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NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Supreme Court of New Hampshire.  
Jane A. KELLY & a.,  
v.  
PRUDENTIAL PROPERTY & CASUALTY **INSURANCE** COMPANY.  
**No. 2001-087.**  
Argued March 13, 2002.  
Opinion Issued April 19, 2002.

Burns, Bryant, Hinchey, Cox & Rockefeller, P.A., of Dover ([Matthew B. Cox](#) on the brief and orally), for the plaintiffs.

McDonough & O'Shaughnessy, P.A., of Manchester ([Robert G. Whaland](#) on the brief and orally), for the defendant.

DUGGAN, J.

The defendant, Prudential Property and Casualty **Insurance** Company (Prudential), appeals a Superior Court (Fauver, J.) order declaring that Prudential may not reduce uninsured motorist benefit payments to the plaintiffs, Jane and Patrick Kelly, by the amount recoverable from the uninsured tortfeasor. We affirm.

Plaintiff Jane Kelly was injured in an **automobile** accident. At the time of the accident, she and her husband, Patrick Kelly, carried uninsured motorist **insurance** issued by Prudential, with a recovery limit of \$100,000. The plaintiffs settled with the tortfeasor for the liability limit of her policy, \$50,000. Following that settlement, an uninsured motorist arbitration panel assessed the plaintiffs' total **damages** at \$225,000. Prudential then offset the plaintiffs' uninsured motorist coverage recovery by taking the value of the uninsured motorist benefits, \$100,000, and reducing it by the \$50,000 settlement, thereby making \$50,000 available to the plaintiffs from the uninsured motorist benefits.

The plaintiffs brought a declaratory judgment action in superior court, see [RSA 491:22 \(1997\)](#), alleging that Prudential was not entitled to offset their award by the tortfeasor's settlement. The superior court concluded that the policy language did not entitle Prudential to offset the tortfeasor's settlement. Prudential appeals.

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Supreme Court of Alabama.  
Ex parte Richard D. ARTHUR and Leila Ashley Arthur,  
In re Richard D. ARTHUR and Leila Ashley Arthur,  
v.  
Bernice Hart STRINGER.  
**1001789.**  
April 19, 2002.

Petition for Writ of Certiorari to the Court of Civil Appeals (Houston Circuit Court, CV-94-718; Court of Civil Appeals, 2991062).

SEE, Justice.

Bernice Hart Stringer was driving in the far right lane on a four-lane road in Houston County on September 19, 1992. She attempted to make a left turn from that far-right lane, and in doing so crossed the lane of traffic that was traveling in the same direction as she was. A van being driven by Richard D. Arthur was in that lane, and Stringer's vehicle turned into Arthur's vehicle. The resulting collision caused injuries to Richard Arthur, the driver, and to his daughter, Ashley Arthur, who was riding in the backseat. Stringer admitted that her negligence caused the accident, and the jury was so instructed.

Richard's only injuries were bruises, which healed completely in the weeks following the accident. Ashley, however, testified at trial that when she saw that the van in which she was a passenger was going to be hit by Stringer's car, she threw out her right arm to shield another passenger. Ashley complains of continuing pain and a lack of the range of motion in her right arm and shoulder, of pain in her neck, and of severe migraine headaches that she says impair her vision and confine her to bed.

Four days after the accident, Ashley visited Dr. J. Paul Maddox in Dothan, complaining of severe pain in her right shoulder and arm and in her neck. Dr. Maddox prescribed physical therapy, including heat packs, ultrasound and electrical muscle stimulation, exercises, and anti-inflammatory medication. Several months later, Ashley returned to Dr. Maddox with similar complaints, and also complaining that her migraine headaches were becoming more frequent. Dr. Maddox suggested additional exercise for her shoulder and arm and sent

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Supreme Court of Minnesota.  
AMERICAN NATIONAL GENERAL **INSURANCE** COMPANY, Respondent,  
v.  
Paul Gerald SOLUM, et al., Petitioners, Appellants,  
Adam KRAUS, Petitioner, Appellant.  
**No. C8-00-2082.**  
April 18, 2002.

