

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Opinion No. 5424 (S.C. Ct. App. filed July 16, 2016) S.C. SUPREME COURT
Appellate Case No. 2016-002156

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Janette Buchanan and Shana Smallwood,
Individually and as Co-Personal Representatives
of the Estate of James S. Buchanan, Respondents,

v.

The South Carolina Property and Casualty
Insurance Guaranty Association, Appellant.

BRIEF OF RESPONDENTS

Daniel W. Luginbill # 68525
WILSON & LUGINBILL
P.O. Box 1150
Bamberg, SC 29003
(803) 245-7799
(803) 245-0037 (facsimile)
dan@w-lawfirm.com

Blake A. Hewitt # 73674
BLUESTEIN THOMPSON SULLIVAN LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)
blake@bluesteinattorneys.com

Attorneys for Respondents

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P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)
blake@bluesteinattorneys.com

Attorneys for Respondents

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COUNTER-STATEMENT OF QUESTION PRESENTED

Did the Court of Appeals properly affirm the circuit court's holding that the statutory scheme applicable when an insurance company becomes insolvent requires the offset for recovered funds be applied to the total amount of a covered claim against the insolvent insurance company rather than to the statutory limit of the Guaranty Association's coverage?

COUNTER-STATEMENT OF THE CASE

On January 7, 2008, James Buchanan was involved in a motor vehicle collision in Bamberg County. A set of tandem tires separated from the axle of a log truck owned by Travis Scott and driven by Eddie Best. The tires struck the front of Mr. Buchanan's vehicle and broke the front axle. Mr. Buchanan's truck crossed the centerline and struck another tractor-trailer. Mr. Buchanan's truck caught fire and he was incinerated.

Respondent Janette Buchanan brought a wrongful death action in 2008 against Mr. Best and Mr. Scott. Mr. Scott's vehicle was insured for one million (\$1,000,000) dollars by Aequicap Insurance Co. (Aequicap). See *AequiCap Ins. Co. v. Best*, 2013-UP-116 (S.C. Ct. App. filed March 20, 2013).

In 2011 Aequicap went into receivership in Florida. *In re Arbitration Between General Sec. Nat. Ins. Co. and AequiCap Prog. Admins.*, 785 F. Supp.2d 411, 423 n.9 (S.D.N.Y. 2011). The South Carolina Property and Casualty Insurance Guaranty Association assumed management of the claims under the South Carolina Property and Casualty Insurance Guaranty Association Act. S.C. Code Ann. § 38-31-10 to -170 (2015).

Mrs. Buchanan settled the underlying tort case against Mr. Scott and Mr. Best. The parties to that tort case stipulated Mrs. Buchanan's damages were \$800,000.

Mrs. Buchanan has received a total of \$376,622 between workers' compensation and recovery from Mr. Scott's co-defendants. (App.p.63, ¶6). This appeal is about whether she entitled to receive anything further. Again, the log truck was covered by an Aequicap policy with \$1,000,000 in limits but Aequicap is insolvent.

In April of 2013 Mrs. Buchanan and the co-personal representative of her husband's estate sued the Guaranty Association seeking a declaration that the Association must pay \$300,000—the limit of its exposure under the Act. See § 38-31-60(a)(iv). She made a claim against the Guaranty Association for \$423,378 — the difference between the \$800,000 in stipulated damages and the \$376,622 she received from other sources — and she said the Association's liability was capped at \$300,000. (App.p.21, ¶¶11-12).

The Guaranty Association claimed the credit for the recovered funds should be applied to the \$300,000 cap, which would leave a balance of zero. (App.p.24, ¶13).

In April of 2014, the Association moved for summary judgment. (App.p.28). On May 14, 2014, Respondents filed their own motion for summary judgment. (App.p.32). Each party filed memoranda in support of the respective positions.

The circuit court held a hearing on the motions in May of 2014. (App.p.135).

In September of 2014, the circuit court issued an order in Respondents' favor. The court held the "covered claim" under the Aequicap policy was \$800,000, to which an offset of \$376,622 would be applied under section 38-31-100(1) for recovered funds, leaving a balance of \$423,378 on the covered claim. (App.pp.11-12). The court held the Guaranty Association was obligated to pay \$300,000 of that amount pursuant to the \$300,000 cap in the Act. (App.p.12).

The Guaranty Association filed a motion requesting the court reconsider its ruling. (App.p.106). That motion was denied. (App.p.6).

The Guaranty Association appealed to the Court of Appeals and the Court of Appeals affirmed. (App.pp.333-338). The Court of Appeals noted Respondents had complied with the Act's requirements that they exhaust all other coverage before seeking compensation from the Guaranty Association and the court held the offset statute — section 38-31-100(1) — mandated the amount of recovered funds be deducted from the claim's total value of \$800,000 rather than the Guaranty Association's maximum liability of \$300,000. (App.p.338). The court grounded this reasoning in the Act's language and the court also observed its holding was supported by the Act's purpose, which was to provide some protection when an insurance company becomes insolvent. (App.p.339).

ARGUMENTS

This matter is before the Court on cross-motions for summary judgment and when cross motions for summary judgment are filed the parties concede the issue before the appellate court should be decided as a matter of law. *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 705 S.E.2d 432 (2011). Also, this is a novel issue in South Carolina. As the Court is aware, it is free to decide the question with no particular deference to the circuit court. *Lambries v. Saluda County Council*, 409 S.C. 1, 760 S.E.2d 785 (2014).

I. The circuit court and the Court of Appeals correctly ruled for Respondents based on the Act's language.

The issue is whether the circuit court erred in granting summary judgment to the Respondents regarding application of the Act's offset and cap provisions. Respondents

contend the Association owes \$300,000, which represents the cap as applied to the balance due Respondents after a setoff for funds already recovered — in this case, \$376,622 — is applied to Respondents’ claim of \$800,000 against Aequicap. The Association contends its obligation is zero because the \$300,000 cap is less than the roughly \$376,000 Respondents have already recovered. The trial court and the Court of Appeals agreed with Respondents. This Court should affirm.

This Court has visited the Act before and has explained:

“All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” *McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” *Id.* Thus, we must follow the plain and unambiguous language in a statute and have “no right to impose another meaning.” *Id.*

S.C. Property and Cas. Ins. Guar. Ass’n v. Brock, 410 S.C. 361, 366, 764 S.E.2d 920, 922 (2014).

