

Redacted

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Presiding Judge

RECEIVED

AUG - 9 2012

S.C. Supreme Court

Opinion No. 2011-UP-242 Filed May 24, 2011
Withdrawn, Substituted and Refiled June 23, 2011

JOSHUA BELL Petitioner

vs.

PROGRESSIVE DIRECT INSURANCE COMPANY Respondent

APPENDIX

Gene M. Connell, Jr.
Kelaher, Connell & Connor, P.C.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Petitioner

J.R. Murphy, Esquire
Murphy & Grantland, PA
P. O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Respondent

INDEX

Order Denying Petition for Rehearing	1
Opinion of the Court of Appeals (Refiled June 23, 2011).....	2
Opinion of the Court of Appeals (Filed May 24, 2011)	8
Petition for Rehearing	14
Record on Appeal.....	attached
Brief of Appellant.....	attached
Reply Brief of Appellant.....	attached
Brief of Respondent	attached

The South Carolina Court of Appeals

Joshua Bell,

Appellant,

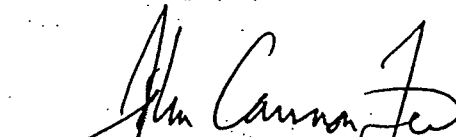
v.

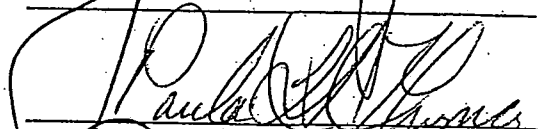
Progressive Direct Insurance Company, Respondent.

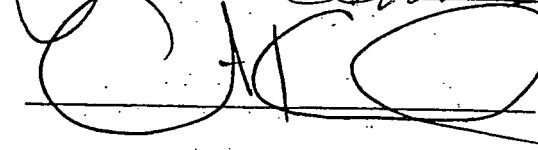
The Honorable J. Michael Baxley
Horry County
Trial Court Case No. 2007-CP-26-05890

ORDER

After careful consideration of the Petition for Rehearing, the Court orders that the Petition for Rehearing be denied. However, the Court hereby withdraws opinion number 242, filed May 24, 2011, and substitutes the attached opinion.



C.J.


J.


J.

Columbia, South Carolina

FILED

JUN 23 2011

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Joshua Bell,

Appellant,

v.

Progressive Direct Insurance
Company,

Respondent.

Appeal From Horry County
J. Michael Baxley, Circuit Court Judge

Unpublished Opinion No. 2011-UP-242
Submitted February 1, 2011 – Filed May 24, 2011
Withdrawn, Substituted and Refiled June 23, 2011

AFFIRMED

Gene M. Connell, Jr., of Surfside Beach, for
Appellant.

J.R. Murphy, of Columbia, for Respondent.

PER CURIAM: In this insurance case from Horry County, Joshua Bell brought an action against Progressive Direct Insurance Co. (Progressive), seeking to recover underinsured motorist (UIM) coverage from a policy issued to his live-in girlfriend, Sarah Serven. Bell now appeals the trial court's grant of summary judgment in favor of Progressive. We affirm.

FACTS

On May 4, 2005, Progressive issued an automobile insurance policy covering a vehicle owned by Serven and effective until May 4, 2006. The policy listed Serven and Bell as "Drivers and household residents," but listed Serven as the only "named insured." In March 2006, Bell was in an auto accident while a passenger in a car owned by his employer.¹ At the time of the accident Bell was living with Serven.

In March 2006, the couple had a child together. Around this time, Bell gave Serven a diamond ring and the two were engaged without having set a wedding date. Sometime around February 2007, Serven and the child moved to Maryland and the couple called off the engagement. Shortly after Serven moved to Maryland, she and Bell became engaged for a second time, again without setting a date. While Serven and the child lived in Maryland, Bell visited several times and planned to move there in June 2007. However, around the end of May 2007, Bell made an unannounced visit to Maryland and found Serven with another man. Subsequently, the couple permanently called off their engagement.

On July 18, 2007, Bell brought this action, seeking UIM coverage under the Progressive policy. Progressive moved for summary judgment. The trial court granted the motion, finding (1) Bell and Serven were not common law married, and therefore, Bell was not a named insured under the policy and (2) South Carolina courts have not adopted the doctrine of

¹ Although the trial court found the date of the accident to be May 31, 2006, the record demonstrates this is a typographical error, and the parties accept that the accident actually occurred in March 2006 during the policy period.

reasonable expectations, and therefore, Bell is not entitled to UIM coverage by virtue of being a "driver or household member." This appeal followed.

STANDARD OF REVIEW

Summary judgment is appropriate when there are no genuine issues of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. "Appellate courts review the grant of summary judgment under the same standard applied by the trial court . . . [granting summary judgment] where there are no genuine issues of material fact, . . . [and viewing] the evidence and all inferences that reasonably can be drawn [therefrom] . . . in the light most favorable to the nonmoving party." Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010) (citations omitted). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

LAW/ANALYSIS

1. Bell argues the trial court erred in failing to find the policy provided him with UIM coverage. We disagree.

If a person's vehicle is not involved in an accident, that person may reach only one at-home policy of which he is an insured. See S.C. Code Ann. § 38-77-160 (2002) ("If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage."). Here, Bell is not an insured under Serven's policy.

Serven's policy explicitly provides UIM for an "insured person," and it defines that term as "you or a relative." "You" is defined under the policy as "a person or persons shown as a named insured on the Declarations Page" and "the spouse of a named insured if residing in the same household." "Relative" is defined as "a person residing in the same household as you, and related to you by blood, marriage, or adoption" Consequently, whether

Bell is insured by and may therefore reach Serven's policy depends upon whether he falls within one of the defined terms, you or relative.

As to whether Bell falls within the defined term "you," Bell first argues the use of the term "household resident" on the policy's declaration page creates an ambiguity as to whether he is a named insured that must be resolved against the insurer, Progressive. We disagree. "The majority view is that listing a driver on the declarations page of an insurance policy does not make that person a named insured." Ex Parte United Servs. Auto Ass'n, 365 S.C. 50, 55, 614 S.E.2d 652, 654 (Ct. App. 2005). Moreover, the policy's failure to define "household resident" does not by itself make the policy ambiguous. Cf. id. at 55-56, 614 S.E.2d at 654-55. The policy defines "you" as the "named insured on the Declarations Page" and "the spouse of the named insured if residing in the same household." It also defines "relative" as "a person residing in the same household as you, and related to you by blood, marriage, or adoption." Thus, we see no ambiguity.

Second, Bell argues the trial court erred in finding he was not Serven's spouse because he provided sufficient evidence to survive summary judgment as to whether they were bound in common law marriage. We disagree. In South Carolina, common law marriage requires cohabitation accompanied by a present intent to be husband and wife. See Baker v. Baker, 330 S.C. 361, 367, 499 S.E.2d 503, 507 (Ct. App. 1998) (recognizing mutual understanding and intent are essential to the existence of a common law marriage); see also Callen v. Callen, 365 S.C. 618, 624, 624 S.E.2d 59, 62 (2005) (indicating that cohabitation combined with holding one's self out as married, creates a rebuttable presumption of the existence of a common law marriage). In this case, Bell failed to provide evidence he and Serven held themselves out as married. Although the couple lived together, cohabitation alone is insufficient to create a common law marriage. The evidence indicates Serven and Bell were engaged to be married at some undetermined point in the future. The only inference to be drawn from this is that the couple did not have a present intent to be married but instead a future intent to be married.

As to the second defined term, Bell maintains he was a "relative" under the policy because the mother of his child was Serven, the named insured. Again, we disagree. Bell is not a relative under the policy because he is not

related to Serven by blood or marriage. Accordingly, the trial court properly held Bell could not reach the UIM coverage of Serven's policy because he was not an insured under that policy.

2. Bell also urges this court to adopt the doctrine of reasonable expectations. We decline to do so.

This doctrine essentially is that the objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated these expectations. The theory is based upon the proposition that the construction of the language of an insurance contract is not ordinarily controlled by the standards applicable to a contract negotiated at arm's length between two parties on the same plane.

....

This view has never been accepted by the Supreme Court of this State. In South Carolina insurance policies are subject to the general rules of contract construction.

....

If the intention of the parties is clear, the Courts have no authority to change the contract in any particular and have no power to interpolate into the agreement between the insurer and the insured, a condition or stipulation not contemplated by the parties. A reviewing court should not rewrite or torture the meaning of policy language to achieve a result never intended by the parties.

Allstate Ins. Co. v. Mangum, 299 S.C. 226, 231, 383 S.E.2d 464, 466-67 (Ct. App. 1989) (citations and internal quotation marks omitted).

Bell argues because the doctrine was not properly before the court in Mangum, the court's statement is dicta and as a result, the court has never explicitly rejected the doctrine. See id. at 232, 383 S.E.2d at 467 (noting that because the doctrine of reasonable expectations was not addressed by the trial court, the issue was not properly preserved for appeal); but see United Servs., 365 S.C. at 54, 614 S.E.2d at 654 (stating that the doctrine of reasonable expectations has been rejected in South Carolina). Admittedly, the court's statement in Mangum is not the law of the case; however, the supreme court has consistently held that unambiguous insurance policies are subject to the general rules of contract construction. See, e.g., Gambrell v. Travelers Ins. Co., 280 S.C. 69, 71, 310 S.E.2d 814, 816 (1983); see also United Servs., 365 S.C. at 54, 614 S.E.2d at 654 (suggesting that implementation of this rule is the equivalent of rejecting the doctrine of reasonable expectations). Therefore, even assuming for the sake of argument that the doctrine has not been explicitly rejected, because the doctrine cannot be reconciled with the rule that unambiguous insurance policies are subject to the traditional rules of contract construction, this court is precluded from adopting the doctrine. Such a departure from jurisprudence must be left to our supreme court.

CONCLUSION

Accordingly, the trial court is

AFFIRMED.

FEW, C.J., THOMAS, and KONDUROS, JJ., concur.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Joshua Bell,

Appellant,

v.

Progressive Direct Insurance
Company,

Respondent.

Appeal From Horry County
J. Michael Baxley, Circuit Court Judge

Unpublished Opinion No. 2011-UP-242
Submitted February 1, 2011 – Filed May 24, 2011

AFFIRMED

Gene M. Connell, Jr., of Surfside Beach, for
Appellant.

J.R. Murphy, of Columbia, for Respondent.

PER CURIAM: In this insurance case from Horry County, Joshua Bell brought an action against Progressive Direct Insurance Co. (Progressive), seeking to recover underinsured motorist (UIM) coverage from a policy issued to his live-in girlfriend, Sarah Serven. Bell now appeals the trial court's grant of summary judgment in favor of Progressive. We affirm.

FACTS

On May 4, 2005, Progressive issued an automobile insurance policy covering a vehicle owned by Serven and effective until May 4, 2006. The policy listed Serven and Bell as "Drivers and household residents," but listed Serven as the only "named insured." In March of 2006, Bell was in an auto accident while a passenger in a car owned by his employer.¹ At the time of the accident Bell was living with Serven.

In March of 2006, the couple had a child together. Around this time, Bell gave Serven a diamond ring and the two were engaged without having set a wedding date. Sometime around February of 2007, Serven and the child moved to Maryland and the couple called off the engagement. Shortly after Serven moved to Maryland, she and Bell became engaged for a second time, again without setting a date. While Serven and the child lived in Maryland, Bell visited several times and planned to move there in June of 2007. However, around the end of May 2007, Bell made an unannounced visit to Maryland and found Serven with another man. Subsequently, the couple permanently called off their engagement.

On July 18, 2007, Bell brought this action, seeking UIM coverage under the Progressive policy. Progressive moved for summary judgment. The trial court granted the motion, finding (1) Bell and Serven were not common law married, and therefore, Bell was not a named insured under the policy and (2) South Carolina courts have not adopted the doctrine of reasonable expectations, and therefore, Bell is not entitled to UIM coverage by virtue of being a "driver or household member." This appeal followed.

¹ Although the trial court found the date of the accident to be May 31, 2006, the record demonstrates this is a typographical error, and the parties accept that the accident actually occurred in March of 2006 during the policy period.

STANDARD OF REVIEW

Summary judgment is appropriate when there are no genuine issues of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. "Appellate courts review the grant of summary judgment under the same standard applied by the trial court . . . [granting summary judgment] where there are no genuine issues of material fact, . . . [and viewing] the evidence and all inferences that reasonably can be drawn [therefrom] . . . in the light most favorable to the nonmoving party." Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010) (citations omitted). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

LAW/ANALYSIS

1. Bell argues the trial court erred in failing to find the policy provided him with UIM coverage by virtue of being a household resident. We disagree. To stack UIM coverage, a party must be a Class I insured—that is (a) the named insured, (b) his/her spouse, or (c) his/her resident relative. See Ex Parte United Servs. Auto Ass'n, 365 S.C. 50, 55, 614 S.E.2d 652, 654 (Ct. App. 2005).

First, Bell argues that because the declaration page lists him as a driver and household resident, which is undefined by the policy, he is entitled to recover UIM. However, a party's status as per the declaration page is not dispositive of whether she is a named insured. See id. at 56, 614 S.E.2d at 654-55 (finding that although the declaration page listed a party as an "operator"—a term not defined by the policy—this did not mean the party qualified as a named insured).

Second, Bell argues the trial court erred in failing to find he was Serven's common law husband. Yet notwithstanding Bell's failure to cite any legal authority to support the assertion, in South Carolina a common law

marriage requires cohabitation accompanied by a present intent to be husband and wife. See Baker v. Baker, 330 S.C. 361, 367, 499 S.E.2d 503, 507 (Ct. App. 1998) (recognizing mutual understanding and intent are essential to the existence of a common law marriage); see also Callen v. Callen, 365 S.C. 618, 624, 624 S.E.2d 59, 62 (2005) (indicating that cohabitation combined with holding one's self out as married, creates a rebuttable presumption of the existence of a common law marriage). In this case, no evidence supports that Bell and Serven held themselves out as married. Although the couple lived together, cohabitation alone is insufficient to create a common law marriage. The evidence indicates Serven and Bell were engaged to be married at some undetermined point in the future. The only inference to be drawn from this is that the couple did not have a present intent to be married but instead a future intent to be married.

Third, Bell maintains that because he lived in the same house with Serven and had a child with her, he was a resident relative of the named insured. Here, however, Bell is not related to Serven by blood or marriage, and his policy defines "relative" as a person residing in the same household as the named insured and related by blood or marriage. Accordingly, the trial court did not err in failing to find the policy provided him with UIM coverage.

2. Bell also urges this court to adopt the doctrine of reasonable expectations. We decline to do so.

This doctrine essentially is that the objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated these expectations. The theory is based upon the proposition that the construction of the language of an insurance contract is not ordinarily controlled by the standards applicable to a contract negotiated at arm's length between two parties on the same plane.

....

This view has never been accepted by the Supreme Court of this State. In South Carolina insurance policies are subject to the general rules of contract construction.

.....

If the intention of the parties is clear, the Courts have no authority to change the contract in any particular and have no power to interpolate into the agreement between the insurer and the insured, a condition or stipulation not contemplated by the parties. A reviewing court should not rewrite or torture the meaning of policy language to achieve a result never intended by the parties.

Allstate Ins. Co. v. Mangum, 299 S.C. 226, 231, 383 S.E.2d 464, 466-67 (Ct. App. 1989) (citations and internal quotation marks omitted).

Bell argues because the doctrine was not properly before the court in Mangum, the court's statement is dicta and as a result, the court has never explicitly rejected the doctrine. See id. at 232, 383 S.E.2d at 467 (noting that because the doctrine of reasonable expectations was not addressed by the trial court, the issue was not properly preserved for appeal); but see United Servs., 365 S.C. at 54, 614 S.E.2d at 654 (stating that the doctrine of reasonable expectations has been rejected in South Carolina). Admittedly, the court's statement in Mangum is not the law of the case; however, the supreme court has consistently held that unambiguous insurance policies are subject to the general rules of contract construction. See, e.g., Gambrell v. Travelers Ins. Co., 280 S.C. 69, 71, 310 S.E.2d 814, 816 (1983); see also United Servs., 365 S.C. at 54, 614 S.E.2d at 654 (suggesting that implementation of this rule is the equivalent of rejecting the doctrine of reasonable expectations). Therefore, even assuming for the sake of argument that the doctrine has not been explicitly rejected, because the doctrine cannot be reconciled with the rule that unambiguous insurance policies are subject to the traditional rules of

contract construction, this court is precluded from adopting the doctrine. Such a departure from jurisprudence must be left to our supreme court.

CONCLUSION

Accordingly, the trial court is

AFFIRMED.

FEW, C.J., THOMAS, and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Presiding Judge

CASE NO. 07-CP-26-5890

RECEIVED

JUN 07 2011

SC Court of Appeals

JOSHUA BELL Petitioner

vs.

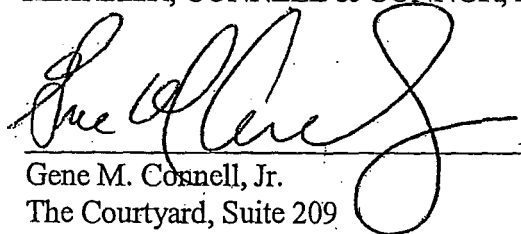
PROGRESSIVE DIRECT INSURANCE COMPANY Respondent

PETITION FOR REHEARING

The Appellant, pursuant to Rule 221 of the South Carolina Appellate Court Rules, moves this Court for a rehearing of its decision filed May 24, 2011 and received by Appellant's attorney on May 25, 2011.~ The basis of this Petition for Rehearing is the attached Memorandum of Law.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Petitioner

June 6, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Presiding Judge

CASE NO. 07-CP-26-5890

JOSHUA BELL Petitioner

vs.

PROGRESSIVE DIRECT INSURANCE COMPANY..... Respondent

MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR REHEARING

The Appellant moves the Court for a rehearing pursuant to Rule 221 of the South Carolina Appellate Court Rules. The basis of this Petition for Rehearing is as follows:

1. The Court's decision does not address the rule that all ambiguities in an insurance policy must be resolved against the insurer. In this case, there is no definition of "household resident" in the insurance policy which creates an ambiguity and thus Bell is entitled to judgment as a matter of law.
2. The Court does not address in its Opinion the request of Appellant to certify the issue of whether the doctrine of reasonable expectation should be heard by the South Carolina Supreme Court. The basis of this request is that the doctrine has never been decided by any appellate court in this state.

3. The Court's opinion regarding the doctrine of reasonable expectations should be published since there is no direct case law on this subject.

4. The Court should fully explain why the doctrine of reasonable expectations should not be adopted since it has been adopted in 36 other states.

5. The Court erred in holding that a party's status as per the declaration page was not dispositive. The error being that any insurance policy can expand on who is covered to include others such as Bell who was listed as a household resident and paid the insurance premium on the policy.

6. The Court erred in affirming the granting of summary judgment on the common law marriage issue when there was more than a scintilla of evidence to support Appellant's claim.

7. The Court erred in holding that *Gambrell v. Travelers Ins. Co.*, 280 S.C. 69, 310 S.E.2d 814 (1983) barred the court from considering the doctrine of reasonable expectations. The basis of this argument is that *Gambrell* only applies to unambiguous insurance policies, and in this case the term household resident had not been defined in the policy. Accordingly, the Appellant asserts it is in this context that the doctrine of reasonable expectations has been used by courts around the country to construe insurance policies.

STATEMENT

This case demonstrates how the law should be changed when society changes the rules of how people decide to live together. The United States Census Bureau estimates that over 12,000,000 people live together in the United States and that there are 77,964 domestic partners living together in South Carolina. (See American Community Survey, U.S. Census Bureau Survey 2005-2007). Many of these partners share the bills, the rent, the insurance

payments, and have children together. Further, the strict construction rules of automobile insurance policies do not fit into how people live and work in this state. Also, the insurance industry understands that relationship and has even listed people such as Appellant as a household resident without defining that term in the policy. This is precisely why the Court should find the doctrine of reasonable expectations is applicable, or in the alternative certify this most important question to the South Carolina Supreme Court because it is an issue of great public interest to those people living together throughout this state.

While Appellant understands this Court's reluctance to change the jurisprudence of this state, it has done so on numerous occasions as justice requires and indeed the South Carolina Supreme Court has adopted this Court's opinions or reasoning on novel issues in the past. (See *Langley v. Boyter*, 325 S.C. 550 (S.C.App. 1984) (comparative negligence adopted by this Court).

I. ALL AMBIGUITIES MUST BE CONSTRUED AGAINST THE INSURER.

This Court errs when it finds that a party's status is not dispositive when listed on the declarations page. In fact, the insurer can choose to insure whoever it wants to and can so state on the declarations page. Here, Bell was not just a mere operator; he was a household resident and the father of the insured's child. They lived together, Bell paid the bills (including the insurance premiums) and they shared a car -- all of which Progressive recognized when it listed Bell as a household resident on the policy. If anything, the policy was ambiguous about Bell's status and thus coverage was mandated. (See Final Brief of Appellant, Section II, *Super Duper, Inc. v. Pennsylvania National Mutual Cas. Ins. Co.*, Op. No. 26717 filed September 14, 2009) ("Ambiguous terms must be construed in favor of the insured.").

Indeed, this Court's own Opinion in this case admits that the term household resident is not defined. (See Court's Opinion, page 1). Thus, this ambiguity and subsequent opinions of this Court require coverage. Since Progressive decided to expand its policy to include household residents such as Bell and knew about the ambiguity when it did so, it must be construed against it. There are also other compelling reasons for finding that the policy is ambiguous. One of which is that when a person is required to purchase liability insurance under state law any ambiguity must be construed against the insurer.

II. THE DOCTRINE OF REASONABLE EXPECTATIONS SHOULD BE ADOPTED BY THE COURT OR AT THE VERY LEAST THIS CASE SHOULD BE CERTIFIED TO THE SUPREME COURT BECAUSE IT HAS AN IMPORTANT PUBLIC INTEREST

First, Appellant realizes that he has requested this important issue be certified to the Supreme Court and this Court on two separate occasions. Appellant again requests the Court use its discretion to do so since this Court in its Opinion indicates this is an open question which has not been directly addressed by this state's highest courts. While not wishing to belabor the point and aggravate this Court, the Appellant refers back to Justice Toal's comments at numerous seminars that she expects effective representation to include counsel asking for the same relief again and again until he or she gets the final answer. Thus, Appellant respectfully requests a third time that this Court certify the question of reasonable expectations to the high Court for a definitive answer. Appellant believes this Court in its Opinion recognizes the significance of this case.

Second, the doctrine of reasonable expectations does not clash with the *Gambrell* case as the Court states in its Opinion. In *Gambrell*, the Supreme Court was faced an interpretation of an automobile insurance policy and an underinsured motorist statute. The Court in *Gambrell* in interpreting underinsured motorist coverage held that a motorist may

recover underinsured motorist coverage when his damages exceed the at-fault motorist's liability coverage. Thus, the *Gambrell* court was interpreting a statute and not an ambiguous insurance policy. The question presented here is: What is the reasonable expectation of the purchaser of such a policy when his name appears as a household resident on that policy? At least 36 states have relaxed the strict construction rules of an insurance policy required by law in these types of circumstances. (See Section III of Appellant's Final Brief for the 36 states which have adopted this rule.).

This Court also erred in citing *Gambrell* for the proposition that the doctrine of reasonable expectations would be rejected by the South Carolina Supreme Court. This ruling is erroneous for the following reasons.

1. *Gambrell* only held that S.C. Code Ann. § 56-9-831 allows appellant to recover those damages exceeding the at-fault motorist's liability coverage to the extent of her underinsured motorist coverage.
2. Neither this Court nor the Supreme Court has ever squarely considered the doctrine of reasonable expectations.
3. No South Carolina case has discussed the doctrine of reasonable expectations except *in dicta*.
4. *Gambrell* and the doctrine of reasonable expectations can be reconciled when there are ambiguous terms in an insurance policy such as household resident. Indeed, *Gambrell* reconciled an underinsured motorist insurance policy with a South Carolina statute.
5. *Gambrell* was decided 28 years ago prior to the doctrine of reasonable expectations being decided and adopted in 36 jurisdictions across the United States.

6. Society has changed and the law should change. Currently almost 12,000,000 Americans live together (See U.S. Census Bureau 2005-2007).

7. The doctrine of reasonable expectations is a logical extension of the way to interpret an insurance policy in circumstances such as these.

8. Because auto insurance is required in South Carolina, this is not the normal contractual relationship where both parties have equal bargaining power. People like Appellant buy the insurance because the law requires them to do it and he should get the benefit of his reasonable expectation.

III. THE COURT ERRED IN HOLDING THAT THERE WAS NO EVIDENCE OF COMMON LAW MARRIAGE.

The Court in its Opinion held that no evidence supports that Bell and Severn held themselves out as married. Appellant respectfully disagrees and believes this ruling is erroneous since the case was decided on summary judgment and required only a scintilla of evidence. Bell's testimony is in the record and was as follows: that they lived together (Deposition, R. p. 97, lines 16-17; R. p. 98, line 3); that both names were on the lease (Deposition, R. p. 99, lines 23-24); that they had a child (Deposition, R. p. 100, lines 9-14); that Bell paid all of the bills, including the car insurance premium (Deposition, R. p. 106, lines 20-25); that the term "household resident" is not defined in the policy (R. p. 52); that Bell had given Severn a diamond ring (Deposition, R. p. 103, lines 11-13); that they had lived together in two different apartment complexes (Deposition, R. p. 100, lines 1-25); that they moved to another apartment complex because they needed a baby room (Deposition, R. p. 100, lines 22-24); that Bell, his common law wife and their baby lived together at least eleven months prior to the wreck (Deposition, R. p. 101, line 10). The record establishes that Bell paid all the bills including car insurance, rent, water, sewer, electric, internet,

clothing and food (Deposition, R. p. 106, lines 20-25); that Bell asked Severn to marry him after she got pregnant and they lived together (Deposition, R. p. 108, lines 4-7); that Bell paid the insurance on the one vehicle in the household and it was used for family purposes (Deposition, R. p. 109, lines 1-3); and that Bell and Severn shared the use of the car (Deposition, R. p. 125, lines 15-22).

In summary, at the time Bell was injured, the record reveals he cohabitated with Severn, had a child with her, and held himself out to be married, paying the bills, sharing a car, living in the same apartment and exhibiting all the outward signs of marriage at the time of the wreck. Thus, this Court should reverse its opinion that common law marriage has not been proven. (This evidence is more than a scintilla and thus summary judgment should be reversed.)

IV. THIS IS NOT A STACKING CASE AND THE RULES OF STACKING DO NOT APPLY.

The Court in its opinion refers to the stacking of underinsured motorist coverage (Opinion at page 1). This is error in that Bell does not attempt to stack underinsured motorist coverage because his employer's vehicle did not have it on the vehicle in the accident. Bell only wants to require Progressive to pay underinsured motorist coverage through the policy he paid for with Severn. Thus this Court's citation to *Ex parte USAA*, 365 S.C. 50, 614 S.E.2d 652 (Ct. App. 2005) is not applicable.

V. THE SUPREME COURT OR COURT OF APPEALS OF THIS STATE HAS NEVER HAD AN OPPORTUNITY TO RULE ON THE DOCTRINE OF REASONABLE EXPECTATIONS.

This Court in its decision indicates that the South Carolina Supreme Court has never accepted the doctrine of reasonable expectations. (Opinion at p. 2). The Court then goes on to admit that the doctrine has never been properly preserved for appeal and decided by this

Court or the Supreme Court. (See *Allstate Ins. v. Mangum*, 299 S.C. 226, 383 S.E.2d 464, (Ct. App. 1989).

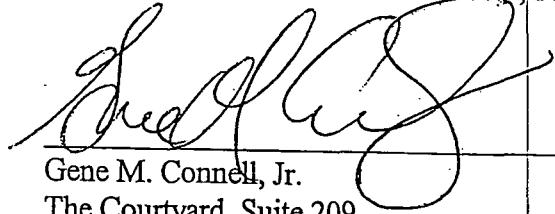
Finally, the Opinion is incorrect in citing *Ex Parte USAA*, 614 S.E.2d 652 (Ct. App. 2005) as authority for rejection of the doctrine, since that opinion cites *Mangum* which makes clear that the issue was not properly preserved for appeal in a footnote. Thus any citation to *Ex Parte USSA* or *Mangum* is inappropriate and the quotation by the court that this view has never been accepted by the Supreme Court of the state is incorrect because it cites *Mangum* which makes clear that the issue was never properly preserved. See *Langley v. Boyter*, 284 S.C. 162, 181, 325 S.E. 2d 550 (1984), reversed 286 S.C. 85, 332 S.E.2d 100 (1985). ("Appellate Courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.").

CONCLUSION

In summary, Appellant requests that this Court reconsider its decision and hold that the doctrine of reasonable expectations is applicable or in the alternative that this Court certify the question to the South Carolina Supreme Court because of the substantial public issues involved in this case.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.

A handwritten signature in black ink, appearing to read "Gene M. Connell, Jr.", is written over a horizontal line.

Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Petitioner

June 6, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Presiding Judge

CASE NO. 07-CP-26-5890

JOSHUA BELL Appellant

vs.

PROGRESSIVE DIRECT INSURANCE COMPANY..... Respondent

RECORD ON APPEAL

Gene M. Connell, Jr.
KELAHHER, CONNELL & CONNOR, P.C.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellant

J.R. Murphy, Esquire
Murphy & Grantland, PA
P. O. Box 6648
Columbia, SC 29260
(803) 782-4100 (phone)
(803) 454-1258 (fax)
Attorney for Respondent

INDEX

Order Denying Motion for Reconsideration by The Honorable J. Michael Baxley dated July 31, 2009, filed August 4, 2009	1
Order Granting Defendant's Motion for Summary Judgment (Order Ending Case) by The Honorable J. Michael Baxley dated December 29, 2008, filed January 14, 2009	2
Summons and Complaint filed by Plaintiff on September 24, 2007	8
Answer filed by Defendant on October 22, 2007	12
Affidavit of Patrick Colangelo filed September 18, 2008	15
Affidavit of James A. Dodrill dated September 9, 2008 with attached South Carolina Motor Vehicle Policy, Motor Vehicle Policy Endorsement, Pro Rata Cancellation Refund Endorsement and Auto Insurance Coverage Summary (Declaration Page)	17
Transcript of Record before The Honorable J. Michael Baxley October 13, 2008	54
Deposition of Joshua Bell – June 10, 2008	76
Certificate of Counsel	132

FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Joshua Bell,

Plaintiff,

v.

Progressive Direct Insurance Company,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

C/A No. 07-CP-26-5890

ORDER DENYING MOTION
FOR RECONSIDERATION

COPY

HORRY COUNTY
CLERK OF COURT
MICHAEL HUGHES
09 AUG 14 AM 10:14

IT IS ORDERED AND ADJUDGED: Plaintiff moves this Court to reconsider its December 29, 2008 decision finding that Plaintiff is not entitled to UIM coverage for injuries sustained in a May 31, 2006 automobile accident. The basis of the motion for reconsideration is that the Court erred in finding as a matter of law that Plaintiff was not a common law spouse of the named insured, and that the decision is manifestly unfair. Upon review, the Court finds the decision to be correct under the prevailing law and the facts of this case, and denies the motion for reconsideration. This case is fully ended.

IT IS SO ORDERED.

July 31, 2009

J. Michael Baxley, Presiding Judge

This judgment was entered on the ____ day of August 2009, and a copy mailed first class this day of August, 2009 to attorneys of record or to parties as follows:

Attorney for Plaintiff

Gene M. Connell, Jr., Esquire
Post Office Box 14547
Surfside Beach, SC 29587

Attorney for Defendant

Doc Morgan, Jr., Esquire
Post Office Box 2980
Greenville, SC 29601

CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

JOSHUA BELL,

Plaintiff,

vs.

PROGRESSIVE DIRECT INSURANCE
COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 07-CP-26-5890

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**
(Order Ending Case)

HORRY COUNTY
CLERK OF COURT
09 JAN 14 AM 11:35
CELIA H. GIGGINS

JLB
This insurance coverage matter arises out of a collision that occurred on March 31, 2006 in which the Plaintiff was a passenger in one of the involved vehicles. Plaintiff is seeking UIM coverage under an insurance policy issued by Progressive Direct Insurance Company ("Progressive") to Plaintiff's former fiancé, Sarah Severn. Defendant seeks summary judgment on the grounds that Plaintiff is not an "insured" under the policy issued to his former fiancé and, therefore, cannot collect any underinsured benefits under that policy.

BACKGROUND

Plaintiff was involved in an accident on May 31, 2006, in which he was a passenger in a vehicle being driven by Plaintiff's coworker. The liability limits of the at-fault driver were tendered and there is no underinsured motorist coverage on the vehicle in which Plaintiff was riding. Plaintiff filed the instant suit seeking to recover from the UIM coverage afforded by the Progressive policy on his former fiancé's vehicle. Plaintiff is not listed as a "named insured" on the policy, but is listed as a "driver".

Progressive issued automobile insurance policy number is 13507563-0 ("the Policy") to Sarah K. Severn with effective dates of November 4, 2005 to May 4, 2006. On the policy

declarations page, Plaintiff is listed as a "driver", but not listed as a named insured. Plaintiff paid for coverage on the vehicle and he and Ms. Severn shared the use of the vehicle. Coverage is afforded under the policy for an "insured person", identified as "you" or a "relative". "You" is defined in the policy as a named insured or a relative and "relative" is defined as a person related by blood or marriage.

Plaintiff first asserts a common law marriage between himself and the named insured (Ms. Severn) that affords him coverage pursuant to the underinsured provisions of the policy. Plaintiff resided with Ms. Severn, but they were not formally married at the time of the accident. Plaintiff testified in his deposition that he and Ms. Severn had been engaged at various times, but had never formally married.¹ Plaintiff had given Ms. Severn an engagement ring, but they had never set a date to be married.² Plaintiff testified that he and Ms. Severn were engaged at the time of the accident.³ Plaintiff further testified in his deposition that Ms. Severn was living in Maryland and the engagement had been definitively broken off.⁴ Thus, the first issue before this Court is whether Plaintiff is married under common law to Ms. Severn.

