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Oct 12 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

PERRY H. GRAVELY, CIRCUIT COURT JUDGE

Appellate Case No.: 2019-000009

Tyrin S. Young, Sr., Individually,
as PR of the Estates of Tyrin Young, Jr.
and Micah A. Young and as Legal
Guardian of J.Y. minor under the age of 14.Respondents,

v.

USAA General Indemnity Company Appellant.

**NOTICE OF SETTLEMENT, CONSENT MOTION TO REMAND TO TRIAL COURT
AND APPELLANT’S MOTION TO VACATE COURT OF APPEALS’ RULING**

This matter comes before this Court on the Parties’ Notice of Settlement, Consent Motion to Remand to Trial Court for Approval of Settlement and Appellant’s Motion to Vacate the Court of Appeals’ Order dated March 9, 2022. In that regard, the Parties hereby notify the Court that they have resolved their differences and have reached a settlement agreement in principle and seek to dismiss the appeal under Rule 260(b) of the South Carolina Appellate Court Rules. Since this matter involved wrongful death claims, the Parties respectfully request that this Court remand this case back to the Trial Court (Court of Common Pleas for the Thirteenth Judicial Circuit) for approval of such settlement. The Parties have agreed that each party will bear its own costs as part of the settlement.

Additionally, the Appellant, USAA General Indemnity Company, respectfully requests that this Court vacate the Court of Appeals’ ruling (Opinion No. 5899) dated March 9, 2022.

Please note that this is a unilateral Motion to Vacate, to which the Respondent takes no position. This Motion to Vacate is similar to *Carolina Convenience Stores, Inc. v. City of Spartanburg* wherein the Parties have reached a settlement, and one party, while abandoning its appeal, believed that the Court of Appeals' prior ruling should be vacated. In *Carolina Convenience Stores*, this Court vacated the Court of Appeals' ruling even over the objection of the non-moving party. Thus, this Court has previously granted the "extraordinary relief" even though it was opposed by one of the parties. In this case, the Respondents take no position as to this Motion and defer to the Court.

As indicated in Rule 261(d) of the South Carolina Appellate Court Rules, vacating an order of a court is an extraordinary measure. However, the Appellant believes that this case constitutes an extraordinary case where the Court of Appeals in a 2 vs. 1 opinion extended prior case law in interpreting S.C. Code Ann. §38-61-10 to apply to an Underinsured Motorist Policy on a vehicle that was neither involved in the accident nor located in the State of South Carolina. The grounds along with the supporting case law have been spelled out in the Appellants' Petition for Writ of Cert, and in an attempt to not waste the Court's time, the Appellants' arguments can be summarized as follows:

1. The policy reformed by the lower court was a California policy. California has enacted specific statutes to preclude the "stacking" of uninsured motorist claims, which includes coverage we refer to as underinsured motorist coverage.
2. The policy insured a vehicle that was located in Guam at the time this accident. That vehicle had not been physically located in the State of South Carolina since no later than 2009.
3. The lower court determined that underinsured motorist coverage does not insure the vehicle, but instead, insures the "lives" of the insureds, who in this case were the Respondent's children. His children were killed in a motor vehicle accident in Greenville, South Carolina. The vehicle involved in the collision had liability and

underinsured motorist coverage that was paid to the Respondent based upon his wife's alleged negligence. The involved vehicle was insured under a South Carolina policy.

4. While our courts have repeatedly held that underinsured motorist coverage is personal and portable, this Court has never reformed an out of state policy to include stackable underinsured motorist coverage for a vehicle that was not involved in the actual accident.
5. Reforming the California policy in this case would not only violate the contractual agreement between the Parties, it would also violate the Full Faith and Credit Clause of the U.S. Constitution as well as both State Constitutions.
6. As a result, the lower court took extraordinary measures extending the existing case law to essentially turn underinsured motorist coverage into a de facto life insurance policy. Such an expansion of existing law creates new law that materially affects thousands of policies issued by the Appellant.

While the Appellant has decided for other reasons to move forward with settlement of this claim, the Appellant respectfully requests that this Court vacate the lower court's ruling in order to prevent an unforeseen expansion of power to reform automobile policies where the insured vehicle was not located in this State or involved in the actual accident.

Conclusion

In summary, the Parties have reached a settlement that will need to be approved by the lower court. Therefore, the Parties have agreed to abandon the current appeal with the understanding that this Court will remand this matter to the trial court for approval of the wrongful death settlement. Additionally, the Appellant respectfully moves this Court to vacate the lower court's ruling in order to prevent a drastic and extraordinary expansion of the power of South Carolina's courts to reform out of state policies to include stackable underinsured motorist

coverage for vehicles that were not involved in the actual accident nor located within this State.

The Respondents take no position as to Petitioner's motion and defer to the Court.

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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served all counsel of record with a copy of the Notice Of Settlement, Consent Motion To Remand To Trial Court And Appellant’s Motion To Vacate Court Of Appeals’ Ruling by mailing a copy of the same by United States Mail with first class postage prepaid to the following:

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