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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis
Circuit Court Judge

Case No.: 2014-CP-45-00132
(Court of Appeals Case No.: 2021-000835)

South Carolina Farm Bureau Ins. Co. . . . . Plaintiff,

v.

Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, Arthur McKenzie, a/k/a Arther McKenzie, The Travelers Home and Marine Insurance Company, The United States of America acting by and through Its agency, The Internal Revenue Services and The South Carolina Tax Commission, ... Defendants,

Of whom Marion L. Driggers is Appellant and The Travelers Home and Marine Insurance Company is the Respondent.

RESPONDENT THE TRAVELERS HOME AND MARINE INSURANCE COMPANY'S MOTION TO STRIKE MATTERS DESIGNATED BY APPELLANT FOR THE RECORD ON APPEAL

Respondent moves this Court for an Order striking irrelevant matter from the record on appeal as designated by the Appellant, because the designation of the Appellant includes matters which were not presented to and ruled on by the lower court.

Rule 210(c), SCRAP, provides that the record shall not include matter which was not presented to the lower court or tribunal. Appellant has designated the Deposition of Marion L. Driggers, which undersigned believes was taken on or about April 12, 2021, as a matter to be included in the record on appeal. This deposition was not considered by the

trial court and should not be considered by the appellate court. The hearings on the matters at issue on this appeal took place on September 17, 2020 and February 18, 2021. (Transcripts attached as Exhibit A). The trial court's Order Granting Respondent's Motion for Summary Judgment as to the Cross-Claim of Marion L. Driggers was filed March 4, 2021, with a Motion to Reconsider filed March 17, 2021 and the final Form 4 Judgment in a Civil Case filed June 25, 2021. (Order, Motion, Form 4 attached as Exhibit B). Although not properly listed on/attached to the original Notice of Appeal and therefore not properly on appeal pursuant to Rule 203(d)(1)(B)(ii), SCACR, the trial court's Order Allowing Funds to be Deposited with the Court Pursuant to Rule 22(b), SCRCP was filed January 5, 2021, with Plaintiff South Carolina Farm Bureau Ins. Co.'s Notice of Motion and Motion to Alter/Amend/Reconsider and/or to Clarify being filed January 14, 2021 and denied via a Form 4 Judgment on April 12, 2021. (Order, Motion, Form 4 attached as Exhibit C). Respondent was dismissed with prejudice on April 19, 2021. (Order attached as Exhibit D).

Appellant, by designating this deposition, is attempting to introduce new evidence before the Court which was never introduced to the lower court. Rule 210(c), SCACR addresses the contents of the Record on Appeal and specifically states: "**The Record shall not, however, include matter which was not presented to the lower court or tribunal.**" Rule 210(c), SCACR (emphasis added). South Carolina courts have upheld this rule, finding that matters not presented to the lower court for consideration cannot be part of the Record on Appeal. *See Williamsburg Rural Water & Sewer Co. v. Williamsburg Cty. Water & Sewer Auth.*, 367 S.C. 566, 571, 627 S.E.2d 690, 693 (2006) (stating that "[n]othing in the appellate court rules permits a party to unilaterally add after-created

evidence to the record" and holding that only the evidence presented to the lower court for determination is proper for considering when reviewing a lower court's order);*see also Norris v. Ferre*, 315 S.C. 179, 183, 432 S.E.2d 491, 493 (Ct. App. 1993) (applying Rule 209(c) to deny a motion to supplement record on appeal where the matters sought to be included "were not presented to the trial judge"). Therefore, Respondent moves to strike the designation by the Appellant of the Deposition of Marion L. Driggers from the record on appeal and any references to that document within the Appellant's initial brief.

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June 20, 2022

EXHIBIT A

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF WILLIAMSBURG) 2014-CP-45-00132

South Carolina Farm Bureau Mutual Insurance Company,	)	
Plaintiff,	)	**Transcript of Record**
vs.	)	
	)	SEPTEMBER 17, 2020
Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, Arthur McKenzie a/k/a Arther McKenzie, The Travelers Home And Marine Insurance Company, The United States of America Acting by and through its Agency The Internal Revenue Service, and the South Carolina Tax Commission,	)	
Defendants.	)	

B E F O R E:

Honorable Kristi F. Curtis
Williamsburg County Courthouse
Kingstree, South Carolina

A P P E A R A N C E S:

John D. Hudson, Sr., Esquire
Attorney for Plaintiff

Marion L. Driggers
Pro Se Defendant

Edward K. Pritchard, III, Esquire
Attorney for Defendants Shiralee Driggers and Tammy Floyd

Daryl J. Corbin, Esquire
Attorney for Defendant Arthur McKenzie

William P. Davis, Esquire
Attorney for Defendant The Travelers Home and Marine Insurance Company

Sallie Beth Todd
Circuit Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
(THERE WERE NO WITNESSES CALLED DURING THIS HEARING.)				

Certificate of Court Reporter 60

E X H I B I T S

NO.	DESCRIPTION	ID	EV	PAGE
(THERE WERE NO EXHIBITS MARKED DURING THIS HEARING.)				

THE COURT: Okay. Good morning. Thank you all for being here in person. I know it was not a nice day to have to make the drive from Kingstree. We came through a -- I got a tornado warning in Sumter this morning and in Richland County. I hope y'all didn't go through as bad of weather as we went through on the way here. I know we've got a number of things to hear this morning. If I could get you all to just tell me your names first for the record. We're here on 2014-CP-45-00132 South Carolina Farm Bureau versus Marion Driggers, Shiralee Driggers, Tammy Floyd, Arthur McKenzie, Alice Peterson, the IRS, the South Carolina Tax Commission, Travelers Insurance, and the United States of America. I think we've covered everybody under the sun. So if I could start with you up here, sir, with the yellow tie. Tell me your name.

MR. PRITCHARD: Yes, ma'am. My name is Edward Pritchard and I'm with the Pritchard Law Group in Charleston, South Carolina. I represent Shiralee Driggers and Tammy Floyd.

THE COURT: Thank you.

And are you Mr. Driggers?

MR. DRIGGERS: Yes, ma'am. Marion L. Driggers.

THE COURT: Thank you, sir.

MR. HUDSON: Your Honor, I'm John Dwight Hudson, Sr. from Myrtle Beach, South Carolina. I have a son, Jr., who lives in Columbia, but I'm the old one. I represent South Carolina

Farm Bureau, the plaintiff in this case. We started it all with a declaratory judgment action.

THE COURT: So you started all of this?

MR. HUDSON: Uh-huh. (Affirmative response.) If I'd have only know, but anyway here we are.

MR. CORBIN: Good morning. My name is Daryl Corbin from Florence. I represent Arthur McKenzie who has expired, deceased, so it really needs to be substituted, and I'll do that, to the Estate of Arthur McKenzie.

THE COURT: Thank you.

MR. CORBIN: Yes, ma'am.

MR. DAVIS: William Davis, Your Honor, with Baker, Ravenel & Bender in Columbia and I represent Travelers Home and Marine Insurance Company.

THE COURT: Thank you.

Okay. I know we have a number of motions to hear this morning. It doesn't really matter to me what particular order we go in. But why don't we hear from Travelers first as to your motions.

MR. DAVIS: Thank you, Your Honor. Your Honor, I'm afraid I didn't ask this; is it okay if I leave my mask off?

THE COURT: I am -- if y'all are sitting next to each other as long as one of you have a mask on that's perfectly fine. When you're addressing the Court if you -- you can try it with the mask on, if you need to take your mask off while

you're addressing me, that is fine. If you need to -- I'm fine also, Mr. Davis, if you want to move up here just so you can distance yourself a little more. That is perfectly fine as well.

MR. DAVIS: Thank you, Your Honor. I think probably our involvement is the least of all of the motions, the least complicated. We -- my client, Travelers, insured the subject property in the name of the decedent, Mr. McKenzie.

THE COURT: Now let me make sure, Mr. Driggers, can you hear okay?

MR. DRIGGERS: I can't hear him.

THE COURT: And I don't know if it will help at all, what about if we move Mr. Driggers over here so you're a little closer? Let's try that.

MR. DAVIS: Okay. Is this better? I was saying that my client Travelers insured the property that burned. They had issued a policy to the late Mr. McKenzie. And we adjusted and paid the loss pursuant to an agreement with his counsel obviously before his death. We did so pursuant to an agreement in light of the outstanding liens and I've got these figures here. But if I may consult with Mr. Corbin here just one second.

Your Honor, we settled with Mr. Corbin and his client Mr. McKenzie after determining that the amount of the loss was $232,073.45 from which we deducted -- of which we paid

$116,933.05 to Mr. McKenzie and Mr. Corbin, I mean Mr. Corbin and Mr. McKenzie for attorney fees and expenses. That leaves $115,140.40 that we owe to somebody, and we recognize that there are a lot of people asserting claims. So we filed a motion to pay those funds into court. And it's been a long time now, but I'm pretty sure that that motion was heard by Judge James shortly before his ascension to the Supreme Court. So he never had the opportunity to rule on it. So we have argued that. I don't know, I guess we'll hear from the others. I don't know that there's any real dispute. What we'd like to do is just pay the money into the court and then let the others who want to assert claims against it do so.

