

1977 S.C. Op. Atty. Gen. 320 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-393, 1977 WL 24729

Office of the Attorney General

State of South Carolina

Opinion No. 77-393

December 14, 1977

*1 A workmen's compensation carrier who pays benefits to a covered employee has no statutory right of subrogation in any payments made to the employee under the employee's uninsured motorist policy.

TO: Director
State Workmen's Compensation Fund

AUTHORITIES:

Code of Laws of South Carolina, 1976, Section 42-1-560;

[Senn v. Weeks & Co., 255 S.C. 585, 180 S.E.2d 336 \(1971\);](#)

[Ferguson v. State Farm, 261 S.C. 96, 198 S.E.2d 522 \(1973\);](#)

[Travelers v. Nat. Farmers Union, 252 Ark. 624, 480 S.W.2d 585 \(1972\);](#)

[Commissioners of State Insurance Fund v. Miller, 4 A.D.2d 481, 166 N.Y.S.2d 777 \(1957\);](#)

[Rhodes v. Automotive Ignition Co., — Pa. —, 275 A.2d 846 \(1971\).](#)

You have requested an Opinion concerning the State Fund's position on uninsured motorist coverage. In particular you have asked if the State Fund should advance its statutory subrogation claim, created under 1976 Code Section 42-1-560(b), against proceeds paid to a compensation recipient under his uninsured motorist coverage.

An examination of the applicable workmen's compensation treatises, and case law convinces me that the South Carolina Supreme Court would not allow the State Fund to advance a third-party claim against uninsured motorist payments.

In [Senn v. Weeks & Co., 255 S.C. 585, 180 S.E.2d 336 \(1971\)](#), our Court held that when an insurance company pays a claim under uninsured motorist, it becomes subrogated to that extent to the rights of the insured as against any and every person causing the injury or damage. The Court held that the uninsured motorist coverage does not insure the uninsured motorist, but is rather a contract between insured and carrier which inures solely to the benefit of the insured.

In [Ferguson v. State Farm; 261 S.C. 96, 198 S.E.2d 522 \(1973\)](#), the Court held that an insurance company could not by endorsement or otherwise reduce amounts to be paid under uninsured motorist coverage by the amounts paid to the insured under the State Workmen's Compensation Law. South Carolina's Court adopted the general rule followed in a majority of jurisdictions, holding that attempts by carriers to reduce payments under uninsured motorist by the amount of compensation benefits are void because they reduce effective coverage below that mandated by law and are contrary to public policy.

Although these cases are not directly on point, they serve to demonstrate two things. First, uninsured motorist coverage is a contractual relationship similar to other risk insurance which an individual may elect to purchase; and, secondly, the Court

will not favor attempts to reduce uninsured motorist benefits because additional compensation has been paid to the insured from other sources.

The exact question presented herein was before the Arkansas Supreme Court in [Travelers v. Nat. Farm Union](#), 252 Ark. 624, 480 S.W.2d 585 (1972). This Court determined, under a third party statute similar to ours, that the carrier's third party claim did not attach to proceeds received under uninsured motorist coverage. The Arkansas Court held that uninsured motorist coverage was not a tort recovery simply because liability depends upon tortious injury. To find otherwise could only be warranted if uninsured motorist coverage was a type of liability insurance on the uninsured motorist, a position rejected in Arkansas (and in South Carolina, see *Senn v. Weeks*, supra.)

*2 The Travelers Court held further:

A workmen's compensation carrier has no more right under the subrogation statute to benefit from this type of insurance which a covered employee elects to take at his own expense than it would from the proceeds of health, accident or hospital insurance. 480 S.W.2d at 588.

The Arkansas decision found support for its result in [Commissioners of State Insurance Fund v. Miller](#), 4 A.D.2d 481, 166 N.Y.S.2d 777 (1957), in which the New York Court reached the same conclusion on the same issue. See also [Rhodes v. Automotive Ignition Co.](#), — Pa. —, 275 A.2d 846 (1971).

Accordingly, it is the opinion of this office that a workmen's compensation carrier who pays benefits to a covered employee has no statutory right of subrogation in any payments made to the employee under the employee's uninsured motorist policy.

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