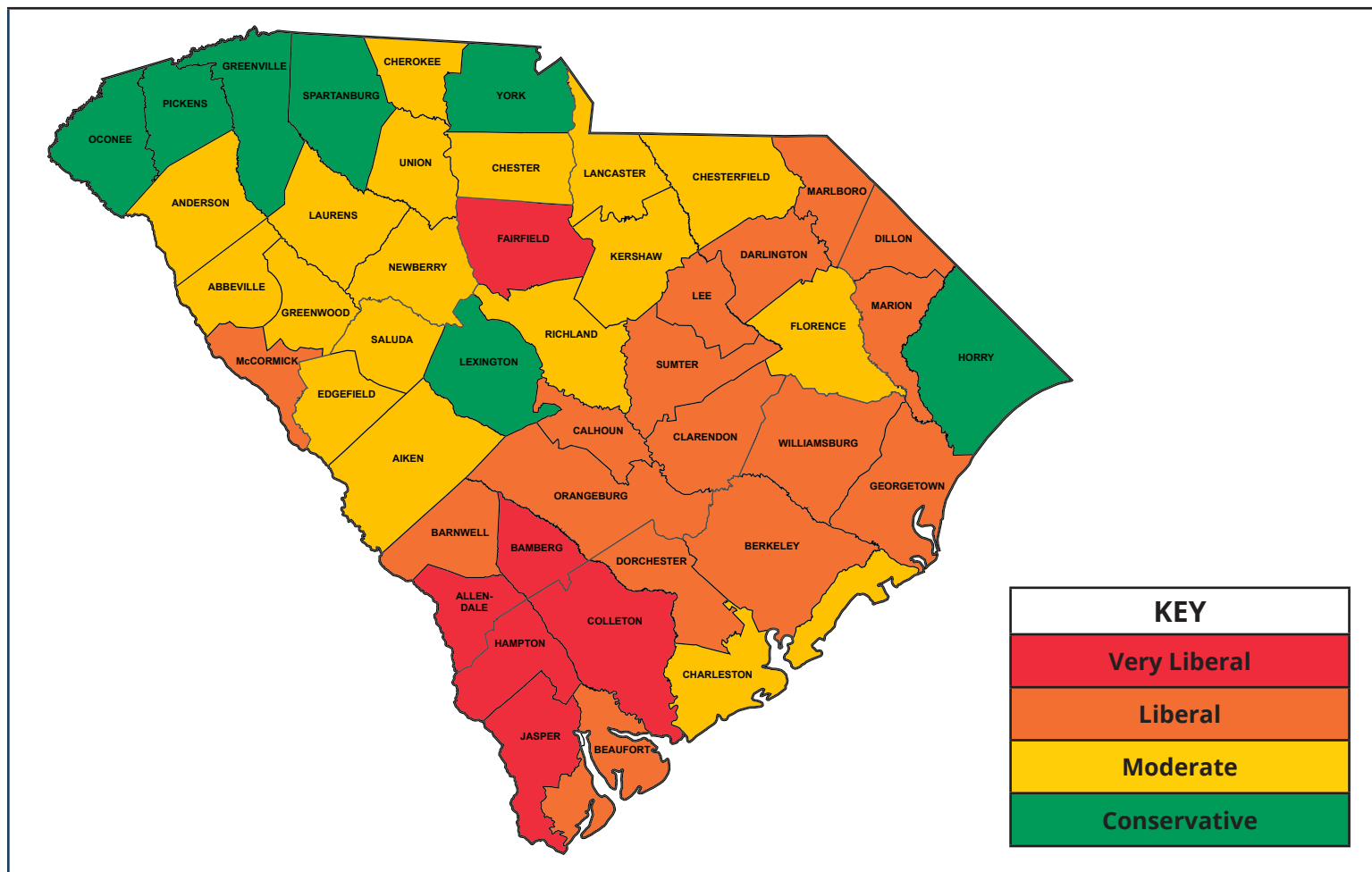




willson jones  
carter & baxley

# SOUTH CAROLINA CIVIL LIABILITY DEFENSE



**Greenville** - 325 Rocky Slope Rd., Suite 201 • Greenville SC 29607

Langdon Cheves.....	864.908.3813.....	lcheves@wjcblaw.com
Anne Culbreath .....	864.672.3713.....	arculbreath@wjcblaw.com
Nathan Ozmint.....	864.213.4146.....	jnozmint@wjcblaw.com
Andrew Price .....	864.672.3714.....	anprice@wjcblaw.com
Jack Riordan.....	864.672.3721.....	jpriordan@wjcblaw.com
Wilson Sheldon.....	864.672.3712.....	wssheldon@wjcblaw.com
Chuck Turner .....	864.672.3711.....	cfturner@wjcblaw.com

**Charleston** - 4922 O'Hear Ave., Suite 301 • N. Charleston SC 29405

Dana Klingener.....	843.284.1096 .....	dmklingener@wjcblaw.com
Mary-Alden Smith .....	843.576.3790 .....	masmith@wjcblaw.com
Troy Thames.....	843.284.0832 .....	tthames@wjcblaw.com

**Columbia** - 3600 Forest Drive, Suite 204 • Columbia, SC 29204

Andrew MacLeod .....	803.509.8071 .....	ajmacleod@wjcblaw.com
Helen Ann Thrower.....	803.509.8075 .....	hathrower@wjcblaw.com

This information is very general in nature and should not be relied upon as legal advice. Please consult an attorney for legal advice.

