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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

C.A. Case No. 2024-CP-41-00087
Appellate Case No. 2026-000356

Truetta Cyrus, Individually and as
Duly Appointed Personal Representative and
Administrator of the Estate of Timothy S. Cyrus......................................Appellant,

v.

Progressive Northern Insurance Company..Respondent.

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

STATEMENT OF THE ISSUES ON APPEAL

I. Whether S.C. Code Ann. § 38-77-142, which mandates liability coverage against the insured's "liability . . . for death," permits a policy to confine the wrongful-death liability of the insured tortfeasor within a single "per person" limit keyed to the decedent's bodily injury.

II. Whether the circuit court erred in treating wrongful-death damages as consequential damages governed by the loss-of-consortium cases—including *Stewart v. State Farm Mutual Automobile Insurance Co.*—when wrongful-death damages are direct damages for a distinct injury, compensated separately from the decedent's bodily injury and measured solely by the beneficiary's own loss.

III. Whether *Toney v. South Carolina Department of Education* and *State Farm Mutual Automobile Insurance Co. v. Ramsey* support confining wrongful-death damages to the decedent's per-person limit, where the Automobile Insurance Code itself defines "bodily injury" to "include[] death resulting therefrom."

STATEMENT OF THE CASE

This is a declaratory-judgment action to determine the amount of liability coverage available under an automobile policy following the death of Timothy S. Cyrus. On June 6, 2021, Mr. Cyrus was killed when the moped he was operating on U.S. Highway 1 was struck by a vehicle driven by Amanda Sandin, a permissive user of a vehicle insured by Progressive Northern Insurance Company ("Progressive") under a policy issued to Dinorah Gonzalez. The policy provides split bodily-injury liability limits of $25,000 "each person" and $50,000 "each accident."

Truetta Cyrus, the decedent's mother and the sole statutory beneficiary of his estate, sued both individually and as the duly appointed personal representative and administrator of the estate. Progressive tendered its $25,000 "each person" limit to resolve the bodily-injury liability claims arising from the decedent's death. Appellant contends that the policy and S.C. Code Ann. § 38-77-142 (2015) make available a second, separate "each person" limit for the wrongful-death claim—one "each person" limit for the survival claim and a separate "each person" limit for the wrongful-death claim. Progressive contends that a single "each person" limit caps both, on the theory that the policy's "each person" clause sweeps "wrongful death" in among the claims "derived from" the decedent's bodily injury.

Appellant filed her complaint for declaratory judgment on June 5, 2024, and an amended complaint on June 19, 2024, seeking a determination of the coverage available under the policy. The declaratory-judgment action proceeded separately from the companion wrongful-death and survival action, Saluda County Court of Common Pleas Case No. 2024-CP-41-00086, and was brought to resolve the coverage question in advance of that action. The parties submitted the coverage question to the circuit court on a written stipulation of facts and the operative policy language.

Progressive moved for summary judgment on October 18, 2024. Following a hearing on November 10, 2025, the Circuit Court granted the motion by order filed January 20, 2026. The circuit court held that a wrongful-death beneficiary's damages are equivalent to loss-of-consortium damages and, like loss of consortium, must share the single "each person" bodily-injury limit applicable to the decedent—thereby confining both the survival and wrongful-death claims to a single $25,000 limit. The order disposed of all claims in the declaratory-judgment action and is a final judgment.

This appeal followed.

STATEMENT OF THE FACTS

On June 6, 2021, Timothy S. Cyrus ("the decedent") was operating a moped on U.S. Highway 1 when he was struck and killed in a collision with a vehicle driven by Amanda Sandin. (Stip. ¶¶ 3–4.) After the collision, which caused significant damage to both vehicles, Sandin left the scene without rendering aid to the decedent; later that evening, after speaking with counsel, she turned herself in to the Batesburg Police Department. (MAIT Report 2–3, 21.)

Sandin was driving with the permission of Dinorah Gonzalez and was an insured person under an automobile policy Progressive Northern Insurance Company ("Progressive") had issued to Gonzalez. (Stip. ¶¶ 1, 4.) The policy was in force on the date of the accident. (Stip. ¶ 5.)