THE COURT: Okay. I know that you had some motions, you had an additional motion for summary judgment as to Farm Bureau's cause of action for equitable indemnity and also as to the crossclaims of Shiralee Driggers and Tammy Floyd.

MR. DAVIS: Thank you for reminding me of that, Your Honor. I'll start with the crossclaims first, if I may. I actually was thinking that I was responding to their motions on that, but the Court's right. I believe I did file those motions.

First of all, with regard to Mr. Driggers crossclaim, he's crossclaimed for bad faith and a number of other, I think breach of contract. I think those arguments can be disposed of easily in that we have no contract with him. He's not

insured under a policy, not listed as a lienholder. He has nothing to do with our contract.

Secondly, whatever claim that he wishes to assert if our motion to deposit the funds that are available into the court is granted, then he like anyone else who wishes to assert claims can do so against that fund. So I mean basically our position is that we have done what we're supposed to do. We've paid our insured. We recognize that there's a dispute over the remainder of the coverage. We just want to pay it into the court and get out.

As far as Farm Bureau's claim is concerned, we obviously disagree that they are entitled to equitable indemnity. We have no relationship with Farm Bureau. Farm Bureau -- in fact we didn't even insure the same insured. Farm Bureau has its own policy with its own insured completely separate from ours. And so essentially, it's -- I guess what I'm arguing is that how we work this out with our own insured is not their concern. To the extent that they feel that it is their concern, they're in the same boat with Mr. Driggers in that they can assert a claim -- assuming that our motion to pay the funds into the court is granted, they can assert a claim against that as well. So bottom line is that -- our position is that we've done our duty, we did what we were supposed to do. A claim was asserted, we paid our insured. Mr. Driggers is not a loss payee on the policy. We have no duties to him

at all. And all we want to do is pay our money into the court and get out.

THE COURT: And I assume your argument as to the crossclaims of Mr. Driggers is the same argument as to the crossclaims of Ms. Driggers and Ms. Floyd.

MR. DAVIS: Yes, ma'am.

THE COURT: Okay.

MR. DAVIS: Thank you.

THE COURT: Thank you. Let me figure out who all of my parties are again. Mr. Pritchard.

MR. PRITCHARD: I'll let Mr. Driggers go first.

THE COURT: Okay. Mr. Driggers, I'm glad to hear from you, sir. First of all, as to Travelers' motion to pay the funds into court. Tell me what your position is with respect to that.

MR. DRIGGERS: Your Honor, he has denied owing me anything as he did right there as a mortgager, or a mortgagee. He's well aware that we've been mortgagee since 1996 because of the contract and also the Judge's order. And I have a paper right here that slipped through the cracks that they never sent us any kind of discovery or anything. But it tells about this -- I asked him to bring Ms. Tina Kennedy, his investigator and Ted Alexander, I guess the agent that handled it. But she has got this letter here, you should have it and they should have it, and it states that I also asked P.D.,

whoever that is, about the mortgage with Shiralee Driggers. He said it has been taken care of; it hasn't. It never had in 11 years; this has been 11 years. And this is the paper I sent it in with the paperwork that you required or asked for. So they have denied since the beginning a mortgagee a right that is stated in a contract, it's also stated in a Judge's order. So Mr. Davis is actually trying to override the Judge's order.

THE COURT: And how about -- let me hear from you as to their motion to -- for summary judgment on your crossclaim.

MR. DRIGGERS: On the what now?

THE COURT: Do you want to tell me what your position is with respect to their motion for summary judgment on your crossclaim against Travelers?

MR. DRIGGERS: Yes. I was asking punitive damages and all for holding this case up as long as it has been. They just denied access and I held up on it for three years on my own. I had a Farm Bureau policy we wrote because the guy was not dependable that had the contract and they were well aware of it that I was holding up until -- Farm Bureau was well aware of it also, until I see if Travelers is going to pay because Travelers is the one that should have to pay. I agree with Mr. Hudson on that.

THE COURT: So you're -- are you objecting to them paying this money into court?

MR. DRIGGERS: Am I objecting to what?

THE COURT: To their motion to pay the money into court?

MR. DRIGGERS: Yeah. The money from 2009 is not the same as money in 2020. I mean you know you can drag somebody's money out -- they should have paid us. It wasn't but a very small amount like $97,000 that they could have paid way back in 2009. They were notified in 2000 -- this date is 1/2 of 2010. Mr. Davis has denied ever -- ever owing us anything. He knows about the contract; he knows about the Judge's order. I've got copies if he needs to read it.

THE COURT: Okay. Thank you.

All right. Mr. Pritchard.

MR. PRITCHARD: As I understand Travelers' motion at least as regarding the court, is essentially an interpleader action; is that correct? I mean and we all get a right to make a claim on the fund. I see no reason not to let them do it. I mean the money is there, if it's ours we've got a right to go get it, but there's no reason for them to hang out. Let it start earning interest.

THE COURT: Okay. Do you want to speak to his motion for summary judgment as to the crossclaim for bad faith?

MR. PRITCHARD: You know candidly our bad faith claim is really against Farm Bureau. I think Mr. Davis is probably correct on the bad faith argument in that they didn't issue us a policy per se, and we weren't a loss payee. But we

certainly claim we're entitled to the funds. I mean but I do think in terms of bad faith it's often difficult to put up evidence to support that.

MR. DRIGGERS: May I say something else, Judge?

THE COURT: Sure.

MR. DRIGGERS: I don't understand why Mr. Davis would pay Mr. Corbin and they're opposing attorneys. Mr. Corbin represented Mr. McKenzie. Why would they pay his -- to his lawyer the law fees? I don't understand that.

THE COURT: Well because Travelers has settled with their insured, I guess is what he's saying at this point. But your concern is noted for the record, sir.

MR. DRIGGERS: Okay.

THE COURT: And, Mr. Hudson, I don't know that you have a dog in that fight, but anything you want to say, sir, with respect to Travelers' motions?

MR. HUDSON: Nothing, Your Honor, other than I think we pled that just because everybody except Farm Bureau from the beginning seemed to have knowledge of this situation and adjusted -- Travelers then adjusted the claim by having Farm Bureau notified or a claim filed I should say, to where it could protect its own interest. That filters over into our other arguments, otherwise it seems like Travelers would have had a duty to let us know what was going on. Now here again, no depositions have -- extensive depositions need to be taken.

We don't know when Travelers really had notice, exactly what happened, and why nobody deemed it necessary to contact Farm Bureau. And it might have been that nobody let them know, but we haven't fully explored that. So that's the reason that we brought that action of equitable indemnity. We agree that we shouldn't have to be bringing this declaratory judgment action to find out things that we should have found out right after the filing. So we were not notified until -- and that was by Mr. Driggers for a claim made, until about three years later, 30 days before the statute of limitations would have run, not that that was an issue and nobody ever discussed it. But they affirmatively -- the Driggers, and we've got three of them; we've got husband, wife, and the daughter. They affirmatively, the evidence we have so far, is they affirmatively took Farm Bureau's sales agent, not a claims person or anything, that they didn't intend -- didn't want to make the claim on that policy because of various reasons, but that they were going to collect from the other company. At that time we didn't know who it was, it was Travelers. So we would think that we at least have an argument that needs to be more fully explored in discovery if this matter moves forward. There are a number of depositions that do need to be taken just to put all of the pieces of the puzzle together.

THE COURT: Okay. Tell me whose depositions still remain to be taken and why we still haven't taken their depositions

some six years later? I saw there was a scheduling order that had a trial not before some date in 2016.

MR. HUDSON: We had tried -- can you hear me okay, Your Honor? Do I need to step up here?

THE COURT: I can hear you.

MR. HUDSON: Okay. We have tried. It's not because we haven't tried to take depositions and there were discovery issues that remained outstanding that -- that when Judge James, now Justice James, went off to the Supreme Court the rulings weren't made, and we were trying to get the rulings before the depositions were taken. But I think it's been pretty well unanimous that once the discovery issues are solved then we can move forward with depositions to complete. We tried depositions but for various reasons unusual things happened and they just weren't completed at all. So the key people i.e. Ms. Driggers has not been -- it was started but it wasn't completed. Mr. Driggers has not been deposed and their daughter Ms. Floyd has not been deposed. For those discovery -- lack of discovery reasons I would say, and in addition to the other folks because of the discovery motions that are out there, Farm Bureau folks, Travelers folks. We've just kind of been at a standstill.

THE COURT: Thank you.

MR. HUDSON: So I think the initial question was Travelers -- it would be because we think Travelers at least

in this unusual factual situation would have had some duty of the pro rata approach as to coverages or whatever to at least contact us and let us know what was taking place.

THE COURT: Okay. Thank you.

MR. HUDSON: Thank you.

THE COURT: Mr. Corbin, do you want to address the Court about any of that?

MR. CORBIN: No, ma'am.