**Automobile insurer** brought action for declaratory judgment that uninsured pickup truck driven by **insured** was owned by his spouse, not his adult child, and that the policy provided no liability coverage. The District Court, Houston County, James A. Fabian, J., entered judgment on jury verdict for **insureds**. **Insurer** appealed. The Court of Appeals, Klaphake, J., [631 N.W.2d 420](#), reversed. Review was granted. The Supreme Court, Stringer, J., held that certificate of title created conclusive presumption that spouse owned pickup truck.

Affirmed.

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Supreme Court of Illinois.  
GENERAL CASUALTY **INSURANCE** COMPANY, Appellee,  
v.  
George W. LACEY, Appellant.  
**No. 90993.**  
April 18, 2002.

**Insured** brought action against **automobile insurer** to recover underinsured motorist (UIM) benefits after settling tort claim for less than the liability coverage limits. The Circuit Court entered summary judgment in favor of the **insurer**. **Insured** appealed. The Appellate Court affirmed in unpublished order. Leave to appeal was granted. The Supreme Court, Thomas, J., held that: (1) validity of exhaustion clause was governed by the law in effect at the time of issuance of the policy, not settlement with the liability **insurer**, and (2) the clause was valid under prior statute.

Affirmed.

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Supreme Court of Arkansas.

Denise SMITH, Individually, and as Natural Mother and Guardian of Jessica Moody, A Minor, and Deidre Moody, A Minor; Jo Ann Cross, Individually, and as Administratrix of the Estate of Cauley Shane Coffey, Deceased; Jeannie Bright Love, Individually, and as Administratrix of the Estates of Amy M. Bright, Deceased, and Emile Bright, Deceased; Stacey Jackson Montgomery, Individually, and as Administratrix of the Estate of Michael Jackson, Deceased, and as Natural Mother and Guardian of Erica Jackson, A Minor; and Tom M. Young, Administrator of the Estate of Vira A. Young, Deceased, Appellants,

v.

ROGERS GROUP, INC.; John Doe 1 Through 5; Hartford Fire **Insurance** Company; and National Union Fire **Insurance** Company, Appellees.

and

James Evans, Appellant,

v.

Rogers Group, Inc.; John Doe 1 Through 5; Marilyn K. Loftin, Administratrix of the Estate of Heath Loftin, Deceased; Hartford Fire **Insurance** Company; and National Union Fire **Insurance** Company, Appellees.

**No. 01-1028.**

April 18, 2002.

Appeal from the Faulkner County Circuit Court, Fourth Division; No. CIV-98- 370; Michael A. Maggio, Judge.

[DONALD L. CORBIN](#), Associate Justice.

The central issue in this case is whether the acquired-immunity doctrine is still a viable defense in this state. The Faulkner County Circuit Court concluded that it is and granted summary judgment to Appellee Rogers Group, Inc., and its **insurers**, Appellees Hartford Fire **Insurance** Company and National Union Fire **Insurance** Company. This case stems from three **automobile** accidents that occurred on U.S. Highway 65 North, between Conway and Greenbrier. Appellants and their decedents brought suit against Rogers, as the contractor for the Arkansas Highway and Transportation Department (AHTD), alleging that Rogers was negligent in applying Type 3 asphalt to the highway, knowing that it should not be used on such a high-volume highway. The trial court found that Rogers was not negligent because it followed AHTD's specifications exactly.

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Supreme Court of Mississippi.  
Della F. YERBY,  
v.  
UNITED HEALTHCARE **INSURANCE** COMPANY.  
**No. 2000-CA-01378-SCT.**  
April 18, 2002.

Clarke County Circuit Court, Hon. Robert Walter Bailey.

[T. Jackson Lyons](#), attorney for appellant.

Edward Arthur Scallet, William Francis Hanrahan, Jennifer E. Eller, [Michael D. Tapscott](#), attorneys for appellee.

EN BANC.

[SMITH](#), Presiding Justice, for the Court.

