

U.S. Supreme Court  
U.S. Court of Appeals, Fourth Circuit  
U.S. District Court  
U.S. Bankruptcy Court  
Attorney General

# 50 Most Important Opinions

S.C. Supreme Court  
S.C. Court of Appeals  
S.C. Circuit Court  
Administrative Law Court  
Workers' Compensation Commission  
Ethics Rulings

## Attractive nuisance decision tops list

### OPINION NO. 1

HENSON v. INTERNATIONAL PAPER

#### Court adopts Restatement, dumps attractive nuisance

The Supreme Court has dissolved the distinction between the torts of attractive nuisance and unguarded dangerous condition in deciding the case of a boy who drowned in a Georgetown County canal.

In place of the two tort theories, the high court adopted Restatement (Second) of Torts § 339 (see the full text on page 12).

Attorneys for both parties lauded the court for simplifying what had become a muddled area of jurisprudence.

The defendant's attorney, Andrew K. "Draw" Epting Jr. of Charleston, said the ruling fixed a "damn mess" in premises liability cases involving children.

"They wanted to clean up the law in South Carolina, and that's what they did and they did a good job," Epting told *Lawyers Weekly*. "Now things are a whole lot simpler in our state and a whole lot clearer."

The plaintiff's attorney, Gregg E. Meyers of Charleston, concurred. "They've essentially merged a lot of the different ideas and concepts, so instead of it being a fragmented analysis, it's now a unified premises liability analysis."

The case is *Henson v. International Paper Co. et al.* (*South Carolina Lawyers Weekly* No. 010-138-07, 13 pages). Chief Justice Jean Hoefler Toal wrote the opinion for a unanimous court.

In the Aug. 27 ruling, the justices said the plaintiff's attrac-

### OPINION NO. 2

DOE v. GREENVILLE

#### High court rejects claim for loss of filial consortium

The parents of a 14-year-old girl who had sex with a substitute teacher could not recover damages for loss of consortium from the Greenville County School District, the Supreme Court has ruled.

The apparent first-impression ruling clarified that South Carolina does not recognize a parental claim for loss of filial consortium. Parents can recover only for the loss of their children's services — not intangibles like companionship, the majority said in a 4-1 decision.

"Our argument all along was that there was no common law right to a loss-of-filial-consortium claim. We found a lot of cases in the 1800s that dealt with child services, where there would actually be an economic loss. But there was none in which there was an emotional claim," said Greenville lawyer Christopher R. Antley, who represented the school district.

The plaintiffs' lawyer, Gregg E. Meyers of Charleston, disagreed and said he plans to seek a rehearing.

"I always understood that the cases, when they talked about the loss of services for a child, were talking about the intangibles. The court seems to think that's different," he said.

"There are cases in South Carolina that allow a dog owner to recover for injuries to his dog. I think, unfortunately, an adult can make a stronger claim for his dog than for his child. That is very frustrating," Meyers told *Lawyers Weekly*.

### OPINION NO. 3

NATIONWIDE v. SMITH

#### UM benefits depend on policyholder's insurable interest

The availability of uninsured motorist benefits in a Lexington County crash pivoted on whether the policyholder had an insurable interest in the vehicle involved, the Court of Appeals ruled Sept. 26.

The case dealt with a policy on a sport utility vehicle that was actually owned by the policyholder's son. When the son and his wife were injured in a collision with an uninsured motorist, they sought benefits under the policy.

The trial court found that they were entitled to UM benefits regardless of whether the policyholder had an insurable interest in his son's SUV.

In a 2-1 decision, the Court of Appeals disagreed and sent the case back to the trial court for a determination of what interest, if any, the policyholder had in the vehicle.

The case is *Nationwide Mut. Ins. Co. v. Smith* (*South Carolina Lawyers Weekly* No. 011-138-07, 12 pages). Judge Thomas E. Huff wrote the opinion and Judge Donald W. Beatty concurred. Judge Ralph King Anderson Jr. dissented and said he would have upheld the trial court's finding of coverage.

The insurance company's attorney, John Robert "J.R." Murphy of Columbia, said the ruling may have been a first-impression decision, but it was consistent with settled case law.

"All insurance policies require an insurable interest in

# INSURABLE: Court says liability coverage must be valid to recover under UM provision

■ Continued from PAGE 1

think that's a very traditional rule and it's a very necessary rule — otherwise it's just gambling. You have to have some legitimate interest to take it out," Murphy told *Lawyers Weekly*.

"You can't have UM apart from liability coverage. You need to have an insurable interest in the policy as a whole to have all the coverages. That seems to be the rule they're laying down," he said.

Bradley Baker of Lexington, who represented the insureds, said he is considering whether to seek a rehearing and cert, if necessary, on the issue.

"The insurance company wasn't able to cite any cases that deal with insurable interest in UM — they are all liability cases, at least in South Carolina," Baker said, adding that UM coverage is different from liability.

"There's case law out there that says the UM statute is remedial and was enacted for the benefit of injured persons. It's to be liberally construed to accomplish that purpose," he said.

