and intelligent rejection of the coverage by the insured." 365 S.E.2d 789, 791 (W. Va. 1987).

A. The plain language of Section 33-6-31 indicates that it does not apply to umbrella policies.

Where “the language of an enactment is clear and within the constitutional authority of the law-making body which passed it, courts must read the relevant law according to its unvarnished meaning, without any judicial embroidery.” Syl. Pt. 4, State ex rel. Charles Town Gen. Hosp. v. Sanders, 556 S.E.2d 85 (W. Va. 2001); see also Syl. Pt. 2, State v. Elder, 165 S.E.2d 108 (W. Va. 1968) (holding that “where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation”).

Section 33-6-31 is entitled “Motor vehicle policy; omnibus clause; uninsured and underinsured motorists’ coverage; conditions for recovery under endorsement; rights and liabilities of insurer,” and, by its own terms, applies only to automobile liability insurance policies or contracts. Section 33-6-31(a) establishes that a certificate of title is a prerequisite for the purchase of a “policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle.” W. VA. CODE § 33-6-31(a). Although this language is unnecessarily broad, subsection (a) then clarifies its meaning, as it refers to “any *such* automobile liability insurance policy or contract.” Id. Then, in subsection (b), the legislature provides further clarification, mandating that when issuing “any *such* policy or contract,” insurers must offer the insured an option to adjust premiums to provide payment for all sums recoverable from the owner or operator of an uninsured or underinsured vehicle. W. VA. CODE § 33-6-31(b). Because the preceding type of “policy or contract” referred to in the statute was “any such automobile liability insurance policy or contract,” the reference in subsection (b) to “any *such* policy or contract” can apply only to automobile liability insurance policies or contracts.

The Appellants contend that the reference in subsection (b) to “such policy or contract” can only refer to the “arising from the ownership, maintenance or use of a motor vehicle” language contained in subsection (a). This contention is, of course, undermined by the fact that the insurance policy to which subsection (a) last refers is “any such automobile liability insurance policy or contract.” Because subsection (b) references “any *such* policy or contract” – which unambiguously directs a reader to the last policy or contract referenced – it can only refer to “any such automobile liability insurance policy or contract.” See BLACK’S LAW DICTIONARY 1163 (7th ed. 1999) (defining “such” as “that or those; having just been mentioned”). Here, the policy or contract that was just mentioned was “any such automobile liability insurance policy or contract;” thus, subsection (b) applies only to automobile liability insurance policies or contracts, which the Umbrella Policy is not.

When reading Section 33-6-31 as a whole, it is clear that the legislature only intended to address automobile liability insurance policies. Indeed, as this Court has recognized, “the Legislature did not intend that the strict requirements of W. Va. Code § 33-6-31(b) apply to every policy of insurance issued in the State of West Virginia.” Cook v. McDowell County Emergency Ambulance Serv. Auth., Inc., 445 S.E.2d 197, 201 (W. Va. 1994). And because the policy at issue here is a personal liability umbrella policy, not an automobile liability insurance policy, subsection (b) did not require Shelby to offer uninsured and underinsured motorist coverage. The Appellants’ contrary assertion would compromise the clearly expressed legislative intent of Section 33-6-31 and broaden its reach far beyond its contemplated bounds. See Sanders, 556 S.E.2d at 92 (providing that a court may venture beyond the bounds of a statute’s plain language only where there exists clear legislative intent to the contrary or where literal application would defeat the statutory purpose or lead to absurd results).

The Appellants' contention that subsection (b) applied to umbrella policies is likewise undermined by the existence and application of Section 33-6-31d. It provides that "optional limits of uninsured coverage and underinsured motor vehicle coverage required by section thirty-one [33-6-31] of this article shall be made available . . . on a form prepared and made available by the insurance commissioner." W. VA. CODE § 33-6-31d (1993). At the time of the Appellants' accident, the West Virginia insurance commissioner, Hanley C. Clark, had sent "Informational Letter Number 88" to all property and casualty companies licensed to do business in West Virginia, instructing that the forms attached thereto should be used "when selling policies of motor vehicle coverage." See Affidavit of Hanley C. Clark at 3-4. However, "insurers were not instructed to use the form with the sale of excess liability coverage," as Clark did not contemplate the application of Section 33-6-31(b) to excess or umbrella-type policies.³ Id. Although he was intimately involved in the enactment of Section 33-6-31d, Clark first considered this issue in the latter part of 2000, more than seven years after Section 33-6-31d became effective.⁴ Id. Thus, if insurers were required to offer UM and UIM coverage when selling umbrella policies, they could not have done so within the requirements of Section 33-6-31d, as the required form was not available.

It is the duty of this Court "to avoid whenever possible a construction of a statute which leads to absurd, inconsistent, unjust or unreasonable results." State v. Kerns, 394 S.E.2d 532, 537 (W. Va. 1990). The Appellants' suggested interpretation of Section 33-6-31(b) is manifestly unjust and patently unreasonable. The legislature enacted Section 33-6-31(b) to cover underlying automobile policies, not umbrella policies, and Shelby reasonably relied on both the

³ Clark's interpretation of the statute was likely influenced by the fact that Section 33-6-31d specifically refers to "any insurer who issues a *motor vehicle insurance policy*." Thus, because an umbrella policy is not a "motor vehicle insurance policy," Section 33-6-31 does not, by its plain language, apply to umbrella policies.

⁴ Hanley C. Clark also presented undisputed testimony to the trial court on July 7, 2002, that was consistent with his

plain language of the Section and the insurance commissioner's accurate interpretation of it. Thus, to impose upon Shelby a retroactive duty to offer UM and UIM coverage at the time umbrella policies were purchased is blatantly unjust.

Shelby, therefore, requests that the Court affirm the ruling of the Circuit Court of Fayette County.

