

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-21-3136

OMNI INSURANCE COMPANY

LIONEL EVANS, and LIONEL EVANS, as Personal  
 Representative of the ESTATE OF ANTONIO DICKEY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Eric M. Poulin	Attorney for : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant
	or <input type="checkbox"/> 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.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 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: Defendant's Motion for Summary Judgment is Granted. Defendant's Motion for Reconsideration is Denied.

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

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 FILED  
 CLERK OF COURT C.P. & G.S.  
 FLORENCE COUNTY, S.C.  
 CERTIFIED - A TRUE COPY  
 [Signature]



STATE OF SOUTH CAROLINA  
IN THE COUNTY OF FLORENCE

Omni Insurance Company,

Plaintiff,

vs.

Lionel Evans, and Lionel Evans as Personal  
Representative of the Estate of Antonio  
Dickey,

Defendant.

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

CASE No.: 2014-CP-21-03136

ORDER

COINTE REEL-SHEARIN  
CCOP & SS  
FLORENCE COUNTY, SC

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FILED

THIS MATTER is before the Court on Defendant Lionel Evans' Motion for Summary Judgment. Also before the Court is Evans' Motion to Reconsider this Court's prior Order of July 24, 2013, in which this Court dismissed Defendant Evans' counterclaims. Present at the call of the case was attorney M. Todd Loftis on behalf of the Plaintiff, and attorney Eric M. Poulin for Defendant Evans. For the following reasons, Defendant's Motion for Summary Judgment is GRANTED and Defendant's Motion to Reconsider is DENIED. Because these rulings dispose of all issues, this Order ends the case.

**BACKGROUND**

Defendant Lionel Evans alleges that he was seriously injured on February 9, 2009, during an automobile accident in which Evans was riding as a passenger a 2003 Chevrolet Trailblazer, license # CSN 192, and VIN 1GNDS135X32159091. A man named Antonio Dickey was driving the vehicle at the time of the accident. Dickey died from the accident. The vehicle was owned by Rederick Thompson and insured under Omni Insurance Policy No. 3389124. The

CERTIFIED: A TRUE COPY  
*Connie Hal-Shearin*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

vehicle was stolen on February 2, 2009 from Redrick Thompson. At the time of the February 2009 accident, decedent Antonio Dickey was operating the stolen Thompson vehicle.

Due to injuries sustained in this accident, Evans filed suit against Dickey in the Florence County Court of Common Pleas in an action styled as Lionel Evans v. Estate of Antonio Dickey, 2011-CP-21-3414.<sup>1</sup> Citing the alleged theft of the vehicle, Omni determined that Dickey was not a permissive driver, and therefore refused to defend or indemnify Dickey under the liability coverage of the Policy. Evans thereafter served copies of the pleadings upon Omni as an Uninsured Motorist carrier pursuant to S.C. Code Ann. § 38-77-150. Omni appeared to defend the underlying action and separately filed this declaratory judgment action seeking a declaration that Evans is not entitled to Uninsured Motorist coverage under the Omni policy. Defendant Evans answered and filed counterclaims for bad faith and fraudulent misrepresentation. By Order dated July 24, 2013, this Court dismissed Defendant's counterclaims. Defendant now asks the Court to reconsider the July 24, 2013 Order, and to grant summary judgment in his favor as to Plaintiff's request for declaratory relief.

#### **LEGAL STANDARD**

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Singleton v. Sherer, 377 S.C. 185, 198, 659 S.E.2d 196, 203 (Ct. App. 2008), quoting Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). South Carolina Rule of Civil Procedure 56(e) states:

When a motion for summary judgment is made and supported ... an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits ... must set forth specific facts showing that there is a

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<sup>1</sup> The case was stricken from the trial roster pursuant to Rule 40(j) and has since been restored under case number 2014-CP-21-1063.

genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

S.C. R. Civ. P. 56(E). Moreover, when it is clear that there is no genuine issue of material fact, summary judgment is appropriate and the moving party is entitled to judgment as a matter of law. Legette v. Piggly Wiggly, Inc., 368 S.C. 576, 579, 629 S.E.2d 375, 376 (Ct. App. 2006), quoting Cafe Associates, Ltd. v. Gerngross, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991).

### **ANALYSIS**

Defendant Evans argues that he is entitled to Uninsured Motorist coverage under the Omni policy as a matter of law and that, accordingly, summary judgment is appropriate. I agree.

