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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS  
FOR THE TENTH JUDICIAL CIRCUIT  
C.A. No: 2021-CP-04-00461

Rosheerah Oglesby,

Plaintiff,

Vs.

Mark J. Rajkowski,

Defendant.

ORDER

This matter came before the Court on July 29, 2021, pursuant to the Motion for Summary Judgment filed by Defendant Mark J. Rajkowski and uninsured motorist insurance carrier, Progressive Select Insurance Company. For the reasons set forth below, this Motion is denied.

**FACTS**

On February 27, 2019, Plaintiff was the passenger in a vehicle being driven by Defendant. Defendant owned the car, and the car was insured by Progressive Select Insurance Company ("Progressive") under a policy issued to Defendant. Defendant lost control of his vehicle and ran off the road while attempting to exit I-26. Defendant then hit a tree and his vehicle overturned. As a result of the wreck, Plaintiff suffered severe injuries to her neck, back, and right shoulder. At the time of the wreck, both Plaintiff and Defendant were employed by Foothills Community Health Care, Inc. Plaintiff made a workers compensation claim which subsequently settled. Plaintiff filed this lawsuit and served Progressive through the Department of Insurance as uninsured motorist insurance carrier. Defendant subsequently filed this Motion.

**ANAYLSIS**

Defendant and Progressive argue that the exclusivity provision of the South Carolina Workers' Compensation Act precludes a claim against Defendant. In Connelly v. Main Street

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America Group, the Court found that an injured worker's claim for UM coverage was not bared by the exclusivity provision of the Workers' Compensation laws. 850 S.E.2d 627, 632. In South Carolina, in order to recover UM benefits, a plaintiff must sue the at-fault driver, and serve the UM carrier through the Department of Insurance. See S.C. Code Ann. § 38-77-150. The UM carrier then has the right to appear and defend the action in the name of the uninsured motorist who is named as the defendant in the case. Id. Evidence of the UM carrier is not admissible at trial. Id.

A UM policy must "pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle" S.C. Code Ann. § 38-77-150. Section 38-77-150 further sets out the method for establishing liability by filing suit against the at-fault driver, and serving the UM carrier through the Department of Insurance. This is consistent with other similar contexts in which a plaintiff can pursue a suit against a defendant to establish her right to recover insurance coverage, where the defendant cannot be held personally liable for the judgment. For instance, it is often the case that an at-fault driver is sued by a plaintiff in order to recover underinsured motorist benefits despite the existence of a covenant not to execute which absolves the at-fault driver of any liability to pay the potential judgment.<sup>1</sup> See Ackerman v. Travelers Indemnity Company 318 S.C. 137 (Ct. App. 1995); see also O'Neill v. Smith, 388 S.C. 246 (2010). Like a suit to establish that one is entitled to UIM benefits, a plaintiff may file suit against a defendant to establish that they are entitled to UM benefits, even if the defendant would not be personally liable for any judgment.

In their motion, Defendant and Progressive do not argue against the Court of Appeals' decision in Connelly that a Plaintiff may recover UM benefits when involved in a wreck while

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<sup>1</sup> The UIM context is particularly pertinent as the UM and UIM statutes, and the cited cases, use the identical "legally entitled to recover" and "action establishing liability" phrases.

working- instead, they argue that the Plaintiff may not bring suit against the at-fault driver to establish that she is legally entitled to recover the UM benefits. It would make no sense for an injured worker to be entitled to recover uninsured coverage as set forth in Connelly, while at the same time being unable to bring a suit against the at-fault driver in order to establish that they are legally entitled to recover the uninsured coverage. Therefore, Defendant and Progressive's Motion is denied.

**CONCLUSION**

As set forth above, Defendant and Progressive's motion is denied.

IT IS SO ORDERED.

**[JUDGE'S SIGNATURE FOLLOWS]**



Anderson Common Pleas

**Case Caption:** Rosheerah Oglesby VS Mark J. Rajkowski  
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So Ordered

s/ J. Cordell Maddox Jr.