Plaintiff further asserts a second theory under which he claims entitlement to underinsured motorist coverage from the policy, arguing that because Plaintiff's name is listed under the section "Drivers and Household Residents" of the policy declarations, he is therefore within the plain meaning of the term "named insured" on the policy, even when Ms. Severn is actually designated as the "named insured" on the declarations page.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is proper when it is clear there is no genuine issue of material fact

¹ Plaintiff's deposition, p. 27-34.

² Plaintiff's deposition, p. 28 and 30-33.

³ Plaintiff's deposition, p. 33.

⁴ Plaintiff's deposition, p. 28-30.

and the moving party is entitled to judgment as a matter of law. *Nexsen v. Haddock*, 353 S.C. 74, 576 S.E.2d 183 (Ct.App. 2002). In ruling on a motion for summary judgment, "... the evidence and inferences that can be drawn therefrom should be viewed in the light most favorable to the nonmoving party." *Tremont Constr. Co., Inc. v. Dunlap*, 310 S.C. 180, 425 S.E.2d 792 (Ct. App. 1992). "If more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury. However, if the evidence is susceptible of only one reasonable inference, the question is no longer one for the jury but one of law for the Court." *Ward v. Zelinski*, 260 S.C. 229, 232, 195 S.E.2d 385, 387 (1973).

CONCLUSIONS OF LAW

Viewing the evidence in the light most favorable to Plaintiff, the Court finds that Plaintiff is not entitled to recover pursuant to the underinsured benefits afforded under his former fiancé's policy.

Whether Plaintiff and the named insured are married pursuant to common law

3
"A common law marriage is formed when two parties contract to be married." *Callen v. Callen*, 365 S.C. 618, 623; 624 S.E.2d 59 (2005). The agreement does not need to be express, but can be inferred from the circumstances if there is evidence that the parties intended to be married to each other and there is a mutual understanding of each party's intent. *Id.* When the party asserting a common-law marriage proves that the parties participated in an "apparently matrimonial" cohabitation and had a reputation in the community of being married, a rebuttable presumption is created that the couple is married under common law, which can be overcome by proof that the couple never intended to marry. *Id.* Additionally, when there is an impediment to marriage, such as lack of validity of common-law marriage in the jurisdiction in which the parties reside, no common-law marriage may be formed. *Id.*

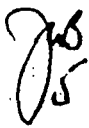
In the present case, the evidence clearly shows that Plaintiff and Ms. Severn were not married pursuant to common law. The Plaintiff's deposition testimony that he and Ms. Severn were engaged at various times; they broke off the engagement each time; they never set a date to be married; the engagement had been definitively broken; and Plaintiff no longer intended to marry Ms. Severn, conclusively show that neither Plaintiff nor Ms. Severn intended to be living as a married couple. Further, Ms. Severn was living in Maryland, a state that does not recognize common-law marriage, which creates a legal impediment to common-law marriage. *John Crane, Inc. v. David Puller*, 169 Md. App. 1, 55; 899 A.2d 879 (2006). Accordingly, the Court finds that no common-law marriage exists or existed between Plaintiff and Ms. Severn.

Whether Plaintiff is entitled to the underinsured motorist coverage afforded on Ms. Severn's policy because Plaintiff is listed under the section "Drivers and Household Residents"

Plaintiff argues that coverage should be afforded based on the Doctrine of Reasonable Expectations. However, South Carolina Courts have explicitly rejected this doctrine. *Ex parte United Servs. Auto. Ass'n*, 365 S.C. 50, 54, 614 S.E.2d 652 (S.C. Ct. App. 2005), citing *Allstate Ins. Co. v. Mangum*, 299 S.C. 226, 231-32, 383 S.E.2d 464, 466-67 (Ct. App. 1989). Therefore, no coverage is afforded to Plaintiff under that doctrine.

South Carolina jurisprudence provides clear guidance relevant to this case. In *Ex parte United Servs. Auto. Ass'n*, 365 S.C. 50, 614 S.E.2d 652 (S.C. Ct. App. 2005), Plaintiff sought to stack UIM coverage using other vehicles at the residence. Plaintiff was listed as an "operator" of the vehicle she was driving on the declarations page of the applicable insurance policy. The policy did not define the term "operator". The named insured was her adopted mother, though they did not reside at the same address. Plaintiff recovered from the liability insurer of the at-fault driver and recovered from the UIM coverage on the vehicle she was driving with the

consent of the named insured. The Court analyzed holdings from other jurisdictions and found that Plaintiff was not a named insured by virtue of being listed as an operator on the declarations page. In fact, the court noted that the term "operator" is broader than the term "driver". *Id.*, at 55, citing *State v. Graves*, 269 S.C. 356, 237 S.E.2d 584 (1977). The Court found that the policy was not vague, even though it did not define the term "operator".

 The Court analyzed the minority view and adopted the majority view that "listing a driver on the declarations page of an insurance policy does not make that person a named insured." *Ex parte United Servs. Auto. Ass'n*, 365 S.C. 50, 55, 614 S.E.2d 652, 654. The Court cited Georgia and North Carolina courts which had held that the policy was not ambiguous because the terms "named insured" and "driver" were not defined in the policy and that to construe those terms as synonymous would expand the term "named insured" beyond its common sense meaning. *Id.*, citing *Nationwide Mut. Ins. Co. v. Williams*, 123 N.C. App. 103, 472 S.E. 2d 220, 222 (N.C. App. 1996.) Accordingly, a person listed as a "driver" on a policy was not allowed to stack coverage.

Similarly, Plaintiff in the present case is listed as a "driver" on the Policy, but is not listed as a "named insured". Ms. Severn is the only one listed as a "named insured". In this case, the policy is clear regarding definitions of who is an "insured" under the policy. Coverage is afforded under the policy for an "insured person", identified as "you" or a "relative".⁵ "You" is defined in the policy as a named insured or a relative and "relative" is defined as a person related by blood or marriage.⁶ Plaintiff is neither a relative by blood nor by marriage, so he does not fall under the definition of "insured" provided in the policy. There is no other provision in the policy under which Plaintiff could be a "named insured". Accordingly, no coverage is available to

⁵ The Policy, p. 17.

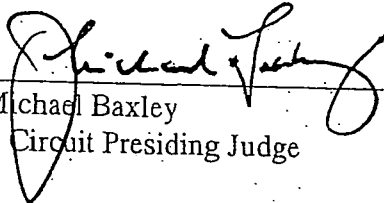
⁶ The Policy, p. 15.

Plaintiff under the policy and Plaintiff may not recover underinsured benefits under the Policy.

CONCLUSION

Because the Court finds Plaintiff is not married by common law to the named insured of the policy and is not otherwise a "named insured" under the policy, the Court finds that Defendant is entitled to summary judgment in this matter. Accordingly, Defendant's Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.


J. Michael Baxley
15th Circuit Presiding Judge

December 29, 2008

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) C/A NO. 2007-CP-26 - 5890

Joshua Bell,

Plaintiff,

vs.

Progressive Direct Insurance Company,

Defendant.

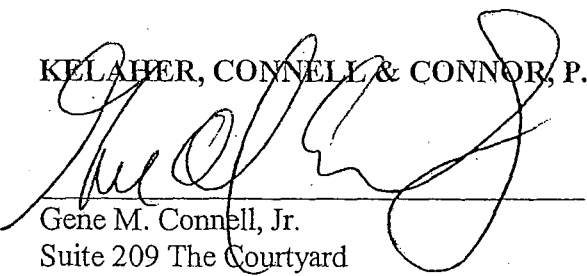
SUMMONS

HORRY COUNTY
07 SEP 24 AM 10:41
MELANIE HUGGINS
CLERK OF COURT

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber or subscribers at his or their office at Suite 209, The Courtyard, 1500 U.S. Highway 17 North, Post Office Drawer 14547, Surfside Beach, South Carolina 29587 within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid; the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

KELAHER, CONNELL & CONNOR, P.C.


Gene M. Connell, Jr.
Suite 209 The Courtyard
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, SC 29587-4547
(843) 238-5648
Attorney for Plaintiff

July 18, 2007
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2007-CP-26 - 5890

Joshua Bell,

Plaintiff,

vs.

Progressive Direct Insurance Company,

Defendant.

COMPLAINT
(Breach of Contract/Bad Faith)

JURY TRIAL

HORRY COUNTY
07 SEP 24 AM 10:41
CLERK OF COURT
DE HUGHES

The Plaintiff, complaining of the Defendants herein, would respectfully allege unto this Court:

1. That the Plaintiff, Joshua Bell, is a citizen and resident of the County of Horry, State of South Carolina.
2. That the Defendant, Progressive Direct Insurance Company, is an insurance company doing business as a domesticated foreign corporation in South Carolina which writes coverage for automobile insurance in Horry County, South Carolina.
3. That Plaintiff and Defendant entered into a contract of insurance whereby Plaintiff was named as an additional driver and/or named insured on a policy of insurance with Policy No. 13507563-0 and with effective dates of 11/04/05 to 05/04/06.
4. That pursuant to the terms of the policy, Plaintiff paid an extra premium to be named as a named driver on the policy and Defendant collected such extra premium.
5. That Plaintiff and Sarah K. Severn were living together, had a child together and held themselves out as common law husband and wife.

6. That on March 31, 2006, Plaintiff was involved in an automobile wreck in which Plaintiff was severely injured.

7. That Plaintiff brings this cause of action against the Defendant alleging that the policy of insurance is applicable to the accident and that the Plaintiff is entitled to underinsured motorist coverage and for an Order of this Court so declaring that underinsured motorist coverage is available to the Plaintiff.

8. That Plaintiff also asks for attorney's fees and costs for bringing such action pursuant to South Carolina law.

FOR A SECOND CAUSE OF ACTION

9. Plaintiff realleges and reiterates each and every allegation as fully as if repeated verbatim herein.

10. Plaintiff brings this cause of action for bad faith and failure to pay benefits.

11. The Plaintiff entered into a policy of insurance with Policy No. 13507563-0.

12. That pursuant to this policy, Plaintiff was an additional insured/additional driver.

13. That Defendant unreasonably and without force and effect of law has refused to make payment on Plaintiff's claim for underinsured motorist benefits.

14. That Plaintiff believes pursuant to South Carolina law that Defendant has acted unreasonably and with bad faith.

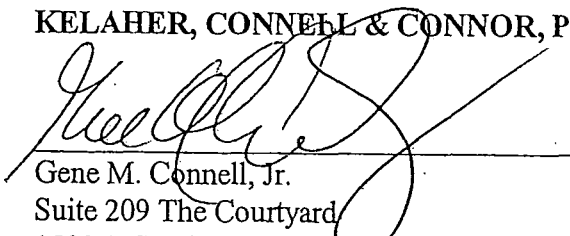
15. That Plaintiff asks for judgment against Defendant for actual damages, punitive damages and the costs of the action.

WHEREFORE, Plaintiff prays for judgment as follows:

A. On the First Cause of Action for an Order declaring the policy to be applicable to the Plaintiff as to underinsured motorist coverage and for an Order of this Court so stating

B. On the Second Cause of Action for actual damages, punitive damages and attorney's fees for failure to pay benefits under the policy of insurance.

KELAHHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
Suite 209 The Courtyard
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, SC 29587-4547
(843) 238-5648
Attorney for Plaintiff

July 18, 2007
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

JOSHUA BELL,

Plaintiff,

vs.

PROGRESSIVE DIRECT INSURANCE
COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 07-CP-26-5890

ANSWER

The Defendant answers the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of the Complaint unless specifically admitted herein.
2. The Defendant admits the allegations of Paragraph 1 on information and belief.
3. The Defendant admits the allegations of Paragraph 2.
4. As to the allegations of Paragraph 3, the Defendant admits the Plaintiff was named as an additional driver on a policy of insurance #13507563-0 with effective dates of November 4, 2005 to May 4, 2006. The Defendant denies the remaining allegations of Paragraph 3.
5. As to the allegations of Paragraph 4, the Defendant does not have sufficient information to admit or deny whether or not the Plaintiff himself paid an extra premium to be named as an additional driver and, therefore, demands strict proof. The Defendant admits it collected premiums for the policy.
6. The Defendant does not have sufficient information to admit or deny the allegations of Paragraph 5 and, therefore, deny the same and demands strict proof.

7. The Defendant admits the allegations of Paragraph 6 on information and belief that the Plaintiff was involved in an automobile accident on March 31, 2006 and was injured. The Defendant does not have sufficient information to admit or deny the severity of the injuries.

8. As to the allegations of Paragraphs 7 and 8, the Defendant admits the Plaintiff brings this cause of action, alleging that the policy of insurance is applicable to the accident, alleging that the Plaintiff is entitled to underinsured motorist coverage, attorney's fees and costs and that he seeks an Order declaring that underinsured motorist coverage is available to the Plaintiff. However, the Defendant denies that the policy of insurance is applicable, that the Plaintiff is entitled to underinsured motorist coverage, and that underinsured motorist coverage is available to the Plaintiff. The Defendant further denies that the Plaintiff is entitled to attorney's fees and costs for bringing this action.

9. As to the allegations of Paragraph 9, the Defendant realleges and reincorporates the preceding Paragraphs.

10. The Defendant admits the allegations of Paragraph 10 that the Plaintiff brings this cause of action for bad faith and failure to pay benefits. The Defendant denies the Plaintiff is entitled to recover for bad faith and failure to pay benefits.

11. The Defendant denies the allegations of Paragraphs 11, 12, 13, 14, 15 and the remaining allegations of the Complaint.

FOR A SECOND DEFENSE

12. Based on the terms, provisions and exclusions of the subject insurance policy, underinsured motorist coverage is not available to the Plaintiff and, therefore, he is not entitled to underinsured motorist coverage and the Defendant pleads the terms, provisions and exclusions of the insurance policy as a complete defense to this action.

13. The Defendant submits that it is entitled to a declaration from the Court that no underinsured motorist coverage is available to the Plaintiff.

FOR A THIRD DEFENSE

14. The Complaint fails to state facts sufficient to constitute a cause of action.

FOR A FOURTH DEFENSE

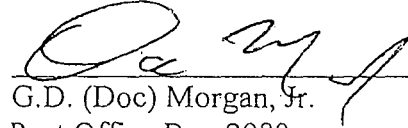
15. At all times herein, the Defendant has had a reasonable basis to deny this claim and has acted in good faith. Therefore, the Defendant is not entitled to a recovery for bad faith.

FOR A FIFTH DEFENSE

16. The Plaintiff is not entitled to an award of punitive damages on the grounds that it would be in violation of the due process and equal protection clauses of the South Carolina and United States Constitutions.

WHEREFORE, having fully answered the Complaint, the Defendant demands that it be dismissed, for the costs of this action and for such other and further relief as the Court deems just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.



G.D. (Doc) Morgan, Jr.
Post Office Box 2980
75 Beattie Place, Suite 300 (29601)
Greenville, South Carolina 29602
(864) 239-4000

October 19, 2007

ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

JOSHUA BELL,

Plaintiff,

vs.

PROGRESSIVE DIRECT INSURANCE
COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 07-CP-26-5890

**AFFIDAVIT OF
PATRICK COLANGELO**

PERSONALLY APPEARED BEFORE ME, the undersigned, being duly sworn, deposes and says the following:

1. I am a Claims Injury Operations Manager for the Progressive Group of Insurance Companies, including Progressive Direct Insurance Company.

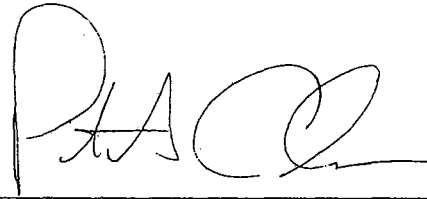
2. I am familiar with the claim of Joshua Bell and have knowledge of the facts and circumstances of the claim, as well as the policy information.

3. The named insured under the policy is Sarah K. Severn and the Policy Number is 13507563-0. The policy has effective dates of November 4, 2005 to May 4, 2006. The date of the subject accident was May 31, 2006.

4. Joshua Bell is listed as a "driver" on the policy of Sarah K. Severn. Mr. Bell is not listed as a named insured.

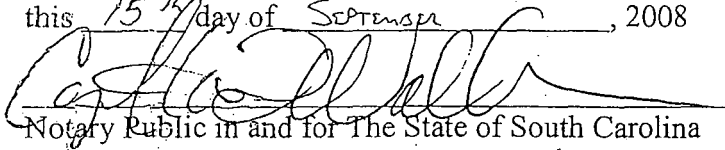
5. The claim submitted by Joshua Bell was for underinsured motorist coverage under the policy. The claim was denied because Mr. Bell did not fall within the terms, provisions and conditions of the insurance policy to qualify for benefits under the underinsured motorist coverage provisions. Mr. Bell was only listed as a "driver" on the policy and not a named insured, nor was he a resident relative of the named insured.

FURTHER AFFIANT SAYETH NOT.



Patrick Colangelo

SWORN AND SUBSCRIBED TO, BEFORE ME
this 15th day of September, 2008



Notary Public in and for The State of South Carolina

My Commission expires: ~~My Commission Expires~~ 02/21/2017

)

)

)

)

)

)

)

)

)

)

)

)

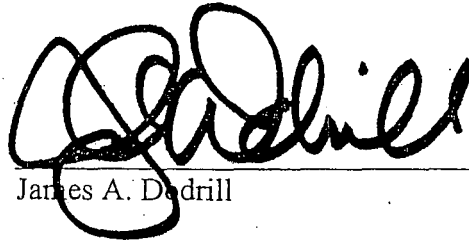
)

)

)

- 17

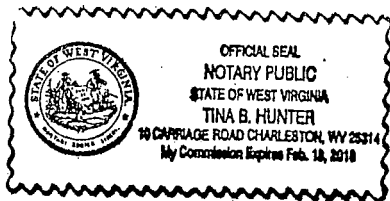
4. Auto Insurance Coverage Summary (Declarations Page), December 19, 2005.

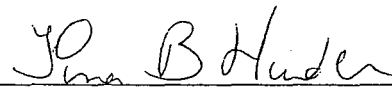

James A. Dodrill

I, Tina B Hunter, a Notary Public in and for the county and state aforesaid, do hereby certify that James A. Dodrill, whose name is signed in the forgoing writing, has this day acknowledged before me in my said county and state.

Given under my hand this 9th day of September, 2008.

My commission expires: Feb. 18, 2018.




Notary Public

9608D SC 1104



PROGRESSIVE
DIRECT

**SOUTH CAROLINA
MOTOR VEHICLE
POLICY**

Form No. 9608D SC (11/04)

IMPORTANT NOTICE

IN ADDITION TO THE INSURANCE COVERAGE REQUIRED BY LAW TO PROTECT YOU AGAINST A LOSS CAUSED BY AN UNINSURED MOTORIST, IF YOU HAVE PURCHASED LIABILITY INSURANCE COVERAGE THAT IS HIGHER THAN THAT REQUIRED BY LAW TO PROTECT YOU AGAINST LIABILITY ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF THE MOTOR VEHICLES COVERED BY THIS POLICY, AND YOU HAVE NOT ALREADY PURCHASED UNINSURED MOTORIST COVERAGE EQUAL TO YOUR LIABILITY INSURANCE COVERAGE:

1. YOUR UNINSURED AND UNDERINSURED MOTORIST INSURANCE COVERAGE HAS INCREASED TO THE LIMITS OF YOUR LIABILITY COVERAGE AND THIS INCREASE WILL COST YOU AN EXTRA PREMIUM CHARGE; AND
2. YOUR TOTAL PREMIUM CHARGE FOR YOUR MOTOR VEHICLE INSURANCE COVERAGE WILL INCREASE IF YOU DO NOT NOTIFY YOUR AGENT OR INSURER OF YOUR DESIRE TO REDUCE COVERAGE WITHIN TWENTY DAYS OF THE MAILING OF THE POLICY OR THE PREMIUM NOTICE, AS THE CASE MAY BE;
3. IF THIS IS A NEW POLICY AND YOU HAVE ALREADY SIGNED A WRITTEN REJECTION OF SUCH HIGHER LIMITS IN CONNECTION WITH IT, PARAGRAPHS (1) AND (2) OF THIS NOTICE DO NOT APPLY.

CONTENTS

YOUR DUTIES

What You Must Do In Case of an Accident or Loss	1
--	---

GENERAL DEFINITIONS

PART I - LIABILITY TO OTHERS

Insuring Agreement	6
Additional Definitions	6
Additional Payments	7
Exclusions	8
Limits of Liability	10
Financial Responsibility Laws	12
Other Insurance	12
Out-of-State Coverage	12
Arbitration of Property Damage Liability Claims	13

PART II - MEDICAL PAYMENTS COVERAGE

Insuring Agreement	13
Additional Definitions	14
Exclusions	15
Limits of Liability	16
Other Insurance	16

PART III - UNINSURED/UNDERINSURED MOTORIST COVERAGE

Insuring Agreement - Uninsured Motorist Coverage	17
Insuring Agreement - Underinsured Motorist Coverage	17
Additional Definitions	17
Exclusions	20
Limits of Liability	21
Other Insurance	25
Arbitration for Bodily Injury Claims	25
Arbitration for Property Damage Claims	26

PART IV - DAMAGE TO A VEHICLE

Insuring Agreement - Collision Coverage.....	27
Insuring Agreement - Comprehensive Coverage.....	27
Insuring Agreement - Custom Parts or Equipment Coverage & Additional Custom Parts or Equipment Coverage	29
Additional Definitions	30
Exclusions	31
Limits of Liability	33
Insuring Agreement - Rental Reimbursement Coverage	35
Insuring Agreement - Loan/Lease Payoff Coverage.....	36
Payment of Loss.....	37
No Benefit to Bailee.....	37
Loss Payee Agreement	37
Other Insurance.....	38
Appraisal.....	38

PART V - ROADSIDE ASSISTANCE COVERAGE

Insuring Agreement	39
Additional Definitions	39
Exclusions	40
Unauthorized Service Provider.....	41
Other Insurance.....	41

GENERAL PROVISIONS

Policy Period and Territory	41
Policy Changes.....	41
Terms of Policy Conformed to Statutes	42
Vehicles with Comprehensive Coverage and/or Collision Coverage Only	43
Transfer	43
Fraud or Misrepresentation	43
Payment of Premium	44
Cancellation.....	45
Cancellation Refund	46
Nonrenewal	46
Proof of Notice.....	46
Automatic Termination	47
Coverage Changes.....	47
Legal Action Against Us.....	47
Our Rights to Recover Payment	48
Joint and Individual Interests.....	49
Bankruptcy.....	49

NAMED DRIVER EXCLUSION 49

**NAMED OPERATOR - NON-OWNED
VEHICLE COVERAGE.....49**

SOUTH CAROLINA MOTOR VEHICLE POLICY

If you pay your premium on time, we will provide the insurance described in this policy.

YOUR DUTIES

WHAT YOU MUST DO IN CASE OF AN ACCIDENT OR LOSS

Notify Us As Soon As Practicable

If a person or vehicle covered by this policy is involved in an **accident** or **loss** for which this insurance may apply, report it to us within twenty-four (24) hours or as soon as practicable by calling us at 1-800-PROGRESSIVE.

For coverage to apply under this policy, you or an insured person must promptly report each accident or loss even if an insured person is not at fault.

You should provide us with the following accident or loss information as soon as it is available:

- time;
- place;
- circumstances of the **accident** or **loss** (for example, how the accident happened and weather conditions);
- names and addresses of all persons involved;
- names and addresses of any witnesses; and
- the license plate numbers of the vehicles involved.

You or an insured person should also notify the police within twenty-four (24) hours or as soon as practicable if:

- you cannot identify the owner or operator of a vehicle involved in the **accident**; or
- theft or vandalism has occurred.

A person claiming coverage must:

- cooperate with us in any matter concerning a claim or lawsuit;
- provide any written proof of loss we may reasonably require;
- allow us to take signed and recorded statements, including sworn statements and examinations under oath, and answer all reasonable questions we may ask as often as we may reasonably require;
- promptly send us any and all legal papers relating to any claim or lawsuit;
- attend hearings and trials as we require;
- take reasonable steps after a loss to protect the covered vehicle, non-owned vehicle, or trailer from further loss. We will pay reasonable expenses incurred in providing that protection. If you fail to do so, any further damages will not be covered under this policy;
- allow us to have the damaged covered vehicle, non-owned vehicle, or trailer inspected and appraised before its repair or disposal;
- submit to medical examinations at our expense by doctors we select as often as we may reasonably require; and
- authorize us to obtain medical and other records.

GENERAL DEFINITIONS

Except as otherwise defined in this policy, terms appearing in boldface will have the following meaning:

1. **"Accident"** means a sudden, unexpected, and unintended occurrence.
2. **"Bodily injury"** means bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease.
3. **"Business"** includes a trade, profession, or occupation.

4. **"Covered vehicle"** means:

- a. any vehicle shown on the **Declarations Page**, unless you have asked us to delete that vehicle from the policy;
- b. any additional vehicle on the date you become the owner if:
 - (i) you acquire the vehicle during the policy period shown on the **Declarations Page**;
 - (ii) we insure all vehicles owned by you; and
 - (iii) no other insurance policy provides coverage for that vehicle.

If we provide coverage for a vehicle you acquire in addition to any vehicle shown on the **Declarations Page**, we will provide the broadest coverage we provide for any vehicle shown on the **Declarations Page**. We will provide that coverage for a period of thirty (30) days after you become the owner. We will not provide coverage after this thirty (30) day period, unless within this period you ask us to insure the additional vehicle. If you add any coverage to this policy or increase your limits, these changes to your policy will not become effective until after you ask us to add the coverage or increase your limits; and

- c. any replacement vehicle on the date you become the owner if:
 - (i) you acquire the vehicle during the policy period shown on the **Declarations Page**;
 - (ii) the vehicle that you acquire replaces one shown on the **Declarations Page**; and
 - (iii) no other insurance policy provides coverage for that vehicle.

If the vehicle that you acquire replaces one shown on the **Declarations Page**, it will have the same coverage as the vehi-

- cle it replaces. You must ask us to insure a replacement vehicle within thirty (30) days after you become the owner if you want to continue any coverage you had under Part IV - Damage To A Vehicle. If the vehicle replaced did not have coverage under Part IV - Damage To A Vehicle, you may add coverage for the replacement vehicle. However, if you add coverage under Part IV - Damage To A Vehicle, it will not become effective until after you ask us to add the coverage. If you add any other coverage to this policy or increase your limits, it will not become effective until after you ask us to add the coverage or increase your limits.
5. "Declarations Page" means the document from us listing:
 - a. the types of coverage you have elected;
 - b. the limit for each coverage;
 - c. the cost for each coverage;
 - d. the specified vehicles covered by this policy;
 - e. the types of coverage for each vehicle; and
 - f. other information applicable to this policy.
 6. "Loss" means sudden, direct, and accidental loss or damage.
 7. "Occupying" means in, on, entering, or exiting.
 8. "Owned" means the person:
 - a. holds legal title to the vehicle;
 - b. has legal possession of the vehicle that is subject to a written security agreement with an original term of six (6) months or more; or
 - c. has legal possession of the vehicle that is leased to that person under a written agreement for a continuous period of six (6) months or more.
 9. "Owner" means any person who, with respect to a vehicle:
 - a. holds legal title to the vehicle;
 - b. has legal possession of the vehicle that is subject to a written security agreement with an original term of six (6) months or more; or
 - c. has legal possession of the vehicle that is leased to that person under a written agreement for a continuous period of six (6) months or more.
 10. "Property damage" means physical damage to, destruction of, or loss of use of, tangible property.
 11. "Relative" means a person residing in the same household as you, and related to you by blood, marriage, or adoption, including a ward, stepchild, or foster child. Your unmarried dependent children temporarily away from home will be considered residents if they intend to continue to reside in your household.
 12. "Vehicle" and "vehicles" mean a land motor vehicle:
 - a. of the private passenger, pickup body, or cargo van type;
 - b. designed for operation principally upon public roads;
 - c. with at least four wheels; and
 - d. with a gross vehicle weight rating of 12,000 pounds or less, according to the manufacturer's specifications.

However, "vehicle" and "vehicles" do not include step-vans, parcel delivery vans, or cargo cutaway vans or other vans with cabs separate from the cargo area.
 13. "We", "Us", and "Our" mean the company providing the insurance, as shown on the Declarations Page.
 14. "You" and "Your" mean:
 - a. a person or persons shown as a named insured on the Declarations Page; and
 - b. the spouse of a named insured if residing in the same household.

PART I - LIABILITY TO OTHERS

INSURING AGREEMENT

Subject to the Limits of Liability, if you pay the premium for liability coverage, we will pay damages for **bodily injury** and **property damage** for which an **insured person** becomes legally responsible because of an **accident** arising out of the:

1. ownership, maintenance, or use of a **vehicle**; or
2. use of any trailer while attached to a:
 - a. **covered vehicle**; or
 - b. **non-owned vehicle** operated by an **insured person**.

Damages include prejudgment interest awarded against an **insured person**.

We will settle or defend, at our option, any claim for damages covered by this Part I.

ADDITIONAL DEFINITIONS

When used in this Part I:

1. "**Insured person**" and "**insured persons**" mean:
 - a. **you** or a **relative** with respect to an **accident** arising out of the ownership, maintenance, or use of a **covered vehicle**;
 - b. any person with respect to an **accident** arising out of that person's use of a **covered vehicle** with the express or implied permission of **you** or a **relative**;
 - c. a **relative** with respect to an **accident** arising out of the maintenance or use of a **non-owned vehicle** with the express or implied permission of the **owner** of the **vehicle**;
 - d. **you** with respect to an **accident** arising out of the maintenance or use of any **vehicle** with the express or implied permission of the **owner** of the **vehicle**;
 - e. any person or organization with respect only to vicarious liability for an **accident**

arising out of the use of a **covered vehicle** or **non-owned vehicle** by a person described in a, b, c, or d above; and

- f. any **Additional Interest Insured** designated by **you** in **your** application or by a change request agreed to by **us**, with respect to liability for an **accident** arising out of the use of a **covered vehicle** or **non-owned vehicle** by a person described in a, b, c, or d above.

2. "**Non-owned vehicle**" means any vehicle that is not owned by **you**, a **relative**, or the named **insured's** non-resident spouse.
3. "**Trailer**" means a non-motorized trailer, including a farm wagon or farm implement, designed to be towed on public roads by a **vehicle**.

ADDITIONAL PAYMENTS

In addition to our limit of liability, we will pay for an **insured person**:

1. all expenses that we incur in the settlement of any claim or defense of any lawsuit;
2. interest accruing after entry of judgment, until we have paid or tendered that portion of the judgment which does not exceed our limit of liability. This does not apply if we have not been given notice of suit or the opportunity to defend an **insured person**;
3. the premium on any appeal bond or attachment bond required in any lawsuit we defend. We have no duty to purchase a bond in an amount exceeding our limit of liability, and we have no duty to apply for or furnish these bonds;
4. up to \$250 for a bail bond required because of an **accident** arising out of the ownership, maintenance, or use of a **covered vehicle** or **non-owned vehicle**. We have no duty to apply for or furnish this bond; and
5. reasonable expenses, including loss of earnings up to \$200 a day, incurred at our request.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART I.

Coverage under this Part I, including our duty to defend, does not apply to:

1. **bodily injury or property damage** arising out of the ownership, maintenance, or use of a **vehicle or trailer** while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food, or any other products. However, this exclusion will not apply to:
 - a. shared-expense car pools; or
 - b. damages within the minimum limits of liability coverage required by the South Carolina Motor Vehicle Financial Responsibility Act that arise out of the ownership, maintenance, or use of a **covered vehicle**;
2. any liability assumed by an **insured person** under any contract or agreement;
3. **bodily injury** to an **employee of an insured person** arising out of or within the course of employment, except for domestic employees if benefits are neither paid nor required to be provided under workers' compensation, disability benefits, or similar laws;
4. **bodily injury or property damage** arising out of an **accident** involving a **vehicle or trailer** while being used by a person while employed or engaged in the **business** of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles. However, this exclusion does not apply to:
 - a. **you, a relative, or an agent or employee of you or a relative**, when using a **covered vehicle**; or
 - b. damages within the minimum limits of liability coverage required by the South Carolina Motor Vehicle Financial Responsibility Act that arise out of the ownership, maintenance, or use of a **covered vehicle**;

5. **bodily injury or property damage** resulting from any pre-arranged or organized racing, speed or demolition contest, stunting activity, or in practice or preparation for any such contest or activity;
6. **bodily injury or property damage** due to a nuclear reaction or radiation;
7. **bodily injury or property damage** for which insurance is afforded under a nuclear energy liability insurance contract;
8. any obligation for which the United States Government is liable under the Federal Tort Claims Act;
9. **bodily injury or property damage** caused by an intentional act of an **insured person** or at the direction of an **insured person**. However, this exclusion will not apply to damages within the minimum limits of liability coverage required by the South Carolina Motor Vehicle Financial Responsibility Act that arise out of the ownership, maintenance, or use of a **covered vehicle**;
10. **property damage** to any property owned by, rented to, being transported by, used by, or in the charge of an **insured person** or a person residing in **your household**. However, this exclusion does not apply to:
 - a. a rented residence or a rented garage damaged by a **covered vehicle**; or
 - b. **property damage** to another **covered vehicle**;
11. **bodily injury** to **you or a relative**. However, this exclusion will not apply to damages within the minimum limits of liability coverage required by the South Carolina Motor Vehicle Financial Responsibility Act that arise out of the ownership, maintenance, or use of a **covered vehicle**;
12. **bodily injury or property damage** resulting from a **relative's** operation or use of a vehicle, other than a **covered vehicle, owned by you or a person who resides with you**;
13. **bodily injury or property damage** resulting from **your** operation or use of a vehicle **owned by you**, other than a **covered vehicle**;

14. **bodily injury or property damage** arising out of the use of a **covered vehicle** while leased or rented to others. However, this exclusion does not apply to the operation of a **covered vehicle** by you or a relative; or
15. **bodily injury or property damage** arising out of the ownership, maintenance or use of a **vehicle** or **trailer** while it is parked and being used:
 - a. for commercial or **business** purposes;
 - b. as a residence or premises; or
 - c. as a premises for office, store or display purposes.

