

THE STATE OF SOUTH CAROLINA RECEIVED
In the Supreme Court

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APPEAL FROM COLLETON COUNTY
Court of Common Pleas S.C. Supreme Court

The Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2011-193846
Opinion No. 175 (S.C. Ct. App. filed April 18, 2011)

Thomas M. Carter, Debra Carter, and Christopher Michael Carter..... Respondents,

v.

The Standard Fire Insurance Company and Frank L. Siau Agency, Inc Defendants,

Of whom

The Standard Fire Insurance Company is the.....Petitioner.

PETITIONER'S REPLY BRIEF

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ARGUMENT

Respondents argue that S.C. Code Ann. sections 38-77-30 (7) and 38-77-160 (2002), as interpreted by the stacking cases, mandate stacking in the case at bar; that Petitioner's brief distorts the holdings in the stacking cases; and that *Burgess v. Nationwide Mutual Insurance Co.*, 373 S.C. 37, 644 S.E.2d 40 (2007) is distinguishable. However, sections 38-77-30 (7) and 33-77-160 do not require stacking, either individually or in combination. Moreover, the stacking cases do not require stacking in the situation presented, since none involved an exclusion similar to Petitioner's (which was essentially sanctioned by this Court in *Burgess*).

I. S.C. CODE ANN. SECTION 38-77-160 DOES NOT REQUIRE STACKING.

Both sides agree that the pertinent portion of section 38-77-160 reads as follows:

If, however, an insured or named insured is protected by uninsured or underinsured motorists coverage in excess of basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident.

On its face, this sentence merely requires that automobile insurance policies that provide underinsured motorist (UIM) coverage in excess of the basic limits restrict insureds' recovery to the amount of coverage that they have on the vehicle involved in the accident. It neither requires that such coverage be purchased nor that it be stacked. It does not even apply to UIM coverage in the basic limits, as the introductory phrase indicates that it only applies where the insured "is protected by" UIM coverage in excess of the basic limit. Because the exclusion in Michael Carter's parents' policy with Standard Fire validly excludes coverage for Michael, since he occupied a vehicle that he owned but insured with another carrier, he is not "protected by" UIM coverage under the

Standard Fire policy. Thus, while this sentence applies to Michael Carter's Allstate policy, as a result of which he was able to stack his UIM coverage from Allstate, it does not apply to his father's Standard Fire policy.

If the above-quoted sentence is the foundation of a "requirement" that Class I insureds be allowed to stack, then insureds with only basic limits UM and UIM coverage would not be subject to the requirement. Insureds who have a vehicle involved in the accident (Class I insureds) are "allowed" to stack, whether they have basic or excess UIM coverage – not because section 38-77-160 or any other statute requires it, but because stacking is generally permitted unless **prohibited** by statute or a **valid policy provision**. *See Gambrell v. Travelers Ins. Co.*, 280 S.C. 69, 310 S.E.2d 814 (1983), *holding modified by Nationwide Mut. Ins. Co. v. Howard*, 288 S.C. 5, 339 S.E.2d 501 (1985); *S.C. Farm Bureau Mut. Ins. Co. v. Mooneyham*, 304 S.C. 442, 405 S.E.2d 396 (1991); *Jackson v. State Farm Mut. Auto. Ins. Co.*, 288 S.C. 335, 342 S.E.2d 603 (1986), *declined to be followed by Ruppe v. Auto-Owners Ins. Co.*, 329 S.C. 402, 496 S.E.2d 631 (1998). Class II insureds are specifically prohibited from stacking by the very next sentence in section 38-77-160:

If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage.

Section 38-77-160 requires insurers to offer UIM coverage. It prohibits insureds who do not have a vehicle involved in the accident from stacking. It limits insureds who are protected by UIM coverage in excess of the basic limits to stacking only to the extent of the coverage they have on the vehicle involved in the accident. Thus, there is a prohibition and a limitation, but there is no requirement.

As set forth in Standard Fire’s first brief, the notion that stacking is “generally permitted” appears to have originated in *Gambrell*. Petitioner’s Br. 15. However, *Gambrell* was allowed to stack “under the present circumstances”, not because § 38-77-160’s predecessor required it, but because it did not prohibit it. *Gambrell*, 280 S.C. at 73, 310 S.E.2d at 817. Three years later, in *Jackson v. State Farm Mutual Automobile Insurance Co.*, 288 S.C. 335, 342 S.E.2d 603 (1986), this Court cited *American Jurisprudence* (Second) and *Gambrell* for the proposition that, “Stacking is generally permitted unless limited by statute or by a valid policy provision.” *Jackson*, 288 S.C. at 336, 342 S.E.2d at 604. Thus, section 38-77-160 is not the foundation for UIM stacking. The foundation for stacking is public policy – not statute. Class I insureds are allowed to stack “unless **limited** by statute or a **valid policy provision.**” *Id.* (emphasis added).

