CHAPTER 61

Insurance Contracts Generally

**SECTION 38‑61‑10.** Contracts which are considered made in State.

 All contracts of insurance on property, lives, or interests in this State are considered to be made in the State and all contracts of insurance the applications for which are taken within the State are considered to have been made within this State and are subject to the laws of this State.

HISTORY: Former 1976 Code Section 38‑61‑10 [1977 Act No. 120 Section 1] recodified as Section 38‑81‑10 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑20 [1947 (45) 322; 1952 Code Section 37‑141; 1962 Code Section 37‑141] recodified as Section 38‑61‑10 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 724.

Library References

Insurance 1088.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 24 to 27.

RESEARCH REFERENCES

Encyclopedias

Am. Jur. 2d Insurance Section 333, Statutes.

NOTES OF DECISIONS

In general 3

Constitutional issues 2

Validity 1

1. Validity

SECTION 38‑61‑10 is not unconstitutional in providing that contracts of insurance on interests which are located in South Carolina are considered to be made in South Carolina and are subject to the laws of South Carolina, even where the contracts are executed outside of the state and between parties who are not citizens of the state, since insuring property, lives and interest in South Carolina constitutes a significant contact with the state. Sangamo Weston, Inc. v. National Sur. Corp. (S.C. 1992) 307 S.C. 143, 414 S.E.2d 127. Insurance 1091(1)

2. Constitutional issues

Application of South Carolina law to dispute over whether excess insurer acted in bad faith or negligently handled insured’s claim for underinsured motorist (UIM) benefits under excess policy was neither arbitrary nor unfair, and thus consistent with Due Process and Full Faith and Credit Clauses of United States Constitution; insuring property located in South Carolina constituted significant contact with state, and parties availed themselves of South Carolina law when they respectively provided or received insurance on interests located in state. Hartsock v. American Auto. Ins. Co., 2011, 788 F.Supp.2d 447, reconsideration denied 2011 WL 2559519. Constitutional Law 3970; Insurance 1091(11); States 5(2)

Due Process Clause and Full Faith and Credit Clause were not offended by application of South Carolina choice‑of‑law insurance statute, in dispute between out‑of‑state life insurer and estate of insured who had been South Carolina resident for seven years at time of his death, even though policy in question had been issued out of state when insured lived out of state; insurer’s provision of insurance to insured during his permanent residence in South Carolina constituted significant contact with state. Heslin‑Kim v. CIGNA Group Ins., 2005, 377 F.Supp.2d 527.

Due Process Clause and Full Faith and Credit Clause were not offended by application of South Carolina choice‑of‑law insurance statute, in dispute between out‑of‑state life insurer and estate of insured who had been South Carolina resident for seven years at time of his death, even though policy in question had been issued out of state when insured lived out of state; insurer’s provision of insurance to insured during his permanent residence in South Carolina constituted significant contact with state. Heslin‑Kim v. CIGNA Group Ins., 2005, 377 F.Supp.2d 527. Constitutional Law 3970; Insurance 1091(7); States 5(2)

3. In general

Florida law, under South Carolina’s rule of lex loci contractus, rather than South Carolina law, pursuant to South Carolina’s choice‑of‑law insurance statute providing that “contracts of insurance on property, lives, or interests” in the state were considered to be made in state and subject to state’s laws, applied to declaratory judgment action by personal representatives of deceased passengers’ estates to reform automobile insurance policy sold to driver’s mother to include underinsured motorist (UIM) coverage, after passengers were killed in automobile accident; insured vehicle was purchased, registered, and insured in Florida, with driver using vehicle in South Carolina on part‑time basis as college student, and insured and driver maintained permanent residence outside state. Russell v. McGrath, 2015, 135 F.Supp.3d 427. Insurance 1091(11)

South Carolina statute providing that all contracts of insurance on property, lives, or interests in state were considered to have been made within state and subject to laws of state applied to dispute over underinsured motorist (UIM) benefits due under excess insurance contract, notwithstanding fact that contract was executed in North Carolina and covered some property located there, since insured property at issue was located in South Carolina, was registered in South Carolina, and bore South Carolina license tag. Hartsock v. American Auto. Ins. Co., 2011, 788 F.Supp.2d 447, reconsideration denied 2011 WL 2559519. Insurance 1091(11)