The decisions below correctly read the Act as requiring a ruling in Respondents’ favor. The Act requires the Guaranty Association to pay an amount up to the statutory cap after receiving credit against the total value of a covered claim for any amounts a plaintiff has already received. If the amount of that claim is less than the \$300,000 statutory cap the recovery of other funds could take the Guaranty Association’s responsibility to zero. But where the covered claim exceeds not only the \$300,000 cap but the cap plus all amounts recovered from other sources, the Guaranty Association must

provide coverage up to the statutory cap. That is what the courts ruled here. This Court should affirm.

The Act is found in Chapter 31 of Title 38 of the Code. Section 38-31-20 contains the definitions applicable to the Chapter and provides:

(8) *“Covered claim” means an unpaid claim ... which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer is an insolvent insurer and (a) the claimant or insured is a resident of this State at the time of the insured event, if for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event or (b) the claim is for first-party benefits for damage to property permanently located in this State. * * **

Section 38-31-20(8) (emphasis added). There is no dispute that Aequicap is an insolvent insurer and that Respondents are residents of this State.

Respondents’ claim is a “covered claim” under the Act. The claim against Aequicap is “unpaid,” it “arises out of and is within the coverage,” and it “is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer,” which was \$1,000,000. See *Brock*, 410 S.C. at 365-368, 764 S.E.2d at 922 (discussing section 38-31-20(8)).

The Act explains the Guaranty Association:

(a) is obligated *to the extent of claims existing before the determination of insolvency* and claims arising up to the earliest of the following dates:

- (i) thirty days after the determination of insolvency;
- (ii) the policy expiration date; or
- (iii) the date the insured replaces or cancels the policy.

(iv) Notwithstanding any other provisions of this chapter, except in the case of a claim for benefits under worker's compensation coverage, any obligation of the association to or on behalf of an insured and its affiliates on all covered claims combined shall cease when ten million dollars shall have been paid in the aggregate by the association and any one or more associations similar to the association of any other state or states, to or on behalf of that insured, its affiliates, and additional insureds on covered claims or allowed claims arising under the policy or policies of any one insolvent insurer. If the association determines that there may be more than one claimant having a covered claim or allowed claim against the association, or any associations similar to the association in other states, under the policy or policies of any one insolvent insurer, the association may establish a plan to allocate amounts payable by the association in such manner as the association in its discretion considers equitable.

This obligation includes only the amount each covered claim is in excess of two hundred fifty dollars *and is less than three hundred thousand dollars.* * * *

Section 38-31-60(a)(iv) (emphasis added). The "covered claim" here is \$800,000 — the amount of the settlement within the limits of Aequicap's policy. That value is "in excess of" \$250. The statute provides the "amount" of the Guaranty Association's "obligation" is capped at \$300,000.

A different section of the same statute provides the Guaranty Association:

(b) is considered the insurer to the extent of its obligation on the covered claims and, to this extent, has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent. However, the association has the right but not the obligation to defend an insured who is not a resident of this State at the time of the insured event unless the property from which the claim arises is permanently located in this State in which instance the association does have the obligation to defend the insured;

Section 38-31-60(b) (emphasis added). The Guaranty Association steps into Aequicap's shoes "to the extent of its obligation on the covered claims." That obligation is \$800,000 — the overall value of the claim — reduced by any funds already recovered. Again though, the Guaranty Association is limited to a maximum exposure of \$300,000.

Next, the statute provides the Guaranty Association:

(d) shall investigate claims brought against the association and adjust, compromise, settle, and *pay covered claims to the extent of the association's obligation* and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which these settlements, releases, and judgments may be properly contested;

Section 38-31-60(d) (emphasis added). Thus, the Guaranty Association must pay a "covered claim," but the "obligation" is limited to \$300,000 for a "covered claim."

The Act then provides that if the Guaranty Association pays on a "covered claim," the insured of the insolvent insurer is deemed to have assigned any right against the assets of the insolvent insurer, including any person affiliated with the insolvent insurer whose liability obligations to other persons are satisfied in whole or in part by payments made by the Guaranty Association. Section § 38-31-90(1) & (2). The Guaranty Association steps into the insured's shoes with regards to recoverable claims against the insolvent insurer and any affiliated individual for whom the Association has covered a loss.

The Act's offset provision provides:

A person, *having a claim under an insurance policy*, whether or not it is a policy issued by a member insurer, *and the claim under such other policy arises from the same facts, injury, or loss that gave rise to the covered claim against the association*, is required to first exhaust all coverage and limits provided by any such policy. Any amount payable on a covered

claim under this chapter must be reduced by the full limits of such other coverage as set forth on the declarations page and the association shall receive a full credit for such limits, or, where there are no applicable limits, *the claim must be reduced by the total recovery*. Notwithstanding the foregoing, no person may be required to exhaust all coverage and limits under the policy of an insolvent insurer.

S.C. Code Ann. § 38-31-100(1) (2015) (emphasis added). Respondents' "claim under an insurance policy" is for \$800,000. Respondents were required to "first exhaust" other coverages, which they have done in the amount of \$376,622. Their "claim under an insurance policy" is then reduced by that total recovery from those other sources, leaving a balance of \$423,378 remaining on the "covered claim" against Aequicap.

Section 38-31-100(1) also provides:

(a) A claim under a policy providing liability coverage to a person who may be jointly and severally liable with or a joint tortfeasor with the person covered under the policy of the insolvent insurer that gives rise to the covered claim must be considered to be a claim arising from the same facts, injury, or loss that gave rise to the covered claim against the association. *Any amount payable on a covered claim* under this chapter must be reduced by the full and combined policy limits of all joint tortfeasors.

(Emphasis added). It is important that the legislature used the term "covered claim," not "obligation." The amount payable on Respondent's "covered claim" is \$800,000, the amount of the settlement. *That* is the amount that must be reduced "by the full and combined policy limits of all joint tortfeasors," which is what was done in this case.

Section 38-31-100(1) next provides:

(b) To the extent that the association's obligation is reduced by the application of this section, *the liability of the person insured by the insolvent insurer's policy for the claim must be reduced in the same amount*.

