Christopher R. Richmond
3300 Vickery Rd.
N. Syracuse, NY 13212

Herbert S. Rosenblum
526 King St., Ste 211
Alexandria, VA 22314

Kathie L. Russell
PO Box 429
Holly Springs, NC 27540

Holly L. Saunders
PO Box 30397
Charlotte, NC 28230

Samuel O. Thompson, Jr.
2300 Russell St.
Orangeburg, SC 29115

William H. Troutman
PO Box 7600
Atlanta, GA 30357

Roberta Y. Wright
628 Ethan Allen Ave
Takoma Park, MD 20912

Erica L. Zaglin
13 Running Springs Ct.
Greer, SC 29650

Aaron M. Zimmerman
117 S. State St
Syracuse, NY 13202

the liability policy. Potomac, 254 S.C. at 111, 173 S.E.2d at 655 (citing Pacific Ins. Co. of New York v. Fireman's Fund Ins. Co., 247 S.C. 282, 147 S.E.2d 273 (1966)). The first defines a permissive user as an insured. See S.C. Code Ann. § 38-77-30(7) (Supp. 2000).[8] The second requires minimum statutory liability limits in every automobile insurance policy. See S.C. Code Ann. § 38-77-140 (1989).[9]

Following the rationale of Potomac, when a liability policy contains an exclusion which conflicts with § 38-77-30(7), then the policy must be reformed as a matter of law to comply with § 38-77-140. Accordingly, the Empire policy, without the illegal endorsement, provides Shields Auto with coverage for Angela up to the statutory minimum limits of 15/30/5.

Therefore, contrary to what the trial court decided, the legal reformation of the Empire policy does not provide $1 million coverage.

---

[8]This section defines "Insured" as "the named insured . . . and any person who uses with the consent, expressed or implied, of the named insured the motor vehicle to which the policy applies . . . ."

[9]This section states, in pertinent part:

> No automobile insurance policy may be issued or delivered in this State to the owner of a motor vehicle or may be issued or delivered by an insurer licensed in this State . . ., unless it contains a provision insuring the persons defined as insured against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States or Canada, subject to limits . . . as follows: [15/30/5]. Nothing in this article prevents an insurer from issuing, selling, or delivering a policy providing liability coverage in excess of these requirements.

(Emphasis added).

2. Reformation Due to Mutual Mistake on Customer Coverage

The question remains, however, whether the invalid endorsement should ever have been activated on the Empire policy at all. In other words, did the parties intend to limit liability for customers to the statutory minimum limits? The Court of Appeals held that a genuine issue of material fact exists on this question and therefore summary judgment was premature. Specifically, the Court of Appeals stated that although it "is undisputed that Shields intended to purchase $1,000,000 in customer coverage from Empire, ... it is less than clear that Rickel, as Empire's agent, intended to issue $1,000,000 in customer coverage." George, 336 S.C. at 221, 519 S.E.2d at 115. We disagree and find that, as a matter of law, the evidence establishes that there was a mutual mistake as to customer coverage. Thus, we affirm summary judgment and hold that the trial court properly reformed the policy to provide coverage for Angela in the amount of $1 million. See Rule 220(c), SCACR (appellate court may affirm any judgment upon any grounds appearing in the record on appeal); I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) (same).

A contract may be reformed on the ground of mistake when the mistake is mutual and consists in the omission or insertion of some material element affecting the subject matter or the terms and stipulations of the contract, inconsistent with those of the parol agreement which necessarily preceded it. E.g., Crosby v. Protective Life Ins. Co., 293 S.C. 203, 206, 359 S.E.2d 298, 300 (Ct. App. 1987). A mistake is mutual where both parties intended a certain thing and by mistake in the drafting did not obtain what was intended. Id. Before equity will reform a contract, the existence of a mutual mistake must be shown by clear and convincing evidence. Id.

In addition to the above-discussed insurance policies themselves, we review the relevant deposition testimony to resolve whether there is a material issue of fact regarding mutual mistake. At John Shields's deposition, he testified about the initial procurement of insurance from Empire, through agent Rickel. Shields made clear that he intended customers such as Angela to be fully covered by the liability policy:

> Q. . . . Have you ever discussed with any agent or sales person who was selling you insurance for John Shields Autos, Inc., a garage liability policy, the coverage that would exist for a customer to whom you loaned a car?
>
> A. Yes.
>
> Q. Who was the first agent you discussed that subject with?
>
> A. Rickel.
>
> . . .
>
> Q. How about the person who sold you the Nationwide policy?
>
> A. Same thing.
>
> . . .
>
> Q. You discussed that subject with them?
>
> A. That's the main subject when you're buying an insurance policy. You want to know, "Is everybody covered?"
>
> Q. "Everybody" being who?
>
> A. Anybody that drove one of my cars.