B. Because Section 33-6-31 is a "minimum liability" statute, Shelby was not required to offer UM or UIM coverage.

Although this Court has not been previously presented this issue, numerous other jurisdictions have addressed it, and the results have been mixed. Even so, it appears that the distinction among the jurisdictions has been dependent upon the type of coverage mandated. For example, the Supreme Courts of New Jersey and Indiana have explained that states with minimum liability statutes – requiring insurers to provide UM and UIM coverage at minimum levels – have typically found that umbrella policies do not provide UM or UIM coverage, even where such statutes provide that insureds may purchase greater coverage up to a defined level. See Doto v. Russo, 659 A.2d 1371, 1375 (N.J. 1995) (concluding that insurer not required to provide UM or UIM coverage through umbrella policy); United National Ins. Co. v. DePrizio, 705 N.E.2d 455, 461 (Ind. 1999) (concluding that insurer required to offer UM and UIM coverage when tendering an umbrella policy). The fact that New Jersey and Indiana agree on the analytical framework for this issue is quite significant, as these two jurisdictions represent the opposing sides of this issue.

In rendering its opinion, the Supreme Court of Indiana first explained the history of Indiana's "Uninsured Motorist Statute," recognizing that the statute originally required only that

affidavit.

insurers offer UM coverage in an amount equivalent to Indiana's minimum financial responsibility requirements. DePrizio, 705 N.E.2d at 460. However, a subsequent amendment mandated that insurers not merely offer such coverage, but that it be provided in an amount equal to, but not greater than, the minimum financial responsibility requirements of the insured's policy. Id. Following this amendment, the court concluded that the purpose of the statute was to "put injured parties in the same position they would have been had the tortfeasor complied with our financial responsibility law." Id. (citing City of Gary v. Allstate Ins. Co., 612 N.E.2d 115, 117 (Ind. 1993)). Subsequently, the statute was again amended and provided that insurers must provide – not merely offer – coverage in limits equal to the limits of liability specified in the bodily injury and property damage provisions of an insured's policy. Id. Additionally, the revised statute also allowed insureds "to purchase coverage in excess of those limits, *transforming the act into a 'full recovery' statute.*" Id. (emphasis added).

It was against this backdrop that the Supreme Court of Indiana concluded that umbrella policies must provide UM and UIM coverage.⁵ The statutory context presented to this Court, however, is decidedly different, as Section 33-6-31(b) was a minimum liability statute. More specifically, it mandated only that an insured be provided with the minimum levels of UM and

⁵ In full, the Supreme Court of Indiana's explanation of the distinction between minimum liability and full recovery statutes was as follows:

In states with minimum liability statutes – mandating that insurers provide uninsured and underinsured coverage at minimum levels, usually the amount required by a state's financial responsibility law – courts have typically found that the relevant statutes do not require that umbrella policies provide uninsured and underinsured coverage. The same is true of several minimum liability jurisdictions where the relevant statutes provide methods to increase the statutory minimum. Some courts reason that because the legislative purpose of these statutes is satisfied when policies compensate the victim to the same extent as they would have been had the tortfeasor had complied with the minimum requirements of the state's financial responsibility laws, application of the statute to underlying policies is sufficient. . . . Other courts rely on what they find to be the fundamental difference between umbrella policies and automobile liability policies.

DePrizio, 705 N.E.2d at 461-62 (internal quotation marks and citations omitted).

UIM coverage. See W. VA. CODE § 33-6-31(b). Furthermore, the options to purchase UM and UIM coverage in amounts greater than the minimum liability requirements were limited to the extent of the bodily injury liability insurance and property damage liability insurance purchased by the insured. *Id.* (providing that “such policy or contract” must provide an option to “pay the insured all sums which he shall be legally entitled to recover as damages from the owner or operator of an uninsured or underinsured motor vehicle *up to an amount* not less than the limits of bodily injury liability insurance and property damage liability insurance purchased by the insured”). Because Section 33-6-31(b) mandated only that an insured be *provided with minimum levels* of UM and UIM coverage and because the options to purchase additional UM and UIM coverage were limited to the extent of the bodily injury and property damage purchased by the insured, this statute is a “minimum liability” statute and does not provide for “full recovery.” Therefore, Section 33-6-31(b) should not require insurers to offer UM and UIM coverage when selling umbrella policies.⁶

⁶ Admittedly, many cases do not rely on the “minimum liability” versus “full recovery” dichotomy, as numerous opinions have been rendered merely on the plain language of the statute at issue, its legislative history, the obvious distinction between umbrella and automobile liability policies, or other relevant factors. Compare Progressive American Ins. v. Vasquez, 515 S.E.2d 8, 9 (N.C. 1999); Jalas v. State Farm Fire & Casualty Co., 505 N.W.2d 811 (Iowa 1993); Trinity Universal Ins. Co. v. Metzger, 360 So.2d 960 (Ala. 1978); Cincinnati Ins. Co. v. Miller, 546 N.E.2d 700 (Ill. App. 1989); Archunde v. Inter. Surplus Lines Ins., 905 P.2d 1128 (N.M. 1995); Continental Ins. Co. v. Howe, 488 So.2d 917 (Fla. App. 1986) (applying Rhode Island law); MacKenzie v. Empire Ins. Co., 782 P.2d 1063 (Wash. 1989); O’Hanlon v. Hartford Accident & Indem. Co., 639 F.2d 1019 (3d Cir. 1981) (applying Delaware law); Moser v. Liberty Mut. Ins. Co., 731 P.2d 406 (Okla. 1986); Matarasso v. Continental Casualty Co., 440 N.Y.S.2d 40 (N.Y.App.Div. 1981); Popham v. State Farm Ins. Co., 634 A.2d 28 (Md. 1993) (finding that umbrella policies need not provide UM or UIM coverage) with Estate of Delmue v. Allstate Ins. Co., 936 P.2d 326 (Nev. 1997); Ormsbee v. Allstate Ins. Co., 859 P.2d 732 (Ariz. 1993); Aetna Casualty & Surety Co. v. Green, 327 So. 2d 65 (Fla. App. 1976); St. Paul Fire & Marine Ins. Co. v. Goza, 224 S.E.2d 429 (Ga. App. 1976); Bartee v. R.T.C. Transp. Inc., 781 P.2d 1084 (Kan. 1989); Southern American Ins. Co. v. Dobson, 441 So.2d 1185 (La. 1983); Duriak v. Globe American Casualty Co., 502 N.E.2d 620, 623 (Ohio 1986); American Economy Insurance Co. v. Canamore, 834 P.2d 542 (Or. App. 1992) (finding that umbrella policies must provide UM and UIM coverage). Even so, the most thorough opinions seem to have, at least, considered the rationales for the varying decisions. Thus, Shelby submits that the articulated framework is appropriately considered, should this Court determine that its analysis must move beyond the language of Section 33-6-31(b). Notably, however, some decisions provide that umbrella policies should nonetheless be excluded from full recovery statutes. See, e.g., Stoumen v. Public Serv. Mut. Ins. Co., 834 F.Supp. 140, 142 (excluding umbrella policies from uninsured motorist statute, despite the fact that the statute provided for “full recovery”). For further treatment of this issue, see Lisa K. Gregory, Annotation, “Excess” or “Umbrella” Insurance Policy as Providing Coverage for Accidents with Uninsured or Underinsured