South Carolina choice‑of‑law insurance statute providing that “[a]ll contracts of insurance on property, lives, or interests in [South Carolina] are considered to be made in “South Carolina] ... and are subject to the laws of [South Carolina]” was applicable, in dispute between out‑of‑state life insurer and estate of insured who had been South Carolina resident for several years at time of his death and had paid premiums from South Carolina and whose estate was probated in South Carolina, even though policy in question had been applied for and delivered out of state and insured had lived out of state at time of contract formation. Heslin‑Kim v. CIGNA Group Ins., 2005, 377 F.Supp.2d 527. Insurance 1091(7)

Under South Carolina law, advertising injury coverage in general business liability policy did not apply to claims against insured for patent infringement; none of the covered categories of advertising injury could reasonably be construed as referring to infringement of patent rights. Sunex Intern., Inc. v. Travelers Indem. Co. of Ill., 2001, 185 F.Supp.2d 614. Insurance 2302

South Carolina substantive law determined whether plaintiff is entitled to collect uninsured motorist benefits from insurer for accident occurring in Georgia but involving van licensed in South Carolina. Sanders v. Doe, 1993, 831 F.Supp. 886. Workers’ Compensation 2088

Parties cannot contract contrary to the public policy of the state due to former Code 1962 Section 37‑141, thus any part of a liability policy from an insurance company to an automobile dealer inconsistent with former Code 1962 Section 46‑150.16 is void and the pertinent provisions of the statute prevail as much as if expressly incorporated in the policy (decided under former law). Security General Ins. Co. v. Bill Vernon Chevrolet, Inc. (D.C.S.C. 1967) 263 F.Supp. 74, affirmed 384 F.2d 1000.

An insurance policy is a contract between the insured and the insurance company, and the policy’s terms are to be construed according to the law of contracts. Williams v. Government Employees Ins. Co. (GEICO) (S.C. 2014) 409 S.C. 586, 762 S.E.2d 705. Insurance 1713; Insurance 1806

Law of Virginia, where the automobile insurance policy was issued and the insured resided, rather than the law of South Carolina, where the accident occurred, applied to question whether the policy was in effect at the time of death. Gordon v. Colonial Ins. Co. of California (S.C.App. 2000) 342 S.C. 152, 536 S.E.2d 376, certiorari denied. Insurance 1091(10)

A contractual dispute between a car rental company and a renter resulting from an accident was governed by New York law even though the accident took place in another state where the agreement was executed in New York, by a resident of New York, with a corporation doing business in New York, the car was registered in New York, and the car rental company delivered the car to the renter in New York. Unisun Ins. Co. v. Hertz Rental Corp. (S.C.App. 1993) 312 S.C. 549, 436 S.E.2d 182, rehearing denied.

SECTION 38‑61‑10 was applicable to insurance contracts which were at issue in certain litigation, even though all of the contracts were executed outside of the state and between parties who were not citizens of the state, where the property which was the subject of the litigation was located within South Carolina; thus, under South Carolina conflict law, South Carolina substantive law governed the dispute. Sangamo Weston, Inc. v. National Sur. Corp. (S.C. 1992) 307 S.C. 143, 414 S.E.2d 127.

North Carolina law applicable, under laws of both North Carolina and South Carolina [former Section 38‑9‑20], as to validity of insurance policy of insured who lived in North Carolina and made application for policy of life insurance in North Carolina with North Carolina insurance company (decided under former law). Ratliff v. Coastal Plain Life Ins. Co. (S.C. 1978) 270 S.C. 373, 242 S.E.2d 424.

Public policy is clearly to effect that all contracts of insurance on subjects in Code 1962 Section 37‑141 shall be deemed made in, and subject to insurance laws of this State (decided under former law). Johnston v. Commercial Travelers Mut. Acc. Ass’n of America (S.C. 1963) 242 S.C. 387, 131 S.E.2d 91.

Former Code 1962 Section 37‑141 made all insurance contracts on property, lives and interest located in this State subject to Insurance Code of this State and was clearly attempt on part of legislature to regulate accident insurance (decided under former law). Johnston v. Commercial Travelers Mut. Acc. Ass’n of America (S.C. 1963) 242 S.C. 387, 131 S.E.2d 91.