#### **I. Existing Law**

South Carolina Code § 38-77-150 creates the requirement that all insurance contracts include uninsured motorist coverage. S.C. Code Ann. § 38-77-150. The law serves the public policy interest of protecting insured motorists against loss caused by the wrongful conduct of an uninsured motorist. Ferguson v. State Farm Mut. Auto. Ins. Co., 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973). In the instant case, Evans' recovery is dependent upon the analysis of what constitutes an uninsured vehicle after an insurer denies liability, and whether Evans may be qualified as a "guest" within the meaning of S.C. Code Ann. § 38-77-30.

#### **A. Denial of liability converts an insured vehicle into an uninsured vehicle**

Our Supreme Court has addressed similar questions in the past. The first in this line of cases was Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 529 S.E.2d 280 (2000). In Unisun, the liability carrier successfully denied coverage for an injured passenger because the driver was a non-permissive driver of the vehicle. Id. at 365, 529 S.E.2d 280, 281. However, the Court held that the insurer's denial of liability converted the otherwise insured vehicle into an uninsured motor vehicle. Id. at 367, 529 S.E.2d 280, 282.

The Court based its holding on the statutory definition of “uninsured motor vehicle” as when “there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder...” *Id.*, quoting S.C. Code. Ann. § 38-77-30(13)(b) amended as § 38-77-30(14)(b). The Unisun Court continued to echo the statutes’ historic public policy concern in its opinion, “[t]he purpose of the uninsured motorist law is ‘to provide benefits and protection against the peril of injury or death by an uninsured motorist to an insured motorist, his family, and the permissive users of his vehicle.’” Unisun, 339 S.C. at 368, 529 S.E.2d 280, 283, quoting Ferguson v. State Farm Mut. Auto. Ins. Co., 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973).

Therefore, based on Dickey’s non-permissive use, Omni’s denial of liability converted Thompson’s otherwise insured vehicle into an uninsured motor vehicle pursuant to S.C. Code Ann. § 38-77-30(14)(b).

While Unisun squarely addressed the issue of what constitutes an uninsured motor vehicle, its holding was fairly narrow as to the applicability of uninsured motorist coverage for guests. In Unisun, all parties conceded that the injured passenger had the named insured’s permission to ride in the vehicle. Unisun, 339 S.C. at 364, 529 S.E.2d 280, 281. However, Unisun’s narrow application was expanded in the subsequent case of Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008)

**B. “Guest” status is determined from the passenger’s perspective**

In Rollison, a teenager drove a car off his grandfather’s car dealership without permission. *Id.* at 603, 663 S.E.2d 484, 485. The teenager picked up a friend, and was later involved in a single-car accident. *Id.* The passenger sought recovery for injuries through the vehicle’s general liability policies, but was denied because the insurance carrier determined the injured passenger was neither a permissive user, nor a permissive guest in the vehicle at the time

of the accident. Rollison, 378 S.C. at 609, 663 S.E.2d 484, 488. As a result, the Rollison Court revisited Unisun's narrow holding regarding the statutory qualifications of a "guest." Id.

Unisun had briefly discussed the definition of "guest," under the South Carolina Uninsured Motorist Statute. Unisun, 339 S.C. at 366, 529 S.E.2d 280, 282 (2000). "Insured" means the named insured and ... a guest in the motor vehicle to which the policy applies or the personal representative of any of the above." S.C. Code Ann. § 38-77-30(7). Unison reaffirms the notion that "[t]he uninsured motorist statute 'is remedial in nature, enacted for the benefit of injured persons, and is to be liberally construed so that the purpose intended may be accomplished.'" Unisun, 339 S.C. at 339 S.C. 362, 366, 529 S.E.2d 280, 282 quoting Gunnels v. American Liberty Ins. Co., 251 S.C. 242, 247, 161 S.E.2d 822, 824 (1968). Therefore, the Court determined that the statutory language "to which the policy applies," is for identification, not exclusion. Unisun, 339 S.C. at 367, 529 S.E.2d 280, 282. As such, the statute is focused more on the vehicle identified in the policy, and less on the status of the "guest" within the vehicle.

The Rollison court went further and stated, "A review of the plain language of the statute reveals that 'guest' is listed independently as a person who constitutes an 'insured.' As we interpret the statute, a person ... need only have the status of a "guest" to qualify as an 'insured.'" Rollison, 378 S.C. at 610, 663 S.E.2d 484, 489. Since the legislature did not include language of consent in the statute, the Court did not require the named insured's consent as a prerequisite for "guest" status. Id. Therefore,

[A] passenger can only rely on the driver's representations regarding his status as a permissive user. Thus, a determination of whether a passenger qualifies as a "guest" under the statute must be viewed from the passenger's perspective.

We believe that to define "guest" otherwise would lead to an absurd result which would require a passenger to specifically inquire whether the driver either owned the vehicle or had permission from the named insured to drive the vehicle.

