

2011-195286

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Presiding Judge

Opinion No. 2011-UP-242 Filed May 24, 2011
Withdrawn, Substituted and Refiled June 23, 2011

JOSHUA BELL Petitioner

vs.

PROGRESSIVE DIRECT INSURANCE COMPANY..... Respondent

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioners certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on June 23, 2011

QUESTIONS PRESENTED

- I. Did the Court of Appeals err in finding that the Doctrine of Reasonable Expectation was not applicable to the facts of this case?
- II. Did the Court of Appeals err in failing to find the policy was ambiguous and thus Bell was entitled to underinsured motorist coverage as a matter of law?
- III. Did the Court of Appeals err in ruling that there was no genuine issue of material fact regarding the common law marriage of Bell?
- IV. Did the Court of Appeals err in citing *Gambrell* for the proposition that the Doctrine of Reasonable Expectations would be rejected by the South Carolina Supreme Court.
- V. Did the Court of Appeals err in failing to rule all ambiguities must be construed against the insurer?

STATEMENT OF THE CASE

The Plaintiff was involved in a serious automobile accident on May 31, 2006 in which he was a passenger in a vehicle owned by his employer and driven by Plaintiff's co-worker. The liability limits of the at-fault driver were tendered and there was no underinsured motorist insurance (UIM) coverage on the involved vehicle. Plaintiff filed the instant suit seeking to recover from the UIM coverage afforded by the Progressive policy on his common law wife's vehicle.

The Defendant, Progressive Direct Insurance Company issued an automobile insurance policy number 13507563-0 to Sarah K. Severn (Plaintiff's common law wife)

with effective dates of November 4, 2005 to May 4, 2006. On the policy declarations page Plaintiff is listed as a “driver” and “household resident.” The terms “driver” and “household resident” are not defined in the insurance policy. Prior to the accident, the Plaintiff had lived with Severn for eleven months, had a son together and had given Severn a diamond ring. Also, Plaintiff had supported both Severn and their child including paying the rent and all bills including the Progressive insurance premium on the one vehicle in their household.

The trial court granted Defendant’s Motion for Summary Judgment finding that Plaintiff was not covered under the policy and thus not entitled to underinsured motorist coverage.

The case was heard by the South Carolina Court of Appeals and an opinion affirming the trial court was issued May 24, 2011. Thereafter a Petition for Rehearing was filed and the Court withdrew its original opinion and issued its final opinion on June 23, 2011. This Petition for Certiorari follows.

REASONS FOR GRANTING CERTIORARI

The Petitioner requests this Court grant certiorari because this case concerns novel issues of law which have never been ruled upon by this Court.¹ The Plaintiff had requested the Circuit Court and the Court of Appeals adopt the doctrine of reasonable expectations in the construction of an insurance policy. In the Court of Appeals Opinion, the judges noted:

... even assuming for the sake of argument that the doctrine has not been explicitly rejected, because the doctrine cannot be reconciled with the rule that unambiguous insurance policies are subject to the traditional rules of contract construction, this court is precluded from adopting the doctrine. Such a departure from jurisprudence must be left to our Supreme Court.

¹ Petitioner’s counsel has a niece who is studying for the bar exam and she advised him that the instructor told the class this doctrine had been adopted in over 40 states but had not been squarely reviewed by this Court.

This case demonstrates how the law should evolve when society changes the rules of how people live together. The United States Census Bureau estimates that over 12,000,000 people live together in the United States and that there are 77,964 domestic partners living together in South Carolina. (See American Community Survey, U.S. Census Bureau Survey 2005-2007). Many of these partners, like Bell, share their bills, their rent, their insurance payments, and have children together. Further, the strict construction rules of automobile insurance policies do not neatly fit into how people live and work in this state. Also, the insurance industry understands that relationship and has listed people such as Bell as a household resident without defining that term in the policy. This is precisely why the Court should find the doctrine of reasonable expectations is applicable in this case. Appellant is aware of no South Carolina Supreme Court case which has ever decided whether or not the doctrine of reasonable expectations would be adopted in this state. Thus, this is a novel question of law this State's highest court ought to consider based on the importance of it to all the domestic partners living throughout the state.

