



ALAN WILSON
ATTORNEY GENERAL

January 31, 2018

Mr. Scott D. Beard, Deputy Director
S.C. Department of Crime Victim Compensation
1205 Pendleton Street, Suite 401
Columbia, SC 29201

Dear Mr. Beard:

We received your letter dated January 22, 2017 for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter):

Does the Department of Crime Victim Compensation (DCVC) have the authority to offset or recover financial assistance from a claimant for monies paid out by DCVC (DCVC is the payer of last resort) if the claimant is the driver of a motor vehicle and the claimant is claiming uninsured motorist coverage from a resident-relative? (The claimant[] is claiming his own uninsured coverage policy and wants to stack the policies.)

Law/Analysis:

As you likely are aware, the South Carolina Department of Insurance controls South Carolina's Uninsured Motorists Fund. S.C. Code Ann. § 38-77-154. As you know, this Office issued a 2013 opinion regarding a similar question to yours. See Op. S.C. Att'y Gen., 2013 WL 5494614, at *2 (S.C.A.G. Sept. 23, 2013). In that opinion, we discussed subrogation as:

[S]ubrogation broadly defined means "the substitution of one person in the place of another with reference to a lawful claim or right." Shumpert v. Time Ins. Co., 329 S.C. 605, 496 S.E.2d 653 (Ct.App.1998) (citing 73 Am.Jur.2d Subrogation § 1 (1974)). Subrogation "enables the insurer to recover the amount paid to its insured out of any judgment or settlement proceeds received by the insured from the third party." Shumpert, 329 S.C. 605, 496 S.E.2d 653. Therefore, let us examine more law concerning subrogation. This State recognizes the right to subrogation through three different methods: statutorily, by contract, and through equity. Shumpert v. Time Ins. Co., 329 S.C. 605, 496 S.E.2d 653 (Ct.App.1998) (citing Dailey v. Secura Ins. Co., 164 Wis.2d 624, 476 N.W.2d 299 (App.1991)).

Op. S.C. Att'y Gen., 2013 WL 5494614, at *2 (S.C.A.G. Sept. 23, 2013). As we pointed out in the 2013 opinion, the law prohibits benefits paid pursuant to S.C. Code Ann. § 38-77-160 from being subrogated or assigned. S.C. Code Ann. § 38-77-160. Nevertheless, South Carolina also authorizes subrogation regarding compensation for Victims¹ of a crime when it states that:

¹ "Victim(s)" is capitalized throughout this opinion as it is a Constitutionally-defined term in Article I, Section 24 of the South Carolina Constitution.

Payment of an award pursuant to this article subrogates the State to the extent of the payment to any right of action accruing to the claimant or to the victim or intervenor to recover losses resulting from the crime with respect to which the award is made, except that subrogation shall not reduce the financial recovery by the victim, claimant, or intervenor to less than one hundred percent of actual losses or expenses. The subrogation amount must be reduced if there is a jury award or judicial award in a bench trial, which results in a loss to the victim, claimant, or intervenor. Subrogation shall not be reduced if the action is terminated other than by a jury award or judicial award in a bench trial.

S.C. Code Ann. § 16-3-1250 (1976 Code, as amended) (emphasis added). The law authorizes awards in the following circumstances:

- (A) An award may be made for:
- (1) reasonable and customary charges as periodically determined by the board for medical services, including mental health counseling, ...
 - (2) reasonable and customary charges as periodically determined by the board for other services required and rendered as a direct result of the injury upon which the claim is based, ...
 - (3) loss of earning or support, provided that:
 - (a) claimant is deprived of that income for at least two consecutive weeks;
 - (b) the loss is not reimbursable;
 - (c) the amount may not exceed the maximum rate provided in Section 42-1-50;
 - (d) conditions (a), (b), and (c) may be waived in severe hardship cases;
 - (4) reasonable and customary charges for employment-oriented retraining or rehabilitative services incurred as a direct result of the injury; and
 - (5) burial expenses not to exceed four thousand dollars.
- ...

S.C. Code Ann. § 16-3-1180. You referenced in your letter the language each Victim is required to agree to in writing. Quoting your letter, you say it states that:

“I agree to repay SOVA (now DCVC) if I receive money from another source, up to the amount paid on my behalf. This includes any payment I may receive from the offender, any insurance policy or settlements, judgments, or civil lawsuits.”

Thus, as we pointed out in the 2013 opinion, South Carolina Code Ann. § 16-3-250 and § 38-77-160 appear to be in conflict with each other. See Op. S.C. Att’y Gen., 2013 WL 5494614 (S.C.A.G. September 23, 2013). We concluded in the 2013 opinion that “SOVA [the State Office of Victim Assistance] has the right to recover (whether through unjust enrichment under the common law or through statutory or contractual subrogation) the assistance it provided to the Victim of a crime to the full amount over and above the Victim's recovery of 100% of actual losses and expenses as a direct result of the crime.” Id. Additionally, this Office believes in this case a court will apply the principle that where there are conflicting statutes, the later in time trumps. Feldman v. S.C. Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943). Since South Carolina Code Ann. § 16-3-250 was last modified in 1996 by Act No. 458, Part II, § 51B, whereas § 38-77-160 was last modified in 1994 by Act No. 461, § 7, South Carolina

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Code Ann. § 16-3-250 would be the latter act of the General Assembly regarding two conflicting statutes and thus would trump.

Conclusion:

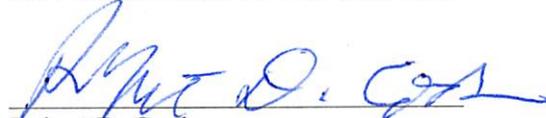
This Office affirms its conclusions expressed in the September 23, 2013 opinion that South Carolina Code Ann. § 16-3-250 and § 38-77-160 appear to be in conflict with each other and that unless and until a court declares otherwise, the State has a right to subrogation (whether statutorily, by contract, or through equity) for assistance it provides to the Victim of a crime over and above the Victim's recovery of 100% of actual losses and expenses as a direct result of the crime. See Op. S.C. Att'y Gen., 2013 WL 5494614 (S.C.A.G. September 23, 2013). Additionally, § 16-3-250 was last modified by the General Assembly of the two conflicting statutes, and thus would prevail. Feldman v. S.C. Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943). At this time we are not aware of any court rulings contradicting the 2013 opinion, but if you are aware of one, you may resubmit the question with the updated information. This Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code Ann. § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General