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SC Court of Appeals

ELECTRONICALLY FILED - 2026 Jan 20 11:24 AM - SALUDA - COMMON PLEAS - CASE#2024CP4100087

STATE OF SOUTH CAROLINA COUNTY OF SALUDA	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT
Truetta Cyrus, Individually and as Duly Appointed Personal Representative and Administrator of the Estate of Timothy S. Cyrus, Plaintiff, vs. Progressive Northern Insurance Company, Defendants.	C/A#: 2024CP4100087 **ORDER GRANTING PROGRESSIVE'S MOTION FOR SUMMARY JUDGMENT**

This comes before me upon Defendant Progressive Northern Insurance Company ("Progressive")'s Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. This is a declaratory judgment action in which the Plaintiff claims that she is entitled to a separate "per person" bodily injury liability limit from a Progressive automobile liability policy issued to a driver who was involved in a fatal accident involving her son. Progressive moves for summary judgment on the basis that Plaintiff, as a statutory beneficiary under the South Carolina Wrongful Death Act, is not entitled to a separate "per person" liability limit from her son who was killed in an automobile accident.

A hearing was held on the motion on November 10, 2025 in Saluda County. Johnston Cox appeared for Progressive. John Nichols appeared for Plaintiff.

BACKGROUND

The undisputed facts in this case are as follows: Progressive issued Auto Policy # 942176143 to Dinorah Gonzalez ("Gonzalez"), which listed a 2012 Dodge Grand Caravan as an

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insured vehicle ("Policy"). The Policy provided bodily injury liability limits of $25,000 per person, $50,000 per accident, and property damage liability limits of $25,000 per accident.

On June 6, 2021, Timothy S. Cyrus ("Decedent") was operating a moped on U.S. Highway 1 when he was killed in a motor vehicle accident with Amanda Sandin ("Sandin"), who was operating the 2012 Dodge Grand Caravan with Gonzalez's permission. The Policy was in force on the date of the accident.

Plaintiff Truetta Cyrus ("Cyrus") is the mother of Decedent. She is the only statutory beneficiary of the Decedent's estate. She was not a witness to the Decedent's accident with Sandin, was not physically present at the time of the Decedent's accident with Sandin, and was not physically injured in the accident with Sandin. Cyrus did not own any property involved in the Decedent's accident with Sandin. Cyrus' damages derive solely from the death of her son as a statutory beneficiary of his estate under S.C. Code Ann. § 15-51-10. As such her damages are limited to potential pecuniary losses, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, and deprivation of society recoverable under the Wrongful Death Act.

Progressive tendered the full per person bodily injury liability limit of $25,000 to Cyrus individually and as the personal representative of the Decedent's estate. Cyrus brings this action asking the Court to declare that she is individually entitled to a separate per person liability limit of $25,000 because she is a statutory beneficiary of Decedent's estate.

STANDARD

Under South Carolina law, insurance policies are subject to the general rules of contract construction. *Nationwide Mut. Ins. Co. v. Commercial Bank*, 325 S.C. 357, 479 S.E.2d 524 (1996). The insurer's duties under a policy of insurance are set forth by the terms of the policy and cannot

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be enlarged by judicial construction. *South Carolina Ins. Co. v. White,* 301 S.C. 133, 390 S.E.2d 471 (Ct. App. 1990). Therefore, the court must afford policy language its plain, ordinary, and popular meaning. *Diamond State Ins. Co. v. Homestead Indus. Inc.,* 318 S.C. 231, 456 S.E.2d 912 (1995). An insurer's obligation under a policy of insurance is defined by the terms of the policy and cannot be enlarged by judicial construction. *South Carolina Ins. Co. v. White*, 301 S.C. 133, 390 S.E.2d 471, 474 (1990). If the intention of the parties is clear, the court has no authority to torture the meaning of policy language or to extend or defeat coverage that was never intended by the parties. *Sunex Int'l, Inc. v. Travelers Indem. Co. of Ill.*, 185 F.Supp.2d 614, 617 (D.S.C. 2001).

