THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2011-CP-10-8496

South Carolina Property and Casualty Insurance Guaranty Association, ... Appellant-Respondent,

v.

Roger Brock, Ryan Stevens, Malachi Sanders, and Health Advantage/BCBS of Arkansas, ... Defendants,

Of whom Roger Brock is the Respondent-Appellant.

INITIAL RESPONDENT'S BRIEF OF APPELLANT-RESPONDENT

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II. Did the trial court properly find that the Association may offset personal injury protection ("PIP") coverage available to a claimant from a solvent insurer after the claimant's insurer became insolvent?

COUNTER-STATEMENT OF THE CASE

This case involves interpretation of the South Carolina Property and Casualty Insurance Guaranty Association Act, S.C. Code Ann. § 38-31-10 *et seq.* (the "Act"). The Parties have filed cross-appeals regarding what offsets should be applied to Brock's claim against the Association in light of the fact that at-fault driver's insurer is insolvent. (R. ___; Association's Notice of Appeal; R. ___; Brock's Notice of Appeal).

Specifically, the South Carolina Property and Casualty Insurance Guaranty Association ("Association") contends that it should be allowed to offset amounts recovered by Brock from solvent insurers providing liability coverage, uninsured motorist ("UM") coverage, personal injury protection ("PIP"), and medical insurance benefits, as set forth in S.C. Code Ann. § 38-31-100(1) and (5). (*See* Initial Brief of Association). Brock contends that the Association should not be entitled to set off any amounts. (*See* Initial Brief of Brock).

The Parties filed Cross-Motions for Summary Judgment on these issues. (R. ___; Association's Motion for Summary Judgment; R. ___; Brock's Motion for Summary Judgment). The trial court ruled that the Association is entitled to claimed offsets for $25,000 paid to Brock by his parents' insurer for UM coverage and $5,000 paid to Brock by his parents' insurer for PIP. (R. ___; 1/24/13 Order p. 16-18). The Association submits the trial court erred, however, in concluding that the Association was not entitled to the claimed offsets for $40,590.45 paid by Brock's medical insurance and $22,500 paid to Brock by the liability insurer for the driver of the car in which Brock was riding when he was injured. (R. ___; 1/24/13 Order p. 7-15).

Both Parties appealed from this Order splitting the offset amounts. (R. ___; Association's Notice of Appeal; R. ___; Brock's Notice of Appeal). The Association

contends, based on the plain language of the Act, the trial court's order cannot stand as the bi-furcated approach on offset is not envisioned under the Act.

The Association's Initial Brief explains why the trial court erred by ruling that the Association could not offset liability and medical insurance coverage. (*See* Initial Brief of Association). Brock's Initial Brief only addresses PIP and UM coverage because the trial court permitted offset of these amounts. (*See* Initial Brief of Brock). Therefore, this brief in response will only address those issues raised in Brock's Initial Brief of Respondent-Appellant.

COUNTER-STATEMENT OF FACTS

The Parties' Statement of Facts as set forth in their Initial Briefs are not in conflict with each other or the trial court's Order. Brock's Statement of the Facts does contain some extraneous information that is not relevant to the instant issues on appeal, such as the extent and type of Brock's injuries, which are of no moment here. To the extent the Statements of Fact conflict, the Association maintains its Statement of the Facts is correct.

ARGUMENT

The trial court correctly interpreted the Act to require the Association to offset payments to Brock from solvent insurers providing UM and PIP coverage. (R. ___; 1/24/13 Order p. 16-18). The trial court's ruling regarding UM and PIP coverage is consistent with the express terms and purpose of the Act, which provides that **any and all coverage** from solvent insurers arising from the same facts, injury or loss should be offset. [1] Therefore, this Court should affirm this portion of the trial court's order declaring that the Association is entitled to offsets for amounts paid by insurers providing UM and PIP coverage.

[1] Similarly, as stated in the Association's initial brief, medical insurance payments and liability insurance payments should be offset as well. (*See* Initial Brief of Association).

I. The Plain Language of the Act Unambiguously Requires The Association to Set Off *All* Amounts Paid to A Claimant By *Any* Other Solvent Insurer For Injury Arising Out Of The Same Facts And Circumstances.

"When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Anderson v. South Carolina Election Comm'n*, 397 S.C. 551, 556, 725 S.E.2d 704, 706-07 (2012) (*citing Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 476 S.E.2d 690 (1996)). In this case, the Act is clear and unambiguous in its mandate that the Association should offset the amount of coverage available from any and all solvent insurers arising from the same facts, injury and loss as the claim against the Association.

As set forth in the Association's Initial Brief at pages 6-7, the Association was created by the Legislature to provide some measure of protection when an insurer becomes insolvent. *S.C. Prop. and Cas. Ins. Guar. Ass'n v. Carolinas Roofing and Sheet Metal Contractors Self-Insurance Fund*, 315 S.C. 555, 557, 446 S.E.2d 422, 424 (1994). To pay these sums, the Association is funded by assessments paid by insurers who write property and casualty coverage in South Carolina, which in turn are used to pay "covered claims" in accordance with the Act. (Initial Brief of Association p. 6-7). The assessments paid by insurers are ultimately passed on to the consumer in the form of increased insurance rates. *See* S.C. Code Ann. § 38-73-920 ("Rate changes proposed where the sole factor for the change is the impact of a revised assessment does not constitute a rate increase for purposes of this section.").

The Act unambiguously requires the insured of an insolvent insurer to exhaust ***all*** other coverage available under ***any*** policies providing coverage arising from the same facts, injury or loss as the insured's claim against the Association before any funds are provided by the Association. Specifically, the Act states:

> A person, having a claim under an insurance policy, whether or not it is a policy issued by a member insurer, and the claim under such other policy arises from the same facts, injury or loss which gave rise to the covered claim against the association, is required to first exhaust ***all*** coverage and limits provided by ***any*** such policy. Any amount payable on a covered claim under this chapter must be reduced by the full limits of such other coverage as set forth on the declarations page and the association shall receive a full credit for such limits, or, where there are no applicable limits, the claim must be reduced by the total recovery.

S.C. Code Ann. § 38-31-100(1) (emphasis added).

Brock claims that the phrase "a claim under an insurance policy" in Section 38-31-100(1) is ambiguous. (*See* Initial Brief of Brock p. 9). The Association respectfully submits this is incorrect. "A claim under an insurance policy" is such a commonly understood phrase that it creates no ambiguity and needs no further definition. *See Anderson*, 397 S.C. at 556-57, 725 S.E.2d at 707 ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning."). It is elementary that any benefits received from UM and PIP coverage are necessarily the result of a claim under an insurance policy. Otherwise the monies would not have been paid to Brock. Coverage under those policies existed and the insurers paid. This extinguishes the obligation for the Association to double-pay on these amounts.

Further, our courts must read the statutory scheme as a whole, not in isolated parts. *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). When viewing the statutory scheme as a whole, the plain meaning of these words is further

reinforced by other language in Section 38-31-100(1). For example, the statute states that the insurance policy of the solvent insurer does not have to be issued by a member insurer and requires exhaustion by "all coverage" under "any such policy." S.C. Code Ann. § 38-31-100(1).

It is therefore clear from the statute's plain language that the Association may offset recovery from any solvent insurer, regardless of the type of insurance, as long as the claim arose under the same facts, injury or loss as the claim against the Association. The trial court's decision to allow the Association to offset PIP and UM coverage therefore should be affirmed.

II. Brock Wrongly Relies On Statutes Readily Distinguishable From South Carolina's Act To Argue An Ambiguity Exists And Offset Should Not Be Allowed.

Brock mistakenly asserts that South Carolina's offset statute is based on language from a uniform model act which has caused much confusion and triggered numerous states to amend their offset statutes to list specific types of coverage that may be offset. (Initial Brief of Brock p. 10). While he is correct that the model act has caused confusion and statutory amendments in other states, South Carolina's statute has very different--and much broader--statutory language than those states following the model act. Thus, the statutes and cases cited by Brock are readily distinguishable.

All states have statutorily created guaranty associations, and they all have offset provisions. (*See* **Table A**, detailing other state statutes). Nine other states have statutes like South Carolina's that refer to offset of all payments from any insurance policy providing payments relating to the same facts, injury or loss. (*Id.*). The three courts construing the statutes like South Carolina's have consistently held the guaranty association is entitled to an

offset of other insurance recovered by claimants for any and all insurance coverage related to the "same facts, injury or loss." (*See* **Table B**, case law from states with offset provisions like South Carolina).