**SECTION 38‑61‑20.** Approval of forms by director or designee; notification; withdrawal of approval; exemptions; optional accident or health riders.

 (A) It is unlawful for an insurer doing business in this State to issue or sell in this State a policy, contract, or certificate until it has been filed with and approved by the director or his designee. The director or his designee may disapprove the form if it:

 (1) does not meet the requirements of law;

 (2) contains provisions which are unfair, deceptive, ambiguous, misleading, or unfairly discriminatory; or

 (3) is solicited by means of advertising, communication, or dissemination of information which is deceptive or misleading.

 However, this subsection does not apply to surety contracts or fidelity bonds, except as required in Section 38‑15‑10, or to insurance contracts, riders, or endorsements prepared to meet special, unusual, peculiar, or extraordinary conditions applying to an individual risk or exempt commercial policies.

 (B) Within thirty days after the filing of a form requiring approval, the director or his designee shall notify the organization filing the form of the approval or disapproval of the form, and the reason if the form is disapproved. The director or his designee, in his discretion, may extend for up to an additional sixty days the period within which he shall approve or disapprove the form. A form received, but neither approved nor disapproved by the director or his designee, is deemed approved at the expiration of the thirty days if the period is not extended, or at the expiration of the extended period, if any. An organization may not use a form deemed approved pursuant to the default provision of this section until the organization has filed with the director or his designee a written notice of its intent to use the form. The notice must be filed in the office of the director at least ten days before the organization uses the form.

 (C) At any time after having given written approval, and after an opportunity for a hearing for which at least thirty days’ written notice has been given, the director or his designee may withdraw approval if he finds that the form:

 (1) does not meet the requirements of law;

 (2) contains provisions which are unfair, deceptive, ambiguous, misleading, or unfairly discriminatory; or

 (3) is solicited by means of advertising, communication, or dissemination of information which is deceptive or misleading.

 (D) The director or his designee may exempt from the requirements of subsection (A) as long as he considers proper any type of insurance policy, contract, or certificate to which in his opinion subsection (A) practically must not be applied, or the filing and approval of which, in his opinion, is not necessary for the protection of the public. However, each insurer at least annually shall list the types and form numbers of all policies it issues or sells in this State which the director or his designee has exempted from being filed and approved, and an officer of the insurer shall certify that all of these policies comply fully with the laws of this State. If a policy, contract, or certificate is certified to be in compliance with the laws of this State and the director or his designee finds it violates a law of this State, he may disqualify that insurer from certifying policies, contracts, or certificates allowed under this subsection.

 (E) Nothing in this chapter precludes the issuance of a life insurance contract that includes an optional accident, health, or accident and health insurance rider. However, the optional accident, health, or accident and health insurance rider must be filed with and approved by the director or his designee pursuant to Section 38‑71‑310, 38‑71‑720, or 38‑71‑740, as appropriate, and comply with all applicable sections of Chapter 71 of this title and, in addition, in the case of long term care insurance, Chapter 72 of this title.

HISTORY: Former 1976 Code Section 38‑61‑20 [1977 Act No. 120 Section 2] recodified as Section 38‑81‑20 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑9‑360 [1947 (45) 322; 1952 Code Section 37‑170; 1962 Code Section 37‑170; 1979 Act No. 64] recodified as Section 38‑61‑20 by 1987 Act No. 155, Section 1; 1988 Act No. 316, Section 1; 1992 Act No. 332, Section 2; 1993 Act No. 181, Section 724; 1998 Act No. 411, Section 5; 2000 Act No. 235, Section 3; 2000 Act No. 312, Section 12; 2001 Act No. 82, Section 20, eff July 20, 2001.

CROSS REFERENCES

Applicability of this section to the requirement that forms for accident and health insurance policies be approved by the Commissioner, see Section 38‑71‑310.

Applicability of this section to the requirement that forms for group accident and health insurance policies be approved by the Commissioner, see Section 38‑71‑720.

Approval required for mass‑marketed life insurance policies and certificates offered for sale to residents of this State, see Section 38‑65‑60.

As to additional requirements to fund a preneed funeral contract, see Section 38‑55‑330.

