

# SOUTH CAROLINA LAWYERS WEEKLY

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## A LUCRATIVE SOLUTION

*Little-known case allows an attorney to stack UIM coverage and reap big rewards*

### ■ PHILLIP BANTZ

[phillip.bantz@sclawyersweekly.com](mailto:phillip.bantz@sclawyersweekly.com)

Few lawyers would have represented LaShaunae Steward, a 16-year-old girl who was hurt in a crash with an underinsured driver while she was riding in an uninsured car.

But Charleston attorney J. Van Wyck Taylor figured out a way to help Steward and in doing so he unlocked the door for other lawyers to get more insurance money for clients in similar situations.

“Right now this is not a reported case. It’s a case that nobody knows about,” Taylor said, adding that if word about his win spreads “lawyers would

be looking closer at these cases. But now they’re just bagging them.”

Charleston Circuit Judge J.C. Nicholson issued an order in Steward’s case that allowed her to collect \$50,000 in stacked underinsured motorist coverage that the insurer contended was off the table.

Columbia lawyer John Nichols, a veteran litigator at Bluestein Nichols Thompson & Delgado, wasn’t aware of the Steward case before Lawyers Weekly asked

him to review the matter. Afterward, he called the order, which appears to have slipped through

the cracks, “very significant.”

“If I’d known about this, I would have passed copies around to lawyers in the firm and said, ‘Be on the lookout for this,’” he said.

### ‘Why can’t she stack?’

Steward’s case, which was decided last August, hinged on whether she could stack or combine the underinsured motorist coverage from two vehicles that her relatives owned, despite the fact that the vehicle she was riding in during the crash was uninsured.

Stacking is complicated, and the applicable state law is relatively vague. Lawyers in need of guidance typically look to the South Carolina Supreme Court’s 2004 decision in *Burgess v. Na-*



tionwide Mutual Insurance Company. Nicholson noted the significance of the opinion in his order, writing: "When it comes to stacking, all roads lead to *Burgess* and its progeny."

The *Burgess* court held that people who reject optional UIM coverage on a vehicle that is involved in a crash forfeit their right to stack basic UIM coverage that they have for other vehicles at home.

Only policyholders and the family members with whom they live can stack UIM coverage from multiple auto policies to cover their damages or until the policy limits are met. They are considered to be Class I insureds, as opposed to Class II insureds, who are guests of policyholders and cannot stack.

Steward qualified as a Class I because the car she was riding in at the time of the accident belonged to her mom, who had let the insurance policy lapse. Steward and her mother lived with two relatives who both had cars at home that were covered by UIM policies.

*Burgess* made no distinction between owners and their live-in relatives who were passengers during an accident. Taylor said that "most lawyers thought, based on *Burgess*, that if the vehicle involved in a crash was not insured for UIM coverage then it was over, case closed, don't even look at anything else."

He relied on the state Supreme Court's lesser-known ruling in *Nationwide v. Rhoden* to overcome *Burgess* and allow Steward to stack her relatives' UIM coverage, paving the way for other Class I insureds to increase their available

coverage when they're injured in an uninsured car.

In the order, Nicholson wrote that *Rhoden* stood for the proposition that "all Class I insureds are not created equally." He added that while *Rhoden* did not overturn *Burgess*, the former decision "made it clear that some Class I insureds can recover basic UIM on 'at-home' vehicles, but others cannot."

Relying on *Rhoden*, which was published in June 2012, about six months before Steward's accident, Taylor successfully argued that Steward should be able to stack UIM coverage because she was a Class I and had no say over whether the car she was riding in had UIM coverage.

"If she's a Class I who was never offered that coverage, why can't she stack?" Taylor said.

Nicholson agreed, writing in his order that if "basic UIM coverage is really 'personal and portable,' then, in a case like the one before this Court, it should also be stackable."

### Trumping *Burgess*

Taylor said he "tripped over" *Rhoden* while building Steward's case against the Bristol West Insurance Co., which wrote the two UIM policies at the center of the lawsuit.

"I said, 'I found a diamond in the rough here. I think I really need to buff this up,'" he said, adding that in the wake of Nicholson's order "*Rhoden* trumps [*Burgess*] when the vehicle involved in the accident is not owned by that Class I."

During negotiations, Bristol West, swayed by *Rhoden*, eventually agreed to pay the basic

limit of \$25,000 to Steward from one of her relative's policies but contended that they were not going to let her stack and recover another \$25,000 from the second policy.

Bristol West cited a pair of cases in which the courts refused to allow an insured to stack UIM coverage on at-home vehicles that exceeded the coverage on the vehicle involved in the crash.

But Nicholson held that the stacking limitation Bristol West built its defense on only applied to situations involving excess UIM coverage. Basic limits were at play in Steward's case, which led Nicholson to reject Bristol West's defense. Its attorney, Alan Jones of McAngus, Goudelock & Courie in Myrtle Beach, did not respond to interview requests.

Bristol West has paid the additional \$25,000 in stacked coverage to Steward and will not appeal Nicholson's ruling, according to Taylor. He added that without *Rhoden* he and his client "would have been in big trouble."

"She likely would have missed out on \$50,000 in coverage," he said. "The takeaway here is that *Rhoden* trumps *Burgess* when the vehicle involved in an accident is not owned by that Class I."

Taylor's law partner and son, Howard Taylor, came away from the Steward case with another message: Don't always listen to your colleagues.

"My dad talked with other lawyers before trying to do this and they told him, 'You're not going to be able to do it,'" he said. "But he looked at the law and the case law and said, 'Well, I don't see why not.'"