THE COURT: And do you have a motion to substitute the Estate of Arthur McKenzie?

MR. CORBIN: I have no formal motion, but I think with consent everybody will agree that I need to substitute the Estate of Arthur McKenzie for Arthur McKenzie.

Do you agree, guys?

MR. HUDSON: No objection.

MR. PRITCHARD: No objection.

MR. DRIGGERS: Your Honor, Mr. McKenzie never had a legal assignment to that property ---

THE COURT: I understand you have issues with -- you have legal issues, but the limited question we've got here is he is a party to this lawsuit and he is deceased.

MR. DRIGGERS: Yes. I'm saying though he never had a legal assignment. The Judge -- Judge Shuler had in there that if there was any changes to that contract that all parties have to sign. I have a copy of it, you should have a copy.

On section eight that we all had to get together and Arthur just went somewhere and fixed up a quick assignment. Do you have a copy of Judge Shuler ---

THE COURT: Well I've got a copy of Judge James' order from December of 2016 where you made a motion to abolish the assignment and he denied that motion.

MR. DRIGGERS: I don't know why he would deny it, but anyway I ---

THE COURT: He heard that motion and issued his order back in December of 2016.

MR. DRIGGERS: But you do have a copy of this -- this order?

THE COURT: If it's in the file. Yes, sir.

MR. DRIGGERS: And let me read it to you. This is the Judge's order, now. This is not the contract. Section eight of the contract ---

THE COURT: Sir, tell me the date of that order that you're referring to.

MR. DRIGGERS: Ma'am?

THE COURT: What's the date of Judge Shuler's order?

MR. DRIGGERS: Who gave it?

THE COURT: The date that Judge Shuler signed it.

MR. DRIGGERS: Oh, that was 9/6. That was the first time we had to evict him from the house.

THE COURT: So I see there was an eviction action that

was filed in magistrate's court.

MR. DRIGGERS: That was the eviction. That came out by this order.

THE COURT: But that was not issued in this case? Judge Shuler's order is not from this case because this case wasn't filed until after the fire.

MR. DRIGGERS: No, but Judge Shuler's order bears on this case because it's all about it. It's what we agreed to.

THE COURT: Okay. Mr. Driggers, I understand you have a legal dispute as to the legality of the assignment.

MR. DRIGGERS: The agreement ---

THE COURT: But, sir, the question right now is simply are you objecting to the estate being substituted for Mr. McKenzie?

MR. DRIGGERS: The estate being substituted?

THE COURT: In other words, he's deceased ---

MR. DRIGGERS: Yeah.

THE COURT: --- so now his estate would step into his shoes.

MR. DRIGGERS: No, I don't have a problem with that because he has no -- he has no bearing on it. He's not even -- my thought to the Court is he has no right. They can't show me an assignment, a legal assignment.

THE COURT: I understand.

Okay. Farm Bureau has a motion for summary judgment as

well. And you've got a motion to quash and a motion for protective order?

MR. HUDSON: That's correct, Your Honor. Primarily it started off with a motion to quash and it has to do with Driggers and frankly they're a little bit of a moving target as far as when we make the motions because they've changed and now Mr. Pritchard is representing the ladies and Mr. Driggers is now pro se.

THE COURT: Yes, sir.

MR. HUDSON: So that kind of switches it all up, but I'll address the whole thing. We have had discovery motions somewhat with Judge James. In fact, we had -- he ruled on all of the -- I think all of them and they've been complied with except of production of personnel -- Farm Bureaus personnel files and from the claims manuals which Farm Bureau strongly asserts that those are trade secrets and are not discoverable. Both of those arguments, Your Honor, are well briefed by my lawyer partner in the brief as far as the case law goes that supports our position and the factual situation. But basically Farm Bureau is the only company in South Carolina that is domestic and writes only in South Carolina, has its own adjusting folks. Their main selling point is service and obviously they are farm and farmer oriented company by and large and so they take great pride in that. We have affidavits from both human resources with Farm Bureau and we

have the district claims rep as to the claims manuals as well as the personnel files. And they're very explicit on why Farm Bureau feels so strongly that they should not be published. Here in this case it's even stronger because a co-defendant is an insurance company competitor. So there is no way you're going to keep it confidential and keep harm from being done. I have a law review article that basically says -- I can't find the exact title of it, but it says if I tell you what you want to know I'll have to kill you. I've got to read that one. But in any event it is very important that these affidavits are very explicit, and we think put the burden strictly on the defendants who are requesting this for bad faith actions of which we think there's really no foundation whatsoever in a bad faith action at all. That's part of our summary judgment motion.

The personnel files have nothing to do with claims at Farm Bureau, they're strictly personal material: family, education, different things that are very personal. It's appropriately named personnel files; it has nothing to do with the claims. No claims are mentioned in any of them, they aren't involved.

The claims manual is because South Carolina is unique in South Carolina. Their main selling point is service. They can't compete with Travelers as far as price goes and Travelers or Geico or whatever want to money whip them you

know have a loss leader campaign or something like that. They can't compete, but they compete with service and they do right well with that approach. They have their own adjustors, everything top to bottom they're always the first to complete their hurricane claims and everything else because they have this operation that's in these claims manuals that seems to work. They don't need to disclose that.

The motion for summary judgment is really primarily to this bad faith action and that has kind of bloomed into a lawsuit that we don't think that's anywhere -- has any foundation anywhere in the factual situation here. Farm Bureau really wasn't notified affirmatively of a claim or a claims made that there was a loss of this house. Farm Bureau was informed that the owner of the insurance was titled in Mr. Driggers. The sales agent with Farm Bureau or at least the one that they said they had a conversation with said that there had been a loss there at the house but they weren't going to make a claim. I think it was Ms. Driggers. But the sales agent that they talked to, not a claim person, nothing was filled out, no claim made, they actually told him according to his sworn testimony not to make a claim that they were going to get it from the other insurance company, i.e. Travelers.

THE COURT: And when you say according to his sworn testimony, who are you referring to?

MR. HUDSON: I'm sorry, Your Honor. Wayne McKenzie. This is another McKenzie. He was the Farm Bureau agent at the time. He's now head of Farm Bureau in Clarendon County, but then he was in Williamsburg. He handled the policies, and he had a lot of policies with the Driggers. In fact, he informed us -- we didn't know this until the deposition, that he went to the same church that they did since he was five years old. In fact, Ms. Driggers -- here's another small world and small town -- Ms. Driggers was his CPA and I think it was Ms. Driggers that did his taxes and such. I think it was Ms. Driggers that just casually mentioned that there was a loss, but they weren't making the claim because this other company should pay and all of that. They didn't want their rates to go up or whatever (inaudible) to make a claim. They chose affirmatively not to make a claim and he was just a sales agent. So the claims department never found out until a month ago when the statute of limitations, two years eleven months later. And here it's developed that the ownership interest here, both of these are owner's policies, Your Honor. Mr. Driggers this policy is not as a mortgagee or anything else. Mr. McKenzie was an owner's policy. You've got two owners policies and you start having this pro rata case law that comes in there that says we needed that interpretation because you have to have figures to be able to work with that and we haven't really been able to get the figures because these

folks haven't agreed on what their ownership interest is, how much has been paid because of this land sales contract which we were never advised of. So there's an ownership interest that's floating around out there, what percentage, who owns what if any. Those are material things that need to be cleared up.

So it does seem and I'm still on the summary judgment, Your Honor, they say that we wrongfully and in bad faith adjusted this claim. Your Honor, we didn't adjust the claim. Travelers adjusted the claim. We didn't have any notice to adjust the claim. We would have loved to -- it was obligatory for them to put us on notice then we could properly adjust the claim and not be prejudiced, which Farm Bureau definitely has. Farm Bureau has not denied the claim yet. We filed a declaratory judgment action trying to set out all of things that we knew about at the time after EUO's were taken, both Mr. and Ms. Driggers. We haven't taken, I don't believe, Tammy Floyd's yet, but Mr. and Ms. Floyd's. These other things kept popping up between the other parties and ownership interest and things like that that even complicated the matter more. So we would say at least as to just a bad faith action in this as a response to a declaratory judgment action under the factual situation that we have here that's really in its material features and facts are not in dispute, there is just no way it's bad faith adjustment of a claim. They've never

had the opportunity to adjust the claim. We tried to figure out what in the world is going on and who do you pay and what do you pay properly in the matter because the target keeps moving the more we find out. Here again, those depositions that I mentioned earlier of the parties have not been taken and they have noticed depositions of a number of Farm Bureau witnesses which we have submitted their CVs that would have been involved with any underwriting or anything with that.

But getting back to the original motion to quash, we strongly object to producing the claims manuals and the personnel files. There's just -- we don't think -- we think we've met the burden of their importance and we don't -- I think the burden is on them to prove that they can't pursue their case without those things. I don't think they can do that at all. The prejudice far outweighs the probative value of producing those items and Judge James did withhold that. I mean I think, just my own interpretation, he had problems with that. He was going to make a ruling and he got elected to ---

THE COURT: In this form order -- I think he did a form order initially, ruling on some things and holding some things in abeyance.

