

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Dairyland Insurance Company, )  
)  
Plaintiff, )  
)  
v. )  
)  
Kimberly L. White, Individually and as the )  
Personal Representative of the Estate of )  
Sheldon Lee Langston, )  
)  
Defendant. )  
\_\_\_\_\_ )

Case No. 4:12-cv-01997-RBH

**JUDICIAL DECLARATION  
AND ORDER OF DISMISSAL  
WITH PREJUDICE**

This matter comes before the Court on the joint motion of Plaintiff Dairyland Insurance Company (“Dairyland” or “Plaintiff”) and Defendant Kimberly L. White, individually and as Personal Representative of the Estate of Sheldon Lee Langston, (“Defendant” or “White”) for a judicial declaration, by consent of the parties, that a motorcycle liability insurance policy, Policy Number 384026890, (the “Policy”) issued to Sheldon Lee Langston by Dairyland includes underinsured motorist (“UIM”) coverage with limits of \$25,000 per person and \$50,000 per accident for the policy period 05/08/2009 to 05/08/2010 as relates only to the 2003 Harley Davidson motorcycle described in the Policy. Plaintiff and Defendant also jointly move to dismiss this action with prejudice.

**Findings of Fact**

Based on the pleadings to this action (**ECF 1, 7, and 8**) and the allegations in the parties’ joint motion, the Court hereby finds as follows:

1. Dairyland issued the Policy to Langston providing coverage as set forth therein for the period from May 8, 2009 to May 8, 2010.

2. Dairyland asserts that the Policy was purchased personally by Langston through the Langley Agency in Florence, South Carolina.

3. According to Kim Suggs, an agent with the Langley Agency at the time, Suggs supervised the purchase of the Policy by Langston.

4. Suggs claims that she witnessed Langston personally execute a form rejecting UIM coverage with respect to the Policy.

5. On the other hand, Kimberly L. White, who was married to Langston, claims that she executed the UIM rejection form.

6. Langston was killed as the result of a motorcycle accident on September 13, 2009, in Kershaw County, South Carolina, when the motorcycle he was operating collided with a vehicle being driven by Sammie Johnson, Jr.

7. Allstate Insurance Company ("Allstate") insured Johnson and Horace Love, the owner of the vehicle being driven by Johnson at the time of the accident, under an automobile liability insurance policy.

8. On or around March 30, 2012, Allstate paid its policy limits to White in exchange for a Covenant Not to Execute as to Johnson and Love by White in her individual capacity and in her capacity as Personal Representative of the Estate of Sheldon Lee Langston.

9. On May 4, 2012, White, individually, filed an action, designated as Case No. 2012-CP-21-1190, against Johnson in the Court of Common Pleas for Florence County, South Carolina, alleging Johnson caused the motorcycle accident and seeking to recover for any damages White suffered individually as a result thereof.

10. Also on May 4, 2012, White, as Personal Representative of the Estate, filed an action against Johnson in the Court of Common Pleas for Florence County, South Carolina,

alleging Johnson caused the motorcycle accident and seeking to recover under theories of wrongful death and survival as a result thereof.

11. White served both complaints on Dairyland, as a purported UIM carrier under the Policy.

12. Subsequently, Dairyland filed the present action for a judicial declaration of coverage under the Policy.

13. Since filing this action, Dairyland and White have settled all claims between them, with Dairyland and the insurance broker who procured the Policy, Gene H. Langley d/b/a Langley Agency, agreeing to pay Kimberly L. White, as Personal Representative of the Estate of Sheldon Lee Langston, a sum certain upon approval of the settlement by the Court of Common Pleas for Florence County, South Carolina, in Case No. 2012-CP-21-1191.

14. As part of this settlement, the parties also agree to the relief requested in their joint motion.

### **Conclusions of Law**

1. Based on the foregoing, and pursuant to 28 U.S.C. §2201, the Court hereby declares that the Policy issued to Sheldon Lee Langston by Dairyland includes UIM coverage with limits of \$25,000 per person and \$50,000 per accident for the policy period 05/08/2009 to 05/08/2010 as relates only to the 2003 Harley Davidson motorcycle described in the Policy.

2. Based on the consent of the parties, the Court further dismisses this action with prejudice, with each party to bear its own costs and attorneys' fees incurred in this action.

s/R. Bryan Harwell  
R. Bryan Harwell  
United States District Judge

Dated: September 10, 2013  
Florence, South Carolina