¶ 1. Della F. Yerby and James D. Yerby filed suit on April 22, 1998, against George Langham ("Langham") and John E. Smith & Company, Inc. ("Smith") for personal injuries suffered by Della in a motor vehicle accident which occurred when a vehicle driven by Langham struck the Yerbys' vehicle from behind. On April 29, 1998, the Yerbys filed an amended complaint adding Healthcare Recoveries, Inc. ("HR, Inc.") of Louisville, Kentucky, as a plaintiff under [Rule 17\(b\) of the Mississippi Rules of Civil Procedure](#) stating that HR, Inc. was the real party in interest due to an unsatisfied medical healthcare subrogation lien.

¶ 2. United Healthcare **Insurance** Company (United) moved to intervene pursuant to [Rule 24 of the Mississippi Rules of Civil Procedure](#). United claimed as its basis to intervene that under the terms of Della's **insurance** plan, it was contractually entitled to recover any benefits paid or payable for medical treatment of Della as a result of any recovery from another source. HR, Inc. had contracted with United to pursue subrogation claims on United's behalf.

¶ 3. The Yerbys settled their suit against Langham and Smith for \$738,000.00. United moved to recover the amount it paid to Mrs. Yerby for her injuries. Yerby filed a motion to deny United's claimed lien. After a hearing, the

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Supreme Court of Mississippi.  
Bradie REID, A Minor, by and through his Father and Legal Guardian, Bradley  
REID,  
v.  
AMERICAN PREMIER **INSURANCE** COMPANY And Ross-King-Walker, Inc.  
**No. 2000-CA-01791-SCT.**  
April 18, 2002.

Lawrence County Circuit Court, Hon. Michael R. Eubanks, J.

[Woodrow W. Pringle, III](#), attorney for appellant.

[James L. Quinn](#), [Richard M. Edmonson](#), attorneys for appellees.

EN BANC.

EASLEY, Justice, for the Court.

¶ 1. Bradley Reid (Bradley) appeals from the dismissal of his lawsuit against his **insurer** and its agent, on behalf of his minor son, Bradie Reid (Bradie). While the trial court dismissed the action on the merits, we conclude that the action is barred by the doctrine of res judicata. Accordingly, we affirm.

#### FACTS

¶ 2. On June 16, 1995, Tawanatha Reid (Tawanatha) was in a car accident with her son Bradie. Bradie was in the front passenger seat, and when the car collided, the passenger side air bag deployed striking him in the face. As a result, he suffered massive facial edema causing the closing of his right eye and a fracture of the nasal cartilage area.

¶ 3. Earlier on May 9, 1994, Tawanatha and her husband, Bradley, applied for **automobile insurance** with American Premier **Insurance** Company (American Premier) through Ross-King-Walker, Inc. (Walker), an **insurance** agency. At the time, the Reids owned a 1991 Pontiac **automobile** which was **insured** by Principle Casualty **Insurance** Company providing for bodily injury liability limits in the amount of \$10,000.00 per person and \$20,000.00 per accident. The Reids leased a 1994 Nissan **automobile** which was **insured** by Mutual Service Casualty Company (Mutual

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Supreme Court of New Hampshire.  
The ESTATE OF George LIBBY,  
v.  
STATE FARM MUTUAL **AUTOMOBILE INSURANCE** COMPANY.  
**No. 2001-056.**  
Argued Feb. 13, 2002.  
Opinion Issued April 17, 2002.

Federal employee's estate brought declaratory judgment action against **automobile insurer** to recover uninsured motorist (UM) benefits for employee's death as a result of collision with Navy motor vehicle driven by fellow employee. The Superior Court, Rockingham County, Coffey, J., entered summary judgment in favor of the **insurer**. Estate appealed. The Supreme Court, Duggan, J., held that the employee was not legally entitled to recover since the federal work injury compensation statute him from suing his employer or co- employee.

Appeal dismissed.

Nadeau, J., dissented and filed opinion.

Supreme Court of South Dakota.  
Darrell D. SPADE and Michelle Spade, Plaintiffs and Appellants,  
v.  
Matthew BRANUM, Defendant and Appellee.  
**No. 22051.**  
Argued Feb. 13, 2002.  
Decided April 17, 2002.

Appeal from the Circuit Court of the Second Judicial Circuit, Minnehaha County; Glen A. Severson, Judge.