On the other hand, the statutes relied upon by Brock do not include South Carolina's broad language referring to payments from all policies providing coverage relating to the "same facts, injury or loss." *See* S.C. Ann. § 38-31-100(1). Rather than using the "same facts, injury or loss" language, these statutes instead have language that arguably requires the claim under the "other insurance" also to be a covered claim in order to be offset. For example, the statute applied in *Int'l Collection Serv. v. Vermont Prop. & Cas. Ins. Guar. Ass'n*, 555 A.2d 978 (Vt. 1988), provides:

> § 3619. Nonduplication of recovery
>
> (a) Any person having a claim against an insurer under any provision in an insurance policy other than policy of an insolvent insurer **which is also a covered claim**, shall be required to exhaust first his right under such policy. *Any amount payable on a covered claim under this subchapter shall be reduced by the amount of any recovery under such insurance policy.*

Vt. Stat. Ann. Tit. 8, § 3619 (emphasis added). This language in the Vermont statute is materially different than the language in South Carolina's statute.

Unlike courts interpreting language similar to our statute, courts construing statutes utilizing the language in the Vermont statute have consistently found it ambiguous. *See, e.g., Int'l Collection*, 555 A.2d at 980. As a result, decisions regarding the offset requirement under statutes with language similar to Vermont have been conflicting. *Cf. Int'l Collection*, 555 A.2d at 980 (finding provision ambiguous and permitting offset of liability insurance) and *R & R Indus. Park, LLC v. Utah Prop. & Cas. Insur. Guar. Ass'n*, 199 P.3d 917 (Utah 2008)

(finding provision ambiguous and not permitting offset against any amount less than insured's total loss). Because the statutes applied in the other cases have the "covered claim" standard for an offset rather than the "same facts, injury or loss" standard found in South Carolina's offset provision, these other statutes and cases are not instructive on the interpretation of the Act in this case.

Furthermore, the fact that several states with the model act's "covered claim" standard have subsequently amended their statutes to list specific types of insurance that must be offset actually supports the Association's position. Such amendments are evidence that state Legislatures were not content with the court decisions finding that such insurance could not be offset under their previous statute's wording and specifically listed the coverages which are examples of the broad and all-inclusive language in their amended and South Carolina's statutes. Consequently, this Court should take note that those Legislatures sought to bring the wording more in line with the Legislative intent and the requirements asserted under South Carolina's broader provision.

Importantly, South Carolina's offset statute has not required such amendment because it is not based on the "covered claim" standard that has caused such confusion in other states.[2] Rather, our offset statute clearly and unambiguously sets forth that "all" insurance under "any" other policy arising from the "same facts, injury or loss" must be offset. This clear language, given its plain and ordinary meaning, obviates the need to include a laundry list of all possible types of insurance in the Act.

For all the reasons stated above, recovery from all solvent insurers, including PIP and UM, is required under the Act as long as the PIP and UM claims arose from the "same facts,

[2] South Carolina's offset provision was previously based on the "covered claim" standard but was amended in 2001 to the current "same facts, injury or loss" standard. 2001 S.C. Acts 82.

loss or injury" as the claim against the Association. The trial court's decision to allow the Association to offset PIP and UM coverage therefore should be affirmed.

III. Offsetting PIP And UM Coverage Is Consistent With The Purpose Of The Act.

Notwithstanding the plain language of the Act, the Association should be entitled to offset PIP and UM coverage because Brock misconstrues the purpose of the Act in hopes of increasing his recovery beyond the amount for which he agreed to settle his claims. As shown by the chart below, Brock's reading of the statute would result in a windfall, allowing him to collect over $65,000 ***more*** than he would have received if the insurer at issue, Aequicap, had not become insolvent:

	What Brock Seeks to Receive Upon Aequicap's Insolvency	**What Brock Would Have Received Had Aequicap Not Become Insolvent**	**What Brock Should Receive Pursuant to the Act**	**What Brock Would Receive if Association Did Not Exist**
Progressive Uninsured Motorist Coverage	$ 25,000.00	0 (uninsured coverage would not have been available)	$ 25,000.00	$ 25,000.00
BC/BS Medical Benefits	$ 40,590.45	0 (Brock would have had to reimburse BC/BS)	$ 40,590.45 (Brock does not have to reimburse BC/BS)	$ 40,590.45
Progressive Personal Injury Protection	$ 5,000.00	$ 5,000.00	$ 5,000.00	$ 5,000.00
Nationwide Liability Insurance	$ 22,500.00	$ 22,500.00	$ 22,500.00	$ 22,500.00
Aequicap Liability Insurance	N/A	$185,000.00	N/A	0
Guaranty Association	$ 185,000.00	N/A	$91,909.55	N/A
TOTAL	**$278,090.45**	**$212,500.00**	**$185,000.00**	**$93,090.45**

The Act is not designed to create a double recovery or windfall. Of course, the Association and the Act exist to provide some level of protection for insureds when their insurers become insolvent, but this protection is limited by the express terms of the Act. Indeed, the Act states that the Association is to "pay covered claims *to the extent of the Association's obligation.*" S.C. Code Ann. § 38-31-60(d) (emphasis added). The Act then expressly limits the Association's obligation by allowing it to offset recovery from other solvent insurers. *See* S.C. Code Ann. § 38-31-100(1). General principles of South Carolina law disfavor double-recovery or windfalls. *See, e.g., Park Regency, LLC v. R&D Dev. of the Carolinas, LLC*, 402 S.C. 401, 412-13, 741 S.E.2d 528, 533-34 (Ct. App. 2012) (modifying a trial court award that would have otherwise resulted in a windfall); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998) (allowing money to be recovered from innocent third party where third party would have otherwise received a windfall); S.C. Jur. Implied Contracts § 6 ("[J]ustice and equity require the compensation of one who bestowed a benefit on another, because without such recovery the beneficiary would be allowed a windfall . . . ").

Moreover, the South Carolina Supreme Court has recognized that the protection afforded by the Act is limited, stating that the purpose of the Association is "to provide **some** protection to insureds whose insurance companies become insolvent." *Carolinas Roofing*, 315 at 557, 446 at 424 (emphasis added). This reflects the court's understanding of the Legislature's desire to provide protection to insureds of insolvent carriers while limiting increased rates resulting from increased assessments if the Association's obligations were not so limited. This view of South Carolina's Legislature and Supreme Court is consistent with the broadly accepted view of the limited protection guaranty associations provide. *See* 44

C.J.S. Insurance § 221 ("A person seeking payment from an insurance guaranty association or a fund created by multiple insurance companies generally must first exhaust other insurance available to such person, such as uninsured motorist coverage. It is the philosophy of Insurance Guaranty Fund to have all potential claims against the Fund's assets reduced by a solvent insurer, and not the Fund, whenever possible. The liability of the association or fund is reduced by the amount recovered under such other insurance."). Thus, limitation is also consistent with the view that the Act is not created to provide a windfall.

Given the plain language and purpose of the Act, the offset statute allows the Association to offset any amounts paid by any and all solvent insurers which arise out of the same facts, injury or loss as the claim against the Association. The trial court therefore correctly found that the language of the offset provision requires offset of the UM and PIP coverage.

IV. PIP and UM Statutes Do Not Prohibit Offset Because the Act Specifically Addresses Offset In The Case Of An Insolvent Insurer.

Brock mistakenly argues that the Association is not entitled to offset his UM and PIP coverage because subrogation of UM coverage is prohibited by S.C. Code Ann. § 38-77-160 and subrogation or offset of PIP coverage is prohibited by S.C. Code Ann. § 38-77-144. (Initial Brief of Brock p. 11-13). First, the statute prohibiting subrogation of UM coverage is irrelevant because the Association is not seeking to subrogate Brock's UM recovery. Instead, it simply seeks to apply the offset to sums unavailable absent the insolvency as required by the Act and to assure a windfall does not occur.

Second, although the UM and PIP statutes generally prohibit subrogation or setoff, they are less specific than the Act's exhaustion statute, which explicitly provides that these setoffs

are available to determine the Association's liability to claimants in the particular circumstance where an insurer becomes insolvent. As Brock admits, the more specific statute prevails over the general one. (Initial Brief of Brock p. 13).[3] Here, the exhaustion statute's specific allowance of an offset for these coverages in the special circumstances involved when an insurer becomes insolvent prevails over the general prohibition of their subrogation or setoff in the UM and PIP statutes.

Additionally, the Act's offset provision was revised to its current form in 2001, after the UM statute was most recently amended in 1994 and the PIP statute was enacted in 2000. 2001 S.C. Acts 82; 1994 S.C. Acts 461; 2000 S.C. Acts 344. Courts must presume that the Legislature knew of the UM and PIP statutes when revising the Act's offset provision, and therefore, the more recent offset provision allowing for offset of any and all insurance coverage arising from the same facts, injury or loss is controlling. *See Hair v. State*, 305 S.C. 77, 79, 406 S.E.2d 332, 334 (1991) ("[I]f two statutes are in conflict, the latest statute passed should prevail so as to repeal the earlier statute to the extent of the repugnancy."); *Ward v. Cobb*, 204 S.C. 275, 28 S.E.2d 850, 852 (1944) ("The last act of the Legislature is the law, and has the effect of repealing all prior inconsistent laws."). The trial court's decision to allow the Association to offset PIP and UM coverage therefore should be affirmed.

