CHAPTER 77

Automobile Insurance

ARTICLE 1

Purposes and Definitions

**SECTION 38‑77‑10.** Declaration of purpose.

 In order to effect a complete reform of automobile insurance and insurance practices in South Carolina, the purposes of this chapter are to provide:

 (1) that every automobile insurance risk which is insurable on the basis of the criteria established in this chapter is entitled to automobile insurance;

 (2) for a residual market mechanism, known as the Associated Auto Insurers Plan, for every person who is legally entitled to automobile insurance but has not been able to obtain a motor vehicle liability policy to apply to the director of the Department of Insurance to have his risk assigned to an insurance carrier licensed to write and writing motor vehicle liability insurance in the State who shall issue a motor vehicle liability policy which will meet at least the minimum requirements for establishing financial responsibility in this chapter;

 (3) prohibitions and penalties in respect to unfairly discriminatory or unfairly competitive practices having as their purpose or effect evasion of the coverages as provided in this chapter; and

 (4) medical, surgical, funeral, and disability insurance benefits without regard to fault to be offered under automobile insurance policies that provide bodily injury and property damage liability insurance, or other security, for motor vehicles registered in this State.

HISTORY: Former 1976 Code Section 38‑37‑10 [1962 Code Section 37‑591; 1974 (58) 2718; 1976 Act No. 694, Section 1] recodified as Section 38‑77‑30 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑37‑110 [1962 Code Section 37‑591.1; 1974 (58) 2718; 1987 Act No. 166, Section 1] recodified as Section 38‑77‑10 by 1987 Act No. 155, Section 1; 1988 Act No. 399, Section 4; 1993 Act No. 181, Section 801; 1996 Act No. 326, Section 4; 1997 Act No. 154, Section 6.

Library References

Insurance 1532, 2645, 2817.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 85 to 88, 90, 2149 to 2153.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina: Insurance Law ‑ Automobile Insurers’ Right to Cancel Contracts with Independent Agencies. 31 S.C. L. Rev. 11.

NOTES OF DECISIONS

In general 2

Validity of prior law 1

1. Validity of prior law

South Carolina Automobile Reparation Reform Act which required automobile insurance carriers to write policies for all insurable applicants, whether or not they were good risks, and which established reinsurance facility to permit insurers to distribute net operating profit or loss on reasonable number of risks equitably among all insurers did not violate insurer’s rights to equal protection and due process, since Act bore reasonable relation to state objective of guaranteeing adequate coverage for all drivers, and the Act did not represent a confiscatory taking of insurer’s property, since diminution in value of insurer’s business did not constitute a taking in the constitutional sense. Prudential Property and Cas. Ins. Co. v. Insurance Com’n of South Carolina Dept. of Ins. (C.A.4 (S.C.) 1983) 699 F.2d 690. Constitutional Law 3694; Constitutional Law 4288; Insurance 1532

2. In general

Automobile Reparation Reform Act was designed to make certain that automobile insurance would be available to all drivers and that, conversely, all drivers would be insured. (Decided under former law.) Prudential Property and Cas. Co. v. Insurance Commission of South Carolina Dept. of Ins. (D.C.S.C. 1982) 534 F.Supp. 571, affirmed 699 F.2d 690. Insurance 1219

In the case of automobile insurance, a binder may be given orally and may be evidenced by such things as a receipt for premiums tendered to an agent who had the apparent authority to bind the insurance company. Noisette v. Ismail (S.C.App. 1989) 299 S.C. 243, 384 S.E.2d 310, reversed in part 304 S.C. 56, 403 S.E.2d 122.

Negligent infliction of emotional trauma is a bodily injury for which damages may be recovered under a standard automobile liability insurance policy. State Farm Mut. Auto. Ins. Co. v. Ramsey (S.C.App. 1988) 295 S.C. 349, 368 S.E.2d 477, affirmed 297 S.C. 71, 374 S.E.2d 896.

Former Chapter 37 of Title 38 exclusively controlled individual automobile insurance, since that chapter, which was enacted subsequent to former Section 38‑43‑430(1), effected a complete reform of automobile insurance and insurance practices in the state as the same pertains to individuals. State Farm Mut. Auto. Ins. v. Lindsay (S.C. 1986) 288 S.C. 327, 342 S.E.2d 599. Insurance 2645

The South Carolina Reinsurance Facility was expressly empowered to enact rules and regulations consistent with its purpose, as stated in former Sections 38‑37‑110(4), 38‑37‑710 and 38‑37‑720; moreover, former Section 38‑37‑730 directed the adoption of a plan of operation to provide for “equitable apportionment” of Facility losses among its members, and permitted the apportionment to be based upon any method that related insurers to their respective utilization of the Facility, and, thus, these sections expressly empower the Facility to enact rules requiring an insurer who overutilizes the Facility to participate to a greater degree in the distribution of Facility losses as a function of its authority equitably to apportion losses. Grain Dealers Mut. Ins. Co. v. Lindsay (S.C. 1983) 279 S.C. 355, 306 S.E.2d 860.

**SECTION 38‑77‑20.** Construction.

 This chapter is to be liberally construed in order to achieve its purposes.

HISTORY: Former 1976 Code Section 38‑37‑160 [1962 Code Section 37‑591.3; 1974 (58) 2718] recodified as Section 38‑77‑20 by 1987 Act No. 155, Section 1.

**SECTION 38‑77‑30.** Definitions.

 As used in this chapter, unless the context requires otherwise:

 (1) “Automobile insurance” means automobile bodily injury and property damage liability insurance, including medical payments and uninsured motorist coverage, and automobile physical damage insurance such as automobile comprehensive physical damage, collision, fire, theft, combined additional coverage, and similar automobile physical damage insurance and economic loss benefits as provided by this chapter written or offered by automobile insurers. An automobile insurance policy includes a motor vehicle liability policy as defined in item (7) of Section 56‑9‑20 and any nonowner automobile insurance policy which covers an individual private passenger automobile not owned by the insured, a family member of the insured, or a resident of the same household as the insured.

 (2) “Automobile insurer” means an insurer licensed to do business in South Carolina and authorized to issue automobile insurance policies.

 (3) “Bodily injury” includes death resulting therefrom.

 (3.5) “Cancellation” or “to cancel” means a termination of a policy during the policy period.

 (4) “Damages” includes both actual and punitive damages.

 (4.5) “Facility physical damage rate” means the final rate or premium charge for physical damage coverage which must be established by adding the physical damage loss component developed under Section 38‑77‑596 to the expense component developed under Section 38‑77‑596.

 (5.2) “Facility physical damage rate” means the final rate or premium charge for physical damage coverage which must be established by adding the physical damage loss component developed under Section 38‑73‑780 to the expense component developed under Section 38‑73‑1420.

 (5.5)(a) “Individual private passenger automobile” means the following types of motor vehicles owned by or leased under a long‑term contract by an individual or individuals:

 (i) motor vehicles of the private passenger type or station wagon type;

 (ii) panel trucks, delivery sedans, vehicles with a pickup body, vans, or similar motor vehicles designed for use on streets and highways and so licensed;

 (iii) motor homes, so long as the motor vehicles described in (ii) and (iii) are not used in the occupation, profession, or business of the insured other than farming and ranching; and

 (iv) motorcycles.

 (b) A motor vehicle is not considered “owned by or leased under a long‑term contract by an individual or individuals” if the motor vehicle is owned by a partnership or corporation, unless the motor vehicle is owned by a farm family copartnership or a farm family corporation and is garaged principally on a farm or ranch.

 (c) A motor vehicle is not considered “used in the occupation, profession, or business of the insured”, because it is used in the course of driving to and from work.

Text of (5.5)(d) effective until November 19, 2018.

 (d) Individual private passenger automobile does not include:

 (i) motor vehicles that are used for public or livery conveyance or rented to others without a driver;

 (ii) fire department vehicles, police vehicles, ambulances, and rescue squad vehicles which are publicly owned;

 (iii) motor‑driven cycles, motor scooters, and mopeds;

 (iv) dune buggies, all‑terrain vehicles, go carts, and snowmobiles;

 (v) golf carts; and

 (vi) small commercial risks.

Text of (5.5)(d) effective November 19, 2018.

 (d) Individual private passenger automobile does not include:

 (i) motor vehicles that are used for public or livery conveyance or rented to others without a driver;

 (ii) fire department vehicles, police vehicles, ambulances, and rescue squad vehicles which are publicly owned;

 (iii) mopeds;

 (iv) dune buggies, all‑terrain vehicles, go carts, and snowmobiles;

 (v) golf carts; and

 (vi) small commercial risks.

 (6) “Institutional source” means any person or governmental entity that provides information about an individual to an agent, insurer, or insurance‑support organization other than:

 (a) an agent;

 (b) the individual who is the subject of the information; or

 (c) a natural person acting in a personal capacity rather than in a business or professional capacity.

 (7) “Insured” means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above.

 (8) “Insurance‑support organization” means any person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurer or agent for insurance transactions, including (i) the furnishing of consumer reports or investigative consumer reports to an insurer or agent for use in connection with an insurance transaction or (ii) the collection of personal information from insurers, agents, or other insurance‑support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity. However, the following persons shall not be considered insurance‑support organizations for purposes of this chapter: agents, governmental institutions, insurers, rating organizations, medical care institutions, and medical professionals.

Text of (9) effective until November 19, 2018.

 (9) “Motor vehicle” means every self‑propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with these vehicles but excepting traction engines, road rollers, farm trailers, tractor cranes, power shovels and well‑drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails. For purposes of this chapter, the term automobile has the same meaning as motor vehicle.

Text of (9) effective November 19, 2018.

 (9) “Motor vehicle” means every self‑propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with these vehicles but excepting traction engines, road rollers, farm trailers, tractor cranes, power shovels and well‑drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails. Mopeds are considered to be motor vehicles for the purposes of uninsured motor vehicle insurance coverage and underinsured motor vehicle insurance coverage only. For purposes of this chapter, the term automobile has the same meaning as motor vehicle.

 (10) “Nonpayment of premium” means failure of the named insured to pay when due any of his obligations in connection with the payment of premiums on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if membership is a condition precedent to insurance coverage.

 (10.5) “Policy of automobile insurance” or “policy” means a policy or contract for bodily injury or property damage liability insurance issued or delivered in this State covering liability arising from the ownership, maintenance, or use of any motor vehicle, insuring as the named insured one individual or husband and wife who are residents of the same household, and under which the insured vehicle designated in the policy is either:

 (a) a motor vehicle of a private passenger, station wagon, or motorcycle type that is not used commercially, rented to others, or used as a public or livery conveyance where the terms “public or livery conveyance” do not include car pools, or

 (b) any other four‑wheel motor vehicle which is not used in the occupation, profession, or business, other than farming, of the insured, or as a public or livery conveyance, or rented to others. The term “policy of automobile insurance” or “policy” does not include:

 (i) any policy issued through the Associated Auto Insurers Plan,

 (ii) any policy covering the operation of a garage, sales agency, repair shop, service station, or public parking place,

 (iii) any policy providing insurance on an excess basis such as an umbrella policy, or

 (iv) any other contract providing insurance to the named insured even though the contract may incidentally provide insurance on motor vehicles.

 (11) “Quota share reinsurance” means that form of reinsurance in which the reinsurer assumes a fixed percentage of the insured risk.

 (12) “Renewal” or “to renew” means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, the renewal policy to provide types and limits of coverage at least equal to those contained in the policy being superseded, or the issuance and delivery of a certificate or notice extending the terms of a policy beyond its policy period or term with types and limits of coverage at least equal to those contained in the policy being extended. However, any policy with a policy period or term of less than six months or any period with no fixed expiration date is considered as if written for successive policy periods or terms of six months.

 (13) “Small commercial risk” means:

 (a) Garage risks including nonmotor vehicle insurance when written in combination with automobile liability coverage.

 (b) Ambulance risks.

 (c) Commercial risks which have a manufacturer’s gross vehicular weight less than twenty thousand pounds and are not required to have a mandatory filing by a governmental authority other than an SR‑22.

 (d) Church buses used by a church to transport adults or children to and from services and in activities incidental to church functions, so long as a mandatory filing by any governmental authority other than an SR‑22 is not required.

 (e) Privately‑owned school buses used to carry school children and students, their parents or guardians, members of the faculty, school board members, nurses, doctors, and dentists, as well as guests in connection with any school activity and operations incidental thereto, including games, outings, and similar road trips, so long as a mandatory filing by any governmental authority other than an SR‑22 is not required.

 “Small commercial risk” does not include pulpwood trucks or dump trucks.

Text of (14) effective until November 19, 2018.

 (14) “Uninsured motor vehicle” means a motor vehicle as to which:

 (a) there is not bodily injury liability insurance and property damage liability insurance both at least in the amounts specified in Section 38‑77‑140; or

 (b) there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder; or

 (c) there was that insurance, but the insurer who wrote the same is declared insolvent, or is in delinquency proceedings, suspension, or receivership, or is proven unable fully to respond to a judgment; and

 (d) there is no bond or deposit of cash or securities in lieu of the bodily injury and property damage liability insurance;

 (e) the owner of the motor vehicle has not qualified as a self‑insurer in accordance with the applicable provisions of law.

 A motor vehicle is considered uninsured if the owner or operator is unknown. However, recovery under the uninsured motorist provision is subject to the conditions set forth in this chapter.

 Any motor vehicle owned by the State or any of its political subdivisions is considered an uninsured motor vehicle when the vehicle is operated by a person without proper authorization.

Text of (14) effective November 19, 2018.

 (14) “Uninsured motor vehicle” means a motor vehicle as defined in item (9) as to which:

 (a) there is not bodily injury liability insurance and property damage liability insurance both at least in the amounts specified in Section 38‑77‑140; or

 (b) there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder; or

 (c) there was that insurance, but the insurer who wrote the same is declared insolvent, or is in delinquency proceedings, suspension, or receivership, or is proven unable fully to respond to a judgment; and

 (d) there is no bond or deposit of cash or securities in lieu of the bodily injury and property damage liability insurance;

 (e) the owner of the motor vehicle has not qualified as a self‑insurer in accordance with the applicable provisions of law.

A motor vehicle is considered uninsured if the owner or operator is unknown. However, recovery under the uninsured motorist provision is subject to the conditions set forth in this chapter. Any motor vehicle owned by the State or any of its political subdivisions is considered an uninsured motor vehicle when the vehicle is operated by a person without proper authorization.

Text of (15) effective until November 19, 2018.

 (15) “Underinsured motor vehicle” means a motor vehicle as to which there is bodily injury liability insurance or a bond applicable at the time of the accident in an amount of at least that specified in Section 38‑77‑140 and the amount of the insurance or bond is less than the amount of the insureds’ damages.

Text of (15) effective November 19, 2018.

 (15) “Underinsured motor vehicle” means a motor vehicle as defined in item (9) as to which there is bodily injury liability insurance or a bond applicable at the time of the accident in an amount of at least that specified in Section 38‑77‑140 and the amount of the insurance or bond is less than the amount of the insureds’ damages.

HISTORY: Former 1976 Code Sections 38‑37‑10 [1962 Code Section 37‑591; 1974 (58) 2718; 1976 Act No. 694, Section 1] and 56‑9‑810 [1962 Code Section 46‑750.31’ 1963 (53) 526; 1964 (53) 2064; 1977 Act No. 80, Section 5; 1987 Act No. 155, Section 25(a); 1987 Act No. 166, Section 21, transferred to Section 38‑77‑30 by 1987 Act No. 155, Section 24] recodified as Section 38‑77‑30 by 1987 Act No. 155, Section 1; 1988 Act No. 376, Sections 1, 2; 1988 Act No. 399, Section 5; 1989 Act No. 148, Section 52; 1992 Act No. 443, Section 1; 1993 Act No. 181, Section 802; 1996 Act No. 326, Section 5; 1997 Act No. 154, Section 7; 2017 Act No. 89 (H.3247), Section 33, eff November 19, 2018.

Editor’s Note

2017 Act No. 89, Section 37, provides as follows:

“This act takes effect eighteen months after approval by the Governor. The provisions of this act amending Section 38‑77‑30 apply to automobile insurance coverage issued or renewed on or after eighteen months following approval by the Governor.”

Effect of Amendment

2017 Act No. 89, Section 33, in (5.5)(d)(iii), substituted “mopeds” for “motor‑driven cycles, motor scooters, and mopeds”; in (9), inserted the second sentence, relating to mopeds; in (14), inserted “defined in item (9) as”, and combined the two undesignated paragraphs; and in (15), inserted “defined in item (9) as”.

CROSS REFERENCES

Agreements to exclude designated natural persons from coverage, see Section 38‑77‑340.

Requirement that an applicant or existing policyholder possess a valid driver’s license before issuance of automobile insurance policy, see Section 38‑77‑112.

Library References

Insurance 2645 to 2908.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 90, 623, 629 to 630, 1290, 1344 to 1347, 1393 to 1398, 1454 to 1513, 1596 to 1601, 1603 to 1605, 1611 to 1624, 1727 to 1730, 1732 to 1734, 1979 to 1980, 2149 to 2204, 2227 to 2229, 2231 to 2275, 2279 to 2303, 2327, 2329, 2331 to 2333.

RESEARCH REFERENCES

ALR Library

15 ALR 4th 10 , Automobile Liability Insurance: What Are Accidents or Injuries “Arising Out of Ownership, Maintenance, or Use” of Insured Vehicle.

21 ALR 4th 1146 , Omnibus Clause as Extending Automobile Liability Coverage to Third Person Using Car With Consent of Permittee of Named Insured.

Encyclopedias

3 Am. Jur. Proof of Facts 2d 81, Employer’s Acquiescence in Employee’s Use of Company Equipment for Personal Projects.

32 Am. Jur. Proof of Facts 2d 1, Status of Rider as Passenger Rather Than Guest.

16 Am. Jur. Proof of Facts 3d 271, “Permissive” Use of Automobile‑Grant of Permission to Insured’s Permittee.

18 Am. Jur. Proof of Facts 3d 433, “Permissive” Use of Automobile‑Use Within Scope of Permission Granted.

30 Am. Jur. Trials 1, Unloaded Gun Litigation.

S.C. Jur. Damages Section 50, Automobile Accident‑ Motion for a New Trial on Damages Only.

Forms

South Carolina Litigation Forms and Analysis Section 3:15 , Declaratory Judgment (Insurance Coverage).

Treatises and Practice Aids

Automobile Liability Insurance Section 27:19, Punitive Damages.

Automobile Liability Insurance Section 38:17, Uncompensated Damages Approach‑Damages Exceeding Tortfeasor Limits Required for Coverage Activation.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina: Insurance Law ‑ Automobile Insurers’ Right to Cancel Contracts with Independent Agencies. 31 S.C. L. Rev. 11.

1978 Survey: insurance: insurance policy construction; apparent authority. 29 S.C. L. Rev. 132.

NOTES OF DECISIONS

In general 1

Actions at law 9

Arising out of ownership, maintenance, or use 2

Guest 5

Individual private passenger automobile 5.5

Insured 3

Motor vehicles 6

Permissive user 4

Questions of fact 10

Sufficiency of evidence 11

Torts 8

Underinsured motor vehicle 7

1. In general

Former Code Section 38‑37‑940(2), which clearly prohibits an insurer, as defined in former Section 38‑37‑10, from using indirect means to penalize an agent for complying with the South Carolina Automobile Reparation Act, also prohibits an insurer from using a third‑party to cancel contracts it could not cancel directly. Furthermore the Act imposes a duty on agents not to participate or allow themselves to be used to violate the Act. Auto Ins. Agency, Inc. v. Interstate Agency, Inc. (D.C.S.C. 1981) 525 F.Supp. 1104.

Provision in uninsured motorist (UM) endorsement that insurer would not make duplicate payment for any element of loss for which payment had been made by or for anyone who was legally responsible did not dictate that workers’ compensation was exclusive remedy available to employee, where parties stipulated that employee was injured by at‑fault unidentified driver, and UM benefits substituted for benefits worker would have received from motorist who caused injuries. Antley v. Nobel Ins. Co. (S.C.App. 2002) 350 S.C. 621, 567 S.E.2d 872, rehearing denied, certiorari denied. Insurance 2780; Insurance 2807

A policy issued and delivered outside of the state is not a policy issued or delivered in this State and, therefore, need not provide uninsured motorist (UM) coverage. Newton v. Progressive Northwestern Ins. Co. (S.C.App. 2001) 347 S.C. 271, 554 S.E.2d 437. Insurance 2774

An accounting rule for the State Reinsurance Facility whereby excessive cessions are taxed to the offending insurer by requiring an additional contribution to the Facility losses in the amount of $2 for every “overceded” premium dollar, was authorized, under former Sections 38‑37‑10 and 38‑37‑950, by properly delegated authority to apportion losses equitably among Facility members, giving weight to each member’s actual utilization. Grain Dealers Mut. Ins. Co. v. Lindsay (S.C. 1983) 279 S.C. 355, 306 S.E.2d 860. Insurance 1227(5)

Motor Vehicle Financial Responsibility Act does not specifically or by implication repeal Family Purpose Doctrine, which doctrine is an expansion of the concept of agency. (Decided under former law.) Lucht v. Youngblood (S.C. 1976) 266 S.C. 127, 221 S.E.2d 854. Automobiles 195(1)

2. Arising out of ownership, maintenance, or use

Under South Carolina’s test for determining whether incident arises from ownership, maintenance, or use of motor vehicle, so as to trigger coverage under automobile insurance policy, party seeking coverage must establish a causal connection between the vehicle and the injury, there must exist no act of independent significance breaking the causal link, and it must be shown that the vehicle was being used for transportation purposes at the time of the accident; each of these elements must be shown by party seeking coverage before coverage will be extended. Peagler v. USAA Ins. Co., 2004, 325 F.Supp.2d 620, question certified 411 F.3d 469, certified question answered 368 S.C. 153, 628 S.E.2d 475, rehearing denied, answer to certified question conformed to 448 F.3d 286. Insurance 2677

Truck owner was “using” truck in ordinary and expected manner at the time that shotgun discharged accidentally, fatally injuring owner’s wife as she sat in driver’s seat, in that owner was unloading firearms from truck’s back seat when accident occurred and it was foreseeable that pickup truck would be used by its owner for hunting purposes and that hunting gear, including firearms, would be loaded and unloaded from truck, and therefore sufficient causal connection existed between use of truck and wife’s death to establish causation element of test, under South Carolina law, for determining whether injury arose out of use of motor vehicle for purposes of coverage under automobile insurance policy. Peagler v. USAA Ins. Co., 2004, 325 F.Supp.2d 620, question certified 411 F.3d 469, certified question answered 368 S.C. 153, 628 S.E.2d 475, rehearing denied, answer to certified question conformed to 448 F.3d 286. Insurance 2677

Fatal gunshot injury to driver as her husband unloaded shotguns from pickup truck did not arise out of ownership, maintenance, or use of the vehicle, and, thus, automobile policy provided no coverage; the truck was merely the site of the injury and not an active accessory, and, thus, no causal connection existed between use and the injury. Peagler v. USAA Ins. Co. (S.C. 2006) 368 S.C. 153, 628 S.E.2d 475, rehearing denied, answer to certified question conformed to 448 F.3d 286. Insurance 2677

The focus of insurance coverage test for determining whether an injury arose out of the ownership, maintenance, or use of a vehicle is on the extent of the role, if any, the vehicle played in causing the injuries or damage, or whether a particular activity is a covered use as required by statute or a policy provision. Peagler v. USAA Ins. Co. (S.C. 2006) 368 S.C. 153, 628 S.E.2d 475, rehearing denied, answer to certified question conformed to 448 F.3d 286. Insurance 2677

In analyzing whether an injury arose out of the ownership, maintenance, or use of a vehicle, a court ruling on automobile insurance coverage makes no distinction as to whether the injury resulted from a negligent, reckless, or intentional act; the test applies regardless of whether the injury occurred as a result of an intentional assault or an accident. Peagler v. USAA Ins. Co. (S.C. 2006) 368 S.C. 153, 628 S.E.2d 475, rehearing denied, answer to certified question conformed to 448 F.3d 286. Insurance 2677

An injury arises out of the ownership, maintenance, or use of a motor vehicle, for purposes of automobile insurance, if (1) a causal connection exists between the vehicle and the injury, (2) no act of independent significance breaks the causal link between the vehicle and the injury, and (3) the vehicle was being used for transportation purposes at the time of the injury. Peagler v. USAA Ins. Co. (S.C. 2006) 368 S.C. 153, 628 S.E.2d 475, rehearing denied, answer to certified question conformed to 448 F.3d 286. Insurance 2677

Individual’s personal injuries arise out of the “ownership, maintenance, or use” of an automobile, such that they are covered by automobile insurance policy, if: (1) there exists a causal connection between the vehicle and the injury; and (2) no act of independent significance breaks the causal link; and (3) the vehicle is being used for transportation at the time of the assault. Doe v. South Carolina State Budget and Control Bd., Office of Ins. Services, Ins. Reserve Fund (S.C. 1999) 337 S.C. 294, 523 S.E.2d 457. Insurance 2677

For purposes of determining whether claimants’ injuries from alleged sexual assaults by police officer arose out of the “ownership, maintenance, or use” of an automobile, such that they would be covered by automobile liability insurance policy, necessary causal connection meant (1) the vehicle was an “active accessory” to the assault; and (2) something less than proximate cause but more than mere site of the injury; and (3) the injury had to be foreseeably identifiable with the normal use of the automobile. Doe v. South Carolina State Budget and Control Bd., Office of Ins. Services, Ins. Reserve Fund (S.C. 1999) 337 S.C. 294, 523 S.E.2d 457. Insurance 2678

Police officer’s sexual assaults on victims who were stopped by officer for driving under influence (DUI) investigations did not arise out of “use” of patrol car within meaning of automobile liability insurance policy; cruiser was not being used for transportation at time of assaults, it was not “active accessory,” and victims’ acceptances of officer’s offers were acts of independent significance which broke any causal link. Doe v. South Carolina State Budget and Control Bd., Office of Ins. Services, Ins. Reserve Fund (S.C. 1999) 337 S.C. 294, 523 S.E.2d 457. Insurance 2678

Automobile exclusion of commercial general liability (CGL) insurance policy applied to damages because of bodily injury, even though it referred only to bodily injury arising out of the use of an automobile; the exclusion applied to the occurrence or event causing damages and thus barred coverage for all damages arising from the use of an automobile. MGC Management of Charleston, Inc. v. Kinghorn Ins. Agency (S.C.App. 1999) 336 S.C. 542, 520 S.E.2d 820. Insurance 2278(13)

The injuries suffered by a pedestrian when he was struck by a police car “arose out of” the city’s ownership of the automobile, and thus were excluded from coverage under the city’s general liability policy, despite the claim that the injuries arose out of the city’s negligent failure to properly train its officers, since there was no causal link by which the city’s negligence could be independently connected to the pedestrian’s injuries without the officer’s alleged negligent operation of the police car. McPherson By and Through McPherson v. Michigan Mut. Ins. Co. (S.C. 1993) 310 S.C. 316, 426 S.E.2d 770. Insurance 2278(13)

Ambulance driver was not “using” ambulance for transportation purposes at time she was struck by underinsured motorist, and thus her employer’s insurance policy did not violate South Carolina law requiring insurance coverage of any person who uses a vehicle by failing to extend coverage to her accident, where driver was struck when she was approximately 8 feet away from ambulance on opposite side of lane. Cramer v. National Casualty Company (C.A.4 (S.C.) 2017) 690 Fed.Appx. 135, 2017 WL 2333591. Insurance 2679

3. Insured

This section’s definition of “insured” concludes 2 classes of insureds: the named insured who, together with his spouse and relatives residing in his household, are covered at all times under automobile insurance policy; and permissive users and guests, who are covered insureds while using or riding in covered motor vehicle. Wright v. Allstate Ins. Co., 1990, 746 F.Supp. 612.

The son of the named insureds on an insurance policy who was a resident in the same household was an insured person under former Section 56‑9‑810. Pennsylvania Nat. Mut. Cas. Ins. Co. v. Dawkins (D.C.S.C. 1982) 551 F.Supp. 971. Insurance 2661

The statutory definition of “insured” cannot be limited by a contractual provision. South Carolina Farm Bureau Mut. Ins. Co. v. Kennedy (S.C. 2012) 398 S.C. 604, 730 S.E.2d 862. Insurance 2100

The statute defining an insured under an automobile insurance policy is controlling if the terms of an insurance policy excluding coverage are in conflict with the requirements of the statute. Auto Owners Ins. Co. v. Rollison (S.C. 2008) 378 S.C. 600, 663 S.E.2d 484, rehearing denied. Insurance 2660.5

Named insured’s son, who was owner of car in which passenger was injured during accident, was a “dependent” of named insured for purposes of automobile policies providing primary coverage to other vehicles, and thus son was a “relative” of named insured under policies and car was thus not a “non‑owned vehicle” for which policies would provide excess liability coverage; named insured claimed son as a dependent on her income tax returns, albeit pursuant to a court order, she shared costs for son’s medical expenses with father, she paid for son’s car taxes and insurance, she cosigned lease for son’s apartment near university he attended, and she maintained a bedroom at her house to which son often returned on weekends. Coakley v. Horace Mann Ins. Co. (S.C. 2007) 376 S.C. 2, 656 S.E.2d 17, rehearing denied. Insurance 2656; Insurance 2761

Use of a vehicle by a friend of the son of the named insured was within the scope of the named insured’s consent, even though the son had been forbidden to let anyone else drive the vehicle, since (1) the policy definition of “insured” was broader than that set forth in Section 38‑77‑30(6) and included the son, who had permission to use the vehicle for any normal purpose, and (2) the consent of the named insured needed only to flow to the use of the vehicle itself. Maryland Cas. Co. v. State Farm Mut. Auto. Ins. Co. (S.C.App. 1994) 312 S.C. 476, 441 S.E.2d 338, rehearing denied, certiorari denied. Insurance 2666

A decedent, who was a member of the insured’s household, but was not connected with the insured by blood, marriage, or adoption, was not a “relative” of the insured within the meaning of former Section 56‑9‑810(2). Inman v. South Carolina Ins. Co. (S.C.App. 1990) 300 S.C. 550, 389 S.E.2d 173.

Former section 56‑11‑250 was intended to allow named insured to obtain lower premium rate by excluding member of his household who has bad driving record, otherwise included pursuant to former Section 56‑9‑810, and such exclusion cannot apply to named insured and exclusion of named insured operates as cancellation of policy. Lovette v. U. S. Fidelity and Guaranty Co. (S.C. 1980) 274 S.C. 597, 266 S.E.2d 782.

4. Permissive user

Under South Carolina law, as predicted by the district court, truck passenger who was injured in truck accident was not a guest in the truck, so as to be an insured under truck’s insurance policy, and thus, eligible to recover under truck’s uninsured motor vehicle coverage; passenger was not a guest of truck’s owner, but, at most, rode in truck with consent of person who borrowed truck from owner, and borrower acted outside the scope of owner’s permission both in disobeying owner’s instruction not to transport passengers and by using the truck for personal activities. Progressive Specialty Ins. Co. v. Murray, 2007, 472 F.Supp.2d 732. Insurance 2660.5; Insurance 2667

Under South Carolina law, for purposes of establishing coverage under an automobile insurance policy through permissive use, implied consent involves an inference arising from a course of conduct or relationship between the parties, in which there is mutual acquiescence or lack of objection under circumstances signifying assent. Progressive Specialty Ins. Co. v. Murray, 2007, 472 F.Supp.2d 732. Insurance 2664

Even if borrower of truck was acting within scope of truck owner’s implied permission by taking truck on second night after owner allowed him to borrow truck for one night to drive home from work and back the next day, borrower was not acting within scope of his permission when he loaned truck to driver for trip to store, and thus, passenger in truck who was injured in accident during trip to store was not a permissive user, so as to be an insured under truck’s insurance policy under South Carolina law; owner expressly instructed borrower that truck was to be used only for work‑related activities and was not to be used for personal reasons, that no passengers were permitted to ride in truck with him, and that he was only to drive truck straight home. Progressive Specialty Ins. Co. v. Murray, 2007, 472 F.Supp.2d 732. Insurance 2667

Vehicle involved in accident while being driven by another person residing in household did not qualify as non‑owned vehicle with respect to policyholder’s daughter, who resided in household; car was owned by daughter within exclusionary language for relative owners unless car had been insured within last 30 days and was driven by an insured, where driver, although a resident of the household, was not an insured within policy. State Farm Mut. Auto. Ins. Co. v. Boyd, 2005, 377 F.Supp.2d 511. Insurance 2656

The invalidity of an exclusion of liability coverage for a named insured’s customers as permissive users mandated coverage up to the statutory minimum limits, not the limits of the garage policy. George v. Empire Fire and Marine Ins. Co. (S.C. 2001) 344 S.C. 582, 545 S.E.2d 500. Insurance 2866; Insurance 2876(1)

Omnibus clause defining a permitted user as any person or organization with permission to use a covered auto contained no requirement that the use must be within the scope of permission, and, thus, fifteen‑year‑old driver was an insured even though she exceeded license restrictions and even if she exceeded the scope of permission. Pennell v. Foster (S.C.App. 1999) 338 S.C. 9, 524 S.E.2d 630. Insurance 2663

The seller of a fleet of cars was not the owner when a child of an employee for the buyer’s subsidiary caused an accident, and, thus, the child was not insured under the seller’s policy as a permissive user of a car owned by the seller, even though the seller was the titleholder and even if the seller retained an insurable interest in the vehicle; the subsidiary had possession, and the seller had agreed to execute the paperwork for transfer. Pennell v. Foster (S.C.App. 1999) 338 S.C. 9, 524 S.E.2d 630. Insurance 2663

Permissive user of named insured’s pickup truck was not an insured for purposes of liability coverage on vehicles not involved in the accident. State Farm Mut. Auto. Ins. Co. v. James (S.C.App. 1999) 337 S.C. 86, 522 S.E.2d 345. Insurance 2660.5

Driver lacked implied permission to use his aunt’s car when he took the keys from his sleeping mother’s mattress, and, thus, he was not permissive user and was not entitled to liability coverage under policy issued to aunt as vehicle owner, even though he had used the car in the past without permission; the mother required the driver to ask permission before using the car. Catawba Ins. Co. v. Smith (S.C.App. 1999) 336 S.C. 33, 518 S.E.2d 291. Insurance 2663

Driver’s previous use of his aunt’s car without permission did not permit inference of implied permission; thus, the driver was not a permissive user under aunt’s policy. Catawba Ins. Co. v. Smith (S.C.App. 1999) 336 S.C. 33, 518 S.E.2d 291. Insurance 2664; Insurance 2691

“Express consent” making driver a permissive user covered by automobile insurance policy must be of an affirmative character, directly and distinctly stated, clear and outspoken, and not merely implied or left to inference. Catawba Ins. Co. v. Smith (S.C.App. 1999) 336 S.C. 33, 518 S.E.2d 291. Insurance 2663

“Implied consent” making driver a permissive user covered by automobile insurance policy rests upon proof of circumstances from which an inference of actual permission or consent reasonably arises; it involves an inference arising from a course of conduct or relationship between the parties, in which there is mutual acquiescence or lack of objection under circumstances signifying assent. Catawba Ins. Co. v. Smith (S.C.App. 1999) 336 S.C. 33, 518 S.E.2d 291. Insurance 2664; Insurance 2691

Consent making driver a permissive user covered by automobile insurance policy must flow from the insured or from one authorized to act on the insured’s behalf. Catawba Ins. Co. v. Smith (S.C.App. 1999) 336 S.C. 33, 518 S.E.2d 291. Insurance 2663; Insurance 2666

A provision in an automobile insurance policy issued to a car dealership, which excluded liability coverage for an individual using a covered vehicle “while working in the business of servicing automobiles,” was invalid because it contravened Sections 38‑77‑30(6) and 38‑77‑140 in that it attempted to avoid liability coverage for the permissive user of a covered vehicle defined by the statute as an insured. American Mut. Fire Ins. Co. of Charleston, Inc. v. Aetna Cas. & Sur. Co. (S.C. 1991) 303 S.C. 301, 400 S.E.2d 147.

An injured permissive user of an automobile claiming uninsured motorist benefits from the insurer of the automobile of which he is a permissive user must first prove that he sustained his injury while using the insured motor vehicle. (Decided under former law.) Hite v. Hartford Acc. and Indem. Co. (S.C.App. 1986) 288 S.C. 616, 344 S.E.2d 173.

“Use” of an automobile,for the purpose of determining whether a permissive user is entitled to uninsured motorist benefits from the insurer of the automobile, involves the employment of the vehicle for some purpose of the user, and the quoted term is broader then “operate” or “drive.” (Decided under former law,) Hite v. Hartford Acc. and Indem. Co. (S.C.App. 1986) 288 S.C. 616, 344 S.E.2d 173. Insurance 2679

A self‑employed roofing contractor and son of the insured, as a permissive user of his father’s insured vehicle, was an insured according to the Motor Vehicle Financial Responsibility Act so as to be insured against loss from liability imposed by law upon him as a result of an accident arising from his use of the vehicle. (Decided under former law.) Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker (S.C.App. 1984) 282 S.C. 546, 320 S.E.2d 458. Insurance 2663

Fact that defendant was permissive user under automobile liability insurance policy in no manner reduced immunity granted him as co‑employee under Longshoremen’s Act [33 USC Section 933(i)]; neither existence of covering insurance policy nor defendant’s status as insured created cause of action. (Decided under former law.) Smalls v. Blackmon (S.C. 1977) 269 S.C. 614, 239 S.E.2d 640.

A grant of authority by the named insured delegating to another the right of third person to operate the named insured’s vehicle may be implied from the broad scope of the initial permission or from attending circumstances and the conduct of the parties. (Decided under former law.) American Mut. Fire Ins. Co. v. Reliance Ins. Co. (S.C. 1977) 268 S.C. 310, 233 S.E.2d 114.

Where the insured gave his son unrestricted and unfettered right to use the insured’s car, there was ample evidence to support the court’s finding that the son had permission to allow third persons to use the insured’s car. (Decided under former law.) American Mut. Fire Ins. Co. v. Reliance Ins. Co. (S.C. 1977) 268 S.C. 310, 233 S.E.2d 114.

Permission by the named insured to another to use an automobile does not of itself authorize the first permittee to delegate permission to a third person, so as to bring the third person within the coverage of the omnibus clause of an automobile insurance policy. (Decided under former law.) American Mut. Fire Ins. Co. v. Reliance Ins. Co. (S.C. 1977) 268 S.C. 310, 233 S.E.2d 114.

Where a driver testified that person who had custody of automobile gave him permission to drive it whenever he wanted, there was sufficient evidence for the trial judge to find that driver had permission to use automobile and was an insured under the omnibus clause of the insurance policy covering the automobile. (Decided under former law.) American Mut. Fire Ins. Co. v. Reliance Ins. Co. (S.C. 1977) 268 S.C. 310, 233 S.E.2d 114.

5. Guest

Passenger who rode in automobile owned by dealership at invitation of driver was a “guest” and, thus, an insured, for purposes of uninsured motorist (UM) coverage under garage liability policy, even though the driver did not have the owner’s permission to drive the car; based on driver’s invitation, passenger had, by implication, owner’s consent, and there was no evidence that passenger had reason to know that driver was not a permissive user of the car. Auto Owners Ins. Co. v. Rollison (S.C. 2008) 378 S.C. 600, 663 S.E.2d 484, rehearing denied. Insurance 2660.5; Insurance 2663

Passenger in car driven by person who was not permissive user was not “insured” and, therefore, was not entitled to uninsured motorist (UM) benefits under vehicle owner’s policy; statutory definition of “insured” required guest to be in vehicle to which policy applied, and since driver used vehicle without owner’s consent, car was no longer a motor vehicle to which the policy applied. Unisun Ins. Co. v. Schmidt (S.C.App. 1998) 331 S.C. 437, 503 S.E.2d 211, rehearing denied, certiorari granted, reversed 339 S.C. 362, 529 S.E.2d 280. Insurance 2660.5

Coverage existed for injuries caused to a backhoe driver by a bottle thrown by the passenger of an insured vehicle, since the person who threw the bottle was placed in his position only through the use of the vehicle, and the vehicle’s speed contributed to the velocity of the bottle, thus increasing the seriousness of the driver’s injuries. Home Ins. Co. v. Towe (S.C.App. 1992) 310 S.C. 167, 425 S.E.2d 784, rehearing denied, certiorari granted, affirmed 314 S.C. 105, 441 S.E.2d 825. Insurance 2677

A passenger who was riding in her own vehicle at the time of collision was not a “guest in such motor vehicle” within the meaning of former Section 56‑9‑810 and, therefore, was not entitled to stack uninsured motorist coverage contained in the policy of the driver. Fireman’s Ins. Co. of Newark, New Jersey v. State Farm Mut. Auto. Ins. Co. (S.C. 1988) 295 S.C. 538, 370 S.E.2d 85. Insurance 2799

A bus company, which was a self‑insurer of its motor vehicles, was required to provide coverage to fare paying passengers for injuries inflicted by acts of uninsured motorists. (Decided under former law. ) South Carolina Elec. and Gas Co. v. Jeter (S.C.App. 1986) 288 S.C. 432, 343 S.E.2d 47.

5.5. Individual private passenger automobile

South Carolina law did not automatically engraft motor vehicle insurance law provision that defined “individual private passenger automobile” onto “private passenger auto” in automobile insurance policy where coverage for non‑owned vehicle was at issue and it did not require that insurance policies use its definition of “individual private passenger automobile” to define similar‑sounding terms or prohibit policies from defining similar‑sounding terms differently; moreover, similarity of “private passenger auto” and “individual private passenger automobile” was not, standing alone, sufficient reason to impose definition upon automobile insurance policy that insurer and insured was free to reject under South Carolina law. Garrison Property and Casualty Insurance Company v. Rickborn, 2016, 226 F.Supp.3d 551. Insurance 2653; Insurance 2656

Non‑owned pickup truck involved in collision that was being used while engaged in occupation other than auto business, farming, or ranching was not “private passenger auto” under South Carolina law, and thus exception regarding “use of a private passenger auto; a pickup or a van that you own” did not apply to work use exclusion from automobile liability insurance coverage; words “pickup” and “private passenger auto” appeared together throughout policy as items in disjunctive series indicating that pickup truck was not “private passenger auto,” and court could not read “private passenger auto” to include only pickup trucks that policyholders did not own because policy did not indicate that whether vehicle was private passenger auto depended in any way on whether policyholder owned it and insurer easily could have written that exception did not apply to “a pickup” without adding qualifying language about ownership. Garrison Property and Casualty Insurance Company v. Rickborn, 2016, 226 F.Supp.3d 551. Insurance 2653; Insurance 2683

6. Motor vehicles

The fact that farm tractors are subject to statutes regulating traffic on highways does not convert farm tractors to motor vehicles within the meaning of motor vehicle insurance laws (Sections 38‑77‑10 et seq.). Anderson v. State Farm Mut. Auto. Ins. Co. (S.C. 1994) 314 S.C. 140, 442 S.E.2d 179. Insurance 2653

A farm tractor does not come under the definition of “motor vehicle” under the Motor Vehicle Financial Responsibility Act (Section 38‑77‑150) since it is not designed for use on the highway, although it may be incidentally used on the highway. Anderson v. State Farm Mut. Auto. Ins. Co. (S.C. 1994) 314 S.C. 140, 442 S.E.2d 179. Insurance 2653

A farm tractor is not a “motor vehicle” for purposes of uninsured or underinsured motor vehicle coverage, since the uninsured motorist statutes were not intended to apply to injuries inflicted by vehicles not subject to registration or compulsory insurance provisions. Anderson v. State Farm Mut. Auto. Ins. Co. (S.C. 1994) 314 S.C. 140, 442 S.E.2d 179.

7. Underinsured motor vehicle

Availability of bodily injury liability insurance, rather than availability of vehicle‑specific liability insurance, determined availability of underinsured motorist (UIM) coverage and, thus, UIM coverage was not available for claims asserted by personal representative of estate of deceased motorist, predicated on underlying fatal automobile accident, where tortfeasor’s employer’s commercial automobile policies provided coverage for said claims. Goldston v. State Farm Mut. Auto. Ins. Co. (S.C.App. 2004) 358 S.C. 157, 594 S.E.2d 511, rehearing denied, certiorari denied. Insurance 2787

Alleged gap in coverage under tortfeasor’s employer’s commercial general liability policies due to deductible contained in policies did not operate to trigger coverage under deceased motorist’s underinsured motorist (UIM) policy, where court determined that coverage did not exist under tortfeasor’s employer’s commercial general liability policies to cover claims asserted by personal representative of estate of deceased motorist. Goldston v. State Farm Mut. Auto. Ins. Co. (S.C.App. 2004) 358 S.C. 157, 594 S.E.2d 511, rehearing denied, certiorari denied. Insurance 2787

Setoff provision reducing underinsured motorist (UIM) benefits by the amount of workers’ compensation was consistent with public policy and was valid; UIM coverage was voluntary. State Farm Mut. Auto. Ins. Co. v. Calcutt (S.C.App. 2000) 340 S.C. 231, 530 S.E.2d 896. Insurance 2807

Pedestrian’s injuries from gunshots fired by a soldier from a vehicle were not foreseeably identifiable with the normal use of an automobile, thus did not arise out of the ownership, maintenance, or use of a vehicle, and, therefore, did not entitle the pedestrian to underinsured motorist (UIM) benefits; no causal connection existed between the vehicle and injury. State Farm Mut. Auto. Ins. Co. v. Bookert (S.C. 1999) 337 S.C. 291, 523 S.E.2d 181, rehearing denied. Insurance 2679

Victim of carburator fire during attempt to start named insured’s pickup truck was a “Class II insured” not entitled to stack underinsured motorist (UIM) coverages under policies not involved in the accident; the named insured was repairing a truck owned by the victim’s employer. State Farm Mut. Auto. Ins. Co. v. James (S.C.App. 1999) 337 S.C. 86, 522 S.E.2d 345. Insurance 2799

An insured motorist was not entitled to reformation of an automobile insurance policy, and the vehicle in which the insured’s daughter was killed was not an underinsured motor vehicle as defined by statute and policy amendment, where the policy at issue was renewed on November 14, 1987, Section 56‑9‑810 (a predecessor to Section 38‑77‑30) had become effective June 4, 1987, and this section defined underinsured motor vehicle pursuant to “reduction” coverage, rather than “excess” coverage. Purvis v. State Farm Mut. Auto. Ins. Co. (S.C.App. 1991) 304 S.C. 283, 403 S.E.2d 662.