Regulation of credit insurance, see S.C. Code of Regulations R. 69‑11.1.

Library References

Insurance 1774.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 479 to 480.

**SECTION 38‑61‑25.** Approval procedures to issue or sell exempt commercial policies.

 It is unlawful for an insurer doing business in this State to issue or sell in this State any exempt commercial policy, contract, or certificate until it has been filed with and approved by the director or his designee. A filing that is filed with the department is deemed to have met the requirements of this chapter unless it:

 (1) does not meet the requirements of law;

 (2) contains any provisions which are unfair, deceptive, ambiguous, misleading, or unfairly discriminatory; or

 (3) is going to be solicited by means of advertising, communication, or dissemination of information which is deceptive or misleading.

 If a filing is not in compliance with this chapter, the director or his designee shall issue an order specifying in detail the provisions with which the insurer has not complied and stating the time within which the insurer has to comply with the order before the filing is no longer valid. An order issued by the director pursuant to this section must be on a prospective basis only and may not affect a contract issued or made before the effective date of the order. However, this section does not apply to surety contracts or fidelity bonds, except as required in Section 38‑15‑10, or to insurance contracts, riders, or endorsements prepared to meet special, unusual, peculiar, or extraordinary conditions applying to an individual risk.

HISTORY: 2000 Act No. 235, Section 4.

Library References

Insurance 1774.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 479 to 480.

**SECTION 38‑61‑30.** Promulgation of standards for readability of certain contracts and policies.

 The department shall promulgate regulations which establish minimum standards for the readability of each homeowners, dwelling fire, automobile, accident and health, life, and all other forms of personal insurance, excluding commercial, fleet vehicle, and group insurance, which must be complied with by all insurers authorized to do business in this State. The standards shall include, but are not limited to, standards on an index of policy provisions, general organization of text, text readability, type size, type style, type spacing, and general appearance of the insurance contract.

HISTORY: Former 1976 Code Section 38‑3‑61 [1978 Act No. 550 Section 2] recodified as Section 38‑61‑30 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 724.

Library References

Insurance 1769.

Westlaw Topic No. 217.

C.J.S. Insurance Section 481.

**SECTION 38‑61‑40.** Compliance with standards for readability of certain contracts and policies; withdrawal of approval or certification on noncomplying documents.

 All insurers licensed to transact insurance business in this State shall comply with the standards prescribed by regulation of the department. The director or his designee is empowered to withdraw approval or certification on all existing policies of commonly purchased insurance that do not comply with Section 38‑61‑30.

HISTORY: Former 1976 Code Section 38‑3‑62 [1978 Act No. 550 Section 3] recodified as Section 38‑61‑40 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 724; 2001 Act No. 82, Section 21, eff July 20, 2001.

Library References

Insurance 1769, 1774.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 479 to 481.

**SECTION 38‑61‑50.** Standards for readability of certain contracts and policies; advice of other agencies concerning standards.

 The director or his designee shall consult with and call upon the expertise of other state agencies, as may be necessary, to determine the standards to be promulgated and, after promulgation, the effectiveness of these standards. This consultation shall include, but is not limited to, the State Department of Education or its successor entity.

HISTORY: Former 1976 Code Section 38‑3‑63 [1978 Act No. 550 Section 4] recodified as Section 38‑61‑50 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 724.

Library References

Insurance 1769.

Westlaw Topic No. 217.

C.J.S. Insurance Section 481.

**SECTION 38‑61‑60.** Advertising insurance policy in foreign language; effect on interpretation of policy provided in English.

 (A) If an insurer advertises an insurance policy, or the availability of a foreign language informational sheet, or the availability of a translation of an insurance policy in a language other than English, the insurer only needs to provide an English written insurance policy, so long as the advertisement clearly states that the insurance policy is only available in English. Notwithstanding the use of a language other than English in an advertisement, if there is a dispute, the insurance policy is controlling and an advertisement for an insurance policy, informational sheet, or translation may not be construed to modify or change the insurance policy.

 (B) Nothing in this section may be construed to require insurers to provide insurance related services, such as claim services, in a language other than English.

HISTORY: 2006 Act No. 358, Section 1, eff June 9, 2006.

Library References

Insurance 1560.

Westlaw Topic No. 217.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Advertising Section 42, Accident and Health Insurance.