V. The Collateral Source Rule Does Not Prohibit Offset In This Case.

Next, Brock mistakenly argues that the Association is barred by the collateral source rule from offsetting Brock's UM and PIP coverage. (Initial Brief of Brock p. 12, 14). "The collateral source rule provides that compensation received by an injured party from a source

[3] *Wooten ex rel. Wooten v. South Carolina Dep't of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999) ("A specific statutory provision prevails over a more general one.").

wholly independent of the wrongdoer will not reduce the amount of damages owed by the wrongdoer." *In re W.B. Easton Constr. Co., Inc.*, 320 S.C. 90, 92, 463 S.E.2d 317, 318 (1995). However, the collateral source rule is a creature of common law, and therefore, was superseded by codification of the Act's offset requirements because the Legislature specifically provided that all other insurance coverage related to the same facts, injury or loss must be offset. *See Estate of Rattenni v. Grainger*, 298 S.C. 276, 278, 379 S.E.2d 890, 891 (1989) (noting that the General Assembly can abrogate the collateral source rule by statute). It is well-settled the General Assembly can abrogate the common law by statute. *Id.*

Furthermore, courts must read statutes "so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,' for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.'" *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (internal citations omitted). Here, the Act directly contradicts the collateral source rule by requiring the Association to offset potentially collateral sources—namely, those claims under other insurance policies arising from the same facts, injury or loss as the claim against the Association. As such, if the collateral source rule was applicable to determining the Association's liability to claimants, the Association's liability could never be reduced by any collateral sources or recovery from any other policy and the offset provisions of the Act would be rendered completely meaningless.

In support of this conclusion, numerous other state courts have found that their respective offset statutes abrogated the common law collateral source rule as well. (*See* **Table C**, noting states that recognize an abrogation of the collateral source rule in light of statutory

provisions). By doing so, these courts have acknowledged the need to effectuate specific legislative pronouncements.

Accordingly, application of the collateral source rule to the offset provisions of the Act is contrary to the Act's express terms, the intent of the Legislature, and basic tenets of statutory construction. The Act clearly abrogates the collateral source rule, and the trial court correctly refused to apply it in this case in ruling that the Association is entitled to offset UM and PIP coverage.

VI. The Act Requires Offset of the $25,000.00 Brock Received From His UM Coverage.

As noted above, the Act permits offset of payments from any and all insolvent insurers for claims arising out of the same facts, injury or loss as the claim against the Association. *See* S.C. Code Ann. § 38-31-100(1). This standard is clearly met in that the UM coverage would not have been available but for the insolvency of Aequicap, the liability carrier for the at-fault party, and Brock would not have been paid any sums but for the insolvency.[4] Thus, UM coverage should be subject to set off, despite Brock's attempts to differentiate it.

A. Brock misconstrues the effect of the Act's exclusion of accident insurance on the Association's ability to offset his UM coverage.

Brock argues that the UM coverage he received is accident insurance, and because the Act does not apply to accident insurance, the UM coverage cannot be a "covered claim" subject to offset by the Association. (Initial Brief of Brock p. 11). First, a claim under another insurance policy need not be a "covered claim" under the Act in order to offset the

[4] Brock admits his UM coverage claim arose from the motor vehicle accident on October 2, 2009, the same loss from which the covered claim against the Association arose. (R. ___; Association's Memorandum in Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendant's Cross Motion for Summary Judgment p. 8).

Association's liability. It need simply arise under the same facts, injury or loss giving rise to a "covered claim." Although the requirement asserted by Brock is found in statutes that follow the model act, that is simply not the requirements established by the South Carolina Legislature. As stated above, South Carolina's offset statute simply requires that the other claim arise from the same facts, injury or loss as the covered claim against the Association.

Next, to the extent Brock argues that UM benefits are accident insurance not subject to the Act, he is mistaken. "Accident and health insurance" is defined in S.C. Code § 38-1-20(1) as "insurance of human beings against death or personal injury by accident, and each insurance of human beings against sickness, ailment, and any type of physical disability resulting from accident or disease, and prepaid dental service, but not including coverages required by the Workers' Compensation Law of this State." S.C. Code Ann. § 38-1-20(1). In other words, accident insurance and health insurance are defined together and applied as a unitary type of coverage and no health or accident insurer is a "member insurer" under the Act. In contrast, UM coverage is casualty insurance "against legal liability of the insured for bodily injury to or death of another person . . . ." S.C. Code Ann. § 38-1-20(11). The statutory authority for and definition of uninsured motorist coverage is found in S.C. Code Ann. § 38-77-30(14) and is clearly included in requirements of automobile insurance, a well recognized sub-set of casualty insurance. In fact, insurers providing automobile and by extension UM coverage are members of the Association and assessments against those insurers are included in the "automobile insurance account" established by S.C. Code Ann. § 38-31-40. Accordingly, automobile carriers providing uninsured coverages are "member insurers" and uninsured coverage is casualty insurance to which the Act is applicable. Thus, Brock's attempts to alter the well-established definition to suit his claim must fail.

Even if UM benefits constituted accident insurance, the offset provision would require that such benefits be setoff. The fact that the Act does not apply to health and accident insurers simply means that such insurers are not members of the Association. The offset statute in the Act clearly provides that a policy can be offset "whether or not it is a policy issued by a member insurer." S.C. Code Ann. § 38-31-100(1). For another insurance policy to be offset, it does not matter whether the other policy was issued by an insurer who writes property and casualty insurance in South Carolina and would therefore be a member of the Association. Accident and health insurance policies may be offset because it is irrelevant under the statute whether the other policy was issued by a member of the Association. Therefore, Brock's argument does not support the reversal of the trial court's ruling that the UM coverage must be offset.

B. Refusing to allow the Association to offset the uninsured coverage would result in a windfall to Brock.

As noted herein, as a practical matter, Brock obtained recovery from his UM coverage solely by virtue of Aequicap's insolvency, which rendered Stevens an uninsured motorist. Otherwise, Brock would not have received any money from his UM coverage. Because this recovery would not have been received by Brock but for Aequicap's insolvency, allowing Brock to keep this money without an offset to the Association would create a windfall and a double recovery for Brock. Therefore, the Association should be allowed to offset the amount Brock received from his UM coverage in accordance with the Act and to prevent a double recovery for Brock. *See, e.g., Park Regency, LLC*, 402 S.C. at 412-13, 741 S.E.2d at 533-34 (modifying a trial court award that would have otherwise resulted in a windfall); *McNair*, 330 S.C. 332, 499 S.E.2d 488 (allowing money to be recovered from innocent third party where

third party would have otherwise received a windfall); S.C. Jur. Implied Contracts § 6 ("[J]ustice and equity require the compensation of one who bestowed a benefit on another, because without such recovery the beneficiary would be allowed a windfall . . . ").

C. The majority of other jurisdictions permit offset of uninsured coverage.

Although no South Carolina cases directly address the Association's entitlement to a setoff of UM coverage, the vast majority of states addressing this issue support the Association's right to such setoff. (*See* **Table D**, showing states establishing the right to offset UM payments from solvent insurers). This principle is so well-established that C.J.S. uses UM coverage as the example for a Guaranty Association's right to offset. *See* 44 C.J.S. Insurance § 221 ("A person seeking payment from an insurance guaranty association or a fund created by multiple insurance companies generally must first exhaust other insurance available to such person, such as uninsured motorist coverage."). As such, the right of the Association to offset Brock's UM coverage is supported by the plain language of the Act and the case law, and, the trial court's decision that the Association is entitled to such offset should be affirmed.

VII. Brock Relies On Distinguishable Cases From Other Jurisdictions To Wrongly Argue PIP Coverage Should Not Be Offset.

In seeking to bar the offset for PIP coverage, Brock relies on opinions from courts interpreting statutory language different from the South Carolina Act. (Initial Brief of Brock p. 14). Regardless of the opinions cited by Brock, as explained above, the plain language of South Carolina's offset statute clearly differs from the statutes analyzed in the Minnesota and Kentucky opinions on which Brock relies. Specifically, those statutes did not contain the

"arising from the same facts, injury or loss" language found in the South Carolina Act.[5] This foundational difference distinguishes the support for the offset and does not provide any guidance in determining the offset right.

Moreover, cases in other jurisdictions analyzing statutes like Kentucky's and Minnesota's allow offset. In McMichael v. Robertson, 77 Md. App. 208, 549 A.2d 1157 (Md. Ct. Spec. App. 1988), cited by the trial court, the Maryland court relies on statutory language different from South Carolina's to find that the Association is entitled to offset PIP coverage. These cases from other jurisdictions utilizing dissimilar statutory language simply are not instructive in interpreting the broad language of South Carolina's offset statute permitting offset of all payments under coverage arising from the same facts, injury or loss as the claim against the Association.

Furthermore, although no South Carolina cases directly address the Association's entitlement to a setoff of PIP coverage, the clear majority of states addressing this issue support the Association's right to such setoff. (*See* **Table E**, showing states establishing the right to offset PIP payments from solvent insurers).