(Emphasis added). Again, the liability of Aequicap's insured was \$800,000. The liability has been reduced by \$376,622 — the amount of the recovery from the joint tortfeasors and the employer. There remains, however, a covered claim against the people who would have been insured by Aequicap. The amount of that claim is \$423,378.

Section 38-31-100 next provides:

A person having a claim which may be recovered under more than one insurance guaranty association or associations similar to the association must be required first to exhaust all coverage and limits in recovery *from the association of the place of residence of the insured* except that, if it is a first-party claim for damage to property with a permanent location, he shall be required first to exhaust all coverage and limits in recovery from the association of the location of the property, and, if it is a workers' compensation claim, he shall be required first to exhaust all coverage and limits in recovery from the association of the residence of the claimant. Any amount payable on a covered claim under this chapter must be reduced by the full amount of recovery from any other insurance guaranty association or associations similar to the association, and the association shall receive full credit for such recovery.

Section 38-31-100(2) (emphasis added). The insureds under the Aequicap policy (Best and Scott) are residents of South Carolina. (App.pp.19-20, ¶4). Respondents exhausted the applicable workers' compensation coverage which was credited against their covered claim of \$800,000.

The statute finally provides:

A person who has liquidated by settlement or judgment a claim against an insured under a policy issued by an insolvent insurer, and the claim is a covered claim and is also a claim within the coverage of any policy issued by a solvent insurer, must be required first to exhaust all coverage and limits provided under the policy issued by the solvent insurer before execution, levy, or any other proceedings are begun to enforce any judgment obtained against or the settlement with the insured of the insolvent insurer. *Any amount payable on a covered claim* under this chapter, whether through settlement, judgment, or otherwise, must be

reduced by the full limits of such other coverage as set forth on the declarations page of the policy issued by the insolvent insurer.

S.C. Code Ann. § 38-31-100(5) (emphasis added). Respondents have liquidated by settlement their claim against the insureds under Aequicap's policy. The liquidated amount is \$800,000. Respondents' claim was a "covered claim." It was *also* a claim within the coverage of Aequicap's policy; the policy had \$1,000,000 in coverage.

Respondents were required to first exhaust all coverage and limits provided by the solvent insurer, which they have done. The total amount payable under that covered claim was \$800,000. That amount was "reduced by the full limits of such other coverage," which all parties agree is \$376,622. The Guaranty Association must pay \$300,000 because the unpaid covered claim exceeds that amount.

II. This conclusion is bolstered by the Act's purpose of protecting consumers.

The Guaranty Association is a statutory entity designed to provide some protection for the insureds of insolvent insurance companies. *Brock*, 410 S.C. at 367, 764 S.E.2d at 923; *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Carolinas Roofing & Sheet Metal Contractor's Self-Insurers Fund*, 303 S.C. 368, 369, 401 S.E.2d 144, 145 (1991). Its purpose is to provide payment for the covered claims of insolvent insurers. *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores*, 304 S.C. 210, 403 S.E.2d 625 (1991).

This Court's decision in *Brock* explains the operative process. A claimant is required to first exhaust all available coverage from solvent insurers toward the "covered claim." 410 S.C. at 366, 764 S.E.2d at 922. The Guaranty Association is then allowed to offset the full limits of such other coverage against the "covered claim" under the Act.

Id. at 367, 764 S.E.2d at 922-923. Here, Respondents exhausted the available coverage from the solvent insurers and applied those amounts to their covered claim against Aequicap's insured. Once that offset was applied there remained a substantial unsatisfied obligation under the Act. The Guaranty Association is required to pay the difference between the settlement amount (\$800,000) and the offset amount (\$376,622), which is \$423,378 (but capped at \$300,000). This is what happened in *Brock*. See 410 S.C. at 365, 764 S.E.2d at 922 (the Guaranty Association paid "the difference between the settlement amount (\$185,000) and the offset amount (\$93,090.45).").

That is what these statutes plainly say, and that is how the trial court applied them. This should end the inquiry.

III. The Guaranty Association's argument is not faithful to the Act's language, its purpose, or to this Court's precedent.

The Guaranty Association's arguments are not faithful to the Act's language, its purpose, or to this Court's precedents.

a. The Act's language and the relevant precedents.

The Guaranty Association reads the words "covered claim" to mean the Guaranty Association's "net obligation," but those words do not appear in the statute. As pointed out above, the "covered claim" means a claim covered under the policy of the insolvent insurer, and it is against *that* amount that the offsets are to be taken. Section 38-31-100(1) provides "the amount payable on a *covered claim*" is reduced by sums already recovered. The statute does not say to reduce the amount of the Guaranty Association's "obligation under the Act" or "obligation to pay the claim." The Guaranty Association

essentially asks the Court to rewrite Section 38-31-100(1), but amending this statute is the province of the legislature, not the Court. *American Petroleum Institute v. SC Dep't of Rev.*, 382 S.C. 572, 579, 677 S.E.2d 16, 20 (2009) (“it is not the province of [the] Court to perform legislative functions.”).

It is also not within this Court’s authority to alter the Act’s plain meaning by altering the term “covered claim” to mean the Guaranty Association’s net obligation under the Act, for under the plain meaning rule “it not the province of the court to change the meaning of a clear and unambiguous statute.” *Alltel Comm. v. S.C. Dep't of Rev.*, 399 S.C. 313, 319, 731 S.E.2d 869, 873 (2012). Section 38-31-100(1) says what it says, and the meaning of “covered claim” is plain – it is the unpaid claim arising under the coverage set forth within the applicable limits of a policy of an insolvent insurer. Section 38-31-20(8).

At the Court of Appeals the Guaranty Association contended Section 38-31-100(1) must be read together as a whole with section 38-31-60(a)(iv) (the cap provision) “consistent with” this Court’s decisions in *Brock and Hudson v. Lancaster Convalescent Center*. (App.pp.227-228). Respondents agree — these provisions should be read *in pari materia*. They should also be read plainly and against the backdrop of the legislative purpose in creating the Guaranty Association. As this Court wrote in *Hudson*:

[The Guaranty Association] is a last resort insurer created by the legislature to protect consumers in the event that their insurer becomes insolvent. See § 38–31–60; *South Carolina Property and Cas. Ins. Guar. Ass’n v. Carolinas Roofing and Sheet Metal Contractors Self-Insurance Fund*, 315 S.C. 555, 557, 446 S.E.2d 422, 424 (1994) (“[The Association’s] purpose is to provide some protection to insureds whose insurance companies become insolvent”). Section 38–31–60(b) provides

that [the Association] “is considered the insurer to the extent of its obligation on the covered claims and, to this extent, has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent...” *When [the Association] steps into the shoes of an insolvent insurer, its liability is derivative of the insolvent insurance company’s direct liability to the consumer.* The legislature has limited this liability to a “covered claim” which is defined by § 38–31–20(8) as “... an unpaid claim ... which arises out of ... an insurance policy to which this chapter applies issued by an insurer, if the insurer is an insolvent insurer ... covered claim does not include: ... (h) any claim for interest.”

