THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable R. Markley Dennis, Jr.

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

Respondent-Appellant.

FINAL BRIEF OF RESPONDENT-APPELLANT

Andrew D. Gowdown
Timothy J.W. Muller
ROSEN, ROSEN & HAGOOD, LLC
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726

ATTORNEYS FOR RESPONDENT-
APPELLANT ROGER BROCK

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUES ON APPEAL

Whether the Circuit Court erred in granting partial summary judgment to Appellant-Respondent South Carolina Property and Casualty Insurance Guaranty Association (the "Association") and allowing the Association to offset $5,000.00 for personal injury protection coverage and $25,000.00 for uninsured motorist coverage Respondent-Appellant Roger Brock ("Brock") received when: (1) the applicable offset statute, S.C. Code of Ann. § 38-31-100, does not explicitly designate that such coverage is available for offset by the Association; (2) the offset of such coverage conflicts with the purpose of the Association; (3) South Carolina law provides that such coverages are specifically not subject to setoff or subrogation; and (4) such coverages constitute a collateral source of insurance coverage.

STATEMENT OF THE CASE

The Association filed a declaratory judgment action on November 15, 2011. See (R. pp. 19-24). The essence of this declaratory judgment action is that the Association contends it is entitled to offset all of the amounts received by Brock from solvent insurers in the amount of $93,090.45 pursuant to S.C. Code Ann. § 38-31-100. Brock received these amounts as a result of injuries he sustained in a vehicle collision.[1] Following the exchange of written discovery, Brock and the Association filed cross motions for summary judgment, both conceding that this matter involves statutory construction and contains no genuine issues of material fact. See (R. pp. 58-61). Counsel for both parties likewise concurred that no genuine issues of material fact existed on the date of the summary judgment hearing. See (R. p. 31, lines 1-21). After hearing oral arguments and receiving multiple memorandums of law, Circuit Court Judge R. Markley Dennis, Jr. ruled that both parties' motions for summary judgment were granted and denied in part. See (R. pp. 1-18). More specifically, Judge Dennis found that the Association may not

[1] The underlying case and facts giving rise to this matter are outlined in the Statement of Facts herein.

offset the $22,500.00 for liability coverage and the $40,590.45 for medical insurance benefits Brock received. (R. p. 18). However, the Association was entitled to offset the $5,000.00 for personal injury protection ("PIP") coverage and the $25,000.00 for uninsured motorist ("UM") coverage Brock received. (R. p. 18). Accordingly, the Association was ordered to pay Brock the remaining amount of $63,090.45. (R. p. 18). The Association submitted its notice of appeal of the Order on February 20, 2013. (R. pp. 225-244). Brock thereafter submitted his notice of cross-appeal on February 26, 2013. (R. pp. 245-264). The issue of whether S.C. Code Ann. § 38-31-100 applies to allow the Association to offset payments from other solvent insurers is a matter of first impression under South Carolina law.

STATEMENT OF FACTS

Roger Brock is a citizen and resident of the State of Arkansas. (R. p. 84, ¶ 1). On October 2, 2009, while visiting Walterboro, South Carolina, Brock was involved in a serious motor vehicle accident with a logging truck driven by Ryan Stephens. (R. pp. 84-87, ¶¶ 2-24). Brian Mason, Brock's friend who was driving the car in which Brock was riding, was killed in the collision. (R. pp. 94-98, ¶¶ 1-27). Angela Hess, who was also a passenger in the vehicle with Brock and Brian Mason, was likewise seriously injured as a result of the collision. (R. pp. 106-110, ¶¶ 7-24). Although not fatal, the injuries Brock sustained were both permanent and severe. (R. p. 119, ¶ 1). As a result of the violent collision, Brock suffered nerve damage to his hand and arm, his nose was nearly severed from his face, his left pinky finger was broken, and he had to have four teeth extracted. (R. p. 119, ¶ 1). He continues to experience pain and numbness in his leg, hip, neck, back, chest, arm, and shoulder as well as pain and cramping in his hand and wrist. (R. p. 119, ¶ 1). In addition, he will require oral surgery and implants in the future to replace missing teeth. (R. p. 119, ¶ 1). Brock was only 39 years old at the time, and he will

continue to suffer from pain, scarring, and loss of enjoyment of life for his remaining years. (R. p. 119, ¶ 2).