**SECTION 38‑61‑70.** Commercial general liability policy; coverage for construction professional doing construction related work; definition of occurrence; application

 (A) For purposes of this section:

 (1) “Commercial general liability insurance policy” means a contract of insurance that covers occurrences of damages or injury during the policy period and insures a construction professional for liability arising from construction related work.

 (2) “Construction professional” means a person, sole proprietorship, partnership, corporation, limited liability company, or other recognized legal entity that engages in the development, construction, installation, or repair of an improvement to real property.

 (3) “Construction related work” means activities by a construction professional involving the development, construction, installation, or repair of an improvement to real property.

 (B) Commercial general liability insurance policies shall contain or be deemed to contain a definition of “occurrence” that includes:

 (1) an accident, including continuous or repeated exposure to substantially the same general harmful conditions; and

 (2) property damage or bodily injury resulting from faulty workmanship, exclusive of the faulty workmanship itself.

 (C) This section is not intended to restrict or limit the nature or types of exclusions from coverage that an insurer, including a surplus lines insurer, may include in a commercial general liability insurance policy.

 (D) This section applies only to a commercial general liability insurance policy that insures a construction professional for liability arising from construction related work.

 (E) This section applies to any pending or future dispute over coverage that would otherwise be affected by this section as to all commercial general liability insurance policies issued in the past, currently in existence, or issued in the future.

HISTORY: 2011 Act No. 26, Section 1, eff May 17, 2011.

Validity

For validity of this section, see Harleysville Mut. Ins. Co. v. State, 401 S.C. 15, 736 S.E.2d 651 (S.C. 2012).

Editor’s Note

2011 Act No. 26, Section 3, provides as follows:

“This act takes effect upon approval by the Governor and applies to any pending or future dispute over coverage that would otherwise be affected by this section as to commercial general liability insurance policies issued in the past, currently in existence, or issued in the future.”

Library References

Insurance 2275.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1352, 1364 to 1365, 1368, 1371, 1375, 1416.

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law Section 11:214, South Carolina, Kentucky, Alabama, Indiana, Mississippi and Georgia Rule on Whether Faulty Workmanship is an “Occurrence”.

Bruner and O’Connor on Construction Law Section 11:222, Legislative Developments Addressing “Occurrence”.

LAW REVIEW AND JOURNAL COMMENTARIES

The rise and fall of Crossmann: the South Carolina Supreme Court’s double take on whether a CGL insurance policy covers progressive property damage resulting from faulty workmanship. John C. Bruton, 63 S.C. L. Rev. 887 (Summer 2012).

NOTES OF DECISIONS

Insured 3

Occurrence 2

Stipulations 4

Validity 1

1. Validity

Statute defining “occurrence” under commercial general liability insurance policy in construction context to include “property damage or bodily injury resulting from faulty workmanship, exclusive of faulty workmanship itself,” and which provided that definition applied to all policies previously issued or currently in effect, amounted to retroactive application of law in violation of Contract Clauses under state and federal constitutions, in that it substantially impaired pre‑existing contractual relationships between insurer and insured by mandating that all commercial general liability policies to include new statutory definition of “occurrence,” and retroactivity provision was not reasonable and necessary to address pressing emergency. Harleysville Mut. Ins. Co. v. State (S.C. 2012) 401 S.C. 15, 736 S.E.2d 651. Constitutional Law 2758; Insurance 2275

Statute providing that covered “occurrence” under commercial general liability insurance policy in construction context included “property damage or bodily injury resulting from faulty workmanship, exclusive of faulty workmanship itself,” and that it applied to all policies previously issued, which was enacted in response to Supreme Court’s decision on initial appeal that statututory definition of “occurrence” did not include loss arising out of damage to insured’s condominiums caused by faulty construction, did not violate equal protection based on insurer’s claim that statute was narrowly limited to commercial general liability policies issued in construction cases and not to policies issued non‑construction professional insureds, where statute was enacted as attempt to resolve lack of clarity regarding coverage in construction cases, which resulted in substantial litigation. Harleysville Mut. Ins. Co. v. State (S.C. 2012) 401 S.C. 15, 736 S.E.2d 651. Constitutional Law 3694; Insurance 2275