C. Even if Section 33-6-31(b) is ambiguous, examination of the legislative history reveals that it was intended only to apply to automobile liability insurance policies.

Section 33-6-31(b), as modified by subsection (a), applies only to automobile liability policies; thus, it is unnecessary to go beyond the face of the statute for interpretation. However, consideration of the legislative, administrative, and public records only further reveals that Section 33-6-31(b) was not intended to require insurers to offer uninsured and underinsured motorist coverage in connection with the purchase of excess or umbrella-type personal liability policies.

When faced with this issue, Judge Rowe requested that the parties brief the legislative history of Section 33-6-31. Counsel for each side thereafter presented the court with a supplemental memorandum addressing the relevant legislative history. Thus, as is revealed by the substantial record created below, the Circuit Court had an abundance of information on which to base its decision. After carefully considering the requested materials, Judge Rowe concluded that Section 33-6-31(b) did not require insurers to offer uninsured and underinsured motorist coverage in connection with the purchase of an umbrella policy. See Order of Circuit Court of Fayette County (July 21, 2004) (the "Order") at 7-8. In so concluding, the Circuit Court found the following portions of the legislative record particularly instructive:

1. Senate Bill No. 43, passed March 7, 1967, entitled "AN ACT to amend article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as thirty-one, **relating to provisions in a motor vehicle liability policy and requiring that such policies include an omnibus clause and coverage for loss by uninsured motorists.**" Subpart (a) of Section 31 contains this language, "Provided that in **such automobile liability insurance policy or contract.**" (Emphasis added)
2. House Bill No. 730, passed March 9, 1972, in which the title states "AN ACT to amend and reenact section thirty-one, article six, chapter thirty-

Motorists, 2 A.L.R.5th 922 (1992).

three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to uninsured motorist insurance coverage.”

3. House Bill 1351, passed March 10, 1979, entitled “AN ACT . . . all relating to the motor vehicle safety responsibility law; requirements as to policy or bond; proof of financial responsibility; motor vehicle liability insurance; policy limits; uninsured motorist coverage; conditions of recovery; rights and liabilities of insurer; rates.” This enactment further defined “Motor vehicle liability policy” for purposes of Chapter 17D to mean “owner’s policy” or an “operator’s policy” of liability insurance certified as proof of financial responsibility.
4. Committee Substitute for Senate Bill 288, passed March 13, 1982, entitled “AN ACT . . . to amend and reenact section thirty-one, article six, and section one, article six-a, chapter thirty-three of said code, all relating to motor vehicle insurance or other security; requirement of minimum level of security for registration and operation of a motor vehicle in this state; . . . ; providing for ten days’ notice to insured upon cancellation of automobile liability policy for failure of consideration upon initial insurance of policy.
5. Committee Substitute for Senate Bill 86, passed March 12, 1988, entitled “AN ACT to amend and reenact section thirty-one, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, **relating to motor vehicle insurance**; omnibus clause; . . . and mandatory liability requirement of section two, article four, chapter 17(d) of the code.” (Emphasis added).
6. House Bill 2580, passed April 10, 1993, entitled “AN ACT to amend article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-one-c; and to amend article twelve of said chapter by adding thereto a new section, designated section thirty, all relating to uninsured and underinsured insurance coverage.” Part (a) of the Section 31c states “Optional limits of uninsured motor vehicle coverage and underinsured motor vehicle coverage required by section thirty-one of this article shall be made available to the named insured at the time of initial application for liability coverage . . .” “The contents of the form shall . . . specifically inform the named insured of the coverage offered and the rate calculation therefore, including, but not limited to, . . . the **number of vehicles** which will be subject to the coverage.” Subpart (b) states “Any insurer who issues a **motor vehicle insurance policy** in this state shall provide the form to each person who applies for the insurance . . . Subpart (c) states “Any insurer who has issued a **motor vehicle insurance policy** in this state which is in effect on the effective date of this section . . . (Emphasis added)

7. Senate Bill 309, passed March 8, 1995, entitled "AN ACT to amend and reenact section thirty-one, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the determination of the total amount of coverage available to an insured." This provided for equal treatment of motor vehicle coverage offered and provided through a multiple motor vehicle insurance policy or contract or in separate single vehicle insurance policies or contracts be treated alike.
8. Senate Bill 191, passed March 12, 1998, entitled "AN ACT to repeal section thirteen, article four, chapter seventeen-c of the code of West Virginia . . . and to amend and reenact section thirty-one, article six, chapter thirty-three of said code, all relating to repealing the requirement that accident reports be confidential; revising accident reporting requirements, revising accident report forms; revising reporting requirements to the commissioner of motor vehicles **under certain motor vehicle insurance policies.**" This amendment deleted the requirement of the insured to report the occurrence of an accident to the commissioner of motor vehicles as was contained in subsection (e) (i). (Emphasis added).
9. House Bill 2970, approved May 2, 2001, entitled "AN ACT to amend article six, chapter thirty-three of the code of West Virginia, . . ., by adding thereto a new section, designated thirty-one-f, relating to exempting excess or umbrella policies of insurance from having to offer, provide or make available uninsured and underinsured motorist coverage. This act required insurers issuing or providing liability policies that are of excess or umbrella-type shall offer uninsured and underinsured motorist vehicle coverage on such policies in an amount not less than the amount of liability insurance purchased by the named insured and required offers of such option coverage be made to the named insured on a form prepared and made available by the insurance commissioner.⁷

See Order at 4-6.