If a court with proper jurisdiction determines an exclusion is invalid or unenforceable because it does not satisfy the minimum requirements of the South Carolina Motor Vehicle Financial Responsibility Act, such exclusion shall apply only to that portion of the damages that is in excess of the minimum limits of liability required by that law.

LIMITS OF LIABILITY

The limit of liability shown on the **Declarations Page** is the most **we** will pay regardless of the number of:

1. claims made;
2. **covered vehicles**;
3. **trailers** shown on the **Declarations Page**;
4. **insured persons**;
5. lawsuits brought;
6. vehicles involved in an **accident**; or
7. premiums paid.

If the **Declarations Page** shows that "combined single limit" or "CSL" applies, the amount shown is the most **we** will pay for the total of all damages resulting from any one **accident**. However, without changing this total "each accident" limit of liability, **we** will comply with any law that requires us to provide any separate limits.

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 a **bodily injury** to one person;
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** for which an insured person becomes liable as a result of any one **accident**.

The "each person" limit of liability includes 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, emotional injury or mental anguish resulting from the **bodily injury** of another or from witnessing the **bodily injury** to another, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

The Limits of Liability under this Part I shall not be reduced by payments made under Part II - Medical Payments Coverage. However, no one will be entitled to duplicate payments for the same elements of damages.

Any payment to a person under this Part I shall be reduced by any payment to that person under Part III - Uninsured/Underinsured Motorist Coverage.

A **vehicle** and attached **trailer** are considered one **vehicle**. Therefore, the Limits of Liability will not be increased for an **accident** involving a **vehicle** which has an attached **trailer**.

FINANCIAL RESPONSIBILITY LAWS

When we certify this policy as proof of financial responsibility, this policy will comply with the law to the extent required. You must reimburse us if we make a payment that we would not have made if this policy was not certified as proof of financial responsibility.

OTHER INSURANCE

If there is other applicable liability insurance or bond, we will pay only our share of the damages. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide for a:

1. vehicle, other than a covered vehicle; or
2. trailer, other than a trailer being towed by a covered vehicle;

will be excess over any other collectible insurance, self-insurance, or bond.

OUT-OF-STATE COVERAGE

If an accident to which this Part I applies occurs in any state, territory or possession of the United States of America or any province or territory of Canada, other than the one in which a covered vehicle is principally garaged, and the state, province, territory or possession has:

1. a financial responsibility or similar law requiring limits of liability for **bodily injury or property damage** higher than the limits shown on the **Declarations Page**, this policy will provide the higher limit; or
2. a compulsory insurance or similar law requiring a non-resident to maintain insurance whenever the non-resident uses a vehicle in that state, province, territory or possession, this policy will provide the greater of:
 - a. the required minimum amounts and types of coverage; or
 - b. the Limits of Liability under this policy.

ARBITRATION OF PROPERTY DAMAGE LIABILITY CLAIMS

Any party to a disputed **property damage** liability claim may submit the claim for determination by arbitration. The disputed claim must be filed in triplicate with the clerk of court, on forms to be provided by the clerk, in the county in which the cause of action arose or where the plaintiff or defendant resides.

The parties to the dispute may, by agreement, provide for determination of the disputed claim by one arbitrator. Otherwise, the court shall appoint three arbitrators to hear and determine the disputed claim within sixty (60) days after the date of filing, or as soon thereafter as is feasible. The three arbitrators shall:

1. hear and determine the disputed claim; and
2. award damages, subject to the limitations, exclusions, and other terms set forth in this policy.

A decision agreed to by two of the three arbitrators shall determine the issue.

If any party is dissatisfied with the decision of the arbitrator(s), the party may appeal, within twenty (20) days of the decision, to the court in which the claim was filed by service upon the other parties of a notice to appeal.

PART II - MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

Subject to the Limits of Liability, if you pay the premium for Medical Payments Coverage, we will pay the **usual and customary charge** for reasonable and necessary expenses, incurred within three (3) years from the date of an **accident**, for medical and funeral services because of **bodily injury**:

1. sustained by an **insured person**;
2. caused by an **accident**; and

3. arising out of the ownership, maintenance or use of a motor vehicle or trailer.

Any dispute as to the usual and customary charge will be resolved between the service provider and us.

ADDITIONAL DEFINITIONS

When used in this Part II:

1. "Insured person" and "insured persons" mean:
 - a. you while occupying any vehicle, other than a vehicle owned by you which is not a covered vehicle;
 - b. a relative while occupying a covered vehicle or non-owned vehicle;
 - c. you or any relative when struck by a land motor vehicle of any type, or a trailer, while not occupying a motor vehicle;
 - d. any other person while occupying a covered vehicle; and
 - e. any person occupying a trailer:
 - (i) shown on the Declarations Page; or
 - (ii) owned by you while attached to a covered vehicle.
2. "Non-owned vehicle" means any vehicle that is not owned by you, a relative, or the named insured's non-resident spouse.
3. "Trailer" means a non-motorized trailer, including a farm wagon or farm implement, designed to be towed on public roads by a land motor vehicle, but that is not used:
 - a. for commercial or business purposes;
 - b. as a premises for office, store or display purposes; or
 - c. as a passenger conveyance.
4. "Usual and customary charge" means an amount which we determine represents a customary charge for services in the geographical area in which the service is rendered. We shall determine the usual and customary charge through the use of independent sources of our choice.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART II.

Coverage under this Part II does not apply to bodily injury:

1. sustained while occupying a vehicle while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to:
 - a. shared-expense car pools; or
 - b. bodily injury sustained by you or a relative while a passenger in a taxi or limousine of the private passenger type vehicle which is not owned, rented, or leased for use by you or a relative;
2. sustained while occupying any vehicle or trailer while being used as a residence or premises;
3. if workers' compensation benefits are available for the bodily injury;
4. arising out of an accident involving a vehicle or trailer while being used by a person while employed or engaged in the business of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles. However, this exclusion does not apply to you; a relative, or an agent or employee of you or a relative, when using a covered vehicle;
5. resulting from any pre-arranged or organized racing, speed or demolition contest, stunting activity, or in practice or preparation for any such contest or activity;
6. due to a nuclear reaction or radiation;
7. for which insurance is afforded under a nuclear energy liability insurance contract;
8. for which the United States Government is liable under the Federal Tort Claims Act;

9. sustained by any person while occupying a **covered vehicle** or trailer without the express or implied permission of you or a relative;
10. sustained by you or a relative while occupying a **non-owned vehicle** without the express or implied permission of the owner; or
11. that is intentionally inflicted on an insured person at that person's request or self-inflicted.

LIMITS OF LIABILITY

The Medical Payments limit of liability shown on the **Declarations Page** is the most we will pay for each insured person injured in any one accident, regardless of the number of:

1. claims made;
2. covered vehicles;
3. trailers shown on the **Declarations Page**;
4. insured persons;
5. lawsuits brought;
6. vehicles involved in an accident; or
7. premiums paid.

No one will be entitled to duplicate payments under this policy for the same elements of damages.

OTHER INSURANCE

If there is other applicable vehicle medical payments insurance, we will pay only our share of the medical and funeral services. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide for an insured person occupying a:

1. vehicle, other than a covered vehicle; or
2. trailer, other than a trailer being towed by a covered vehicle;

will be excess over any other vehicle or trailer insurance providing payments for medical or funeral expenses.

PART III - UNINSURED/UNDERINSURED MOTORIST COVERAGE

INSURING AGREEMENT - UNINSURED MOTORIST COVERAGE

Subject to the Limits of Liability, if you pay the premium for Uninsured Motorist Coverage, we will pay for damages which an insured person is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by an insured person or due to property damage:

1. caused by an accident; and
2. arising out of the ownership, maintenance, or use of an uninsured motor vehicle.

INSURING AGREEMENT - UNDERINSURED MOTORIST COVERAGE

Subject to the Limits of Liability, if you pay the premium for Underinsured Motorist Coverage, we will pay for damages which an insured person is legally entitled to recover from the owner or operator of an underinsured motor vehicle because of bodily injury sustained by an insured person or due to property damage:

1. caused by an accident; and
2. arising out of the ownership, maintenance, or use of an underinsured motor vehicle.

We will pay under this Part III only after the limits of liability under all applicable liability bonds and policies have been exhausted by payment of judgments or settlements.

ADDITIONAL DEFINITIONS

When used in this Part III:

1. "Insured person" and "insured persons" mean:
 - a. you or a relative;
 - b. any person occupying a covered vehicle; and

- c. any person who is entitled to recover damages covered by this Part III because of **bodily injury** sustained by a person described in a or b above.
- 2. "**Non-owned vehicle**" means any vehicle that is not **owned** by you, a **relative**, or the named insured's non-resident spouse.
- 3. "**Underinsured motor vehicle**" means a land motor vehicle or trailer of any type to which bodily injury liability insurance or a bond applies at the time of the **accident** with limits of liability that equal or exceed the minimum amount required by the South Carolina motor vehicle financial responsibility law, but which are less than the amount of the damages sustained by the insured person in the accident.

An "**underinsured motor vehicle**" does not include any vehicle or equipment:

- a. **owned** by any governmental unit or agency, except when:
 - (i) operated by a person without proper authorization; or
 - (ii) a cause of action against that governmental unit or agency arising out of a motor vehicle **accident** is barred by the Tort Claims Act of South Carolina, as amended, or by any other applicable law;
- b. operated on rails or crawler treads;
- c. designed mainly for use off public roads, while not on public roads;
- d. while used as a residence or premises;
- e. not required to be registered as a motor vehicle; or
- f. which is an **uninsured motor vehicle**.
- 4. "**Uninsured motor vehicle**" means a land motor vehicle or trailer of any type:
 - a. to which no liability bond, cash deposit, security, or policy in at least the amounts of coverage required by South Carolina law applies at the time of the **accident**;
 - b. to which a liability bond or policy applies at the time of the **accident**, but the bonding

- or insuring company:
 - (i) denies coverage;
 - (ii) is or becomes insolvent;
 - (iii) is in delinquency proceedings, suspension, or receivership; or
 - (iv) is financially unable to fully satisfy a judgment rendered in favor of an insured person;
- c. to which a liability bond or policy applies at the time of the **accident**, but its limit of liability is less than the minimum limit of liability specified by the financial responsibility law of the state in which a **covered vehicle** is principally garaged; or
- d. whose operator or owner cannot be identified and which causes an accident resulting in **bodily injury** to an **insured person**, or **property damage**, provided:
 - (i) the **insured person**, or someone on his or her behalf, reports the **accident** to the police or civil authority within twenty-four (24) hours or as soon as practicable after the **accident**; and
 - (ii) if there has been no physical contact between the vehicle operated by the unidentified operator and the **insured person**, or a vehicle occupied by the **insured person**, there must be independent corroborative evidence by a witness to the **accident** who executes a signed affidavit attesting to the truth of the **accident** to prove that the **bodily injury** or **property damage** was proximately caused by the negligence or intentional actions of the unidentified operator of the motor vehicle. The testimony of the owner or operator of the **covered vehicle** shall not constitute independent corroborative evidence. No recovery will be provided under this Part III if the **insured person** was negligent in failing to determine the identity of the other motor vehicle and its driver at the time of the **accident**.

An "uninsured motor vehicle" does not include any vehicle or equipment:

- a. **owned** or operated by a self-insurer under any applicable vehicle law, except a self-insurer that:
 - (i) is or becomes insolvent; or
 - (ii) fails to qualify as a self-insurer under South Carolina law;
- b. **owned** by any governmental unit or agency, except when:
 - (i) operated by a person without proper authorization; or
 - (ii) a cause of action against that governmental unit or agency arising out of a motor vehicle **accident** is barred by the Tort Claims Act of South Carolina, as amended, or by any other applicable law;
- c. operated on rails or crawler treads;
- d. designed mainly for use off public roads, while not on public roads;
- e. while used as a residence or premises;
- f. not required to be registered as a motor vehicle; or
- g. which is an **underinsured motor vehicle**.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART III.

1. Coverage under this Part III is not provided for **bodily injury** or **property damage** sustained by any person while using or **occupying**:
 - a. a **covered vehicle** while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools;
 - b. a **covered vehicle** without the express or implied permission of **you** or a **relative**;

- c. a **non-owned vehicle** without the express or implied permission of the **owner**; or
- d. any motor vehicle **owned** by **you** or a **relative** if uninsured motorist coverage or underinsured motorist coverage has not been purchased for that motor vehicle.

2. Coverage under this Part III will not apply directly or indirectly to benefit any insurer or self-insurer under any of the following or similar laws:
 - a. workers' compensation law; or
 - b. disability benefits law.

If a court with proper jurisdiction determines an exclusion is invalid or unenforceable because it does not satisfy the minimum requirements of the South Carolina Motor Vehicle Financial Responsibility Act, such exclusion shall apply only to that portion of the damages that is in excess of the minimum limits of liability required by that law.

LIMITS OF LIABILITY

The limit of liability shown on the **Declarations Page** for the coverages under this Part III is the most we will pay regardless of the number of:

1. claims made;
2. trailers shown on the **Declarations Page**;
3. **insured persons**;
4. lawsuits brought; or
5. vehicles involved in an **accident**.

Additionally, the limit of liability shown on the **Declarations Page** for coverage under this Part III for a **covered vehicle** involved in an **accident** that causes **bodily injury** to an **insured person**, other than **you** or a **relative**, is the most we will pay regardless of the number of:

1. **covered vehicles**; or
2. premiums paid.

When you or a relative sustain damages covered under this Part III while occupying a covered vehicle, the most that may be recovered as benefits under each applicable uninsured motorist coverage or underinsured motorist coverage is the limit of liability applicable to that covered vehicle.

When you or a relative are occupying a motor vehicle other than a covered vehicle and sustain bodily injury covered under this Part III, our coverage shall be excess to the coverage applicable to the motor vehicle that you or the relative are occupying, and our total limit of liability under this policy shall not exceed our limit of liability for one vehicle. Coverage for more than one vehicle under this policy may not be stacked or combined together for bodily injury sustained by you or a relative while occupying a motor vehicle other than a covered vehicle.

When you or a relative are not occupying a motor vehicle and sustain bodily injury caused by the owner or operator of an uninsured motor vehicle or underinsured motor vehicle, our limit of liability shall not exceed the limit of liability shown on the Declarations Page for any one covered vehicle.

If the Declarations Page shows that "combined single limit" or "CSL" applies, the amount shown is the most we will pay for the total of all damages resulting from any one accident. However, without changing this total "each accident" limit of liability, we will comply with any law that requires us to provide any separate limits.

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 a bodily injury to one person;
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 aggregate of all property damage caused by any one accident.

The "each person" limit of liability includes the total of all claims made for bodily injury to an insured person and all claims of others derived from such bodily injury, including, but not limited to, emotional injury or mental anguish resulting from the bodily injury of another or from witnessing the bodily injury to another, loss of society, loss of companionship, loss of services, loss of consortium, and wrongful death.

Our limit of liability under this Part III for property damage to a covered vehicle arising out of one accident is the lowest of:

1. the actual cash value of the covered vehicle at the time of the accident, reduced by the applicable deductible shown on the Declarations Page, and reduced by its salvage value if you or the owner retain the salvage;
2. the amount necessary to replace the covered vehicle, reduced by the applicable deductible shown on the Declarations Page, and reduced by its salvage value if you or the owner retain the salvage;
3. the amount necessary to repair the covered vehicle to its pre-loss condition, reduced by the applicable deductible shown on the Declarations Page; or
4. any limit of liability shown on the Declarations Page for "property damage" under this Part III.

Payments for property damage under this Part III are subject to the following provisions:

1. any amount payable under this Part III for property damage shall be subject to the deductible shown on the Declarations Page;
2. no more than one deductible shall be applied to any one accident;
3. an adjustment for depreciation or physical condition, which may also be referred to as betterment, wear and tear, or prior damage,

will be made in determining the limit of liability at the time of the **accident**; and

4. in determining the amount **we** will pay to repair damaged property to its pre-loss condition, the repair or replacement parts and equipment may be new, reconditioned, remanufactured, or used, including, but not limited to:
 - (a) original manufacturer parts or equipment; and
 - (b) nonoriginal manufacturer parts or equipment.

In determining the amount payable under this Part III for **bodily injury**, the damages which the **insured person** is entitled to recover from the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle** shall be reduced by all sums:

1. paid because of **bodily injury** by or on behalf of any persons or organizations that may be legally responsible, including, but not limited to, all sums paid under Part I - Liability To Others; and
2. paid or payable because of **bodily injury** under any of the following or similar laws:
 - a. workers' compensation law; or
 - b. disability benefits law.

The Limits of Liability under this Part III for **property damage** shall be reduced by all sums paid:

1. because of **property damage** by or on behalf of any persons or organizations who may be legally responsible, including, but not limited to, all sums paid under Part I - Liability To Others; and
2. under Part IV - Damage To A Vehicle for loss to the **vehicle**.

No one will be entitled to duplicate payments for the same elements of damages.

Any judgment or settlement for damages against an operator or **owner** of an **uninsured motor vehicle** or **underinsured motor vehicle** which

arises out of a lawsuit brought without **our** written consent is not binding on **us**.

OTHER INSURANCE

If there is other applicable uninsured or underinsured motorist coverage, **we** will pay only **our** share of the damages. **Our** share is the proportion that **our** limit of liability bears to the total of all available coverage limits. However, any insurance **we** provide shall be excess over any other uninsured or underinsured motorist coverage, except for **bodily injury** to **you** or a **relative** when occupying a **covered vehicle**.

We will not pay for any damages which would duplicate any payment made for damages under other insurance.

ARBITRATION FOR BODILY INJURY CLAIMS

If **we** and an **insured person** cannot agree on:

1. the legal liability of the operator or **owner** of an **uninsured motor vehicle** or **underinsured motor vehicle**; or
2. the amount of the damages sustained by the **insured person**;

this will be determined by arbitration if **we** or the **insured person** make a written demand for arbitration prior to the expiration of the bodily injury statute of limitations in the state in which the **accident** occurred.

If **we** and the **insured person** agree to arbitration, then each party shall select an arbitrator. The two arbitrators will select a third. If the two arbitrators cannot agree on a third arbitrator within thirty (30) days, then on joint application by the **insured person** and **us**, the third arbitrator will be appointed by a court having jurisdiction.

Each party will pay the costs and fees of its arbitrator and any other expenses it incurs. The costs and fees of the third arbitrator will be shared equally.

Unless both parties agree otherwise, arbitration will take place in the county in which the **insured person** resides. Local rules of procedure and evidence will apply.

A decision agreed to by two of the arbitrators will be binding with respect to a determination of:

1. the legal liability of the operator or owner of an **uninsured motor vehicle** or **underinsured motor vehicle**; and
2. the amount of the damages sustained by the **insured person**.

The arbitrators shall have no authority to award an amount in excess of the limit of liability. The decision of the arbitrators is binding only if the amount of the award does not exceed the minimum limit of liability specified by the financial responsibility laws of the state listed on your application as your residence. If the award of the arbitrators is in an amount which exceeds this minimum limit, either party may demand the right to a trial. This demand must be made in writing within sixty (60) days of the arbitrators' decision. If the demand is not made within sixty (60) days, the amount of damages agreed to by the arbitrators will be binding.

ARBITRATION FOR PROPERTY DAMAGE CLAIMS

An **insured person** may submit any disputed **property damage** claim for determination by arbitration. The disputed claim must be filed in triplicate with the clerk of court, on forms to be provided by the clerk, in the county in which the cause of action arose or where the plaintiff or defendant resides.

The parties to the dispute may, by agreement, provide for determination of the disputed claim by one arbitrator. Otherwise, the court shall appoint three arbitrators to hear and determine the disputed claim within sixty (60) days after the date of filing,

or as soon thereafter as is feasible. The three arbitrators shall:

1. hear and determine the liability for the disputed claim; and
2. determine and award damages, subject to the limitations, exclusions, and other terms set forth in this policy.

A decision agreed to by two of the three arbitrators shall determine the issue.

If any party is dissatisfied with the decision of the arbitrator(s), the party may appeal, within twenty (20) days of the decision, to the court in which the claim was filed by service upon the other parties of a notice to appeal.

PART IV - DAMAGE TO A VEHICLE

INSURING AGREEMENT - COLLISION COVERAGE

If you pay the premium for Collision Coverage, we will pay for loss to a:

1. **covered vehicle** for which Collision Coverage has been purchased;
2. **non-owned vehicle**; or
3. **trailer**;

when it overturns or is in a collision with another object, subject to the Limits of Liability.

INSURING AGREEMENT - COMPREHENSIVE COVERAGE

If you pay the premium for Comprehensive Coverage, we will pay for comprehensive loss to a:

1. **covered vehicle** for which Comprehensive Coverage has been purchased;
2. **non-owned vehicle**; or
3. **trailer**;

subject to the Limits of Liability.

A comprehensive loss is a loss to a covered vehicle, non-owned vehicle, or trailer, other than a loss covered under Collision Coverage, including, but not limited to, any of the following:

1. contact with an animal (including a bird);
2. explosion or earthquake;
3. fire;
4. malicious mischief or vandalism;
5. missiles or falling objects;
6. riot or civil commotion;
7. theft or larceny; or
8. windstorm, hail, water, or flood.

If you pay the premium for Comprehensive Coverage under this policy, we will pay you up to the greater of:

1. \$20 each day for thirty (30) days; or
2. any higher limit of liability purchased as Rental Reimbursement Coverage that is shown on the Declarations Page;

for transportation expenses incurred by you if a covered vehicle to which Comprehensive Coverage applies is stolen, or for loss of use damages that you are legally liable to pay if a non-owned vehicle is stolen.

Transportation expenses and loss of use damages coverage begins forty-eight (48) hours after you report the theft to us, and ends the earliest of:

1. when the covered vehicle or non-owned vehicle has been recovered and returned to you or its owner;
2. when the covered vehicle or non-owned vehicle has been recovered and repaired;
3. when the covered vehicle or non-owned vehicle has been replaced; or
4. seventy-two (72) hours after we make an offer to pay the applicable limit of liability under this Part IV if the covered vehicle or non-owned vehicle is deemed by us to be a total loss or unrecoverable.

You must provide us written proof of your transportation expenses and loss of use damages.

If we can pay the loss under either Comprehensive Coverage or Collision Coverage, we will pay under the coverage which applies the lowest deductible. If the deductible is the same under both coverages, we will pay the loss under Comprehensive Coverage.

INSURING AGREEMENT - CUSTOM PARTS OR EQUIPMENT COVERAGE & ADDITIONAL CUSTOM PARTS OR EQUIPMENT COVERAGE

Subject to the Limits of Liability, if you pay the premium for Comprehensive Coverage or Collision Coverage, we will pay for theft of, or damage to, custom parts or equipment resulting from any loss for which Comprehensive Coverage or Collision Coverage is provided under the terms of this policy. All payments for loss to custom parts or equipment shall be reduced by the applicable deductible, but only one deductible may be applied to any one loss in an accident which is covered by this Part IV. However, Additional Custom Parts or Equipment Coverage applies only to custom parts or equipment on a covered vehicle for which this coverage has been purchased.

The limit of liability for loss to custom parts or equipment is the lowest of:

1. the actual cash value of such custom parts or equipment, reduced by the applicable deductible, and reduced by its salvage value if you or the owner retain the salvage;
2. the amount necessary to repair such custom parts or equipment, reduced by the applicable deductible;
3. the amount necessary to replace such custom parts or equipment, reduced by the applicable deductible, and reduced by its salvage value if you or the owner retain the salvage; or
4. the limit of:
 - a. \$1,000 if you did not purchase Additional Custom Parts or Equipment Coverage; or
 - b. if you have purchased Additional Custom Parts or Equipment Coverage ("ACPE"),

\$1,000 added to the amount of ACPE you purchased. However, the Limit of Liability for custom parts or equipment shall not exceed the declared value of all custom parts or equipment on the covered vehicle.

We will reduce the amount of the loss to custom parts or equipment by its salvage value if you or the owner retain the salvage.

Coverage for custom parts or equipment shall not cause our limit of liability for loss to a vehicle under this Part IV to be increased to an amount in excess of:

- a. the actual cash value of the vehicle, including its custom parts or equipment; or
- b. any applicable Limits of Liability or Stated Amount Vehicle Coverage elected by you.

ADDITIONAL DEFINITIONS

When used in this Part IV:

1. **"Custom parts or equipment"** means equipment, devices, accessories, enhancements, and changes, other than those which are original manufacturer installed, which:
 - a. are permanently installed or attached; and
 - b. alter the appearance or performance of a vehicle.

This includes any electronic equipment, antennas, and other devices used exclusively to send or receive audio, visual, or data signals, or to play back recorded media, other than those which are original manufacturer installed, that are permanently installed in a covered vehicle or non-owned vehicle using bolts or brackets, including slide-out brackets.

2. **"Non-owned vehicle"** means any vehicle that is not owned by you, a relative, a resident of your household, or the spouse of the named insured even if not residing in the same household as the named insured, while in the custody of, or being operated by, you or a relative with the express or implied permission of the owner.

3. **"Total loss"** means:

- a. the theft of the vehicle if the vehicle is not recovered within thirty (30) days; or
- b. any other loss to the vehicle that is payable under this Part IV if the cost to repair the damage (including parts and labor), when combined with the salvage value, exceeds the actual cash value of the vehicle at the time of the loss.

4. **"Trailer"** means a non-motorized trailer, including a farm wagon or farm implement, designed to be towed on public roads by a land motor vehicle, that is:

- a. owned by you;
- b. not owned by you, while being towed by a covered vehicle; or
- c. shown on the Declarations Page but that is not used:
 - a. for commercial or business purposes;
 - b. as a primary residence;
 - c. as a premises for office, store or display purposes; or
 - d. as a passenger conveyance.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART IV.

Coverage under this Part IV does not apply for loss:

1. to a covered vehicle, non-owned vehicle, or trailer, while being used to carry persons or property for compensation or a fee, including, but not limited to, delivery of magazines, newspapers, food, or any other products. This exclusion does not apply to shared-expense car pools;
2. to any covered vehicle or trailer while it is leased or rented to others;
3. to a non-owned vehicle or trailer, other than one rented by you or a relative, if being maintained or used by a person while employed or engaged in any business not described in the

next exclusion. This exclusion does not apply to the use by **you** or any **relative** of a **non-owned vehicle** that is a private passenger vehicle or trailer;

4. to a **non-owned vehicle** or trailer while being used or driven by a person while employed or engaged in the **business** of selling, leasing, repairing, parking, storing, servicing, delivering, or testing vehicles;
5. to a **covered vehicle**, **non-owned vehicle**, or trailer, resulting from any pre-arranged or organized racing, speed or demolition contest, stunting activity, or in practice or preparation for any such contest or activity;
6. to a **covered vehicle**, **non-owned vehicle**, or trailer, due to a nuclear reaction or radiation;
7. to a **covered vehicle**, **non-owned vehicle**, or trailer, for which insurance is afforded under a nuclear energy liability insurance contract;
8. due to destruction or confiscation by governmental or civil authorities of a **covered vehicle**, **non-owned vehicle**, or trailer, because **you** or any **relative** engaged in illegal activities;
9. to a **covered vehicle**, **non-owned vehicle**, or trailer, caused by an intentional act by **you**, a **relative**, or the **owner** of the **non-owned vehicle** or trailer, or at the direction of **you**, a **relative**, or the **owner** of the **non-owned vehicle** or trailer;
10. to a **covered vehicle**, **non-owned vehicle**, or trailer, that is due and confined to:
 - a. wear and tear;
 - b. freezing;
 - c. mechanical or electrical breakdown or failure; or
 - d. road damage to tires.

This exclusion does not apply if the damage results from the theft of a **covered vehicle**, **non-owned vehicle**, or trailer;
11. due to theft or conversion of a **covered vehicle**, **non-owned vehicle**, or trailer:
 - a. by **you**, a **relative**, or any resident of your household;

- b. prior to its delivery to **you** or a **relative**; or
- c. while in the care, custody, or control of anyone engaged in the **business** of selling the **vehicle** or trailer;

12. to equipment, devices, accessories, and any other personal effects which are not permanently installed or attached by brackets or bolts. This includes, but is not limited to:
 - a. tapes, compact discs, cassettes, and other recording or recorded media;
 - b. any case or other container designed for use in storing or carrying tapes, compact discs, cassettes, or other recording or recorded media;
 - c. any device used for the detection or location of radar, laser, or other speed measuring equipment or its transmissions; and
 - d. CB radios, telephones, two-way mobile radios, or televisions;
13. to **custom parts or equipment** in excess of the applicable Limits of Liability; or
14. to a **covered vehicle**, **non-owned vehicle**, or trailer, for diminution of value.

LIMITS OF LIABILITY

1. The limit of liability for loss to a **covered vehicle**, **non-owned vehicle**, or trailer is the lowest of:
 - a. the actual cash value of the stolen or damaged property at the time of the loss, reduced by the applicable deductible shown on the **Declarations Page**, and by its salvage value if **you** or the **owner** retain the salvage;
 - b. the amount necessary to replace the stolen or damaged property, reduced by the applicable deductible shown on the **Declarations Page**, and by its salvage value if **you** or the **owner** retain the salvage;
 - c. the amount necessary to repair the damaged property to its pre-loss condition, reduced by the applicable deductible shown on the **Declarations Page**; or

- d. any applicable Limits of Liability or Stated Amount Vehicle Coverage elected by you, reduced by its salvage value if you or the owner retain the salvage.
- However, if the loss is to a trailer:
- a. the most we will pay for loss to a trailer that is shown on the **Declarations Page** is the limit of liability shown on the **Declarations Page** for the trailer sustaining the loss; and
 - b. the most we will pay for loss to any other trailer is \$500.
2. Payments for loss covered under Collision Coverage, Comprehensive Coverage, Custom Parts or Equipment Coverage and Additional Custom Parts or Equipment Coverage are subject to the following provisions:
- a. no more than one deductible shall be applied to any one covered loss;
 - b. if coverage applies to a **non-owned vehicle**, we will provide the broadest coverage applicable to any vehicle shown on the **Declarations Page**. However, the highest deductible on any **covered vehicle** shall apply;
 - c. if Stated Amount Vehicle Coverage is elected by you, the stated amount is the most we will pay for all loss to a covered vehicle, including its custom parts or equipment;
 - d. an adjustment for depreciation or physical condition, which may also be referred to as betterment, wear and tear, or prior damage, will be made in determining the Limits of Liability;
 - e. in determining the amount necessary to repair damaged property to its pre-loss condition; the amount to be paid by us:
 - (i) shall not exceed the prevailing competitive labor rates charged in the area where the property is to be repaired, and the cost of repair or replacement parts and equipment, as reasonably determined by us; and
 - (ii) will be based on the cost of repair or replacement parts and equipment which may be new, reconditioned, remanufactured, or used, including, but not limited to:
 - (a) original manufacturer parts or equipment; and
 - (b) nonoriginal manufacturer parts or equipment;
 - f. the actual cash value is determined by the market value, age and condition of the vehicle at the time the loss occurs; and
 - g. duplicate recovery for the same elements of damages is not permitted.
3. If more than one vehicle is shown on your **Declarations Page**, coverage will be provided as specified on the **Declarations Page** as to each vehicle.
4. No deductible will apply to a loss to automobile safety glass.
5. If two or more deductibles apply to any one covered loss, only the lowest deductible will apply.
6. Any amount paid or payable to a person under this Part IV for **property damage** to a vehicle shall be reduced by any amount paid for that **property damage** to the vehicle under Part III - Uninsured/Underinsured Motorist Coverage.

INSURING AGREEMENT - RENTAL REIMBURSEMENT COVERAGE

Subject to the limits of liability, if you pay the premium for Rental Reimbursement Coverage, we will reimburse rental charges incurred when you rent a vehicle from a rental agency or vehicle repair shop due to a loss:

- 1. to a **covered vehicle** for which Rental Reimbursement Coverage has been purchased; and

2. for which Comprehensive Coverage or Collision Coverage applies.

Our limits of liability are the amount and the number of days shown on the **Declarations Page**.

If Rental Reimbursement Coverage applies, no other coverage under this policy for rental expenses shall apply.

Rental charges will be reimbursed beginning:

1. when the **covered vehicle** cannot be driven due to a **loss**; or
 2. if the **covered vehicle** can be driven, when you deliver the **covered vehicle** to a vehicle repair shop for repairs due to the **loss**;
- and ending the earliest of when the **covered vehicle** has been:

1. returned to you;
2. repaired;
3. replaced; or
4. if the **covered vehicle** is deemed by us to be a **total loss**, seventy-two (72) hours after we make an offer to pay the applicable limit of liability under this Part IV.

You must provide us written proof of your rental charges. Duplicate recovery for the same elements of damages is not permitted under this policy.

INSURING AGREEMENT - LOAN/LEASE PAYOFF COVERAGE

If you pay the premium for Loan/Lease Payoff Coverage for a **covered vehicle** and the **covered vehicle** for which this coverage has been purchased sustains a **total loss**, we will pay, in addition to any amounts otherwise payable under this Part IV, the difference between:

1. the actual cash value of the **covered vehicle** at the time of the **total loss** reduced by the applicable deductible and by its salvage value if you or the **owner** retain the salvage; and

2. any greater amount the **owner** of the **covered vehicle** is legally obligated to pay under a written loan or lease agreement to which the **covered vehicle** is subject at the time of the **total loss**, reduced by:

- a. unpaid finance charges or refunds due to the **owner** for such charges;
- b. excess mileage charges or charges for wear and tear;
- c. charges for extended warranties or refunds due to the **owner** for extended warranties;
- d. charges for credit insurance or refunds due to the **owner** for credit insurance;
- e. past due payments and charges for past due payments;
- f. collection or repossession expenses; and
- g. its salvage value if you retain the salvage.

However, our payment under this Loan/Lease Payoff Coverage shall not exceed twenty-five percent (25%) of the actual cash value of the **covered vehicle** at the time of the **total loss**.

PAYMENT OF LOSS

At our expense, we may return any recovered stolen property to you or to the address shown on the **Declarations Page**, with payment for any damage resulting from the theft. We may keep all or part of the property at the agreed or appraised value. We may settle any loss with you or the **owner** or lienholder of the property.

NO BENEFIT TO BAILEE

Coverage under this Part IV will not directly or indirectly benefit any carrier or other bailee for hire.

