



1/30/2024

SC Supreme Court Clarifies Procedure in “John Doe” Lawsuits

The South Carolina Supreme Court has recently clarified an important issue in “John Doe” uninsured motorist lawsuits. In the recent matter of Peter Rice v. John Doe, the Court said that the witness affidavit requirement in the statute is not a condition precedent to filing the lawsuit and plaintiff can produce the affidavit after the lawsuit is filed. However, if the plaintiff never produces an affidavit, summary judgment could be appropriate.

The facts of this case are typical of a “John Doe” lawsuit. An unidentified “phantom” vehicle crossed the center line, causing the Plaintiff’s vehicle to veer off the road and hit a tree. S.C. Code Ann. 38-77-170 says that to make a claim against a “John Doe” defendant, there must be either physical contact from the unidentified vehicle or a witness (other than the owner/operator) that signs an affidavit attesting to the truth of how the accident occurred. The statute is clearly designed to prevent fraudulent “John Doe” claims.

Attorneys



Ross Plyler

e | rplyler@cassidycoates.com
p | 864.404.3132

Practice Areas

- [Insurance](#)
- [Litigation](#)

SC Supreme Court Clarifies Procedure in “John Doe” Lawsuits

In this case, Peter Rice filed a lawsuit and “John Doe” (presumably Rice’s uninsured motorist insurance carrier) filed an answer and motion to dismiss on the grounds that Plaintiff did not file the required affidavit. The next day, Plaintiff produced an affidavit, but “John Doe” filed a motion for summary judgment some months later. The trial court denied the motion for summary judgment, saying that the affidavit requirement was satisfied. Interestingly, at trial “John Doe” renewed the earlier motion to dismiss arguing that the affidavit had to be filed along with the complaint. The trial judge agreed that the affidavit was a condition precedent to the lawsuit and dismissed the case.

The Supreme Court ruled that S.C. Code Ann. 38-77-170 does not require the filing of the witness affidavit as a condition precedent to bringing a “John Doe” action. The Court says if the General Assembly intended such a requirement, it could have stated one. However, the Court did have to square this ruling with prior caselaw that said “strict compliance with the affidavit requirement is mandatory”. Therefore, the Court said that while an affidavit is not a prerequisite, an affidavit is still “essential to the success of the claim.” If the affidavit is requested in discovery and the Plaintiff does not provide the affidavit “promptly”, the “John Doe” defendant or insurance carrier can seek relief through a motion to compel or a motion for summary judgment.

Cassidy Coates Price assists local and regional businesses with a variety of complex legal issues, litigation and disputes, including insurance and insurance litigation. If you would like to learn more, please contact [Ross Plyler](#), or visit our [website](#).

This material has been prepared by Cassidy Coates Price for informational purposes only and is not legal advice. Readers should not act upon any information without seeking professional legal advice. Any communication you may have with a Cassidy Coates Price attorney, through this announcement or otherwise, should not be understood by you to be attorney-client communication unless and until you and the firm agree to enter into an attorney-client relationship.