8. Torts

An automobile insurance carrier may exclude coverage for intentional injuries caused by its insured through the operation of a motor vehicle since former Sections 56‑9‑810 et seq. only required that “accidents” be covered and nowhere does the statute mandate that intentional torts be covered. Pennsylvania Nat. Mut. Cas. Ins. Co. v. Dawkins (D.C.S.C. 1982) 551 F.Supp. 971. Insurance 2675; Insurance 2737

Exclusion provision in tortfeasor’s employer’s/vehicle repossession business’ commercial general liability policies, stating that coverage did not apply to bodily injury or property damage arising out of ownership, maintenance, use or entrustment to others of any auto owned or operated by or rented or loaned to any insured, applied to preclude coverage for all claims asserted in wrongful death and survival action predicated on underlying automobile accident, including claims not premised on use of auto; definitions “bodily injury” and “property damage” in policies assured that auto exclusion applied to all bodily injury and property damages arising out of use of auto and did not limit application of exclusion only to causes of action that arose out of use or entrustment of auto. Goldston v. State Farm Mut. Auto. Ins. Co. (S.C.App. 2004) 358 S.C. 157, 594 S.E.2d 511, rehearing denied, certiorari denied. Insurance 2278(13)

Tortfeasor’s employer’s/vehicle repossession business’ commercial automobile policies provided coverage for claims asserted in wrongful death and survival action predicated on underlying automobile accident, although policy language limiting coverage to non‑owned and hired autos materially conflicted with policy language defining garage operations and insureds for garage operations, thus rendering policies ambiguous; policies provided coverage based on the premise that ambiguous or conflicting terms in an insurance contract should be construed in favor of the insured and strictly against the insurer. Goldston v. State Farm Mut. Auto. Ins. Co. (S.C.App. 2004) 358 S.C. 157, 594 S.E.2d 511, rehearing denied, certiorari denied. Insurance 2656; Insurance 2659; Insurance 2865; Insurance 2867

Automobile exclusion of commercial general liability (CGL) insurance policy barred coverage for personal injury damages recovered in suit for wrongful death caused by insured’s use of car; the distinction between bodily injury damages and personal injury damages was irrelevant, since the exclusion applied to the occurrence itself and not the type of damages, and since the death arose from use of a car, the policy excluded damages emanating from the death. MGC Management of Charleston, Inc. v. Kinghorn Ins. Agency (S.C.App. 1999) 336 S.C. 542, 520 S.E.2d 820. Insurance 2278(13)

Negligent infliction of emotional distress is a bodily injury for which damages may be recovered under a standard automobile insurance policy. State Farm Mut. Auto. Ins. Co. v. Ramsey (S.C. 1988) 297 S.C. 71, 374 S.E.2d 896. Insurance 2673

Negligent infliction of emotional trauma is a bodily injury for which damages may be recovered under a standard automobile liability insurance policy. State Farm Mut. Auto. Ins. Co. v. Ramsey (S.C.App. 1988) 295 S.C. 349, 368 S.E.2d 477, affirmed 297 S.C. 71, 374 S.E.2d 896.

9. Actions at law

A declaratory judgment action to determine which of two insurers has primary liability coverage is at law. Pennell v. Foster (S.C.App. 1999) 338 S.C. 9, 524 S.E.2d 630. Declaratory Judgment 253

A declaratory judgment action to determine the coverage under an insurance policy’s omnibus clause is an action at law. Pennell v. Foster (S.C.App. 1999) 338 S.C. 9, 524 S.E.2d 630. Declaratory Judgment 253

An action to declare excess or secondary liability coverage is an action at law. Pennell v. Foster (S.C.App. 1999) 338 S.C. 9, 524 S.E.2d 630. Declaratory Judgment 253

10. Questions of fact

The question of implied delegation of the right of a permittee to allow third persons to operate the named insured’s vehicle is factual. (Decided under former law. ) American Mut. Fire Ins. Co. v. Reliance Ins. Co. (S.C. 1977) 268 S.C. 310, 233 S.E.2d 114.

11. Sufficiency of evidence

Evidence supported trial court’s finding in declaratory judgment action that named insured’s son, who was owner of car in which passenger was injured during accident, was not a “dependent” of named insured for purposes of automobile policies providing primary coverage to other vehicles, and thus son was not a “relative” of named insured under policies and car was therefore a “non‑owned vehicle” for which policies would provide excess liability coverage, although son was listed as a dependent on named insured’s income tax returns; evidence indicated that son’s father paid majority of son’s college tuition, son testified that named insured did not pay son’s rent or help with tuition, and son testified that he paid his own expenses concerning gasoline and repairs. Coakley v. Horace Mann Ins. Co. (S.C.App. 2005) 363 S.C. 147, 609 S.E.2d 537, rehearing denied, certiorari granted, reversed 376 S.C. 2, 656 S.E.2d 17. Insurance 2694

Evidence was sufficient to support a finding that a husband was an insured under an auto policy where, although there was testimony that the husband often spent the night at his mother’s home during his 18‑year marriage, there was also testimony that there was no divorce action filed nor was a divorce ever contemplated. State Auto Property and Cas. Ins. Co. v. Gibbs (S.C. 1994) 314 S.C. 345, 444 S.E.2d 504.

Jury’s finding that at time an automobile struck and killed child pedestrian it was operated with the owner’s implied consent was supported by evidence that the owner had actual knowledge of the drivers intention to use his automobile and that he took no steps to prevent her from doing so. (Decided under former law.) Holloman v. McAllister (S.C. 1986) 289 S.C. 183, 345 S.E.2d 728. Automobiles 244(22.1)

ARTICLE 3

Mandate to Write and Insurance Coverage

**SECTION 38‑77‑112.** Automobile insurers not required to write coverage for automobile insurance for any applicants or existing policyholders.

 An automobile insurer is not required to write coverage for automobile insurance as defined in Section 38‑77‑30 for an applicant or existing policyholder. An insurer or producer shall retain, for at least three years, a record of its refusals of coverage including the reason for the refusal and shall furnish this information upon the request of the Director of the Department of Insurance or his designee.

HISTORY: Former 1976 Code Section 38‑37‑315 [1987 Act No. 166, Section 5] recodified as Section 38‑77‑112 by 1987 Act No. 155, Section 24; 1988 Act No. 399, Section 6; 1989 Act No. 148, Section 12; 1997 Act No. 154, Section 9; 2011 Act No. 8, Section 1, eff April 12, 2011.

Library References

Insurance 1515, 1518.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 43, 659 to 660, 662.

**SECTION 38‑77‑113.** Conditions for waiver of license reinstatement fee.

 If a driver’s license is suspended or revoked because the licensee is determined by the Department of Motor Vehicles to have no motor vehicle liability insurance, the Director of the Department of Motor Vehicles or his designee shall waive the reinstatement fee imposed pursuant to Section 56‑1‑390 if the licensee had motor vehicle liability coverage when his license was suspended or revoked and shall document the reasons for waiving the fee in the records of the Department of Motor Vehicles.

HISTORY: 1992 Act No. 427, Section 3; 1992 Act No. 443, Section 3; 1993 Act No. 181, Section 804; 1996 Act No. 459, Section 62.

Library References

Automobiles 144.7.

Westlaw Topic No. 48A.

C.J.S. Motor Vehicles Sections 465 to 471.

**SECTION 38‑77‑114.** Review and reports on impact of repeal of antirebate laws concerning sale of automobile insurance.

 Beginning on March 1, 2000 the director of the Department of Insurance shall review annually the impact of the repeal of the antirebate statutes concerning the sale of automobile insurance in South Carolina pursuant to this act and shall report annually to the General Assembly his findings and recommendations, if any, along with the data and supporting information which the director utilized. In his review, the director shall evaluate the following, but is not limited to: the impact on automobile insurance premiums; any pattern of an insurance carrier, agent, broker, and others concerning the practice of rebating; any pattern of discrimination regarding the insured or policyholder, agent, broker, insurance carrier, or others; the impact on the automobile insurance industry, such as additional market entrants, number of insurance carriers, agents, or others who engage in this practice, or any change in the number of companies writing automobile insurance or of agents selling automobile insurance; and any complaints received by or made to the Department of Insurance concerning rebates in the sale of automobile insurance or regarding the repeal of the antirebate statutes concerning the sale of automobile insurance in South Carolina. The initial report by the director of the Department of Insurance shall be submitted to the General Assembly by May 1, 2000 and notwithstanding any other provision of law, the director shall begin collecting data, material, and any information needed for this initial report on March 1, 1999. All subsequent reports shall be submitted to the General Assembly no later than March first of each year. Notwithstanding any other provision of law, the director of the Department of Insurance shall make his final report on this matter to the General Assembly as provided herein on March 1, 2003 unless otherwise directed by the General Assembly; however, the director may at his discretion continue to submit a report to the General Assembly regarding this matter at any time after March 1, 2003 and shall continue to monitor the impact of the repeal of the antirebate statutes concerning the sale of automobile insurance in South Carolina pursuant to this act. The director may promulgate regulations in order to carry out the requirements of this section.

HISTORY: 1997 Act No. 154, Section 27.

Library References

Insurance 1567.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 659 to 662.

**SECTION 38‑77‑120.** Requirements for notice of cancellation of or refusal to renew policy.

 (a) No cancellation or refusal to renew by an insurer of a policy of automobile insurance is effective unless the insurer delivers or mails to the named insured at the address shown in the policy a written notice of the cancellation or refusal to renew. This notice:

 (1) must be approved as to form by the director or his designee before use;

 (2) must state the date not less than fifteen days after the date of the mailing or delivering on which the cancellation or refusal to renew becomes effective;

 (3) must state the specific reason of the insurer for cancellation or refusal to renew and provide for the notification required by subsection (B) of Section 38‑77‑390. However, those notification requirements must not apply when the policy is being canceled or not renewed for the reason set forth in Section 38‑77‑123(B),

 (4) must inform the insured of his right to request in writing within fifteen days of the receipt of notice that the director review the action of the insurer. The notice of cancellation or refusal to renew must contain the following statement to inform the insured of such right:

“IMPORTANT NOTICE

Within fifteen days of receiving this notice, you or your attorney may request in writing that the director review this action to determine whether the insurer has complied with South Carolina laws in canceling or nonrenewing your policy. If this insurer has failed to comply with the cancellation or nonrenewal laws, the director may require that your policy be reinstated. However, the director is prohibited from making underwriting judgments. If this insurer has complied with the cancellation or nonrenewal laws, the director does not have the authority to overturn this action.”;

 (5) must inform the insured of the possible availability of other insurance which may be obtained through his agent, through another insurer, or through the Associated Auto Insurers Plan. It must also state that the Department of Insurance has available an automobile insurance buyer’s guide regarding automobile insurance shopping and availability, and provide applicable mailing addresses and telephone numbers, including a toll‑free number, if available, for contacting the Department of Insurance.

 Nothing in this subsection prohibits any insurer or agent from including in the notice of cancellation or refusal to renew, any additional disclosure statements required by state or federal laws, or any additional information relating to the availability of other insurance. The insurer must disclose in writing whether the insured is ceded to the facility.

 (b) Subsection (a) does not apply if the:

 (1) insurer has manifested to the insured its willingness to renew by actually issuing or offering to the insured to issue a renewal policy, certificate, or other evidence of renewal, or has manifested such intention to the insured by any other means;

 (2) named insured has demonstrated by some overt action to the insurer or its agent that he expressly intends that the policy be canceled or that it not be renewed.

HISTORY: Former 1976 Code Sections 38‑37‑1450 [1962 Code Section 47‑750.65; 1970 (56) 2540] and 38‑37‑1510 [1962 Code Section 46‑750.66; 1970 (56) 2540] recodified as Section 38‑77‑120 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 806; 1997 Act No. 154, Section 10.

CROSS REFERENCES

Requirement that prior to the termination of insurance the insurer give notice as required by this section and section 38‑77‑110, see Section 56‑10‑230.

Library References

Insurance 1900, 1929, 2044.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 555, 558, 781 to 786, 865 to 867, 872, 882, 1028 to 1029, 1044, 1068 to 1074, 1128, 1135.

RESEARCH REFERENCES

Treatises and Practice Aids

Automobile Liability Insurance Section 8:29, Cancellation by Insurer‑Notice Contents; Statement of Reason for Cancellation Requirement.

NOTES OF DECISIONS

In general 1

Disclosure that insured ceded to facility 7

Fraud or misrepresentation 5

Nonpayment of premium 4

Notice requirement 3

Qualifiedly privileged communications, reason for cancellation 6

Renewal 2

1. In general

A new insurance policy on a replacement vehicle was not in itself an “overt action” within the meaning of statute permitting cancellation without notice by the insurer if the insured has demonstrated intent to cancel by some overt action to the insurer or its agent. South Carolina Farm Bureau Mut. Ins. Co. v. Courtney (S.C. 2002) 349 S.C. 366, 563 S.E.2d 648, rehearing denied. Insurance 1922; Insurance 1929(1)

Premium service company is not required to comply with statutory requirements for cancellation of insurance policy by insurer, but was only required to follow statute governing cancellation of insurance contracts it has funded. Hiott v. Guaranty Nat. Ins. Co. (S.C.App. 1997) 329 S.C. 522, 496 S.E.2d 417. Insurance 2043

The cancellation of a liability insurance policy operates prospectively and is to be distinguished from rescission which destroys the policy ab initio. DD(Decided under former law.) Government Emp. Ins. Co. v. Chavis (S.C. 1970) 254 S.C. 507, 176 S.E.2d 131.

Termination refers to expiration of policy by lapse of policy period; cancellation refers to termination of policy prior to end of policy period. (Decided under former law.) Government Emp. Ins. Co. v. Chavis (S.C. 1970) 254 S.C. 507, 176 S.E.2d 131.

2. Renewal

Notice requirement of former Code Section 38‑37‑1450 need not be complied with where insurance company manifests intent to renew; thus, premium notice for renewal sent by insurer providing that coverage would be renewed for period of 6 months if insured sent premium payment, is sufficient to absolve insurer of notice requirement. Lee v. Insurance Co. of North America (D.C.S.C. 1982) 562 F.Supp. 562.

An insurer manifested its willingness to renew a commercial automobile policy in compliance with Section 38‑77‑120(b) where it mailed its Automobile Insurance Policy Declarations and Continuation Certificate to the insured before the expiration of the policy. Bannister v. Ohio Cas. Ins. Co. (S.C.App. 1994) 314 S.C. 388, 444 S.E.2d 528, rehearing denied.

3. Notice requirement

While notice of insurance policy cancellation need not be in any particular form, it must be of such character as to positively and unequivocally indicate to insured that company does not intend to be bound by contract any longer. Hiott v. Guaranty Nat. Ins. Co. (S.C.App. 1997) 329 S.C. 522, 496 S.E.2d 417. Insurance 1929(2)

An insurer complied with the 15 day mailing requirement of Section 38‑77‑120(a) where it mailed its Automobile Insurance Policy Declarations and Continuation Certificate to the insured 18 days prior to the expiration of the policy. Bannister v. Ohio Cas. Ins. Co. (S.C.App. 1994) 314 S.C. 388, 444 S.E.2d 528, rehearing denied.

An insurer was not required to comply with Section 38‑77‑120(a) where it complied with Section 38‑77‑120(b) by mailing its Automobile Insurance Policy Declarations and Continuation Certificate to the insured prior to the expiration of the policy. Bannister v. Ohio Cas. Ins. Co. (S.C.App. 1994) 314 S.C. 388, 444 S.E.2d 528, rehearing denied.

4. Nonpayment of premium

An automobile liability coverage policy terminated prior to the insured’s accident at 11:00 p.m. where (1) the policy provided that it would automatically terminate at the end of the policy period for nonpayment of the renewal premium when due, (2) the insured’s premium was due 3 weeks prior to his accident, (3) by notice of cancellation the company offered to maintain coverage provided the insured paid by 12:01 a.m. on the day of the accident, and (4) he did not pay the premium by the morning of his accident. State Auto Property and Cas. Co. v. Brannon (S.C.App. 1992) 310 S.C. 388, 426 S.E.2d 810.

Under former Code 1962 Section 46‑750.51, a liability insurance policy can be cancelled by the insurer when the insured fails to make payment of premium for the policy, and the manner of cancellation is set forth in former Code 1962 Section 46‑138. Government Emp. Ins. Co. v. Mackey (S.C. 1973) 260 S.C. 306, 195 S.E.2d 830.

5. Fraud or misrepresentation

There is nothing in former Code 1962 Section 46‑750.51 to restrict or prevent an insurance company from instituting an action to rescind the policy and make such void ab initio because of untrue, false and fraudulent statements made by a person in his application for said policy. There is no authority which requires the insurer to reserve the right to rescind its policy for fraud or material misrepresentation. Government Emp. Ins. Co. v. Chavis (S.C. 1970) 254 S.C. 507, 176 S.E.2d 131.

6. Qualifiedly privileged communications, reason for cancellation

As respects statute providing that reasons specified for cancellation of policy in notice of cancellation shall constitute a privileged communication, essential elements of a conditionally privileged communication are: good faith; an interest to be upheld; a statement limited in its scope to this purpose, a proper occasion; and publication in a proper manner and to proper parties only; the privilege arises from necessity of full and unrestricted communication concerning a matter in which parties have an interest or duty, and is not restricted within any narrow limits. Prentiss v. Nationwide Mut. Ins. Co. (S.C. 1971) 256 S.C. 141, 181 S.E.2d 325.

Letter, which was written by officer of automobile insurer in response to letter by insured requesting reasons for cancellation of policy, and which advised insured that one of reasons was that insured’s wife, who was an additional insured under policy, was “mentally retarded,” was a qualifiedly privileged communication, and, absent evidence supporting a finding of existence of actual or express malice, or abuse of privilege, insurer was not liable for libel. Prentiss v. Nationwide Mut. Ins. Co. (S.C. 1971) 256 S.C. 141, 181 S.E.2d 325.

7. Disclosure that insured ceded to facility

Statute which governed cancellation of or refusal to renew automobile policy and required insurer to disclose in writing whether insured had been ceded to the Reinsurance Facility did not require insurer to notify insured that he had not been ceded to the Facility as a high‑risk driver. Jones v. State Farm Mut. Auto. Ins. Co. (S.C.App. 2005) 364 S.C. 222, 612 S.E.2d 719, rehearing denied. Insurance 1900; Insurance 1929(2); Insurance 2044(1)

**SECTION 38‑77‑121.** Application for original issuance of policy of insurance covering liability; cancellation notice; disclosure of previous cancellation or refusal to renew.

 (A) Any application for the original issuance of a policy of insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle as defined in Section 38‑77‑30 must have the following statement printed on or attached to the first page of the application form, in boldface type: “THE INSURER CAN CANCEL THIS POLICY FOR WHICH YOU ARE APPLYING WITHOUT CAUSE DURING THE FIRST 90 DAYS. THAT IS THE INSURER’S CHOICE. AFTER THE FIRST 90 DAYS, THE INSURER CAN ONLY CANCEL THIS POLICY FOR REASONS STATED IN THE POLICY.”

 (B) Any application for the original issuance of a policy of insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle defined in Section 38‑77‑30 that requires the insured to disclose information as to any previous cancellation or refusal to renew must also permit the insured to offer or provide a full explanation of the reason for the cancellation or refusal to renew.

 (C) The notice required by this section must accompany the initial declarations page in the event the applicant is not provided a written copy at the time of the application and the coverage has been bound by the insurer.

 (D) The insurer may cancel without cause at any time in the first ninety days during which the policy is in effect subject to Section 38‑77‑122.

 This section does not apply to the renewal of any policy of insurance.

HISTORY: 1997 Act No. 154, Section 11.

LAW REVIEW AND JOURNAL COMMENTARIES

Lifting the iron curtain of automobile insurance regulation. 49 S.C. L. Rev. 1193 (Summer 1998).

**SECTION 38‑77‑122.** Insurers and agents prohibited from refusing to issue automobile insurance policies due to certain factors; prohibited factors for premium rates.

 (A) No insurer or agent shall refuse to issue an automobile insurance policy as defined in Section 38‑77‑30 because of any one or more of the following factors: the age, sex, location of residence in this State, race, color, creed, national origin, ancestry, marital status, or income level. No insurer or agent shall refuse to issue an automobile insurance policy as defined in Section 38‑77‑30 solely because of any one of the following factors: the previous refusal of automobile insurance by another insurer, prior purchase of insurance through the Associated Auto Insurers Plan, or lawful occupation, including the military service, of the person seeking the coverage. Nothing in this section prohibits any insurer from limiting the issuance of motor vehicle insurance policies only to persons engaging in or who have engaged in a particular profession or occupation, or who are members of a particular religious sect.

 Nothing in this section prohibits any insurer from setting rates in accordance with relevant actuarial data.

 (B) In determining the premium rates to be charged for an automobile insurance policy as defined in Section 38‑77‑30, it is unlawful to consider race, color, creed, religion, national origin, ancestry, location of residence in this State, economic status, or income level. Nor may an insurer, agent, or broker refuse to write or renew an automobile insurance policy as defined in Section 38‑77‑30 based upon age, sex, race, color, creed, religion, national origin, ancestry, location of residence in this State, economic status, or income level. However, nothing in this subsection may preclude the use of a territorial plan approved by the director. Any insurer or agent who violates this section shall be subject to the penalties as provided in Section 38‑2‑10. If the director of the Department of Insurance or his designee finds that an insurer or agent is participating in a pattern of unfair discrimination, the director or his designee may impose a fine of up to two hundred thousand dollars. Provided, however, if the unfair discrimination is required by an insurer, only the insurer is subject to the penalty as long as the agent of the insurer has reported the pattern of unfair discrimination to the department. The director or his designee at any time may examine an insurer or agent to enforce this section. The expense of examination must be paid by the insurer, agent, or broker.

HISTORY: 1997 Act No. 154, Section 11.

Library References

Insurance 1515, 1517.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 43, 659 to 662.

**SECTION 38‑77‑123.** Insurers and agents prohibited from refusing to renew automobile insurance policies due to certain factors; cancellation restrictions; penalties for violations.

 (A)(1) No insurer shall refuse to renew an automobile insurance policy because of any one or more of the following factors:

 (a) age;

 (b) sex;

 (c) location of residence in this State;

 (d) race;

 (e) color;

 (f) creed;

 (g) national origin;

 (h) ancestry;

 (i) marital status;

 (j) income level.

 (2) No insurer shall refuse to renew an automobile insurance policy solely because of any one of the following factors:

 (a) lawful occupation, including the military service;

 (b) lack of driving experience or number of years of driving experience;

 (c) lack of supporting business or lack of the potential for acquiring such business;

 (d) one or more accidents or violations that occurred more than thirty‑six months immediately preceding the upcoming anniversary date;

 (e) one or more claims submitted under the uninsured motorists coverage of the policy where the uninsured motorist is known or there is physical evidence of contact;

 (f) single claim by a single insured submitted under the medical payments coverage or medical expense coverage due to an accident for which the insured was neither wholly nor partially at fault;

 (g) one or more claims submitted under the comprehensive or towing coverages. However, nothing in this section prohibits an insurer from modifying or refusing to renew the comprehensive or towing coverages at the time of renewal of the policy on the basis of one or more claims submitted by an insured under those coverages, provided that the insurer mails or delivers to the insured at the address shown in the policy, written notice of the change in coverage at least thirty days before the renewal;

 (h) two or fewer motor vehicle accidents within a three‑year period unless the accident was caused either wholly or partially by the named insured, a resident of the same household, or other customary operator; or

 (i) an insured who uses his personal automobile for volunteer emergency services and who provides a copy of the policy promulgated by the chief of his department to his insurer on request.

 (3) Nothing contained in subsection (A)(1)(f), (g), and (h) prohibits an insurer from refusing to renew a policy where a claim is false or fraudulent. Nothing in this section prohibits an insurer from setting rates in accordance with relevant actuarial data except that no insurer may set rates based in whole or in part on race, color, creed, religion, national origin, ancestry, location of residence in this State, economic status, or income level. However, nothing in this subsection may preclude the use of a territorial plan approved by the director.

 (B) No insurer shall cancel a policy except for one or more of the following reasons:

 (1) The named insured or any other operator who either resides in the same household or customarily operates a motor vehicle insured under the policy has had his driver’s license suspended or revoked during the policy period or, if the policy is a renewal, during its policy period or the ninety days immediately preceding the last anniversary of the effective date.

 (2) The named insured fails to pay the premium for the policy or any installment of the premium, whether payable to the insurer or its agent either, directly or indirectly under any premium finance plan or extension of credit.

 (C) There shall be no liability on the part of and no cause of action of any nature shall arise against the director or his designees; any insurer, its authorized representatives, its agents, or its employees; or any person furnishing to the insurer information as to reasons for cancellation or refusal to renew, for any statement made by any of them in complying with this section or for providing information pertaining to the cancellation or refusal to renew. For the purposes of this section, no insurer shall be required to furnish a notice of cancellation or refusal to renew to anyone other than the named insured, any person designated by the named insured, any other person to whom such notice is required to be given by the terms of the policy and the director.

 (D) Within fifteen days of receipt of the notice of cancellation or refusal to renew, any insured or his attorney shall be entitled to request in writing to the director that he review the action of the insurer in canceling or refusing to renew the policy of the insured. Upon receipt of the request, the director shall promptly begin a review to determine whether the insurer’s cancellation or refusal to renew complies with the requirements of this section and of Section 38‑77‑120 if the notice was sent by mail. The policy must remain in full force and effect during the pendency of the review by the director except where the cancellation or refusal to renew is for the reason set forth in subsection (B)(2) of this section, in which case the policy terminates as of the effective date stated in the notice. Where the director finds from the review that the cancellation or refusal to renew has not complied with the requirements of this section or of Section 38‑77‑120, he shall immediately notify the insurer, the insured, and any other person to whom such notice was required to be given by the terms of the policy that the cancellation or refusal to renew is not effective. Nothing in this section authorizes the director to substitute his judgment as to underwriting for that of the insurer.

 (E) Each insurer shall maintain for at least three years, records of cancellation and refusal to renew and copies of every notice or statement referred to in Section 38‑77‑120 of this section that it sends to any of its insureds.

 (F) The provisions of this section do not apply to any insurer that limits the issuance of policies of motor vehicle liability insurance to one class or group of persons engaged in any one particular profession, trade, occupation, or business. Nothing in this section requires an insurer to renew a policy of automobile insurance if the insured does not conform to the occupational or membership requirements of an insurer who limits its writings to an occupation or membership of an organization. No insurer is required to renew a policy if the insured becomes a nonresident of South Carolina.

 (G) Any insurer who violates this section shall be subject to the penalties as provided in Section 38‑2‑10. If the director of the Department of Insurance or his designee finds that an insurer, agent, or broker is participating in a pattern of unfair discrimination, the director or his designee may impose a fine of up to two hundred thousand dollars. Provided, however, if the unfair discrimination is required by an insurer, only the insurer is subject to the penalty as long as the agent of the insurer has reported the pattern of unfair discrimination to the department. The director or his designee at any time may examine an insurer, agent, or broker to enforce this section. The expense of examination must be paid by the insurer, agent, or broker.

HISTORY: 1997 Act No. 154, Section 11; 2008 Act No. 296, Section 4, eff June 11, 2008.

Library References

Insurance 1899, 1921, 2042.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 553 to 554, 865 to 866, 882, 1044, 1068 to 1070, 1128, 1135.

NOTES OF DECISIONS

Termination clauses 1

1. Termination clauses

Automatic termination clause allowing unilateral cancellation by an insurer when the insured obtains similar coverage on a covered automobile is invalid, since statute allows cancellation only for license suspension or revocation or an insured’s failure to pay. South Carolina Farm Bureau Mut. Ins. Co. v. Courtney (S.C. 2002) 349 S.C. 366, 563 S.E.2d 648, rehearing denied. Insurance 1922; Insurance 3043

**SECTION 38‑77‑124.** Refusal to issue or renew automobile insurance policy on basis of location of residence.

 (A) Notwithstanding the provisions of Sections 38‑77‑122 and 38‑77‑123, an insurer may refuse to issue or renew an automobile insurance policy as defined in Section 38‑77‑30 on the basis of location of residence where the insurer has filed with the director a territorial plan setting forth the precise geographic areas of the state in which it will issue or renew policies. This territorial plan may not limit issuances or renewals to areas at any level smaller than a county, except that an insurer may include in its territorial plan an area smaller than a county which is contiguous to a whole county contained within the territorial plan provided, that the inclusion in the territorial plan of any such area at a level smaller than a county does not have the effect of excluding populations based upon any factors set out in Section 38‑77‑122(A) or Section 38‑77‑123(A)(1). The director must reject any territorial plan which violates the provisions of this section.

 (B) No insurer or agent shall refuse to issue or fail to renew a policy of motor vehicle liability insurance solely because of the age of the motor vehicle to be insured, provided the motor vehicle is licensed.

HISTORY: 1997 Act No. 154, Section 11.

Library References

Insurance 1518, 1899.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 43, 553 to 554, 659 to 660, 662.

**SECTION 38‑77‑125.** Name, address, and telephone number of insurance company must be stated or provided.

 Every automobile insurance policy or other policy containing automobile insurance coverage on the face of the policy must state the complete name of the company issuing the policy, its address, and telephone number.

HISTORY: 1988 Act No. 564; 2000 Act No. 312, Section 22.

**SECTION 38‑77‑126.** Disclosure where rate level higher than lowest tier for that insurer or group.

 Insurers must disclose to the insured if the rate level is higher than the lowest rate level tier for that insurer or the group to which the insurer is a member. The insurer must provide in writing the reason for the higher tier.

HISTORY: 1997 Act No. 154, Section 11.

Library References

Insurance 1541.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 91 to 95, 105 to 107.

**SECTION 38‑77‑127.** Insurer may issue verification of coverage electronically.

 (A) An automobile insurer may issue verification concerning the existence of coverage it provides an insured in an electronic format to a mobile electronic device upon request of the insured.

 (B) For purposes of this section, “mobile electronic device” means a portable computing and communication device that has a display screen with touch input or a miniature keyboard and is capable of receiving information transmitted in an electronic format.

HISTORY: 2014 Act No. 128 (H.3623), Section 1, eff March 4, 2014.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 103, Proof of Compliance to be Carried in Vehicle.

**SECTION 38‑77‑130.** Group automobile insurance; rate.

 An automobile insurer may negotiate and contract for the sale of automobile insurance with any bona fide group of twenty or more persons who are employed by a common employer or who have been members for six months or more of a fraternal order, labor union, or employment association. The insurer may negotiate, enter a contractual relationship, and service the contract solely and directly with the bona fide representative of the group. An insurance contract sold on the basis of a group plan or contract shall have a rate not less than five percent less than the individual rate for which the insurer markets a substantially similar policy.

HISTORY: Former 1976 Code Sections 38‑37‑340 [1962 Code Section 37‑591.14; 1974 (58) 2718] and 38‑37‑350 [1962 Code Section 37‑591.15; 1974 (58) 2718] recodified as Section 38‑77‑130 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Rate for an automobile insurance contract sold on the basis of a group plan or contract pursuant to this section, see Section 38‑73‑480.

Library References

Insurance 1541.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 91 to 95, 105 to 107.

**SECTION 38‑77‑140.** Bodily injury and property damage limits; general requirements.

 (A) An automobile insurance policy may not be issued or delivered in this State to the owner of a motor vehicle or may not be issued or delivered by an insurer licensed in this State upon a motor vehicle then principally garaged or principally used in this State, unless it contains a provision insuring the persons defined as insured against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States or Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as follows:

 (1) twenty‑five thousand dollars because of bodily injury to one person in any one accident and, subject to the limit for one person;

 (2) fifty thousand dollars because of bodily injury to two or more persons in any one accident; and

 (3) twenty‑five thousand dollars because of injury to or destruction of property of others in any one accident.

 (B) Nothing in this article prevents an insurer from issuing, selling, or delivering a policy providing liability coverage in excess of these requirements.

HISTORY: Former 1976 Code Section 56‑9‑820 [1962 Code Section 46‑750.32; 1963 (53) 526; 1974 (58) 2718] recodified as Section 38‑77‑140 by 1987 Act No. 155, Section 1; 1997 Act No. 154, Section 12; 2006 Act No. 395, Section 3.A, eff June 14, 2006 affecting policies issued or renewed on or after January 1, 2007.

Editor’s Note

2013 Act No. 47, Section 5, provides as follows:

“Section 5. An automobile liability insurer is not required to make a new offer of coverage or obtain a new prescribed form on any automobile insurance policy, within the contemplation of Section 38‑77‑350, to comply with statutory changes to the minimum required limits set forth in Section 38‑77‑140 and Section 38‑77‑150.”

CROSS REFERENCES

Definition of “motor vehicle liability policy”, see Section 56‑9‑20.

Definition of “underinsured motor vehicle”, see Section 38‑77‑30.

Insurance policy for at least the minimum coverages specified in sections 38‑77‑140 through 38‑77‑230 and the benefits required under sections 38‑77‑240, 38‑77‑250, and 38‑77‑260, as satisfying the security requirements of the Motor Vehicle Registration and Financial Security provisions, see Section 56‑10‑20.

Mandatory imputing of any negligence or wilful misconduct of a minor when driving a motor vehicle to the person who signed the application for a permit or license, unless the minor is protected by insurance in the form and amounts required under this section, see Section 56‑1‑110.

Transportation Network Company Act, driver qualification requirements, documentation, inspections of records, disclosures, see Section 58‑23‑1650.

Library References

Insurance 2663 to 2684.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1347, 1477 to 1478, 1498 to 1513, 2163 to 2164, 2168 to 2177, 2179, 2181 to 2184, 2249 to 2250, 2257 to 2259.

RESEARCH REFERENCES

ALR Library

79 ALR 5th 289 , Uninsured Motorist Indorsement: Construction and Application of Requirement that There be “Physical Contact” With Unidentified or Hit‑And‑Run Vehicle; “Hit‑And‑Run” Cases.

15 ALR 4th 10 , Automobile Liability Insurance: What Are Accidents or Injuries “Arising Out of Ownership, Maintenance, or Use” of Insured Vehicle.

21 ALR 4th 1146 , Omnibus Clause as Extending Automobile Liability Coverage to Third Person Using Car With Consent of Permittee of Named Insured.

Encyclopedias

3 Am. Jur. Proof of Facts 2d 81, Employer’s Acquiescence in Employee’s Use of Company Equipment for Personal Projects.

16 Am. Jur. Proof of Facts 3d 271, “Permissive” Use of Automobile‑Grant of Permission to Insured’s Permittee.

18 Am. Jur. Proof of Facts 3d 433, “Permissive” Use of Automobile‑Use Within Scope of Permission Granted.

81 Am. Jur. Trials 425, Uninsured and Underinsured Motorist Claims.

S.C. Jur. Automobiles and Other Motor Vehicles Section 9, Application‑By Unemancipated Minor; Imputed Liability.

S.C. Jur. Automobiles and Other Motor Vehicles Section 78, Requirement of Liability Policy.

S.C. Jur. Automobiles and Other Motor Vehicles Section 79, Self‑Insurers.

S.C. Jur. Automobiles and Other Motor Vehicles Section 100, Requirement for Registered Vehicles.

Treatises and Practice Aids

Automobile Liability Insurance Section 1:22, Security Suspension and Limits Requirements.

LAW REVIEW AND JOURNAL COMMENTARIES

1980 Survey: Business Law; Joinder of Insurer as Party‑defendant Under S. C. Code Ann. Section 15‑15‑20. 32 S.C. L. Rev. 10.

Annual Survey of South Carolina Law: Business Law; Capacity of Partnership to Sue or be Sued in its Own Name. 32 S.C. L. Rev. 23 (August 1980).

Annual Survey of South Carolina Law: Insurance Law. 38 S.C. L. Rev. 140 (Autumn 1986).

Annual survey of South Carolina law, insurance law. 41 S.C. L. Rev. 126 (Autumn 1989).

NOTES OF DECISIONS

In general 1

Actions at law 12

Additional coverage 2

Automobile 3

Bodily injury 4

Damages arising out of ownership, maintenance or use 5

Imposed by law 6

Insured 7

Notice 8

Permissive use 9

Presumptions and burden of proof 13

Self insurance 10

Stacking 11

Sufficiency of evidence 14

1. In general

Although automobile liability coverage is required, non‑owned vehicle coverage is not and, therefore, may be limited by contract. Coakley v. Horace Mann Ins. Co. (S.C.App. 2005) 363 S.C. 147, 609 S.E.2d 537, rehearing denied, certiorari granted, reversed 376 S.C. 2, 656 S.E.2d 17. Insurance 2656; Insurance 2736

The subsidiary of the buyer of a fleet of cars was the owner when a child of an employee for the subsidiary caused an accident, and, thus, the vehicle was a covered auto, even though the seller remained the titleholder until the completion of paperwork. Pennell v. Foster (S.C.App. 1999) 338 S.C. 9, 524 S.E.2d 630. Insurance 2652

The section which mandates minimum coverage of $5,000 for injury to or destruction of property of others in any one accident did not require an automobile dealership’s policy to provide coverage for damage to a dealership car caused by a customer’s test drive of the car, since “property of others” refers to property of individuals other than the named insured. Fritz‑Pontiac‑Cadillac‑Buick v. Goforth (S.C. 1994) 312 S.C. 315, 440 S.E.2d 367. Insurance 2872

In insurance policy limiting coverage to own vehicles “not used for business or commercial purposes” was void as contravening the provisions of the Motor Vehicle Financial Responsibility Act. (Decided under former law.) Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker (S.C.App. 1984) 282 S.C. 546, 320 S.E.2d 458. Insurance 2684

Pursuant to former Sections 56‑9‑820 and 56‑9‑830, the underinsured motorist coverage required to be offered by insurance carriers to their policyholders, under former Section 56‑9‑831, was not mandatory, unlike liability insurance and uninsured motorist coverage. Garris v. Cincinnati Ins. Co. (S.C. 1984) 280 S.C. 149, 311 S.E.2d 723.

2. Additional coverage

Since there is no requirement for insurance company to extend any coverage to insured for driving nonowned automobiles, any exclusion within such extended coverage is valid policy provision, and where person for whom coverage is sought is not driving vehicle described in policy, he or she is not insured under policy. (Decided under former law.) Paul v. Hartford Acc. & Indem. Co. (D.C.S.C. 1977) 443 F.Supp. 112. Insurance 2656

Additional primary coverage, not excess coverage, was provided by a policy insuring a trailer owned by the driver and pulled by a truck owned and insured by another, when it became unhitched and struck a passenger car, where the truck did not make contact with the car, the policy insuring the truck excluded a non‑covered trailer owned by the driver, and by its own terms the policy covering the trailer would only be excess if there were other vehicle liability coverage; thus, the primary insurer of the trailer was equally obligated to pay the damages arising from the accident. North Carolina Farm Bureau Mut. Ins. Co. v. State Farm Mut. Auto. Ins. Co. (S.C.App. 1991) 304 S.C. 110, 403 S.E.2d 151, dismissed 306 S.C. 263, 411 S.E.2d 425.

3. Automobile

Insurance policy providing coverage of insured while driving nonowned automobile did not afford coverage while using nonowned motorcycle, where nonowned automobile was defined as meaning automobile or trailer not owned by or furnished for regular use of named insured or any relative. (Decided under former law.) Paul v. Hartford Acc. & Indem. Co. (D.C.S.C. 1977) 443 F.Supp. 112.

4. Bodily injury

An automobile liability policy need not provide separate coverage under the “per person” policy limits for loss of consortium. Stewart v. State Farm Mut. Auto. Ins. Co. (S.C.App. 2000) 341 S.C. 143, 533 S.E.2d 597, rehearing denied. Insurance 2756(3)

“Damages” within the meaning of statute requiring the insurer to offer underinsured motorist (UIM) coverage for damages in excess of tort‑feasor’s liability limits meant bodily injury or property damage and did not entitle insured’s spouse to separate recovery of UIM benefits for loss of consortium; the term referred to liability coverage, which in turn explicitly limited coverage to bodily injury. Russo v. Nationwide Mut. Ins. Co. (S.C.App. 1999) 334 S.C. 455, 513 S.E.2d 127. Insurance 2796

Negligent infliction of emotional trauma is a bodily injury for which damages may be recovered under a standard automobile liability insurance policy. State Farm Mut. Auto. Ins. Co. v. Ramsey (S.C.App. 1988) 295 S.C. 349, 368 S.E.2d 477, affirmed 297 S.C. 71, 374 S.E.2d 896.

5. Damages arising out of ownership, maintenance or use

Even if vehicle in which shooter was sitting at time he shot victim was active accessory to his assault on victim under South Carolina law, causal connection did not exist between shooter’s vehicle and injuries victim sustained when shooter fired shots from his vehicle into victim’s car, and thus victim’s injuries did not arise out of shooter’s “ownership, maintenance or use of a motor vehicle,” as required to establish coverage under shooter’s automobile liability policy, even though shooter used vehicle to locate victim, position himself next to victim’s car, and leave scene of crime, since victim’s injuries were not foreseeably identifiable with the normal use of an automobile. Holmes v. Allstate Ins. Co., 2009, 786 F.Supp.2d 1022. Insurance 2678

Under South Carolina law, insured vehicle in which shooter was sitting at time he shot victim was not active accessory to his assault on victim, and thus victim’s injuries did not arise out of shooter’s “ownership, maintenance or use of a motor vehicle,” as required to establish coverage under shooter’s automobile liability policy, even though shooter used vehicle to arrive at and flee from scene; shooter did not use vehicle to assault victim, shooter’s position in relation to victim was not dependent on use of vehicle, and shooter’s use of vehicle did not increase severity of potential harm inflicted by gunshots. Holmes v. Allstate Ins. Co., 2009, 786 F.Supp.2d 1022. Insurance 2678

Under South Carolina law, causal connection did not exist between vehicle in which insured was sitting and gunshot injuries she sustained when assailant fired shots from adjacent vehicle, and thus insured’s injuries did not arise out of her “ownership, maintenance or use of a motor vehicle,” as required to establish coverage under insured’s underinsured motorist (UIM) policy; insured was merely occupying stationary vehicle at time of shooting, and vehicle was parked on side of road in anticipation of arrival of school bus. Holmes v. Allstate Ins. Co., 2009, 786 F.Supp.2d 1022. Insurance 2679

Under South Carolina law, there was no causal connection between vehicle and insured’s strangulation death in its back seat, and thus insured’s death did not fall within liability, uninsured, or underinsured motorist coverage of her automobile insurance policy, even though vehicle was used by assailant to take insured to location where she was strangled, where nature of assault had nothing to do with vehicle’s functional characteristics. Nationwide Property & Cas. Co. v. Lain, 2005, 402 F.Supp.2d 644. Insurance 2678; Insurance 2679

Under South Carolina law, causal connection between vehicle and injury necessary to support coverage under automobile insurance policy means: (1) vehicle was active accessory to assault; and (2) something less than proximate cause but more than mere site of injury; and (3) that injury must be foreseeably identifiable with normal use of vehicle. Nationwide Property & Cas. Co. v. Lain, 2005, 402 F.Supp.2d 644. Insurance 2677

Under South Carolina law, injury arises out of ownership, maintenance, or use of automobile, and thus is covered by terms of automobile insurance policy, if: (1) there is causal connection between vehicle and injury; (2) no act of independent significance occurred that broke causal link; and (3) vehicle was being used for transportation at time of assault. Nationwide Property & Cas. Co. v. Lain, 2005, 402 F.Supp.2d 644. Insurance 2677

Driver who was shot from other unidentified vehicle could not recover for injuries under uninsured motorist provision of insurance policy because her injuries did not arise out of ownership, maintenance, or use of vehicle and injuries were not caused by other vehicle. Wausau Underwriters Ins. Co. v. Howser, 1990, 727 F.Supp. 999, reversed 978 F.2d 1257.