The plain language of South Carolina's Act clearly supports the Association's right to offset Brock's PIP coverage. As the keystone language centers on the "arising out of the same facts, injury or loss" requirement, what must be decided is whether the foundational requirements are met and then an application of the clear and unambiguous statutory language must occur. When focusing on the facts present in this case, Brock admitted that the PIP payments were made as a result of the same facts, injury or loss, and the Association should be

[5] In fact, Minnesota has subsequently amended its statute to more closely align with South Carolina's "same facts" standard. Minn. Stat. Ann. § 60C.13.

entitled to an offset for these payments. (R. ___; Association's Memorandum in Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendant's Cross Motion for Summary Judgment p. 13).

CONCLUSION

The Act's plain language requires Brock to exhaust the coverage provided by his uninsured and personal injury protection coverage and provides that the Association is entitled to setoff its liability to Brock by the amounts of these other coverages. For the foregoing reasons, the Association respectfully requests this Court affirm the circuit court's ruling that the Association is entitled to the claimed offsets for Brock's uninsured and personal injury protection coverage.

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TABLE A

*****The statutes that refer to offset of all payments from any insurance policy providing payments relating to the same facts, injury or loss are listed in bold.**

State	Statute Citation	Statute's Wording
Alabama	Ala. Code § 27-42-12	(a) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his rights under such policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such insurance policy.
Alaska	Alaska Stat. Ann. § 21.80.100	(a) A person having a claim against an insurer, whether or not the insurer is a member insurer, under a provision in an insurance policy other than a policy of an insolvent insurer that is also a covered claim is required to exhaust first the person's right under the policy. An amount payable on a covered claim under this chapter shall be reduced by the amount of recovery under the insurance policy.
Arizona	Ariz. Rev. Stat. Ann. § 20-673	(C) Where more than one policy may be applicable, a policy issued by the insolvent insurer shall be deemed to be excess coverage. The claimant shall be required to exhaust all rights under other applicable coverage or coverages. Any recovery pursuant to this article shall be reduced by the amount of the recovery under the claimant's insurance policy. Any amount payable on a covered claim shall be reduced by the amount of such recovery under other applicable insurance.
Arkansas	Ark. Code Ann. § 23-90-117	(a)(1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer, which is also a covered claim, shall be required to exhaust first his or her right under the policy. (2) Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under the insurance policy.
California	Cal. Ins. Code § 1063.2	(c)(1) If damages against uninsured motorists are recoverable by the claimant from his or her own insurer, the applicable limits of the uninsured motorist coverage shall be a credit against a covered claim payable under this article. . . . (2) Any claimant having collision coverage on a loss that is covered by the insolvent company's liability policy shall first proceed against his or her collision carrier. . . . (e) Any person having a claim or legal right of recovery under any governmental insurance or guaranty program which is also a covered claim, shall be required to first exhaust his or

		her right under the program. . . .
Colorado	Colo. Rev. Stat. Ann. § 10-4-512	(1) Any person having a claim against an insurer under any provision in any insurance policy that is also a covered claim shall exhaust first the person's right under such policy. Any amount payable on a covered claim under this part 5 is reduced by the amount recoverable under such insurance policy.
Connecticut	Conn. Gen. Stat. Ann. § 38a-845	(a) Any person having a claim against an insurer under any provision in an insurance policy, other than a policy of an insolvent insurer, which is also a covered claim under sections 38a-836 to 38a-853, inclusive, shall exhaust first his rights under such policy. Any amount payable on a covered claim under said sections shall be reduced by the amount recoverable under the claimant's insurance policy or chapter 568.
Delaware	Del. Code Ann. tit. 18, § 4212	(a) Any person having a claim covered under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim shall be required to first exhaust the rights under such policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such insurance policy.
D.C.	D.C. Code § 31-5509	(a) Any person having a claim against an insurer under any provision in an insurance policy, other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his or her right under such a policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such an insurance policy.
Florida	Fla. Stat. Ann. § 631.61	(1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall not be required to exhaust first her or his rights under such a policy. Any amount payable on a covered claim under this part shall be reduced by the amount of any recovery under such insurance policy.
Georgia	Ga. Code Ann. § 33-36-14	(a) Except as provided for in Code Section 33-36-20, any person having a claim against a policy or an insured under a policy issued by an insolvent insurer, which claim is a covered claim and is also a claim within the coverage of any policy issued by a solvent insurer, shall be required to exhaust first his or her rights under such policy issued by the solvent insurer. The policy of the solvent insurer shall be treated as primary coverage and the policy of the insolvent insurer shall be treated as secondary coverage and his or her rights to recover such claim under this chapter shall be reduced by any

		amounts received from the solvent insurers.
Hawaii	Haw. Rev. Stat. § 431:16-112;	(a) Any person having a claim against an insurer whether or not the insurer is a member insurer under any provision in an insurance policy other than a policy of an insolvent insurer that is also a covered claim, shall be required to exhaust first the person's rights under the policy. Any amount payable on a covered claim under this part shall be reduced by the amount of any recovery under the insurance policy. If there are any other policies issued by an insolvent insurer applicable to the covered claim, then all such policies shall be exhausted before any claim can be deemed a covered claim subject to being covered by the association.
Idaho	Idaho Code Ann. § 41-3612	(1) Any person having a claim against an insurer, whether or not the insurer is a member insurer, under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such insurance policy.
Illinois	**215 ILCS 5/546**	**(a) An insured or claimant shall be required first to exhaust all coverage provided by any other insurance policy, regardless of whether or not such other insurance policy was written by a member company, if the claim under such other policy arises from the same facts, injury, or loss that gave rise to the covered claim against the Fund. The Fund's obligation under Section 537.2 shall be reduced by the amount recovered or recoverable, whichever is greater, under such other insurance policy. Where such other insurance policy provides uninsured or underinsured motorist coverage, the amount recoverable shall be deemed to be the full applicable limits of such coverage. . . .**
Indiana	**IN ST 27-6-8-11** **2013 Ind. Legis. Serv. P.L. 52-2013 (S.E.A. 431) (WEST) (to be codified at Ind. Code § 27-6-8-11(b))(effective July 1, 2013)**	**Current:** **Sec. 11. (a) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first the person's right under the policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of recovery under the insurance policy.** **To Be Effective July 1, 2013:** **Sec. 11. (a) For purposes of this section, "coverage provided by any other insurance policy" includes:** **(1) coverage under an insured health plan, a health**

		maintenance organization, a hospital plan corporation, a professional health service corporation, or a disability insurance policy; and (2) any amount payable by or on behalf of a self-insurer. However, the term does not include coverage under a life insurance policy. (b) Any person having a claim against an insurer shall, in accordance with subsection (c), be required first to exhaust all coverage provided by any other insurance policy, including the right to a defense under the other insurance policy, if the claim under the other insurance policy arises from the same facts, injury, or loss that gave rise to the covered claim against the association under this chapter. (c) The requirement to exhaust coverage provided by any other insurance policy under subsection (b): (1) applies regardless of whether the other insurance policy is written by a member insurer; and (2) does not apply to a right under a: (A) policy written by an insolvent insurer; or (B) life insurance policy.
Iowa	Iowa Code Ann. § 515B.9	1. a. Any person having a claim under an insurance policy, and the claim under such other policy alleges the same damages or arises from the same facts, injury, or loss that gives rise to a covered claim against the association, shall be required to first exhaust all coverage provided by that policy, whether such coverage is on a primary, excess, or pro rata basis and any obligation of the association shall not be considered other insurance. (1) Any amount payable on a covered claim shall be reduced by the full applicable limits of such other insurance policy and the association shall receive full credit for such limits or where there are no applicable limits, the claim shall be reduced by the total recovery. . . . b. For purposes of this section, an insurance policy means a policy issued by an insurance company, whether or not a member insurer, which policy insures any of the types of risks insured by an insurance company authorized to write insurance under chapter 515, 516A, or 520, or comparable statutes of another state, except those types of risks set forth in chapters 508 and 514.
Kansas	Kan. Stat. Ann. § 40-2910	(a) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim shall be

		required to exhaust first his right under such policy. A claim under an insurance policy shall include a claim under any kind of insurance, whether such claim is a first party or third party claim, and shall include, without limitation, accident and health insurance, workers' compensation, Blue Cross and Blue Shield and all other coverages except for policies of an insolvent insurer. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such other insurance policy.
Kentucky	Ky. Rev. Stat. Ann. § 304.36-120	(1) Any person having a claim against an insurer under any provision in an insurance policy other than the policy of an insolvent insurer which is also a covered claim shall be required to exhaust first his right under the policy. Any amount payable on a covered claim under this subtitle shall be reduced by the amount of recovery under the insurance policy. Any provision in an insurance policy includes, but is not limited to, the following coverages: basic reparation benefits under KRS Chapter 304, Subtitle 39; uninsured motorist; underinsured motorist; workers' compensation; and health care.
Louisiana	**La. Rev. Stat. Ann. § 22:2062**	**A. (1) Any person having a claim against an insurer shall be required first to exhaust all coverage provided by any other policy, including the right to a defense under the other policy, if the claim under the other policy arises from the same facts, injury or loss that gave rise to the covered claim against the association. The requirement to exhaust shall apply without regard to whether or not the other insurance policy is a policy written by a member insurer. However, no person shall be required to exhaust any right under the policy of an insolvent insurer or any right under a life insurance policy or annuity.** **(2) Any amount payable on a covered claim under this Part shall be reduced by the full applicable limits stated in the other insurance policy, or by the amount of the recovery under the other insurance policy as provided herein. The association and the insured shall receive a full credit for the stated limits, unless the claimant demonstrates that the claimant used reasonable efforts to exhaust all coverage and limits applicable under the other insurance policy. If the claimant demonstrates that the claimant used reasonable efforts to exhaust all coverage and limits applicable under the other insurance policy, or if there are no applicable stated limits under the policy, the association and the insured shall receive a full credit for the total recovery. . . .**