II. S.C. CODE ANN. § 38-77-30 (7) DOES NOT REQUIRE STACKING.

The definition of “insured” found in S.C. Code Ann. section 38-77-30 (7) does not affect this analysis. It defines “insured” in part so as to include not only the named insured, but resident spouses and their relatives “while in a motor vehicle or otherwise.” S.C. Code Ann. § 38-77-30 (7) (2002). According to section 38-77-160, insureds who are protected by UIM coverage in excess of the basic limits are only protected to the extent of the coverage they have on the vehicle involved in the accident.¹ This limitation applies regardless of whether they are named insureds or not. If none of their vehicles is involved in the accident, UIM coverage “is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage.” S.C. Code Ann. § 38-77-160 (2002). Thus, section 38-77-160 prohibits “insureds,” as

¹ “The ‘If, however’ sentence in § 38-77-160 evinces the legislature’s intent, in a stacking situation, to bind the insured to the amount of UIM coverage he chose to purchase in the policy covering the vehicle involved in the accident.” *Burgess*, 373 S.C. at 41, 644 S.E.2d at 42-43.

defined in section 38-77-30 (7), from stacking if they do not have a vehicle involved in the accident. Where they are protected by UIM coverage in excess of the basic limits, they are limited to stacking in amounts that are no greater than the coverage they have on the vehicle involved in the accident. Section 38-77-160 does not require stacking, either on its own or when considered in conjunction with section 38-77-30(7)'s definition of "insured."

Michael Carter falls within § 38-77-30(7)'s definition of "insured." Because he had UIM coverage of \$250,000 available to him on his Dodge Charger, which he occupied at the time of the wreck, and on his Chevrolet Cavalier, he was protected by UIM coverage in excess of the basic limits, as a result of which section 38-77-160 requires that "the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident." S.C. Code Ann. § 38-77-160 (2002). His Allstate policy contains such a provision, as does the Standard Fire policy. R. pp. 385-386 (at "Limits of Liability") and p. 329 (at "Split Limits"), pp. 364-365 respectively. Both policies therefore comply with section 38-77-160. Michael recovered \$250,000 in UIM coverage from Allstate on each of his two vehicles, and was indeed "protected only to the extent of the coverage he has on the vehicle involved in the accident." Neither sections 38-77-160 nor 38-77-30 (7), nor any other statute, requires that he be allowed to stack UIM coverage from his father's policy. Rather, as a matter of public policy, "[s]tacking is generally permitted unless limited by statute or a valid policy provision." *Jackson*, 288 S.C. at 336, 342 S.E.2d at 604 (citing 7 Am.Jur.2d *Automobile Insurance* § 326 and *Gambrell*). The exclusion in the Standard Fire policy is such a "valid policy provision" by virtue of *Burgess*.

III. MICHAEL CARTER CANNOT STACK UIM COVERAGE FROM HIS PARENTS' POLICY, NOT BECAUSE THEIR POLICY PROHIBITS STACKING, BUT BECAUSE IT CONTAINS A VALID AND APPLICABLE EXCLUSION OF UIM COVERAGE, AND SUCH COVERAGE IS THEREFORE NOT AVAILABLE TO HIM.

In *Burgess v. Nationwide Mutual Insurance Co.*, this Court held that public policy is not offended by a restriction on the portability of UIM coverage. *Burgess*, 373 S.C. at 41-42, 644 S.E.2d at 43. That restriction was similar to that contained in the Standard Fire policy. *Id.* Stacking is “the insured’s recovery of damages under more than one policy until all of his damages are satisfied or the limits of all **available** policies are met.” *Giles v. Whitaker*, 297 S.C. 267, 268-69, 376 S.E.2d 278, 279-80 (1989) (emphasis added); see also *Cont’l Ins. Co. v. Shives*, 328 S.C. 470, 473, 492 S.E.2d 808, 810 (Ct.App. 1997). UIM coverage under Michael’s father’s Standard Fire policy is therefore not “available.”