LOSS PAYEE AGREEMENT

Payment under this Part IV for a **total loss** to a **covered vehicle** will be made according to your interest and the interest of any Loss Payee or lienholder shown on the **Declarations Page** or design-

nated by you. Payment may be made to both jointly, or separately, at our discretion. We may make payment for a partial loss covered under this Part IV directly to the repair facility with your consent.

Where fraud, misrepresentation, material omission, or intentional damage has been committed by or at the direction of you or a relative, or where the loss is otherwise not covered under the terms of this policy, the Loss Payee or lienholder's interest will not be protected.

We will be entitled to the Loss Payee or lienholder's rights of recovery, to the extent of our payment to the Loss Payee or lienholder.

OTHER INSURANCE

If there is other applicable insurance, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability. However, any insurance that we provide for a vehicle other than a covered vehicle, or for a trailer other than a trailer shown on the Declarations Page, will be excess over any other collectible source of recovery including, but not limited to:

1. any coverage provided by, to, or through the owner of the non-owned vehicle or trailer; and
2. any other applicable physical damage insurance.

APPRAISAL

If we cannot agree with you on the amount of a loss, then we or you may demand an appraisal of the loss. If a demand for an appraisal is made, each party shall appoint a competent and impartial appraiser. The appraisers will determine the amount of loss. If they fail to agree, the disagreement will be submitted to a qualified and impartial umpire chosen by the appraisers. If the two appraisers are unable to agree upon an umpire

within fifteen (15) days, we or you may request that a judge of a court of record, in the county where you reside, select an umpire. The appraisers and umpire will determine the amount of loss. The amount of loss agreed to by both appraisers, or by one appraiser and the umpire, will be binding. You will pay your appraiser's fees and expenses. We will pay our appraiser's fees and expenses. Payment of the umpire and all other expenses of the appraisal will be shared equally between us and you. Neither we nor you waive any rights under this policy by agreeing to an appraisal.

PART V - ROADSIDE ASSISTANCE COVERAGE

INSURING AGREEMENT

If you pay the premium for Roadside Assistance Coverage, we will pay for our authorized service representative to provide the following services when necessary due to a covered emergency:

1. towing of a covered disabled vehicle to the nearest qualified repair facility; and
2. labor on a covered disabled vehicle at the place of disablement.

ADDITIONAL DEFINITIONS

When used in this Part V:

1. "Covered disabled vehicle" means a disabled covered vehicle for which this coverage has been purchased.
2. "Covered emergency" means a disablement that is a result of:
 - a. mechanical or electrical breakdown;
 - b. battery failure;
 - c. insufficient supply of fuel, oil, water, or other fluid;
 - d. flat tire;
 - e. lock-out; or
 - f. entrapment in snow, mud, water or sand, within 100 feet of a road or highway.

EXCLUSIONS - READ THE FOLLOWING EXCLUSIONS CAREFULLY. IF AN EXCLUSION APPLIES, COVERAGE WILL NOT BE AFFORDED UNDER THIS PART V.

Coverage under this Part V does not apply to:

1. The cost of purchasing parts, fluid, lubricants, fuel or replacement keys, or the labor to make replacement keys;
2. installation of products or material not related to the disablement;
3. labor not related to the disablement;
4. labor on a **covered disabled vehicle** for any time period in excess of sixty (60) minutes per disablement;
5. towing or storage related to impoundment, abandonment, illegal parking, or other violations of law;
6. assistance with jacks, levelers, airbags, or awnings;
7. towing from a service station, garage, or repair shop;
8. labor or repair work performed at a service station, garage, or repair shop;
9. vehicle storage charges;
10. a second service call or tow for a single disablement;
11. disablement that occurs on roads not regularly maintained, sand beaches, open fields, or areas designated as not passable due to construction;
12. mounting or removing of snow tires or chains;
13. tire repair;
14. repeated service calls for a **covered disabled vehicle** in need of routine maintenance or repair;
15. disablement that results from an intentional or willful act or action by **you**, a **relative** or the operator of a **covered disabled vehicle**; or
16. a trailer.

UNAUTHORIZED SERVICE PROVIDER

When service is rendered by a provider in the **business** of providing roadside assistance and towing services, other than one of our authorized service representatives, we will only pay reasonable charges, as determined by us, for:

1. towing of a **covered disabled vehicle** to the nearest qualified repair facility; and
 2. labor on a **covered disabled vehicle** at the place of disablement;
- which is necessary due to a covered emergency.

OTHER INSURANCE

Any coverage provided under this Part V for service rendered by an unauthorized service provider will be excess over any other collectible insurance or towing protection coverage.

GENERAL PROVISIONS

POLICY PERIOD AND TERRITORY

This policy applies only to **accidents** and **losses** occurring during the policy period shown on the **Declarations Page** and which occur within any state, territory, or possession of the United States of America, or any province or territory of Canada, or while a **covered vehicle**, non-owned vehicle, or trailer is being transported between their ports.

POLICY CHANGES

This policy, **your** insurance application (which is made a part of this policy as if attached hereto), the **Declarations Page**, as amended, and endorsements to this policy issued by **us** contain all the agreements between **you** and **us**. Subject to the following, its terms may not be changed or waived except by an endorsement issued by **us**.

The premium for each vehicle is based on information we have received from you or other sources. You agree to cooperate with us in determining if this information is correct and complete, and you will notify us if it changes during the policy period. If this information is incorrect, incomplete, or changes during the policy period, we may adjust your premium during the policy period, or take other appropriate action. To properly insure your vehicle, you must promptly notify us when:

1. you change your address;
2. any resident operators are added or deleted; or
3. you acquire an additional or replacement vehicle.

Changes that may result in a premium adjustment are contained in our rates and rules. These include, but are not limited to, you or a relative obtaining a driver's license or operator's permit, or changes in:

1. the number, type, or use classification of covered vehicles;
2. operators using covered vehicles;
3. an operator's marital status;
4. the place of principal garaging of any covered vehicle;
5. coverage, deductibles, or limits of liability; or
6. rating territory or discount eligibility.

TERMS OF POLICY CONFORMED TO STATUTES

If any provision of this policy fails to conform with the legal requirements of the state listed on your application as your residence, the provision shall be deemed amended to conform with such legal requirements. All other provisions shall be given full force and effect. Any disputes as to the coverages provided or the provisions of this policy shall be governed by the law of the state listed on your application as your residence.

VEHICLES WITH COMPREHENSIVE COVERAGE AND/OR COLLISION COVERAGE ONLY

If you purchase only:

1. Comprehensive Coverage;
2. Collision Coverage; or
3. Comprehensive Coverage and Collision Coverage;

for a covered vehicle, no other coverage will be provided under this policy with respect to the ownership, maintenance or use of that covered vehicle, or any replacement for that covered vehicle, until after you have asked us to add other coverage.

TRANSFER

This policy may not be transferred to another person without our written consent. If a named insured dies, this policy will provide coverage until the end of the policy period for the legal representative of the named insured, while acting as such, and for persons covered under this policy on the date of the named insured's death.

FRAUD OR MISREPRESENTATION

This policy was issued in reliance upon the information provided on your insurance application. We may void this policy if you or an insured person:

1. made incorrect statements or representations to us with regard to any material fact or circumstance;
2. concealed or misrepresented any material fact or circumstance; or
3. engaged in fraudulent conduct;

at the time of application. We may void this policy due to fraud, misrepresentation, or an incorrect statement of a material fact in the application, even after the occurrence of an accident or loss. This means that we will not be liable for any claims or damages which would otherwise be covered unless we have certified this policy as proof of financial responsibility. If we have certified this pol-

icy as proof of financial responsibility, nothing in this provision shall affect coverage under Part I - Liability To Others up to the minimum liability limits required by the South Carolina Motor Vehicle Financial Responsibility Act for an **accident** that occurs before **we** notify the named insured that the policy is void. If **we** void this policy, **you** must reimburse **us** if **we** make a payment.

We may deny coverage for an **accident** or **loss** if **you** or an insured person have knowingly concealed or misrepresented any material fact or circumstance, or engaged in fraudulent conduct, in connection with the presentation or settlement of a claim.

PAYMENT OF PREMIUM

If **your** initial premium payment is by check, draft, or any remittance other than cash, coverage under this policy is conditioned upon the check, draft, or remittance being honored upon presentment to the bank or other financial institution. If the check, draft, or remittance is not honored upon presentment, this policy may, at **our** option, be canceled from its inception by notice of cancellation or rescission. This means that **we** will not be liable under this policy for any claims or damages which would otherwise be covered if the check, draft, or remittance had been honored upon presentment.

A charge may be added to **your** account if:

1. **you** tender a check, draft, remittance or other method of payment to **us** for any full or partial payment of **your** premium, other than **your** initial payment, and the check, draft, remittance or other method of payment is returned to **us** or refused because of insufficient funds, a closed account, or a stop payment order; or
2. **your** premium payment is received after the due date but prior to cancellation.

CANCELLATION

You may cancel this policy by calling or writing **us**, and stating the future date that **you** wish the cancellation to be effective.

We may cancel this policy by mailing a notice of cancellation to the named insured shown on the **Declarations Page** at the last known address appearing in **our** records, stating the specific reason for cancellation. Notice will be mailed at least fifteen (15) days before the effective date of cancellation.

We may cancel this policy only for one or more of the following reasons within the first sixty (60) days of the initial policy period:

1. a premium payment by check, draft, or remittance is not honored upon presentment;
2. **you** produce proof that **you** have sold or otherwise disposed of a **covered vehicle**, or surrendered its tags and registration; or
3. **you** have secured another policy that satisfies the financial responsibility laws of the State of South Carolina.

After the policy has been in effect for sixty (60) days, but before the policy has been in effect for more than ninety (90) days, **we** may cancel this policy for any reason.

After this policy has been in effect for more than ninety (90) days, or if this is a renewal or continuation policy, **we** may only cancel for one or more of the following reasons:

1. **you** do not pay the required premium for this policy when due;
2. loss of driving privileges through suspension or revocation of **your** operator's license or that of an operator who either resides in the same household as **you** or who customarily operates a **covered vehicle**; or
3. any other reason specified by law.

With respect to cancellation, this policy is neither severable nor divisible. Any cancellation will be effective for all coverage for all persons and all vehicles.

If this policy is canceled, coverage will not be provided as of the effective date and time shown in the notice of cancellation.

CANCELLATION REFUND

Upon cancellation, you may be entitled to a premium refund. However, our making or offering of a refund is not a condition of cancellation.

If we cancel this policy for any reason other than nonpayment of premium, any refund due will be computed on a daily pro rata basis. However, if this policy is canceled at your request or if cancellation is for nonpayment of premium, any refund due will be computed on a ninety percent (90%) of a daily pro-rata basis. This is a daily, accelerated method of calculating short-rate earned premium on cancellations. Earned premium is calculated on a daily basis. We will supply a copy of the table to you on request.

NONRENEWAL

If we decide not to renew or continue this policy, we will mail notice of nonrenewal stating the specific reason for nonrenewal to the named insured shown on the **Declarations Page** at the last known address appearing in our records. Notice will be mailed at least fifteen (15) days before the end of the policy period.

PROOF OF NOTICE

Proof of mailing of any notice will be sufficient proof of notice.

AUTOMATIC TERMINATION

Coverage for a covered vehicle shall terminate automatically:

1. when a person other than you or a relative becomes the owner of the vehicle; or
2. on the effective date of any other motor vehicle insurance policy covering that vehicle.

Comprehensive Coverage and Collision Coverage in excess of \$500 for loss to a trailer shown on the **Declarations Page** shall terminate automatically when a person other than you or a relative becomes the owner of the trailer.

COVERAGE CHANGES

If we make a change which broadens a coverage you have under this edition of your policy, without additional charge, you will receive the broadened coverage. The broadened coverage applies on the date the coverage change is implemented in your state. This provision does not apply to a general program revision or our issuance of a subsequent edition of your policy. Otherwise, this policy can be changed only by endorsement issued by us.

LEGAL ACTION AGAINST US

We may not be sued unless there is full compliance with all the terms of this policy. Any lawsuit against us by you, a relative, or any other insured person following an accident, or an alleged breach of our obligations under this policy, must be commenced within the time period set forth as the bodily injury statute of limitations in the laws of the state listed in our records as your principal address.

We may not be sued for payment under Part I - Liability To Others until the obligation of an insured person to pay is finally determined either by final judgment against that person or by written agreement of the insured person, the claimant, and us.

No one will have any right to make us a party to a lawsuit to determine the liability of an insured person.

If we retain salvage, we have no duty to preserve or otherwise retain the salvage for any purpose, including evidence for any civil or criminal proceeding.

OUR RIGHTS TO RECOVER PAYMENT

In the event of any payment under this policy, we are entitled to all the rights of recovery that the insured person to whom payment was made has against another. That insured person must sign and deliver to us any legal papers relating to that recovery, do whatever else is necessary to help us exercise those rights, and do nothing after an accident or loss to prejudice our rights.

However, we may not assert rights of recovery:

1. for amounts paid as Underinsured Motorist Coverage benefits; or
2. for amounts paid as Medical Payments Coverage benefits;
3. against any person who was using a covered vehicle with your express or implied permission for any payment made under Part IV - Damage To A Vehicle.

When an insured person has been paid by us under this policy and also recovers from another person, entity, or organization, the amount recovered will be held by the insured person in trust for us and reimbursed to us to the extent of our payment.

If recovery is made by an insured person under this policy from a responsible person, entity, or organization without our written consent, the insured person's right to payment under any affected coverage will no longer exist.

JOINT AND INDIVIDUAL INTERESTS

If there is more than one named insured on this policy, any named insured may cancel or change this policy. The action of one named insured shall be binding on all persons provided coverage under this policy.

BANKRUPTCY

The bankruptcy or insolvency of an insured person will not relieve us of any obligations under this policy.

NAMED DRIVER EXCLUSION

If you have asked us to exclude any person from coverage under this policy, then we will not provide coverage for any claim arising from an accident or loss involving a motorized vehicle being operated by that excluded person. THIS INCLUDES ANY CLAIM FOR DAMAGES MADE AGAINST YOU, A RELATIVE, OR ANY OTHER PERSON OR ORGANIZATION THAT IS VICARIOUSLY LIABLE FOR AN ACCIDENT ARISING OUT OF THE OPERATION OF A MOTORIZED VEHICLE BY THE EXCLUDED DRIVER.

NAMED OPERATOR - NON-OWNED VEHICLE COVERAGE

If you elect Named Operator - Non-Owned Vehicle Coverage, you agree with us that this policy is amended as follows:

1. GENERAL DEFINITIONS

The general policy definition of "covered vehicle" is deleted and no coverage is provided with respect to a covered vehicle under this policy.

2. PART I - LIABILITY TO OTHERS

ADDITIONAL DEFINITIONS: When used in Part I, the definition of "insured person" and "insured persons" is deleted and replaced by the following:

"Insured person" and "insured persons" mean:

- a. you or a relative, when operating or using a vehicle, other than a vehicle owned by you or a relative, with the express or implied permission of the owner; and
- b. any person or organization with respect only to vicarious liability for an accident arising out of the use of a non-owned vehicle by you with the express or implied permission of the owner.

3. PART II - MEDICAL PAYMENTS, PERSONAL INJURY PROTECTION, or NO-FAULT MEDICAL COVERAGE

ADDITIONAL DEFINITIONS: When used in Part II, the definition of "insured person" and "insured persons" is deleted and replaced by the following:

"Insured person" and "insured persons" mean you or a relative:

- a. while occupying any vehicle, other than a vehicle owned by you or a relative; or
- b. when struck by a motor vehicle or trailer while not occupying a motor vehicle.

4. PART III - UNINSURED/UNDERINSURED MOTORIST COVERAGE

- a. ADDITIONAL DEFINITIONS: When used in Part III, the Additional Definition of "insured person" and "insured persons" is deleted and replaced by the following:

"Insured person" and "insured persons" mean:

- a. you or a relative; and
 - b. any person who is entitled to recover damages covered by Part III because of bodily injury to you or a relative.
- b. All references to "property damage" are deleted and no coverage is provided with respect to property damage under Uninsured Motorist Coverage or Underinsured Motorist Coverage.



Motor Vehicle Policy Endorsement

Your policy is amended as follows

1. Part IV - Damage To A Vehicle

- (a) The following provision is added to the Collision Coverage Insuring Agreement in Part IV:

Subject to any deductible applicable to a collision loss, we will replace, or reimburse the reasonable cost to replace, any child safety seat or restraint damaged in an accident to which this Collision Coverage applies.

- (b) The following exclusions are added to Part IV:

Coverage under Part IV - Damage To A Vehicle does not apply for loss to a covered vehicle, non-owned vehicle, or trailer, caused directly or indirectly by mold, mildew or fungus, including any type or form of:

- a. decomposing or disintegrating organic material or microorganism;
- b. organic surface growth on moist, damp, or decaying matter;
- c. yeast or spore-bearing plant-like organism; or
- d. spores, scents, toxins, bacteria, viruses, or any other by-products produced or released by any mold, mildew, fungus, or other microbes.

However, this exclusion does not apply to loss caused by mold, mildew or fungus, if such loss is caused by any other loss covered under this Part IV.

Coverage under Part IV - Damage To A Vehicle does not apply for loss to a covered vehicle, non-owned vehicle, or trailer, caused directly or indirectly by:

- a. war (declared or undeclared), including civil war;
- b. warlike action by any military force of any government, sovereign or other authority using military personnel or agents. This includes any action taken to hinder or defend against an actual or expected attack;
- c. insurrection, rebellion, revolution, usurped power, or any action taken by a governmental authority to hinder or defend against any of these acts; or
- d. any intentional discharge, dispersal or release of radioactive, nuclear, pathogenic, poisonous biological, chemical or hazardous material for any purpose other than its safe and useful purpose.

- (c) The following provision is added to the Limits of Liability in Part IV:

Payments for loss covered under Collision Coverage, Comprehensive Coverage, Custom Parts or Equipment Coverage and Additional Custom Parts or Equipment Coverage are also subject to the following provisions:

To determine the amount necessary to repair the damaged property to its pre-loss condition as referred to in paragraph 1.c., the total cost of necessary repair will be reduced by:

- (i) the cost of labor, parts and materials necessary to repair or replace damage, deterioration, defects, or wear and tear on exterior body parts, windshields and other glass, wheels, and paint, that existed prior to the accident and that is eliminated as a result of the repair or replacement of property damaged in the loss. This adjustment for physical condition includes, but is not limited to, broken, cracked or missing parts, rust, dents, scrapes, gouges and peeling paint;
- (ii) an amount for depreciation (also referred to as betterment) that represents a portion of the cost of mechanical parts (parts that wear out over time and have a useful life typically shorter than the life of the vehicle as a whole) that are installed as replacements for existing mechanical parts that were defective, inoperable or nonfunctional prior to the accident, which we deem necessary to replace in the course of repair; and

- (iii) an amount for depreciation (also referred to as betterment) that represents a portion of the cost for replacement tires, batteries, engine or transmission, determined by the proportional increase in the useful life of the replacement part when compared to the replaced part. For example, if we replace a twenty-four (24) month old battery that had a manufacturer's rated life of sixty (60) months with a new sixty (60) month rated battery, our payment for the battery is reduced by forty percent (40%) and you are responsible to pay that forty percent (40%) portion of the cost of the battery. However, the reduction of the amount we will pay for a new or rebuilt engine or transmission will be determined by using the proportion the actual miles used before replacement, after reducing the miles used by 80,000, bears to 150,000 miles (or any other measure of useful engine life as reasonably determined by us). If we replace an engine or transmission that has less than 80,000 miles of use, no reduction shall be taken.

2. General Provisions

- (a) The Automatic Termination provision is deleted and replaced with the following:

Coverage for a covered vehicle shall terminate automatically when a person other than you or a relative becomes the owner of the vehicle.

Comprehensive Coverage and Collision Coverage in excess of \$500 for loss to a trailer shown on the Declarations Page shall terminate automatically when a person other than you or a relative becomes the owner of the trailer.

- (b) The following paragraph is added to the Our Rights To Recover Payment provision:

If we elect to exercise our rights of recovery against a responsible person, entity, or organization, you authorize us, at our option, to recover any deductible incurred by you for property damage covered by this policy. We have no obligation to seek repayment of the deductible if we pursue recovery through Inter-company Arbitration. We have no obligation to pursue recovery against a responsible person, entity, or organization for anything other than the deductible incurred by you and the amount we have paid for property damage. If you or an insured person have other claims to pursue against the responsible person, entity or organization for recovery of damages not paid by us, then:

1. a separate or independent legal action may be filed by you or that insured person; or
2. the claims may be joined with our action if that person notifies us and secures separate counsel to protect those other interests.

We reserve the right to compromise or settle the deductible and property damage claims against the liable parties for less than the full amount. We reserve the right to incur reasonable expenses and attorney fees in pursuit of the recovery. You are entitled to reimbursement of your proportionate share of any recovery, subject to a reduction for your proportionate share of expenses and attorney fees incurred in connection with these collection efforts.

All other terms, limits and provisions of this policy remain unchanged.

Form 7951 SC (11/02)

Pro Rata Cancellation Refund Endorsement

The following is added to your policy:

When you renew this policy, we will waive our right under the policy to calculate cancellation refunds on a ninety percent (90%) of daily pro-rata basis; instead, any refund of premium following a cancellation that may apply to the renewal policy will be calculated on a daily pro-rata basis.

Form 0138 (09/02)

PROGRESSIVE DIRECT
P.O. BOX 31260
TAMPA, FL 33631

PROGRESSIVE
DIRECT

SARAH K SEVERN
408 CAMBRIDGE CRCL #J7
GARDEN CITY BEA, SC 29576

Policy number: 13507563-0

Underwritten by:

Progressive Halcyon Insurance Co.

December 19, 2005

Policy Period: Nov 4, 2005 - May 4, 2006

Page 1 of 2

progressive.com

Online Service

Make payments, check billing activity, update
policy information or check status of a claim.

800-PROGRESSIVE (800-776-4737)

For customer service and claims service,
24 hours a day, 7 days a week.

Auto Insurance Coverage Summary

This is your Declarations Page
Your policy information has changed

Your coverage began on November 4, 2005 at the later of 12:01 a.m. or the effective time shown on your application. This policy period ends on May 4, 2006 at 12:01 a.m.

This coverage summary replaces your prior one. Your insurance policy and any policy endorsements contain a full explanation of your coverage. The policy contract is form 9608D SC (11/04). The contract is modified by forms 0138 (09/02) and 7951 SC (11/02)

Policy changes effective November 4, 2005

Changes requested on:	Dec 17, 2005 06:56 a.m.
Requested by:	SARAH K SEVERN
Premium change:	-\$265.00
Changes:	The name of JOSHUA D BELL has changed. The date of birth for JOSHUA D BELL was changed to 11/11/1984. The driving history for JOSHUA D BELL has changed.

Underwriting Company

Progressive Halcyon Insurance Co.
P.O. Box 31260
Tampa, FL 33631
800-888-7764

Drivers and household residents

SARAH K SEVERN
JOSHUA D BELL

Additional information

Named insured

Outline of coverage**2000 Honda Cr-V EX**

VIN JHLRD1864YC000137

	Limits	Deductible	Premium
Liability To Others			\$506
Bodily Injury Liability	\$100,000 each person/\$300,000 each accident		
Property Damage Liability	\$50,000 each accident		
Uninsured Motorist	\$100,000 each person/\$300,000 each accident		12
Underinsured Motorist	\$100,000 each person/\$300,000 each accident		36
Uninsured Motorist Property Damage	\$50,000 each accident	\$200	9
Underinsured Motorist Property Damage	\$50,000 each accident	\$0	3
Medical Payments	\$5,000 each person		38
Comprehensive	Actual Cash Value	\$500/\$0 glass	96
Collision	Actual Cash Value	\$500/\$0 glass	251
Roadside Assistance			7
Subtotal policy premium			\$958
South Carolina Uninsured Motorist Fund charge			1
Total 6 month policy premium			\$959

Premium discount

Policy

13507563-0

paid in full

COURT OF COMMON PLEASE
FIFTEENTH JUDICIAL CIRCUIT

Plaintiff

2007-CP-26-5890

OCTOBER 13, 2008

THE HONORABLE J. MICHAEL BAXLEY

GRENVILLE D. MORGAN, JR., ESQUIRE
Attorney for Progress Direct Insurance Company

54

INDEX

Motion for Summary Judgment Page 03

Certificate of Reporter Page 20

EXHIBIT FOR THE DEFENDANT

1. Deposition of Joshua Bell Page 07

1 THE COURT: We are in the matter of Joshua Bell versus
2 Progressive Direct Insurance Company. This case actually is
3 number six for trial on our trial roster. Case Number 07-26-
4 5890. This is a Motion for Summary Judgment. Let's let the
5 attorneys introduce themselves so our record will be clear and
6 tell us who they represent. And, we will start --- Mr.
7 Connell, we will start with you, sir.

8 MR. CONNELL: All right. I represent Joshua Bell, the
9 Plaintiff. My name is Gene Connell.

10 MR. MORGAN: I am Grenville Morgan. I represent the
11 Defendant.

12 THE COURT: And, Mr. Morgan, you are the movement for
13 the Judgment?

14 MR. MORGAN: Yes, sir.

15 THE COURT: I will be glad to hear from you.

16 MR. MORGAN: May it, please the Court. Your Honor, this
17 is a coverage case for UIM benefits. A little background,
18 factual background, on the case. The Plaintiff was involved
19 in a automobile accident back in March of 2006. He was a
20 passenger in a vehicle. He is --

21 THE COURT: Let me just make sure. I have May 31,
22 2006, accident date, is that correct?

23 MR. MORGAN: Yes, sir, that is correct.

24 THE COURT: All right, I'm with you.

25 MR. MORGAN: He was a passenger in that vehicle, and has

1 made a claim for underinsured motorist benefits on a policy of
2 his on again off again fiancé, a lady by the name of Sarag
3 Sevlén. He was living with her at the time of the accident.
4 The Plaintiff made a claim for UIM benefits under her policy
5 on her car and Progressive. My client insured that vehicle
6 --- Progressive insured her in that vehicle. She is the main
7 insured under that policy.

8 The Plaintiff, Mr. Bell, is not a named insured under the
9 policy. He is listed only as a driver. So he is trying to
10 get coverage under her policy, UIM benefits under her policy.
11 And I assume, the argument he is making is that because he is
12 listed as a driver that he therefore a named insured and
13 therefore entitled to recover benefits.

14 It's basic automobile policy language in this case that
15 in order to recover UIM benefits, you have to be an insured
16 person, and the policy has a five-day affidavit of June ---
17 Mr. Dogers, and I attached copy of the policy that should be
18 in the file.

19 THE COURT: I have it.

20 MR. MORGAN: Your Honor, the policy --- Again, it's
21 just the basic automobile policy. You've got to be an insured
22 person to recover UIM. It defines insured person as you or a
23 relative, and then the policy then defines you as the main
24 insured, and the relative as somebody as blood or marriage.
25 So the bottom line is under the standard language in the

1 policy, and that is the same language in this case --- the
2 person in order to recover UIM benefits has to either be the
3 named insured, or related by blood or marriage. In this case,
4 it's neither the Plaintiff Mr. Bell is neither the named
5 insured nor is he, the husband of Ms. Sevlén. That is the
6 only way he can recover in this case. If he's the named
7 insured or if he's the husband. I am going to take the first
8 part of it first.

9 Let me also submit this to The Court, and I believe
10 counsel is agreeing with me, but these are real issues of law.
11 I don't think it is for a jury, even one of these issues. The
12 first one was a contract interpretation of whether he's a
13 named insured. Case law is clear when you have any
14 construction of a contract. It is a matter of law. I think
15 we're --- I don't think there is any argument to that.

16 THE COURT: And, Counsel do you agree then that the
17 damages are such that either the policy is owed because of the
18 amount of damages, or it is not owed because there is no
19 coverage?

20 MR. MORGAN: I don't know ---- Not being involved in the
21 underlying case and the damages issue, I don't --- I can't
22 speak to whether the entire amount of coverage is due to Mr.
23 Bell or not.

24 THE COURT: Very good.

25 MR. MORGAN: And I'm sure on the coverage part of it.

1 So the first thing is, I think both of these issues, whether
2 he is a named insured, or whether he is the husband of our
3 named insured are issues for The Court. I think the case law
4 is clear on that. I will give you a case or two in a little
5 bit on that.

6 I think the best way to handle this thing, is to take the
7 two points. I think what the Plaintiff is going to argue in
8 this case is that because he was listed as a driver, he is
9 therefore a named insured, or he is a common law husband of
10 the named insured. The driver part of it, he is listed only
11 as a driver for the policy. He is listed under the heading,
12 Drivers and Household Residence. It has her name, Sarag Sevlén
13 as the named insured. That is the second to the last page ---
14 I don't know if you have the Affidavit of Mr. Dodgers --- His
15 name is Dogers.

16 THE COURT: I do.

17 MR. MORGAN: Your Honor, it would be the second to the
18 last page of the policy there. The Declaration's page, second
19 to the last attached to that affidavit.

20 THE COURT: I have it.

21 MR. MORGAN: Okay. And down there at the bottom you can
22 see Drivers and Household Residence, Sarag Sevlén, Joshua
23 Bell, that's the Plaintiff. As you can see Sarag Sevlén is
24 listed as the main insured. Mr. Bell is listed simply as a
25 driver. That is the normal way the policy is set out. He is

1 the names insured and listed as a driver. So he is listed
2 solely as a driver under this policy.

3 And I submit to you, Your Honor, as I stated earlier the
4 only way that you can be able to recover UIM benefits is to be
5 a named insured. He is not a named insured. I assume that
6 counsel is going to argue, because he is listed as a driver,
7 that puts him in the category as a named insured. But I want
8 to hand up to you, Your Honor, cases right on point. It is
9 USAA versus Moore. Your Honor, in that case the same thing
10 happened there as well. In that particular case the Plaintiff
11 was trying to get UIM benefits under her guardian, possibility
12 adopted mother. The Plaintiff in that case was listed as an
13 operator. They were not driver but an operator. The Court
14 cites a number of cases from North Carolina, Georgia, and
15 Maryland that if you are listed as driver, as in this case,
16 you cannot recover UIM benefits. In this particular case,
17 this USAA case, she was listed as an operator. And, The Court
18 --- It looks like what the Plaintiff did that case is try to
19 argue --- Well, the driver's little narrow, but she is an
20 operator and therefore could fill in that named insured
21 category. It's a broader term than even meaning driver. The
22 Court still said no, even though you are an operator, it's a
23 broader term than driver, they acknowledged that, but The
24 Court still said no UIM coverage. You are not a named
25 insured, and cites a number of cases as you see that drivers

1 are not named insureds, and drivers cannot recover UIM
2 provision and policy, so it is exactly on point. It also
3 discuss some of the definitions defining the named insured
4 just like in this case. So the USAA case is right on point on
5 the driver issue. Same as in this case, Mr. Bell is simply
6 listed as the driver, therefore he is not a named insured and
7 therefore he cannot recover as set forth in USAA case.

8 Which leads me to the second argument, I believe, that
9 they will try to make in this case, which is, okay, if,
10 because he is a driver and not a named insured he can't
11 recover there. The fall back position is as well. He is the
12 husband of the named insured, Ms. Sevelen, common law husband.
13 No question that there is no official marriage, civil ceremony or
14 anything like that. There is no --- that they are not civilly
15 married. So he's trying to argue that they are common law
16 married. Again, Your Honor, that was a question of law for
17 The Court. Case of Callin versus Callin, Supreme Court Case
18 just a couple of years ago states specifically that whether a
19 common law marriage exists is a question of law, and it cites
20 another Supreme Court case and the other Supreme Court case of
21 Campbell versus Christian. So I think about of these issues
22 are for The Court to decide and not a jury.

23 But in any event, going to the common law marriage part
24 of the case, I will move into evidence and counsel has agreed
25 --- This is the copy of the original deposition. Your Honor,

1 what I have done I have made copies for, Your Honor, the
2 important packages and the testimony of Mr. Bell's deposition.

3 THE COURT: Thank you. Well, let's just take a moment
4 to make sure our court reporter is able to mark that before we
5 go forward.

6 MR. MORGAN: Yes, sir.

7 WHEREUPON, DEFENDANT'S EXHIBIT

8 NUMBER 1 WAS MARKED AND ADMITTED

9 INTO THE RECORD.

10 THE COURT: All right, go ahead, Mr. Morgan.

11 MR. MORGAN: Thank you, Your Honor. I have made copies
12 of exerts of the deposition for Your Honor to show you the
13 testimony when I took his deposition to see if he did in fact
14 have a common law marriage. I will conceive that he did have
15 a child with the named insurer. They did live together. So
16 when questioning him more about their relationship, starting
17 on page 26 and the highlighted provisions for Your Honor, you
18 can see some of the questions. Specifically, page 28. I
19 started a set of questions there on line ten on page 28. When
20 was your wedding date? He said. We hadn't set a date yet.
21 She just agreed to marry me, ring in all. Question on line
22 15. When did y'all get in engaged? Well, we got engaged
23 twice, but then she moved away and I thought it was going to
24 be over and she called me back and said she wanted to marry
25 me. So I took the ring back up to her and that was probably

1 twelve months ago. On page 29. Did you all become unengaged
2 when she left? He says that we became re-engaged. I asked,
3 well when she left and you became unengaged, did she give you
4 the ring back or did she keep it? He says. I took it back.
5 And then he says re-engaged. When I asked him when he got
6 re-engaged he said some time around his birthday. If you run
7 down to the last line of, page 25 there. And the reason I am
8 asking --- I wanted to know if she had moved to Maryland. So
9 basically what happened was they were living together, they
10 got engaged, they broke up. She moved to Maryland, and has
11 been living in Maryland since. He then goes back up to
12 Maryland, they get re-engaged. He comes back down. He gives
13 her the ring again. He then makes sort of a surprised trip I
14 think up there to Maryland to she --- her and finds her with
15 somebody else. So they get unengaged again, and he takes the
16 ring back again. And I go through a colloquy of questions
17 here asking him about that, and he is confirming that he gave
18 her a ring to be married. They got unengaged. He went back
19 up there. Got re-engaged again. He finds her with somebody
20 else, and they got unengaged. At no time in any of his
21 testimony is he saying my wife, we got married, we're husband
22 and wife. They were engaged with rings and he has taken it
23 back and forth.