Additionally, Hanley C. Clark's affidavit was presented to the Court, and it likewise indicated that the legislature did not intend Section 33-6-31(b) to apply to excess or umbrella-type policies. Clark was involved in the enactment of House Bill 2580, which later became Section 33-6-31d. See Affidavit of Hanley C. Clark at 3. Following its adoption and pursuant to his duties as the West Virginia Insurance Commissioner, he drafted an informational letter to all

⁷ Shelby will specifically address the enactment of Section 33-6-31f in Section D of this Brief. See infra 14-16.

property and casualty insurance companies licensed in this state; included with this letter were forms to be used by insurers in carrying out their duties under Section 33-6-31(b). Id. at 3-4. Clark did not, however, instruct insurers to use the forms in connection with the purchase of umbrella policies, as “it was not the intent of the Legislature to mandate offerage of underinsured motorist coverage on excess liability policies. If the Legislature did not discuss and address the application of the provisions contained in Section 33-6-31 and 31d, it could not have intended its application.” Id. at 4.

Although Clark attended numerous meetings with representatives of the “plaintiffs’ bar” and the insurance industry, he had not been presented with the notion that Section 33-6-31(b) may apply to umbrella policies until “the latter part of 2000.” Id. at 3-4. Then, after considering the issue, Clark “determined that the mandatory motor vehicle offerage and coverage provisions set forth in Sections 31 and 31d did not apply by statute to excess liability coverage.” Id. at 5. Thus, it is clear that those closest to the enactment of the statutory sections at issue did not perceive any ambiguity; rather, it was commonly understood that Section 33-6-31(b) applied only to automobile liability insurance policies.⁸ However, even if an ambiguity exists, Clark’s construction of Sections 33-6-31(b) and 33-6-31d is entitled to great weight. See Syl. Pt. 4, Pennsylvania & West Virginia Supply Corp. v. Rose, 368 S.E.2d 101 (W. Va. 1988) (providing that the construction of an ambiguous statute by the officers charged with its execution is entitled to great weight).

A careful examination of the legislative history of Section 33-6-31 reveals that subsection (b) was not intended to require insurers to offer uninsured or underinsured motorist coverage when providing an umbrella policy. Thus, the plain language of Section 33-6-31, buoyed by the

⁸ Likewise, the West Virginia Trial Lawyers’ Association considered Sections 33-6-31(b) and 33-6-31d and did not identify umbrella policies as a source of uninsured or underinsured motorist coverage. See Shelby’s Supplemental

underlying legislative history, indisputably reveals the propriety of the Circuit Court's conclusion. Shelby, therefore, respectfully requests that this Court affirm that decision.

D. A change in the law must be presumed by the subsequent enactment of Section 33-6-31f.

By its plain language, Section 33-6-31(b) does not impose a duty on an insurer to offer uninsured or underinsured motorist coverage on umbrella policies. On May 2, 2001, however, the West Virginia legislature amended Section 33-6-31 by adding Section 33-6-31f, entitled "Uninsured and underinsured motorists' coverage optional on umbrella and excess type liability policies." W. VA. CODE § 33-6-31f (2001). In pertinent part, Section 33-6-31f provides:

(a) Notwithstanding any other provisions of this article, insurers issuing or providing liability policies that are of an excess or umbrella type and which are written to cover automobile liability shall offer uninsured and underinsured motor vehicle coverage on such policies in an amount not less than the amount of liability insurance purchased by the named insured: Provided, That the named insured may decline any or all of the coverage offered under the excess or umbrella type policy.

Id. Thus, effective July 13, 2001, insurers must offer, at the time of purchase of an umbrella policy covering automobile liability, like amounts of uninsured or underinsured motorist coverage. Obviously, this enactment cures any potential ambiguity within the statute for future cases; however, it also definitively decides the present issue.

When interpreting an ambiguous statute, a court may discern the legislature's intent by considering other statutes that are *in pari materia*. Syl. Pt. 1, State v. Epperly, 65 S.E.2d 488, 491 (W. Va. 1951); Berkeley County Pub. Serv. Sewer Dist. v. West Virginia PSC, 512 S.E.2d 201, 209 (W. Va. 1998). Under this canon of construction, "statutes which relate to the same subject matter should be read and applied together so that the Legislature's intention can be gathered from the whole of the enactments." Syl. Pt. 3, ACF Indus. v. Credithrift of America,

312 S.E.2d 746 (W. Va. 1983). Moreover, this canon is most often applicable to “those statutes relating to the same subject matter which are passed at the same time or refer to each other or *amend each other.*” Leary v. McDowell County Nat’l Bank, 552 S.E.2d 420, 426 (W. Va. 2001) (emphasis added). Nevertheless, where statutes address the same subject matter, they must be read and applied together, whether passed simultaneously or with reference to one another. See Syl. Pt. 1, State ex rel. Schroath v. Condry, 83 S.E.2d 470 (W. Va. 1954) (providing that statutes *in pari materia* must be read together even if passed at different times); Fruehauf Corp. v. Huntington Moving & Storage, 217 S.E.2d 907, 911 (W. Va. 1975) (providing that such statutes must be read together regardless of whether reference is made by one to the other).