By virtue of *Burgess*, decided after the vast majority of the stacking cases, the exclusion in the Standard Fire policy is valid. As has been shown, the exclusion in the Standard Fire policy does not violate sections 38-77-160 or 38-77-30(7). Because the limitation on the portability of UIM coverage created by the Standard Fire exclusion is similar to that at issue in *Burgess*, it does not offend public policy.

In *Burgess*, this Court said:

Neither § 38-77-160 nor our prior decisions decide the issue presented here: Is public policy offended by an automobile insurance policy provision that limits basic UIM portability when an insured is involved in an accident when in a vehicle he owns, but does not insure under the policy? We find it is not. UIM coverage is entirely voluntary, and permits insureds, at their option, to purchase insurance coverage for situations where they are injured by an at-fault driver who does not carry sufficient liability insurance to cover the insureds’ damages.

Burgess, 373 S.C. at 41-42, 644 S.E.2d at 43. Thus, UIM coverage is voluntary, and the parties are free to contract as they choose, so long as the contractual provisions do not violate the requirements of a statute and do not offend public policy. *See S.C. Farm Bur. Mut. Ins. Co. v. Dawsey*, 371 S.C. 353, 356, 638 S.E.2d 103, 104-05 (Ct.App. 2006); *Marchant v. S.C. Ins. Co.*, 281 S.C. 585, 586-87, 316 S.E.2d 707, 709 (Ct.App. 1984); *Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 550-51, 320 S.E.2d 458, 461 (Ct.App. 1984).

Michael Carter's situation is no different than that of other insureds where the policy in question validly excludes coverage in a given situation. For example, assuming for the sake of argument that Michael's license has been suspended and that he had been driving his car with the knowledge that it had been suspended, UIM benefits would not be available to him under the policy by virtue of the following exclusion:

EXCLUSIONS

A. We do not provide Underinsured Motorists Coverage for "bodily injury" or "property damage" sustained by any person:

* * *

3. Using a vehicle without a reasonable belief that that person is entitled to do so.

R. p. 328 (at "Exclusions"); *see Omni Ins. Co. v. Harps*, 196 Ga.App. 340, 396 S.E.2d 66 (Ga. Ct. App. 1990).

Under Respondents' reasoning, Standard Fire would not be able to rely on this exclusion because, as a Class I insured (an insured who has a vehicle involved in the accident), Michael Carter should be entitled to stack, but the exclusion, if applied, would

not allow him to do so. If this argument were accepted, then an insured in this situation would be allowed not only to recover UIM benefits on the vehicle involved in the accident, but also on any “at home” vehicles - - notwithstanding an otherwise valid exclusion of such coverage. Moreover, an insured in the same situation, but without other UIM coverages available for stacking, would not be entitled to any UIM coverage whatsoever by virtue of the exclusion, which, under Respondents’ reasoning, would be **valid** because stacking is not available. Essentially, Respondents’ argument is that, because Michael Carter would be able to stack if it were not for the exclusion, the exclusion should not apply. Such an argument is neither fair nor logical.

IV. PUBLIC POLICY IS NOT OFFENDED BY THE STANDARD FIRE EXCLUSION’S LIMITATION ON UIM PORTABILITY.

The issue in the case at bar is whether public policy is offended by a limitation on UIM portability similar to that at issue in *Burgess*. As in *Burgess*, neither section 38-77-160 nor prior decisions apply (with the exception of *Nakatsu*, which, it is submitted, should be overturned). The only significant difference between the situation presented in the case at bar and that presented in *Burgess* is that Mr. Burgess had not purchased UIM coverage on the vehicle that he occupied at the time of the accident, while Michael Carter had. However, as discussed above, neither section 38-77-160 nor any other statute requires that Michael Carter be allowed to stack. Nor, as set forth below, is there any reason why the public policy considerations applicable to Mr. Burgess should be any different than those applicable to Mr. Carter.

As this Court observed in *Burgess*, section 38-77-160 provides that, in a stacking situation, the insured is limited to the amount of UIM coverage he chose to purchase in the policy covering the vehicle involved in the accident, which is itself a limitation on the

portability of UIM coverage. *Burgess*, 373 S.C. at 41-42, 644 S.E.2d at 42-43. Michael has received all the UIM coverage that he purchased, stacking \$250,000 in coverage on his Chevrolet Cavalier on top of \$250,000 in coverage on his Dodge Charger involved in the accident. He had been listed as a driver on his father's policy, but his mother removed him from that policy and helped him get his own policy on his Charger, in order for him to assume responsibility for his own policy and to get a lower premium. R., p. 200, lines 6-16; p. 201, lines 6-23; p. 209, lines 3-7; p. 210, line 7 – p. 211, line 19; p. 172, lines 21-24; p. 179, line 3 – p. 180, line 1.