MR. HUDSON: That's what he did. Now, the form order I can't visualize it right now. He did -- he did have an order where he ruled on the items that we have since produced, but we withheld what we objected to, personnel files and claim

manuals. He was going to rule on that. Like I say, I repeat myself, he withheld judgment on that and was going to review matters and maybe have some more discovery, I'm not sure. Anyway, in the interim we have to go see him in Columbia. And I think that's pretty much it, Your Honor. Mainly those two motions are primarily why we're here and we added the summary judgment motion just because you kind of sit back and look at these facts and say how in the world can we be adjusting the claim in bad faith when we didn't even know about it. Nothing was complied with. In fact, we don't want to waive our argument that there's no coverage at all because of lack of notice, clearly intentional. The problem in how this thing developed has not been the fault of Farm Bureau whatsoever, but of the insureds whoever they might be at this time. They've changed their position, they being the Driggers, to where they were a partnership to now they're the husband and wife or undisclosed principals of a daughter. The title to the property is the daughter. She's not here. Same arguments as far as named insured, standing that Travelers uses would apply here by Farm Bureau. I think that about covers it, Your Honor. Really the brief has got all of the case law and affidavits that support these arguments.

THE COURT: Okay. Thank you, Mr. Hudson.

MR. HUDSON: Thank you.

THE COURT: Mr. Pritchard, was it your motion for -- or

your request for -- was it your request to produce the claims manuals and the personnel files?

MR. PRITCHARD: Yes, Your Honor.

THE COURT: Okay.

MR. PRITCHARD: All right. With the Court's indulgence, the -- the motion to quash and the motion -- the request for production, the motion to compel, and the summary judgment are sort of in knots, so I'd like to sort of attack them all at once if it's okay with the Court.

THE COURT: However you want to address it --

MR. PRITCHARD: Thank you.

THE COURT: -- I'm fine with.

MR. PRITCHARD: Thank you. You know, a couple of things that Mr. Hudson said during his arguments stood out to me. One, he said, "those are material issues to be sorted out", direct quote. And two, Farm Bureau didn't adjust the claim, and that's exactly what the complaints are here. They didn't adjust the claim.

And I think what we need to do, if you don't mind, with the indulgence of the Court I'd like to hand up a case. Essentially what happened in that case was Insurance Company of North America issued a policy to Crescent Company of Spartanburg which was in the process of building a -- a development. And they had a rider in the policy that said, "This company shall not be liable for loss if the described

buildings have been vacant or unoccupied beyond a period of 30 consecutive days immediately proceeding the loss, whether or not such period commenced prior to the inception date of this coverage; but a building in process of construction shall not be deemed vacant or unoccupied." All right. Well, the buildings were unoccupied for a period of two years. And the Insurance Company of North America pretty much -- it was easily discoverable, but yet they kept renewing the policies and they kept taking the premiums. So, the Supreme Court in that case essentially said that that rises to the level of evidence sufficient to estop them from denying coverage, in so many words. And I think we've got a situation that not only similar, but actually stronger in favor in this circumstance.

And I'm going to point to the deposition of Wayne McKenzie, and I'll be happy to provide the Court with a copy of his deposition transcript. But Mr. McKenzie was deposed on the 27th of January 2016. Starting on Page 9 at Line 15 he said:

"I was approached by a manager at Farm Bureau.

Who?

Roger Poston.

Okay."

And tell me if I'm going too quickly.

"And he asked if I would be interested in talking to him about coming to work for Farm Bureau.

All right. And obviously you took the job.

I did. March of 2005.

And you've been working continuously for Farm Bureau ever since?

Yes, sir.

And you're employed by them today?

Yes, sir."

That answer on Page 10, Line 6, and then down at the bottom on Page 10, Line 25:

"Okay. Who is your employer?"

Page 11, Line 1 through 2:

"I am employed by Farm Bureau Insurance."

Page 11, Line 3 through 5:

"Okay. And your paycheck is from Farm Bureau, correct?"

Answer:

"Right."

So, he's an employee of Farm Bureau; no if, ands, or buts about it. So, he came on and then we jump down a little further in the transcript. And he came on in Page 18, Line 2, he was asked if he had ever written policies for Marion and Shiralee Driggers or Tammy Floyd. He then said yes. He can't recall which one or how many, but later on down the line beginning at Page 19, Line 12 he says:

"And you've been writing insurance for them for approximately how long?

The Driggers family from 2005 to 2009."
So, that's found on Page 19. And then he ended up transferring to -- from Florence to Darlington in 2010, so he was no longer responsible for that particular policy because he moved to a different area of the state.

He then goes on and he talks about adding and -- and going on he says on Page 20, Line 15, they were established clients. And most of their business was already in the books when he came to work at Farm Bureau, and he added policies. So, from 2005 to '19 he's not sure how many properties he wrote, but more than ten. So, we go on and on and we then asked him about this particular property and his recollection of it is that this particular property was already in -- you know, there was already a policy in place when he came on. So, the point of the matter is -- is they've written this policy and renewed it over and over and over again. They were visibly taking premiums and kept insuring this policy on behalf of the Driggers/Floyd group.

I can't begin to answer the question as to why Mr. and Ms. Driggers put the property in Ms. Floyd's name, but they nonetheless did, and they then bound the coverage on the policy -- on the property through Farm Bureau and renewed this policy over and over and over again for multiple years. And Farm Bureau not once said anything about it. And Mr. McKenzie knew the Driggers; he knew Ms. Floyd. He'd gone to school

her; they went to church together; Ms. Driggers does his taxes. And nobody ever questioned this relationship until, shockingly, there was a claim. Happy to take the premiums for years on end, but not so happy to pay the claim when it arises. So ---

THE COURT: Let me -- let me stop you. So what should they have questioned? Are you referring to the fact that it was in the name of Tammy Floyd but it was insured by ---

MR. PRITCHARD: Correct. Correct.

THE COURT: --- the Driggers.

MR. PRITCHARD: Correct. And I think they're estopped from raising that issue at this point. Because pragmatically when you get down to it from a risk model standpoint when you're an insurance carrier what does it really matter which one owns the property? It's not like the risk expanded by virtue of Tammy being the title holder, or Mr. Driggers being the title holder, or Ms. Driggers being the title holder. The risk model was identical. You know, they would not have charged any more premium or any less premium, or at least I don't think so but of course I haven't been privy to any of that information because it's been withheld from me, but the risk model would have been the same. So, it's not like they bought risk that would have been lesser or greater. They didn't get anything different than what they bargained for, they just happened to be the wrong name on the policy. But

pretty clearly Mr. Driggers was acting as an agent, an undisclosed agent, for Ms. Floyd, the real owner of the property, and visibly paying the premiums.

THE COURT: And so did Mr. McKenzie testify that he was aware the property was not actually owned by Ms. Floyd?

MR. PRITCHARD: You know, he did not. But, here again, as the -- as the Supreme Court notes, it says -- important language here, bear with me.

The scope of the risk under the insurance policy can be extended by estoppel if the insurer has misled the insured into believing the particular risk is within the coverage. And my insurers thought all along that their particular risk was within coverage over and over and over again, never a question, never asked, never bothered, just kept taking the premiums. And if this had happened 30 days after the first binding of the coverage there might be a much better argument here. But here you've got an insured who's paying premiums, okay so you've got the wrong name on the policy, but that's an easy -- the policy can be reformed to name the correct insured, they do it all the time, actually. Usually for the carriers I work with we don't play this game, we find out who it is and often times we just rewrite the policy with the correct name and keep going because we took the premium.

THE COURT: So I guess what I'm asking is, is it your argument that Farm Bureau knew, or should have known, that

Marion Driggers was not the title owner of the property?

MR. PRITCHARD: Well, my argument is it really doesn't matter what they did and didn't know because it didn't expand the risk.

THE COURT: Well, I mean, they can't affirmatively say yeah, we know you're not the real owner but we're insuring you anyway if they didn't know that he wasn't the real owner.

MR. PRITCHARD: Well I'm not sure I understand that --

THE COURT: Well, your argument seems to be with the *Crescent* case that Crescent -- the building is obviously sitting there vacant.

MR. PRITCHARD: Correct.

THE COURT: And the insurance company continues to accept the premiums and continues to represent that it's insured, even though if they'd just have driven out there, they could see that the building was vacant.

MR. PRITCHARD: Right.

THE COURT: So I would assume you're trying to say that Farm Bureau knew that Marion Driggers did not actually own the property but they kept accepting his premium; and therefore, somehow communicating to Tammy Floyd you're covered. I mean, how -- how would they know that she was not -- that she was actually the title owner?

MR. DRIGGERS: May I address that, Your Honor?

THE COURT: In just a minute, sir.