Pursuant to the foregoing, this Court should consider the enactment and content of Section 33-6-31f when interpreting the meaning of Section 33-6-31(b), as “a court should not limit its consideration to any single part, provision, section, sentence, phrase or word, but rather review the act or statute in its entirety to ascertain legislative intent properly.” Syl. Pt. 5, Fruehauf Corp., 217 S.E.2d at 907. Here, Section 33-6-31(b) and Section 33-6-31f each regulate the insurance industry in West Virginia, and each is contained with Article Six of Chapter 33 of the West Virginia Code. Furthermore, both Sections specifically relate to an insurer’s offer of uninsured or underinsured motorist coverage to their insureds. Thus, although Section 33-6-31f was enacted years after Section 33-6-31(b), the statutes must be applied together as though enacted at the same time. See Syl. Pt. 1, Owens-Illinois Glass Co. v. Battle, 154 S.E.2d 854 (W. Va. 1967) (providing that “statutes relating to the same subject matter, whether enacted at the same time or at different times, and regardless of whether the later statute refers to the former statute, are to be read and applied together as a single statute the parts of which had been enacted at the same time”).

Any ambiguity in the language of Section 33-6-31(b) is resolved by application of the *in pari materia* doctrine. Section 33-6-31f specifically requires insurers to offer uninsured and underinsured motorist coverage in like amounts upon purchase of an umbrella-type policy. Nevertheless, the Appellants assert that this requirement already existed pursuant to Section 33-6-31(b), thereby rendering Section 33-6-31f an exercise in legislative redundancy. The legislature, however, “must be presumed to know the language employed in former acts, and, if in a subsequent statute on the same subject it uses different language in the same connection, the court must presume that *a change in the law was intended.*” Arnold v. Turek, 407 S.E.2d 706, 710 (W. Va. 1991) (citations omitted).

In drafting Section 33-6-31f, the legislature used different language (“policies that are of an excess or umbrella type”) in the same context (applying to the optional provision of uninsured and underinsured motorist coverage) in a subsequent statute on the same subject. Thus, this Court must presume that a change in the law was intended and that no similar duties existed under Section 33-6-31(b). Because this conclusion is consistent with the Order of the Circuit Court of Fayette County, Shelby respectfully asserts that the Order should be affirmed.

E. The contrary case law relied upon by the Appellants contains incomplete analysis.

In their Brief, the Appellants rely *exclusively* on Judge Copenhaver’s unpublished opinion in Walker-Harrah v. Liberty Mutual Insurance Comp.⁹ and Judge Recht’s opinion in Skiles v. American National Property and Casualty Ins. Co.¹⁰ Each decision specifically addresses the issue presented here and concludes that Section 33-6-31(b) required insurers to offer uninsured and underinsured motorist coverage when providing umbrella-type personal

⁹ Civil Action No. 2:97-1265, United States District Court for the Southern District of West Virginia (September 29, 2000).

liability policies. Careful consideration of each opinion, however, reveals that each was rendered without fully and appropriately analyzing the issue.

In Walker-Harrah, Judge Copenhaver relied on the plain language of Section 33-6-31(b) and concluded that “the statute affords no distinction between automobile liability insurance policies and umbrella policies. Had the legislature intended to exclude umbrella policies from the statutory application, it could have done so.” Walker-Harrah at 27. As was previously explained, however, Section 33-6-31(b) applies only to “automobile liability insurance policies or contracts,” as it is modified by subsection (a). See supra Section A at 3-5 (explaining that subsection (b) refers only to “such policy or contract,” which directs a reader to the most recently referenced type of “policy or contract”). This analysis is completely lacking from Walker-Harrah, as it fails to even consider subsection (a). See Walker-Harrah at 23-31. Likewise, Walker-Harrah does not address Section 33-6-31d, which requires the Insurance Commissioner to provide forms pertaining to the offer of coverage pursuant to Section 33-6-31. Thus, as recognized by the Circuit Court, the narrow reading of Section 33-6-31(b) in Walker-Harrah improperly disregards relevant language of Section 33-6-31.¹¹ See Order at 3. As such, Walker-Harrah violates the previously expounded canon of construction *in pari materia*. See Syl. Pt. 5, Fruehauf Corp., 217 S.E.2d at 907 (providing that a court “should not limit its consideration to any single part, provision, section, sentence, phrase or word, but rather review the act or statute in its entirety to ascertain legislative intent properly”).

Furthermore, Walker-Harrah was decided prior to the enactment of Section 33-6-31f. Thus, in consideration of this case, Judge Rowe had the benefit of examining conclusive

¹⁰ Civil Action No. 00-C-116, Circuit Court of Brooke County, West Virginia (December 13, 2001).

¹¹ In fact, the analysis in Walker-Harrah did not extend beyond the language of Section 33-6-31(b), as no other provision of Section 33-6-31 was even cited. See Walker-Harrah at 23-31. Because subsection (b) itself references “any *such* policy or contract,” this abbreviated analysis was clearly erroneous.

evidence of the legislature's intent. Again, Section 33-6-31f provides the exact relief requested by the Appellants; thus, if this relief was previously available pursuant to Section 33-6-31(b), Section 33-6-31f was completely unnecessary. The Appellants, therefore, must necessarily contend that no change in the law was intended and that the law prior to the enactment of Section 33-6-31f was identical to the law as it stands today. This contention, however, is contrary to the rules of statutory construction.

Finally, although Walker-Harrah cites many cases from other jurisdictions that had addressed this issue, the analysis is limited only to a string citation. Indeed, Judge Copenhaver failed to attempt to discern the distinction drawn between the various jurisdictions. As explained above, this distinction is extremely significant, as it illustrates that Section 33-6-31(b) is merely a minimum liability statute, which should therefore abrogate any requirement that umbrella policies provide UM or UIM coverage. Thus, because Walker-Harrah was decided only on the language of Section 33-6-31(b), because other relevant and instructive language was both disregarded and not-yet-available, and because relevant analysis was wholly disregarded, Walker-Harrah should be afforded very limited persuasive authority.

Likewise, the persuasive authority of Skiles is minimal. In finding that insurers were required to offer UM and UIM coverage when selling umbrella policies, Skiles relies on: "1) Judge Copenhaver's reasoning in Walker-Harrah, 2) the various cases relating to the rules of statutory construction, and 3) the reasoning in Youler." Skiles at 5. Each pillar underlying Skiles is, however, wrought with deficiencies. First, as explained above, Walker-Harrah did not consider Section 33-6-31(b) within the broader statutory context of Section 33-6-31. Thus, it did not weigh the effects of subsection (a) or Section 33-6-31d on the interpretation of subsection (b). Moreover, Walker-Harrah was decided before the enactment of Section 33-6-31f, which

definitively reveals that Section 33-6-31(b) did not apply to umbrella policies, and it failed to properly consider the relevant persuasive authority.

