

**IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA**

RACHEL PEARL ARNO,

Plaintiff,

v.

Civil Action No.: 21A05259

JAMIE BROOK SHERMAN,

Defendant.

**PLAINTIFF’S RESPONSE IN OPPOSITION TO HANOVER INSURANCE
COMPANY’S MOTION FOR SUMMARY JUDGMENT**

Plaintiff files this her *Response in Opposition to Hanover Insurance Company’s Motion for Summary Judgment* and shows this Court as follow:

INTRODUCTION

In a rare situation before the Court, the parties do not dispute the material facts of what happened on December 1, 2019.¹ Plaintiff was seriously injured when her roommate, Defendant Sherman, rear-ended another vehicle on their travels back to the University of Alabama. *See* Complaint, ¶ 5-9. Under ordinary circumstances, it is clear that Defendant Sherman breached a duty of reasonable care owed to Plaintiff when she drove into the back of another car and injured Plaintiff. *See* Deposition of Jamie Brooke Sherman, P. 27, Li. 10-18 attached as Exhibit 1. However, Hanover Insurance Company (“Hanover”) attempts to distract this Court from the correct application of benefits that Plaintiff is entitled to under Allmerica Financial Benefit Insurance Company Policy Number A2A D730431 (“The Policy”). For the reasons set forth below,

¹ While Hanover’s *Brief in Support for Motion for Summary Judgment* contains factual errors regarding Plaintiff’s purpose of travel and citations, these errors are not material to the arguments of authority at hand.

Plaintiff respectfully requests that this Court deny Hanover's Motion for Summary Judgment and rule in Plaintiff's favor.

STATEMENT OF FACTS AND HISTORY

On December 1, 2019, Plaintiff was a passenger in her college roommate's Ford Escape, traveling back to the University of Alabama. Her college roommate, Defendant Sherman, was traveling on Interstate 20 at approximately 65-70 miles per hour before she applied the brakes and rear-ended another motorist. Exhibit 1, P. 27, Li. 10-22. Upon impact, Plaintiff was injured. Complaint ¶ 9.

At the time of the December 1, 2019 collision (hereinafter "The Collision"), Defendant Sherman was listed driver on an Allstate Property & Casualty Insurance Company policy with bodily injury liability policy limits of \$250,000.00 per person/\$500,000.00 per occurrence. *See Jamie Brook Sherman's Responses to Hanover Insurance Company's First Requests for Admissions*, ¶ 2-3. Plaintiff submitted a pre-suit demand for damages ("Demand") to Allstate Property and Casualty Insurance Company (hereinafter "Allstate") on March 11, 2021. A true and accurate copy of Plaintiff's *Confidential Offer to Settle Tort Claims and Unliquidated Damages Demand Sent Pursuant to O.C.G.A. § 51-12-14* is attached as Exhibit 2. Allstate received Plaintiff's Demand on March 25, 2021. After several months without a response, counsel for Plaintiff confirmed that Allstate declined to compensate Plaintiff for her damages incurred because of The Collision. A true and accurate email correspondence between Darren M. Tobin and Allstate claims adjusters Anita Ocran and Shay Mitchell is attached as Exhibit 3.

At the time of The Collision, Plaintiff was also listed as a "rated driver" under The Policy. Exhibit 1 to *Brief in Support of Hanover Insurance Company's Motion for Summary Judgment*. Uninsured motorist coverage limits under The Policy are \$250,000.00 per person/\$500,000.00 per

occurrence. Exhibit 1 to *Brief in Support of Hanover Insurance Company's Motion for Summary Judgment*. Under The Policy language, Hanover "will pay under this [uninsured motorist] coverage only after the limits of liability under any applicable liability bonds or policies have been exhausted by payment of judgments or settlements." A true and accurate copy of The Policy contract language for Uninsured Motorists Coverage is attached as Exhibit 4. Hanover then defines an "uninsured motor vehicle" as:

- D. "Uninsured motor vehicle" means a land motor vehicle or trailer of any type:
 - 1. To which there is neither:
 - a. Cash or securities on file with the Georgia Director of Public Safety; nor
 - b. A liability bond or policy; applicable at the time of the accident.
 - 2. To which a liability bond or policy applies at the time of the accident but its limit of liability either:
 - a. Is not enough to pay the full amount the "insured" is legally entitled to recover as damages; or
 - b. Has been reduced by payments to others to an amount which is not enough to pay the full amount the "insured" is legally entitled to recover as damages.

Exhibit 4.

Hanover also defines an "uninsured motor vehicle" as one "to which a liability bond or policy applies at the time of the accident but the bonding or insuring company denies coverage". Exhibit 4.

AUTHORITY AND ARGUMENT

Plainly put, there is no "applicable" liability policy from which Plaintiff can recover from by virtue of the Alabama Guest Statute. Ala. Code § 32-1-2. While Georgia has no similar law barring passengers from recovery against an at-fault driver, both the Supreme Court and Court of Appeals directly addressed these types of scenarios where another state's statute controls and

prevents an injured party from recovering against a liability policy by no fault of their own. Applying the broad purpose of O.C.G.A. § 33-7-11 et seq. (“Uninsured Motorist Act”), the courts have found in situations where a plaintiff cannot obtain a judgment because of a defense or law unrelated to the underlying facts of the case, Plaintiff may pursue uninsured motor vehicle coverage.