Shields also testified that after the accident, he was assured by Empire's agents that Angela would be covered for $1 million:

> Q. Did anyone tell you that the young lady driving the car that caused the accident had a million dollars worth of insurance?
>
> A. They told me that my car was covered with a million dollars

coverage. Cf. Commercial Union Assurance Co. v. Castile, 283 S.C. 1, 320 S.E.2d 488 (Ct. App. 1984) (where the court found that insured and agent agreed to provide insurance for 1977 Ford during their telephone conversation, even though agent could not recall the conversation, and thus reformed the policy erroneously written to cover 1972 Chevrolet); 13A John Appleman & Jean Appleman, Insurance Law and Practice § 7609 (1976) ("where the party applying for insurance states the facts to the agent and relies on him to write the policy, . . . and the agent so understands, but fails by mistake to so write the contract, the mistake is considered mutual.").

We note further that all relevant parties have been deposed; thus, it was not premature for the trial court to dispose of the case on summary judgment. Cf. Baughman 306 S.C. at 112, 410 S.E.2d at 543 (summary judgment should not be granted until "the opposing party has had a full and fair opportunity to complete discovery"). Clearly, Empire had a full and fair opportunity to develop the record on this issue, but failed to do so.

Accordingly, we find there is clear and convincing evidence of mutual mistake, requiring reformation of the policy. Crosby v. Protective Life Ins. Co., 293 S.C. at 206, 359 S.E.2d at 300 (a mistake is mutual where the clear and convincing evidence shows that both parties intended a certain thing and by mistake in the drafting did not obtain what was intended). We therefore affirm, in result, the trial courts' decisions to grant summary judgment to petitioners and reform the policy to provide $1 million coverage for Shields Auto's customers. See Rule 220(c), SCACR (appellate court may affirm any judgment upon any grounds appearing in the record on appeal).

The Court of Appeals' decision is

REVERSED.

TOAL, C.J., BURNETT and PLEICONES, JJ., concur. MOORE, J., concurring and dissenting in a separate opinion.

A: He told me he had half a million dollars of coverage and we went over the inventory coverage on *(sic)* the garage liability. We went over his inventory coverage. I didn't feel he was carrying enough but he told me – he specifically said that that's what he wanted. He wanted the $100,000, I believe, for inventory coverage. That he felt he was definitely safe with that limit. And then we went over his property coverage also.

Q: Okay. Did you see his Nationwide policy?

A: I know that I saw his Nationwide policy on the property. I don't recall – I'm not sure if I saw the Nationwide policy on the liability.

Q: Okay. And this would have been in the context of the discussions prior to the filling out of the application?

A: This would have taken place while I was filling out the application.

Based on this testimony, I believe the Court of Appeals correctly concluded the record "does not show that Rickel was aware of the Nationwide policies and their contents." Absent evidence that Rickel knew the Nationwide policies covered customers for the full liability limits, there is no clear and convincing evidence of his intent in writing the initial Empire policy. *See* Truck South, Inc. v. Patel, 339 S.C. 40, 528 S.E.2d 424 (2000) (mistake must be common to both parties and, by reason of it, each has done what neither intended); Sims v. Tyler, 276 S.C. 640, 281 S.E.2d 229 (1981) (before equity will reform an instrument, it must be shown by clear and convincing evidence not simply that it was a mistake on the part of one of the parties but that it was a mutual mistake).

In my opinion, summary judgment was inappropriately granted. I would affirm the Court of Appeals' ruling remanding the case for trial on the issue of reformation based on mutual mistake.

of the right atrium of the heart. The contusion was caused by Dr. Joseph M. Pearson's improper placement of the catheter into McGee. The autopsy further revealed there were two puncture sites involving the liver with perforation into a large hepatic vein caused by respondent. As a result, petitioner filed a wrongful death and survival suit against Dr. Pearson, respondent, and others.