## INSURANCE

**Duty to Disclose Policy Limits:** As of January 1, 2012, carriers must 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.

You can do this by providing a copy of the dec page. If the claimant's attorney does not give you enough information to provide this information, you must state in writing what additional information is needed to complete the request. This does not apply to fleet policy limits, umbrella coverages, or excess coverages.

**Liability Coverage:** The mandatory minimum limits in SC are 25/50/25. Liability coverage cannot be stacked.

**Uninsured Motorist Coverage (UM):** Mandatory minimum limits are 25/50/25. Subrogation is permitted, and stacking is available for Class I insureds.

**John Doe Claim:** To make a "John Doe" claim, one must (1) report the accident to the appropriate police authority within a reasonable time; (2) have physical contact with unknown vehicle OR if no contact, accident must have been witnessed by someone other than the owner or operator of the insured vehicle (the witness also has to complete an affidavit that meets certain requirements); and (3) insured must not have been negligent in failing to determine the identify of the other vehicle/driver at the time of the accident.

**Underinsured Motorist Claim (UIM):** UIM coverage is not required by law; however, the insurer must make a "meaningful offer" up to the liability limits. If no meaningful offer is made, UIM coverage can be rolled on to the policy in the amount of the liability limits. UM and UIM coverages are mutually exclusive (unless policy allows otherwise). No subrogation is allowed for UIM claims, and stacking is permitted for Class I insureds.

**Stacking:** No stacking of liability coverage is permitted; however, a "Class I" insured (named insured, resident spouse, and resident relative—all of whom must have had a vehicle involved in the accident) may stack UIM or UM.

**Bad Faith:** The insurer's unreasonable refusal to settle within liability policy limits which subjects the insured to an excess verdict constitutes bad faith (this is also known as the Tyger River doctrine). The insurer's unreasonable action in processing a claim can also constitute bad faith, even if the policy ultimately provides no coverage.

## NEGLIGENCE AND LIABILITY

**Modified Comparative Negligence:** If a plaintiff's negligence is greater than all defendants, then the plaintiff cannot recover. If a plaintiff's negligence is 50% or less, then the plaintiff's recovery is reduced by the percentage of his/her negligence.

**Negligence of Minor:** A minor's conduct is judged by the standard of behavior to be expected of a child of like age, intelligence, and experience under like circumstances.

**Statutory Violation:** When a defendant violates a duty that arises from a statute, ordinance, or regulation, the defendant is negligent per se (negligent as a matter of law). This can constitute evidence of recklessness, which could give rise to a claim for punitive damages.

**Punitive Damages:** Punitive damages are covered by an automobile insurance policy in an amount at least up to the minimum limits, regardless of whether the claim involves liability, UM, or UIM coverage.

**Seat Belt:** Evidence that the plaintiff was not wearing a seat belt is not admissible at trial.

**Post-Judgment Interest:** Post-judgment interest is the Prime rate plus 4%. There is generally no pre-judgment interest.

**Joint and Several Liability:** Generally, a defendant must be at least 50% at fault to be required to pay 100% of the damages. A defendant less than 50% at fault only pays its percentage of liability.

**Contribution among Joint Tortfeasors:** The right of contribution is limited to recovery of amounts paid by a tortfeasor in excess of its pro rata share of the common liability, which is determined without consideration of relative degrees of fault. The liability of a joint tortfeasor for all contribution is extinguished when the joint tortfeasor receives a release or covenant in good faith. In state court, a contribution claim is not ripe until a defendant pays more than its pro rata share. It is unclear how this Act will be interpreted in light of the new rules on joint and several liability.

## PROCEDURAL ISSUES

**Statute of Limitations:** The Statute of Limitations is generally three (3) years for negligence claims. The time begins to run when the plaintiff discovered (or with reasonable efforts should have discovered) the claim.

**Answer:** A defendant has thirty (30) days after service to serve an answer to the original complaint in State Court and twenty-one (21) days in Federal Court. The defendant can get one extension (30 days in State Court and 21 in Federal Court), but be careful. Technically, the rule providing for extensions states that an extension can be granted by written agreement of counsel, so an argument can be made that the attorney has to get the extension.

**Removal to Federal Court:** Notice of Removal must be filed within thirty (30) days after notice of the lawsuit (or pleading making case removable). This time cannot be extended under any circumstances. Also, removal is not allowed after the case has been pending for one (1) year.

**Venue:** Venue lies as follows:

**Resident Defendant:** Where a defendant resides at the time the claim arose or where the incident occurred.

**Non-Resident Defendant:** Where a plaintiff resides at the time the claim arose or where the incident occurred.

**Domestic Defendant Corporation:** A defendant's principal place of business at the time the claim arose or where the incident occurred.

**Non-Resident Defendant Corporation:** A defendant's principal place of business at the time the claim arose or where the incident occurred. If the corporation does not have a Certificate of Authority on file in SC, venue is also proper where a plaintiff resided at the time the claim arose.

**Multiple Residents and Non-Resident Defendants:** A Plaintiff can choose, so long as venue is proper for either using the above rules.

**Offers of Judgment:** Any party may make an Offer of Judgment. If the party offering judgment obtains a more favorable verdict, it may recover "administrative, filing, or other court costs from the date of offer until judgment." Plus, if the offeror is a plaintiff, 8% interest computed on the verdict from the date of the offer; or if the offeror is a defendant, a reduction from the judgment of 8% interest computed on the verdict from the date of the offer.