Fatal gunshot injury to driver as her husband unloaded shotguns from pickup truck did not arise out of ownership, maintenance, or use of the vehicle, and, thus, automobile policy provided no coverage; the truck was merely the site of the injury and not an active accessory, and, thus, no causal connection existed between use and the injury. Peagler v. USAA Ins. Co. (S.C. 2006) 368 S.C. 153, 628 S.E.2d 475, rehearing denied, answer to certified question conformed to 448 F.3d 286. Insurance 2677

The focus of insurance coverage test for determining whether an injury arose out of the ownership, maintenance, or use of a vehicle is on the extent of the role, if any, the vehicle played in causing the injuries or damage, or whether a particular activity is a covered use as required by statute or a policy provision. Peagler v. USAA Ins. Co. (S.C. 2006) 368 S.C. 153, 628 S.E.2d 475, rehearing denied, answer to certified question conformed to 448 F.3d 286. Insurance 2677

The test for determining whether an injury arose out of the use of a vehicle and insurance coverage exists turns on the causal connection between the vehicle and the injury; no distinction is made as to whether the injury resulted from a negligent, reckless, or intentional act. Wright v. North Area Taxi, Inc. (S.C.App. 1999) 337 S.C. 419, 523 S.E.2d 472. Insurance 2677

Gunshot injury to taxicab driver during attempted robbery by passengers did not arise out of the ownership, maintenance, or use of the vehicle and did not entitle the driver’s estate to liability insurance benefits under the owner’s self‑insurance, even though the risk was foreseeably identifiable; the car served merely as the situs of the shooting, not the launching pad for the assault, the special danger to taxi drivers was inherent in the occupation and not in the use of the motor vehicle as a vehicle, and the injury arose from an act of independent significance breaking any causal connection. Wright v. North Area Taxi, Inc. (S.C.App. 1999) 337 S.C. 419, 523 S.E.2d 472. Insurance 2678

Property damage to parked vehicle as a result of taxicab passenger shooting driver during attempted robbery arose out of the use of a motor vehicle as a vehicle and entitled the vehicle owner to liability insurance benefits under taxicab owner’s self‑insurance. Wright v. North Area Taxi, Inc. (S.C.App. 1999) 337 S.C. 419, 523 S.E.2d 472. Insurance 2678

For purposes of determining whether claimants’ injuries from alleged sexual assaults by police officer arose out of the “ownership, maintenance, or use” of an automobile, such that they would be covered by automobile liability insurance policy, necessary causal connection meant (1) the vehicle was an “active accessory” to the assault; and (2) something less than proximate cause but more than mere site of the injury; and (3) the injury had to be foreseeably identifiable with the normal use of the automobile. Doe v. South Carolina State Budget and Control Bd., Office of Ins. Services, Ins. Reserve Fund (S.C. 1999) 337 S.C. 294, 523 S.E.2d 457. Insurance 2678

Police officer’s sexual assaults on victims who were stopped by officer for driving under influence (DUI) investigations did not arise out of “use” of patrol car within meaning of automobile liability insurance policy; cruiser was not being used for transportation at time of assaults, it was not “active accessory,” and victims’ acceptances of officer’s offers were acts of independent significance which broke any causal link. Doe v. South Carolina State Budget and Control Bd., Office of Ins. Services, Ins. Reserve Fund (S.C. 1999) 337 S.C. 294, 523 S.E.2d 457. Insurance 2678

Injury arises out of the ownership, maintenance, or use of an uninsured vehicle, if a causal connection exists between the vehicle and the injury and no act of independent significance breaks the causal link, and if the injury arises from assault, it must be shown that the vehicle was being used for transportation at the time of the assault. State Farm Fire & Cas. Co. v. Aytes (S.C. 1998) 332 S.C. 30, 503 S.E.2d 744. Insurance 2679

Causation required for injury to arise out of ownership, maintenance, or use of vehicle is something less than proximate cause and something more than the vehicle being the mere site of the injury; the injury must be foreseeably identifiable with the normal use of the vehicle. State Farm Fire & Cas. Co. v. Aytes (S.C. 1998) 332 S.C. 30, 503 S.E.2d 744. Insurance 2677

Insured passenger’s injuries from gunshot fired by driver standing outside car did not arise out of ownership, maintenance, or use of uninsured vehicle; the stationary car was not “active accessory” and was not used for transportation at the time of the injury, even though driver used it to transport passenger to the site, and driver broke any causal link when he exited vehicle and became assailant. State Farm Fire & Cas. Co. v. Aytes (S.C. 1998) 332 S.C. 30, 503 S.E.2d 744. Insurance 2679

An automobile insurance policy excluding the use of the covered vehicle’s crane did not violate Section 38‑77‑140 where, at the time of the accident, the crane was being used to lift a condenser onto a roof, because the scope of Section 38‑77‑140 is limited to transportation uses. Canal Ins. Co. v. Insurance Co. of North America (S.C. 1993) 315 S.C. 1, 431 S.E.2d 577.

A motorist was entitled to recover, under the uninsured motorist provision of her automobile insurance policy, for gunshot wounds sustained during a vehicular chase by the unknown operator of an unidentified vehicle on a public highway where the unknown vehicle was used to “bump” the insured’s automobile prior to the shooting; thus, the unknown vehicle was an active accessory to the assault, and the use of the vehicle was inextricably linked with the shooting as one continuing assault. Wausau Underwriters Ins. Co. v. Howser (S.C. 1992) 309 S.C. 269, 422 S.E.2d 106.

A motorist injured by gunfire from an unidentified vehicle was entitled to recover under the uninsured motorist provision of her automobile insurance policy, even though the gunman’s vehicle was not the direct cause of her injuries, where there was a witness in the motorist’s car who was available to attest to the facts of the accident, and the witness was neither the owner, nor the driver, of the insured vehicle. Wausau Underwriters Ins. Co. v. Howser (S.C. 1992) 309 S.C. 269, 422 S.E.2d 106.

Under South Carolina law, as predicted by the Court of Appeals, driver’s first employer’s insurer did not have to contribute under umbrella policy to payment of settlement for accident involving vehicle owned by first employer until primary insurance limits were exhausted under driver’s second employer’s business auto coverage policy, even though first employer’s business auto coverage policy provided primary coverage for accident, where accident occurred while driver was working for second employer, and accident would have fallen within scope of second employer’s policy but for existence of first employer’s business auto coverage policy. Continental Cas. Co. v. Penn Nat. Ins. Co. (C.A.4 (S.C.) 2005) 128 Fed.Appx. 957, 2005 WL 900171, Unreported. Insurance 2396; Insurance 2761

6. Imposed by law

Section 38‑77‑140 draws no distinction between intentional acts and negligent acts of the insured; if liability for damages is “imposed by law,” coverage must be provided. The Financial Responsibility Act imposes liability on one who intentionally uses an automobile in a manner that causes damage to another. South Carolina Farm Bureau Mut. Ins. Co. v. Mumford (S.C.App. 1989) 299 S.C. 14, 382 S.E.2d 11.

7. Insured

An automobile liability policy need not provide separate coverage under the “per person” policy limits for loss of consortium. Stewart v. State Farm Mut. Auto. Ins. Co. (S.C.App. 2000) 341 S.C. 143, 533 S.E.2d 597, rehearing denied. Insurance 2756(3)

A “Class I insured” is a named insured, a spouse, and relatives residing in the named insured’s household. Richardson v. South Carolina Farm Bureau Mut. Ins. Co. (S.C.App. 1999) 336 S.C. 233, 519 S.E.2d 120, rehearing denied, certiorari denied. Insurance 2660.5

Driver whose father was listed as a driver on a commercial automobile insurance policy could not be a Class I insured under the policy issued to a corporation, since the corporation could not have a spouse or family members. Richardson v. South Carolina Farm Bureau Mut. Ins. Co. (S.C.App. 1999) 336 S.C. 233, 519 S.E.2d 120, rehearing denied, certiorari denied. Insurance 2660.5

8. Notice

Insured’s failure to notify automobile liability insurer of suit or to cooperate entitled the insurer to avoid coverage for liability in excess of the statutory minimum. United Services Auto. Ass’n v. Markosky (S.C.App. 2000) 340 S.C. 223, 530 S.E.2d 660. Insurance 3167; Insurance 3211

9. Permissive use

Under South Carolina law, for purposes of establishing coverage under an automobile insurance policy through permissive use, the consent required for implied permission must flow from the insured or one authorized to act on his behalf. Progressive Specialty Ins. Co. v. Murray, 2007, 472 F.Supp.2d 732. Insurance 2664; Insurance 2666

Under South Carolina law, for purposes of establishing coverage under an automobile insurance policy through permissive use, implied consent does not arise simply because the named insured allowed another to use the vehicle on prior occasions. Progressive Specialty Ins. Co. v. Murray, 2007, 472 F.Supp.2d 732. Insurance 2664

Under South Carolina law, for purposes of establishing coverage under an automobile insurance policy through permissive use, implied consent involves an inference arising from a course of conduct or relationship between the parties, in which there is mutual acquiescence or lack of objection under circumstances signifying assent. Progressive Specialty Ins. Co. v. Murray, 2007, 472 F.Supp.2d 732. Insurance 2664

Even if borrower of truck was acting within scope of truck owner’s implied permission by taking truck on second night after owner allowed him to borrow truck for one night to drive home from work and back the next day, borrower was not acting within scope of his permission when he loaned truck to driver for trip to store, and thus, passenger in truck who was injured in accident during trip to store was not a permissive user, so as to be an insured under truck’s insurance policy under South Carolina law; owner expressly instructed borrower that truck was to be used only for work‑related activities and was not to be used for personal reasons, that no passengers were permitted to ride in truck with him, and that he was only to drive truck straight home. Progressive Specialty Ins. Co. v. Murray, 2007, 472 F.Supp.2d 732. Insurance 2667

South Carolina adheres to the conversion or strict construction rule of permissive use for purposes of coverage under an automobile insurance policy, which mandates coverage only if the permittee acted strictly within the scope of the permission granted. Progressive Specialty Ins. Co. v. Murray, 2007, 472 F.Supp.2d 732. Insurance 2663; Insurance 2667

Under South Carolina law, for purposes of establishing coverage under an automobile insurance policy through permissive use, regardless of whether permission is express or implied, it must originate in the language or conduct of the named insured or of someone having authority to bind him in that respect. Progressive Specialty Ins. Co. v. Murray, 2007, 472 F.Supp.2d 732. Insurance 2663

When an automobile liability policy contains an exclusion which conflicts with the statutory requirement of coverage for a permissive user, then the policy must be reformed as a matter of law to comply with minimum liability limits. George v. Empire Fire and Marine Ins. Co. (S.C. 2001) 344 S.C. 582, 545 S.E.2d 500. Insurance 1889

Car rental agreement listing named insured as only authorized driver established that named insured’s spouse lacked permission to drive it and that policy provided no collision coverage while she was driving; named insured declined to pay the charge required to add his wife as an authorized driver, and even if spouse were treated as named insured, permission of the lessor was required for each person driving the car. Dorman v. Allstate Ins. Co. (S.C.App. 1998) 332 S.C. 176, 504 S.E.2d 127. Insurance 2663

A provision in an automobile insurance policy issued to a car dealership, which excluded liability coverage for an individual using a covered vehicle “while working in the business of servicing automobiles,” was invalid because it contravened Sections 38‑77‑30(6) and 38‑77‑140 in that it attempted to avoid liability coverage for the permissive user of a covered vehicle defined by the statute as an insured. American Mut. Fire Ins. Co. of Charleston, Inc. v. Aetna Cas. & Sur. Co. (S.C. 1991) 303 S.C. 301, 400 S.E.2d 147.

An automobile liability insurer could not nullify its statutory obligations to ensure the permissive user of an automobile owned by its insured, by interposing a separate hold harmless agreement through its rights as subrogee of the named insured. (Decided under former law.) Aetna Cas. & Sur. Co. v. Security Forces, Inc. (S.C.App. 1986) 290 S.C. 20, 347 S.E.2d 903, certiorari denied 107 S.Ct. 1975, 481 U.S. 1038, 95 L.Ed.2d 816. Insurance 2663

Under former Section 56‑9‑820, a liability insurer could not exclude coverage to a permissive user of the insured automobile when the user was employed in the automobile business at the time of the accident. Farmland Mut. Ins. Co. v. Jim Moore Cadillac‑Oldsmobile, Inc. (S.C.App. 1984) 283 S.C. 33, 320 S.E.2d 719. Insurance 2684

10. Self insurance

Although plain language of motor vehicle self‑insurer statute requires applicant for self‑insurance certificate to prove to Department of Motor Vehicles (DMV) that applicant is able to pay any judgments obtained, literal reading of the “any judgments obtained” clause would allow DMV exceedingly broad discretion to deny applicants who were unable to satisfy hypothetical judgments far greater than statutory insurance policy requirements necessary for other insured motorists, and self‑insurer statute must therefore be interpreted in conjunction with minimum statutory policy requirements to determine whether applicant has the capacity to satisfy any adverse judgments. Original Blue Ribbon Taxi Corp. v. South Carolina Dept. of Motor Vehicles (S.C.App. 2008) 380 S.C. 600, 670 S.E.2d 674. Automobiles 93

Motor vehicle self‑insurance certificate applicant which operated fleet of taxi cabs complied with requirements for self‑insurance status, where applicant provided segregated claims account in form of letter of credit containing per vehicle sum mandated by statute, and, although applicant and its bank amended the irrevocable letter of credit to limit claims to the minimum automobile insurance policy limits enacted by the General Assembly, that limiting merely served to ensure applicant’s substitute for insurance policy conformed to the statutory policy limits. Original Blue Ribbon Taxi Corp. v. South Carolina Dept. of Motor Vehicles (S.C.App. 2008) 380 S.C. 600, 670 S.E.2d 674. Automobiles 93

A self‑insured vehicle owner must provide the same minimum protection to the public as the minimum limits required by a statutory liability policy. Wright v. North Area Taxi, Inc. (S.C.App. 1999) 337 S.C. 419, 523 S.E.2d 472. Insurance 2736

11. Stacking

Named insured’s son, who was owner of car in which passenger was injured during accident, was a “dependent” of named insured for purposes of automobile policies providing primary coverage to other vehicles, and thus son was a “relative” of named insured under policies and car was thus not a “non‑owned vehicle” for which policies would provide excess liability coverage; named insured claimed son as a dependent on her income tax returns, albeit pursuant to a court order, she shared costs for son’s medical expenses with father, she paid for son’s car taxes and insurance, she cosigned lease for son’s apartment near university he attended, and she maintained a bedroom at her house to which son often returned on weekends. Coakley v. Horace Mann Ins. Co. (S.C. 2007) 376 S.C. 2, 656 S.E.2d 17, rehearing denied. Insurance 2656; Insurance 2761

Stacking is permitted unless limited by statute or by valid policy provision. Ruppe v. Auto‑Owners Ins. Co. (S.C.App. 1996) 323 S.C. 425, 475 S.E.2d 771, rehearing denied, certiorari granted, reversed 329 S.C. 402, 496 S.E.2d 631. Insurance 2108

Insureds could stack liability coverage under auto policy covering multiple vehicles that purported to ban stacking only to the extent of required statutory coverage of $15,000 on each vehicle; remaining portion of coverage could not be stacked. Ruppe v. Auto‑Owners Ins. Co. (S.C.App. 1996) 323 S.C. 425, 475 S.E.2d 771, rehearing denied, certiorari granted, reversed 329 S.C. 402, 496 S.E.2d 631. Insurance 2760

Automobile insurance policy provisions limiting stacking of liability insurance were valid because there is no statutory requirement that an insurer provide liability coverage for vehicles other than the one described in the policy. (Decided under former law.) Giles v. Whitaker (S.C. 1989) 297 S.C. 267, 376 S.E.2d 278. Insurance 2760

A named insured under an automobile insurance policy, who was not driving one of his insured vehicles at the time of collision, would not be permitted to stack uninsured motorist coverage on the insured vehicles. (Decided under former law.) Fireman’s Ins. Co. of Newark, New Jersey v. State Farm Mut. Auto. Ins. Co. (S.C. 1988) 295 S.C. 538, 370 S.E.2d 85. Insurance 2799

A passenger who was riding in her own vehicle at the time of collision was not a “guest in such motor vehicle” within the meaning of Section 56‑9‑810 and, therefore, was not entitled to stack uninsured motorist coverage contained in the policy of the driver. (Decided under former law.) Fireman’s Ins. Co. of Newark, New Jersey v. State Farm Mut. Auto. Ins. Co. (S.C. 1988) 295 S.C. 538, 370 S.E.2d 85. Insurance 2799

Stacking of limit of liability where only one of the 2 automobiles covered by an insurance policy was involved in the accident was precluded by the policy’s separability clause providing that if 2 or more vehicles are covered under the policy, the limit of coverage applied separately to each. (Decided under former law.) Thompson v. Continental Ins. Companies (S.C.App. 1986) 291 S.C. 47, 351 S.E.2d 904.

An insurance policy provision which purports to limit stacking of non‑owned vehicle coverage is valid. (Decided under former law.) Jackson v. State Farm Mut. Auto. Ins. Co. (S.C. 1986) 288 S.C. 335, 342 S.E.2d 603.

An insurance policy provision which purports to limit stacking of statutorily‑required coverage is invalid, but such provision limiting stacking with respect to coverage not required by statute is valid; stacking refers to an insured’s recovery of damages under more then one policy in succession and until all of his damages are satisfied or were until the total limits of all policies have been exhausted. (Decided under former law.) Jackson v. State Farm Mut. Auto. Ins. Co. (S.C. 1986) 288 S.C. 335, 342 S.E.2d 603.

Stacking of insurance policies was not permitted if the insured had protection in excess of the limits set forth in former Section 56‑9‑820. Nationwide Mut. Ins. Co. v. Howard (S.C.App. 1984) 284 S.C. 17, 324 S.E.2d 323, certiorari granted 285 S.C. 455, 329 S.E.2d 768, affirmed as modified 288 S.C. 5, 339 S.E.2d 501.

12. Actions at law

A declaratory judgment action to determine which of two insurers has primary liability coverage is at law. Pennell v. Foster (S.C.App. 1999) 338 S.C. 9, 524 S.E.2d 630. Declaratory Judgment 253

A declaratory judgment action to determine the coverage under an insurance policy’s omnibus clause is an action at law. Pennell v. Foster (S.C.App. 1999) 338 S.C. 9, 524 S.E.2d 630. Declaratory Judgment 253

An action to declare excess or secondary liability coverage is an action at law. Pennell v. Foster (S.C.App. 1999) 338 S.C. 9, 524 S.E.2d 630. Declaratory Judgment 253

13. Presumptions and burden of proof

Though a certificate of title constitutes prima facie evidence of ownership for purposes of automobile insurance coverage, this presumption can be rebutted by evidence establishing someone other than the titleholder is the true owner. Pennell v. Foster (S.C.App. 1999) 338 S.C. 9, 524 S.E.2d 630. Insurance 2691

14. Sufficiency of evidence

Testimony of named insured and agent about amount of coverage for customers under garage liability policy provided clear and convincing evidence of mutual mistake and required reformation of the policy to provide $1 million in coverage, rather than statutory minimum; the only reasonable inference was that some agent erroneously limited the coverage for customers. George v. Empire Fire and Marine Ins. Co. (S.C. 2001) 344 S.C. 582, 545 S.E.2d 500. Insurance 1893(2)

**SECTION 38‑77‑141.** Required notice to be attached to new policy or original premium notice of insurance covering liability regarding insurance premiums.

 No new policy or original premium notice of insurance covering liability arising out of the ownership, maintenance, or use of a motor vehicle may be issued or delivered unless it contains the following statement printed in boldface type, or unless the statement is attached to the front of or is enclosed with the policy or premium notice:

“IMPORTANT NOTICE

 IN ADDITION TO THE INSURANCE COVERAGE REQUIRED BY LAW TO PROTECT YOU AGAINST A LOSS CAUSED BY AN UNINSURED MOTORIST, IF YOU HAVE PURCHASED LIABILITY INSURANCE COVERAGE THAT IS HIGHER THAN THAT REQUIRED BY LAW TO PROTECT YOU AGAINST LIABILITY ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF THE MOTOR VEHICLES COVERED BY THIS POLICY, AND YOU HAVE NOT ALREADY PURCHASED UNINSURED MOTORIST INSURANCE COVERAGE EQUAL TO YOUR LIABILITY INSURANCE COVERAGE:

 (1) YOUR UNINSURED AND UNDERINSURED MOTORIST INSURANCE COVERAGE HAS INCREASED TO THE LIMITS OF YOUR LIABILITY COVERAGE AND THIS INCREASE WILL COST YOU AN EXTRA PREMIUM CHARGE; AND

 (2) YOUR TOTAL PREMIUM CHARGE FOR YOUR MOTOR VEHICLE INSURANCE COVERAGE WILL INCREASE IF YOU DO NOT NOTIFY YOUR AGENT OR INSURER OF YOUR DESIRE TO REDUCE COVERAGE WITHIN TWENTY DAYS OF THE MAILING OF THE POLICY OR THE PREMIUM NOTICE, AS THE CASE MAY BE;

 (3) IF THIS IS A NEW POLICY AND YOU HAVE ALREADY SIGNED A WRITTEN REJECTION OF SUCH HIGHER LIMITS IN CONNECTION WITH IT, PARAGRAPHS (1) AND (2) OF THIS NOTICE DO NOT APPLY.”

 After twenty days, the insurer is relieved of the obligation imposed by this subsection to attach or imprint the foregoing statement to any subsequently delivered renewal policy, extension certificate, other written statement of coverage continuance, or to any subsequently mailed premium notice.

HISTORY: 1997 Act No. 154, Section 11.

**SECTION 38‑77‑142.** Policies or contracts of bodily injury or property damage liability insurance covering liability; required provisions.

 (A) No policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle or may be issued or delivered by an insurer licensed in this State upon a motor vehicle that is principally garaged, docked, or used in this State unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the vehicle by the named insured or by any such person. Each policy or contract of liability insurance, or endorsement to the policy or contract, insuring private passenger automobiles principally garaged, docked, or used in this State, that has as the named insured an individual or husband and wife who are residents of the same household and that includes, with respect to any liability insurance provided by the policy, contract, or endorsement for use of a nonowner automobile a provision requiring permission or consent of the owner of the automobile for the insurance to apply.

 (B) No policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of a vehicle or may be issued or delivered by an insurer licensed in this State upon a motor vehicle principally garaged or used in this State without an endorsement or provision insuring the named insured, and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured, against liability for death or injury sustained, or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the motor vehicle by the named insured or by any other person. If an insurer has actual notice of a motion for judgment or complaint having been served on an insured, the mere failure of the insured to turn the motion or complaint over to the insurer may not be a defense to the insurer, nor void the endorsement or provision, nor in any way relieve the insurer of its obligations to the insured, provided the insured otherwise cooperates and in no way prejudices the insurer.

 Where the insurer has elected to provide a defense to its insured under such circumstances and files responsive pleadings in the name of its insured, the insured is not subject to sanctions for failure to comply with discovery pursuant to the South Carolina Rules of Civil Procedure unless it can be shown that the suit papers actually reached the insured, and that the insurer has failed after exercising due diligence to locate its insured, and as long as the insurer provides such information in response to discovery as it can without the assistance of the insured.

 (C) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void.

HISTORY: 1997 Act No. 154, Section 11.

Library References

Insurance 2645 to 2695, 2734 to 2771, 3170.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 90, 623, 629 to 630, 1344, 1347, 1454 to 1456, 1474 to 1513, 1596 to 1601, 1603 to 1605, 1611 to 1624, 1823 to 1824, 1827 to 1829, 1831 to 1832, 1865, 2154 to 2155, 2161 to 2179, 2181 to 2184, 2249 to 2250, 2253 to 2262.

RESEARCH REFERENCES

ALR Library

15 ALR 4th 10 , Automobile Liability Insurance: What Are Accidents or Injuries “Arising Out of Ownership, Maintenance, or Use” of Insured Vehicle.

Treatises and Practice Aids

Couch on Insurance Section 111:22, Statutory Form of the “Omnibus” Clause.

Couch on Insurance Section 111:29, Incorporation of Statutory Clause Into Policy.

NOTES OF DECISIONS

In general 1

1. In general

Family step‑down provision in automobile insurance policy, which reduced coverage for bodily injury to family members from the stated policy coverage of $100,000 to the statutory minimum amount mandated by South Carolina law during the policy period, was void as against public policy; public policy, as evidenced in automobile insurance statute, prevented an insurer from reducing coverage from the amount stated in the policy, which was $100,000, to the statutory minimum limit, which was $15,000 per person for bodily injury during the policy period at issue. Williams v. Government Employees Ins. Co. (GEICO) (S.C. 2014) 409 S.C. 586, 762 S.E.2d 705. Insurance 2756(1)

Step‑down provision of automobile insurance policy unambiguously reduced coverage for bodily injury to family members from the stated policy coverage of $100,000 to the statutory minimum amount mandated by South Carolina law; although provision was not artfully worded in that the exclusion for named insureds and resident relatives actually stated there was “no coverage,” when all of the pertinent provisions were read together, it was unmistakable that the intent of the provision was to limit coverage to the minimum amount. Williams v. Government Employees Ins. Co. (GEICO) (S.C. 2014) 409 S.C. 586, 762 S.E.2d 705. Insurance 2747; Insurance 2756(1)

Once the face amount of coverage in automobile policy is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage. Williams v. Government Employees Ins. Co. (GEICO) (S.C. 2014) 409 S.C. 586, 762 S.E.2d 705. Insurance 2755

In analyzing whether an injury arose out of the ownership, maintenance, or use of a vehicle, a court ruling on automobile insurance coverage makes no distinction as to whether the injury resulted from a negligent, reckless, or intentional act; the test applies regardless of whether the injury occurred as a result of an intentional assault or an accident. Peagler v. USAA Ins. Co. (S.C. 2006) 368 S.C. 153, 628 S.E.2d 475, rehearing denied, answer to certified question conformed to 448 F.3d 286. Insurance 2677

Automobile liability insurer’s obligation to pay default judgment against insured up to the minimum limits was not affected by statute which states that, if an insurer has actual notice of a motion for judgment or complaint having been served on an insured, the mere failure of the insured to turn the motion or complaint over to the insurer may not be a defense to the insurer or relieve it of its obligations to the insured, provided the insured otherwise cooperates and in no way prejudices the insurer; the statute governs only the relationship between an insurer and its insured. Cowan v. Allstate Ins. Co. (S.C. 2004) 357 S.C. 625, 594 S.E.2d 275. Insurance 3170; Insurance 3213; Insurance 3458(2)

Statute which states that, if an insurer has actual notice of a motion for judgment or complaint having been served on an insured, the mere failure of the insured to turn the motion or complaint over to the insurer may not be a defense to the insurer or relieve it of its obligations to the insured, does not make a cooperation clause enforceable against an innocent third party. Cowan v. Allstate Ins. Co. (S.C. 2004) 357 S.C. 625, 594 S.E.2d 275. Insurance 3170; Insurance 3213

Police officer’s sexual assaults on victims who were stopped by officer for driving under influence (DUI) investigations did not arise out of “use” of patrol car within meaning of automobile liability insurance policy; cruiser was not being used for transportation at time of assaults, it was not “active accessory,” and victims’ acceptances of officer’s offers were acts of independent significance which broke any causal link. Doe v. South Carolina State Budget and Control Bd., Office of Ins. Services, Ins. Reserve Fund (S.C. 1999) 337 S.C. 294, 523 S.E.2d 457. Insurance 2678

Negligent infliction of emotional trauma is a bodily injury for which damages may be recovered under a standard automobile liability insurance policy. State Farm Mut. Auto. Ins. Co. v. Ramsey (S.C.App. 1988) 295 S.C. 349, 368 S.E.2d 477, affirmed 297 S.C. 71, 374 S.E.2d 896.

**SECTION 38‑77‑143.** Maintenance, selling, etc. policies and contracts to be primary.

 A policy or contract of insurance relating to the maintenance, selling, repairing, servicing, storing, or parking of motor vehicles shall be primary.

HISTORY: 1997 Act No. 154, Section 11.

Library References

Insurance 2761, 2800, 2878.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1616 to 1619, 1623, 2291 to 2298.

**SECTION 38‑77‑144.** Personal injury protection (PIP) coverage not mandated.

 There is no personal injury protection (PIP) coverage mandated under the automobile insurance laws of this State. Any reference to personal injury protection in Title 38 or 56 or elsewhere is deleted. If an insurer sells no‑fault insurance coverage which provides personal injury protection, medical payment coverage, or economic loss coverage, the coverage shall not be assigned or subrogated and is not subject to a setoff.

HISTORY: 2000 Act No. 344, Section 2.

Library References

Insurance 2818.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2150 to 2151, 2156 to 2157, 2159, 2167.

RESEARCH REFERENCES

Treatises and Practice Aids

Automobile Liability Insurance Section 40:21, Collateral Benefit Setoffs.

NOTES OF DECISIONS

In general 1

1. In general

Automobile insurer’s practice of offsetting payments of underinsured motorist (UIM) benefits by amounts paid to insured for medical benefits did not violate South Carolina statutory provision that any medical expense coverage offered by automobile insurer in no‑fault policy “is not subject to a setoff”; UIM coverage was not mandatory, statutory provision was intended to preclude tortfeasor from setting off medical payments to insured against tortfeasor’s liability, and insurer’s application of setoff did not reduce tortfeasor’s liability. Rowzie v. Allstate Ins. Co. (C.A.4 (S.C.) 2009) 556 F.3d 165. Insurance 2806

**SECTION 38‑77‑150.** Uninsured motorist provision; defense of action by insurer; subrogation and assignment of benefits.

 (A) No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38‑77‑140. The uninsured motorist provision also must provide for no less than twenty‑five thousand dollars’ coverage for injury to or destruction of the property of the insured in any one accident but may provide an exclusion of the first two hundred dollars of the loss or damage. The director or his designee may prescribe the form to be used in providing uninsured motorist coverage and when prescribed and promulgated no other form may be used.

 (B) No action may be brought under the uninsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the uninsured motorist provision. The insurer has the right to appear and defend in the name of the uninsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record.

 (C) Benefits paid pursuant to this section are subject to subrogation and assignment if an uninsured motorist has selected the option to be uninsured by paying the fee pursuant to Section 56‑10‑510.

HISTORY: Former 1976 Code Section 56‑9‑830 [1962 Code Section 46‑750.33; 1963 (53) 526; 1971 (57) 854; 1974 (58) 2718] recodified as Section 38‑77‑150 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 807; 1997 Act No. 154, Section 13; 2013 Act No. 47, Section 1, eff January 1, 2014.

Editor’s Note

2013 Act No. 47, Section 5, provides as follows:

“Section 5. An automobile liability insurer is not required to make a new offer of coverage or obtain a new prescribed form on any automobile insurance policy, within the contemplation of Section 38‑77‑350, to comply with statutory changes to the minimum required limits set forth in Section 38‑77‑140 and Section 38‑77‑150.”

CROSS REFERENCES

Definition of “motor vehicle liability policy”, see Section 56‑9‑20.

Definition of “proof of financial responsibility”, see Section 56‑9‑20.

Insurance policy for at least the minimum coverages specified in sections 38‑77‑140 through 38‑77‑230 and the benefits required under sections 38‑77‑240, 38‑77‑250, and 38‑77‑260, as satisfying the security requirements of the Motor Vehicle Registration and Financial Security provisions, see Section 56‑10‑20.

Mandatory imputing of any negligence or willful misconduct of a minor when driving a motor vehicle to the person who signed the application for a permit or license, unless the minor is protected by insurance in the form and amounts required under this section, see Section 56‑1‑110.

Transportation Network Company Act, primary automobile insurance, proof of coverage, see Section 58‑23‑1630.

Library References

Insurance 2772 to 2816.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2229, 2231 to 2252, 2263 to 2275, 2279 to 2303, 2327, 2329, 2331 to 2333.

RESEARCH REFERENCES

Encyclopedias

32 Am. Jur. Proof of Facts 2d 1, Status of Rider as Passenger Rather Than Guest.

18 Am. Jur. Proof of Facts 3d 433, “Permissive” Use of Automobile‑Use Within Scope of Permission Granted.

NOTES OF DECISIONS

In general 2

Construction and application 4

Construction with other laws 5

Foreseeability 6

Good faith requirement 7

Insurable interest 3

Insured 8

Limitations of actions 14

Motor vehicles 9

Out of state insurance policies 10

Self‑insurers 11

Service of process 15

Stacking 12

Underinsured coverage 13

Validity of prior law 1

1. Validity of prior law

An insurer was not required to pay damages growing out of an automobile collision that was caused when an unidentified motorist caused a passenger car to swerve and hit the car in which plaintiff was riding where, contrary to statutory requirements and those of the uninsured motorist provisions of the policy, there was no physical contact by the unknown motorist; the statutory requirement of physical contact did not violate the equal protection clauses of the State and Federal Constitutions. (Decided under former law.) Sapp v. State Farm Auto. Ins. Co. (S.C. 1979) 272 S.C. 301, 251 S.E.2d 745.

2. In general

State requirement that all automobile insurance contracts include uninsured motorist coverage is imposed to further public policy aimed at protecting insured motorists against loss caused by the wrongful conduct of uninsured motorist. Sanders v. Doe, 1993, 831 F.Supp. 886. Insurance 2774

Uninsured motorist (UM) coverage provides benefits and protection against the peril of injury or death by an uninsured motorist to an insured motorist, his family, and the permissive users of his vehicle. Nationwide Mut. Ins. Co. v. Smith (S.C.App. 2007) 376 S.C. 60, 654 S.E.2d 837, rehearing denied, certiorari dismissed, certiorari denied. Insurance 2660.5; Insurance 2661; Insurance 2663

Purpose of the uninsured motorist statute is to provide benefits and protection against the peril of injury or death by an uninsured motorist to an insured motorist and his family. Nationwide Mut. Ins. Co. v. Smith (S.C.App. 2007) 376 S.C. 60, 654 S.E.2d 837, rehearing denied, certiorari dismissed, certiorari denied. Insurance 2772

Uninsured motorist coverage (UM) coverage does not exist in and of itself, but, rather, is a requirement of and dependent on a valid automobile insurance policy. Nationwide Mut. Ins. Co. v. Smith (S.C.App. 2007) 376 S.C. 60, 654 S.E.2d 837, rehearing denied, certiorari dismissed, certiorari denied. Insurance 2772; Insurance 2774

Public policy for mandatory uninsured motorist (UM) coverage entitled passenger to UM benefits under policy on her car, even when she was a passenger on her spouse’s uninsured motorcycle. Nationwide Mut. Ins. Co. v. Erwood (S.C. 2007) 373 S.C. 88, 644 S.E.2d 62. Insurance 2654

Policy provision limiting uninsured motorist (UM) coverage to the lesser of the limits of policy covering vehicle not involved in accident or policy covering vehicle involved in accident, if the involved vehicle was not named insured’s auto described in the policy, was void as to passenger on her husband’s uninsured motorcycle, and, thus, the passenger was entitled to UM benefits under policy on her car; UM coverage was mandatory. Nationwide Mut. Ins. Co. v. Erwood (S.C. 2007) 373 S.C. 88, 644 S.E.2d 62. Insurance 2796

An automobile liability insurer could not nullify its statutory obligations to ensure the permissive user of an automobile owned by its insured, by interposing a separate hold harmless agreement through its rights as subrogee of the named insured. (Decided under former law.) Aetna Cas. & Sur. Co. v. Security Forces, Inc. (S.C.App. 1986) 290 S.C. 20, 347 S.E.2d 903, certiorari denied 107 S.Ct. 1975, 481 U.S. 1038, 95 L.Ed.2d 816. Insurance 2663

Pertinent provisions of the uninsured motorist statutes which are absent from the language of a particular policy prevail as much as if the provisions were expressly incorporated in the policy. (Decided under former law.) Nationwide Mut. Ins. Co. v. Howard (S.C. 1985) 288 S.C. 5, 339 S.E.2d 501. Insurance 1852

3. Insurable interest

Question of whether driver of insured automobile involved in accident with uninsured vehicle lacked an insurable interest in automobile was relevant to determining the amount of uninsured motorist (UM) coverage available to him and his wife, who had been passenger in automobile at time of accident; liability insurance was dependent upon an insurable interest, and, since liability insurance could not be issued without UM coverage, UM coverage was indirectly dependent on the existence of an insurable interest. Nationwide Mut. Ins. Co. v. Smith (S.C.App. 2007) 376 S.C. 60, 654 S.E.2d 837, rehearing denied, certiorari dismissed, certiorari denied. Insurance 1794.5

4. Construction and application

The uninsured motorist statute is remedial in nature, enacted for the benefit of the injured persons, and is to be liberally construed so that the purpose intended may be accomplished. Nationwide Mut. Ins. Co. v. Smith (S.C.App. 2007) 376 S.C. 60, 654 S.E.2d 837, rehearing denied, certiorari dismissed, certiorari denied. Insurance 2772

The uninsured and underinsured motorist (UM/UIM) statutes are remedial in nature and enacted for the benefit of injured persons; therefore, they should be construed liberally to effect the purpose intended by the Legislature. Floyd v. Nationwide Mut. Ins. Co. (S.C. 2005) 367 S.C. 253, 626 S.E.2d 6, rehearing denied. Insurance 2772

The uninsured and underinsured motorist (UM/UIM) statutes are remedial in nature and enacted for the benefit of injured persons; therefore, they should be construed liberally to effect the purpose intended by the Legislature. Floyd v. Nationwide Mut. Ins. Co. (S.C. 2005) 367 S.C. 253, 626 S.E.2d 6, rehearing denied. Insurance 2772

The uninsured motorist (UM) statutes are remedial in nature and enacted for the benefit of the injured persons; they are to be liberally construed so that the purpose may be accomplished. Collins v. Doe (S.C.App. 2000) 343 S.C. 119, 539 S.E.2d 62, rehearing denied, certiorari granted, reversed 352 S.C. 462, 574 S.E.2d 739. Insurance 2772

Amendments to statute governing service on insurers and to statute governing uninsured motorist (UM) coverage that were effective July 1, 1995 would not be applied retroactively. Franklin v. Devore (S.C.App. 1997) 327 S.C. 418, 489 S.E.2d 651, rehearing denied, certiorari denied. Insurance 2772

5. Construction with other laws

The exclusivity provision of the workers’s compensation law, Section 42‑1‑540, did not bar a city employee’s claim against a self‑insured city for uninsured motorist benefits since insurance benefits sound in contract, and under the workers’ compensation scheme the employer enjoys immunity only from tort actions brought by its employees. Wright v. Smallwood (S.C. 1992) 308 S.C. 471, 419 S.E.2d 219. Workers’ Compensation 2088

6. Foreseeability

Pedestrian’s injuries from gunshots fired by a soldier from a vehicle were not foreseeably identifiable with the normal use of an automobile, thus did not arise out of the ownership, maintenance, or use of a vehicle, and, therefore, did not entitle the pedestrian to underinsured motorist (UIM) benefits; no causal connection existed between the vehicle and injury. State Farm Mut. Auto. Ins. Co. v. Bookert (S.C. 1999) 337 S.C. 291, 523 S.E.2d 181, rehearing denied. Insurance 2679

7. Good faith requirement

There is implied covenant in automobile insurance policy that insurance company will handle claim under uninsured motorist provision of policy fairly and in good faith, despite contention by insurer that insurance carrier and insured are in adversarial relationship because under statute insurance carrier has right to appear and defend in name of uninsured motorist in any action which may affect its liability and therefore there could be no duty of “good faith” with regards to settling disputed claim; fact that insurance company and its insured hold adverse positions on issue of liability does not materially distinguish uninsured motorist insurance from first party insurance with respect to existence of duty on part of insurer to handle insured’s claim fairly and in good faith. (Decided under former law.) Jefferson v. Allstate Ins. Co., 1987, 673 F.Supp. 1401.

8. Insured

Under South Carolina law, as predicted by the district court, truck passenger who was injured in truck accident was not a guest in the truck, so as to be an insured under truck’s insurance policy, and thus, eligible to recover under truck’s uninsured motor vehicle coverage; passenger was not a guest of truck’s owner, but, at most, rode in truck with consent of person who borrowed truck from owner, and borrower acted outside the scope of owner’s permission both in disobeying owner’s instruction not to transport passengers and by using the truck for personal activities. Progressive Specialty Ins. Co. v. Murray, 2007, 472 F.Supp.2d 732. Insurance 2660.5; Insurance 2667

Florida automobile insurance policy’s definition of an uninsured motor vehicle barred underinsured motorist (UIM) coverage for insured’s daughter who was injured when riding as a passenger in insured’s vehicle; the policy’s definition of “uninsured” explicitly excluded an automobile owned, furnished to, or available for the regular use of the named insured or a family member, and the automobile involved in the accident was owned by insured and his wife, and wife, a family member, regularly drove the vehicle. Green v. United States Auto. Ass’n Auto and Property Ins. Co. (S.C. 2014) 407 S.C. 520, 756 S.E.2d 897. Insurance 2786

A car that the driver did not have permission to use and thus became uninsured remained a vehicle to which the policy applied, and, thus, a guest passenger who was a permissive user or occupant was an “insured” entitled to uninsured motorist (UM) benefits. Unisun Ins. Co. v. Schmidt (S.C. 2000) 339 S.C. 362, 529 S.E.2d 280. Insurance 2660.5

9. Motor vehicles

A farm tractor is not a “motor vehicle” for purposes of uninsured or underinsured motor vehicle coverage, since the uninsured motorist statutes were not intended to apply to injuries inflicted by vehicles not subject to registration or compulsory insurance provisions. Anderson v. State Farm Mut. Auto. Ins. Co. (S.C. 1994) 314 S.C. 140, 442 S.E.2d 179.

10. Out of state insurance policies

The fact that motor vehicle accident occurred in South Carolina did not convert the validity of a Florida automobile insurance policy from one of lex loci contractus into one of lex loci delicti, and thus, the substantive law of Florida governed the validity of policy’s family member exclusion. Green v. United States Auto. Ass’n Auto and Property Ins. Co. (S.C. 2014) 407 S.C. 520, 756 S.E.2d 897. Insurance 1091(10)

Georgia automobile insurer’s act of certifying the policy as proof of financial responsibility for accident in South Carolina did not entitle the insured to uninsured motorist (UM) coverage mandated by South Carolina law; the policy did not provide UM coverage and entitled the insurer to reimbursement if it made a payment that it would not have made if the policy was not certified as proof of financial responsibility. Newton v. Progressive Northwestern Ins. Co. (S.C.App. 2001) 347 S.C. 271, 554 S.E.2d 437. Insurance 2774

A policy issued and delivered outside of the state is not a policy issued or delivered in this State and, therefore, need not provide uninsured motorist (UM) coverage. Newton v. Progressive Northwestern Ins. Co. (S.C.App. 2001) 347 S.C. 271, 554 S.E.2d 437. Insurance 2774

11. Self‑insurers

A self‑insured city was not immunized by the Tort Claims Act, Section 15‑78‑10 et seq., from liability to an injured city employee, who was involved in an auto accident with an uninsured motorist while driving a city vehicle, since the Act applies only to the torts of a governmental entity, and uninsured motorist coverage is a contractual liability, which is expressly excluded from immunity. Wright v. Smallwood (S.C. 1992) 308 S.C. 471, 419 S.E.2d 219.

A self‑insured city was subject to Section 38‑77‑150, mandating the provision of uninsured motorist coverage, even though it was neither an “automobile insurance carrier” nor an “issuer” of policies, since Section 38‑77‑150 makes no distinction between “automobile insurance carriers” and any other insurer, merely mandating that all automobile policies contain uninsured coverage. Wright v. Smallwood (S.C. 1992) 308 S.C. 471, 419 S.E.2d 219.

A bus company, which was a self‑insurer of its motor vehicles, was required to provide coverage to fare paying passengers for injuries inflicted by acts of uninsured motorists. (Decided under former law.) South Carolina Elec. and Gas Co. v. Jeter (S.C.App. 1986) 288 S.C. 432, 343 S.E.2d 47.

12. Stacking

An insured is entitled to stack uninsured motorist (UM) coverage in an amount no greater than the amount of coverage on the vehicle involved in the accident. Nationwide Mut. Ins. Co. v. Smith (S.C.App. 2007) 376 S.C. 60, 654 S.E.2d 837, rehearing denied, certiorari dismissed, certiorari denied. Insurance 2799

Victim of carburator fire during attempt to start named insured’s pickup truck was a “Class II insured” not entitled to stack underinsured motorist (UIM) coverages under policies not involved in the accident; the named insured was repairing a truck owned by the victim’s employer. State Farm Mut. Auto. Ins. Co. v. James (S.C.App. 1999) 337 S.C. 86, 522 S.E.2d 345. Insurance 2799

An insurance policy provision which purports to limit stacking of statutorily‑required coverage is invalid, but such provision limiting stacking with respect to coverage not required by statute is valid; stacking refers to an insured’s recovery of damages under more then one policy in succession and until all of his damages are satisfied or were until the total limits of all policies have been exhausted. (Decided under former law.) Jackson v. State Farm Mut. Auto. Ins. Co. (S.C. 1986) 288 S.C. 335, 342 S.E.2d 603.

