

The South Carolina Supreme Court

Deloris Williams, Personal Representative of the Estate
of Edward Murry, Deceased, and Matthew Whitaker, Jr ,
as Personal Representative of the Estate of Annie Mae
Murry, Deceased, Appellants,

v

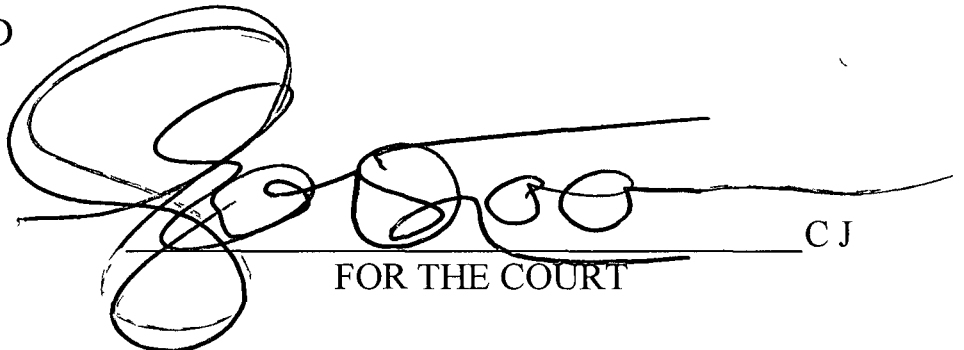
GEICO Employees Insurance Company, Respondent

Appellate Case No 2011-196449

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this
appeal is hereby certified for review by the South Carolina Supreme Court
Upon receipt of this order, the Court of Appeals is hereby directed to forward
the case file, all records and briefs and any exhibits on file to this Court

IT IS SO ORDERED



FOR THE COURT CJ

Columbia, South Carolina

July 25, 2012

cc

William H Bowman, III

Robert A McKenzie

Robert P Wood

Terry E Richardson, Jr

Christopher James Moore

The Honorable Jenny Kitchings



RICHARDSON PATRICK
WESTBROOK & BRICKMAN LLC

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February 17, 2012

RECEIVED
FEB 17 2012
SC Court of Appeals

Seth Tucker, Esq
S C Court of Appeals
Clerk of Court's Office
1015 Sumter Street
Columbia, South Carolina 29201

RE Williams v GEICO Employees Ins Co
Case No 2009-CP-40-8344

James C Bradley
Michael J Brickman
Elizabeth Middleton Burke
J David Butler
Aaron R Dias
Jerry Hudson Evans
Nina H Fields
Thomas P Gressette Jr
H Blair Hahn
Daniel S Haltiwanger
David Hendricks
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Karl E Novak
Kimberly Keevers Palmer
Charles W Patrick Jr
Terry E Richardson Jr
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James L Ward Jr
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Kenneth J Wilson
Robert S Wood

Of Counsel
Daniel O Myers
Gordon C Rhea (CA DC & USVI only)
James H Riron Jr
Howard Siegel (DC & MD only)
David L Suggs (MN & NY only)
Robert M Turkewitz

Dear Seth,

I hope this finds you well Enclosed please find an amended certificate of counsel for Rule 210(g) compliance By copy of this letter I have provided opposing counsel a copy of the same Should you have any questions please do not hesitate to contact me

Most respectfully,

Christopher J Moore

ENC
Cc William H Bowman, III, Esquire
Robert McKenzie, Esquire



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Robert S Wood

January 26, 2012

V Claire Allen
Deputy Clerk of Court
S C Court of Appeals
P O Box 11629
Columbia, SC 29211

Of Counsel
Daniel O Myers
Gordon C Rhea (CA DC & USVI only)
James H Rion Jr
Howard Siegel (DC & MD only)
David L Suggs (MN & NY only)
Robert M Turkewitz

Re **Williams v GEICO Employees Insurance Company**
Case No 2009-CP-40-8344

Dear Ms Allen

I hope this finds you well In response to your letter dated January 24, 2012 enclosed for filing please find appellant's Rule 210(g) and Rule 211(b) certificates of compliance in the above referenced appeal Also enclosed please find a number of labels adding the information for respondent's counsel to be attached to our filed copies of the record on appeal I apologize for not having included this on the initial cover Thank you so much for your assistance in placing those on those records on appeal

Should you have any questions, please do not hesitate to contact me

Most respectfully,

Christopher J Moore

CJM/jhh
Enclosure
cc Robert A McKenzie, Esq
William H Bowman, III, Esq

REC'D * 1/27/12
JAN 30 2012
SC COURT - 11334K

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January 26, 2012

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VIA HAND DELIVERY

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

SC Court of Appeals

RE Delores Williams, Personal Representative of the Estate of Edward Murry, deceased and Matthew Whitaker, Jr , as Personal Representative of the Estate of Annie Mae Murry, deceased v GEICO Employees Insurance Company
Case Tracking No 2011196449
Case No 09-CP-40-8344
Claim No 0013686370101207
RTT No 011222-00674

Dear Ms Gee

Thank you for your letter of January 24, 2012 Enclosed please find an original and one copy of the Proof of Service of the Respondent's Final Brief

By copy of this letter I am serving a copy of same on opposing counsel, Terry E Richardson, Jr , Christopher J Moore and Robert A McKenzie

If you have any questions, please let me know Thank you

Sincerely,

ROGERS TOWNSEND & THOMAS, P C

A handwritten signature in black ink, appearing to be "WB", written over the typed name.

William H Bowman, III

WHB/cmh
Enclosure(s)

cc Terry E Richardson, Jr , Esquire
Christopher J Moore, Esquire
Robert A McKenzie, Esquire
Teresa Ball

ORIGINAL



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLFN
DEPUTY CLERK

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January 24, 2012

Terry E Richardson, Jr , Esquire
Christopher J Moore, Esquire
Richardson, Patrick, Westbrook
P O Box 1368
Barnwell, SC 29812

Re Williams, Deloris v GEICO
Case #2011196449

Dear Counsel

We have received the Record on Appeal and the Final Brief of the Appellants' for the above case. However, a Certificate of Compliance with Rule 210 (g), and 211(b) of the South Carolina Appellate Court Rules, was not included with either of these items. Please provide this Court with a Certificate of Compliance with Rule 210 (g), and 211(b) for the Record on Appeal and the Final Brief of the Appellants' within ten (10) days from the date of this letter.

Also, information for all attorneys of record must appear on the cover of the Record on Appeal, pursuant to Rule 210 of the SCACR. Therefore, within ten (10) days of the date of this letter, you must come to the first floor of the Edgar A. Brown Building located at 1205 Pendleton Street, Columbia, and place labels on the covers of the original and all copies of the Record on Appeal. The labels must be appropriately sized and must not cover any other information than that which they are intended to correct.

Please call prior to your arrival so that the briefs can be made available without delay.

Very truly yours,

V. Claire Allon, Deputy
CLERK

TAG/jt

cc Robert A McKenzie, Esquire
William H Bowman, III, Esquire
Robert P Wood, Esquire



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
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January 24, 2012

William H Bowman, III, Esquire
Robert P Wood, Esquire
Rogers Townsend & Thomas, PC
P O Box 100200
Columbia, SC 29202

Re Williams, Deloris v GEICO
Case #2011196449

Dear Counsel

We have received the Final Brief of the Respondent for the above case. However, a Proof of Service was not included with the Final Brief. Please provide this Court with a Proof of Service within ten (10) days from the date of this letter.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/jt

cc Robert A McKenzie, Esquire
Terry E Richardson, Jr, Esquire
Christopher J Moore, Esquire

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December 5, 2011

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

RE Delores Williams, Personal Representative of the Estate of Edward Murry, deceased and Matthew Whitaker, Jr , as Personal Representative of the Estate of Annie Mae Murry, deceased v GEICO Employees Insurance Company
Case Tracking No 2011196449
Case No 09-CP-40-8344
Claim No 0013686370101207
RTT No 011222-00674

Dear Ms Gee

Enclosed please find an original and fifteen (15) copies of the Final Brief of Respondent with a Proof of Service as well as Respondent's Certificate of Counsel

By copy of this letter, I am serving a copy of same on opposing counsel, Terry E Richardson, Jr , Christopher J Moore and Robert A McKenzie

If you have any questions, please let me know Thank you

Sincerely,

ROGERS TOWNSEND & THOMAS, P C

A handwritten signature in black ink, appearing to be "W. Bowman III".

