The State of South Carolina

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Burnet R. Maybank, III
Counsel to the Governor
Post Office Box 11369
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Dear Mr. Maybank:

By your letter dated August 3, 1989, you request an "opinion as to whether [underinsured motorist] UIM claims are subject to subrogation." Attorney General Medlock has asked me to respond to that request.

In 1987, the South Carolina General Assembly enacted 1987 S. C. Acts 155, which was approved June 5, 1987, and took effect January 1, 1988. This Act, commonly known as the "Insurance Recodification Act," recodified former S. C. Ann. §56-9-831 (1976) 1/ as §33-78-160 to provide:

> Automobile insurers shall offer, at the option of the insured, uninsured motorist coverage up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. They shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at fault insured or underinsured motorist. If, however, an

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1/ S.C. Code Ann. §56-9-331 (1976 and 1986 Cum. Supp.) provided: "Benefits paid pursuant to this section shall be subject to subrogation and assignment."

> insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured motorist coverage. Coverage on any other vehicles may not be added to that coverage. Benefits paid pursuant to this section are subject to subrogation and assignment. [Emphasis added.]

Section 24 of Act No. 155 of 1987 provides:

> The Code Commissioner is authorized and directed to place all appropriate provisions of acts dealing with insurance enacted during the 1987 session of the General Assembly in the appropriate area covered by this act. He is further authorized and directed to eliminate or delete from this act any provision of law contained herein whose subject matter was repealed or eliminated by the General Assembly in any other act passed during the 1987 session. He is further authorized and directed to amend provisions of this act corresponding to amendments of the insurance laws of this State as may have been passed by the General Assembly during the 1987 session in other acts.

1987 S. C. Acts 155, §24.

Also in 1987, the South Carolina General Assembly enacted 1987 S. C. Acts 166 which was approved and took effect on June 4, 1987. Section 22 of Act No. 166 of 1987 amended former §56-9-831 to provide:

> Automobile insurance carriers shall offer, at the option of the insured, uninsured motorist coverage up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 56-9-830. Such carriers shall also offer, at the option of the insured, underinsured motorist

> coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at fault insured or underinsured motorist. If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage. Benefits paid pursuant to this section are not subject to subrogation and assignment. [Emphasis added.]

1987 S. C. Acts 166, §22. The language of Act No. 166 is the version of §38-77-160 that has been codified. S. C. Code Ann. §38-77-160 (1976 and 1988 Cum. Supp.).

Of course, statutory construction is, ultimately, the province of the courts. Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942).

In interpreting a statute, the primary purpose is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987); Multi-Cinema, Ltd. v. South Carolina Tax Comm'n,292 S.C. 411, 357 S.E.2d 6 (1987). When interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983).

Where a statute is clear and unambiguous, there is no room for construction and the terms of the statute must be given their literal meaning. Duke Power Co. v. South Carolina Tax Comm'n, 292 S.C. 64, 354 S.E.2d 902 (1987). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, supra. In determining the meaning of a statute, it is the duty of the court to give force and effect to all parts of the statute . State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979). In construing a statute, words must be given their plain and ordinary meaning, without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Bryant v. City of Charleston, 295

S.C. 408, 368 S.E.2d 899 (1988). The legislature is presumed to have fully understood the import of words used in a statute and intended to use them in their ordinary and common meaning, unless that meaning is vague and indefinite, or in their well-defined legal sense, if any. Powers v. Fidelity and Deposit Co. of Maryland, 180 S.C. 501, 186 S.E. 523 (1936).

When two or more statues relating to the same matter are ambiguous or inconsistent, the court may reconcile them into one harmonious whole, especially when both acts are passed at the same legislative session. State v. Liggett & Myers Tobacco Co., 171 S.C. 511, 172 S.E. 857, appeal dismissed, 291 U.S. 652 (1933).

> Generally, statutes adopted at the same session of the legislature are not to be construed as inconsistent or in conflict if it is possible to construe them otherwise; but if inconsistent or conflicting provisions can not be reconciled it is not the duty of the court to reconcile the irreconcilable or to raise by implication and inference to the dignity of a solemn pronouncement of the legislature what is clearly due, not to deliberate intention, but to inadvertence or carelessness. Where statutes passed at the same session are necessarily inconsistent, the question of which shall take effect depends on the intent of the legislature. Ordinarily a statute which deals with the common subject matter in a minute and particular way will prevail over one of a more general nature; and a legislative intent clearly expressed in a special act will prevail over any implication which can be gathered from a general statute, where both were approved contemporaneously.
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> It is a general rule that where statutes passed at the same session are irreconcilably inconsistent, the latest in point of time will prevail. In this connection it has been held that, as between inconsistent statutes approved on the same day, that which takes effect last will prevail; that a statute passed later, but going into effect earlier, will prevail over one passed earlier, but going into effect later; that an act going into effect immediately will prevail over an act passed before it, but going into effect later; that where two acts, each without any

> repealing or emergency clause, are to take effect at the same time, the one approved last will prevail, and that one act containing an emergency clause will overcome another which does not contain such a clause, passed on the same day, or at the same session. Where acts passed at the same session contain conflicting clauses, the whole record of legislation will be examined to ascertain the legislative intent, and such intent, if ascertained, will be given effect, regardless of priority of enactment. [Footnotes omitted.]

82 C.J.S. Statutes §367(b).

The language of §24 of Act No. 155 of 1987 appears to be a clear and unambiguous declaration of legislative intent concerning other acts passed by the South Carolina General Assembly in 1987 involving the insurance laws of South Carolina. Therefore, 1987 S.C. Acts 166, §22 as it amended §38-77-160 (and former §56-9-831) would prevail here, regardless of the priority of enactment between 1987 S.C. Acts 155 and 1987 S.C. Acts 166. Therefore, UIM claims would not be subject to subrogation according to 1987 S.C. Acts 166, §22 (as codified at §38-77-160). Of course, if this conclusion is not consistent with the intent of the General Assembly, the legislature may choose to amend the relevant statutory provisions.

If I can answer any further questions concerning this matter, please let me know.

Sincerely,

Samuel L. Wilkins

Samuel L. Wilkins
Assistant Attorney General

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REVIEWED AND APPROVED BY:

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