24 THE COURT: They have a child together, apparently?

25 MR. MORGAN: They do have a child together, yes, sir.

1 THE COURT: All right.

2 MR. MORGAN: And he is paying child support by
3 agreement. There is no Court Order or anything like that. He
4 even made some comments in here like on page 32. He says, you
5 know the girl's suppose to marry me. See down on line 12.
6 Here is an important question. Had you all taken any steps to
7 get married other than the engagement? He says, well I bought
8 her the ring. She is a procrastinator, I mean, the girl is
9 supposed to marry me, and she is supposed to be on that, I
10 thought. If you go on down it says --- I ask him, well she
11 just didn't make that move, and he said, no. I said well I
12 assume you all the discussions about it. He said, oh, yeah,
13 every night, when are we going to set a date and all that. So
14 he is talking about setting dates. Even the first --- there
15 were a couple of times in his deposition as his soon wife,
16 soon to be wife on page 52. Then he says on page 55, my soon
17 wife. So in his deposition he has been engaged. He is not
18 married. It is clear that he is not married. Your Honor,
19 they have no --- They didn't file joint tax returns. They
20 didn't have a joint checking account as husband and wife. It
21 just doesn't meet any of the elements of a common law
22 marriage.

23 Again, I will stipulate and concede that they did have a
24 child together, and he is paying some child support. They
25 have lived together for some time. But I submit to you it is

1 clearly there is no evidence whatsoever that there is any
2 common law marriage at all. And I will say this too, Your
3 Honor, that as an additional argument in a fall back position,
4 as I told you they got engaged twice. They got engaged here
5 and then they had some problem and go unengaged and she went
6 to Maryland, and has lived in Maryland ever since. And as you
7 can see in the testimony, he went back up to Maryland to give
8 her the ring again to get re-engaged. He came back down and
9 then flew up there and found her with another man. The become
10 unengaged, and he's got the ring back.

11 In South Carolina although we do recognize common law
12 marriage if there is some impairment to the marriage even if
13 there is an argument of common law marriage there is none.
14 And there is an impediment in this case when they got
15 unengaged here, and went to Maryland, and supposedly got re-
16 engages. Maryland does not recognize common law marriages.

17 And, Your Honor, I will submit to you the case, the
18 Maryland case of Crane versus Puller which says that Maryland
19 does not recognize the common law marriage. I will submit to,
20 Your Honor, --- bear with me just a quick second. Case of
21 Callin versus Callin. It says that if you say you've got a
22 common law marriage in another state, and that state does not
23 recognize common law marriage then you are not common law
24 married in South Carolina. I submit it doesn't have to get
25 that far. As you can see from the deposition testimony he is

1 talking about getting engaged, getting rings, going to get
2 married, trying to get her to set a date for the marriage, and
3 she wouldn't do it. She wouldn't do it at all. She
4 procrastinated. Then they broke up and she moved up there.
5 So even if that was not a enough, the fact that she moved up
6 there to Maryland where they don't recognize it, and with the
7 Callin case it says that is an impediment, Maryland doesn't
8 recognize, so there is no common law marriage.

9 Your Honor, two arguments they've got. He is a driver and
10 therefore his named insured. The USAA case is right on point.
11 The fallback position that they have is a common law marriage.
12 You can see from the testimony that there is no common
13 marriage. They don't have any of the things that our South
14 Carolina cases sort of like at. Holding yourself as husband
15 and wife, he's not doing that. No joint bank accounts, no tax
16 returns, nothing. And it is all matter of law, Your Honor, so
17 I submit we're entitled to a judgment.

18 THE COURT: All right, thank you. Mr. Connell, let me
19 ask you before you begin. Do you agree this case is not for
20 jury determination? Is there a damages issue out there as
21 well?

22 MR. CONNELL: I agree that this issue, when I say this
23 issue, I'm talking about the issue of whether or not the
24 policy applies. I was looking at the case law and, in fact,
25 there is a case called Smith versus Auto Owners says that the

1 relative status is a question of law for The Court. I agree
2 that on that issue that The Court has to, make a determination
3 whether or not this person is on the policy. So I would agree
4 with The Court on that.

5 Now if The Court finds, like I think it should find, that
6 he is a resident, relative, or household resident, then there
7 is an issue of whether or not we proceed with a bad faith
8 claim. But I would assume that if you make that decision that
9 the Defendants would have thirty days to decide whether they
10 want to appeal that issue.

11 THE COURT: All right.

12 MR. CONNELL: So as far as trying the case, I guess that
13 is something The Court should know.

14 THE COURT: Very good. And, how do you define coverage
15 here?

16 MR. CONNELL: Your Honor, this is kind of interesting
17 --- it seems like everything I show up with you is somewhat of
18 an interesting legal argument. But if you look at the policy
19 to start out with. I know you have the policy in front of
20 you. The policy was basically to both father and mother, if
21 you will, if you look at the last page of the policy the
22 Declaration page has got some unusual language on it, and if
23 you look at the name, Joshua Bell and Sarah Sevlén, they have
24 driver, and household resident.

25 Now, that is unlike any other policy that I think has

1 been quoted in the case law that I have been able to find any
2 other case looking around in that regard. But it's a little
3 different than just driver and it says, and household
4 resident. So one of the things I would say to The Court up
5 front is, that is obvious that they knew they were living
6 together. When I say they, the insurance company, and they
7 adjusted the premium accordingly. Further, when you look at
8 the way that the named insured is drawn there, that doesn't
9 say --- it's just line down there but there's an ambiguity as
10 to whether or not he's a named insured or not. Certainly he's
11 able to drive the vehicle in question, and I am going to get
12 into why that is in just a minute. But, one of the key
13 questions in this case is, he is a household resident entitled
14 to under insured motorist coverage the way this policy is
15 drawn, and the way they've got this Dec page drawn, because
16 obviously they knew that was the case.

17 Now, if you look at the deposition of Mr. Bell you will
18 find a number of interesting things. First of all, this issue
19 about her moving to Maryland, that happened way after the
20 automobile accident. The issue of them deciding to, get
21 married and acting as a married couple was a long time before
22 the automobile accident on May 31, and I will give you some
23 points for that in the deposition.

24 Apparently, they met in school. They were going to
25 college as I understand it. They moved in together. This was

1 like two years before they lived --- The Campus Edge
2 Apartments at Coastal Carolina. They had a joint lease. They
3 found out they were going to have a child. His testimony in
4 his deposition was they were going to do the family thing.
5 They need to get a new apartment. They moved into a new
6 apartment because they needed room for the baby. The child
7 was born. The automobile accident, of course,
8 happened May of 06. She left way after the automobile
9 accident had happened, and the injuries he received happened.
10 He has been paying child support of \$75 a week. It has
11 agreed, he says it was agreed between him and Ms. Sevlen that
12 he would pay all the bills. He would put all the money in her
13 checking account. He would get a job. And all the rent,
14 water and internet all that was paid from her checking
15 account, that he had access to it and put money in. He stated
16 that they had a verbal agreement, and that he had given her a
17 ring. He found out --- He said when he found out that she was
18 pregnant --- this was before the accident now, when he found
19 out she was pregnant he asked her to marry him. She said yes,
20 and they lived together in that fashion up until the accident
21 and even after that period of time, and that was all in South
22 Carolina. He stated that on many weeks he put his entire
23 paycheck in their account together. He said they saved money
24 together. They shared a car. He stated that they had been on
25 the same policy. The testimony of the deposition is that

1 there were two cars. They were acting as a family and could
2 not afford but one car, so they agreed to get rid of his car
3 and just use her car. And that is when they decided to call
4 Progressive Insurance Company and talk with them about how the
5 policy would be. And that is when you get this change in the
6 policy, and that was way back on November 4, 2005 which is
7 about six or seven months before the accident.

8 So, all that said I do agree, and, of course, I
9 understand that there is case law that says the driver is not
10 --- The Court of Appeals has said in Victa (phonetic) that the
11 driver is not covered. I question whether or not household
12 resident that issue has not yet been resolved by any Court.
13 There are really four legal issues that I can think of in this
14 case.

15 The first one is, is a household residence named insured.
16 In this case before you get to common law marriage issue, it
17 is obvious his name was on the policy, and it is obvious he
18 was an household resident, so was he covered under that
19 theory.

20 The second question is, whether there is an ambiguity in
21 the policy. The term, named insured, appeared by here name.
22 There is nothing beside his name. It makes you wonder whether
23 or not they intended that, because he is a household resident.

24 The third thing is not only the Declaration page, but
25 there is an ambiguity about what they thought when they ---

1 When I say they, I'm talking about Progressive. If you will
2 look at the affidavits, there is no indication in the
3 affidavits as to why they decided to have the policy done in
4 this particular fashion.

5 The other issue, of course, is whether or not he is a
6 relative. And we maintain, based on upon the deposition that
7 he had, all that was going on his life, the fact that they had
8 a child, and they were living together, all that makes them
9 entitled to underinsured motorist coverage.

10 And, it would be interesting to know in this case all the
11 way around these facts, is whether or not the child, Ms.
12 Sevlén would be a named insured under their argument, it is
13 pretty similar in one respect. And we would say to The Court
14 that based upon what we know about their --- his lifestyle and
15 how they were acting, they were acting as common law married.
16 They would hold themselves out. He is paying all the bills.
17 They had one car. They had to move to several different
18 apartments. All that we think shows The Court that they had a
19 common law relationship.

20 I will say that I looked for days to find some case law
21 about that. I could not find any. I think the reason why is
22 because South Carolina has a unique situation with the common
23 law marriage. There was some indication that the domestic
24 partners, which is out in California, that they may have had
25 coverage but I have not been able to get a really definitive

1 argument on that for you.

2 The other thing is Your Honor, is there is what is called
3 the Doctrine of Reasonable Expectations. And I admit that The
4 Court of Appeals has said we don't have that in South
5 Carolina. That has not yet been decided by the Supreme Court.
6 The Doctrine of Reasonable Expectations says specifically if
7 you have a situation where you, reasonable believe you are on
8 the policy and you've got the facts to, back it up, some
9 Courts throughout the northeast have found that there is
10 coverage. Now in the case that, I believe he cites, there is
11 some discussion that the Doctrine of Reasonable Expectations
12 has not been granted, or has been viewed unfavorable in South
13 Carolina. Be that as it may, about the Reasonable
14 Expectations Doctrine, we still have ambiguity. We still have
15 an issue of, whether or not he had common law marriage to this
16 woman. And, we also have the issue of what the term household
17 resident means. I know that Mr. Morgan has not spoken of that
18 but there is no case law on that. There is absolutely no case
19 law on that whatsoever. And so we would argue, Your Honor, to
20 The Court that there is evidence in the record and if you look
21 at the case Smith versus Auto Owners they go on to say that
22 the determination of a resident or relative status is a
23 question of fact, and it will be disturbed and will not
24 disturb the Circuit Court's ruling in the record against any
25 evidence support it. We think there is ample evidence to

1 support The Court's ruling this case.

2 And one other thing, I know this case has not been cited.
3 There is only one case that I was able to find on common law
4 marriage as it relates to this case. And it was a case called
5 Goethe versus GEICO, 649 S.E.2nd 689. It's a real interesting
6 case because in that case GEICO sued Mr. Goethe is arguing
7 that he was not entitled to any coverage because he was a
8 quote, a common law husband. Goethe then went to the Family
9 Court and filed an action in Family Court, and said I am a
10 common law husband, and I am entitled to coverage under this
11 policy. Well, GEICO then tried to intervene in the Family
12 Court's determination, and the Supreme Court said you can't
13 intervene that is --- even though you may have some interest
14 in that, you can't intervene in that case in Family Court.
15 That went up to the Supreme Court and the Supreme Court,
16 although not deciding that particular issue about the common
17 law marriage, decided GEICO could not intervene in that action
18 in Family Court. So I think, although it's not on four with
19 all these facts, kind of gives you kind of a idea about the
20 Supreme Court would do in this kind of situation.

21 THE COURT: All right, gentlemen, let me do this, let
22 me stand down and review this. If I need further argue I will
23 come back with questions.

24 We will be in recess for just a few moments. We will be
25 in recess momentarily.

1 (Whereupon, a recess was taken.)

2 THE COURT: Counsel, let's go off the record and come
3 up a minute and help me look through a couple provisions in
4 the policy. I don't think is really any way we do this on the
5 record, but we will memorialize what we want to say.

6 -- END OF TRANSCRIPT --

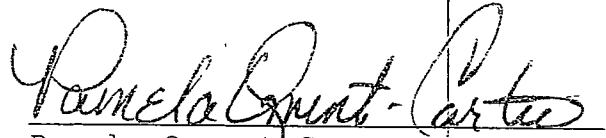
CERTIFICATE OF REPORTER

20

I, the undersigned, Pamela Ozment-Cartee, official court reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in The Court of Common Pleas, Horry County, South Carolina, on the 13th day of October 2008.

I do further certify that am neither, of kin, counsel, nor interest to any party hereto.

October 10, 2009


Pamela Ozment-Cartee
Circuit Court Reporter

STATE OF SOUTH CAROLINA

SS:

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

JOSHUA BELL,

Plaintiff,

vs.

Civil Action No.:
2007-CP-26-5890

PROGRESSIVE DIRECT INSURANCE
COMPANY,

Defendant.

The deposition of JOSHUA BELL was taken before Michele E. Starkey, Court Reporter and Notary Public for South Carolina, at the law offices of Kelaher, Connell & Connor, 1500 U.S. Highway 17 North, Suite 209, The Courtyard, Surfside Beach, South Carolina, on Wednesday, June 10, 2008, commencing at 2:40 p.m., pursuant to notice and/or agreement, in the above-entitled cause pending in the above-named action.

FRAKES COURT REPORTING
P.O. BOX 2805
MYRTLE BEACH, SOUTH CAROLINA 29578
(843) 626-2449

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

KELAHHER, CONNELL & CONNOR
1500 U.S. Highway 17 North
The Courtyard, Suite 209
Surfside Beach, SC 29575
BY: GENE M. CONNELL, JR., ESQ.

ON BEHALF OF THE DEFENDANT:

MCANGUS, GOUDELOCK & COURIE, LLC
75 Beattie Place, Suite 300
P.O. Box 2980
Greenville, SC 29602
BY: G.D. "DOC" MORGAN, ESQ.

PROGRESSIVE INSURANCE
Corporate Claims Counsel
101 Washington Street East
Suite 107
Charleston, WV 25301
BY: JAMES A. DODRILL, ESQ.

I N D E X

Examination by Mr. Morgan

PAGE

3

E X H I B I T S

None Proffered

STIPULATIONS

This deposition was taken pursuant to proper Notice and pursuant to Circuit Rule 30, to be used for the purpose of discovery and/or evidence at trial, or for any other purpose permitted by Circuit Rule 30; all objections except as to the form of the question were reserved until the time of trial. Reading and signing of the deposition was waived by counsel and deponent.

JOSHUA BELL

of lawful age, the witness herein, called for Discovery Examination by the Defendant, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

EXAMINATIONBY MR. MORGAN:

Q. Mr. Bell, my name is Doc Morgan. We just met. I'm going to be asking you some questions. If at any time you don't understand any of my questions, let me know. If at any time you want to take a break, you let me know too, okay?

A. Yes, sir.

Q. Give me a little background on yourself. What is your full name?

A. Joshua Daniel Bell. I was born right here in Horry

1 County, South Carolina.

2 Q. What is your date of birth?

3 A. 84.

4 Q. What is your Social Security number?

5 A. -6867.

6 Q. Where do you currently live right now?

7 A. Garden City Beach.

8 Q. What is the address there?

9 A. 404 Oak Avenue, Garden City Beach, South Carolina,
10 29575.

11 Q. How long have you lived there?

12 A. A year.

13 Q. 29575?

14 A. Yes, sir.

15 Q. You live there about a year?

16 A. Correct.

17 Q. Who do you live with?

18 A. My sister and her fiance-- husband now.

19 Q. What is her name?

20 A. Kristina with a K.

21 Q. With a K?

22 A. LeAnn Bell.

23 Q. And you say her husband now?

24 A. Yeah. Going to be Curran, I'm sorry.

25 Q. Curran?

1 A. Yeah, C-U-R-R-A-N.

2 Q. All right. They already married?

3 A. Yes, March 16.

4 Q. And what is her husband's name?

5 A. Brandon.

6 Q. B-R-A-N-D-O-N?

7 A. Yes, sir, Frederick Curran.

8 Q. You say you've lived there about a year?

9 A. Yeah.

10 Q. Where did you live before that?

11 A. In Cambridge Apartments, Apartment J-7.

12 Q. Cambridge?

13 A. 404 Cambridge Circle, Apartment J-7, I think was
14 the address. It's been a while. They're on the
15 claim paper.

16 Q. Cambridge Apartments?

17 A. J-7.

18 Q. And how long did you live there?

19 A. Three years.

20 Q. Who did you live with there?

21 A. Sarag Catherine Sevlen and my son. After the first
22 after two years we had a son and his name is
23 Bell he lived at the residence as well.

24 Q. What is your son's name?

25 A. Bell, B-E-L-L.

1 Q. When was he born?

2 A.

3 Q. So you-all lived there about two years before
4 was born or does he go by _____?

5 A.

6 Q. You lived there about two years before _____ was
7 born?

8 A. We lived one year in that apartment, one year on
9 501 in Campus Edge. They changed the name of it
10 now. I don't know what it is. It used to be
11 Campus Edge.

12 Q. Campus Edge?

13 A. Yes, sir.

14 Q. That's an apartment too?

15 A. Yes, sir. That was her place and we got a place
16 together down here so.

17 Q. What is the-- is it on 501?

18 A. Yeah. I'm not sure of the address there.

19 Q. But definitely Campus Edge Apartments was on 501?

20 A. Yeah.

21 Q. You say you-all lived there about a year?

22 A. About close to a year, probably ten months, eight
23 to ten months.

24 Q. You-all moved from Campus Edge to Cambridge Circle?

25 A. Yes, sir. She moved to Frederick and I moved right

1 across the street.

2 Q. Okay. Frederick, Maryland?

3 A. Yes, sir.

4 Q. When did she move to Frederick, Maryland?

5 A. About four months after the accident, five months
6 maybe.

7 Q. Before Campus Edge, where did you live?

8 A. 617 Jefferson Way, Conway, South Carolina, 29526.

9 Q. And how long did you live there?

10 A. Twenty years.

11 Q. Is that your parents' house where you grew up?

12 A. Yes, sir.

13 Q. How old are you?

14 A. 24.

15 Q. 24?

16 A. Yes, sir.

17 Q. Born and raised in Conway then?

18 A. Well, my parents moved to Conway when I was seven.
19 I lived in Myrtle Beach and I stayed down here in
20 Garden City most of my life. Not live there but I
21 did most of my running around down here.

22 Q. When did you move out of your parents house at
23 Jefferson Way?

24 A. I was like 18, 19.

25 Q. And did you move out of there full time?

1 A. Yes, sir.

2 Q. Or did you move somewhere and go back and forth?

3 A. No. I have been out of there since I was 19. I
4 moved in with her. I think I lived with a girl
5 before her for a little bit.

6 Q. Who was that?

7 A. I don't remember.

8 Q. Don't remember her name?

9 A. It's just been a while.

10 Q. How long did you live with that girl?

11 A. Couple months.

12 Q. Do you know if that girl is still around?

13 A. No. I haven't seen her in forever.

14 Q. When you moved out of Jefferson way where you grew
15 up or lived most of your life, you moved out and
16 lived with whoever this girl was and lived there a
17 couple of months, then is that when you moved to
18 Campus Edge or did you live somewhere else?

19 A. No. I moved in with her at Campus Edge. She was
20 finishing school. She graduated at Coastal
21 Carolina.

22 Q. Ms. Sevlen?

23 A. Yes, sir. We got a place together in Garden City.

24 Q. That was Campus Edge or did you go somewhere before
25 that?

1 A. No. We left Campus Edge and went to Cambridge in
2 Garden City.

3 Q. You say Ms. Sevlen finished school. Where did she
4 go to school?

5 A. Coastal Carolina University.

6 Q. Did she graduate from there?

7 A. Yes, sir, theatrical arts.

8 Q. When did she graduate?

9 A. Trying to think of the date. She was pregnant with
10 Isaac so probably '05. Yeah, she graduated in '05.

11 Q. Where is she from originally?

12 A. Frederick, Maryland.

13 Q. So when did you meet her?

14 A. Early '05, around February '05. Right around my
15 birthday, so.

16 Q. That's February 29th?

17 A. Yes, sir.

18 Q. So you met her sometime in February of '05?

19 A. Yes, sir.

20 Q. Give me a little bit of your education. How far
21 did you go in school?

22 A. I got my GED.

23 Q. When did you-- how far did you go before you-- I
24 assume you dropped out a little bit?

25 A. No. I got in some trouble so I went to a military

1 camp school and--

2 Q. What grade were you in when you got in trouble?

3 A. Tenth grade.

4 Q. When you say got in trouble, what happened?

5 A. I was caught with some marijuana.

6 Q. Kicked you out?

7 A. Yeah.

8 Q. Did you go to Conway High?

9 A. No, went to Carolina Forest High and then I went to
10 North Myrtle Beach High.

11 Q. So which one kicked you out?

12 A. Carolina Forest. That's why I went to North Myrtle
13 Beach and I was waiting on a bunk to get in
14 military school and I then I went to military
15 school in Beaufort, South Carolina.

16 Q. Went to Carolina Forest to North Myrtle Beach High
17 School?

18 A. Yeah. I went there for like three months. A bunk
19 was waiting for me in Beaufort.

20 Q. And then what is the school in Beaufort?

21 A. Beaufort Marine Institute, BMI, a learning camp for
22 youthful offenders.

23 Q. Is that a state run school?

24 A. Yes, sir.

25 Q. All youthful offenders?

1 A. Yes, from 14 to 20, I think. I don't know the
2 set-- the ages now but when I was there, anybody
3 from 14 to 20. wouldn't hold you if you were over
4 21.

5 Q. You say it was for marijuana? Possession of
6 marijuana or--

7 A. Yeah. I got caught with an ounce, so.

8 Q. Ever been arrested for anything else?

9 A. I got arrested last year for driving on the beach
10 in Garden City.

11 Q. What happened to that charge?

12 A. I went to court, paid the fine. It's on my record,
13 so.

14 Q. Arrested for anything else?

15 A. Couple times over my life.

16 THE WITNESS: I mean, how is that
17 relevant?

18 MR. CONNELL: You have to answer any
19 questions he asks unless I tell you not to.

20 THE WITNESS: All right.

21 MR. CONNELL: They can ask that question.

22 A. Yeah. I mean, yeah, I can't give you all the
23 things I have been arrested for but I'm sure Horry
24 County would be more than happy to give you a list
25 of this stuff. I just can't keep the list off the

1 top of my head, you know.

2 Q. Give me as much as you can.

3 A. I got arrested for fighting a couple of times, so
4 assault.

5 Q. Assault and battery?

6 A. No, just simple assault. Never had no battery.

7 Q. So simple assault you say a couple of times?

8 A. Yeah. I was a wild youngun.

9 Q. Simple assault a couple of times?

10 A. Yeah, and I had malicious damage before. That's
11 really all I can think of off the top of my head.

12 Q. Where was the simple assault?

13 A. In Pine Valley Estates.

14 Q. Is that a subdivision?

15 A. Yeah.

16 Q. Horry County?

17 A. Yeah. That's where the 617 Jefferson Way is.
18 That's my parents' neighborhood.

19 Q. All the arrests in Horry County?

20 A. Yeah. No. I had one at Georgetown County too.

21 Q. Georgetown?

22 A. Yes.

23 Q. All right. So we have got an arrest for simple
24 assault, arrest for malicious damage to property.
25 What else?

1 A. The marijuana.

2 Q. You actually got arrested for that, the one you got
3 kicked out of school?

4 A. Yeah.

5 Q. What else?

6 A. That's all I can think of. I have got in some
7 trouble, so.

8 Q. You think maybe there's so more?

9 A. There might be some more. I don't think so but if
10 there is, it's probably-- I don't know.

11 Q. How many convictions for any of these?

12 A. I mean, it was just all misdemeanor courts. I had
13 to go pay the fine and just get out of it. I'm not
14 sure it's on my record. I'd just go pay the fine
15 and be done with it.

16 Q. Any jail time for any of them?

17 A. No, not since I was-- after I got out of Beaufort.
18 The only time I have been at jail was J. Reuben for
19 like a weekend for getting locked up and wait until
20 Monday morning until I could get the money together
21 but I was never convicted for any of them. I
22 wasn't in prison for it.

23 Q. What did you get locked up for?

24 A. For the like simple assault, they kept me in there
25 a couple of times over the weekend until Monday

1 morning whenever I could get the money brought up
2 there, so usually would happen on a Friday night.

3 Q. Most of the time you got in jail, where was that,
4 city jail, county?

5 A. County.

6 Q. Horry County and once in Georgetown?

7 A. Yeah, J. Rueben Long Detention Center.

8 Q. Do you remember any others?

9 A. Not off the top of my head, sir, no.

10 Q. You say you got your GED. When did you get your
11 GED?

12 A. '04.

13 Q. Any other education?

14 A. No, sir.

15 Q. Give me a little background on work history. What
16 are you doing now?

17 A. I'm a foreman for McAndrews Concrete.

18 Q. Say again?

19 A. McAndrews, M-C-A-N-D-R-E-W-S.

20 Q. You're a foreman there?

21 A. Yes, sir.

22 Q. How long have you been there?

23 A. Eight months.

24 Q. And residential or commercial?

25 A. Both.

1 Q. Both?

2 A. Yes, sir.

3 Q. Who's your supervisor there?

4 A. My supervisor is the owner, Ed McAndrews.

5 Q. Where is McAndrews Concrete located?

6 A. He works out of his house. It's a small company.

7 It's not like a big corporate but it's in Garden

8 City Beach on-- what is the name of that road? I

9 don't know. I ain't got a check stub or I could

10 tell you.

11 Q. He runs it out of his house?

12 A. Yes.

13 Q. Ever since you have been working for him, is that
14 what you have been doing?

15 A. Yes.

16 Q. In Garden City?

17 A. Yes, sir. It's actually in the same-- it's in the
18 front of the neighborhood where I used to live.

19 That's why I know him.

20 Q. Which neighborhood was that?

21 A. Cambridge.

22 Q. Cambridge?

23 A. Yes.

24 Q. How many employees does he have?

25 A. Me, Brandon, two Mexicans that just went back to

1 Mexico, so there's four more Mexicans. There's six
2 guys.

3 Q. Is Brandon the one that married your sister?

4 A. Yes, sir. We have been good friend since we have
5 been kids.

6 Q. You and Brandon?

7 A. Yeah.

8 Q. Prior to working at McAndrews, where did you work?

9 A. Actually since my accident with Masco, this whole
10 accident, it's been hard for me to get back to work
11 because work has been slowing down but I have done
12 everything. I worked for-- my father owns Bell
13 woodworking. I have worked with him for a couple
14 of months. I worked for him off and on my whole
15 life but.

16 Q. So you had the accident was March of '06?

17 A. Yeah. And I didn't go back to work until what, it
18 was February when Workers' Comp cleared me to go
19 back to work.

20 Q. Who were you working for at the time of the
21 accident?

22 A. Masco Kitchen and Bath Cabinetry, Masco
23 Corporation.

24 Q. So after the accident, were you out on total
25 disability with Comp, Workers' Comp?

1 A. Yeah, Workmens' Comp.

2 Q. You drew benefits, I think, sounds like you said
3 until February of '07?

4 A. No, I didn't draw benefits until I think it was end
5 of November when they stopped my check, I think.

6 Q. So you started getting temporary total benefits
7 after the accident?

8 A. No. They gave me-- we had some kind of like we're
9 doing now. They gave me a check for I think 6,000.
10 It was more than that. I got like 6,000 from it
11 but that was it.

12 Q. But you had a Comp claim?

13 A. Yeah.

14 Q. And you had been working for Masco at that time?

15 A. Yeah.

16 Q. Then after the accident, did you work for anybody
17 before you started working for McAndrews?

18 A. I worked with my dad for a while and I worked in
19 the kitchen at Miyabi's.

20 Q. What is your dad's name?

21 A. Lawrence Arthur Bell.

22 Q. What does he do?

23 A. He's a master woodworker and he does-- it's a big
24 word. He builds tables, he does really fine wood-
25 working so whatever.

1 Q. He has his own business?

2 A. Yes, sir.

3 Q. And how long did you work for him?

4 A. I have worked with him before I worked for Masco
5 for eight years and after Masco, I mean, I was--
6 would have been probably six or seven. I don't
7 know, not off the top of my head. I'm not good
8 with dates or numbers or anything.

9 Q. You worked where, at Miyabi's?

10 A. Yeah. I worked there the summer-- last summer like
11 four months.

12 Q. Summer of '07?

13 A. Yes, sir. That was the only job I could--

14 Q. You say cooking or--

15 A. Yeah, cooking. Line prep.

16 Q. So prior to working for your dad, working at
17 Miyabi's, it was Masco?

18 A. Yes.

19 Q. How long did you work at Masco prior to the
20 accident?

21 A. Two more days would have been a year that I worked
22 for Masco.

23 Q. All right. And how about before that, who did you
24 work for?

25 A. I said my father.

1 Q. Anybody else other than your father?

2 A. No.

3 Q. When you were working for your father at that time
4 prior to the accident, was that a full-time job or
5 part time?

6 A. Yes, sir, full time.

7 Q. Then you went to work for Masco in?

8 A. '07. No, '05.

9 Q. Worked two days short of a year?

10 A. Yes.

11 Q. What did you do at Masco? Tell me this. What is
12 Masco?

13 A. Actually, Masco does a lot of stuff but the branch
14 I worked with, we did kitchen and bath cabinetry so
15 I drove a truck and I installed cabinets in all the
16 track homes around here.

17 Q. You say drove a truck. Did you make deliveries, is
18 that what--

19 A. I delivered-- I mean, we have to deliver. I mean,
20 it was a work truck I wrecked in so we put cabinets
21 in and took it to the job with us every day but
22 when I was first hired, I was hired as a delivery
23 guy. I only worked in the warehouse for, I think,
24 four weeks and then they put me on-- gave me a
25 truck and helper so.

1 Q. So you drove trucks and what else?

2 A. Installed cabinets. I was an installer.

3 Q. Who was your supervisor at Masco?

4 A. I can't remember his name. Dennis. I don't know
5 his last name.

6 Q. Do you know if he's still there?

7 A. I'm not sure. I haven't talked to any of those
8 people since the accident.

9 Q. Did you ever try to go back to work there after the
10 accident?

11 A. No.

12 Q. Was there any problem with it?

13 A. Yeah.

14 Q. Was there some animosity or something?

15 A. Yeah, to say the least.

16 Q. They wouldn't hire you back, is that what it was?

17 A. They were trying to push me out so I just made it
18 easy on them.

19 Q. That's when you worked for your father a little bit
20 and over--

21 A. Yeah. I wasn't working. Well, I couldn't work. I
22 had a leg cast on and I still hurt, so.

23 Q. On your Comp claim that you made, did you reach a
24 final settlement in that?

25 THE WITNESS: Did we--

1 MR. CONNELL: Yeah. I will give it to
2 you. He's got-- he had about 20,000 in meds and
3 had nine or ten percent impairment rating and I
4 want to say he got about \$10,000 less fees, got
5 about \$6,000 I believe. I brought the file. You
6 can get the clincher.

7 MR. MORGAN: It was clinchered?

8 MR. CONNELL: It was. We were at the
9 hearing when an offer was made. You may or may not
10 know this. We had-- off the record.

11 (A discussion was held off the record.)

12 Q. We talked a little bit off the record about your
13 workers' Comp claim and a little bit about the
14 accident.

15 A. Yes, sir.

16 Q. At the time, though, you were working for Masco
17 when the accident happened?

18 A. Yes, sir.

19 Q. And had been there about a year, as I understand.

20 A. Yes, sir.

21 Q. Any other jobs other than what we have talked
22 about?

23 A. I worked at Sonic when I was a kid. No, nothing.

24 Q. All right. Started work for Masco about '05. Is
25 that about the same time you met Ms. Sevlen?

1 A. Yeah. I mean, I had started working there and
2 about two month later I met Ms. Sevlen, I met her
3 at a college party at College Park and stuff.

4 Q. Tell me a little bit about that relationship. You
5 said you met her at a college party?

6 A. Yeah. I met her-- she went to school there. I had
7 seen her around a bunch and she came to that party.
8 We talked and we dated for a while while I lived
9 with my parents and she wanted me to move in with
10 her right before she graduated college.

11 Q. How long did you date while you lived with your
12 parents?

13 A. Four or five months.

14 Q. So you-all were dating during that time period?

15 A. Yes, sir.

16 Q. And then you-all decided to move in together?

17 A. Yes, sir.

18 Q. Who made that decision? Was it a joint decision?

19 A. Yes.

20 Q. Was she pregnant at that time?

21 A. No, sir.

22 Q. Let's see, -

23 A. He just turned two.

24 Q. He just turned two, so you dated about four or five
25 months while you lived at home. You-all decided to

1 move in together and where did you move into? Did
2 you move into her place?

3 A. Her Campus Edge, yeah.

4 Q. Was that where she was living?

5 A. Yeah. Well, she was finishing the lease there and
6 we had to finish the lease. I helped her pay the
7 bills there until--

8 Q. So you-all moved in together at her place at Campus
9 Edge and then how long did you live at Campus Edge
10 before you left there?

11 A. I'm not sure; a couple months, maybe a month, two,
12 something like that.

13 Q. Then from there you-all went to Cambridge?

14 A. Yes, stayed until she--

15 Q. Does Campus Edge have anything to do with Coastal?

16 A. Yeah. It's like, I mean, you've got four bedroom
17 apartments and it's kind of like each bedroom is
18 rented out but a big living area so.

19 Q. So it's part of the university or college?

20 A. It's kind of like a-- it's like a huge dorm place.

21 Q. Is that why you-all had to move out, because she
22 graduated?

23 A. No. Her lease was up and she-- we was going to get
24 out of there anyway before graduation but she
25 didn't want to because it was real close to her

1 school and close to my work because I worked on
2 501, and we just waited until she was done
3 graduating. She still had a lease there so.