William H Bowman, III

WHB/cmh
Enclosure(s)

cc Terry E Richardson, Jr , Esquire
Christopher J Moore, Esquire
Robert A McKenzie, Esquire
Teresa Ball

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SC Court of Appeals



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November 18, 2011

Tanya Gee, Esquire
Clerk of the Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE Williams v GEICO Employees Insurance Co
Case No 2009-CP-40-8344

Dear Ms Gee,

I hope this finds you well Enclosed for filing, please find fifteen (15) copies of the Brief of Appellants in the above-referenced appeal Pursuant to Rule 267(d), SCACR I have included one unbound copy for the Court Pursuant to Rule 211(a), SCACR I have also enclosed proof of service of the Brief of Appellants to opposing counsel In addition, I have also enclosed one additional copy of the Brief to be file stamped and returned in the provided envelope if you would be so kind as to accommodate that request

Lastly, pursuant to Rule 211(a), SCACR, **I hereby certify that the Brief of Appellants complies with the content requirements of Rule 211(b), SCACR**

Should you have any questions please do not hesitate to contact me

Most respectfully,

Christopher J Moore

ENC

Cc William H Bowman, Esquire
Robert A McKenzie, Esquire

NOV 21 2011

James C Bradley
Michael J Brickman
Elizabeth Middleton Burke
J David Butler
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November 17, 2011

Tanya Gee, Esquire
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Columbia, South Carolina 29211

RE Williams v GEICO Employees Insurance Co
Case No 2009-CP-40-8344

Of Counsel
Daniel O Myers
Gordon C Rhea (CA DC & USVI only)
James H Rion Jr
Howard Siegel (DC & MD only)
David L Suggs (MN & NY only)
Robert M Turkewitz

Dear Ms Gee,

I hope this finds you well Enclosed for filing, please find fifteen (15) copies of the Record on Appeal in the above-referenced appeal Pursuant to Rule 267(d) I have included one unbound copy for the Court Pursuant to Rule 210(a) I have also enclosed proof of service of the Record on Appeal to opposing counsel In addition, I have also enclosed one additional copy of the Record to be file stamped and returned in the provided envelope if you would be so kind as to accommodate that request

Lastly, pursuant to Rule 210(g), **I hereby certify that the Record on Appeal contains all material proposed to be included by all parties and does not contain any other material**

Should you have any questions please do not hesitate to contact me

Most respectfully,

Christopher J Moore

ENC
Cc William H Bowman, Esquire
Robert A McKenzie, Esquire

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SC COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

George C James, Jr , Circuit Court Judge

Case No 2009-CP-40-8344

Delores Williams,
Personal Representative
of the Estate of Edward
Murry, Deceased, and
Matthew Whitaker, Jr as
Personal Representative
of the Estate of Annie
Mae Murry, Deceased

Appellant,

v

GEICO Employees
Insurance Company

Respondent

**RESPONDENT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

William H Bowman, III
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803-771-7900

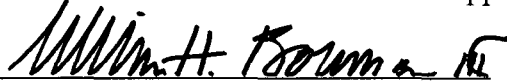
Attorney for Respondent

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SC Court of Appeals

In addition to the matters designated by the Appellants to be included in the Record on Appeal, the Respondent designates the following additional matter

- 1 Order Granting Judgment to Defendant filed on June 2, 2011
- 2 Order filed on July 6, 2011,
- 3 Defendant's Exhibit A, and
- 4 Exhibit A to Reply to Motion for Reconsideration, New Trial, and/or to Alter and Amend Judgment

I certify that this Designation contains no matter which is irrelevant to the appeal



William H Bowman, III

SC Bar No 810

Robert P Wood

SC Bar No 6206

Rogers Townsend & Thomas, PC

P O Box 100200, Columbia, SC 29202

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Attorneys for the Respondent

Columbia, South Carolina
November 1, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

George C James, Jr , Circuit Court Judge

Case No 2009-CP-40-8344

Delores Williams,
Personal Representative
of the Estate of Edward
Murry, Deceased, and
Matthew Whitaker, Jr as
Personal Representative
of the Estate of Annie
Mae Murry, Deceased

SC Court of Appeals

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Appellant,

v

GEICO Employees
Insurance Company

Respondent

PROOF OF SERVICE

I certify that I have served the Respondent's Designation of Matter to Be Included in Record on Appeal in this case on Terry E Richardson, Jr and Christopher J Moore, attorneys for the Appellant, by depositing a copy of it in the United States Mail, postage prepaid, on November 1, 2011, addressed to them at P O Box 1368, Barnwell, South Carolina 29812, and on Robert A McKenzie, attorney for the Appellant, by depositing a copy of it in the United States Mail, postage prepaid, on November 1, 2011, addressed to him at P O Box 58, Columbia, South Carolina 29202 .



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Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

George C James, Jr , Circuit Court Judge

Case No 2009-CP-40-8344

Delores Williams,
Personal Representative
of the Estate of Edward
Murry, Deceased, and
Matthew Whitaker, Jr as
Personal Representative
of the Estate of Annie
Mae Murry, Deceased

Appellant,

v

GEICO Employees
Insurance Company

Respondent

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent in this case on Terry E Richardson, Jr and Christopher J Moore, attorneys for the Appellant, by depositing a copy of it in the United States Mail, postage prepaid, on November 1, 2011, addressed to them at P O Box 1368, Barnwell, South Carolina 29812, and on Robert A McKenzie, attorney for the Appellant, by depositing a copy of it in the United States Mail, postage prepaid, on November 1, 2011, addressed to him at P O Box 58, Columbia, South Carolina 29202



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November 1, 2011

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

**RE Delores Williams, Personal Representative of the Estate of Edward Murry, deceased and Matthew Whitaker, Jr , as Personal Representative of the Estate of Annie Mae Murry, deceased v GEICO Employees Insurance Company
Case Tracking No 2011196449
Case No 09-CP-40-8344
Claim No 0013686370101207
RTT No 011222-00674**

Dear Ms Gee

Enclosed please find an original and one copy of the Initial Brief of Respondent with a Proof of Service as well as Respondent's Designation of the Matter to be Included in Record on Appeal with a proof of Service I would appreciate your filing the original and date stamping the copy for our files

By copy of this letter, I am enclosing a copy of same to opposing counsel, Terry E Richardson, Jr , Christopher J Moore and Robert A McKenzie

If you have any questions, please let me know Thank you

Sincerely,

ROGERS TOWNSEND & THOMAS, P C

A handwritten signature in black ink that reads "William H Bowman III".

William H Bowman, III

WHB/cmh
Enclosure(s)

cc Terry E Richardson, Jr , Esquire
Christopher J Moore, Esquire
Robert A McKenzie, Esquire
Teresa Ball

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

George C James, Jr , Circuit Court Judge

Case No 2009-CP-40-8344

Delores Williams,
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of the Estate of Annie
Mae Murry, Deceased

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SC Court of Appeals

Appellant,

v

GEICO Employees
Insurance Company

Respondent

INITIAL BRIEF OF THE RESPONDENT

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Attorney for Respondent

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TABLE OF AUTHORITIES

CASES

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<i>United Services Automobile Assoc v Markosky</i> , 340 S C 223, 530 S E 2d 660 (Ct App 2000)	9, 10, 11
<i>Universal Underwriters Ins Co v Metropolitan Property and Life Ins Co</i> , 298 S C 404, 380 S E 2d 858 (Ct App 1989)	5, 6, 9

STATUTES

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STATEMENT OF ISSUES ON APPEAL

- I DID THE TRIAL COURT ERR IN FINDING THAT THE INSURANCE CONTRACT IS NOT AMBIGUOUS?
- II DID THE TRIAL COURT ERR IN FINDING THAT THE FAMILY STEP-DOWN PROVISION DOES NOT VIOLATE SOUTH CAROLINA LAW OR PUBLIC POLICY?

STATEMENT OF CASE

This declaratory judgment action was filed on November 24, 2009, alleging that Respondent owes Appellants One Hundred Thousand and 00/100ths (\$100,000 00) Dollars in liability insurance proceeds under Policy No 0685-44-55-04 issued to Edward Murry, Deceased, and Annie Mae Murry, Deceased (“the Policy”) [Complaint, Defendant’s Exhibit A, Stipulation of Facts] Respondent filed an Answer on December 15, 2009, alleging that Appellants are limited to Fifteen Thousand and 00/100ths (\$15,000 00) Dollars in liability insurance proceeds pursuant to a provision in the Policy which limits liability coverage for bodily injury to any insured or relative of an insured residing in his or her household to the minimum limits required by South Carolina law [Stipulation of Facts, Answer of Defendant]

On May 12, 2011, the parties entered into a Stipulation of Facts and a non-jury trial was held before the Honorable George C James, Jr , to determine the legal issue of whether Appellants were entitled to \$15,000 00 or \$100,000 00 in liability insurance proceeds under the Policy [Stipulation of Facts, Trial Tr p 1, p 6, line 17 – p 7, line 1] On June 2, 2011, Judge James filed his order entering judgment in favor of Respondent [Order Granting Judgment to Defendant] He concluded that the family step-down provision in the Policy specifically limits liability coverage to the minimum limits required by South Carolina law where there is bodily injury to any insured or any relative

of an insured residing in his household [Order Granting Judgment to Defendant] Judge James further determined that the family step-down provision was unambiguous and did not violate public policy or the South Carolina Motor Vehicle Financial Responsibility Act (“the Act”) and therefore was valid and enforceable [Order Granting Judgment to Defendant] As a result, Judge James found that Appellants were limited to liability insurance proceeds of \$15,000 00, the statutory minimum limits in effect on September 3, 2006, the date of the accident [Order Granting Judgment to Defendant]

On June 8, 2011, Appellants filed a Motion for Reconsideration, New Trial, and/or to Alter or Amend Judgment pursuant to Rule 59, SCRPC, requesting that the Court consider orders issued in two other circuit court cases [Notice of Motion and Motion for Reconsideration, New Trial, and/or to Alter or Amend Judgment Pursuant to Rule 59, SCRPC] Respondent replied to Appellant’s Motion on June 14, 2011, arguing that the two circuit court orders have no precedential value, ignore the controlling decision of *Hansen v United Services Automobile Assoc* , 350 S C 62, 565 S E 2d 114 (Ct App 2002), and misinterpret S C Code Ann § 38-77-142 [Reply to Motion for Reconsideration, New Trial, and/or to Alter and Amend Judgment, Hearing Transcript (June 21, 2011), p 14-28, 33-35] A hearing was held on June 21, 2011, after which the Court issued its order on July 6, 2011, denying Appellant’s Motion [Order filed July 6, 2011]

Appellant served a Notice of Appeal on August 2, 2011 [Notice of Appeal]

STATEMENT OF THE FACTS

Respondent issued the Policy to Edward Murry and Annie Mae Murry, effective September 2, 2006 until March 2, 2007, covering among other vehicles, a 1999 Jaguar,