The legislature has chosen to define a “covered claim” as a claim arising from an insolvent insurer, yet [the Guaranty Association] asks this Court to read the “covered claims” and its corresponding interest limitation to apply to claims arising from [the Guaranty Association’s] own actions. We decline to do so.

407 S.C. 112, 124, 754 S.E.2d 486, 492 (2014) (emphasis added).

The Guaranty Association’s derivative liability to the consumer here is its obligation to pay the covered claim under the insolvent insurance company’s policy. That claim is \$800,000. The Act’s offset provision permits the Guaranty Association to reduce the “covered claim” by the amounts Respondents received. The liability has a floor of \$250 and a cap of \$300,000. This is the extent of the Guaranty Association’s obligation.

The Guaranty Association believes its “*obligation* on a covered claim is offset by coverage limits for other insurance for the same facts, injury or loss which gave rise to the claim against the Association.” (App.pp.228-232). The Association reads the term “amount payable on a covered claim” to mean the Association’s obligation under the Act. (App.pp.230-232). The upshot is that the Association equates the terms “obligation” and “covered claim.” This is a misreading of the statute.

The offset provision reads:

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

Section 38-31-100(1)(emphasis added). The Guaranty Association contends the bolded language *really* means the Association's "obligation" is reduced, not the "amount payable on the covered claim" is reduced. (App. Br. p. 14). But that is not what the statute says.

The Act distinguishes between the terms "covered claim" and "obligation." The Act provides the Association "shall investigate claims brought against the association and adjust, compromise, settle, and *pay covered claims to the extent of the association's obligation....*" § 38-31-60(d) (emphasis added). If the term "obligation" is the same as "covered claim," this provision makes no sense.

Analyzing Section 38-31-100(1) sentence by sentence is helpful. The first clause of the first sentence provides: "A person, *having a claim under an insurance policy*, whether or not it is a policy issued by a member insurer...." There is no dispute that Respondents meet this language – they are people and they "have a claim under an insurance policy."

The second clause of the first sentence provides: "and the claim under such other policy arises from the same facts, injury, or loss that gave rise to the covered claim

against the association....” Again, it is undisputed that the claim against the other solvent insurer and the workers’ compensation carrier arose from the same facts, injury or loss that gave rise to the covered claim against the Guaranty Association (which derives from the claim against the insolvent insurer, Aequicap).

The third clause of the first sentence then states, “is required to first exhaust all coverage and limits provided by any such policy.” The parties agreed to reduced the covered claim by the amounts actually recovered under the other policies. The phrase “any such policy” means the recovery from the solvent insurer and the workers’ compensation carrier in this case.

The second sentence, which is the operative offset sentence, provides, “*Any amount payable on a covered claim* under this chapter must be reduced by the full limits of such other coverage as set forth on the declarations page and the association shall receive a full credit for such limits, or, where there are no applicable limits, the claim must be reduced by the total recovery.” (Emphasis added). The Guaranty Association believes the italicized language creates an offset against the Association’s obligation *after* the cap is applied. This is not correct.

“Any amount payable” is followed by the phrase “on a covered claim.” This ties the amount payable to amount of the insolvent insurer’s policy. This is because the definition of “covered claim” references the insolvent insurer, not the Guaranty Association. As noted above, “covered claim” is specifically defined in the Act:

“Covered claim” *means an unpaid claim ... which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer is*

an insolvent insurer and (a) the claimant or insured is a resident of this State at the time of the insured event, if for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event or (b) the claim is for first-party benefits for damage to property permanently located in this State. * * *

Section 38-31-20(8) (emphasis added). The “covered claim” is thus: (a) the “unpaid claim”; (b) “which arises out of and is within the coverage”; and (c) is subject to the applicable limits of an insolvent insurer’s policy. The “covered claim” means the \$800,000 claim against Aequicap’s policy limits of \$1,000,000. “Payable on a covered claim” thus means payable under the Aequicap policy, not by the Guaranty Association.

If the General Assembly intended the result the Guaranty Association seeks, it could have drafted the statute as follows:

Any amount payable on a covered claim on the Guaranty Association’s obligation under this chapter must be reduced by the full limits of such other coverage as set forth on the declarations page and the association shall receive a full credit for such limits, or, where there are no applicable limits, the ~~claim~~ obligation must be reduced by the total recovery.

(Strikethrough and underline added). That would have been easy to write, but it is not what the statute says. This Court should not read the statute that way.

In the Court of Appeals, the Guaranty Association asserted:

Reading the statute to require the offset to be deducted from a claimant’s total amount of claimed damages would render the offset provision meaningless in any situation where the difference between a claimant’s damages and the amount received from other available insurance exceeds \$300,000.

(App.p.231). Precisely. The legislature drafted the statute in this manner, expressing a policy decision to protect consumers up to \$300,000 against an insolvent carrier where

the damages and coverage under an applicable policy exceed that amount. If Respondents' carrier was not insolvent, Respondents could recover all of the remaining balance on the loss — \$423,378. Under the Act, Respondents' recovery is limited to \$300,000.

This construction of the statute does not render the offset provision “meaningless.” Had Respondents received \$600,000 from other sources, the Guaranty Association's obligation in this case would have been \$200,000. Because Respondents received less than \$500,000 towards their \$800,000 claim, the Association is required to pay the capped amount.

Because the Act is protective legislation it bears mentioning Respondents are not being made whole — far from it. Their damages totaled \$800,000 against which they received only \$376,622 from other sources. Of the \$423,378 balance remaining, they may only recover \$300,000 from the Guaranty Association, leaving them with \$123,378 in uncompensated losses. The Act is consumer protection legislation and is supposed to provide “last resort” insurance coverage. *Hudson*, 407 S.C. at 124, 754 S.E.2d at 492. The trial court's ruling serves that goal. The Guaranty Association's position does not.