ARGUMENT

I. **The Court of Appeals erred in finding that the Doctrine of Reasonable Expectation was not applicable to the facts of this case.**

The Court of Appeals and the trial court denied Appellant's request for underinsured motorist's insurance coverage under the Doctrine of Reasonable Expectations. The trial court, which was affirmed by the Court of Appeals, noted: "South Carolina courts have explicitly rejected this doctrine." *Ex parte United Servs. Auto. Ass'n.*, 365 S.C.50, 54, 614 S.E.2d 652 (S.C. Ct.App. 2005), *citing Allstate Ins. Co. v. Mangum*, 299 S.C. 226, 231-32, 383 S.E.2d 464, 466-67 (Ct.App. 1989).

However, those citations by the Court of Appeals and the trial court are incorrect. A close reading of *Allstate Ins. Co. v. Mangum*, 299 S.C. 226, 231-232, 383 S.E.2d 464, 466-467 (Ct.App. 1989) notes that the Doctrine of Reasonable Expectations was never addressed by the court. In footnote 5 of the *Mangum* case, the Court of Appeals noted:

... the appealed order does not address the Doctrine of Reasonable Expectations. This Court has repeatedly held that though an issue is argued before a trial judge, if a trial judge failed to pass on the issue, the party asserting it does not preserve it for appeal unless he moves to amend the judgment by requesting the circuit court to address it pursuant to Rule 59(e) SCRPC. *Palm v. General Painting Co.*, 296 S.C. 41, 370 S.E.2d 463 (Ct.App. 1988). Hamilton failed to so move and therefore failed to preserve for appeal the argument of reasonable expectation. 383 S.E.2d at 465.

Further, the appealed order of the trial court and of the Court of Appeals cites the case of *Ex parte United Servs. Auto. Ass'n.*, 365 S.C.50, 54, 614 S.E.2d 652 (S.C. Ct.App. 2005) for the proposition that the courts of this state have never adopted the Doctrine of Reasonable Expectations in regard to insurance policy construction. The *USAA* case only mentions in passing the *Mangum* case, but never explicitly rules on the Doctrine of Reasonable Expectations. Accordingly, the cases cited by the Court of Appeals and the trial court do not stand for the proposition that this court has never recognized the Doctrine of Reasonable Expectations. Indeed, this is the only case of which Appellant is aware that this Court has ever been asked to consider the doctrine.

The question in this case is whether or not the term “household resident” qualifies someone for underinsured motorist coverage. “Household resident” is not defined in the policy of Progressive Direct Insurance Company and because Bell is named as a “household resident” and “driver”, this ambiguity should provide him coverage based on his reasonable expectation that he was covered at the time of the accident. The facts of this case clearly cry out for the Court to apply the Doctrine of Reasonable Expectations to this insurance policy.

Bell lived with his common law wife, had a son, paid all the household bills including the insurance premium, and was named as a “household resident” on the declarations page. (R. p. 52). If anyone had a reasonable expectation of coverage, it was Bell who was the father of the insured’s baby and had a well-founded belief the policy would cover him. The declaration page (R. p. 52) is as follows:

Drivers and household residents	Additional information
SARAH K. SEVERN	Named insured
JOSHUA D. BELL	

The Doctrine of Reasonable Expectations requires a court to consider the expectations of the parties to an insurance contract. As one court noted: “The gist of the doctrine is that the insured is entitled to all the coverage he may reasonably expect to be provided under the policy. Only an unequivocally conspicuous, plain and clear manifestation of a company’s intent to exclude coverage will defeat that expectation.” See *Woodson v. Manhattan Life Insurance Co. of N.Y.*, 743 S.W.2d 835 (1987). Here, the term “household resident” is not conspicuously defined (or defined at all), making it ambiguous, which allows the Court to apply the doctrine based on the unique facts present here.