VIN No SAJKD604XXC871601, with liability limits of \$100,000 00 [Stipulation of Facts, Trial Tr p 3, lines 19–25, p 7, lines 5-17]

On September 3, 2006, Annie Mae Murry and Edward Murry were in the 1999 Jaguar when it was struck by a train. It is unknown whether Mr. or Mrs. Murry was driving the Jaguar at the time of the collision. [Stipulation of Facts, Trial Tr p 5, line 9 – p 6, line 8] Both died from injuries arising out of the accident. [Stipulation of Facts]

The Policy provides, in the Liability Section under Exclusions

We will not defend any suit for damage if one or more of the exclusions listed below applies. We do not provide liability coverage, under Exclusions 1, 2, 3, and 8, in excess of the minimum limits of liability required by South Carolina law. We do not provide any liability coverage for the remaining Exclusions

1 *Bodily injury* to any *insured* or any *relative* of an *insured* residing in his household is not covered

[Defendant's Exhibit A at p 4]

Because Edward Murry and Annie Mae Murry were both insureds under the Policy, Respondent takes the position that the family step-down provision cited above applies to this situation regardless of who was driving the Jaguar, such that coverage is limited to \$15,000 00, the minimum limits required by South Carolina law at the time of the accident. [Answer of Defendant, Trial Tr p 21, line 6 – p 22, line 6] Appellants contend that \$100,000 00, the amount listed in the Policy Declarations, is the amount owed to the Appellants under the Policy. [Stipulation of Facts, Trial Tr p 4, line 1-9]

ARGUMENT

Appellants raise two issues on appeal (1) whether the Policy is ambiguous and (2) whether the family step-down provision violates S C Code Ann 38-77-142 and is contrary to South Carolina public policy

I THE INSURANCE CONTRACT IS NOT AMBIGUOUS AND MUST BE APPLIED AS WRITTEN

An insurance contract is ambiguous only when it may be fairly and reasonably understood in more ways than one when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement *Goldston v State Farm Auto Ins Co* , 358 S C 157, 170, 594 S E 2d 511, 518 (Ct App 2004), *Hansen v United Services Auto Assoc* , 350 S C 62, 68, 565 S E 2d 114, 116-117 (Ct App 2002) Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect *Goldston* In examining the insurance contract, one must consider all of its provisions and may not read a single sentence or clause in isolation to create an ambiguity *Hansen* at 68, 565 S E 2d at 117

Appellants argue that the Policy contains various contradictions in the declarations page and the insurance contract itself which renders the Policy ambiguous [Initial Brief of Appellant, p 5] However, in reaching this conclusion, Appellants do not consider the entire integrated agreement but instead read the declarations page and certain provisions of the Policy in isolation to create an ambiguity

First, Appellants assert that since the declarations page shows liability coverage of \$100,000/\$300,000 but fails to contain a notation that such coverage is limited to the statutory minimum if it involves injury to the insured or a resident relative of the insured, the Policy is ambiguous However, the declarations page by itself cannot create an

ambiguity Insurance contracts contain many limitations and exclusions and it would be unrealistic and unreasonable to expect an insurer to identify every such limitation and exclusion and note it on the declarations page Hence, the rule that the entire integrated agreement must be considered

Next, Appellants refer to the general insuring provision of the liability section of the Policy that states that Respondent will pay damages which an insured becomes legally obligated to pay because of bodily injury sustained by a person Appellants contend that this is misleading because the Policy does not define “person” or specifically limit the term to everyone who is not an insured or resident relative [Initial Brief of Appellant, p 5-6] Contrary to Appellants’ position, the failure to define “person” does not render the Policy misleading or ambiguous Instead, language used in an insurance contract is to be understood in its plain, ordinary and popular sense *Universal Underwriters Ins Co v Metropolitan Property and Life Ins Co*, 298 S C 404, 406, 380 S E 2d 858, 860 (Ct App 1989) “Person” would admittedly include any human being However, the general insuring provision cannot be read alone but must instead be considered with the “Exclusions” listed on the same page of the Policy [Defense Exhibit A at p 6]

Twelve items are listed under the “Exclusions ” The Policy specifically states at the beginning of the “Exclusions” section that it does “not provide liability coverage, under Exclusions 1, 2, 3, and 8, *in excess of the minimum limits of liability required by South Carolina law* ” [Emphasis added] Exclusion 1 is bodily injury to any insured or any relative of an insured residing in his household While perhaps Exclusions 1, 2, 3, and 8 might more properly have been labeled “limitations” under a separate heading,

there is only one fair and reasonable way to interpret this language. Liability coverage will be provided for Exclusions 1, 2, 3, and 8 but only up to the minimum limits of liability required by South Carolina law while no liability coverage will be provided for the other Exclusions. Simply because an insurance contract is not written in the most desirable manner, if it is unmistakable in its meaning, when carefully read, it is valid and enforceable. *See Universal Underwriters* at 407, 380 S E 2d at 860.

When all of the provisions of the Policy are read together, it unambiguously provides that liability coverage for bodily injury to an insured or resident relative is limited to the minimum limits of liability required by South Carolina law.

II THE FAMILY STEP-DOWN PROVISION DOES NOT VIOLATE SOUTH CAROLINA LAW OR PUBLIC POLICY AND IS THEREFORE VALID AND ENFORCEABLE

Appellants contend that the family step-down provision violates S C Code Ann 38-77-142. Subsection (C) of the statute provides "Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void."

According to Appellants, because the Policy limits liability coverage where there is bodily injury to an insured or resident relative, it reduces the coverage afforded by the provisions required by S C Code Ann 38-77-142.

In analyzing whether the step-down provision violates this statute, it is important to examine what coverage is afforded by the provisions. Under Subsection (A), the statute requires

(A) No policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued unless the policy contains a provision insuring the named insured and any

other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred as a result of negligence in the operation or use of the vehicle by the named insured or by any such person. Each policy that has as the named insured an individual or husband or wife who are residents of the same household and that includes, with respect to any liability insurance provided by the policy for use of a nonowner automobile a provision requiring permission or consent of the owner of the automobile for the insurance to apply.

Subsection A requires that an insurance contract provide coverage for (1) liability arising from the ownership, maintenance or use of a motor vehicle, (2) for death or injury resulting from the operation or use of the vehicle by the named insured or permissive driver, and (3) liability for use of a non-owned automobile if used with the permission of the owner. There is no mention of the amount of coverage required. It simply identifies the situations where there should be coverage.

Subsection (B) of the statute requires

(B) No policy relating to the ownership, maintenance, or use of a motor vehicle may be issued without an endorsement or provision insuring the named insured, and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured, against liability for death or injury as a result of negligence in the operation or use of the motor vehicle by the named insured or by any other persons. If an insurer has actual notice of a motion for judgment or complaint having been served on an insured, the mere failure of the insured to turn the motion or complaint over to the insurer may not be a defense to the insurer, nor void the endorsement or provision, nor in any way relieve the insurer of its obligations to the insured, provided the insured otherwise cooperates and in no way prejudices the insurer.

Subsection B requires that an insurance contract provide (1) coverage to the named insured and permissive user against liability for death or injury as a result of negligence in the operation or use of the motor vehicle and (2) specifies that such

coverage is not voided between the insurer and insured if the insured fails to provide insurer with suit papers provided that the insurer has actual notice of lawsuit and the insured otherwise cooperates and does not prejudice the insurer. Thus, subsection (B), like subsection (A), identifies situations of coverage rather than amounts of coverage.

The purpose of subsection (C) in prohibiting the insurer from limiting or reducing “the coverage afforded by the provisions required by this section” does not relate to the amount of coverage but instead relates to when the coverage applies. The statute requires that a policy of bodily injury or property damage liability insurance must cover liability arising from “ownership, maintenance, and use” of a motor vehicle and also addresses who is an insured, including the named insured, resident relatives of the same household, and permissive users of the vehicle. Therefore, applying subsection (C) to subsections (A) and (B), a policy of bodily injury or property damage liability insurance cannot limit or reduce liability arising out of ownership, maintenance or use of a vehicle and cannot limit or reduce who is an “insured” under the policy. The statute does not address the *amount* of bodily injury or property damage liability coverage that must be provided to an insured. The trial judge concluded that if the legislature had intended for subsection (C) to prevent the insurer from limiting or reducing the maximum amount of liability coverage afforded by a policy, it would have used words such as “for no less than the policy limits shown on the declarations page” [Order filed on July 6, 2011]. Instead, it used the phrase “the coverage afforded by the provisions required by this section.”

In construing a statute, the court must ascertain and effectuate the intent of the Legislature. The court should not resort to a subtle or forced construction that limits or expands the statute’s operation. *McGee v South Carolina Dept of Motor Vehicles*, 389

S C 540, 698 S E 2d 841 (Ct App 2010) It must be read “in a sense that harmonizes with its subject matter and accords with its general purpose” *Id* at 543, 698 S E 2d at 843 Appellants’ interpretation of S C Code Ann 38-77-142(C) to prohibit an insurance policy from limiting the amount of coverage to the mandatory minimum in certain situations expands the statute’s operation beyond its subject matter and purpose

Under South Carolina law, a policy provision that limits coverage to the statutory minimum is not contrary to public policy *Hansen v United Services Automobile Assoc* , 350 S C 62, 565 S E 2d 114 (Ct App 2002), *United Services Automobile Assoc v Markosky*, 340 S C 223, 530 S E 2d 660 (Ct App 2000), *Universal Underwriters Ins Co v Metropolitan Property and Life Ins Co* , 298 S C 404, 380 S E 2d 858 (Ct App 1989) S C Code Ann § 38-77-140 governs the amount of coverage required in a policy of motor vehicle liability insurance As long as a policy provision or exclusion does not limit or reduce coverage beyond the amounts listed in § 38-77-140, the provision or exclusion does not violate the Act or public policy *See United Services Automobile Assoc v Markosky*, 340 S C 223, 530 S E 2d 660 (Ct App 2000)

In *Hansen*, the court upheld a family member exclusion in a policy issued in Ohio that limited liability coverage to an insured or family member to the minimum limits required by law Although the insured purchased liability coverage of \$200,000 00, the insurer in *Hansen* took the position that the exclusion applied to limit the family members’ recovery of liability proceeds to the mandatory minimum The insureds in *Hansen* asserted that the family member exclusion did not apply because the accident occurred in South Carolina making an “out of state” coverage provision applicable The “out of state” coverage provision immediately followed the family member exclusion in

the policy. The court concluded that the “out of state” coverage provision did not affect the application and validity of the family member exclusion. Instead, the “out of state” coverage provision limited the family members’ recovery of liability proceeds to the South Carolina statutory minimum of \$30,000, rather than Ohio’s statutory minimum of \$25,000.