1. **Plaintiff is legally entitled to recover under The Policy where it is impossible for her to obtain a judgment against a defendant by virtue of a legal principle or defense unrelated to the facts of the case.**

The Georgia Supreme Court and the Court of Appeals have long held that where “it is impossible” for an insured to obtain a judgment because of a defense or legal principle unrelated to the facts of the accident, the insured may recover against her own uninsured motor vehicle insurer. *Wilkinson v. Vigilant Ins. Co.*, 236 Ga. 456 (1976) (bankruptcy discharge did not prevent plaintiff from seeking uninsured motor coverage); *Tinsley v. Worldwide Ins. Co.*, 212 Ga.App. 809 (1994) (sovereign immunity defense did not bar plaintiff from seeking uninsured motor coverage); *Georgia Farm Bureau Mut. Ins. Co. v. Williams*, 266 Ga.App. 540 (2004) (Florida’s no-fault statute did not bar plaintiff from seeking uninsured motor coverage) ; *FCCI Ins. Co. v. McLendon Enterprises, Inc.*, 297 Ga. 136, 137 (2015) (sovereign immunity defense did not bar plaintiff from seeking uninsured motor coverage). The Supreme Court of Georgia went even further to explain that to pursue uninsured motorist coverage, the insured had to show the fault of the tortfeasor gave rise to the damages, not that recovery from the tortfeasor is actually possible. *FCCI Ins. Co.*, supra at 138-139.

Nearly a half-century ago, the Supreme Court first considered the implications of a scenario where no liability can attach to a known insured tortfeasor. *Wilkinson*, supra, at 456. In *Wilkinson*, a plaintiff was injured in a motor vehicle collision with a known at-fault driver. *Id.* She filed suit

against the at-fault driver, naming him, and served her own insurance carrier. *Id.* While the suit was pending, the defendant driver filed a bankruptcy petition including the tort claim, which was later discharged while plaintiff's suit was still being litigated. *Id.* The plaintiff's uninsured motor insurer filed a motion for summary judgment, which was granted by the trial court and affirmed on appeal by the Court of Appeals. *Id.* However, in a one-page opinion written by Chief Justice Horace E. Nichols, the Supreme Court explained that:

To allow an insurer to escape liability under its contract because of the uninsured's bankruptcy would be contrary to the intent and purpose of the Act. (It is the liability to the insured under the contract of insurance that is to be adjudicated whether the uninsured motorist be known or unknown...thus, it is seen that the insurance company is the real party in interest and not the uninsured motorist.

Id.

Chief Justice Nichols further explained that “**since no liability can attach to the known uninsured, the action should have been allowed to proceed as though it was a John Doe action and the insured can establish ‘all sums which he shall be legally entitled to recover as damages,’ caused by the uninsured motorist.**” *Id.* (emphasis added).

In 1994, the Court of Appeals applied the reasoning in *Wilkinson* to a case in which a motorist was injured by a sheriff's deputy in a motor vehicle collision. *Tinsley*, supra at 809. Like Ms. Arno, the motorist and his wife also served their uninsured motor insurer with a copy of the complaint. *Id.* While the trial court granted summary judgment to the named deputy, city, and city police department because of sovereign immunity, the trial court also granted summary judgment to the uninsured motor insurer because “it found that [the plaintiffs] failed to meet the condition precedent [of obtaining a judgment against the tortfeasors] and therefore were not entitled to coverage.” *Id.* On appeal, the Court of Appeals reversed the trial court's ruling, citing *Wilkinson* and the premise that “**since no liability can attach to the known uninsured, the action should**

have been allowed to proceed as though it was a John Doe action and the insured can establish ‘all sums which he shall be legally entitled to recover as damages,’ caused by the uninsured motorist.” *Id.* citing *Wilkinson*, supra, at 456. Going further, the Court of Appeals explained that:

The key factor which unites *Wilkinson* to the case at bar is the impossibility of [plaintiffs] ever obtaining a judgment against the uninsured motorist. For this reason, we find that it would defeat the intent and purpose of the Act if the [uninsured motor insurer] were allowed to escape liability because of the defendants’ discharge from this litigation under the doctrine of sovereign immunity.

Id. at 811.

Moreover, in her special concurrence to the *Tinsley* decision, Judge Beasley wrote, “I concur because the impossibility of a judgment against the uninsured motorist is created by law unrelated to the merits of the case and not through any inaction or procedural misstep of the injured party.”

Id.

In nearly identical circumstances to the facts in this case, the Court of Appeals found in favor of a Georgia resident seeking uninsured motor vehicle coverage when another state’s statute prevented her as a matter of law from obtaining a judgment against a tortfeasor. In *Williams*, a plaintiff filed a personal injury action to recover uninsured motorist benefits for injuries she sustained in an accident that occurred in Florida with another insured motorist. *Williams*, supra, at 540. Similar to Alabama’s Guest Statute, Florida’s no-fault statute barred the plaintiff from recovering for her injuries unless her injuries were such that there was: a) significant or permanent loss of an important bodily function; b) a permanent injury within a reasonable degree of medical probability; c) significant and permanent scarring or disfigurement; or d) death. *Id.* Compare Fla. Stat. § 627.737(2) with Ala. Code § 32-1-2. While the plaintiff’s personal injury claim was barred under Florida law, the plaintiff presented a demand for her injuries to the at-fault driver’s insurance

carrier prior to filing suit. *Williams*, supra, at 540. The liability carrier declined to pay. *Id.* Contending that the liability carrier’s failure to pay resulted in “legally denied coverage” under the liability policy, plaintiff sought coverage through her own insurance carrier for uninsured motor vehicle coverage. *Id.* at 541.

