

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

Appendix

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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.

RECORD ON APPEAL

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SC Court of Appeals

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LYNN W. LANCASTER

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS)

2015 MAR 11 A 10:09
CA NO: 2014-CP-30-603

Juan Michael Ramirez,)

Plaintiff,)

LAURENS COUNTY
CLERK OF COURT

ORDER

vs.)

Progressive Northern Insurance Company,)

Defendant.)

This matter came before me on Defendant Progressive Northern Insurance Company's (hereinafter "Progressive") Motion for Judgment on the Pleadings pursuant to Rule 12(c), SCRCP.¹ A hearing was held on February 2, 2015, in Laurens, South Carolina. Present in the courtroom were Edwin L. Turnage on behalf of the Plaintiff, and Bradley L. Lanford on behalf of Progressive. For the reasons set forth below, Progressive's motion is hereby granted and judgment awarded in its favor.

FACTUAL BACKGROUND

The facts of this declaratory judgment action are undisputed as demonstrated by the pleadings as well as the argument of counsel. The plaintiff was involved in a single car accident while a passenger in a vehicle owned by John S. Bryan, Jr. The plaintiff suffered numerous injuries in the accident and incurred substantial medical bills. Mr. Bryan had liability insurance through State Farm with limits of \$25,000. There was no underinsured motorist ("UIM") coverage on the Bryan vehicle. The plaintiff was also a named insured under his own personal automobile policy through Bristol West, which had UIM limits of \$25,000, and he also qualified

¹ Progressive had also filed a Motion to Strike and Motion to Dismiss and the Plaintiff had filed a Motion to Compel. In light of the disposition of Progressive's Motion for Judgment on the Pleadings, I find that the other Motions are rendered moot.

CJ

as an insured under a State Farm policy issued to his father and the subject Progressive policy issued to his mother.

The plaintiff recovered the \$25,000 liability limits from the State Farm policy on the Bryan vehicle and also recovered the \$25,000 UIM limits on his own State Farm policy as well as the Bristol West policy for a total recovery of UIM benefits of \$50,000. The plaintiff made a demand on Progressive for its UIM limits of \$25,000 which Progressive denied because the plaintiff had already received more than one UIM limit from his other policies. Progressive took the position that under South Carolina law the most the plaintiff would be able to recover would be one additional UIM coverage because he did not "have" a vehicle in the accident. Therefore, since there were three applicable policies, the most Progressive would be required to pay under its policy would be its pro rata share of \$25,000 or \$8,333.33. Progressive offered to pay the plaintiff that pro-rated amount in exchange for a partial release allowing the plaintiff to file a declaratory judgment action seeking the additional coverage.

The within action was filed seeking a declaration that Progressive owed its entire UIM policy limit. Progressive answered essentially admitting all of the factual allegations in the complaint and also filed its own counterclaim alleging that the plaintiff was in a non-owned vehicle and seeking a declaration that it owed no more UIM coverage under the policy. The plaintiff admitted Progressive's factual allegations but denied the conclusion to be drawn from those facts. After the close of the pleadings Progressive moved for judgment on the pleadings on the basis that it owed no further obligations on the policy under South Carolina law.

LEGAL STANDARD

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Rule 12(c), SCRPC. A judgment on the pleadings

shall be granted where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in the plaintiff's favor. *Home Builders Ass'n of S. Carolina v. Sch. Dist. No. 2 of Dorchester Cnty.*, 405 S.C. 458, 748 S.E.2d 230 (2013).

DISCUSSION

In South Carolina, an insured is generally allowed to stack UIM coverage on multiple policies or multiple vehicles within a policy when the insured is both a Class I insured, as has been defined both by statute and our courts, and when the insured 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”).

The plaintiff in the within case was a Class I insured under the Progressive policy because he was a resident of his mother’s household and would be a resident relative under the policy despite not being a named insured under the policy. However, the plaintiff was a passenger in a vehicle he did not own and therefore did not “have” a vehicle in the accident, the second requirement to be able to stack multiple UIM coverages.

The plaintiff argued that this is not a stacking case because there was only one vehicle on the Progressive policy. The plaintiff further argued that public policy would favor the payment of the coverage since the plaintiff’s mother paid a premium for the coverage and protecting her family would be part of the reason that coverage was purchased.

In regards to the first argument, even though the plaintiff is attempting to recover from multiple policies rather than multiple vehicles within one policy, he is still attempting to stack multiple coverages. See *Ruppe v. Auto-Owners Ins. Co.*, 329 S.C. 402, 496 S.E.2d 631 (1998) ("Stacking does not depend upon number of automobile insurance policies issued, but on number of additional coverages for which insured has contracted."); ("Portability," as distinguished from stacking, 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.") *Nakatsu v. Encompass Indem. Co.*, 390 S.C. 172, 700 S.E.2d 283 (Ct. App. 2010).

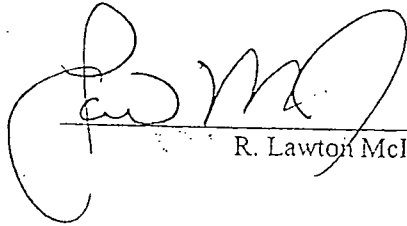
The plaintiff's second argument in regards to public policy is also not persuasive. The limit on stacking that is at issue in this case was specifically enacted by the legislature in S.C. Code Ann. § 38-77-160. If the plaintiff's position were to be adopted it would be in contravention of that statutory section as well as well-settled South Carolina case law. I find that there is no violation of public policy in following the existing statutory and case law.

CONCLUSION

For the reasons stated herein, the Court finds that since the plaintiff did not have a vehicle involved in the accident then he is limited to one UIM coverage which he has already recovered. Therefore, the plaintiff cannot recover any additional coverage from Progressive and Progressive's Motion for Judgment on the Pleadings is GRANTED. Because the Court's ruling on this motion is dispositive of the entire case, it is not necessary to rule on the parties' remaining outstanding motions which are hereby moot.

IT IS SO ORDERED.

3-12, 2015
Anderson, South Carolina


R. Lawton McIntosh

A TRUE COPY OF ORIGINAL
GIVEN BY
Lynn W. Lancaster
Laurens County CCCC & GS

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

LYNN W. LANCASTER

CASE NO. 2014-CP-30-00603

Juan Michael Ramirez,

Progressive Northern Insurance Company,

2015 FEB 19 P 3: 20

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

LAURENS COUNTY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Defendant's Motion to Dismiss and/or Alter Pleadings is granted. Defense counsel [David E. Belton/Bradley Lewis Lanford] to prepare a formal order.

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk:

ORDER INFORMATION

Plaintiff is only one of the three household policies provided with and may not separately collect all three with policies

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

SCRCP Form 4C (03/2013)

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

2-12-15
Date

Page 1

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Edwin L. Turnage

David E. Belton

Bradley Lewis Lanford

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS
CLYNN W. LANCASTER
IN THE COURT OF COMMON PLEAS
170 AUG -4 P 1:06

JUAN MICHAEL RAMIREZ,

LAURENS COUNTY
Plaintiff
COURT OF COMMON PLEAS

Civil Action No. 2014

-CP30-

603

vs.

SUMMONS

PROGRESSIVE NORTHERN INSURANCE
COMPANY,

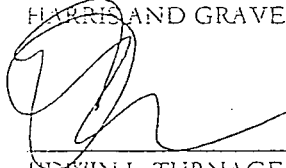
Jury Trial Requested

Defendant.

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office, Greenville, SC, within thirty (30) days after service thereof exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

HARRIS AND GRAVES, P.A.



EDWIN L. TURNAGE

Attorney for Plaintiff

SC Bar No. 12842

P.O. Box 6263

Greenville, SC 29606

(864) 235-1331

eli@harrisgraves.com

Greenville, South Carolina

Dated: 7/31/14

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

LYNN W. LANCASTER

27th AUG - 4

IN THE COURT OF COMMON PLEAS
P 1:06

JUAN MICHAEL RAMIREZ,

Plaintiff,

vs.

PROGRESSIVE NORTHERN INSURANCE
COMPANY,

Defendant.

LAURENS COUNTY
COURT OF COMMON PLEAS

Civil Action No. 2014 -CP30-603

COMPLAINT

Jury Trial Requested

The Plaintiff would respectfully show unto the Court that:

PARTIES

1. Plaintiff Juan Michael Ramirez ("Michael") is a citizen and resident of Laurens County, South Carolina.
2. Defendant, Progressive Northern Insurance Company, doing business as Progressive Direct, is a Wisconsin insurance company that is licensed to sell insurance in South Carolina, and which owns property in Laurens County, South Carolina.
3. Defendant markets itself to South Carolina consumers with an actor who calls herself "Flo." Using this character, Defendant seeks to contrast itself as a cool insurance company while portraying other insurance company salesmen as sticks in the mud.
4. As of December 2007, Defendant's Income Statement indicated Defendant owned nearly \$5 Billion Dollars of assets. It derived more than \$4 Billion in premiums during 2007. Defendant's net income during 2007 was more than \$357 Million Dollars. Since 2007, the company assets and profits have likely soared.
5. Defendant sells thousands of automobile insurance policies to South Carolina citizens across the State.

6. Defendant derives substantial income from South Carolina citizens by selling its automobile insurance policies to South Carolina citizens.

7. Defendant makes a large profit here in South Carolina by selling automobile insurance.

DECLARATORY JUDGMENT

8. The allegations of paragraphs 1 through 7 are incorporated by reference.

9. On or about April 11, 2013, Michael lived with his mother Kandi Ramirez ("Kandi") and his step father, Paul Eclavea ("Paul"). Michael was a resident relative of the household.

10. On or before April 11, 2013, Defendant issued an automobile insurance policy to Michael's mother, Kandi Ramirez ("Kandi"). Defendant assigned the Policy Number 33143869-1. The policy was issued as a minimum limits policy that included underinsured motorist coverage limits of \$25,000.

11. Defendant's policy provided coverage for one covered automobile. In other words, Policy Number 33143869-1 did not provide coverage for any other vehicles on the policy.

12. Michael owned a motor vehicle and his automobile insurance policy was issued by Bristol West Insurance Services, Inc. of Florida. It was assigned Policy Number G00 5778802 00. Policy Number G00 5778802 00 provided for underinsured motorist coverage limits of \$25,000.

13. Michael's step father, Paul, also had insured vehicles. His automobile insurance policy was issued by State Farm Insurance Company and was assigned Policy Number 467293440G ("Paul's State Farm policy"). Policy Number 467293440G provided for underinsured motorist coverage limits of \$25,000.

14. On or about April 11, 2013, Michael was a passenger in a 2001 Chevrolet that was traveling south on Deadfall Road, West, at approximately 60 miles per hour. At that time and place, John S. Bryan, Jr. ("John"), who was driving the Chevrolet, lost control of the Chevrolet and drove it off the right side of the road into a trees.

15. John's Chevrolet was insured by State Farm Automobile Insurance (John's State Farm policy) under a \$25,000 liability insurance policy. John's policy did not include coverage for underinsured motorist.



16. In the collision, Michael sustained a comminuted obliquely oriented right humerus (upper arm) fracture at the distal humeral diaphysis with moderate angulation. Michael also sustained a bloody superior scalp abrasion. On April 11, 2013, he underwent a closed reduction of the humerus fracture and was fitted with a splint. On April 18, 2013, Michael underwent an open reduction internal fixation of right humeral shaft fracture and exploration of the radial nerve operation. Hardware that was inserted permanently into Michael's right arm. He has a permanent impairment to his right hand and a permanent scar on his right upper extremity.
17. In the end, Michael incurred medical expenses of approximately \$65,169.18 for treatment of injuries proximately caused by the alleged negligence of John Bryan.
18. Michael missed work. He lost approximately \$3,407.95 in wages. He endured pain and suffering, loss of enjoyment of life, anxiety, mental distress, and he has a permanent impairment and permanent scarring.
19. On or about September 12, 2013, Michael made a claim against John's liability insurance company, State Farm.
20. On or about September 26, 2013, State Farm offered to settle the liability claim against John for payment of the policy limits (\$25,000) in exchange for a Covenant Not to Execute Against John's Personal Assets. Michael accepted the offer.
21. On or about October 21, 2013, Michael issued a claim for underinsured motorist coverage against his Bristol West insurance policy.
22. On or about October 30, 2013, Bristol West tendered its policy limits of \$25,000 underinsured motorist coverage to Michael.
23. On or about November 21, 2013, Michael made underinsured motorist coverage claims against Paul's State Farm policy and Kandli's Progresssive policy.
24. On or about December 16, 2013, State Farm tendered its policy limits for Paul's underinsured motorist insurance coverage of \$25,000.
25. Defendant, however, asserted policy defenses and refused to tender its \$25,000 underinsured motorist insurance policy limits. Instead, on about March 6, 2013, Defendant narrowly interpreted

the coverage on Kandi's policy and tendered only \$8,333.33, which it alleged were the policy underinsured motorist limits.

26. Defendant also asserts that its narrow interpretation of its policy limits provisions applies to uninsured motorist coverage.

27. The South Carolina Legislature has mandated that all automobile insurance policies issued here include a minimum of coverages and that such coverage be offered to all policy-holders in the State of South Carolina in the amount of \$25,000 on each policy. See S.C. Code Ann. § 38-77-140

28. The South Carolina Legislature has mandated that no automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38-77-140 (i.e., \$25,000). See S.C. Code Ann. § 38-77-150.

29. The South Carolina Legislature has mandated that 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. If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. 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. Benefits paid pursuant to this section are not subject to subrogation and assignment. See S.C. Code Ann. § 38-77-160.

30. The Legislature also directed the Department of Insurance (DOI) to issue proper forms to comply with this obligation. See S.C. Code Ann. § 38-77-350. This mandate was executed by Bulletin Number 2006-03. In this Bulletin, the DOI confirmed that all policies must provide at least

\$25,000 of underinsured motorist coverage. "[Y]our insurance company is required to offer, optional underinsured motorist coverage in various limits up to the limits of liability coverage you have purchased."

31. In accordance with S.C. Code Ann. § 38-77-350, Defendant issued a form to Kandi when she took out her policy. The form was checked and suggests Kandi paid the additional premium for \$25,000 of underinsured motorist coverage.

32. Defendant's policy language also confirms it provided Kandi and Michael with \$25,000 on its policy issued to Michael's mother, Kandi.

33. Even assuming Defendant's policy could be read as limiting the statutorily required minimum limits, which is disputed, then Defendant's policy violates South Carolina public policy and it must be reformed to comply with the public policy of the Great State of South Carolina.

34. Defendant's improperly narrow interpretation of its uninsured and underinsured motorist coverage provisions will negatively impact coverage for tens of thousands of South Carolina citizens.

35. For the above-reasons, Michael is entitled to a Declaratory Judgment holding that Defendant's underinsured motorist coverage on the policy it issued to Kandi was for a total amount of \$25,000, and that a judgment for Michael stating that the remaining balance on the policy limits (\$16,666.67) is owed and due as required by South Carolina public policy.

BREACH OF CONTRACT

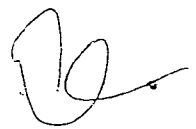
36. The allegations of paragraphs 1 through 35 are incorporated by reference.

37. Michael is a third party beneficiary of Kandi's policy.

38. Defendant substantially breached its contract with Kandi and Michael by refusing to pay the policy limits.

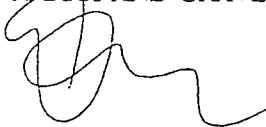
39. Michael was damaged by Defendant's breach of contract in the liquidated amount of \$16,666.67.

40. Michael is entitled to a judgment against Defendant for breach of contract in the amount of \$16,666.67.



WHEREFORE, the Plaintiff prays judgment against the Defendant for Declaratory Relief and actual and damages in an appropriate amount, the costs of this action, pre-judgment interest in the liquidated amount of \$16,666.67 (from the date of the breach), and for such other and further relief as the Court may deem just and proper.

HARRIS AND GRAVES, P.A.



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Attorney for Plaintiff

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elt@harrisgraves.com

Greenville, South Carolina

Dated: 7/31/14

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	C/A NO.: 2014-CP-30-603
	)	
Juan Michael Ramirez,	)	
	)	
Plaintiff,	)	ANSWER
	)	
vs.	)	
	)	
Progressive Northern Insurance Company	)	
	)	
Defendant.	)	

Defendant Progressive Northern Insurance Company (hereinafter "Progressive") answers plaintiff's complaint, subject to a Motion to Dismiss and Motion to Strike being filed contemporaneously herewith, as follows:

FOR A FIRST DEFENSE

1. Progressive denies each and every allegation of the complaint not hereinafter specifically admitted, qualified or explained.
2. Admits the allegations of paragraph one (1) of the Complaint.
3. Denies the allegations of paragraph two (2) of the Complaint.
4. Progressive denies the allegations of paragraphs three (3), four (4), five (5), six (6) and seven (7) of the Complaint, also the subject of a separate Motion to Strike being filed contemporaneously with this Answer.
5. Answering the allegations of paragraph eight (8) of the Complaint, Progressive incorporates and realleges the preceding paragraphs of its answer.
6. Progressive admits the allegations of paragraphs nine (9) through twenty-five (24) of the Complaint.
7. Answering the allegations of paragraph twenty-five (25) of the Complaint,

1



Progressive admits only that it tendered a pro-rated portion of the underinsured motorist coverage available under the Ramirez policy. The remaining allegations of paragraph twenty-five (25) are denied.

8. Progressive denies the allegations of paragraph twenty-six (26) of the Complaint as stated, also the subject of a separate Motion to Strike being filed contemporaneously with this Answer.

9. Answering paragraphs twenty-seven (27) and twenty-eight (28) of the Complaint, Progressive would crave reference to the statutes cited in the respective paragraphs, but denies that the allegations have any applicability to the within lawsuit and as such are the subject of a Motion to Strike being filed contemporaneously with this Answer.

10. Answering paragraph twenty-nine (29) of the Complaint, Progressive would crave reference to the South Carolina statute cited in the paragraph.

11. Answering paragraph thirty (30) of the Complaint, Progressive would crave reference to the South Carolina statute and Department of Insurance Bulletin cited in the paragraph. Progressive would further assert that this paragraph is not pertinent to this lawsuit and as such has filed a Motion to Strike contemporaneously with this Answer.

12. Admits the allegations of paragraph thirty-one (31) of the Complaint.

13. Answering paragraph thirty-two (32) of the Complaint, Progressive would crave reference to said policy.

14. Denies the allegations of paragraph thirty-three (33) of the Complaint.

15. Denies the allegations of paragraph thirty-four (34) of the Complaint, also the subject of a Motion to Strike being filed contemporaneously with this Answer.

