The State of South Carolina
In The Supreme Court

APPEAL FROM LAURENS COUNTY

Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2016-002312

JUAN MICHAEL RAMIREZ, Petitioner,

v.

PROGRESSIVE NORTHERN INSURANCE COMPANY, Respondent.

Petitioner's Reply to Respondent's Return to Petition for Writ of Certiorari

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Respondent continues to describe this as a "stacking" case. The authorities cited by Respondent that address stacking of multiple coverages on an automobile insurance policy are not relevant to this case. This policy included only one vehicle. Petitioner seeks only the statutorily mandated minimum limits required by the South Carolina Legislature. This is a portability case not a stacking case.

This is an important case. A ruling in favor of the Respondent's position alters the Legislative mandate on minimum coverages required and would likely impact thousands of South Carolina families by eliminating mandatory ($25,000) per person) UIM coverage for which thousands of consumers have paid for and for which the Legislature has mandated be included in all automobile insurance policies issued in South Carolina.

Question for Review

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

ARGUMENT

Respondent's Return argument is entirely based upon an isolated misinterpretation of a sentence from the automobile insurance statute: "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 (emphasis added).

Respondent's argument requires us to accept that the Legislature intended to limit the amount of Class II UIM coverage that the automobile insurance industry as a whole may provide in multiple single-vehicle policies, "only one of the vehicles" in a collision. It is an obviously wrong-headed reading of the remedial automobile insurance Statute. Respondent's interpretation makes no sense in context of the statutory purpose and intent. "This chapter is to be liberally construed in order to achieve its purposes." S.C. Code Ann. § 38-77-20.

Section 38-77-160, which contains the phrase forming the cornerstone of Respondent's argument, is included under Article 3 titled, "Mandate to Write and Insurance Coverage." The Title of Article 3 confirms our Legislature's intent was to instruct the individual automobile insurance companies about mandatory coverages which must be written into every automobile insurance policy.

ARTICLE 3

Mandate to Write and Insurance Coverage

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 (not the automobile industry as a whole).

> 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 context 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 as a whole 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 also singular.

Article 3 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 argues.

December 16, 2016

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Proof of Service

I, Karie L. Hall, Paralegal to Edwin L. Turnage, an employee of Harris & Graves, P.A., hereby certify that I have served Petitioner's Reply to Respondent's Return to Petition for Writ of Certiorari on Progressive Northern Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on December 16, 2016 addressed to its attorney of record, Bradley L. Lanford, Post Office Box 8057, Columbia, South Carolina 29202.

Karie L. Hall