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THE SOUTH CAROLINA UNINSURED MOTORIST ACT*

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Within the last few months, January 1, 1961, to be exact, there was introduced into this state an insurance coverage which can well be classified as being one of the most unusual and difficult coverages to interpret in the insurance industry today. This coverage is afforded by an endorsement to an automobile liability policy as required by the laws of this state, known as the South Carolina Uninsured Motorist Fund Act.[1]

The purpose of this act is to protect an insured person who innocently becomes involved in an automobile accident with an uninsured motorist and generally provides that those individuals who are insured with automobile liability insurance which meets the requirements of this act will be protected against an uninsured driver to the extent of $10,000.00 each person, $20,000.00 each accident for bodily injury and $5,000.00 property damage, if he is legally entitled to damages. In addition, the spouse, relative of either if a resident of the same household, and any passenger in the insured vehicle is covered.

The Fund referred to is created by a payment of $20.00 per person who licenses an uninsured motor vehicle in this state and any loss paid on behalf of an uninsured motorist will be paid by the insurance company carrying the insurance on the insured person that is involved in the accident. There will be an annual distribution of this fund, after administrative costs, to the various insurance companies in proportion to the number of policies bearing the endorsement written in this state for the preceding year. In other words, the insurance company paying the loss is not entitled to seek reimbursement from the fund for the actual amount of each loss as the reimbursement will depend on the amount in the fund and the number of policies written.

Let us first consider the so-called "Hit and Run Provision"[2] in the endorsement which provides that the injury

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1. Stats. at Large of S. C., Act No. 723 of the Acts of 1952 as amended by Act No. 311 of the Acts of 1959 and Act No. 803 of the Acts of 1960.

2. Stats. at Large of S. C., Act No. 723 of the Acts of 1952, § 21 as amended by Act No. 311 of the Acts of 1959, § 11.

or property damage must arise out of physical contact with a hit and run automobile. It is interesting to note that the act makes no mention of the words "hit and run," but simply states that "if the owner or operator of any vehicle causing an injury or damage be unknown, an action may be instituted against the unknown defendant as John Doe." You can readily appreciate the litigation which can possibly arise as a result of this provision in the endorsement, but unless our Legislature incorporates the requirement of physical contact within the act, it is difficult to see how the endorsement itself can require such physical contact. One can certainly appreciate the necessity for requiring physical contact to be present, for if it were otherwise, the potential for fraudulent claims could well be astronomical.

In the event of an accident involving an unknown driver and an insured vehicle, the cause of action can apparently be brought within any county in the state by simply serving the clerk of court of the county with the various pleadings. However, there are three necessary requirements as follows:

1. Notify the police immediately.
2. File a written report to the South Carolina Highway Department within five days. (Occupant of said vehicle may file a report if the driver is physically unable to do so.)
3. Notify the insurance company of the said accident and furnish the company copy of various pleadings.[3]

Arbitration is clearly forbidden in the act, but perhaps it should be allowed in the case of unknown drivers for it seems that this would give some small amount of protection to the insurance company as the company should be entitled to as much protection as possible under this portion of the act, for as mentioned previously, this provision may well open the door for fraudulent claims.

Once payment has been made, the insurance company making such payment reserves the right of subrogation and may proceed against the uninsured motorist to the extent of the amount paid on the loss. This alone presents a question which may well result in extensive litigation. Let us assume that an uninsured motorist is served with a Summons and Complaint, a copy of which is sent to the insurance company, and

3. Stats. at Large of S. C., Act No. 311 of the Acts of 1959, § 11 (f) [providing that the accident shall be reported as required in CODE OF LAWS OF SOUTH CAROLINA §§ 46-326 to -328 (1952)].

the company settles the case for $10,000.00 without notifying or consulting the uninsured motorist of its intention to settle, and then brings subrogation proceedings against the uninsured motorist as it is entitled to do under the act. Under these circumstances, would not the uninsured motorist have a right to question the amount of payment and possibly set up a defense in his Answer to the effect that the insurance company overpaid the claim? Realizing that the purpose of this act is not to afford protection to the uninsured motorist, this could well result in the reverse of the famous Tyger River[4] decisions; so it may be advisable to consult the uninsured motorist of any intention to dispose of the case by way of settlement.