16. Denies the allegations of paragraph thirty-five (35) of the Complaint.

17. Answering the allegations of paragraph thirty-six (36) of the Complaint,

Progressive incorporates and realleges the preceding paragraphs of its answer.

18. Denies the allegations of paragraphs thirty-seven (37) through forty (40) of the Complaint which are also the subject of a Motion to Dismiss being filed contemporaneously with this Answer.

19. Denies the allegations of the final paragraph of the Complaint beginning with the word "WHEREFORE", also the subject of a Motion to Strike being filed contemporaneously with this Answer.

FOR A SECOND DEFENSE
(Accord and Partial Satisfaction)

20. In exchange for the payment of \$8,333.33 from Progressive, the plaintiff signed a Release of Contractual Liability, in which the plaintiff reserved only the right to seek a determination from a South Carolina court as to whether the plaintiff is entitled to the full amount of the underinsured motorist coverage. A copy of the Release is attached hereto as Exhibit "A" to the Answer.

21. Despite that clear contractual limitation, the plaintiff has alleged Breach of Contract and is also seeking pre-judgment interest in contravention of the agreed upon Release.

22. The determination of whether there is any additional underinsured motorist coverage owed to the plaintiff is a legal question for the court.

23. Therefore, Progressive requests that the plaintiff's cause of action for Breach of Contract be stricken from the Complaint and dismissed, that the plaintiff's demand for prejudgment interest be stricken, and that the case be transferred to the non-jury docket.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM
(Declaratory Judgment)

24. The plaintiff was a passenger in a vehicle that was not owned by him and therefore he did not have a vehicle involved in the accident which is a prerequisite to stacking

underinsured motorist coverages in South Carolina. Fireman's Ins. Co. v. State Farm Mut. Auto. Ins. Co., 370 S.E.2d 85 (S.C. 1988).

25. Although the plaintiff would be deemed a Class I insured under the Progressive policy as a resident relative, he was not a Class I insured for stacking purposes. See S.C. Code Ann. § 38-77-160; Fireman's, supra; South Carolina Farm Bureau Mut. Ins. Co. v. Mooneyham, 405 S.E.2d 396, 397, (S.C. 1991).

26. Since the plaintiff was a Class II insured for stacking purposes, he would only be entitled to one additional underinsured motorist coverage from the various policies under which he was an insured. All three of those policies had limits of \$25,000, which would be the most the plaintiff would be entitled to from any of the three policies combined.

27. Despite this clear stacking limitation, the plaintiff has received the full amount of underinsured motorist coverage from both Bristol West and State Farm, or \$50,000, despite being entitled under South Carolina stacking law to only \$25,000.

28. The most the plaintiff would ever be entitled to under the Progressive policy would be one-third of \$25,000 or \$8,333.33 since there were three applicable policies, that amount which has previously been tendered to and accepted by the plaintiff in exchange for a Release of Contractual Liability.

29. The plaintiff has been fully compensated under South Carolina law, and is thus not entitled to any additional coverage from Progressive.

30. Progressive therefore requests an Order that the plaintiff is entitled to no additional underinsured motorist coverage under the policy.

WHEREFORE, having fully answered the complaint, subject to a pending Motion to Strike and Motion to Dismiss, Progressive prays for the dismissal of same, for a declaration that the plaintiff has been fully compensated under South Carolina law and is not entitled to any

further underinsured motorist coverage from Progressive, for costs, for the case to be transferred to the nonjury docket, and for such other and further relief that the Court deems just and proper.

Bradley L. Lanford
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September 8, 2014

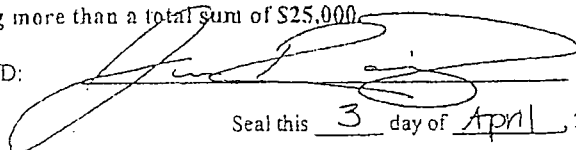
RELEASE OF CONTRACTUAL LIABILITY

For the sole consideration of Eight Thousand, Three Hundred, Thirty-Three Dollars and 33/100 cents, representing the pro rata underinsured motorist coverage policy limits for policy number 33143869-1, after taking into account other household policies, the receipt of which is hereby acknowledged, I, Juan Michael Ramirez, do hereby release and discharge Progressive Northern Insurance Company from any and all liability under the uninsured and underinsured motorist provisions, collision/property damage provision, and medical payment provision of policy number 33143869-1 on account of personal injuries and/or property damage resulting, or to result, from an automobile accident occurring on April 11, 2013 at or near Deadfall Road, Greenwood, South Carolina. This instrument is intended as a release of contractual liability and not a release of tort liability of any person causing the accident. In consideration of the payment of the sum, the undersigned further agrees to indemnify Progressive Northern Insurance Company and save them harmless from any and all further liability, loss, damage, claims of subrogation and expense, liens, arising because of any injuries and damages, and, if necessary in order to save them harmless, to satisfy on their behalf and judgment against them arising in any way out of the aforesaid accident.

This conditional release, however, expressly permits Juan Michael Ramirez to file a civil action asking a South Carolina Court to determine whether Ramirez is entitled to the full underinsured motorist coverage policy limits available under this policy, rather than a pro rata apportionment. Should the Court determine in a final judgment that Juan Michael Ramirez is entitled to the full policy limits for underinsured motorist coverage, under policy number 33143869-1, which are Twenty-Five Thousand Dollars, rather

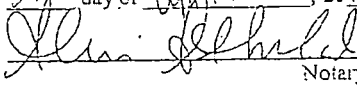


than a pro rata apportionment based on the available household coverage, then Progressive shall then pay Juan Michael Ramirez an additional Sixteen Thousand, Six Hundred, Sixty-Six Dollars and 67/100 Cents. Except as for an Order granting taxable costs, the parties agree that in no case shall Progressive be responsible for paying more than a total sum of \$25,000.

SIGNED: 

Seal this 3 day of April, 2014

Subscribed and sworn to before me, this 3rd day of April, 2014.


Notary Public

My Commission expires: 3/1/2023



LYNN W. LANCASTER

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS

2014 OCT 10 A 10:53

JUAN MICHAEL RAMIREZ,

Plaintiff,

Civil Action No. 2014-CP-30-603
LAURENS COUNTY
CLERK OF COURT

vs.

REPLY

PROGRESSIVE NORTHERN INSURANCE
COMPANY,

Defendant.

TO: THE DEFENDANT ABOVE-NAMED:

Plaintiff hereby replies to Defendant's Counterclaim.

1. Replying to paragraph 24, Plaintiff admits he was a passenger in a vehicle owned by John S. Bryan, Jr., when the collision that is the subject of this lawsuit took place. Plaintiff admits that he is the son of Defendant's insured, and thus, is a statutory insured as a resident relative of his mother's insurance policy with Defendant. Plaintiff denies he is attempting to "stack" coverages on vehicles insured by his mother. There was only one insured vehicle on her policy and the issue of stacking is not relevant here. The remaining allegations of Paragraph 24 are denied.
2. Replying to paragraph 25, Plaintiff admits he was a resident relative under his mother's policy with Defendant, which insured only one vehicle. Plaintiff denies he is attempting to "stack" coverages on vehicles insured by his mother. There was only one insured vehicle on her policy and the issue of stacking is not relevant here. The remaining allegations of Paragraph 25 are denied.
3. Plaintiff denies the allegations of Paragraph 26.
4. Replying to paragraph 27, Plaintiff admits that the two other insurance companies who insured Plaintiff as a resident relative, or as the named insured, have paid their policy limits of \$25,000 each under each of those respective underinsured motorist policies. Both of the other policies complied with South Carolina public policy and have properly interpreted their insurance

coverage to compel payment of the minimum limits of coverage on their respective policies as imposed by the South Carolina Legislature. The remaining allegations of Paragraph 27 are denied.

5. The allegations of Paragraph 28 are denied.
6. The allegations of Paragraph 29 are denied.
7. The allegations of Paragraph 30 are denied.
8. All allegations of Defendant's counterclaim not admitted hereinabove, including but not limited to allegations in the WHEREFORE clause, are denied.

WHEREFORE, having fully answered the Counterclaim of Defendant, Plaintiff requests the Court dismiss the counterclaim, grant the relief sought in the Complaint, and award Plaintiff costs and attorney's fees.

HARRIS AND GRAVES, P.A.



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Greenville, South Carolina

Dated: 10/8/14

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUAN MICHAEL RAMIREZ,

PLAINTIFF,

-VS-

PROGRESSIVE NORTHERN
INSURANCE COMPANY,

DEFENDANT.

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2014-CP-30-00603

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE R. LAWTON MCINTOSH

APPEARANCES:

EDWIN L. TURNAGE, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

BRADLEY L. LANFORD, ESQUIRE
ATTORNEY FOR THE DEFENDANT

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PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

February 2, 2015

2 (WHEREUPON, court convened with all parties
3 present and the following proceedings were had.)

4 THE COURT: Do you have four motions. Is
5 this Ramirez?

6 MR. LANFORD: Yes, sir.

7 MR. TURNAGE: That's correct, Your Honor.

8 THE COURT: Would you bear with me for a
9 second. I'm minus a law clerk, so I'm making notes so
10 I don't get too far behind.

11 (WHEREUPON, court stood at ease.)

12 THE COURT: Okay. We have a motion for
13 breach of contract. We have a motion to dismiss the
14 breach of contract, motion to strike, motion for
15 judgment on the pleadings, and motion to compel. Which
16 one do y'all want to do first? Have y'all decide? I'm
17 glad to just do it in the order they appear. It
18 doesn't matter.

19 MR. TURNAGE: I would just suggest, I mean,
20 it's three of theirs, but it would seem to me the smart
21 way to proceed would be the motion on the pleadings.
22 And then handle the motion to strike and the motion --
23 the third motion. Because that one is kind of
24 connected. And then the final one, if appropriate, is
25 hear the motion to compel.

1 MR. LANFORD: I think that makes the most
2 sense.

3 THE COURT: Okay.

4 MR. LANFORD: Good afternoon, Your Honor,
5 Brad Lanford here for the Defendant, Progressive. To
6 give a brief overview of the facts, because it's
7 actually a fairly narrow issue in this case. The
8 plaintiff, Mr. Ramirez, was in an automobile accident.
9 It was single-car accident. He was a guest passenger
10 in a vehicle that was owned by someone else; okay? It
11 was a single-car accident. The driver of that vehicle
12 was at fault. Mr. Ramirez had fairly serious injuries.
13 Damages are certainly not a question here today. State
14 Farm insured the vehicle that he was riding in as a
15 guest passenger; okay? They tendered their twenty-five
16 thousand liability limits. There was no underinsured
17 coverage on that particular vehicle.

18 Mr. Ramirez, he had his own insurance policy
19 through Bristol West; okay? And I want to explain his
20 arrangement. As I understand it -- and essentially
21 none of these facts are in dispute. Mr. Ramirez was
22 living with his mother and I believe his step-father.
23 The three of them all had separate insurance policies
24 that insured separate vehicles; okay. So Mr. Ramirez
25 ---

1 THE COURT: . So they had three different
2 policies that insured the same vehicle?

3 MR. LANFORD: Separate vehicles.

4 THE COURT: Oh, okay.

5 MR. LANFORD: In other words, Mr. Ramirez had
6 his own vehicle. He had his own insurance policy. His
7 step-father had his own vehicle. He had his own
8 insurance policy. His mother had her own vehicle with
9 her own policy. For each of those policies only they
10 were the main insured. In other words, the mother is
11 the sole named insured under her policy. The step-
12 father the same way and Mr. Ramirez is the same way.

13 THE COURT: So the question is -- go ahead.

14 MR. LANFORD: I'm sure you see where this is
15 headed.

16 THE COURT: I think. But as soon as I think
17 that I'd be wrong. So go ahead.

18 MR. LANFORD: So the question essentially is
19 what, if any, additional coverages can Mr. Ramirez
20 collect?

21 THE COURT: Did he collect his own policy
22 under UIM?

23 MR. LANFORD: He collected his own policy.
24 And he actually collected from his step-father's
25 policy, as well.

1 THE COURT: Okay.

2 MR. LANFORD: And I can see the expression on
3 your face because that was the exact reaction I had.
4 Why are they paying this money? I represent
5 Progressive who insured the mother's automobile. The
6 claim was presented to Progressive with essentially the
7 facts that I just presented to you. And Progressive
8 said, well, Mr. Ramirez was not in his own vehicle. He
9 did not have a vehicle in the accident. So he's a
10 class II insured for stacking purposes. He's only
11 entitled to one additional coverage under the statute
12 and all the subsequent case law.

13 Mr. Turnage disagreed with that and they took a
14 position which, frankly, I don't think they needed to
15 take, but they said because there were three policies
16 and the most he could ever collect is twenty-five
17 thousand, we believe the most he would ever be entitled
18 to collect from Progressive would be a third of that.
19 So you pro-rate the three policies to where they pay a
20 third, a third, and a third.

21 Now, in reality that's not what happened. In
22 reality, two of the carriers actually paid their entire
23 policy limit. So I think Progressive could easily have
24 taken the position that he had already gotten his one
25 additional coverage and he could get no more. But they

1 didn't do that. They said they would pay a pro-rata
2 share of that policy, which would be a third.

3 THE COURT: Let me ask Mr. Turnage.

4 MR. TURNAGE: That part's incorrect. We've
5 always had the position, Your Honor, ---

6 THE COURT: Regardless of what you collect,
7 that's outside. It doesn't matter to me. I mean, I
8 don't think it's relevant. But your client is a
9 passenger in an unowned vehicle so clearly he's class
10 II.

11 MR. TURNAGE: No question. We've never said
12 otherwise.

13 THE COURT: Okay. And then hasn't it been
14 the law for years and years that as a class II you
15 don't get to stack, you just have to collect off of any
16 applicable UIM that you may have on one of your
17 vehicles?

18 MR. TURNAGE: Well, I think where the
19 confusion comes in that, is stacking, a lot of times --
20 well, in all the cases that he cited and you'll read,
21 stacking is always where one policy has multiple
22 vehicles on it. Or maybe the same company has issued,
23 you know, three policies for three vehicles in the same
24 household. And the question is whether the stacking of
25 that coverage with those three companies is applicable.

1 We have one policy, one policy, one policy. State
2 Farm, Bristol West, ---.

3 THE COURT: What about the requirement that
4 says that you have to pick a policy. You get to pick
5 the one with the highest limits if you want to, but
6 you've got to pick a policy.

7 MR. TURNAGE: Well, yeah, that's ---

8 THE COURT: I understand what you mean by
9 stacking.

10 MR. TURNAGE: 38-77-142 says you cannot
11 collect more than the limits of any one vehicle
12 involved. And in this case, all the policies were for
13 twenty-five thousand. They were all minimum limits
14 policy. We're suggesting in this case that it's
15 mandatory, when you buy a policy you provide pure
16 minimum coverage to the insureds. My client was a
17 resident relative of the State Farm policy, the step-
18 father. He was a resident relative of his mother's
19 home. So he is an insured under their policy. They
20 provided twenty-five thousand dollars underinsured
21 motorist, both Crystal West and State Farm agreed with
22 us that -- we're not trying to stack. We're just
23 trying to get the one vehicle that the policy was for,
24 and for which both the step-father and my client paid
25 the premium for.

1 Progressive took his mother Candy Ramirez's money,
2 but they didn't give him the twenty-five thousand that
3 the policy required. So our case is it's the statute
4 that mandates twenty-five thousand minimum. And what
5 they're trying to do in this case is to reduce the
6 statutory mandatory coverage of twenty-five thousand
7 that must be offered. And that's the dispute. My
8 colleague thinks that this is stacking. I say it's not
9 stacking unless I have multiple vehicles on the policy.

10 THE COURT: What would you call it if your
11 client was driving in his car, got in a wreck at not
12 fault of his own, collected his UIM coverage and then
13 went to look at dad's and mom's. What would you call
14 it then?

15 MR. TURNAGE: It's the same case. If the dad
16 and the mom had multiple vehicles on their policies,
17 like, say the dad had three cars on his policy. I
18 don't know -- or don't even know if he may or may not
19 have had more cars in his household. Then I could
20 stack all the cars on that policy and I could stack all
21 the cars on the Progressive policy that -- Candy had
22 two cars on hers. We're just asking for the one
23 coverage on the policy. That's not stacking. And I've
24 got the case law. I'll show you, Judge, that it's not
25 and it's never been the case that it is.

1 THE COURT: Okay. I cut you off. I'm sorry.
2 That's interesting argument. Go ahead.

3 MR. LANFORD: No, that's fine. The case law
4 makes no distinction whatsoever between intra-policy
5 stacking, which would be what he's attempting to do
6 here versus inter-policy stacking. Exactly. If you
7 have one policy that covers four vehicles and you're a
8 class I insured, you're a resident relative or named
9 insured, you have a vehicle involved in the accident,
10 you can stack all four of those coverages on all those
11 vehicles. If you own four vehicles and you have
12 insured those for whatever reason by four different
13 companies, then you can also stack those four
14 coverages. It's a distinction without a difference
15 because there is no -- you're stacking. You are
16 stacking excess coverages. The statute says you cannot
17 do that unless you have a vehicle involved in the
18 accident, which he does not. Progressive is following
19 the statute. And the stacking law has been around for
20 more than thirty years, I believe. I think by saying
21 this is not stacking, I don't -- and perhaps I'm being
22 -- I'm just not able to comprehend that argument.
23 Maybe it's so far above my head I don't get it. But I
24 do not get that. I don't understand that. This is
25 stacking. It has always been stacking. This is not

1 even a particularly -- this is a very easy stacking
2 question. I wish the stacking questions I got on a
3 fairly regular basis were this simple because I believe
4 it's very cut and dried. There's no issue as to
5 whether he had a vehicle involved in the accident. If
6 that were an issue, then it's a different -- it's a
7 different scenario. I agree with that.

8 And I applaud Mr. Turnage because he has gotten
9 for his client an additional thirty-three thousand
10 dollars that really, under South Carolina law, he
11 wasn't entitled to get. Of course, he's not going to
12 turn away an insurance company voluntarily paying
13 money. But that's our position, Your Honor. I think
14 this is a very easy case. The facts are not in
15 dispute. We move for judgment on the pleadings on the
16 basis that there is no factual dispute. That is the
17 sole issue. Is he entitled to whatever you call it,
18 but he's stacking; is he entitled to stack these
19 additional coverages?