As in *Burgess*, Michael Carter chose to insure both his Dodge Charger involved in the accident and his Chevrolet Cavalier with a different company. R. p. 207, line 24 – p. 208, line 16. The Standard Fire policy explicitly excludes UIM coverage where an insured is injured while occupying a vehicle that he or a family member owns but does not insure under the policy. Thus, the Carters could not have had any reasonable expectation that UIM coverage under the Standard Fire policy would be available to Michael if he were injured after moving to Allstate for a cheaper premium. The policy excludes it, and the governing statute does not require it. Moreover, Michael's Dodge Charger was never even insured by Standard Fire. R. p. 210, lines 4 – 6.

Thus, the public policy considerations set forth in *Burgess* apply equally here. UIM coverage is voluntary, and the parties should therefore be free to choose the terms of their agreement, so long as they are not in violation of any statute and do not offend public policy. See *S.C. Farm Bur. Mut. Ins. Co. v. Dawsey*, 371 S.C. 353, 356, 638 S.E.2d 103, 104-05 (Ct.App. 2006); *Marchant v. S.C. Ins. Co.*, 281 S.C. 585, 586-87, 316 S.E.2d 707, 709 (Ct.App. 1984); *Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Parker*, 282

S.C. 546, 550-51, 320 S.E.2d 458, 461 (Ct.App. 1984). Mrs. Carter, who graduated from high school and worked at Anderson State Bank for about ten years as a teller, then worked many years as a bookkeeper, testified that she shopped for a good rate for Michael's policy, and settled on Allstate. R. p. 184, line 25 – p. 185, line 3; p. 185, line 16, - p. 186, line 5; p. 200, lines 9-20; p. 201, lines 16-19; p. 207, line 24 – p. 208, line 2. They moved Michael's Chevrolet Cavalier from the Standard Fire policy and added it to his Allstate policy, which also insured his new Dodge Charger. R. p. 208, lines 3 – 16. Whether or not Michael would be able to recover UIM coverage under her husband's policy after he got his own policy with Allstate was not a consideration:

Q After you removed Michael from the . . . Standard Fire . . . policy and he got his policy with Allstate – did you believe Michael to still be covered with the Standard Fire policy?

A You mean like if an accident or something happened or –

Q If anything happened for which a claim needed to be made for Michael.

A It would be through Allstate.

Q Okay. Alright. So is that a no? Did – did you believe that he was not covered under the Standard Fire policy after he took out the Allstate policy?

A No, Sir.

Q Okay. You're saying – I just want to make sure we're clear on – on the answer. Are you saying that you did not believe he was covered after – under the Standard Fire policy after the Allstate policy was taken out?

A That's correct.

R., p. 210, line 20 – p. 211, line 19.

Mrs. Carter correctly believed that Michael would not be entitled to any

coverage under the Standard Fire policy. Having contracted with Allstate to cover his two vehicles, he was not a party to the Standard Fire insurance contract, and had even been removed as a driver. R. p. 200, lines 6 – 16; p. 201, lines 20 – 23; p. 210, line 7 – p. 211, line 20; p. 365. There is no public policy reason why he should be entitled to recover UIM coverage under his father’s policy when the statute does not require it and the policy excludes it.

Michael Carter has received the UIM coverage for which he contracted and paid. Public policy is not offended by exclusions like the one at issue. *See Burgess*, 373 S.C. at 41-42, 644 S.E.2d at 43 (“Neither § 38-77-160 nor our prior decisions decide the issue presented here: Is public policy offended by an automobile insurance policy provision that limits basic UIM portability when an insured is involved in an accident while in a vehicle he owns, but does not insure under the policy? We find it is not.”).

Respondents offer the analogy of a voluntary purchase of an automobile, which the law requires be outfitted with seat belts. Petitioner submits that a better analogy is as follows. S.C. Code Ann. section 38-77-140 requires that automobile insurance policies issued or delivered in South Carolina on motor vehicles principally garaged or used in South Carolina must protect those defined as “insured” against loss from liability arising out of the ownership, maintenance or use of such motor vehicles, with limits of at least \$25,000/ \$50,000/\$25,000. *See* S.C. Code Ann. § 38-77-140 (Supp. 2012). It does not, however, require that such policies provide liability coverage, even to statutory insureds, for liability arising out of the ownership, maintenance, or use of a non-owned or unlisted vehicle. *Id.*; *see also Crenshaw v. Preferred Risk Mut. Ins. Co.*, 259 S.C. 302, 191 S.E.2d 718 (1972) (finding that the requirements of liability coverage did not require an insurer