At the first trial, the trial court dismissed petitioner's case against respondent on a directed verdict motion. The jury returned a verdict against Dr. Pearson.[1] This Court affirmed the verdict against Dr. Pearson, but reversed the trial court's grant of respondent's directed verdict motion and remanded for further proceedings. McGee v. Bruce Hosp. Sys., 321 S.C. 340, 468 S.E.2d 633 (1996).

Before the trial of respondent, Dr. Pearson paid the verdict amount in full with interest. Petitioner executed a satisfaction of judgment against Dr. Pearson and the Pee Dee Surgical Group. Respondent then amended his answer and alleged petitioner's claim should be dismissed because the judgment was satisfied.

The trial court refused to dismiss petitioner's claim, and stated the previous award of punitive damages against Dr. Pearson should not bar a recovery of punitive damages against respondent. The court further noted that whether respondent acted recklessly, wilfully, or wantonly was not determined in the first trial. The court concluded that while petitioner could not recover actual damages against respondent, petitioner could attempt to recover punitive damages.

During respondent's trial, the trial court bifurcated the closing

---

[1] The jury awarded McGee $500,000 in actual damages and $1,000,000 in punitive damages in the wrongful death action and $500,000 in actual damages and $2,000,000 in punitive damages in the survival cause of action.

arguments for liability and damages. The jury failed to reach a verdict on liability and the trial court granted a mistrial. Respondent then moved for a directed verdict and the trial court reversed its earlier opinion and granted the motion, stating that petitioner was entitled to only one satisfaction in a matter in which indivisible damages are alleged to be the result of the acts or omissions of one or more tortfeasors.

Petitioner appealed to the Court of Appeals, which affirmed the decision of the trial court. The Court of Appeals stated that, because petitioner conceded he had received all actual damages to which he was entitled and the issue of actual damages cannot be submitted to the jury, there was no legal liability upon which to predicate a verdict for punitive damages. The court further noted that this conclusion is in accord with the principle that there can be only one satisfaction for an injury or a wrong. McGee v. Bruce Hosp. Sys., 336 S.C. 410, 520 S.E.2d 623.

ISSUE

> May petitioner seek punitive damages against respondent following the satisfaction of a judgment against Dr. Joseph M. Pearson?

DISCUSSION

When addressing a similar issue, the United States District Court for the District of South Carolina found that a plaintiff could not bring another action against a second defendant where a previous judgment in an earlier action against a first defendant had been satisfied. Garner v. Wyeth Lab., Inc., 585 F. Supp. 189 (D.S.C. 1984). The Garner Court further noted that a lawsuit seeking only punitive damages cannot proceed once the cause of action for actual damages has been extinguished. Id. at 195. The Court of Appeals relied on Garner to support its finding that petitioner could not seek punitive damages against respondent. However, the Garner Court inaccurately surmised the law of South Carolina.

supra, the issue of respondent's liability can be submitted to the jury and if the jury determines respondent is liable, the jury can then decide whether punitive damages against respondent are warranted.

Petitioner should be placed in the position he would have been in had the trial court in the first action not erroneously granted a directed verdict for respondent. Had the first action proceeded properly, the jury could have awarded petitioner punitive damages against Dr. Pearson and respondent.

While "it is almost universally held that there can be only one satisfaction for an injury or wrong,"[2] allowing petitioner to seek punitive damages against respondent will not result in petitioner having a double recovery. Although Dr. Pearson has paid the punitive damages levied against him, those punitive damages do not reflect the amount of punitive damages for which a jury may find that respondent is responsible.[3] In this case, a jury has yet to have the opportunity to determine whether respondent's conduct was willful, wanton, or in reckless disregard of petitioner's rights. See Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35 (1996) (in order for a plaintiff to recover punitive damages, there must be evidence the defendant's conduct was willful, wanton, or in reckless disregard of the plaintiff's rights). Petitioner should not be denied the opportunity to have a jury determine

---

[2] Truesdale v. South Carolina Highway Dep't, 264 S.C. 221, 235, 213 S.E.2d 740, 746 (1975), overruled in part on other grounds, McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985). See also Garner v. Wyeth Lab, Inc., supra ("A plaintiff may have but one satisfaction for a wrong done.").

[3] See, e.g., Beerman v. Toro Mfg. Corp., 615 P.2d 749, 755 (Haw. App. 1980) ("Punitive damages awarded against one tortfeasor do not constitute double recovery with respect to a judgment against another tortfeasor since the purpose of punitive awards is to punish a particular offender rather than to compensate the victim for its injury." (citations omitted)); Sanchez v. Clayton, 877 P.2d at 572 (punitive damages against two or more defendants must be separately determined).

whether respondent is liable for punitive damages.