Whether statute providing that covered “occurrence” under commercial general liability insurance policy in construction context included “property damage or bodily injury resulting from faulty workmanship, exclusive of faulty workmanship itself,” and that it applied to all policies previously issued, which was enacted in response to Supreme Court’s decision on initial appeal that statututory definition of “occurrence” did not include loss arising out of damage to insured’s condominiums caused by faulty construction, violated equal protection based on insurer’s claim that statute was narrowly limited to commercial general liability policies issued in construction cases and not to policies issued non‑construction professional insureds, was subject to rational‑basis, rather than strict scrutiny review, where General Assembly had logical reason and sound basis for enacting statute, in view of substantial litigation arising out of prior statute’s lack of clarity regarding such coverage in construction context. Harleysville Mut. Ins. Co. v. State (S.C. 2012) 401 S.C. 15, 736 S.E.2d 651. Constitutional Law 3694

Statute providing that covered “occurrence” under commercial general liability insurance policy in construction context included “property damage or bodily injury resulting from faulty workmanship, exclusive of faulty workmanship itself,” and stating that definition applied to all policies previously issued and currently in effect, which was enacted in response to Supreme Court’s decision on initial appeal that statutory definition of “occurrence” did not include loss arising out of damage to insured’s condominiums caused by faulty construction, was not constitutionally prohibited special law, but rather appeared to be general law that uniformly applied to all construction commercial general liability insurance policies issued in South Carolina. Harleysville Mut. Ins. Co. v. State (S.C. 2012) 401 S.C. 15, 736 S.E.2d 651. Insurance 2275; Statutes 1651; Statutes 1717

General Assembly’s enactment of statute providing that covered “occurrence” under commercial general liability insurance policy in construction context included “property damage or bodily injury resulting from faulty workmanship, exclusive of faulty workmanship itself,” and that statute applied to all policies previously issued, which enactment was in response to Supreme Court’s interpretation of pre‑amended statutory definition of “occurrence” as not including loss arising out of damage to condominiums caused by faulty construction, did not violate separation of powers doctrine by allegedly retroactively overruling Supreme Court’s prior interpretation of statute, where initial appeal was not final decision of Court, in that rehearing was granted, which stayed sending of remittitur, and Supreme Court issued subsequent ruling in which it revised its prior interpretation of statute. Harleysville Mut. Ins. Co. v. State (S.C. 2012) 401 S.C. 15, 736 S.E.2d 651. Constitutional Law 2384; Insurance 2275

Whether statute providing that covered “occurrence” under commercial general liability insurance policy in construction context included “property damage or bodily injury resulting from faulty workmanship, exclusive of faulty workmanship itself,” and that it applied to all policies previously issued, which was enacted in response to Supreme Court’s decision on initial appeal that statutory definition of “occurrence” did not include loss arising out of damage to insured’s condominiums caused by faulty construction, violated equal protection based on insurer’s claim that statute was narrowly limited to commercial general liability policies issued in construction cases and not to policies issued non‑construction professional insureds, was subject to rational‑basis, rather than strict scrutiny review, where General Assembly had logical reason and sound basis for enacting statute, in view of substantial litigation arising out of prior statute’s lack of clarity regarding such coverage in construction context. Harleysville Mut. Ins. Co. v. State (S.C. 2012) 401 S.C. 15, 736 S.E.2d 651. Constitutional Law 3694

Statute providing that covered “occurrence” under commercial general liability insurance policy in construction context included “property damage or bodily injury resulting from faulty workmanship, exclusive of faulty workmanship itself,” and that it applied to all policies previously issued, which was enacted in response to Supreme Court’s decision on initial appeal that statutory definition of “occurrence” did not include loss arising out of damage to insured’s condominiums caused by faulty construction, did not violate equal protection based on insurer’s claim that statute was narrowly limited to commercial general liability policies issued in construction cases and not to policies issued non‑construction professional insureds, where statute was enacted as attempt to resolve lack of clarity regarding coverage in construction cases, which resulted in substantial litigation. Harleysville Mut. Ins. Co. v. State (S.C. 2012) 401 S.C. 15, 736 S.E.2d 651. Constitutional Law 3694; Insurance 2275