to provide such coverage on every automobile driven by the insured); *Paul v. Hartford Acc. & Indem. Co.*, 443 F. Supp. 112, 114 (D.S.C. 1977) (“Where the person for whom coverage is sought is not driving a vehicle described in the policy, he or she is not an insured under the policy. Of course the policy may include a vehicle by specific or reference language or by force of statute, but the language of inclusion must exist to afford coverage.”); *Giles v. Whitaker*, 297 S.C. 267, 269, 376 S.E.2d 278, 279 (1989) (“This statute has been interpreted as not requiring the insurer to provide liability coverage for automobiles other than the one described in the policy.”); *State Farm Mut. Auto. Ins. Co. v. Moorner*, 330 S.C. 46, 61, 496 S.E.2d 875, 883 (Ct. App. 1998) (“The court stated that stacking of liability coverage for non-owned vehicles is controlled by its decision in *Jackson*, in which it held that liability coverage for *non-owned* vehicles is *not* statutorily required coverage and the parties are free to choose their own terms regarding this voluntary coverage.”); *S.C. Prop. & Cas. Guar. Ass’n v. Yensen*, 345 S.C. 512, 516, 548 S.E.2d 880, 882 (Ct. App. 2001).

There is no reason why there should be a different rule for UIM coverage, which, unlike liability coverage, is not required on every automobile policy issued or delivered in this state. In other words, there is no reason why an insurance carrier should be required to provide UIM coverage for an insured who has chosen to purchase his UIM coverage from a different carrier. After all, UIM coverage is optional, voluntary coverage. *See Burgess*, 373 S.E. at 43, 644 S.E.2d at 42. While UIM coverage is generally portable, and liability coverage is not, public policy is not offended by a restriction on such portability when the insured is injured while occupying a vehicle that he owns, but chose to insure under a different policy issued by a different carrier. *See*

Burgess, 373 S.C. at 43, 644 S.E.2d at 42. Section 38-77-140 does not require liability coverage to be provided when an insured is driving a vehicle that he owns but does not list on his policy, nor does section 38-77-160 require that UIM coverage be available when the insured is occupying a vehicle that he owns, but chose to insure under a different policy with a different carrier. Whether or not that insured would otherwise have been able to stack should not make a difference.

In a free market, some insurers may offer policies that do not include such a restriction. After all, even though not required to do so, both Michael's Allstate policy and his father's Standard Fire policy provide liability coverage to their insureds while they are operating vehicles not listed on the policies, so long as they are doing so with a reasonable belief that they are entitled to do so, or with the owner's permission. R. p. 311 – 312; p. 373 – 374, respectively. Some carriers may elect to offer policies without restrictions on the portability of UIM coverage, probably for a somewhat higher premium.

V. EXCEPT FOR *NAKATSU* (WHICH, IT IS SUBMITTED, WAS WRONGLY DECIDED), THE STACKING CASES ARE ALL DISTINGUISHABLE BECAUSE THEY DID NOT INVOLVE AN EXCLUSION OF UIM COVERAGE LIKE THE ONE AT ISSUE, AND VIRTUALLY ALL OF THEM WERE DECIDED BEFORE *BURGESS*.

Neither the stacking cases nor any of the other cases cited by Respondents, except for *Nakatsu*, require stacking in the situation presented. The cases cited in Respondents' brief, with the exception of those already discussed in Standard Fire's first brief, are discussed below.

Respondents cite *Hogan v. Home Insurance Co.*, 260 S.C. 157, 194 S.E.2d 890 (1973) for the proposition that Class I insureds have uninsured motorists (UM) coverage