Melissa B. Nicholson, [Thomas J. Nicholson](#) of Johnson, Eklund, Nicholson & Peterson Sioux Falls, South Dakota, Attorneys for plaintiffs and appellants.

[Paul T. Barnett](#) of Siegel, Barnett & Schutz, Sioux Falls, South Dakota, Attorneys for defendant and appellee.

[KONENKAMP](#), Justice.

[¶ 1.] In a case apparently requiring service by publication, can the summons be published without first obtaining a court order granting permission to do so? The circuit court ruled in the negative and dismissed the suit for invalid service. We affirm because service by publication requires strict compliance with statutory mandates, and a court order is an indispensable prerequisite to proper service by publication.

#### **Background**

[¶ 2.] This is a personal injury action arising from an **automobile** accident in Sioux Falls, South Dakota, on December 24, 1997. Plaintiffs Darrell and Michelle Spade (the Spades) sought compensation from the **insurer** of the other driver, Matthew Branum. Unable to arrive at a satisfactory resolution with Branum's **insurer**, the Spades' attorney prepared to sue.

[¶ 3.] On December 13, 2000, eleven days before the statute of limitations on their action would expire, the Spades' attorney filed a summons and complaint with the Minnehaha County Clerk of Courts. He also sent copies of these to Branum's **insurer**, with whom he had been corresponding for over two years. On the same date, the summons and complaint were delivered to the Minnehaha County Sheriff for service on Branum. Branum's address was listed on the accident report. Some days later, the Spades' attorney received a sheriff's return, indicating that a deputy sheriff had attempted to serve process on Branum, but was "unable to locate" him because he was "avoiding service." On that date and at least on one other occasion, on January 5, 2001, a deputy left a notice at

(Publication page references are not available for this document.)

Supreme Court of Arkansas.  
CADILLAC COWBOY, INC.,

v.

Pamela Sue JACKSON.

**No. 00-1243.**

March 14, 2002.

Administratrix of estate of motorist killed by drunk driver sued vendor of alcohol and its owners. The Circuit Court, Howard County, Yeagen, J., dismissed complaint. Administratrix appealed. The Supreme Court, [337 Ark. 24, 986 S.W.2d 410](#), reversed and remanded. On remand, the Circuit Court entered judgment on jury verdict in favor of administratrix. Vendor and its owners appealed. The Supreme Court, Annabelle Clinton Imber, J., held that: (1) on remand, trial court was required to apply standard of duty of care, which Supreme Court conclusively set forth in its mandate based on statutes that existed at the time of its decision, rather than standard of newly-enacted Dramshop Act; (2) evidence was sufficient to establish driver was intoxicated during time he was being served alcohol at club; and (3) assuming unnecessary comparative causation interrogatory was erroneous, jury was not misled.

Affirmed.

Thornton, J., filed a dissenting opinion, in which Corbin, J., joined.

(Publication page references are not available for this document.)

Supreme Court of Indiana.  
Steven BEAM, Appellant, (Plaintiff Below),  
v.  
WAUSAU **INSURANCE** CO., Appellee (Defendant Below).  
**No. 20S03-0202-CV-111.**  
Feb. 12, 2002.

Truck driver brought action against his employer's **automobile insurer** to recover underinsured motorist (UIM) benefits. The Superior Court, Elkhart County, Benjamin Pfaff, J., reduced the verdict by worker's compensation, liability coverage, and the UIM benefits under the driver's policy. Driver appealed. The Court of Appeals, Ratliff, Senior Judge, affirmed. On petition to transfer, the Supreme Court, Boehm, J., held that: (1) the policy required a reduction for workers' compensation from the amount of **damages**, rather than the policy limit, abrogating [Transcontinental Technical Serv., Inc. v. Allen, 642 N.E.2d 981](#); (2) the workers' compensation entitled the **insurer** to an offset reducing the UIM benefits by 55% of the workers' compensation benefits; and (3) as a matter of first impression, post-judgment interest on an award modified on appeal ran on the modified amount from the date of the original verdict, not on the original amount.

Remanded.

Opinion, [743 N.E.2d 1188](#), vacated.