Second, although Skiles properly sets forth three canons of construction relating to the *in pari materia* rule, it errs in applying the canons. As explained in Sections A and D of this Brief, when considering Section 33-6-31 as a whole, one must conclude that Section 33-6-31(b) does not apply to umbrella policies. Otherwise, Section 33-6-31f would be redundant and unnecessary, a conclusion prohibited by the very canons that Skiles recites.

Third and finally, Skiles relies on the reasoning of State Auto. Mut. Ins. Co. v. Youler, 396 S.E.2d 737 (W. Va. 1990). In Youler, this Court determined that additions to Section 33-6-31(b) prohibiting setoffs of a tortfeasor's liability insurance coverage against the injured person's underinsured motorist coverage limits merely clarified the legislature's original intent under subsection (b). See id. at 750. Here, however, the legislature enacted an entirely new section, Section 33-6-31f, and directed its function to an entirely different class of insurance policies. Therefore, although some subsequent enactments may correctly be interpreted as clarification to then-existing law, the Court is not currently presented with such an instance.

Because the authority relied upon by the Appellants contains incomplete and incorrect analysis, Shelby requests that this Court affirm the Circuit Court of Fayette County.

F. Because the relief requested is contrary to the policy purchased and because any deficiency could have been corrected when the Automobile Policy was renewed three months after the Umbrella Policy was renewed, the Circuit Court should be affirmed.

Finally, it is important to bear in mind the factual circumstances of this case. In April of 2000, the Umbrella Policy was renewed; notably, the Umbrella Policy excludes coverage for "bodily injury or personal injury to you or any family member." See Umbrella Policy at 5 of 8.

Furthermore, the Umbrella Policy specifically provides that Shelby does “not provide Uninsured Motorists coverage, Underinsured Motorists coverage, or any similar coverage unless this policy is endorsed to provide such coverage.” *Id.* at 6 of 8. Then, in July of 2000, the Automobile Policy was renewed and provided for UM and UIM coverage of \$100,000 / \$300,000. Thus, given that the Umbrella Policy specifically excludes UM and UIM coverage and because the Automobile Policy renewal date was merely nine days before the Accident, Dr. Brown cannot credibly maintain that he did not have the opportunity to purchase the currently-requested limits of UM and UIM coverage.

Moreover, according to the final provision of Section 33-6-31(b) – which is the provision that ironically underlies the present dispute – any offer of UM or UIM coverage at the time the Umbrella Policy was purchased must have been limited to the “the bodily injury liability insurance and property damage liability insurance purchased by the insured.” Thus, even if Shelby had the duty to offer such coverage when the Umbrella Policy was purchased, the offer would have been futile, as Dr. Brown had already purchased UM and UIM coverage in such amounts.

Notwithstanding the foregoing, Section 33-6-31(b) should not be interpreted to require insurers to offer UM and UIM coverage when selling umbrella policies, as the aims of such policies are wholly inconsistent. As the Supreme Court of New Jersey has explained:

Because umbrella policies are intended simply to provide comprehensive excess liability coverage, the purpose of umbrella coverage is fundamentally different from a primary automobile-liability policy. . . . Typically, umbrella policies are intended to provide liability insurance against claims made against the insured by third-parties, and are not intended to provide the insured with a first-party source of recovery.

Doto, 659 A.2d at 1374.¹² Here, the distinctions between these two competing policies is dramatically underscored. Dr. Brown did not purchase the Umbrella Policy in order to provide a separate and distinct means of recovery for his own losses – indeed, the Umbrella Policy specifically excludes such recovery. Rather, the Umbrella Policy was purchased to protect Dr. Brown in the event that a third-party sought recovery from him. Indeed, had Dr. Brown intended or interpreted the Umbrella Policy to provide recovery *to him* for his personal injuries, then Shelby must question why no such claim was ever made against it.

Finally, in Progressive American Insurance v. Vasquez, the Supreme Court of North Carolina considered the exact issue presented here.¹³ In its words, the court determined whether the North Carolina Financial Responsibility Act “requires a commercial excess liability policy to

¹² The Eastern District of Pennsylvania has also recognized the varying purposes of the umbrella policies versus automobile liability policies, stating:

The arguments in favor of excluding umbrella policies from uninsured motorist statutes are substantial. First, umbrella policies insure the policy holder in general, rather than a particular automobile within the state. See Trinity Universal Ins. Co. v. Metzger, 360 So. 2d 960, 962 (Ala. 1978). In fact, not only is it immaterial where the insured's car is kept, car ownership is immaterial. In either case, the insurance company will issue the insured a policy. Thus, the court finds that umbrella policies are not issued "with respect to a[] motor vehicle registered or principally garaged in this Commonwealth" § 1731(a). Second, umbrella policies' *raison d'etre* is to provide individuals with affordable protection against excess judgments of third parties, rather than provide individuals with automobile insurance. See MacKenzie v. Empire Ins. Co., 113 Wash. 2d 754, 782 P.2d 1063, 1065 (Wash. 1989) (citing 8C J. Appleman, *Insurance* § 5071.65 at 107 (1981)). This fundamental difference is underscored by the difference in premiums that an insurance company charges for the two types of policies. Due to the relative risks associated with each, the premiums that insurance companies charge for umbrella insurance are substantially lower than the premiums they charge for automobile insurance. See Metzger, 360 So. 2d at 962. Third, the amount of coverage provided by umbrella policies is far greater than the coverage provided in the typical automobile insurance policy. Thus, if the Court were to adopt the plaintiff's position, a motorist holding an umbrella policy would actually be better off if he became involved in an accident with an uninsured motorist because he could then submit a claim under his umbrella policy and receive millions of dollars in coverage.

Stoumen v. Public Serv. Mut. Ins. Co., 834 F. Supp. 140, 143 (E.D. Pa. 1993).