An insured injured party, who obtained a $500,000 judgment in a John Doe action against an uninsured motorist, could stack his three $35,000 single limit uninsured motorist policies in full with his $15,000 policy and therefore recover $120,000. (Decided under former law.) Nationwide Mut. Ins. Co. v. Howard (S.C.App. 1984) 284 S.C. 17, 324 S.E.2d 323, certiorari granted 285 S.C. 455, 329 S.E.2d 768, affirmed as modified 288 S.C. 5, 339 S.E.2d 501. Insurance 2799

13. Underinsured coverage

Elimination of underinsured motorist (UIM) coverage under policy issued to motorist’s employer, if motorist was driving his own car, not car leased from employer, was valid, as elimination neither offended public policy nor conflicted with state insurance laws. Zurich American Ins. Co. v. Tolbert (S.C.App. 2008) 378 S.C. 493, 662 S.E.2d 606, rehearing denied, certiorari granted, affirmed 387 S.C. 280, 692 S.E.2d 523. Insurance 2654

Commercial automobile insurance carrier was required to make a meaningful offer of optional underinsured motorist (UIM) coverage when selling a “fronting policy” of automobile insurance to insured, in which the insured’s deductible limits equaled the liability limits; insured did not seek approval as self‑insured by obtaining certificate of self‑insurance from state, and insurer retained risk that it would be liable for claims without indemnification if insured became insolvent. Croft v. Old Republic Ins. Co. (S.C. 2005) 365 S.C. 402, 618 S.E.2d 909. Insurance 2776

Underinsured and uninsured motorist coverage are mutually exclusive. Under former Section 56‑9‑831, additional uninsured coverage applied when the at‑fault motorist lacks liability insurance with minimum statutory limits while underinsured coverage applies when the at‑fault motorist has the required minimum liability coverage but such coverage is insufficient to fully compensate the insured for damages sustained. (Decided under former law.) Fireman’s Ins. Co. of Newark, New Jersey v. State Farm Mut. Auto. Ins. Co. (S.C. 1988) 295 S.C. 538, 370 S.E.2d 85. Insurance 2772

14. Limitations of actions

Statute prohibiting action for uninsured motorist (UM) benefits unless copies of pleadings in underlying action establishing liability are served upon UM insurer “in the manner provided by law” does not establish limitations period requiring that insurer be served within three years as if it were party defendant. Franklin v. Devore (S.C.App. 1997) 327 S.C. 418, 489 S.E.2d 651, rehearing denied, certiorari denied. Insurance 2791; Insurance 3560

15. Service of process

An insurer was not entitled to formal service of a summons and complaint filed by its insured, who sought underinsured motorist benefits, against a driver who was involved in an accident with the insured since, at the time the suit was instituted, former Section 56‑9‑830 required only a party seeking uninsured benefits to formally serve the insurer. Although subsequent legislation, i.e., former Section 38‑77‑160, applied the same requirement for underinsured benefits, no such provision existed at the time the suit was commenced and, therefore, the insurer was not entitled to formal service of the summons and complaint. Simmons v. South Carolina Farm Bureau Mut. Ins. Co. (S.C. 1990) 301 S.C. 267, 391 S.E.2d 560.

**SECTION 38‑77‑151.** Collected funds to be placed in Uninsured Motorists Fund; use of funds.

 All funds collected by the director of the Department of Motor Vehicles under the provisions of Chapter 10, Title 56 must be placed on deposit with the State Treasurer and held in a special fund to be known as the “Uninsured Motorists Fund” to be disbursed as provided by law. Interest earned by the “Uninsured Motorists Fund” must be retained by that fund. The director of the Department of Insurance, as provided in Sections 38‑77‑154 and 38‑77‑155, may expend such funds for the administration of this chapter; provided, however, that the Department of Insurance shall retain ten percent of the Uninsured Motorists Fund to be used by the Department of Insurance to enforce the provisions of Title 38 including Sections 38‑77‑112, 38‑77‑122, and 38‑77‑123, to publish for consumers an automobile insurance buyer’s guide, a brochure comparing automobile insurance premiums, and to provide for a public awareness campaign.

HISTORY: 1997 Act No. 154, Section 11.

Cross references

Expenditure of funds from Uninsured Motorists Fund and Uninsured Enforcement Fund for administration of this title, see Sections 56‑10‑550, 56‑10‑552.

Library References

Automobiles 251.1.

Insurance 1050.

Westlaw Topic Nos. 48A, 217.

C.J.S. Motor Vehicles Sections 1479, 1484 to 1488.

Attorney General’s Opinions

Discussion of the effect of a temporary proviso on an inconsistent general law. S.C. Op.Atty.Gen. (March 19, 2003) 2003 WL 21043487.

**SECTION 38‑77‑154.** Department of Insurance to supervise and control Uninsured Motorists Fund; purpose of fund.

 The Uninsured Motorists Fund shall be under the supervision and control of the Department of Insurance. Payments from the Uninsured Motorists Fund shall be made on warrants of the Comptroller General issued on vouchers signed by a person designated by the director. The purpose of the Uninsured Motorists Fund is to reduce the cost of the insurance required by Section 38‑77‑150 and to protect and educate consumers as provided by Section 38‑77‑151.

HISTORY: 1997 Act No. 154, Section 11.

Cross references—

Expenditure of funds from Uninsured Motorists Fund and Uninsured Enforcement Fund for administration of this title, see Sections 56‑10‑550, 56‑10‑552.

Library References

Automobiles 251.1.

Insurance 1050.

Westlaw Topic Nos. 48A, 217.

C.J.S. Motor Vehicles Sections 1479, 1484 to 1488.

**SECTION 38‑77‑155.** Distribution of funds; obtaining premium information.

 The director shall distribute monies annually from the Uninsured Motorists Fund among the several insurers writing motor vehicle bodily injury and property damage liability insurance on motor vehicles registered in this State. Monies must be distributed in the proportion that each insurer’s premium income for the auto liability coverage bears to the total premium income for auto liability coverage written in this State during the preceding year. Premium income must be gross premiums less cancellation and return premiums for coverage required by Section 38‑77‑150. The director shall obtain premium information from the annual statement filed by each insurer.

HISTORY: 1997 Act No. 154, Section 11; 2004 Act No. 291, Section 12, eff July 29, 2004.

Library References

Automobiles 251.1.

Insurance 1050.

Westlaw Topic Nos. 48A, 217.

C.J.S. Motor Vehicles Sections 1479, 1484 to 1488.

**SECTION 38‑77‑160.** Additional uninsured motorist coverage; underinsured motorist coverage.

 Automobile insurance carriers shall offer, at the option of the insured, uninsured motorist coverage up to the limits of the insured’s liability coverage in addition to the mandatory coverage prescribed by Section 38‑77‑150. Such carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at‑fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute. If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. If none of the insured’s or named insured’s vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage. Benefits paid pursuant to this section are not subject to subrogation and assignment.

 No action may be brought under the underinsured motorist provision unless copies of the pleadings in the action establishing liability are served in the manner provided by law upon the insurer writing the underinsured motorist provision. The insurer has the right to appear and defend in the name of the underinsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. The evidence of service upon the insurer may not be made a part of the record. In the event the automobile insurance insurer for the putative at‑fault insured chooses to settle in part the claims against its insured by payment of its applicable liability limits on behalf of its insured, the underinsured motorist insurer may assume control of the defense of action for its own benefit. No underinsured motorist policy may contain a clause requiring the insurer’s consent to settlement with the at‑fault party.

HISTORY: Former 1976 Code Section 56‑9‑831 [1978 Act No. 569, Section 1; 1987 Act No. 166, Section 22; repealed by 1987 Act No. 155, Section 25] recodified as Section 38‑77‑160 by 1987 Act No. 155, Section 1 [amendment to former 1976 Code Section 56‑9‑831 by 1987 Act No. 166, Section 22, transferred to Section 38‑77‑160 by 1987 Act No. 155, Section 24]; 1989 Act No. 148, Section 21; 1994 Act No. 461, Section 7.

CROSS REFERENCES

Definition of “motor vehicle liability policy”, see Section 56‑9‑20.

Insurance policy for at least the minimum coverages specified in sections 38‑77‑140 through 38‑77‑230 and the benefits required under sections 38‑77‑240, 38‑77‑250, and 38‑77‑260, as satisfying the security requirements of the Motor Vehicle Registration and Financial Security provisions, see Section 56‑10‑20.

Mandatory imputing of any negligence or wilful misconduct of a minor when driving a motor vehicle to the person who signed the application for a permit or license, unless the minor is protected by insurance in the form and amounts required under this section, see Section 56‑1‑110.

Library References

Insurance 2773, 2787, 2794 to 2806.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2229, 2231 to 2238, 2240 to 2242, 2244 to 2248, 2263 to 2269, 2271 to 2272, 2279 to 2302, 2333.

RESEARCH REFERENCES

ALR Library

75 ALR 6th 235 , Validity, Construction, and Application of Exhaustion Clause of Underinsured Motorist Coverage Plan.

16 ALR 6th 491 , Conduct or Inaction by Insurer Constituting Waiver Of, or Creating Estoppel to Assert, Defense of Consent to Settle Provision Under Insurance Policy.

3 ALR 5th 746 , Insured’s Recovery of Uninsured Motorist Claim Against Insurer as Affecting Subsequent Recovery Against Tortfeasors Causing Injury.

40 ALR 5th 603 , Validity and Construction of Provision of Uninsured or Underinsured Motorist Coverage that Damages Under the Coverage Will be Reduced by Amount of Recovery from Tortfeasor.

23 ALR 4th 12 , Combining or “Stacking” Uninsured Motorist Coverages Provided in Single Policy Applicable to Different Vehicles of Individual Insured.

25 ALR 4th 6 , Combining or “Stacking” Uninsured Motorist Coverages Provided in Separate Policies Issued by Same Insurer to Same Insured.

18 ALR 4th 249 , Validity, Construction, and Effect of “No‑Consent‑To‑Settlement” Exclusion Clauses in Automobile Insurance Policy.

55 ALR 3rd 216 , Construction of Statutory Provision Governing Rejection or Waiver of Uninsured Motorist Coverage.

Encyclopedias

S.C. Jur. Compromise and Settlement Section 26, Workers’ Compensation Liens.

S.C. Jur. Damages Section 26, Injury to Child or Spouse.

Treatises and Practice Aids

Automobile Liability Insurance Section 41:2, Stacking of Underinsured Motorist Coverages for Uncompensated Damages.

Automobile Liability Insurance Section 19:17, Optional Uninsured Motorist Coverages‑”Offer” Requirement.

Automobile Liability Insurance Section 38:19, Insurer Obligation to Provide Underinsured Motorist Coverage.

Automobile Liability Insurance Section 38:24, Optional Underinsured Motorist Coverage: Method, Form, and Content of Offer‑Offer of Increased Limits.

Automobile Liability Insurance Section 42:17, The “Substitute Payment” Procedure.

26 Causes of Action 1, Cause of Action to Recover Benefits Under Underinsured Motorist Provisions of Automobile Insurance Policy.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Insurance Law. 38 S.C. L. Rev. 140 (Autumn 1986).

Annual survey of South Carolina law, insurance law. 40 S.C. L. Rev. 149 (Autumn 1988).

Annual survey of South Carolina law, insurance law. 41 S.C. L. Rev. 123 (Autumn 1989).

Attorney General’s Opinions

Discussion of if an innocent driver, injured in an accident with a drunk driver, receives a settlement from his or her uninsured/underinsured motorist coverage, does the Compensation for Victims of Crimes Fund have a claim against these proceeds. S.C. Op.Atty.Gen. (July 31, 1990) 1990 WL 599266.

NOTES OF DECISIONS

In general 1

Acceptance or rejection by agent of insured 15

Adequate information, offer of coverage 10

Amount of coverage, offer of coverage 13

Assignment 18

Construction and application 4

Constructions with other laws 6

Damages 31

Defense of action 25

Estoppel 27

Exempt commercial policies 29

Forms, offer of coverage 11

Good faith 21

Insurable interest 3

Insured 19

Limitation of actions 17

Limitations in policy 5

Meaningful offer, offer of coverage 9

Offer of coverage 8‑14

In general 8

Adequate information 10

Amount of coverage 13

Forms 11

Meaningful offer 9

Reformation of policy 14

Written materials 12

Other insurance 2

Ownership, maintenance or use of motor vehicle 23

Payment of benefits 30

Portability 16

Presumptions and burden of proof 33

Property damage 28

Purpose 7

Questions of law 34

Reformation of policy, offer of coverage 14

Review 36

Service of process 24

Set‑off 20

Stacking 22

Sufficiency of evidence 35

Summary judgment 32

Timeliness of claims 26

Written materials, offer of coverage 12

1. In general

Underinsured motorist (UIM) coverage is controlled by and subject to the South Carolina UIM act, and any insurance policy provisions inconsistent therewith are void, and the relevant statutory provisions prevail as if embodied in the policy. Carter v. Standard Fire Ins. Co. (S.C. 2013) 406 S.C. 609, 753 S.E.2d 515, rehearing denied. Insurance 2772

A policy of automobile insurance must provide at least the minimum amount of coverage outlined in the underinsured motorist (UIM) statute, and a policy issued pursuant to the law which gives less protection will be interpreted by the court as supplying the protection which the legislature intended. Carter v. Standard Fire Ins. Co. (S.C. 2013) 406 S.C. 609, 753 S.E.2d 515, rehearing denied. Insurance 2774

An insurer must offer underinsured motorist (UIM) coverage when the insurer extends statutorily required liability coverage. Howell v. United States Fidelity and Guar. Ins. Co. (S.C. 2006) 370 S.C. 505, 636 S.E.2d 626. Insurance 2775

Automobile insurer on policy providing voluntary liability coverage only for hired and non‑owned vehicles is not required to offer underinsured motorist (UIM) coverage; the coverage is not statutorily required. Howell v. United States Fidelity and Guar. Ins. Co. (S.C. 2006) 370 S.C. 505, 636 S.E.2d 626. Insurance 2775

Underinsured motorist (UIM) coverage in any amount up to the insured’s liability coverage must be offered to a policyholder. Bower v. National General Ins. Co. (S.C. 2002) 351 S.C. 112, 569 S.E.2d 313, rehearing denied. Insurance 2775

Underinsured motorist coverage is controlled by and subject to the underinsured motorist act, and any insurance policy provisions inconsistent therewith are void, and the relevant statutory provisions prevail as if embodied in the policy. Kay v. State Farm Mut. Auto. Ins. Co. (S.C.App. 2002) 349 S.C. 446, 562 S.E.2d 676, rehearing denied, certiorari denied. Insurance 1852; Insurance 2772

Recovery of underinsured motorist (UIM) benefits precluded recovery of uninsured motorist (UM) benefits under same policy. State Farm Mut. Auto. Ins. Co. v. James (S.C.App. 1999) 337 S.C. 86, 522 S.E.2d 345. Insurance 2806

Under Section 38‑77‑160, an insured must preserve the right of action against an at‑fault driver so long as the underinsured carrier has not agreed to the amount and payment of underinsured motorist benefits. Williams v. Selective Ins. Co. of Southeast (S.C. 1994) 315 S.C. 532, 446 S.E.2d 402. Insurance 2787

Underinsured and uninsured motorist coverage are mutually exclusive. Under former Section 56‑9‑831, additional uninsured coverage applies when the at‑fault motorist lacks liability insurance with minimum statutory limits while underinsured coverage applies when the at‑fault motorist has the required minimum liability coverage but such coverage is insufficient to fully compensate the insured for damages sustained. Fireman’s Ins. Co. of Newark, New Jersey v. State Farm Mut. Auto. Ins. Co. (S.C. 1988) 295 S.C. 538, 370 S.E.2d 85. Insurance 2772

Pursuant to former Sections 56‑9‑820 and 56‑9‑830, the underinsured motorist coverage required to be offered by insurance carriers to their policyholders, under former Section 56‑9‑831, was not mandatory, unlike liability insurance and uninsured motorist coverage. Garris v. Cincinnati Ins. Co. (S.C. 1984) 280 S.C. 149, 311 S.E.2d 723.

2. Other insurance

“Other insurance” provision in automobile insurance policy pertaining to underinsured motorist (UIM) benefits, providing that “with respect to property damage, this insurance shall be excess over other valid and collectible insurance applicable to the damaged property,’ did not violate public policy so as to render it invalid; UIM property damage coverage was not statutorily mandated, the “other insurance” provision did not conflict with the public policy expressed in UIM statute, and provision did nothing more than make UIM coverage secondary to other insurance that covered the loss rather than leave an insured without coverage. Bardsley v. Government Employees Ins. Co. (S.C. 2013) 405 S.C. 68, 747 S.E.2d 436. Insurance 2800

3. Insurable interest

Question of whether driver of insured automobile involved in accident with uninsured vehicle lacked an insurable interest in automobile was relevant to determining the amount of uninsured motorist (UM) coverage available to him and his wife, who had been passenger in automobile at time of accident; liability insurance was dependent upon an insurable interest, and, since liability insurance could not be issued without UM coverage, UM coverage was indirectly dependent on the existence of an insurable interest. Nationwide Mut. Ins. Co. v. Smith (S.C.App. 2007) 376 S.C. 60, 654 S.E.2d 837, rehearing denied, certiorari dismissed, certiorari denied. Insurance 1794.5

4. Construction and application

The uninsured and underinsured motorist (UM/UIM) statutes are remedial in nature and enacted for the benefit of injured persons; therefore, they should be construed liberally to effect the purpose intended by the Legislature. Floyd v. Nationwide Mut. Ins. Co. (S.C. 2005) 367 S.C. 253, 626 S.E.2d 6, rehearing denied. Insurance 2772

Underinsured motorist (UIM) statute does not require payment of tort‑feasor’s automobile liability insurance policy limits as precondition to collecting UIM benefits, but UIM carrier is entitled to credit for any amount of liability coverage not exhausted in a settlement with its insured. Cobb v. Benjamin (S.C.App. 1997) 325 S.C. 573, 482 S.E.2d 589, rehearing denied, certiorari denied. Insurance 2787; Insurance 2806

Claimants were not entitled to Underinsured Motorist (UIM) coverage at the time their rights vested where on July 13, 1988 the insured driver was struck and killed by a driver whose own liability coverage was below both the amount of damages arising from the insured’s death and the amount of the UIM coverage, since at the time of this vesting Section 38‑73‑1105 was not effective and the state was still a “reduction” coverage state wherein benefits were only provided to an insured under his own policy when the claimant’s UIM coverage was greater than the at‑fault driver’s liability coverage. State Farm Mut. Auto. Ins. Co. v. Horry (S.C. 1991) 304 S.C. 165, 403 S.E.2d 318.

The State Insurance Reserve Fund is not an “automobile insurance carrier” within the meaning of Section 38‑77‑160. Davis v. State of S.C. Budget and Control Bd., Div. of General Services Ins. Reserve Bd. (S.C.App. 1989) 298 S.C. 135, 378 S.E.2d 604, certiorari dismissed 301 S.C. 373, 392 S.E.2d 183.

5. Limitations in policy

Policy provision limiting underinsured motorist (UIM) coverage to the lesser of the coverage limits under policy or the coverage limits on the vehicle involved in the accident did not violate public policy and was valid as to an insured motorcyclist who carried no UIM coverage on motorcycle policy, but had UIM coverage on vehicles not involved in accident. Burgess v. Nationwide Mut. Ins. Co. (S.C. 2007) 373 S.C. 37, 644 S.E.2d 40. Insurance 2796

6. Constructions with other laws

An insurer’s failure to comply with the statute governing form for offer of underinsured motorist (UIM) coverage does not necessarily require reformation of the policy; rather, the insurer bears the burden of establishing it made a meaningful offer of UIM coverage. McDowell v. Travelers Property & Cas. Co. (S.C.App. 2003) 357 S.C. 118, 590 S.E.2d 514, rehearing denied. Insurance 1889; Insurance 1893(1); Insurance 2813

Statute specifying form for automobile insurers to use when offering underinsured motorist (UIM) coverage and other optional coverages does not modify statute requiring automobile insurers to offer UIM coverage up to limits of liability coverage; in other words, automobile insurers still must offer UIM coverage below minimum liability limits. Butler v. Unisun Ins. Co. (S.C. 1996) 323 S.C. 402, 475 S.E.2d 758, rehearing denied. Insurance 2775

Sections 38‑77‑160 and 38‑77‑350 cover the same subject matter (the offer of optional insurance coverages for automobiles) and therefore must be construed together and as explanatory of each other; statutes that deal with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result. Osborne v. Allstate Ins. Co. (S.C.App. 1995) 319 S.C. 479, 462 S.E.2d 291, rehearing denied, certiorari granted.

The State Budget and Control Board did not waive its right to assert the provisions of Section 10‑7‑180 against its insured by reason of delay where there was no showing that the insured was prejudiced; conducting discovery did not prejudice the insured because any discovery conducted related to the bad faith claim as well. Charleston County School Dist. v. State Budget and Control Bd. (S.C. 1993) 313 S.C. 1, 437 S.E.2d 6.

An insured was not entitled to reformation of an umbrella policy to include uninsured motorist (UM) coverage where (1) the policy, which included only liability coverage, was renewed on October 22, 1986, (2) Section 38‑77‑161 sets forth that UM coverage need not be provided in an umbrella policy, and (3) the accident occurred after Section 38‑77‑161’s effective date of July 1, 1989. Todd v. Federated Mut. Ins. Co. (S.C. 1991) 305 S.C. 395, 409 S.E.2d 361.

7. Purpose

The central purpose of the underinsured motorist (UIM) statute is to provide coverage when the injured party’s damages exceed the liability limits of the at‑fault motorist; therefore, the UIM and underinsured motorist (UM) statutes are remedial in nature and enacted for the benefit of injured persons and should be construed liberally to effect the purpose intended by the Legislature. Carter v. Standard Fire Ins. Co. (S.C. 2013) 406 S.C. 609, 753 S.E.2d 515, rehearing denied. Insurance 2772; Insurance 2787

The central purpose of the underinsured motorist (UIM) statute is to provide coverage when the injured party’s damages exceed the liability limits of the at‑fault motorist. Floyd v. Nationwide Mut. Ins. Co. (S.C. 2005) 367 S.C. 253, 626 S.E.2d 6, rehearing denied. Insurance 2772

The intent of Section 38‑77‑160 is to protect an insurance carrier’s right to contest its liability for underinsured benefits. Williams v. Selective Ins. Co. of Southeast (S.C. 1994) 315 S.C. 532, 446 S.E.2d 402.

The purpose of Section 38‑77‑160 is to provide notice to the insurance company. Ex parte South Carolina Farm Bureau Mut. Ins. Co. (S.C. 1993) 314 S.C. 487, 431 S.E.2d 252, rehearing denied.

The statutory purpose of underinsured coverage is to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at‑fault insured or underinsured motorist. Underinsured motorist coverage is controlled by and subject to the underinsured motorist act, and any insurance policy provisions inconsistent therewith are void and the relevant statutory provisions prevail as if embodied in the policy. Thus, an insured who was not driving the vehicle described in his policy at the time of an accident had underinsured motorist coverage of $25,000, even though the policy contained a provision which limited underinsured motorist coverage to $15,000 if the insured was not driving the described vehicle at the time of the accident, since the policy provision was void as violative of the Financial Responsibility Act. The insurer could not restrict coverage so as to preclude the insured from recovering the full amount of his damages to the extent that he had underinsured motorist coverage on the described vehicle where the insured’s damages exceeded the limits of the at‑fault motorist’s liability coverage. (Decided under former law.) McAlister v. State Farm Mut. Auto. Ins. Co. (S.C.App. 1990) 301 S.C. 113, 390 S.E.2d 383.

The purpose of former Section 56‑9‑831 is to provide insurance coverage where the insured party’s damages exceed the liability limits of the at fault motorist, regardless of whether the insured’s underinsured motorist coverage limits exceed the liability limits of the at fault motorist, so that, under the section, an injured plaintiff whose damages exceeded the at fault defendant’s $50,000 liability coverage was entitled to stack coverage, even though that coverage was greater than her underinsured motorist coverage. Gambrell v. Travelers Ins. Companies (S.C. 1983) 280 S.C. 69, 310 S.E.2d 814.

8. Offer of coverage—In general

Automobile insurer made statutorily‑compliant offer of underinsured motorist (UIM) coverage to insured who purchased automobile insurance policy from insurer through insurer’s internet website; insured agreed to interact with insurer electronically by choosing to purchase insurance through its website, insurer’s website acted as its electronic agent, completing offer form based on insured’s selections of coverage and presenting it to insured in a format that was easily viewable, printable and savable, and insured rejected the recommended preset coverage packages, all of which included UIM coverage, instead choosing to create a customized package and decline UIM coverage. Traynum v. Scavens (S.C. 2016) 416 S.C. 197, 786 S.E.2d 115, rehearing denied. Insurance 2775; Insurance 2778

A noncomplying offer of uninsured or underinsured motorist (UM/UIM) coverage has the legal effect of no offer at all. Grinnell Corp. v. Wood (S.C.App. 2008) 378 S.C. 458, 663 S.E.2d 61, rehearing denied, certiorari granted, reversed 389 S.C. 350, 698 S.E.2d 796. Insurance 2779(1)

A noncomplying offer of uninsured or underinsured motorist (UM/UIM) coverages has the legal effect of no offer at all. Floyd v. Nationwide Mut. Ins. Co. (S.C. 2005) 367 S.C. 253, 626 S.E.2d 6, rehearing denied. Insurance 2775

If the insurer fails to comply with its statutory duty to make a meaningful offer to the insured, the policy will be reformed, by operation of law, to include underinsured motorist (UIM) coverage up to the limits of liability insurance carried by the insured. Floyd v. Nationwide Mut. Ins. Co. (S.C. 2005) 367 S.C. 253, 626 S.E.2d 6, rehearing denied. Insurance 1885; Insurance 2779(2)

A noncomplying offer of underinsured motorist (UIM) coverage has the legal effect of no offer at all. Progressive Cas. Ins. Co. v. Leachman (S.C. 2005) 362 S.C. 344, 608 S.E.2d 569. Insurance 2779(1)

If the insurer fails to comply with its statutory duty to make a meaningful offer of underinsured motorist (UIM) coverage, the policy will be reformed, by operation of law, to include UIM coverage up to the limits of liability insurance carried by the insured. McDowell v. Travelers Property & Cas. Co. (S.C.App. 2003) 357 S.C. 118, 590 S.E.2d 514, rehearing denied. Insurance 1885; Insurance 2779(2)

A non‑complying offer of underinsured motorist (UIM) coverage has the legal effect of no offer at all. Bower v. National General Ins. Co. (S.C. 2002) 351 S.C. 112, 569 S.E.2d 313, rehearing denied. Insurance 2775

Automobile insurer was required to offer underinsured motorist (UIM) coverage to a car buyer when changing the name of the insured from the seller, the buyer’s mother, to the buyer, even though the buyer did not complete an application for a policy; the buyer had never been a named insured on a policy issued by the insurer. McDonald v. South Carolina Farm Bureau Ins. Co. (S.C.App. 1999) 336 S.C. 120, 518 S.E.2d 624, rehearing denied, certiorari denied. Insurance 2775

Removing car seller from automobile insurance policy and substituting buyer, seller’s child, as the named insured was not a mere policy change, but created a new insurance policy with a new named insured, thus requiring the insurer to offer underinsured motorist (UIM) coverage. McDonald v. South Carolina Farm Bureau Ins. Co. (S.C.App. 1999) 336 S.C. 120, 518 S.E.2d 624, rehearing denied, certiorari denied. Insurance 1878; Insurance 2775

The Insurance Commissioner has discretion to approve the sufficiency of offers of underinsured motorist (UIM) coverage under Section 38‑77‑350; however, the commissioner has no discretion to approve offers that do not make it clear to applicants that they may obtain UIM coverage for amounts less than the minimum liability coverages required by Section 38‑77‑160. Osborne v. Allstate Ins. Co. (S.C.App. 1995) 319 S.C. 479, 462 S.E.2d 291, rehearing denied, certiorari granted. Insurance 2775

In order to comply with Section 38‑77‑160, mandating that automobile insurance carriers offer their insureds optional underinsured motorist coverage up to the limits of their insured liability coverage, the offer must satisfy 4 criteria: (1) the insurer must give notification of the offer in a commercially reasonable manner, (2) the insurer must specify the limits of optional coverage in general terms, (3) the insurer must tell the insured the optional coverage is available for an additional stated premium, and (4) the insurer must give an intelligible explanation of underinsured motorist coverage in a manner that permits the insured to make an informed decision to accept or reject the coverage ‑ i.e., the necessary information must be conveyed in a format and in language that make it readily understandable to a person of common intelligence. American Sec. Ins. Co. v. Howard (S.C.App. 1993) 315 S.C. 47, 431 S.E.2d 604. Insurance 2775

An automobile insurer’s offer of underinsured motorist insurance was an illegal negative sale in violation of Section 38‑77‑160, mandating that automobile insurance carriers offer their insureds optional underinsured motorist coverage up to the limits of their insured liability coverage, where the offer automatically “rolled on” underinsured motorist coverage with mandatory liability coverage, and gave the insured the right to reject the coverage and receive a partial refund of the premium. American Sec. Ins. Co. v. Howard (S.C.App. 1993) 315 S.C. 47, 431 S.E.2d 604. Insurance 2775

An offer of optional underinsured motorist insurance that does not comply with Section 38‑77‑160 has the legal effect of no offer at all, even where the insured has consistently rejected underinsured motorist coverage in the past. American Sec. Ins. Co. v. Howard (S.C.App. 1993) 315 S.C. 47, 431 S.E.2d 604.

9. —— Meaningful offer, offer of judgment

In order to be a “meaningful offer” of underinsured motorist (UIM) coverage under South Carolina law, an offer must intelligibly advise the insured of the nature of UIM coverage. Nationwide Mut. Ins. Co. v. Powell (C.A.4 (S.C.) 2002) 292 F.3d 201. Insurance 2775

Under South Carolina law, automobile insurer was required to make meaningful offer of underinsured motorist (UIM) coverage to insured driver whose girlfriend obtained insurance on his behalf; driver was a named insured under the policy and insurer had never offered him the option of UIM coverage or to execute a UIM offer form, and driver was also an applicant on the policy, as insurer had the right to reject coverage for him if it had so decided, and public policy favoring insureds warranted liberal interpretation of the meaningful offer requirement. Allstate Fire and Casualty Insurance Company v. Simpson, 2016, 152 F.Supp.3d 487. Insurance 2775

Viewing totality of transaction, automobile insurer did not make a meaningful offer of underinsured motorist (UIM) coverage to insureds, as required under South Carolina law, and thus policy would be reformed by operation of law to include UIM coverage up to the limits of insureds’ liability coverage; one insured received quotes that included UIM coverage in an amount equal to limits of liability coverage and was subsequently charged an amount greater than that quoted, such that insured would not reasonably have expected less coverage than she initially sought, and when insured spoke to insurer’s representative after receiving offer form, which misleadingly asked insured to indicate if she wanted “additional” UIM coverage, representative did not inform her that she did not have UIM coverage and insured declined additional UIM coverage because she believed policy already afforded such coverage. Liberty Mut. Fire Ins. Co. v. McKnight, 2015, 125 F.Supp.3d 602. Insurance 2775

Automobile insurer’s offer form did not, in and of itself, intelligibly advise insureds of the nature of optional underinsured motorist (UIM) coverage, and thus insurer did not make meaningful offer of UIM coverage, as required under South Carolina law, such that policy would be reformed by operation of law to include UIM coverage up to the limits of insureds’ liability coverage; even though offer form’s explanation of coverages section advised insureds that their policy did not automatically provide any UIM coverage, form’s UIM section asked insureds if they wished to purchase “additional underinsured motorist coverage,” despite the fact that UIM coverage in any amount was entirely optional, and explanation of coverages section did not affirmatively correct the mischaracterization of optional coverage prominently displayed in UIM section. Liberty Mut. Fire Ins. Co. v. McKnight, 2015, 125 F.Supp.3d 602. Insurance 2775

Automobile insurer did not meet its burden of showing that its offer form met statutory requirements for forms used by insurers in making offers of optional insurance coverages, and thus was not entitled to presumption that it made insureds a meaningful offer of optional underinsured motorist (UIM) coverage or optional additional uninsured motorist (UM) coverage, as required under South Carolina law. Liberty Mut. Fire Ins. Co. v. McKnight, 2015, 125 F.Supp.3d 602. Insurance 2812

Despite use of blanket term “insured” in this section, it would be nonsensical and would create impossible task for legislature to require insurer to make a meaningful offer of optional coverage to every person who may, after policy is written, become permissive user or guest in policyholder’s automobile; thus, statute does not oblige insurer to offer underinsured motorist coverage to plaintiff driver driving his employer’s automobile with permission, employer being the named insured and plaintiff/driver being an insured only for purpose of coverage under the policy; however, plaintiff still has standing to pursue action against defendant insurer on theory that insurer should have offered coverage to plaintiff, since if defendant insurer failed to make effective offer of optional underinsured motorist coverage to its policyholder (the employer) and thereby such coverage is imposed as a matter of law, plaintiff would be a beneficiary of defendant’s failure to comply with statutory requirement, and if plaintiff is unable to prove necessary factual requirements he will bear any loss over and above liability coverage of driver of other vehicle whose negligence caused accident, therefore, plaintiff has a personal interest in subject matter of lawsuit and has standing. Wright v. Allstate Ins. Co., 1990, 746 F.Supp. 612.

An automobile insurer’s offer of underinsured motorist (UIM) coverage must be meaningful. Cohen v. Progressive Northern Ins. Co. (S.C.App. 2013) 402 S.C. 66, 737 S.E.2d 869. Insurance 2775

In general, for an insurer to make a meaningful offer of underinsured motorist (UIM) coverage, (1) the insurer’s notification process must be commercially reasonable, whether oral or in writing; (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms; (3) the insurer must intelligibly advise the insured of the nature of the optional coverage; and (4) the insured must be told that optional coverages are available for an additional premium. Cohen v. Progressive Northern Ins. Co. (S.C.App. 2013) 402 S.C. 66, 737 S.E.2d 869. Insurance 2775

An offer of additional uninsured or underinsured motorist (UM/UIM) coverage must be an effective offer that is meaningful to the insured. Grinnell Corp. v. Wood (S.C.App. 2008) 378 S.C. 458, 663 S.E.2d 61, rehearing denied, certiorari granted, reversed 389 S.C. 350, 698 S.E.2d 796. Insurance 2775

The purpose of requiring automobile insurers to make a meaningful offer of additional uninsured or underinsured motorist (UM/UIM) coverage is for insureds to know their options and to make an informed decision as to which amount of coverage will best suit their needs. Grinnell Corp. v. Wood (S.C.App. 2008) 378 S.C. 458, 663 S.E.2d 61, rehearing denied, certiorari granted, reversed 389 S.C. 350, 698 S.E.2d 796. Insurance 2775

Automobile insurer’s offer of underinsured motorist (UIM) coverage must be meaningful in order to comply with statutory obligation to offer UIM coverage up to the limits of the liability coverage. Atkins v. Horace Mann Ins. Co. (S.C.App. 2008) 376 S.C. 625, 658 S.E.2d 106. Insurance 2775

Automobile insurer’s unnecessary offer of underinsured motorist (UIM) coverage after insured added car to existing policy had to be a meaningful offer. Atkins v. Horace Mann Ins. Co. (S.C.App. 2008) 376 S.C. 625, 658 S.E.2d 106. Insurance 2775

To determine whether an automobile insurer has complied with its duty to offer optional coverages and thus make a meaningful offer of underinsured motorist (UIM) coverage, the court must consider the following factors: (1) the insurer’s notification process must be commercially reasonable, whether oral or in writing; (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms; (3) the insurer must intelligibly advise the insured of the nature of the option coverage: and (4) the insured must be told that optional coverages are available for an additional premium. Atkins v. Horace Mann Ins. Co. (S.C.App. 2008) 376 S.C. 625, 658 S.E.2d 106. Insurance 2775

In order for an insurer to make a meaningful offer of underinsured motorist (UIM) coverage, (1) the insurer’s notification process must be commercially reasonable, whether oral or in writing; (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms; (3) the insurer must intelligibly advise the insured of the nature of the optional coverage; and (4) the insured must be told that optional coverages are available for an additional premium. Floyd v. Nationwide Mut. Ins. Co. (S.C. 2005) 367 S.C. 253, 626 S.E.2d 6, rehearing denied. Insurance 2775

When an automobile insurer offers all amounts of underinsured motorist (UIM) coverage that the Department of Insurance authorizes it to sell, the insurer has made a meaningful offer; it has provided the opportunity for the insured to make an intelligent decision as to whether to accept or reject UIM coverage, and the statute governing the offer does not require a blank line to write in an amount up to the liability coverage limit. Progressive Cas. Ins. Co. v. Leachman (S.C. 2005) 362 S.C. 344, 608 S.E.2d 569. Insurance 2775

In general, for an automobile insurer to make a meaningful offer of underinsured motorist (UIM) coverage, (1) the insurer’s notification process must be commercially reasonable, whether oral or in writing; (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms; (3) the insurer must intelligibly advise the insured of the nature of the optional coverage; and (4) the insured must be told that optional coverages are available for an additional premium. Progressive Cas. Ins. Co. v. Leachman (S.C. 2005) 362 S.C. 344, 608 S.E.2d 569. Insurance 2775

Fronting insurer made a meaningful offer of underinsured motorist (UIM) coverage to insured truck owner, even though the insurer failed to state the premium amounts for the UIM coverage; the insured was required to reimburse the insurer for the amount paid in adjusting the claims during the policy period, the premium was thus equal to the one hundred percent of the claims plus an administrative fee, and the insured provided workers’ compensation insurance and did not want to provide UIM coverage for its drivers. McDowell v. Travelers Property & Cas. Co. (S.C.App. 2003) 357 S.C. 118, 590 S.E.2d 514, rehearing denied. Insurance 2775

The following test determines whether an insurer made a meaningful offer of underinsured motorist (UIM) coverage: (1) the insurer’s notification process must be commercially reasonable, whether oral or in writing; (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms; (3) the insurer must intelligibly advise the insured of the nature of the optional coverage; and (4) the insured must be told that optional coverages are available for an additional premium. Bower v. National General Ins. Co. (S.C. 2002) 351 S.C. 112, 569 S.E.2d 313, rehearing denied. Insurance 2775

Although an insured must exercise common sense in responding to an offer of underinsured motorist (UIM) coverage, a court cannot expect an insured to act intelligently when, as a matter of law, an offer has not been meaningfully conveyed. Bower v. National General Ins. Co. (S.C. 2002) 351 S.C. 112, 569 S.E.2d 313, rehearing denied. Insurance 2775; Insurance 2778

For an offer of underinsured motorist (UIM) coverage to be meaningful, as required for compliance with statutory obligation to offer UIM coverage: (1) the insurer’s notification process must be commercially reasonable, whether oral or in writing; (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms; (3) the insurer must intelligibly advise the insured of the nature of the optional coverage; and (4) the insured must be told that optional coverages are available for an additional premium. Tucker v. Allstate Ins. Co. (S.C.App. 1999) 337 S.C. 128, 522 S.E.2d 819. Insurance 2775

To comply with statute requiring insurance carriers to offer underinsured motorist (UIM) coverage to policyholders, the insurer’s offer of UIM coverage must be meaningful. Tucker v. Allstate Ins. Co. (S.C.App. 1999) 337 S.C. 128, 522 S.E.2d 819. Insurance 2775

To determine whether insurer has complied with duty to offer optional coverages and thus make meaningful offer of underinsured motorist (UIM) coverage, court must consider these factors: (1) insurer’s notification process must be commercially reasonable, whether oral or written; (2) insurer must specify limits of optional coverage and not merely offer additional coverage in general terms; (3) insurer must intelligibly advise insured of nature of optional coverage; and (4) insured must be told optional coverages are available for additional premium. Norwood v. Allstate Ins. Co. (S.C.App. 1997) 327 S.C. 503, 489 S.E.2d 661, rehearing denied, certiorari denied. Insurance 2779(1)

An offer of optional underinsured motorist coverage does not constitute a meaningful offer within the meaning of Section 38‑77‑160 where the offer fails to specifically state the limits of the additional coverage in dollar amounts, or where the offer does not provide the insured with a separately stated premium amount for coverage at the specified limits, or where the offer fails to explain the nature of underinsured motorist coverage and how it differs from other coverages, and omits any description that would allow the insured to make an informed decision to accept or reject the coverage . American Sec. Ins. Co. v. Howard (S.C.App. 1993) 315 S.C. 47, 431 S.E.2d 604.

10. —— Adequate information, offer of judgment

The statute governing the offer of underinsured motorist (UIM) coverage mandates the insured to be provided with adequate information in such a manner as to allow the insured to make an intelligent decision of whether to accept or reject the coverage. Bower v. National General Ins. Co. (S.C. 2002) 351 S.C. 112, 569 S.E.2d 313, rehearing denied. Insurance 2775; Insurance 2778

Former Section 56‑9‑831 mandates that insured be provided with adequate information, and in such manner, as to allow insured to make intelligent decision of whether to accept or reject uninsured motorists coverage, and standard by which to determine whether insurer has complied with duty to offer optional coverage requires: (1) insurer’s notification process must be commercially reasonable, whether oral or in writing, (2) insurer must specify limits of optional coverage and not merely offer additional coverage in general terms, (3) insurer must intelligibly advise insured of nature of optional coverage, and (4) insured must be told that optional coverages are available for additional premium; renewal premium notice accompanied by 9 page booklet from insurer, without more, does not constitute effective offer of underinsured coverage as required by statute; where none of insured’s or named insured’s vehicles is involved in accident, insured is not entitled to stack his underinsured coverage. State Farm Mut. Auto. Ins. Co. v. Wannamaker (S.C. 1987) 291 S.C. 518, 354 S.E.2d 555.

11. —— Forms, offer of judgment

Insurance agent’s assistant’s presentation of underinsured motorist (UIM) coverage form to vehicle owner’s wife, who procured automobile policy for her husband’s automobiles, did not intelligibly advise the husband, as the prospective named insured, about UIM coverage, and was therefore not a “meaningful offer” of such coverage as required under South Carolina law, thus requiring that the policy be reformed to include such coverage; the husband, the named insured, never completed and executed the UIM form, and the insured and his wife offered evidence that he made the decision to accept the policy without ever having seen the UIM form. Nationwide Mut. Ins. Co. v. Powell (C.A.4 (S.C.) 2002) 292 F.3d 201. Insurance 2775

Insurance companies should be able to rely on the Section 38‑77‑350 form as satisfying the statutory requirements concerning offers of uninsured motorist coverage. Holt v. State Farm Mut. Auto. Ins. Co., 1994, 870 F.Supp. 658.

An automobile insurer’s noncompliance with statutory provision that requires that an application form required under the statute be properly completed and executed by the named insured before an insurer is entitled to a conclusive presumption that it has made a meaningful offer of underinsured motorist (UIM) coverage does not render the use of the statutory form a noncomplying offer of coverage, but rather, simply means that the trial court must make the factual determination of whether the insurer made a meaningful offer. Cohen v. Progressive Northern Ins. Co. (S.C.App. 2013) 402 S.C. 66, 737 S.E.2d 869. Insurance 2779(1)

Offer of underinsured motorist (UIM) coverage in selection/rejection form mailed to insured was made in a commercially reasonable manner to person intelligibly advised of the nature of UIM coverage and, therefore, was valid; insured called agent, dealing by mail was apparently acceptable to insured, the coverage on the newly‑acquired car was same as coverage on other vehicles, form clearly explained the nature of UIM coverage, and insured was high school teacher, former principal, and coach with a master’s degree. Atkins v. Horace Mann Ins. Co. (S.C.App. 2008) 376 S.C. 625, 658 S.E.2d 106. Insurance 2775; Insurance 2778

Form provided to insured for selecting or rejecting underinsured motorist (UIM) coverage provided meaningful offer of UIM benefits for amounts less than the minimum liability limits carried by the insured, precluding reformation of the policy to include UIM coverage; insured was informed that if he was interested in any limits that did not appear with examples on form, he could fill in those amounts and his agent would provide the attendant premium amounts if those limits were marketable within this State, that he could purchase UIM coverage in limits “up to” the limits of his liability coverage, and was asked to specify the limits desired on a blank line on form, below various examples of commonly sold UIM limits. Warren Burch v. South Carolina Farm Bureau Mut. Ins. Co. (S.C.App. 2002) 351 S.C. 342, 569 S.E.2d 400. Insurance 1885; Insurance 2775

Insurer did not make a meaningful offer of underinsured motorist (UIM) coverage by listing three choices of limits equal to or less than the liability coverage limits; although the form did not state outright that “all” available limits were listed, it did state that the limits for UIM coverage were shown on the form, and the form thus did not inform the insured that any limits up to the liability limits could be purchased and that optional coverages are available for an additional premium. Bower v. National General Ins. Co. (S.C. 2002) 351 S.C. 112, 569 S.E.2d 313, rehearing denied. Insurance 2775

Offer of underinsured motorist (UIM) coverage in limits shown on the form was not meaningful; it did not inform the insured of the right to select amounts not listed on the form and did not label the options as examples of amounts less than the liability limits. Bower v. National General Ins. Co. (S.C.App. 2000) 342 S.C. 315, 536 S.E.2d 693, rehearing denied, certiorari granted, affirmed 351 S.C. 112, 569 S.E.2d 313. Insurance 2775

If an insurer’s form offering underinsured motorist (UIM) coverage fails to contain provisions similar to the Insurance Commissioner’s form or fails to comply with statutory requirements, the insurer is not entitled to protection, even if the Commissioner approved the insurer’s form. Wilkes v. Freeman (S.C.App. 1999) 334 S.C. 206, 512 S.E.2d 530, rehearing denied, certiorari denied. Insurance 2775; Insurance 2778

A rejection form did not constitute a meaningful offer of underinsured motorist coverage where it provided only a cursory definition of underinsured motorist coverage and contained no explanation of how it differs from other coverages, it stated in general terms that the optional coverage was available up to the limits of the insured’s liability coverage but did not specify the limits of the coverage in dollar amounts, and it failed to state the amounts of additional premium that the insured would be required to pay for underinsured motorist coverage at the specified limits. Thus, the insurer failed to make a meaningful offer of underinsured motorist coverage to the insured, as required by Section 38‑77‑160. Jackson v. State Farm Mut. Auto. Ins. Co. (S.C.App. 1990) 301 S.C. 440, 392 S.E.2d 472, affirmed 303 S.C. 321, 400 S.E.2d 492. Insurance 2775

Motorcycle insurer made meaningful offer of uninsured motorist (UIM) coverage, under South Carolina law, and thus, insured was not entitled to reformation of policy to include such coverage; insured mailed offer to insured, offer was for UIM coverage in all amounts that South Carolina Department of Insurance had authorized Foremost to sell at time, and form offer clearly explained nature of coverage and listed additional premiums associated with each level of coverage. Bagnal v. Foremost Ins. Group (C.A.4 (S.C.) 2012) 461 Fed.Appx. 311, 2012 WL 29183, Unreported. Insurance 2775

Under South Carolina law, insurer was not entitled to a statutory presumption that it made a meaningful offer of underinsured motorist (UIM) coverage where it failed to complete a form with “a list of available limits and the range of premiums for the limits,” as required by statute. McWhite v. ACE American Ins. Co. (C.A.4 (S.C.) 2011) 412 Fed.Appx. 584, 2011 WL 674722, Unreported. Insurance 2812

Under South Carolina law, commercial automobile insurance carrier failed to make meaningful offer of optional underinsured motorist (UIM) coverage when selling “fronting policy” of automobile insurance, even though insurer’s forms used state‑approved format, UIM option equal to policy’s liability limits was offered in forms’ table of limits, and insured’s representative instructed insurer not to offer additional UIM coverage, where forms stated that UIM was only “available at Limit(s) up to the same Limit(s) selected for Uninsured Motorists [coverage],” and insurer never offered UIM coverage equal to policy’s liability limits. Croft v. Old Republic Ins. Co. (C.A.4 (S.C.) 2007) 233 Fed.Appx. 262, 2007 WL 1455138, Unreported. Insurance 2775

12. —— Written materials, offer of judgment

An insurer failed to intelligibly advise its insured of the nature of optional underinsured motorist coverage where it merely enclosed its offer with several other inserts in the same envelope containing the insured’s renewal premium notice. Lopez v. National General Ins. Co. (S.C. 1992) 308 S.C. 342, 417 S.E.2d 864.