To seek redress for his injuries, Brock filed suit in the United States District Court for the District of South Carolina, Charleston Division, against Ryan Stephens and Malachi Sanders (the owner of the logging truck), among others, claiming entitlement to a recovery for severe injuries, lost wages, lost earning capacity, and past and future medical expenses. See (R. pp. 84-93). At the time of the collision, Sanders was insured through a policy issued by Aequicap Insurance Company ("Aequicap"), a Florida domiciled insurer that insured individuals and entities in the State of South Carolina. See (R. pp. 20-21, ¶¶ 16-18).

Early on in the federal litigation, the parties obtained reliable information that Aequicap was in serious financial trouble. (R. p. 120, ¶ 3); (R. p. 123, ¶¶ 6-9). Therefore, all three cases were jointly mediated on January 5, 2011, just months after having been filed. The mediation, however, was unsuccessful. Following mediation and upon further consideration of Aequicap's precarious financial condition, Brock ultimately decided to settle the case for an amount which was far less than what would actually compensate him for his substantial injuries. (R. p. 120, ¶ 3). Aequicap's financial problems and potential insolvency were likewise major considerations in Hess' decision to accept Aequicap's offer to settle her claims. (R. p. 123, ¶ 8). As a result of Brock's concessions, a settlement was ultimately reached on January 21, 2011. (R. p. 120, ¶ 3). In exchange for a release of all claims against the defendants, Brock agreed to accept the sum of $185,000.00, even though his actual injuries greatly exceeded that amount. (R. p. 120, ¶ 3). The settlement agreement was filed with, and approved by, the District Court and became binding on the parties. (R. p. 136).

Less than a month after the settlement was reached, and prior to payment of the

settlement amount, Aequicap was declared insolvent by the State of Florida. See (R. pp. 20-21, ¶¶ 16-18). Because Aequicap, as the insolvent insurer, was a company admitted and licensed by the South Carolina Department of Insurance, and because the insured alleged to have caused Brock's injuries was a resident of South Carolina at the time Brock was injured, the claim was referred to the South Carolina Property and Casualty Guaranty Association. (R. pp. 20-21, ¶¶ 16-18). The Association is an unincorporated non-profit legal entity created pursuant to the South Carolina Property and Casualty Insurance Guaranty Association Act codified at S.C. Code Ann. § 38-31-10 *et seq.* ("Act"). Pursuant to the Act, the Association is to pay certain "covered claims," as that term is defined under the Act. See id. Demand was thereby made on the Association for the payment of the full settlement amount of $185,000.00.

In light of the Aequicap insolvency and the collision in which Brock was injured, Brock received the following amounts from other solvent insurers:

a. Liability Coverage from Nationwide Ins. Co. (insurer for Mason vehicle in which Brock was riding)	$22,500.00
b. Medical Insurance from Health Advantage/BCBS of Arkansas (Brock's private pay medical insurance carrier)	$40,590.45
c. Uninsured Motorist Coverage from Progressive Ins. Co. (resident relative coverage through Brock's parents' carrier)	$25,000.00
d. PIP benefits from Progressive Ins. Co. (resident relative coverage through Brock's parents' carrier)	$5,000.00
TOTAL	$93,090.45

Following Brock's demand, the Association refused to pay Brock the full settlement amount of $185,000.00 and filed a declaratory judgment action, asserting its entitlement to an offset for all payments from solvent insurers pursuant to S.C. Code Ann. § 38-31-100. See (R. pp. 19-29). As such, the Association has only paid Brock $91,909.55 to date, representing the

difference between the settlement amount ($185,000.00) and the claimed offsets ($93,090.45). Id. Brock objected to the reduction and demanded payment of the agreed upon settlement sum. See (R. pp. 25-29); (R. pp. 119-120).

STANDARD OF REVIEW

An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Wogan v. Kunze, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). Summary judgment is appropriate if, upon viewing the evidence and inferences to be drawn from it in a light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is clearly entitled to judgment as a matter of law. Standard Fire Ins. Co. v. Marine Contracting & Towing Co., 301 S.C. 418, 392 S.E.2d 460 (1990); Davis v. Piedmont Eng'rs Architects & Planners, 284 S.C. 20, 324 S.E.2d 325 (Ct. App. 1984). "A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." Colleton County Taxpayers Ass'n v. Sch. Dist. of Colleton County, 371 S.C. 224, 231, 638 S.E.2d 685, 688 (2006).