At the Court of Appeals, the Guaranty Association pointed to *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores*, asserting this Court found “that it is not the intent of the Act to place the Association in the shoes of the insurer because the Association's rights and obligations are limited.” (App.p.234). That case involved an insurance contract that was declared by the Eighth Circuit to be illegal and void. 304 S.C. at 212, 403 S.E.2d at 626. The key is that there was no “covered claim.” Under *those* facts, the

Guaranty Association did not stand in the shoes of anyone. Here, there is no argument or suggestion the insurance policy was invalid.

The Guaranty Association's argument would render the Act perfunctory in any case where there are other sources of coverage that provide at least \$300,000 towards the covered claim. A faithful reading of the statutory scheme does not support that result. The Guaranty Association is intended to provide limited coverage, and exchange for this consumer protection, the Act requires the consumer to pursue all other avenues of payment before turning to the Guaranty Association and the Act caps the Guaranty Association's obligation at \$300,000.

b. The preamble to the Act's 2001 amendments does not undermine the decisions in Respondents' favor.

At the Court of Appeals, the Guaranty Association cited the "preamble" to the Act's 2001 amendments as support for its view that the legislature intended to "[provide] a credit to the Association for other coverages arising from the same facts, injury, or loss as the claim against the Association." (App.pp.233-234).

An Act's preamble is not part of the effective portion of a statute, although it may supply the guide to an act's meaning. *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015): The preamble to the 2001 legislation is lengthy and informs that the Act was intended, among other things:

to Amend Section 38-31-100, as Amended, Relating to Procedures for Asserting Claims and to Limitations on Claims, So as to Require Exhausting All Coverage and Claims and Providing Credit to the Guaranty Association under Certain Conditions....

Act No. 82, 2001 S.C. Acts 1959. The Guaranty Association believes the phrase “limitations on claims” means the offset provision “would limit the claims asserted against the Association by providing a credit to the Association for other coverage arising from the same facts, injury, or loss as the claim against the Association.” (App.pp.233-234).

Respondents do not disagree that through the Act and the 2001 amendment, the legislature intended to require an offset against a “covered claim” before a claimant could then turn to the Guaranty Association. The intent was to ensure the Guaranty Association was not a first-line insurer but would provide coverage for a “covered claim” only after a claimant has exhausted all other available sources. The Guaranty Association would owe nothing if exhausting those other sources fully satisfied the covered claim since the claimant would be made whole from those other sources. Barring that, the intent was for the Guaranty Association to fill the uncovered gap, but only up to the cap of \$300,000.

The 2001 amendment did the following to Section 38-31-100:

- (A) Added the last sentence to Part (1), which provides “Notwithstanding the foregoing, no person may be required to exhaust all coverage and limits under the policy of an insolvent insurer.”
- (B) Added to Part (1) the provisions of subparts (a) and (b), which state:
 - (a) “A claim under a policy providing liability coverage to a person who may be jointly and severally liable with or a joint tortfeasor with the person covered under the policy of the insolvent insurer that gives rise to the covered claim must be considered to be a claim arising from the same facts, injury, or loss that gave rise to the covered claim against the association. Any amount payable on a covered claim under this chapter must be reduced by the full and combined policy limits of all joint tortfeasors.”

- (b) “To the extent that the association’s obligation is reduced by the application of this section, the liability of the person insured by the insolvent insurer’s policy for the claim must be reduced in the same amount.”
- (C) Part (2) was amended slightly for verbiage, and the following sentence added: “Any amount payable on a covered claim under this chapter must be reduced by the full amount of recovery from any other insurance guaranty association or associations similar to the association, and the association shall receive full credit for such recovery.”
- (D) Part (4) was amended to add the underlined language as follows: “No claim held by an insurer, reinsurer, insurance pool, or underwriting association based on an assignment or on rights of subrogation, or otherwise, may be recovered from a claimant or asserted in any legal action against a person insured under a policy issued by an insolvent insurer or the association except to the extent the amount of the claim exceeds the obligation of the association under this chapter.”
- (E) Part (5) was amended to strike words and add underlined language as follows: “A person who has liquidated by settlement or judgment a claim against an insured under a policy issued by an insolvent insurer, and the claim is a covered claim and is also a claim within the coverage of any policy issued by a solvent insurer, is must be required first to exhaust first his rights all coverage and limits provided under the policy issued by the solvent insurer before execution, levy, or any other proceedings are begun to enforce any judgment obtained against or the settlement with the insured of the insolvent insurer. Any amount payable on a covered claim under this chapter, whether through settlement, judgment, or otherwise, must be reduced by the full limits of such other coverage as set forth on the declarations page of the policy issued by the insolvent insurer.
- (F) Part (6) was added to provide, “A person having a claim against an insolvent insurer under any provision in an insurance policy is limited to ten million dollars aggregate payout from the association.”
- (G) Part (7) was added to provide, “A person having a net worth of greater than twenty-five million dollars and having a claim against an insolvent insurer under any provision in an insurance policy may not make a claim against the association.”

None of these amendments support the Guaranty Association’s view that its “obligation” is reduced by any other recovery. The “covered claim” is reduced. Not the “obligation.”

Nothing in the preamble contradicts the trial court's reading of the express terms of the offset provision. And nothing in the preamble expresses any intent that the offset must be applied to the Guaranty Association's capped obligation under the Act. The Court should not be persuaded to read the preamble to the 2001 amendment to Section 38-31-100 to include something that simply is not there. And even if the Court could divine such language from the preamble to the 2001 amendment, that preamble may serve only to guide the meaning of the Act. The preamble is not a part of the effective portion of the statute. *Mitchell*, 411 S.C. at 634, 770 S.E.2d at 392.

**c. The Guaranty Association's arguments
contravene public policy rather than honor it.**

The circuit court stated:

Of note, nothing in Title 38, Chapter 10 clearly sets out that a claimant may only receive \$300,000 in any event. It only limits the Association's payment to a single claimant to \$300,000. If the purpose of the Act is to protect South Carolina citizens from insurance companies who become insolvent, then the Act is remedial and should be liberally construed in favor of payment to the claimant in order to best accomplish that goal.

