

Handling Auto Accident Cases in South Carolina

The Basics:

Plaintiff's Causes of Action:

1. **Negligence**
2. **Negligence *Per Se* / *Violation of Statutory Laws***
3. **Negligent Entrustment**
4. **Dram Shop**

Commonly Argued Defenses and Themes of Defense Counsel:

1. **Just an Accident...**
2. **Unavoidable Accident**
3. **Contributory Negligence**
4. **Negligence of Third-Party**
5. **Last Clear Chance**
6. **Sudden Emergency**
7. **Delays in Treatment**
8. **Accident did not Cause Injuries**
9. **Injuries are Just "soft tissue"**
10. **Lack of Significant Property Damage**

Sample Complaint

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

_____,)

Plaintiff,)

vs.)

_____,)

Defendant.)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

CIVIL ACTION No.: _____

COMPLAINT
(Jury Trial Demanded)

The Plaintiff, complaining of the Defendant herein, would respectfully show unto this Honorable Court the following:

1. Plaintiff was a citizen and resident of Richland County, South Carolina.
2. Upon information and belief, Defendant is a citizen and resident of Richland County, South Carolina.
3. Jurisdiction and venue are proper in this Court because the event that gives rise to this action occurred in Richland County, South Carolina.
4. This action arises from a motor vehicle collision that occurred on October 16, 2014 in Richland, South Carolina.
5. On October 16, 2014, Plaintiff was lawfully operating a motor vehicle on Assembly Street in Richland County.

6. As Plaintiff was proceeding through the intersection of Assembly Street and Park Street with a green traffic light, she was violently struck on the passenger side of her vehicle by the Defendant's vehicle.

7. Defendant failed to observe the red light when approaching or otherwise enter into the intersection of Assembly Street and Park Street.

8. Plaintiff did not cause or contribute to the collision in any manner, and further she had no ability to avoid or prevent the collision.

9. As a result of the collision, Plaintiff suffered painful, traumatic, and injuries throughout her body, including to her spine that necessitates a spinal surgery and significant medical treatment. Plaintiff has incurred, and will continue to incur in the future, medical expenses, and has suffered, and will continue to suffer general damages such as physical and mental pain and suffering, emotional anguish, loss wages, and a loss of enjoyment of life, along with considerable medical bills and inconvenience, all of which they are entitled to be compensated for as a direct and proximate result of Defendant's actions described above.

10. Defendant was negligent, negligent *per se*, careless, reckless, and grossly negligent in one or more of the following particulars:

- a. In causing his vehicle collide into Plaintiff's vehicle;
- b. In operating a vehicle in a distracted manner;
- c. In failing to observe traffic signals or lights;
- d. In failing to keep a proper outlook;
- e. In operating a vehicle in a manner too fast for conditions;
- f. In operating a vehicle in a manner to avoid a collision;
- g. In failing to maintain proper control over the vehicle;
- h. In failing to yield the right of way;
- i. In entering an intersection with oncoming traffic;
- j. In failing to properly brake the vehicle to avoid the collision;
- k. In failing to take any evasive action by means to keep from causing the collision;
- l. In failing to obey the statutory and common laws of the State of South Carolina;

- m. In failing to use the degree of caution and care that a reasonable driver would have used under the same or similar circumstances;
- n. In operating his motor vehicle in whole or in part in a careless, reckless, willful, and wanton disregard for others; and
- o. In otherwise being negligent or reckless as discovery may reveal.

All of which were the direct and proximate cause of the injuries and damages suffered by Plaintiff.

11. Plaintiff is entitled to a judgment against the Defendant to compensate her for the damages and injuries sustained.

12. Plaintiff is entitled to an award of punitive damages to the extent Defendant's conduct was in violation of statutory laws or reckless, willful, or wanton.

13. Plaintiff demands a jury trial.

WHEREFORE, Plaintiff prays this Honorable Court for judgment against Defendant for: (a) actual and consequential damages; (b) punitive damages; (c) pre-judgment interest; (d) costs and attorney's fees in instituting this action; and (e) for such other and further legal and equitable relief as this Honorable Court may deem just and proper.

Respectfully submitted,

By:

Robert F. Goings, Esq. (S.C. Bar # 74855)
Goings Law Firm, LLC
914 Richland Street, Suite A-101
Post Office Box 436 (29202)
Columbia, South Carolina 29201
Email: rgoings@goingslawfirm.com
Phone: (803) 350-9230
Fax: (877) 789-6340
Attorney for Plaintiff

_____, 2015

Columbia, South Carolina

How to Determine Insurance Coverage Limits of the At-Fault Driver?

Answer: Comply with S.C. Section 38-77-250

- **Written Request to At-Fault Driver's Carrier**
- **Set forth under oath the specific nature of the claim asserted**
- **Send certified mail or statutory overnight delivery**
- **Attorney must state that he is authorized to make such request**
- **Include a copy of the incident report**

SECTION 38-77-250. Release of coverage information upon written request of claimant's attorney; confidentiality.

(A) Every insurer providing automobile insurance coverage in this State and which is or may be liable to pay all or a part of any claim shall provide, within thirty 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 nonfleet private passenger insurance issued by it, the name of the insurer, the name of each insured, and the limits of coverage. The insurer may provide a copy of the declaration page of each such policy in lieu of providing such information. The 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 also must state that the attorney is authorized to make such a request and must be accompanied by a copy of the incident report from which the claim is derived.

(B) If the request provided in subsection (A) contains information insufficient to allow compliance, the insurer upon whom the request was made may so state in writing, stating specifically what additional information is needed and such compliance shall constitute compliance with this section.

(C) The information provided to a claimant or his attorney as required by subsection (A) of this section shall not create a waiver of any defenses to coverage available to the insurer and shall not be admissible in evidence.