ARGUMENT

This action involves an issue of statutory interpretation. Questions of statutory interpretation are questions of law. Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) (quoting CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)). "It is well established that '[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.'" Id. (quoting Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "'What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are

bound to give effect to the expressed intent of the legislature.'" Id. (quoting Hodges, 341 S.C. at 85, 533 S.E.2d at 581). Courts must "follow the plain and unambiguous language in a statute." Id. The words of the statute "must be construed in context and in light of the intended purpose of the statute in a manner 'which harmonizes with its subject matter and accords with its general purpose.'" Cabiness v. Town of James Island, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011) (quoting Eagle Container Co. v. County of Newberry, 379 S.C. 564, 570, 666 S.E.2d 892, 896 (2008)). However, when "applying the words literally leads to a result so patently absurd that the General Assembly could not have intended it," courts then "look beyond the statute's plain language." Grier, at 536, 725 S.E.2d at 695 (citing Cabiness, 393 S.C. at 192, 712 S.E.2d at 425).

Furthermore, when provisions of a statute conflict, the court has a "duty to attempt to harmonize the [ ] two ostensibly at-odd provisions." Grazia v. S.C. State Plastering, LLC, 390 S.C. 562, 571, 703, S.E.2d 197, 201 (2010); see also Hinton v. S.C. Dep't of Probation, Parole and Pardon Servs., 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004) (the court should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless). Thus, "a specific statutory provision prevails over a more general one." Wooten ex rel. Wooten v. S.C. Dept. of Transp., 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999).

I. BASED ON THE PURPOSE OF THE ASSOCIATION AND THE AMBIGUITY OF THE ACT, IT IS UNCLEAR WHETHER THE MEANING OF S.C. CODE ANN. § 38-31-100 ALLOWS THE ASSOCIATION TO DEDUCT THE OTHER COVERAGE BROCK RECEIVED

The Association is an unincorporated non-profit legal entity created pursuant to the South Carolina Property and Casualty Insurance Guaranty Association Act codified at S.C. Code Ann. § 38-31-10 *et seq.* "The Guaranty Association's function is to provide protection for insureds in the event their insurance carriers become insolvent." S.C. Prop. & Cas. Ins. Guar. Ass'n v.

Carolinas Roofing & Sheet Metal Contractor's Self-Insurers Fund, 303 S.C. 368, 369, 401 S.E.2d 144, 145 (1991). Importantly, the Association "is considered the insurer to the extent of its obligation on the covered claims and, to this extent, has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent." S.C. Code Ann. § 38-31-60(b). Similarly, under § 38-29-30, the purpose of the South Carolina Life and Accident Health Insurance Guaranty Association, the Association's sister organization, is:

> to maintain public confidence in the promises of insurers by providing a mechanism for protecting . . . insureds . . . of life insurance policies, accident and health insurance policies . . . against failure in the performance of contractual obligations due to the impairment of the insurer issuing these policies or contracts.

S.C. Code Ann. § 38-29-30. In order to provide this protection, "an association of insurers is created to enable the guaranty of payment of benefits." S.C. Code Ann. § 38-29-30(1). Thus, because the purpose of the Association is to provide protection for insureds, that includes the purpose to provide and maintain public confidence in the promises of insurers.

Pursuant to the Act, the Association is to pay certain "covered claims," as that term is defined under the Act. See S.C. Code Ann. § 38-31-10 *et seq.* As a condition precedent to recovery from the Association, a claimant is purportedly required to first exhaust all available coverage from solvent insurers. See S.C. Code Ann. § 38-31-100. To the extent recovery is made, the Association is arguably allowed an offset against its statutory obligation according to the Act. See id.

The offset or exhaustion provision of the Act provides in pertinent part:

> 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.

S.C. Code Ann. § 38-31-100(1). Thus, even if "the policy is direct insurance, the Act applies only to a 'covered claim.'" S.C. Prop. & Cas. Ins. Guar. Ass'n v. Carolinas Roofing & Sheet Metal Contractors Self-Ins. Fund, 315 S.C. 555, 557, 446 S.E.2d 422, 424 (1994). Although not yet addressed under South Carolina law, other states have found that the purpose of "the offset provision of the Guaranty Act applies to prevent double recovery of amounts above an insured's total loss." R & R Indus. Park, LLC v. Utah Prop. & Cas. Ins. Guar. Ass'n, 199 P.3d 917, 925 (Utah 2008) (citing Conn. Ins. Guar. Ass'n v. Union Carbide Corp., 217 Conn. 371, 388, 585 A.2d 1216, 1224–25 (Conn. 1991).