4 Q. Did she graduate in the winter or spring?

5 A. It was warm out. No. I think it might have been
6 cold out.

7 Q. Did she graduate early or late?

8 A. She graduated on time.

9 Q. You think it may have been in December?

10 A. May have been. I'm pretty sure Christmas came
11 right afterwards. We went up there for Christmas.

12 Q. Where were you-all living at the time she
13 graduated?

14 A. Cambridge.

15 Q. So you-all had moved to Cambridge?

16 A. Yeah.

17 Q. So you lived at Campus Edge for about one or two
18 months and then moved to Cambridge?

19 A. Yeah.

20 Q. Is Cambridge just a regular apartment complex?

21 A. Yes, sir.

22 Q. Whose name was the lease in?

23 A. Joint. It was both of ours. She had better credit
24 than I did, so.

25 Q. You-all fill out any kind of application?

1 A. Yes, sir.

2 Q. Is Cambridge still there?

3 A. Yeah.

4 Q. Does it go by Cambridge?

5 A. Yeah, Cambridge Apartments.

6 Q. You-all filled out an application jointly and it
7 was put-- the lease was put in both of your names?

8 A. Yes, sir.

9 Q. How long after you moved to Cambridge was
10 born? Let me ask you this. How long after you
11 moved into Cambridge did Sarah become pregnant?

12 A. I think she became pregnant right after, either
13 right before or right after she graduated so she
14 was pregnant while she was still in Campus Edge.
15 That's why we decided to get a place together and
16 decided to do the family thing, start off.

17 Q. So you-all were still in Campus Edge when you found
18 out she was pregnant?

19 A. Yeah.

20 Q. Stayed there a couple months and then moved to
21 Cambridge?

22 A. Yeah. We needed a baby room and stuff, so.

23 Q. So you-all had been there roughly, I guess, six,
24 seven months before -- was born?

25 A. No, maybe four months before he-- she was pregnant

1 and--

2 Q. She was pregnant at Campus Edge and then you-all
3 moved to Cambridge and were you there at Campus
4 Edge for a couple of months?

5 A. Like I said, two, three months. Not long at all.

6 Q. Two, three months?

7 A. Yeah.

8 Q. Then you-all moved to Cambridge and shortly
9 thereafter was born?

10 A. Yeah. Takes nine months to have a baby so around
11 ten months, eight, nine months.

12 Q. Either one of you-all had any problem there, you or
13 Sarah?

14 A. No.

15 Q. So T. is born and how long after was born
16 did you-all split up?

17 A. When he was born on , the accident was on
18 March 30th and she left the following February, so
19 he was probably eleven month old.

20 Q. All right. is born. March 30,
21 '06, the accident. February '07 she leaves; is
22 that right?

23 A. That's about right.

24 Q. That's when she went up to Frederick, Maryland?

25 A. Lives with her parents still.

1 Q. What are her parents' names?

2 A. Tom and Lynn Sevens.

3 Q. Do you know the address up there in Frederick where
4 they live?

5 A. Yeah. Hold on, I got it. 103 West Third Street,
6 Frederick, Maryland. I can't remember the zip code
7 right off the top of my head at this second.

8 Q. Do you know if that's where they have lived for a
9 while?

10 A. They lived out in the outskirts of Maryland. They
11 just bought that house last year. I went up there
12 and did some work in it for her mom.

13 Q. How often do you get up there?

14 A. I try to get up at least once a month, maybe two
15 times a month.

16 Q. Is with Sarah?

17 A. Yes, sir.

18 Q. You try to get up there once a month at least?

19 A. Yeah.

20 Q. How about child support?

21 A. I pay no court child support but she gets-- I send
22 her a hundred dollars every Friday.

23 Q. So child support by agreement?

24 A. Yes, sir.

25 Q. You-all file anything with the court?

1 A. No. She was going to and then I think we're going
2 to end up doing it now because there's bad water
3 now.

4 Q. Bad water now?

5 A. Yeah.

6 Q. Wasn't--

7 A. As of two weeks ago, yeah. I flew up there and
8 found a guy in her apartment so we're no longer
9 getting married.

10 Q. When was your wedding date or had you--

11 A. We hadn't set a date yet. She just agreed to marry
12 me, a ring and all.

13 Q. Agreed or disagreed?

14 A. Agreed.

15 Q. Okay. When did you-all get engaged?

16 A. We got engaged twice but then she moved away and I
17 thought it was going to be over and she called
18 back, said she wanted to marry me, so I took the
19 ring back up to her and that was probably twelve
20 months ago. And I was supposed to move up there at
21 the end of June and live with her and [redacted], and
22 then I made-- and I just had a funny feeling and I
23 bought a plane ticket and found a guy in the house.
24 So I went back down, got a cab, went and stayed in
25 the Baltimore airport in Baltimore for nine hours

1 and bought a plane ticket back. Haven't talked to
2 her since. I don't plan on it.

3 Q. So going back a little bit, February of '07 when
4 she left, you-all were engaged at that time?

5 A. Yes, sir.

6 Q. And do you remember when you gave her the ring?

7 A. No, not off the top of my head, sir, no, I don't.

8 Q. Did you-all become unengaged when she left?

9 A. Yeah.

10 Q. Then became reengaged-- let me back up. When she
11 left and you-all became unengaged, did she give
12 back the ring or did she keep it?

13 A. I took it back.

14 Q. Took it back?

15 A. Yeah.

16 Q. And then you got reengaged when?

17 A. I don't know. Sometime around my birthday this
18 year so February. Yeah. What was the date? The
19 second trip I made there this year, so the last
20 one was the 4th of April, second trip, so the first
21 trip I made was on 's birthday this year.
22 That's when it was.

23 Q. March of this year?

24 A. Yes, sir.

25 Q. You went up there, gave her the ring back, you-all

1 were going to get married again?

2 A. Yeah, and come back here and finish up stuff I had
3 to do here and move up there the end of June.

4 Q. So that was the game plan, to move up there in June
5 of this year?

6 A. Yes, sir, end of this month. That was the plan.

7 Q. So you went up there and what happened up there?
8 Said something about the house--

9 A. Yeah, I went to her house.

10 Q. The house where she's living with her parents?

11 A. Yeah. Parents were out of town and she's not being
12 faithful so.

13 Q. Found somebody up there with her?

14 A. Yeah.

15 Q. So you got on a plane and came back?

16 A. Yeah.

17 Q. Last time you have seen her?

18 A. Yeah. Don't plan on it. Go see my son
19 occasionally and that will be it. I don't care if
20 I talk to her at all.

21 Q. That was back in March, I think you said, s
22 birthday?

23 A. No, that was the reengagement. This was on the 4th
24 of April.

25 Q. Again, as I understand, you-all, in either of these

1 engagements, had not set any date yet?

2 A. No, sir.

3 Q. Did you get the ring back--

4 A. Yeah.

5 Q. -- same time? Took it back with you that day?

6 A. No. She sent it back to me in the mail.

7 Q. Haven't talked to her since?

8 A. No.

9 Q. And that's where you talk about the court order for
10 child support?

11 A. Um-hum, just so I can get visitation rights.

12 Q. What was the visitation rights prior to all this?

13 A. Whenever I could afford to go see him, I'd go see
14 him. She wouldn't come bring him to see me.

15 That's because she's trying to get me to move there
16 with her. She don't want to live down here so we
17 made an agreement and I'd come up there and live
18 with her, get a job and pay the bills like I did
19 down here for so long. She didn't work while she
20 was here. I paid all the bills.

21 Q. Tell me a little bit about that. What were some of
22 the bills you had? Obviously you had rent.

23 A. Car insurance. We had rent, water, sewer,
24 electric, Internet because she was on the Internet.
25 I had countless bills; clothing, food. You name

1 it, I paid for it. I worked my butt off all the
2 time for that woman.

3 Q. She didn't work at all?

4 A. No. She had a job at Hooters for three weeks and
5 that's the only time she worked while she was down
6 here. I worked all the time. She'd sit there and
7 drive me crazy.

8 Q. Had you-all taken any steps to get married other
9 than the engagement?

10 A. Verbal agreement and a ring, yeah. She's a
11 procrastinator and she didn't-- I mean, I didn't
12 think-- I mean, the girl supposed to marry me,
13 she's supposed to be on that, I thought, and so she
14 didn't want to do it so it just progressively got
15 longer. And she's a confusing girl so.

16 Q. She was supposed to be taking the steps to get
17 married and you-all--

18 A. How am I going to do it and I work all the time,
19 so--

20 Q. She just didn't make that move and--

21 A. No.

22 Q. All right. I assume you-all had discussions about
23 it though?

24 A. Oh, yeah, every night, kitchen table. When are you
25 going to set a date, what are we-- I don't have

1 time for this. I work 60, 70 hours a week.

2 Q. At the time of the accident, were you-all engaged
3 yet?

4 A. Yes. We already had our son. I asked her to marry
5 me after she got pregnant.

6 Q. That was my next question. When did you ask her?

7 A. When I found out she was pregnant with my son.

8 Q. Did she say yes right away?

9 A. Yeah.

10 Q. Do you remember that day when you-- the time period
11 when you asked her to marry you? Some of us can
12 remember and some can't.

13 A. Somewhere within the nine months of Isaac being
14 pregnant, so, he's two now so three years ago now.

15 Q. Okay. Did you-all-- you said you paid the bills.
16 Did you-all have separate accounts and all?

17 A. She had a bank account. I put money in there for
18 her spending money and her parents put money in it,
19 and sometimes I put all my paycheck in her account.
20 So if I'm working on Friday or Saturday, she would
21 run and pay bills while I was working and stuff for
22 me. There was a little give and take in there but
23 it was mostly me giving and her taking, you know.

24 Q. Vehicles, did you own any vehicles or anything like
25 that together?

1 A. No, not together. She owned a CRV I paid the
2 insurance on.

3 Q. So you would put your checks sometimes in her bank
4 account?

5 A. Oh, yeah, quite often, just sign it over to her.

6 Q. Did you by any chance have a bank account yourself?

7 A. I had a bank account myself at Wachovia. I
8 remember it was Wachovia.

9 Q. It was solely in your name?

10 A. Yes.

11 Q. Tell me a little bit about the accident. Gene just
12 told us a little bit when we were off the record.
13 Give us a little bit of your recollection of the
14 event.

15 A. Like he said, I grew up with Ron and his daughter.
16 Ron's a little bit older gentleman.

17 Q. Ron being the--

18 A. Ron Gula, the guy driving the truck at the time of
19 the accident.

20 Q. You were a passenger in Ron's truck?

21 A. Well, it was Masco's truck. He was a driver.

22 Q. All right. And you-all are on company business.
23 Where were you all going?

24 A. We was going to Country Manor on Four-- Three Mile
25 Road in Conway.

1 Q. And Ron Gula was driving the vehicle?

2 A. Yes, sir.

3 Q. What kind of truck was it?

4 A. Isuzu 2500 box truck, the one with the flat front.

5 Q. Tell me what happened.

6 A. Beautiful day. I remember going over the bridge,
7 looking down at the river, saying the river looks
8 nice. Me and Ron used to go boating and kayaking
9 in it. He said oh, shit, and I looked up and that
10 was it.

11 Q. Which way were you-all heading?

12 A. We was heading north on 501 or heading towards
13 Conway. I guess that's north.

14 Q. Where on 501?

15 A. On Lake Bridge.

16 Q. Is that before you get to the Tanger Outlets?

17 A. It's past Tanger Outlets. You know where the power
18 plant is? It's the small loop bridge right before
19 you get to the power plant.

20 Q. So he obviously sees something going on. What
21 happened? What do you see?

22 A. I didn't see nothing. I looked up. It knocked me
23 out. I was unconscious and I woke up and the truck
24 was just completely annihilated and--

25 Q. Did you wake up there at the scene?

1 A. Yeah. I got out of the truck, tried to stand up,
2 and I couldn't stand up really but I still had that
3 adrenaline going, and I couldn't find Ron because--
4 I don't know. The truck-- I didn't know what part
5 was-- it was weird.

6 Q. Did you see or recall any of the details about the
7 accident?

8 A. Sometimes I can. It's just I got hit. It was
9 weird. I mean, I wasn't driving and I was-- we
10 always have blueprints on the job, layouts of the
11 kitchen cabinets. I remember reading the
12 blueprints and looking over to the river, telling
13 him that, and then glass breaking and me waking up.
14 Abrasions all over my face, my arms, my whole body,
15 my knees swole up, and Ron-- I remember seeing Ron
16 and he was in really bad shape.

17 Q. Was he still in the cab--

18 A. Yeah.

19 Q. -- of the truck? Did you and him have any
20 conversation?

21 A. No. He was-- it was bad. There was bones sticking
22 out of him and stuff.

23 Q. Which leg did he lose?

24 A. Left leg from the knee down.

25 Q. Did you know him before this accident?

1 A. Yeah. I have known him my whole life.

2 Q. You-all grew up together?

3 A. He lived-- well, my parents neighborhood is like
4 two miles away. I went to school with his daughter
5 and always hung out, went to go hang out at his
6 house. He and his daughter had cookouts. He's the
7 one that turned me on to the company.

8 Q. So you woke up, Ron was in bad shape, you had some
9 abrasions and your knee was hurting and some other
10 things. What do you recall then?

11 A. Pardon?

12 Q. What do you recall after that?

13 A. Walking and two EMS persons coming to me telling me
14 to have a seat on the bumper of the truck. I said,
15 why? I'm fine. He said no, you're not, and then
16 getting-- it was all like flash to flash. It's
17 weird because I was losing time. And I remember
18 sitting on the curb beside the guy who was driving
19 the log truck, and he was telling me he was sorry.
20 And riding in the ambulance and then getting to the
21 hospital. It was just my head was swelled up like
22 a balloon. I really don't remember a whole lot.

23 Q. How long did you stay in the hospital?

24 A. Ten hours, twelve hours, something like that.

25 Q. Did you stay overnight or just that day?

1 A. They wanted me to stay overnight but my mom was
2 tripping and I was tripping so I didn't.

3 Q. Tripping as in wanting to get out of there?

4 A. Yeah.

5 Q. So I assume you went home from there?

6 A. Yeah, went to my mother's house.

7 Q. Your mother's house?

8 A. I lived in Cambridge and I couldn't-- because there
9 were steps going up to my apartment and I couldn't
10 get up and down the steps so I stayed at my mom's
11 until I was able to get up and down the steps.

12 Q. How long did you stay at your mom's?

13 A. Five weeks.

14 Q. Then went back over to Cambridge?

15 A. Yeah. Sarah stayed at the house, at my parents'
16 house, with me while I was recovering.

17 Q. Tell me a little bit about your injuries. You
18 mentioned your knee. What all injuries did you
19 sustain as a result of the accident?

20 A. Well, I got multiple abrasions all over my body. I
21 think it was-- I had like seven pressure fractures
22 in my tibial plateau of my left knee. Mostly just
23 a lot of-- I still get glass pops out of me
24 occasionally. There's a lot of cuts and abrasions.
25 And my knee. My hip hurt but I don't know. I

1 don't think I received the best of medical care, be
2 honest with you.

3 Q. Why is that?

4 A. Because I still hurt. My knee still hurts me.
5 Even incredibly at times after I got home from
6 work, I worked about four hours. I told my boss
7 it's the humidity, whatever, my knee just starts
8 pounding and the bottom of it will swell up. I got
9 to go home and put ice on it.

10 Q. Any surgeries on your knee?

11 A. No.

12 Q. What leg is it?

13 A. My left leg.

14 Q. Who did treat you?

15 A. Conway Medical Center.

16 Q. How long did you get treated with Conway Medical?

17 A. Months.

18 Q. Was that your employer's selection under the
19 Workers' Comp?

20 A. Workmens' Comp selection.

21 Q. Do you remember the doctor who treated you?

22 A. No.

23 Q. Did they treat you for anything other than your
24 knee?

25 A. Yeah. I had to go to some quack, I don't know what

1 you call them. A doctor-- he's not like a real
2 doctor, he's a head doctor, because I had post
3 traumatic stress syndrome.

4 Q. A psychologist or psychiatrist?

5 A. Yeah. He run a bunch of tests on me and stuff. He
6 wanted me to come back and said there was all this
7 crazy stuff wrong. I was like, I think your-- I
8 think he was overreacting a little bit to it
9 because I don't know, I'm not one to be sitting
10 there and babied. If I can't come over on my own,
11 I don't need to come over.

12 Q. Who recommended that you go to the psychiatrist or
13 psychologist?

14 A. I was going to two doctors in Conway. It wasn't my
15 bone doctor, it was one for-- it was all workmens'
16 Comp doctors. I was going to a fleet of them. I
17 don't really know. It was one doctor referred me
18 to this doctor. I'm not sure of their names.

19 Q. So obviously an orthopedic treated you for your
20 knee?

21 A. Yeah.

22 Q. Were you treated for anything other than your knee,
23 or psychological issues?

24 A. No.

25 Q. Did you sustain any other injuries other than the

1 your knee?

2 A. Yeah, cuts and abrasions all over my body. I had
3 40 some staples and a bunch of stitches. I got
4 this, that, these.

5 Q. All right. For the record, you're going "these"
6 and "that". Explain what--

7 A. I got like, I got a couple of abrasions on my
8 forehead right here. A long one here on my side.
9 I got one on my chin. I got several bad ones on my
10 right leg. Two bad ones on my left leg, my elbow.

11 Q. Are you talking about scars? Is that what you're
12 talking about?

13 A. Yeah.

14 Q. You mentioned the top--

15 A. This top one's right here. There's a bunch of them
16 on my forehead.

17 Q. There's scars on top of your head. Is that
18 something else?

19 A. This right here's been here since I was born.

20 Q. So you had some scarring here on your face and you
21 mentioned on your leg. Any scarring--

22 A. My chin, that one. That was the worse one because
23 it still bugs me and it itches. I don't know.
24 They put a bunch of stitches in it. That was why
25 people were freaking out because my chin was

1 hanging down like this. I remember touching it and
2 blood pouring out of it, so.

3 Q. Did you have to see any--

4 A. Plastic surgeons?

5 Q. Plastic surgeons?

6 A. I wish I could have but like I said, I don't think
7 I received the best of medical care since then
8 because--

9 Q. Who treated you for your scarring and your
10 abrasions?

11 A. Conway Medical Center. They just sewed me up and
12 sent me on my way.

13 Q. So you have not seen a plastic surgeon?

14 A. No. I can't afford that.

15 Q. And tell me other than your knee, any other
16 physical body--

17 A. Pain, ailments?

18 Q. Pain?

19 A. Not that they treated me for, no, because it was
20 like an in-out deal. I mean, that's the way Conway
21 Hospital is.

22 Q. I assume you had some initial body ailments at the
23 time. Did those go away?

24 A. No. They still hurt me every day. My shoulder
25 hurts, it pops like that all the time. My hip

1 still hurts me, my back hurts me, my knee hurts me.

2 This knee hurts me.

3 Q. Talking about your right knee?

4 A. Yeah, and I had none of those ailments before this
5 accident.

6 Q. Any surgery at all?

7 A. No.

8 Q. Are you being treated for anything at all right
9 now?

10 A. No.

11 Q. When was the last time you were treated for
12 anything regarding--

13 A. Well, workmens' Comp cut it off.

14 Q. Workmens' Comp cut it off back in February?

15 A. Some date.

16 Q. Best you can recall.

17 A. Best I recall, around February time.

18 Q. That was February of '07? The accident was March
19 '06?

20 A. Yeah, so February '07.

21 Q. Since February of '07, have you had any medical
22 treatment at all?

23 A. They said I couldn't, so I can't afford to go back
24 to the doctor and pay for it, so no.

25 Q. When you say "they", you talking about workers'

1 Comp?

2 A. Yeah. Workmens' Comp wouldn't.

3 Q. Were you treated for anything other than your knee
4 and cuts and abrasions?

5 A. No.

6 Q. You mentioned your shoulder and your hip and stuff.
7 Anybody treat you for that?

8 A. No.

9 Q. Did you ask to be treated or--

10 A. Yeah. I told the doctors and stuff that everything
11 else was hurting me. They said it would go away
12 over time but it hasn't. My knee actually feels
13 worse now than it did. At times it feels worse now
14 than it did whenever it was healing.

15 Q. What was the problem with your knee? What was the
16 diagnosis?

17 A. They said that I had-- some muscles on the side of
18 my leg were badly stretch and bruised. And I had
19 seven-- in the tibia plateau I had seven stress
20 fractures from the compact-- or the contact and I
21 had one of those long leg brace things on for what,
22 five months.

23 Q. So you had some stress fractures in your knee?

24 A. Yeah, and, I don't know. There's medical papers
25 around because I'm not good with that medical

1 stuff.

2 Q. I understand. Just best you can recall.

3 A. Yeah, messed up my muscles on the side of my knee,
4 ACL and MCL, and my tibial plateau, I think that's
5 what you call it, tibia something.

6 Q. And you were in a leg brace for how long?

7 A. Months, five months, something like that, on
8 crutches, hating life.

9 Q. All right. Shoulder and your hip, how often you
10 get pain in that?

11 A. Quite often.

12 Q. Any of these injuries keeping you from doing
13 anything?

14 A. Yeah. I had to learn how to surf again because
15 when I got back-- I surf all the time. I have been
16 surfing since I was a kid. And after I got my leg
17 brace and stuff off I couldn't surf because my knee
18 was too weak so I got on a long board. I don't
19 know. Just having fun with my son, being able to
20 get down on the floor and play with him, can't do
21 that a lot. After a time of just being on the
22 floor, it hurts. I have to get up and rest.
23 working, it hurts.

24 Q. Have you missed any work because of it?

25 A. Oh, yeah.

1 Q. I mean, I'm talking about after you'd gone back to
2 work.

3 A. Oh, yeah. Oh, yeah.

4 Q. After Workmens Comp.

5 A. Oh, yeah.

6 Q. At McAndrews--

7 A. Concrete. I have probably missed-- I've worked for
8 him six months. I told him I had to leave a dozen
9 times to go and ice my knee.

10 Q. Have you missed any as far as missing a whole day
11 because of it?

12 A. Oh, yeah.

13 Q. How many would you say?

14 A. Probably a dozen days after six months.

15 Q. You have been with him about eight months?

16 A. Yeah.

17 Q. So you missed about a dozen days in eight months?

18 A. It's actually seven months. I'm thinking the dates
19 are different.

20 Q. You mentioned you can't get down and sometimes play
21 with your son. What else, what other problems?

22 A. Can't ride a bike no more. I can like ride around
23 the street for about five minutes. I used to ride
24 bikes all the time and I can't ride them for
25 distance because of my knee.

1 Q. Anything else? You said you're learning to surf
2 again, you're back surfing?

3 A. Oh, yeah, I'm back surfing now. It kills me too.
4 It hurts while I surf. Ever since I have been back
5 on my short board, it hurts. I can't surf all day
6 like I used to be able to.

7 Q. What else, anything else? Anything that you are
8 not able to do?

9 A. Lift anything over a hundred pounds with just my
10 legs. If it weighs more than a hundred pounds,
11 usually I can't pick it up without real bad pain in
12 my knee.

13 Q. Are you on any prescribed medication right now?

14 A. No. I take a bunch of ibuprofen every day.

15 Q. Over the counter?

16 A. Yeah, probably 12, 1300 milligrams a day.

17 Q. When was the last time you took any prescribed
18 medication?

19 A. I got a bad stomach so I never-- I mean, I just
20 fought through a lot of the pain and just took
21 Tylenol. I wouldn't fill my pain prescription
22 because I see what happens to people out there. I
23 smoked me a little pot when I was a kid and I drink
24 a couple of beers now but I'm not into drugs and
25 that's what that stuff is.

1 Q. The truck that you were driving in or riding in
2 that day, that was Masco's truck?

3 A. Yes, sir.

4 Q. How many trucks did he have, or they have?

5 A. A fleet of them.

6 MR. CONNELL: It's a national company.

7 Q. What I mean, your job area, how many?

8 A. I don't know. Let's say a dozen.

9 Q. You had your workers' Comp claim and did you have
10 to go through a deposition like this in that case?

11 A. Yeah.

12 Q. How many have you gone through?

13 A. This will be-- well, I missed the last one because
14 I was visiting my son. That was for the guy that
15 initially caused the wreck, but this is my second
16 one and I didn't have-- I was supposed to be here
17 but I bought a plane ticket and it was a
18 nonnegotiable plane ticket so I wasn't missing out
19 on that money because it was 600 bucks.

20 Q. You were deposed in the Comp case?

21 A. Yeah.

22 MR. CONNELL: The second time he's
23 talking about is mediation where we all got
24 together.

25 MR. MORGAN: On the claim?

1 MR. CONNELL: Yeah, limited liability
2 policy. Just so you know, I got a notice for his
3 deposition as a witness. Ron Gula is suing
4 somebody else over it so I don't know what that's
5 about but we'll have to see.

6 MR. MORGAN: Ron Gula is suing somebody
7 else as a result of this accident?

8 MR. CONNELL: I think so. That's the
9 impression. Maybe the Highway Department or
10 something.

11 Q. All right. So other than this deposition and that
12 one for Comp and the mediation, those are the three
13 things?

14 A. (Witness nods head.)

15 Q. Who do you have your car insurance with now?

16 A. My car? I have lost my license last year.

17 Q. Okay. What did you lose your license for?

18 A. Driving under suspension because of speeding
19 tickets and I lost-- my points on my license.

20 Q. When was that that you lost your license?

21 A. It's been a year, I guess. I'm not really sure.

22 Q. How do you get around now?

23 A. My girlfriend.

24 Q. Is that her sitting out in the lobby there?

25 A. Yeah.

1 Q. What is her name?

2 A. Rachel Stone. Rachel Rebecca Stone.

3 Q. How long has she been your girlfriend?

4 A. We dated for six years when we was in elementary
5 school and high school and we've been back together
6 for about two months now.

7 Q. Now, at the time of this accident, what vehicle did
8 you have?

9 A. At the time of the accident?

10 Q. Yeah.

11 A. I had a Chevy Astro van but I--

12 Q. What year?

13 A. '92.

14 Q. And you were getting ready to say something?

15 A. Well, we was saving money and stuff so I took--
16 that was insured through Nationwide and I took the
17 insurance off of it so we wouldn't have two
18 insurance bills, so Sarah made me an additional
19 driver on her Progressive and I drove her car and
20 we just shared that car. She'd drive me to work
21 and I'd drive her to work and I'd drive-- I'd use
22 it on the weekend and I drove it all over.

23 Q. What car did she have?

24 A. Honda CRV. It's an '01 or 2000. I can't remember
25 off the top of my head.

1 Q. So she had a Honda CRV and you had the '92 Chevy
2 Astro?

3 A. Yes, sir.

4 Q. At that time it was-- I mean, prior to that, it was
5 insured at Nationwide?

6 A. Yes, sir.

7 Q. How long had you been insured with Nationwide?

8 A. Two years.

9 Q. And then when did you decide to drop Nationwide and
10 go with an additional driver on her policy?

11 A. I'm not sure of the date. Sometime within our
12 relationship.

13 Q. At any point did you lose your license during that
14 time?

15 A. No. I didn't lose my license until after she had
16 been gone.

17 Q. When you lost your license last year, that was the
18 first time you had ever lost your license?

19 A. Yes.

20 Q. I think you said the reason you-all did that was to
21 save money?

22 A. Yeah.

23 Q. So at some point you were added as an additional
24 driver on her policy with Progressive?

25 A. Yeah. That was only like, I think, 267 a month for

1 both of us and just mine alone through Nationwide
2 was 219 a month and that's 500 bucks, so.

3 Q. So together actually, I guess, her coverage on the
4 Honda CRV and you added as an additional driver was
5 \$267 a month?

6 A. 16. Did I say 67? I think it was like that. I'm
7 not sure off the top of my head but I know it was a
8 little bit more than \$200 a month.

9 Q. You were paying 290 plus on Nationwide?

10 A. I was paying, yeah.

11 Q. How long had you been an additional driver on her
12 policy when the accident happened?

13 A. A year. I'm not sure.

14 Q. Did you have any involvement with the insurance
15 company in doing that? Did you go down to the
16 agent and apply?

17 A. I called them on the phone and I did it. I had all
18 her personal information, my soon-to-be wife, so I
19 just called and did it because I couldn't get her
20 to do it.

21 Q. She would never do it?

22 A. Well, she said she'd do it and then the stuff would
23 sit on the table and I wasn't driving around Myrtle
24 Beach with my name not being on her insurance. I
25 can't do that. They'd take me to jail.

1 Q. Did you drop the coverage with Nationwide before
2 you got on as an additional driver--

3 A. Yeah.

4 Q. -- with Progressive?

5 A. It was like within a week.

6 Q. About a week?

7 A. This wasn't no long time period she didn't do it.
8 It's like I dropped it because she was supposed to
9 do it that day and it sat on the kitchen table for
10 at least a day so I ended up saying come over and
11 sit beside me and let's do this, you know.

12 Q. Tell me again what you did. I think you talked to
13 somebody on the phone?

14 A. Yeah.

15 Q. How did that go about--

16 A. I called, gave her all my information. They put me
17 down as an additional driver and they told me the
18 premium, how much difference the bill was going to
19 be each month, and then I had to pay more money at
20 the first. I don't know. I think it was-- just
21 been a long time. I'm not sure about all this
22 information.

23 Q. When you say you called, who did you call?

24 A. Progressive, the number on the back.

25 Q. National number?

1 A. Yeah, off the back of the insurance card, the
2 little card they give you.

3 Q. Do you recall what information you gave them or
4 what they asked for?

5 A. My driving license number, my social, my name, my
6 address, you know, the original--

7 Q. They tell you what the premium would be then?

8 A. Yeah.

9 Q. And you were talking about something just a minute
10 ago, that something changed.

11 A. No, nothing changed.

12 Q. The premium you started paying in the beginning was
13 the original premium?

14 A. Yeah.

15 Q. Other than that one phone call with Progressive,
16 did you have any other phone calls with them?

17 A. Progressive? Yeah, phone by check. When I paid my
18 phone by check, I'd call and pay the bill over the
19 telephone every month.

20 Q. Is that how you did it?

21 A. Yeah.

22 Q. Did you do that every month?

23 A. Yeah.

24 Q. Other than that--

25 A. Well, she would call and use my card. I mean, I

1 can't do everything so yeah, she's my soon wife so
2 yeah, she did it sometimes too. She used my card
3 or she used the money I gave her out of her account
4 or the bill would get paid.

5 Q. Other than those phone calls and paying the bill
6 each month and the one phone call you had that you
7 were put on as an additional driver, did you have
8 any other conversations with Progressive?

9 A. No.

10 Q. Did you have any understanding of what that meant,
11 to be an additional driver on the policy?

12 A. No. I need a cigarette. I'm getting irritated.

13 MR. MORGAN: We'll take a break.

14 (A short break was taken, after which
15 there was a discussion off the record.)

16 MR. MORGAN: That's all. Thank you.

17 (Deposition concluded at 3:10 p.m.)
18
19
20
21
22
23
24
25

1 STATE OF SOUTH CAROLINA :
2 COUNTY OF HORRY : SS: CERTIFICATE

3 I, Michele E. Starkey, a Notary Public for South
4 Carolina, do hereby certify that the within named
5 witness, JOSHUA BELL, was by me first duly sworn to
6 testify the truth, the whole truth, and nothing but the
7 truth in the cause aforesaid:

8 That the testimony then given was reduced by me to
9 stenotype in the presence of said witness, subsequently
10 transcribed onto a computer under my direction, and
11 that the foregoing is a true and correct transcript of
12 the testimony so given as aforesaid.

13 I do further certify that this deposition was
14 taken at the time and place as specified in the
15 foregoing caption, and that I am not a relative,
16 counsel or attorney of either party, or otherwise
17 interested in the outcome of this action.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 and affixed my seal of office at Murrells Inlet, South
20 Carolina, this 3rd day of June, 2008.

21 Michele E. Starkey
22 MICHELE E. STARKEY, Notary
Public for South Carolina

23 My Commission expires September 20, 2011.
24
25

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Presiding Judge

CASE NO. 07-CP-26-5890

JOSHUA BELL Appellant

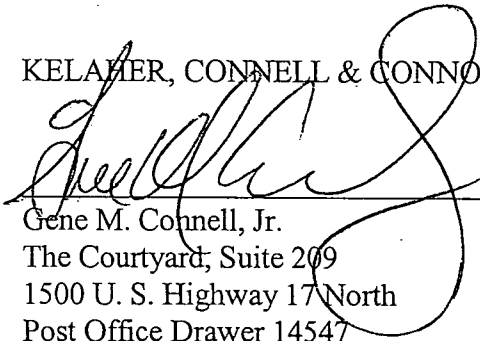
vs.

PROGRESSIVE DIRECT INSURANCE COMPANY Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellant

March 26, 2010
Surfside Beach, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Presiding Judge

CASE NO. 07-CP-26-5890

JOSHUA BELL Appellant

vs.

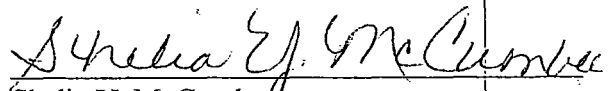
PROGRESSIVE DIRECT INSURANCE COMPANY Respondent

PROOF OF SERVICE

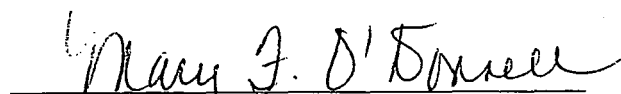
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served the **Record on Appeal** on the Respondent, through its attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

J.R. Murphy, Esquire
Murphy & Grantland, PA
P. O. Box 6648
Columbia, SC 29260

DATE OF MAILING: March 26, 2010


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 26th day of March, 2010.


Notary Public for South Carolina
My Commission Expires: 6/1/16

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Presiding Judge

CASE NO. 07-CP-26-5890

JOSHUA BELL Appellant

vs.