Where a motion for summary judgment presents a question concerning the construction of a written contract, the question is one of law if the language employed by the contract is plain and unambiguous. *Moss v. Porter Bros., Inc.*, 292 S.C. 444, 357 S.E.2d 25, 27 (1987). Summary judgment is proper in such a case where the intention of the parties regarding the legal effect of the contract may be gathered from its four corners. *Id.* The burden of proof is on the insured to show that a claim falls within the coverage of an insurance contract. *Gamble v. Travelers Ins. Co.*, 160 S.E.2d 523, 525 (S.C. 1968). Summary judgment shall be granted if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

After reviewing the memoranda submitted by the parties, oral argument and reviewing South Carolina law, the Court finds that Cyrus cannot recover under a separate "per person" bodily injury limit from the Progressive automobile liability policy issued to Gonzalez.

Under South Carolina law, Cyrus cannot recover for emotional distress or other damages she allegedly sustained as a result of Decedent's accident with Sandin. In order to do so, she must

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meet the elements for a negligent infliction of emotional distress claim (bystander liability). It is undisputed that she does not meet the elements of such a claim. *See Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 582–83, 336 S.E.2d 465, 467 (1985) (elements of a bystander claims are (a) the negligence of the defendant must cause death or serious physical injury to another; (b) the plaintiff bystander must be in close proximity to the accident; (c) the plaintiff and the victim must be closely related; (d) the plaintiff must contemporaneously perceive the accident; and (e) the emotional distress must both manifest itself by physical symptoms capable of objective diagnosis and be established by expert testimony). Despite her inability to recover for bodily injury against Sandin, Cyrus nevertheless claims that she is entitled to recover against Sandin under a separate "per person" bodily injury liability limit.

However, to recover under a separate per person limit, Cyrus must have suffered bodily injury in the accident. It is undisputed that she did not suffer bodily injury as defined by the policy or South Carolina law in the decedent's accident with Sandin. Therefore, Progressive is entitled to a dismissal of this action as a matter of law.

Progressive's policy states, in relevant part:

> **GENERAL DEFINITIONS**
>
> The following definitions apply throughout the policy. Defined terms are printed in bold-face type and have the same meaning whether in the singular, plural, or any other form.
>
> ***
>
> 4. "Bodily injury" means bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease.
>
> ***
>
> **PART I—LIABILITY TO OTHERS**
> **INSURING AGREEMENT**

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> If you pay the premium for this coverage, we will pay damages for bodily injury and property damage for which an insured person becomes legally responsible because of an accident.
>
> ***
> **LIMITS OF LIABILITY**
> ***
>
> If **your declarations page** shows a split limit:
>
> 1. the amount shown for "each person" is the most **we** will pay for all damages due to **bodily injury** to one person resulting from any one accident;
>
> 2. subject to the "each person" limit, the amount shown for "each accident" is the most **we** will pay for all damages due to **bodily injury** sustained by two or more persons in any one accident; and
>
> 3. the amount shown for "property damage" is the most **we** will pay for the total of all **property damage** resulting from any one accident.
>
> The "each person" limit of liability applies to the total of all claims made for **bodily injury** to a person and all claims of others derived from such **bodily injury**, including, but not limited to, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

Based upon the above-referenced language, Progressive's Auto policy provides an insured coverage only for "damages for bodily injury . . . for which an insured person becomes legally responsible because of an accident." "Bodily injury" is defined as "bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease." Further, the Policy clearly states:

> The "each person" limit of liability applies to the total of all claims made for **bodily injury** to a person and all claims of others derived from such **bodily injury**, including, but not limited to, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

Progressive's policy complies with South Carolina statutory and common law. S.C. Code Ann. § 38-77-140 states:

> (A) an automobile insurance policy may not be issued or delivered in this State to the owner of a motor vehicle or may not be issued or delivered by an insurer