at all times. *Hogan* is distinguishable because it involved basic UM coverage, which is mandatory. Unlike the Standard Fire exclusion, the exclusion at issue in *Hogan* was “a limitation upon the broad coverage required by the statute and . . ., therefore, void.” *Id.*, 260 S.C. at 162, 194 S.E.2d at 892. *Burgess* confirms that UIM coverage, on the other hand, is voluntary and that Class I insureds are not necessarily entitled to coverage “at all times,” notwithstanding section 38-77-30 (7)’s definition of “insured.” *See Burgess*, 373 S.C. at 41-42, 644 S.E.2d at 42-43. Rather, public policy is not offended by a policy provision that limits the UIM portability that Class I insureds generally enjoy. *Burgess* specifically sanctioned the limitation on such portability that applied when a Class I insured was involved in an accident while in a vehicle that he owns, but does not insure under the policy in question. *Burgess*, 373 S.C. at 41-42, 644 S.E.2d at 42-43. In short, neither section 38-77-160 nor public policy requires that Class I insureds have UIM coverage at all times. Limitations on portability, such as the one at issue in *Burgess*, do not violate public policy and are permissible. Class I insureds who happen to have a vehicle involved in the accident should not be subject to a different rule. After all, public policy is not offended when UIM coverage is excluded for such an insured who chose to purchase insurance coverage on the vehicle involved in the accident from a different insurer.

Respondents cite the recent case of *Nationwide Mutual Insurance Co. v. Rhoden*, 398 S.C. 393, 728 S.E.2d 477 (2012), for the proposition that UIM coverage is personal and portable. Resp. Br. 8. Standard Fire does not dispute this proposition; however, by virtue of *Burgess*, a policy provision limiting that portability when an insured is involved in an accident while in a vehicle that he owns, but does not insure under the policy, is

permissible.

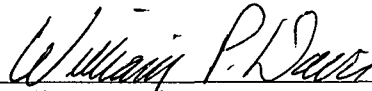
In *Rhoden*, this Court held that public policy required that UIM coverage be provided to the named insured, Ms. Rhoden, and one of her resident daughters, Ms. Dickey. *See Rhoden*, 398 S.C. at 399-400, 728 S.E.2d at 480-81. They both occupied, but did not own, the vehicle involved in the subject accident. *Id.* at 402, 728 S.E.2d at 482. Thus, a provision in Ms. Rhoden's "at-home" policy limiting the amount of UIM coverage, under the circumstances, to the limit on the vehicle involved in the accident (which was none) was unenforceable as to Ms. Rhoden and Ms. Dickey. *Id.* at 399-400, 728 S.E.2d at 480-81. However, since Ms. Rhoden's other resident daughter was the owner of the vehicle that they all occupied at the time of the accident, and had chosen not to purchase UIM coverage, public policy was not offended by the aforementioned limitation on UIM portability contained in her policy. *Id.*

Thus, if Michael Carter's father, Thomas Carter, who was the named insured on the Standard Fire policy, had been a passenger in Michael's Dodge Charger at the time of the accident, the exclusion in his Standard Fire policy would not apply to him by virtue of *Rhoden*. However, like the daughter who owned the vehicle involved in the accident in *Rhoden*, Michael Carter is subject to the exclusion. The only distinction is that Ms. Rhoden's daughter chose not to purchase UIM coverage on her vehicle, while Michael Carter chose to purchase it, but from a different carrier. However, because restricting UIM portability when the insured seeking coverage chose to insure his vehicle with a different carrier does not violate public policy, the exclusion is valid as to Michael. *See Burgess*, 373 S.C. at 42, 644 S.E.2d at 43. Since the restriction on UIM coverage contained in Ms. Rhoden's policy was upheld as to the daughter whose vehicle they all

occupied, *Rhoden* supports Standard Fire's position.

CONCLUSION

Because, for the reasons set forth in *Burgess*, the Standard Fire exclusion does not offend public policy; because Michael Carter chose to purchase UIM coverage from another carrier; and because neither S.C. Code Ann. section 38-77-30 (7), nor section 38-77-160, nor the stacking cases, require stacking in the situation presented, it is respectfully submitted that *Nakatsu* was wrongly decided and should be overturned, and that the Court of Appeals' opinion in the within action should be reversed.



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February 18, 2013

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM COLLETON COUNTY

Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2011-193846
Opinion No. 175 (S.C. Ct. App. filed April 18, 2011)

Thomas M. Carter, Debra Carter, and Christopher Michael Carter..... Respondents,

v.

The Standard Fire Insurance Company and Frank L. Siau Agency, Inc.Defendants,

Of whom

The Standard Fire Insurance Company is thePetitioner.

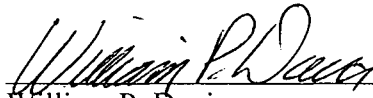
PROOF OF SERVICE

I, William P. Davis, attorney for Petitioner The Standard Fire Insurance Company, do hereby certify that I have this 19th day of February 2013 served all counsel of record with copies of **Petitioner's Reply Brief and Proof of Service Thereof** by mailing said copies by United States Mail, first class postage pre-paid, to said counsel at the following addresses:

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