Under § 38-31-20(8), "covered claim" means "an unpaid claim . . . which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies." S.C. Code Ann. § 38-31-20(8) (West 2012). "This chapter applies to all kinds of direct insurance but does not apply to . . . life, annuity, health, or accident insurance." S.C. Code Ann. § 38-31-30(1) (West 2012). The issue of whether the exhaustion statute applies to allow the Association to offset payments from other solvent insurers is a matter of first impression under South Carolina law.

In its Motion for Summary Judgment, the Association took the position that the phrase "a claim under an insurance policy" is clear and unambiguous and that the plain meaning of S.C. Code Ann. § 38-31-100(1) allows it to deduct "[a]ny amount payable on a covered claim" that Brock has recovered from any other insurance policy. As such, the Association argues it is permitted to deduct recoveries Brock received through uninsured motorist coverage and PIP benefits from the total amount of Brock's settlement. However, such an interpretation would be inconsistent with the purpose of the Association and the general purpose of the Act. The words

of S.C. Code Ann. § 38-31-100 must be construed in context and in light of the intended purpose of the statute in a manner which harmonizes with its subject matter and accords with its general purpose. See Cabiness, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011). Section 38-31-100 simply cannot be interpreted to allow the Association to offset uninsured motorist coverage and PIP benefits from the total amount of Brock's settlement in a manner which achieves that harmony as the phrase "a claim under an insurance policy" is ambiguous and the statutory text does nothing to define the meaning of "claim" or "insurance policy."

South Carolina's offset statute is based on language from a uniform model act. A dozen states throughout the United States have amended their own respective exhaustion statute, often specifically because of the inherent ambiguity contained in the statutory language of the model act.[2] Prior to such statutory amendments, many states had ambiguously-worded versions of the model act statute similar to S.C. Code Ann. § 38-31-100 concerning a guaranty association's ability to offset other insurance benefits received by a claimant. "Significantly, particularly as applied in the areas of exhaustion and non-duplication of recovery, the model law frequently has been described as being plagued by multiple ambiguities and apparent inconsistencies." Bell v. Slezak, 571 Pa. 333, 342, 812 A.2d 566, 571 (2002). As a result, the many of the states with

[2] See, e.g., See, e.g., Cal. Ins. Code § 1063.2(c)(1) (statute amended in 1991 to include particular language about offset classes available to guaranty association); Haw. Rev. Stat. § 431:16-112 (statute amended in 2012 to include particular language about offset classes available to guaranty association); Kan. Stat. Ann. § 40-2910(a) (statute amended in 2005 to include particular language about offset classes available); Ky. Rev. Stat. Ann. § 304.36-120(a) (statute amended in 1998 to specifically identify forms of coverage available for offset); La. Rev. Stat. Ann. § 22:2062A (statute amended in 2010 to specifically include that medical coverage is subject to offset); Mo. Ann. Stat. § 375.778(1) (statute amended in 2004 to include particular language about offset classes available to guaranty association); N.C. Gen. Stat. § 58-48-55(a) (statute amended in 2003 to include particular language about offset classes available to guaranty association); N.H. Rev. Stat. Ann. § 404-H:12(1) (statute specifically identifies UM benefits as subject to offset by guaranty association); N.J. Stat. Ann. § 17:30A-12(b) (statute amended in 2004 to include particular language about offset classes available to guaranty association); N.M. Stat. Ann. § 59A-43-11(A) (statute specifically identifies UM benefits as subject to offset by guaranty association); 40 Pa. Stat. Ann. § 991.1817(a) (statute amended in 1994 to include particular language about offset classes available to guaranty association); Tex. Ins. Code Ann. art. § 462.251(a)(1) (statute amended in 2005 to include particular language specifying offset classes available to guaranty association).

exhaustion statutes based on the model act have provided clarification by passing statutory amendments. No statutory amendment has been applied to S.C. Code Ann. § 38-31-100 to delineate the type of offset classes that are available to the Association. Therefore, as evidenced by the numerous statutory amendments in other states clarifying their own respective state exhaustion statutes, it is neither clear nor unambiguous that the plain meaning of S.C. Code Ann. § 38-31-100 allows the Association to deduct "the full limits of such other coverage" that Brock has recovered from any other insurance policy.

II. THIS COURT SHOULD REVERSE THE CIRCUIT COURT IN PART BY FINDING THAT THE UNINSURED MOTORIST BENEFITS BROCK RECEIVED IN THE AMOUNT OF $25,000.00 ARE NOT SUBJECT TO OFFSET BY THE ASSOCIATION

As a resident relative living with his parents at the time of the subject wreck, Brock received uninsured motorist coverage in the amount of $25,000.00 through a policy his parents held with Progressive Insurance Company. The uninsured motorist benefits Brock received must not be used to reduce the Association's obligation because such benefits are not subject to offset by statutory law and are additionally subject to the collateral source rule.