We remand this case to the trial court with instructions that petitioner be allowed to proceed with his action against respondent for the sole purpose of determining whether petitioner is entitled to punitive damages. To recover punitive damages, petitioner must first prove, on remand, that respondent, through his conduct, committed acts making him liable to petitioner for compensatory damages. The jury also has to determine whether respondent acted wilfully, wantonly, or in reckless disregard of McGee's rights in order to support an award of punitive damages. At the conclusion of the trial, if the jury has found respondent liable for actual and punitive damages, then the trial court will strike the award of actual damages given the fact that petitioner's actual damages have already been satisfied by Dr. Pearson. If punitive damages are found, the trial court will then determine any motion concerning punitive damages according to Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991).[4]

REVERSED AND REMANDED.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur.

---

[4] To the extent Brown v. Singleton, 337 S.C. 74, 522 S.E.2d 816 (Ct. App. 1999), is inconsistent with this opinion, it is overruled.

Attorney General David A. Spencer, and Assistant Attorney General William Bryan Dukes, all of Columbia, for respondent.

____

JUSTICE MOORE: We granted this petition for a writ of certiorari to determine if the post-conviction relief (PCR) court erred by finding petitioner waived his right to an appeal by failing to appear for trial. We find petitioner is entitled to a belated appeal.

FACTS

Petitioner was released on bond after his arrest for first degree criminal sexual conduct (CSC) of a minor and did not appear for trial. He was convicted at a trial in his absence. After being apprehended by law enforcement, he appeared for the opening of his sealed sentence of thirty years imprisonment, which was reduced at its opening to imprisonment for twenty-three years. Petitioner appealed the conviction and sentence, but the appeal was dismissed when petitioner failed to file an Initial Brief and Designation of Matter.

Thereafter, petitioner filed a PCR application, which was denied after a hearing. The PCR court dismissed his application, and stated the following: "The applicant escaped from custody and willfully remained at large for several months as a fugitive from justice. By such action he destroyed the right to appeal his conviction, directly or collaterally."

ISSUE

> Whether the PCR court erred by finding petitioner had waived his right to appeal by failing to appear for trial?

DISCUSSION

While the PCR court did not cite any law for the proposition that escaping from custody destroys one's right to directly or collaterally attack his conviction and sentence, the following cases are applicable: Lamb v. State, 293 S.C. 174, 359 S.E.2d 282 (1987); Jordan v. State, 276 S.C. 168, 276 S.E.2d 781 (1981); Martin v. State, 276 S.C. 514, 280 S.E.2d 210 (1981). Lamb, Jordan, and Martin hold that this Court will not hear the appeal of a party who evades the process of the Court and refuses to submit to its jurisdiction by escaping.

These cases are distinguishable from the instant case. In all of these cases, the prisoner escaped custody after conviction and was not, at the time of appeal, in South Carolina custody. In this case, petitioner is in custody in South Carolina and has been since he was sentenced. While petitioner did not appear at his trial, this does not act to waive his right to appeal from his conviction. Cf. State v. Robinson, 287 S.C. 173, 337 S.E.2d 204 (1985) (where a defendant is tried *in abstentia*, an appeal may not be taken until the sealed sentence is opened and read to the defendant); State v. Washington, 285 S.C. 457, 330 S.E.2d 289 (1985) (same).

Both petitioner, acting pro se, and his counsel filed Notices of Appeal with this Court.[1] At the PCR hearing, petitioner testified he believed counsel was proceeding with the appeal. While petitioner admitted he did not pay counsel for pursuing the appeal, he testified counsel never requested any payment.

Counsel testified he told petitioner he would file an appeal; however, he stated he was never offered any money to proceed with the appeal. Counsel stated he informed petitioner's wife he could handle the appeal for a fee or that the Office of Appellate Defense could handle it for free. He testified he did not personally contact Appellate Defense because he felt

[1] The appeals were later combined into one appeal.

REMANDED.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur.

The Supreme Court of South Carolina

In the Matter of John G. O'Day, Respondent.

ORDER

The Office of Disciplinary Counsel asks this Court to place respondent on interim suspension pursuant to Rule 17(b), RLDE, Rule 413, SCACR, and appoint an attorney to protect clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR. Respondent consents to an interim suspension.

IT IS ORDERED that the petition is granted and respondent is suspended from the practice of law in this State until further order of this Court.