20 If you'd like me to address the other motions with
21 sort of -- in regards to some of the paragraphs in the
22 complaint and one of the causes of action, I'm happy to
23 do that, but I ---

24 THE COURT: No, I want to hear more about the
25 stacking or the lack of stacking in the cases?

1 MR. TURNAGE: My paralegal put all the cases
2 that were cited by the parties and some of the statutes
3 for your law clerk, Judge. And I filed this, this
4 morning. I served this on Progressive's adjuster
5 before we filed suit, which also has some case law
6 relative to, you know, the fact that the Legislature
7 mandates that he provide the coverage of twenty-five
8 thousand minimum.

9 THE COURT: Well, let me ask you this. You
10 keep saying that, and that's where I'm kind of dropping
11 off in the process. And I understand your argument up
12 to a certain point. Because I get bogged down that
13 doesn't mean a whole lot. But you keep saying may a
14 carrier unless -- offer UIM unless it's the statutory
15 amount. Well, obviously, you've got to meet the
16 statutory requirements.

17 But what I'm hearing you say and opposing counsel
18 say, is that there's not a situation where somebody had
19 coverage of less than twenty-five thousand dollars.
20 Even if that were -- even if it's on the father's,
21 mother's, or your client's UIM coverage it's out there.
22 Is that true?

23 MR. TURNAGE: Well, it's -- let me see if I
24 can illustrate it this way, Judge?

25 THE COURT: No, answer my question.

1 MR. TURNAGE: Okay. Their policy that they
2 issued, Progressive's policy, was for twenty-five
3 thousand.

4 THE COURT: Okay.

5 MR. TURNAGE: And they had a provision in it
6 that sought to reduce the underinsured motorist
7 coverage if there were other policies in the same
8 status, like the step-father and my client's vehicle
9 policy. So that's why they -- they've already -- they
10 did pay one-third of the coverage. But they've
11 withheld the other sixteen thousand six hundred and
12 sixty-six.

13 THE COURT: Well, hang on then. If your
14 client paid a third of the coverage, doesn't that fly
15 in the face of what your argument's been all along?

16 MR. LANFORD: I think Progressive, in an
17 attempt to be reasonable, ---

18 THE COURT: Why would they pay a third of the
19 coverage unless they were trying to say that it's
20 exactly like Mr. Turnage is saying, we ought to kick in
21 our pro-rata share?

22 MR. LANFORD: I think it was exactly what you
23 were saying earlier, which is, it doesn't matter what
24 the other carriers paid. And I think that was how they
25 were looking at it was, okay, we're not even going to

1 take into account that State Farm and Bristol West has
2 already paid. Because if they had taken that into
3 account, then I think the answer is you've received
4 your additional coverage under the statute. But they
5 negotiated a settlement with Mr. Turnage. And their
6 position was, if Progressive owed anything, it would be
7 a pro-rata share amongst the three parties, which would
8 be a third, a third, a third, because all the policies
9 are twenty-five thousand. So the most -- under the
10 statute the most he could ever get from any of those
11 additional coverages would be twenty-five thousand,
12 whether he gets that from -- he makes a demand on his
13 own policy or his father's policy or he sends a letter
14 to all three saying, I want twenty-five thousand, y'all
15 figure out how to do it.

16 So Progressive negotiated a settlement with Mr.
17 Turnage where they would pay what, in their minds, was
18 the most they would ever be required to pay, which
19 would be the eight thousand -- the third of the policy
20 prorated amongst the other two policies that were out
21 there. In other words, if there weren't two other
22 policies out there, if that was his only policy, then I
23 think they would have been entitled to pay the entire
24 twenty-five. But since there were other policies, and
25 those are the policies that actually paid, so I think

1 they owed zero under the statute and under the case
2 law. But in an effort to negotiate with Mr. Turnage,
3 they agreed to pay a third of the policy, the eight
4 thousand three hundred. Does that make sense? Does
5 that answer your question?

6 THE COURT: It doesn't make sense, but I
7 understand it.

8 MR. TURNAGE: And it doesn't make sense that
9 companies like State Farm and Bristol West, which
10 understand -- would pay their limits. I mean, if there
11 was a way for them not to pay, they wouldn't pay. And
12 that's one of the issues in this case, Judge. This is
13 a huge case in the matter of public policy. Because if
14 you buy their argument, you're going to be affecting
15 households across the state of South Carolina.

16 THE COURT: That's why they've got Appellate
17 Courts, and I'm sure you're not afraid to have me
18 corrected if I'm wrong.

19 MR. TURNAGE: Right.

20 THE COURT: But it seems to me, it seems to
21 me that while you have cleverly couched it in terms
22 that are attractive sounding; i.e., can a carrier pay
23 less than the policy limits when the cases say, no, you
24 can't. What that overlooks is the fact that I thought
25 the rule was that you get to pick and choose one

1 applicable UIM coverage. And once you get it, then
2 you're done. I mean, that's the way I understood it.
3 And I was on your side of the coin more -- I never
4 represented an insurance carrier, but I was -- I mean,
5 I'd have loved to be able to have this argument and I
6 just wasn't bright enough to come up with it. I
7 thought ---

8 MR. TURNAGE: Well, the law is pretty clear
9 on it, Judge. And I'll go through it with you right
10 now if you want to.

11 THE COURT: All right. Go over it with me,
12 please.

13 MR. TURNAGE: All right. So in their answer,
14 which they've admitted most of the allegations in my
15 complaint. They didn't like some of them, but the gist
16 of it was like we've discussed. They've admitted, you
17 know, just pay that and the situation that we've
18 described. They cited two cases, the Fireman's
19 Insurance Company and the Mooneyham case. So I took
20 those and put them on this sheet, on this book for you,
21 and I highlighted it. And I highlighted the defense
22 counsel's copy of it.

23 THE COURT: Okay.

24 MR. TURNAGE: And I'll show you, and kind of
25 go through the facts with you, and show you that this

1 -- I'm not making a novel argument. I'm not making a
2 creative argument. I'm just making a flat out argument
3 based on the statute. It's clear ---

4 THE COURT: Okay. All right. Walk me
5 through it.

6 MR. TURNAGE: Okay. So in the Fireman's case
7 there were two plaintiffs in that case. It was a
8 declaratory judgment, a Mullins and a Locklear. There
9 was a question presented of uninsured motorist and/or
10 underinsured motorist. But because the defendant in
11 that case was a Florida drive it got convoluted. But
12 the gist of it is, let's look at the UM stacking that
13 the court addressed in that.

14 The accident occurred -- it was all related to Mr.
15 Mullins' policy with Fireman's. They were in
16 Locklear's car, who was driving. Or Mullins was
17 driving his -- Locklear's vehicle when the accident
18 occurred. The Locklear policy paid their limits. And
19 so it then became how much stacking could Mullins do in
20 his case with his vehicle. He was not in one of the
21 insured vehicles under his policy.

22 THE COURT: And this is Judge Traxler's case
23 from back in '88.

24 MR. TURNAGE: I think that's correct, Your
25 Honor.

1 THE COURT: And basically that's where it
2 came up with class I and II?

3 MR. TURNAGE: Class I and II is definitely
4 discussed in that. If you look at page five -- well,
5 you'll also see, Judge, there was a Garris case, also
6 which is cited by my colleague as authoritative. It's
7 discussed on page four, so excuse me. And they talk
8 about, however, where the insured is a member of the
9 second class, none of the insured's vehicles involved
10 in the accident, underinsured motorist recovery is
11 limited to the extent of coverage on one vehicle with
12 underinsured coverage.

13 THE COURT: Now, where are you reading from
14 on page four?

15 MR. TURNAGE: I'm reading from up here at the
16 top. She highlighted it for me.

17 THE COURT: I got you.

18 MR. TURNAGE: Underinsured coverage in this
19 instance on any other vehicle under the policy could
20 not be stacked or added to that coverage. So that's
21 the court talking about it there. Then down further
22 they talk about it being a class II insured and as a
23 consequence of Mullins being a class II insured, he's
24 not permitted to stack uninsured coverage. Okay. We
25 don't disagree with that. We're not trying to stack

1 here. But we're just trying to get the one policy on
2 the policy -- one coverage on the policy. And then on
3 page five, the court rules Mullins cannot stack
4 uninsured benefits as a class II insured and because
5 this is an excess policy, he's only entitled to thirty-
6 five thousand uninsured coverage as set forth in the
7 policy.

8 And that's what we're asking Progressive to do.
9 To do what's set forth in their policy. Pay the
10 twenty-five thousand that Candy Ramirez paid them
11 premiums for. And in the file you'll see the waiver
12 form. She signed checking off, I want underinsured and
13 I'm going to pay this extra money for this twenty-five
14 thousand underinsured. So the next case they cited was
15 the ---

16 THE COURT: Can I stop you right there?

17 MR. TURNAGE: Yes, sir.

18 THE COURT: And then I'll let you go through
19 it. Looking at Fireman's case on page four of your
20 numbering, paragraph Roman Numeral II that cites 56-9-
21 831, and is that still good law that says if none of
22 the insureds are named insured vehicles involved in the
23 accident, which is what we have, coverage is available
24 only to the extent of coverage on any one of the
25 vehicles with excess ownership coverage.

1 MR. TURNAGE: I believe that is in your book.
2 38-77-142 is the new statute. I believe it's on page
3 seventy. I think that's good law, except for that last
4 sentence I think was amended by the Legislature where
5 it says coverage on any other vehicle should not be
6 added to that coverage. I could be wrong, but I
7 believe that was deleted in a Legislative action.

8 MR. LANFORD: I apologize for jumping in.
9 That's 160, Your Honor.

10 MR. TURNAGE: Oh, is it 160?

11 MR. LANFORD: 160. 160(c). 38-77-160 is
12 where that was eventually ---

13 MR. TURNAGE: That's the underinsured
14 motorist statute. Thank you, counsel.

15 THE COURT: And that has that same language,
16 except ---

17 MR. TURNAGE: Yes, sir.

18 THE COURT: --- coverage on any other vehicle
19 shall not be added to that coverage?

20 MR. TURNAGE: That's at page eighty in your
21 book.

22 THE COURT: Page eighty? Okay. I'm sorry.
23 You're at page five where Mullins cannot stack
24 underinsured class II benefits?

25 MR. TURNAGE: Right. And I'm finished with

1 that case. I want to go on to the next one because I
2 think that case shows that he's trying to stack. He's
3 not allowed to stack multiple vehicles on his policy.
4 The next case they cite in their answer was the
5 Mooneyham case. It starts at page twelve. In this
6 case the trial judge ruled that Mr. Mooneyham was not
7 allowed to stack underinsured coverage and the Court of
8 Appeals disagreed with that and reversed. They again
9 discussed the Garris case, which I showed you, Judge,
10 which was discussed in the previous case. And they
11 stated -- of course, they cite to the remedial purposes
12 of the underinsured motorist coverage. It's intended
13 to be remedial and to protect people from injury where
14 their coverage of liability is not sufficient in it.
15 And on page seventeen -- excuse me. On that page
16 thirteen, they talk about Garris. And they said in
17 Garris the policy in question had basic limits
18 underinsured coverage. Although we held that the
19 insureds could not stack because they were class II
20 insureds, it was noted that if the insureds had been
21 class I they could have stacked. And then later down
22 further in that paragraph, they talk about the statute
23 limits the amount of coverage which may be stacked from
24 policies on vehicles not involved in an accident to an
25 amount no greater than the coverage on the vehicle

1 involved in that accident, which was twenty-five
2 thousand here. Thus, because the policy covering the
3 car involved in the accident had only basic limits
4 coverage, the insured could not recover any amount
5 greater than the basic limits from any of the other
6 policies. That's their case, Judge, in their answer.
7 And then on page fourteen, they talk about the result
8 we reach is consistent with the purpose of underinsured
9 motorist coverage, which is to assure that an insured
10 whose damages exceed the liability limits of an at-
11 fault driver recovers the full amount of his damages.

12 And then I also cited for you in the Garris case,
13 which, you know, we both -- both of those cases cited.
14 And on page seventeen, this was a fifteen/thirty
15 thousand dollar coverage back before they raised the
16 limit. The question was, can such coverage on each of
17 the vehicles insured under each defendant policy be
18 stacked. Later on, page seventeen, the court says --
19 this is a question the federal courts had asked the
20 Supreme Court. The Supreme Court said, coverage is
21 available only to the extent of coverage on any one of
22 the vehicles. On page eighteen, they talk about the
23 statute we looked at. And they talk about that the
24 coverage is limited to one of the vehicles. And then
25 the court in the final two sentences says, thus, the

1 plaintiffs cannot stack the coverage of the other
2 vehicles under the policies issued to them, but may
3 only recover benefits on one vehicle with the coverage.

4 THE COURT: Now, that's the case here; isn't
5 it?

6 MR. TURNAGE: We just are asking Progressive
7 to pay on the one vehicle, the twenty-five thousand.
8 And they've paid eight thousand three hundred and
9 thirty-three dollars. So, yes, that is exactly the
10 case here. We're not asking for stacking. We're just
11 asking them to pay the minimum coverage on one vehicle.

12 THE COURT: Well, now, I think that it goes
13 to intra or inter policy stacking. And I think the
14 language that you pointed to earlier in the case law
15 seems to be a kind of use where the term stacking as
16 opposed to other policies that have UIM coverage on it.
17 But I thought that it was kind of clear that once you
18 are a class II, you have UIM out there and multiple
19 policies, you pick and choose which one you were going
20 to get, as long as you're insured under that policy,
21 but then you're stuck. That's my impression of what
22 it's always been.

23 MR. TURNAGE: Only if it's the one policy
24 with multiple cars. If there's different resident
25 relatives, different coverages ---

1 THE COURT: Well, then you said something
2 earlier then, Mr. Turnage, that what would be -- if I
3 decide to have four cars or five cars with UIM coverage
4 on them, and I'm paying for out of my benefit of the
5 bargain argument, as opposed to coming under the
6 statutory definition of being insured, but I'm not
7 paying the policy, my mother's paying the policy. So
8 I'm not really getting the benefit of any bargain; she
9 is, okay? What would be the policy, public policy
10 question behind not allowing me to do it when I'm
11 spending my own money for it, but allowing me to get
12 that coverage that my mama spends for?

13 MR. TURNAGE: Because you're protecting your
14 family. That's the purpose of insurance. Your mama is
15 looking out for her family.

16 THE COURT: So where I spend more money, I
17 get limited to where I have somebody else spend their
18 money. And there's a public policy question behind
19 that? I mean, I know it's not necessarily seeing it
20 being put very ---

21 MR. TURNAGE: I'm not sure I'm understanding
22 what your question -- I don't think it really matters
23 who's paying.

24 THE COURT: What I hear in your argument is
25 this. If Lawton McIntosh was a class II insured, had

1 five policies, four policies, UIM of twenty-five a
2 piece, I'm -- say four. I'm limited to twenty-five
3 thousand UIM under the intra policy stacking rule.

4 MR. TURNAGE: Yes, sir.

5 THE COURT: However, in an intra policies
6 stacking situation where you have me, my wife, my mom
7 and somebody else who may have their own individual
8 policies and own UIM coverages, I can get seventy-five
9 thousand and there's a public policy in favor of that?

10 MR. TURNAGE: That's correct. That's exactly
11 right. Your wife or your mother, when they go purchase
12 that policy, they're buying from the insurance company
13 what's required to be sold to them or offered to them
14 of underinsured motorist of twenty-five thousand. And
15 they're agreeing when they sign that waiver form, I
16 accept the twenty-five thousand and I agree -- it's
17 actually on the form. It's in that memorandum. But
18 they agree to pay extra premium for the twenty-five
19 thousand. And it's mandatory. The Legislature and the
20 statutes I'm talking about mandates. So it's not --
21 it's just one car. And you could get the one vehicle
22 on your mother's policy or on your wife's policy, if
23 she had a separate policy, or your son or your
24 grandparent. I mean, I ---

25 THE COURT: It doesn't matter as long as

1 you're insured.

2 MR. TURNAGE: Right. Because your wife took
3 out a policy and bought it with the understanding that
4 I'm going to protect the people in my household from
5 the situation like my client Juan Michael Ramirez was
6 in where he had a really bad injury. There's not
7 enough coverage on the person driving. Now, the family
8 member has paid for a policy to protect his family
9 member. And that's the benefit and that's the public
10 policy.

11 THE COURT: In the submissions you have to me
12 which is eighty some odd pages, can you show me a case
13 where in real world effect, not some language that can
14 be spun to say this is what they're really saying. Do
15 we have somebody who is a class II insured who was able
16 to collect at three different intra policies -- three
17 different policies that are not on the same -- with the
18 same named insured. Have you ever found that?

19 MR. TURNAGE: I'm not positive about the case
20 law on that, Judge. I'd have to go back and look at
21 it. But I think some of the cases that we've cited are
22 cases where they've collected on other policies. It
23 may have been in the very first one that they did, in
24 fact, collect on -- Mullins, they collected on
25 Locklear's policy first and then they collected on

1 Mullins' policy one more time. So that case stands
2 directly for that factual ---

3 THE COURT: Which case is that again?

4 MR. TURNAGE: The Fireman's case.

5 THE COURT: Fireman?

6 MR. TURNAGE: Yes, sir. But, Judge, if you
7 go through these cases -- I'm not trying to spin it or
8 just take language out of context or anything -- you
9 won't find anything that supports the defense, the
10 Progressive position in this case where the courts have
11 held that a insurance company does not have to pay
12 their minimum policy. You won't find it. It's not out
13 there. There isn't any case that does what they say.

14 If they win this case, this case could hit all of
15 us by taking away our underinsured motorist coverage.

16 THE COURT: Let me ask you this. Aren't
17 there cases out there that says as long as my car is
18 not involved in the accident, I'm free to limit
19 coverages in the amounts that my insured and I can
20 reasonably agree upon, something along those lines;
21 i.e., when you have UIM coverage on your own personal
22 vehicle, you're driving a rental car that doesn't have
23 that necessarily, you can't go back and use that UIM to
24 get into the non-coverage on that vehicle? Isn't that
25 what the law is on that?

1 MR. TURNAGE: Well, in a rental car
2 situation, I think you -- underinsured motorists or
3 uninsured motorists either ---

4 THE COURT: If I'm driving my buddy John's
5 car without any UIM coverage on it?

6 MR. TURNAGE: Yeah. It doesn't matter.
7 Underinsured motorist and uninsured motorist go with
8 the person. You could be walking down the street and
9 ---

10 THE COURT: Underinsured goes with the car
11 and UIM goes with the person; right?

12 MR. TURNAGE: Uninsured and underinsured go
13 with the person.

14 THE COURT: They go with the person?

15 MR. TURNAGE: It does not matter if you're in
16 your car or walking down the street or in another
17 person car or a rental car.