Contrary to Appellants’ contention that whether or not a family step down provision conflicts with South Carolina public policy is a matter of first impression for our courts, the court in *Hansen* stated

The majority of compulsory insurance jurisdictions have invalidated household exclusions clauses only to the extent of the statutorily prescribed mandatory minimum liability coverage. In *United States Automobile Ass’n v Markosky*, South Carolina aligned itself with the majority view.

Hansen at 72, 565 S.E.2d at 118-119.

The court in *Hansen* thus expressed its agreement with the majority view that household exclusion clauses are valid to the extent that they provide the statutorily prescribed mandatory minimum liability coverage.

Finally, Appellants assert that the family step-down provision violates South Carolina public policy and cites to a Kentucky case, *Lewis v. West American Ins. Co.*, 927 S.W.2d 829 (Ky. 1996) [Initial Brief of Appellant p. 8]. *Lewis* is a case decided under Kentucky law and has no precedence in this matter. In fact, the court in *Markosky* distinguished *Lewis* while citing with approval cases from other jurisdictions which have held family step-down provisions valid and enforceable. *Markosky* at 228-229, 530 S.E.2d at 663, n. 1. The court in *Markosky* observed that the public policy has been effected by the enactment of the minimal limits coverage statute, S.C. Code Ann. § 38-

77-140, and that “[t]o the extent the legislature determines this public policy is not being effected, it has the option of raising the minimum limits. We will not construe the plain language of the statute to extend the public policy beyond that which was plainly intended.” *Markosky* at 230, 530 S E2d at 664

Therefore, while Appellants urge the public policy reasons of the Kentucky courts as set forth in *Lewis*, South Carolina has its own statutory scheme which embodies its public policy. Under South Carolina law, liability insurance coverage provides a means by which a motor vehicle owner can respond to a judgment that arises out of his or her negligence while also serving the public purpose of affording protection to innocent victims of motor vehicle accidents. On the other hand, underinsured motorist coverage protects the insured and his or her resident relatives where the damages sustained by them are in excess of the liability limits of the at-fault driver. S C Code Ann § 38-77-160, *see also Garris v Cincinnati Ins Co*, 280 S C 149, 311 S E 2d 723 (1984). Furthermore, underinsured motorist coverage can be stacked by the insured and his or her resident relatives to provide additional protection if the family owns other insured vehicles. Thus, a family step-down provision in the liability section of a motor vehicle policy that provides minimum limits coverage does not frustrate the public purpose of protecting innocent victims of motor vehicle accidents, especially where the insured has the option of purchasing underinsured motorist coverage for additional protection for damages sustained by the insured and his or her family. [Trial Tr p 6, lines 11-16]

As discussed above, the family step-down provision in the Policy does not violate S C Code Ann 38-77-142 or South Carolina public policy and is therefore valid and enforceable.

CONCLUSION

Because the insurance contract is not ambiguous and the family step-down provision does not violate South Carolina law or public policy, Respondent requests that the Court of Appeals affirm the Order of the Honorable George C. James, Jr. filed on June 2, 2011

Respectfully submitted,



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November 1, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable George C James, Jr , Circuit Court Judge

Case No 2009-CP-40-8344

Delores Williams, Personal
Representative of the Estate of
Edward Murry, Deceased, and Appellants,
Matthew Whitaker, Jr , as
Personal Representative of the
Estate of Annie Mae Murry,
Deceased,

v

GEICO Employees Insurance Respondent
Company,

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

- Appellant proposes the following be included in the Record on Appeal
- 1 Stipulation of Facts (May 12, 2011),
 - 2 Transcript from May 12, 2011 hearing (declaratory judgment bench trial),
 - 3 Transcript from June 21, 2011 hearing (motion to reconsider hearing),
 - 4 Complaint (Nov 24, 2009),
 - 5 Answer (Dec 15 2009),
 - 6 Pre-trial brief of Respondent (May 10, 2011),
 - 7 Motion to reconsider (June 9, 2011),
 - 8 Reply to motion to reconsider (June 14, 2011),
 - 9 Appellant's proposed order on declaratory judgment,
 - 10 Order on declaratory judgment (May 26, 2011),
 - 11 Order on motion to reconsider (June 30, 2011),
 - 12 GEICO insurance policy and declaration page purchased by Appellants (July 12, 2006)

I certify that this designation contains no matter which is irrelevant to this appeal

[SIGNATURE PAGE BELOW]

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RE Williams, Delores v GEICO

Dear Ms Allen,

I hope this finds you well Enclosed please find Appellant's amended designation of matter to be included in the record on appeal including the certification of counsel that no information proposed to be included is irrelevant to the appeal pursuant to Rule 209, SCACR Please allow this letter to also act as certification that no information included in Appellant's designation is irrelevant to the above-referenced appeal

Should you have any questions please do not hesitate to contact me

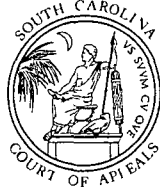
Most respectfully,

Christopher J Moore

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Cc Robert A McKenzie, Esquire
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The South Carolina Court of Appeals

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Re Williams, Deloris v GEICO

Dear Counsel

We have received the Appellants' Initial Brief and Designation of Matter in the above entitled case on appeal

Please be advised, it will be necessary for you to provide the Court with the certification of counsel stating that the designation of matter contains no information that is irrelevant to the appeal in accordance with Rule 209 of the South Carolina Appellate Court Rules within ten (10) days of the date of this letter

Very truly yours,

V Claire Allen, Deputy
CLERK

TAG/ma

cc Robert A McKenzie, Esquire
William H Bowman, III, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable George C. James, Jr., Circuit Court Judge

Case No. 2009-CP-40-8344

Delores Williams, Personal
Representative of the Estate of
Edward Murry, Deceased, and
Matthew Whitaker, Jr., as
Appellants,
Personal Representative of the
Estate of Annie Mae Murry,
Deceased,

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v

GEICO Employees Insurance
Company, Respondent

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

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10 Appellant's proposed order on declaratory judgment,
11 Order on declaratory judgment (May 26, 2011),
12 Order on motion to reconsider (June 30, 2011),
GEICO insurance policy and declaration page purchased by Appellants (July 12,
2006)

[SIGNATURE PAGE BELOW]

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October 3, 2011

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable George C James, Jr , Circuit Court Judge

Case No 2009-CP-40-8344

Delores Williams, Personal
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Estate of Annie Mae Murry,
Deceased,

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v

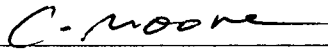
GEICO Employees Insurance
Company,

Respondent

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and the Designation of Matter to be Included in the Record on Appeal on William H Bowman, III by depositing copies of each in the United States Mail, postage prepaid, on October 3, 2011, addressed to him at Post Office Box 100200, Columbia, South Carolina 29202

October 3, 2011


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RE Delores Williams, Personal Representative of the Estate of
Edward Murry, Deceased, et al v GEICO Employees Insurance Company
Case No 2011196449
2009-CP-40-08344

Dear Ms Gee,

I hope this finds you well Enclosed for filing please find one original and one copy of the Initial Brief of Appellant and one copy of the Appellant's Designation of Matter to be Included in the Record on Appeal Enclosed you will also find proof of service If you would be so kind as to file-stamp the copy and return it to me in the enclosed, self-addressed envelope, I would greatly appreciate it I have copied all other counsel of record to this communication

Should you have any questions please do not hesitate to contact me

Most respectfully,

Christopher J Moore

ENC

cc Robert A McKenzie, Esq
William H Bowman, III, Esq

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable George C James, Jr , Circuit Court Judge

Case No 2009-CP-40-8344

Delores Williams, Personal
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Deceased,

Appellants,

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OCT 04 2011

SC Court of Appeals

v

GEICO Employees Insurance
Company,

Respondent

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- 1 DID THE TRIAL COURT ERR IN FAILING TO FIND THE INSURANCE CONTRACT AT ISSUE TO BE MISLEADING AND AMBIGUOUS?
- 2 DID THE TRIAL COURT ERR IN FAILING TO FIND THE COVERAGE LIMITATION AT ISSUE VIOLATIVE OF SOUTH CAROLINA PUBLIC POLICY?