The majority of courts have held that the concept of reasonable expectations should be applied to the construction of all insurance policies. One should look to the reasonable expectation of the applicant and intended beneficiaries regarding the terms of the insurance contract and those will be honored even though painstaking study of the policy provisions would have negated those expectations. See *Grinnell Mutual Reinsurance Co. v. Voeltz*, 431 N.W.2d 783 (1988).²

² It should be noted there are no policy provisions here which define household resident. The Progressive policy is silent, making it clear the doctrine should be applied in this case.

Indeed, most courts have held the rule regarding insurance coverage is to protect what a person may reasonably expect from the terms of the policy he purchases. See *Travelers Insurance Co., Inc. v. Jones*, 529 So.2d 234 (1988).

In sum, it is well established throughout the country that if there is an ambiguity, an insurance contract should be read to accord with the reasonable expectation of a purchaser so far as the language will permit. *Steigler v. Insurance Co. of North America*, 384 A.2d 398 (1978) (doctrine allows innocent spouse to recover on a fire policy when other spouse burned their house); *Mills v. Agrichemical Aviation, Inc.*, 250 N.W.2d 663 (1977) (our guide is, as it must be, the reasonable expectation of the purchaser when he purchased the policy) (allowing coverage for crops under the doctrine despite policy language); *Keene Corp. v. Insurance Co. of North America*, 667 F.2d 1034 (1981) (use of the reasonable expectation test by these courts reflects the inapplicability of traditional contract theory to this type of insurance marketing) (allowing coverage for asbestos claims); *Fritz v. Old American Ins. Co.*, 354 F.Supp. 514 (S.D.Tex. 1973) (The objectively reasonable expectations of the insured will be honored even though painstaking study of the policy provisions would have negated those expectations) (allowing coverage for death claim in accident insurance policy); *Commercial Union Assurance Co. v. Aetna Casualty and Surety Co.*, 455 F.Supp. 1190 (D.N.H.1978) (An insurance contract should be given a construction which a reasonable person standing in the shoes of the insured would expect the language to mean.) (The majority rule is that the insured is not presumed to know the contents of an adhesion type insurance contract delivered to him.) (allowing coverage regarding motor vehicle accident); *National Mutual Insurance Co. v. McMahon & Sons, Inc.*, 177 W.Va. 734, 356 S.E.2d 488 (1987) (reversing trial court and adopting the doctrine when policy is

ambiguous). See also 2 Couch on Insurance 2d § 15.16, P174 (1984) (test is what a reasonable person in position would have understood the language to mean).

Over 36 jurisdictions have recognized this doctrine. This Court now has an opportunity to squarely consider it. Most states have also recognized this doctrine as a matter of law in construction of all insurance policies: *Eli Lilly & Co. v. Home Ins. Co.*, 794 F.2d 710, 715 (D.C.Cir. 1986), *cert. denied*, 479 U.S. 1060, 107 S.Ct. 940, 93 L.Ed.2d 991 (1987) (Applying Indiana law.); *Keene Corp. v. Insurance Co. of North America*, 215 U.S.App.D.C. 156, 667 F.2d 1034, 1041 (1981), *cert. denied*, 455 U.S. 1007, 102 S.Ct. 1644, 71 L.Ed.2d 875 (1982), *reh'g denied*, 456 U.S. 951, 102 S.Ct. 2023, 72 L.Ed.2d 476 (1982); *Crawford v. Ranger Ins. Co.*, 653 F.2d 1248, 1251 (9th Cir. 1981) (Applying Hawaii law.); *Macon Light House Revival Center, Inc. v. Continental Ins. Co.*, 651 F.Supp. 417-18 (M.D.Ga. 1987) (Applying Georgia law.); *Commercial Union Assurance Co. v. Aetna Casualty & Surety Co.*, 455 F.Supp. 1190, 1193 (D.N.H. 1978) (Applying New Hampshire law.); *Gleason v. Merchants Mut. Ins. Co.*, 589 F.Supp. 1474, 1480 (D.R.I. 1984) (Applying Rhode Island law.); *Dronge v. Monarch Ins. Co.*, 511 F.Supp. 1, 4 (D.Kan. 1979) (Applying Kansas law.); *Fritz v. Old American Ins. Co.*, 354 F.Supp. 514, 516 (S.D.Tex. 1973) (Applying Texas law.); *Peerless Ins. Co. v. Brennon*, 564 A.2d 383, 386 (Me. 1989); *Grinnell Mutual Reinsurance Co. v. Voeltz*, 431 N.W.2d 783, 785-86 (Iowa 1988); *Travelers Insurance Co., Inc. v. Jones*, 529 So.2d 234, 239 (Ala. 1988); *Woodson v. Manhattan Life Insurance Co. of N.Y.*, 743 S.W.2d 835, 839 (Ky. 1987); *National Mutual Insurance Co. v. McMahon & Sons, Inc.*, 177 W.Va. 734, 739, 356 S.E.2d 488, 495 (1987); *Steigler v. Insurance Co. of North America*, 384 A.2d 398, 400 (Del.Supr. 1978); *Davis v. M.L.G. Corp.*, 712 P.2d 985, 989 (Colo. 1986); *Meier v. New Jersey Life Ins. Co.*, 101 N.J.