First, such benefits are not covered under § 38-31-30 since uninsured motorist benefits are accident insurance. As previously addressed, the Act specifically states that, "[t]his chapter applies to all kinds of direct insurance *but does not apply to* . . . life, annuity, health, or *accident insurance*." S.C. Code Ann. § 38-31-30(1) (West 2011) (emphasis added). Under the statutory definition, the Association is not permitted to offset Brock's uninsured motorist coverage from a solvent insured. See e.g., R.I. Insurers' Insolvency Fund v. Benoit, 723 A.2d 303 (R.I. 1999) (Claim for uninsured motorist benefits from solvent insurer was not a "covered claim," and, thus, Insurers' Insolvency Fund could not offset UM benefits to reduce its liability on a covered claim against an insolvent automobile liability insurer).

The "purpose of the uninsured motorist statute is to provide benefits and protection against the peril of injury or death by an uninsured motorist to an insured motorist and his family." Nationwide Mut. Ins. Co. v. Smith, 376 S.C. 60, 69, 654 S.E.2d 837, 841 (Ct. App. 2007) (quoting Ferguson v. State Farm Mut. Auto. Ins. Co., 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973)). The amount Brock received as uninsured motorist coverage is not subject to subrogation under § 38-77-160 (West 2011), which explicitly states *"[b]enefits paid pursuant to this section are not subject to subrogation or assignment."* (emphasis added). As such, the $25,000.00 Brock received as uninsured motorist coverage is not subject to offset by the Association to reduce its total liability.

Moreover, "South Carolina has long followed the collateral source rule that compensation received by an injured party from a source wholly independent of the wrongdoer should not be deducted from the amount of damages owed by the wrongdoer to the injured party. This rule applies to insurance proceeds." Estate of Rattenni By & Through Rattenni v. Grainger, 298 S.C. 276, 277-78, 379 S.E.2d 890 (1989) (collateral source rule applied because the benefits received were from the injured party's own underinsurance policy). "Had the General Assembly intended to abrogate the collateral source rule in regard to this particular class of insurance proceeds, it would have done so." Id. No authority exists for the proposition that uninsured motorist coverage received by an injured party is not subject to the collateral source rule under South Carolina law. Cf. Ex parte Barnett, 978 So. 2d 729, 735 (Ala. 2007) ("[W]e hold that UM insurance benefits are a collateral source that may not be used to diminish an award in favor of the plaintiff."). Accordingly, the Association may not offset Brock's uninsured motorist benefits pursuant the collateral source rule, nor is it entitled to offset those benefits under § 38-31-30(1) and § 38-77-160.

III. THIS COURT SHOULD REVERSE THE CIRCUIT COURT IN PART BY FINDING THAT THE PERSONAL PROTECTION BENEFITS BROCK RECEIVED IN THE AMOUNT OF $5,000.00 ARE NOT SUBJECT TO OFFSET BY THE ASSOCIATION

Brock received PIP benefits in the amount of $5,000.00 from the same policy in which he received the uninsured coverage. The benefits Brock received from PIP coverage must not be offset because allowing the Association to do so would not only defeat the intent of the legislature, it would further violate the specific statute regarding PIP benefits. Under S.C. Code Ann. § 38-77-144, "[i]f an insurer sells no-fault insurance coverage which provides personal injury protection, medical payment coverage, or economic loss coverage, the coverage shall not be assigned or subrogated *and is not subject to a setoff.*" (emphasis added). This provision is in conflict with the Circuit Court's interpretation of § 38-31-100, allowing the Association to offset the PIP benefits Brock received. Under South Carolina's guiding rules of statutory construction, the provision that prohibits the offset of PIP benefits is more specific than the general provision regarding the Association's right to offset. The Act merely lists "any benefits" and, therefore, is broader and more general in nature than the PIP provision. Thus, the PIP provision controls over the Association's provision and the Association must not be permitted to offset the PIP benefits Brock received as a result. See Wooten ex rel. Wooten v. S.C. Dept. of Transp., 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999) ("A specific statutory provision prevails over a more general one.").