¹³ In so doing, the Court specifically distinguished Isehour v. Universal Underwriters Ins. Co., 461 S.E.2d 317 (N.C. 1995), a case on which Judge Copenhaver relied, in concluding that insurers had a duty to offer like amounts when selling excess or umbrella policies. See Vasquez at 13 (explaining that the issue in Isehour was how much UIM insurance was available under a predecessor statute, “not whether a separate and distinct policy of excess liability must also offer UM/UIM coverage”).

offer separate uninsured and underinsured motorist coverage in addition to what is offered by the underlying policy.” 515 S.E.2d 8, 9 (N.C. 1999). When faced with this issue, the court carefully examined the legislative history of the underlying statute. It also pointed out that under another statute, a “motor vehicle policy” of liability insurance must be certified as provided by additional statutes for proof of financial responsibility. *Id.* at 12. Most significant to this discussion, however, was Vazquez’s disposition of the public policy regarding compensating injured victims. Specifically, the court explained that

where there are separate and distinct underlying and excess liability policies, the legislature’s policy of providing some compensation to innocent victims who have been injured by financially irresponsible motorists is satisfied by requiring the underlying, primary policy to provide UIM coverage ‘equal to the highest limit of bodily injury . . . liability coverage for any one vehicle in the policy,’ where the insured has neither rejected UIM coverage nor selected a different coverage limit in the motor vehicle liability policy.

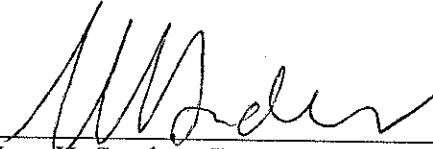
Id. at 13. Likewise, here, the West Virginia legislature’s goal of providing adequate compensation was wholly and adequately addressed by the requirement that insurers offer like amounts of UIM and UM coverage when selling a motor vehicle policy. And, because Dr. Brown had, indeed, purchased UM and UIM coverage up to the limits established in Section 33-6-31(b), the legislature’s concern that each insured be apprised of the availability of UM and UIM coverage was sufficiently addressed.

Thus, because the Umbrella Policy was never intended to provide a means of recovery to Dr. Brown and because the Legislature’s goal of providing adequate compensation to injured parties is met by the UM and UIM requirements of automobile policies, Shelby respectfully requests that this Court affirm the trial court’s disposition of the issue.

III. CONCLUSION

WHEREFORE, Shelby Casualty Insurance Company respectfully requests that this Court affirm the Circuit Court of Fayette County.

Respectfully submitted,



Mary H. Sanders, WVSB 3084
Brian J. Headley, WVSB 9667
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Insurance Company*

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P.O. Box 3786
Charleston, WV 25337
(304) 344-9869

EXHIBIT A

PX101 10/97

03/16/00 1
RENEWAL OF POLICY 8471246 JS 0935897

JS 0935897



PERSONAL LIABILITY UMBRELLA POLICY
RENEWAL DECLARATIONS * * * * EFFECTIVE 04/15/00

06

WV

IF YOU HAVE QUESTIONS, PLEASE CONTACT YOUR AGENT AT 304-847-2073

POLICY NUMBER JS 0935897	FROM 12:01 AM 04/15/00	POLICY PERIOD TO 12:01 AM 04/15/01	AGENCY SHELBY CASUALTY INSURANCE COMPANY 3760 RIVER RUN DR. BIRMINGHAM, AL 35244	P 847 124600
NAME INSURED AND ADDRESS BROWN, JAMES P P O DRAWER 407 CRAIGSVILLE WV 26205-0407		AGENT CENTRAL INSURANCE INC 142 E NORTH COURT SQUARE WEBSTER SPRINGS WV 26288		

WE WILL PROVIDE THE INSURANCE DESCRIBED IN THIS POLICY IN RETURN FOR THE PREMIUM AND COMPLIANCE WITH ALL APPLICABLE POLICY PROVISIONS. IF WE CONTINUE THIS INSURANCE, WE WILL RENEW THIS POLICY IF YOU PAY THE RENEWAL PREMIUM. RENEWALS ARE SUBJECT TO THE RATES, RULES AND FORMS THEN IN EFFECT.

WE REQUIRE YOU TO MAINTAIN UNDERLYING POLICIES FOR THE AMOUNTS SHOWN AS DEDUCTIBLE AMOUNTS. THESE DEDUCTIBLE AMOUNTS WILL APPLY EVEN IN THE EVENT THAT THE INSURER PROVIDING UNDERLYING INSURANCE IS OR BECOMES BANKRUPT OR INSOLVENT. A RETAINED LIMIT OF \$1,000 WILL APPLY TO EACH OCCURRENCE WHICH IS COVERED BY THIS POLICY BUT IS NOT COVERED BY UNDERLYING INSURANCE REQUIRED BY THIS POLICY

YOU AGREE THAT REQUIRED UNDERLYING INSURANCE POLICIES WILL BE MAINTAINED IN FORCE FOR ANY EXPOSURES WHICH EXIST.

SCHEDULE OF REQUIRED TYPES OF UNDERLYING INSURANCE AND REQUIRED UNDERLYING LIMIT

TYPES OF LIABILITY	RETAINED LIMIT	INSURING COMPANY	EXPOSURE	PREMIUM
RESIDENCE PREMISES	300,000	ANTHEM	01	\$ 65.00
AUTO COVERAGE	100/300	ANTHEM	01	\$ 25.00
WEST VIRGINIA SURCHARGE				\$ 1.00
TERRITORY 04	LIMIT OF LIABILITY \$1,000,000	MIN.	TOTAL PREMIUM	\$ 101.00

FORMS AND ENDORSEMENTS - PX-100 10/97 , IL7019 03/98 .

YOUR PREMIUM NOTICE WILL BE MAILED SEPARATELY. THIS IS NOT A BILL.