There is another interesting provision in the typical endorsement reading as follows:

> Any payment made under this endorsement to or for any such person shall be applied in reduction of any amount which he may be entitled to recover from any person who is an insured under the bodily injury liability or property damage liability coverage and any payment made under the bodily injury liability or property damage liability coverages to or for any such person shall be applied in reduction of any amount which he may be entitled to recover under this endorsement.

In effect, this means that if an insured carries a $10,000.00 liability policy on his vehicle and he has a passenger in his automobile when he is involved in a collision with an uninsured motorist, the passenger would be limited to a recovery of $10,000.00. Of course, the purpose of this provision is to prevent the passenger from availing himself of the entire amount of the insured's personal coverage in addition to the $10,000.00 coverage provided in the Act. This may well be a good rule, but there are serious doubts as to its validity, as there is nothing set out specifically in the act allowing this provision. One can visualize a passenger seriously bringing suit against his host as well as the uninsured motorist and recovering a verdict of $35,000.00 against both defendants, with the host carrying a policy of insurance for $25,000.00.

4. Chesser v. Tyger River Pine Co., 155 S. C. 356, 152 S. E. 646 (1930); Tiger River Pine Co. v. Maryland Cas. Co., 163 S. C. 229, 161 S. E. 491 (1931); Tyger River Pine Co. v. Maryland Cas. Co., 170 S. C. 286, 170 S. E. 346 (1933); *accord*, American Cas. Co. v. Howard, 187 F. 2d 322 (4th Cir. 1951).

Now, if the reduction clause is applied, the most the guest can recover from available insurance is $25,000.00, leaving a $10,000.00 judgment against the host and the uninsured motorist. Although the uninsured would have no right under the act, would not the host who is an insured driver, have a right to be protected to the full limits of his policy and demand that the guest also be paid $10,000.00 as provided in the Act rather than be faced with a $10,000.00 judgment recorded against him? Also, would not the passenger have a right to demand that he be paid the additional $10,000.00 as required by the Act since he is an insured?

As to the property damage, the Act allows the companies to avail themselves of a $200.00 deductible provided it is so stated in the endorsement attached to the policy. If, however there is no endorsement attached to the policy, there will be no $200.00 deductible for the Act says that the endorsement *may* provide an exclusion of the first $200.00 of such loss for destruction of property.

In addition to the above mentioned property damage deductible, there is another exclusion in the endorsement which prevents the insured from making a settlement or bringing an action against an uninsured without the written consent of the company. While this exclusion may vary somewhat, it is basically the same in most endorsements and rather than comment at length as to the validity of this exclusion, one may refer to a recent South Carolina case[5] in which our Supreme Court commented on this exclusion.

It also appears in the exclusion that the endorsement does not apply so as to inure directly or indirectly to the benefit of any workman's compensation or disability benefits carrier, or any person or organization qualifying as a self-insurer under any workman's compensation or disability benefits law, or any similar law. This can be interpreted to mean that if the insured accepts compensation benefits and later recovers under this coverage, the insurance company's limit of liability is the difference between the compensation payment and the policy limit.

There is one other matter which may occasionally confront us, and that is where an insured automobile is being driven by an uninsured driver without the permission of the insured, and said automobile becomes involved in an accident.

5. Childs v. Allstate Ins. Co., 237 S. C. 455, 117 S. E. 2d 867 (1961).

In this instance, the owner of the automobile, would have a suit for his property damage, but the uninsured driver, driving the car without the insured's permission, would not be entitled to protection under the Act.

Until our courts have clarified some of these conditions in the endorsement, it is recommended that the insurance companies be most careful in not permitting a default judgement to be rendered.

By close cooperation between the insured and insurer, many dangerous situations can be averted. Yet there will still remain many problems with which we as lawyers will soon become involved.