		(5) For purposes of this Section, a claim under an insurance policy other than a life insurance policy or annuity shall include, but is not limited to: **(a) A claim against a health maintenance organization, a hospital plan corporation, a professional health service corporation or disability insurance policy, liability coverage, uninsured or underinsured motorist liability coverage, hospitalization, coverage under self-insurance certificates, preferred provider organization, or similar plan, and any and all other medical expense coverage; and** **(b) Any amount payable by or on behalf of a self-insurer.** **(c) Any claim against persons prohibited from recovering against the association as specified in this Part.**
Maine	Me. Rev. Stat. tit. 24-A, § 4443	1. Insurance policy. Any person having a claim against an insurer under any provision in an insurance policy, other than that of an insolvent insurer, which is also a covered claim, shall be required to exhaust first the person's right under the policy. Any amount otherwise payable on a covered claim under this subchapter shall be reduced by the amount of any recovery under the insurance policy.
Maryland	Md. Code Ann., Ins. § 9-310	(a)(1) A person with a claim against an insurer under a policy or surety bond that is also a covered claim against an insolvent insurer shall exhaust first the person's rights under the policy or surety bond. (2) The amount payable on a covered claim under this subtitle shall be reduced by the amount of any recovery under the policy or surety bond.
Massachusetts	Mass. Gen. Laws Ann. ch. 175D, § 9	Any person having a claim against his insurer under any insolvency provision in his insurance policy which is also a covered claim shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of such recovery under the claimant's insurance policy.
Michigan	Mich. Comp. Laws Ann. § 500.7931	If damages or benefits are recoverable by a claimant other than from any disability policy or life insurance policy owned or paid for by the claimant or by a claimant or insured under an insurance policy other than a policy of the insolvent insurer, or under a self-insured program of a self-insured entity, the damages or benefits recoverable shall be a credit against a covered claim payable under this chapter. The claimant, insured, or self-insured entity shall first exhaust all coverage provided by any policy or the self-insured retention of an excess insurance policy.
Minnesota	**Minn. Stat. Ann. § 60C.13**	**Subdivision 1. Other policy coverage. Any person having a claim under another policy whether or not the policy is a policy of a member insurer, which claim arises out of the**

		same facts which give rise to the covered claim, shall be first required to exhaust the person's right under the other policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such insurance policy. For purposes of this subdivision, another insurance policy does not include a workers' compensation policy.
Mississippi	Miss. Code. Ann. § 83-23-123	(1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer, which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this article shall be reduced by the amount of any recovery under such insurance policy.
Missouri	**Mo. Ann. Stat. § 375.778**	**Any person having a claim against an insurer, regardless of whether such insurer is a member insurer, under any provision in an insurance policy, other than the policy of the insolvent insurer, which arises out of the same facts, injury, or loss that gave rise to the covered claim against the association and which is also a covered claim shall be required to first exhaust his or her right under such policy or policies of insurance. Such other policies of insurance shall include, but not be limited to, liability coverage, health and accident insurance, hospitalization and other medical expense coverage, health care coverage by a health maintenance organization or health services corporation, or any amount payable by or on behalf of a self-insured plan, workers' compensation benefits, disability insurance, uninsured motorist coverage, and underinsured motorist coverage. The association's obligation pursuant to subsection 1 of section 375.775 shall be reduced by the amount recovered or recoverable, whichever is greater under any such other insurance policy or policies. To the extent the association's obligation pursuant to subsection 1 of section 375.775 is reduced by the application of the section, the liability of the person insured by the insolvent insurer's policy for the claim shall be reduced in the same amount.**
Montana	Mont. Code Ann. § 33-10-115	(1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this part shall be reduced by the amount of any recovery under such insurance policy.

Nebraska	Neb. Rev. Stat. Ann. § 44-2411	(1) Any person having a claim against his or her own insurer under any provisions of his or her own insurance policy, which claim is also a covered claim against an insolvent member insurer under the Nebraska Property and Liability Insurance Guaranty Association Act, shall be required to exhaust all of his or her rights under his or her own policy before the association is obligated to pay the covered claim under such act. Any amount payable on a covered claim by the provisions of such act shall be reduced by the amount of such recovery under the claimant's own insurance policy.
Nevada	Nev. Rev. Stat. Ann. § 687A.100	(1) Any person having a claim against his insurer, under any provision in his insurance policy, which is also a covered claim shall be required to exhaust first his right under the policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of recovery under the claimant's insurance policy.
New Hampshire	N.H. Rev. Stat. Ann. § 404-H:12	(1) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer, including but not limited to the provisions of uninsured motorist coverage of any policy, shall be required to exhaust first his or her right under such policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such insurance policy.
New Jersey	N.J. Stat. Ann. § 17:30A-12	(b) Any person having a claim, except for a claim for coverage for personal injury protection benefits issued pursuant to section 4 of P.L. 1972, c. 70 (C. 39:6A-4) and section 4 of P.L. 1998, c. 21 (C. 39:6A-3.1), under an insurance policy other than a policy of an insolvent insurer, shall be required to exhaust first his right under that other policy. For purposes of this subsection b., a claim under an insurance policy shall include a claim under any kind of insurance, whether it is a first-party or third-party claim, and shall include without limitation, general liability, accident and health insurance, workers' compensation, health benefits plan coverage, primary and excess coverage, if applicable, and all other private, group or governmental coverages except coverage for personal injury protection benefits issued pursuant to section 4 of P.L. 1972, c. 70 (C. 39:6A-4) and section 4 of P.L. 1998, c. 21 (C. 39:6A-3.1).
New Mexico	N.M. Stat. Ann. § 59A-43-11	(A) Any person having a claim against any insurer under any provision in an insurance policy including but not limited to uninsured motorist coverage other than a policy of an insolvent insurer which is also a covered claim, shall be

		required to exhaust first his rights under the policy. An insured of an insolvent insurer and possessing no other insurance coverage applicable to a specific claim shall be deemed to be "uninsured" for uninsured motorist coverage purposes. Any amount payable on a covered claim under this article shall be reduced by the amount of any recovery available under such insurance policy. No action against an insured of an insolvent insurer shall be tried prior to the exhaustion of all other available sources of recovery.
New York	N.Y. Ins. Law §§ 7601 to 7614 (McKinney)	New York's Act is very different from other state's Insurance Guaranty Association statutes and does not include any provisions regarding offsets.
North Carolina	N.C. Gen. Stat. § 58-48-55	(a) Any person having a right to a defense or a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his rights under such policy. Any amount payable on a covered claim under this Article shall be reduced by the amount of any recovery under that insurance policy. For purposes of this section, a claim under an insurance policy shall include a claim under or covered by any kind of insurance, whether it is a first-party or a third-party claim, and whether it is a policy covering the policyholder or another person liable to the claimant, and shall include, without limitation, policies of accident and health insurance, workers' compensation insurance, medical expense coverage, and all other coverage except for policies of an insolvent insurer.
North Dakota	N.D. Cent. Code § 26.1-42.1-09	(1) Any person with a claim against an insurer, regardless of whether that insurer is a member insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, is required to exhaust first that person's right under that policy. Any amount payable on a covered claim under this chapter must be reduced by the amount of any recovery under the insurance policy.
Ohio	Ohio Rev. Code Ann. § 3955.13	Any person having a covered claim upon which recovery is also presently possible under an insurance policy written by another insurer shall be required first to exhaust his rights under such other policy. Any amount payable on a covered claim under sections 3955.01 to 3955.19 of the Revised Code shall be reduced by the amount of such recovery.
Oklahoma	**Okla. Stat. Ann. tit. 36, §**	**(1) Any person having a claim against an insurer shall be required to first exhaust all coverage provided by another**