Adopting the interpretation suggestion by the Association would prevent full compensation, and in this case, any compensation from the Association. It would also work to dissuade claimants from resolving claims against joint tortfeasors who may have little proportionate liability, thus increasing the likelihood of protracted litigation and actually increasing the Association's exposure. As such, it is against public policy to adopt such an argument.

(App.pp.14-15).

In this case there is no claim Respondents did not look first to other available sources for recovery for their covered claim – they, in fact, did so. Respondents turned to

the Guaranty Association after exhausting those sources and the Guaranty Association had the obligation to respond to the remainder of the covered claim. That obligation was capped at \$300,000.

This Court has already noted the Guaranty Association “is a last resort insurer created by the legislature *to protect consumers* in the event that their insurer becomes insolvent.” *Hudson*, 407 S.C. at 124, 754 S.E.2d at 492 (emphasis added). Consumer protection is at the heart of this statutory scheme. The Act is not designed to insulate the Guaranty Association to the point that it may only respond to claims where the total recovery from all sources is \$300,000 or less. Had the General Assembly desired such a result it would have been a simple matter to draft the legislation in that fashion.

IV. Decision from other jurisdictions do not support a different result than the result reached below.

At the Court of Appeals the Guaranty Association argued “[t]he majority of other states ruling on this issue agree that the Association’s offset is applied to reduce its statutory claim limit rather than a claimant’s total amount of damages.” (App.p.239). The Guaranty Association makes the same argument in its merits brief to this Court.

The circuit court noted “all but one of the cases” the Guaranty Association cited below “are cases involving setoffs applied to the [underlying] policy limit, rather than the statutory limit.” (App.p.11, n.1). The trial court’s view of those decisions was correct and this Court should affirm.

A. Arizona - *Jangula v. Arizona Property and Cas. Ins. Guar. Fund*, 88 P.3d 182 (Ariz. Ct. App. 2004). The Arizona statute obligates Arizona’s fund to pay damages

“up to the applicable limits of the insolvent insurer’s policy or \$99,900, whichever is less.” A.R.S. § 20-667(B) (2002). Prior to 1998, Arizona’s statute provided:

Where more than one policy may be applicable, a policy issued by the insolvent insurer shall be deemed to be excess coverage. The claimant shall be required to exhaust all rights under other applicable coverage or coverages. Any amount *payable on a covered claim* shall be reduced by the amount of such recovery under other applicable insurance.

A.R.S. § 20-673(C) (1997) (emphasis added). The Arizona Supreme Court construed the last sentence of pre-1998 subsection (C) to require that the amount of the claimant’s total damage claim be reduced by the amount paid under other insurance policies, but that the other payments would not be offset against the Fund’s obligation. *Arizona Prop. & Cass Ins. Guar. Fund v. Herder*, 751 P.2d 519, 523-525 (Ariz. 1988). The court concluded the phrase “amount payable on a covered claim” referred to “the total amount payable as damages for the claimant’s injuries caused by the covered occurrence,” *not* to the extent of the fund’s obligation. *Id.* at 523. A reduction in the “amount payable on a covered claim” would reduce the total amount of the damage claim, but if the total damages still exceeded the fund’s maximum obligation (the lesser of \$99,900 or the limits of the insolvent insurer’s policy), the amount paid by the fund would not be reduced. This result is identical to the result the trial court reached here.

Significantly, in 1998 the Arizona legislature amended § 20-673(C) (2002) to add this sentence: “Any recovery pursuant to this article shall be reduced by the amount of the recovery under the claimant’s insurance policy.” The section now provides:

Where more than one policy may be applicable, a policy issued by the insolvent insurer shall be deemed to be excess coverage. The claimant shall be required to exhaust all rights under other applicable coverage or

coverages. *Any recovery pursuant to this article shall be reduced by the amount of the recovery under the claimant's insurance policy. Any amount payable on a covered claim shall be reduced by the amount of such recovery under other applicable insurance.*

A.R.S. § 20-673(C) (1997) (emphasis added). *Jangula* held the *new* language in the 1998 amendment “changed the interpretation announced in *Herder*.” 88 P.3d at 184. The court stated:

The word “recovery” in this context customarily means the amount of money received by a claimant after asserting a claim or pursuing an action for damages. See Black’s Law Dictionary 1280 (7th ed. 1999) (defining “recovery” as an “amount awarded in or collected from a judgment or decree”). The referenced “article” is Article 6 of Chapter 3 of Title 20 of the Arizona Revised Statutes. Article 6 establishes the Fund and defines its obligations. See A.R.S. §§ 20–661 to –680. A “recovery pursuant to this article” is defined as the smallest of (1) the claimant’s damages, (2) the face amount of the policy issued by the insolvent insurer, or (3) \$99,900. See A.R.S. §§ 20–661(3) (defining covered claim) and 20–667(B) (limiting coverage to lesser amount of covered claim, face amount of policy, or \$99,900).

88 P.3d at 185. Thus, the amended statute specifically required the result in *Jangula*.

There has been no similar amendment to South Carolina’s Act. Arizona’s prior decision (*Herder*) interpreting its former statute support the rulings in Respondents’ favor.

B. Delaware - *Marra v. Wilson*, 2003 WL 367831 (Del. Sup. Ct. 2/20/03) (memorandum decision).¹ A Delaware trial court construed the phrase “payable on a covered claim” to mean the capped amount the fund in that case would owe. This ruling, however, is by a trial court in Delaware trying to decide an issue it repeatedly described as “a matter of first impression.”

¹The Delaware Supreme Court permits citation to unreported decisions so long as a copy is attached to the brief. Rule 14 (B)vi(B)(2), Del. Sup. Ct. Rules.

