

IN THE STATE OF SOUTH CAROLINA

In the Supreme Court

**RECEIVED**

**Jan 28 2022**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2021-000005

Stephany A. Connelly and James M. Connelly, ..... Plaintiffs,

v.

The Main Street America Group, Old Dominion Insurance Company,  
Allstate Fire and Casualty Insurance Company, Debbie Cohn, and  
Freya Trezona ..... Defendants,

Of which Allstate Fire and Casualty Insurance Company, The Main  
Street America Group and Old Dominion Insurance Company are the... Petitioners

And

Stephany A. Connelly and James M. Connelly are the..... Respondents.

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**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND SUPPORTING  
MEMORANDUM**

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Pursuant to Rule 213 of the South Carolina Appellate Court Rules, Progressive Select Insurance Company (“Progressive”) hereby moves for leave to file an amicus curiae brief in this appeal. Progressive is an insurer authorized to write insurance in South Carolina. This appeal concerns the interpretation of the phrase “legally entitled,” which is used extensively in Progressive’s insurance policies. Therefore, the Court’s decision in this case will impact Progressive’s business and its obligations under its policies.

Moreover, Progressive has an interest in the outcome of this appeal because a South Carolina Circuit Court recently denied Progressive’s Motion for Summary Judgment in a similar case based on the reasoning of the Court of Appeals in this case. *Oglesby v. Rajkowski*, Civil Action No. 2021-CP-04-00461. A copy of that order is attached hereto as Exhibit A. Therefore, the outcome of this case will not only generally affect Progressive’s business and obligations but also specifically effect its coverage obligations in a related case.

In this case, the South Carolina Court of Appeals held that the phrase “legally entitled to recover” – which appears in practically every insurance policy – means showing that the tortfeasor is at fault and caused damages rather than actually being legally entitled to recover against the tortfeasor. *Connelly v. Main St. Am. Grp.*, 432 S.C. 122, 130, 850 S.E.2d 627, 631 (Ct. App. 2020). A brief of an amicus curiae is desirable in this case because if the Court adopts the Court of Appeals’ reasoning such a decision would be a drastic change from the way insurance is understood in South Carolina and would have far reaching implications beyond the facts of this case. An amicus curiae brief could help bring to the Court’s attention these additional implications so that the Court may make a fully informed decision.

WHEREFORE, Progressive respectfully requests that this Court grant it leave to file an amicus curiae brief. According to Rule 213 of the South Carolina Appellate Court Rules, an amicus curiae brief may be conditionally filed with a motion for leave to file. Therefore, Progressive’s amicus curiae brief is conditionally filed herewith.

January 27, 2022

  
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