MR. PRITCHARD: I don't think it matters whether they knew that she was the actual underlying title owner is what I'm saying. I think first off, the fact that she was the underlying title owner is a matter of record. So they -- so anybody is on constructive notice. I mean, a google search at your desk will take two minutes to figure that one out. You know, it's just -- I mean, just go on the Williamsburg County tax records and voila you're going to find out who the record owner is. But, you know, in the Crescent Homes case, one of the reasons I think my case is stronger is the Crescent Homes case, the fact that the policy was -- excuse me, the property was vacant actually expanded the scope of the risk. So generally speaking, if the scope of the risk is expanded then you've got an argument of now we charge a bigger premium. But here there's none of that. The bottom line is, okay, he was acting for his daughter as -- as an undisclosed agent. But the bottom line is, you've got an insured who's paying a premium, the risk is no different. The risk is no different. His argument essentially is we didn't have a contract with Ms. Floyd, but just because you enter into a contract with an undisclosed principle doesn't mean you don't have a contract with the undisclosed principle, and that's essentially what he's arguing here when you get down to it. And that's exactly what's going on here. And that's what I don't think under the Crescent Homes case, I think we've got -- I think we've got a

jury issue as to (a) was he acting as an undisclosed principle; and number 2, do they have a contract with her based on it? And naturally what it's coming down to, I think they're estopped from asserting some of these positions.

Now as for the claim issue, Mr. McKenzie who was an employee of Farm Bureau, discussed this with Ms. Driggers. He wrote the policy. Now, I know there was some discussion about whether or not they should make the claim or not make the claim, but certainly at that moment Farm Bureau was on notice that a property that they insured had caught fire. That he chose not to take it back to them is between him and them, but they knew at that moment so to say we didn't know, we couldn't investigate, and we could do this, they most certainly could have. I mean, just because no formal claim was done doesn't mean you can't go out and take a look at a property. If you're insuring a property and you know it burned down and you just say we're not going to go take a look at it, you can't -- you can't just do that. You've got to have some basis for not doing it. Now again, Ms. Driggers didn't in fact make a formal claim, but at that moment Farm Bureau was on notice that a property that they insured had burned down and -- or caught fire. And so they knew about it. He was a licensed insurance agent, it's not like he was, you know, a store clerk. I mean, he had to take a test; he has to go to continuing education; you know, he's got company policies and

procedures, again which I've never been allowed to see. And so at this point, you know, I've got a pretty solid jury issue as to whether or not they were on notice and they should have done something about it.

THE COURT: So tell me what your specific request is to produce.

MR. PRITCHARD: Well, what I'm looking for is I want to know what their claims manual and their policy guidelines are. And I understand that they have great heartburn about Travelers getting ahold of it, but certainly protective orders and confidentiality orders do it all the time. I do it as an insurance carrier defense lawyer all the time. And what I don't understand is how, because he's got some heartburn about giving it to another party, that my request for production should be denied. I'm certainly not going to use it to my advantage, at age 58 I promise you I'm not starting an insurance company. I mean, you know, if there's something we can craft where Travelers doesn't get it or whatever, I don't care they work that out, I really don't. But I don't know why I should be denied information necessary to prosecute my claim because he's got some -- because one party has heartburn about another party getting it. I mean, it just -- I just don't see how that fits within the Rules of Civil Procedure and Rule 26 of open discovery. I mean, I haven't heard a single objection that would justify my not getting that information. The

objection is, you know, we don't want another carrier to have it because it's proprietary. Well, that's what a protective order is all about.

THE COURT: And so you want to be able to see it to determine whether Mr. McKenzie followed proper --

MR. PRITCHARD: Yeah. And whether they followed their own procedures in adjusting, or not adjusting I should say, this claim.

THE COURT: And tell me what your position is, first of all what personnel files are you requesting?

MR. PRITCHARD: I want to know if whoever this claim was assigned to has any disciplinary issues, whether they've ever had any other problems adjusting claims, what their training was, that sort of thing so I can ascertain if you have a properly trained claims handler. Has this claims handler had other problems in the past with regards to adjusting claims? I mean the question is, did Farm Bureau act reasonably in simply doing nothing. I mean, they filed a DJ action for sure, but by and large they've done nothing. Again, at least Travelers, to their credit, has come in and tried to pay the money. There's some disputes about whether, you know, how they should come down, but I mean Travelers at least stepped up to the plate with all this mess and said we took a premium, we've got a policy, we just want to pay the Court and let everybody else figure out whose it is. Farm Bureau hasn't

even done that. We took the premium for years and years and years, we just want to truck them out of here. I mean, I've done this 35 years and I'm going to be honest with you, I've only seen two bad faith cases that are worse, and I'm usually on the defense side. I mean, this is -- they just didn't bother to investigate any of it. I mean, that in and of itself is unreasonable conduct in my view, and I think there are jury issues here. And I think -- I think we've got a right to have a jury.

And, you know, while we're on the subject, as Your Honor knows this is a 2014 case. And I recognize that today is the 17th of September so we're 2 months from Thanksgiving and things start getting a little squirrely and we've got the whole Covid thing going on. But I really would like to put this thing on a fast track and try it in the spring and get it done with. It's -- it's -- as a matter of fact, pets have died in shorter time. You know, this case is just going on forever and it needs to ---

THE COURT: I agree with that.

MR. PRITCHARD: Thank you.

THE COURT: Thank you.

Mr. Driggers?

MR. DRIGGERS: Yes. I'd like to add that the reason that it was in my daughter's name, we have a little group called TDF group which is her name, Tammy D. Floyd, that's how this

property was listed. She was my designee as also Arthur McKenzie had Aliza Richardson as his designee at the court case in '96. Everything steams back to those, the contract and the Judge's order.

THE COURT: I've got a copy right here in front of me.

MR. DRIGGERS: Ma'am?

THE COURT: I have that order on my computer right now.

MR. DRIGGERS: Okay. And also Wayne McKenzie had his supervisor with him when he went out to that house. My wife stated to them that Arthur had insurance with Travelers, and we were looking for them to pay because we had notified Ms. Tina Kennedy, well actually she came and looked at the record, and she was well aware on 1/02 of '10 which is just a month or two after the fire. See, Mr. Davis has been insinuating that they don't have a claim, a mortgagee, and I've got several -- which I'm sure you're aware of, that the mortgagee's protected.

THE COURT: Who is Tina Kennedy?

MR. DRIGGERS: Who is what?

THE COURT: Who is Tina Kennedy?

MR. DRIGGERS: TDF?

THE COURT: You referred to a Tina Kennedy.

MR. DRIGGERS: Tina Kennedy is a Travelers investigator. That's the one that I told you I had the paper stating that she put us on notice. I'd like to know who P.D. is.

Do you know, Mr. Davis?

THE COURT: Mr. Driggers, this is your turn to address me as to the Farm Bureau's motions on the request for production and Farm Bureau's motion for summary judgment.

MR. DRIGGERS: Okay. Well I disagree totally with Farm Bureau being let out of it. They were well aware in early '10 of the situation. Even the supervisor came along with the guy. We were trying to help Farm Bureau by collecting from who really owed me. That's how we got -- they denied the claim. They had already approved the claim, Mr. Hudson and Matthew from Farm Bureau already -- we did EUO's, EOU's, whatever they are, and they had already approved that she had an insurable interest in it and then all of a sudden I don't know what happened, somebody talked with them about something. They had already approved the claim.

THE COURT: Okay. I think that is all of Farm Bureau's and Travelers' motions that we've heard from everybody on. I don't believe that you had any pending motions, Mr. Pritchard?

MR. PRITCHARD: No, Your Honor, I don't. And I want to try to understand something. I don't want to put words in Mr. Davis' mouth, but I understand that Travelers position is that they don't care who the money belongs to, they just want to pay it and be done with it. If Driggers gets it, great, but that's a fight that the rest of us are supposed to have. Is that correct?

THE COURT: That's what I understand.

MR. DAVIS: Absolutely correct.

THE COURT: Okay.

Mr. Driggers, I understand that you have some motions as well, sir.

MR. DRIGGERS: Yes, ma'am. I have a motion to reconsider about the code section here 38-59-10.

THE COURT: Okay. Let me ask you first, what are you asking the Court to reconsider?

MR. DRIGGERS: Judge James, Judge James.

THE COURT: Okay. Judge James' order ---

MR. DRIGGERS: He ordered ---

THE COURT: I understand. That was in 2016 and Judge Cothran has denied that motion for reconsideration in 2018, and Judge Brown denied the motion for reconsideration on June 20th, 2017 so that's already been addressed at least twice previously.

MR. DRIGGERS: I don't think the motion to reconsider has been heard at all.

THE COURT: Sir, there's been an order issued by both -- I mean there's a written order dated June 20th, 2017 by Judge Brown.

MR. DRIGGERS: Judge Brown?

THE COURT: I understand it was raised in front of Judge Cothran, although I have not seen a written order from Judge

Cothran. I think that was ---

MR. DRIGGERS: That was just a discussion, that wasn't a motion hearing we had with Judge Cothran because we don't have any trial transcript at all on it. But I was under the impression that I had to file a motion to reconsider on Judge James' order to be able to appeal it.

THE COURT: You did, sir, and Judge Brown ruled on it.