18 THE COURT: Well, I seem to recall there was
19 a case out there that said if I'm in a vehicle that's
20 not my vehicle, the insurance company can limit the
21 amount of coverage below. Is that wrong?

22 MR. TURNAGE: It's possible there was a case
23 where -- and I'm ---

24 THE COURT: I can't cite it to you; I'm just
25 asking.

1 MR. TURNAGE: I think there's case law where
2 like let's say my son's a really bad driver, reckless
3 driving, DUIs and stuff like that. I say I don't want
4 to let my son on my policy so I can get my premium
5 down. They say, okay, but, you know, your son's not
6 going to be covered. I think that under that situation
7 the insurance companies have been permitted to limit
8 the coverage on the bad driving son. And maybe that's
9 what you're thinking about. I don't know, Judge.

10 THE COURT: It may be. It may be. It may
11 very well ---

12 MR. TURNAGE: But this case, I think I -- as
13 much as he thinks that he's clear, I think -- I mean, I
14 can't tell you, and I'm very sorry to hear that you
15 didn't take this opportunity when you were practicing,
16 but I've done this -- I've been practicing twenty-five
17 years; I've spent ten years at Harris and Graves. I
18 have not had anybody make this argument until this
19 case. This is the very first time it's ever been
20 raised.

21 THE COURT: Really?

22 MR. TURNAGE: Yes, sir. Never. I never have
23 heard this. And I sent them the law before I brought
24 this action so they could read the law. I sent them,
25 in this memorandum that you have, it's got Ms:

1 Ramirez's signed form. And it's got the insurance
2 commission, you know, the Legislature gave permission
3 for the South Carolina Insurance Commission to make
4 regulations related to this issue of underinsured
5 motorists, the forms that need to be signed by
6 insurance carriers. If you look at the form it says
7 you've got to give the minimum coverage. And if you
8 look at 38-77-142, Judge, -- look at 38-77-142 (c) on
9 page seventy-eight. It says, any endorsement provision
10 or rider attached to or included in any policy of
11 insurance which purports or seeks to limit or reduce
12 the coverage afforded by the provisions required by
13 this section is void. That's what's required by our
14 Legislators.

15 So we feel like our case is very strong. We don't
16 think there's an issue. I don't know if you want to
17 reach this issue on this Rule 12 motion, which has been
18 presented to you or if we should have further
19 discovery. I made an argument that we haven't even had
20 a chance to do any discovery. I feel like I may be
21 able to get some facts to show the Court that this case
22 should never have been -- happened. Because I think
23 this law is totally clear. And I think it could be one
24 of the cases that you could consider awarding, you
25 know, a reasonable basis for attorneys' fees and things

1 like that. But I don't have a record to make that
2 argument right now in my case. But I think we've got a
3 very strong case. And I'm not ashamed at all, and I'm
4 not trying to be creative. I'm doing what ---

5 THE COURT: I don't think -- I just --
6 really, I'm telling you that's the way I understood the
7 rule to be. That's just the way I understood it to be.

8 MR. TURNAGE: I went through there and
9 highlighted the other cases, Judge, that some of them
10 were in that memorandum. I'm not going to go through
11 them, but they all support, right down the line, that
12 there's no case law authority that -- he won't be able
13 to show you one where the courts allow an insurance
14 company to not pay the minimum limits of coverage on
15 their policy that was issued. There's not one.

16 THE COURT: Now, this is before me on a
17 12(b) (6)?

18 MR. LANFORD: No, Your Honor, this is a
19 motion for judgment on the pleadings.

20 THE COURT: Same standard; right?

21 MR. LANFORD: Yes, Your Honor.

22 THE COURT: Show me where his pleadings are
23 defective then. I got us off on this tangent, but ---

24 MR. LANFORD: No, please, I'd be glad to.

25 THE COURT: --- technically I'm supposed to

1 look at the four corners of the pleadings and that's
2 it.

3 MR. LANFORD: Right. And we admitted and
4 essentially stipulated to all of the facts. I think
5 the only difference is, I guess, the interpretation of
6 what those facts mean. That was the basis for the
7 motion for judgment on the pleadings. Even based on
8 what he's alleged, what he alleged in his complaint,
9 I'm not saying it was defective, but based on what he
10 alleged, he's not entitled to any relief.

11 THE COURT: Well, show me -- how about -- I
12 mean, I know I'm running down the road a little bit but
13 if we look -- you know, Mr. Turnage's point is pretty
14 well taken. And to some degree this is before you on a
15 12(b)(6) or 12(c). So tell me where he's defective in
16 his complaint.

17 MR. LANFORD: Because he alleges, he alleges
18 that the plaintiff was involved in an automobile
19 accident. He lived with his mother.

20 THE COURT: Let me get there, let me get
21 there with you..

22 MR. LANFORD: Okay.

23 THE COURT: Do you have a copy of the
24 complaint that I can look at? I'm sure it's in here.
25 I'm just not seeing it.

1 MR. LANFORD: I do, Your Honor. I don't know
2 if I have another copy to look on with you, but ---

3 THE COURT: Do you have a copy?

4 MR. TURNAGE: I have one copy. I don't mind
5 if you want to -- I'm pretty familiar with it.

6 THE COURT: Sorry to ask you a question and
7 take it away from you.

8 MR. TURNAGE: No, that's fine. I think what
9 he's saying is that they've admitted most of my
10 allegations. There's not really any dispute about what
11 we've been talking about today. And, therefore, you
12 have enough to rule on.

13 MR. LANFORD: Right. There's no, there's no
14 factual dispute as we stand here today. The only
15 dispute is what -- is he entitled to this additional
16 sixteen thousand, the additional -- the remaining
17 coverage? That's really the only question.

18 THE COURT: Does it go in the pleadings, is
19 what I was looking for, payment of the other UIM
20 policies?

21 MR. LANFORD: All of that.

22 THE COURT: You do go over all that?

23 MR. TURNAGE: Yes, sir.

24 THE COURT: So, okay ---

25 MR. LANFORD: The pleadings are very thorough

1 and I think that was also in our counterclaim. And
2 there was a -- Mr. Turnage filed a reply to the
3 counterclaim, paragraph one is, plaintiff admits he was
4 a passenger in a vehicle owned by John S. Bryan,
5 Junior, when the collision took place, which I don't
6 think there was any dispute about that, but I think
7 that makes it clear he was in a vehicle. He's a class
8 II insured for stacking purposes. So that was why we
9 made the motion because we felt like at that point the
10 facts were not disputed. He's a class II insured.
11 He's already gotten one coverage.

12 THE COURT: Would the disposition of this be
13 dispositive on the rest of the issues?

14 MR. LANFORD: It would.

15 THE COURT: I'm asking?

16 MR. TURNAGE: Well, he's got -- his motion to
17 strike seeks to strike my request for pre-judgment
18 interest. And I think I'm entitled to also ---

19 THE COURT: I wouldn't grant that anyway.

20 MR. LANFORD: Well, the document, the release
21 that was signed specifically limits the recovery --

22 MR. TURNAGE: You might want to hear this
23 part, Judge, before you decide that, because that's
24 also not in dispute, but I think it ---

25 MR. LANFORD: And that's why -- I don't

1 normally move to strike that. That was the only reason
2 I moved to strike it was because the release that was
3 signed, which is attached to, I believe, my motion to
4 dismiss, specifically states that under no event will
5 Progressive pay more than the twenty-five thousand
6 dollars. So that was why I felt like he was pleading
7 for something that his client had already contractually
8 given away. And that was the basis for that.

9 THE COURT: Got you.

10 MR. LANFORD: But I agree ---

11 THE COURT: So that would seem to me then
12 that the agreement would be, depending on the coverage
13 issue, you're going to pay it or not pay it, the whole
14 amount, minus what you've paid already.

15 MR. LANFORD: Right. And that was ---

16 THE COURT: Without accrued interest on it.

17 MR. LANFORD: Right. That was -- essentially
18 the agreement was in consideration of payment, the
19 partial payment ---

20 THE COURT: Why can't you just stipulate to
21 that?

22 MR. TURNAGE: Well, I don't think that's
23 entirely accurate. Because what we actually signed
24 said this conditional release, however, expressly
25 permits Juan Michael Ramirez to file a civil action

1 asking the South Carolina court to determine whether
2 Ramirez is entitled to full underinsured motorist
3 coverage limits available under the policy rather than
4 a pro-rata apportionment. Except as for an order
5 granting taxable costs, the parties agree that in no
6 case ---

7 THE COURT: And pre-judgment interest is not
8 cost, though.

9 MR. TURNAGE: Well, I think under Rule 54 it
10 is, it is a cost. Because Rule 54 -- I put that in the
11 package.

12 THE COURT: Well, in your pleadings you asked
13 for pre-judgment interest plus cost. And I thought
14 costs were cost of transcripts, service of process,
15 depositions, etcetera, etcetera.

16 MR. TURNAGE: Well, it actually says taxable
17 costs at page eighty-two.

18 THE COURT: Okay.

19 MR. TURNAGE: All sanctions, including
20 reasonable attorneys fees if ordered imposed upon
21 another party and in favor of the prevailing party
22 under any statute or rule of civil procedure are
23 taxable. And the statute is 34-30-120. That's the
24 prejudgment interest statute. And the other statute
25 for cost of attorneys' fees is 38-59-40.

1 Now, if you were -- let's say you were to make a
2 ruling in favor of me. I'm just -- hypothetically.
3 I'm not trying to suggest that you do. .

4 THE COURT: That sounds like it's more of
5 trial judge issue to determine anyway than me ---

6 MR. TURNAGE: Right. That's what I say.

7 THE COURT: Okay. I'm going to allow any
8 trial judge to do that in the event that you go
9 forward; okay. So other than this issue, which
10 obviously I tend to agree with the Defense on this case
11 at this point, pending me read this, any other motions
12 that I need to dispose of today?

13 MR. TURNAGE: Well, if the Court decides to
14 let us proceed, we have a motion to compel.

15 THE COURT: Which is?

16 MR. TURNAGE: We asked for some information
17 about the number of policies and the amount of money
18 that Progressive has issued and collected from South
19 Carolina residents. Purpose being, since it's a public
20 policy matter, the trial court or the appellate courts
21 may want to know how many people are going to be
22 affected by this Court's determination. We think it's
23 a perfectly fine, appropriate ---

24 THE COURT: This is not a bad-faith case.

25 MR. TURNAGE: Well, there's a question of

1 whether there's a reasonable denial, but it's just in
2 general the Court needs to know.

3 THE COURT: Have you alleged bad faith?

4 MR. TURNAGE: I don't think I alleged bad
5 faith. I don't think I did. I alleged a breach of
6 contract is all. I didn't allege a breach of contract
7 accompanied by fraudulent act. We did -- we agreed to
8 disagree on the policy and the exclusion, whether it
9 was applicable. We made our claim, as I thought I
10 should, to protect my client so he could proceed with
11 an action.

12 THE COURT: I'm going to deny your case --
13 your motion to compel without prejudice depending on
14 developments of the case down the line if you feel that
15 you want to re-file it at some given date and you think
16 the facts are warranted under those circumstances. I'm
17 going to give you that opportunity. I'm going to deny
18 it at this stage. Fair enough?

19 MR. TURNAGE: Yes, sir.

20 THE COURT: So effectively what I'm doing is
21 looking at it under 12(b)(6) or 12(c) as to whether or
22 not I should dismiss the complaint. All right.

23 Do you have extra copies of this?

24 MR. TURNAGE: Is that my complaint?

25 THE COURT: Yes, sir.

1 MR. TURNAGE: Yes, sir, I do.

2 THE COURT: And this notebook was for me?
3 I've got your memorandums in the file. I'll let it
4 stay there, but I want to take that with me and look
5 through it.

6 MR. TURNAGE: That was for you and your law
7 clerk.

8 THE COURT: Unfortunately I'm minus a law
9 clerk for a little short period of time.

10 MR. TURNAGE: Judge, if you decide to keep
11 the notebook, I'm fine. I can always make another
12 copy. But if we have to come back and argue this
13 again, that might be useful to the trial judge. But if
14 you want it, it's yours and I'll just make another
15 copy.

16 THE COURT: Let me just tell you, I'm going
17 to leave it here. I'll be back tomorrow. And before I
18 leave here, I'll try to look through it. I like to not
19 rush through things when making my call.

20 I had Gene Covington here earlier today. Too bad
21 we didn't have him here this afternoon; we might call
22 him as an expert witness about coverages. Anything
23 further from your side?

24 MR. LANFORD: No, Your Honor.

25 MR. TURNAGE: I think Gene would agree with

1 my position, but ---

2 THE COURT: All right. He's a plaintiff's
3 lawyer; that's for sure.

4 I appreciate it, guys. Interesting argument.

5 MR. TURNAGE: Thank you, Judge.

6

7 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official
3 Court Reporter for the Tenth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Court of Common Pleas,
9 Greenville County, South Carolina, on the 2nd day of
10 February, 2015.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 June 20, 2015

16

17

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Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	C/A NO.: 2014-CP-30-603
	)	
Juan Michael Ramirez,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S MOTION FOR
	)	JUDGMENT ON THE PLEADINGS
	)	
Progressive Northern Insurance Company,	)	
	)	
Defendant.	)	

TO: EDWIN L. TURNAGE, ATTORNEY FOR PLAINTIFF.

You will please take notice that Defendant Progressive Northern Insurance Company (hereinafter "Progressive"), by and through its undersigned attorney, will move on the tenth (10th) day after service or as soon as practicable before this Honorable Court, pursuant to Rule 12(c), SCRCP, for judgment on the pleadings.

The plaintiff, at the time of the single car accident referenced in the complaint, was a passenger in a vehicle owned by John S. Bryan, Jr. The plaintiff has recovered the liability limits on Mr. Bryan's vehicle, which was insured by State Farm, and has also recovered underinsured motorist (hereinafter "UIM") proceeds from Bristol West, who insured his personal vehicle, and State Farm, who insured vehicles owned by the plaintiff's father. The plaintiff has recovered a total of \$50,000 in UIM benefits from those two carriers.

Prior to suit being filed, Progressive took the correct position under South Carolina law that the plaintiff was only entitled to a total of \$25,000 in UIM coverage and, since there were three applicable policies, the most Progressive would be obligated to pay the plaintiff would be its pro rata share of \$8,333.33. That sum was tendered and accepted by the plaintiff while reserving his right to litigate whether he was entitled to the remainder of the coverage from

Progressive.

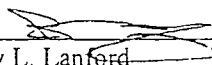
Under well established South Carolina law, an insured can only stack UIM coverage if he is a Class I insured which has been defined both by statute and our courts as an insured who has a vehicle involved in the accident. *Garris v. Cincinnati Ins. Co.*, 280 S.C. 149, 311 S.E.2d 723 (1984); *Fireman's 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 allegations in the complaint, the plaintiff was not a Class I insured at the time of the accident and is thus only entitled to one UIM coverage of \$25,000. The plaintiff has already recovered more than the amount which he is legally entitled to recover under South Carolina law and thus Progressive owes no further obligations under the policy and is entitled to judgment in its favor on the pleadings.

The plaintiff has apparently taken the position in his Reply to Progressive’s Counterclaim that this is not a stacking case because there was only one vehicle on the Progressive policy. However, this position represents a fundamental misunderstanding of stacking since there can be intra-policy stacking, which is stacking coverages on multiple vehicles on one policy, as well as inter-policy stacking, which is stacking single coverages on multiple policies as the plaintiff is attempting to do in this case. It is essentially a distinction without a difference as an insured can only stack, whether it is multiple vehicles within one policy or multiple policies that cover a single vehicle, if the insured is a Class I insured as defined by *Garris*.



This Motion is based on the pleadings, well settled South Carolina statutory and case law, a memorandum of law that may be filed at a later time, and any other authorities the court deems applicable. I hereby certify that consultation for the purpose of attempting to resolve the matter contained in this motion would serve no useful purpose.



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Our File: 10716.52
Attorneys for Defendant

October 17, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	C/A NO.: 2014-CP-30-603
	)	
Juan Michael Ramirez,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S MOTION TO
	)	DISMISS BREACH OF CONTRACT
	)	CAUSE OF ACTION
Progressive Northern Insurance Company,	)	
	)	
Defendant.	)	

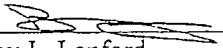
TO: EDWIN L. TURNAGE, ATTORNEY FOR PLAINTIFF:

You will please take notice that Defendant Progressive Northern Insurance Company (hereinafter "Progressive"), by and through its undersigned attorney, will move on the tenth (10th) day after service or as soon as practicable before this Honorable Court for an Order pursuant to Rules 12 and Rule 56 of the South Carolina Rules of Civil Procedure, dismissing the plaintiff's second cause of action for breach of contract.

The sole issue for determination in this case is whether the plaintiff is entitled to additional underinsured motorist coverage in the amount of \$16,666.67 from a policy issued by Progressive to the plaintiff's mother, Kandi Ramirez. To that end, Progressive tendered \$8,333.33 to the plaintiff, which was accepted, in exchange for a Release of Contractual Liability that reserved only the right for the plaintiff to seek a judicial determination of whether he was entitled to the remaining \$16,666.67 in underinsured motorist coverage. The Release is attached hereto as Exhibit "A". All other claims were released by the plaintiff which would include a breach of contract claim. Therefore, Progressive respectfully requests that the plaintiff's second cause of action for breach of contract be dismissed with prejudice.

This Motion is based on the pleadings, rules, statutory and case law, common law,

memoranda of law that may be filed at a later time, and any other authorities the Court deems applicable. I hereby certify that consultation for the purpose of attempting to resolve the matter contained in this motion would serve no useful purpose.