Baker said he agreed with Judge Anderson's dissent, which said the insurable interest question was inconsequential and UM benefits should be available.

Baker also said he thought the close family ties of his clients were important. "We're dealing with a family who was living in the same household. This wasn't a situation where the father was insuring a car of his son who wasn't living with him."

The case comes on the heels of a Supreme Court ruling that said the mandatory nature of UM coverage meant that it was "personal and portable" — it follows the individual, not the car (see April 16, 2007 *Lawyers Weekly*). That case was *Nationwide Mut. Ins. Co. v. Erwood*.

Concerns about the way the *Erwood* decision was applied to the present case have led Murphy to contemplate seeking a rehearing as well.

"Assuming that we were able to prove no insurable interest, I think we should be following the *Erwood* case. I think this decision may be in conflict with that," he said.

Baker said he believed the decision comported well with *Erwood*.

## Opinion Brief

**Case Name:** *Nationwide Mut. Ins. Co. v. Smith* (South Carolina Lawyers Weekly No. 011-138-07, 12 pages).

**Court:** S.C. Court of Appeals

**Judge:** Judge Thomas E. Huff. Judge Ralph King Anderson Jr. dissented.

**Attorneys:** John Robert Murphy, Murphy & Grantland, PA, of Columbia, for insurance company-appellant. Bradley Baker, Salley Law Firm, PA, of Lexington, for insureds-respondents.

**Issue:** Was a policyholder required to have an insurable interest in the covered vehicle in order for the vehicle's owner and his wife to claim UM benefits under the policy?

**Holding:** Yes. Liability insurance requires an insurable interest to be valid. Since UM coverage is linked to liability coverage, its validity is indirectly tied to the existence of an insurable interest.

**Potential Impact:** The apparent first-impression decision makes clear that, despite the mandatory nature of UM and the requirement that it be liberally construed in favor of coverage, benefits will not be available unless the policyholder had an insurable interest in the subject vehicle.

**Opinion Digest:** See *South Carolina Lawyers Weekly* Oct. 8, 2007, page 10.

**Comments?** E-mail [greg.froom@sc.lawyersweekly.com](mailto:greg.froom@sc.lawyersweekly.com).

### Facts

On Oct. 29, 2003, the policyholder's son, James W. Smith Jr., and daughter-in-law, Elizabeth Smith, were involved in a wreck while traveling in a 1999 Mitsubishi Montero Sport owned by the son.

The accident occurred when an uninsured motorist hit the Montero, causing it to overturn. The son and daughter-in-law pursued UM claims under the Nationwide policy that covered the Montero.

The policyholder was James W. Smith Sr. The policy had UM limits of \$50,000 per person and \$100,000 per occurrence.

The policy also listed a 1992 Ford Ranger that was owned by the policyholder and his grandson. It provided \$50,000/\$100,000 UM coverage on the Ranger.

Nationwide denied coverage and filed a declaratory judgment action seeking a ruling that the policy on the Montero was void for lack of an insurable interest.

The son and the daughter-in-law answered and counterclaimed. They argued that because they used the Montero to transport the policyholder, he benefited from its use and had an insurable interest.

They also contended that the insurable interest requirement for liability coverage was irrelevant when dealing with UM. The trial court agreed and held that the son and the daughter-in-law were entitled to UM benefits on the Montero policy and could stack coverage from the Ranger.

Nationwide appealed.

### Holding

The Court of Appeals ruled that the UM coverage question turned on whether the policyholder had an insurable interest in the Montero. The panel remanded the case for further proceedings on the issue.

"[L]iability insurance is dependent upon an insurable interest, and since liability insurance cannot be issued without UM coverage, UM coverage, consequently, is indirectly dependent on the existence of an insurable interest," Judge Huff wrote.

The panel said the trial court's reliance on the cases of *Unison Ins. Co. v. Schmidt*, 339 S.C. 362 (2000), and *Hogan v. Home Ins. Co.*, 260 S.C. 157 (1973), was misplaced. Those cases involved insurance companies that tried to exclude UM coverage under valid policies.

"It is undeniable that, under a valid insurance policy, Nationwide could not exclude coverage in this case. The question, however, is not whether Nationwide is unduly excluding coverage; rather, the issue is whether there exists a valid insurance policy," the opinion stated.

The court said it was mindful of the statute requiring UM coverage to be liberally construed in favor of injured persons. "However, we do not believe that entitles this court to pervert the well-settled rule of law in this country that an insured must possess an interest in the subject matter of the policy," Judge Huff wrote.

If the policyholder did have an insurable interest in the Montero, the son and daughter-in-law would be able to recover UM coverage under that policy, as well as under the Ranger policy, according to the decision.

If he lacked an insurable interest, the court would not be without coverage, the court said, citing the recent case of *Erwood*.

"According to *Erwood*, the [son and daughter-in-law] would be limited in recovery to the UM coverage provided on the Ranger, the non-involved vehicle," the opinion stated.

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