Appellant Truetta Cyrus is the decedent's mother and the sole statutory beneficiary of his estate. (Stip. ¶¶ 6–7.) She was not a witness to the accident, was not physically present when it occurred, and was not herself physically injured in it. (Stip. ¶¶ 8–10.) Neither she nor any other statutory beneficiary was riding with the decedent on the moped or witnessed the collision. (Resp. to Reqs. for Admis.) Her only claimed damages arising from her son's death are the pecuniary losses, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, and deprivation of society recoverable under the South Carolina Wrongful Death Act, S.C. Code Ann. § 15-51-10 (Supp. 2025). (Stip. ¶ 11.)

The Progressive policy provides split bodily-injury liability limits of $25,000 "each person" and $50,000 "each accident," together with property-damage liability limits of $25,000 each accident. (Stip. ¶ 2.) The policy's Limits of Liability provision states, in relevant part:

> The limit of liability shown on the declarations page for liability coverage is the most we will pay regardless of the number of: (1) claims made; (2) covered autos; (3) insured persons; (4) lawsuits brought; (5) vehicles involved in the accident; or (6) premiums paid.
>
> If your declarations page shows a split limit:
>
> 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;
>
> 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
>
> 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.

(Policy 5–6.) The final sentence—the "each person" clause grouping "wrongful death" with claims "derived from" another's bodily injury—is the provision on which the circuit court's ruling turned.

Progressive tendered its $25,000 "each person" bodily-injury limit to resolve the bodily-injury liability claims against Sandin and Gonzalez. (Stip. ¶ 13.) Appellant seeks one "each person" limit of $25,000 under the survival claim and a separate "each person" limit of $25,000 under the wrongful-death claim, for a total of $50,000. (Stip. ¶ 14.) Progressive maintains that a single $25,000 "each person" limit caps both claims.

ARGUMENT

The circuit court granted summary judgment on a single premise: that a wrongful-death beneficiary's damages are *equivalent* to loss-of-consortium damages, and so, like consortium, must share the single "per person" bodily-injury limit that applies to the decedent. (Order, pg. 7) That premise is the foundation of the order, and it is wrong as a matter of law.

South Carolina does not treat a wrongful-death claim as a byproduct of the decedent's bodily injury. The decedent's own injury is compensated on a separate track, the survival action. The wrongful-death claim compensates a different injury, one suffered by the statutory beneficiary and measured only by the beneficiary's own losses. The principal line of authority the circuit court relied on turns on whether damages are consequential to a living claimant's bodily injury. Wrongful-death damages are not. The order therefore cannot stand.

Two independent grounds require reversal. First, S.C. Code Ann. § 38-77-142 requires every automobile liability policy to insure against the tortfeasor's "liability . . . for death," and the Progressive policy cannot be read to fold that required coverage into a limit keyed to someone else's bodily injury. Second, the circuit court's equating wrongful death with loss of consortium mistakes both the nature of the wrongful-death claim and the damages recoverable under it. Each ground is addressed in turn.

I. BECAUSE S.C. CODE ANN. § 38-77-142 MANDATES LIABILITY COVERAGE FOR "DEATH," THE POLICY CANNOT CONFINE WRONGFUL-DEATH LIABILITY TO A LIMIT KEYED TO THE DECEDENT'S BODILY INJURY.

South Carolina's compulsory-coverage statute speaks directly to death. Section 38-77-142(A) provides that no liability policy may be issued or delivered in this State unless it insures the named insured and permissive users "against liability for death or injury sustained . . . as a result of negligence in the operation or use" of the vehicle. S.C. Code Ann. § 38-77-142(A). The statute thus names "death" as a category of liability that every policy must cover, independently of and in addition to "injury." Indeed, the chapter's own definitions fold death into the very term Progressive treats as its boundary: "'Bodily injury' includes death resulting therefrom." S.C. Code Ann. § 38-77-30(3) (2015) (discussed further in Part III). The Progressive policy insures Dinorah Gonzalez and her permissive user against exactly the liability the statute describes: liability imposed by law for the death of Timothy Cyrus arising out of the negligent use of the insured vehicle.