PROGRESSIVE DIRECT INSURANCE COMPANY..... Respondent

FINAL BRIEF OF APPELLANT

Gene M. Connell, Jr.
KELAHHER, CONNELL & CONNOR, P.C.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case.....	2
Arguments	3
I. The trial court erred in granting summary judgment to Progressive when Bell was a household resident, which is not defined in the auto policy	3
II. All ambiguities are to be resolved against the insurer.	5
III. The trial court erred in finding that the Doctrine of Reasonable Expectations was not applicable to the facts of this case	6
IV. The court failed to find the policy was ambiguous and thus Bell was entitled to underinsured motorist coverage as a matter of law..	12
V. The court erred in ruling that there was no genuine issue of material fact regarding the common law marriage of Bell	13
Conclusion.....	15

TABLE OF AUTHORITIES

Cases

<i>Allstate Ins. Co. v. Mangum</i> , 299 S.C. 226, 231-232, 383 S.E.2d 464, 466-467 (Ct.App. 1989)	6, 11
<i>Atlantic Cement Co., Inc. v. Fidelity & Casualty Co. of New York</i> , 91 A.D.2d 412, 459 N.Y.S.2d 425, 429 (1983), <i>affd</i> , 63 N.Y.2d 798, 481 N.Y.S.2d 329, 471 N.E.2d 142 (1984).....	11
<i>Atwater Creamery Co. v. Western Nat'l Ins. Co.</i> , 366 N.W.2d 271, 278-79 (Minn. 1985)	10
<i>Callen v. Callen</i> , 365 S.C. 618, 624 S.E.2d 59 (2005)	14
<i>Collister v. Nationwide Life Ins. Co.</i> , 479 Pa. 579, 388 A.2d 1346, 1354 (1978), <i>cert. denied</i> , 439 U.S. 1089, 99 S.Ct. 871, 59 L.Ed.2d 55 (1979)	10
<i>Commercial Union Assurance Co. v. Aetna Casualty and Surety Co.</i> , 455 F.Supp. 1190 (D.N.H.1978).....	9, 10
<i>Costello v. Costello</i> , 465 S.E.2d 620 (1998)	11
<i>Crawford v. Ranger Ins. Co.</i> , 653 F.2d 1248, 1251 (9th Cir. 1981).....	9
<i>Crowell v. Federal Life & Casualty Co.</i> , 397 Mich. 614, 247 N.W.2d 503, 506 (1976)	10
<i>Darner Motor Sales v. Universal Underwriters</i> , 140 Ariz. 383, 389, 682 P.2d 388, 394 (1984).....	10
<i>Davis v. M.L.G. Corp.</i> , 712 P.2d 985, 989 (Colo. 1986)	10
<i>Dronge v. Monarch Ins. Co.</i> , 511 F.Supp. 1, 4 (D.Kan. 1979).....	10
<i>Eli Lilly & Co. v. Home Ins. Co.</i> , 794 F.2d 710, 715 (D.C.Cir. 1986), <i>cert. denied</i> , 479 U.S. 1060, 107 S.Ct. 940, 93 L.Ed.2d 991 (1987)	9
<i>Fritz v. Old American Ins. Co.</i> , 354 F.Supp. 514 (S.D.Tex. 1973)	8, 9, 10
<i>Gambrell v. Travelers Ins.</i> 280 S.C. 69, 310 S.E.2d 814 (1983)	11
<i>Gleason v. Merchants Mut. Ins. Co.</i> , 589 F.Supp. 1474, 1480 (D.R.I. 1984)	10

<i>Great American Ins. Co. v. C.G. Tate Constr. Co.</i> , 303 N.C. 387, 279 S.E.2d 769, 774 (1981)	10
<i>Greenville County v. Ins. Reserve Fund</i> , 313 S.C. 546, 443 S.E.2d 552 (1994)	5
<i>Grinnell Mutual Reinsurance Co. v. Voeltz</i> , 431 N.W.2d 783, 785-86 (Iowa 1988) ...	8, 10
<i>Gross v. Lloyds of London Ins. Co.</i> , 121 Wis.2d 78, 358 N.W.2d 266, 270 (1984)	10
<i>Gyler v. Mission Ins. Co.</i> , 10 Cal.3d 216, 110 Cal. Rptr. 139, 514 P.2d 1219, 1221 (1973)	11
<i>Hill v. York Co. Sheriff's Dept.</i> , 313 S.C. 303, 437 S.E.2d 179	4, 14
<i>Home Indem. Ins. Co. v. Merchants Distributors, Inc.</i> , 396 Mass. 103, 483 N.E.2d 1099, 1101 (1985)	10
<i>Katz Drug Co. v. Commercial Standard Ins. Co.</i> , 647 S.W.2d 831, 835 (Mo.App. 1983)	11
<i>Keene Corp. v. Insurance Co. of North America</i> , 215 U.S.App.D.C. 156, 667 F.2d 1034, 1041 (1981), <i>cert. denied</i> , 455 U.S. 1007, 102 S.Ct. 1644, 71 L.Ed.2d 875 (1982), <i>reh'g denied</i> , 456 U.S. 951, 102 S.Ct. 2023, 72 L.Ed.2d 476 (1982)	8, 9
<i>Kraci v. Aetna Casualty & Sur. Co.</i> , 220 Neb. 869, 374 N.W.2d 40, 44 (1985)	10
<i>Macon Light House Revival Center, Inc. v. Continental Ins. Co.</i> , 651 F.Supp. 417-18 (M.D.Ga. 1987)	9
<i>Max True Plastering Co. v. U.S. Fidelity and Guar. Co.</i> , 912 P.2d 861 (1996)	11
<i>McPherson v. Michigan Mutual Ins. Co.</i> , 426 S.E.2d 70, 771 (1993)	5
<i>Meier v. New Jersey Life Ins. Co.</i> , 101 N.J. 597, 503 A.2d 862, 869 (1986)	10
<i>Mills v. Agrichemical Aviation, Inc.</i> , 250 N.W.2d 663, 673 (N.D. 1977)	8, 10
<i>National Mutual Insurance Co. v. McMahon & Sons, Inc.</i> , 177 W.Va. 734, 739, 356 S.E.2d 488, 495 (1987)	9, 10
<i>National Union Fire Ins. Co. v. Reno's Executive Air, Inc.</i> , 100 Nev. 360, 682 P.2d 1380, 1383-84 (1984)	10
<i>Nexsen v. Haddock</i> , 353 S.E. 74, 576 S.E.2d 183 (Ct.App. 2002)	3

<i>Palm v. General Painting Co.</i> , 296 S.C. 41, 370 S.E.2d 463 (Ct.App. 1988).....	6
<i>Peerless Ins. Co. v. Brennon</i> , 564 A.2d 383, 386 (Me. 1989).....	10
<i>Pribble v. Aetna Life Ins. Co.</i> , 84 N.M. 211, 501 P.2d 255, 260 (1972)	11
<i>Richardson v. Estate Record Co. Inc.</i> , 330 S.C.562, 499 S.E.2d 822 (Ct.App. 1998)	4
<i>Spinx Oil Co. v. Federated Mutual Ins. Co.</i> , 427 S.E.2d 649 (1993).....	5
<i>Steigler v. Insurance Co. of North America</i> , 384 A.2d 398, 400 (Del.Supr. 1978).....	8, 10
<i>Super Duper, Inc. v. Pennsylvania National Mutual Cas. Ins. Co.</i> (Op. 26717 filed September 14, 2009).....	5
<i>Transamerica Ins. Co. v. Royle</i> , 202 Mont. 173,656 P.2d 820, 824 (1983)	10
<i>Travelers Insurance Co., Inc. v. Jones</i> , 529 So.2d 234, 239 (Ala. 1988).....	8, 10
<i>Tremont Constr. Co., Inc. v. Dunlap</i> , 310 S.C.180, 425 S.E.2d 792 (Ct.App. 1992).....	3
<i>United Servs. Auto. Ass'n.</i> , 365 S.C.50, 54, 614 S.E.2d 652 (S.C. Ct.App. 2005)	6, 11, 12, 13
<i>United States Fire Ins. Co. v. Colver</i> , 600 P.2d I, 3-4 (Alaska 1979)	10
<i>Ward v. Zelinski</i> , 260 S.C. 229, 195 S.E.2d 385 (1973).....	3
<i>Watters v. Terminix Serv. Inc.</i> , 376 S.C. 632, 658 S.E.2d 110 (Ct.App. 2008).....	4, 14
<i>Woodson v. Manhattan Life Insurance Co. of N.Y.</i> , 743 S.W.2d 835, 839 (Ky. 1987)	8,10
Other Authorities	
<u>Couch on Insurance 2d</u> § 15.16, P174 (1984).....	9
Rules	
Rule 59(e), SCRCF	6
Rule 56, SCRCF	4, 14, 15
Rule 204(b) SCAR.....	11

STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in granting Defendant's Motion for Summary Judgment?
- II. Did the court err in failing to hold the policy was ambiguous?
- III. Did the trial court err in failing to apply the Doctrine of Reasonable Expectations in the construction of insurance contracts in this state?
- IV. Did the trial court err in failing to hold that the Appellant as a household resident was entitled to underinsured motorist coverage?
- V. Did the trial court err in failing to hold that Joshua Bell was a common law husband to the named insured?
- VI. Did the trial court err in failing to find underinsured motorist coverage for Appellant because of the ambiguity in the policy?

STATEMENT OF THE CASE

The Plaintiff was involved in a serious automobile accident on May 31, 2006 in which he was a passenger in a vehicle owned by his employer and driven by Plaintiff's co-worker. The liability limits of the at-fault driver were tendered and there was no underinsured motorist insurance (UIM) coverage on the vehicle. Plaintiff filed the instant suit seeking to recover from the UIM coverage afforded by the Progressive policy on his common law wife's vehicle.

The Defendant, Progressive Direct Insurance Company issued an automobile insurance policy number 13507563-0 to Sarah K. Severn (Plaintiff's common law wife) with effective dates of November 4, 2005 to May 4, 2006. On the policy declarations page Plaintiff is listed as a "driver" and "household resident." The terms "driver" and "household resident" are not defined in the insurance policy. Prior to the accident, the Plaintiff had lived with Severn for eleven months, had a son together and had given Severn a diamond ring. Also, Plaintiff had supported both Severn and their child including paying the rent and all bills including the Progressive insurance premium on the one vehicle in their household.

The trial court granted Defendant's Motion for Summary Judgment finding that Plaintiff was not covered under the policy and thus not entitled to underinsured motorist coverage. This appeal follows.

ARGUMENT

I. The trial court erred in granting summary judgment to Progressive when Bell was a household resident which is not defined in the auto policy.

It is well settled in South Carolina that summary judgment can only be granted when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Nexsen v. Haddock*, 353 S.E. 74, 576 S.E.2d 183 (Ct.App. 2002). Further, all inferences that can be drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Tremont Constr. Co., Inc. v. Dunlap*, 310 S.C.180, 425 S.E.2d 792 (Ct.App. 1992). It is black letter law that if more than one reasonable inference can be drawn from the evidence, the case must be submitted to the jury. *Ward v. Zelinski*, 260 S.C. 229, 195 S.E.2d 385 (1973).

In this case, the evidence presented offers many reasonable inferences and the trial court erred in granting summary judgment. Here, the record establishes that Bell was a “driver” and “household resident” under an automobile liability insurance policy from his common law wife, Sarah Severn (Deposition, R. p. 97, lines 16-17); that they lived together (Deposition, R. p. 97, lines 16-17, R. p. 98, line 3); that both names were on the lease (Deposition, R. p. 99, lines 23-24); that they had a child (Deposition, R. p. 100, lines 9-14); that Bell paid all of the bills, including the car insurance premium (Deposition, R. p. 106, lines 20-25); that the term “household resident” is not defined in the policy (R. p. 52); that Bell had given Severn a diamond ring (Deposition, R. p. 103, lines 11-13); that they had lived together in two different apartment complexes (Deposition, R. p. 100, lines 1-25); that they moved to another apartment complex because they needed a baby room (Deposition, R. p. 100, lines 22-24); that Bell, his common law wife and their baby lived together at least eleven months prior to the wreck (Deposition, R. p. 101, line 10). The record establishes

that Bell paid all the bills including car insurance, rent, water, sewer, electric, internet, clothing and food (Deposition, R. p. 106, lines 20-25); that Bell asked Severn to marry him after she got pregnant and they lived together (Deposition, R. p. 108, lines 4-7); that Bell paid the insurance on the one vehicle in the household and it was used for family purpose (Deposition, R. p. 109, lines 1-3); and that Bell and Severn shared the use of the car (Deposition, R. p. 125, lines 15-22) .

Despite this evidence presented by Plaintiff and the fact that the term “household resident” had not been defined in the Progressive policy, the Court granted summary judgment finding no genuine issue of material facts. The Appellant submits that all of the evidence listed above clearly created a genuine issue of material fact that there was coverage available to Appellant.

The Court in granting summary judgment did not analyze the evidence and testimony through the appropriate standard required under SCRCp 56. The Courts of Appeal of this state have held on many occasions that it is only necessary for the non-moving party to submit “a scintilla of evidence warranting determination by a jury for summary judgment to be denied.” *Hill v. York Co. Sheriff's Dept.*, 313 S.C. 303, 437 S.E.2d 179. (The Court must give every benefit of the doubt to the non-moving party.) See also *Watters v. Terminix Serv. Inc.*, 376 S.C. 632, 658 S.E.2d 110 (Ct.App. 2008). (The parties seeking summary judgment have the initial responsibility of demonstrating the absence of a genuine issue of material fact and there must be an absence of evidence to support the non-moving party's case.) *Richardson v. Estate Record Co. Inc.*, 330 S.C.562, 499 S.E.2d 822 (Ct.App. 1998). In deciding this case, the Court did not apply these time honored principles to the evidence and thus erred in granting summary judgment.

II. All ambiguities are to be resolved against the insurer.

It has been settled in South Carolina for well over a century that any ambiguities in an insurance policy are to be construed against the insurer. Here, the term “driver” or “household resident” are not defined in the policy. Indeed, Bell was not only a “driver” but a “household resident” who resided with his young son and his common law wife at the time of the wreck. Further, the evidence presented by Plaintiff was that he was a “relative,” as he was the father of the child of the insured. (Deposition, R. p. 101, lines 10-12).

See *Super Duper, Inc. v. Pennsylvania National Mutual Cas. Ins. Co.* (Op. 26717 filed September 14, 2009) (“Ambiguous terms must be construed in favor of the insured.”) *Greenville County v. Ins. Reserve Fund*, 313 S.C. 546, 443 S.E.2d 552 (1994); *McPherson v. Michigan Mutual Ins. Co.*, 426 S.E.2d 70, 771 (1993); *Spinx Oil Co. v. Federated Mutual Ins. Co.*, 427 S.E.2d 649 (1993) (“When an insurance policy is capable of two reasonable interpretations that construction will be adopted which is most favorable to the insured.”).

The only evidence or inferences submitted regarding the common law marriage or the term “household resident” was from the deposition of Bell; and, thus, the Court could not as a matter of law find on the Motion for Summary Judgment that no common law marriage existed or that the term “household resident” was not ambiguous. Indeed, Bell’s uncontradicted testimony from his deposition was that he, Severn and their child had lived together for almost eleven months during and after the accident. (Deposition, R. p. 100, lines 1-25; R. p. 101, lines 1-25). Thus, the Court could not find on these facts that summary judgment should be granted as a matter of law.

III. The trial court erred in finding that the Doctrine of Reasonable Expectations was not applicable to the facts of this case.

The trial court denied Appellant's request for insurance coverage under the Doctrine of Reasonable Expectations. The trial court noted: "South Carolina courts have explicitly rejected this doctrine." *Ex parte United Servs. Auto. Ass'n.*, 365 S.C.50, 54, 614 S.E.2d 652 (S.C. Ct.App. 2005), citing *Allstate Ins. Co. v. Mangum*, 299 S.C. 226, 231-32, 383 S.E.2d 464, 466-67 (Ct.App. 1989).

However, those citations by the trial court are incorrect. A close reading of *Allstate Ins. Co. v. Mangum*, 299 S.C. 226, 231-232, 383 S.E.2d 464, 466-467 (Ct.App. 1989) notes that the Doctrine of Reasonable Expectations was not addressed by the court. In footnote 5 of the *Mangum* case, the Court of Appeals noted:

... the appealed order does not address the Doctrine of Reasonable Expectations. This Court has repeatedly held that though an issue is argued before a trial judge, if a trial judge failed to pass on the issue, the party asserting it does not preserve it for appeal unless he moves to amend the judgment by requesting the circuit court to address it pursuant to Rule 59(e) SCRPC. *Palm v. General Painting Co.*, 296 S.C. 41, 370 S.E.2d 463 (Ct.App. 1988). Hamilton failed to so move and therefore failed to preserve for appeal the argument of reasonable expectation. 383 S.E.2d at 465.

Further, the appealed order of the trial court cites the case of *Ex parte United Servs. Auto. Ass'n.*, 365 S.C.50, 54, 614 S.E.2d 652 (S.C. Ct.App. 2005) for the proposition that the courts of this state have never adopted the Doctrine of Reasonable Expectations in regard to insurance policy construction. The *USAA* case only mentions in passing the *Mangum* case, but never explicitly rules on the Doctrine of Reasonable Expectations. Accordingly, the cases cited by the trial court do not stand for the proposition that this court has never recognized the Doctrine of Reasonable Expectations.

Because the Supreme Court of South Carolina has not yet considered the Doctrine of Reasonable Expectations in the construction of insurance contracts and the doctrine has been applied to both ambiguous and unambiguous contract language or to exclusions which are masked by technical or obscure language, this Court ought to consider the doctrine as approved by 36 other state appellate courts throughout the country.

The question in this case is whether or not the term "household resident" qualifies someone for underinsured motorist coverage. "Household resident" is not defined in the policy of Progressive Direct Insurance Company and because Bell is named as a "household resident" and "driver", this ambiguity should provide him coverage based on his reasonable expectation that he was covered at the time of the accident. The facts of this case clearly cry out for the Court to apply the Doctrine of Reasonable Expectations to this insurance policy. Bell lived with his common law wife, had a son, paid all the household bills including the insurance premium, and was named as a "household resident" on the declarations page. (R. p. 52). If anyone had a reasonable expectation of coverage, it was Bell who was the father of the insured's baby and had a well founded belief the policy would cover him. The declaration page (R. p. 52) is as follows:

Drivers and household residents
SARAH K. SEVERN
JOSHUA D. BELL

Additional information
Named insured

The Doctrine of Reasonable Expectations requires a court to consider the expectations of the parties to an insurance contract. As one court noted: "The gist of the doctrine is that the insured is entitled to all the coverage he may reasonably expect to be provided under the policy. Only an unequivocally conspicuous, plain and clear manifestation of a company's intent to exclude coverage will defeat that expectation." See

Woodson v. Manhattan Life Insurance Co. of N.Y., 743 S.W.2d 835 (1987). Here, the term “household resident” is not conspicuously defined (or defined at all), making it ambiguous, which allows the Court to apply the doctrine based on the unique facts present here.

Other courts have noted that the concept of reasonable expectations should be applied to the construction of all insurance policies. One should look to the reasonable expectation of the applicant and intended beneficiaries regarding the terms of the insurance contract and those will be honored even though painstaking study of the policy provisions would have negated those expectations. See *Grinnell Mutual Reinsurance Co. v. Voeltz*, 431 N.W.2d 783 (1988).¹

Indeed, most courts have held the rule regarding insurance coverage is to protect what a person may reasonably expect from the terms of the policy he purchases. See *Travelers Insurance Co., Inc. v. Jones*, 529 So.2d 234 (1988).

In sum, it is well established throughout the country that if there is an ambiguity, an insurance contract should be read to accord with the reasonable expectation of a purchaser so far as the language will permit. *Steigler v. Insurance Co. of North America*, 384 A.2d 398 (1978) (doctrine allows innocent spouse to recover on a fire policy when other spouse burned their house); *Mills v. Agrichemical Aviation, Inc.*, 250 N.W.2d 663 (1977) (our guide is, as it must be, the reasonable expectation of the purchaser when he purchased the policy) (allowing coverage for crops under the doctrine despite policy language); *Keene Corp. v. Insurance Co. of North America*, 667 F.2d 1034 (1981) (use of the reasonable expectation test by these courts reflects the inapplicability of traditional contract theory to this type of insurance marketing) (allowing coverage for asbestos claims); *Fritz v. Old American Ins.*

¹ It should be noted there are no policy provisions here which define household resident. The Progressive policy is silent, making it clear the doctrine should be applied in this case.

Co., 354 F.Supp. 514 (S.D.Tex. 1973) (The objectively reasonable expectations of the insured will be honored even though painstaking study of the policy provisions would have negated those expectations) (allowing coverage for death claim in accident insurance policy); *Commercial Union Assurance Co. v. Aetna Casualty and Surety Co.*, 455 F.Supp. 1190 (D.N.H.1978) (An insurance contract should be given a construction which a reasonable person standing in the shoes of the insured would expect the language to mean.) (The majority rule is that the insured is not presumed to know the contents of an adhesion type insurance contract delivered to him.) (allowing coverage regarding motor vehicle accident); *National Mutual Insurance Co. v. McMahon & Sons, Inc.*, 177 W.Va. 734, 356 S.E.2d 488 (1987) (reversing trial court and adopting the doctrine when policy is ambiguous). See also 2 Couch on Insurance 2d § 15.16, P174 (1984) (test is what a reasonable person in position would have understood the language to mean).

Over 36 jurisdictions have recognized this doctrine, although this Court nor the South Carolina Supreme Court has had an opportunity to squarely consider it. Most states have also recognized this doctrine as a matter of law in construction of all insurance policies: *Eli Lilly & Co. v. Home Ins. Co.*, 794 F.2d 710, 715 (D.C.Cir. 1986), *cert. denied*, 479 U.S. 1060, 107 S.Ct. 940, 93 L.Ed.2d 991 (1987) (Applying Indiana law.); *Keene Corp. v. Insurance Co. of North America*, 215 U.S.App.D.C. 156, 667 F.2d 1034, 1041 (1981), *cert. denied*, 455 U.S. 1007, 102 S.Ct. 1644, 71 L.Ed.2d 875 (1982), *reh'g denied*, 456 U.S. 951, 102 S.Ct. 2023, 72 L.Ed.2d 476 (1982); *Crawford v. Ranger Ins. Co.*, 653 F.2d 1248, 1251 (9th Cir. 1981) (Applying Hawaii law.); *Macon Light House Revival Center, Inc. v. Continental Ins. Co.*, 651 F.Supp. 417-18 (M.D.Ga. 1987) (Applying Georgia law.); *Commercial Union Assurance Co. v. Aetna Casualty & Surety Co.*, 455 F.Supp. 1190, 1193

(D.N.H. 1978) (Applying New Hampshire law.); *Gleason v. Merchants Mut. Ins. Co.*, 589 F.Supp. 1474, 1480 (D.R.I. 1984) (Applying Rhode Island law.); *Dronge v. Monarch Ins. Co.*, 511 F.Supp. 1, 4 (D.Kan. 1979) (Applying Kansas law.); *Fritz v. Old American Ins. Co.*, 354 F.Supp. 514, 516 (S.D.Tex. 1973) (Applying Texas law.); *Peerless Ins. Co. v. Brennon*, 564 A.2d 383, 386 (Me. 1989); *Grinnell Mutual Reinsurance Co. v. Voeltz*, 431 N.W.2d 783, 785-86 (Iowa 1988); *Travelers Insurance Co., Inc. v. Jones*, 529 So.2d 234, 239 (Ala. 1988); *Woodson v. Manhattan Life Insurance Co. of N.Y.*, 743 S.W.2d 835, 839 (Ky. 1987); *National Mutual Insurance Co. v. McMahon & Sons, Inc.*, 177 W.Va. 734, 739, 356 S.E.2d 488, 495 (1987); *Steigler v. Insurance Co. of North America*, 384 A.2d 398, 400 (Del.Supr. 1978); *Davis v. M.L.G. Corp.*, 712 P.2d 985, 989 (Colo. 1986); *Meier v. New Jersey Life Ins. Co.*, 101 N.J. 597, 503 A.2d 862, 869 (1986); *Home Indem. Ins. Co. v. Merchants Distributors, Inc.*, 396 Mass. 103, 483 N.E.2d 1099, 1101 (1985); *Atwater Creamery Co. v. Western Nat'l Ins. Co.*, 366 N.W.2d 271, 278-79 (Minn. 1985); *Kracil v. Aetna Casualty & Sur. Co.*, 220 Neb. 869, 374 N.W.2d 40, 44 (1985); *National Union Fire Ins. Co. v. Reno's Executive Air, Inc.*, 100 Nev. 360, 682 P.2d 1380, 1383-84 (1984); *Gross v. Lloyds of London Ins. Co.*, 121 Wis.2d 78, 358 N.W.2d 266, 270 (1984); *Darner Motor Sales v. Universal Underwriters*, 140 Ariz. 383, 389, 682 P.2d 388, 394 (1984); *Transamerica Ins. Co. v. Royle*, 202 Mont. 173, 656 P.2d 820, 824 (1983); *Great American Ins. Co. v. C.G. Tate Constr. Co.*, 303 N.C. 387, 279 S.E.2d 769, 774 (1981); *United States Fire Ins. Co. v. Colver*, 600 P.2d 1, 3-4 (Alaska 1979); *Collister v. Nationwide Life Ins. Co.*, 479 Pa. 579, 388 A.2d 1346, 1354 (1978), *cert. denied*, 439 U.S. 1089, 99 S.Ct. 871, 59 L.Ed.2d 55 (1979); *Mills v. Agrichemical Aviation, Inc.*, 250 N.W.2d 663, 673 (N.D. 1977); *Crowell v. Federal Life & Casualty Co.*, 397 Mich. 614, 247 N.W.2d 503, 506 (1976);

Gyler v. Mission Ins. Co., 10 Cal.3d 216, 110 Cal. Rptr. 139, 514 P.2d 1219, 1221 (1973); *Pribble v. Aetna Life Ins. Co.*, 84 N.M. 211, 501 P.2d 255, 260 (1972); *Katz Drug Co. v. Commercial Standard Ins. Co.*, 647 S.W.2d 831, 835 (Mo.App. 1983); *Atlantic Cement Co., Inc. v. Fidelity & Casualty Co. of New York*, 91 A.D.2d 412, 459 N.Y.S.2d 425, 429 (1983), *aff'd*, 63 N.Y.2d 798, 481 N.Y.S.2d 329, 471 N.E.2d 142 (1984); *Costello v. Costello*, 465 S.E.2d 620 (1998) (applying West Virginia law). See *Max True Plastering Co. v. U.S. Fidelity and Guar. Co.*, 912 P.2d 861 (1996) in which Oklahoma recognized the doctrine.

This Court has never squarely addressed the Doctrine of Reasonable Expectations in an insurance policy. Neither *Mangum* nor *USAA* provides guidance as to whether this is the law. The *USAA* case merely cites the *Mangum* case and *Mangum* holds the Doctrine of Reasonable Expectations was not decided by the trial court. Further, *Gambrell v. Travelers Ins.* 280 S.C. 69, 310 S.E.2d 814 (1983) did not address the Doctrine of Reasonable Expectations nor has any other Supreme Court case. Finally use of the doctrine would not torture the meaning of the insurance policy language in this case because “household resident” is not defined and is ambiguous. Indeed, this is an important issue of first impression which is the majority rule throughout the country. Accordingly, this Court should address this matter directly or in the alternative on its own motion certify this case to the South Carolina Supreme Court pursuant to SCAR 204(b) because the court of last resort has not decided whether the Doctrine of Reasonable Expectations applies to insurance contracts in South Carolina.

IV. The court failed to find the policy was ambiguous and thus Bell was entitled to underinsured motorist coverage as a matter of law.

The Progressive policy does not define the term “household resident” although that term appears prominently on the declaration page. (R. p. 52) The declaration page states:

Drivers and household residents	Additional information
SARAH K. SEVERN	Named insured
JOSHUA D. BELL	

Further, the General Definitions section of the policy (R. p. 25-26) and the Additional Definitions section (R. p. 27) do not define the term “household resident”. Also, the policy, by naming Bell as a “household resident”, shows that he was being recognized as more than just a “driver”. Because “household resident” is not defined and all ambiguities are to be construed against the insurer, this Court should hold that a “household resident” is entitled to underinsured motorist coverage. Finally, Bell was not only a “household resident”, but the father of Severn’s baby, thus, he was a relative as that term is defined in the policy.² (See **Insured person** means: you or a **relative** with respect to an **accident** arising out of the ownership, maintenance or use of a **covered vehicle**.) (R. p. 27). Thus, by listing Bell as a “household resident” on the declaration page, insurance coverage was clearly contemplated by Progressive. (It is without dispute that Bell was more than just a mere “driver” -- he was a “household resident”, a common law husband and the father of the named insured’s baby). Accordingly, *Ex parte United Servs. Auto. Ass’n.*, 365 S.C.50, 54, 614 S.E.2d 652 (S.C. Ct.App. 2005) is not applicable. Indeed, by using the term “household resident” in the policy Progressive admits Bell was living with Severn and was not just a “driver” which this Court in *USAA* found to mean only mere use of the vehicle. (614 S.E.2d

² He was also a common law husband under South Carolina law.

at 652). The use of “household resident” in the policy contemplates a more lasting relationship akin to that of a named insured and thus coverage should be extended.

V. The court erred in ruling that there was no genuine issue of material fact regarding the common law marriage of Bell.

The trial court also granted summary judgment on the Plaintiff’s common law marriage claim despite the evidence in the record offered only by the Plaintiff.

In this case, the evidence presented offers numerous inferences on common law marriage and the trial court erred in granting summary judgment. Here, the record establishes that Bell was a “driver” and “household resident” of a policy from his common law wife, Sarah Severn (Deposition, R. p. 97, lines 16-17); that they lived together in South Carolina (Deposition, R. p. 97, lines 16-17, R. p. 98, line 3); that both names were on the lease (Deposition, R. p. 99, lines 23-24); that they had a child (Deposition, R. p. 100, lines 9-14); that Bell paid all of the bills, including the car insurance premium (Deposition, R. p. 106, lines 20-25); that the term “household resident” is not defined in the policy (R. p. 52); that Bell had given Severn a diamond ring (Deposition, R. p. 103, lines 11-13); that they had lived together in two different apartment complexes (Deposition, R. p. 100, lines 1-25); that they moved to another apartment complex because they needed a baby room (Deposition, R. p. 100, lines 22-24) ; that Bell, his common law wife and their baby lived together eleven months (Deposition, R. p. 101, line 10). The record establishes that Bell paid all the bills including car insurance, rent, water, sewer, electric, internet, clothing and food (Deposition, R. p. 106, lines 20-25); that Bell asked Severn to marry him after she got pregnant (Deposition, R. p. 108, lines 4-7); that Bell paid the insurance on the one vehicle in the household (Deposition, R. p. 109, lines 1-3); and that Bell and Severn shared the car (Deposition, R. p. 125, lines 15-22) .

Further, the case cited by the trial court, *Callen v. Callen*, 365 S.C. 618, 624 S.E.2d 59 (2005), actually involved a trial by the family court and an order of the court on whether a common law marriage existed. Here, the trial court made legal conclusions based solely on oral argument at a motion for summary judgment. The court in this case violated the *Callen* case by use of this procedure. (In *Callen*, the parties participated in an apparently matrimonial cohabitation and while cohabitating the parties had a reputation in the community as being married, a rebuttable presumption arises that a common law marriage was created”) *Callen*, 624 S.E.2d at 60. The evidence presented by Bell showed matrimonial cohabitation with Severn and created an inference of marriage. Accordingly, defendant’s motion for summary judgment must be reversed.

It is puzzling based on the *Callen* case and on the strict requirements of SCRCP 56 that the Court rendered summary judgment. As has been stated above in other portions of the brief, it is only necessary for the non-moving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied. *Hill v. York Co. Sheriff’s Dept.*, 313 S.C. 303, 437 S.E.2d 179 (every benefit of the doubt to the non-moving party under the summary judgment standard) See *Watters v. Terminix Serv. Inc.*, 376 S.C. 632, 658 S.E.2d 110 (Ct.App. 2008).

Here, the court did not have a trial, the defendants offered no evidence and Plaintiffs offered the sworn testimony of Joshua Bell that he lived with the insured, Severn, in South Carolina, that they had a child, that he paid the insurance, that he was the father of Severn’s child, that they shared one car, that they had lived in two different apartment complexes in South Carolina, that they moved into the apartment where they lived when the accident happened because they needed a baby room, that Bell had given Severn a diamond ring, and

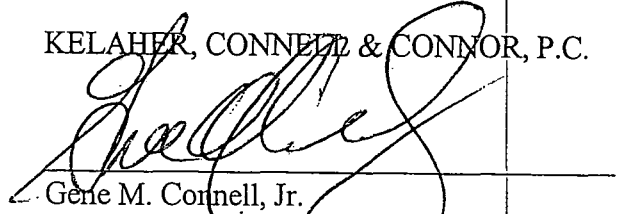
that he paid all of the household bills while she stayed home with the child. These facts are more than a scintilla of evidence and show that the parties were cohabitating and presenting themselves to the community as if being married. Thus, summary judgment was inappropriate in this case. Accordingly, Appellant requests that this case be reversed and returned to the circuit court for trial and disposition.

CONCLUSION

In conclusion, Plaintiff requests the Court reverse the trial court and remand for further proceedings. The proof presented by Bell shows that the Court should not have granted summary judgment under the standard set out by this Court in SCRCP 56. Further, there is manifest injustice to Bell in this case. He lived with Severn as her husband, had a son, supported her, moved with her twice to apartments in Horry County and was named as a "household resident" on the Progressive policy he paid for. Also, the term is not defined in the policy. Bell had a reasonable expectation that the policy would cover him under these unique facts for underinsured motorist's coverage. To hold otherwise allows the insurer to disclaim coverage on any "household resident" who makes the premium payment and expects to be covered when he or she buys an insurance policy to protect him.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.

A large, stylized handwritten signature in black ink, likely belonging to Gene M. Connell, Jr., is written over a horizontal line.

Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellant

March 26, 2010
Surfside Beach, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Presiding Judge

CASE NO. 07-CP-26-5890

JOSHUA BELL Appellant

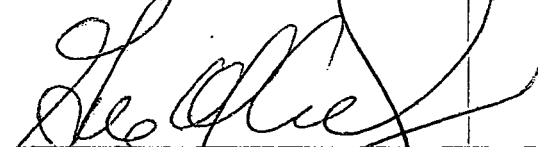
vs.

