

lawful attorney upon whom all legal process in any action or proceeding against it must be served and in this writing shall agree that any lawful process against it which is served upon this attorney is of the same legal force and validity as if served upon the insurer and that the authority continues in force so long as any liability remains outstanding in the State.”), § 15-9-270 (“This service is considered sufficient service upon the company.”) By serving the Summons and Complaint on USAA through the South Carolina Department of Insurance, Plaintiff properly served USAA as the underinsured motorist carrier in this action pursuant to Rule 4, SCRCPP, and §§ 15-9-270; 38-5-70.

Given that USAA was properly served through the South Carolina Department of Insurance, **USAA was required to make an appearance within thirty (30) days.** S.C. Code Ann. §38-77-160. Section 38-77-160 provides “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 on it in which to appear.** (emphasis added) USAA did not appear until approximately 330 days after the service of the Summons and Complaint on the South Carolina Department of Insurance for the Underinsured Motorist Carrier, USAA.

USAA waived the right to appear and defend in the name of the underinsured motorist, Larry Branham, by failing to appear within the time required by South Carolina law. “[The intent of § 38-77-160 is to protect an insurance carrier’s right to contest its liability for underinsured benefits.” *Williams v. Selective Ins. Co. of the Southeast*, 315 S.C. 532, 534, 446 S.E.2e 402, 404 (1994) However, that right is not absolute. *See, e.g. id.* at 535, 446 S.E.2d at 404 (referring to the right to defend as an “**option** to assume control of the defense.” (emphasis added)). The “insurer has the right to appear and defend” but must “appear” within “thirty days after service of process.” § 38-77-160. “A statute as a whole must receive practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers.” *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005). The plain language of § 38-77-160 contemplates a consequence for the UIM carrier’s failure to timely appear.

The consequence of the failure to appear is the waiver of the known right to appear and defend. *See Sanford v. S.C. State Ethics Comm’n*, 385 S.C. 483, 496, 685 S.E.2d 600, 607 (2009) (“A waiver is a voluntary and intentional abandonment or relinquishment of a known right.” An insurer must know and accepts the terms and obligations of Title 38, including § 38-77-160, to obtain a license to write insurance in South Carolina. *See* S.C. Code Ann. § 38-5-80(b) (“Before

granting the original certificate of authority or license to a domestic insurer to do business in this State, the director or his designees must be satisfied by proper evidence that: . . . (b) The insurer . . . accepts the terms and obligations of this title as a part of the consideration for license.”); § 38-5-81(b) (same requirement for a “foreign or alien insurer to do business in this State.”) USAA knew of the right to appear and defend, and the requirement to appear within 30 days but failed to comply with §38-77-160. Therefore, USAA waived the right to appear and defend.

It appears from the Acceptance of Service by the South Carolina Department of Insurance that the Summons and Complaint in this action were served on the Underinsurance Carrier USAA Casualty Insurance Group on the 20th day of May 2019.

It also appears from the Affidavit of Plaintiff’s attorney that no Answer or motion to the Complaint was served on the Plaintiff’s attorney in the time prescribed and required by law. Furthermore, it appears that the Underinsurance Carrier is not entitled to relief under the Soldiers’ & Sailors’ Relief Act and that Plaintiff’s damages are unliquidated.

NOW, ON MOTION of Plaintiff’s attorney, it is ordered and adjudged that the Underinsurance Carrier is now in default and that Plaintiff is awarded judgment against the USAA for damages to be determined at a non-jury hearing held in accordance with applicable law and/or the South Carolina Rules of Civil Procedure. Finally, the Clerk of Court is directed to schedule a hearing during the next available non-jury term at which the extent of Plaintiff’s damages shall be determined.



Richland Common Pleas

Case Caption: Patti Ann Burns vs Larry Branham

Case Number: 2019CP4002528

Type: Order/Entry of Default

IT IS SO ORDERED!

s/ Alison Renee Lee