Marra is apparently viewed as an outlier. In 2006, the Supreme Court of New Jersey ruled that under New Jersey's act "when an insured is covered by both a solvent and an insolvent insurer and the solvent insurer has paid the insured an amount exceeding the Act's maximum payment, but which falls short of the insured's total damages, the insured may seek compensation from the Association." *Thomsen v. Mercer-Charles*, 901 A.2d 303 (N.J. 2006). The court stated:

Given that the New Jersey Legislature adopted the Model Act's language, we have no reason to believe that the Legislature intended a different interpretation of the provision than that commonly understood as having been intended by the drafters of the Model Act. Moreover, when New Jersey adopted the language of Section 12b, the Legislature had the benefit of the Connecticut Supreme Court's explanation and application of Section 12b. The very purpose of adoption of a model act is to encourage consistency in approach in the legislative language and its application. See [*Carpenter Tech. Corp. v. Admiral Ins. Co.*, 800 A.2d 54, 60 (N.J. 2004)] ("In passing New Jersey's Act, the Legislature sought to bring our State within a nationwide network of individual insurance guaranty association statutes designed to spread equitably the risk of insurer insolvency among the states."). The salutary purpose of uniformity is advanced by interpreting Section 12b consistent *with the nearly unanimous approach taken by our sister jurisdictions, all but one of which have interpreted the section as did the trial court below*. See *Marra v. Wilson*, 2003 WL 367831, 2003 Del.Super. LEXIS 63 (Feb. 20, 2003) (holding that insurance credit should be applied to Association's statutory liability rather than to plaintiffs' total amount of damages).

901 A.2d at 311 (emphasis added). This Court should follow the Supreme Court of New Jersey's example, not an unpublished trial court decision from Delaware.

C. Louisiana - *Cooper v. Huddy*, 581 So.2d 723 (La. Ct. App. 1991). The issue in *Cooper* was whether the Louisiana Insurance Guaranty Act was entitled to offset amounts the claimants had already recovered from the Pennsylvania Insurance Guaranty Association. The relevant portion of Louisiana act provided:

(2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workmen's compensation claim, he shall seek recovery first from the association of the residence of the claimant. *Any recovery under this Part shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.*

LSA-R.S. 22:1386 (2) (emphasis added). The Louisiana court found “no ambiguity in the provision of LSA-R.S. 22:1386(2) which states that “[a]ny recovery under this Part [which in this case is \$597,719.64] shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.” 581 So.2d 727-728.

Unlike the issue in *Cooper*, the issue here is not an attempt to offset payment under the Act by payments recovered under another state's Insurance Guaranty Association Act. And South Carolina's statute is *different* than the Louisiana statute. Under South Carolina's version of the Act:

(2) A person having a claim which may be recovered under more than one insurance guaranty association or associations similar to the association must be required first to exhaust all coverage and limits in recovery from the association of the place of residence of the insured except that, if it is a first-party claim for damage to property with a permanent location, he shall be required first to exhaust all coverage and limits in recovery from the association of the location of the property, and, if it is a workers' compensation claim, he shall be required first to exhaust all coverage and limits in recovery from the association of the residence of the claimant. *Any amount payable on a covered claim* under this chapter must be reduced by the full amount of recovery from any other insurance guaranty association or associations similar to the association, and the association shall receive full credit for such recovery.

Section 38-31-100(2) (emphasis added). South Carolina's statute uses the phrase “amount payable on a covered claim” rather than “recovery under this Part.” *Cooper*

does not support a different conclusion than the one reached by the circuit court and the Court of Appeals.

D. Minnesota - *Cox v. Minnesota Ins. Guar. Assoc.*, 508 N.W.2d 536 (Minn. Ct. App. 1994). Like the Louisiana decision (*Cooper*), this case dealt with whether the Minnesota Insurance Guaranty Association was entitled to offset its limit of liability against an amount the claimant had already recovered from another guaranty association, the Florida Insurance Guaranty Association. The statute at issue provided:

Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the state of residence of the insured. * * * Any *recovery under this chapter* shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

Minn. Stat. § 60C.13, subd. 2 (emphasis added). The Minnesota Court of Appeals found “the plain meaning of ‘recovery under this chapter’ can only mean the obligation to a claimant as created and defined by Chapter 60C. ‘Recovery’ is the amount arrived at after applying the liability limit set forth in 60C.09, subd. 3.” 508 N.W.2d at 541.

Here again, South Carolina’s statute is different from the Minnesota statute.

Under South Carolina’s version of the Act:

Any amount payable on a covered claim under this chapter must be reduced by the full amount of recovery from any other insurance guaranty association or associations similar to the association, and the association shall receive full credit for such recovery.

Section 38-31-100(2) (emphasis added). South Carolina’s statute uses the phrase “amount payable on a covered claim” rather than “recovery under this chapter.” *Cox* does not support the Guaranty Association’s argument.

E. Mississippi - *Leitch v. Mississippi Ins. Guar. Assoc.*, 27 So.3d 405 (Miss. Ct. App. 2009), *aff'd* 27 So.3d 396 (Miss. 2010).

This case involved a credit for settlement funds received from the plaintiff's Uninsured Motorist carrier after the at-fault driver's insurance company became insolvent. The plaintiff settled with his UM carrier for the policy's limit of \$300,000. The plaintiff then filed a declaratory judgment action against the Mississippi Insurance Guaranty Association seeking a ruling that any award received from his UM coverage did not reduce the Mississippi Association's obligation.

The Mississippi Association moved for summary judgment, arguing that pursuant to Mississippi Code Section 83-23-123 its obligation must be reduced by the UM carrier's payment of benefits and that the association had no further obligation because the payment of \$300,000 was equal to the association's entire statutory limit. The trial court agreed and the Mississippi Supreme Court affirmed.

The court's analysis is telling. The court wrote:

The case before us today presents a plaintiff who made a claim against State Farm (a solvent insurer) *which is the same* as the "covered claim" he now pursues against MIGA. The maximum amount payable on a "covered claim" is \$300,000. Miss. Code Ann. § 83-23-115(1)(a)(iii). According to the statute, "[a]ny amount payable on a covered claim ... shall be reduced by the amount of any recovery under [the State Farm] policy." Miss. Code Ann. § 83-23-123(1). Accordingly, MIGA is statutorily required to reduce the "amount payable on [Leitch's] covered claim ... by the amount of any recovery under [the State Farm] insurance policy."

27 So.3d at 400 (emphasis added).

Leitch involved a claim against a plaintiff's UM carrier *because* the defendant's insurer became insolvent. That UM carrier stepped into the shoes of the insolvent

insurer. The claim against State Farm was “the same as the ‘covered claim’ he [pursued] against [the Mississippi Association].” The Mississippi Court held that under those circumstances the association was entitled to a complete offset against any amount recoverable.