(D) The information provided to a claimant or his attorney as required by subsection (A) shall be amended upon the discovery of facts inconsistent with or in addition to the information provided.

(E) The provisions of this section do not require disclosure of limits for fleet policy limits, umbrella coverages, or excess coverages.

(F) The information received pursuant to this section is confidential and must not be disclosed to any outside party. Upon final disposition of the case, the claimant's attorney must destroy all information received pursuant to this section. The court must impose sanctions for a violation of this subsection.

HISTORY: 2011 Act No. 52, Section 4, effective January 1, 2012.



SAMPLE LETTER

October 15, 2015

VIA CERTIFIED MAIL
& FACSIMILE (888) 870-0317

Acme Insurance Company
Claims Department
Post Office Box 1000000
Columbia, South Carolina 29202

Re: Client: John Q. Public
Your Insured: Betty Jo Driver
Claim #: 400-C-9999
DOI: 3/26/14

Dear Sir or Madam:

Please be advised that this firm has been retained to represent John Q. Public. My client suffered personal injuries from a motor vehicle collision that occurred in Richland County on March 25, 2014. Your insured, Betty Jo Driver, was negligent in causing this collision. A copy of the incident report is enclosed.

Pursuant to S.C. Code Ann. § 38-77-250, we are hereby writing to obtain information concerning automobile insurance coverage of the insured and the insured vehicle, the driver, and the owner of the vehicle. We hereby request within thirty (30) days from the above date, a statement, under oath, of a corporate officer or the insurer's claims manager stating with regard to each known policy issued, the name of the insurer, the name of each insured, and the limits of coverage. In the alternative, you may provide a copy of the declaration page of each such policy in lieu of providing such information. As counsel for John Q. Public, I am hereby authorized to make this request.

We would request this information be provided at your earliest convenience. Please direct any and all future correspondence concerning this matter to my attention. Thank you for your assistance.

Sincerely,

Robert F. Goings

cc: John Q. Public
Enclosure

SWORN TO ME BEFORE THIS _____ day
of _____, 2015

NOTARY PUBLIC for South Carolina
My Commission Expires: _____

Underinsured Motorist Coverage (UIM) & Uninsured (UM) Motorist Coverage

Checklist:

- 1. Obtain your Client's Auto Insurance Declaration Page**
 - All vehicles in the household
 - All Auto Insurance Company Policies

- 2. If the Client's Policy lacks UIM Coverage, perform a "meaningful offer" analysis**
 - *State Farm Mut. Auto. Ins. Co. v. Wannamaker*, 291 S.C. 518, 354 S.E.2d 555 (S.C. 1987)
 - S.C. Code Section 38-77-350
 - Reform the Policy to Include UIM Coverage if a meaningful offer was not made.

- 3. Perform a "Stacking" Analysis**
 - Stacking is maximizing the insured's recovery of damages under more than one policy in succession until all damages are satisfied or until the total limits of all policies have been exhausted.
 - Only a Class I insured can stack.
 - Class I: the named insured, spouse and relatives residing in the household
 - Measuring vehicle for stacking is the vehicle involved in collision.
 - Coverage is "personal and portable" – follows individual not the insured vehicle.

- 4. Service of Process**
 - UM – Must Serve the UM Carrier
 - UIM – Must Serve both the UM Carrier and the at-fault driver
 - S.C. Code Section 38-5-70 states the S.C. Director of Insurance is the exclusive means of service to the UIM/UM carrier.

- 5. How to Serve the UIM/UM Carrier?**
 - Mail or deliver service of process on the Director in his capacity as agent for service of process at 1201 Main Street, Suite 1000, Columbia, SC 29201
 - Furnish two copies of the Summons and Complaint, and anything else you wish to have served, to the Director for each insurer served per UM / UIM notice.
 - Service of process fee is \$10 for each insurer served. Checks should be made payable to the South Carolina Department of Insurance.
 - Fully, clearly and correctly identify the insurer to be served. The precise name of the insurer should be listed on the declarations page of the policy.
 - Clearly state if the case is UM or UIM and serve notices separately

Maximizing Results in a “Low Impact” Collision

Common Themes of Defense Counsel

“Plaintiff can’t be hurt as bad as he says.....”

“She had a bad back before the accident. She had a bad back after the accident.”

“It was just a little fender bender.....just a little bump in the back.”

“The bumper wasn’t even damaged, how could she be hurt?”

“Just look at the pictures of the car, not even a dent.”

“There were no broken bones and not even a bruise..”

“Ms. Jones did not complain about these injuries immediately...”

Maximizing Results in a “Low Impact” Collision

5 Trial Tips for the Plaintiff’s Attorney:

- 1. Prove Medical Causation**
 - establishing medical causation is critical
 - testimony from doctors, paramedics, therapists
- 2. Address Pre-Existing Conditions & Lapses in Treatment**
 - testimony from medical providers
- 3. Establish Future Medical Damages**
 - often overlooked
 - obtain a future treatment plan
 - calculate cost of future medical care
- 4. Know how to Argue Property Damage**
 - property damage is a double-edge sword
- 5. Empower the Jury with Moral Responsibility**

Bennett & Carey v. Dyer, Inc.

2012-CP-40-8215



Simple Negligence (Rear End Collision)

Injuries: Cervical Spine - Herniated Disk

Damages: 18K – Bennett past medicals; 27K – Carey past medicals
80K – Bennett future medicals

VERDICT: \$600,000.00 (7/23/2014)

Smith v. Giordano

2013-CP-40-2468



Simple Negligence (Rear End Collision)

Injuries: Right Shoulder - Labrum Tear
Lumbar Spine - Lumbar Facet Joint

Damages: 57K in past medicals
140K in future medicals

VERDICT: \$897,500.00 (10/28/2014)