An insurer's obligations are defined by the policy and cannot be enlarged by judicial construction, but neither may a policy be construed to contract beneath the statutory floor. *See Williams v. Gov't Emps. Ins. Co. (GEICO)*, 409 S.C. 586, 603, 762 S.E.2d 705, 714 (2014) (holding, under § 38-77-142(C), that a policy provision reducing coverage below the policy's stated amount is void, because it is the face amount of coverage that controls, not the statutory minimum); *Nationwide Mut. Fire Ins. Co. v. Walls*, 433 S.C. 206, 215, 858 S.E.2d 150, 154 (2021) (Supreme Court found "it significant that the General Assembly has not amended section 38-77-142 since this Court decided *Williams* in 2014"). Subsection (C) is explicit: any provision "which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void." S.C. Code Ann. § 38-77-142(C). Where the statute requires coverage, policy terms that purport to withhold it are void to the extent of the conflict. *SC Farm Bureau Mut. Ins. Co. v.*

Mumford, 299 S.C. 14, 17, 382 S.E.2d 11, 13 (Ct. App. 1989) (if a provision in an automobile policy excluding coverage conflicts with statutory requirements, the statute controls). The question, then, is not whether Progressive's definitions are internally coherent, but whether they deliver the coverage § 38-77-142 commands.

They do not, at least not as the circuit court read them. The court read the policy's "each person" clause, which lists "wrongful death" among claims "derived from" the decedent's bodily injury, to confine the wrongful-death liability that § 38-77-142 mandates within the single per-person limit that applies to the decedent. That reading treats the required coverage for "death" as though it were nothing more than a consequence of the decedent's "injury." But the General Assembly listed "death" as its own object of mandatory coverage in § 38-77-142 (A) ("No policy or contract of bodily injury ... liability insurance covering liability arising from the ownership, maintenance, or use of a motor vehicle may be issued or delivered in this State to the owner of the vehicle ... unless the policy contains a provision insuring the named insured and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured against liability *for death* ***or*** *injury sustained* ***or*** *loss* ***or*** *damage incurred* within the coverage of the policy or contract as a result of negligence in the operation or use of the vehicle by the named insured or by any such person") (italics and bold added). A construction that erases the distinction the statute draws, reducing "death" to a subset of "injury," cannot be reconciled with the statutory text and must yield to it. *See, e.g.*, *Senate v. McMaster*, 425 S.C. 315, 322, 821 S.E.2d 908, 912 (2018) (the court "must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,' for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.'"); S.C. Code Ann. § 38-77-20 (2015) ("This chapter is to be liberally construed in order to achieve its purposes.").

This statutory construction also distinguishes the only recent authority on which Progressive relies. The decisions reading § 38-77-142 against coverage have done so in the underinsured-motorist (UIM) context, where the claimant is the named insured and the controlling statutory language, liability "by the named insured," does not fit. In a liability policy, by contrast, the insured is the tortfeasor, whose negligent operation of the vehicle indisputably caused the death. The statute's "liability for death . . . as a result of negligence in the operation or use" language in § 38-77-142(A) fits this case exactly. The coverage § 38-77-142 withholds from a UIM claimant who was not injured by his own insured's negligence is the very coverage it requires here.

For the reasons set forth above, the Court should reverse the Circuit Court Order and remand for further proceedings granting Appellant's request for Declaratory Judgment.

II. THE CIRCUIT COURT ERRED IN TREATING WRONGFUL-DEATH DAMAGES AS CONSEQUENTIAL DAMAGES GOVERNED BY THE LOSS-OF-CONSORTIUM CASES.

A. The Controlling Question Is Whether the Damages Are Consequential or Direct, Not Whether the Claim Is Separate.

The circuit court rested its decision on *Stewart v. State Farm Mutual Automobile Insurance Co.*, 341 S.C. 143, 533 S.E.2d 597 (Ct. App. 2000), and the consortium cases it builds on: *Russo v. Nationwide Mutual Insurance Co.*, 334 S.C. 455, 513 S.E.2d 127 (Ct. App. 1999) and *Sheffield v. American Indemnity Co.*, 245 S.C. 389, 140 S.E.2d 787 (1965). What those cases actually hold matters here, because the holding is narrower than the order assumes.

Appellant does not contend that the wrongful-death claim does not satisfy a separate limit merely because it is, in some sense, "separate" from the decedent's claim. *Stewart* forecloses that argument, and Appellant does not make it. *Stewart* expressly acknowledged that loss of consortium is an "independent action, not derivative" under South Carolina law, yet still confined it to the single per-person limit. *Stewart*, 341 S.C. at 156, 533 S.E.2d at 604. The court was explicit about why: "The crux of coverage is not the separateness of a loss of consortium claim. Instead, the key is the consequential or direct nature of the damages sought." *Id.* at 157, 533 S.E.2d at 604. Separateness, in other words, is beside the point. What controls is whether the damages are *consequential* to a bodily injury or *direct*.