PROGRESSIVE DIRECT INSURANCE COMPANY Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b),
SCACR.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellant

March 26, 2010
Surfside Beach, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Presiding Judge

CASE NO. 07-CP-26-5890

JOSHUA BELL Appellant

vs.

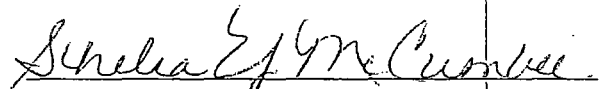
PROGRESSIVE DIRECT INSURANCE COMPANY Respondent

PROOF OF SERVICE

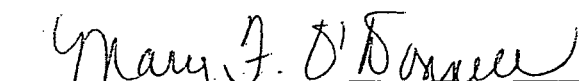
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served the **Final Brief of Appellant** on the Respondent, through its attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

J.R. Murphy, Esquire
Murphy & Grantland, PA
P. O. Box 6648
Columbia, SC 29260

DATE OF MAILING: March 26, 2010


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 26th day of March, 2010.


Notary Public for South Carolina
My Commission Expires: 6/1/16

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM Horry County

Court of Common Pleas

The Honorable J. Michael Baxley, Circuit Court Judge

Case No. 07-CP-26-5890

Joshua Bell Appellant

v.

Progressive Direct Insurance Company Respondent

BRIEF OF RESPONDENT

J.R. Murphy, Esquire
Ashley B. Stratton, Esquire
MURPHY & GRANTLAND, P.A.
4406-B Forest Drive
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100

Attorney for Respondent

TABLE OF CONTENTS

Table of Authorities	ii
Issues on Appeal	iv
Statement of the Case	1
Statement of the Facts	1
Standard of Review	2
Argument	3
I. APPELLANT DOES NOT QUALIFY AS AN INSURED FOR UNDERINSURED MOTORIST COVERAGE UNDER THE POLICY ISSUED BY PROGRESSIVE TO SARAH SEVERN	3
A. APPELLANT WAS NOT A NAMED INSURED UNDER THE POLICY	4
B. APPELLANT WAS NOT THE SPOUSE OF A NAMED INSURED.	6
C. APPELLANT WAS NOT A RELATIVE AS DEFINED IN THE POLICY.	8
II. APPELLANT’S “HOUSEHOLD RESIDENT” ARGUMENT IS NOT PRESEVED FOR REIVEW.	9
III. APPELLANT’S REASONABLE EXPECTATIONS HAVE NO BEARING ON THE INTERPRETATION OF THE POLICY.	10
Conclusion	13

TABLE OF AUTHORITIES

Cases

<u>Allstate Ins. Co. v. Mangum</u> , 299 S.C. 226, 383 S.E.2d 464 (1989)	10-12
<u>Bankers Ins. Co. v. Prezzy</u> , 2009 WL 3459189 (D.S.C.)	11
<u>Bannon v. Knauss</u> , 282 S.C. 589, 320 S.E.2d 470 (Ct. App. 1984).....	11
<u>Baughman v. American Telephone and Telegraph Co.</u> , 306 S.C. 101, 410, S.E.2d 537 (1991)	2
<u>Benjamin v. McKinnon</u> , 887 N.E.2d 14 (Ill. Ct. App. 2008)	9
<u>Berry v. McLeod</u> , 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997)	2
<u>Brooks v. Northwood Little League, Inc.</u> , 327 S.C. 400, 489 S.E.2d 647 (Ct. App. 1997).....	3
<u>Callen v. Callen</u> , 365 S.C. 618, 624 S.E.2d 59 (2005)	6, 7
<u>Campbell v. Christian</u> , 235 S.C. 102, 110 S.C.2d 1 (1959).....	6
<u>Carroway v. Johnson</u> , 245 S.C. 200, 139 S.E.2d 908 (1965)	12
<u>David v. McLeod Reg'l Med. Ctr.</u> , 367 S.C. 242, 626 S.E.2d 1 (2006)	2
<u>Ex Parte United Servs. Auto. Ass'n</u> , 365 S.C. 50, 614 S.E.2d 652 (Ct. App. 2005).....	2, 4-6, 11
<u>Ex parte Blizzard</u> , 185 S.C. 131, 193 S.E. 633 (1937)	6
<u>Gambrell v. Travelers Ins. Co.</u> , 280 S.C. 69, 310 S.E.2d 814 (1983)	11, 12

<u>Pon, L.L.C. v. Town of Mt. Pleasant,</u> 338 S.C. 406, 526 S.E.2d 716 (2000)	9
<u>Lindsay v. Lindsay,</u> 328 S.C. 329, 491 S.E.2d 583 (Ct. App. 1997).....	11, 12
<u>Lucas v. Rawl Family Ltd. Partnership,</u> 359 S.C. 505, 598 S.E.2d 712 (2004)	9
<u>McCance v. McCance,</u> 908 A.2d 905 (Pa. Super. 2006)	9
<u>NGM Ins. Co. v. Carolina's Power Wash & Painting, LLC,</u> 2010 WL 146482 (D.S.C.).....	11
<u>Pittman v. Lowther,</u> 363 S.C. 47, 610 S.E.2d 479 (2005)	6
<u>Shelby Mut. Ins. Co. v. Askins,</u> 307 S.C. 81, 413 S.E.2d 855 (Ct. App. 1992)	4
<u>Southern Land and Golf Co. Ltd. v. Harleysville Mut. Ins. Co.,</u> 2006 WL 2443340 (D.S.C.).....	11
<u>State v. Graves,</u> 269 S.C. 356, 237 S.E.2d 584 (1977)	5
<u>Young v. South Carolina Department of Corrections,</u> 33 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999)	3
<u>Statutes and Rules</u>	
S.C. Code Ann. § 20-1-100 (2002)	7
Rule 56, SCRCP.....	2

ISSUES ON APPEAL

- I) WHETHER APPELLANT QUALIFIES AS AN INSURED FOR UNDERINSURED MOTORIST COVERAGE UNDER THE POLICY ISSUED BY PROGRESSIVE TO SARAH SEVERN.
- II) WHETHER APPELLANT'S "HOUSEHOLD RESIDENT" ARGUMENT IS PRESEVED FOR REIVEW.
- III) WHETHER APPELLANT'S REASONABLE EXPECTATIONS HAVE ANY BEARING ON THE INTERPRETATION OF THE POLICY.

STATEMENT OF THE CASE

This appeal arises out of an insurance coverage dispute in which Appellant Joshua Bell claims he is entitled to underinsured motorist ("UIM") coverage under a policy of insurance issued by Respondent Progressive Direct Insurance Company ("Progressive") to Appellant's former girlfriend, Sarah Severn. In an Order filed January 9, 2008, the trial court granted Progressive summary judgment based on the finding that Appellant was not an "insured" under the Progressive policy and, therefore, not entitled to any UIM benefits under the policy.

STATEMENT OF THE FACTS

On May 31, 2006, Appellant was a passenger in a vehicle owned by his employer which was involved in accident. Appellant received the liability limits of the at-fault driver, but there was no UIM coverage on the company vehicle in which Appellant was riding. Consequently, Appellant filed the instant suit seeking to recover UIM benefits under the Progressive policy covering a Honda CRV owned by his former girlfriend.

Progressive policy 13507563-0 was issued to Sarah Severn with effective dates of November 4, 2005, to May 4, 2006. The policy listed Appellant as a "driver and household resident", but not as a "named insured". (R.p.52.) The policy provided UIM coverage for an "insured person", which is defined as "you" or a "relative". "You" is defined in the policy as a named insured or spouse if residing in the same household; "relative" is defined as a person related to the named insured by blood or marriage and also residing in the same household. (R.p.26.)

Appellant was not a named insured nor did his being listed on the declarations page as a driver and/or household resident entitle him to UIM benefits as a named

insured. Appellant also asserts a common law marriage existed between himself and Ms. Severn. According to Appellant, he and Ms. Severn had been engaged at various times, but had never married. (R.pp.102-109.) Although he resided with Ms. Severn and had given her an engagement ring, they never set a date to be married. (R.pp.103, 105-108.) Ms. Severn left Appellant and South Carolina subsequent to the accident and, while she was residing without Appellant in Maryland, the engagement was definitely broken off. (R.pp.103-105, 108.)

The trial court granted summary judgment to Progressive based on the fact that Appellant was not a named insured and could not establish the existence of a common law marriage to Ms. Severn. (R.pp. 5-7.) The trial court also held that Appellant was not entitled to UIM coverage under the doctrine of reasonable expectations because that doctrine has been explicitly rejected by South Carolina Courts. (R.p.5 (citing Ex parte United Servs. Auto. Ass'n, 365 S.C. 50, 614 S.E.2d 652 (Ct. App. 2005)).

STANDARD OF REVIEW

An appellate court reviews the grant of summary judgment under the same standard applied by the circuit court. David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Summary Judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Berry v. McLeod, 328 S.C. 435, 492 S.E.2d 794, 798 (Ct. App. 1997); S.C.R.C.P., Rule 56 (c). The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. Baughman v. Am. Tel. and Tel. Co., 306 S.C. 101, 115, 410, S.E.2d 537, 545 (1991). This initial responsibility may be discharged by showing that there is an absence of evidence to support the

nonmoving party's case. Id. Once the moving party carries its initial burden, the opposing party must do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial. Id.

All ambiguities, conclusions and inferences arising from the evidence must be construed against the moving party. Young v. South Carolina Department of Corrections, 33 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999). However, when the evidence is susceptible of only one reasonable interpretation, summary judgment is proper. Brooks v. Northwood Little League, Inc., 327 S.C. 400, 489 S.E.2d 647, 648 (Ct. App. 1997).

ARGUMENT

D) APPELLANT DOES NOT QUALIFY AS AN INSURED FOR UNDERINSURED MOTORIST COVERAGE UNDER THE POLICY ISSUED BY PROGRESSIVE TO SARAH SEVERN.

The relevant policy provision for a determination of whether Bell is entitled to underinsured motorist coverage for the injuries he sustained in the accident of March 30, 2006, is dependent upon whether he qualifies as an "insured person" as defined in the policy. An "insured person" includes both "you" and a "relative", both of which are also defined terms in the policy. The definitions are set forth as follows:

ADDITIONAL DEFINITIONS

When used in this Part III:

1. **"Insured person" and "insured persons" mean:**
 - a. **You or a relative;**
 - b. **any person occupying a covered vehicle; and**

...
11. **"Relative" means a person residing in the same household as you, and related to you by blood, marriage or adoption,**

...

14. “You” and “Your” mean:
 - a. a person or persons shown as a named insured on the **Declarations Page**; and
 - b. the spouse of a named insured if residing in the same household.

(Policy pp. 26, 32.)

A) APPELLANT WAS NOT A NAMED INSURED UNDER THE POLICY.

In order to qualify as a named insured, an individual must be listed as a named insured on the declarations page of the policy. Ex parte: United Servs. Auto. Ass’n, 365 S.C. 50, 614 S.E.2d 652 (Ct. App. 2005); Shelby Mut. Ins. Co. v. Askins, 307 S.C. 81, 413 S.E.2d 855 (Ct. App. 1992). The declarations page in this case clearly indicates that only Sarah K. Seven was the named insured under the section listing the drivers and household residents (under which Bell’s name also appears, but without the designation as a named insured) and the addressee section which includes only Sarah K. Severn as the named insured. (R.p.52.) Therefore, Bell is not a named insured under the policy.

The trial court correctly determined that this issue is controlled by this Court’s decision in Ex parte: United Services Automobile Association, 365 S.C. 50, 614 S.E.2d 652 (Ct. App. 2005). In United Services, the appellant argued she should be allowed to stack coverages on other vehicles at her residence because she was listed as an “operator” on the declarations page of the applicable insurance policy. The appellant there argued that her inclusion as an “operator” on the declarations page of the policy created an ambiguity as to whether she was a named insured and such an ambiguity should be resolved in favor of coverage. Id. at 54, 614 S.E.2d at 654. The named insured on the policy was the appellant’s adoptive mother, although they did not reside at the same address. Analyzing cases from other jurisdictions and adopting the majority view, this

Court held that “listing a driver on the declarations page of an insurance policy does not make that person a named insured.” Id. at 55, 614 S.E.2d at 654.

In United Services, the failure of the policy to define the term “operator” did not render the policy vague or ambiguous. The Court noted that the term “operator” is broader than the term “driver.” Id. at 55 (citing State v. Graves, 269 S.C. 356, 237 S.E.2d 584 (1977)). Citing cases from Georgia and North Carolina, this Court held that the policy was unambiguous. The terms “named insured” and “driver” were not defined in the policy when “operator” can be defined “according to the usual understanding of term’s significance to the ordinary person.” Id. at 55, 614 S.E.2d at 654. The Court held that to construe “named insured” and “driver” as synonymous would expand the term “named insured” beyond its common sense meaning.

United Services is squarely on point with the instant case in which Appellant is listed as a “driver” and a “household resident”, but is not listed as a “named insured”. The only “named insured” under the policy is Ms. Severn. As in United Services, UIM coverage is afforded to “insured persons” and the policy defines “insured persons” for purposes of UIM while occupying a non-owned auto as “you or a relative.” (R.p.32.) The policy further defines “you” as the person “shown as a named insured on the **Declarations Page**; and the spouse of a named insured if residing in the same household.” (R.p.26.) “**Relative**” is defined as “a person residing in the same household as you, and related to you by blood, marriage, or adoption.” (R.p.26.) Thus, the exact reasoning of United Services applies:

[E]ven though [“driver”] is not defined in the policy, the policy is not ambiguous. Where a term is not defined in a policy, it is to be defined according to the usual understanding of the term’s significance to the ordinary person ... [T]he policy defines “you” and “your” as “the ‘named insured’ shown in the declarations.”

The only person listed in the “Named Insured” box on the declarations page was [Severn]. Thus, we see no ambiguity.

United Services, 365 S.C. at 55-56, 614 S.E.2d at 654-55 (citations omitted and “driver” substituted for “operator” and “Severn” substituted for “Washnok”).

Appellant’s only attempt to distinguish United Services, based on his “household resident” argument, is unpersuasive when the only person designated as a “named insured” under that section of the declarations page is Ms. Severn. Accordingly, United Services controls the instant case and the decision of the trial court should be affirmed.

B) APPELLANT WAS NOT THE SPOUSE OF A NAMED INSURED.

The trial court correctly found that Appellant failed to submit any evidence to support his contention that a common law marriage existed between himself and Severn. Whether a common-law marriage exists is a question of law. Campbell v. Christian, 235 S.C. 102, 104, 110 S.C.2d 1, 2 (1959). The proponent of the alleged marriage has the burden of proving the elements by a preponderance of the evidence. Ex parte Blizzard, 185 S.C. 131, 133, 193 S.E. 633, 634 (1937). The trial court’s findings of fact will be upheld if they are supported by any evidence in the record. Pittman v. Lowther, 363 S.C. 47, 50, 610 S.E.2d 479, 480 (2005).

There are five requirements of common law marriage. First, the party asserting common law marriage must prove that the parties participated in an “apparently matrimonial” cohabitation and had a reputation in the community of being married. Callen v. Callen, 365 S.C. 618, 624, 624 S.E.2d 59, 62 (2005). “Apparently matrimonial” cohabitation creates a rebuttable presumption that the couple is married under common law, which can be overcome by proof that the couple never intended to marry. Id. Second, the parties must hold themselves out to the public as husband and

wife. Third, the parties must be sixteen years of age or older. S.C. Code Ann. § 20-1-100. Fourth, the parties must intend to be married to each other and have a mutual understanding of that intention. Callen, 365 S.C. at 624, 620 S.E.2d at 62. Fifth, in order to have a valid common law marriage, there can be no impediments to marriage such as lack of validity of common law marriage in the jurisdiction in which the parties reside. Id.

The record is clear that Bell and Severn were never married and never considered themselves to be married. To the contrary, Bell repeatedly admitted that he and Severn were merely engaged and that their co-habitation was under the promise to be married, not under the premise that they were already married. (R.pp.103-107). The trial court was correct in granting summary judgment because there is no evidence the couple ever held themselves out, publicly or privately, as anything more than being engaged. For example, Bell testified as follows:

Q. ... February of '07 when she left, you-all were engaged at that time?

A. Yes sir.

Q. And do you remember when you gave her the ring?

A. No, not off the top of my head, sir, no, I don't.

Q. Did you-all become unengaged when she left?

A. Yeah.

...

Q. When she left did she give back the ring or did she keep it?

A. I took it back.

(R.p.104.)

Bell further confirmed that the couple was never married based on his surprise visit to Maryland upon which he found Severn living with another man. He testified:

A. I flew up there and found a guy in her apartment so we're no longer getting married. ... We got engaged twice but then she moved away and I thought it was going to be over and she called back, said she wanted to marry me ...

Q. You went up there, gave her the ring back, you-all were going to get married?

A. Yeah. ... [S]he's not being faithful so ...

Q. Last time you have seen her?

A. Yeah. Don't plan on it. ... I don't care if I talk to her at all.

(R.pp.103-105.)

A couple that is going to get married in the future cannot be presently married as a matter of law. The fact that Bell honestly admitted that the relationship never passed beyond an engagement, albeit one which was broken off twice, removes any contention that a common law marriage existed between Bell and Severn.

C) APPELLANT WAS NOT A RELATIVE AS DEFINED IN THE POLICY.

As previously noted, the policy defines an "insured person" as "you or a relative." "Relative" is defined as "a person residing in the same household as you, and related to you by blood, marriage, or adoption." (R.p.26.) As a threshold matter, an individual that is married to another person is not related to that person by marriage. The phrase "related by marriage" applies to an individual's in-laws, who become affiliated with him by virtue of his marriage to one of their blood or adoptive relatives. It does not mean spouse.

Therefore, Bell could not qualify as a “relative” of Severn, as defined in the Progressive policy, as a matter of law. See, e.g., Benjamin v. McKinnon, 887 N.E.2d 14 (Ill. Ct. App. 2008) (“‘Related by marriage’ is synonymous with ‘related by affinity.’ There are degrees of affinity. ‘Direct affinity’ is ‘[t]he relationship of a spouse to the other spouse’s blood relatives,’ such as ‘a wife and her husband’s brother.’ ‘Collateral affinity’ is ‘[t]he relationship of a spouse’s relatives to the other spouse’s blood relatives,’ such as a ‘wife’s brother and her husband’s sister.’”) (citations omitted); McCance v. McCance, 908 A.2d 905 (Pa. Super. 2006).

However, even if Bell could attempt to establish he was a “relative” under the Progressive policy by virtue of his marriage to Severn, such a claim would fail for the same reasons set forth above, demonstrating that Bell was never the spouse of Severn.

II. APPELLANT’S “HOUSEHOLD RESIDENT” ARGUMENT IS NOT PRESEVED FOR REIVEW.

Appellant failed to preserve his argument that his status as a “household resident” entitles him to UIM coverage. The “household resident” argument was not raised to and ruled upon by the trial court. Issues not raised and ruled upon in the trial court will not be considered on appeal. Lucas v. Rawl Family Ltd. Partnership, 359 S.C. 505, 598 S.E.2d 712 (2004). Furthermore, if the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review. I’on, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000).

Imposing this preservation requirement on the appellant is meant to enable to the lower court to rule properly after it has considered all relevant facts, law, and arguments. The requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve –

intentionally or by chance – in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.

Id. (citations omitted).

The trial court did not rule upon Appellant's "household resident" argument. Although the trial court noted that Appellant's name is listed under the section "Drivers and Household Residents" of the policy declarations, the trial court never ruled on whether Appellant's status as a "household resident" entitles him to coverage under the policy. (R.p.3.) The Court did not analyze whether listing Appellant as a "household resident" would qualify him as an insured or whether the term "household resident" was ambiguous. Further, Appellant failed to raise the issue in a motion to alter or amend the judgment. Considering Appellant's failure to preserve the "household resident" argument, it is not properly before this Court.

Moreover, even if the issue has been preserved, Appellants argument fails as more fully set forth in Sections I and III. The term "household resident" is not synonymous with "named insured" or "insured person" and the Progressive declarations page clearly shows the distinction, when it includes both Severn and Bell under the "household resident" section but further defines Severn alone as a named insured.

III. APPELLANT'S REASONABLE EXPECTATIONS HAVE NO BEARING ON THE INTERPRETATION OF THE POLICY.

The doctrine of reasonable expectations "has never been accepted by the Supreme Court of this State," and, therefore, has no application to the instant case. Allstate Ins. Co. v. Mangum, 299 S.C. 226, 383 S.E.2d 464 (1989). This Court addressed the doctrine of reasonable expectations in Allstate, explaining that the doctrine essentially is that "the objectively reasonable expectations of the applicants and intended beneficiaries regarding

the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated these expectations.” Id. at 231, 383 S.E.2d at 467 (citations omitted).

Appellant argues that because this Court has “never squarely addressed” the doctrine of reasonable expectations, it should be considered in the instant case.

Appellant’s argument could not be more erroneous considering the fact that “South Carolina courts have continuously refused to incorporate the doctrine of reasonable expectations into South Carolina insurance law.” Bankers Ins. Co. v. Prezy, 2009 WL 3459189 *1 (D.S.C.) (citing United Services, 365 S.C. at 54, 614 S.E.2d at 654; Mangum, 299 S.C. at 231032, 383 S.E.2d at 466-67); see also Southern Land and Golf Co. Ltd. v. Harleysville Mut. Ins. Co., 2006 WL 2443340 *8 (D.S.C.) (“The parties’ mutual expectations of coverage are not a basis for estoppels ... South Carolina has not adopted the doctrine of ‘reasonable expectations.’”). The interpretation of insurance policies according to the general rules of contract construction has always been method used by South Carolina Courts. This method should not be abandoned for a doctrine which has been specifically rejected as recently as January of this year. See NGM Ins. Co. v. Carolina's Power Wash & Painting, LLC, 2010 WL 146482 *5 (D.S.C.) (“South Carolina does not follow the doctrine of reasonable expectations.”).

In South Carolina, insurance policies are subject to the general rules of contract construction. Mangum, 299 S.C. at 231, 383 S.E.2d at 467 (citing Gambrell v. Travelers Ins. Co., 280 S.C. 69, 71, 310 S.E.2d 814, 816 (1983)). Interpretation of a contract is governed by the objective manifestation of the parties’ assent at the time the contract was made, rather than the subjective, after-the-fact meaning one party assigns to it. Bannon v.

Knauss, 282 S.C. 589, 593, 320 S.E.2d 470, 472 (Ct. App. 1984). If the intention of the parties is clear, the Courts have no authority to change the contract in any particular and have no power to interpolate into the agreement between the insurer and the insured, a condition or stipulation not contemplated by the parties. Mangum, 299 S.C. at 231, 383 S.E.2d at 467 (citing Carroway v. Johnson, 245 S.C. 200, 203, 139 S.E.2d 908, 910 (1965)). A reviewing court should not rewrite or torture the meaning of policy language to achieve a result never intended by the parties. Id. (citing Gambrell, 280 S.C. at 71, 310 S.E.2d at 816)). A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully. Lindsay v. Lindsay, 328 S.C. 329, 340, 491 S.E.2d 583, 589 (Ct. App. 1997).

Applying these longstanding rules of interpretation and considering the holding in United Services, it is clear that Appellant's expectation of coverage has no bearing on an otherwise unambiguous policy. The terms "driver" and "household resident" are not synonymous with named insured. A driver may be a permissive user, friend, or anyone actually operating a vehicle. A household resident could include unlicensed drivers, minors, non-family members, etc. The designation as a driver and/or household resident originates in the policy application and is used to help insurance companies properly evaluate the risks to be insured under the policy. These terms are not ambiguous and therefore, the Reasonable Expectations Doctrine would not help Appellant even if it had not already been rejected in South Carolina.

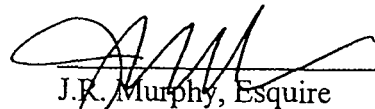
Furthermore, that fact that the policy provides additional information under this category, delineating Sarah K. Severn as named insured but not identifying Bell as a

named insured is conclusive on this issue. Therefore, Appellant's reasonable expectations argument should be rejected and the decision of the trial court should be affirmed.

CONCLUSION

For the reasons stated, the decision of the trial court should be affirmed. Appellant is not a named insured under the policy, nor does he otherwise qualify as an insured because he was not in a valid common law marriage with the named insured at the time of his accident.

Respectfully submitted,



J.R. Murphy, Esquire
Ashley B. Stratton, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Respondent

April 1, 2010

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable J. Michael Baxley, Circuit Court Judge

Case No. 07-CP-26-5890

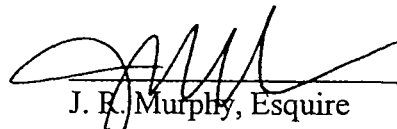
Joshua Bell Appellant,

v.

Progressive Direct Insurance Company Respondent.

CERTIFICATE

I, J.R. Murphy, Esquire, attorney for Respondent, certify that the Respondent's Brief complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.



J. R. Murphy, Esquire
Ashley B. Stratton, Esquire
MURPHY & GRANTLAND, P.A.
4406-B Forest Drive
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100

Attorneys for Respondent
April 1, 2010

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable J. Michael Baxley, Circuit Court Judge

Case No. 07-CP-26-5890

Joshua Bell Appellant,

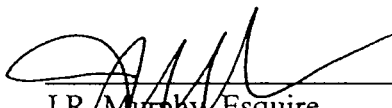
v.

Progressive Direct Insurance Company Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent's Final Brief by depositing a copy of it in the United States Mail, postage prepaid, on April 1, 2010, addressed to her attorney of record, Gene M. Connell, Esquire, P.O. Drawer 14547, Surfside Beach, SC 29587.

Respectfully submitted,



J.R. Murphy, Esquire
Ashley B. Stratton, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Respondent

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Presiding Judge

CASE NO. 07-CP-26-5890

JOSHUA BELL Appellant

vs.

PROGRESSIVE DIRECT INSURANCE COMPANY..... Respondent

FINAL REPLY BRIEF OF APPELLANT

Gene M. Connell, Jr.
KELAHER, CONNELL & CONNOR, P.C.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities	ii
Introduction	1
Arguments	1
I. Appellant is entitled to coverage under the policy.	1
II. The Doctrine of Reasonable Expectations has not been decided by the courts of this State.	2
III. Appellant’s “household resident” argument is preserved for review	3
Conclusion.....	4

TABLE OF AUTHORITIES

Cases

<i>Allstate Ins. Co. v. Mangum</i> , 299 S.C. 226, 231-232, 383 S.E.2d 464, 466-467 (Ct.App. 1989)	2
<i>Ex parte United Servs. Auto. Ass'n.</i> , 365 S.C.50, 614 S.E.2d 652 (S.C. Ct.App. 2005)	1, 2, 3

INTRODUCTION

The Appellant hereby files this Reply Brief in response to the Brief of Respondent served on February 19, 2010. Appellant offers the following observations in regard to the Brief of Respondent.

ARGUMENT

I. Appellant is entitled to coverage under the policy.

The Respondent argues throughout its brief that Appellant is not entitled to coverage for underinsured motorist benefits under the policy. However, it is clear from the record in this case that Appellant was not only a driver, but a household resident, which is not defined in the policy. Further, the testimony proves that Bell's relationship to Severn was not that of just a mere operator as is described in *Ex parte United Serv. Auto. Ass'n*, 365 S.C. 50, 614 S.E.2d 652 (S.C. Ct. App. 2005). Indeed, Progressive's policy goes further. By naming Bell as a named driver and a "household resident," Progressive's policy recognizes that Bell had a special relationship with Severn, i.e., he lived with her, he was the father of her child, he provided support for Severn and their child, he paid the insurance coverage, and they had one automobile which they used together. Further, because the term "household resident" is not defined, it is thus ambiguous. Bell is, and should be, considered to be an insured. The cases offered by Respondent do not discuss the special relationship Bell had with Severn. Under the argument presented by the Respondent, the child of Bell and Severn would be covered under the policy, but not the father who is living with them as a "household resident". This argument is nonsensical and creates form over substance under the unique facts of this case.

II. The Doctrine of Reasonable Expectations has not been decided by the courts of this State.

Respondent, in its Brief, continues to insist that the Doctrine of Reasonable Expectations in insurance law has been decided in this State. Respondent cites three United States District Court Opinions for the proposition that the Doctrine of Reasonable Expectations has not been adopted by the courts. However, Respondent can cite no South Carolina Supreme Court decisions or Court of Appeals decisions which find that the Doctrine of Reasonable Expectations is not applicable. The only case that considers the doctrine is *Allstate Ins. Co. v. Mangum*, 299 S.C. 226, 383 S.E.2d 464 (Ct.App. 1989) which was addressed in Appellant's primary brief. Any statements in *Mangum* are clearly *dicta* in light of the Court of Appeals footnote in that case which stated that the appealed order "did not address the doctrine of reasonable expectations." Further, the only other case which even mentions the doctrine of reasonable expectations is *Ex parte United Serv. Auto. Ass'n*, 365 S.C. 50, 614 S.E.2d 652 (S.C. Ct. App. 2005). In that case, this Court mentions in passing the Doctrine of Reasonable Expectations, but makes no ruling.

It is clear that despite what Respondent may say its brief, the Doctrine of Reasonable Expectations has never been ruled on by a court in this State, much less the South Carolina Supreme Court. Appellant, without providing additional argument here on the Doctrine of Reasonable expectations directs the Court to Sections III and IV of his Initial Brief regarding the numerous other state courts which have adopted the Doctrine of Reasonable Expectation.

III. Appellant's "household resident" argument is preserved for review.

Respondent argues that Appellant's "household resident" argument is not preserved for review. Appellant points to the Order Granting Defendant's Motion for Summary Judgment wherein the Court stated:

Plaintiff further asserts a second theory under which he claims entitlement to underinsured motorist coverage from the policy, arguing that because Plaintiff's name is listed under the section "Drivers and Household Residents" of the policy declarations, he is therefore within the plain meaning of the term "named insured"

The Court further noted in ruling on this exception that there was no coverage because Plaintiff was simply in the same situation as the plaintiff in *Ex parte United Servs. Auto. Ass'n.*, 365 S.C.50, 614 S.E.2d 652 (S.C. Ct.App. 2005) wherein he was listed as an operator. Thus the lower court reasoned that if an operator was not covered neither would a driver and/or household resident be covered.

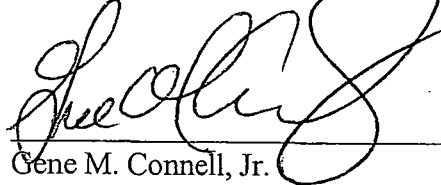
Here, as has been stated before, it is obvious that Appellant was more than just a mere operator. Appellant was the father of the insured's child, Appellant supported the insured and the child, Appellant had paid for the insurance, Appellant and insured lived together as husband and wife. Under these unique circumstances, and because the term "household resident" is not defined in the policy, Appellant is entitled to coverage because Appellant was more than just a stranger. He was the father of the insured's child and they lived together in a family unit. Accordingly, it makes no sense to argue that Appellant was neither a relative by blood nor by marriage, since Appellant had a special relationship with the insured because they had a child together and lived together.

CONCLUSION

For these reasons, this Court should hold that the trial court erred and that Appellant is entitled to underinsured motorist benefits under the policy.

Respectfully submitted,

KELAHHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellant

March 26, 2010
Surfside Beach, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Presiding Judge

CASE NO. 07-CP-26-5890

JOSHUA BELL Appellant

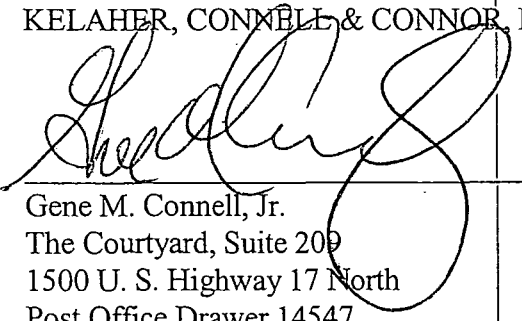
vs.

PROGRESSIVE DIRECT INSURANCE COMPANY Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Reply Brief complies with Rule
211(b), SCACR.

KELAHER, CONNELL & CONNOR, P.C.


Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellant

March 26, 2010
Surfside Beach, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Presiding Judge

CASE NO. 07-CP-26-5890

JOSHUA BELL Appellant

vs.

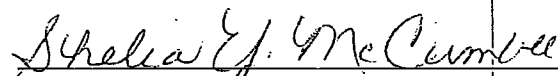
PROGRESSIVE DIRECT INSURANCE COMPANY Respondent

PROOF OF SERVICE

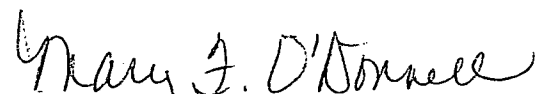
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served the **Final Reply Brief of Appellant** on the Respondent, through its attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

J.R. Murphy, Esquire
Murphy & Grantland, PA
P. O. Box 6648
Columbia, SC 29260

DATE OF MAILING: March 26, 2010


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 26th day of March, 2010.


Notary Public for South Carolina
My Commission Expires: 6/1/16

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Presiding Judge

RECEIVED

AUG -- 9 2012

Opinion No. 2011-UP-242 Filed May 24, 2011
Withdrawn, Substituted and Refiled June 23, 2011

S.C. Supreme Court

JOSHUA BELL Petitioner

vs.

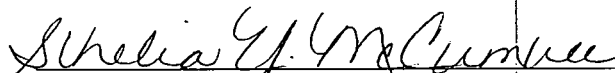
PROGRESSIVE DIRECT INSURANCE COMPANY Respondent

PROOF OF SERVICE

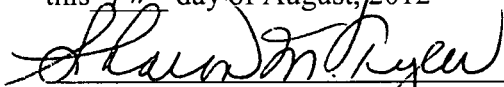
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., Attorneys at Law, and that she has served the **Appendix** on the Respondent, through its attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

J.R. Murphy, Esquire
Murphy & Grantland, PA
P. O. Box 6648
Columbia, SC 29260

DATE OF MAILING: August 7, 2012


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 7th day of August, 2012



Notary Public for South Carolina

My Commission Expires: 2-25-19