



South Carolina Department of Insurance

Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201


NIKKI R. HALEY
Governor

RAYMOND G. FARMER
Director

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6160

BULLETIN NUMBER 2016-09

TO: Insurers writing Automobile, Property, and Casualty Liability Insurance in South Carolina

FROM: Raymond G. Farmer
Director of Insurance 

SUBJECT: Withdrawal of Bulletin 6-77 Relating to Liability Insurance Coverage for Punitive Damages

DATE: October 5, 2016

I. Purpose

The purpose of this bulletin is to formally withdraw South Carolina Department of Insurance Bulletin 77-6 and to clarify that based upon South Carolina law insurers writing liability insurance policies other than automobile liability insurance policies in South Carolina may exclude coverage for punitive damages. It supersedes and replaces any and all bulletins relating to this subject previously issued by this Department.

II. Discussion

South Carolina courts have traditionally held that “insurers have the right to limit their liability and to impose whatever conditions they desire upon an insured, provided they are not in contravention of some statutory inhibition or public policy.”¹ South Carolina law contains one statutory provision referencing punitive damages in relation to automobile insurance liability policies is found in S.C. Code Section 38-77-30 and provides that “damages” as used in chapter 77, includes both actual and punitive damages. Therefore, automobile liability insurance policies must provide coverage for punitive damages. *See* S.C. Code Ann. Section 38-77-30(4) (2015).

In policies other than automobile insurance policies, coverage for punitive damages depends upon the language of the liability insurance policy. The absence of an express exclusion may create an

¹ *Penn. Nat'l Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 550-51, 320 S.E.2d 458, 461 (Ct.App.1984) (citations omitted).

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ambiguity in coverage. However, rules of construction require that where the words of the policy are ambiguous, or where they are capable of two reasonable interpretations, the construction most favorable to the insured will be adopted. In *South Carolina State Budget & Control Board, Division of General Services, Insurance Reserve Fund v. Prince*,² the general liability policy provided coverage for “all sums” that insured was “legally obligated to pay as damages.” Because the policy did not limit recovery to actual or compensatory damages, the South Carolina Supreme Court found that the policy encompassed punitive damages.

In the absence of a clear exclusion, an agreement to pay “all sums that the insured becomes legally obligated to pay as damages” includes punitive as well as compensatory damages. Generally, South Carolina insurers have the right to limit their liabilities provided the limitations and conditions do not conflict with statutory law or public policy. With the *exception* of automobile insurance policies, South Carolina law allows insurers to exclude coverage for punitive damages. The South Carolina Court of Appeals recognized the validity of a punitive damage exclusion in *Pulliam v. Travelers Indemnity Co.*, 403 S.C. 332, 743 S.E.2d 117 (2013) under a Directors and Officers (D&O) Liability policy. The Court of Appeals found that the D&O endorsement which covered wrongful acts specifically provided that it did not cover punitive or exemplary damages based upon that exclusion and the validity of that provision was upheld.

III. Questions

Questions about the content of this bulletin should be directed to the attention of Gwendolyn McGriff at gmcgriff@doi.sc.gov.

² *South Carolina State Budget & Control Board, Division of General Services, Insurance Reserve Fund v Prince*, 304 S.C. 241, 403 S.E.2d 643(1991)

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