The plaintiff’s uninsured motor carrier in *Williams* filed a motion for summary judgment with the trial court, arguing that the plaintiff could not recover uninsured motor vehicle benefits as a matter of law because she failed to prove that she was “legally entitled to recover damages” from the alleged uninsured motorist. *Id.* at 540. Ultimately, the trial court denied the insurance company’s motion and the ruling was affirmed on appeal. *Id.* In a case of first impression, the Court of Appeals applied the reasoning in *Wilkinson* and *Tinsley* and found that the at-fault driver was considered uninsured for purposes of the Uninsured Motorist Act, and that plaintiff could proceed against her own uninsured motor carrier. Particularly, the Court explained that Plaintiff was “legally entitled to recover” because:

In the case at bar, the reason no judgment can be obtained **is not because of the facts of the accident, but because of the public policy and statutes of the place where the accident occurred.**

Id. at 542 (emphasis added). The Court of Appeals further explained:

One of the goals of uninsured motorist legislation is to protect innocent victims from the negligence of irresponsible drivers. Because uninsured motorist statutes are remedial in nature, they must be broadly construed to accomplish the legislative purpose. In light of that purpose, we are unwilling to allow [UM Insurance Carrier] to escape liability based on considerations unrelated to the accident. Therefore, [Plaintiff] must be allowed the opportunity to ‘establish all sums which [she] shall be legally entitled to recover as damages, caused by the uninsured motorist.’

Id. (emphasis added), citing *Brown v. State Farm Mut. Auto. Ins. Co.*, 242 Ga.App. 313, 315(2)(2000) and *Smith v. Commercial Union Assur. Co.*, 246 Ga. 50, 51 (1980).

Like in *Williams*, here Plaintiff is unable to obtain a judgment against Defendant because of the statute “of the place where the accident occurred” rather than the facts of The Collision. Plaintiff notified Hanover of her intent to pursue uninsured motor insurance as early as May 14, 2020. Plaintiff then served Hanover with a copy of the complaint for damages on November 18, 2021, one day after the complaint was filed. *See Affidavit of Service Upon The Hanover Insurance Company filed on November 22, 2021*. Like the plaintiff in *Williams*, Plaintiff also submitted her Demand to Defendant’s insurer, Allstate. Exhibit 2. Allstate declined to compensate Plaintiff for her damages from The Collision. Exhibit 3. While Defendant Sherman admitted that “Allstate has not denied coverage to [her] in this case,” Allstate’s denial of payment serves as a *de facto* denial of coverage for purposes of the *Tinsley/Wilkinson* analysis, which effectively bars Plaintiff from recovering compensation from the liability insurance carrier solely due to the law and policy of Alabama.

Hanover attempts to distinguish the facts of *Williams* in its favor to contend that that Plaintiff’s inability to show that Defendant Sherman intentionally caused The Collision is factually related to the accident. Yet, Hanover misses the black-and-white text set forth by the both the Supreme Court and Court of Appeals explaining that the trial court must consider the exact reason *why* a judgment cannot be obtained. Here, Hanover cannot factually dispute that:

- 1) Plaintiff was a passenger in Defendant’s vehicle on December 1, 2019²;
- 2) Defendant Sherman rear-ended another vehicle while Plaintiff was traveling as her passenger on December 1, 2019³;
- 3) Plaintiff did nothing to cause or contribute to The Collision⁴;

² Complaint ¶ 5; Exhibit 1, P. 26, Li. 3-6; Deposition of Catherine Griffin P. 8, Li. 4-12 attached as Exhibit 5; Deposition of Rachel Pearl Arno P. 20, Li. 1-6 attached as Exhibit 6.

³ Exhibit 1, P. 27, Li. 10-18; Exhibit 5, P. 15, Li. 10-24; Exhibit 6, P. 28, Li. 19-25.

⁴ Exhibit 1, P. 54, Li. 20-25.

- 4) Plaintiff felt pain in her shoulder at the scene of The Collision⁵;
- 5) Plaintiff told other of her pain on the same day The Collision occurred⁶;
- 6) Plaintiff sought medical treatment for her injuries following The Collision⁷;
and
- 7) Plaintiff incurred expenses for her medical treatment following The Collision⁸.

Courts all over Georgia, including this Honorable Court, frequently preside over negligence claims when an at-fault driver rear-ends another person. Like those cases, the facts above meet the threshold for a trier of fact to find that Plaintiff was injured by the Defendant's negligence. However, because The Collision occurred a few miles away in a neighboring state, Hanover unjustly seeks deny Plaintiff uninsured insurance coverage despite her not causing or contributing to the collision in any way, shape, or form. Exhibit 1, P. 54, Li. 20-25. Therefore, contrary to Hanover's bold assertions, it "is not because of the facts of the accident" that prevent Plaintiff from recovering for her injuries; rather, the reason Plaintiff is prevented is because of the "statute of the place where the accident occurred." As such, this Court should follow the holdings of *Wilkinson*, *Tinsley*, and *Williams* and deny Hanover's Motion for Summary Judgment.

2. To allow Hanover to skirt its obligations under The Policy because of a technicality would be contrary to the intent and purpose of uninsured motor vehicle coverage under the Uninsured Motorist Act.

Georgia law is clear: contracts of insurance are interpreted by ordinary rules of contract construction. *Fireman's Fund Ins. Co. v. University of Georgia Athletic Ass'n, Inc.* 288 Ga.App. 355, 356 (2007), citing *Boardman Petroleum v. Federated Mut. Ins. Co.*, 269 Ga. 326, 327-328 (1998). "Where the terms are clear and unambiguous and capable of only one reasonable interpretation, the court is to look to the contract alone to ascertain the parties' intent." *Id.* Yet

⁵ Exhibit 6, P. 48, Li. 22-24.

⁶ Exhibit 1, P. 39, Li. 15-24; Exhibit 5, P. 19, Li. 5-20;

⁷ Exhibit 6, P. 52, Li. 14-16; Exhibit 2.