In support of its holding allowing the offset of PIP benefits, the Circuit Court relied on McMichael v. Robertson, 77 Md. App. 208, 549 A.2d 1157 (Md. Ct. Spec. App. 1988) for the proposition that the recovery received by a claimant from his own personal injury protection coverage offset the Maryland Guaranty Corporation's liability for a judgment against an insolvent liability insurer. (Order, pp. 17-18 (filed Jan. 26, 2012)). McMichael is distinguishable

from the circumstances and law applicable in this case. First, the Maryland exhaustion statute has been revised since the date of the McMichael opinion. See Md. Code Ann., Ins. § 9-310 (West 2012). Second, neither version of the Maryland exhaustion statute contained the same language as S.C. Code Ann. § 38-31-100. See McMichael, 77 Md. App. 208, 549 A.2d 1157 (citing former version of exhaustion statute); Md. Code Ann., Ins. § 9-310. Third, the holding in McMichael, a case interpreting Maryland law, does not address and is inconsistent with S.C. Code Ann. § 38-77-144, which specifically prohibits the setoff of PIP benefits.

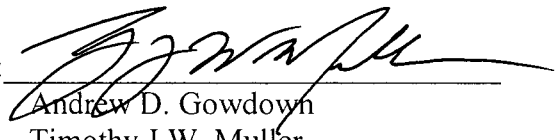
Prohibiting the offset of the PIP benefits is in accordance with the legislative intent of both the PIP statute and the Act governing the Association. Other courts have held that a guaranty association is not permitted to offset PIP benefits against its obligation. See, e.g., Gimmestad v. Gimmestad, 451 N.W.2d 662, 665 (Minn. Ct. App. 2002) (holding that, because the recovery of the PIP benefits by the injured party would not result in a duplicative recovery, the guaranty association was not permitted to offset them); Stone v. Kentucky Ins. Guar. Ass'n, 858 S.W.2d 726, 728 (Ky. Ct. App. 1993) (holding that guaranty association was not permitted to offset basic reparation benefits, which included PIP payments). Allowing the Association to offset the PIP benefits Brock has received is likewise impermissible under the collateral source rule for the same reasons discussed above in the section addressing uninsured motorist coverage. Accordingly, the Circuit Court erred in allowing the Association to offset the $5,000.00 in PIP benefits Brock received.

CONCLUSION

For the reasons set forth above, this Court should reverse the Circuit Court's Order Granting Summary Judgment in favor of the Appellant-Respondent and find that the Association is not entitled to offset the $5,000.00 in personal injury protection benefits and the $25,000.00 in

uninsured motorist coverage that Brock received. This Court should further find that the Association is responsible for paying Brock the remaining amount of his claim, totaling $93,090.45.

ROSEN, ROSEN & HAGOOD, LLC

By: 

Andrew D. Gowdown
Timothy J.W. Muller
151 Meeting Street, Suite 400
P.O. Box 893
Charleston, SC 29402
(843) 577-6726

ATTORNEYS FOR RESPONDENT-
APPELLANT ROGER BROCK

Charleston, South Carolina
October 10, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable R. Markley Dennis, Jr.

Case No. 2011-CP-10-8496

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

vs.

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

Of whom Roger Brock is ..... *Respondent-Appellant*.

PROOF OF SERVICE

The undersigned hereby certifies that on **October 10, 2013**, a true and correct copy of the Reply Brief of Respondent-Appellant Roger Brock; Final Response Brief of Respondent-Appellant Roger Brock, and Final Brief of Respondent-Appellant Roger Brock was placed in an envelope with first class postage prepaid and affixed thereto and mailed to the following:

Howard A. Van Dine, III, Esquire
Erik T. Norton, Esquire
Tara C. Sullivan, Esquire
A. Mattison Bogan, Esquire
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 11070
Columbia, South Carolina 29211

[SIGNATURE PAGE FOLLOWS]

ROSEN, ROSEN & HAGOOD, LLC

By: _____

Andrew D. Gowdown
Timothy J.W. Muller
151 Meeting Street, Suite 400
P.O. Box 893
Charleston, SC 29402
(843) 577-6726

ATTORNEYS FOR RESPONDENT-
APPELLANT ROGER BROCK

Charleston, South Carolina
October 10, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable R. Markley Dennis, Jr.

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

Respondent-Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that Respondent-Appellant's Final Brief, Final Response Brief and Final Reply Brief comply with Rule 211(b), SCACR.

By: _____
Andrew D. Gowdown
Timothy J.W. Muller
ROSEN, ROSEN & HAGOOD, LLC
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, SC 29402
(843) 577-6726

ATTORNEYS FOR RESPONDENT-
APPELLANT ROGER BROCK