That distinction decides this appeal, because wrongful-death damages are not consequential to the decedent's bodily injury in the sense *Stewart* requires. The circuit court never engaged that question. The court moved directly from "wrongful death is equivalent to loss of consortium" to "therefore it shares the single limit," skipping the only inquiry *Stewart* treats as dispositive: whether the damages are consequential to a bodily injury or direct. (Order p. 7-8)

B. Wrongful-Death Damages Are Not Consequential to the Decedent's Bodily Injury; They Compensate a Distinct Injury Measured by the Beneficiary's Own Loss.

In *Stewart, Russo,* and *Sheffield,* the structure was always the same: a living person sustained a bodily injury, survived, recovered (or could recover) his or her own per-person limit, and a spouse then sought a second limit for damages that flowed *from* that bodily injury. The consortium claimant's loss existed only as a consequence of the injured spouse's bodily harm. The wife in *Stewart* "became sick as a result of her husband's bodily injuries." *Stewart*, 341 S.C. at 155, 533 S.E.2d at 603. That is the paradigm *Sheffield* described when it explained that such consequential injuries "cannot be split up" and are "regarded as essentially injuries to one person."

Sheffield, 245 S.C. at 395, 140 S.E.2d at 790-91. The "one person" whose injury anchors the limit is the living, bodily-injured claimant from whom the consequential damages flow.

Wrongful death does not fit that paradigm, for two related reasons.

First, the decedent's bodily injury is compensated on its own separate track, not as the trunk from which the beneficiary's damages branch. South Carolina law channels the decedent's own injuries, including his conscious pain and suffering, his medical expenses, and his bodily harm, into the survival action, which belongs to the estate. *Jolly v. Gen. Elec. Co.*, 435 S.C. 607, 670, 869 S.E.2d 819, 853 (Ct. App. 2021), *aff'd sub nom. Jolly v. Fisher Controls Int'l, L.L.C.*, 443, S.C. 511, 905 S.E.2d 380 (2024) (citing *Scott v. Porter*, 340 S.C. 158, 170, 530 S.E.2d 389, 395 (Ct. App. 2000)).

The wrongful-death action, by contrast, recovers nothing for the decedent's injuries; in a wrongful-death action "no damages resulting to the deceased are recoverable, but only such as her death caused to" the statutory beneficiaries. *Bennett v. Spartanburg Ry., Gas & Elec. Co.*, 97 S.C. 27, 30, 81 S.E. 189, 190 (1914). The two are "different claims for different injuries." *Jolly*, 435 S.C. at 670, 869 S.E.2d at 853 (quoting *Smith v. Widener*, 397 S.C. 468, 724 S.E.2d 188 (Ct. App. 2012)). The Supreme Court reaffirmed that distinction on certiorari in the same litigation, treating the decedent's personal-injury claim and the wrongful-death claim as "different claims for different injuries" that cannot be set off against one another because they are not "the same injury or the same wrongful death." *Jolly v. Fisher Controls Int'l, LLC*, 443 S.C. 511, 535, 905 S.E.2d 380, 393 (2024). Because the decedent's bodily injury lives on the survival track, the beneficiary's wrongful-death damages cannot be the "consequence" of a bodily injury that is, by statute, compensated elsewhere.

South Carolina courts have refused to treat the wrongful-death and survival claims as compensation for a single injury even where doing so would have simplified a damages calculation. In *Glenn v. 3M Co.*, 440 S.C. 34, 890 S.E.2d 569 (Ct. App. 2023), the court rejected the contention that a decedent's wrongful-death and survival claims "seek damages for a single injury," holding instead that they are "different claims for different injuries" that "respectively seek different types of damages." *Id.* at 84 n.26, 89, 890 S.E.2d at 595 n.26, 598. The claims could not be collapsed into one another for purposes of a single recovery, because each compensates a distinct loss.

