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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

APR 28 2016

SC Court of Appeals

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2011-CP-32-04981
Appellate Case No. 2014-000671

Mike Russell, Respondent,

v.

Randolph Gill and Pennsylvania Life
Insurance Company, Defendants,

Of Which Pennsylvania Life Insurance
Company is Appellant.

PETITION FOR REHEARING

S. Jahue Moore
John C. Bradley, Jr.
R. Nick Riley, Jr.
MOORE TAYLOR LAW FIRM, P.A.
1700 Sunset Boulevard
West Columbia, South Carolina 29169
803-796-9160

Attorneys for Respondent

Pursuant to Rule 221 and Rule 240, SCACR, Respondent Mike Russell files this Petition for Rehearing with respect to this Court's decision in *Mike Russell v. Randolph Gill and Pennsylvania Life Insurance Company*, 2016-UP-177 (S.C. Ct. App., filed April 13, 2016). Respondent suggests that the Court overlooked and misapprehended the following points in reversing the decision of the Trial Court.

1. The Court's decision misapprehended, overlooked and ignored the fact that the Appellant presented no evidence of delivery of the application or policy to Respondent. (R. p. 99, ll. 14-23; p. 103, ll. 21-23; p. 107, l. 18 – p. 108, l. 1; p. 112, l. 20 – p. 133, l. 1).
2. The Court's decision misapprehended, overlooked and/or ignored the fact that the Respondent never received a copy of the policy of insurance because Appellant never delivered one to Respondent. (R. p. 137, ll. 11-16; p. 138, ll. 9-21; p. 139, ll. 6-10; p. 140, ll. 7-11; p. 141, ll. 14-17; p. 146, ll. 2-21; p. 149, l. 3; p. 152, ll.10-17; p. 154, ll. 18-21; p. 353, ll. 15-18; p. 354, ll. 6-25; p. 417; ll. 8-9; p. 418, ll. 5-8).
3. The Court's decision misapprehended and overlooked evidence that neither Respondent nor his wife had any knowledge of the existence of the exclusion relied upon by Appellant. (R. p. 418, ll. 9-11; 20-25).
4. The Court's decision misapprehended, overlooked and/or ignored the fact that Respondent was never provided with any information regarding any alleged "intoxication exclusion." (R. p. 354, ll. 15-18).
5. The Court's decision misapprehended, overlooked and/or ignored the fact that Appellant presented no testimony or evidence that the policy was ever delivered

to Respondent. (R. p. 99, ll. 14-23; p. 103, ll. 21-23; p. 107, l. 18 – p. 108, l. 1; p. 112, l. 20 – p. 113, l. 1; p. 137, ll. 11-16; p. 138, ll. 9-21; p. 139, ll. 6-10; p. 140, ll. 7-11; p. 141, ll. 14-17; p. 146, ll. 2-21; p. 149, l. 3; p. 152, ll. 10-17; p. 154, ll. 18-21).

6. The Court's Opinion misconstrues and misapplies South Carolina Code Section 38-71-30 to the facts of this case. The Trial Court correctly interpreted Section 38-71-30 and found and ruled that as a result of Appellant's clear (and admitted) violation of South Carolina Code Section 38-71-30, it was not entitled to enforce any intoxication exclusion contained in the policy. The Trial Court's Order was correct and should have been affirmed by this Court.
7. Judge Griffith correctly applied the plain and clear meaning of South Carolina Code Section 38-71-30 to the facts of this case. South Carolina law clearly and unequivocally requires that the insurer deliver a copy of both the application and policy to the insured in order that the "whole contract appears in the application and policy of insurance." Clearly, under this statute, an insurer is required to deliver both the application and the actual policy of insurance to its insured. Appellant presented no evidence at trial that it ever delivered a copy of the policy to Respondent. Therefore, under South Carolina law, it cannot rely on any intoxication exclusion allegedly contained in its policy (which it never delivered to Respondent) to defeat coverage in this case. This Court's opinion misapprehended, misconstrued and misapplied this Statute to the facts of this case in ruling otherwise and in reversing the Trial Court's opinion.

8. The Court's decision reversing the Trial Court misapprehends and violates clear legislative intent for the insured to be provided with all relevant documents which form the contract of insurance. Failure to provide an insured with all the necessary documents precludes an insurer from enforcing a policy provision contained in the undelivered policy against its insured. It would be a ridiculous construction to interpret this statute in such a way that an insurer has to provide a copy of the application, but may withhold from its insured a copy of the actual policy.

For reasons stated above, this Court should grant this Petition, withdraw its prior Opinion, and issue a new opinion affirming the Trial Court's decision and Order.

Respectfully submitted,

By: 

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West Columbia, SC
April 28, 2016

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Mike Russell, Respondent,

v.

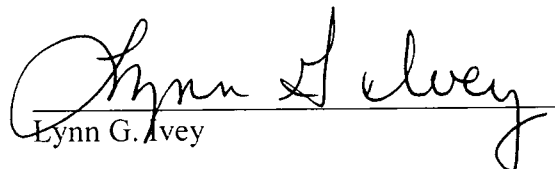
Randolph Gill and Pennsylvania Life
Insurance Company, Defendants,

Of Which Pennsylvania Life Insurance
Company is Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Petition for Rehearing on Counsel of Record by depositing a copy of same in the United States Mail, postage prepaid, on April 28, 2016, addressed to the attorneys of record as follows:

D. Larry Kristink
Elizabeth Herlong Brogdon
Michael J. Anzelmo
Kristen E. Horne
1320 Main Street, 17th Floor
Columbia, SC 29201


Lynn G. Avey

West Columbia, South Carolina
April 28, 2016

April 28, 2016

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

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SC Court of Appeals

RE: Mike Russell vs. Randolph Gill and Pennsylvania Life Insurance
Company
Civil Action No.: 2011-CP-32-04981
Appellate Case No.: 2014-000671

S. Jahue Moore*
J. Mark Taylor*
C. Vance Stricklin, Jr.
James Edward Bradley†
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Melissa K. Moore
William B. Fortino
Ralph Nichols Riley, Jr.
Amber Cary Fulmer
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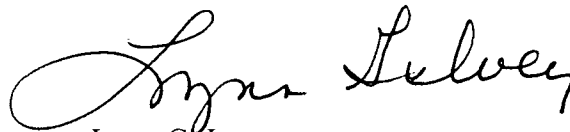
Robert D. Hazel
OF COUNSEL
Billy C. Coleman
RETIRED

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of the *Petition for Rehearing* in reference to this case. I have also enclosed a proof of service of this document upon counsel for Appellants and a check in the amount of \$25.00 for filing this motion. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Respectfully Yours,



Lynn G. Ivey
Assistant to John C. Bradley, Jr.

cc: D. Larry Kristinik
Elizabeth Herlong Brogdon
Michael J. Anzelmo
Kristen E. Horne