	2012	**policy if it arises from the same facts, injury or loss that gave rise to the covered claim against the Oklahoma Property and Casualty Insurance Guaranty Association. The requirement to exhaust all coverage shall apply without regard to whether the other insurance policy is a policy written by a member insurer. However, no person shall be required to exhaust any right under the policy of an insolvent insurer or any right under a life insurance policy.** **(2) Any amount payable on a covered claim under the Oklahoma Property and Casualty Insurance Guaranty Association Act shall be reduced by the full applicable limits stated in the insurance policy or by the amount of the recovery under the insurance policy as provided herein. The Association shall receive a full credit for the stated limits, unless the claimant demonstrates that the claimant used reasonable efforts to exhaust all coverage and limits applicable under the other insurance policy. If the claimant demonstrates that the claimant used reasonable efforts to exhaust all coverage and limits applicable under the insurance policy, or if there are no applicable stated limits under the policy, the Association shall receive a full credit for the total recovery.**
Oregon	Or. Rev. Stat. Ann. § 734.640	(1) Any person who has a claim under an insurance policy against an insurer other than an insolvent insurer which would also be a covered claim against an insolvent insurer must first exhaust the remedies under such policy. . . . (3) Any recovery under ORS 734.510 to 734.710 from the association shall be reduced by the amount of any recovery pursuant to subsections (1) and (2) of this section.
Pennsylvania	40 P.A. Cons. Stat. Ann. § 991.1817	(a) Any person having a claim under an insurance policy shall be required to exhaust first his right under such policy. For purposes of this section, a claim under an insurance policy shall include a claim under any kind of insurance, whether it is a first-party or third-party claim, and shall include, without limitation, accident and health insurance, worker's compensation, Blue Cross and Blue Shield and all other coverages except for policies of an insolvent insurer. Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under other insurance.
Rhode Island	**R.I. Gen. Laws Ann. § 27-34-12**	**(1) Any person having a claim against an insurer, shall be required first to exhaust all coverage provided by any other policy, including the right to a defense under the**

		other policy, if the claim under the other policy arises from the same facts, injury or loss that gave rise to the covered claim against the association. The requirement to exhaust shall apply without regard to whether the other insurance policy is a policy written by a member insurer. However, no person shall be required to exhaust any right under the policy of an insolvent insurer or any right under a life insurance policy. (2) Any amount payable on a covered claim under this chapter shall be reduced by the full applicable limits stated in the other insurance policy, or by the amount of the recovery under the other insurance policy as provided herein. The association shall receive a full credit for the stated limits, unless the claimant demonstrates that the claimant used reasonable efforts to exhaust all coverage and limits applicable under the other insurance policy. If the claimant demonstrates that the claimant used reasonable efforts to exhaust all coverage and limits applicable under the other insurance policy, or if there are no applicable stated limits under the policy, the association shall receive a full credit for the total recovery.
South Carolina	S.C. Code Ann. § 38-31-100	(1) A person, having a claim under an insurance policy, whether or not it is a policy issued by a member insurer, and the claim under such other policy arises from the same facts, injury, or loss that gave rise to the covered claim against the association, is required to first exhaust all coverage and limits provided by any such policy. Any amount payable on a covered claim under this chapter must be reduced by the full limits of such other coverage as set forth on the declarations page and the association shall receive a full credit for such limits, or, where there are no applicable limits, the claim must be reduced by the total recovery. Notwithstanding the foregoing, no person may be required to exhaust all coverage and limits under the policy of an insolvent insurer.
South Dakota	S.D. Codified Laws § 58-29A-93	Any person having a claim against an insurer, whether or not the insurer is a member insurer, under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to first exhaust any right under the policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under the insurance policy.
Tennessee	Tenn. Code	(a) Any person having a claim against an insurer under any

	Ann. § 56-12-111	provision in an insurance policy other than a policy of an insolvent insurer, which is also a covered claim, shall be required to exhaust first such person's right under such policy. Any amount payable on a covered claim under this part shall be reduced by the amount of any recovery under such insurance policy.
Texas	**Tex. Ins. Code Ann. §§ 462.251, 462.252**	**(a) Any person who has a claim under an insurance policy, other than an impaired insurer's policy, and whose claim arises from the same facts, injury, or loss giving rise to a claim against an impaired insurer or the insurer's insured, must first exhaust the person's rights under the insurance policy, including:** **(1) a claim for benefits under a workers' compensation insurance policy or a claim for indemnity or medical benefits under a health, disability, uninsured motorist, personal injury protection, medical payment, liability, or other insurance policy. . . .** **(a) Except as provided by Subsection (b), an amount payable as a covered claim under this chapter is reduced by the full applicable limits of another insurance policy described by Section 462.251, and the association shall receive a full credit in the amount of the full applicable limits of the other policy.**
Utah	Utah Code Ann. § 31A-28-213	(1) (a) Any person who has a claim against an insurer, whether or not the insurer is a member insurer, under any provision in an insurance policy, other than a policy of an insolvent insurer that is also a covered claim, is required to first exhaust that person's right under that person's policy. (b) Any amount payable on a covered claim under this part under an insurance policy is reduced by the amount of any recovery under the insurance policy described in Subsection (1)(a).
Vermont	Vt. Stat. Ann. tit. 8, § 3619	(a) Any person having a claim against an insurer under any provision in an insurance policy other than policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his or her right under such policy. Any amount payable on a covered claim under this subchapter shall be reduced by the amount of any recovery under such insurance policy.
Virginia	Va. Code Ann. § 38.2-1610	(A) Any person having a claim against an insurer under any provision in an insurance policy, other than a policy of an insolvent insurer under which the claim is also covered, shall be required to first seek recovery under the policy covered by

		the insurer which is not insolvent. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under the insurance policy.
Washington	Wash. Rev. Code Ann. § 48.32.100	(1) Any person having a claim against his or her insurer under any provision in his or her insurance policy which is also a covered claim shall be required to exhaust first any right under that policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of a recovery under the claimant's insurance policy.
West Virginia	W. Va. Code Ann. § 33-26-12	(1) Any person having a claim against a solvent insurer under any provision in an insurance policy other than a policy of an insolvent insurer, which is also a covered claim, is required to exhaust first his or her right under the solvent insurer's policy. Any amount payable on a covered claim under this article shall be reduced by the amount of any recovery under the solvent insurer's policy.
Wisconsin	Wis. Stat. Ann. § 646.31	(6)(a) The portion of an otherwise eligible loss claim for which indemnification is provided by other benefits or advantages, which may not be included in the classes of claims specified in s. 645.68(intro.), may not be claimed from the fund under this chapter or from the insured or policyholder. The claimant must exhaust such collateral sources before pursuing payment from the fund. This paragraph does not apply to the claim of an insured or payee under a structured settlement annuity.
Wyoming	Wyo. Stat. Ann. § 26-31-111	(a) Any person having a claim against an insurer under an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall first exhaust his right under the policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under the insurance policy.

TABLE B

Illinois

215 ILCS 5/546

(a) An insured or claimant shall be required first to exhaust all coverage provided by any other insurance policy, regardless of whether or not such other insurance policy was written by a member company, if the claim under such other policy arises from the **same facts, injury, or loss** that gave rise to the covered claim against the Fund. The Fund's obligation under Section 537.2 shall be reduced by the amount recovered or recoverable, whichever is greater, under such other insurance policy. Where such other insurance policy provides uninsured or underinsured motorist coverage, the amount recoverable shall be deemed to be the full applicable limits of such coverage. To the extent that the Fund's obligation under Section 537.2 is reduced by application of this Section, the liability of the person insured by the insolvent insurer's policy for the claim shall be reduced in the same amount.

Hasemann v. White, 177 Ill. 2d 414, 420, 686 N.E.2d 571, 574 (1997)
Liability of Insurance Guaranty Fund on covered claim following insolvency of automobile liability insurer and claimants' settlement with uninsured motorist (UM) carrier for less than policy limits was offset by full amount of UM policy limits, not amount of settlement. Claimant who settles with his uninsured motorist (UM) carrier for less than policy limit should be assumed to have received policy limit for purposes of assessing liability of Insurance Guaranty Fund; when claimant settles with own carrier for less than policy limits, claimant must bear risk of settling too cheaply.

Norberg v. Centex Homes Corp., 247 Ill. App. 3d 267, 616 N.E.2d 1342 (1993)
Developer was required to exhaust claim against its liability insurer before recovering from Insurance Guaranty Fund pursuant to contribution claim against injured worker's employer whose insurer became insolvent.

Roth v. Illinois Ins. Guar. Fund, 366 Ill. App. 3d 787, 797, 852 N.E.2d 289, 297 (2006)
Health insurance for treating automobile accident victim was "other insurance" within the meaning of statute requiring claimant to exhaust all coverage provided by any other insurance policy, if the claim under the other policy arose from the same facts, injury, or loss that gave rise to the covered claim against the Insurance Guaranty Fund, and, thus, the medical insurance payments entitled Fund to setoff reducing to zero Fund's liability on covered claim against insolvent automobile liability insurer; the claims against medical and automobile liability insurers arose from the same injury.

Iowa

Iowa Code Ann. § 515B.9

1. a. Any person having a claim under an insurance policy, and the claim under such other policy alleges the same damages or arises from the **same facts, injury, or loss** that gives rise to a covered claim against the association, shall be required to first exhaust all coverage provided by that policy, whether such coverage is on a primary, excess, or pro rata basis and any obligation of the association shall not be considered other insurance.