597, 503 A.2d 862, 869 (1986); *Home Indem. Ins. Co. v. Merchants Distributors, Inc.*, 396 Mass. 103, 483 N.E.2d 1099, 1101 (1985); *Atwater Creamery Co. v. Western Nat'l Ins. Co.*, 366 N.W.2d 271, 278-79 (Minn. 1985); *Kracl v. Aetna Casualty & Sur. Co.*, 220 Neb. 869, 374 N.W.2d 40, 44 (1985); *National Union Fire Ins. Co. v. Reno's Executive Air, Inc.*, 100 Nev. 360, 682 P.2d 1380, 1383-84 (1984); *Gross v. Lloyds of London Ins. Co.*, 121 Wis.2d 78, 358 N.W.2d 266, 270 (1984); *Darner Motor Sales v. Universal Underwriters*, 140 Ariz. 383, 389, 682 P.2d 388, 394 (1984); *Transamerica Ins. Co. v. Royle*, 202 Mont. 173, 656 P.2d 820, 824 (1983); *Great American Ins. Co. v. C.G. Tate Constr. Co.*, 303 N.C. 387, 279 S.E.2d 769, 774 (1981); *United States Fire Ins. Co. v. Colver*, 600 P.2d I, 3-4 (Alaska 1979); *Collister v. Nationwide Life Ins. Co.*, 479 Pa. 579, 388 A.2d 1346, 1354 (1978), *cert. denied*, 439 U.S. 1089, 99 S.Ct. 871, 59 L.Ed.2d 55 (1979); *Mills v. Agrichemical Aviation, Inc.*, 250 N.W.2d 663, 673 (N.D. 1977); *Crowell v. Federal Life & Casualty Co.*, 397 Mich. 614, 247 N.W.2d 503, 506 (1976); *Gyler v. Mission Ins. Co.*, 10 Cal.3d 216, 110 Cal. Rptr. 139, 514 P.2d 1219, 1221 (1973); *Pribble v. Aetna Life Ins. Co.*, 84 N.M. 211, 501 P.2d 255, 260 (1972); *Katz Drug Co. v. Commercial Standard Ins. Co.*, 647 S.W.2d 831, 835 (Mo.App. 1983); *Atlantic Cement Co., Inc. v. Fidelity & Casualty Co. of New York*, 91 A.D.2d 412, 459 N.Y.S.2d 425, 429 (1983), *aff'd*, 63 N.Y.2d 798, 481 N.Y.S.2d 329, 471 N.E.2d 142 (1984); *Costello v. Costello*, 465 S.E.2d 620 (1998) (applying West Virginia law). See also *Max True Plastering Co. v. U.S. Fidelity and Guar. Co.*, 912 P.2d 861 (1996) in which Oklahoma recognized the doctrine.