An insurer did not make an effective offer of uninsured motorist coverage at the time that certain insurance policies were renewed, where the premium renewal notices did not contain any language directing the customer to read the explanatory inserts concerning underinsured motorist coverage that were mailed with the renewal notices. Zeigler v. South Carolina Farm Bureau Mut. Ins. Co. (S.C. 1990) 301 S.C. 543, 393 S.E.2d 166. Insurance 2775

An insurer’s process for notification of an offer of underinsured coverage was commercially reasonable under former Section 56‑9‑831 where the insurer used written materials sent by mail to notify the insured of the offer and information about the offer was contained in the renewal notice and a separate insert. Since the premium renewal notice is an important document which the average insured will read, it is reasonably calculated to bring the offer to the insured’s attention. The use of the mail is also a reasonable method of communicating with the insured about an important business transaction. However, the insurer failed to make a meaningful offer of underinsured motorist coverage because it failed to include something on the renewal notice alerting the insured to read the insert. Placing critical information in 2 documents, without directing the insured to read both, was not a method reasonably calculated to draw the insured’s attention to the nature of the offer. Dewart v. State Farm Mut. Auto. Ins. Co. (S.C.App. 1988) 296 S.C. 150, 370 S.E.2d 915.

13. —— Amount of coverage, offer of judgment

An insurance company need not offer uninsured motorist coverage in every amount between zero and the policy limit. Holt v. State Farm Mut. Auto. Ins. Co., 1994, 870 F.Supp. 658.

An insurer must offer underinsured motorist (UIM) coverage when the insurer extends statutorily required liability coverage. Nakatsu v. Encompass Indemnity Co. (S.C.App. 2010) 390 S.C. 172, 700 S.E.2d 283, rehearing denied. Insurance 2775

Failure to comply with statutory requirements for forms used by insurers in making offers of optional insurance coverages does not automatically require judicial reformation of an automobile policy; rather, even where an insured is not entitled to the presumption that it made a meaningful offer, it may prove the sufficiency of its offer by showing that it complied with Wannamaker. Code 1976, Section 38‑77‑350. Grinnell Corp. v. Wood (S.C. 2010) 389 S.C. 350, 698 S.E.2d 796. Insurance 2775

Evidence of the insured’s knowledge or level of sophistication is relevant and admissible when analyzing, under Wannamaker, whether an insurer intelligibly advised the insured of the nature of the optional uninsured motorist (UM) or underinsured motorist (UIM) coverage. Grinnell Corp. v. Wood (S.C. 2010) 389 S.C. 350, 698 S.E.2d 796. Insurance 2814

The statute mandating an offer of underinsured motorist (UIM) coverage “up to the limits” of the liability coverage requires the insurer to provide the same type of coverage, not just the same dollar limit. Glasscock, Inc. v. U.S. Fidelity and Guar. Co. (S.C.App. 2001) 348 S.C. 76, 557 S.E.2d 689, rehearing denied, certiorari denied. Insurance 2775

When offering optional coverages, the insurer must offer underinsured motorist (UIM) coverage in any amount up to the policy limits. Bower v. National General Ins. Co. (S.C.App. 2000) 342 S.C. 315, 536 S.E.2d 693, rehearing denied, certiorari granted, affirmed 351 S.C. 112, 569 S.E.2d 313. Insurance 2775

Failure of form offering underinsured motorist (UIM) coverage to include an offer of UIM coverage in precise amount of liability coverage did not warrant reformation of policy to include UIM coverage, where form specified that UIM coverage could be purchased with limits up to the limits of liability coverage and informed policyholder that UIM coverage could be increased or decreased. Tucker v. Allstate Ins. Co. (S.C.App. 1999) 337 S.C. 128, 522 S.E.2d 819. Insurance 1885; Insurance 2779(1)

Offering underinsured motorist (UIM) coverage equal to liability limits and two other choices did not satisfy statutory duty to offer UIM coverage in any amount up to the limits of the liability coverage, even though the Insurance Commissioner approved the form for rejecting or selecting UIM coverage; the form failed to provide any opportunity to request other amounts. Wilkes v. Freeman (S.C.App. 1999) 334 S.C. 206, 512 S.E.2d 530, rehearing denied, certiorari denied. Insurance 2778

Automobile insurer made valid offer of underinsured motorist (UIM) coverage under policy with liability limits of 25/50/25; insured offered UIM coverage of 15/30/5, 15/30/10, and 25/50/10, and offer form indicated ability to purchase UIM coverage up to liability limits and gave instructions on increasing or decreasing limits. Norwood v. Allstate Ins. Co. (S.C.App. 1997) 327 S.C. 503, 489 S.E.2d 661, rehearing denied, certiorari denied. Insurance 2779(2)

An insurer’s offer of underinsured motorist (UIM) coverage at the minimum liability limits did not comply with the requirements of Section 38‑77‑160 that the insurer offer UIM coverage up to the limits of the insured’s liability coverage; the insurer is required to offer UIM coverage below minimum liability limits. White v. Allstate Ins. Co. (S.C.App. 1994) 314 S.C. 167, 442 S.E.2d 195, rehearing denied, certiorari denied. Insurance 2775

An offer of optional underinsured motorist coverage equal to the amount of liability coverage was ineffective because Section 38‑77‑160, mandating that automobile insurance carriers offer their insureds optional underinsured motorist coverage up to the limits of their insured liability coverage, requires the optional coverage to be offered in any amount up to the limits of liability coverage. American Sec. Ins. Co. v. Howard (S.C.App. 1993) 315 S.C. 47, 431 S.E.2d 604. Insurance 2775

An agent’s offer of uninsured motorist coverage only in an amount equal to the insured’s liability limit, rather than “in any amount up to” the insured’s liability coverage, was ineffective. Since the insurer failed to make an effective offer that correctly specified optional coverage limits, its policy with the insured was deemed reformed by operation of law to include underinsured motorist coverage at the limits of the insured’s liability coverage. Hanover Ins. Co. v. Horace Mann Ins. Co. (S.C. 1990) 301 S.C. 55, 389 S.E.2d 657.

14. —— Reformation of policy, offer of judgment

Under South Carolina law, reformation of church’s business automobile policy was warranted to extent that prerequisite that $1,000,000 liability limits of policy be exhausted before underinsured motorist (UIM) coverage was available was contrary to statute providing that UIM coverage must be offered “to provide coverage in the event that damages are sustained in excess of any damages cap or limitation imposed by statute,” and reformation would require insurer to provide UIM coverage up to $1,000,000 in the event that church’s liability exceeded damages cap of $600,000 under statute limiting liability for injury or death caused by employee of charitable organization. Smith ex rel. Estate of Smith v. Church Mut. Ins. Co., 2005, 375 F.Supp.2d 451. Insurance 2787

If the insurer fails to comply with its statutory duty to make a meaningful offer of underinsured motorist (UIM) coverage, the policy will be reformed, by operation of law, to include UIM coverage up to the limits of liability insurance carried by the insured. Grinnell Corp. v. Wood (S.C.App. 2008) 378 S.C. 458, 663 S.E.2d 61, rehearing denied, certiorari granted, reversed 389 S.C. 350, 698 S.E.2d 796. Insurance 2779(2)

If the automobile insurer fails to comply with its statutory duty to make a meaningful offer of underinsured motorist (UIM) coverage to the insured, the policy will be reformed by operation of law to include UIM coverage up to the limits of liability insurance carried by the insured. Atkins v. Horace Mann Ins. Co. (S.C.App. 2008) 376 S.C. 625, 658 S.E.2d 106. Insurance 2779(1); Insurance 2779(2)

Issue of whether automobile insurance policies issued to mother and father whose son was involved in automobile accident should be reformed to include underinsured motorist (UIM) coverage, on ground that insurers did not make meaningful offer of UIM coverage, was mooted by entry of judgment against mother and son in their tort action against driver and owner of other vehicle involved in accident, among others, seeking compensation for son’s injuries; determination that driver, owner, and others were not liable to mother and son would preclude recovery of UIM benefits under the insurance policies, if such coverage existed. McDill v. Nationwide Mut. Ins. Co. (S.C.App. 2006) 368 S.C. 29, 627 S.E.2d 749, rehearing denied. Action 6

If the insurer fails to comply with its statutory duty to make a meaningful offer to the insured, the policy will be reformed, by operation of law, to include underinsured motorist (UIM) coverage up to the limits of liability insurance carried by the insured. Floyd v. Nationwide Mut. Ins. Co. (S.C. 2005) 367 S.C. 253, 626 S.E.2d 6, rehearing denied. Insurance 1885; Insurance 2779(2)

If the automobile insurer fails to comply with its statutory duty to make a meaningful offer of underinsured motorist (UIM) coverage, the policy will be reformed, by operation of law, to include UIM coverage up to the limits of liability insurance carried by the insured. Progressive Cas. Ins. Co. v. Leachman (S.C. 2005) 362 S.C. 344, 608 S.E.2d 569. Insurance 1885; Insurance 2779(2)

If the insurer fails to comply with its statutory duty to make a meaningful offer of underinsured motorist (UIM) coverage to the insured, the policy will be reformed, by operation of law, to include such coverage up to the limits of liability insurance carried by the insured; a noncomplying offer has the legal effect of no offer at all. Warren Burch v. South Carolina Farm Bureau Mut. Ins. Co. (S.C.App. 2002) 351 S.C. 342, 569 S.E.2d 400. Insurance 1885; Insurance 2779(1); Insurance 2779(2)

If an insurer fails to make a meaningful offer of underinsured motorist (UIM) coverage, the policy will be reformed by operation of law to include UIM coverage up to the insured’s liability limits. Bower v. National General Ins. Co. (S.C. 2002) 351 S.C. 112, 569 S.E.2d 313, rehearing denied. Insurance 1885; Insurance 2779(2)

Form provided by commercial automobile insurer for insured to select or reject uninsured and underinsured (UM/UIM) motorist coverage was not meaningful offer of UM/UIM coverage, and thus policy would be reformed to include such coverage up to liability limits of policy, where form failed to list single coverage amount accompanied by corresponding premium and did not apprise insured of nature of UM/UIM coverage. Antley v. Nobel Ins. Co. (S.C.App. 2002) 350 S.C. 621, 567 S.E.2d 872, rehearing denied, certiorari denied. Insurance 1885; Insurance 2778; Insurance 2779(2)

A policy of automobile insurance must provide at least the minimum amount of coverage outlined in the statute, and a policy issued pursuant to the law which gives less protection will be interpreted by the court as supplying the protection which the legislature intended. Kay v. State Farm Mut. Auto. Ins. Co. (S.C.App. 2002) 349 S.C. 446, 562 S.E.2d 676, rehearing denied, certiorari denied. Insurance 2646

If an insurer fails to make a meaningful offer of underinsured motorist (UIM) coverage, the policy will be reformed by operation of law to include UIM coverage up to the limits of liability insurance carried by the insured, even if the insured rejected UIM coverage; a noncomplying offer has the legal effect of no offer at all. Bower v. National General Ins. Co. (S.C.App. 2000) 342 S.C. 315, 536 S.E.2d 693, rehearing denied, certiorari granted, affirmed 351 S.C. 112, 569 S.E.2d 313. Insurance 2779(2)

If the insurer fails to comply with its statutory duty to make a meaningful offer of underinsured motorist (UIM) coverage to the insured, the policy will be reformed, by operation of law, to include UIM coverage up to the limits of liability insurance carried by the insured. Tucker v. Allstate Ins. Co. (S.C.App. 1999) 337 S.C. 128, 522 S.E.2d 819. Insurance 1885; Insurance 2779(1); Insurance 2779(2)

If a form offering of underinsured motorist (UIM) coverage and executed by policyholder does not adequately offer UIM coverage up to the limits of liability coverage, as required by statute, the fact that the form was approved by the Department of Insurance is not dispositive on question of whether policy will be reformed to include UIM coverage. Tucker v. Allstate Ins. Co. (S.C.App. 1999) 337 S.C. 128, 522 S.E.2d 819. Insurance 1882; Insurance 2779(1)

If the insurer fails to make a meaningful offer of underinsured motorist (UIM) coverage to the insured, the policy will be reformed to include UIM coverage up to the limits of liability insurance carried by the insured. McDonald v. South Carolina Farm Bureau Ins. Co. (S.C.App. 1999) 336 S.C. 120, 518 S.E.2d 624, rehearing denied, certiorari denied. Insurance 1882; Insurance 2779(2)

To conform with statutory mandate for underinsured motorist (UIM) coverage in automobile policies, UIM provision had to be reformed to cover injuries from accident arising out of “ownership, maintenance, or use” of motor vehicle, in place of “operation or ownership” of vehicle. State Farm Mut. Auto. Ins. Co. v. Bookert (S.C.App. 1997) 330 S.C. 221, 499 S.E.2d 480, certiorari granted, reversed 337 S.C. 291, 523 S.E.2d 181, rehearing denied. Insurance 1889

If automobile insurer fails to comply with its statutory duty to make meaningful offer of underinsured motorist (UIM) coverage to insured, policy will be reformed, by operation of law, to include UIM coverage up to limits of liability coverage. Butler v. Unisun Ins. Co. (S.C. 1996) 323 S.C. 402, 475 S.E.2d 758, rehearing denied. Insurance 1885; Insurance 2779(2)

An insurer did not make a meaningful offer of uninsured motorist coverage where it failed to offer property coverage equal to the amount of liability coverages, and thus the insurance policies were subject to reformation. Mathis v. State Farm Mut. Auto. Ins. Co. (S.C.App. 1993) 315 S.C. 71, 431 S.E.2d 619, rehearing denied.

The court will reform an automobile insurance policy to afford coverage up to the limits of the insured’s liability coverage where the insurer fails to make a meaningful offer of underinsured motorist coverage as required by Section 38‑77‑160. American Sec. Ins. Co. v. Howard (S.C.App. 1993) 315 S.C. 47, 431 S.E.2d 604. Insurance 1885

An offer of optional underinsured motorist insurance that failed to comply with the formal requisites of Section 38‑77‑160 entitled the insured to reformation of the policy to include underinsured motorist coverage. American Sec. Ins. Co. v. Howard (S.C.App. 1993) 315 S.C. 47, 431 S.E.2d 604.

An insured was entitled to reformation of his primary automobile insurance policy to include uninsured motorist (UM) coverage up to the amount of his liability coverage where (1) at the time of his original insurance purchase, the policy provided liability and UM motorist coverages in the amount of $300,000, (2) one year later the liability limit was changed to $500,000 due to an underwriting requirement of the insurer, but the UM limit remained the same, and (3) the agent who wrote the policy testified that he could not recall whether he offered the insured, who was killed in an accident caused by an uninsured driver, the option of purchasing the additional UM coverage. Todd v. Federated Mut. Ins. Co. (S.C. 1991) 305 S.C. 395, 409 S.E.2d 361.

An insurance policy was deemed to include underinsured motorist (UIM) coverage where, at the time the plaintiff was injured while a passenger in his own car, he was a resident of his stepfather’s household, his stepfather had a policy of insurance which had been renewed 3 times since it was first issued, at the time the policy was first issued UIM coverage was offered but rejected, UIM coverage was not reoffered at any time, and the policy did not mandate that “the same terms shall remain in effect” and “the terms of the policy do not change upon renewal”; thus, the insurer was required to reoffer UIM coverage at the time of each renewal. Webb v. South Carolina Ins. Co. (S.C. 1991) 305 S.C. 211, 407 S.E.2d 635.

An insured motorist was not entitled to reformation of an automobile insurance policy, and the vehicle in which the insured’s daughter was killed was not an underinsured motor vehicle as defined by statute and policy amendment, where the policy at issue was renewed on November 14, 1987, Section 56‑9‑810 (a predecessor to Section 38‑77‑30) had become effective June 4, 1987, and this section defined underinsured motor vehicle pursuant to “reduction” coverage, rather than “excess” coverage. Purvis v. State Farm Mut. Auto. Ins. Co. (S.C.App. 1991) 304 S.C. 283, 403 S.E.2d 662.

An insured motorist was not entitled to reformation of an automobile insurance policy to include underinsured motorist (UIM) coverage where (1) in February of 1985 the insured did not purchase such coverage after a premium renewal notice was accompanied by an insert defining UIM coverage, (2) in December of 1985 the insured changed cars on her policy but again did not purchase UIM coverage, and (3) in February of 1987 the insured suffered injuries in excess of the at‑fault driver’s liability limits; the February 1985 insert constituted a meaningful offer of UIM coverage, the renewal was pursuant to a provision in the expiring policy, and the insurer was not required to reoffer UIM coverage at the time of the insured’s car change. Simpson v. State Farm Mut. Auto. Ins. Co. (S.C.App. 1991) 304 S.C. 137, 403 S.E.2d 167.

15. Acceptance or rejection by agent of insured

Under South Carolina law, “ratification” is the adoption and confirmation by one person of an act or contract performed or entered into in his behalf by another who at the time assumed to act as his agent, and occurs when three elements are present: (1) acceptance by the putative principal of the benefits of acts by the putative agent, (2) full knowledge of the facts by the putative principal, and (3) circumstances or an affirmative election demonstrating the putative principal’s intent to accept the unauthorized arrangements. Nationwide Mut. Ins. Co. v. Powell (C.A.4 (S.C.) 2002) 292 F.3d 201. Principal And Agent 163(1)

Under South Carolina law, insured driver did not act as an implied agent for her insured boyfriend when she declined underinsured motorist (UIM) coverage, as would relieve automobile insurer of its obligation to offer UIM coverage to boyfriend; there was no evidence that couple had discussed automobile insurance at any time prior to the issuance of their policy, there was no evidence that boyfriend knew that driver was obtaining insurance for him or had any understanding of UIM coverage, fact that driver worked at an insurance agency and was familiar with UIM coverage was irrelevant to existence of an implied agency relationship, and fact that couple got married shortly after the policy was issued had no impact on whether implied agency existed at the time driver applied for coverage. Allstate Fire and Casualty Insurance Company v. Simpson, 2016, 152 F.Supp.3d 487. Principal And Agent 14(1); Principal And Agent 14(2)

There was implied agency relationship between husband and wife at time husband applied for automobile insurance and rejected insurer’s offer of underinsured motorist (UIM) benefits, and thus, wife was bound by husband’s rejection of offer; wife knew husband had to obtain insurance and that he was going to get automobile insurance, and she did not object to him going. Nationwide Mut. Ins. Co. v. Prioleau (S.C.App. 2004) 359 S.C. 238, 597 S.E.2d 165, rehearing denied. Insurance 2778; Marriage And Cohabitation 626(1)

Under South Carolina law, agent may act on behalf of principal and, when meaningful offer of underinsured motorist (UIM) coverage is made to agent of named insured, that agent can accept or reject UIM coverage. Nationwide Mutual Ins. Co. v. Powell (C.A.4 (S.C.) 2004) 93 Fed.Appx. 565, 2004 WL 728254, Unreported. Insurance 1659; Insurance 2778

16. Portability

Automobile policy provision purporting to limit a Class I insured’s ability to stack underinsured motorist (UIM) coverage when he was occupying vehicle not insured under the policy violated requirement of UIM statute that an insurer provide UIM coverage up to amount held on vehicle involved in accident, where insured, who owned the vehicle, insured it under another policy; UIM coverage was personal and portable. Carter v. Standard Fire Ins. Co. (S.C. 2013) 406 S.C. 609, 753 S.E.2d 515, rehearing denied. Insurance 2799

Portability limitation provision in automobile insurance policy obtained by insured driver’s mother, with whom driver lived, to insure mother’s car, which provided that amount of underinsured motorist coverage applicable was “lesser of the coverage limits under [mother’s] policy or the coverage limits on the vehicle involved in the accident,” did not violate well‑established public policy that underinsured motorist coverage was personal and portable, so as to permit driver to recover such benefits under her mother’s policy for losses sustained in accident, where driver did not purchase underinsured motorist coverage for her vehicle that was involved in accident. Nationwide Mut. Ins. Co. v. Rhoden (S.C. 2012) 398 S.C. 393, 728 S.E.2d 477, rehearing denied. Insurance 2654; Insurance 2796

South Carolina’s public policy that underinsured motorist coverage is personal and portable entitled automobile insureds to recover underinsured motorist benefits under their policy arising out of accident while riding in car owned and operated by resident relative, despite portability limitation provision in insured’s policy that amount of coverage applicable was “lesser of the coverage limits under this policy or the coverage limits on the vehicle involved in the accident” and that relative’s insurance policy did not provide for underinsured motorist benefits. Nationwide Mut. Ins. Co. v. Rhoden (S.C. 2012) 398 S.C. 393, 728 S.E.2d 477, rehearing denied. Insurance 2796

Uninsured motorist (UM) coverage is personal and portable, meaning coverage follows the person. Nationwide Mut. Ins. Co. v. Smith (S.C.App. 2007) 376 S.C. 60, 654 S.E.2d 837, rehearing denied, certiorari dismissed, certiorari denied. Insurance 2772

Public policy is not offended by an automobile insurance policy provision that limits basic underinsured motorist (UIM) coverage portability when an insured is involved in an accident while in a vehicle he owns, but does not insure under the policy; UIM coverage is entirely voluntary. Burgess v. Nationwide Mut. Ins. Co. (S.C. 2007) 373 S.C. 37, 644 S.E.2d 40. Insurance 2654

Statute which limits named insured to uninsured or underinsured motorist (UM/UIM) coverage on vehicle involved in the accident contains a limit on the portability of coverage. Burgess v. Nationwide Mut. Ins. Co. (S.C. 2007) 373 S.C. 37, 644 S.E.2d 40. Insurance 2795

17. Limitation of actions

Section 38‑77‑160 is not a statute of limitations. Ex parte South Carolina Farm Bureau Mut. Ins. Co. (S.C. 1993) 314 S.C. 487, 431 S.E.2d 252, rehearing denied.

18. Assignment

Personal injury settlement agreement providing that plaintiff, the injured party, would pursue all excess insurance recoveries available to him and pay any recoveries to defendant was impermissible assignment of claim for underinsured motorist (UIM) benefits and was contrary to former statute providing that UIM benefits are not subject to subrogation and assignment. McMillan v. John M. Hughes Seafood Co., Inc. (S.C. 1997) 328 S.C. 157, 493 S.E.2d 91. Compromise And Settlement 9; Insurance 3441

19. Insured

Passenger living with named insured was not in a common‑law marriage with her and, therefore, was not a “relative” entitled to underinsured motorist (UIM) benefits under her policy; although cohabitating and sharing domestic and financial responsibilities, passenger and named insured were merely engaged to be married. Bell v. Progressive Direct Ins. Co. (S.C. 2014) 407 S.C. 565, 757 S.E.2d 399, rehearing denied. Insurance 2661

Automobile passenger claiming underinsured motorist (UIM) benefits as common‑law spouse and thus resident relative under his girlfriend’s automobile policy should have sought a declaration of common‑law marriage in the family court, and circuit court and Court of Appeals erroneously addressed the issue in passenger’s declaratory judgment action against insurer; determining the existence of a common‑law marriage was exclusive province of family court. Bell v. Progressive Direct Ins. Co. (S.C. 2014) 407 S.C. 565, 757 S.E.2d 399, rehearing denied. Courts 472.1; Courts 472.2

Passenger who lived with his girlfriend and was listed as a driver and household resident on declarations page of her policy was not entitled to underinsured motorist (UIM) benefits under her policy for injuries as result of accident while riding with co‑employee; passenger was not a “named insured” or spouse of named insured. Bell v. Progressive Direct Ins. Co. (S.C. 2014) 407 S.C. 565, 757 S.E.2d 399, rehearing denied. Insurance 2660.5; Insurance 2661

Policy provision limiting uninsured motorist (UM) coverage to the lesser of the limits of policy covering vehicle not involved in accident or policy covering vehicle involved in accident, if the involved vehicle was not named insured’s auto described in the policy, was void as to passenger on her husband’s uninsured motorcycle; thus, the passenger was entitled to UM benefits under policy on her car, since UM coverage followed the person not the vehicle. Nationwide Mut. Ins. Co. v. Erwood (S.C.App. 2005) 364 S.C. 1, 611 S.E.2d 319, rehearing denied, certiorari granted, affirmed as modified 373 S.C. 88, 644 S.E.2d 62. Insurance 2796

Uninsured motorist (UM) coverage in policy on automobile not involved in accident was personal to insured motorcycle passenger, was portable, and could not be excluded or restricted; statute stated that, if insured was protected by UM coverage in excess of the basic limits, the policy was required to provide that the insured was protected only to the extent of the coverage on the vehicle involved in the accident. Nationwide Mut. Ins. Co. v. Erwood (S.C.App. 2005) 364 S.C. 1, 611 S.E.2d 319, rehearing denied, certiorari granted, affirmed as modified 373 S.C. 88, 644 S.E.2d 62. Insurance 2654; Insurance 2772

Where uninsured and underinsured motorist (UM/UIM) coverage follows the person, any person who enjoys the status of an insured under a policy which includes UM/UIM coverage enjoys coverage protection simply by reason of having been injured by an uninsured or underinsured motorist. Nationwide Mut. Ins. Co. v. Erwood (S.C.App. 2005) 364 S.C. 1, 611 S.E.2d 319, rehearing denied, certiorari granted, affirmed as modified 373 S.C. 88, 644 S.E.2d 62. Insurance 2772

Statute specifying form for offering underinsured motorist (UIM) coverage to new applicants is consistent with statute requiring the insurer to offer UIM benefits to all insureds and does not relieve an insurer of the obligation to provide an opportunity for all named insureds to accept or reject UIM coverage; the term “new applicant” simply distinguishes between those who never had an opportunity to reject UIM coverage and others, such as insureds renewing policies, who previously had made informed decisions about UIM coverage. McDonald v. South Carolina Farm Bureau Ins. Co. (S.C.App. 1999) 336 S.C. 120, 518 S.E.2d 624, rehearing denied, certiorari denied. Insurance 2775; Insurance 2778

“Class I insured” is insured or named insured that has vehicle involved in accident, and “Class II insured” is insured whose vehicle was not involved in accident and is not entitled to stack coverages. Mangum v. Maryland Cas. Co. (S.C.App. 1998) 330 S.C. 573, 500 S.E.2d 125. Insurance 2688

Reverse piercing of corporate veil was unjustified in order to treat close corporation’s sole shareholders and their child as Class I insureds entitled to stack underinsured motorist (UIM) benefits under policy issued to corporation as only named insured. Mangum v. Maryland Cas. Co. (S.C.App. 1998) 330 S.C. 573, 500 S.E.2d 125. Corporations And Business Organizations 1059

Critical question in determining whether insured has right to stack underinsured motorist (UIM) coverage is whether he is Class I insured (named insured, his spouse, and relatives residing in his household) or Class II insured (any person using, with consent of named insured, motor vehicle to which policy applies and guest in motor vehicle); right to stack is available only to Class I insured. Concrete Services, Inc. v. U.S. Fidelity & Guar. Co. (S.C. 1998) 331 S.C. 506, 498 S.E.2d 865. Insurance 2799

Corporation that is “named insured” in business automobile insurance policy cannot have “family” as that term is used in definition of “insured”; thus, spouse of sole shareholder of such corporation is not Class I insured under policy, and is not entitled to stack underinsured motorist (UIM) coverage with respect to injuries she suffers while operating vehicle owned by corporation and insured under UIM policy. Concrete Services, Inc. v. U.S. Fidelity & Guar. Co. (S.C. 1998) 331 S.C. 506, 498 S.E.2d 865. Insurance 2661; Insurance 2799

“Class I insured” (who is entitled to stack underinsured motorist (UIM) coverage) is insured or named insured who has vehicle involved in accident; “Class II insured” (who is not entitled to stack UIM coverage) is insured whose vehicle was not involved in accident. Code Sections 39‑77‑160. Continental Ins. Co. v. Shives (S.C.App. 1997) 328 S.C. 470, 492 S.E.2d 808, rehearing denied. Insurance 2799

20. Set‑off

Automobile insurer’s practice, expressly set out in automobile policy’s terms, of offsetting payments of underinsured motorist (UIM) benefits by amounts paid to insureds for medical benefits did not violate South Carolina statutory provision that UIM benefits were “not subject to subrogation and assignment”; no assignment or subrogation of any right to UIM benefits occurred due to setoff, and insurer’s practice did not contravene central purpose of statute, namely to provide coverage where injured party’s loss exceeded liability limits of tortfeasor, since insureds were fully compensated for loss. Rowzie v. Allstate Ins. Co. (C.A.4 (S.C.) 2009) 556 F.3d 165. Insurance 2806

Under South Carolina law, as predicted by district court, automobile policy’s provision, stating that amount of underinsured motorist (UIM) benefits payable would be offset by medical expense benefits received under policy, was enforceable, and thus, insured’s medical expense benefits received from insurer would be offset from UIM benefits, but only after insureds were fully compensated for damages from collision with another vehicle whose driver’s insurer tendered its policy limits to insureds but their injuries exceeded damages recovered; although South Carolina law prohibited subrogation and assignment of UIM benefits, insureds were fully compensated by UIM and medical expenses so no subrogation or assignment was required, and insureds would have windfall recovery without offset. Siron v. Allstate Fire & Casualty Insurance Co., 2016, 225 F.Supp.3d 574. Insurance 2806

Under South Carolina law, to extent that church members who were injured in single‑vehicle accident while traveling to church event in church van insured under a business automobile policy obtained underinsured motorist (UIM) coverage from insurer up to amount of $1,000,000 if damages recovered against church in underlying liability actions exceeded $600,000, under statute providing that UIM coverage must be offered “to provide coverage in the event that damages are sustained in excess of any damages cap or limitation imposed by statute,” insurer was entitled to a setoff for amount of liability coverage not exhausted under the statutory cap. Smith ex rel. Estate of Smith v. Church Mut. Ins. Co., 2005, 375 F.Supp.2d 451. Insurance 2806

The underinsured motorist (UIM) statute does not require payment of the applicable liability policy limits as a precondition to collecting UIM benefits; however, the UIM carrier is entitled to a credit for any amount of liability coverage not exhausted in settlement. Kizer v. Kinard (S.C.App. 2004) 361 S.C. 68, 602 S.E.2d 783. Insurance 2787; Insurance 2806

Automobile liability insurer’s payment of per person limits by dividing them equally between accident victim for her injuries and her spouse for his loss of consortium exhausted the limit as to victim’s claim for underinsured motorist (UIM) benefits, and, thus, the credit against the victim’s UIM claim was the payment to her, not the payment to both spouses; the loss of consortium claim had independent status. Kizer v. Kinard (S.C.App. 2004) 361 S.C. 68, 602 S.E.2d 783. Insurance 2787; Insurance 2806

Underinsured motorist benefits were subject to collateral source rule, which provides that compensation received by injured party from source wholly independent of wrongdoer will not reduce amount of damages owed by wrongdoer, and thus, collateral source rule applied to preclude set‑off of underinsured motorist benefits against jury’s $145,000 damages award for motorist, stemming from injuries sustained in vehicular accident, against driver who maintained $50,000 in liability insurance coverage. Pustaver v. Gooden (S.C.App. 2002) 350 S.C. 409, 566 S.E.2d 199. Damages 64

While a plaintiff’s recovery under the ordinary negligence rule is limited to damages which will make him whole, the collateral source rule, which provides that compensation received by injured party from source wholly independent of wrongdoer will not reduce amount of damages owed by wrongdoer, allows plaintiff further recovery under certain circumstances even though he has suffered no loss. Pustaver v. Gooden (S.C.App. 2002) 350 S.C. 409, 566 S.E.2d 199. Damages 59

Setoff provision reducing underinsured motorist (UIM) benefits by the amount of workers’ compensation was consistent with public policy and was valid; UIM coverage was voluntary. State Farm Mut. Auto. Ins. Co. v. Calcutt (S.C.App. 2000) 340 S.C. 231, 530 S.E.2d 896. Insurance 2807

An underinsured motorist (UIM) insurer was entitled to a set‑off of the payout by the defendant’s insurer even though set‑off was not pled as an affirmative defense under Rule 8(c), SCRCP, since (1) Rule 8(c) does not list set‑off as an affirmative defense which must be pled in order to be pursued at trial, (2) the set‑off that was granted did not fall within the 8(c) catchall of “any other matter constituting an avoidance of affirmative defenses, and (3) the set‑off, being statutorily mandated, was not a matter properly triable to the jury. Broome v. Watts (S.C. 1995) 319 S.C. 337, 461 S.E.2d 46, rehearing denied.

Underinsurance proceeds are subject to the collateral source rule. Thus, the collateral source rule precluded setoff of underinsurance proceeds against a jury’s damages award where the benefits received were from the injured party’s own underinsurance policy for which she paid the premiums. (Decided under former law.) Estate of Rattenni By and Through Rattenni v. Grainger (S.C. 1989) 298 S.C. 276, 379 S.E.2d 890. Damages 64

21. Good faith

Under South Carolina law, underinsured motorist (UIM) insurer’s duty to act in good faith regarding UIM benefits arises no later the when insured brings suit against the at‑fault driver and serves the carrier with process. Hartsock v. American Auto. Ins. Co., 2011, 788 F.Supp.2d 447, reconsideration denied 2011 WL 2559519. Insurance 3359

Under South Carolina law, insured is not required to obtain a judgment against an at‑fault driver before the insured’s carrier’s duty arises to exercise good faith and deal fairly with the insured regarding underinsured benefits. Hartsock v. American Auto. Ins. Co., 2011, 788 F.Supp.2d 447, reconsideration denied 2011 WL 2559519. Insurance 3359

Under South Carolina law, underinsured motorist (UIM) carrier’s duty to act in good faith regarding underinsured motorist (UIM) benefits arises after the insured brings suit against the at‑fault driver and serves the carrier with process. Halmon v. American Intern. Group, Inc. Ins. Co., 2007, 586 F.Supp.2d 401. Insurance 3360

Under South Carolina law, insured’s claims of bad faith, outrage, and improper claims handling against underinsured motorist (UIM) insurer were premature where insured had not sued underinsured driver to establish liability and served UIM insurer with proper documentation of his suit against driver at time insured commenced suit against UIM insurer. Halmon v. American Intern. Group, Inc. Ins. Co., 2007, 586 F.Supp.2d 401. Damages 57.46; Insurance 3548

22. Stacking

Under South Carolina law, excess clause in underinsured motorist (UIM) coverage section of auto insurance policy covering vehicles not involved in accident, by providing that excess policy would pay “amount by which the damages exceed the limit of liability of [other] policy,” did not alter state law with regard to stacking, which limited stacking to amount of UIM coverage under policy covering involved vehicle. Booth v. Allstate Ins. Co., 2004, 334 F.Supp.2d 880. Insurance 2799

Under South Carolina law, insured who was injured by underinsured motorist while driving insured motorcycle was not entitled to stack full $100,000 underinsured motorist (UIM) coverage available on each of two automobiles he separately insured with same insurer, but was limited by state statute to stacking the amount of UIM coverage available on the motorcycle, $25,000, for total of $50,000 UIM coverage from non‑involved vehicles. Booth v. Allstate Ins. Co., 2004, 334 F.Supp.2d 880. Insurance 2799

Amount an insured is permitted to stack from at‑home policies is limited to amount of underinsured motorist (UIM) coverage carried on the vehicle involved in the accident. Carter v. Standard Fire Ins. Co. (S.C. 2013) 406 S.C. 609, 753 S.E.2d 515, rehearing denied. Insurance 2799

Automobile policy provision that did not allow Class I insured, which was named insured, named insured’s spouse, or relative residing with named insured, to stack underinsured motorist (UIM) coverage up to the limits of the vehicle in the accident in certain situations conflicted with statute governing UIM coverage, and therefore provision of the policy was void. Nakatsu v. Encompass Indemnity Co. (S.C.App. 2010) 390 S.C. 172, 700 S.E.2d 283, rehearing denied. Insurance 2799

Stacking of underinsured motorist (UIM) coverage cannot be contractually prohibited. Nakatsu v. Encompass Indemnity Co. (S.C.App. 2010) 390 S.C. 172, 700 S.E.2d 283, rehearing denied. Insurance 2799

Stacking of underinsured motorist (UIM) coverage, which is a statutorily required coverage, is governed specifically by statute. Nakatsu v. Encompass Indemnity Co. (S.C.App. 2010) 390 S.C. 172, 700 S.E.2d 283, rehearing denied. Insurance 2799

An insured is entitled to stack uninsured motorist (UM) coverage in an amount no greater than the amount of coverage on the vehicle involved in the accident. Nationwide Mut. Ins. Co. v. Smith (S.C.App. 2007) 376 S.C. 60, 654 S.E.2d 837, rehearing denied, certiorari dismissed, certiorari denied. Insurance 2799

Motorcyclist who sought underinsured motorist (UIM) benefits under only one policy on automobiles was not seeking to stack coverage. Burgess v. Nationwide Mut. Ins. Co. (S.C. 2007) 373 S.C. 37, 644 S.E.2d 40. Insurance 2799

“Stacking” is the insured’s recovery of damages under more than one automobile policy until all of damages are satisfied or the limits of all available policies are met. Burgess v. Nationwide Mut. Ins. Co. (S.C. 2007) 373 S.C. 37, 644 S.E.2d 40. Insurance 2688

Statute which limits named insured to uninsured or underinsured motorist (UM/UIM) coverage on vehicle involved in the accident does not apply when the insured is not attempting to stack excess coverage. Burgess v. Nationwide Mut. Ins. Co. (S.C. 2007) 373 S.C. 37, 644 S.E.2d 40. Insurance 2795

Seventeen‑year‑old child of divorced parents was not a “resident relative” of the household of her stepmother and non‑custodial parent, was not a “Class I insured” under her stepmother’s policy, and, therefore, could not stack underinsured motorist (UIM) coverages on covered vehicles in addition to the one driven by child; in the year prior to the accident, child had stayed with her non‑custodial father on a maximum of three occasions for a total of approximately fourteen days, but, at the time of the accident, had not visited him for over three months, she did not maintain everyday clothes or other possessions at her father’s house, worked full‑time at restaurant near mother’s home, and received mail at father’s house only if it came from mother, and her short, infrequent visits, scattered with her overnight stays with other relatives, demonstrated the transient nature of her residence in her father’s household. Auto‑Owners Ins. Co. v. Horne (S.C.App. 2003) 356 S.C. 52, 586 S.E.2d 865, rehearing denied, certiorari denied. Insurance 2661; Insurance 2799

Invalidity of provision in automobile policy limiting stacking of underinsured motorist (UIM) coverage to statutory minimum limits did not entitle insured to recover full amount of UIM coverage on involved vehicle and uninvolved vehicle, where policy contained clause contemplating that void clauses would be replaced with applicable statute, which required only that underinsured motorist coverage be provided up to limits of insured’s liability coverage. Kay v. State Farm Mut. Auto. Ins. Co. (S.C.App. 2002) 349 S.C. 446, 562 S.E.2d 676, rehearing denied, certiorari denied. Insurance 2796; Insurance 2799

The amount of uninsured motorist (UM) coverage that may be stacked from policies on vehicles not involved in an accident is limited to an amount no greater than the coverage on the vehicle involved in the accident. Kay v. State Farm Mut. Auto. Ins. Co. (S.C.App. 2002) 349 S.C. 446, 562 S.E.2d 676, rehearing denied, certiorari denied. Insurance 2799

Policy provisions limiting underinsured motorist (UIM) benefits to basic limits if the insured was driving an owned vehicle without UIM coverage was valid, and, thus, the amount stacked under the policies on the insured’s vehicles not involved in his motorcycle accident was limited to the liability limits of the motorcycle policy. State Farm Mut. Auto. Ins. Co. v. Gunning (S.C.App. 2000) 340 S.C. 526, 532 S.E.2d 16, rehearing denied, certiorari denied. Insurance 2796; Insurance 2799

Only Class I insureds can stack uninsured motorist or underinsured motorist (UM/UIM) benefits. State Farm Mut. Auto. Ins. Co. v. James (S.C.App. 1999) 337 S.C. 86, 522 S.E.2d 345. Insurance 2799

Victim of carburator fire during attempt to start named insured’s pickup truck was a “Class II insured” not entitled to stack underinsured motorist (UIM) coverages under policies not involved in the accident; the named insured was repairing a truck owned by the victim’s employer. State Farm Mut. Auto. Ins. Co. v. James (S.C.App. 1999) 337 S.C. 86, 522 S.E.2d 345. Insurance 2799

Automobile insurance policy issued to close corporation as only named insured had no Class I insureds entitled to stack underinsured motorist (UIM) benefits; thus, named insured’s sole shareholders and their child were “Class II insureds,” not “Class I insureds,” as to corporate vehicle, since reverse piercing of corporate veil was unwarranted. Mangum v. Maryland Cas. Co. (S.C.App. 1998) 330 S.C. 573, 500 S.E.2d 125. Insurance 2799

So long as individual otherwise qualifies as Class I insured (named insured, his spouse, and relatives residing in his household), he or she need not “own” vehicle in order to stack underinsured motorist (UIM) coverage; overruling National General Ins. Co. v. Pena, 308 S.C. 521, 419 S.E.2d 375, and American Sec. Ins. Co. v. Howard, 315 S.C. 47, 431 S.E.2d 604. Concrete Services, Inc. v. U.S. Fidelity & Guar. Co. (S.C. 1998) 331 S.C. 506, 498 S.E.2d 865. Insurance 2799

Provision of automobile policy limiting stacking of underinsured motorist (UIM) coverage, under which insurer would make additional amount of UIM coverage available to insured or relative if such person sustained injury or damage in accident involving the insured’s insured auto, was valid, as it conformed to statute governing stacking of UIM coverage. Continental Ins. Co. v. Shives (S.C.App. 1997) 328 S.C. 470, 492 S.E.2d 808, rehearing denied. Insurance 2799

“Stacking” is insured’s recovery of damages under more than one policy until insured satisfies all of his damages or exhausts limits of all available policies. Continental Ins. Co. v. Shives (S.C.App. 1997) 328 S.C. 470, 492 S.E.2d 808, rehearing denied. Insurance 2108

Even if insured’s bicycle was “vehicle” within meaning of statute governing stacking of underinsured motorist (UIM) coverage, insured could not stack UIM coverage after he was struck and injured by underinsured motorist while he was riding the bicycle, where there was no UIM coverage on the bicycle, as statute permits stacking only in amount equal to UIM coverage on vehicle involved in accident. Continental Ins. Co. v. Shives (S.C.App. 1997) 328 S.C. 470, 492 S.E.2d 808, rehearing denied. Insurance 2799

Insured who was struck by underinsured motorist while operating his motorcycle was statutorily precluded from stacking the underinsured motorist (UIM) coverage provided under insurance policy covering his two automobiles, regardless of whether he was Class I or Class II insured, where he had rejected UIM coverage under separate insurance policy covering his motorcycle. Ohio Cas. Ins. Co. v. Hill (S.C.App. 1996) 323 S.C. 208, 473 S.E.2d 843, rehearing denied, certiorari denied. Insurance 2799

The language of Section 38‑77‑160, providing that when an insured vehicle is not involved in the accident in question, coverage is available only to the extent of coverage on any one of the vehicles with excess or underinsured coverage, clearly restricts stacking by providing for coverage from any one vehicle. Brown v. Continental Ins. Co. (S.C. 1993) 315 S.C. 393, 434 S.E.2d 270.