Bradley L. Lanford
BAKER, RAVENEL & BENDER, LLP
Post Office Box 8057
Columbia, SC 29202
Telephone: (803) 799-9091
Facsimile: (803) 779-3423
blanford@brblegal.com
Attorneys for Defendant
Our File: 10716.52

September 8, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	C/A NO.: 2014-CP-30-603
	)	
Juan Michael Ramirez,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S
	)	MOTION TO STRIKE
	)	
Progressive Northern Insurance Company,	)	
	)	
Defendant.	)	

TO: EDWIN L. TURNAGE, ATTORNEY FOR PLAINTIFF:

You will please take notice that Defendant Progressive Northern Insurance Company (hereinafter "Progressive"), by and through its undersigned attorney, will move on the tenth (10th) day after service or as soon as practicable before this Honorable Court for an Order pursuant to Rule 12(f), South Carolina Rules of Civil Procedure, striking the following paragraphs from the plaintiff's Complaint:

- Paragraphs three (3) through seven (7) in their entirety as the allegations in those paragraphs are immaterial, impertinent, and not otherwise relevant or admissible as they relate to this case;
- Paragraph twenty-six (26) in its entirety as the allegations are immaterial, impertinent, and not otherwise relevant or admissible as it relates to this case;
- Paragraphs twenty-seven (27) and twenty-eight (28) in their entirety as the allegations are immaterial, impertinent, and not otherwise relevant or admissible as it relates to this case which concerns only whether there is additional underinsured motorist coverage available to the plaintiff;

- Paragraph thirty (30) in its entirety as the allegations are immaterial, impertinent, and not otherwise relevant or admissible as it relates to this case since there are no allegations that Progressive did not properly offer underinsured motorist coverage or that there is generally underinsured motorist coverage available under the policy;
- Paragraph thirty-four (34) in its entirety as the allegations are immaterial, impertinent, and not otherwise relevant or admissible as it relates to this case.
- The prayer for relief requesting "pre-judgment interest in the liquidated amount of \$16,666.67". As outlined further in a Motion to Dismiss filed contemporaneously herewith and incorporated into this Motion by reference, the plaintiff has contractually released Progressive for any amount in excess of \$16,666.67, reserving only the right to recover any taxable costs. Pursuant to that binding agreement, the plaintiff is precluded from seeking any prejudgment interest and the portion of the prayer for relief seeking such relief should be stricken from the Complaint.

This Motion is based on the pleadings, rules, statutory and case law, common law, memoranda of law that may be filed at a later time, and any other authorities the Court deems applicable. I hereby certify that consultation for the purpose of attempting to resolve the matter contained in this motion would serve no useful purpose.


 Bradley L. Lanford
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September 8, 2014

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

2014 SEP 15 A 11:34
IN THE COURT OF COMMON PLEAS

JUAN MICHAEL RAMIREZ,
Plaintiff,

LAURENS COUNTY
CLERK OF COURT

Civil Action No. 2014-CP-30-603

vs.

PROGRESSIVE NORTHERN
INSURANCE COMPANY,
Defendant.

**MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION TO
STRIKE AND MOTION TO
DISMISS**

This matter is before the Court on Defendant's Rule 12 and 56 Motions to Strike paragraphs of the Complaint, and to dismiss Michael Ramirez' breach of contract claim. Both of Defendant's motions are without merit and must be dismissed.

1. Defendant has no basis to support a motion to strike any paragraphs of the Complaint, and it suffered no prejudice by Plaintiff's Complaint.

This matter is before the court on Defendant's Rule 12(f) Motion to Strike. Rule 12(b)(f) provides that the court may strike a portion of the pleading if it contains "redundant, immaterial, impertinent or scandalous matter." South Carolina Rules of Civil Procedure are verbatim for the federal Rule 12(f). Moore's Federal Practice, analyzing motions under Rule 12(f), provides in relevant part as follows:

Motions to strike alleging redundant, immaterial, impertinent or scandalous matter are not favored. The matter will not be

stricken from a pleading unless it is clear that it can have no possible bearing upon the subject matter of the litigation. If there is any doubt as to whether any contingency of the matter may raise an issue, the motion should be denied. Even if the allegations are redundant or immaterial, they need not be stricken if their presence in the pleading cannot prejudice the adverse party.

2A Moore's Federal Practice, 2429-31. Interpreting the identical Rule 12(f), Robert W. Hemphill, a South Carolina Federal District Court judge, cited this provision of Moore's Federal Practice and stated, "Plaintiff's position is well taken. Defendant's motion to dismiss and/or strike Paragraphs Nos. 8, 9 and 11 is therefore denied." KELLY v. RICHLAND SCHOOL DIST. 2, 463 F. Supp. 216 (D.S.C. 1978) (attached).

None of the material in Plaintiff's pleading meets the definition of anything that would give Defendant grounds to have a portion of the pleading stricken. See Alladin Plastics, Inc. v. Wintenna, Inc., 301 S.C. 90, 390 S.E.2d 370 (Ct. App. 1990) (discussing standard of review). The matters pled are simply not "immaterial." Moreover, there is no prejudice to Defendant. Motions to strike should not be granted unless the moving party can establish prejudice. "[T]his Court and others have held that a party must show prejudice to succeed on a motion to strike." See SMITH v. CONREY, (S.D.III. 8-15-2014). Here, Defendant offers no explanation for how he is prejudiced. "A party has no absolute right to have his adversaries pleadings

pruned to suit his fancy." Roberts v. Sparks, 99 N.M. 152 (Ct. App. 1982) (attached).

For the foregoing reasons, Defendant's motion to strike must be denied.

2. The RELEASE OF CONTRACTUAL LIABILITY relied upon by Defendant to support its Motion to Dismiss expressly permitted Michael Ramirez to file this "civil action."

The "release" relied upon by Defendant provides, in part, as follows:

This conditional release, however, expressly permits Juan Michael Ramirez to file a civil action asking a South Carolina Court to determine whether Ramirez is entitled to the full underinsured motorist coverage policy limits available under the policy, rather than a pro rata apportionment. . . . Except as for an Order granting taxable costs, the parties agree that in no case shall Progressive be responsible for paying more than a total sum of \$25,000.

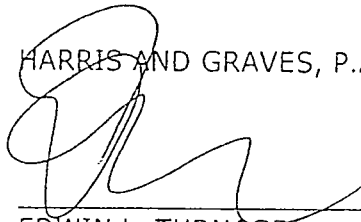
As indicated above, the language of the "conditional" release specifically authorized Michael's lawsuit against Defendant. Therefore, Defendant's motion to dismiss the claim seems to lack any rational basis of any nature whatsoever.

To the extent the motion is based upon Rule 56, the motion is obviously premature. Michael has had no opportunity to undertake discovery. Under Rule 56(f), the Court must deny Defendant's motion when a party requests "discovery be had." See S.C. Rule 56(f).

CONCLUSION

For the foregoing reasons, both motions must be dismissed.

HARRIS AND GRAVES, P.A.



EDWIN L. TURNAGE
Attorney for Plaintiff
SC Bar No. 12842
Post Office Box 6263
Greenville, SC 29606
(864) 235-1331
elt@harrisgraves.com

Greenville, South Carolina

Dated: 9/11/14

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. 2014-CP-30-603

JUAN MICHAEL RAMIREZ, ...Appellant,

vs.

PROGRESSIVE NORTHERN
INSURANCE COMPANY, ...Respondent.

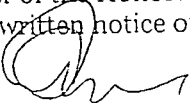
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APR 13 2015

SC Court of Appeals

NOTICE OF APPEAL

Juan Michael Ramirez appeals the order of the Honorable R. Lawton McIntosh filed on March 17, 2015. Appellant received a written notice of entry of this order on March 20, 2015.


Edwin L. Turnage
HARRIS & GRAVES, P.A.
812 Laurens Road
Greenville, SC 29607
(864) 235-1331
Attorney for Appellant

Date: April 10, 2015

Other Counsel of Record:

Bradley L. Lanford
Baker, Ravenel & Bender, LLP
Post Office Box 8057
Columbia, SC 29202
Attorney for Respondent
(803) 343-3870

MEMORANDUM

Date: June 24, 2014

Issue Presented: May a South Carolina automobile insurance carrier limit underinsured motorist coverage available to a resident relative in an automobile policy covering one vehicle to an amount less than the statutory minimum coverage?

Brief Answer: No. South Carolina public policy requires UIM coverage of at least \$25,000 per policy, and the carrier must offer its insureds such minimum coverage with each policy.

FACTS:

On or about April 11, 2013, Juan Michael Ramirez (hereinafter "Michael") was a passenger in a 2001 Chevrolet that was traveling south on Deadfall Road, West, at approximately 60 miles per hour. At that time and place, Defendant, who was driving the Chevrolet, lost control of the Chevrolet and drove it off the right side of the road into a tree.

As a result of the collision, Michael sustained a comminuted obliquely oriented right humerus (upper arm) fracture at the distal humeral diaphysis with moderate angulation. Michael also sustained a bloody superior scalp abrasion. On April 11, 2013, he underwent a closed reduction of the humerus fracture and was fitted with a splint. On April 18, 2013, Michael endured a open reduction internal fixation of right humeral shaft fracture and exploration of the radial nerve operation. He has a permanent impairment to his right hand and a permanent scar on his right upper extremity.

Michael's medical expenses were \$63,204.18. He also suffered \$3,407.95 in lost wages. Michael made claims for compensation including his medical bills, lost wages, pain and suffering, loss of enjoyment of life, past and future, and the permanent impairment and permanent scars.

Michael first made a claim against the liability carrier, State Farm. It tendered \$25,000 of liability coverage on a Covenant not to Execute, and \$25,000 of underinsured motorist coverage (UIM).

At the time of the collision, Michael (an adult) was living with his stepfather and his mother. All of the adults (including Michael) had separate automobile insurance policies on each of their respective vehicles. In other words, none of the vehicles were insured under the same policy, or even by the same insurance company. Michael was a resident relative under his stepfather and mother's two policies, and he was the named insured on his own policy. He made claims against all three UIM policies.

The carriers for Michael's insurance on his car (Bristol West Insurance Services, Inc. of Florida), and his step father's car (State Farm Insurance), tendered the UIM policy limits of \$25,000. Michael signed policy releases in exchange for those payments. However, the automobile carrier for

LAURENCE COUNTY
CLERK OF COURT

2015 FEB - 3
P 1:58

LYNN W. LANCASTER

his mother (Kandi Ramirez) offered Michael only \$8,333, arguing that it would prorate the coverage pursuant to a policy provision limiting the UIM coverage.

The limitation contradicts the offer of UIM coverage form presented to Michael's mother, Kandi, which indicated coverage was \$25,000. (See Exhibit 1). The form indicates that Michael's mother purchased coverage on her policy in the amount of \$25,000.

ANALYSIS

The South Carolina Legislature has mandated that all automobile insurance policies include a minimum of coverages and that such coverage be offered to all policy-holders in the State of South Carolina in the amount of \$25,000, and that insurance companies must offer \$25,000 of UIM coverage.

An automobile insurance policy may not be issued or delivered in this State to the owner of a motor vehicle or may not be issued or delivered by an insurer licensed in this State upon a motor vehicle then principally garaged or principally used in this State, unless it contains a provision insuring the persons defined as insured against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States or Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as follows:

(1) twenty-five thousand dollars because of bodily injury to one person in any one accident and, subject to the limit for one person;

See S.C. Code Ann. § 38-77-140.

No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38-77-140.

See S.C. Code Ann. § 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. If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. 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. Benefits paid pursuant to this section are not subject to subrogation and assignment.

See S.C. Code Ann. § 38-77-160 (emphasis added).

The Legislature also directed the Department of Insurance (DOI) to issue proper forms to comply with this obligation. See S.C. Code Ann. § 38-77-350. This mandate was executed by Bulletin Number 2006-03. (Exhibit 2) In this Bulletin, the DOI confirmed that all policies must provide at least \$25,000 of UIM coverage. "[Y]our insurance company is required to offer, optional underinsured motorist coverage in various limits up to the limits of liability coverage you have purchased." (Exhibit 2, Page 4).

There is no question that the policy in question was required to provide the minimum statutory coverage of \$25,000. See CARTER v. STANDARD FIRE INS. CO., 406 S.C. 609, 623, 753 S.E.2d 515 n.5 (2013) (UIM "is a statutorily required coverage in the sense it is required to be offered.") Under South Carolina law, "[t]he central purpose of the UIM statute is to provide coverage when the injured party's damages exceed the liability limits of the at-fault motorist," and therefore, "[t]he UIM and UM statutes are remedial in nature and enacted for the benefit of injured persons" and "should be construed liberally to effect the purpose intended by the Legislature." Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005) (citations omitted). In the context of interpreting an insurance contract, "[s]tatutory provisions relating to an insurance contract are part of the contract as a matter of law." State Farm Mut. Auto. Ins. Co. v. Calcutt, 340 S.C. 231, 234, 530 S.E.2d 896, 897 (Ct.App.2000) (citation omitted). To this end, "[UIM] coverage is controlled by and subject to our [UIM] act, and any insurance policy provisions inconsistent therewith are void, and the relevant statutory provisions prevail as if embodied in the policy." Kay v. State Farm Mut. Auto. Ins. Co., 349 S.C. 446, 450, 562 S.E.2d 676, 678 (Ct.App.2002). A policy of automobile insurance must provide at least the minimum amount of coverage outlined in the statute, and "a policy issued pursuant to the law which gives less protection will be interpreted by the court as supplying the protection which the legislature intended." *Id.* at 450, 562 S.E.2d at 678 (quoting Hamrick v. State Farm Mut. Auto. Ins. Co., 270 S.C. 176, 179, 241 S.E.2d 548, 549 (1978)). UIM coverage is considered to be both "personal and portable." See Burgess, 373 S.C. at 41, 644 S.E.2d at 42 ("[A]s a general proposition, UIM coverage follows the individual insured rather than the vehicle insured, that is, UIM coverage, like UM, is 'personal and portable.'"). Under the circumstances, the Court found that public policy was not offended by an insurance policy that purported to limit the portability of UIM when an insured is injured in a vehicle he owns but does not insure under the insurance policy. CARTER v. STANDARD FIRE INS. CO., 406 S.C. 609, 619, 753 S.E.2d 515 (2013).

Here, Michael is the named insured, and thus, a Class I insured under the policy. "The two classes of insureds are: (1) the named insured, his spouse and relatives residing in his household; and (2) any person using, with the consent of the named insured, the motor vehicle to which the policy applies and a guest in the motor vehicle. Garris v. Cincinnati, 280 S.C. 149, 311 S.E.2d 723 (1984).

CONCLUSION

Our precedents, read in the context of section 38-77-160, unequivocally require the insurer to provide coverage on each policy issued in an amount equal to the excess UIM coverage purchased on the vehicle involved in the accident (\$25,000). Moreover, the form signed by the

insured confirms that the company's agent unambiguously offered your insured coverage of \$25,000. Therefore, you are bound by the offer and by public policy in South Carolina to tender the remainder of the UIM coverage mandated by the Legislature. Policy provisions that seek to limit coverage mandated by the Legislature are null and have no effect.

III. Offer of underinsured motorist coverage

Limits of Coverage

\$25,000/\$50,000/\$25,000
\$50,000/\$100,000/\$25,000
\$50,000/\$100,000/\$50,000
\$100,000/\$300,000/\$50,000
\$100,000/\$300,000/\$100,000
\$250,000/\$500,000/\$100,000
\$100,000 combined single limit each accident
\$300,000 combined single limit each accident
\$500,000 combined single limit each accident

Amounts of Increased Premium

\$25.00
n/a
n/a
n/a
n/a
n/a
n/a
n/a
n/a

To obtain the underinsured motorist premium amounts for adding or removing vehicles, please contact us.

Do you wish to purchase underinsured motorist coverage?

Yes ☒ No ☐

If your answer is "no," then you must sign here.

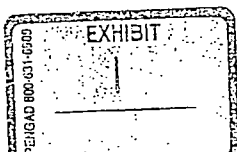
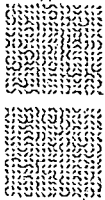
Your Signature

X

If your answer is "yes," then specify the limits which you desire. These limits cannot exceed your automobile insurance liability limits.

I select 25 / 50 / 25 split limits; or

I select _____ Combined Single Limit



IV. **Applicant's acknowledgment**

By my signature, I acknowledge that I have read -- or I have had read to me -- the above explanations and offers of additional uninsured motorist coverage and optional underinsured motorist coverage. I understand that the above explanations of these coverages are intended only to be brief descriptions of additional uninsured motorist coverage and optional underinsured motorist coverage, and that payment of benefits under either of these coverages is subject both to the terms and conditions of my automobile insurance policy and the laws of the State of South Carolina.

My signature below further acknowledges that I understand the coverages as they have been explained to me, and the type and amounts of coverage marked on the preceding pages have been selected by me. This is the type and amount of insurance coverage I wish to purchase.

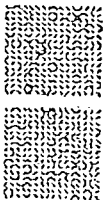
Type or Print Your Name: KANDI RAMIREZ
Your Address: 205 MAY FLOWER DRIVE
LAURENS, SC 29360

Your Signature

Today's Date

X

Form 2005 SC (11/07)



PROGRESSIVE CLAIMS
800 Progressive Way
Suite 150
Marietta, GA 30066

PROGRESSIVE

HARRIS & GRAVES
EDWIN TURNAGE
P O BOX 6263
GREENVILLE, SC 29605

Underwritten By:
Progressive Northern Insurance
Company

Claim Number: 13-3945718
Loss Date: April 11, 2013
Document Date: June 18, 2014
Page 1 of 1

claims.progressive.com
Track the status and details of your claim,
e-mail your representative or report a
new claim.

Claim Information

Dear Mr. Turnage,

Per your request here is a copy of our insured's underinsured and uninsured motorist selection and rejection documents related to your client Juan Michael Ramirez's claim. Please call me with questions you may have.

ALISON PYLE
Claims Department
1-770-779-0580
1-800-PROGRESSIVE (1-800-776-4737)
Fax: 1-770-779-0636
apyle1@progressive.com

Form Z587 XX (01/03) - SC

Policy Number: 111122222
KADJFAR22
Page 45

II. Offer of additional uninsured motorist coverage

Units of coverage

\$25,000/\$50,000/\$25,000

Amount of Uninsured Premium

Minimum limits of uninsured motorist coverage are automatically provided by your insurance policy.

\$50,000/\$100,000/\$25,000

n/a

\$50,000/\$100,000/\$50,000

n/a

\$100,000/\$300,000/\$50,000

n/a

\$100,000/\$300,000/\$100,000

n/a

\$250,000/\$500,000/\$100,000

n/a

\$100,000 combined single limit each accident

n/a

\$300,000 combined single limit each accident

n/a

\$500,000 combined single limit each accident

n/a

To obtain the uninsured motorist premium amounts for adding or removing vehicles, please contact us.

Do you wish to purchase additional uninsured motorist coverage?

Yes

No

If your answer is "no," then you must sign here.

Your signature

X

If your answer is "yes," then specify the limits which you desire. These limits cannot exceed your automobile insurance liability limits.