This case does not involve a similar situation. Respondents did not file claims against a UM carrier and no UM carrier stepped into Aequicap’s shoes. Had Respondents done so, their claim would have been the identical claim they assert against the Guaranty Association. Respondents would have then been looking to two sources to step into AequiCap’s shoes. *Leitch* does not support reversal of the decisions below.

F. Montana - *Palmer v. Montana Insurance Guaranty Ass’n*, 779 P.2d 61 (Mont. 1989). Like the decisions from Louisiana and Minnesota, *Palmer* holds the Montana Insurance Guaranty Fund was entitled to offset its obligation to the plaintiff by the maximum amount recoverable by the plaintiff from another state’s fund, the Idaho Insurance Guaranty Fund. The court observed that the Montana act “was not adopted as a form of reinsurance for every insurer who becomes insolvent. Rather, it is clear the Association was established to soften resulting hardship which may be encountered, under limited circumstances.” *Id.* at 64.

Here again, this case does not involve recovery from another state’s association. The statutory language is also different. Montana’s offset provision stated, “Any recovery under this part shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.” *Id.* at 62-63. That is not what the pertinent provision of South Carolina’s statute says.

G. New Hampshire - *New Hampshire Ins. Guar. Ass'n v. Pitco Frialator*, 705 A.2d 1190 (N.H. 1998). New Hampshire's statute is considerably different from South Carolina's statute. New Hampshire defines "covered claim" as "a *net* unpaid claim ... which arises out of and is within coverage and *not in excess of* the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if such insurer after the effective date of this chapter is declared insolvent..." *Id.* at 1192 (emphasis added). Under South Carolina's statute, however, a "covered claim" means "an unpaid claim ... which arises out of and is within the coverage and *is subject to* the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer is an insolvent insurer...." Section 38-31-20(8) (emphasis added). The "powers and duties" provision of the New Hampshire version of the Act is also significantly different. The New Hampshire's act provides:

The association shall... [b]e obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination, but such obligation shall include only that amount of each covered claim which is less than \$300,000 except that the association shall pay the full amount of any covered claim arising out of a workmen's compensation policy, provided however RSA 281-A:37 shall not apply to payments or settlements made pursuant to this chapter. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

N.H. Rev. Stat. Ann. § 404-B:8, I (1983 & Supp. 1997). In light of these differences *Pitco Frialator* is does not support reversal. Again, South Carolina's statutes tie the definition of "covered claim" to the value of the claim against the insolvent insurer.

H. Oklahoma - *Oglesby v. Liberty Mut. Ins. Co.*, 832 P.2d 834 (Okla. 1992).

The Oklahoma statute in this case provided, “Any obligation of the association to defend an insured shall cease upon the payment or tender by the association of an amount equal to the lesser of the covered claim obligation limit of the association or the applicable policy limit....” 36 Okl. St. Ann. § 2007(A)(2). This statute limited the Oklahoma Guaranty Association’s obligation “to the lesser of \$150,000.00 or the coverage provided in the insolvent insurer’s policy.” South Carolina could have enacted the same statute but did not.

It is true that the offset provision under Oklahoma’s statute is the same as the provision in South Carolina. See 36 Okl. St. Ann. § 2012. However, the Court made clear that its analysis was also “pursuant to § 2007.” South Carolina’s has no such provision.

I. Pennsylvania - *Blackwell v. Pennsylvania Ins. Guar. Ass’n*, 567 A.2d 1103 (Pa. Super. Ct.1989). In *Blackwell*, a panel of the Superior Court of Pennsylvania found that the nonduplication provision of Pennsylvania’s Insurance Guaranty Act required the reduction of recovery against the cap, not the overall damages. But that panel found the phrase “any amount payable on a covered claim under this act” to mean the cap itself (which was \$299,900).

Blackwell supports the Guaranty Association’s argument, but this Court should not be persuaded to follow a decision by a panel of Pennsylvania’s intermediate appellate court construing Pennsylvania’s act. The trial court properly found the “amount payable on a covered claim” refers to the amount payable by the insolvent insurer (\$800,000). If this were not so, the legislature would have used simple language capping the Guaranty

Association's exposure at \$300,000 and writing a dollar-for-dollar offset from that cap for any funds received instead of an offset that applies to the "covered claim."

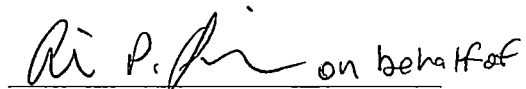
J. Kentucky - *Hawkins v. Kentucky Guar. Ass'n*, 838 S.W.2d 410 (Ky. Ct. App. 1992). Like the Mississippi case (*Leitch*), *Hawkins* involved an injured party who settled with his UM carrier after the at-fault liability carrier became insolvent and involved two entities who stepped into the shoes of the insolvent insurer to cover the exact same claim.

These decisions do not stand for the proposition that the South Carolina Property and Casualty Insurance Guaranty Association Act allows the Guaranty Association to reduce its statutory maximum rather than a claimant's total damages amount. That statutory language would have been easy to write. This Court should affirm.

CONCLUSION

For the foregoing reasons this Court should affirm the trial court and the Court of Appeals.

Respectfully submitted,

 on behalf of

November 28, 2017
Daniel W. Luginbill, # 68525
WILSON & LUGINBILL
P.O. Box 1150
Bamberg, SC 29003
(803) 245-7799
(803) 245-0037 (facsimile)
dan@w-llawfirm.com

Blake A. Hewitt, # 73674
BLUESTEIN THOMPSON SULLIVAN LLC
P.O. Box 7965
Columbia, SC 29202
(803) 779-7599
(803) 779-8995 (facsimile)
blake@bluesteinattorneys.com

Attorneys for Respondents

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

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Doyet A. Early, III, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2013-CP-05-63
Appellate Case No. 2016-002156

Janette Buchanan and Shana Smallwood,
Individually and as Co-Personal Representatives
of the Estate of James S. Buchanan, Respondents,

v.

The South Carolina Property and Casualty
Insurance Guaranty Association, Petitioner.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served
counsel for the Petitioner with a copy of the *Brief of Respondents* by mailing copies of the
same by United States Mail with first class postage prepaid to the following address:

Howard A. Van Dine, III
A. Mattison Bogan
Erik T. Norton
Nelson Mullins Riley & Scarborough, LLP
PO Box 11070
Columbia, SC 29211

November 28, 2017


Erin Bridges