STATEMENT OF THE CASE

This declaratory judgment action was initiated by Appellants on November 24, 2009 in order to determine a coverage dispute amongst the parties. Respondent answered on December 15, 2009 and the right to a jury trial was waived. Thereafter a stipulation of facts was entered into by the parties on May 12, 2011. Appellants' position was that (1) the automobile insurance contract is patently ambiguous and (2) the family step-down provision it contains is in violation of S C Code § 38-77-142 and thus void as against South Carolina public policy. Respondent's defense was that the policy is unambiguous and that S C Code § 38-77-142 is inapplicable. A bench trial was held before the lower court on May 12, 2011 to determine coverage. On May 26, 2011, the lower court entered its order finding in favor of Respondent on the declaratory judgment action. Thereafter, Appellants filed a timely motion to reconsider pursuant to Rule 59, SCRPC, to which Respondent replied on June 14, 2011. A hearing was held on Appellants' motion to reconsider on June 21, 2011. The lower court denied Appellants' motion to reconsider in an order dated June 30, 2011. Appellants timely served and filed their notice of appeal with this Court on August 2, 2011.

STATEMENT OF THE FACTS

This matter arises from an automobile-train collision that killed Mr and Mrs Murry (Stip of Facts at p 1) The incident occurred on September 3, 2007 *Id* It is unknown and disputed by the heirs and statutory beneficiaries as to who was driving when the collision occurred *Id* Mr and Mrs Murry, at the time, had an insurance policy with GEICO Employees Insurance Company (herein “GEICO”) (Complaint at p 2) Prior to filing suit, the parties came to an agreement about the amount of underinsurance coverage due (Stip of Facts at p 2) In addition, GEICO agreed to pay the liability coverage limit under the policy in the amount due under that portion of the policy *Id* However, a dispute amongst the parties arose as to what was due under that portion of the policy *Id*

GEICO takes the position that it owes \$15,000 00, the minimum limits under South Carolina law during the policy period, under the family step-down provision contained in the insurance contract (Complaint at p 2) Plaintiffs take the position that they are due the full amount of liability coverage purchased, \$100,000 00 *Id* Thereafter, Mr and Mrs Murry’s estates, pursuant to S C Code Ann §§ 15-53-10, et seq , brought a declaratory judgment action against GEICO to determine what was owed under the contract (Complaint) Thereafter the parties entered into a stipulation of facts essentially agreeing to the above-stated facts (Stipulation of Facts)

At the heart of this dispute is the clear ambiguity of GEICO’s insurance contract By its own language, the entire policy is comprised of (1) the policy contract itself, (2) the declaration sheet, and (3) the application the decedents filled out (Insurance policy at p 14) The declaration sheet states that the named insureds of the “Family Automobile

Renewal Policy” are Edward and Annie Murry, the decedents (Declaration page at p 1)
The declaration page also states that it provides coverage for “BODILY INJURY LIABILITY EACH PERSON/EACH OCCURRENCE” in the limit amounts of “\$100,000 (per person)/\$300,000 (per occurrence) *Id* at 2 Within the contract itself “Insured” is defined as the persons named as insured on the declaration page, here Edward and Annie Murry (Insurance policy at p 3) Under the section titled “LOSSES WE WILL PAY FOR YOU UNDER SECTION I,” the policy promises to “pay damages which an insured becomes legally obligated to pay because of *bodily injury*, sustained by a person, and arising out of the ownership, maintenance or use of the *owned auto* *Id* at 4 Then under the section titled “EXCLUSIONS,” the policy states in pertinent part

We do not provide liability coverage, under Exclusion 1 in excess of the minimum limits of liability required by South Carolina law
1 Bodily injury to any insured is not covered

Id (herein “the family step-down provision)

On the very next page the policy states that “Who Is Covered” under Section I is “you and your relatives ” *Id* at 5 On that same page, under “LIMITS OF LIABILITY,” the contract states that the “limit of bodily injury stated in the declarations as applicable to “each person” is the limit of our liability for all damages because of bodily injury sustained by one person as the result of one occurrence ” *Id*

In essence, the policy states that it covers the named insureds of the policy in the amounts stated in the declarations page (\$100,000/\$300,000) for any bodily injury arising out of the use of the vehicle at least three to four times Only once does it allude to a limitation, incorrectly defined as an “Exclusion,” which drastically alters the total amount of coverage for injury to the named insureds, the persons which “Family Automobile”

Renewal Policy” are Edward and Annie Murry, the decedents (Declaration page at p 1) The declaration page also states that it provides coverage for “BODILY INJURY LIABILITY EACH PERSON/EACH OCCURRENCE” in the limit amounts of “\$100,000 (per person)/\$300,000 (per occurrence) *Id* at 2 Within the contract itself “Insured” is defined as the persons named as insured on the declaration page, here Edward and Annie Murry (Insurance policy at p 3) Under the section titled “LOSSES WE WILL PAY FOR YOU UNDER SECTION I,” the policy promises to “pay damages which an insured becomes legally obligated to pay because of *bodily injury*, sustained by a person, and arising out of the ownership, maintenance or use of the *owned auto* *Id* at 4 Then under the section titled “EXCLUSIONS,” the policy states in pertinent part

We do not provide liability coverage, under Exclusion 1 in excess of the minimum limits of liability required by South Carolina law
1 Bodily injury to any insured is not covered

Id (herein “the family step-down provision)

On the very next page the policy states that “Who Is Covered” under Section I is “you and your relatives” *Id* at 5 On that same page, under “LIMITS OF LIABILITY,” the contract states that the “limit of bodily injury stated in the declarations as applicable to “each person” is the limit of our liability for all damages because of bodily injury sustained by one person as the result of one occurrence” *Id*

In essence, the policy states that it covers the named insureds of the policy in the amounts stated in the declarations page (\$100,000/\$300,000) for any bodily injury arising out of the use of the vehicle at least three to four times Only once does it allude to a limitation, incorrectly defined as an “Exclusion,” which drastically alters the total amount of coverage for injury to the named insureds, the persons which “Family Automobile”

policies are designed to protect. Nowhere on the declarations page or the policy does it state or warn insurance purchasers, despite the stated liability limits, that this policy will only protect YOU and any other NAMED INSURED in the minimum limits provided by South Carolina law.

ARGUMENT

Standard of Review

This matter is an action at law in which generally the findings of fact will not be disturbed unless there is no evidence to reasonably support the trial court's conclusions. *Townes Assoc v City of Greenville*, 266 S C 81, 86, 221 S E 2d 773, 775 (1976). "However, '[w]hen an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts.'" *Goldston v State Farm Mut Auto Ins Co*, 358 S C 157, 166, 594 S E 2d 511, 516 (Ct App 2004) (quoting *WDW Properties v City of Sumter*, 342 S C 6, 10, 535 S E 2d 631, 632 (2000)). Accordingly, "the appellate court does not have to defer to the trial court's findings." *Goldston*, 358 S C at 167, 594 S E 2d at 516 (internal citations omitted).

I BECAUSE THE INSURANCE CONTRACT AT ISSUE IS CONTRADICTIONARY AND MISLEADING THE TRIAL COURT ERRED IN FINDING IT TO BE UNAMBIGUOUS

It has long been the rule of South Carolina that "the terms of an insurance policy must be construed most liberally in favor of the insured and where the words of a policy are ambiguous, or where they are capable of two reasonable interpretations, that construction will be adopted which is most favorable to the insured." *Pitts v Glens Falls Indemnity Co*, 222 S C 133, 137, 72 S E 2d 174, 176 (1952). An insurance policy is ambiguous "when it may fairly and reasonably be understood in more ways than one."

Univ Underwriters Ins Co v Metropolitan Prop & Life Ins Co, 298 S C 404, 407, 380 S E 2d 858, 860 (Ct App 1989)

Here, the trial court erred in finding the insurance contract, as a whole, to be unambiguous. It wrongly found that Appellants read the declarations page in isolation for their determination that the contract provided \$100,000.00 in liability coverage to the decedent not driving at the time of the incident. To the contrary, Appellants pointed to various contradictions in the declarations page and the policy itself to show that the contract at issue was far from clear. (5/12/11 Hearing Transcript at pp 7-16)

As laid out in Appellants' statement of facts, the policy starts by saying generally, Mr and Mrs Murry, you are the named insureds under this family policy and based on your premiums it provides \$100,000/\$300,000 in liability coverage for bodily injury resulting from the use of your covered automobiles. Absent is any indication that what that really means is that the \$100,000/\$300,000 coverage you've elected to pay for does not include either of you, nor your household relatives, we'll only pay the statutory minimum in South Carolina for that. Nowhere on the declarations page, or in the policy itself, does it ever state what the statutory minimums in South Carolina are at the time the contract was entered. The documents are silent on that fact. There is no indication in the declarations page that the contract provides anything less than the liability limits stated.