⁸ Exhibit 2.

where a provision of an insurance contract “is susceptible to two or more constructions, even when the multiple constructions are all logical and reasonable, it is ambiguous and the statutory rules of contract construction will be applied.” *Id.* at 357, citing *Hurst v. Grange Mut. Cas. Co.*, 266 Ga. 712, 716(4)(1996); O.C.G.A. § 13-2-2. When considering if a provision of an insurance contract is ambiguous, it is well-known that: 1) any ambiguities in the contract are strictly construed against the insurer as the drafter of the document; 2) any exclusion from coverage sought to be invoked by the insurer is likewise strictly construed; and 3) the insurance contract is to be read in accordance with the reasonable expectations of the insured where possible. *Id.* citing *Richards v. Hanover Ins. Co.*, 250 Ga. 613,615(1) (1983).

Hanover explains that The Policy “defines ‘uninsured motorist vehicle’ to include a motor vehicle to which there is ‘no liability bond or policy’ that is ‘applicable at the time of the accident.’” Exhibit 4. Yet, Hanover acknowledges that the term “applicable” is not defined in The Policy. Plaintiff does not dispute that the Meriam-Webster dictionary defines “applicable” as “capable of or suitable for being applied.” However, under the principles of contract construction, it is reasonable and logical that the Court could just as easily interpret that the December 2022 ruling on Defendant Sherman’s motion for summary judgment rendered the Allstate liability policy **not** “capable of or suitable for being applied” to The Collision.

Regardless of the word “applicable” under the language of The Policy, the requirements of the Uninsured Motorist Statute “control over the terms of the policy.” *Georgia Farm Bureau Mutual Insurance Company v. Rockefeller*, 343 Ga.App 36, 40 (2017), citing *McGraw v. IDS Prop. & Cas. Ins. Co.*, 323 Ga.App.408, 410 (2013); *see also Dees v. Logan*, 282 Ga. 815 (2007) (“When an uninsured motorist policy provision is in conflict with the clear intent of O.C.G.A. § 33-7-11, the policy provision is unenforceable and the statute controls.”); *Jones v. Federated Mutual*

Insurance Company, 346 Ga.App 237 (2018); *State Farm Mut. Auto. Ins. Co. v. Vaughn*, 253 Ga.App. 217 (2002); *Hartford Acc. & Idem. Co. v. Booker*, 140 Ga.App. 3 (1976). “Uninsured motorist statutes are remedial in nature and must be broadly construed to accomplish the legislative purpose.” *Id.* See also *Smith v. Commercial Union Assur. Co.*, 246 Ga. 50, 51 (1980); *Wages v. State Farm Mutual Auto. Ins. Co.*, 132 Ga.App. 79 (1974); *McDaniel v. State Farm Mutual Auto. Ins. Co.*, 205 Va. 815 (1965).

Furthermore, the legislature has further codified that:

an otherwise valid insurance endorsement that contains a condition or provision not in compliance with the requirements of the insurance code “shall be construed and applied in accordance with such conditions and provisions as would have applied had the ... endorsement been in full compliance” with the insurance code.

O.C.G.A. § 33-24-12(a).

Like the word “applicable,” Hanover does not define the phrase “legally entitled to recover” for uninsured motor vehicle benefits under The Policy. Exhibit 4. Nevertheless, whichever words or terms Hanover defines under The Policy, the law is clear that Plaintiff is entitled to coverage under The Policy because “**one of the goals of uninsured motorist legislation is to protect innocent victims from the negligence of irresponsible drivers.**” *Williams*, supra, at 542.

CONCLUSION

Plaintiff and her family have paid insurance premiums to Hanover for years so that when they were injured in a crash with an uninsured motorist, Hanover would step up, protect them and compensate them for their injuries. Yet, Hanover seeks to “escape liability” under The Policy when Plaintiff was injured in The Collision. Plaintiff is barred from recovering against Defendant’s Allstate policy only because of a 1935 Alabama law that contradicts Georgia law and public policy.

Essentially, what this boils down to is this: should Plaintiff be penalized because of an out-of-state legal principle that prevents her from obtaining a judgment against an at-fault defendant when Georgia law clearly defines Plaintiff's right to seek uninsured insurance compensation in these exact circumstances? Hanover implores this Court to agree and rule in the affirmative, yet the Supreme Court of Georgia and Georgia Court of Appeals have held otherwise in pointed guidance for trial courts. For the reasons set forth above, Plaintiff respectfully requests that this Court DENY Hanover's Motion for Summary Judgment and find that Plaintiff is entitled to pursue uninsured motorist coverage under The Policy.

Respectfully submitted this 19th day of April, 2023.

TOBIN INJURY LAW

BY: /s/ Caroline H. Monsewicz

DARREN M. TOBIN

Georgia Bar No. 200383

CAROLINE H. MONSEWICZ

Georgia Bar No. 160963

CAMPBELL M. WALKER

Georgia Bar No. 797559

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Atlanta, Georgia 30324
darren@tobininjurylaw.com
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(t) 404 587 8423
(f) 404 581 5877

ATTORNEYS FOR PLAINTIFF

STATE COURT OF
DEKALB COUNTY, GA.
4/19/2023 3:37 PM
E-FILED
BY: Patricia Nesbitt

**IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA**

RACHEL PEARL ARNO,

Plaintiff,

v.

JAMIE BROOK SHERMAN,

Defendant.

Civil Action No.: 21A05259

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on all parties via Odyssey EFileGA electronic service and statutory electronic service addressed to the following attorneys of record:

Joshua S. Ruplin
William R. Gordon, Jr.
Downey & Cleveland, LLP
288 Washington Avenue
Marietta, Georgia 30060
ruplin@downeycleveland.com
gordon@downeycleveland.com

Andrew D. Horowitz
Jordan Wilkinson
Drew, Eckl, & Farnham, LLP
303 Peachtree Street, NE
Suite 3500
Atlanta, Georgia 30308
horowitz@deflaw.com
wilkinsonj@deflaw.com

Respectfully submitted this 19th day of April, 2023.