TOTAL TERM PREMIUM..... \$101.00

EXHIBIT B

AP 52 9/82

06/13/00 1
RENEWAL OF POLICY 8471246 R 6.5900

R 0905900



PERSONAL AUTO TRADITIONAL POLICY
RENEWAL DECLARATION * * EFFECTIVE 07/13/00

14

IF YOU HAVE QUESTIONS, PLEASE CONTACT YOUR AGENT AT 304-847-2073

POLICY NUMBER R 0905900	FROM 12:01 AM 07/13/00	POLICY PERIOD TO 12:01 AM 01/13/01	COVERAGE IS PROVIDED IN SHELBY CASUALTY INSURANCE COMPANY 3760 RIVER RUN DR BIRMINGHAM AL 35243	AGENCY 47 124600	P
NAME INSURED AND ADDRESS BROWN, JAMES P DDS PO DRAWER 407 CRAIGSVILLE WV 26205-0407			AGENT CENTRAL INSURANCE INC 142 E NORTH COURT SQUARE WEBSTER SPRINGS WV 26288		

AUTO	ST	TER	YR	MAKE-DESCRIPTION	SERIAL NUMBER	SYMBOL	CLASS	FACTOR
1	WV	031	97	DODG RAM PU2500	3B7NF23D2VM503857	19	8891114	1.18

INSURANCE IS PROVIDED WHERE A PREMIUM IS SHOWN FOR THE COVERAGE
LIMITS OF LIABILITY

			PREMIUMS
BODILY INJURY LIABILITY	\$100,000 EACH PERSON	AUTO 1	192.00
	\$300,000 EACH ACCIDENT		
PROPERTY DAMAGE LIABILITY	\$100,000 EACH ACCIDENT		INCL
MEDICAL PAYMENTS	\$10,000 EACH PERSON		16.00
*UNINSURED MOTORIST- BODILY INJURY	\$100,000 EACH PERSON		24.00
	\$300,000 EACH ACCIDENT		
*UNINSURED MOTORIST- PROPERTY DAMAGE	\$ 50,000 EACH ACCIDENT		3.00
*UNDERINSURED MOTORIST- BODILY INJURY	\$100,000 EACH PERSON		41.00
	\$300,000 EACH ACCIDENT		
*UNDERINSURED MOTORIST- PROPERTY DAMAGE	\$ 50,000 EACH ACCIDENT		3.00
COMPREHENSIVE	\$100 DEDUCTIBLE		195.00
TOWING AND LABOR COSTS	\$50 PER DISABLEMENT		INCL
COLLISION	\$250 DEDUCTIBLE		340.00
TRANSPORTATION PLUS	\$30 DAY/\$900 MAXIMUM		13.00
	TOTAL BY EACH AUTO		827.00
	- WEST VIRGINIA PREMIUM SURCHARGE		8.27
	TOTAL TERM PREMIUM		\$835.27

*THESE CHARGES ARE ON A PER POLICY BASIS, REGARDLESS OF THE NUMBER OF VEHICLES.

YOUR PREMIUM NOTICE WILL BE MAILED SEPARATELY. THIS IS NOT A BILL.
CONTINUED ON NEXT PAGE

AP 52 9/82

06/13/00 2
RENEWAL OF POLICY 8471246 R 0905900

R 0905900



PERSONAL AUTO TRADITIONAL POLICY
RENEWAL DECLARATION * * EFFECTIVE 07/13/00

14

IF YOU HAVE QUESTIONS, PLEASE CONTACT YOUR AGENT AT 304-847-2073

POLICY NUMBER R 0905900	FROM 12:01 AM 07/13/00	POLICY PERIOD TO 12:01 AM 01/13/01	COVERAGE IS PROVIDED IN SHELBY CASUALTY INSURANCE COMPANY 3760 RIVER RUN DR BIRMINGHAM AL 35243	AGENCY 124600	P
NAME INSURED AND ADDRESS BROWN, JAMES P DDS PO DRAWER 407 CRAIGSVILLE WV 26205-0407			AGENT CENTRAL INSURANCE INC 142 E NORTH COURT SQUARE WEBSTER SPRINGS WV 26288		

DRIVER ID 01	DRIVER NAME JAMES DDS BROWN	LICENSE NUMBER C230343	BIRTH DATE 10/05/54	POINTS 1
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APPLICABLE FORMS

FORM #	DATE	FORM #	DATE	FORM #	DATE	FORM #	DATE	FORM #	DATE
PP002L	06/97	PP012R	06/97	IL7019	03/98	142509		198309	
PP041R	03/93	PP041S	03/93	CA201C	05/97				

LEGAL ADDRESS FOR AUTO # 0
ALDERSON CHURCH ROAD
26205

LOSS PAYEE FOR AUTO # 1
CHRYSLER FINANCIAL
PO BOX 9300
COLUMBIA MD 21046-9300

PREMIUM DISCOUNTS

YOUR PREMIUM HAS BEEN REDUCED AS A RESULT OF THESE DISCOUNTS:

*** MULTI POLICY *** LONGEVITY *** AIRBAG DISCOUNT ***

YOUR PREMIUM NOTICE WILL BE MAILED SEPARATELY. THIS IS NOT A BILL.

TOTAL TERM PREMIUM..... \$835.27

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

JAMES P. BROWN and LYNN BROWN,

Appellant,

V.

APPEAL NO. 32566

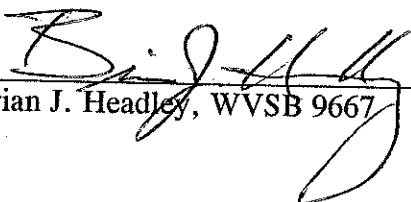
SHELBY CASUALTY INSURANCE COMPANY,

Appellee.

CERTIFICATE OF SERVICE

I, Brian J. Headley, counsel for the Appellee, Shelby Casualty Insurance Company, do hereby certify that I have served a copy of the foregoing "*Appellee's Brief*" upon the following counsel of record, this the 6th day of July, 2005, by mailing a true and exact copy thereof, via first class United States Mail, postage prepaid, in an envelope addressed as follows:

Ralph C. Young, Esq.
HAMILTON, BURGESS, YOUNG & POLLARD PLLC
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Fayetteville, WV 25840


Brian J. Headley, WVSB 9667