

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Omni Insurance Company, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Cary Glenn Ryals, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2012-CP-10-0571

**DEFENDANT'S ORDER  
 GRANTING SUMMARY JUDGMENT**

**FILED**  
 2012 DEC 17 AM 11:49  
 JULIE J. BRAMSTROM  
 CLERK OF COURT  
 BY 1

THIS MATTER came before me on October 25, 2012, upon Defendant Cary Glenn Ryals' motion for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Present at the hearing was J. Drayton Hastie, III, Esquire, for the Plaintiff Omni Insurance Company and Jeff Buncher, Jr., Esquire, and Carl H. Jacobson, Esquire, for the Defendant Ryals. After hearing the arguments from counsel and a review of the memorandums and applicable case law, I hereby grant Defendant's motion for summary judgment.

**FACTS**

1. This case arises out of a one car motor vehicle collision that occurred on or about May 26, 2009. Ryals was a guest in the motor vehicle that was owned and operated by Omni's insured. As a result of the collision, Ryals alleges he was injured and that he is entitled to make a claim for both liability and underinsured (UIM) motorist coverage on the motor vehicle.

2. On February 24, 2011, Omni filed a declaratory judgment action seeking a determination that Ryals is not entitled to make a claim for both the liability and (UIM) coverage provided by Omni for the vehicle in which he was a guest. On March 26, 2012, Ryals timely filed an answer and counterclaim. Thereafter, Ryals moved for summary judgment.

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*Ryals*

## LAW/ANALYSIS

3. Pursuant to Rule 56(a) of the South Carolina Rules of Civil Procedure, "A party seeking ... to obtain a declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move ... for a summary judgment in his favor upon all or any part thereof." "Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 497 (1990) (citations omitted).<sup>1</sup>

4. The "Declarations" page for the subject policy establishes that the insured selected \$25,000.00 of bodily injury liability coverage per person and \$25,000.00 of UIM bodily injury coverage per person. Omni admits in its Complaint that it provided insurance coverage for the vehicle in which Plaintiff was a passenger at the time of the collision. However, Omni asserts that the following policy provision supports its position that Ryals is not allowed to try to recover both the liability and UIM coverage provided for the vehicle:

**PART A-Liability Coverage, Limit of Liability, B.2:**

No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and ... any Underinsured Motorist Coverage provided by this policy.

**PART C2-Underinsured Motorist Coverage, Limit of Liability, D.:**

No one will be entitled to receive duplicate payments for the same elements of loss under this [UIM] coverage and Part A [Liability Coverage] ... of this policy.

5. The UIM statute, S.C. Code Ann. § 38-77-160, provides, in pertinent part that:

Automobile insurance carriers shall offer, at the option of the insured, ... underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability

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<sup>1</sup> Omni acknowledges in its memorandum that the essential facts regarding this matter are undisputed.

limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute.

S.C. Code Ann. § 38-77-160.

6. An insured is statutorily defined as “the named insured ... and a guest in the motor vehicle to which the policy applies ....” S.C. Code Ann. § 38-77-30(7).

7. During oral arguments, Omni discussed two South Carolina cases, *Burgess v. Nationwide Mutual Insurance Company* and *Nationwide Mutual Insurance Company v. Rhoden*, for its position that Ryals is not entitled to make a claim for both the liability and UIM coverage. 373 S.C. 37 (2007); 398 S.C. 393 (2012). Both of these cases, however, deal with the issue of limiting the portability of UIM coverage when the insured did not have UIM coverage on the accident vehicle but did carry UIM coverage on other at-home vehicles. This court finds that the facts in the present case are more akin to those found in *Bratcher v. National Grange Mutual Insurance Co.*, *infra*.

8. Alternatively, Omni also asserts that its insured breached his obligations under the policy provisions and, therefore, Ryals is limited only to the liability coverage. However, Omni participated in the initial tendering of the liability limits and is present and represented by counsel at this hearing, which was brought on by Omni’s filing for a declaratory judgment. Further, the underlying tort action has been temporarily postponed pending the outcome of this hearing, thus giving Omni the opportunity to appear and defend in the underlying tort action. Therefore, Omni’s contention that its insured breached the policy provisions is unsubstantiated.

9. “Our Supreme Court has adopted a policy of construing motor vehicle insurance statutes strictly against insurers.” *Bratcher v. National Grange Mutual Insurance Co.*, 292 S.C. 330, 332 (Ct. App. 1987). “[W]here an insurance policy is issued pursuant to a statute which

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authorizes an exception to the coverage, all other exceptions are excluded.' ” *Id.* (citation omitted).

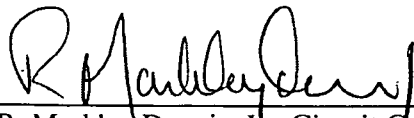
10. In *Bratcher v. National Grange Mutual Insurance Co.*, the Court of Appeals found invalid a similar coverage exception attempting to exclude vehicles owned by the insured from the definition of an underinsured motor vehicle. 292 S.C. 330 (Ct. App. 1987). This invalid exclusion would have operated in the same manner as the “limit of liability” provision espoused by Omni in this case. Explaining that the UIM statute “authorizes insurance carriers to restrict the amount of underinsured motorist coverage to the limits of liability coverage **but does not** authorize any other restrictions on the underinsured motorist coverage,” the *Bratcher* Court ruled the exception invalid. *Id.* at 332 (citations omitted) (emphasis added).

#### CONCLUSION

11. By virtue of the South Carolina case law and S.C. Code Ann. § 38-77-160 which authorizes insurance carriers to restrict the amount of UIM coverage to the limits of liability coverage but does not authorize any other restriction on UIM coverage, Omni’s UIM policy limitation is invalid.

IT IS THEREFORE ORDERED that Defendant’s Motion for Summary Judgment be and is hereby GRANTED!

AND IT IS SO ORDERED on this the 6th day of December, 2012 in Charleston County, South Carolina.

  
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R. Markley Dennis, Jr., Circuit Court Judge  
Ninth Judicial Circuit

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