Clearly, such an interpretation would be contrary to the intention of the Legislature as well as the remedial purpose and inclusive nature of the uninsured motorist statute.

Rollison, 278 S.C. at 611–12, 663 S.E.2d 484, 489–90.

I find the analysis and statutory interpretations of Rollison controlling in the present case. Therefore, we must examine the facts that exist in the present case and apply them to the law as it exists in determining whether there is a genuine issue of material fact that necessitates further proceedings.

## II. Omni's Argument

During the hearing, Defendant Evans' deposition transcript was marked and made a part of the record. Omni did not file any affidavits, memoranda, or other exhibits. Therefore, the deposition testimony comprises the bulk of the evidence that is on the record and before the Court for purposes of this issue. In opposing Defendant Evans' Motion for Summary Judgment, Omni makes two arguments: 1) that the facts of this case are distinguishable from those in Rollison, rendering Rollison non-controlling and 2) that even if Rollison controls, Evans' should not be afforded UM coverage because he either knew or should have known that he was riding in a stolen car.

### A. **There is no practical or legal difference between the factual scenario presented in the Rollison case, and that at issue in the present case.**

Omni argues that Rollison is distinguishable from the present case in that the present case involves a stolen vehicle whereas the Rollison case merely involves a driver who does not have permission to operate the vehicle. Omni argues that, in a situation with a stolen vehicle, the UM coverage should cut off and should not follow the vehicle.

I find this argument unpersuasive. Indeed, it appears to be a distinction without a difference. A driver who takes and operates a vehicle without the owner's permission is

necessarily stealing the vehicle. That the Rollison case involved family members is of little consequence. The only difference between Rollison and the present case is that the vehicle owner in Rollison chose not to report his vehicle or press charges against the non-permissive user who, by all definitions, was still a thief.

Even assuming there is a difference between a non-permissive use case and a theft case, the holdings in Rollison and Schmidt are based heavily upon public policy considerations. This state has a strong public policy reason for ensuring that some type of insurance coverage exists for injured passengers. The Rollison Court noted that

[O]ne who is a "guest" at the invitation of the driver has, by implication, the consent of the named insured. Presumptively then a guest has the consent of the named insured unless he or she has knowledge to the contrary. Logically, because the named insured would rarely be present in a situation as in the facts of this case, a passenger can only rely on the driver's representations regarding his status as a permissive user. Thus, a determination of whether a passenger qualifies as a "guest" under the statute must be viewed from the passenger's perspective.

Rollison, 378 S.C. at 612.

Viewing both the Rollison case and the present case from the passenger's perspective, Omni's distinction disappears. Indeed, the entire problem noted by the Rollison Court is that the passenger is not in the best position to know of the status of the driver. Therefore, a passenger loses protection if he or she knew that the driver did not have permission to drive the vehicle in the first place, regardless of the driver's substatus as either a mere "non-permissive user" or a full blown thief. For these reasons, I decline to draw a distinction between facts of the Rollison case and those presently at issue, and find that the legal analysis in Rollison is binding in the present matter.

- B. There is no evidence to suggest that Evans knew or should have known the vehicle was stolen.**

Therefore, since Omni relies on its pleadings and bare accusations regarding Evans' credibility, there is no genuine issue of material fact. Even viewing the evidence in the light most favorable to Omni, I find that Summary Judgment is appropriate.

**III. Evans' Motion to Reconsider, Alter, and/or Amend**

Also at issue is Defendant Evans' Motion to Reconsider this Court's prior Order of July 24, 2013, in which this Court dismissed Defendant Evans' counterclaims. Evan's argued that the prior order appeared to be based on the mistaken belief that Evans was attempting to bring a third party bad faith claim, when he was actually asserting causes of action for first party bad faith.

I find that the analysis underlying my prior order is correct and decline to reconsider, alter, and/or amend my findings.

Therefore, based upon the foregoing,

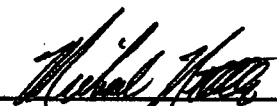
**IT IS ORDERED** that Defendant Evans' Motion for Summary Judgment be **Granted**, and that this action be dismissed without prejudice;

**IT IS FURTHER ORDERED** that Evans is entitled to uninsured motorist coverage in the underlying action;

**IT IS FURTHER ORDERED** that Defendant Evans' Motion to Reconsider, Alter, and/or Amend is **Denied**.

**IT IS SO ORDERED.**

Dated this 8 day of August, 2014

  
The Honorable Michael G. Nettles  
Presiding Judge, 12th Judicial Circuit

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*Constance Neal-Spearman*  
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