Second, wrongful-death damages are measured by the beneficiary's own loss, not by the decedent's bodily harm. The measure is "not . . . the value of the human life lost, but . . . the damages sustained by the beneficiaries from the death." *Singletary v. Shuler*, 433 S.C. 600, 609, 861 S.E.2d 591, 596 (Ct. App. 2021) (quoting *Smith v. Wells*, 258 S.C. 316, 319, 188 S.E.2d 470, 471 (1972); accord *Zorn v. Crawford*, 252 S.C. 127, 136-37, 165 S.E.2d 640, 645 (1969) (measure is the injury to the beneficiaries, not the intrinsic value of the decedent's life). Those damages are the beneficiary's own: pecuniary loss, mental shock and suffering, wounded feelings, grief, and loss of society. The beneficiary sustains them when the decedent dies, and they are measured by the beneficiary's relationship and loss. *Welch v. Epstein*, 342 S.C. 279, 304, 536 S.E.2d 408, 421 (Ct. App. 2000); *Clark v. S.C. Dep't of Pub. Safety*, 353 S.C. 291, 310, 578 S.E.2d 16, 25-26 (Ct. App. 2002). *Singletary* illustrates the point concretely: the beneficiary recovered $1.5 million in wrongful-death damages for her own losses, while a separate survival award compensated the decedent's conscious pain and suffering. *Singletary*, 433 S.C. at 606, 610-11, 861 S.E.2d at 594, 596-97. The two awards were neither merged nor measured by one another.

South Carolina enforces that separation from the other direction as well. In *Carson v. CSX Transportation, Inc.*, 400 S.C. 221, 734 S.E.2d 148 (2012), the Supreme Court held that a wrongful-death beneficiary's comparative negligence could not be imputed to the estate's survival claim, because survival damages turn on "the entitlement of the estate, not the identification of its beneficiaries." *Id.* at 242-43, 734 S.E.2d at 159. Each claim is measured by its own claimant's loss, and an attribute of one does not pass to the other.

The contrast with loss of consortium damages is instructive. Consortium damages compensate the loss of "companionship, aid, society and services" of a spouse. S.C. Code Ann. § 15-75-20 (Supp. 2025). Those damages are consequential precisely because they measure the downstream impact of an injury the spouse survives, the structure *Stewart* and *Sheffield* describe. *Stewart*, 533 S.E.2d at 604; *Sheffield*, 140 S.E.2d at 790-91. Wrongful-death damages are not of that character. They compensate the beneficiary's own loss occasioned by the death itself: grief, wounded feelings, loss of the decedent's society, not the cascading effects of a bodily injury on a household. That difference in what the two sets of damages measure is the difference between consequential and direct that *Stewart* treats as controlling.

There is no living, bodily-injured claimant whose single injury serves as the trunk. There is a death, the only event that triggers a wrongful death action, and a beneficiary whose distinct, independently measured injury arises from that death. Because the damages are not consequential to the decedent's bodily injury, the rule that consequential damages share the injured person's single limit does not reach them. It follows that the consequential-damages rationale of *Stewart* does not apply here.

C. That the Wrongful-Death Claim Shares a Liability Predicate With the Decedent's Claim Does Not Make Its Damages Consequential.

Progressive may observe, correctly, that South Carolina sometimes describes the wrongful-death claim as "derivative" of the decedent's own claim, in that the beneficiaries may recover only when the decedent maintained the right of recovery at this death. *See Jolly*, 435 S.C. at 670, 869 S.E.2d at 853 (noting the claim is treated "as derivative of the decedent's own personal claim during his lifetime"); *Estate of Stokes v. Pee Dee Family Physicians, L.L.P.*, 389 S.C. 343, 347, 699 S.E.2d 143, 145 (2010) (holding that a wrongful death claim "lies in the decedent's estate only when the decedent possessed the right of recovery at his death"). But that label describes a *liability prerequisite*, not the nature of the damages. The word "derivative" is doing different work in the two settings, and the distinction is decisive.

A claim can be "derivative" in the sense that its very existence depends on the tortfeasor's liability to the decedent (the prerequisite *Stokes* describes), without being "derivative" in the sense that its damages flow from and are measured by the decedent's bodily injury. *Stewart*'s rule turns only on the second sense: "the consequential or direct nature of the damages sought." *Stewart*, 341 S.C. at 157, 533 S.E.2d at 604. *Jolly* itself draws the line. Even while acknowledging the derivative-prerequisite label, the court held wrongful-death damages compensate a "different injury" than the decedent's claim and rejected the argument that the claim "allow[s] a decedent's heirs to pursue the decedent's personal injury claims after . . . death." *Jolly*, 435 S.C. at 670, 869 S.E.2d at 853. The derivative label, the court explained, is "simply the expression of a prerequisite for the right of the decedent's heirs to recover *their own damages*." *Id.* at 853 (emphasis added). Their own damages, that is, not the decedent's, are not a consequence of his bodily injury. See

Estate of Stokes, 389 S.C. at 347, 699 S.E.2d at 145 (a claim under the Wrongful Death Act lies in the decedent's Estate only when the decedent possessed the right of recovery at his death).