TOBIN INJURY LAW

BY: /s/ Caroline H. Monsewicz

DARREN M. TOBIN

STATE COURT OF
DEKALB COUNTY, GA.
4/19/2023 3:37 PM
E-FILED
BY: Patricia Nesbitt

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(t) 404 587 8423
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ATTORNEYS FOR PLAINTIFF

Exhibit 1

1 college where you got stuck in traffic?

2 A. I don't recall that, no.

3 Q. And at the time you were -- you were traveling, I

4 understand Pearl was in the front seat; does that sound

5 right?

6 A. Yes.

7 Q. And Catherine was directly behind you in the back

8 passenger seat?

9 A. Yes.

10 Q. Okay. And was there any music playing at the time?

11 A. I don't think so.

12 Q. Would you typically -- if you were to play music,

13 would you typically play it from your phone or Bluetooth?

14 A. Yes, it would be through my phone on Bluetooth.

15 Q. Where was your phone located with you?

16 A. It was probably, like, in the middle console of my

17 car. Like in a cup holder or something like that.

18 Q. At any point during your trip did you pick up your

19 phone?

20 A. No.

21 Q. So you weren't texting?

22 A. No.

23 Q. You weren't scrolling to find different music?

24 A. I wasn't. My passengers may have been on my phone

25 helping me do stuff.

1 Q. Okay. Do you typically let your passengers hold
2 onto your phone when you drive?

3 A. Yes.

4 Q. Okay. What was the weather like that day?

5 A. It wasn't raining. I don't remember it being a
6 particularly sunny day, but it was just a normal -- some
7 clouds in the sky.

8 Q. And we've spoken with a lot of people, and
9 essentially, I want to know in your own words what happened.

10 Can you tell me what happened before impact and what happened
11 upon impact?

12 A. Yes. I was driving. It was just normal. We just
13 got -- we were sitting in traffic for like an hour, and then
14 we had been driving for maybe 30-ish more minutes in traffic.
15 I was just going with the flow of traffic and I see that all
16 of the cars in front of me are putting on their brakes and
17 coming to a stop. So I put on my brakes and come to a stop,
18 but I collided with the car in front of me.

19 Q. How fast were you traveling before you applied the
20 brake?

21 A. I was traveling with the speed of traffic, so it
22 was around 65 to 70 miles per hour.

23 Q. And how far away was the vehicle in front of you
24 when you first applied your brakes?

25 A. It was like a few car lengths ahead of me.

1 A. I did.

2 Q. And is that Cary?

3 A. No. This is a different aunt that doesn't live in
4 Georgia.

5 Q. Okay. Does this aunt live in Alabama?

6 A. She does.

7 Q. Okay. And why did you call your aunt?

8 A. I'm just really close with my aunt and I was -- I
9 was like, "I just got into a car accident," and telling the
10 people I'm close to that I'm okay and everything.

11 Q. Got it. Let's see. Was your car totaled?

12 A. No, it wasn't totaled. We got it fixed.

13 Q. Okay. Are you still driving that car?

14 A. I am.

15 Q. Nice. Okay. Let me -- so talk to me about what
16 happened after you left the scene. You get in Eileen's car,
17 what happened next?

18 A. We got in Eileen's car, I was hysterically crying.
19 I remember that much. And it was me and Catherine, we're in
20 the back of her car, and Pearl was in the front seat, and we
21 were just driving back to Tuscaloosa, and Pearl started
22 complaining about her shoulder hurting. And then we dropped
23 her off in Birmingham with a friend and we went back to
24 Tuscaloosa.

25 Q. And about how long into that car ride was it before

1 the phone call regarding the lawsuit being filed, did you
2 discuss anything about this accident with your parents while
3 you were in Israel?

4 A. Oh, no.

5 Q. Okay. Do you think there's anyone else who should
6 be held responsible for Ms. Arno's pain and suffering as a
7 result of this crash?

8 A. No.

9 MR. GORDON: I'll object to form, and you can
10 answer, Jamie.

11 THE WITNESS: No.

12 BY MS. MONSEWICZ:

13 Q. As you sit here today, and, again, so I understand,
14 you don't believe you're at fault for causing this crash,
15 correct?

16 A. No. That's correct, yes.

17 Q. And you don't accept any responsibility for this
18 crash?

19 A. That's correct.

20 Q. Okay. Do you contend that Ms. Arno did anything
21 wrong in this crash?

22 A. No. She didn't do anything wrong.

23 Q. Do you contend that she in any way contributed or
24 caused this collision?

25 A. No.

Northwest Georgia Orthopaedic	\$7,738.00
Resurgens Orthopaedics	\$2,747.57
MAK Anesthesia Holdings	\$2,975.00
American Family Care	TBD
Total:	\$30,140.66

IV. THIS OFFER

Pearl offers to settle this case as described below for \$100,000.00 [One Hundred Thousand and 00/100 Dollars] (hereinafter “the demanded amount”).

The terms of the offer are as follows:

1. To accept this offer, Allstate must communicate their acceptance of this offer in writing within 30 days of the date that Allstate first received this offer. Allstate must then cause a check or draft made out to “Tobin Injury Law in trust for Rachel Pearl Arno” in the demanded amount to be *delivered* to Tobin Injury Law, 267 W. Wieuca Rd. NE, Suite 204, Atlanta, Georgia 30342 *within 10 days of the date that Allstate confirms their acceptance.*
2. In exchange for the settlement funds, Pearl will sign and execute a copy of the general release attached as Exhibit C and provide an executed copy of that general release to Allstate and/or other people entities as reasonably requested.
3. Liens, subrogation, and reimbursement will be handled as set forth in the release referred to in the preceding paragraph.
4. Our firm’s EIN is 83-3640268 and our firm’s W-9 is attached as Exhibit D.

