THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-000788

Juan Michael Ramirez, ... Appellant,

v.

Progressive Northern Insurance Company.....Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

DID THE TRIAL COURT PROPERLY FIND THAT THE RESPONDENT OWED APPELLANT NO FURTHER OBLIGATIONS UNDER ITS POLICY AND WAS ENTITLED TO JUDGMENT ON THE PLEADINGS IN THIS STACKING CASE?

STATEMENT OF THE CASE

Appellant filed an action August 4, 2014, alleging breach of contract and seeking a determination that appellant was entitled to the full amount of underinsured motorist ("UIM") coverage available under appellant's automobile insurance policy. Respondent filed an answer, counterclaim, motion to strike and motion to dismiss the breach of contract cause of action. Appellant filed a reply to respondent's counterclaim and respondent thereafter filed a motion for judgment on the pleadings.

A hearing was held on February 2, 2015, in Laurens County on all of the outstanding motions. On March 17, 2015, the circuit court granted respondent's motion for judgment on the pleadings and ruled that the other outstanding motions were rendered moot by the order. Appellant did not seek reconsideration of that order and filed a notice of appeal.

FACTS

The facts of this stacking case are not in dispute. On April 11, 2013, appellant was involved in a motor vehicle accident in which he was a passenger in a vehicle being driven and owned by John S. Bryan, Jr., in which Mr. Bryan was at fault. State Farm provided liability coverage in the amount of $25,000 on the Bryan vehicle which did not include any UIM coverage. At the time of the accident, appellant owned a policy of insurance through Bristol West covering his personal vehicle that provided $25,000 in UIM coverage. Appellant also qualified as an insured under his father's policy, issued by

State Farm, as a resident relative of the household, a policy which provided $25,000 in UIM coverage. Finally, appellant qualified as an insured under his mother's personal policy, issued by respondent, as a resident relative of her household. Respondent's policy also provided $25,000 in UIM coverage.

Appellant recovered liability proceeds in the amount of $25,000 from Mr. Bryan's liability carrier, State Farm, and proceeded to attempt to collect UIM benefits from the three other policies. Appellant received the full amount of coverage from the State Farm and Bristol West policies but respondent denied the appellant's request for payment of the UIM coverage under its policy because appellant was not a Class I insured for stacking purposes and therefore could not stack the coverages on the three policies. Specifically, appellant was a Class II insured because he did not "have" a vehicle involved in the accident.

Since the appellant was only entitled to one UIM coverage as a Class II insured who did not have a vehicle involved in the accident, respondent took the position that the most it would be entitled to contribute would be its pro rata share among the three policies of one-third or $8,333.33. Respondent offered to pay that amount which was accepted by the appellant who signed a limited release reserving his right to litigate the issue of whether he was entitled to the remainder of the UIM coverage.

ARGUMENT

Under well established South Carolina law, an insured can only stack UIM coverage if he is a Class I insured which has been defined both by statute and our courts as an insured who has a vehicle involved in the accident. *Garris v. Cincinnati Ins. Co.*, 280 S.C. 149, 311 S.E.2d 723 (1984); *Fireman's Ins. Co. of Newark, New Jersey v. State*

Farm Mut. Auto. Ins. Co., 295 S.C. 538, 370 S.E.2d 85 (1993); S.C. Code Ann. § 38-77-160 ("[i]f 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") (emphasis added); *Brown v. Continental Ins. Co.* 315 S.C. 393, 434 S.E.2d 270 (1993) ("[the statutory] language clearly restricts stacking by providing for coverage from 'any one' vehicle").

Based on the undisputed facts, the plaintiff was not a Class I insured at the time of the accident and is thus only entitled to UIM coverage from one of the three policies available to him. The plaintiff has already recovered more than the amount which he was legally entitled to recover under South Carolina law and thus Progressive owed no further obligations under the policy.

The appellant is taking the unfounded position that his attempt to recover from all three policies is not stacking when in fact that is exactly what it is. The appellant is attempting to interpret the clear language in S.C. Code Ann. § 38-77-160 in a way that the language has never before been construed. That section, which has been construed over and over by our appellate courts, provides that if none of the insured or named insured's vehicles were involved in the accident (which they were not), then "coverage is available only to the extent of coverage on any one of the vehicles." *Id.* This section has been construed to mean that when an insured is involved in an accident in which he did not have a vehicle in the accident, he can only get coverage on one vehicle rather than stacking the coverage on multiple vehicles. *See Fireman's Ins. Co.* and *Brown*, *supra*. In this case, appellant has already recovered UIM on two of the vehicles where there was UIM coverage, his own vehicle and his father's vehicle. He is therefore not entitled to

coverage under respondent's policy.

Not only is appellant ignoring the plain language of the statute in making a "public policy" argument, he is also ignoring years of South Carolina case law construing that very section. Generally speaking, in South Carolina, an insured is only entitled to stack UIM or UM coverages from multiple policies ("inter-policy stacking") or multiple vehicles within the same policy ("intra-policy stacking") if the insured is a Class I insured. A Class I insured has been defined as a named insured or resident relative who has a vehicle involved in the accident. A Class II insured is an insured who is a named insured or resident relative who does not have a vehicle involved in the accident. Those insureds are not entitled to stack multiple coverages as evidenced by the clear statutory language and the cases cited by the appellant in his brief.

The appellant seems to ignore that inter-policy and intra-policy stacking are viewed identically and are indistinguishable for stacking purposes. The fact that appellant qualified as an insured under three separate policies insuring three separate vehicles, rather than a single policy covering three vehicles, makes no difference. He is a Class II insured under South Carolina law and was only entitled to coverage on one of the vehicles insured under those three policies, which he has already received.

Finally, appellant argues that there were issues of fact raised in the pleadings that precluded judgment on the pleadings. It should first be noted that this argument was never raised at the hearing in front of the circuit court and the appellant did not raise the issue in a subsequent motion to alter or amend the judgment so this issue is not preserved for appellate review. *Holy Loch Distribs, Inc. v. Hitchcock*, 340 S.C. 20, 531 S.E.2d 282 (2000). Further, counsel for the appellant at the hearing admitted that the facts were not

in dispute and that the trial court had enough to rule on. (R. p. 56, lines 8-23) (Transcript p. 34, lines 8-23).

Regardless, this argument is without merit. All of the relevant facts were admitted by the parties in their pleadings. Respondent did not dispute any facts in the appellant's complaint, only the ultimate conclusion to be derived from those facts. Respondent did not rely on any policy provision, but on clear South Carolina law that prevents the appellant from stacking. The appellant makes this argument even more clear in his brief by citing *Jackson v. State Farm Mut. Auto. Ins. Co.*, 288 S.C. 335, 342 S.E.2d 603 (1986), for the proposition that an insured can stack policies unless it is limited by statute, which it is in this case. The parties did not dispute that the policy existed and who the named insured was under that policy and whose vehicle it insured and the amount of coverage on that policy. No specific policy language was relied on by respondent because stacking in this situation is prohibited by statute and South Carolina case law.

CONCLUSION

The Order of August March 12, 2015 granting respondent's motion for judgment on the pleadings should be affirmed.

Respectfully submitted,

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September 30, 2015

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Bradley L. Lanford, attorney for Respondent, do hereby certify that I have served on this 1st day of October 2015, a copy of the Final Brief of Respondent upon counsel for Appellant by delivering via U.S. Mail, first class postage pre-paid, to said counsel at the following address:

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October 1, 2015