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

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-10-0571

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

THIS MATTER came before me pursuant to Plaintiff's motion for reconsideration that was filed on December 31, 2012. After a review of the memoranda and applicable case law, I hereby deny Plaintiff's motion for reconsideration.

Standard of Review

The South Carolina Rules of Civil Procedure "contemplate two basic situations in which a party should consider filing a Rule 59(e) motion." *Elam v. S.C. DOT*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). "A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review."

Id.

Law/Analysis

S.C. Code § 33-77-30(7) defines an insured as the "named insured and . . . a guest in the motor vehicle to which the policy applies . . ." Defendant's reliance on this statutory language is to show that while Defendant Ryals was a guest passenger in Plaintiff Omni's insured motor vehicle, Defendant Ryals meets the statutory definition of an "insured".

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In *Bratcher v. National Grange Mutual Insurance Co.*, 356 S.E.2d 151 (Ct. App. 1987), the Court of Appeals found a coverage exception that is similar to Plaintiff's to be invalid. The insurance company in *Bratcher* attempted to exclude vehicles owned by the insured from the definition of an underinsured motor vehicle. *Id.* 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 152 (emphasis added).

"Our Supreme Court has adopted a policy of construing motor vehicle insurance statutes strictly against insurers." *Id.* "[W]here an insurance policy is issued pursuant to a statute which authorizes an exception to the coverage, all other exceptions are excluded." *Id.* Plaintiff's provision limiting Defendant to only liability coverage is in direct conflict with the statutory and case law of this State. Thus, it is invalid.

Despite Plaintiff's contention that *Bratcher* has been abrogated and overruled by *Burgess*, that is simply not the case. *Bratcher* is still good law and, in fact, has been followed by other courts.

Plaintiff cites *Burgess v. Nationwide Mutual Insurance Company*, 644 S.E.2d 40 (2007), and *Nationwide Mutual Insurance Company v. Rhoden*, 728 S.E.2d 477 (2012), for its position that Ryals is not entitled to make a claim for both the liability and UIM coverage. 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 vehicle involved in the accident but did carry UIM coverage on other at-home vehicles. This case is distinguishable from *Burgess* and *Nationwide* and is

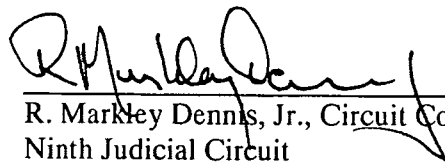
identical to *Burgess* in which the court invalidated an exclusion that prevented guest passengers from collecting under the host driver's UIM and liability coverage.

Conclusion

Based upon the foregoing, Plaintiff's motion to reconsider is denied as there has been no intervening change in controlling law. Additionally, no new evidence has been presented that was not available at oral arguments nor has there been a clear error of law or a manifest injustice as *Bratcher* controls the present situation.

~~IT IS THEREFORE ORDERED~~ that Plaintiff's Motion for Reconsideration be and is hereby DENIED!

AND IT IS SO ORDERED on this the 12 day of March, 2013 in Charleston County, South Carolina.



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

RMDT/B