As the customer reads on, the policy continues to purport to cover the named insureds (and most importantly, the people intending to use the covered vehicles the most). It states that GEICO will pay bodily injury damages sustained by a person arising out of the use of a covered vehicle. (Insurance policy at 4). The policy does not define "person," nor does it limit that term to everyone who is not a named insured (or

household relatives) *Id* Again it fails to warn the customer of any limitation on such coverage On page 5, again the policy states that the limits under Section I apply to “you and your relatives” with no limiting language whatsoever *Id* at 5 Going one step further, on the same page the policy reinforces that the limits of bodily injury coverage contained in the declarations page is what the policy provides for bodily injury to any one person in an occurrence *Id* at 5

Amongst all the language indicating coverage for the named insureds, as persons, up to the liability limits stated, GEICO inserted a family step-down limitation disguised as an “Exclusion ” (Insurance policy at 4) Here, after repeated references of coverage in the policy, GEICO says it will not provide coverage above the South Carolina statutory minimums for bodily injury to any insured *Id* In fact, read in isolation, Exclusion 1 could be read as not providing any coverage for a named insured whatsoever *See id* (“Bodily injury to any insured is not covered”)

After repeated indications that the named insureds are covered up to the liability amounts provided in the declarations page for bodily injury, GEICO slips in the family step-down, which is unclear in and of itself It fails to alert the purchaser what the statutory minimums are, and fails to alert them that this provision means you and your household relatives are NOT protected in the amounts shown This creates an irreparable ambiguity upon which GEICO cannot deny coverage in the full liability limits This policy can both reasonably and fairly be misunderstood *Univ Underwriters, 298 S C at 407, 380 S E 2d at 860* As such, the trial court erred in finding the policy to be unambiguous

II BECAUSE THE COVERAGE LIMITATION AT ISSUE VIOLATES S C CODE § 38-77-142 THE TRIAL COURT ERRED IN FAILING TO FIND THAT THE POLICY PROVISION WAS VOID AS AGAINST SOUTH CAROLINA PUBLIC POLICY

S C Code Ann § 38-77-142 (2010) states in pertinent part

(a) No policy of bodily injury liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State unless the policy contains a provision insuring the named insured[s] against liability for death or injury sustained or loss or damage incurred within the coverage of the policy as a result of negligence in the operation or use of the vehicle by the named insured

(c) Any provision included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void

S C Code Ann § 38-77-142(a), (c) (2010)

The trial court also erred in finding the above family step-down limitation to be valid under South Carolina public policy when the provision contravenes the language and purpose of § 38-77-142. The statute mandates that all South Carolina insurance policies must insure the named insureds against liability for death or injury and, more importantly, the insurance policy may not limit or reduce that coverage or it will be void against public policy. *Id.* Here, GEICO is attempting to reduce the coverage its policy states is provided for the named insureds through the step-down provision which plainly contravenes this statute because it reduces the amount of coverage stated in the declarations page under Section I. At oral argument, counsel for GEICO urged that this merely means the policy must have some coverage for the named insured, conceivably in the amounts provided by S C Code Ann § 38-77-140. However, § 38-77-142 does not reference those limits and specifically states that an insurance contract may not *reduce* the coverage afforded in a policy against liability for death or injury. Here that amount is

\$100,000 00 per person. Thus, GEICO's attempt to reduce that stated coverage through its family step down provision violates § 38-77-142 and that provision should necessarily be deemed void.

To escape that conclusion Respondents have argued that this type of coverage limitation is permissible in South Carolina pursuant to this Court's decision in *Hanson v United Servs Auto Ass n*, 350 S C 62, 565 S E 2d 114 (Ct App 2002). However, *Hanson* dealt with the effect an "out of state" provision had on the family step down provision in an Ohio insurance contract where the situs of the accident was outside of Ohio. There the main question was whether the "out of state" trigger provision was ambiguous or vague. See *Hanson*, 350 S C at 70-71, 565 S E 2d at 118.

Although South Carolina recognizes that reasonable exclusionary clauses are permitted to some extent, they must not conflict with public policy. See *United Servs Auto Ass n v Markosky*, 340 S C 223, 226, 530 S E 2d 660, 662 (Ct App 2000). The question of whether or not a family step down provision such as this conflicts with South Carolina public policy, especially in light of S C Code Ann § 38-77-142, is a matter of first impression for our courts.

At least one of our circuit courts has already strongly suggested that such provisions violate § 38-77-142 and, thus, our public policy. See (Mot to Reconsider at Ex 1). Other state courts have found similarly. See *Lewis v West American Ins Co*, 927 S W 2d 829 (Ky 1996) (finding family step down provision void against public policy in Kentucky).

The reasoning of the *Lewis* court is instructive on this matter. In *Lewis*, the Kentucky Supreme Court reviewed an almost identical provision which provided that an

insured or household relative injured in an incident in one of their covered vehicles could only recover the statutory minimum amounts provided under Kentucky's statutory scheme *Lewis*, 927 S W 2d at 832. In finding the provision void under Kentucky public policy the court focused on two key points: (1) a customer's motivation in purchasing liability insurance in sums exceeding the statutory minimum is to buy increased protection for anyone potentially injured by his/her vehicle, and (2) the only justification for these type of exclusions is to prevent the possibility of collusion by family members to defraud insurance companies. *Id.* at 830-832, 836.

The court found that the customer's motivations in purchasing increased liability coverage was frustrated by these provisions because the "packaging and selling of insurance products as providing the greater policy limit, purchasers are misled into believing that the higher limit applies to all whom they may injure when in fact it applies only to strangers." *Id.* at 837 (J. Lambert, concurring). The same holds true here and is further support that the GEICO contract at issue is misleading and ambiguous.

Here Respondent admits that the purpose for their family step down provision is the same as in *Lewis*, to prevent fraud or collusion amongst family members. *See* (June 21, 2011 hearing at p 22-3). Yet the courts of South Carolina are well-equipped to sniff out collusion or fraud. Thus, the limitation is based solely on the fact that Appellants are named insureds and will be operating the vehicle frequently. As the *Lewis* court noted

[Such an] exclusion becomes particularly disturbing when viewed in light of the fact that this class of victims is the one most frequently exposed to the potential negligence of the named insured. Typical family relations require family members to ride together on the way to work, church, school, social functions, or family outings. Consequently, there is no practical method by which the class of persons excluded from protection

by this provision may conform their activities so as to avoid exposure to the risk of riding with someone who, as to them, is uninsured

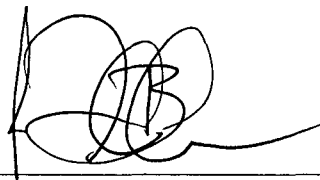
Lewis, 927 S W 2d at 832-3) Appellants would urge that South Carolina join Kentucky in finding that such provisions are generally void against public policy for the same reasons as the *Lewis* court. However, the fact that this provision contravenes S C Code Ann § 38-77-142 provides another basis for this Court to find that the provision at issue violates the law and public policy of South Carolina.

Accordingly, GEICO's family step down provision should be deemed void as against South Carolina public policy as it violates S C Code Ann § 38-77-142 or, in the alternative, because of the harsh results such a misleading provision would have on South Carolina insureds.

CONCLUSION

For the reasons stated herein, this Honorable Court should reverse the finding of the lower court.

October 3, 2011



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Hon Tanya Gee, Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

*Re Delores Williams Personal Representative of the Estate
of Eddie Murry Deceased et al vs GEICO Employees
Insurance Company
Case No 09-CP-40-8344
SC Ct of Appeals No 2011196449*

Of Counsel
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James H Rion Jr
Howard Siegel (DC & MD only)
David L Suggs (MN & NY only)
Robert M Turkewitz

Dear Ms Gee

This is to notify you that today we received a copy of the Transcript of Record from the June 21, 2011 hearing before The Honorable George C James, Jr

Thank you for your time

Sincerely,

Julie Murray
Paralegal

Enclosures

cc William H Bowman, III, Esq
S C Court Administration

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August 23, 2011

Honorable Tanya Gee
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Re **Delores Williams, Personal Representative of the Estate of Eddie Murry,
deceased, et al v GEICO Employees Insurance Company**
Case No **09-CP-40-8344**

Dear Ms Gee

I hope this finds you well I am writing to inform the Court that I have received the transcript from the May 12, 2011 hearing on the declaratory judgment motion, however, we are still waiting to receive the transcript from the June 21, 2011 hearing on the motion to reconsider I just wanted to bring this to the Court's attention to insure that the Court has not started the clock on our briefing schedule until such time as we have received the second transcript I just wanted to make the court aware of that fact Should you have any questions or if this should present a problem, please do not hesitate to contact me at the number provided Thank you in advance for your assistance in this matter

Most respectfully,

Christopher J Moore

CJM/jhh
cc William H Bowman, III, Esq
Office of Court Administration, SC Court of Appeals



RICHARDSON PATRICK
WESTBROOK & BRICKMAN LLC

August 10, 2011

Hon Tanya Gee, Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

*Re Delores Williams Personal Representative of the Estate
of Eddie Murry Deceased et al vs GEICO Employees
Insurance Company
Case No 09-CP-40-8344
SC Ct of Appeals No 2011196449*

Dear Ms Gee

This is to notify you that we received a copy of the Transcript of Record from the May 12, 2011 hearing before The Honorable George C James, Jr

Thank you for your time

Sincerely,

Julie Murray
Paralegal

Enclosures

cc William H Bowman, III, Esq
S C Court Administration

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*Re Delores Williams Personal Representative of the Estate of Eddie
Murry Deceased et al vs GEICO Employees Insurance Company
Case No 09-CP-40-8344*

Dear Ms Thomas

I would like to request that you please send us a copy of the transcript from a hearing that took place on June 21, 2011 in Sumter County, SC in the above-mentioned case Judge George C James, Jr was presiding

Please let me know the cost of this transcript You may contact me by phone at 843-727-6531 or via email at jmurray@rpwb.com Thank you for your time

Sincerely,

Julie Murray
Paralegal to Matthew D Hamrick, Esq

cc William H Bowman, III, Esq
S C Court Administration
Clerk, S C Court of Appeals

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*Re Delores Williams Personal Representative of the Estate of Eddie
Murry Deceased et al vs GEICO Employees Insurance Company
Case No 09-CP-40-8344*

Dear Ms Helms

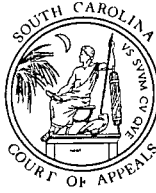
I would like to request that you please send us a copy of the transcript from a hearing that took place on May 12, 2011 in Richland County, SC in the above-mentioned case Judge George C James, Jr was presiding

Please let me know the cost of this transcript You may contact me by phone at 843-727-6531 or via email at jmurray@rpwb.com Thank you for your time

Sincerely,

Julie Murray
Paralegal to Matthew D Hamrick, Esq

cc William H Bowman, III, Esq
S C Court Administration
Clerk, S C Court of Appeals



The South Carolina Court of Appeals

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CLERK

V. CLAIRE ALLEN
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Re Williams, Deloris v. GEICO
2011196449
2009-CP-40-08344

Dear Counsel,

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address 1015 Sumter Street, Columbia, S C 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.


PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the

transcript) with the Court Reporter for furnishing the transcript You are reminded of the notification requirements of Rule 207(a)(5) SCACR also, please advise the Court in writing upon receipt of the transcript

NOTE If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S C Code Ann Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death,
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58,
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance,
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state,
- 5) any final judgment from the circuit court pertaining to elections and election procedure,
- 6) any order limiting an investigation by a State Grand Jury under S C Code Ann Section 14-7-1630,
- 7) any order of the family court relating to an abortion by a minor under S C Code Ann Section 44-41-33

Very truly yours,


Tanya A. Gee
CLERK

TAG/laf

cc William H Bowman, III, Esquire
The Honorable Jeanette W McBride



The South Carolina Court of Appeals

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Re Williams, Deloris v GEICO
2011196449
2009-CP-40-08344

Dear Counsel,

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V Claire Allen, Deputy
CLERK

TAG/laf

cc William H Bowman, III, Esquire
The Honorable Jeanette W McBride

Pm 8-2-11
POS 8-2-11

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

George C James, Jr , Circuit Court Judge

Case No 2009-CP-40-8344

Delores Williams, Personal
Representative of the Estate of
Edward Murry, Deceased, and
Matthew Whitaker, Jr , as
Personal Representative of the
Estate of Annie Mae Murry,
Deceased, Appellants,

v

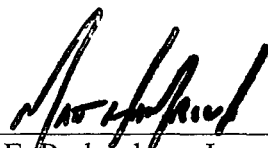
GEICO Employees Insurance
Company, Respondent

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AUG 04 2011
SC Court of Appeals

NOTICE OF APPEAL

Delores Williams, Personal Representative of the Estate of Edward Murry, Deceased, and Matthew Whitaker, Jr , as Personal Representative of the Estate of Annie Mae Murry, Deceased, appeal the orders of the Honorable George C James, Jr dated May 26, 2011 and June 30, 2011, respectively The June 30, 2011 order was a denial of Appellants' motion for reconsideration, new trial, and/or to alter or amend the May 26, 2011 order, pursuant to Rule 59, SCRP Appellants received written notice of entry of the June 30, 2011 order denying Appellants' Rule 59 motion on July 9, 2011

August 2, 2011


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ATTORNEYS FOR RESPONDENTS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

George C James, Jr , Circuit Court Judge

Case No 2009-CP-40-8344

Delores Williams, Personal
Representative of the Estate of
Edward Murry, Deceased, and
Matthew Whitaker, Jr , as
Personal Representative of the
Estate of Annie Mae Murry,
Deceased,

Appellants,

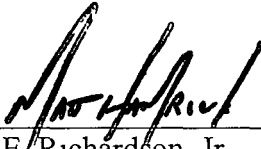
v

GEICO Employees Insurance
Company,

Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on GEICO Employees Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on August 2, 2011, addressed to its attorneys of record, William H Bowman, III, Esquire Rogers Townsend & Thomas, PC, P O Box 100200, 220 Executive Center Drive, Columbia, SC 29202



Terry E. Richardson, Jr
Matthew D Hamrick
RICHARDSON, PATRICK,
WESTBROOK & BRICKMAN, LLC
1017 Chuck Dawley Blvd
Mt Pleasant, SC 29464
(843) 727-6500
(843) 881-6183

ATTORNEYS FOR DELORES
WILLIAMS, PERSONAL

REPRESENTATIVE OF THE
ESTATE OF EDWARD MURRY,
DECEASED

-And-

Robert A McKenzie
McDONALD, McKENZIE, RUBIN,
MILLER AND LYBRAND, LLP
1704 Main Street, 2nd Floor
Post Office Box 58
Columbia, South Carolina 29202
(803) 252-0500
(803) 929-3530 fax

ATTORNEYS FOR MATTHEW WHITAKER,
JR , AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF ANNIE MAE MURRY,
DECEASED

RWB RICHARDSON PATRICK
WESTBROOK & BRICKMAN LLC

P O BOX 1007 1017 CHUCK DAWLEY BLVD MT PLEASANT SC 29464



10/21/20

10/21/20

RWB RICHARDSON PATRICK
WESTBROOK & BRICKMAN LLC

R I C H A R D S O N P A T R I C K
W E S T B R O O K & B R I C K M A N L L C

Hon Tanya Gee Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

10/21/20



RICHARDSON PATRICK
WESTBROOK & BRICKMAN LLC

August 2, 2011

Hon Tanya Gee, Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re *Delores Williams Personal Representative of the Estate
of Eddie Murry Deceased et al vs GEICO Employees
Insurance Company*
Case No 09-CP-40-8344

James C Bradley
Michael J Brickman
Elizabeth Middleton Burke
J David Butler
Aaron R Dias
Jerry Hudson Evans
Nina H Fields
Thomas P Gressette Jr
H Blair Hahn
Daniel S Haltwanger
Matthew D Hamrick
David Hendricks
Gregory A Lofstead
Christiaan A Marcum
Katie McElveen
Christopher J Moore
Karl E Novak
Kimberly Keevers Palmer
Charles W Patrick Jr
Terry E Richardson Jr
Thomas D Rogers
A Hoyt Rowell III
Brady R Thomas
T Christopher Tuck
James L Ward Jr
Edward J Westbrook
Kenneth J Wilson
Robert S Wood

Of Counsel
Daniel O Myers
Gordon C Rhea (CA DC & USVI only)
James H Rion Jr
Howard Segel (DC & MD only)
David L Suggs (MN & NY only)
Robert M Turkewitz

Dear Ms Gee

Enclosed for filing with the court please find the following

- 1) The original and one copy of the Notice of Appeal,
- 2) The original and one copy of the Proof of Service of Notice of Appeal,
- 3) Two copies each of the June 30, 2011 order and the May 26, 2011 order being challenged on appeal, and
- 4) Our firm's check for \$100 for the filing fee

I would greatly appreciate it if you could send me stamped copies of these documents I have included a self-addressed stamped envelope for your convenience

Thank you for your time

Sincerely,

Julie Murray
Paralegal to Matthew D Hamrick, Esq

Enclosures

cc William H Bowman, III, Esq

RECEIVED

AUG 04 2011

SC Court of Appeals

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF RICHLAND

CASE NO 2009CP4008344

IN THE COURT OF COMMON PLEAS

Delores Williams

vs

Government Employees Insurance Company

Plaintiff

Defendant

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 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

RICHLAND COUNTY
 FILED
 2011 JUL - 6 PM 2:15
 JEANETTE W McBRIDE
 CLERK OF COURT

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,

Statement of Judgment by the Court

Dated at Columbia, South Carolina, this ____ day of _____, 2011

PRESIDING JUDGE

This judgment was entered on the ____ day of _____, 2011, and a copy mailed first class this 6 July 2011, to attorneys of record or to parties (when appearing pro se) as follows

Robert A McKenzie
Matthew David Hamrick

ATTORNEY(S) FOR THE PLAINTIFF(S)

William H Bowman III

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W McBride

Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
09-CP-40-8344

Deloris Williams, Personal Representative)
of the Estate of Edward Murry, Deceased,)
and Matthew Whitaker, Jr , as Personal)
Representative of the Estate of Annie)
Mae Murry, Deceased,)

Plaintiffs,)

vs)

GEICO Employees Insurance Company,)

Defendant)

ORDER

RICHLAND COUNTY
FILED
2011 JUL -6 PM 2.12
JEANETTE W McBRIDE
C P & G S

This matter is before the court pursuant to plaintiffs' timely filed motion to reconsider this court's ruling that the GEICO family member step-down provision in the plaintiffs' insurance policy is valid under South Carolina law. A hearing was held at the Sumter County Courthouse on June 21, 2011. Matthew D Hambrick, Esquire, and Robert A McKenzie, Esquire, appeared for the plaintiffs and William H Bowman, III, Esquire, appeared for the defendant. In the present motion, plaintiffs seek a ruling from this court that the GEICO family member step-down exclusion is invalid as it contradicts S C Code Ann §38-77-142. For the reasons set forth below, the motion is denied.

GEICO argues that the §38-77-142 argument is not properly presented to the court as a Rule 59, SCRCP motion to reconsider. GEICO claims the plaintiffs have heretofore focused their argument on the ground that the policy, when read with the exclusion, was ambiguous and should therefore be construed in favor of the insured.


SCANNED

The court requested proposed orders from both parties after the hearing. Plaintiffs submitted a proposed order to the court on May 25, 2011, which alluded to the step-down provision being in violation of §38-77-142 and against public policy. There is no authority addressing whether raising an argument in a proposed order without previously presenting the argument to the court does or does not preserve the argument for reconsideration. This court need not address this issue, as it finds that the motion should be denied on the merits.

GEICO maintains the issue at hand was addressed in Hansen v United Services Automobile Assoc., 350 S C 62, 565 S E 2nd 114 (Ct App 2002) and that the inquiry ends there. However, §38-77-142 became effective on March 1, 1999, well after the May 31, 1998 accident in Hansen, and certainly after the Hansen policy was issued. As such, Hansen does not apply to §38-77-142.

The pertinent part of §38-77-142(A)¹ reads as follows: “No policy or contract of bodily injury may be issued or delivered in this State to the owner of the vehicle unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability for death or injury sustained or loss or damage incurred **within the coverage of the policy**” (emphasis added). S C Code Ann §38-77-142(C) provides that “any endorsement, provision, or rider which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void.”

