

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP3201368

Ronald Lee Cooper

Rebecca Sue Fischer

Progressive Northern
 Insurance Company

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

3/19/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on **19th of March 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **19th of March 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

John W. Carrigg Jr.
137 E. Butler St., Ste. 6 Lexington, SC 29072

Peter E. Farr PO Box 6648 Columbia, SC 29260

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

CIVIL ACTION NO: 2013-CP-32-1368

Ronald Lee Cooper,

Plaintiff

vs.

ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER

Rebecca Sue Fischer,

Defendant.

This matter comes before the Court upon motion by Plaintiff for the Court to reconsider its Order dismissing Plaintiff's underinsured motorist claim against Progressive Northern Insurance Company ("Progressive"). After considering the briefs of the parties and reviewing the Order of Dismissal, this Court denies Plaintiff's motion and reaffirms its decision in the Order of Dismissal.

Plaintiff first argues that he had no reason to know UIM coverage would be needed at the time default was first entered. That argument is flawed because the South Carolina Financial Responsibility Act requires minimum limits of \$25,000.00 to apply in cases of non-cooperation of an insured. Once the Plaintiff files an Affidavit to obtain an Entry of Default, he knows there will likely be only \$25,000.00 in liability coverage available. Plaintiff then should have known at the time the Complaint was not timely answered after valid service that his liability coverage could be limited and advised UIM that it would need to appear and Answer on behalf of the Defendant. Had that course been followed, Progressive Northern could have appeared and defended on behalf of the Defendant, as is mandated by S.C. Code Ann. § 38-77-160. The procedure for obtaining UIM benefits is set forth in section 38-77-160, which provides:

No action may be brought under the underinsured motorist provision unless copies of the pleadings in the action establishing liability are served in the

manner provided by law upon the insurer writing the underinsured motorist provision. The insurer has the right to appear and defend in the name of the underinsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear. . . . In the event the automobile insurance insurer for the putative at-fault insured chooses to settle in part the claims against its insured by payment of its applicable liability limits on behalf of its insured, the underinsured motorist carrier may assume control of the defense of action for its own benefit. . . .

That procedure was not followed by the Plaintiff.

The Plaintiff next argues that it is inaccurate that the Plaintiff refused to consent to setting aside default before settling with the Defendant. The procedural history is clear. A motion to set aside default was filed, and that motion was denied. No appeal of that order was made, and that order has not been set aside. It stands as a valid order in this case. Such a motion is not before the Court, and the existence of an order denying the Defendant's motion to set aside default is uncontroverted. The Broome case discussed in the Court's prior Order indicates that the parties cannot enter into a binding agreement to prejudice the UIM carrier. The case does not give the Plaintiff the right to pursue legal avenues to collect a settlement and then unilaterally reverse those same legal avenues to try to then pursue the UIM carrier without consequence. The case is by the Plaintiff against the Defendant. Either the Plaintiff correctly serves the UIM to involve it prior to a liability decision or he does not. When he does not, he is bound by his actions in getting an entry of default. Interestingly, Broome involves a Plaintiff who correctly served the UIM prior to this collusive agreement and then tried to bind the UIM carrier through a settlement agreement while the UIM carrier was already in the case.

The case still turns on the requirement of timely service on the UIM carrier. Ex Parte Allstate Insurance Co., 339 S.C. 202, 205, 528 S.E.2d 679, 680 (Ct. App. 2000). "The intent of the statute is that UIM carriers receive notice of actions in which they may be liable for UIM benefits so that they can protect their interests." Id. at 205, 528 S.E.2d at 681. "To allow service

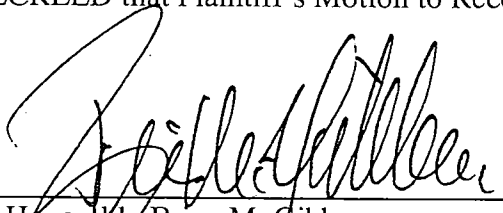
on a UIM carrier after that action has been tried would defeat the purpose of granting the UIM carrier the right to 'appear and defend.'" Id. In Ex Parte Allstate, the court held that even though the UIM carrier was served with the pleadings while post-trial motions were pending, the plaintiff was not entitled to UIM benefits because the plaintiff failed to preserve the UIM carrier's right to appear and defend. Id. at 205-06, 528 S.E.2d at 681.

Ex Parte Allstate is controlling in this matter. Plaintiff failed to serve Progressive until after it had obtained an Order of default and settled with the liability carrier based on that Order. The Order of default was the matter in which Defendant Fischer's liability was established. Accordingly, Plaintiff waived his right to UIM benefits by failing to serve Progressive and to preserve its right to appear and defend Fischer fully. Plaintiff held Fischer in default and the successfully argued to keep Fischer in default. Had Progressive been served, it could have appeared on Fischer's behalf and contested both liability and damages. By the time Progressive was served, it was too late for it to appear and defend. Therefore, Plaintiff has failed to comply with section 38-77-160, and Plaintiff is not entitled to UIM benefits.

The Order by the Court is correct in addressing the actual issues in the case. The Plaintiff's motion raises no issues with the Court's Order that have support in any legal authority. Accordingly, the Court does not wish to alter or amend its prior Order of Dismissal. It is therefore

ORDERED, ADJUDGED and DECREED that Plaintiff's Motion to Reconsider is DENIED, and

IT IS SO ORDERED.


The Honorable Brian M. Gibbons
Presiding Judge
Lexington County Court of Common Pleas

4/30, 2014

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Ronald Lee Cooper,

Plaintiff

vs.

Rebecca Sue Fischer,

Defendant.

IN THE COURT OF COMMON PLEAS

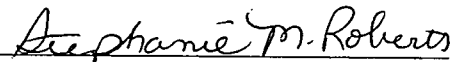
CIVIL ACTION NO: 2013-CP-32-1368

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorney for **Progressive Northern Insurance Company**, do hereby certify that I have served a copy of the foregoing, **Order Denying Plaintiff's Motion to Reconsider**, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

John W. Carrigg, Jr., Esquire
137 East Butler Street, Suite 6
Lexington, SC 29072

Bradley L. Lanford, Esquire
Baker Ravenel & Bender
Post Office Box 8057
3710 Landmark Drive, Suite 400 (29204)
Columbia, SC 29202



Stephanie M. Roberts
Paralegal to Peter E. Farr, Esquire

May 5, 2014