The circuit court conflated these two senses. It reasoned from the premise that the beneficiary's entitlement arises "not in her own right, but as beneficiary of the statutory cause of action," *Hopkins v. Fid. Ins. Co.*, 240 S.C. 230, 233, 125 S.E.2d 468, 469 (1962), to the conclusion that her damages are consequential and therefore capped. But *Hopkins* speaks to whose cause of action the beneficiary vindicates (the liability prerequisite), not to whether her damages are consequential to a bodily injury. The premise is about standing; the conclusion is about the measure of damages. The one does not follow from the other, and treating it as though it does is the error at the heart of the order.

D. The Wrongful-Death Act's Authorization of Punitive Damages Confirms That These Are Not Merely Consequential Bodily-Injury Damages.

The distinct character of the wrongful-death injury is confirmed by the damages the Act authorizes. The Wrongful Death Act permits the jury to award punitive (exemplary) damages keyed to the wrongdoer's culpability. S.C. Code Ann. § 15-51-40 (Supp. 2025); see *Scott v. Porter*, 340 S.C. 158, 173, 530 S.E.2d 389, 396 (Ct. App. 2000) (affirming separate punitive awards in the wrongful-death and survival actions arising from a single death, each independently supported and reviewed). Consequential damages, such as loss of consortium or medical expenses incurred on behalf of an injured spouse, do not carry an independent punitive component; they are derivative of, and measured by, another's bodily injury. A damages category that carries its own punitive exposure, tied to the tortfeasor's conduct in causing the death rather than to the decedent's own injury before death, is not fairly described as a mere consequence of that injury.

Nothing in South Carolina's motor-vehicle coverage law requires a different result. Punitive damages are not neatly subordinated to or divisible within the bodily-injury framework in the way an insurer would prefer, *cf. Gov't Emps. Ins. Co. v. Poole*, 424 S.C. 1, 817 S.E.2d 283 (2018), and § 15-51-40 makes the point directly here: wrongful-death damages carry their own punitive component, tied to the tortfeasor's conduct in causing the death. They are therefore direct damages for a distinct injury, not consequential damages that can be confined within the decedent's single per-person limit.

For the reasons set forth above, the Court should reverse the Circuit Court Order and remand for further proceedings granting Appellant's request for Declaratory Judgment.

III. THE AUTHORITIES THE CIRCUIT COURT INVOKED FOR THE "PERSONAL VERSUS BODILY INJURY" DISTINCTION DO NOT SUPPORT CONFINING WRONGFUL-DEATH DAMAGES TO THE DECEDENT'S LIMIT.

The circuit court leaned on *Toney v. S.C. Department of Education*, 284 S.C. 401, 327 S.E.2d 322 (1985), and *State Farm Mutual Automobile Insurance Co. v. Ramsey*, 295 S.C. 349, 368 S.E.2d 477 (Ct. App. 1988), aff'd, 297 S.C. 71, 374 S.E.2d 896 (1988), for the proposition that wrongful-death damages are "personal" rather than "bodily" injuries. Neither case bears the weight placed on it, because the Automobile Insurance Code's own definition forecloses the distinction on which both are read to rest: for purposes of this chapter, "'Bodily injury' includes death resulting therefrom." S.C. Code Ann. § 38-77-30(3).

That definition does not contradict anything established in Part II. The direct character of wrongful-death damages, that they are distinct from, and independently measured against, the decedent's bodily injury, is a question about how the damages are characterized. How the Code defines the *coverage term* "bodily injury" is a separate question, and on that question § 38-77-30(3) expressly folds death into the term. The two operate on different axes and point the same way: death is its own injury for purposes of measuring the beneficiary's damages, and it falls squarely within the defined coverage term the policy must honor.