IT IS FURTHER ORDERED that Wilburn Brewer, Jr., Esquire, is appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain. Mr. Brewer shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Brewer may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office

accounts respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Wilburn Brewer, Jr., Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Wilburn Brewer, Jr., Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Brewer's office.

s/Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina

April 6, 2001

any other law office accounts respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Lynette Rogers Hedgepath, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Lynette Rogers Hedgepath, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Ms. Hedgepath's office.

s/Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina

April 9, 2001

against Mr. Peake." The court ruled that Peake's actions were based upon "reasonable inferences" that criminal as well as civil liability was addressed by an agreement "in the nature of a covenant not to prosecute," given in exchange for Peake's conveyance of the wastewater treatment facility to a governmental subdivision of the State.

On appeal, the State contends the trial court erred in ruling that DHEC had the authority to bind the Attorney General to an agreement not to prosecute for a criminal offense. The State further claims the court erred in ruling that the State could be estopped from prosecuting Peake criminally. We conclude that DHEC could not legally bind the Attorney General to the agreement and that the State is not estopped from prosecuting Peake.

DISCUSSION

Our supreme court has ruled that a guilty plea rests upon contract principles and that the State can be required to fulfill the terms of its promise to forego further prosecution of the accused when such forbearance is a part of the benefit of the bargain. State v. Thrift, 312 S.C. 282, 292-93, 440 S.E.2d 341, 347 (1994) (citing Santobello v. New York, 404 U.S. 257 (1971)). The court noted that "a plea agreement analysis must be more stringent than a contract because the rights involved are fundamental and constitutionally based." Thrift, 312 S.C at 293, 440 S.E.2d at 347 (citing United States v. Ringling, 988 F.2d 504 (4th Cir. 1993)).

Other jurisdictions have applied these principles to an agreement not to prosecute, even where no guilty plea has been entered. See United States v. Carrillo, 709 F.2d 35, 36 (9th Cir. 1983) (finding that cooperation agreement is analogous to a plea bargain); United States v. Rodman, 519 F.2d 1058, 1059-60 (1st Cir. 1975) (affirming dismissal of indictment when SEC breached agreement to make no prosecution recommendation to United States Attorney in return for defendant's cooperation). However, enforcement of an agreement not to prosecute is subject to two conditions: (1) the agent must be authorized to make the promise; and (2) the defendant must rely to his detriment on the promise. See United States v. Streebing, 987 F.2d 368, 372 (6th Cir. 1993); see also Ringling, 988 F.2d at 506-07 (finding that Assistant United States Attorney

Constitution.[2] See S.C. Const. art. V, § 24 ("The Attorney General shall be the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record." (emphasis added)). The trial court agreed with this reasoning and concluded Hunter-Shaw had the authority to promise forbearance of criminal prosecution in exchange for civil sanctions.

We conclude this was error. Our supreme court addressed this issue in State v. Thrift and concluded that the power constitutionally granted to the Attorney General to supervise the prosecution of criminal cases includes the power to decide which cases to prosecute. 312 S.C. at 307, 440 S.E.2d at 355.

In Thrift, a defendant was indicted for violation of the pre-1991 Ethics Act, S.C. Code Ann. § 8-13-490 (1986) (repealed 1991). The "old" Ethics Act contained language requiring a referral from the Ethics Commission to the Attorney General before prosecution could be maintained. On appeal, the defendant argued the requirement of referral thereby placed the decision to prosecute in the hands of the Ethics Commission, not the Attorney General. Our supreme court disagreed, stating:

> [Article V, § 24] is dispositive that any requirement which places the authority to supervise the prosecution of a criminal case in the hands of the Ethics Commission is unconstitutional. As noted earlier in the plea agreement issue, the prosecution has wide latitude in selecting what cases to prosecute and what cases to plea bargain. This power arises from our State Constitution and cannot be impaired by legislation.

---

[2]Peake also suggests that the dual role held by DHEC attorney Shissias renders this situation unique. However, there is no assertion that Shissias was appointed as a Deputy Attorney General prior to Peake's agreement with Hunter-Shaw, or that Shissias participated in any way in negotiating the agreement. Furthermore, Shissias was "deputized" as an Assistant Attorney General in order to seek the indictment and handle the prosecution of the case, all of which occurred after the agreement with Hunter-Shaw and the transfer of the wastewater treatment facility.