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> licensed in this State upon a motor vehicle then principally garaged or principally used 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 exclusive of interest and costs, with respect to each motor vehicle, as follows:
>
> (1) twenty-five thousand dollars because of bodily injury to one person in any one accident and, subject to the limit for one person;
>
> (2) fifty thousand dollars because of bodily injury to two or more persons in any one accident;

Under South Carolina law and Progressive's policy, a person must receive "bodily injury" to recover under their own "per person" limit. However, the damages Cyrus is claiming as a statutory beneficiary of Decedent's estate are not considered "bodily injury" under South Carolina law. Rather, damages recoverable under the wrongful death statute are classified as "personal injuries." Neither Progressive's policy, S.C. Code Ann. § 38-77-140, nor the Wrongful Death Act require Progressive to apply a separate per person liability limit to Cyrus' claim for damages.

South Carolina's Wrongful Death Act provides:

> Whenever the death of a person shall be caused by the wrongful act, neglect or default of another and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured.

S.C. Code Ann. § 15-51-10.

Section 15–51–20 provides a wrongful death action may be brought for the benefit of the statutory beneficiaries, in this case, the Decedent's mother. "Damages recoverable for wrongful death are the damages sustained by the statutory beneficiaries resulting from the death of the decedent, including pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, and loss of society and companionship." *Clark v. S.C. Dep't of Pub. Safety*, 353 S.C. 291, 310, 578

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S.E.2d 16, 25 (Ct. App. 2002), *aff'd*, 362 S.C. 377, 608 S.E.2d 573 (2005). "Injuries recoverable under the Wrongful Death Act such as pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, and loss of society and companionship are not 'bodily injuries' but are 'personal injuries.'" *State Farm Mut. Auto. Ins. Co. v. Ramsey*, 295 S.C. 349, 353, 368 S.E.2d 477, 479 (Ct. App.), *aff'd*, 297 S.C. 71, 374 S.E.2d 896 (1988). *See also, Toney v. S.C. Dep't of Educ.*, 284 S.C. 401, 405, 327 S.E.2d 322, 325 (1985) ("[T]he kinds of injuries recoverable under the Wrongful Death Act are not included within the term 'bodily injuries.'").

The South Carolina Supreme Court has distinguished the terms "bodily injury" and "personal injury." The Court held the term "bodily injuries" was much narrower than the term "personal injuries." *Ramsey*, 368 S.E.2d at 479 (citing *Toney*, 327 S.E.2d at 325); *see also Russo v. Nationwide Mut. Ins. Co.*, 513 S.E.2d 127 (Ct. App. 1999) (spouse could not recover UIM benefits for loss of consortium under a per person limit separate from insured's recovery for bodily injuries); *Cummings v. Horace Mann Ins. Co.*, 996 F.2d 720 (4th Cir. 1993) (wrongful death damages not recoverable under underinsured motorist coverage because they are personal injuries, not bodily injuries).

In this way, wrongful death damages are equivalent to loss of consortium damages. "Damages for medical expenses and loss of consortium suffered by an individual due to injuries to his or her spouse are 'personal injuries' and not 'bodily injuries.' *Id.*; *see also Sheffield v. American Indemnity Company*, 245 S.C. 389, 140 S.E.2d 787 (1965); *Sossamon v. Nationwide Mutual Insurance Company*, 243 S.C. 552, 135 S.E.2d 87 (1964); *Russo v. Nationwide Mut. Ins. Co.*, 513 S.E.2d 127 (Ct. App. 1999).