Toney did not interpret § 38-77-142 or any automobile liability policy. It interpreted a no-fault school-bus statute, S.C. Code Ann. § 59-67-710 (1976, as amended). After a 1977 amendment swapped the phrase "personal injuries" for "bodily injuries" in one subsection, the court held that the narrower amended term did not reach wrongful-death damages under that statute. *Toney*, 284 S.C. at 405, 327 S.E.2d at 325. The holding is tethered to a statutory amendment in a wholly different coverage scheme; it says nothing about whether, under § 38-77-142's death mandate and a liability policy, wrongful-death liability shares the decedent's per-person limit. Whatever force *Toney*'s school-bus taxonomy may have had under a different statute, it cannot be carried into the automobile-insurance context to exclude "death" from "bodily injury" when the chapter's own definitions fold death into that very term.

Ramsey cuts against Progressive, not for it. *Ramsey* held that a bystander's *own* negligent-infliction-of-emotional-distress injury is a "bodily injury" entitling her to a separate per-person limit. *Ramsey*, 295 S.C. at 351, 368 S.E.2d at 478. Progressive reads *Ramsey*'s bystander analysis to imply that, absent *Kinard* elements, a family member's own damages can never be bodily injury. But *Ramsey* answered a different question, whether a witness's direct emotional trauma qualifies as bodily injury, not whether a statutory beneficiary's wrongful-death damages are confined to the decedent's limit. Progressive presses the contrary inference: that because the *Ramsey* plaintiff had to invoke a bystander theory to obtain a separate limit, wrongful-death damages must not themselves qualify as bodily injury. The inference does not follow. The *Ramsey* plaintiff needed the bystander theory because she was asserting a freestanding claim for her *own* emotional injury, a separate route to a separate limit that exists independently of the wrongful-death claim. That a bystander must satisfy *Kinard* to recover for her own trauma says nothing about whether wrongful-death damages are consequential to the decedent's bodily injury, which is the only question that controls under *Stewart*. The two paths to a separate limit, one through the beneficiary's own bystander injury and one through the distinct nature of wrongful-death damages, are independent; the existence of the first does not foreclose the second.

Progressive's "personal versus bodily injury" proposition, moreover, does not come from the *Ramsey* holding at all. The majority held only that negligent infliction of emotional distress can be a bodily injury supporting a separate limit. *Id.* at 351, 368 S.E.2d at 478. The statement that wrongful-death damages are "personal injuries" and not "bodily injuries" appears solely in a separate concurrence, and as to a wrongful-death claim that had already been settled and was not before the court. *Id.* at 353, 368 S.E.2d at 479 (Cureton, J., concurring). It is the view of one judge, on a question *Ramsey* did not decide. *Ramsey*'s silence on the latter question is not a holding regarding it. Indeed, *Ramsey* recognized that some emotional-injury damages *are* bodily injury warranting a separate limit. *See Ramsey, 295 S.C. at 351, 368 S.E.2d at 478* ("emotional trauma is a bodily injury for which damages may be recovered under a standard policy of insurance").

South Carolina has long recognized that "bodily injuries" are more than just physical injuries to one's person. *Spaugh v. Atlantic Coast Line R. Co.*, 158 S.C. 25, 30, 155 S.E. 145, 147 (1930) (holding that injuries to the "nervous system" are separate bodily injuries from other physical injuries sustained in an accident); *see also Padgett v. Colonial Wholesale Dist. Co.*, 232 S.C. 593, 607-608, 103 S.E.2d 265, 272 (1958) (holding that bodily injuries may result from "shock, fright and emotional upset"). That recognition undercuts any categorical rule that family-member damages are always confined to recover only for coverage allocated to one bodily injury.

Finally, both *Russo* and *Sheffield* are consortium cases involving a living, injured spouse, and they share the structural feature that distinguishes them from wrongful death: in each, the consequential claimant's damages flowed from a surviving person's bodily injury. For the reasons set out in Part II, that structure is absent here.

For the reasons set forth above, the Court should reverse the Circuit Court Order and remand for further proceedings granting Appellant's request for Declaratory Judgment.

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CONCLUSION

The order rests on a single, mistaken equation: that wrongful death is the same as loss of consortium. That equation ignores the only question South Carolina law treats as controlling, which is whether wrongful death damages are consequential to a living person's bodily injury or direct. Wrongful-death damages are direct damages for a distinct injury. They are compensated on a track separate from the decedent's bodily injury and measured by the beneficiary's own loss. Section 38-77-142 independently requires coverage for "death," which the policy may not contract away by folding it into a limit keyed to the decedent's injury. For these reasons, the judgment should be reversed.

Respectfully submitted,

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