Thrift, 312 S.C. at 307, 440 S.E.2d at 355. Under Thrift, the decision to prosecute is constitutionally granted to the Attorney General and cannot be impaired by the Legislature.

It is axiomatic that legislation must be construed so as to be constitutional. A basic rule of statutory interpretation requires a construction which is constitutional. "Constitutional constructions of statutes are not only judicially preferred, they are mandated; a possible constitutional construction must prevail over an unconstitutional interpretation." Henderson v. Evans, 268 S.C. 127, 132, 232 S.E.2d 331, 333-34 (1977).

The State argues that sections 48-1-220 and 48-1-210 were intended to give the exclusive control over civil enforcement of the Act to DHEC. Our supreme court resolved the controversy in Thrift by recognizing the civil nature of the Ethics Act complaint and adopted a narrow construction of that statute. 312 S.C. at 307, 440 S.E.2d at 355. Therefore, we agree with the State that these sections must be construed to apply only to civil enforcement of final determinations and orders issued pursuant to the Act. Thus, even if Hunter-Shaw intended to reach a binding agreement to forego prosecution of Peake in return for civil sanctions, she was without power to do so.

Furthermore, absent authority of Hunter-Shaw to enter into an agreement, the State cannot be estopped from prosecuting Peake. The State may be subject to estoppel where its officers or agents act within the proper scope of their authority. Goodwine v. Dorchester Dep't of Soc. Servs., 336 S.C. 413, 418-19, 519 S.E.2d 116,118-19 (Ct. App. 1999). However, estoppel "will not be applied to deprive the State of the due exercise of its police power or to thwart its application of public policy." Id. at 418, 519 S.E.2d at 118. A governmental body cannot be estopped "by the unauthorized or erroneous conduct or statements of its officers or agents which have been relied on by a third party to his detriment." S.C. Coastal Council v. Vogel, 292 S.C. 449, 453, 357 S.E.2d 187, 189 (Ct. App. 1987); see McDaniel v. S.C. Dept. of Pub. Safety, 325 S.C. 405, 411, 481 S.E.2d 155, 158 (Ct. App. 1996) (probation officer's assurance could not bind the Department of Public Safety because he had no connection with the Department and no authority); Daniels v. City of Goose Creek, 314

we believe the legislature would not have used the term "named insured" if it intended that any insured under the policy be able to waive UIM coverage. By the plain language of section 38-77-350(B), the form must be executed by the named insured to the exclusion of other mere insureds.[3]

Given the broad statutory definition of "insured," a construction allowing offers to and rejection by mere insureds would allow even permissive users to reject UIM coverage. See S.C. Code Ann. § 38-77-30(7); Wright v. Allstate Ins. Co., 746 F. Supp. 612 (D. S.C. 1990); Cobb v. Benjamin, 325 S.C. 573, 482 S.E.2d 589 (Ct. App. 1997). This court must reject an interpretation of a statute leading to an absurd result not possibly intended by the legislature. Hamm v. South Carolina Pub. Serv. Comm'n, 287 S.C. 180, 181, 336 S.E.2d 470, 471 (1985). Moreover, requiring the form be executed by the named insured who is the applicant is consistent with the language in section 38-77-350(A) requiring the form be used "for all

---

terms of named insured), -120 (requiring notice be given to the named insured before cancellation or refusal to renew a policy), -123(A)(2)(h) (forbidding insurers from refusing to renew policy solely because named insured, a resident of the same household, or other customary operator has had two or fewer accidents), -123(B) (outlining when policy may be cancelled), -340 (allowing persons included under statutory definition of insured to be excluded from coverage if so provided by the terms of a written amendatory endorsement signed by the named insured and the person to be excluded).

[3] The case of Oncale v. Aetna Casualty & Surety Co., 417 So.2d 471 (La. Ct. App. 1982), cited by Allstate to support treating a spouse as a named insured, is distinguishable because Louisiana only requires that the rejection be made by "any insured named in the policy." La. Rev. Stat. Ann. 22:1406 (D)(1)(a) (Supp. 2000). We find the following cases more instructive: State Farm Mut. Auto. Ins. Co. v. Martin, 289 So.2d 606 (Ala. 1974) (holding that if right to reject belongs to named insured, rejection of coverage by spouse legally insufficient); Frank v. Illinois Farmers Ins. Co., 336 N.W.2d 307 (Minn. 1983) (finding mandatory offer of UIM coverage must be made to applicant, not applicant's spouse).