Section 38‑77‑160 was applicable to the stacking of basic limits uninsured motorist coverage so as to bar the insured, who was injured while riding on a motorcycle owned by another and not listed on his policy, from stacking coverage under a policy providing basic limits for 4 listed vehicles, even though the language of Section 38‑77‑160 indicates that it applies only to additional uninsured motorist coverage, since holding that it does not apply to basic limits uninsured coverage would be illogical and inconsistent with public policy. National General Ins. Co. v. Pena (S.C.App. 1992) 308 S.C. 521, 419 S.E.2d 375, rehearing denied, certiorari denied.

An insured was entitled to stack her underinsured motorist (UIM) coverage, in an amount equal to the coverage on the car she was driving, from 3 auto insurance policies issued by the same insurer where the car she was driving had UIM coverage in excess of the basic limits. South Carolina Farm Bureau Mut. Ins. Co. v. Mooneyham (S.C. 1991) 304 S.C. 442, 405 S.E.2d 396.

A named insured under an automobile insurance policy, who was not driving one of his insured vehicles at the time of collision, would not be permitted to stack uninsured motorist coverage on the insured vehicles. (Decided under former law.) Fireman’s Ins. Co. of Newark, New Jersey v. State Farm Mut. Auto. Ins. Co. (S.C. 1988) 295 S.C. 538, 370 S.E.2d 85. Insurance 2799

A passenger who was riding in her own vehicle at the time of collision was not a “guest in such motor vehicle” within the meaning of former Section 56‑9‑810 and, therefore, was not entitled to stack uninsured motorist coverage contained in the policy of the driver. Fireman’s Ins. Co. of Newark, New Jersey v. State Farm Mut. Auto. Ins. Co. (S.C. 1988) 295 S.C. 538, 370 S.E.2d 85. Insurance 2799

Former Section 56‑9‑831 permits an insured to stack coverage up to, but not in excess of the basic liability limits required by former Section 56‑9‑820, and this is true regardless of how the coverage is broken down in particular policies. If an insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, Section 56‑9‑831 limits the amount of coverage which may be stacked from policies on vehicles not involved in an accident to an amount no greater than the coverage on the vehicle involved in the accident. Accordingly, stacking is limited to the basic amount even in “single limit” policies. A policy provision that uninsured motorist coverage payments are to be reduced by any insured motorist coverage applicable to the vehicle involved in the accident is void. Nationwide Mut. Ins. Co. v. Howard (S.C. 1985) 288 S.C. 5, 339 S.E.2d 501.

23. Ownership, maintenance or use of motor vehicle

Under South Carolina law, as predicted by district court, ambulance driver who was struck by underinsured vehicle, while responding to car accident and standing on shoulder of road to avoid traffic as she was returning to ambulance eight feet away after assessing accident scene, was in process of “getting in” ambulance, and thus was “occupying” ambulance, as required to qualify as “insured,” under employer’s underinsured motorist (UIM) policy; driver intended to occupy ambulance, as she activated ambulance lights and kept engine running while she exited ambulance to assess scene, her route back to ambulance was direct and only interrupted by passing of other vehicles which was hazard she was attempting to avoid, but she was struck before she could complete process of crossing road and getting into ambulance. Cramer v. National Casualty Company, 2016, 190 F.Supp.3d 510, reversed 2017 WL 2333591. Insurance 2670

Limiting underinsured motorist (UIM) coverage to injury from accident arising out of operation or ownership of underinsured vehicle was inconsistent with statute requiring coverage for injury arising out of ownership, maintenance, or use and was unenforceable. State Farm Mut. Auto. Ins. Co. v. Bookert (S.C.App. 1997) 330 S.C. 221, 499 S.E.2d 480, certiorari granted, reversed 337 S.C. 291, 523 S.E.2d 181, rehearing denied. Insurance 2679

Injuries sustained by insured when shot by assailant circling restaurant in underinsured vehicle arose out of “ownership, maintenance, or use” of vehicle, as required for coverage under underinsured motorist (UIM) policy; as launching pad for attack, vehicle was “active accessory” sufficient for causal connection, use of vehicle and assault were “inextricably linked” as one continuing act, gunshot thus was not act of independent significance, and vehicle was being used for transportation. State Farm Mut. Auto. Ins. Co. v. Bookert (S.C.App. 1997) 330 S.C. 221, 499 S.E.2d 480, certiorari granted, reversed 337 S.C. 291, 523 S.E.2d 181, rehearing denied. Insurance 2679

When determining whether injury arose out of “use” of vehicle, no distinction is made as to whether injury to insured resulted from negligent, reckless, or intentional act. State Farm Mut. Auto. Ins. Co. v. Bookert (S.C.App. 1997) 330 S.C. 221, 499 S.E.2d 480, certiorari granted, reversed 337 S.C. 291, 523 S.E.2d 181, rehearing denied. Insurance 2677

Provision in insurance policy providing that underinsured motor vehicle did not include any vehicle owned by or furnished or available for regular use of policy holder or any family member was invalid, as former Section 56‑9‑831 authorized insurance carriers to restrict amount of underinsured motorist coverage to limits of liability coverage but did not authorize any other restriction on underinsured motorist coverage despite fact that to allow recovery under both liability and underinsured motorist coverages of policy would effectively transform underinsured motorist coverage into liability coverage, resulting in insurance carriers charging more for underinsured motorist coverage to match costs of presently more expensive liability coverage. Bratcher v. National Grange Mut. Ins. Co. (S.C.App. 1987) 292 S.C. 330, 356 S.E.2d 151.

24. Service of process

Insured was required to serve underinsured motorist (UIM) carrier with a copy of pleadings in tort case before the conclusion of the tort trial; thus, serving the carrier after the trial precluded recovery of UIM benefits, even though post‑trial motions remained pending. Ex parte Allstate Ins. Co. (S.C.App. 2000) 339 S.C. 202, 528 S.E.2d 679, rehearing denied. Insurance 2791

In an action by an insured alleging that her insurer failed to provide underinsured motorist coverage, the trial court properly granted summary judgment for the insurer because the insured failed to comply with the Section 38‑77‑160 requirement that she serve on the insurer copies of pleadings in any action against the at‑fault driver. Williams v. Selective Ins. Co. of Southeast (S.C. 1994) 315 S.C. 532, 446 S.E.2d 402.

An insurer was not entitled to formal service of a summons and complaint filed by its insured, who sought underinsured motorist benefits, against a driver who was involved in an accident with the insured since, at the time the suit was instituted, former Section 56‑9‑830 required only a party seeking uninsured benefits to formally serve the insurer. Although recent legislation, i.e., Section 38‑77‑160, applies the same requirement for underinsured benefits, no such provision existed at the time the suit was commenced and, therefore, the insurer was not entitled to formal service of the summons and complaint. Simmons v. South Carolina Farm Bureau Mut. Ins. Co. (S.C. 1990) 301 S.C. 267, 391 S.E.2d 560.

The language “in the manner provided by law” found in Section 38‑77‑160 modifies the manner of service, requiring that the insured serve the insurance carrier through the insurance commissioner as provided in Section 15‑9‑270 and Rule 4, SCRCP. Ex parte South Carolina Farm Bureau Mut. Ins. Co. (S.C. 1993) 314 S.C. 487, 431 S.E.2d 252, rehearing denied.

25. Defense of action

Attorney for underinsured motorist (UIM) insurer did not have an attorney‑client relationship with underinsured driver who was named defendant in injured motorist’s suit seeking UIM benefits, even though insurer stepped into the shoes of the named defendant in suit; once the underinsured motorist settled for her liability policy limits, she no longer had a stake in the outcome of the litigation, whereas the UIM insurer still had a viable financial interest in the case, and therefore, the attorney for the UIM insurer represented the insurer and not the named defendant. Crawford v. Henderson (S.C.App. 2003) 356 S.C. 389, 589 S.E.2d 204. Privileged Communications And Confidentiality 124

An underinsured motorist (UIM) carrier always has the right to appear and defend in the name of the alleged tort‑feasor in any action which may affect its liability, notwithstanding the fact that it may not have the right to control the defense. Ex parte Allstate Ins. Co. (S.C.App. 2000) 339 S.C. 202, 528 S.E.2d 679, rehearing denied. Insurance 2790

In a personal injury action wherein the plaintiff’s insurer had assumed the defense of the action because of underinsured motorist (UIM) coverage, the UIM insurer was not bound by the defendant’s agreement to waive a jury trial where the waiver had occurred before the UIM insurer had assumed defense of the action. Broome v. Watts (S.C. 1995) 319 S.C. 337, 461 S.E.2d 46, rehearing denied.

In an action arising from an auto accident, the underinsured carrier has the option to assume control of the defense of the action as provided in Section 38‑77‑160 in the event that the insured chooses to settle with the at‑fault party’s liability carrier. Williams v. Selective Ins. Co. of Southeast (S.C. 1994) 315 S.C. 532, 446 S.E.2d 402.

26. Timeliness of claims

Under South Carolina law, insured’s claims against excess insurer, alleging bad faith and negligent claims handling related to claim for underinsured motorist (UIM) benefits under excess policy, were not premature, even though insured had not yet obtained judgment against at‑fault driver in underlying tort action, where insured had initiated action against at‑fault driver and served all relevant documents from that action upon insurer before initiating action against insurer. Hartsock v. American Auto. Ins. Co., 2011, 788 F.Supp.2d 447, reconsideration denied 2011 WL 2559519. Insurance 3379

Insured’s suit against insurer arising from the denial of claim for compensation under underinsured motorist (UIM) policy was premature under South Carolina law, and thus dismissal of suit without prejudice was warranted, even though suit was characterized as one for breach of the implied covenant of good faith and fair dealing rather than one for breach of contract for failure to pay UIM benefits, where insured had not brought suit against the at‑fault motorist and served the pleadings on insurer, and South Carolina’s UIM statute explicitly required that an insured serve his UIM insurer with pleadings filed in a suit against the at‑fault motorist prior to commencing any action. Potylicki v. Allstate Ins. Co. (C.A.4 (S.C.) 2010) 386 Fed.Appx. 435, 2010 WL 2640477, Unreported. Insurance 2791; Insurance 3548

27. Estoppel

Under South Carolina law, insured and his wife were not estopped, by virtue of her signing his name to the appropriate forms, from asserting, in insurer’s action for declaratory judgment that insured’s automobile policy did not provide underinsured motorist (UIM) coverage, that wife did not possess the authority to reject uninsured motorist UIM coverage on her husband’s behalf when she procured the policy for his vehicles, where, although insurance agent’s assistant did subsequently ask husband whether he wanted to accept the policy, she never asked him whether his wife possessed the authority to reject UIM coverage, and he had no reason to know that that additional fact might carry legal significance; insurer needed only to ask the insured. Nationwide Mut. Ins. Co. v. Powell (C.A.4 (S.C.) 2002) 292 F.3d 201. Insurance 1800

The personal representatives of an insured’s estate were barred from bringing an action for declaratory judgment against the insurer to reform the policy to include underinsured motorist (UIM) coverage where the insurer had been awarded summary judgment in a prior action requesting the same relief, and it was held that settlement with the at‑fault driver by the representatives had made UIM coverage a legal impossibility; res judicata applied even though the prior court did not address the issue of the insured’s entitlement to reformation. Foran v. USAA Cas. Ins. Co. (S.C.App. 1993) 311 S.C. 189, 427 S.E.2d 918.

28. Property damage

“Property damage” in the underinsured motorist (UIM) coverage had to include loss of use since the liability coverage defined “property damage” to include loss of use, and, thus, the UIM coverage definition of “property damage” as limited to injury to or destruction of the named insured’s covered auto was invalid; a statute requires an offer of UIM coverage up to the limits of the liability coverage. Glasscock, Inc. v. U.S. Fidelity and Guar. Co. (S.C.App. 2001) 348 S.C. 76, 557 S.E.2d 689, rehearing denied, certiorari denied. Insurance 2673; Insurance 2774

29. Exempt commercial policies

For purposes of determining whether an insurer made a meaningful offer of underinsured motorist (UIM) coverage to a commercial insured, evidence of the insured’s knowledge or level of sophistication is relevant and admissible in determining, subjectively, the insured’s understanding of UIM coverage, and, objectively, in determining whether the insurer intelligibly explained UIM coverage to the insured. Croft v. Old Republic Ins. Co. (S.C. 2005) 365 S.C. 402, 618 S.E.2d 909. Insurance 2814

Evidence of the insureds knowledge or level of sophistication is relevant and admissible when analyzing whether an insurer intelligibly advised the insured of the nature of the optional uninsured motorist (UM) or underinsured motorist (UIM) coverage, as required to make a meaningful offer of optional coverage. Croft v. Old Republic Ins. Co. (S.C. 2005) 365 S.C. 402, 618 S.E.2d 909. Insurance 2814

Evidence of an insured’s knowledge or level of sophistication is not relevant when the analysis of whether a meaningful offer of underinsured motorist (UIM) coverage is confined to whether a particular written form complies with the statutory requirements, such that the insurer enjoys a presumption that it made a meaningful offer. Croft v. Old Republic Ins. Co. (S.C. 2005) 365 S.C. 402, 618 S.E.2d 909. Insurance 2813

An insurer selling an automobile insurance policy, issued in the form of a fronting policy, to a commercial insured is required to comply with Wannamaker and its progeny in order to make a meaningful offer of underinsured motorist (UIM) coverage, even though the insured has expressed a desire not to purchase such coverage; State Farm Mut. Auto. Ins. Co. v. Wannamaker required insurer to advise the insured with a commercially reasonable offer that specifies the limits of coverage, with intelligible advice to insured of nature of coverage, and that the coverage was available for an additional premium. Croft v. Old Republic Ins. Co. (S.C. 2005) 365 S.C. 402, 618 S.E.2d 909. Insurance 2775

For an insurer to make a meaningful offer of underinsured motorist (UIM) coverage, (1) the insurers notification process must be commercially reasonable, whether oral or in writing, (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms, (3) the insurer must intelligibly advise the insured of the nature of the optional coverage, and (4) the insured must be told that optional coverages are available for an additional premium. Croft v. Old Republic Ins. Co. (S.C. 2005) 365 S.C. 402, 618 S.E.2d 909. Insurance 2775

If an automobile insurer fails to comply with its statutory duty to make a meaningful offer to the insured, the policy will be reformed, by operation of law, to include underinsured motorist (UIM) coverage up to the limits of liability insurance carried by the insured. Croft v. Old Republic Ins. Co. (S.C. 2005) 365 S.C. 402, 618 S.E.2d 909. Insurance 2779(2)

Commercial automobile insurance carrier was required to make a meaningful offer of optional underinsured motorist (UIM) coverage when selling a “fronting policy” of automobile insurance to insured, in which the insured’s deductible limits equaled the liability limits; insured did not seek approval as self‑insured by obtaining certificate of self‑insurance from state, and insurer retained risk that it would be liable for claims without indemnification if insured became insolvent. Croft v. Old Republic Ins. Co. (S.C. 2005) 365 S.C. 402, 618 S.E.2d 909. Insurance 2776

An automobile insurance carrier is required to make a meaningful offer of underinsured motorist (UIM) coverage when selling an exempt commercial policy to a commercial insured. Croft v. Old Republic Ins. Co. (S.C. 2005) 365 S.C. 402, 618 S.E.2d 909. Insurance 2775

Issuer of exempt commercial automobile insurance policy was required to make meaningful offer of uninsured motorist (UIM) coverage to insurer, even though insurer claimed that large commercial insurance accounts do not need the same close regulation as do unsophisticated purchasers of insurance; legislature did not intend to exempt issuers of exempt commercial policies from requirement to make meaningful offer of UIM coverage, and exempt commercial policies can be sold to small businesses without knowledgeable risk managers as well as sophisticated large corporations. Croft v. Old Republic Ins. Co. (S.C. 2005) 365 S.C. 402, 618 S.E.2d 909. Insurance 2775

30. Payment of benefits

Under South Carolina law, underinsured motorist (UIM) insurer did not breach its contract in refusing to pay UIM benefits to insured who accepted tender of underinsured driver’s liability limits rather than establishing in a state court proceeding that driver was at fault, as required by statute. Halmon v. American Intern. Group, Inc. Ins. Co., 2007, 586 F.Supp.2d 401. Insurance 2793(1)

31. Damages

It did not violate public policy to allow insureds to seek punitive damages after signing a covenant not to execute against the personal assets of an at‑fault defendant; insurer contracted to provide insured with underinsured motorist (UIM) coverage, once damages exceeded defendant’s insurance limits, UIM contract was triggered, punitive damages were recoverable under UIM provision, and served purpose of vindicating motorists’ private rights. O’Neill v. Smith (S.C. 2010) 388 S.C. 246, 695 S.E.2d 531. Insurance 2793(1); Insurance 2803

“Damages” within the meaning of statute requiring the insurer to offer underinsured motorist (UIM) coverage for damages in excess of tort‑feasor’s liability limits meant bodily injury or property damage and did not entitle insured’s spouse to separate recovery of UIM benefits for loss of consortium; the term referred to liability coverage, which in turn explicitly limited coverage to bodily injury. Russo v. Nationwide Mut. Ins. Co. (S.C.App. 1999) 334 S.C. 455, 513 S.E.2d 127. Insurance 2796

32. Summary judgment

An insurer did not as a matter of law fail in its duty to offer underinsured‑motorist coverage (UIM) incident to the issuance of a motor vehicle liability insurance policy where the insured, a sophisticated attorney, claimed that he was unfamiliar with the laws of underinsurance and that he merely requested the lowest premium possible, but the insurance agent claimed that UIM was specifically discussed with, and rejected by, the insured; thus, the insurer raised at least a scintilla of evidence which warranted a determination of the facts by the jury. Anders v. South Carolina Farm Bureau Mut. Ins. Co. (S.C.App. 1992) 307 S.C. 371, 415 S.E.2d 406.

33. Presumptions and burden of proof

The question of whether an insurer met its burden of proving it made a meaningful offer of underinsured motorist (UIM) coverage is a question of fact. Cohen v. Progressive Northern Ins. Co. (S.C.App. 2013) 402 S.C. 66, 737 S.E.2d 869. Insurance 2816

Motorcycle insurer’s failure to comply with statutory provision that required an application form required under the statute to be properly completed and executed by the named insured before insurer would be entitled to a conclusive presumption that it had made a meaningful offer of underinsured motorist (UIM) coverage did not automatically require judicial reformation of the policy to include UIM benefits, but rather simply meant that the trial court was required to make a factual determination of whether a meaningful offer had been made. Cohen v. Progressive Northern Ins. Co. (S.C.App. 2013) 402 S.C. 66, 737 S.E.2d 869. Insurance 2779(1)

If an insurer fails to comply with its statutory duty to make a meaningful offer of underinsured motorist (UIM) coverage to the insured, the policy will be reformed, by operation of law, to include UIM coverage up to the limits of liability insurance carried by the insured; the insurer bears the burden of establishing that it made a meaningful offer. Cohen v. Progressive Northern Ins. Co. (S.C.App. 2013) 402 S.C. 66, 737 S.E.2d 869. Insurance 2779(2); Insurance 2813

The insurer bears the burden of establishing that it made a meaningful offer uninsured or underinsured motorist (UM/UIM) coverage. Grinnell Corp. v. Wood (S.C.App. 2008) 378 S.C. 458, 663 S.E.2d 61, rehearing denied, certiorari granted, reversed 389 S.C. 350, 698 S.E.2d 796. Insurance 2813

Automobile insurer bears the burden of establishing that it made a meaningful offer of underinsured motorist (UIM) coverage. Atkins v. Horace Mann Ins. Co. (S.C.App. 2008) 376 S.C. 625, 658 S.E.2d 106. Insurance 2813

The insurer bears the burden of establishing that it made a meaningful offer of underinsured motorist (UIM) and additional uninsured motorist (UM) coverages. Floyd v. Nationwide Mut. Ins. Co. (S.C. 2005) 367 S.C. 253, 626 S.E.2d 6, rehearing denied. Insurance 2775; Insurance 2813

An automobile insurer enjoys a presumption that it made a meaningful offer of underinsured motorist (UIM) coverage, if the insured executes a form that complies with statute. Progressive Cas. Ins. Co. v. Leachman (S.C. 2005) 362 S.C. 344, 608 S.E.2d 569. Insurance 2812

The automobile insurer bears the burden of establishing that it made a meaningful offer of underinsured motorist (UIM) coverage. Progressive Cas. Ins. Co. v. Leachman (S.C. 2005) 362 S.C. 344, 608 S.E.2d 569. Insurance 2813

Automobile insurer did not enjoy the statutory presumption that it made a meaningful offer of underinsured motorist (UIM) coverage, where it did not fill in blanks listing premium amounts for the various limits. McDowell v. Travelers Property & Cas. Co. (S.C.App. 2003) 357 S.C. 118, 590 S.E.2d 514, rehearing denied. Insurance 2812

Initial burden is on the insurer to prove a meaningful offer of optional underinsured motorist (UIM) coverage has been made to the insured in proceeding to reform automobile insurance policy to include such coverage up to the limits of liability insurance carried by the insured. Warren Burch v. South Carolina Farm Bureau Mut. Ins. Co. (S.C.App. 2002) 351 S.C. 342, 569 S.E.2d 400. Insurance 1893(1); Insurance 2813

The insurer bears the burden of establishing it made a meaningful offer of underinsured motorist (UIM) coverage. Bower v. National General Ins. Co. (S.C.App. 2000) 342 S.C. 315, 536 S.E.2d 693, rehearing denied, certiorari granted, affirmed 351 S.C. 112, 569 S.E.2d 313. Insurance 2813

The insurer bears the burden of establishing that it made a meaningful offer of underinsured motorist (UIM) coverage. Tucker v. Allstate Ins. Co. (S.C.App. 1999) 337 S.C. 128, 522 S.E.2d 819. Insurance 2813

34. Questions of law

The question of whether an offer of underinsured motorist (UIM) coverage is sufficient is a question of law. Bower v. National General Ins. Co. (S.C.App. 2000) 342 S.C. 315, 536 S.E.2d 693, rehearing denied, certiorari granted, affirmed 351 S.C. 112, 569 S.E.2d 313. Insurance 2816

35. Sufficiency of evidence

Evidence was sufficient to support a finding that motorcycle insurer complied with its statutory duty to make a meaningful offer of underinsured motorist (UIM) coverage to insured, in action by insureds in which they sought to reform policy to include UIM coverage; insurer’s agent orally presented an offer of coverage and told insured that optional coverages were available for an additional premium, and insured signed the application form in three places, including a page in which he acknowledged that he either read, or had someone read to him, the form’s explanation of UIM coverage and its offer of the that coverage, and form indicated insured rejected insured’s offer of UIM coverage. Cohen v. Progressive Northern Ins. Co. (S.C.App. 2013) 402 S.C. 66, 737 S.E.2d 869. Insurance 2775; Insurance 2778

An insurer met its burden of proving that it had made a meaningful offer of underinsured motorist coverage as required by former Section 56‑9‑831, where the insured received a 2‑part offer consisting of a premium renewal notice and an insert explaining the optional coverages, the notices referred to “underinsured” and “uninsured” motor vehicle coverage using those words, and the notice contained a statement instructing the insured to refer to the insert for a further explanation of underinsured and uninsured motor vehicle coverage. Jackson v. State Farm Mut. Auto. Ins. Co. (S.C. 1991) 303 S.C. 321, 400 S.E.2d 492. Insurance 1906

36. Review

Issue of whether jury charge that law implied malice from use of deadly weapon could have been raised in defendant’s prior petition for postconviction relief, and issue was procedurally barred in habeas corpus proceeding; even if state Supreme Court had not recognized unconstitutionality of such a charge at time postconviction petition was filed, the United States Supreme Court had so recognized. Keeler v. Mauney (S.C.App. 1998) 330 S.C. 568, 500 S.E.2d 123, rehearing denied. Habeas Corpus 285.1

Trial court’s unappealed ruling that insured’s bicycle was not “vehicle” within meaning of statute governing stacking of underinsured motorist (UIM) coverage was law of the case, and appellate court had to assume that ruling was correct. Code Sections 39‑77‑160. Continental Ins. Co. v. Shives (S.C.App. 1997) 328 S.C. 470, 492 S.E.2d 808, rehearing denied. Appeal And Error 853

The trial court’s ruling on the adequacy of an underinsured motorist coverage premium notice was sufficiently questioned in the Circuit Court to raise the issue on appeal before the Supreme Court where the appellant’s exceptions averred that the trial court erred in (1) finding that the insurer’s notice constituted a meaningful and sufficient offer, (2) finding that the notice intelligibly advised him about the nature of the coverage, and (3) denying his request for declaratory judgment requiring the insurer to provide such coverage. Lopez v. National General Ins. Co. (S.C. 1992) 308 S.C. 342, 417 S.E.2d 864.

**SECTION 38‑77‑161.** Uninsured or underinsured coverage not required in excess or umbrella policy.

 No uninsured or underinsured motorist coverage need be provided in this State by any excess or umbrella policy of insurance.

HISTORY: 1989 Act No. 148, Section 5.

Library References

Insurance 2773.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2229, 2231 to 2238, 2240 to 2242, 2244 to 2247.

NOTES OF DECISIONS

In general 1

1. In general

An insured was not entitled to reformation of an umbrella policy to include uninsured motorist (UM) coverage where (1) the policy, which included only liability coverage, was renewed on October 22, 1986, (2) Section 38‑77‑161 sets forth that UM coverage need not be provided in an umbrella policy, and (3) the accident occurred after Section 38‑77‑161’s effective date of July 1, 1989. Todd v. Federated Mut. Ins. Co. (S.C. 1991) 305 S.C. 395, 409 S.E.2d 361.

**SECTION 38‑77‑170.** Conditions to sue or recover under uninsured motorist provision when owner or operator of motor vehicle causing injury or damage is unknown.

 If the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, there is no right of action or recovery under the uninsured motorist provision, unless:

 (1) the insured or someone in his behalf has reported the accident to some appropriate police authority within a reasonable time, under all the circumstances, after its occurrence;

 (2) the injury or damage was caused by physical contact with the unknown vehicle, or the accident must have been witnessed by someone other than the owner or operator of the insured vehicle; provided however, the witness must sign an affidavit attesting to the truth of the facts of the accident contained in the affidavit;

 (3) the insured was not negligent in failing to determine the identity of the other vehicle and the driver of the other vehicle at the time of the accident.

 The following statement must be prominently displayed on the face of the affidavit provided in item (2) above: A FALSE STATEMENT CONCERNING THE FACTS CONTAINED IN THIS AFFIDAVIT MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL PENALTIES AS PROVIDED BY LAW.

HISTORY: Former 1976 Code Section 56‑9‑850 [1962 Code Section 46‑750.34; 1963 (53) 526; 1987 Act No. 166, Section 25; repealed by 1987 Act No. 155, Section 25] recodified as Section 38‑77‑170 by 1987 Act No. 155, Section 1 [amendment to former 1976 Code Section 56‑9‑850 by 1987 Act No. 166, Section 25, transferred to Section 38‑77‑150 by 1987 Act No. 155, Section 24]; 1989 Act No. 148, Section 53.

CROSS REFERENCES

Definition of “motor vehicle liability policy”, see Section 56‑9‑20.

Insurance policy for at least the minimum coverages specified in sections 38‑77‑140 through 38‑77‑230 and the benefits required under sections 38‑77‑240, 38‑77‑250, and 38‑77‑260, as satisfying the security requirements of the Motor Vehicle Registration and Financial Security provisions, see Section 56‑10‑20.

Library References

Insurance 2781 to 2786, 2815(4).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2249 to 2250, 2252, 2263 to 2266, 2268 to 2275.

RESEARCH REFERENCES

ALR Library

79 ALR 5th 289 , Uninsured Motorist Indorsement: Construction and Application of Requirement that There be “Physical Contact” With Unidentified or Hit‑And‑Run Vehicle; “Hit‑And‑Run” Cases.

115 ALR 5th 589 , What Constitutes Bad Faith on Part of Insurer Rendering it Liable for Statutory Penalty Imposed for Bad Faith in Failure to Pay, or Delay in Paying, Insured’s Claim‑Particular Conduct of Insurer.

77 ALR 5th 319 , Uninsured Motorist Indorsement: Construction and Application of Requirement that There be “Physical Contact” With Unidentified or Hit‑And‑Run Vehicle; “Miss‑And‑Run” Cases.

Encyclopedias

81 Am. Jur. Trials 425, Uninsured and Underinsured Motorist Claims.

S.C. Jur. Affidavits Section 33, Trials.

S.C. Jur. Appeal and Error Section 71, The Four Basic Requirements.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Constitutional Law: Equal Protection. 33 S.C. L. Rev. 21 (August 1981).

NOTES OF DECISIONS

Construction and application 2

Limitation of actions 7

Ownership, maintenance or use of motor vehicle 6

Physical contact requirement 3

Reporting requirement 4

Review 9

Sufficiency of evidence 8

Validity 1

Witnesses 5

1. Validity

An insurer was not required to pay damages growing out of an automobile collision that was caused when an unidentified motorist caused a passenger car to swerve and hit the car in which plaintiff was riding where, contrary to statutory requirements and those of the uninsured motorist provisions of the policy, there was no physical contact by the unknown motorist; the statutory requirement of physical contact did not violate the equal protection clauses of the State and Federal Constitutions. (Decided under former law.) Sapp v. State Farm Auto. Ins. Co. (S.C. 1979) 272 S.C. 301, 251 S.E.2d 745.

2. Construction and application

The uninsured motorist statute is remedial in nature, enacted for the benefit of injured persons, and is to be liberally construed so that the purpose intended may be accomplished. Enos v. Doe (S.C.App. 2008) 380 S.C. 295, 669 S.E.2d 619, rehearing denied. Insurance 2772

Although Section 38‑77‑170 was revised by deletion of the words “and unless” and the word “and” from the first and second conditions, respectively, the statute still requires that all 3 conditions following the word “unless” be met before an insured may recover under the insured’s uninsured motorist coverage. The revised statute simply provides an alternate method of satisfying the second condition; this condition can now be met either by evidence of physical contact with the unknown vehicle or evidence provided by an independent witness to the accident. Chestnut v. South Carolina Farm Bureau Mut. Ins. Co. (S.C.App. 1989) 298 S.C. 151, 378 S.E.2d 613.

3. Physical contact requirement

Circumstantial evidence presented by insured’s affiants failed to comply with statute that governed recovery of uninsured‑motorist (UM) benefits when there was no physical contact with unknown driver’s vehicle and that required someone other than insured to have witnessed accident and attested to facts of accident in signed affidavit; no affiant actually saw insured swerve to avoid trash bag in road and collide with tree, and fact that three people saw bag of trash in same roadway did not implicate involvement of another vehicle. Bradley v. Doe (S.C.App. 2007) 374 S.C. 622, 649 S.E.2d 153, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 382 S.C. 613, 677 S.E.2d 213. Insurance 2815(4)

Amendment to uninsured motorist (UM) statute that loosened “physical contact” requirement in cases involving unknown drivers did not supersede statute permitting service on court clerk in such cases. Franklin v. Devore (S.C.App. 1997) 327 S.C. 418, 489 S.E.2d 651, rehearing denied, certiorari denied. Insurance 2784

Contact with an unattached portion of an unknown vehicle does not meet the physical contact requirement of former Section 56‑9‑850. Accordingly, a passenger in an automobile had no cause of action under the statute for injuries suffered when a wheel bearing broke through the windshield and hit her in the chest, and she was unable to identify the passing truck (or its driver) from which the wheel bearing presumably came. The requirement of physical contact with the unknown vehicle, and not just with an unattached part thereof, is a viable manner of preventing fraudulent, fictitious claims. Davis v. Doe (S.C. 1985) 285 S.C. 538, 331 S.E.2d 352.

4. Reporting requirement

Insured’s reporting of automobile accident to police eight months after accident occurred did not satisfy provision of uninsured motorist statute barring recovery of uninsured motorist (UM) benefits arising from accident involving vehicle whose owner or operator is unknown, unless accident is reported to police within reasonable time, even though insured was employee of insurance company and had reported accident to insurance company. Morehead v. Doe (S.C.App. 1996) 324 S.C. 559, 479 S.E.2d 817, rehearing denied. Insurance 2790

Uninsured motorist carrier’s mere investigation of insured’s loss did not preclude insurance company from relying on insured’s failure to report accident to appropriate police authority within reasonable time, for purposes of uninsured motorist statute. Morehead v. Doe (S.C.App. 1996) 324 S.C. 559, 479 S.E.2d 817, rehearing denied. Insurance 3108

Mailing of South Carolina Traffic Collision Report to the Safety Responsibility Section of the State Highway Department constituted sufficient compliance with reporting provision of former 1962 Code Section 46‑750.34 [1976 Code Section 56‑9‑850]; amendatory changes to this section in 1963 infused a degree of flexibility into a previously rigid statute, granting discretion to the claimant. Bolton v. Doe (S.C. 1976) 266 S.C. 344, 223 S.E.2d 187.

5. Witnesses

In order for an insured to recover uninsured motorist benefits when accident involves no physical contact between the insured’s vehicle and the unidentified vehicle, the accident must have been witnessed by someone other than the owner or operator of the insured vehicle and the witness must sign an affidavit attesting to the truth of the facts of the accident contained therein. Tucker v. Doe (S.C.App. 2015) 413 S.C. 389, 776 S.E.2d 121, rehearing denied, certiorari denied. Insurance 2815(4)

Sworn witness affidavit, in which witness stated he was following truck and car carrier and that “the truck and car carrier suddenly veered to the left as if to avoid something in the roadway and in doing so struck a cement pillar supporting the overpass,” was sufficient to satisfy statutory requirements for truck driver to recover uninsured motorist benefits based on an accident caused by an unidentified vehicle; while affidavit did not provide direct evidence as to the involvement of an unknown driver or explain the unknown driver’s involvement, it amounted to sufficient circumstantial evidence that supported truck driver’s testimony and the other evidence in the record suggesting an unknown driver contributed to the accident by leaving a 650‑pound steel bearing block in the middle of the road. Tucker v. Doe (S.C.App. 2015) 413 S.C. 389, 776 S.E.2d 121, rehearing denied, certiorari denied. Insurance 2815(4)

Uninsured motorist statute’s “John Doe” provision, requiring an affidavit from independent witness when there is no physical contact with an unknown vehicle, is not restricted to a collision caused by an unknown vehicle; affidavit requirement applies equally to a single‑car accident as an accident caused by an unknown vehicle. Enos v. Doe (S.C.App. 2008) 380 S.C. 295, 669 S.E.2d 619, rehearing denied. Insurance 2815(4)

Uninsured motorist statute’s “John Doe” provision, requiring a witness other than owner or operator of vehicle to sign an affidavit when injury or damage was caused without physical contact with an unknown vehicle, applied to insured vehicle owner’s claim resulting from an unknown driver causing owner’s vehicle to collide with a bridge abutment while owner, who could not remember who was driving, was intoxicated and asleep in passenger seat. Enos v. Doe (S.C.App. 2008) 380 S.C. 295, 669 S.E.2d 619, rehearing denied. Insurance 2815(4)

Under statute requiring witness to sign affidavit attesting to truth of facts of accident in order for insured to recover uninsured‑motorist (UM) benefits regarding accident involving unknown driver, insured’s strict compliance with statute’s affidavit requirement is mandatory. Bradley v. Doe (S.C.App. 2007) 374 S.C. 622, 649 S.E.2d 153, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 382 S.C. 613, 677 S.E.2d 213. Insurance 2815(4)

Affidavits submitted by passenger, who was injured in accident allegedly caused when driver of pickup truck swerved to avoid an unknown car, did not contain evidence supporting driver’s version of the accident and, thus, did not raise genuine issue of material fact as to whether anyone other than the driver witnessed the accident, as would preclude summary judgment against passenger on issue of whether passenger could recover uninsured motorist benefits under the “John Doe” statute, where both affidavits stated that affiants were told by the driver that another car came onto the roadway causing him to sharply swerve. Shealy v. Doe (S.C.App. 2006) 370 S.C. 194, 634 S.E.2d 45, certiorari denied. Judgment 185.3(12)

Testimony of eyewitnesses to accident allegedly caused by unidentified vehicle did not excuse motorist seeking payment under uninsured motorist (UM) provision from satisfying statutory requirement that she provide an affidavit by a corroborating witness to the accident; although witness’s testimony seemingly served legislature’s intent to prevent making of false statements, legislature’s chosen vehicle for fraud prevention was sworn affidavit prominently displaying prescribed disclaimer so as to alert the affiant that she may be subject to criminal penalties for providing untrue information, to allow the defendant, at trial, to cross examine the witness regarding the statement, and allow the insurer to assess and evaluate the claim. Collins v. Doe (S.C. 2002) 352 S.C. 462, 574 S.E.2d 739. Insurance 2815(4)

A passenger involved in an automobile accident with an unknown motorist was a proper attesting witness to the accident under the statute regarding accidents with unknown motorists (Section 38‑77‑170) even though the passenger sought to recover damages from the driver’s uninsured motorist insurer, since the plain language of the statute excluded only the owner or operator from being an attesting witness to an accident involving an unknown motorist; the legislature had opportunity to further restrict witnesses to independent and disinterested persons, but did not do so. Miller v. Doe (S.C. 1994) 312 S.C. 444, 441 S.E.2d 319. Insurance 2790

A motorist injured by gunfire from an unidentified vehicle was entitled to recover under the uninsured motorist provision of her automobile insurance policy, even though the gunman’s vehicle was not the direct cause of her injuries, where there was a witness in the motorist’s car who was available to attest to the facts of the accident, and the witness was neither the owner, nor the driver, of the insured vehicle. Wausau Underwriters Ins. Co. v. Howser (S.C. 1992) 309 S.C. 269, 422 S.E.2d 106.

6. Ownership, maintenance or use of motor vehicle

Driver who was shot from other unidentified vehicle could not recover for injuries under uninsured motorist provision of insurance policy because her injuries did not arise out of ownership, maintenance, or use of vehicle and injuries were not caused by other vehicle. Wausau Underwriters Ins. Co. v. Howser, 1990, 727 F.Supp. 999, reversed 978 F.2d 1257.

A motorist was entitled to recover, under the uninsured motorist provision of her automobile insurance policy, for gunshot wounds sustained during a vehicular chase by the unknown operator of an unidentified vehicle on a public highway where the unknown vehicle was used to “bump” the insured’s automobile prior to the shooting; thus, the unknown vehicle was an active accessory to the assault, and the use of the vehicle was inextricably linked with the shooting as one continuing assault. Wausau Underwriters Ins. Co. v. Howser (S.C. 1992) 309 S.C. 269, 422 S.E.2d 106.

7. Limitation of actions

Serving John Doe as the unknown owner or operator of a motor vehicle did not toll the statute of limitations as to an alleged driver subsequently added as a defendant in the accident victim’s personal injury action; the statute applied separately as to each defendant. Jackson v. Doe (S.C.App. 2000) 342 S.C. 552, 537 S.E.2d 567. Limitation Of Actions 124

8. Sufficiency of evidence

Testimony of eyewitnesses to accident allegedly caused by unidentified vehicle was sufficient to satisfy statutory requirement that motorist seeking payment under uninsured motorist (UM) provision provide affidavit by corroborating witness to accident; purpose of requirement was to prevent false statements in such cases by making false statement subject to criminal penalties, and giving false testimony under oath constituted felony perjury. Collins v. Doe (S.C.App. 2000) 343 S.C. 119, 539 S.E.2d 62, rehearing denied, certiorari granted, reversed 352 S.C. 462, 574 S.E.2d 739. Insurance 2815(4)

9. Review

Issue of whether revised witness affidavit, submitted nearly 10 months after plaintiff truck driver commenced suit against unknown defendant truck driver and trucking company which allegedly caused accident, was untimely was not preserved for review, as plaintiff’s uninsured motorist carriers, who answered complaint, did not raise issue in trial court, nor did trial court rule on the issue. Tucker v. Doe (S.C.App. 2015) 413 S.C. 389, 776 S.E.2d 121, rehearing denied, certiorari denied. Appeal and Error 189(2); Appeal and Error 242(2)

Issue of whether witness, who submitted sworn witness affidavit in plaintiff truck driver’s action against unknown defendant truck driver and trucking company who allegedly caused accident, was required to testify at trial was not preserved for appellate review by plaintiff’s uninsured motorist carriers, who had answered the complaint on behalf of the unknown defendants; insurer conceded at trial that plaintiff was not required to do anything more than submit an affidavit to satisfy statutory requirements, and at trial insurer did not contest plaintiff’s failure to call witness. Tucker v. Doe (S.C.App. 2015) 413 S.C. 389, 776 S.E.2d 121, rehearing denied, certiorari denied. Appeal and Error 189(2)

Issue of discrepancies between sworn witness’s first and second affidavits, including fact that first affidavit indicated that truck veered right while second indicated that truck veered left, was never raise or ruled upon in the circuit court, nor did unknown defendant truck driver and trucking company, who were represented by plaintiff truck driver’s uninsured motorist insurance carriers, address the issue in their appellate briefs, and thus issue, which defendants raised during oral argument, was not preserved for appeal in plaintiff’s personal injury action following collision with steel bearing block in road. Tucker v. Doe (S.C.App. 2015) 413 S.C. 389, 776 S.E.2d 121, rehearing denied, certiorari denied. Appeal and Error 189(2); Appeal and Error 242(2); Appeal and Error 766

On appeal from summary judgment against him, passenger failed to provide sufficient appellate argument to support his contention that insurance company’s letter, stating that an unknown vehicle caused accident in which passenger was injured, was an admission against interest, and thus argument would be deemed abandoned on appeal, where passenger failed to cite any case law for the proposition and made only conclusory arguments in support of it. Shealy v. Doe (S.C.App. 2006) 370 S.C. 194, 634 S.E.2d 45, certiorari denied. Appeal And Error 1079

**SECTION 38‑77‑180.** “John Doe” actions against unknown defendant; service of process and defense by insurer; action against or joinder of identified owner or operator.

 If the owner or operator of any vehicle causing injury or damages by physical contact is unknown, an action may be instituted against the unknown defendant as “John Doe” and service of process may be made by delivery of a copy of the summons and complaint or other pleadings to the clerk of the court in which the action is brought. The insurer has the right to defend in the name of John Doe. However, the bringing of an action against the unknown owner or operator as John Doe or the conclusion of that action does not constitute a bar to the insured, if the identity of the owner or operator who caused the injury or damages complained of becomes known, from bringing an action against the owner or operator previously proceeded against as John Doe. Notwithstanding the uninsured motorist provision nor any other provision of law, the joinder of any other person causing the injury as a party defendant, in an action against John Doe, is allowed.

HISTORY: Former 1976 Code Section 56‑9‑860 [1962 Code Section 46‑750.35; 1963 (53) 526] recodified as Section 38‑77‑180 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Definition of “motor vehicle liability policy”, see Section 56‑9‑20.

Insurance policy for at least the minimum coverages specified in sections 38‑77‑140 through 38‑77‑230 and the benefits required under sections 38‑77‑240, 38‑77‑250, and 38‑77‑260, as satisfying the security requirements of the Motor Vehicle Registration and Financial Security provisions, see Section 56‑10‑20.

Mandatory imputing of any negligence or wilful misconduct of a minor when driving a motor vehicle to the person who signed the application for a permit or license, unless the minor is protected by insurance in the form and amounts required under this section, see Section 56‑1‑110.

Library References

Insurance 2789.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2327, 2329, 2331 to 2332.

RESEARCH REFERENCES

ALR Library

79 ALR 5th 289 , Uninsured Motorist Indorsement: Construction and Application of Requirement that There be “Physical Contact” With Unidentified or Hit‑And‑Run Vehicle; “Hit‑And‑Run” Cases.

77 ALR 5th 319 , Uninsured Motorist Indorsement: Construction and Application of Requirement that There be “Physical Contact” With Unidentified or Hit‑And‑Run Vehicle; “Miss‑And‑Run” Cases.

78 ALR 5th 341 , Uninsured Motorist Indorsement: General Issues Regarding Requirement that There be “Physical Contact” With Unidentified or Hit‑And‑Run Vehicle.

Forms

South Carolina Litigation Forms and Analysis Section 2:8 , Unknown Defendant.

NOTES OF DECISIONS

In general 1

Construction and application 2

Limitation of actions 3

Questions for jury 5

Venue 4

1. In general

Testimony of eyewitnesses to accident allegedly caused by unidentified vehicle did not excuse motorist seeking payment under uninsured motorist (UM) provision from satisfying statutory requirement that she provide an affidavit by a corroborating witness to the accident; although witness’s testimony seemingly served legislature’s intent to prevent making of false statements, legislature’s chosen vehicle for fraud prevention was sworn affidavit prominently displaying prescribed disclaimer so as to alert the affiant that she may be subject to criminal penalties for providing untrue information, to allow the defendant, at trial, to cross examine the witness regarding the statement, and allow the insurer to assess and evaluate the claim. Collins v. Doe (S.C. 2002) 352 S.C. 462, 574 S.E.2d 739. Insurance 2815(4)

“Physical contact” requirement of uninsured motorist (UM) statute governing service on unknown drivers was satisfied even though the contact was not made with the unknown vehicle. Franklin v. Devore (S.C.App. 1997) 327 S.C. 418, 489 S.E.2d 651, rehearing denied, certiorari denied. Insurance 2784

2. Construction and application

Amendment to uninsured motorist (UM) statute that loosened “physical contact” requirement in cases involving unknown drivers did not supersede statute permitting service on court clerk in such cases. Franklin v. Devore (S.C.App. 1997) 327 S.C. 418, 489 S.E.2d 651, rehearing denied, certiorari denied. Insurance 2784

3. Limitation of actions

Serving John Doe as the unknown owner or operator of a motor vehicle did not toll the statute of limitations as to an alleged driver subsequently added as a defendant in the accident victim’s personal injury action; the statute applied separately as to each defendant. Jackson v. Doe (S.C.App. 2000) 342 S.C. 552, 537 S.E.2d 567. Limitation Of Actions 124

4. Venue

Section 38‑77‑180, which states that as to an unknown defendant, “service of process may be made by delivery...to the clerk of the court in which the action is brought,” does not operate to nullify the substantial right of a known defendant to be tried in the county of his or her residence. Thus, in an action arising out of an automobile accident involving a vehicle driven by either a known defendant or an unknown defendant whose residence was unknown, the trial court erred in denying the only known defendant’s motion for change of venue to his county of residence, and in interpreting Section 38‑77‑180 so as to nullify the defendant’s substantial right to be tried in the county in which he resided. Carroll v. Guess (S.C. 1990) 302 S.C. 175, 394 S.E.2d 707.