V. CONCLUSION

This letter extends an offer to resolve this case *within* Ms. Sherman’s policy limits.

This offer is also made pursuant to O.C.G.A. § 51-12-14 for unliquidated damages in a tort action. If you fail to pay such amount, then pursuant to the provisions of that statute, our client shall be entitled to receive interest on the claimed sum if, upon trial of the case in which the claim is made, the judgment is for an amount not less than the sum claimed.

We appreciate your time and consideration of this matter. Should Allstate have any questions regarding this demand, we request that it make them in writing.

[Signature on Next Page]

Allstate Property and Casualty Insurance Company
0570106476 XTE
March 11, 2021
Page 4 of 4

Sincerely,

TOBIN INJURY LAW



Darren M. Tobin

Exhibit 3

Caroline Monsewicz

From: Darren Tobin
Sent: Thursday, December 9, 2021 3:34 PM
To: Devin Ripley; Campbell Walker
Subject: FW: [External] Claim 0570106476 Rachel Arno

Thanks,

Darren M. Tobin
TOBIN INJURY LAW
Telephone: 404-JUSTICE (404-587-8423)
darren@tobininjurylaw.com
www.tobininjurylaw.com

From: Allstate Insurance <allstate@service01.email-allstate.com>
Sent: Thursday, December 9, 2021 3:33 PM
To: Darren Tobin <darren@tobininjurylaw.com>
Subject: RE: [External] Claim 0570106476 Rachel Arno

Again, the file is in litigation and under review. At this time, we don't have any offer pending. Our defense counsel will contact you soon to discuss.

Thank you.

ANITA OCRAN
Allstate Property and Casualty Insurance Company
Phone: (678) 589-1019
claims@claims.allstate.com

CONFIDENTIALITY/PRIVACY NOTICE: This e-mail, including any attachments, may contain personal, private and confidential information intended solely for use by the individual to whom it is addressed. If you are not the intended addressee, please be aware that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you received this message in error, please notify the sender immediately by e-mail and delete from your system.

**** Please do not delete your unique Conversation ID ****

*** Conversation ID: FR9ddf4218c3cd48 ***

From: darren@tobininjurylaw.com
Sent: Thursday, Dec 09, 2021 1:34 PM
To: claims@claims.allstate.com
Subject: RE: [External] Claim 0570106476 Rachel Arno

So we are clear: Allstate is making no offer?

Thanks,

Darren M. Tobin

TOBIN INJURY LAW

Telephone: 404-JUSTICE (404-587-8423)

darren@tobininjurylaw.com

[https://urldefense.com/v3/http://www.tobininjurylaw.com ;!!IU9BLNPZ2ob!eWyyPBmqtLHNu6ImOHsXla8Vaukiq_dXeYMEloia5OWufb7_W36TLowPBr0E_LZOMTQ\\$](https://urldefense.com/v3/http://www.tobininjurylaw.com)

From: Allstate Insurance

Sent: Thursday, December 9, 2021 11:46 AM

To: Darren Tobin

Subject: RE: [External] Claim 0570106476 Rachel Arno

Greetings,

Please be advised the file has been assigned to me for handling. The file is litigation and we don't have any offer pending at this time.

Thank you

ANITA OCRAN

Allstate Property and Casualty Insurance Company

Phone: (678) 589-1019

claims@claims.allstate.com

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**** Please do not delete your unique Conversation ID ****

*** Conversation ID: FR9ddf4218c3cd48 ***

From: darren@tobininjurylaw.com

Sent: Wednesday, Dec 08, 2021 2:36 PM

To: claims@claims.allstate.com

Subject: RE: [External] Claim 0570106476 Rachel Arno

Hello,

Please let me know if you have an offer to extend.

Thanks,

Darren M. Tobin

TOBIN INJURY LAW

Telephone: 404-JUSTICE (404-587-8423)

darren@tobininjurylaw.com

[https://urldefense.com/v3/http://www.tobininjurylaw.com ;!!IU9BLNPZ2ob!a6a0l_vd8xFiyC9MXCFggx2hMQ5t4wvTzmQMSbo_0egbJJxum-FSLINdj-2051c6Q\\$](https://urldefense.com/v3/http://www.tobininjurylaw.com)

From: Allstate Insurance

Sent: Tuesday, November 9, 2021 4:48 PM

To: Darren Tobin

Subject: [External] Claim 0570106476 Rachel Arno

Good Afternoon,

I have received a total of 6 emails from you.

SHAY Mitchell

Allstate Property and Casualty Insurance Company

Phone: (678) 742-3933

Fax: (866) 447-4293

claims@claims.allstate.com

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*** Conversation ID: FR9ddf4218c3cd48 ***

From: darren@tobininjurylaw.com

Sent: Tuesday, Nov 09, 2021 1:56 PM

To: claims@claims.allstate.com

Subject: [External] Claim 0570106476

Thanks,

Darren M. Tobin

TOBIN INJURY LAW

49B Lenox Pointe

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Telephone: 404-JUSTICE (404-587-8423)

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Exhibit 4

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNINSURED MOTORISTS COVERAGE ADDED ON TO
AT-FAULT LIABILITY LIMITS - GEORGIA

SCHEDULE

Any amount payable for damages under this coverage will be in excess of the applicable per accident deductible.