MR. DRIGGERS: Judge Brown?

THE COURT: Yes, sir, on June 20th, 2017.

MR. DRIGGERS: I'll have to check on that. I don't remember that. He ruled on something that I disagreed with, oh, he overruled another Judge's order, that's what it was which is illegal. But anyway, we'll move from that one and go to the motion to compel. I have orders from Judge David Norton which is a federal judge. It says when insurance companies commit bad faith, even one element, they waive all of their rights to protection. We haven't received any kind of discovery at all. All I'm asking for is the discovery between Nettles, Corbin, and Nettles and Corbin.

THE COURT: Okay. I see a motion ---

MR. DRIGGERS: Between Travelers, Nettles, and Corbin that's the information that I feel like I have a right to that.

THE COURT: Okay. I'm not sure what you're asking for. I see that you filed a letter in July of 2018 to Judge Cothran

referring to a federal case.

MR. DRIGGERS: Right.

THE COURT: But I don't see where you have -- tell me what you're asking.

MR. DRIGGERS: I'm asking for all of the information, all of the letters. See because Judge James let Travelers by with a lot of this stuff that I fell like I should have been exposed to, but then I found this order where this federal judge, and it's been through the Supreme Court and they haven't denied it. If you can produce one element, and I can very well produce one element that I haven't been paid under section 38-20 in three months by no means. And I was denied anything to do with the case, have been for ten years. They act like they don't even know a mortgagee.

THE COURT: Well I see Judge James ruled on your motion to compel Travelers to produce certain documents and he granted some of that and he denied some of that. Is that what you're referring to, those documents that you requested?

MR. DRIGGERS: Yeah. I requested those documents, and I haven't received any kind of correspondence between Mr. Davis and Travelers, none. They are opposing attorneys, there's nothing confidential about that.

THE COURT: It appears to me that there was a later order that denied your request that asked for I think attorney to attorney documents.

MR. DRIGGERS: Right.

THE COURT: I can't remember where that was listed, but again I think that Judge James has already ruled on that motion to compel.

MR. DRIGGERS: I don't think so, not on this order because I didn't bring it out. I didn't know about it until this case had drug on for two or three years without any kind of discovery or any kind of thing happening on it. I don't remember when I received the actual motion from Judge Norton but it hasn't been but a couple of years and I don't think that's been heard, but if you say so I'll go along with what you say.

THE COURT: Mr. Davis, do you know offhand, sir, when Judge James on the motion to compel back in May of 2016, Judge James granted it in part and denied it in part. Do you know if Travelers turned over the documents responsive to that motion to compel?

MR. DAVIS: I have to say, Your Honor, if we were ordered to do so I'm confident that we did, although I can't stand here and say that I have a specific memory of it. I did my best to get all of that details of what's happened all of these years in my mind in the last couple of days, but I don't remember that one.

MR. DRIGGERS: But that was before this order.

THE COURT: Mr. Driggers, I don't know which request for

production you're referring to. If you served a request for production ---

MR. DRIGGERS: The clerk should have it in her office. I have a list of motions ---

THE COURT: Mr. Driggers, a request for production goes to the attorneys. It doesn't get filed with the Court unless it's part of a motion to compel. I didn't see any request for production that was attached to your motion to compel. So tell me what specific request for production they have not complied with.

MR. DRIGGERS: Well I -- this order states pretty much that I am due or should be due all of the information that they have. That's the way I read the order.

THE COURT: You're talking about Judge Norton's?

MR. DRIGGERS: Judge Norton.

THE COURT: Okay. That very well may be, but you still have to request the documents. You have to make a specific request for them.

MR. DRIGGERS: I have requested them through I believe a motion is what I'm saying. I'll double check, but I think I received this order form Judge Norton after Judge James. It was later.

THE COURT: I understand, sir, but procedurally if you're saying that they haven't -- that you are compelling -- that you want the Court to compel them to turn over documents you

have to request those documents from them through the discovery process and then they have to formally respond to your request and say yes, here are the documents, or give you some reason why they're not going to give them to you.

MR. DRIGGERS: Okay. Well I'll do that after this. Okay. That's fine. I'll do that. And let's see, the motion to dismiss. That was the order of default. Mr. McKenzie has been removed from this case by Delores Williams following the court order of Judge Duane Shuler.

THE COURT: Okay. Are you referring to -- I saw there was a magistrate court order that ejected him from the property back sometime after the fire?

MR. DRIGGERS: Right.

THE COURT: Which would not have any bearing on this case. First of all, the magistrate court does not have jurisdiction to deal with an interest in real property. The magistrate can evict somebody from the property, but a magistrate cannot make a determination of who's got what in real property. They don't have any jurisdiction in that.

MR. DRIGGERS: Well Judge Shuler wrote that in his order.

THE COURT: That was back in 1994.

MR. DRIGGERS: Well that is this case, ma'am. The '96 case is actually this case. It's about the same thing.

THE COURT: Sir, it can't be this case. That's before the fire.

MR. DRIGGERS: But that order is still good until the contract is up. A judge's order is still good until the contract is up.

THE COURT: So tell me the date of your motion to dismiss that you're arguing to me right now.

MR. DRIGGERS: All of these was to Judge Ferrell Cothran.

THE COURT: Was it July 20th, 2018?

MR. DRIGGERS: Wait a minute. Let me see if I can find that motion here. Motion to dismiss was on October 2nd, 2017.

THE COURT: Okay.

MR. DRIGGERS: And Judge Cothran never heard it.

THE COURT: There was no -- I see that was listed on the public index but there was no document attached. Let me see, I think I've got it in front of me right here. Okay. I'm looking at a letter to Judge Cothran, it's called a motion to dismiss. It was filed October 10th, 2017 that says: "Dear Sir, I'm enclosing an order from Judge Shuler for your information as to why these counterclaims against the Driggers should be dismissed." I'm assuming you're talking about the counterclaims filed by Arthur McKenzie?

MR. DRIGGERS: Right.

THE COURT: And so it's your position that Judge Shuler's order from this 1994 action precludes Mr. McKenzie from crossclaiming against you?

MR. DRIGGERS: Right.

THE COURT: Okay. Let me -- let me hear what -- Mr. Corbin, do you want to respond to that, sir?

MR. CORBIN: I can, Your Honor. There are a lot of different things. Number one, the magistrate court's order it was a default and Your Honor is correct, no jurisdiction. Plus in default you can only ask for relief that you're requested. The only relief that's requested was ejectment. The house had burnt three years before. Mr. McKenzie had been out of the house for three years, so the magistrate court's order does not affect this case.

Don't know what Your Honor wants me to address, whether or not Mr. McKenzie has standing?

THE COURT: I'm referring to this 1994 order of Duane Shuler. The action was E.L. Matthews versus Arthur McKenzie versus Shiralee Driggers.

MR. CORBIN: Yes, ma'am.

THE COURT: And I have not read that order, but it appears to be with respect to this property.

MR. CORBIN: It is. It indicated that the parties would enter into this particular contract which is dated April 25, 1997.

THE COURT: The parties reached an agreement?

MR. CORBIN: Yes, ma'am.

THE COURT: Mr. McKenzie was to pay some money for past due rent and for attorney's fees. It also states that the

parties recognize that there are other mortgages in agreement between the parties which will not be released by the terms and conditions of the release but will be satisfied by the contract. It gives Arthur McKenzie the right to assign his interests to a designee whose name will appear on the contract. Was this contract ever entered into?

MR. CORBIN: Yes, ma'am. It's part of numerous responses to motions, but this is a copy of the contract, Your Honor.

THE COURT: Numerous responses to motions in this case?

MR. CORBIN: Yes, ma'am.

THE COURT: And do you have a copy that Mr. Driggers can see what I'm looking at?

MR. DRIGGERS: Which one, the contract?

THE COURT: Sir, what I'm looking at is a contract for sale and purchase dated, it looks like April 25th, 1997.

MR. CORBIN: Your Honor, in that particular contract, Mr. Driggers has a copy of it, it's clear that's what Mr. Driggers indicates he was his daughter's designee. And it's clear that Arthur McKenzie -- that Aliza Gambell was the designee for Mr. McKenzie. Clearly in this contract Mr. McKenzie is a party and he can enforce this contract. We're not looking to abnegate the contract; we want to enforce it. For example, on page three, paragraph four the attorneys representing the parties indicates that Arthur McKenzie is represented by me, he's a party. Page seven, that talks about that in fact it's

on the sales contract if there's a default then there'll be a foreclosure and any excess of that foreclosure would go to Mr. McKenzie. Page number nine, binding effect of this contract, this agreement shall be binding upon the parties hereto, Driggers, which is Mr. Driggers, McKenzie, Mr. McKenzie, and others so clearly he's a party. Furthermore, paragraph seventeen states the parties agree that Arthur McKenzie shall jointly share any and all responsibilities and liabilities with Aliza Gambell under the terms of this contract, so clearly he's a party to this contract. Mr. Driggers is a party to the contract, Mr. McKenzie is a party to the contract; therefore, he has standing to bring his action for breach of those contracts.