5. Questions for jury

Issue of whether unidentified driver or injured motorist’s own negligence caused accident was for jury to decide in action by injured motorist to recover under uninsured motorist (UM) insurance provision. Collins v. Doe (S.C.App. 2000) 343 S.C. 119, 539 S.E.2d 62, rehearing denied, certiorari granted, reversed 352 S.C. 462, 574 S.E.2d 739. Automobiles 245(2.1); Automobiles 245(90); Insurance 2816

**SECTION 38‑77‑190.** Subrogation of insurer who pays claim under uninsured motorist provision to rights of insured.

 An insurer paying a claim under the uninsured motorist provision required by Section 38‑77‑150 is subrogated to the rights of the insured to whom the claim was paid against any and every person causing the injury, death, or damage to the extent that payment was made. However, the insurer shall pay its proportionate part of any reasonable costs and expenses incurred in connection with any recovery, including reasonable attorneys’ fees.

HISTORY: Former 1976 Code Section 56‑9‑870 [1962 Code Section 46‑750.36; 1963 (53) 526] recodified as Section 38‑77‑190 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Definition of “motor vehicle liability policy”, see Section 56‑9‑20.

Insurance policy for at least the minimum coverages specified in sections 38‑77‑140 through 38‑77‑230 and the benefits required under sections 38‑77‑240, 38‑77‑250, and 38‑77‑260, as satisfying the security requirements of the Motor Vehicle Registration and Financial Security provisions, see Section 56‑10‑20.

Library References

Insurance 3520.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1989, 1993, 1999, 2011 to 2012, 2024, 2322, 2325 to 2328.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 51, Uninsured Motorist.

**SECTION 38‑77‑200.** Arbitration clause prohibited in uninsured motorist provision; requirements on insured; action and employment of counsel by insured.

 The uninsured motorist provision may not require arbitration of any claim arising under it, nor may anything not otherwise herein provided for or as may be provided in the form prescribed by the director or his designee be required of the insured except the establishment of legal liability of the uninsured motorist, nor may the insured be restricted or prevented in any manner from employing legal counsel or instituting legal proceedings.

HISTORY: Former 1976 Code Section 56‑9‑880 [1962 Code Section 46‑750.37; 1963 (53) 526] recodified as Section 38‑77‑200 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 808.

CROSS REFERENCES

Definition of “motor vehicle liability policy”, see Section 56‑9‑20.

Insurance policy for at least the minimum coverages specified in sections 38‑77‑140 through 38‑77‑230 and the benefits required under sections 38‑77‑240, 38‑77‑250, and 38‑77‑260, as satisfying the security requirements of the Motor Vehicle Registration and Financial Security provisions, see Section 56‑10‑20.

Uniform Arbitration Act, see Section 15‑48‑10 et seq.

Library References

Insurance 3273, 3277, 3317.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1889, 1910 to 1911, 2311, 2313 to 2317.

NOTES OF DECISIONS

In general 1

1. In general

Uninsured motorist provision of policy requiring plaintiff to submit to physical examination as condition precedent to recovery was limitation on coverage rather than part of proof of claim procedure and was contrary to former Section 56‑9‑880. Benson v. Nationwide Mut. Ins. Co. (S.C. 1977) 269 S.C. 563, 238 S.E.2d 683. Insurance 3177

**SECTION 38‑77‑210.** Uninsured motorist provision not required to cover property damages paid to insured.

 The uninsured motorist provision need not insure any liability for property damages for which loss a policyholder has been compensated by insurance or otherwise.

HISTORY: Former 1976 Code Section 56‑9‑890 [1962 Code Section 46‑750.38; 1963 (53) 526] recodified as Section 38‑77‑210 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Definition of “motor vehicle liability policy”, see Section 56‑9‑20.

Insurance policy for at least the minimum coverages specified in sections 38‑77‑140 through 38‑77‑230 and the benefits required under sections 38‑77‑240, 38‑77‑250, and 38‑77‑260, as satisfying the security requirements of the Motor Vehicle Registration and Financial Security provisions, see Section 56‑10‑20.

Mandatory imputing of any negligence or wilful misconduct of a minor when driving a motor vehicle to the person who signed the application for a permit or license, unless the minor is protected by insurance in the form and amounts required under this section, see Section 56‑1‑110.

Library References

Insurance 2673, 2780.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1506, 2168 to 2170, 2172 to 2177, 2184, 2248, 2251, 2281 to 2283.

**SECTION 38‑77‑220.** Additional liability which automobile insurance policy need not cover.

 The automobile policy need not insure any liability under the Workers’ Compensation Law nor any liability on account of bodily injury to an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of the motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

HISTORY: Former 1976 Code Section 56‑9‑900 [1962 Code Section 46‑750.39; 1963 (53) 526] recodified as Section 38‑77‑220 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Definition of “motor vehicle liability policy”, see Section 56‑9‑20.

Insurance policy for at least the minimum coverages specified in sections 38‑77‑140 through 38‑77‑230 and the benefits required under sections 38‑77‑240, 38‑77‑250, and 38‑77‑260, as satisfying the security requirements of the Motor Vehicle Registration and Financial Security provisions, see Section 56‑10‑20.

Mandatory imputing of any negligence or wilful misconduct of a minor when driving a motor vehicle to the person who signed the application for a permit or license, unless the minor is protected by insurance in the form and amounts required under this section, see Section 56‑1‑110.

Library References

Insurance 2735, 2748.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1474 to 1475, 1496.

RESEARCH REFERENCES

ALR Library

31 ALR 5th 116 , Uninsured and Underinsured Motorist Coverage: Validity, Construction, and Effect of Policy Provision Purporting to Reduce Coverage by Amount Paid or Payable Under Workers’ Compensation Law.

NOTES OF DECISIONS

In general 1

Set‑offs 2

1. In general

Permissive automobile user whose alleged negligence injured his employee was an “insured” within the meaning of statute permitting exclusion of coverage for liability under the Workers’ Compensation Law on account of bodily injury to an employee of the insured while engaged in the employment; the term “the insured” in the statute was not limited to the named insured. State Farm Mut. Auto. Ins. Co. v. James (S.C.App. 1999) 337 S.C. 86, 522 S.E.2d 345. Insurance 2748(1)

Reasonable exclusionary clauses which do not conflict with the legislative expression of the public policy of the State as revealed in the various motor vehicle insurance statutes are permitted; however, if a policy provision conflicts with a statutory mandate, the statute controls. State Farm Mut. Auto. Ins. Co. v. James (S.C.App. 1999) 337 S.C. 86, 522 S.E.2d 345. Insurance 2646

Insured’s employee was engaged in employment when fire burned him during attempt to start vehicle by pouring gasoline into carburator, and, thus, employee exclusion clauses of employer’s and vehicle owner’s policies barred liability coverage for injury to employee; employee acted at the direction of the employer and was being paid, and the truck was used to transport equipment to the job site. State Farm Mut. Auto. Ins. Co. v. James (S.C.App. 1999) 337 S.C. 86, 522 S.E.2d 345. Insurance 2748(1)

A provision in an automobile liability insurance policy excluding liability for bodily injury to “any employee of an insured arising out of his or her employment” was consonant with former Sections 56‑9‑20(7)(c) and 56‑9‑900. State Farm Mut. Auto. Ins. Co. v. North River Ins. Co. (S.C.App. 1986) 288 S.C. 374, 342 S.E.2d 627.

2. Set‑offs

Recovery of non‑domestic employee who was covered under employer’s automobile liability policy under policy’s mandatory uninsured motorist (UM) coverage could be reduced by, or offset against, the workers compensation benefits received by the employee; statute governing additional liability which automobile insurance policy need not cover permitted policy to exclude any liability under the Workers’ Compensation Law, statute permitted employer to exclude an employee, other than a domestic, all together from bodily injury under the policy, and no public policy was violated if employer who had provided employees with voluntary bodily injury coverage was permitted to offset the employee’s recovery under the policy against employee’s compensation benefits, as long as offset did not operate to make employee less than whole. Sweetser v. South Carolina Dept. of Ins. Reserve Fund (S.C. 2010) 390 S.C. 632, 703 S.E.2d 509. Insurance 2807

Section 38‑77‑220 allows an insurer the right to offset workers’ compensation benefits received by an employee of the insured; consequently, the terms of the underinsured motorist endorsement controlled in determining whether the employee was covered under the employer’s automobile insurance policy rather than the exclusion of workers’ compensation liability contained in the policy’s general liability provisions. South Carolina Farm Bureau Mut. Ins. Co. v. U.S. Fidelity & Guar. Ins. Co. (S.C.App. 1995) 320 S.C. 489, 465 S.E.2d 777.

Under the automobile insurance statutes (Section 38‑77‑220), an employer’s automobile insurer was entitled to offset workers’ compensation benefits against the underinsured motorist coverage provided to an injured employee pursuant to the terms of an automobile policy, with the offset to be applied against the total damages sustained once the employee was fully compensated for his injuries. Williamson v. U.S. Fire Ins. Co. (S.C. 1994) 314 S.C. 215, 442 S.E.2d 587.

**SECTION 38‑77‑230.** Certain payments under automobile insurance policy are not to be construed as admission or recognition of liability.

 No payment made under an automobile insurance policy of a claim against any insured thereunder arising from any accident or other event insured against for damage to or destruction of property owned by another person is to be construed as an admission of liability by the insured, or the insurer’s recognition of liability, with respect to any other claim arising from the same accident or event.

HISTORY: Former 1976 Code Section 56‑9‑910 [1962 Code Section 46‑750.40; 1966 (54) 2142] recodified as Section 38‑77‑230 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Definition of “motor vehicle liability policy”, see Section 56‑9‑20.

Insurance policy for at least the minimum coverages specified in sections 38‑77‑140 through 38‑77‑230 and the benefits required under sections 38‑77‑240, 38‑77‑250, and 38‑77‑260, as satisfying the security requirements of the Motor Vehicle Registration and Financial Security provisions, see Section 56‑10‑20.

Library References

Insurance 3114.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1219 to 1220, 2349.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 78, Requirement of Liability Policy.

**SECTION 38‑77‑250.** Release of coverage information upon written request of claimant’s attorney; confidentiality.

 (A) Every insurer providing automobile insurance coverage in this State and which is or may be liable to pay all or a part of any claim shall provide, within thirty days of receiving a written request from the claimant’s attorney, a statement, under oath, of a corporate officer or the insurer’s claims manager stating with regard to each known policy of nonfleet private passenger insurance issued by it, the name of the insurer, the name of each insured, and the limits of coverage. The insurer may provide a copy of the declaration page of each such policy in lieu of providing such information. The request shall set forth under oath the specific nature of the claim asserted and shall be mailed to the insurer by certified mail or statutory overnight delivery. The request also must state that the attorney is authorized to make such a request and must be accompanied by a copy of the incident report from which the claim is derived.

 (B) If the request provided in subsection (A) contains information insufficient to allow compliance, the insurer upon whom the request was made may so state in writing, stating specifically what additional information is needed and such compliance shall constitute compliance with this section.

 (C) The information provided to a claimant or his attorney as required by subsection (A) of this section shall not create a waiver of any defenses to coverage available to the insurer and shall not be admissible in evidence.

 (D) The information provided to a claimant or his attorney as required by subsection (A) shall be amended upon the discovery of facts inconsistent with or in addition to the information provided.

 (E) The provisions of this section do not require disclosure of limits for fleet policy limits, umbrella coverages, or excess coverages.

 (F) The information received pursuant to this section is confidential and must not be disclosed to any outside party. Upon final disposition of the case, the claimant’s attorney must destroy all information received pursuant to this section. The court must impose sanctions for a violation of this subsection.

HISTORY: 2011 Act No. 52, Section 4, eff January 1, 2012.

Editor’s Note

2011 Act No. 52, Section 7, provides as follows:

“SECTION 7. This act takes effect January 1, 2012, and applies to all actions that accrue on or after the effective date except the provisions of SECTION 3 do not apply to any matter pending on the effective date of this act.”

Library References

Insurance 1580, 3141.

Westlaw Topic No. 217.

**SECTION 38‑77‑260.** General release, assignment of claims, and like documents.

 (a) No person making payment or settlement of benefits for which the person is obligated under Sections 38‑77‑240 to 38‑77‑340 and no insurer may in connection with the payment or settlement of a claim for these first‑party benefits or for any first‑party benefits arising under an automobile insurer’s coverage including, but not limited to, medical payments and uninsured motorist coverage, obtain or attempt to obtain from the claimant receiving the benefits any general release, covenant not to sue, assignment, article of subrogation, or any other instrument or document which purports to assign to that person or insurer all or any portion of any claim which the claimant may have against any other party or his insurer arising out of legal liability or which purports to constitute an agreement by the claimant that any amount received as first party benefits must be deducted from any settlement or judgment recoverable from any other party or his insurer arising out of legal liability. Every such purported general release, covenant not to sue, or similar instrument is null and void unless (1) the insurer or other person has delivered to the person entitled to the first‑party benefits, or his legal representative, a disclosure statement, on a form approved by the director or his designee, fully and fairly disclosing the fact that the first‑party benefits payable under Sections 38‑77‑240 to 38‑77‑340 are contractual obligations of the insurer or other person and are entirely separate and distinct from any obligation which the insurer or other person may have because of the legal liability of any person and that the person receiving the first‑party benefits is not required and may not be required to release or relinquish any rights which he may have arising out of the legal liability of any person in order to receive payment or settlement of the first‑party benefits arising under Sections 38‑77‑240 to 38‑77‑340 and (2) an interval of not less than three days has elapsed between the later of (i) the delivery of the disclosure statement or (ii) the payment or settlement of the first‑party benefits and the execution of the general release, covenant not to sue, or similar instrument.

 (b) [Repealed]

 (c) [Repealed]

HISTORY: Former 1976 Code Section 56‑11‑130 [1962 Code Section 46‑750.113; 1974 (58) 2718] recodified as Section 38‑77‑260 by 1987 Act No. 155, Section 1; 1989 Act No. 148, Section 57; 1993 Act No. 181, Section 809.

CROSS REFERENCES

Insurance policy for at least the minimum coverages specified in sections 38‑77‑140 through 38‑77‑230 and the benefits required under sections 38‑77‑240, 38‑77‑250, and 38‑77‑260, as satisfying the security requirements of the Motor Vehicle Registration and Financial Security provisions, see Section 56‑10‑20.

Requirement that every risk retention group, its agents and its representatives comply with the claims settlement practices laws, see Section 38‑87‑40.

Library References

Insurance 2764, 2804, 2844, 3366, 3383, 3390, 3441, 3520, 3521.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1659 to 1661, 1879 to 1880, 1882 to 1884, 1937, 1941, 1959, 1989, 1993, 1999, 2002, 2010 to 2012, 2023 to 2024, 2158, 2202 to 2204, 2213 to 2216, 2218, 2223, 2291 to 2303, 2322 to 2328.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 100, Requirement for Registered Vehicles.

NOTES OF DECISIONS

In general 1

Purpose 2

1. In general

Under the language of subsection (b) of former section, a setoff was required only by those persons who had already received benefits from their own insurance carrier. Moultrie v. North River Ins. Co., Inc. (S.C. 1978) 272 S.C. 53, 249 S.E.2d 158.

The only permissible subrogation under PIP coverage was described in former Code 1962 Section 46‑750.113 [Code 1976 Section 56‑11‑130]. Tillotson v. State Farm Mut. Auto. Ins. Co. (S.C. 1977) 268 S.C. 248, 233 S.E.2d 295.

Pedestrian who made claim for Personal Injury Protection [PIP] from own insurer after being struck by an automobile cannot be compelled, as a condition to receiving payment, to sign a loan receipt giving his insurer subrogation rights in the event the claimant recovers from the tortfeasor. (Decided under former law.) Tillotson v. State Farm Mut. Auto. Ins. Co. (S.C. 1977) 268 S.C. 248, 233 S.E.2d 295.

2. Purpose

The purpose of former Code 1962 Section 46‑750.113(b) [Code 1976 Section 56‑11‑130(b)] was to prevent a tortfeasor’s insurance carrier from paying twice for the same PIP damages under former Code 1962 Section 46‑750.111 [Code 1976 Section 56‑11‑110]. It did not permit other subrogations, such as subrogation for PIP payments received from the victim’s insurer under former Code 1962 Section 46‑750.112 [Code 1976 Section 56‑11‑120]. Tillotson v. State Farm Mut. Auto. Ins. Co. (S.C. 1977) 268 S.C. 248, 233 S.E.2d 295.

**SECTION 38‑77‑270.** Christian Science or any licensed healing art care and treatment.

 Nothing in this title prohibits an insurer from providing Christian Science or any licensed healing art care and treatment. Any Christian Science or any licensed healing art care and treatment constitutes economic loss.

HISTORY: Former 1976 Code Section 56‑11‑140 [1962 Code Section 46‑750.114; 1974 (58) 2718; 1987 Act No. 166, Section 4; repealed by 1987 Act No. 155, Section 25] recodified as Section 38‑77‑270 by 1987 Act No. 155, Section 1 [amendment to former 1976 Code Section 56‑11‑140 by 1987 Act No. 166, Section 4, transferred to Section 38‑77‑270 by 1987 Act No. 155, Section 24]; 1988 Act No. 399, Section 7.

CROSS REFERENCES

Declaration that requiring certain types of insurance as condition for loan constitutes unfair trade practice, see Section 39‑5‑35.

Library References

Insurance 2831(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1344 to 1347, 2186, 2191, 2195 to 2199.

**SECTION 38‑77‑280.** Collision coverage; comprehensive coverage.

 (A) Any automobile insurer may, at its own election, make collision coverage and either comprehensive or fire, theft, and combined additional coverage available to an insured or qualified applicant who requests the coverage at such rates and under such rules as have been approved by the director. Automobile insurers contracted pursuant to Section 38‑77‑590 for risks written by them through producers assigned by the facility governing board pursuant to that section may make available collision coverage and either comprehensive or fire, theft, and combined additional coverage available to an insured or qualified applicant who requests the coverage. Notwithstanding Section 38‑77‑590(g), a designated producer may have one or more voluntary outlets for automobile physical damage.

 (B) Any automobile physical damage insurance coverage deductible or policy deductible does not apply to automobile safety glass.

 (C) Notwithstanding Section 38‑77‑111, automobile physical damage insurance coverage may be ceded to the facility. However, automobile physical damage coverages ceded to the facility by an insurer or servicing carrier must be at the facility physical damage rate as defined in Section 38‑77‑30.

 (D) In determining the premium rates to be charged on physical damage coverage or single interest collision coverage, it is unlawful to consider race, color, creed, religion, national origin, ancestry, location of residence in this State, economic status, or income level. Nor may an insurer, agent, or broker refuse to write or renew physical damage insurance coverage or single interest collision coverage based upon race, color, creed, religion, national origin, ancestry, location of residence in this State, economic status, or income level. However, nothing in this subsection may preclude the use of a territorial plan approved by the director. If the director of the Department of Insurance or the director’s designee finds that an insurer, agent, or broker is participating in a pattern of unfair discrimination, the director or the director’s designee may impose a fine of up to two hundred thousand dollars. The director or the director’s designee at any time may examine an insurer, agent, or broker to enforce this section. The expense of examination must be paid by the insurer, agent, or broker.

HISTORY: Former 1976 Code Section 38‑37‑935 [1987 Act No. 166, Section 10] recodified as Section 38‑77‑280 by 1987 Act No. 155, Section 24. 1988 Act No. 399 Section 8; 1988 Act No. 641, Section 5; 1989 Act No. 148, Section 49; 1990 Act No. 557, Section 1; 1991 Act No. 113, Section 3; 1993 Act No. 181, Section 810; 1996 Act No. 326, Section 7; 1997 Act No. 154, Section 14.

CROSS REFERENCES

Mandatory imputing of any negligence or wilful misconduct of a minor when driving a motor vehicle to the person who signed the application for a permit or license, unless the minor is protected by insurance in the form and amounts required under this section, see Section 56‑1‑110.

Purpose of automobile insurance laws to make insurance available to applicants or insureds who have satisfied the same objective standards as established in this section, see Section 38‑77‑10.

Requirement that an applicant or existing policyholder possess a valid driver’s license before issuance of automobile insurance policy, see Section 38‑77‑112.

Library References

Insurance 2696 to 2733.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1290, 1454 to 1473, 1727 to 1730, 1732 to 1734, 1979 to 1980.

**SECTION 38‑77‑320.** Enforcement of article; promulgation of regulations.

 The department has the authority to issue and promulgate all necessary regulations not inconsistent with the provisions of this article to enforce, carry out, and make effective this article and to review all policies of insurance issued, renewed, sold, or delivered in this State to determine whether they are in compliance with law and the regulations promulgated under the law.

HISTORY: Former 1976 Code Section 56‑11‑180 [1962 Code Section 46‑750.118; 1974 (58) 2718] recodified as Section 38‑77‑320 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 811.

**SECTION 38‑77‑330.** Denial of claim or of delay of payment; payments due immediately; consequences of unnecessary delay.

 No claim for damage to property resulting from a motor vehicle accident may be denied or payment delayed because the person who is entitled to payment or any other person has a claim pending for bodily injury which may have arisen from the same or any other accident. Whenever an insurer has the appropriate motor vehicle coverage for the party liable and there is no dispute as to either the liability for the payment of the full property damages or the amount of monetary equivalent of these damages, then the amount payable is immediately due and owing and must be paid promptly. If the director or his designee determines that the payment of the amount was unnecessarily delayed, he may assess interest on the amount at the rate of eight percent per annum.

HISTORY: Former 1976 Code Section 56‑11‑240 [1962 Code Section 46‑750.124; 1974 (58) 2718; 1987 Act No. 155, Section 25] recodified as Section 38‑77‑330 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 812.

Library References

Insurance 3360, 3395.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1873, 1982, 2138 to 2143, 2211, 2309, 2350.

**SECTION 38‑77‑340.** Agreement to exclude designated natural person from coverage.

 Notwithstanding the definition of “ insured” in Section 38‑77‑30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name. The agreement, when signed by the named insured, is binding upon every insured to whom the policy applies and any substitution or renewal of it. However, no natural person may be excluded unless the named insured declares in the agreement that (1) the driver’s license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded.

HISTORY: Former 1976 Code Section 56‑11‑250 [1962 Code Section 46‑750.125; 1974 (58) 2718; 1987 Act No. 166, Section 20; 1987 Act No. 155, Section 25] recodified as Section 38‑77‑340 by 1987 Act No. 155, Section 1 [amendment to former 1976 Code Section 56‑11‑250 by 1987 Act No. 166, Section 20, transferred to Section 38‑77‑340 by 1987 Act No. 155, Section 24]; 1988 Act No. 641, Section 2; 1993 Act No. 181, Section 813A; 1993 Act No. 181, Section 813B; 1996 Act No. 459, Section 63; 2004 Act No. 241, Section 8, eff January 1, 2005.

Library References

Insurance 2660.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1344, 1491 to 1495, 1497, 1504, 2161 to 2162, 2165 to 2166, 2253 to 2256, 2259.

RESEARCH REFERENCES

ALR Library

33 ALR 5th 121 , Validity, Construction, and Application of “Named Driver Exclusion” in Automobile Insurance Policy.

Encyclopedias

S.C. Jur. Automobiles and Other Motor Vehicles Section 106, Operation of Uninsured Vehicle Prohibited.

Treatises and Practice Aids

Automobile Liability Insurance Section 23:8, Liability Exclusions: Creating Uninsured Motorists; Activating Uninsured Motorist Coverage‑Named‑Driver Exclusion.

Automobile Liability Insurance Section 6:12, Named Driver Exclusion.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Insurance Law. 38 S.C. L. Rev. 137 (Autumn 1986).

NOTES OF DECISIONS

In general 1

Construction and application 2

Purpose 3

1. In general

Under South Carolina’s named insured exclusion statute, named insured was excluded from coverage under commercial automobile policy issued to named insured and his business, and thus insurer had no duty to defend or indemnify named insured in underlying personal injury action, even though named insured answered “no” to application question asking whether “applicant” was currently insured, since “applicant” was named insured’s business, and named insured executed exclusion agreement for himself and represented that he had coverage through another insurance policy or other security. United Financial Cas. Co. v. Bostic, 2011, 782 F.Supp.2d 179. Insurance 2660.5

Former Section 56‑11‑250 was intended to allow named insured to obtain lower premium rate by excluding member of his household who has bad driving record, otherwise included pursuant to former Section 56‑9‑810, and such exclusion cannot apply to named insured and exclusion of named insured operates as cancellation of policy. Lovette v. U. S. Fidelity and Guaranty Co. (S.C. 1980) 274 S.C. 597, 266 S.E.2d 782.

2. Construction and application

The Motor Vehicle Financial Responsibility Act’s (MVFRA) mandate that “the liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by the motor vehicle liability policy occurs” did not permit recovery by occupants of second vehicle of the minimum limits liability coverage on first vehicle’s motor vehicle liability policy, when a person named in a policy provision pursuant to statutory provision that allowed for the exclusion of a designated natural person from coverage was operating the first motor vehicle at the time of the accident. Lincoln General Ins. Co. v. Progressive Northern Ins. Co. (S.C.App. 2013) 406 S.C. 534, 753 S.E.2d 437. Insurance 2660.5

3. Purpose

The purpose of statutory provision that allows the owner of a family automobile policy to exclude coverage while another family member operates a motor vehicle is to alleviate the problem often faced by the owner, who has a relatively safe driving record but is forced to pay higher premiums because another member of the family is by definition also included in the policy coverage. Lincoln General Ins. Co. v. Progressive Northern Ins. Co. (S.C.App. 2013) 406 S.C. 534, 753 S.E.2d 437. Insurance 2661

**SECTION 38‑77‑341.** Unfair trade practices.

 It is an unfair trade practice as defined in Section 39‑5‑20 to:

 (1) knowingly and wilfully make or cause to be made any false statement or representation of a material fact for use in an application for payment or for use in determining the right to payment under this chapter;

 (2) submit or cause to be submitted bills or requests for payment containing charges for services rendered which are substantially in excess of the person’s customary charges or in applicable cases substantially in excess of the person’s costs for such services, unless there is good cause for the bills or requests containing the charges or costs;

 (3) submit bills or requests for payment for work covered by insurance which are in excess of those submitted for similar work not covered by insurance;

 (4) submit bills or requests for payment which are inflated for the purpose of relieving the insured of the obligation for making a payment for such goods and services as a result of a deductible or copayment clause; or

 (5) in the case of a health care facility, as defined in Section 44‑7‑130, and a health care provider licensed pursuant to Title 40, charge a fee for:

 (a) the search for and duplication of a medical record, in excess of sixty‑five cents per page for the first thirty pages and fifty cents per page for all other pages;

 (b) searching and handling a medical record in excess of fifteen dollars per request plus actual postage and applicable sales tax;

 (c) records copied at the request of a health care provider or for records sent to a health care provider at the request of a patient for the purpose of continuing medical care;

 (d) more than the actual cost of reproduction of an X‑ray. Actual cost means the cost of materials and supplies used to duplicate the X‑ray and the labor and overhead costs associated with the duplication.

HISTORY: 1989 Act No. 148, Section 18; 1994 Act No. 468, Section 4.

Library References

Insurance 3181.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1759, 1804 to 1806, 1856, 1858 to 1862, 1864 to 1865, 1867 to 1871.

Attorney General’s Opinions

This section is applicable only to those medical records arising out of an automobile insurance claim. S.C. Op.Atty.Gen. (March 16, 1990) 1990 WL 599234.

**SECTION 38‑77‑350.** Form to be used when optional coverages are offered.

 (A) The director or his designee shall approve a form that automobile insurers shall use in offering optional coverages required to be offered pursuant to law to applicants for automobile insurance policies. This form must be used by insurers for all new applicants. The form, at a minimum, must provide for each optional coverage required to be offered:

 (1) a brief and concise explanation of the coverage;

 (2) a list of available limits and the range of premiums for the limits;

 (3) a space to mark whether the insured chooses to accept or reject the coverage and a space to state the limits of coverage the insured desires;

 (4) a space for the insured to sign the form that acknowledges that the insured has been offered the optional coverages;

 (5) the mailing address and telephone number of the insurance department that the applicant may contact if the applicant has questions that the insurance agent is unable to answer.

 (B) If this form is signed by the named insured, after it has been completed by an insurance producer or a representative of the insurer, it is conclusively presumed that there was an informed, knowing selection of coverage and neither the insurance company nor an insurance agent is liable to the named insured or another insured under the policy for the insured’s failure to purchase optional coverage or higher limits.

 (C) An automobile insurer is not required to make a new offer of coverage on any automobile insurance policy which renews, extends, changes, supersedes, or replaces an existing policy.

 (D) Compliance with this section satisfies the insurer and agent’s duty to explain and offer optional coverages and higher limits and no person, including, but not limited to, an insurer and insurance agent is liable in an action for damages on account of the selection or rejection made by the named insured.

 (E) If the insured fails or refuses to return an executed offer form within thirty days to the insurer, the insurer shall add on uninsured motorist and underinsured motorist coverages with the same policy limits as the insured’s liability limits.

HISTORY: 1989 Act No. 148, Section 22; 1994 Act No. 496, Section 2; 1997 Act No. 154, Section 15; 2006 Act No. 395, Section 1, eff June 14, 2006.

Editor’s Note

2013 Act No. 47, Section 5, provides as follows:

“SECTION 5. An automobile liability insurer is not required to make a new offer of coverage or obtain a new prescribed form on any automobile insurance policy, within the contemplation of Section 38‑77‑350, to comply with statutory changes to the minimum required limits set forth in Section 38‑77‑140 and Section 38‑77‑150.”

Library References

Insurance 2775, 2778, 2820, 2823.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2159, 2235 to 2236, 2238, 2240 to 2241, 2244 to 2247.

RESEARCH REFERENCES

ALR Library

4 ALR 7th 2 , Construction and Application of Uniform Electronic Transactions Act.

55 ALR 3rd 216 , Construction of Statutory Provision Governing Rejection or Waiver of Uninsured Motorist Coverage.

Encyclopedias

S.C. Jur. Appeal and Error Section 122, Issues of Law.

Treatises and Practice Aids

Automobile Liability Insurance Section 19:10, Coverage Rejection or Selection of Other Limit‑Form of Rejection.

Automobile Liability Insurance Section 19:12, Coverage Rejection or Selection of Other Limits‑Renewal, Replacement, and Substitute Policies.

Automobile Liability Insurance Section 19:17, Optional Uninsured Motorist Coverages‑”Offer” Requirement.

NOTES OF DECISIONS

In general 1

Amount of coverage offered 7

Approval by Department or Commissioner 4

Construction with other laws 2

Insureds 6

Internet 9.5

Meaningful offer 5

Presumption of informed selection 3

Presumptions and burden of proof 10

Reformation 9

Renewal 8

Review 12

Sufficiency of evidence 11

1. In general

Insurance companies should be able to rely on the Section 38‑77‑350 form as satisfying the statutory requirements concerning offers of uninsured motorist coverage. Holt v. State Farm Mut. Auto. Ins. Co., 1994, 870 F.Supp. 658.

An offer of underinsured motorist (UIM) insurance coverage by the insurer that fails to comply with the statutory requirements outlining what such an offer must entail has the legal effect of no offer at all. Ray v. Austin (S.C. 2010) 388 S.C. 605, 698 S.E.2d 208. Insurance 2775

Automobile insurer was not required to make a new offer of underinsured motorist (UIM) coverage after insured added car to policy. Atkins v. Horace Mann Ins. Co. (S.C.App. 2008) 376 S.C. 625, 658 S.E.2d 106. Insurance 2775

If the form for selecting underinsured motorist (UIM) coverage does not comply with the statutory requirements for a meaningful offer, the insurer may not benefit from the protections of the statute. Progressive Cas. Ins. Co. v. Leachman (S.C. 2005) 362 S.C. 344, 608 S.E.2d 569. Insurance 2779(1)

A noncomplying offer of underinsured motorist (UIM) coverage has the legal effect of no offer at all. Progressive Cas. Ins. Co. v. Leachman (S.C. 2005) 362 S.C. 344, 608 S.E.2d 569. Insurance 2779(1)

Automobile insurer had no obligation to make another offer of underinsured motorist (UIM) coverage after insured contacted it to drop the UIM coverage. United Services Auto. Ass’n v. Litchfield (S.C.App. 2003) 356 S.C. 582, 590 S.E.2d 47, rehearing denied, certiorari denied. Insurance 2778

2. Construction with other laws

Thirty‑day statutory time period to execute offer form rejecting underinsured motorist (UIM) coverage is triggered by provision of offer forms to new applicants, rather than by the provision of offer forms to existing policyholders, an event not contemplated by statute. Government Employees Ins. Co. v. Draine (S.C.App. 2010) 389 S.C. 586, 698 S.E.2d 866. Insurance 2778

Statute specifying form for automobile insurers to use when offering underinsured motorist (UIM) coverage and other optional coverages does not modify statute requiring automobile insurers to offer UIM coverage up to limits of liability coverage; in other words, automobile insurers still must offer UIM coverage below minimum liability limits. Butler v. Unisun Ins. Co. (S.C. 1996) 323 S.C. 402, 475 S.E.2d 758, rehearing denied. Insurance 2775

Sections 38‑77‑160 and 38‑77‑350 cover the same subject matter (the offer of optional insurance coverages for automobiles) and therefore must be construed together and as explanatory of each other; statutes that deal with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result. Osborne v. Allstate Ins. Co. (S.C.App. 1995) 319 S.C. 479, 462 S.E.2d 291, rehearing denied, certiorari granted.

3. Presumption of informed selection

An automobile insurer’s noncompliance with statutory provision that requires that an application form required under the statute be properly completed and executed by the named insured before an insurer is entitled to a conclusive presumption that it has made a meaningful offer of underinsured motorist (UIM) coverage does not render the use of the statutory form a noncomplying offer of coverage, but rather, simply means that the trial court must make the factual determination of whether the insurer made a meaningful offer. Cohen v. Progressive Northern Ins. Co. (S.C.App. 2013) 402 S.C. 66, 737 S.E.2d 869. Insurance 2779(1)

Even where an insurer is not entitled to the presumption that it made a meaningful offer of uninsured/underinsured motorist benefits, it may prove the sufficiency of its offer by showing that it complied with State Farm Mutual Automobile Insurance v. Wannamaker. Code 1976, Section 38‑77‑350(A). Wiegand v. U.S. Auto. Ass’n (S.C. 2011) 391 S.C. 159, 705 S.E.2d 432. Insurance 2775; Insurance 2812

Automobile insurer’s form relating to underinsured motorist coverage met requirements for making meaningful offer of such coverage to insured, under statute in effect at time form was signed by insured, and therefore, insurer was entitled to statutory presumption that meaningful offer was made to insured, in action brought by personal representative of insured’s estate following denial of request for underinsured motorist benefits; form contained brief and concise explanation of coverage, what coverage paid for, who received compensation, and definition of “underinsured motor vehicle,” form identified limits that insurer was approved to sell by Department of Insurance, along with specific language on how to decrease or increase coverage, and there was space for insured to mark whether he chose to accept or reject such coverage, to indicate limits of coverage sought, and to sign form. Wiegand v. U.S. Auto. Ass’n (S.C. 2011) 391 S.C. 159, 705 S.E.2d 432. Insurance 2775; Insurance 2778; Insurance 2812

Automobile insurer could not be held liable for insured’s failure to purchase underinsured motorist (UIM) coverage pursuant to statutory provisions that created a presumption that insured made a knowing and informed decision rejecting coverage when he failed to return offer of UIM coverage for new applicants, and which provided that an insurer’s compliance with statute satisfied insurer’s obligation to insured, and that insurer could not be held liable for insured’s failure to elect UIM coverage. Government Employees Ins. Co. v. Draine (S.C.App. 2010) 389 S.C. 586, 698 S.E.2d 866. Insurance 2775; Insurance 2779(1); Insurance 2812

Automobile insurer was not entitled to statutory presumption that a meaningful offer of underinsured motorist (UIM) coverage was offered to insured, where form used by insurer to offer UIM coverage to insured contained three blanks for insurer to fill in commonly sold limits of UIM coverage along with corresponding increases in premium for selecting such coverage, and insurer failed to fill in the blanks. Ray v. Austin (S.C. 2010) 388 S.C. 605, 698 S.E.2d 208. Insurance 2812

If form for selecting or rejecting uninsured or underinsured motorist (UM/UIM) coverage does not comply with statutory requirements for form to offer optional coverage, the insurer may not benefit from its protections, such as conclusive presumption of informed, knowing selection of coverage. Grinnell Corp. v. Wood (S.C.App. 2008) 378 S.C. 458, 663 S.E.2d 61, rehearing denied, certiorari granted, reversed 389 S.C. 350, 698 S.E.2d 796. Insurance 2778

If automobile insurer does not have benefit of conclusive statutory presumption of a meaningful offer of underinsured motorist (UIM) coverage, the insurer bears the burdens of proof and persuasion in demonstrating that a meaningful offer was made to the insured. Floyd v. Nationwide Mut. Ins. Co. (S.C. 2005) 367 S.C. 253, 626 S.E.2d 6, rehearing denied. Insurance 2813

Offer form that insurance agent or employee filled in while named insured was present was not “properly completed and executed by the named insured,” and, thus, conclusive statutory presumption of a meaningful offer of underinsured motorist (UIM) coverage if form was properly completed and executed by the named insured did not apply; the legislature intended for the insured herself to personally mark, select, and sign the UIM offer form. Floyd v. Nationwide Mut. Ins. Co. (S.C. 2005) 367 S.C. 253, 626 S.E.2d 6, rehearing denied. Insurance 2775; Insurance 2778

An insurer enjoys a presumption it made a meaningful offer of underinsured motorist (UIM) coverage when a form is executed in compliance with statutory requirements; the insurer may not benefit from the protections of the statute when the form does not comply with the statute. Floyd v. Nationwide Mut. Ins. Co. (S.C. 2005) 367 S.C. 253, 626 S.E.2d 6, rehearing denied. Insurance 2775; Insurance 2812

An automobile insurer enjoys a presumption that it made a meaningful offer of underinsured motorist (UIM) coverage, if the insured executes a form that complies with statute. Progressive Cas. Ins. Co. v. Leachman (S.C. 2005) 362 S.C. 344, 608 S.E.2d 569. Insurance 2812

Automobile insurer did not enjoy the statutory presumption that it made a meaningful offer of underinsured motorist (UIM) coverage, where it did not fill in blanks listing premium amounts for the various limits. McDowell v. Travelers Property & Cas. Co. (S.C.App. 2003) 357 S.C. 118, 590 S.E.2d 514, rehearing denied. Insurance 2812

Under South Carolina law, insurer was not entitled to a statutory presumption that it made a meaningful offer of underinsured motorist (UIM) coverage where it failed to complete a form with “a list of available limits and the range of premiums for the limits,” as required by statute. McWhite v. ACE American Ins. Co. (C.A.4 (S.C.) 2011) 412 Fed.Appx. 584, 2011 WL 674722, Unreported. Insurance 2812

Under South Carolina law, automobile insurer was not entitled to conclusive presumption that it made meaningful offer of uninsured motorist (UIM) coverage, even though insured signed forms that used state‑approved format and met statutory requirements, where insured failed to return forms to insurer within statutory time limit. Croft v. Old Republic Ins. Co. (C.A.4 (S.C.) 2007) 233 Fed.Appx. 262, 2007 WL 1455138, Unreported. Insurance 2812

4. Approval by Department or Commissioner

The Department of Insurance’s approval of an insurer’s form regarding an offer of uninsured/underinsured motorist coverage alone is not dispositive of whether a form constituted a meaningful offer of the same. Wiegand v. U.S. Auto. Ass’n (S.C. 2011) 391 S.C. 159, 705 S.E.2d 432. Insurance 2775

Form that is approved by the Department of Insurance for selecting uninsured or underinsured motorist (UM/UIM) coverage does not necessarily constitute a meaningful offer. Grinnell Corp. v. Wood (S.C.App. 2008) 378 S.C. 458, 663 S.E.2d 61, rehearing denied, certiorari granted, reversed 389 S.C. 350, 698 S.E.2d 796. Insurance 2775; Insurance 2778

A form does not necessarily constitute a meaningful offer of underinsured motorist (UIM) coverage simply because it was approved by the Department of Insurance. Floyd v. Nationwide Mut. Ins. Co. (S.C. 2005) 367 S.C. 253, 626 S.E.2d 6, rehearing denied. Insurance 2775

A form for selecting underinsured motorist (UIM) coverage does not necessarily constitute a meaningful offer simply because it was approved by the Department of Insurance. Progressive Cas. Ins. Co. v. Leachman (S.C. 2005) 362 S.C. 344, 608 S.E.2d 569. Insurance 2775; Insurance 2778

If a form offering of underinsured motorist (UIM) coverage and executed by policyholder does not adequately offer UIM coverage up to the limits of liability coverage, as required by statute, the fact that the form was approved by the Department of Insurance is not dispositive on question of whether policy will be reformed to include UIM coverage. Tucker v. Allstate Ins. Co. (S.C.App. 1999) 337 S.C. 128, 522 S.E.2d 819. Insurance 1882; Insurance 2779(1)

If an insurer’s form offering underinsured motorist (UIM) coverage fails to contain provisions similar to the Insurance Commissioner’s form or fails to comply with statutory requirements, the insurer is not entitled to protection, even if the Commissioner approved the insurer’s form. Wilkes v. Freeman (S.C.App. 1999) 334 S.C. 206, 512 S.E.2d 530, rehearing denied, certiorari denied. Insurance 2775; Insurance 2778

An insurer is not entitled to the protections afforded by Section 38‑77‑350(B) where, although the form offer of underinsured motorist coverage was approved by the Insurance Commissioner, it does not contain the identical provisions of the Commissioner’s SCDI Form Number 2006 and does not comply with the requirements of Sections 38‑77‑160 and 38‑77‑350(A). Osborne v. Allstate Ins. Co. (S.C.App. 1995) 319 S.C. 479, 462 S.E.2d 291, rehearing denied, certiorari granted.

The Insurance Commissioner has discretion to approve the sufficiency of offers of underinsured motorist (UIM) coverage under Section 38‑77‑350; however, the commissioner has no discretion to approve offers that do not make it clear to applicants that they may obtain UIM coverage for amounts less than the minimum liability coverages required by Section 38‑77‑160. Osborne v. Allstate Ins. Co. (S.C.App. 1995) 319 S.C. 479, 462 S.E.2d 291, rehearing denied, certiorari granted. Insurance 2775

The trial court erred in concluding that an insurer was conclusively presumed to have made a valid offer of Underinsured motorist (UIM) coverage simply because the form which offered the coverage was approved by the Insurance Commissioner; consequently, even though the form of the insurer’s offer had been approved by the commissioner, the insurer’s offer of UIM coverage was ineffective because it did not indicate to the insureds that UIM coverage could be obtained in amounts less than the minimum liability limits of their policy. Osborne v. Allstate Ins. Co. (S.C.App. 1995) 319 S.C. 479, 462 S.E.2d 291, rehearing denied, certiorari granted.