Select / / Split limits, or

Select Combined Single Limit



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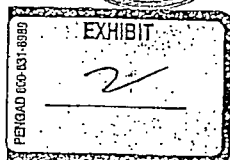
South Carolina Department of Insurance

300 Arbor Lake Drive, Suite 1200
Columbia, South Carolina 29223

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6223

MARK SANFORD
Governor

ELEANOR KITZMAN
Director of Insurance



BULLETIN NUMBER 2006-03

TO: Insurers Writing Automobile Property and Casualty Insurance in South Carolina

FROM: Eleanor Kitzman, Director

Eleanor Kitzman

SUBJECT: Recent Changes in South Carolina Law Concerning Increases in Minimum Liability Limits and Offers of Additional Uninsured and Optional Underinsured Motorist Insurance Coverage Requirements

DATE: July 7, 2006

SECTION I: PURPOSE

The purpose of this bulletin is to address recent changes in South Carolina law governing minimum automobile liability insurance limits and the offering of additional uninsured and optional underinsured motorist insurance coverage. This bulletin supersedes and replaces South Carolina Department of Insurance Bulletin 1999-01 on this subject and South Carolina Department of Insurance Bulletin 2006-01 regarding the decision in *Floyd v. Nationwide Mutual Insurance Company*, 367 S.C.253, 626 S.E.2d 6 (2005).

SECTION II: INCREASE IN MINIMUM AUTOMOBILE LIABILITY INSURANCE LIMITS

Effective January 1, 2007, the minimum automobile liability insurance limits that insurers are required to offer are increased as set forth below:

- \$25,000 because of bodily injury to one person in any one accident and, subject to the limit for one person;
- \$50,000 because of bodily injury to two or more persons in any one accident; and
- \$25,000 because of injury to or destruction of property of others in any one accident.

See 2006 S.C. Rat. No. 377, § 3. These are minimum requirements. Insurers are not precluded from issuing, selling or delivering a policy providing liability coverage in excess of these requirements.

The increased minimum limits *only* apply to new or renewal policies with effective dates of coverage on or after January 1, 2007. It does not apply to in-force policies unless those policies cancel mid-term after January 1, 2007. If a minimum limits policy cancels mid-term and is reinstated within the insurer's established reinstatement guidelines, it may be reinstated at the old minimum limits. If the policy cancels mid-term and is re-written, it must be written with the increased minimum limits. Insurers that already have approved rate filings with factors for 25/50/25 and that are not seeking an increase for those limits or any other rates at January 1, 2007 do not need to make any rate filing with the Department. Insurers seeking an increase in their

25/50/25 rates or that do not have approved rates for 25/50/25 must make a rate filing with the Department. Additionally, if an insurer's forms refer to 15/30/10 or 15/30/15 policy limits, new forms and/or an endorsement must be filed. Please submit filing by November 1, 2006 to insure a January 1, 2007 effective date.

SECTION III: WHAT CONSTITUTES A MEANINGFUL OFFER OF OPTIONAL UNDERINSURED MOTORIST COVERAGE

Section 38-77-350 requires the Director to "approve a form which automobile insurers shall use in offering optional coverages required to be offered pursuant to law to applicants for automobile insurance policies." The statute further provides that if the "form is properly completed and executed by the named insured it is conclusively presumed that there was an informed, knowing selection of coverage and neither the insurance company nor any insurance agents has any liability to the named insured or any other insured under the policy for the insured's failure to purchase any optional coverage or higher limits." See S.C. Code Ann. §38-77-350 (B) (2002). Pursuant to South Carolina Department of Insurance Bulletin 1999-01, effective March 1, 1999, the Department promulgated SCDOI Form Number 2006, *Offer of Additional Uninsured Motorist Coverage and Optional Underinsured Motorist Coverage*.

In December 2005, the South Carolina Supreme Court held that the insured had to personally mark the selection and sign the form for it to be considered an informed and knowing selection of optional insurance coverage. See *Floyd v. Nationwide Mutual Insurance Company*, 367 S.C.253, 626 S.E.2d 6 (2005). The South Carolina General Assembly effectively reversed the *Floyd* decision with the enactment of 2006 S.C. Rat. No. 377, §1 amending §38-77-350. Effective June 14, 2006, an insurer or representative of the insurer may complete the form for the named insured. If the form is signed by the named insured after it has been completed by the producer or representative of the insurer, it is conclusively presumed that there was an informed, knowing selection of coverage and neither the insurance company nor an insurance agent is liable to the named insured or another insured under the policy for the insured's failure to purchase optional coverage or higher limits. See 2006 S.C. Rat. No. 377, §1.

SECTION IV: REVISED SCDOI FORM NUMBER 2006

The Department has revised SCDOI Form Number 2006 to reflect both the increase in the minimum liability limits and the revisions to §38-77-350. Attached as Exhibit 1 is a copy of that revised form. It, or another substantially similar form offering additional uninsured or optional underinsured motorist coverage, must be used by insurers for all newly issued automobile insurance policies. Insurers may also wish to have this revised form completed at renewal for existing policies in order to avail themselves of the protections of §38-77-350. If an insurer chooses to use a form other than SCDOI 2006, it must first be submitted to the Office of Forms and Rates for approval at the address listed below.

Carla Lachance
Manager, Forms and Rates
South Carolina Department of Insurance
300 Arbor Lake Drive, Suite 1200
Columbia, South Carolina 29223
Telephone: (803) 737-6230
Fax: (803) 737-6233
Email: clachance@doi.sc.gov

EXHIBIT 1

STATE OF SOUTH CAROLINA DEPARTMENT OF INSURANCE
SCDOI FORM NUMBER 2006
[REVISED JANUARY 1, 2007]

OFFER OF ADDITIONAL UNINSURED MOTORIST COVERAGE AND OPTIONAL UNDERINSURED MOTORIST COVERAGE

Automobile liability insurance coverage pays other motor vehicle drivers and their passengers for damages caused by you and for which you are legally responsible. There are two types of automobile liability insurance coverage: bodily injury and property damage. Bodily injury coverage pays for bodily injuries to others inflicted by your motor vehicle. Property damage coverage pays for damages which your motor vehicle causes to other motor vehicles or property.

Under South Carolina law, an insurance company may refuse to write your automobile liability insurance for a number of reasons. If an insurance company decides to write your automobile liability insurance coverage, however, it must provide at least \$25,000 of bodily injury coverage for each person whom you may injure in any single accident and \$50,000 of bodily injury coverage for two or more people whom you may injure in any single accident. The insurance company must also provide at least \$25,000 in property damage coverage for each accident you may cause. You may have seen these limits described as \$25,000/\$50,000/\$25,000 or 25-50-25. These limits are commonly-known as minimum limits. In order to drive your automobile upon the roads of this State, you must have at least these minimum limits of insurance, unless you post a satisfactory bond or pay a \$550 fee to drive uninsured. There is no requirement that an insurance company offer higher than minimum limits of automobile liability insurance coverage. If your insurance company does offer more than the minimum limits, you will be required to pay an additional premium for those increased limits of protection.

An insurer that writes your automobile liability insurance coverage must also offer two additional coverages which will protect you in the event you are damaged in an automobile accident by an at-fault driver who either has no automobile insurance or whose automobile insurance liability limits are less than your damages in that accident. These coverages are termed additional uninsured motorist coverage and optional underinsured motorist coverage, respectively. You may also see them referred to as UM and/or UIM. If you decide to purchase either of these coverages, you will be required to pay an additional premium for each of these coverages.

Uninsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you may be legally entitled to collect as damages from an owner or operator of an at-fault uninsured motor vehicle. An uninsured motor vehicle is a motor vehicle which either has no liability insurance coverage or is operated by a hit-and-run driver. By law, your automobile insurance policy automatically provides uninsured motorist coverage of \$25,000/\$50,000/\$25,000. There is a \$200 deductible for uninsured property damage claims.

You also have the right to buy additional uninsured motorist coverage, in various limits up to the limits of the liability coverage you have purchased. The limits of additional uninsured motorist coverage which your insurance company is authorized to write and for which you are eligible are shown on this form, together with the additional premium for those increased limits. You may not purchase uninsured motorist coverage with limits in excess of your liability limits.

Underinsured motorist coverage compensates you, or other persons insured under your automobile insurance policy, for amounts which you legally may be entitled to collect as damages from an owner or operator of an at-fault underinsured motor vehicle. An underinsured motor vehicle is a motor vehicle which is covered by some

form of liability insurance, but which is insufficient to fully compensate you for your damages.

Your automobile insurance policy does not automatically provide any underinsured motorist coverage. However, you have the right to buy, and your insurance company is required to offer, optional underinsured motorist coverage in various limits up to the limits of liability coverage you have purchased. The limits of optional underinsured motorist coverage which your insurer is authorized to write and for which you are eligible are shown on this form, together with the additional premium for those limits. You may not purchase underinsured motorist coverage with limits in excess of your liability limits.

If you reject optional underinsured or additional uninsured motorist coverages shown on this form and if you are involved in an automobile accident that is not your fault, this form may be used by your insurance company as evidence against you if you make a claim for additional uninsured motorist coverage or optional underinsured motorist coverage.

If you do not complete this form and return it to your insurance company or insurance agent within 30 days, your insurance company is required by law to add additional uninsured motorist coverage and optional underinsured motorist coverage, in the same limits as your automobile liability insurance, to your automobile insurance policy. You will be required to pay an additional premium for each of these coverages and your policy may be canceled for non-payment of that additional premium.

In the future, if you wish to increase or to decrease your limits of additional uninsured motorist coverage or optional underinsured motorist coverage, you must contact either your insurance agent or your insurance company. You will not be presented with another copy of this form by your insurance agent or insurance company upon the renewal of your automobile liability insurance policy. You will not be presented with another copy of this form by your insurance agent or current insurance company when you extend, change, supersede, or replace your automobile liability insurance policy.

Please read this form carefully. Your insurance agent or your insurance company must answer any questions which you may have. If you have any further questions, you may contact the Department of Insurance at:

Office of Consumer Services
South Carolina Department of Insurance
300 Arbor Lake Drive, Suite 1200, Columbia, SC 29223
Post Office Box 100105 Columbia, South Carolina 29202-3105
(803) 737-6180
(800) 768-3467 E-mail Address: CnsmMail@doi.sc.gov

Offer of Additional Uninsured Motorist Coverage

Minimum uninsured motorist coverage limits of \$25,000/\$50,000/\$25,000 are automatically provided by your insurance policy. If you select additional uninsured motorist coverage, an additional premium will be charged. The schedule below indicates the premium charges for minimum and increased limits:

a. Individual Named Insureds and Partnerships

(1) Split Limits (000's)

	Number of Autos (premium per auto)					
	1	2	3-4	5-9	10-30	>30
25/50/25						
50/100/50						
100/300/50						
250/500/50						

(2) Single Limits

Limit	Number of Autos (premium per auto)					
	1	2	3-4	5-9	10-30	>30
75,000						
150,000						
350,000						
550,000						

Do you wish to purchase additional uninsured motorist coverage? Yes ___ No ___

If your answer is "no," you must sign here: _____

If your answer is "yes," specify the limits you desire. These limits cannot exceed your automobile insurance liability limits.

_____ I select _____ / _____ / _____ split limits: OR
 _____ I select _____ single limit.

Offer of Optional Underinsured Motorist Coverage

Minimum uninsured motorist coverage limits of \$25,000/\$50,000/\$25,000 are automatically provided by your insurance policy. If you select optional underinsured motorist coverage, an additional premium will be charged. The schedule below indicates the premium charges for minimum and increased limits:

a. Individual Named Insureds and Partnerships

(1) Split Limits (000's)

	Number of Autos (premium per auto)					
	1	2	3-4	5-9	10-30	>30
25/50/25						
50/100/50						
100/300/50						
250/500/50						

(2) Single Limits

Limit	Number of Autos (premium per auto)					
	1	2	3-4	5-9	10-30	>30
75,000						
150,000						
350,000						
550,000						

Do you wish to purchase optional underinsured motorist coverage? Yes ___ No ___

If your answer is "no," you must sign here: _____

If your answer is "yes," specify the limits you desire. These limits cannot exceed your automobile insurance liability limits.

_____ I select _____ / _____ / _____ split limits: OR
 _____ I select _____ single limit.

Applicant's Acknowledgment

By my signature, I acknowledge that I have read – or I have had read to me – the above explanations and offers of additional uninsured motorist coverage and optional underinsured motorist coverage. I understand that the above explanations of these coverages are intended only to be brief descriptions of additional uninsured motorist coverage and optional underinsured motorist coverage, and that payment of benefits under either of these coverages is subject both to the terms and conditions of my automobile insurance policy and the laws of the State of South Carolina.

My signature below further acknowledges that I understand the coverages as they have been explained to me, and the type and amounts of coverage marked on the preceding pages have been selected by me. This is the type and amount of insurance coverage I wish to purchase.

Type or print your name: _____

Your signature: _____

Your address: _____

Today's date: _____

MITCHELL J. WILLIAMS
STEVEN D. HAYMOND
ROBERT F. McMAHAN, JR.
MICHAEL S. SWINDELL
EDWIN L. TURNAGE
S. HAMPTON EADON, III*

*Also Licensed in North Carolina

LAW OFFICES
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ROCK HILL
SPARTANBURG

OF COUNSEL
E. WESLEY GRAVES, III

RETIRED
SHIPP D. HARRIS

July 23, 2014

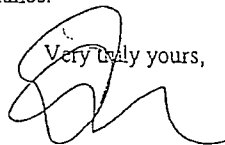
Alison Pyle
Progressive Northern Insurance Company
800 Progressive Way, Suite 150
Marietta, GA 30066

RE: Our File No. 201339345
Your Insured: Kandi Ramirez
Your Claim #: 13-3945718
Our Client(s): Juan Michael Ramirez
Accident Date: 4/11/2013

Dear Allison:

This letter is a renewal of our demand for the remainder of the UIM policy limits (\$25,000) required by South Carolina law. I am enclosing a Memorandum which outlines the legal obligation to provide \$25,000 of coverage under South Carolina law within each automobile insurance policy. Please let me know by August 15, 2014, if you will tender the remaining amount of coverage that you owe to Michael Ramirez. Thank you for your assistance.

Very truly yours,



Edwin L. Turnage

Enclosure

cc: Michael Ramirez

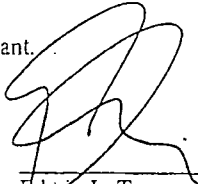
1.80

CERTIFICATE OF SERVICE

Edwin L. Turnage says that he is the Attorney for the Plaintiff, with offices at Greenville, South Carolina, and that on February 2, 2015, he hand-delivered a copy of a June 24, 2014 Memorandum and Attachments to:

Bradley L. Lanford, Esq. at the Laurens County Courthouse, 100 Hillcrest Square,
Laurens, South Carolina.

the name and address of counsel for the defendant.


Edwin L. Turnage

LAURENS COUNTY
CLERK OF COURT

2015 FEB -2 P 1:50

LYNN W. LANCASTER

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS 2014 OCT 31 P. 07:30: 2014-CP-30-603

Juan Michael Ramirez,

LAURENS COUNTY
CLERK OF COURT

vs.

Progressive Northern Insurance Company,

Defendant.

DEFENDANT'S ANSWERS TO
DISCOVERY REQUESTS OF
PLAINTIFF

TO: EDWIN L. TURNAGE, ATTORNEY FOR PLAINTIFF:

Defendant Progressive Northern Insurance Company (hereinafter {"Progressive"}) hereby
answers Defendant's Discovery Requests as follows:

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: None at this time.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the defense in the case.

ANSWER: None at this time other than Progressive's insurance policy that is at issue in this case.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: Progressive is not aware of any applicable coverages other than what has already been tendered and what is at issue in this case.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER: None at this time.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Answer to Interrogatory #1.

6. State the number of automobile insurance policies Defendant issued in South Carolina in the calendar years 2013 and 2014.

ANSWER: Progressive objects on the basis that this interrogatory is overly broad, unduly burdensome, and is not reasonably calculated to lead to the discovery of relevant evidence.

7. State the amount of money Defendant has collected in premiums paid by South Carolina citizens on policies issued in South Carolina during 2013 and 2014.

ANSWER: Progressive objects on the basis that this interrogatory is overly broad, unduly burdensome, and is not reasonably calculated to lead to the discovery of relevant evidence.

DOCUMENT REQUEST

1. Produce a true copy of Defendant's Policy Number 33143869-1.

ANSWER: See attached.

2. Produce the Declaration Page for Policy Number 33143869-1.

ANSWER: See attached.

3. Produce all forms signed by your insureds when she took out Policy Number 33143869-1.

ANSWER: See attached.


Bradley L. Lanford

BAKER, RAVENEL & BENDER, LLP

Post Office Box 8057

Columbia, SC 29202

Telephone: (803) 799-9091

Facsimile: (803) 779-3423

blanford@brblegal.com

Attorneys for Defendant.

Our File: 10716.52

October 23, 2014

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS

) 2014 DEC/A NOA 2014-CP-30-603

Juan Michael Ramirez,

Plaintiff,

) LAURENS COUNTY
) CLERK OF COURT
) DEFENDANT'S SUPPLEMENTAL
) ANSWERS TO INTERROGATORIES

vs.

Progressive Northern Insurance Company,

Defendant.

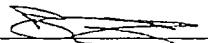
TO: EDWIN L. TURNAGE, ATTORNEY FOR PLAINTIFF:

Defendant Progressive Northern Insurance Company (hereinafter {"Progressive"}) hereby supplements its answers to plaintiff's Interrogatories:

INTERROGATORIES

6. State the number of automobile insurance policies Defendant issued in South Carolina in the calendar years 2013 and 2014.

ANSWER: Progressive objects on the basis that this interrogatory is overly broad, unduly burdensome, and is not reasonably calculated to lead to the discovery of relevant evidence. Subject to and without waiving said objection, Progressive states that it wrote automobile insurance policies in 2013 and 2014 throughout the state of South Carolina and collected premiums on those policies.