Per Accident Deductible Applies		
<input type="checkbox"/>	YES	\$ _____ Deductible Amount
<input type="checkbox"/>	NO	

PART C - UNINSURED MOTORISTS COVERAGE

Part C is replaced by the following:

INSURING AGREEMENT

A. We will pay compensatory damages in excess of any applicable deductible shown in the Schedule or in the Declarations for this coverage which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of:

1. "Bodily injury" sustained by an "insured" and caused by an accident; and
2. "Property damage" caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "uninsured motor vehicle". We will pay under this coverage only after the limits of liability under any applicable liability bonds or policies have been exhausted by payment of judgments or settlements. However, if a settlement is made between an "insured" and the insurer of the "uninsured motor vehicle" for an amount that does not exhaust the limits of liability under any applicable liability bonds or policies, we will not pay under this coverage unless we previously consented to such settlement in writing.

Any judgment for damages arising out of a suit brought without our written consent is not binding on us.

B. "Insured" as used in this endorsement means:

1. You or any "family member".
2. Any other person "occupying" "your covered auto".

3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

C. "Property damage" as used in this endorsement means injury to or destruction of:

1. "Your covered auto" (including its resulting loss of use).
2. Any property owned by a person listed in 1. or 2. of the definition of "insured" while contained in "your covered auto".

D. "Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which there is neither:
 - a. Cash or securities on file with the Georgia Director of Public Safety; nor
 - b. A liability bond or policy; applicable at the time of the accident.
2. To which a liability bond or policy applies at the time of the accident but its limit of liability either:
 - a. Is not enough to pay the full amount the "insured" is legally entitled to recover as damages; or
 - b. Has been reduced by payments to others to an amount which is not enough to pay the full amount the "insured" is legally entitled to recover as damages.

3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits or which causes an accident resulting in "bodily injury" or "property damage" without hitting:
 - a. You or any "family member";
 - b. A vehicle which you or any "family member" are "occupying"; or
 - c. "Your covered auto".

If there is no physical contact with the hit-and-run vehicle, the facts of the accident must be corroborated by an eyewitness to the accident other than the "insured" making the claim.

4. To which a liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - a. Denies coverage; or
 - b. Is or becomes insolvent.

However, "uninsured motor vehicle" does not include any vehicle or equipment:

1. Owned by or furnished for the regular use of you or any "family member".
2. Operated on rails or crawler treads.
3. Designed mainly for use off public roads while not on public roads.
4. While located for use as a residence or premises.

EXCLUSIONS

- A. We do not provide Uninsured Motorists Coverage for "property damage" or "bodily injury" sustained by any "insured":
 1. If that "insured" or the legal representative settles the "bodily injury" or "property damage" claim without our consent. However, an "insured" may, without our consent, release the insurer of the "uninsured motor vehicle" from further obligation to pay damages after accepting from such insurer a settlement which exhausts the limits of liability under any applicable liability bonds or policies.
 2. When "your covered auto" is being used as a public or livery conveyance. This Exclusion (A.2.) does not apply to a share-the-expense car pool.
 3. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This Exclusion (A.3.) does not apply to a "family member" using "your covered auto" which is owned by you.
 4. If the property is contained in or struck by a motor vehicle (other than "your covered auto") owned by you or any "family member".

B. This coverage shall not apply directly or indirectly to benefit:

1. Any insurer or self-insurer under any of the following or similar law:
 - a. Workers' compensation law; or
 - b. Disability benefits law.
2. Any insurer of property.

C. We do not provide Uninsured Motorists Coverage for punitive or exemplary damages.

LIMIT OF LIABILITY

A. The limit of "bodily injury" liability shown in the Declarations for each person for Uninsured Motorists Coverage is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one accident. Subject to this limit for each person, the limit of "bodily injury" liability shown in the Declarations for each accident for Uninsured Motorists Coverage is our maximum limit of liability for all damages for "bodily injury" resulting from any one accident.

The limit of "property damage" liability shown in the Declarations for each accident for Uninsured Motorists Coverage is our maximum limit of liability for all "property damage" resulting from any one accident.

This is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

- B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and Part A or Part B of this policy.
- C. We will not make a duplicate payment under this coverage for any element of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.
- D. We will not pay for any element of loss if a person is entitled to receive payment for the same element of loss under any workers' compensation law.
- E. No payment will be made for loss paid or payable to the "insured" under Part D of the policy.

OTHER INSURANCE

If there is other applicable similar insurance available under more than one policy or provision of coverage that is similar to the insurance provided under this Part of the policy:

1. The following priorities of recovery apply:

First	The policy affording Uninsured Motorists Coverage to the "insured" as a named insured or family member.
Second	The Uninsured Motorists Coverage applicable to the vehicle the "insured" was occupying at the time of the accident.

2. We will pay only for our share of the loss. Our share is the proportion that our limit of liability bears to the total of all limits applicable on the same level of priority.

This endorsement must be attached to the Change Endorsement when issued after the policy is written.

Exhibit 5

1 into Alabama?

2 Q So would that be I-20 westbound?

3 A Yes.

4 Q Okay. Where were you sitting in the vehicle
5 at the time of the accident?

6 A I was in the back seat behind the driver.

7 Q Okay. And who was driving?

8 A Jamie was.

9 Q And was there a passenger in the front
10 passenger's seat?

11 A Yes. Pearl was sitting in the passenger's
12 seat up front.

13 Q Pearl, what's Pearl's full name? Do you
14 recall?

15 A Rachel --

16 Q Okay. And do you know Rachel Arno?

17 A Yes. I've always been -- she's always been
18 referred to Pearl to me.

19 Q Sure. Okay. And we may call her Pearl, we
20 may call her Rachel, or we may call her Ms. Arno just
21 for the purpose of this proceeding. Do you recall
22 what day the accident occurred?

