

The State of South Carolina



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September 14, 1989

The Honorable John G. Richards
Chief Insurance Commissioner
Department of Insurance
P. O. Box 100105
Columbia, South Carolina 29202-3105

Re: Sections 38-71-340(11) and 15-3-530

Dear Commissioner Richards:

You have requested the opinion of this Office whether Section 15-3-530, South Carolina Code of Laws, 1976 (as last amended by Act 432 of 1988), repeals Section 38-71-340(11) (as last amended by Act 394 of 1988). You suggest the presence of a potential conflict between Section 38-71-340(11) insofar as it provides a six-year limitation upon actions¹ brought to recover upon accident and health insurance policies¹ and the provisions of Section 15-3-530 that provide:

Within three years:

- (1) An action upon a contract, obligation or liability, express or implied, excepting those provided for in Section 15-3-520; ...
- (8) An action on any policy of insurance, either fire or life, whereby any person or property,

1. In its literal sense, Section 38-71-340(11) addresses a mandatory provision that must be included in all accident and health insurance policies; nonetheless, this provision has been construed by the South Carolina Supreme Court as providing a six-year statute of limitations on all actions upon accident and health insurance policies. Johnston v. Commercial Travelers Mutual Accident Association, 242 S.C. 387, 131 S.E.2d 91 (1963).

resident or situate in this State, may be or may have been insured, or for or on account of any loss arising under the policy, any clause, condition, or limitation contained in the policy to the contrary notwithstanding....

I first note that the interpretation of statutes is ultimately a matter within the province of the courts, Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942), and thus, my comments upon the question reflect my judgment as to how the courts may approach the matter and not necessarily a personal opinion or comment upon whether it was sound legislative policy to create a different statute of limitations for claims upon accident and health insurance policies. There are several rules of statutory interpretation adopted by the courts to guide us in attempting to determine how a court might determine the question.

First, there exists a strong presumption against the repeal of a prior statute by implication. Sutherland Statutory Construction (2d ed.) Section 23.10. Generally, repeal of a statute by implication is not favored, and is to be resorted to only in the event of an irreconcilable conflict between provisions of two statutes, and if the two statutes can be construed so that each will operate within the limits of its own terms, the Supreme Court will so construe them. In the Interest of Shaw, 274 S.C. 534, 265 S.E.2d 522 (1980); Sutherland, supra, Section 23.17. Moreover, statutes of a specific nature are not to be considered as repealed in whole or in part by latter general statutes unless there is a direct reference to the former statute or the intent of the Legislature to repeal the specific statute is expressly implied therein. Sharpe v. South Carolina Department of Mental Health, 281 S.C. 242, 315 S.E.2d 112 (1984).

Particularly, in the context of statutes of limitation, a specific limitation period controls over the more general or ordinary limitations period. State v. Life Insurance Company of Georgia, 254 S.C. 286, 175 S.E.2d 203 (1970). More importantly, "if there is any doubt as to which of two statutes (of limitation) applies, that doubt must be resolved in favor of the longest period, according to the great weight of authority." Scovill v. Johnson, 190 S.C. 457, 3 S.E.2d 543, 545 (1939). It is against this backdrop that I examine the competing statutes of limitation.

First, it is clear that Section 15-3-530 (as last amended by Section 1 of Act 432 of 1988) does not expressly repeal (or refer) to Section 38-71-340(11). Thus, it is presumed that the

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General Assembly did not intend to repeal Section 38-71-340(11). This presumption is, of course, strengthened here in that Section 38-71-340(11) provides the longer period for the bringing of an action upon an accident and health insurance policy. Scovill v. Johnson, supra.

Second, the relevant amendment to Section 15-3-530 (Section 1 of Act 432 of 1988) did not revise the scope of the statute; instead, the amendment only effected a reduction in the limitation period for those actions that had been and continue to be listed in the statute. It is reasonably clear that prior to the enactment of Act 432 of 1988, Section 38-71-340(11) provided the applicable statute of limitation for actions on accident and health insurance contracts, Johnston v. Commercial Travelers Mutual Accident Association, supra, and since Section 1 of Act 432 did not modify the scope of Section 15-3-530, it is unlikely that Act 432 was intended to amend the statute of limitations for those actions not earlier covered by Section 15-3-530.²

Finally, Section 38-71-340(11) is the more specific provision relative to actions upon accident and health insurance policies. Thus, even if we were to assume that Section 15-3-530, as most recently amended, also covers such actions, Section 38-71-340(11) would still be deemed the controlling statute governing the limitation period. State v. Life Insurance Company of Georgia, supra; Sharpe v. South Carolina Department of Mental Health, supra.

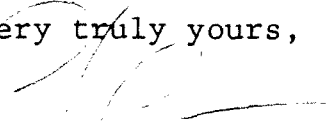
In conclusion, there exists a strong presumption recognized by the courts that Section 38-71-340(11) continues in full force and effect with regard to actions upon accident and health insurance policies. Moreover, there is nothing within the language of the recent amendments that suggest a legislative intent to repeal Section 38-71-340(11) or expand the scope of Section 15-3-530 to include actions upon accident and health insurance policies. For these reasons, I believe a court would conclude that the six-year statute of limitations provided by Section 38-71-340(11) (as last amended by Act 394 of 1988) con-

2. Parenthetically, Section 15-3-530, South Carolina Code of Laws, 1976, cross-references then extant Section 38-35-440(11), the predecessor provision to Section 38-71-340(11), thus, providing further indication that actions upon an accident or health insurance policy are beyond the scope of Section 15-3-530.

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tinues in force and effect for actions upon accident and health insurance policies.

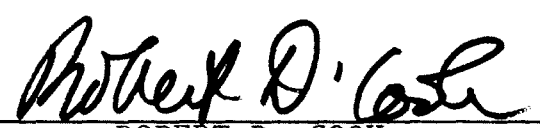
Very truly yours,



Edwin E. Evans
Chief Deputy Attorney General

EEE/shb

REVIEWED AND APPROVED:



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EXECUTIVE ASSISTANT FOR OPINIONS