This Court has never addressed the Doctrine of Reasonable Expectations in an insurance policy. Neither *Mangum* nor *USAA* provides guidance as to whether this is the law. The *USAA* case merely cites the *Mangum* case and *Mangum* holds the Doctrine of

Reasonable Expectations was not decided by the trial court. Further, *Gambrell v. Travelers Ins.* 280 S.C. 69, 310 S.E.2d 814 (1983) did not address the Doctrine of Reasonable Expectations nor has any other case from this Court.³ Finally use of the doctrine would not torture the meaning of the insurance policy language in this case because “household resident” is not defined and is ambiguous. Indeed, this is an important issue of first impression which is the majority rule throughout the country. Accordingly, this Court should directly address this matter because the Court of last resort in this state has not decided whether the Doctrine of Reasonable Expectations applies to insurance contracts in South Carolina.

II. The Court of Appeals failed to find the policy was ambiguous and thus Bell was entitled to underinsured motorist coverage as a matter of law.

The Progressive policy does not define the term “household resident” although that term appears prominently on the declaration page. (R. p. 52) The declaration page states:

Drivers and household residents	Additional information
SARAH K. SEVERN	Named insured
JOSHUA D. BELL	

Further, the General Definitions section of the policy (R. p. 25-26) and the Additional Definitions section (R. p. 27) do not define the term “household resident”. Also, the policy, by naming Bell as a “household resident”, shows that he was being recognized as more than just a “driver”. Because “household resident” is not defined and all ambiguities are to be construed against the insurer, this Court should hold that a “household resident” is

³ Two United States District Court cases state that South Carolina rejects the doctrine, however, those cases cite *United Servs.*, 365 SC at 4; 614 S.E.2d at 654. However, the doctrine is only cited as dicta and has never been addressed by this Court. See *Bankers Ins. Co. v. Prezzy*, 2009 W.L. 3459189 (D.S.C.) and *NGM Ins. Co. v. Carolina’s Power Wash & Painting, LLC* (2010 W.L. 146482).

entitled to underinsured motorist coverage. Finally, Bell was not only a “household resident”, but the father of Severn’s baby, thus, he was a relative as that term is defined in the policy.⁴ (See **Insured person** means: **you** or a **relative** with respect to an **accident** arising out of the ownership, maintenance or use of a **covered vehicle**.) (R. p. 27). Thus, by listing Bell as a “household resident” on the declaration page, insurance coverage was clearly contemplated by Progressive. (It is without dispute that Bell was more than just a mere “driver” -- he was a “household resident”, a common law husband and the father of the named insured’s baby). Accordingly, *Ex parte United Servs. Auto. Ass’n.*, 365 S.C.50, 54, 614 S.E.2d 652 (S.C. Ct.App. 2005) is not applicable. Indeed, by using the term “household resident” in the policy Progressive admits Bell was living with Severn and was not just a “driver” which the Court of Appeals in *USAA* found to mean only mere use of the vehicle. (614 S.E.2d at 652). The use of “household resident” in the policy contemplates a more lasting relationship akin to that of a named insured and thus coverage should be extended.

III. The Court of Appeals erred in ruling that there was no genuine issue of material fact regarding the common law marriage of Bell.

The Court of Appeals affirmed the trial court’s grant of summary judgment on the Plaintiff’s common law marriage claim despite the evidence in the record was offered only by the Plaintiff.

In this case, the evidence presented offers numerous inferences on common law marriage and the trial court erred in granting summary judgment. Here, the record establishes that Bell was a “driver” and “household resident” of a policy from his common law wife, Sarah Severn (Deposition, R. p. 97, lines 16-17); that they lived together in South Carolina (Deposition, R. p. 97, lines 16-17, R. p. 98, line 3); that both names were on the

⁴ He was also a common law husband under South Carolina law.

lease (Deposition, R. p. 99, lines 23-24); that they had a child (Deposition, R. p. 100, lines 9-14); that Bell paid all of the bills, including the car insurance premium (Deposition, R. p. 106, lines 20-25); that the term “household resident” is not defined in the policy (R. p. 52); that Bell had given Severn a diamond ring (Deposition, R. p. 103, lines 11-13); that they had lived together in two different apartment complexes (Deposition, R. p. 100, lines 1-25); that they moved to another apartment complex because they needed a baby room (Deposition, R. p. 100, lines 22-24) ; that Bell, his common law wife and their baby lived together eleven months (Deposition, R. p. 101, line 10). The record establishes that Bell paid all the bills including car insurance, rent, water, sewer, electric, internet, clothing and food (Deposition, R. p. 106, lines 20-25); that Bell asked Severn to marry him after she got pregnant (Deposition, R. p. 108, lines 4-7); that Bell paid the insurance on the one vehicle in the household (Deposition, R. p. 109, lines 1-3); and that Bell and Severn shared the car (Deposition, R. p. 125, lines 15-22) .

