

## Insurers Must Disclose Limits Before Suit is Filed



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As part of the newly-enacted South Carolina Fairness in Civil Justice Act of 2011, which became effective January 1, 2012, insurance companies must now, under certain conditions, disclose the automobile coverage limits to a plaintiff's lawyer prior to the lawyer filing suit. This has been a controversy in our state for a number of years, and this provision is tucked away into this somewhat comprehensive legislative bill at Section 38-77-250.

It provides that every insurer that provides automobile insurance coverage in South Carolina, which is or may be liable to pay for all or any part of any claim, shall provide "within 30 days of receiving a written request from the claimant's attorney, a statement, under oath, of a corporate officer, or the insurer's claims manager, stating with regard to each known policy of non-fleet private passenger insurance issued by it, the name of the insurer, the name of the insured, and the limits of coverage."

This request must be initiated by the plaintiff's lawyer, and the reply must be "under oath" either by a corporate officer or the insurer's claims manager.

The statute goes on to say, however, that the insurer "may provide a copy of the declarations page of each policy in lieu of providing such information." The statute does not specifically say the declarations page must be certified "under oath" to be a true and accurate copy of the coverage as requested. A safe course of action might be to provide such a notarized affirmation.

The plaintiff's lawyer or claimant's lawyer also has certain hoops to jump through in making the request. The Act provides the initial request shall set forth "under oath" the specific nature of the claim asserted and shall be mailed to the insurer by certified mail or statutory overnight delivery. The request must also state the attorneys are authorized to make such a request and must be accompanied by a copy of the incident report by which the claim is derived.

This is unexplored territory for insurers in South Carolina but cannot be ignored. If an insurer receives a request that does not comply, then Section (B) of 38-77-250 requires the insurer to state in writing what additional information is needed in order to comply with this Section.

Additional protection is afforded to the insurance company by other provisions of this law, which provide that this law does not create a waiver of any defenses to coverage available to the insurer, and it is not admissible as evidence. There is a continuing duty to amend if additional information is obtained and, as noted above, the provisions do not apply to the disclosure of limits from fleet policy limits, umbrella coverage, or excess coverage. Moreover, the information received is regarded as "confidential and must not be disclosed to any outside party." The claimant's attorney or plaintiff's attorney must destroy all of the information received pursuant to this Section upon final disposition of the case.

Finally, the court may impose sanctions for violations.

A full review of this law bears close scrutiny by all companies writing automobile insurance in South Carolina. If you have any questions, please don't hesitate to contact me.

- Jack

### **About Jack Griffeth**

Jack Griffeth is a shareholder at Collins & Lacy, P.C. His 35-year practice of law has focused on defense trial work, representing employers in employment related litigation and mediation. Jack serves as General Counsel to Wofford College, Furman University and Spartanburg Methodist college. Jack is a summa cum laude graduate of Wofford College where he earned his degree in Liberal Arts. He received his Juris Doctor from Duke University. In 1976, Duke University created the Charles Murphy Award for Jack, in recognition of his unique collegial contributions to the Duke Law School community. He's also the 2008 recipient of the Greenville Bar's most prestigious honor, the Tommy Thomason Award.

Jack is the Past President of the Greenville Bar Association, President-Elect for the S.C. Bar Foundation Board of Directors and a member of the House of Delegates for the 13th Judicial Circuit. He is a past member of the South Carolina Bar's nominations committee and past-president of the Bar's Alternative Dispute Resolution Council. Jack is a certified mediator by the South Carolina Bar and speaks frequently on the subject.

He is considered one of South Carolina's pre-eminent attorneys by Martindale-Hubbell and has been named by his peers a Best Lawyer in America, the oldest and most respected peer-review publication in the legal profession.

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