

The State of South Carolina In The Supreme Court

APPEAL FROM LAURENS COUNTY

Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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S.C. SUPREME COURT

Case No. 2015-000788

JUAN MICHAEL RAMIREZ,

Petitioner,
~~Appellant,~~

v.

PROGRESSIVE NORTHERN INSURANCE COMPANY, Respondent.

Petition for Writ of Certiorari

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Attorney for ~~Appellant~~

Petitioner

Pursuant to Rule 242 of the South Carolina Appellate Court Rules Appellant respectfully moves for issuance of a writ of certiorari in this matter. No hearing was held on this appeal, and the Court's one-paragraph *per curiam* Order conflicts with prior decisions of the Supreme Court. Additionally, the Court of Appeals Order denying Petitioner statutorily-mandated automobile underinsured motorist coverage (UIM) created a novel question of law. *Ramirez v. Progressive Northern Ins. Co.* is a critically important public policy case because the June 8, 2016, Order affirming the Circuit Court's March 17, 2015, Order without a hearing eliminated or limited the statutorily-mandated automobile UIM coverage of thousands of South Carolina families.

Appellant filed a Petition for Rehearing en banc before the South Carolina Court of Appeals. Counsel certifies that on October 27, 2016, that petition was rejected. The Order rejecting the petition for rehearing was a final order of the South Carolina Court of Appeals.

Question for Review

Does Respondent's automobile insurance policy, which seeks to reduce portable UIM coverage to less than the statutory minimum limits of \$25,000, violate South Carolina public policy.

Brief Statement of the Case

On August 4, 2014, Appellant Juan Michael Ramirez (hereinafter "Ramirez") filed a Summons and Complaint seeking declaratory judgment and asserting a breach of contract claim against Respondent Progressive Northern Insurance Company (hereinafter "Progressive Insurance Company"), an automobile insurance company. Ramirez claimed he was entitled to recover the full, declared, underinsured motorist (UIM) coverage amount (\$25,000) on Respondent's policy. Respondent paid Ramirez only \$8,333.33. (R. pp. 7-13)

The basis of Ramirez action was a policy Respondent sold to Ramirez's mother. The policy declared UIM coverage limits of \$25,000 for one automobile. (R. pp. 9, 14) Respondent was a resident relative and was covered by the policy. Ramirez was also insured by two other automobile UIM insurance policies at the residence. His own policy with Bristol West Insurance Services, and a State Farm Insurance Company policy issued to his step father. (R. pp. 9, 14) Both Bristol West and

State Farm tendered the UIM policy limits. Respondent, however, asserted a policy defense and refused to tender the declared \$25,000 UIM coverage. Instead, on March 6, 2014, Respondent tendered \$8,333.33, a "pro-rated portion" of Respondent limits. (R. pp. 9, 16, and 19-20) Respondent retained the remaining \$16,666.67 of its declared \$25,000 UIM coverage.

On September 11, 2014, Respondent filed a Rule 12 Motion for Judgment on the Pleadings. (R. pp. 65-67) On February 2, 2015, the Laurens County Circuit Court heard argument between the parties. (R. pp. 23-64) On March 17, 2015, the Court granted Respondent's Motion for Judgment on the Pleadings. (R. pp. 1-5) On April 13, 2015, Ramirez timely filed his Notice of Appeal. (R. p. 76)

On June 8, 2016, Order affirmed the Circuit Court's March 17, 2015, Order without a hearing. On June 20, 2016, Appellant filed a Motion for Petition for Rehearing en banc. On October 27, 2016, the Petition was rejected by the Court of Appeals.

Neither the trial court nor the Court of Appeals properly applied direct precedent in favor of Ramirez's case. Specifically, in *Nakatsu v. Encompass Indemnity Co.*, 390 S.C. 172, 181, 700 S.E.2d 283 (2010), this Court held that, "[P]ortability refers to a person's ability to use his coverage on a vehicle not involved in an accident as a basis for recovery of damages sustained in the accident."

As many other of this Court's decisions specifically hold, South Carolina requires that all carriers offer certain minimum limits of UIM coverage, \$25,000, on each policy issued.

Automobile insurance carriers *shall offer*, at the option of the insured, uninsured motorist coverage up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. Such carriers *shall also offer*, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute.

S.C. Code Ann. § 38-77-160 (emphasis added); see e.g., *Ferguson v. State Farm Mut. Ins. Co.*, 261 S.C. 96, 100, 198 S.E.2d 522 (1973); *Garris v. Cincinnati Ins. Co.*, 280 S.C. 149, 311 S.E.2d 723 (1984); *Brown v. Continental Ins. Co.*, 315 S.C. 393, 434 S.E.2d 270 (1993).

The panel overlooked that statute and case law. Its ruling will deprive South Carolina families of the statutorily required UIM coverage.

Petitioner suggests that his Petition for a Writ of Certiorari ought to be granted to protect the South Carolina families negatively impacted by the Order.

November 2, 2016



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Proof of Service

I certify that I have served ~~Appellant~~ ^{*Petitioner*}'s Petition for Writ of Certiorari on Progressive Northern Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on November 14, 2016 addressed to its attorney of record, Bradley L. Lanford, Post Office Box 8057, Columbia, South Carolina 29202.

November 14, 2016



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