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Post Office Box 8057
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Facsimile: (803) 779-3423
blanford@brblegal.com
Attorneys for Defendant
Our File: 10716.52

December 5, 2014



Laurens County Eighth Judicial Circuit Public Index



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Switch View

Juan Michael Ramirez VS Progressive Northern Insurance Company

Case Number:	2014CP3000603	Court Agency:	Common Pleas	Filed Date:	08/04/2014
Case Type:	Common Pleas	Case Sub Type:	Breach of Cont 140	File Type:	Jury
Status:	Judgment	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Judgment	Disposition Date:	03/17/2015	Disposition Judge:	McIntosh, R Lawton
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Ramirez, Juan Michael	Notice of Appeal (The State of South Carolina)	Filing		04/13/2015-16:14		
Progressive Northern Insurance Company	Order/Order	Order		03/17/2015-12:11		
Ramirez, Juan Michael	Order/Form 4	Order		02/19/2015-15:22	03/17/2015-15:22	
Ramirez, Juan Michael	Order/Form 4-Mot Compel Denied/Mot Dismiss Under Advisement	Order		02/03/2015-09:42	03/17/2015-09:42	
Turnage, Edwin L.	Notice of Motions Roster Publication Sent	Action		12/29/2014-11:29	03/17/2015-11:29	
Turnage, Edwin L.	Notice of Motions Roster Publication Sent	Action		12/29/2014-11:29	03/17/2015-11:29	
Turnage, Edwin L.	Notice of Motions Roster Publication Sent	Action		12/29/2014-11:29	03/17/2015-11:29	
Turnage, Edwin L.	Notice of Motions Roster Publication Sent	Action		12/29/2014-11:29	03/17/2015-11:29	
Belton, David E.	Notice of Motions Roster Publication Sent	Action		12/29/2014-11:29	03/17/2015-11:29	
Belton, David E.	Notice of Motions Roster Publication Sent	Action		12/29/2014-11:29	03/17/2015-11:29	
Belton, David E.	Notice of Motions Roster Publication Sent	Action		12/29/2014-11:29	03/17/2015-11:29	

Belton, David E.	Notice of Motions Roster Publication Sent	Action		12/29/2014-11:29	03/17/2015-11:29	
Lanford, Bradley Lewis	Notice of Motions Roster Publication Sent	Action		12/29/2014-11:29	03/17/2015-11:29	
Lanford, Bradley Lewis	Notice of Motions Roster Publication Sent	Action		12/29/2014-11:29	03/17/2015-11:29	
Lanford, Bradley Lewis	Notice of Motions Roster Publication Sent	Action		12/29/2014-11:29	03/17/2015-11:29	
Lanford, Bradley Lewis	Notice of Motions Roster Publication Sent	Action		12/29/2014-11:29	03/17/2015-11:29	
Progressive Northern Insurance Company	Supplemental Answer And Service	Filing		12/11/2014-11:27	03/17/2015-11:27	
Progressive Northern Insurance Company	Answer/Answer And Service	Filing		10/31/2014-12:54	03/17/2015-12:54	
Ramirez, Juan Michael	Service/Certificate Of Service	Filing		10/23/2014-11:31	03/17/2015-11:31	
Ramirez, Juan Michael	Service/Certificate Of Service Certified Mail	Filing		10/23/2014-11:30	03/17/2015-11:30	
Ramirez, Juan Michael	Interrogatories(Plt's First Set of Discovery Requests to Def	Filing		10/23/2014-11:28	03/17/2015-11:28	
Ramirez, Juan Michael	Affidavit/Affidavit of	Filing		10/23/2014-11:28	03/17/2015-11:28	
Ramirez, Juan Michael	Motion/Compel	Motion		10/23/2014-11:27	03/17/2015-11:27	
Progressive Northern Insurance Company	Service/Certificate Of Service	Filing		10/20/2014-12:33	03/17/2015-12:33	
Progressive Northern Insurance Company	Motion/Judgment on the Pleadings	Motion		10/20/2014-12:33	03/17/2015-12:33	
Ramirez, Juan Michael	Reply/Service	Filing		10/10/2014-10:56	03/17/2015-10:56	
Ramirez, Juan Michael	Service/Certificate Of Service Certified Mail	Filing		09/15/2014-12:58	03/17/2015-12:58	
Ramirez, Juan Michael	Memo/Memo in Opposition	Filing		09/15/2014-12:26	03/17/2015-12:26	
Progressive Northern Insurance Company	Motion/Strike	Motion		09/11/2014-10:49	03/17/2015-10:49	
Progressive Northern Insurance Company	Motion/Dismiss Breach of Contract Cause of Action	Motion		09/11/2014-10:48	03/17/2015-10:48	
Progressive Northern Insurance Company	Answer/Answer And Service	Filing		09/11/2014-10:40	03/17/2015-10:40	
South Carolina Department of	Service/Acceptance Of Service	Filing		08/18/2014-12:01	03/17/2015-12:01	

7/6/2015

Public Index Search

Insurance					
Ramirez, Juan Michael	Summons & Complaint	Filing		08/04/2014- 13:06	03/17/2015- 13:06

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SEP 24 2015

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 3, 2015



Edwin L. Turnage
HARRIS & GRAVES, P.A.
812 Laurens Road
Greenville, South Carolina 29607
(864) 235-1331
Attorney for Appellant.

The State of South Carolina In The Court of Appeals

APPEAL FROM LAURENS COUNTY

Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

SEP 24 2015

SC Court of Appeals

Case No. 2015-000788

JUAN MICHAEL RAMIREZ,

Appellant,

v.

PROGRESSIVE NORTHERN INSURANCE COMPANY, Respondent.

Brief of Appellant

Edwin L. Turnage
HARRIS & GRAVES, P.A.
812 Laurens Road
Greenville, SC 29607
(864) 235-1331

Attorney for Appellant

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STATEMENT OF ISSUES ON APPEAL

1. 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.
2. Did the trial court err by granting Respondent's motion for judgment on the pleadings under Rule 12, SCRPC, when factual issues raised by those pleadings were in dispute and Appellant requested time for discovery?

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)

On September 11, 2014, Respondent filed an Answer that admitted some of the facts asserted in the Complaint. However, Respondent also denied that its policy language offered \$25,000 of UIM coverage and denied that it owed Ramirez any more money. Respondent's pleading asserted a counterclaim seeking declaratory judgment that it owed Ramirez no additional money. (R. pp. 14-20) Contemporaneously, Respondent filed a Rule 12 Motion for Judgment on the Pleadings.¹ (R. pp. 65-67)

On October 10, 2014, Ramirez filed a Reply denying the counterclaim. (R. pp. 21-22)

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.² (R. pp. 1-5) On April 13, 2015, Ramirez timely filed his Notice of Appeal. (R. p. 76)

¹ Respondent also filed a Motion to Strike and Dismiss Ramirez's breach of contract claim. (R. pp. 70-71)

² The Court ruled that all of the other pending motions were mooted by its Order granting Respondent's Rule 12(c) motion for judgment on the pleadings. (R. p. 1)

FACTS

On April 11, 2013, Ramirez was a passenger in an underinsured 2001 Chevrolet that John S. Bryan was driving. Bryan, who was speeding, lost control of the Chevrolet and crashed it into trees next to the roadway. (R. pp. 2, 14)

The bones in Ramirez's right upper arm shattered in the collision. On April 11, 2013, he underwent a closed reduction operation on his right arm. A closed reduction operation is a hospital emergency room procedure where the doctor pulled and yanked on Ramirez's broken right arm to move the pieces of the fractured bone into a better alignment. On April 18, 2013, Ramirez underwent an open reduction internal fixation of right humeral shaft fracture and exploration of the radial nerve operation. In this procedure, doctors cut open Ramirez's arm and bound the fractured pieces of bone together with screws, metal rods, and K-wires. (R. pp. 10, 14)

Ramirez incurred medical expenses of \$65,169.18 for treatment of his collision-related injuries. He lost approximately \$3,407.95 in wages. He endured pain, anxiety, and mental distress, and lost of enjoyment of life. He sustained a permanent impairment and permanent scarring. (R. pp. 10, 14) Respondent admits and stipulates that Ramirez's uncompensated harms and losses exceed \$25,000, the

declared amount of its UIM \$25,000 policy limits. (R. pp. 9, 14, and 27)

Respondent is in the profitable business of writing automobile insurance policies and selling them across the State of South Carolina. It collects substantial revenue in premiums from South Carolina's citizens. (R. p. 97).

Respondent sold Policy Number 33143869-1 to Kandi Ramirez, Michael Ramirez's mother. The policy declared UIM coverage limits of \$25,000 for one automobile. (R. pp. 9, 14) In accordance with S.C. Code Ann. § 38-77-350, Respondent issued a form explaining UIM coverage under the policy. (R. pp. 9, 14) The form was checked and signed by Kandi Ramirez. It stated that she paid an additional \$25 premium in exchange for \$25,000 of UIM coverage. (R. pp. 9, 14, and 81-82) Pursuant to State law, the policy's UIM coverage protected Kandi Ramirez and her resident family members including her son, Michael (Appellant). There is no dispute that on the date of the collision Michael Ramirez lived with his mother and his step father, Paul Eclavea ("Eclavea") in their family home. ((R. pp. 9, 14) Respondent did not insure any of the other vehicles garaged at the Ramirez household.

Ramirez was insured by two other automobile UIM insurance policies at the residence. First, Ramirez owned a car. His car was

insured by Bristol West Insurance Services. Bristol West's policy provided Ramirez with UIM coverage of \$25,000. (R. pp. 9, 14)

Second, Eclavea (Ramirez's step father) owned vehicles. Eclavea's cars were insured by State Farm Insurance Company with \$25,000 UIM coverage limits. (R. pp. 9, 14)

On September 12, 2013, Ramirez made a claim against Bryan's liability insurance company (State Farm). On September 26, 2013, State Farm tendered the liability policy limits (\$25,000) in exchange for a Covenant Not to Execute against Bryan's personal assets. Ramirez accepted the offer. (R. pp. 10, 14)

On October 21, 2013, Ramirez made a claim for UIM coverage against the Bristol West insurance policy. On or about October 30, 2013, Bristol West tendered its \$25,000 UIM coverage limits. (R. pp. 10, 14).

On November 21, 2013, Ramirez made UIM claims against Eclavea's State Farm and Respondent's policies. On December 16, 2013, State Farm tendered its \$25,000 UIM limits. (R. pp. 10, 14) Respondent, however, asserted a policy defense and refused to tender the declared \$25,000 UIM coverage.³ Instead, on March 6, 2014, Respondent tendered \$8,333.33, a "pro-rated portion" of Respondent

³ Respondent's policy is not part of the court record.

limits. (R. pp. 9, 16, and 19-20) Respondent retained the remaining \$16,666.67 of its declared \$25,000 UIM coverage.

ARGUMENTS

1. South Carolina mandates that automobile insurance companies offer consumers the option to purchase a minimum of \$25,000 of UIM coverage for every automobile insurance policy sold. A Policy provision that attempts to limit the mandatory minimum UIM coverage is void because it violates South Carolina public policy.

Ramirez v. Progressive Northern Ins. Co. is an important public policy case because an order affirming the Circuit Court's March 17, 2015, Order will eliminate UIM coverage for thousands of South Carolina families.

Respondent claims this is a stacking case. Generally, "[s]tacking refers to an insured's recovery of damages under more than one insurance policy in succession until all of his damages are satisfied or until the total limits of all policies have been exhausted." Nakatsu v. Encompass Indemnity Co., 390 S.C. 172, 178, 700 S.E.2d 283 (2010) (emphasis added). The circuit court became confused by Respondent's loose use of the term "stacking."

The case law discussing automobile insurance stacking is nuanced and potentially confusing because South Carolina appellate

courts have used the term differently depending on the facts. If the case involves liability insurance, stacking means one thing. If it is an unininsured (UM) or UIM case, it means something different.

The best way to avoid confusion is to recognize that this is a case about "portability" rather than thinking it is a case about stacking. "[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." *Id.* 390 S.C. at 181. Instead of getting side-tracked by various and sundry stacking opinions, a Court must direct its focus into the plain terms of the UIM statute. When focus is directed appropriately on the UIM statute, the law is clear.

The South Carolina UIM statute states as follows:

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. If, however, an insured or named insured is protected by uninsured or underinsured motorist coverage in excess of the basic limits, the policy shall provide that the insured or named insured is protected only to the extent of the coverage he has on the vehicle involved in the accident. 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.

See S.C. Code Ann. § 38-77-160 (emphasis added).⁴

On its face, Respondent's policy declared it provided the minimum allowed UIM coverage (\$25,000). (R. pp. 9, 14) The UIM statute provides that even when an insured vehicle is not involved in an accident, the coverage must equal at least "the extent of coverage" on any one of the vehicles with the excess or underinsured coverage. See id. Respondent only insured one vehicle. The extent of coverage it insured here on its one vehicle was \$25,000. Therefore, it is illegal for Respondent (or any automobile insurance company) to try to redefine the mandatory UIM coverage minimums by reliance upon alleged policy language.

Regulations promulgated by the Department of Insurance (DOI) confirm this clear statutory directive. The DOI regulation was properly issued because the Legislature directed the DOI to issue forms to be used by carriers, and guidance to explain the mandatory automobile insurance coverages to consumers. Insurance companies must use the DOI forms (or similar forms approved by the DOI). See S.C. Code Ann. § 38-77-350. This legislative mandate was met with DOI Bulletin Number 2006-03. (R. pp. 85-91)

⁴ The current South Carolina liability and UM limits are \$25,000 per person and \$50,000 per accident.

Like the UIM statute, Page 1 of the Bulletin states insurers are required to offer the "minimum automobile liability insurance limits." It says, "These are minimum requirements." (R. p. 85) The DOI's UIM coverage explanation, aimed at South Carolina consumers, states, "[Y]our insurance company is required to offer, optional underinsured motorist coverage in various limits up to the limits of liability coverage you have purchased." (R. p. 88)

Respondent used the DOI-approved form and presented it to Kandi Ramirez when she chose to buy Respondent's offered \$25,000 of UIM coverage. She selected limits of "25/50/25."⁵ (R. pp. 81-82) Thus, Respondent's policy declared UIM coverage of \$25,000.

Respondent alleged in its Answer that a policy provision limited the UIM coverage here to \$8,333.33. However, "[A]ny limiting language in an insurance contract which has the effect of providing less protection than made obligatory by the statute is contrary to public policy and is of no force and effect." See Ferguson v. State Farm Mut. Ins. Co., 261 S.C. 96, 100, 198 S.E.2d 522 (1973); see also Nationwide Mut. Ins. v. Howard, 288 S.C. 5, 339 S.E.2d 501 (1985). Any such policy provision in Respondent's policy must be declared void. "A policy of automobile insurance must provide at least the

minimum amount of coverage outlined in the statute, and 'a policy issued pursuant to the law which gives less protection will be interpreted by the court as supplying the protection which the legislature intended.'" Carter v. Standard Fire Ins. Co., 406 S.C. 609 (2013) (quoting Kay v. State Farm Mut. Auto. Ins. Co., 349 S.C. 446, 450, 562 S.E.2d 676, 678 (Ct. App.2002)). Jackson v. State Farm Mutual Auto. Ins. Co., 288 S.C. 335, 342 S.E.2d 603 (1986), and Giles v. Whitaker, 297 S.C. 267, 376 S.E.2d 278 (1989). "In Jackson and Giles, we held that a policy provision which attempts to limit stacking of 'statutorily required coverage' is invalid. In Jackson, we specifically noted that required coverage includes coverage that is required to be provided or required to be offered. 342 S.E.2d at 604, n. 1." Brown v. Continental Ins. Co., 315 S.C. 393, 396 (1993) (quoting Jackson). See Carter, 406 S.C. at 612 (using the clearer terminology discussing UIM stacking as "stack coverages under the Policy"). See also Burgess v. Nationwide Mut. Ins. Co., 361 S.C. 196, 202, 603 S.E.2d 861 (Ct. App. 2004) ("UIM statute is also remedial in nature and enacted for the benefit of injured persons. It should be construed liberally to effect the purpose intended by the legislature.")

⁵The DOI bulletin explained to consumers that these terms in a policy declaration or form refer to UIM coverage of \$25,000 per person.

The Order cites Ruppe v. Auto-Owners Ins. Co., 329 S.C. 402, 496 S.E.2d 631 (1998), Garris v. Cincinnati Ins. Co., 280 S.C. 149, 311 S.E.2d 723 (1984), and Firemans Ins. Co. v. State Farm Mut. Auto Ins. Co., 370 S.E.2d 85 (S.C. 1988), in support of its holding that Respondent could limit the declared amount of UIM coverage to less than \$25,000.⁶ None of the cited cases support the Order's conclusion.

Ruppe v. Auto-Owners Ins. Co., 329 S.C. 402, 496 S.E.2d 631 (1998), is a liability insurance stacking case. The case did block Ruppe's attempt to stack liability coverages on multiple vehicles. But the Supreme Court distinguished Ruppe from the UIM and UM stacking cases by noting the important distinction between automobile liability insurance coverage and UIM and UM coverage. "Liability coverage, therefore, while statutorily required, is limited to the particular vehicle for which it is purchased." Id. 329 S.C. at 406. UIM coverage, on the other hand, is portable. UIM and UM coverage follow the person. See Burgess v. Nationwide Mut. Ins. Co., 361 S.C. 196, 201, 603 S.E.2d 861 (Ct. App. 2004) ("South Carolina falls in the category where UIM coverage follows the person.") The portability of the \$25,000 UIM coverage on Respondent's policy is the basis of Ramirez's claim and

⁶ The Order actually holds that Respondent owed Ramirez no UIM coverage whatsoever. (Order)

the real issue here. Thus, Ruppe is distinguished and its holding offers no specific precedent in analyzing this a UIM portability case.

Garris was a wrongful death case involving two Class II insureds' UIM claims against State Auto Mutual Insurance Company (State Auto) and Allstate Insurance Company (Allstate). Roderick Lee Huntley insured two vehicles under a State Auto policy. Thomas H. Garris was insured by Allstate, which provided coverage of four vehicles. Huntley and Garris were passengers in a non-owned vehicle and were classified, like Ramirez, as a class II insureds for purposes of UIM coverage analysis.⁷ After analyzing the statutory language, the Garris opinion stated:

The obvious intent of the legislature is to allow insureds or named insureds to take advantage of the benefit of their bargain with their insurance carrier when they are injured by an underinsured motorist and their vehicle is not involved in the accident. . . . Thus, plaintiffs cannot stack the coverage of the other vehicles under the policies issued to them, but may only recover benefits on one vehicle with the coverage.

Garris, 280 S.C. at 156 (emphasis added). Elsewhere, the opinion states, "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 excess or underinsured coverage.

⁷ It is undisputed that Ramirez was injured while a passenger in a vehicle not owned by him or any of his resident relatives.

Coverage on any other vehicles shall not be added to that coverage.”

Id. Here, Ramirez seeks to recover benefits on only the one vehicle insured under Respondent’s policy. If Respondent had insured more than one car in the Ramirez household, Ramirez would concede that because he is a Class II insured Respondent’s policy could have precluded him from stacking the other vehicles’ UIM coverages.

The final case cited was Firemans Ins. Co., 370 S.E.2d 85. Rather than supporting Respondent’s position, it makes Ramirez’s case. It should be noted that Firemans Ins. Co. is a UM case, but the analysis of UM coverage for a class II insured is the same as for UIM coverage. Mullins (the class II insured in Firemans Ins. Co.) was driving a vehicle insured by State Farm Mutual Insurance Company. He collected the UM coverage on the vehicle from State Farm, and made a second claim against his Firemans Insurance Company, which insured three of Mullins’ vehicles for \$35,000 each. The Court ruled that Mullins was, “only entitled to \$35,000 uninsured coverage as set forth in the policy.” Firemans Ins. Co. , 295 S.C. at 546. Therefore, the Fireman Ins. Co. case demonstrated that a class II insured is able to collect the full amount of coverage on at least one of the vehicles under a policy. This is exactly what section 38-77-160 requires, and what Ramirez’s Complaint seeks.