23 A Yes, it was after Thanksgiving break that we
24 were driving home.

25 Q Okay. And do you recall what day of the

1 A No.

2 Q And by she, you know by she I mean
3 Ms. Sherman; correct?

4 A Yes.

5 Q And to your recollection was Ms. Sherman
6 speaking with either you or Ms. Arno when the accident
7 occurred?

8 A No, when the accident occurred all three of
9 us were silent.

10 Q Okay. All right. Just kind of walk me
11 through what you recall about the accident.

12 A So we were merging from the middle lane into
13 the left lane. And like I said, the traffic had been
14 completely standstill and then we had just freed up.
15 So everyone was accelerating forward, picking up
16 speed. And so she was merging to the left lane. And
17 I didn't see, like, everything leading up to it,
18 'cause like I said, I was in the back seat.

19 But when I did look forward, I saw both of
20 them, like the car that was in front of us moving over
21 and Jamie's car. And then I saw Jamie slam on her
22 brake and then we, like, reared end, like, went
23 forward, skidding on her brakes, and then rammed into
24 the car in front of us.

25 Q Did you see whether or not the car ahead of

1 Jamie to go back with their friend?

2 A Yes.

3 Q Did Pearl also ride back in the same car?

4 A Yes.

5 Q Okay. What happened after y'all left the
6 scene of the accident with her friend? Where did
7 everybody go?

8 A So we made sure to grab all of our bags from
9 Jamie's car. We got into the other girl's car who
10 knew Jamie. And so we drove back to -- they -- Jamie
11 and Pearl both lived in Tutwiler. I lived in the dorm
12 across the street. So that's where we got dropped
13 off.

14 Q Do you recall if Pearl got dropped off in
15 Birmingham first before y'all continued to Tuscaloosa?

16 A Yes. Yeah.

17 Q And was that --

18 A I know that, like, when we got in the other
19 car she started saying, like, maybe her shoulder was
20 bothering her.

21 Q Okay. Do you remember which shoulder? Left
22 or right.

23 A I -- she never really talked to me directly
24 about what was going on, so I don't -- I never knew
25 the details of what was going on.

Exhibit 6

1 Q Okay. And you're riding back to school with
2 Jamie, obviously.

3 A Yes, sir.

4 Q Okay. And you were sitting in the front
5 passenger seat, I believe.

6 A Yes.

7 Q Okay. And we've talked about this, but you
8 guys were obviously freshmen in 2019 when this
9 accident happened; correct?

10 A Correct.

11 Q Still in the first semester of school at the
12 University of Alabama?

13 A Yes, sir.

14 Q Okay. You and Jamie were roommates at the
15 time in Tutwiler?

16 A Yes.

17 Q What floor were y'all on?

18 A Floor 10.

19 Q So y'all were up there.

20 A Yes, we were.

21 Q I digress, but I graduated in '99. I think
22 that building had been there since like 40 years
23 before I even went there. I'm surprised it still
24 stands.

25 A It's disgusting.

1 shoulder?

2 A Left.

3 Q Okay. And as far as on I-20, were y'all
4 near Anniston?

5 A No, we were more near Talladega.

6 Q More near Talladega? I'm really mincing
7 words here, and I'm sorry. I'm from Alabama so I have
8 some general working knowledge of the counties there.
9 Do you know, do you remember if you were in Talladega
10 County or Calhoun County?

11 A I don't remember. I just remember Talladega
12 because we were really close to the NASCAR stuff.

13 Q Talladega Superspeedway?

14 A Yes.

15 Q Had you already passed the racetrack?

16 A No.

17 Q Had not gotten to the racetrack yet?

18 A Yes.

19 Q Very good. All right. Do me a favor,
20 Ms. Arno, and just walk me through the accident. Tell
21 me what happened.

22 A Jamie was driving, and I was kind of asleep
23 but not really. I was still fully awake. I was just
24 kind of dozing off and then next thing I know, we got
25 in the accident. She rear-ended the person. And then

1 Q Did you overhear her conversation with
2 either her mom or dad?

3 A No.

4 Q Do you recall if Ms. Griffin called her
5 parents following the accident?

6 A Yes.

7 Q Do you recall anything that she may have
8 spoken with her parents about?

9 A No, sir.

10 Q Do you know if Jamie called anybody else
11 besides her parents?

12 A Not that I can remember.

13 Q Okay. Was the other car towed? The
14 4Runner.

15 A I can't remember.

16 Q Do you remember how long you were at the
17 scene before y'all got in Ms. Tuck's vehicle to
18 continue towards Birmingham?

19 A An hour maybe. We were there for a while,
20 but so much was happening that I can't exactly
21 remember.

22 Q Did your shoulder pain develop while you
23 were still at the scene of the accident?

24 A Yes.

25 Q Okay. And understanding that, you know, you

1 car?

2 A No, just the mom and Rachel.

3 Q Okay. Rachel's mom and Rachel were in the
4 car. And what kind of questions was your dad asking?

5 A Just, "What does she look like? Is she
6 okay? Do you think she should go to urgent care? Do
7 you think she should go to the hospital?" Basic
8 questions like that.

9 Q And was Ms. Estreicher [ph] in favor of you
10 going to urgent care just to --

11 A Yes.

12 Q -- get some treatment?

13 A Yes.

14 Q Did you go to urgent care in Tuscaloosa or
15 urgent care in Birmingham?

16 A Tuscaloosa.

17 Q Was it just you just wanted to get back to
18 Tuscaloosa and just get treatment there?

19 A Yes.

20 Q So you left Birmingham, go back to
21 Tuscaloosa. Did Molly drive you back to Tuscaloosa?

22 A No, Rachel did.

23 Q Rachel drove you back to Tuscaloosa.
24 Thanks. And how was your shoulder feeling on the way
25 back to Tuscaloosa from Birmingham?