THE COURT: Mr. Driggers, do you want to respond, sir?

MR. DRIGGERS: Yes, ma'am. On page four he moved away from it, but said in the event of a default by the buyer all contract rights of the buyer Gambell and McKenzie will terminate. Buyer and McKenzie acknowledge they have no rights to equity for rent paid. That's in the contract, it's also in that order.

THE COURT: You're referring to page four of the contract for sale dated April 25th, 1997?

MR. DRIGGERS: Yeah. On contract page four and it says buyer shall have the right to vacate within 30 days from written notice. If the buyer fails to vacate within 30 days

the seller shall commence eviction proceedings in magistrate's court. The notice shall have the event of default, the buyer will have the right to cure the default. He never cured it and a lawyer served this and a magistrate -- Kim Dotson (ph) served that to the magistrate or gave it to the magistrate. She did the default according to the order of Judge Shuler. Same case from '96 til now. I believe it's on section eight about the assignment, that there can be no assignment without my family signing the papers, so Mr. McKenzie shouldn't have ever really been in this. Ms. Richardson, if they were going to do anything, should have.

THE COURT: Okay. I'm denying your motion to dismiss on the basis of Judge Shuler's order of 1996. Given the fact that the parties then entered into a contract for the purchase of a property after Judge Shuler's order in April of 1997. So that motion is denied.

MR. DRIGGERS: Wait a minute, ma'am. That wasn't two different cases now. That's all the same case.

THE COURT: I understand exactly what your position is, sir, but it's my ruling that Judge Shuler's order was then followed up by the contract of sale between the parties and so I'm not dismissing the action at this point. But you can move on to your next motion.

MR. DRIGGERS: Okay. Motion to produce legal assignment, that's the next thing. I haven't received it.

THE COURT: Okay. I understand that you had previously filed a motion to abolish the assignment.

MR. DRIGGERS: Right.

THE COURT: We had an affidavit from Lisa Gamble is it?

MR. DRIGGERS: Aliza Gamble.

THE COURT: Who indicated that she did not sign the assignment. Judge James ruled on your motion to abolish the assignment back in 2016 and indicated that Ms. Gamble having acknowledged she did not sign it, that he was not ruling on how that affected the legal rights of the parties. So I don't know what you're asking us to do at this point. I think they can't produce something that doesn't exist.

MR. DRIGGERS: Right. And they have -- you know if the Judge ordered that it be a separate hearing and separate agreement on it, which is Judge Shuler's order then they can't have an assignment. He forged the assignment. I've got a forged assignment is you want to read it.

THE COURT: Well from what I understand you asked them to produce an assignment that you say that by your account is a valid assignment.

MR. DRIGGERS: A valid assignment.

THE COURT: They've produced to you all of the assignments that they have. I understand that you're going to have a legal argument down the road about the validity of those assignments.

MR. DRIGGERS: Right.

THE COURT: But there's nothing further for them to produce to you at this point.

MR. DRIGGERS: Okay. So if they can't produce it, what affect will that have with the law?

THE COURT: Well that's for another day for another Judge and during the trial for the jury to make that determination.

MR. DRIGGERS: Okay.

THE COURT: But that's not in front of me now.

MR. DRIGGERS: Fair enough. Motion to compel which is the federal order, that don't seem to make any difference.

Motion to reconsider, let's see what that one is on. I don't seem to have it, Your Honor, so we'll skip over that.

I've got a motion to revise. I was asking the Court to produce a legal assignment that's signed by all parties in the court order and the contract for sale and I ask the Court to abolish the counterclaims by Mr. McKenzie. He has no standing to counterclaim. That's not the one I wanted to revise. I wanted to revise the amount I was asking in damages, and I revised it due to an order from Judge Michael Nettles to ask for punitive damages.

THE COURT: Okay. Let me ask first of all, Mr. Pritchard, can you tell me whether the original claim requests punitive damages?

MR. DRIGGERS: The original claim what?

THE COURT: I think the -- at this point I don't know if the summons and complaint has been amended, but the most recent summons and complaint does it ask for punitives?

MR. PRITCHARD: I'm pretty sure it does. I'll have to fire up my computer, I haven't looked at the thing in so long, but I can't imagine that it doesn't, I'll put it that way. I wouldn't have no put it in there. If it's a bad faith claim I'm going to ask for that. I can go pull the complaint out. You'll have to bear with me.

MR. DRIGGERS: And I have a motion, I think, to revise the cause of action. This is where I was sending the motion to revise my cause of action due to opinion number 26718. In this action our Supreme Court upheld the jury award from Judge Michael Nettles' court in Florence. It is very clear that the courts will uphold these punitive damages because of torturous conduct and unconscionable actions of insurance companies. I now am asking $350,000 actual damage and $10,000,000 in punitive damages. It is obvious that Travelers Insurance and Farm Bureau had bad faith claims for disobeying South Carolina statute 38. I also ask that they be held in breach of trust and breach of contract. I also plan to show this Court and jury possible collusion and perjury by some attorneys. For the above reasons, I ask this Court to enter a judgment of $10,350,000.

THE COURT: So the next question is that the original

complaint was for breach of -- there certainly was a breach of contract action in there somewhere? I don't know about breach of trust.

MR. PRITCHARD: Honestly I can't answer that without looking at it.

Madam Clerk, is there a Wi-Fi password or something here?

THE CLERK: Public 123.

MR. PRITCHARD: Excuse me?

THE CLERK: Public 123.

MR. PRITCHARD: Public 123. Thank you. All right.

THE COURT: Okay. I'm looking at an amended answer and counterclaim and crossclaim of Marion Driggers, Shiralee Driggers, and Tammy Floyd. It looks like there's an unsigned order that is titled Order Allowing Defendants Marion Driggers, Shiralee Driggers, and Tammy Floyd to amend their answer. This is from 2015. I don't see where this is clocked. But in this amended answer, counterclaim, and crossclaim there's a breach of contract action against South Carolina Farm Bureau, bad faith claim against South Carolina Farm Bureau, there's a breach of contract claims as to Travelers, bad faith claim as to Travelers, and it requests punitive damages in an appropriate amount to be considered by the Court. I do not see an action for breach of trust.

So tell me who you want to sue for breach of trust, Mr. Driggers.

MR. DRIGGERS: Breach of trust, both of them really, Farm Bureau and Travelers.

THE COURT: I'm going to deny your motion to amend your complaint or crossclaim. I'm going to deny -- I'm going to interpret your motion as a motion to amend your answer counterclaim and crossclaim to include a cause of action for breach of trust. We are now six years into this litigation. It looks like your case was thoroughly pled in the various pleadings that have been filed. There has been virtually no discovery going forward so it not as though anything that was discovered in discovery that wouldn't have been known to the parties at the beginning of the case. So that motion is denied. As to your punitive damages, you've already pled punitive damages, you've already pled breach of contract so there's nothing for you to amend at this point.

MR. DRIGGERS: So you're denying discovery?

THE COURT: No, sir. You filed a motion to revise.

MR. DRIGGERS: Uh-huh. (Affirmative response.)

THE COURT: I'm assuming you're talking about revising your complaint.

MR. DRIGGERS: The amount, right.

THE COURT: You don't have to revise the amount. You don't have to ---

MR. DRIGGERS: Okay.

THE COURT: --- ask for a specific amount of punitive

damages. You've already asked for punitive damages. When the case goes to a judge or jury, you'll make a request as that point.

MR. DRIGGERS: That'll be fine.

THE COURT: Okay. So let's recap, shall we. First of all, anybody need to say anything else at this point?

MR. PRITCHARD: Really the point that I would have back to the summary judgment motion is if it's dismissed essentially they issued a policy to no one, took the premiums, and don't have to pay anybody.

THE COURT: Let's start in turn here. If y'all will give me a minute to just go back over my notes as to what all we have now. Okay. As to Travelers motions, the motion basically for interpleader to pay the funds into court is granted basically with the consent of the parties.

The motion for summary judgment as to the cross claims and the motion for summary judgment as to South Carolina Farm Bureau's equitable indemnity claim, I'm going to take under advisement and look at that carefully.

South Carolina Farm Bureau's motion to quash is granted as to the personnel file or files. It seems to me that their -- I'm not saying that that's not a possible line of inquiry during a deposition, but as far as having to produce the personnel files of South Carolina Farm Bureau employees, that motion to quash is granted.

As to the claims manuals and policy guidelines, I think is how you phrased it, I'm going to deny that motion to quash subject to protective order. And what I'm going to do is allow y'all to circulate the terms of a protective order and see if you can agree on the terms of a confidentiality order. And if you cannot agree on it, then if you'll send me each your version and I will -- I'll craft one, but I'd first like --

MR. PRITCHARD: I'm confident Mr. Hudson and I can do this.

THE COURT: I'm sorry.

MR. PRITCHARD: I'm confident Mr. Hudson and I can do this.