The controlling issue is our legislature’s intent in including the words “within the coverage of the policy” in subsection (A) and the words “limit or reduce” in subsection

¹ Subsection (B) contains very similar language and the analysis would be the same.



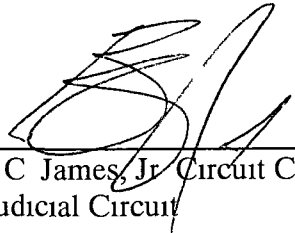
(C) It is the opinion of this court that had the legislature intended §38-77-142 to forbid step-down akin to the GEICO family member provision, which effectively reduce coverage in certain scenarios to the minimum coverage required by §38-77-140, the legislature could have clearly stated this

Does the word “coverage” in the statute mean monetary coverage or coverage provisions in general, or both? The same question must be asked of the words “limit” and “reduce” in (C) In my view, the legislature had wanted to enact the limitation urged by the plaintiffs, instead of using the words ‘within the coverage of the policy’, it would have used words such as “for no less than the policy limits shown on the declarations page”

Again, §38-77-142 requires every policy issued to insure the named insured and permissive users against liability for death or injury sustained or loss or damage incurred “within” the coverage of the policy I find that “within the coverage of the policy” does not mandate coverage up to the maximum amount of liability coverage under a policy when there is a family member claimant As the coverage afforded does not fall below the minimum coverage required under §38-77-140, the step-down does not run afoul of public policy as revealed in our automobile insurance statutes (See Hansen, 350 S C at 72)

The plaintiffs’ motion is therefore denied

AND IT IS SO ORDERED



George C. James, Jr. Circuit Court Judge
Third Judicial Circuit

Sumter, South Carolina
June 30, 2011



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Delores Williams, Personal
Representative of the Estate of Edward
Murry, Deceased, and Matthew Whitaker,
Jr , as Personal Representative of the
Estate of Annie Mae Murry, Deceased,

Plaintiffs,

vs

Government Employees Insurance
Company,

Defendant

IN THE COURT OF COMMON PLEAS

DOCKET NUMBER 09-CP-40-8344

ORDER GRANTING JUDGMENT TO
DEFENDANT

This matter was tried without a jury on May 11, 2011. Appearing for Plaintiffs was Robert A. McKenzie, Esquire and Matthew D. Hamrick, Esquire and appearing for Defendant was William H. Bowman, III, Esquire.

After considering the pleadings, the Stipulation of Facts, the arguments of counsel, and the evidence submitted at trial, the Court enters judgment in favor of the Defendant.

FINDINGS OF FACT

1 Defendant GEICO issued a policy of motor vehicle liability insurance to Edward Murry and Annie Murry under policy number 0685-44-55-04, effective September 2, 2006 until March 2, 2007, covering, among other vehicles, a 1999 Jaguar, VIN No SAJKD604XXC871601 (hereinafter referred to as "the Policy").

2 On September 3, 2006, Annie Mae Murry and Edward Murry were the sole occupants of the 1999 Jaguar insured under the Policy when it was struck by a train.



3 Annie Mae Murry and Edward Murry both died from injuries resulting from the collision with the train

4 It is unknown and disputed by the heirs and statutory beneficiaries of Annie Mae Murry and Edward Murry as to who was driving the Jaguar and who was riding as a passenger at the time of the collision with the train

5 Plaintiffs have agreed or will hereafter agree to a disposition of any liability insurance proceeds payable from the Policy as a result of the accident on September 3, 2006, upon completion of this litigation Underinsurance proceeds on the other vehicles have been agreed upon and tendered

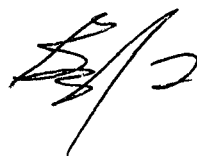
6 Defendant takes the position that only Fifteen Thousand and no/100 (\$15,000 00) Dollars is owed to Plaintiffs under the liability section of the Policy as a result of the following provision under Exclusions

We do not provide liability coverage, under Exclusions 1, 2, 3, and 8, in excess of the minimum limits of liability required by South Carolina law

1 Bodily injury to any **insured** or any **relative** of an **insured** residing in his household is not covered

Exclusion 1 above is hereinafter referred to as "the Family Member Exclusion

7 Plaintiffs contend that the Family Member Exclusion is not an exclusion but a retraction of coverage Plaintiff cites to the declarations page of the Policy which shows liability limits of \$100,000/\$300,000 per person and asserts that there is an ambiguity in coverage when reading the declaration page and the Policy provisions together Plaintiffs take the position that, in order for the Family Member Exclusion to be effective, the declarations page should have a notation showing the reduction in liability coverage if an



insured or resident relative is injured Plaintiffs claim that as a result of this ambiguity, the Policy should be construed in their favor and that they are entitled to the full limits of liability coverage of One Hundred Thousand and no/100 (\$100,000 00) Dollars under the Policy

Based upon the Findings of Fact, I find and conclude as a matter of law as follows

CONCLUSIONS OF LAW

1 An insurance contract is subject to the general rules of contract construction *Universal Underwriters Ins Co v Metropolitan Property and Life Ins Co* , 298 S C 404, 406, 380 S E 2d 858, 860 (Ct App 1989) Where the terms of a contract are clear and unambiguous, then its construction is for the Court However, where the terms of the contract are ambiguous then the question of the parties' intent must be submitted to the fact finder *Hansen v United Services Automobile Assoc* , 350 S C 62, 68, 565 S E 2d 114, 116-117 (Ct App 2002)

2 A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business *Hansen v United Services Automobile Assoc* , 350 S C 62, 68, 565 S E 2d 114, 117 (Ct App 2002) , *Universal Underwriters Ins Co v Metropolitan Property and Life Ins Co* , 298 S C 404, 406, 380 S E 2d 858, 860 (Ct App 1989)

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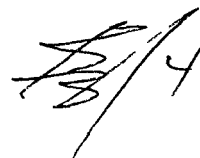
3 In construing an insurance contract, all of its provisions, rather than isolated portions, should be considered *Hansen v United Services Automobile Assoc* , 350 S C 62, 68, 565 S E 2d 114, 117 (Ct App 2002) , *Universal Underwriters Ins Co v Metropolitan Property and Life Ins Co* , 298 S C 404, 406, 380 S E 2d 858, 860 (Ct App 1989)

4 Where an insurance contract is ambiguous, or where it is capable of two reasonable interpretations, the construction which is most favorable to the insured should be adopted *Hansen v United Services Automobile Assoc* , 350 S C 62, 68, 565 S E 2d 114, 117 (Ct App 2002)

5 The declarations page, which lists a \$100,000/\$300,000 per person liability limit, cannot be read in isolation to create an ambiguity but instead must be construed with all of the Policy provisions

6 Under South Carolina law, an insurer may limit its liability and impose whatever conditions it desires upon an insured provided that the limitations or conditions are not in contravention of any statute or public policy *Hansen v United Services Automobile Assoc* , 350 S C 62, 71-72, 565 S E 2d 114, 118 (Ct App 2002), *United Services Automobile Assoc v Markosky*, 340 S C 223, 226, 530 S E 2d 660, 662 (Ct App 2000), *Universal Underwriters Ins Co v Metropolitan Property and Life Ins Co* , 298 S C 404, 409, 380 S E 2d 858, 861 (Ct App 1989)

7 The South Carolina Motor Vehicle Financial Responsibility Act (hereinafter referred to as "the Act") requires that an automobile insurance policy contain a provision insuring the persons defined as insured against loss from the liability imposed



by law for damages arising out of the ownership, maintenance, or use of a motor vehicle and specifies minimum limits of liability coverage that a policy must provide S C Code Ann § 38-77-140 At the same time, the Act permits coverage beyond the mandatory minimum limits

8 A policy provision that limits coverage to the statutory minimum is not contrary to public policy and does not violate the Act *Hansen v United Services Automobile Assoc* , 350 S C at 72, 565 S E 2d at 118-199 (Ct App 2002), *Universal Underwriters Ins Co v Metropolitan Property and Life Ins Co* , 298 S C at 410, 380 S E 2d at 861-862 (Ct App 1989) In *Hansen*, the court concluded that a family member exclusion that limited liability coverage to the statutory minimum limits was valid and enforceable

9 The Policy provides liability coverage in excess of the minimum limits However, the Family Member Exclusion cited above specifically limits liability coverage to the minimum limits required by South Carolina law where there is bodily injury to any insured or any relative of an insured residing in his household The Family Member Exclusion is unambiguous and when read together with the rest of the Policy, including the declarations page, is capable of only one reasonable interpretation

10 Both Annie Mae Murry and Edward Murry are insureds under the Policy Regardless of whether Annie Mae Murry or Edward Murry was driving, the accident resulted in bodily injury to an insured

11 The Family Member Exclusion in the Policy does not violate public policy or the Act and is therefore valid and applies to the accident of September 3, 2006



12 On June 14, 2006, S C Code Ann § 38-77-140 was amended to require minimum liability coverage of \$25,000 00 for policies issued or renewed on or after January 1, 2007 Prior to January 1, 2007, the statute required minimum limits of liability coverage of \$15,000 00 Because the Policy was issued on September 2, 2006, the \$15,000 00 minimum limit applies to this situation


13 The Family Member Exclusion applies to limit Plaintiffs' recovery of liability proceeds under the Policy to the statutory minimum limits of \$15,000 00

CONCLUSION

I find that Defendant is entitled to judgment that the Family Member Exclusion in the Policy applies to limit liability coverage to \$15,000 00 for damages arising out of the accident of September 3, 2006

IT IS THEREFORE ORDERED that \$15,000 00 in liability coverage is due to Plaintiffs under the Policy

AND IT IS SO ORDERED



George C. James, Jr
Circuit Court Judge

Sumter, South Carolina

Dated 5/26/11