Stecher v. Iowa Ins. Guar. Ass'n, 465 N.W.2d 887, 890 (Iowa 1991)

Accident victims are required to exhaust uninsured motorist coverages before filing claim with state's Insurance Guaranty Association; on payment of claim, Association is entitled to credit for any uninsured motorist coverage already collected by victim.

Louisiana

La. Rev. Stat. Ann. § 22:2062

A. (1) Any person having a claim against an insurer shall be required first to exhaust all coverage provided by any other policy, including the right to a defense under the other policy, if the claim under the other policy arises from the **same facts, injury or loss** that gave rise to the covered claim against the association. The requirement to exhaust shall apply without regard to whether or not the other insurance policy is a policy written by a member insurer. However, no person shall be required to exhaust any right under the policy of an insolvent insurer or any right under a life insurance policy or annuity.

Mancuso v. Siegel, 94-525 La. App. 5 Cir. 11/29/94, 646 So. 2d 1200, 1203 (La. Ct. App. 1994)

Any person having claim under policy of uninsured (UM) or underinsured motorist (UIM) liability coverage must first exhaust his rights under that policy before looking to Louisiana Insurance Guaranty Association (LIGA) by reason of insolvency of another insurer; in turn, amount payable by such other insurance shall act as credit against damages of claimant and LIGA shall not be liable for that portion.

Minnesota

Minn. Stat. Ann. § 60C.13

Subdivision 1. Other policy coverage. Any person having a claim under another policy whether or not the policy is a policy of a member insurer, which claim arises out of the **same facts** which give rise to the covered claim, shall be first required to exhaust the person's right under the other policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such insurance policy. For purposes of this subdivision, another insurance policy does not include a workers' compensation policy.

Gimmestad v. Gimmestad, 451 N.W.2d 662, 664-65 (Minn. Ct. App. 1990)
Insurance Guaranty Association, which took the place of insolvent insurer for State and snowplow driver, was not entitled to offset of $30,000 total personal injury protection benefits received by a passenger, who suffered injuries when vehicle in which she was riding was involved in a snowplow whiteout, from her insurer inasmuch as payment of excess personal injury protection benefits did not produce duplicative recovery. The court interpreted section 60C.13 as only requiring an offset to prevent double recovery. "The [guaranty] will be entitled to an offset of payments made from another insurance policy only when double recovery would otherwise result."

**Gimmestad* analyzes a prior version of Minnesota's offset provision that was based on the "covered claim" standard rather than Minnesota's current "same facts" standard.

TABLE C

- King v. Jordan, 601 P.2d 273 (Alaska 1979) ("[T]he 'nonduplication of recovery' provision of AS 21.80.100 embodies a legislative abrogation of the collateral source rule.");

- Bird v. Norpac Foods, Inc., 934 P.2d 382 (Or. 1997) ("The collateral source rule is a common law creation of this court that the legislature is entitled to alter or abolish, in whole or in part. Here, the legislature's specific and unambiguous direction in ORS 734.640(3), that any recovery under ORS 734.510 *et seq.* from OIGA shall be offset by certain other recoveries overrides whatever impact the collateral source rule otherwise might have in these circumstances.");

- Ventulett v. Main Ins. Guar. Ass'n, 583 A.2d 1022 (Me. 1990) ("By this offset provision, appearing in a section appropriately entitled 'Nonduplication of recovery,' the legislature has specifically modified the usual **collateral source** rule so far as MIGA and other available insurance are concerned.");

- Vokey v. Massachusetts Insurers Insolvency Fund, 409 N.E.2d 783 (Mass. 1980) (agreeing with "[c]ases in other jurisdictions which have interpreted their nonduplication of recovery provisions from the N.A.I.C. Model Act [and] have rejected **collateral source** arguments and have required offset");

- Orren v. Smackover Nursing Home, 876 S.W.2d 600 (Ark. Ct. App. 1994) (holding that the issue of the Guaranty Fund's liability to a claimant is governed by the exhaustion statute, not the common law collateral source rule);

- Lucas v. Illinois Ins. Guar. Fund, 52 Ill.App.3d 237 (1977) ("The theory advanced by the plaintiffs is that recovery from their own policies is a **collateral source** recovery providing benefits from a source wholly independent of, and collateral to, the obligor (the Fund), which should not diminish the amount of damages otherwise recoverable from the Fund. . . . Plaintiffs' contentions lack merit."); and

- Baker v. Myers, 39 Pa. D.&C.4th 303 (Ct. Common Pleas 1999) (declining to address the claimant's collateral source argument because "it has no merit whatsoever, as there is no authority for the proposition that the collateral source rule is applicable to the non-duplication of recovery provision of PPCIGA").

TABLE D

- Alabama Ins. Guar. Ass'n v. Hamm, 601 So. 2d 419 (Ala. 1992) ("To receive the full amount of both liability coverage and UM coverage would be a double recovery, and to the extent of the duplicate recovery, calculated by subtracting the UM recovery from the AIGA coverage, the AIGA's obligation for payment is offset.");

- King v. Jordan, 601 P.2d 273 (Alaska 1979) (holding that Alaska's Guaranty Association was entitled to offset uninsured benefits the claimant received from her own insurer upon the tortfeasor's liability insurer's insolvency);

- Jangula v. Arizona Prop. & Cas. Ins. Guar. Fund, 88 P.3d 182 (Ariz. Ct. App. 2004) (holding that recovery from Guaranty Fund be reduced by the amount claimant recovered from her own uninsured coverage);

- Cal. Ins. Code § 1063.2(c)(1) ("If damages against uninsured motorists are recoverable by the claimant from his or her own insurer, the applicable limits of the uninsured motorist coverage shall be a credit against a covered claim payable under this article.");

- Colorado Ins. Guar. Ass'n v. Menor, 166 P.3d 205, 214 (Colo. Ct. App. 2007) (Guaranty Association was entitled to offset claimant's recovery under uninsured/underinsured coverage and this offset furthered the nonduplication of recovery provision's purpose of "conserving the resources available to CIGA to pay claimants and policyholders");

- Robinson v. Gailno, 880 A.2d 127 (Conn. 2005) (finding that Connecticut's Guaranty Association was entitled to setoff uninsured motorist benefits "to insure that the Fund is a recovery of last resort");

- Marra v. Wilson, CIV. A. 00C-08-019RRC, 2003 WL 367831 (Del. Super. Feb. 20, 2003) (finding that Guaranty Association is entitled to offset any amount received by a claimant from his uninsured coverage);

- Mosley v. Welch, 830 A.2d 1246, 1249 (D.C. 2003) (finding that Guaranty Association is entitled to offset any amount received by a claimant from his uninsured coverage);

- Hasemann v. White, 686 N.E.2d 571 (Ill. 1997) (finding that the Guaranty Association's liability under the Act should be offset by the full limits of a claimant's uninsured coverage);

- Stecher v. Iowa Ins. Guar. Ass'n, 465 N.W.2d 887, 890 (Iowa 1991) (finding that claimants are required to exhaust uninsured coverage before pursuing recovery from the Guaranty Association and that Guaranty Association is entitled to a credit for uninsured coverage recovered by claimants);

- Hetzel v. Clarkin, 772 P.2d 800 (Kan. 1989) (holding that Guaranty Association is entitled to credit for claimant's recovery under his own uninsured coverage);

- Ky. Rev. Stat. Ann. § 304.36-120(a) ("Any person having a claim against an insurer under any provision in an insurance policy other than the policy of an insolvent insurer which is also a covered claim shall be required to exhaust first his right under the policy. Any amount payable on a covered claim under this subtitle shall be reduced by the amount of recovery under the insurance policy. Any provision in an insurance policy includes, but is not limited to, the following coverages: . . . uninsured motorist . . . ");

- La. Rev. Stat. Ann. § 22:2062A ("(1) Any person having a claim against an insurer shall be required first to exhaust all coverage provided by any other policy, including the right to a defense under the other policy, if the claim under the other policy arises from the same facts, injury or loss that gave rise to the covered claim against the association. . . . (5) For purposes of this Section, a claim under an insurance policy other than a life insurance policy or annuity shall include, but is not limited to: (a) . . . uninsured or underinsured motorist liability coverage . . . ");

- McMichael v. Robertson, 549 A.2d 1157 (Md. Ct. Spec. App. 1988) (finding that the Guaranty Corporation was entitled to a setoff for uninsured benefits received by the claimants);

- Massachusetts Insurers Insolvency Fund v. Premier Ins. Co., 869 N.E.2d 576, 583 (Mass. 2007) ("The purpose of the exhaustion requirement of the first sentence of § 9 is to render the Fund a source of last resort in the event of insolvency. The second sentence of § 9 states a clear legislative policy that any recovery to which a claimant is contractually entitled under his own insurance policy shall be offset to reduce the liability of the Fund. Thus, where UM coverage exists, the burden of paying for losses cannot be shifted to the Fund.");