Plaintiff was not present at the scene of the accident and did not witness the accident. She was not injured in the accident. She does not allege that she incurred property damage resulting

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from the accident. Her right to recover damages under the Wrongful Death Act is purely derivative of her son's claim. *Hopkins v. Fid. Ins. Co.*, 240 S.C. 230, 233, 125 S.E.2d 468, 469 (1962) ("Plaintiff's entitlement to compensation was not in her own right, but as beneficiary of the statutory cause of action."). As a result, she is not legally entitled to recover any bodily injury damages from Sandin. *See Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 582-83, 336 S.E.2d 465, 467 (1985) (cause of action exists for negligent infliction of emotional distress but is limited to bystander recovery); *State Farm Mut. Auto. Ins. Co. v. Ramsey*, 295 S.C. 349, 351, 368 S.E.2d 477, 478 (Ct. App.), *aff'd*, 297 S.C. 71, 374 S.E.2d 896 (1988) (negligent infliction of emotional trauma is a bodily injury for which damages may be recovered under a standard policy of insurance); *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341 S.C. 143, 533 S.E.2d 597 (Ct. App. 2000) (Wife's damages and loss of consortium from her husband's injuries were subject to the "per person" limit of liability applicable to the husband's injuries under the tort-feasor's automobile liability policy; even though the loss of consortium claim was independent, not derivative, the wife's damages were consequential, not direct bodily injury). Cyrus can only recover consequential "personal injury" damages under the Wrongful Death Act, which are not subject to a separate "per person" limit under Progressive's policy.

While not a wrongful death case, the South Carolina Court of Appeals discussion in *Russo v. Nationwide Mut. Ins. Co.*, 334 S.C. 455, 458, 513 S.E.2d 127, 128 (Ct. App. 1999) regarding whether loss of consortium damages, which are also "personal injuries," are recoverable under UIM is instructive. In *Russo*, an injured woman's husband argued that he was entitled to recover under a separate "per person" limit for his loss of consortium damages under a UIM policy issued to both he and his wife. The Court of Appeals rejected his argument that S.C. Code Ann. § 38-77-160 (Supp. 1998) requires a UIM carrier to provide coverage for loss of consortium damages

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because such damages are not considered "damages ... because of bodily injury." *Russo*, 513 S.E.2d at 129. The Court of Appeals found that UIM policies only cover damages resulting from bodily injury, not personal injuries such as loss of consortium and wrongful death damages. *Id.*; *See also Sheffield v. Am. Indem. Co.*, 245 S.C. 389, 397, 140 S.E.2d 787, 791 (1965) (since the wife of the appellant who sustained injury by reason of the negligent operation of an uninsured automobile and has been paid the full amount limited by the uninsured motorist endorsement in case of 'bodily injury' to one person, her husband, who has sustained no physical injury, cannot recover from the insurer for consequential damages on account of loss of consortium and reimbursement for medical expenses arising out of the injury to his wife, since he has sustained no 'bodily injury' within the meaning of the uninsured endorsement).

The same rationale applies to wrongful death damages which are also "personal injuries" not "bodily injuries." Wrongful death beneficiaries who sustain derivative "personal injuries" under the Wrongful Death Act are not entitled to recover a separate per person liability limit under a liability policy.

The definition of "bodily injury" contained in Progressive's policy is consistent with the South Carolina's Financial Responsibility Act and the common law. Further, the policy's definition of the damages included within a "per person" limit is wholly consistent with South Carolina law as previously discussed.[1]

THEREFORE, Progressive's Motion for Summary Judgment is granted. Cyrus is not entitled to recover a separate "per person" bodily injury liability limit from the Progressive automobile liability policy issued to Gonzalez as a matter of law. Her wrongful death damages are

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[1] "The 'each person' limit of liability applies to the total of all claims made for bodily injury to a person and all claims of others derived from such bodily injury, including, but not limited to, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death."

included in the same "per person" bodily injury liability limit applicable to the Decedent.

AND IT IS SO ORDERED.

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Saluda Common Pleas

Case Caption: Truetta Cyrus, Administrator Of The Estate Of Timothy S. Cyrus VS Progressive Northern Insurance Company

Case Number: 2024CP4100087

Type: Order/Summary Judgment

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167