2. Occurrence

Insured developers failed to show that payments made to settle homeowners’ claims in other states, arising from damage at condominium projects caused by water intrusion, related to “property damage,” as required for commercial general liability (CGL) and umbrella policies to provide coverage for claims, rather than costs related to defective construction, which were not covered under the policies, and thus amounts paid to settle homeowners’ claims in other states could not be considered in determining whether underlying CGL policy limits were exhausted, so as to trigger umbrella policies. Crossmann Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co. (S.C.App. 2015) 411 S.C. 506, 769 S.E.2d 453. Insurance 2277; Insurance 2396

Fallen outdoor advertising sign and removal of two remaining signs, based on insured’s alleged negligent design, fabrication, and erection of the signs, constituted an “occurrence” that triggered coverage under commercial general liability (CGL) policy, even though other two signs did not fall across interstate highway; the signs were simultaneously constructed, and removal of remaining two signs would not have occurred “but for” the fallen sign as the accident precipitated the mandate issued by Department of Transportation (DOT) to remove the remaining two signs. Auto‑Owners Ins. Co. v. Rhodes (S.C. 2013) 405 S.C. 584, 748 S.E.2d 781. Insurance 2275

3. Insured

Sole owner and shareholder of corporations, both of which conducted business under same trade name, was an insured under commercial general liability (CGL) policy issued to corporations, for purposes of coverage for owner’s tort liability in suit naming him as doing business as (d/b/a) the trade name asserted in the tort complaint; based on stipulation that the trade name in the complaint was the trade name of owner’s corporations, insurer acknowledged landowner was sued in his corporate capacity, and fact that owner operated his business under another name did not create a separate legal entity for insurance purposes. Auto‑Owners Ins. Co. v. Rhodes (S.C. 2013) 405 S.C. 584, 748 S.E.2d 781. Insurance 2272

4. Stipulations

Court of Appeals would not abrogate stipulation between commercial general liability (CGL) and umbrella insurers and insured developers, which provided that if there was an “occurrence,” as required for coverage under policies, damages at underlying projects that met definition of “property damage” in policies were $7.2 million, as would permit insureds to use the $16.8 million paid to settle underlying claims by homeowners, rather than stipulated damages, to establish that underlying CGL policies had been exhausted, so as to trigger umbrella policies; there was no agreement to abrogate stipulation, and insureds provided no basis requiring trial court to abrogate stipulation in interests of justice. Crossmann Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co. (S.C.App. 2015) 411 S.C. 506, 769 S.E.2d 453. Stipulations 13

Stipulation between commercial general liability (CGL) and umbrella insurers and insured developers, which provided that if there was an “occurrence,” as required for coverage under CGL and umbrella policies, damages at condominium projects that met definition of “property damage” in policies were $7.2 million, was not limited to coverage under policies, and thus stipulation could be used to determine whether CGL policies were exhausted, so as to trigger umbrella policies, given that another stipulation provided that the parties agreed that trial court would determine, in the event there was an occurrence, how the $7.2 million in damages should be allocated. Crossmann Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co. (S.C.App. 2015) 411 S.C. 506, 769 S.E.2d 453. Stipulations 14(12)

In insured developers’ action seeking coverage for settlement payments to homeowners in underlying actions arising from property damage at condominium projects resulting from water intrusion, trial court properly allocated stipulated property damages with respect to commercial general liability (CGL) insurer and umbrella insurer by first considering default formula for time‑on‑the‑risk methodology, assuming damage occurred in equal portions during each year it progressed, and then computing pro rata allocation based on daily loss rather than annual loss, since insurer with which insureds had settled had coverage for less than one year and another settling insurer had coverage for less than two years. Crossmann Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co. (S.C.App. 2015) 411 S.C. 506, 769 S.E.2d 453. Insurance 2285(4)

Origin of payments made to settle homeowners’ claims against insured developers for property damage resulting from water intrusion was irrelevant in determining whether underlying commercial general liability (CGL) policies were exhausted, such that umbrella policies were triggered, since parties stipulated that damages were $7.2 million and insureds settled with underlying insurers for $8.6 million, such that umbrella policies were not triggered because stipulated property damage had been paid. Crossmann Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co. (S.C.App. 2015) 411 S.C. 506, 769 S.E.2d 453. Insurance 2396