- Yetzke v. Fausak, 488 N.W.2d 222 (Mich. Ct. App. 1992) (affirming summary judgment in favor of the Michigan Guaranty Association on its claim that it was entitled to offset a claimant's uninsured motorist recovery);

- Leitch v. Mississippi Ins. Guar. Ass'n, 27 So.3d 396, (Miss. 2010) (Guaranty Association was required to reduce its liability by any amount claimant received from own uninsured coverage);

- Mo. Ann. Stat. § 375.778 ("Any person having a claim against an insurer, regardless of whether such insurer is a member insurer, under any provision in an insurance policy, other than the policy of the insolvent insurer, which arises out of the same facts, injury, or loss that gave rise to the covered claim against the association and which is also a covered claim shall be required to first exhaust his or her right under such policy

or policies of insurance. Such other policies of insurance shall include, but not be limited to, . . . uninsured motorist coverage . . . ");

- N.H. Rev. Stat. Ann. § 404-H:12(1) ("Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer, including but not limited to the provisions of uninsured motorist coverage of any policy, shall be required to exhaust first his or her right under such policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such insurance policy.");

- N.M. Stat. Ann. § 59A-43-11(A) ("Any person having a claim against any insurer under any provision in an insurance policy including but not limited to uninsured motorist coverage other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his rights under the policy. An insured of an insolvent insurer and possessing no other insurance coverage applicable to a specific claim shall be deemed to be 'uninsured' for uninsured motorist coverage purposes. Any amount payable on a covered claim under this article shall be reduced by the amount of any recovery available under such insurance policy.");

- Rinehart v. Hartford Cas. Ins. Co., 371 S.E.2d 788 (N.C. Ct. App. 1988) (affirming summary judgment in favor of the North Carolina Guaranty Association on its claim for an offset of uninsured motorist coverage);

- Santarelli v. W. Reserve Transit Auth., 1989 WL 13485 (Ohio Ct. App. 1989) (holding that Guaranty Association was entitled to a setoff against claimant's uninsured motorist recovery);

- Bird v. Norpac Foods, Inc., 934 P.2d 382, 391 (Or. 1997) (finding that Guaranty Association is entitled to a setoff against claimant's uninsured coverage recovery);

- McMahon v. Caravan Refrigerated Cargo, Inc., 594 A.2d 349 (Pa. Super. Ct. 1991) (holding that Guaranty Association properly offset its liability by amount of uninsured benefits received by claimant);

- Hogins v. Ross, 988 S.W.2d 685 (Tenn. Ct. App. 1998) (noting that a claimant was required to exhaust his uninsured motorist coverage before seeking recovery from the Guaranty Association);

- Tex. Ins. Code Ann. § 462.251(a)(1) ("Any person who has a claim under an insurance policy, other than an impaired insurer's policy, and whose claim arises from the same facts, injury, or loss giving rise to a claim against an impaired insurer or the insurer's insured, must first exhaust the person's rights under the insurance policy, including: (1) . . . a claim for indemnity or medical benefits under a . . . uninsured motorist, . . . or other insurance policy . . . ");

- Northland Ins. Co. v. Virginia Prop. & Cas. Ins. Guar. Ass'n, 392 S.E.2d 682 (Va. 1990) (finding that the Guaranty Association was not liable to the claimants after the offset of their uninsured coverage recovery);

- Gallagher v. Sidhu, 109 P.3d 840 (Wash. Ct. App. 2005) (holding that Guaranty Association was entitled to offset its liability to claimants by the amount available to them under their uninsured motorist coverage); and

- Matter of Midland Ins. Co., 537 N.W.2d 51 (Wis. Ct. App. 1995) (finding that the Insurance Security Fund was entitled to offset the amount of uninsured coverage available to a claimant).

TABLE E

- G & MSS Trucking, Inc. v. Rich, 479 S.E.2d 761 (Ga. Ct. App. 1996) (finding that Insurers Insolvency Pool's liability to a claimant was reduced by that claimant's recovery of medical payment benefits from his insurer);

- Kan. Stat. Ann. § 40-2910(a) ("Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim shall be required to exhaust first his right under such policy. A claim under an insurance policy shall include a claim under any kind of insurance, whether such claim is a first party or third party claim, and shall include, without limitation, accident and health insurance . . . and all other coverages except for policies of an insolvent insurer.");

- La. Rev. Stat. Ann. § 22:2062A ("(1) Any person having a claim against an insurer shall be required first to exhaust all coverage provided by any other policy, including the right to a defense under the other policy, if the claim under the other policy arises from the same facts, injury or loss that gave rise to the covered claim against the association. . . . (5) For purposes of this Section, a claim under an insurance policy other than a life insurance policy or annuity shall include, but is not limited to: (a) . . . liability coverage, . . . and any and all other medical expense coverage . . . ");

- McMichael v. Robertson, 549 A.2d 1157 (Md. Ct. Spec. App. 1988) (holding the Maryland Guaranty Association was entitled to offset its liability to claimants by the amounts they received from their own personal injury protection coverage);

- Auto Club Ins. Ass'n v. Meridian Mutl. Ins. Co., 523 N.W.2d 821 (Mich. App. 1994) (finding that the Michigan Guaranty Association had no liability to a claimant that had yet to seek personal injury protection from other insurer);

- Mo. Ann. Stat. § 375.778 ("Any person having a claim against an insurer, regardless of whether such insurer is a member insurer, under any provision in an insurance policy, other than the policy of the insolvent insurer, which arises out of the same facts, injury, or loss that gave rise to the covered claim against the association and which is also a covered claim shall be required to first exhaust his or her right under such policy or policies of insurance. Such other policies of insurance shall include, but not be limited to, liability coverage, health and accident insurance, hospitalization and other medical expense coverage . . . ");

- N.C. Gen. Stat. § 58-48-55(a) ("Any person having a right to a defense or a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his rights under such policy. Any amount payable on a covered claim under this Article shall be reduced by the amount of any recovery under that insurance policy. For purposes of this section, a claim under an insurance policy shall include a claim under

or covered by any kind of insurance, whether it is a first-party or a third-party claim, and whether it is a policy covering the policyholder or another person liable to the claimant, and shall include, without limitation, policies of accident and health insurance, . . . medical expense coverage, and all other coverage except for policies of an insolvent insurer.");

- Santarelli v. W. Reserve Transit Auth., 1989 WL 13485 (Ohio Ct. App. 1989) (holding that Guaranty Association was entitled to a setoff against claimant's medical pay benefits);

- 40 P.A. Cons. Stat. Ann. § 991.1817(a) ("Any person having a claim under an insurance policy shall be required to exhaust first his right under such policy. For purposes of this section, a claim under an insurance policy shall include a claim under any kind of insurance, whether it is a first-party or third-party claim, and shall include, without limitation, accident and health insurance . . . and all other coverages except for policies of an insolvent insurer.");

- Tex. Ins. Code Ann. § 462.251(a)(1) ("Any person who has a claim under an insurance policy, other than an impaired insurer's policy, and whose claim arises from the same facts, injury, or loss giving rise to a claim against an impaired insurer or the insurer's insured, must first exhaust the person's rights under the insurance policy, including: (1) . . . a claim for indemnity or medical benefits under a . . . personal injury protection . . . or other insurance policy . . . ");

- MacDougall v. Hartford Ins. Group, 2003 WL 1563436 (Va. Cir. Ct. 2003) (holding that Guaranty Association's liability should be reduced by any amounts the claimants received under the "medpay" provision of their insurance policy); and

- Shepard v. Washington Ins. Guar. Ass'n, 84 P.3d 940 (Wash. Ct. App. 2004) (holding that the Washington Guaranty Association was entitled to offset its liability to claimants by amounts the claimants received through personal injury protection coverage).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2011-CP-10-8496

South Carolina Property and Casualty Insurance Guaranty Association,..... Appellant-Respondent,

v.

Roger Brock, Ryan Stevens, Malachi Sanders, and Health Advantage/BCBS of Arkansas,..... Defendants,

Of whom Roger Brock is the Respondent-Appellant.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant-Respondent, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Document(s):

Initial Respondent's Brief of Appellant-Respondent

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Lisa S. Shumpert

August 9, 2013

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Of whom Roger Brock is the Respondent-Appellant.

APPELLANT-RESPONDENT'S RESPONSIVE DESIGNATION OF MATTER FOR THE RECORD ON APPEAL

Pursuant to Rule 209, SCACR, Appellant-Respondent South Carolina Property and Casualty Insurance Association ("Appellant-Respondent") designates in response to Respondent-Appellant's Initial Brief and Designation of Matter all previously designated documents referenced in its Designation of Matter filed with the Court on June 7, 2013. Undersigned counsel certifies, pursuant to Rule 209(c), SCACR, that the designation contains no matter which is irrelevant to the appeal.

SIGNATURE PAGE ATTACHED

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August 9, 2013.

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PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant-Respondent, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Document(s):

Appellant-Respondent's Responsive Designation of Matter for the Record on Appeal

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August 9, 2013