Based upon the statute, regulatory guidance, and our precedent, it is clear the March 17, 2015, Order must be reversed. This case should be remanded to the Circuit Court for further proceedings on the relief sought by Ramirez.

2. Judgment on the pleadings in favor of Respondent was improper because disputed issues of fact were raised in the pleadings and Ramirez is entitled to discovery under Rule 56(f).

The Order granted Respondent judgment on the pleadings based upon Rule 12(c), SCRCP. Rule 12(c), SCRCP provides as follows:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided by Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

Importantly, Respondent's policy was never filed or introduced into the Circuit Court record. The Circuit Court never reviewed the alleged policy language that Respondent claims limited Ramirez's UIM coverage. As such, it was impossible for the court to render a judgment on the pleadings or under Rule 12 or Rule 56, SCRCP.

The trial court granted Respondent's motion for judgment on the pleadings because counsel for Respondent asserted that there were no

disputed issues of fact. (R. pp. 56-57) However, in Paragraphs 25 through 35 of the Complaint, Ramirez alleged that Respondent's policy language, as a factual matter, established that Ramirez was entitled to the \$25,000 of UIM coverage. (R. pp. 10-12) Ramirez alleged that Respondent's promise of \$25,000 of coverage was reflected in the UIM Coverage Election Form and that offer established \$25,000 of UIM coverage under Respondent's policy as a factual matter. (R. pp. 81-82) In the Answer, Respondent denied Ramirez's factual allegations and referred to its unfiled policy. (R. pp. 14-16).

The Circuit Court assumed that Respondent's policy unambiguously prohibited Ramirez from collecting the \$25,000 coverage. Such an assumption is contradicted by the case law. Generally, an insured can stack policies unless limited by statute or by a valid policy provision. See Jackson v. State Farm Mut. Auto. Ins. Co., 288 S.C. 335, 342 S.E.2d 603 (1986). Thus, the question of whether the policy validly prohibited recovery of the declared \$25,000 of UIM coverage here remained open and disputed under the pleadings.⁸

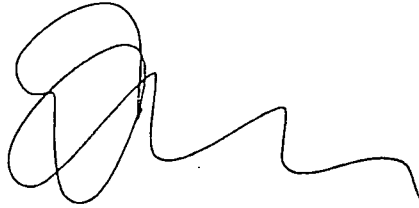
⁸ Ramirez contends any policy language that attempts to alter the minimum UIM coverage required by law is invalid and void as a matter of law. Alternatively, it at least contradicts the coverage form signed by Kandi Ramirez and renders Respondent's policy ambiguous.

Ramirez argued below that granting a Rule 12(c) motion was premature because Ramirez had not had an opportunity for discovery. Specifically, Ramirez's memorandum argued, "To the extent the motion is based upon Rule 56, the motion is obviously premature. Michael [Ramirez] has had no opportunity to undertake discovery. Under Rule 56(f), the Court must deny Defendant's motion when a party requests 'discovery be had.'" (R. p. 74) See Home Builders Assn of SC v. School Distr. No. 2 of Dorchester Co., 405 S.C. 458, 748 S.E.2d 230 (2013) ("Because we find issues of fact raised by the complaint that must be resolved before the constitutionality of 2009 Act No. 99(Act) can be determined, we reverse and remand for further proceedings.") The Circuit Court clearly misapplied the procedural standard of Rule 12(c).

CONCLUSION

For the foregoing reasons, the Court must reverse the Order, and remand the case to the Circuit Court for proceedings on the relief sought by Ramirez.

September 14, 2015



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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.

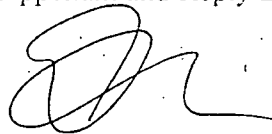
Progressive Northern
Insurance Company,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Brief of Appellant and Reply Brief of Appellant comply with Rule 211(b), SCACR.

September 22, 2015



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PROOF OF SERVICE

I certify that I have served the Brief of Appellant and Reply Brief of Appellant on Progressive Northern Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on September 22, 2015, addressed to its attorney of record, Bradley L. Lanford, Post Office Box 8057, Columbia, South Carolina 29202.

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APPEAL FROM LAURENS COUNTY

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Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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JUAN MICHAEL RAMIREZ,

Appellant,

v.

PROGRESSIVE NORTHERN INSURANCE COMPANY, Respondent.

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ARGUMENT

1. Respondent's claim that years of precedent supports its argument is humbuggery.

Respondent argues Michael Ramirez, "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." It asserts Ramirez is, "ignoring years of South Carolina case law construing that very section." (Respondent's Brief at 4) Respondent's claim that years of South Carolina precedent supports its argument sounds powerful—like the Wizard of Oz did in the movie based on L. Frank Baum's book. Surely a litigant which claims that years of precedent exists would cite at least one supporting case. But if you look behind the curtain all you find is a timid little man who admits he is a humbug.

Respondent cited three cases in its Brief. But they do not help its argument. To the contrary, they demolish it. First, there was Garris v. Cincinnati Ins. Co., 280 S.C. 149, 311 S.E.2d 723 (1984). (Respondent's Brief at 2). The two Class II insured litigants in Garris were attempting to stack coverages for multiple vehicles on two policies. One policy had two vehicles and one four. The Garris Court ruled the insureds could not stack and were eligible to, "only recover benefits on one vehicle with the coverage." Garris, 280 S.C. at 156. Here, Ramirez seeks coverage on only the one vehicle under Respondent's policy.

Next, there was Firemans Ins. Co. v. State Farm Auto. Ins. Co., 295 S.C. 538, 370 S.E.2d 85 (1993). (Respondent's Brief at 2 and 3) Mullins (the insured in Firemans Ins. Co.) was a Class II insured who had already collected the uninsured coverage on one vehicle

under a State Farm policy. Mullins made a second claim against his own policy with Firemans Insurance Company which insured three vehicles. Firemans Insurance Company tendered the coverage for one of the vehicles (\$35,000). Mullins, however, sought to stack coverage on all three vehicles listed in the policy, \$35,000 each (\$105,000). The Supreme Court ruled that Mullins was, "only entitled to \$35,000 uninsured coverage as set forth in the policy." Firemans Ins. Co., 295 S.C. at 546. Thus, Firemans Ins. Co. shows that even when a Class II insured has collected coverage on another automobile insurance policy, the second automobile insurance company must still pay the coverage, "on any one of the vehicles with the excess or underinsured coverage." Id.

Finally, Respondent cited Brown v. Continental Ins. Co., 315 S.C. 393, 434 S.E.2d 270 (1993). (Respondent's Brief at 2 and 3) In Brown, Continental Insurance Company provided insurance on two cars under one policy. It provided for \$100,000 of uninsured and underinsured coverage on both vehicles covered by the policy. Brown was a Class II insured. Continental Insurance Company paid Brown the full coverage on one vehicle, \$200,000. Brown filed suit and attempted stack coverages for both vehicles (\$400,000). Brown lost his stacking claim. But the decision confirmed a Class II insured is nevertheless eligible to collect the coverage on one vehicle insured by a policy.

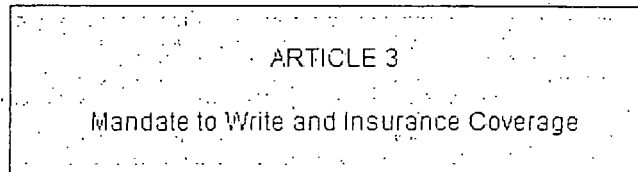
None of the three cited cases help Respondent. The closer one examines these three cases, the more Respondent's argument melts away.

2. Section 38-77-160 is aimed at individual automobile insurance companies that write policies, and not the whole automobile insurance industry.

Respondent makes a bold statement accusing Ramirez of "ignoring the plain language" of Section 38-77-160. (Respondent's Brief at 4) Respondent does not clearly explain how Ramirez ignores it. But Respondent quoted two cases which themselves quoted an isolated sentence from the statutory provision: "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." S.C. Code Ann. § 38-77-160. Respondent must be arguing this sentence is written in favor of the whole automobile insurance industry. Respondent is apparently claiming that the Legislature intended to limit the amount of Class II UIM coverage that the automobile insurance industry may provide to, "only one of the vehicles." If so, that is an unsound reading of the Statute that makes no sense in context of the statutory purpose and intent. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature.")

One, Respondent's interpretation is inconsistent with Section 38-77-20: "This chapter is to be liberally construed in order to achieve its purposes." S.C. Code Ann. § 38-77-20. The statute is not designed to benefit the automobile insurance industry. Rather, the purpose of automobile insurance is to insure the people from automobile risk. See S.C. Code Ann. § 38-77-10.

Two, Section 38-77-160 is included under Article 3 titled, "Mandate to Write and Insurance Coverage." The



Title confirms our Legislature's intent is to instruct individual automobile insurance companies about mandatory coverages which must be written into every automobile insurance policy issued.

Three, the clear language of the rest of Section 38-77-160 confirms its provisions are aimed at individual automobile insurance companies and the policies they write.

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). By referencing a carrier's "offer," the text of the statute refers to an individual insurance company. The statutory language makes no sense when one reads "carriers" in the plural as if referring to the whole automobile insurance industry. How does the automobile insurance industry make an offer to an individual insured? That the legislature intended "carriers" in the singular is made clear by the following clause, "at the option of the insured," which is singular.

Finally, the Article is not intended to confer some kind of nebulous obligation (or benefit) upon the whole automobile insurance industry. Respondent's interpretation of "carriers" in the plural makes no sense when read in context with the Sections related to Section 38-77-160. "In ascertaining the intent of the Legislature, a court should not focus

on any single section or provision but should consider the language of the statute as a whole.” Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). For example, Section 38-77-150(A) provides, in part, as follows:

No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38-77-140.

S.C. Code Ann. § 38-77-150 (emphasis added); see also S.C. Code Ann. § 38-77-140 (“No automobile insurance policy or contract may be issued or delivered unless it contains a provision”) Section 38-77-160 follows the same thread. The phrase “one of the vehicles with excess or underinsured coverage” means “in the carrier’s policy” not “in the carriers’ policies” as Respondent apparently contends.

3. Appellant never abandoned his argument that factual issues remained and he was entitled to discovery.

Respondent asserts Appellant’s counsel “admitted that the facts were not in dispute and that the trial court had enough to rule on.”¹ (Respondent’s Brief at 4-5) The transcript, however, does not support Respondent’s interpretation.

I think what he’s [Respondent’s Counsel] saying is that they’ve admitted most of my allegations. There’s not really any dispute about what we’ve been talking about today. And, therefore, you have enough to rule on.

(R. p. 56) (emphasis added). Counsel for Ramirez was just paraphrasing *Respondent’s argument* in response to an inquiry by the trial judge about the Rule 12 standard of review.

(R. p. 55) A fair reading of the hearing transcript confirms that at no point did Appellant abandon his Rule 56(f) argument. (R. pp. 23-63)

CONCLUSION

For the foregoing reasons, the Court must reverse the Order in favor of Ramirez on the issue of his \$25,000 UIM coverage, and remand the case to the Circuit Court for further proceedings on the relief sought including costs, attorney's fees, and prejudgment interest.

September 14, 2015



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¹ This does not mean, however, the trial court could not have ruled in favor of Ramirez. It had enough Respondent admissions in the pleadings to rule in Ramirez's favor on the issue of his portable \$25,000 of UIM coverage.

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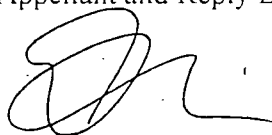
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PROOF OF SERVICE

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SC Court of Appeals

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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

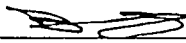
in dispute and that the trial court had enough to rule on. (R. p. 56, lines 8-23) (Transcript p. 34, lines 8-23).

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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ATTORNEYS FOR RESPONDENT

September 30, 2015

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

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OCT 01 2015
SC Court of Appeals

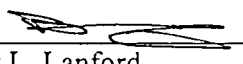
Juan Michael Ramirez, ... Appellant,

v.

Progressive Northern Insurance
Company..... Respondent.

CERTIFICATE OF COMPLIANCE

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


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Juan Michael Ramirez, ... Appellant,

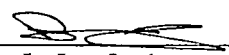
v.

Progressive Northern Insurance
Company Respondent.

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

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

Juan Michael Ramirez, Appellant,

v.

Progressive Northern Insurance Company, Respondent.

Appellate Case No. 2015-000788

Appeal From Laurens County
R. Lawton McIntosh, Circuit Court Judge

Unpublished Opinion No. 2016-UP-280
Submitted March 1, 2016 – Filed June 8, 2016

AFFIRMED

Edwin L. Turnage, of Harris & Graves, PA, of
Greenville, for Appellant.

Bradley Lewis Lanford, of Baker Ravenel & Bender,
LLP, of Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State Farm Mut. Auto Ins. Co. v. Moorer*, 330 S.C. 46, 60, 496 S.E.2d 875, 883 (Ct. App. 1998) ("Stacking refers to an insured's recovery of damages under more than one insurance policy in succession until all of his damages are satisfied or until the total limits of all policies have been exhausted."); *Nakatsu v.*

Encompass Indem. Co., 390 S.C. 172, 178, 700 S.E.2d 283, 286-87 (Ct. App. 2010) ("Only a Class I insured may stack."); *id.* at 181, 700 S.E.2d at 288 ("[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."); S.C. Code Ann. § 38-77-160 (2015) ("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." (emphasis added)); *Brown v. Cont'l Ins. Co.*, 315 S.C. 393, 395, 434 S.E.2d 270, 271-72 (1993) ("This language clearly restricts stacking by providing for coverage from 'any one' vehicle.").

AFFIRMED.¹

HUFF, A.C.J., and SHORT and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

70957

The State of South Carolina In The Court of Appeals

APPEAL FROM LAURENS COUNTY

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Court of Common Pleas

JUN 20 2016

R. Lawton McIntosh, Circuit Court Judge **SC Court of Appeals**

Case No. 2015-000788

JUAN MICHAEL RAMIREZ,

Appellant,

v.

PROGRESSIVE NORTHERN INSURANCE COMPANY, Respondent.

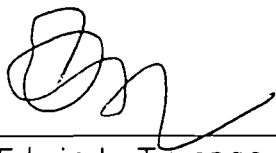
Appellant's Motion for Rehearing, and Suggestion for Rehearing *En Banc*

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Attorney for Appellant

Appellant respectfully requests a rehearing on this matter. No hearing was held on this appeal, and the Court's one-paragraph *per curiam* Order misapprehended and overlooked statutory and case authority. Moreover, rehearing *en banc* is suggested because the Court's decision is needed to maintain uniformity of its decisions on the portability of automobile underinsured motorist coverage (UIM) and because the proceeding involves a question of exceptional importance. Specifically, *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 automobile UIM coverage of thousands of families across the State of South Carolina.

June 15, 2016



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**The State of South Carolina
In The Court of Appeals**

APPEAL FROM LAURENS COUNTY

Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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JUN 20 2016

Case No. 2015-000788

SC Court of Appeals

JUAN MICHAEL RAMIREZ,

Appellant,

v.

PROGRESSIVE NORTHERN INSURANCE COMPANY, Respondent.

**Appellant's Memorandum in Support of his
Motion for Rehearing, and
Suggestion for Rehearing *En Banc***

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Attorney for Appellant

The *per curiam* Order suggested the panel misapprehended this action as a stacking case. It is not a stacking case. It is a portability of UIM insurance case. "[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." *Nakatsu v. Encompass Indemnity Co.*, 390 S.C. 172, 181, 700 S.E.2d 283 (2010). Petitioner is not seeking to stack multiple coverages on the Progressive insurance policy. Rather, Petitioner seeks only the statutory minimum \$25,000 UIM coverage on one vehicle.¹ In upholding the Rule 12 Order dismissing petitioner's claim against Progressive, the Order deprived Petitioner of statutory required UIM coverage. The *per curiam* Order contradicts dozens of published automobile insurance public policy cases and lacks support of any authority whatsoever.

South Carolina requires that all carriers offer certain minimum limits of UIM coverage, \$25,000, on each policy issued.

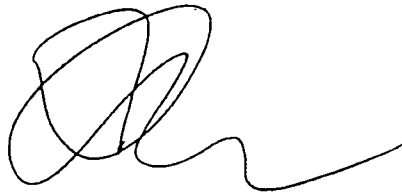
Automobile insurance carriers *shall offer*, at the option of the insured, uninsured motorist coverage up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. Such carriers *shall also offer*, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to

¹ Progressive paid Appellant \$8,333.33. He filed suit asking the court for payment of the balance of the minimum limits UIM coverage on the policy.

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). It is undisputed that the policy was issued with \$25,000 of UIM coverage. The quoted section of the automobile UIM statute mandates minimum coverage of \$25,000 on each automobile insurance policy issued in South Carolina. The panel overlooked that statute, and its ruling will deprive many families in South Carolina of the statutorily required UIM coverage. Petitioner suggests that a hearing on this matter must be set *en banc* to protect the South Carolina families negatively impacted by the Order.

June 15, 2016



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
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JUN 20 2016

R. Lawton McIntosh, Circuit Court Judge

SC Court of Appeals

Case No. 2015-000788

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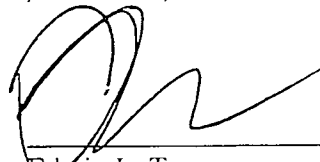
Progressive Northern
Insurance Company,

Respondent.

PROOF OF SERVICE

I certify that I have served Appellant's Motion for Rehearing, and Suggestion for Rehearing *En Banc* and Appellant's Memorandum in Support of his Motion for Rehearing, and Suggestion for Rehearing *En Banc* on Progressive Northern Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on June 16, 2016 addressed to its attorney of record, Bradley L. Lanford, Post Office Box 8057, Columbia, South Carolina 29202.

June 16, 2016



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Attorney for Appellant

The South Carolina Court of Appeals

Juan Michael Ramirez, Appellant,

v.

Progressive Northern Insurance Company, Respondent.

Appellate Case No. 2015-000788

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Huff J.
Paul G. Sproull, Jr. J.
Paul H. Thomas J.

Columbia, South Carolina

cc:

Edwin L. Turnage, Esquire

Bradley Lewis Lanford, Esquire

The Honorable R. Lawton McIntosh

FILED

10-27-16