5. Meaningful offer

Automobile insurer made meaningful offer of underinsured motorist coverage to insured, in compliance with requirements under statute in effect at time form was signed; form complied with requirement for meaningful offer under statute in effect at time insured completed form, box contained in form that indicated rejection of coverage by insured was checked, insured signed form, form was processed by insurer and never returned to insured to complete, insured was insured by same insurer for 15 years, during which time insured never indicated that he desired underinsured motorist coverage or that mistake had been made on form offer. Wiegand v. U.S. Auto. Ass’n (S.C. 2011) 391 S.C. 159, 705 S.E.2d 432. Insurance 2775; Insurance 2778

The insurer is required to make a meaningful offer of underinsured (UIM) coverage to commercial insureds even if the insured has expressed a desire not to purchase such coverage; one who is ignorant and unwary might require more explanation than a sophisticated applicant. Ray v. Austin (S.C. 2010) 388 S.C. 605, 698 S.E.2d 208. Insurance 2775

The purpose of requiring automobile insurers to make a meaningful offer of additional uninsured (UM) or underinsured (UIM) coverage is for insureds to know their options and to make an informed decision as to which amount of coverage will best suit their needs. Ray v. Austin (S.C. 2010) 388 S.C. 605, 698 S.E.2d 208. Insurance 2775

In order for an insurer to make a meaningful offer of underinsured motorist (UIM) coverage: (1) the insurer’s notification process must be commercially reasonable, whether oral or in writing; (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms; (3) the insurer must intelligibly advise the insured of the nature of the optional coverage; and (4) the insured must be told that optional coverages are available for an additional premium. Ray v. Austin (S.C. 2010) 388 S.C. 605, 698 S.E.2d 208. Insurance 2775

Automobile insurer made a meaningful offer of underinsured (UIM) coverage to its insured, even though it failed to specify the exact amount of coverage offered, instead advising insured it had the option of purchasing coverage up to the limits of its liability coverage, where insurer informed insured of its option to purchase UIM coverage, explained the nature of UIM coverage through oral discussions and in writing, and insured made a business decision to refuse UIM coverage with full awareness of the nature of the coverage it was rejecting. Ray v. Austin (S.C. 2010) 388 S.C. 605, 698 S.E.2d 208. Insurance 2775

If a form for selecting or rejecting uninsured or underinsured motorist (UM/UIM) coverage fails statutory requirements for form to offer optional coverages, it does not meet requirements of a meaningful offer without evidence outside of the offer form; the statutory requirements are a minimum. Grinnell Corp. v. Wood (S.C.App. 2008) 378 S.C. 458, 663 S.E.2d 61, rehearing denied, certiorari granted, reversed 389 S.C. 350, 698 S.E.2d 796. Insurance 2775; Insurance 2778

An insurer’s failure to comply with statutory requirements for form to offer optional uninsured or underinsured motorist (UM/UIM) coverage does not necessarily presage the lack of a meaningful offer; the insurer still has an opportunity to prove offer was meaningful. Grinnell Corp. v. Wood (S.C.App. 2008) 378 S.C. 458, 663 S.E.2d 61, rehearing denied, certiorari granted, reversed 389 S.C. 350, 698 S.E.2d 796. Insurance 2775; Insurance 2813

Automobile insurer’s unnecessary offer of underinsured motorist (UIM) coverage after insured added car to existing policy had to be a meaningful offer. Atkins v. Horace Mann Ins. Co. (S.C.App. 2008) 376 S.C. 625, 658 S.E.2d 106. Insurance 2775

To determine whether an automobile insurer has complied with its duty to offer optional coverages and thus make a meaningful offer of underinsured motorist (UIM) coverage, the court must consider the following factors: (1) the insurer’s notification process must be commercially reasonable, whether oral or in writing; (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms; (3) the insurer must intelligibly advise the insured of the nature of the option coverage: and (4) the insured must be told that optional coverages are available for an additional premium. Atkins v. Horace Mann Ins. Co. (S.C.App. 2008) 376 S.C. 625, 658 S.E.2d 106. Insurance 2775

The purpose of requiring automobile insurers to make a meaningful offer of additional uninsured or underinsured motorist (UM/UIM) coverages is for insureds to know their options and to make an informed decision as to which amount of coverage will best suit their needs. Floyd v. Nationwide Mut. Ins. Co. (S.C. 2005) 367 S.C. 253, 626 S.E.2d 6, rehearing denied. Insurance 2775

In order for an insurer to make a meaningful offer of underinsured motorist (UIM) coverage, (1) the insurer’s notification process must be commercially reasonable, whether oral or in writing; (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms; (3) the insurer must intelligibly advise the insured of the nature of the optional coverage; and (4) the insured must be told that optional coverages are available for an additional premium. Floyd v. Nationwide Mut. Ins. Co. (S.C. 2005) 367 S.C. 253, 626 S.E.2d 6, rehearing denied. Insurance 2775

Insurer made a meaningful offer of underinsured motorist (UIM) coverage to insured who specifically rejected it, although she filled in “25/50” on the blank line located on the UIM offer form and no premium amount was filled in by the agent or insurer; the “25/50” statement was not a complete coverage amount as it lacked a property damage figure, and the insurer could not and did not need to determine a premium. Clinton v. West American Ins. Co. (S.C.App. 2005) 364 S.C. 113, 611 S.E.2d 521. Insurance 2775; Insurance 2778

When an automobile insurer offers all amounts of underinsured motorist (UIM) coverage that the Department of Insurance authorizes it to sell, the insurer has made a meaningful offer; it has provided the opportunity for the insured to make an intelligent decision as to whether to accept or reject UIM coverage, and the statute governing the offer does not require a blank line to write in an amount up to the liability coverage limit. Progressive Cas. Ins. Co. v. Leachman (S.C. 2005) 362 S.C. 344, 608 S.E.2d 569. Insurance 2775

Form for selecting underinsured motorist (UIM) coverage made a meaningful offer by providing option for eleven different amounts up to the amount of liability coverage; the insured purchased UIM coverage in amount less than liability limits, and the offer gave the opportunity to make an intelligent and informed decision on whether to purchase UIM coverage. Progressive Cas. Ins. Co. v. Leachman (S.C. 2005) 362 S.C. 344, 608 S.E.2d 569. Insurance 2775; Insurance 2778

In general, for an automobile insurer to make a meaningful offer of underinsured motorist (UIM) coverage, (1) the insurer’s notification process must be commercially reasonable, whether oral or in writing; (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms; (3) the insurer must intelligibly advise the insured of the nature of the optional coverage; and (4) the insured must be told that optional coverages are available for an additional premium. Progressive Cas. Ins. Co. v. Leachman (S.C. 2005) 362 S.C. 344, 608 S.E.2d 569. Insurance 2775

Fronting insurer made a meaningful offer of underinsured motorist (UIM) coverage to insured truck owner, even though the insurer failed to state the premium amounts for the UIM coverage; the insured was required to reimburse the insurer for the amount paid in adjusting the claims during the policy period, the premium was thus equal to the one hundred percent of the claims plus an administrative fee, and the insured provided workers’ compensation insurance and did not want to provide UIM coverage for its drivers. McDowell v. Travelers Property & Cas. Co. (S.C.App. 2003) 357 S.C. 118, 590 S.E.2d 514, rehearing denied. Insurance 2775

To satisfy requirements for a meaningful offer of underinsured motorist (UIM) coverage: (1) the insurer’s notification process must be commercially reasonable, whether oral or in writing; (2) the insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms; (3) the insurer must intelligibly advise the insured of the nature of the optional coverage; and (4) the insured must be told that optional coverages are available for an additional premium. McDowell v. Travelers Property & Cas. Co. (S.C.App. 2003) 357 S.C. 118, 590 S.E.2d 514, rehearing denied. Insurance 2775

Form for selecting or rejecting underinsured motorist (UIM) coverage provided meaningful offer of UIM benefits up to the limits of liability coverage; after presenting a number of split limit and single limit UIM coverage amounts and their accompanying premium costs, the form provided blanks for different coverage amounts and premiums, and it stated that UIM coverage would be added unless rejected. Rabb v. Catawba Ins. Co. (S.C.App. 2000) 339 S.C. 228, 528 S.E.2d 693, rehearing denied, certiorari denied. Insurance 2778

Insurance agent’s handwritten entries on forms used for offer of underinsured motorist coverage did not render forms ambiguous, where only automobile insurer’s interpretation of forms gave effect to each part of offer forms; forms which followed South Carolina approved format were therefore entitled to presumption that they made meaningful offer of coverage. State Farm Mut. Auto. Ins. Co. v. Medgyesy (C.A.4 (S.C.) 2015) 610 Fed.Appx. 213, 2015 WL 2041076. Insurance 2775; Insurance 2812

6. Insureds

Automobile insurer was required to offer underinsured motorist (UIM) coverage to a car buyer when changing the name of the insured from the seller, the buyer’s mother, to the buyer, even though the buyer did not complete an application for a policy; the buyer had never been a named insured on a policy issued by the insurer. McDonald v. South Carolina Farm Bureau Ins. Co. (S.C.App. 1999) 336 S.C. 120, 518 S.E.2d 624, rehearing denied, certiorari denied. Insurance 2775

Statute specifying form for offering underinsured motorist (UIM) coverage to new applicants is consistent with statute requiring the insurer to offer UIM benefits to all insureds and does not relieve an insurer of the obligation to provide an opportunity for all named insureds to accept or reject UIM coverage; the term “new applicant” simply distinguishes between those who never had an opportunity to reject UIM coverage and others, such as insureds renewing policies, who previously had made informed decisions about UIM coverage. McDonald v. South Carolina Farm Bureau Ins. Co. (S.C.App. 1999) 336 S.C. 120, 518 S.E.2d 624, rehearing denied, certiorari denied. Insurance 2775; Insurance 2778

Removing car seller from automobile insurance policy and substituting buyer, seller’s child, as the named insured was not a mere policy change, but created a new insurance policy with a new named insured, thus requiring the insurer to offer underinsured motorist (UIM) coverage. McDonald v. South Carolina Farm Bureau Ins. Co. (S.C.App. 1999) 336 S.C. 120, 518 S.E.2d 624, rehearing denied, certiorari denied. Insurance 1878; Insurance 2775

7. Amount of coverage offered

An insurance company need not offer uninsured motorist coverage in every amount between zero and the policy limit. Holt v. State Farm Mut. Auto. Ins. Co., 1994, 870 F.Supp. 658.

Failure of form offering underinsured motorist (UIM) coverage to include an offer of UIM coverage in precise amount of liability coverage did not warrant reformation of policy to include UIM coverage, where form specified that UIM coverage could be purchased with limits up to the limits of liability coverage and informed policyholder that UIM coverage could be increased or decreased. Tucker v. Allstate Ins. Co. (S.C.App. 1999) 337 S.C. 128, 522 S.E.2d 819. Insurance 1885; Insurance 2779(1)

8. Renewal

Automobile insurer was not required to offer insured underinsured motorist (UIM) coverage on renewal of his policy, and thus, even though insurer provided UIM offer form with renewal application, insured’s failure to return form within 30 days did not require insurer to reform policy to add UIM coverage in an amount equal to insurer’s liability limits, where insured properly rejected UIM coverage on his original application when he was a new applicant. Government Employees Ins. Co. v. Draine (S.C.App. 2010) 389 S.C. 586, 698 S.E.2d 866. Insurance 2775; Insurance 2778

9. Reformation

Insurance agent’s assistant’s presentation of underinsured motorist (UIM) coverage form to vehicle owner’s wife, who procured automobile policy for her husband’s automobiles, did not intelligibly advise the husband, as the prospective named insured, about UIM coverage, and was therefore not a “meaningful offer” of such coverage as required under South Carolina law, thus requiring that the policy be reformed to include such coverage; the husband, the named insured, never completed and executed the UIM form, and the insured and his wife offered evidence that he made the decision to accept the policy without ever having seen the UIM form. Nationwide Mut. Ins. Co. v. Powell (C.A.4 (S.C.) 2002) 292 F.3d 201. Insurance 2775

Motorcycle insurer’s failure to comply with statutory provision that required an application form required under the statute to be properly completed and executed by the named insured before insurer would be entitled to a conclusive presumption that it had made a meaningful offer of underinsured motorist (UIM) coverage did not automatically require judicial reformation of the policy to include UIM benefits, but rather simply meant that the trial court was required to make a factual determination of whether a meaningful offer had been made. Cohen v. Progressive Northern Ins. Co. (S.C.App. 2013) 402 S.C. 66, 737 S.E.2d 869. Insurance 2779(1)

Trial court’s finding that automobile insured was not entitled to reformation of policy to include underinsured motorist (UIM) coverage did not offend purpose of statute protecting insureds from uninformed decisions regarding optional UIM coverage; insured expressly rejected insurer’s legally compliant offer of UIM coverage two years earlier as a new applicant, and UIM offer form sent with renewal application specifically advised insured he was required to return form only if he wanted to make a change to his policy, leading to the inescapable conclusion insured made an informed decision to reject UIM coverage. Government Employees Ins. Co. v. Draine (S.C.App. 2010) 389 S.C. 586, 698 S.E.2d 866. Insurance 2778

If the insurer fails to comply with its duty to make a meaningful offer of underinsured motorist (UIM) coverage, the policy will be reformed by operation of law to include UIM coverage up to the limits of liability insurance carried by the insured. Ray v. Austin (S.C. 2010) 388 S.C. 605, 698 S.E.2d 208. Insurance 2779(1)

If the automobile insurer fails to comply with its statutory duty to make a meaningful offer of underinsured motorist (UIM) coverage, the policy will be reformed, by operation of law, to include UIM coverage up to the limits of liability insurance carried by the insured. Progressive Cas. Ins. Co. v. Leachman (S.C. 2005) 362 S.C. 344, 608 S.E.2d 569. Insurance 1885; Insurance 2779(2)

If the insurer fails to comply with its statutory duty to make a meaningful offer of underinsured motorist (UIM) coverage to the insured, the policy will be reformed, by operation of law, to include such coverage up to the limits of liability insurance carried by the insured; a noncomplying offer has the legal effect of no offer at all. Warren Burch v. South Carolina Farm Bureau Mut. Ins. Co. (S.C.App. 2002) 351 S.C. 342, 569 S.E.2d 400. Insurance 1885; Insurance 2779(1); Insurance 2779(2)

Form provided to insured for selecting or rejecting underinsured motorist (UIM) coverage provided meaningful offer of UIM benefits for amounts less than the minimum liability limits carried by the insured, precluding reformation of the policy to include UIM coverage; insured was informed that if he was interested in any limits that did not appear with examples on form, he could fill in those amounts and his agent would provide the attendant premium amounts if those limits were marketable within this State, that he could purchase UIM coverage in limits “up to” the limits of his liability coverage, and was asked to specify the limits desired on a blank line on form, below various examples of commonly sold UIM limits. Warren Burch v. South Carolina Farm Bureau Mut. Ins. Co. (S.C.App. 2002) 351 S.C. 342, 569 S.E.2d 400. Insurance 1885; Insurance 2775

Form provided by commercial automobile insurer for insured to select or reject uninsured and underinsured (UM/UIM) motorist coverage was not meaningful offer of UM/UIM coverage, and thus policy would be reformed to include such coverage up to liability limits of policy, where form failed to list single coverage amount accompanied by corresponding premium and did not apprise insured of nature of UM/UIM coverage. Antley v. Nobel Ins. Co. (S.C.App. 2002) 350 S.C. 621, 567 S.E.2d 872, rehearing denied, certiorari denied. Insurance 1885; Insurance 2778; Insurance 2779(2)

If the insurer fails to make a meaningful offer of underinsured motorist (UIM) coverage to the insured, the policy will be reformed to include UIM coverage up to the limits of liability insurance carried by the insured. McDonald v. South Carolina Farm Bureau Ins. Co. (S.C.App. 1999) 336 S.C. 120, 518 S.E.2d 624, rehearing denied, certiorari denied. Insurance 1882; Insurance 2779(2)

9.5. Internet

Automobile insurer made statutorily‑compliant offer of underinsured motorist (UIM) coverage to insured who purchased automobile insurance policy from insurer through insurer’s internet website; insured agreed to interact with insurer electronically by choosing to purchase insurance through its website, insurer’s website acted as its electronic agent, completing offer form based on insured’s selections of coverage and presenting it to insured in a format that was easily viewable, printable and savable, and insured rejected the recommended preset coverage packages, all of which included UIM coverage, instead choosing to create a customized package and decline UIM coverage. Traynum v. Scavens (S.C. 2016) 416 S.C. 197, 786 S.E.2d 115, rehearing denied. Insurance 2775; Insurance 2778

10. Presumptions and burden of proof

An automobile insurer has the burden of establishing that the requirements have been met in order to take advantage of the presumption that it made a meaningful offer of uninsured/underinsured motorist benefits. Wiegand v. U.S. Auto. Ass’n (S.C. 2011) 391 S.C. 159, 705 S.E.2d 432. Insurance 2812; Insurance 2813

The insurer bears the burden of establishing that it made a meaningful offer of underinsured motorist (UIM) coverage. Ray v. Austin (S.C. 2010) 388 S.C. 605, 698 S.E.2d 208. Insurance 2813

The automobile insurer bears the burden of establishing that it made a meaningful offer of underinsured motorist (UIM) coverage. Progressive Cas. Ins. Co. v. Leachman (S.C. 2005) 362 S.C. 344, 608 S.E.2d 569. Insurance 2813

An insurer’s failure to comply with the statute governing form for offer of underinsured motorist (UIM) coverage does not necessarily require reformation of the policy; rather, the insurer bears the burden of establishing it made a meaningful offer of UIM coverage. McDowell v. Travelers Property & Cas. Co. (S.C.App. 2003) 357 S.C. 118, 590 S.E.2d 514, rehearing denied. Insurance 1889; Insurance 1893(1); Insurance 2813

11. Sufficiency of evidence

Evidence was sufficient to support a finding that motorcycle insurer complied with its statutory duty to make a meaningful offer of underinsured motorist (UIM) coverage to insured, in action by insureds in which they sought to reform policy to include UIM coverage; insurer’s agent orally presented an offer of coverage and told insured that optional coverages were available for an additional premium, and insured signed the application form in three places, including a page in which he acknowledged that he either read, or had someone read to him, the form’s explanation of UIM coverage and its offer of the that coverage, and form indicated insured rejected insured’s offer of UIM coverage. Cohen v. Progressive Northern Ins. Co. (S.C.App. 2013) 402 S.C. 66, 737 S.E.2d 869. Insurance 2775; Insurance 2778

12. Review

Whether an automobile insurance form regarding an offer of uninsured/underinsured motorist benefits complies with the statutory requirement that the insurer make a meaningful offer to the insured is a question of law for the Supreme Court. Wiegand v. U.S. Auto. Ass’n (S.C. 2011) 391 S.C. 159, 705 S.E.2d 432. Appeal and Error 842(8); Insurance 2816

**SECTION 38‑77‑370.** Obligations of insurance‑support organizations; access to personal information.

 (A) If an individual, after proper identification, submits a written request to an insurance‑support organization for access to recorded personal information about the individual that is reasonably described by the individual and reasonably able to be located and retrieved by the insurance‑support organization, the insurance‑support organization, within thirty business days from the date the request is received shall:

 (1) inform the individual of the nature and substance of the recorded personal information in writing, by telephone, or by other oral communication, whichever the insurance‑support organization prefers;

 (2) permit the individual to see and obtain a copy of the recorded personal information pertaining to him or to obtain a copy of the recorded personal information by mail, whichever the individual prefers, unless the recorded personal information is in coded form, in which case an accurate translation in plain language must be provided in writing;

 (3) disclose to the individual the identity, if recorded, of those persons to whom the insurance‑support organization has disclosed the personal information within two years before the request, and if the identity is not recorded, the names of those insurance‑support organizations or other persons to whom the information is disclosed normally; and

 (4) provide the individual with a summary of the procedures by which he may request correction, amendment, or deletion of recorded personal information.

 (B) Any personal information provided pursuant to subsection (A) of this section must identify the source of the information if it is an institutional source.

 (C) Medical record information supplied by a medical care institution or medical professional and requested under subsection (A) of this section, together with the identity of the medical professional or medical care institution that provided the information, must be supplied either directly to the individual or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurer, agent, or insurance‑support organization prefers. If it elects to disclose the information to a medical professional designated by the individual, the insurer, agent, or insurance‑support organization shall notify the individual, at the time of the disclosure, that it has provided the information to the medical professional.

 (D) Except for personal information provided under this section, an insurer, agent, or insurance‑support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals.

 (E) The obligations imposed by this section upon an insurer or agent may be satisfied by another insurer or agent authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under subsection (A) of this section, an insurer, agent, or insurance‑support organization may make arrangements with an insurance‑support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.

 (F) The rights granted to individuals in this section must extend to all natural persons to the extent information about them is collected and maintained by an insurer, agent, or insurance‑support organization in connection with an insurance transaction. The rights granted to all natural persons by this subsection must not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

 (G) For purposes of this section, “insurance‑support organization” does not include “consumer reporting agency”.

HISTORY: 1997 Act No. 154, Section 16.

Library References

Insurance 1580, 1587.

Westlaw Topic No. 217.

**SECTION 38‑77‑390.** Written notice of cancellation or nonrenewal; request for reasons for cancellation or nonrenewal.

 (A) In the event of a cancellation or nonrenewal, including those that involve policies referred to in Section 38‑77‑120, the insurer or agent responsible for the cancellation or nonrenewal shall give a written notice in a form approved by the director that:

 (1) either provides the applicant, policyholder, or individual proposed for coverage with the specific reason or reasons for the cancellation or nonrenewal in writing or advises the person that upon written request he may receive the specific reason or reasons in writing; and

 (2) provides the applicant, policyholder, or individual proposed for coverage with a summary of the rights established under subsection (B) of this section and Section 38‑77‑380.

 (B) Upon receipt of a written request within ninety business days from the date of the mailing of notice or other communication of a cancellation or nonrenewal to an applicant, policyholder, or individual proposed for coverage, the insurer or agent shall furnish to the person within twenty‑one business days from the date of receipt of the written request:

 (1) the specific reason or reasons for the cancellation or nonrenewal in writing, if that information was not furnished initially in writing pursuant to subsection (A)(1);

 (2) the specific items of personal and privileged information that support those reasons; however:

 (a) the insurer or agent shall not be required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the director, that the applicant, policyholder, or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation, or material nondisclosure; and

 (b) specific items of medical‑record information supplied by a medical‑care institution or medical professional must be disclosed either directly to the individual about whom the information relates or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurer or agent prefers; and

 (3) the names and addresses of the institutional sources that supplied the specific items of information given pursuant to subsection (B)(2) of this section. However, the identity of any medical professional or medical‑care institution must be disclosed either directly to the individual or to the designated medical professional, whichever the insurer or agent prefers.

 (C) The obligations imposed by this section upon an insurer or agent may be satisfied by another insurer or agent authorized to act on its behalf. However, the insurer or agent making the cancellation or nonrenewal shall remain responsible for compliance with the obligations imposed by this section.

 (D) When a cancellation or nonrenewal results solely from an insured’s oral request or inquiry, the explanation of reasons and summary of rights required by subsection (A) of this section may be given orally.

HISTORY: 1997 Act No. 154, Section 16.

Library References

Insurance 1900, 1929.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 555, 558, 781 to 786.

**SECTION 38‑77‑395.** Absence of liability or cause of action in certain situations; exceptions.

 There is no liability on the part of and no cause of action of any nature may arise against the director or his designees, any insurer, or the authorized representatives, agents, and employees of either or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or refusal to write or renew, for any statement made by any of them in complying with this article, or for the providing of information pertaining thereto, unless the person asserting the cause of action establishes that the person against whom the cause of action is asserted was motivated by express malice or gross negligence.

HISTORY: 1997 Act No. 154, Section 23.

Library References

Insurance 1035, 1133, 1147.

Torts 121.

Westlaw Topic Nos. 217, 379.

C.J.S. Insurance Sections 59, 162 to 165, 175 to 176, 204.

C.J.S. Torts Sections 32 to 33, 37, 40.

ARTICLE 7

Arbitration of Property Damage Liability Claims

**SECTION 38‑77‑710.** Appointment of attorneys as arbitrators to hear and determine property damage liability claims; process and procedure.

 The court of common pleas, or any inferior courts having concurrent jurisdiction, in and for each county, shall by order of reference appoint an attorney or attorneys to hear and determine, by arbitration, property damage liability claims arising out of motor vehicle collisions or accidents and to award actual and punitive damages. This order must be consistent with the provisions of this chapter and may not be inconsistent with the Rules of the Supreme Court of South Carolina. Process and procedure must be as summary and simple as may be reasonable and may provide for the taking of evidence in the form of reports, statements, or itemized bills or in any other manner without the procedural and evidentiary limitations which pertain in jury trials. The court may provide for the taking of depositions of a witness within or without the State.

HISTORY: Former 1976 Code Section 56‑11‑510 [1962 Code Section 47‑750.135; 1974 (58) 2718] recodified as Section 38‑77‑710 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Uniform Arbitration Act, see Section 15‑48‑10 et seq.

Library References

Insurance 3296.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1895 to 1897.

**SECTION 38‑77‑720.** Number, qualifications, and compensation of arbitrators; fee paid by claimant.

 (a) The order of reference shall establish a panel of arbitrators each of whom must be a member of the bar and the members must be selected for service in particular cases on some fair rotation basis. Three arbitrators shall hear and determine each case and the decision of two of the three arbitrators shall determine the issue. However, the parties to the dispute may, by agreement, provide for determination of the disputed claim by one arbitrator.

 (b) Each arbitrator assigned to determine the claim may be compensated, not to exceed thirty‑five dollars for his services and time, payable out of the funds of the court and which may not be taxable as costs to either party.

 (c) The claimant who is the moving party in seeking arbitration shall pay to the clerk of court a fee of ten dollars. Five dollars must be retained by the clerk as the cost of filing the claim and final judgment and five dollars must be used to pay the cost of service on the other party or parties.

HISTORY: Former 1976 Code Section 56‑11‑520 [1962 Code Section 46‑750.136; 1974 (58) 2718] recodified as Section 38‑77‑720 by 1987 Act No. 155, Section 1.

Library References

Insurance 3294.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1895 to 1898, 1903, 2314 to 2315.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 11, Fees and Costs.

**SECTION 38‑77‑730.** Request for arbitration; no formal pleading and process; arbitration docket; filing of claim; service of summons to defendant.

 (a) Any person who is a party to the disputed property damage liability claim may submit his claim for determination through arbitration. No formal pleading or process is required. The clerk of court of each county shall prepare and keep an arbitration docket and set the cases thereon for arbitration as provided by law for the settling of cases in the court of common pleas.

 (b) The claim must be filed with the clerk of court in the county in which the cause of action arose or where the plaintiff or defendant resides. The claim must be filed in triplicate with the clerk of court on forms to be provided by him. The forms shall set forth the names of the parties, the date and place of the accident, and the amount of property damage claimed. The clerk shall file one copy in his office, and one copy must be served upon the defendant as provided by law for service of summons and complaints. The sheriff, or such other person, shall promptly serve the claim upon the defendant and shall receive the sum of five dollars to defray the cost of securing this service. The sheriff, or such other person, serving the process shall promptly file an affidavit of personal service with the clerk of court on forms to be provided by the clerk.

 (c) There must be attached to, or made part of, the form a summons to the defendant named notifying him that he should file a response with the clerk of court within thirty days from the date of service and that failure to file a response within thirty days entitles the plaintiff to a default judgment. The form must be signed by the party filing it or his attorney, if any, and shall by order of reference show the address of the person signing it.

HISTORY: Former 1976 Code Section 56‑11‑530 [1962 Code Section 46‑750.137; 1974 (58) 2718] recodified as Section 38‑77‑730 by 1987 Act No. 155, Section 1.

Library References

Insurance 3285, 3300.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1892 to 1894, 1899 to 1902, 1908 to 1909, 2310, 2312, 2316.

**SECTION 38‑77‑740.** Hearing; notice to parties; damages to be awarded; securing attendance of witnesses.

 (a) The court, or the clerk acting for the court, shall assign the arbitrators to hear the matter at the courthouse, or other designated place in the county where the claim is filed, within sixty days after the date of filing, or as soon thereafter as is feasible. The clerk of court shall, on a form provided by him, advise the parties or their attorneys of record, if any, by mail as to the place, date, and time of hearing and shall advise the parties to bring all records which may pertain to the claim, including, but not limited to, the following:

 (1) Two estimates of damage to the motor vehicle or its contents signed by the estimator.

 (2) Signed receipts for car repairs.

 (3) Bills or receipts for other property damages claimed.

 The forms shall also contain notice to the parties that, if they cannot attend because of illness or otherwise, the clerk of court must be notified as soon as possible with the request that another date be set for the hearing.

 (b) Property damages must be awarded as provided by law, including, but not limited to, actual damages, loss of use, depreciation, and any other property damages which are the direct and proximate result of the accident.

 (c) The parties may secure the attendance of witnesses by their voluntary appearance or may secure their attendance by subpoenas prepared and issued in accordance with the laws of this State.

HISTORY: Former 1976 Code Section 56‑11‑540 [1962 Code Section 46‑750.138; 1974 (58) 2718] recodified as Section 38‑77‑740 by 1987 Act No. 155, Section 1.

Library References

Insurance 3300.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1899 to 1902, 1908 to 1909, 2316.

**SECTION 38‑77‑750.** Enforcement of subpoenas; warrant to produce witnesses; certification of records.

 (a) The court of common pleas shall, on application of the arbitrators, or any one of them, or any party or his attorney, enforce by proper proceedings the attendance and testimony of witnesses and the production of records and may punish for contempt of court, by fine or imprisonment or both, the unexcused failure or refusal to attend and give testimony or produce records required by any subpoena issued. The court may issue to the sheriff of the county in which any hearing is held a warrant requiring him to produce at the hearing any witness who has ignored or failed to comply with any subpoena issued and served upon the witness pursuant to this article and the warrant shall authorize and empower the sheriff to arrest and produce at the hearing the witness. It is the duty of the sheriff to do so, but the failure of a witness to appear may be excused on the same grounds as provided by law in the courts of this State.

 (b) All records introduced in evidence which are not identified by their preparer must be certified under oath as a correct statement of the facts contained therein.

HISTORY: Former 1976 Code Section 56‑11‑550 [1962 Code Section 46‑750.139; 1974 (58) 2718] recodified as Section 38‑77‑750 by 1987 Act No. 155, Section 1.

Library References

Insurance 3300.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1899 to 1902, 1908 to 1909, 2316.

**SECTION 38‑77‑760.** Decision of arbitrators.

 After receiving the evidence, the arbitrators, or a majority of them, or the single arbitrator if the parties have agreed upon a single arbitrator, shall enter the decision on the back of the original claim and file it with the clerk of court, who shall enter it as a judgment on the records of his office. The arbitrator first appointed shall, on the day the decision is filed with the clerk of court, serve a copy of the decision signed by each arbitrator on each party to the arbitration, either personally or by registered mail, or as provided by agreement.

HISTORY: Former 1976 Code Section 56‑11‑560 [1962 Code Section 46‑750.140; 1974 (58) 2718] recodified as Section 38‑77‑760 by 1987 Act No. 155, Section 1.

Library References

Insurance 3305, 3325 to 3331(10).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 1910 to 1918, 1923 to 1926, 2219 to 2222, 2313 to 2317.

Attorney General’s Opinions

Clerks of Court should enter, as judgments, decisions of arbitration panels without waiting for the lapse of appeal time. 1988 Op.Atty.Gen., No. 88‑77, p 222, 1988 WL 383560.

**SECTION 38‑77‑770.** Right to appeal decision; procedures.

 If any party is dissatisfied with the decision of the arbitrators, or the single arbitrator, he may appeal within twenty days of the decision to the court in which the claim is filed by service upon the other parties of a notice of appeal. Every notice of appeal shall include a statement under oath that the appeal is taken in good faith and not merely for the purpose of delay. The trial on appeal must be a trial de novo.

HISTORY: Former 1976 Code Section 56‑11‑570 [1962 Code Section 46‑750.141; 1974 (58) 2718] recodified as Section 38‑77‑770 by 1987 Act No. 155, Section 1.

Library References

Insurance 3329.

Westlaw Topic No. 217.

C.J.S. Insurance Section 1923.

NOTES OF DECISIONS

Jury trial 2

Venue 1

1. Venue

A driver was entitled to a change of venue for a property damage claim filed by a motorcyclist following a collision with the driver where the motorcyclist filed his claim for arbitration in Hampton County, the arbitration panel awarded the motorcyclist $2,201, and the driver appealed for a de novo trial in Circuit Court under Section 15‑7‑30 alleging that his own county of residence was the proper county of venue; nothing in Section 38‑77‑770 diminishes a defendant’s right to have the action tried in the county of his residence. Blizzard v. Miller (S.C. 1991) 306 S.C. 373, 412 S.E.2d 406.

2. Jury trial

Party appealing decision of arbitration panel regarding automobile accident had right to jury trial in action for monetary damages arising out of motor vehicle accident; statutory provision providing for arbitration of property damage liability claims did not abolish guaranteed right to jury trial, arbitration procedures set forth in statutes were compulsory as they could be initiated by one of disputing parties without agreement of other party, and legislature could not abrogate constitutional right to jury trial by designating civil action as nonjury. Cooper v. Poston (S.C. 1997) 326 S.C. 46, 483 S.E.2d 750. Jury 17(1); Jury 31.1

ARTICLE 8

Assignment of Risks

**SECTION 38‑77‑810.** Promulgation of standards for assignment of risks to insurance carriers and servicing carriers; establishment of Associated Auto Insurers Plan.

 Beginning on March 1, 2003 and continuing thereafter, the director may promulgate reasonable standards for the assignment of risks to insurance carriers and servicing carriers, and an assigned risk plan, hereinafter referred to as the Associated Auto Insurers Plan, must be established by March 1, 2003. More than one assigned risk plan may be established. The director may make reasonable regulations for the assignment of risks to insurance carriers. He shall establish rate classifications, rating schedules, rates, and regulations to be used by insurance carriers issuing assigned risk, policies of motor vehicle liability, physical damage, and underinsured and uninsured motorist insurance in accordance with this chapter as appear to it to be proper in the establishment of rate classifications, rating schedules, rates, and regulations, it shall be guided by the principles and practices which have been established under its statutory authority to regulate motor vehicle liability, physical damage, and medical payments insurance rates, and it may act in conformity with its statutory discretionary authority in such matters.

 The servicing carriers for the Associated Auto Insurers Plan may be competitively bid as provided for in this section. If the Associated Auto Insurers Plan is competitively bid, then the director or his designee shall appoint a committee or committees of individuals as he considers qualified to establish standards and procedures for the consideration and evaluation of bids. Insurers or other vendors, in conjunction with a licensed automobile insurer, may submit bids. The committee or committees shall evaluate and award contracts pursuant to the bidding process established by the committee or committees, subject to the final approval of the director or his designee. The director may require a bid fee to cover the expenses of implementing this section.

 The plan for the Associated Auto Insurers Plan must contain a provision for which licensed agents and/or brokers may be certified such as to bind insurance policies. The manager of the plan shall establish and maintain an electronic means to bind policies immediately. The electronic effective date procedure shall be available only to producers of record who are certified by the plan.

HISTORY: 1997 Act No. 154, Section 21(A).

Library References

Insurance 1532.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 85 to 88.

LAW REVIEW AND JOURNAL COMMENTARIES

Lifting the iron curtain of automobile insurance regulation. 49 S.C. L. Rev. 1193.

**SECTION 38‑77‑820.** Application to have risk assigned to insurance carrier licenses to write motor vehicle liability insurance.

 Every person who has been unable to obtain a motor vehicle liability policy shall have the right to apply to the director to have his risk assigned to an insurance carrier licensed to write and writing motor vehicle liability insurance in the State and the insurance carrier, whether a stock or mutual company, reciprocal, or interinsurance exchange, or other type or form of insurance organization, as provided in this chapter shall issue a motor vehicle liability policy which will meet at least the minimum requirements for establishing financial responsibility as provided in this chapter, and in addition shall provide, at the option of the insured, reasonable motor vehicle physical damage and medical payments coverages, both as defined in Chapter 77, Title 38, in the same policy. Every person who has otherwise obtained a motor vehicle liability insurance policy, or who has been afforded motor vehicle liability insurance under the laws of this State, but who was not afforded motor vehicle medical payments insurance or motor vehicle physical damage insurance in the same policy, or who was not afforded such coverages under the provisions of that section, shall have the right to apply to the director to have his risk assigned to an insurance carrier, as provided above, licensed to write and writing either or both coverages, and the insurance carrier shall issue a policy providing the coverage or coverages applied for.

HISTORY: 1997 Act No. 154, Section 21(A).

Library References

Insurance 1532.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 85 to 88.

**SECTION 38‑77‑830.** Assigned Risk Pool.

 Insurance carriers may satisfy their Associated Auto Insurers Plan obligations by joining with other insurers to establish an Assigned Risk Pool whereby one or more insurers accepts the assignments of other insurers and in return, the other insurers agree to be responsible for any assessment necessary to pay losses associated with the servicing carrier’s pool policies. These agreements are subject to approval by the director.

HISTORY: 1997 Act No. 154, Section 21(A).

Library References

Insurance 1532.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 85 to 88.

**SECTION 38‑77‑840.** Powers of director.

 The director may in its discretion, after reviewing all information pertaining to the applicant or policyholder available from its records, the records of the department, or from other sources:

 (1) refuse to assign an application;

 (2) approve the rejection of an application by an insurance carrier;

 (3) approve the cancellation of a policy of motor vehicle liability, physical damage, and medical payments insurance by an insurance carrier; or

 (4) refuse to approve the renewal or the reassignment of an expiring policy.

HISTORY: 1997 Act No. 154, Section 21(A).

Library References

Insurance 1532.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 85 to 88.

**SECTION 38‑77‑841.** Information to be supplied by Associated Auto Insurers Plan producers.

 The producer of each Associated Auto Insurers Plan must provide on a form promulgated by the director of the Department of Insurance the information as follows:

 (1) the name of one other insurance agent and/or insurer representative who has rejected the applicant for automobile insurance;

 (2) if the producer has at least one voluntary market for automobile insurance, the producer must provide the application to at least one voluntary market used by that producer and the application must be rejected;

 (3) the reason why the applicant is submitting an application to the Associated Auto Insurers Plan. Such reason shall include data on traffic violations, accidents and/or reasons as to why the voluntary market has not provided coverage.

HISTORY: 1997 Act No. 154, Section 21(A).

Library References

Insurance 1532.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 85 to 88.

**SECTION 38‑77‑845.** Review of applications.

 (A) The director or his designee, or the plan manager, may review each application. Applications which are not complete or accurate, or both, shall be considered in violation of Section 38‑57‑30 and are subject to penalty. The department shall promulgate regulations to enforce this section. Penalties may include suspension of binding authority, fines up to five thousand dollars, and revocation of license.

 (B) The director or his designee may review each application and provide such application to other qualified insurers upon request who may provide the insurance in the voluntary market at a rate less than the Associated Auto Insurers Plan rate. In such a case, the producer shall not receive commission on the sale of such policy.

 (C) In his review of the agent’s or broker’s residual market business, the director or his designee may consider whether the insurer, agent, or broker is participating in a pattern of unfair discrimination as provided in Section 38‑77‑122 and Section 38‑77‑123.

HISTORY: 1997 Act No. 154, Section 21(A).

Library References

Insurance 1532.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 85 to 88.

**SECTION 38‑77‑850.** Confidentiality of information filed with director.

 Any information filed with the director by an insurance carrier in connection with an assigned risk must be confidential and solely for the information of the director and its staff and must not be disclosed to any person, including an applicant, policyholder, and any other insurance carrier.

HISTORY: 1997 Act No. 154, Section 21(A).

Library References

Insurance 1580.

Westlaw Topic No. 217.

**SECTION 38‑77‑860.** Disclosure of reasons for director’s decisions not required; liability.

 (A) The director is not required to disclose to any person, including the applicant or policyholder, its reasons for:

 (1) refusing to assign an application;

 (2) approving the rejection of an application by an insurance carrier;

 (3) approving the cancellation of a policy of motor vehicle liability, physical damage, and medical payments insurance by an insurance carrier; or

 (4) refusing to approve the renewal or the reassignment of an expiring policy.

 (B) The director or anyone acting for him is not held liable for any act or omission in connection with the administration of the duties imposed upon it by the provisions of this chapter, except upon proof of actual malfeasance.

HISTORY: 1997 Act No. 154, Section 21(A).

Library References

Insurance 1034, 1035, 1532.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 42, 54, 56, 59, 85 to 88.

**SECTION 38‑77‑870.** Availability of assignment of risks provisions to nonresidents and personnel of the Armed Forces.

 The provisions of this chapter relevant to the assignment of risks must be available to nonresidents who are unable to obtain a policy of motor vehicle liability, physical damage, and medical payments insurance with respect only to motor vehicles registered and used in the State. Provided, however, that assignment through the South Carolina Automobile Insurance Plan also must be available to personnel of the Armed Forces of the United States who are on active duty and who officially are stationed in this State if they possess a valid motor vehicle driver’s license issued by another state or territory of the United States or by the District of Columbia, regardless of the state of registration of their motor vehicle, if their motor vehicle is garaged principally in this State.

HISTORY: 1997 Act No. 154, Section 21(A); 2003 Act No. 73, Section 16, eff June 25, 2003.

Library References

Insurance 1532.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 85 to 88.

**SECTION 38‑77‑880.** Availability of assignment of risks provisions to carriers legally required to carry public liability and property damage insurance.

 Notwithstanding any other provision of law, the provisions of this chapter relating to assignment of risks must be available to carriers by motor vehicle who are required by law to carry public liability and property damage insurance for the protection of the public.

HISTORY: 1997 Act No. 154, Section 21(A).

Library References

Insurance 1532.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 85 to 88.

ARTICLE 11

Motor Vehicle Theft and Motor Vehicle Insurance Fraud Reporting‑Immunity Act

**SECTION 38‑77‑1110.** Short title.

 This article may be cited as the “Motor Vehicle Theft and Motor Vehicle Insurance Fraud Reporting‑Immunity Act”.

HISTORY: Former 1976 Code Section 38‑37‑1610 [1986 Act No. 513, Section 1] recodified as Section 38‑77‑1110 by 1987 Act No. 155, Section 1.

**SECTION 38‑77‑1120.** Definitions.

 As used in this article:

 (a) “Authorized agency” means:

 (1) the South Carolina State Law Enforcement Division, the Department of Public Safety, the sheriff’s department of any county of this State, and any duly constituted criminal investigative department or agency of another state of the United States;

 (2) the Attorney General of this State, any circuit solicitor of this State, any prosecuting attorney for a county, circuit, or district of another state or of the United States;

 (3) the South Carolina Department of Insurance and the South Carolina Department of Consumer Affairs of the Attorney General’s Office; and

 (4) the United States Department of Justice and its Federal Bureau of Investigation.

 (b) “Relevant” means having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.

 (c) “Action” means affirmative acts and the failure to take action.

 (d) “Immune” means that neither a civil action nor a criminal prosecution may arise from any action taken pursuant to this article unless actual malice on the part of the insurance company or authorized agency against the insured or gross negligence or reckless disregard for his rights is present.

HISTORY: Derived from 1976 Code Section 38‑37‑1620 [1986 Act No. 513, Section 2] recodified as Section 38‑77‑1120 by 1987 Act No. 155, Section 1; 1992 Act No. 454, Section 1; 1993 Act No. 181, Section 829; 1996 Act No. 459, Section 64.

**SECTION 38‑77‑1130.** Provision to authorized agencies, by insurance companies, of information regarding motor vehicle theft or motor vehicle insurance fraud; release of information by authorized agencies; immunity from liability.

 (a) Any authorized agency may require, in writing, the insurance company at interest to release to the requesting agency any or all relevant information or evidence considered important to the authorized agency which the company may have in its possession, relating to any specific motor vehicle theft or motor vehicle insurance fraud. Relevant information includes:

 (1) pertinent insurance policy information relevant to theft or fraud under investigation and any application for a policy;

 (2) policy premium payment records which are available;

 (3) history of previous claims made by the insured;

 (4) material relating to the investigation of the loss including statements of any person, proof of loss, and any other evidence relevant to the investigation.

 (b) When an insurance company has reason to believe that a motor vehicle loss in which it has an interest may involve theft or a fraudulent claim, the company may notify, in writing, an authorized agency and provide it with any or all material developed from the company’s inquiry into the loss; however, when this information includes possible evidence of motor vehicle theft or motor vehicle insurance fraud involving specifically named persons, the information in all cases may be furnished to the solicitor in the circuit where the loss occurred and he shall furnish the information to other authorized agencies if he considers the action appropriate. When an insurance company provides any one of the authorized agencies with notice of a theft or fraud, it is sufficient notice for the purpose of this article.

 (c) The authorized agency provided with information may release or provide the information to any agency asked to participate in the investigation.

 (d) Any insurance company providing information to an authorized agency has the right to be informed, upon written request, as to the status of the case by the agency within a reasonable time, as determined by the authorized agency.

 (e) Any insurance company or authorized agency which releases information, whether oral or written, and any person acting in their behalf, pursuant to this article, is immune from any liability arising out of the release.

HISTORY: Former 1976 Code Section 38‑37‑1630 [1986 Act No. 513, Section 3] recodified as Section 38‑77‑1130 by 1987 Act No. 155, Section 1.

Library References

Torts 121, 122.

Westlaw Topic No. 379.

C.J.S. Torts Sections 32 to 37, 40.

**SECTION 38‑77‑1140.** Requirement that information be held in confidence until release is required; obligation of authorized agency, and its agents and employees, to testify.

 (a) Any authorized agency or insurance company which receives any information furnished pursuant to this article shall hold the information in confidence until its release is required pursuant to a criminal or civil action or proceeding.

 (b) Any authorized agency, its agents, or employees, may be required to testify in any litigation in which the insurance company at interest is named as a party.

HISTORY: Former 1976 Code Section 38‑37‑1640 [1986 Act No. 513, Section 4] recodified as Section 38‑77‑1140 by 1987 Act No. 155, Section 1.

Library References

Insurance 1580.

Westlaw Topic No. 217.

**SECTION 38‑77‑1150.** Prohibitions relative to disclosure or nondisclosure of information.

 (a) No person may intentionally or knowingly refuse to release any information requested pursuant to this article.

 (b) No person may fail to hold in confidence information required to be held in confidence by this article.

HISTORY: Former 1976 Code Section 38‑37‑1650 [1986 Act No. 513, Section 5] recodified as Section 38‑77‑1150 by 1987 Act No. 155, Section 1.

**SECTION 38‑77‑1160.** Violations and penalties.

 Any person who violates the provisions of this article is guilty of a misdemeanor and upon conviction must be fined not more than three thousand dollars or imprisoned for not more than two years, or both.

HISTORY: Former 1976 Code Section 38‑37‑1660 [1986 Act No. 513, Section 6] recodified as Section 38‑77‑1160 by 1987 Act No. 155, Section 1.

Library References

Insurance 3640.

Westlaw Topic No. 217.

C.J.S. Insurance Section 148.