Further, the case cited by the trial court, *Callen v. Callen*, 365 S.C. 618, 624 S.E.2d 59 (2005), actually involved a trial by the family court and an order of the court on whether a common law marriage existed. Here, the trial court made legal conclusions based solely on oral argument at a motion for summary judgment. The court in this case violated the *Callen* case by use of this procedure. (In *Callen*, the parties participated in an apparently matrimonial cohabitation and while cohabitating the parties had a reputation in the community as being married, a rebuttable presumption arises that a common law marriage was created”) *Callen*, 624 S.E.2d at 60. The evidence presented by Bell showed matrimonial cohabitation with Severn and created an inference of marriage. Accordingly, defendant’s motion for summary judgment must be reversed.

It is puzzling based on the *Callen* case and on the strict requirements of SCRCP 56 that the Court of Appeals affirmed summary judgment. As has been stated above in other portions of the brief, it is only necessary for the non-moving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied. *Hill v. York Co. Sheriff's Dept.*, 313 S.C. 303, 437 S.E.2d 179 (every benefit of the doubt to the non-moving party under the summary judgment standard) See *Watters v. Terminix Serv. Inc.*, 376 S.C. 632, 658 S.E.2d 110 (Ct.App. 2008).

Here, the Court of Appeals affirmed the trial court without a trial when the defendants offered no evidence and Plaintiffs offered the sworn testimony of Bell that he lived with the insured, Severn, in South Carolina, that they had a child together, that he paid the liability insurance, that he was the father of Severn's child, that they shared one car, that they had lived in two different apartment complexes in South Carolina, that they moved into the apartment where they lived when the accident happened because they needed a baby room, that Bell had given Severn a diamond ring, and that he paid all of the household bills while she stayed home with the child. These facts are more than a scintilla of evidence under South Carolina summary judgment rule (SCRCP 56) and show that the parties were cohabitating and presenting themselves to the community as if being married. Thus, summary judgment was inappropriate in this case. Accordingly, Appellant requests that this case be reversed and returned to the trial court.

IV. The Court of Appeals erred in citing *Gambrell* for the proposition that the Doctrine of Reasonable Expectations would be rejected by the South Carolina Supreme Court.

The Court of Appeals held that the Doctrine of Reasonable Expectations would clash with the *Gambrell* case and thus would not be accepted in this state. In *Gambrell*, the

Supreme Court was faced with an interpretation of an automobile insurance policy and an underinsured motorist statute. The Court in *Gambrell*, in interpreting underinsured motorist coverage, held that a motorist may recover underinsured motorist coverage when his damages exceed the at-fault motorist's liability coverage. The question presented here is: What is the reasonable expectation of the purchaser of such a policy when his name appears as a household resident on that policy? As has been stated previously, at least 36 states have relaxed the strict construction rule of insurance policy interpretation in these types of circumstances..

This Court of Appeals thus erred in citing *Gambrell* for the proposition that the Doctrine of Reasonable Expectations would be rejected by this Court. This ruling is erroneous for the following reasons.

1. *Gambrell* only held that S.C. Code Ann. § 56-9-831 allows appellant to recover those damages exceeding the at-fault motorist's liability coverage to the extent of her underinsured motorist coverage.

2. This Court has never considered the doctrine of reasonable expectations in regard to insurance policies and should do so now.

3. No South Carolina case other than a United States District Court case has discussed the doctrine of reasonable expectations except *in dicta*.

4. *Gambrell* and the doctrine of reasonable expectations can be reconciled when there are ambiguous terms in an insurance policy such as household resident. Indeed, *Gambrell* reconciled an underinsured motorist insurance policy with a South Carolina statute. The same can be done here using the Doctrine of Reasonable Expectations.

5. *Gambrell* was decided 28 years ago prior to the doctrine of reasonable expectations being adopted in 36 states across the United States.

6. Society has changed and the law should change. Currently almost 12,000,000 Americans live together without being officially married. (See U.S. Census Bureau 2005-2007).

7. The doctrine of reasonable expectations is a logical extension of how to interpret an insurance policy in circumstances such as these when someone such as the Appellant is named on the insurance policy.

8. Because an automobile insurance policy is required in South Carolina, this is not the normal contractual relationship where both parties have equal bargaining power. People buy the insurance because the law requires them to do so and thus should get the benefit of their reasonable expectation in the purchase of such policy.

V. **The Court of Appeals erred in failing to rule all ambiguities must be construed against Progressive**

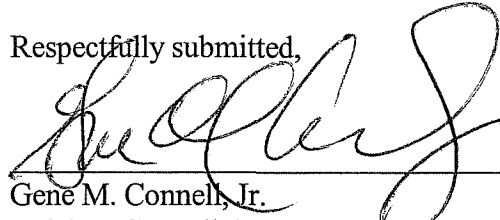
The Court of Appeals erred when it found that a party's status is not dispositive when listed on the declarations page. In fact, the insurer can choose to insure whoever it wants to and can so state on the declarations page. Here, Bell was not just a mere operator; he was a household resident and the father of the insured's child. They lived together, Bell paid the bills (including the insurance premiums) and they shared a car -- all of which Progressive recognized when it listed Bell as a household resident on the policy. If anything, the policy was ambiguous about Bell's status and thus coverage was mandated. See *Super Duper, Inc. v. Pennsylvania National Mutual Cas. Ins. Co.*, Op. No. 26717 filed September 14, 2009) ("Ambiguous terms must be construed in favor of the insured.").

Indeed, the Court of Appeals' initial Opinion in this case admits that the term household resident is not defined. (See withdrawn Opinion, May 23, 2011). Thus, this ambiguity and subsequent opinions of this Court require coverage. Since Progressive decided to expand its policy to include household residents such as Bell and knew about the ambiguity when it did so, the policy must be construed against it.

CONCLUSION

In conclusion, Appellant requests this Court reverse the Court of Appeals and remand for further proceedings. There is manifest injustice to Bell in this case. He lived with Severn as if he were her husband, had a son with her, supported her, moved with her twice to apartments in Horry County, and was named as a "household resident" on the Progressive policy that he paid for. Also, the term "household resident" is not defined in the policy. Bell had a reasonable expectation that the policy on the car which he drove and on which he paid the insurance premiums would cover him for underinsured motorist's coverage. Accordingly, Petitioner requests that the Court accept certiorari in this case to squarely consider the Doctrine of reasonable Expectations in regard to insurance policies in this state. Petitioner believes that this is a matter of significant public importance and is a novel question which has not yet been decided by this Court. Finally, Petitioner requests this Court consider the Doctrine of Reasonable Expectations and adopt it as the majority rule like 36 other states around the country.

Respectfully submitted,



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July 14, 2011

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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

J. Michael Baxley, Presiding Judge

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JOSHUA BELL Petitioner

vs.

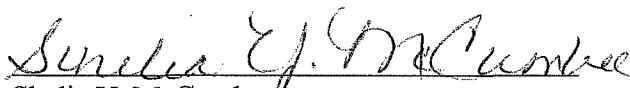
PROGRESSIVE DIRECT INSURANCE COMPANY..... Respondent

PROOF OF SERVICE

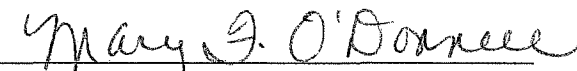
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served the **Petition for Writ of Certiorari** on the Respondent, through its attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

J.R. Murphy, Esquire
Murphy & Grantland, PA
P. O. Box 6648
Columbia, SC 29260

DATE OF MAILING: July 14, 2011


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 14th day of July, 2011


Notary Public for South Carolina
My Commission Expires: 6/1/16