THE COURT: Sure. I'd like y'all to take a stab at agreeing on the terms of a protective order. I do think that Farm Bureau has a legitimate interest in keeping those documents confidential and so they do not have to produce those until a confidentiality order is in place and signed by the Court.

As to South Carolina Farm Bureau's motion for summary judgment, I find that that motion is premature at this time. By all accounts, discovery has been fairly limited thus far in this case. However, I do think that you certainly would have the ability to refile. I'll put that in the order that you can refile that motion for summary judgement or renew that

motion for summary judgment at the conclusion of discovery.

I think we need a scheduling order in place. First of all, that all fact witnesses -- we're going to have a date when all fact witnesses have to be named. We're going to then have a date when all depositions have to have concluded, including the depositions of Marion Driggers, Shiralee Driggers, Tammy Floyd, and any representative of Arthur McKenzie's estate. We're going to have a date when dispositive motions have to be made by. And we're going to have a trial by or a trial not before date. I can't tell you those dates right off hand because I don't want to make y'all wait while I do that. But I'm not going to ask y'all to agree on that, because frankly I think we're going to spend more time trying to get everybody's agreement than if I just set those dates, so I'm going to set those dates. I'm also going to say in this order that those dates are not going to be extended except a party showing extremely good cause as to why not. This is a 2014 case. There's no reason why we still have this case pending. We have fairly limited narrow legal issues to address, so I see no reason why we can't get this case concluded.

As to Mr. Driggers motions, the motion to dismiss is denied again on the basis of the contract of sale that was entered into between the parties after Judge Shuler's order of 1996. The motion for valid assignment is denied as it's not

really a proper motion for this Court. The motion to reconsider Judge James' order is denied as that order has already -- or that motion has already been heard previously and ruled on by Judge Craig Brown. The motion to revise is denied as to the breach of trust action. I find that it's a moot motion as to the request for punitive damages and breach of contract since those things have already been pled in Mr. Driggers previous pleadings with the Court.

I think that addresses everything. So, again, I'm going to take the two Travelers motions under advisement. I'm glad to do a form order as to everything I've just said unless someone wants to draft an order as to any particular part of this.

Mr. Davis, I don't know if you want to draft a motion -- an order with respect to the interpleader?

MR. DAVIS: I'll be happy to, Your Honor.

THE COURT: Okay. If you'll do that.

MR. CORBIN: If I may, also include the consent order to allow the substitution of the party for the estate on behalf of Mr. McKenzie.

THE COURT: Yes, sir. And are you fine with me doing a form order for that?

MR. CORBIN: Yes, ma'am. Yes, ma'am.

THE COURT: Has a personal representative been named?

MR. CORBIN: Yes.

THE COURT: Do you know the name of that person?

MR. CORBIN: I do. I can't think of it off the top of my head.

THE COURT: If you will just e-mail to me, copy the parties, on if you've got a copy of that order appointing PR so we'll have that name.

MR. CORBIN: Yes, ma'am.

THE COURT: Otherwise, I'll do a form order as to my rulings. Okay. Thank you all so much for coming here today under, you know really difficult circumstances. I appreciate it. We've got the weather, we've got a pandemic, we have all manner of issues and I know that you all -- that everyone wants a resolution of this case, so I do appreciate everyone being physically present today so we could make some headway.

MR. DRIGGERS: May I ask a question?

THE COURT: Certainly.

MR. DRIGGERS: You have not released Travelers from this lawsuit, right? You're just going to let them pay that into the court?

THE COURT: They're going to pay that money into court. Yes, sir. I haven't ruled ---

MR. DRIGGERS: Have you released?

THE COURT: I have not ruled yet as to their crossclaim -- their motion for summary judgment. I'm taking that under advisement.

MR. DRIGGERS: Okay.

THE COURT: All right. Thank you.

(HEARING IS ADJOURNED.)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	2014-CP-45-00132
	)	
SOUTH CAROLINA FARM BUREAU, PLAINTIFF,	)	
vs.	)	TRANSCRIPT OF RECORD
MARION L. DRIGGERS, ET AL, DEFENDANTS.	)	

February 18, 2021
Via WebEx

B E F O R E:

THE HONORABLE KRISTI F. CURTIS, JUDGE.

A P P E A R A N C E S:

JOHN DWIGHT HUDSON, ESQ.
Attorney for the Plaintiff

EDWARD K. PRITCHARD, ESQ.
Attorney for the Defendant Driggers and Floyd

WILLIAM P. DAVIS, ESQ.
Attorney for Defendant Traveler's

DARYL JAMES CORBIN, ESQ.
Attorney for Defendant McKenzie

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

PROCEEDINGS

THE COURT: This is case number 2020-CP-45-132, South Carolina Farm Bureau vs. Marion Driggers, et al. We've got Mr. Hudson here for Farm Bureau. We've got Mr. Pritchard here for Shiralee Driggers and Ms. Floyd. Mr. Driggers is with us via telephone, so we've already tested that Mr. Driggers can hear us. We're not going to be able to see him, but we'll be able to hear him and he can hear us. We've got Mr. Davis here for Travelers Insurance. And we've got Mr. Corbin here for Mr. McKenzie.

I do have a court reporter here in the courtroom with me and I'm also just hitting the record button to record this on the WebEx system as well.

I will ask, though, for benefit of our court reporter who has not been through hearings in this case yet, if you'll state your name for the record before you speak for the first time so we'll be able to keep that straight for our transcript going forward.

So we're here today on Mr. Hudson's motion to alter, amend or clarify or reconsider. So I'm going to hear from Mr. Hudson first. I'll be glad to hear from anybody who wants to say anything. We'll just go in turn.

So Mr. Hudson, I'm going to turn it over to you to start with. I may have to mute the other attorneys, just depending on how much feedback we get while each person is

speaking. Sometimes I've got to mute you. Don't think I'm being rude, it just means we're getting some feedback and I'll unmute you at the appropriate time.

Okay, Mr. Hudson.

MR. HUDSON: Thank you, Your Honor. If I'm too loud or not loud enough, just let me know. This is a motion, Farm Bureau's motion to alter, amend or reconsideration and clarification.

Basically, it has to do with Traveler's, which came about right after the first of the year, which I think it was January 5th, that, basically, in addition to depositing remaining coverage from their policy, where over half of it had already been previously in this matter paid to -- paid out to claimants and lawyers without the participation or input from the other parties to this action to allow Traveler's to deposit the remaining coverage into the court.

Essentially, I think there's some confusion in this order about exactly the extent of just depositing the remaining coverage and the effect of what Traveler's was trying to do.

We received a memorandum in opposition by Traveler's late yesterday afternoon, probably around quitting time and I haven't had a chance to respond to it. We just really got it. Mr. Leroy Driggers called me about getting it and how he would get a copy of it. So late yesterday afternoon, we

managed to get him a copy or maybe this morning. We haven't had a chance, or anybody's had a chance to really reply to that.

But the essential questions here are to deposit the money, which I think the parties really didn't have an objection to, was okay if Traveler's just wanted to put the remaining monies into the court, was that the import of trying to say it was fully pled and interpleader, which would absolve the depositor of any and all responsibility.

I think the arguments before the Court that led up to that order clearly shows that the parties were not agreeing to that and were arguing that there was extensive liability still -- potential liability against Traveler's by both Farm Bureau, Driggers, that everybody was under the impression that that particular aspect of the claims against Traveler's would be ongoing and remaining and not absolve Traveler's of the responsibility.

So on the order that was just barely short and to the point without really setting out any specifics, it, basically, almost worked as a summary judgment order if you read it literally absolving Traveler's of any further responsibility. Of course, with our arguments and the Court still having some things under consideration that they still had some exposure and liability remaining out there, probably not to be cleared up or ascertained fully until

remaining discovery was accomplished, particularly in the forms of depositions of the parties and some other individuals involved in the claim.

So that's why we made this motion because the order seemed to be saying that Traveler's is absolved from other responsibility by simply doing an interpleader, supposedly, without -- by just depositing the remainder of the coverage, not all the coverage, never has been deposited, all the coverage into the court, that they just -- what's remaining after they decided what is remaining.

The essential elements as in our arguments before the Court at that time was of equitable indemnity claims that Farm Bureau would still have outstanding against Traveler's by being, under the factual situation, exposed to this entire situation not being advised, having to go to the expenses of attorney's fees and related expenses in this matter of which we allege, and I think reasonably so, that Traveler's under the facts of the case will have some responsibility. Those causes of action and those claims should still survive and not be eliminated simply by letting Traveler's deposit what they say is the remaining coverage into the clerk of court.

So that's, basically, our argument today. I know that the Court can see that the order -- or the, at least, by e-mail, we never have received any other kind of formal

order of any type other than that particular order from Attorney Davis for Traveler's, just allow them to deposit the money and absolve them of any further liability. We haven't received any other orders whatsoever as to how things were based and that this was, indeed, eliminating all further responsibility of Traveler's.

And I do know from talking with Mr. Driggers and remembering his arguments all along and particularly in that hearing that the -- he never consented and it was my understanding, of course, we didn't either, consenting that Traveler's be absolved.

So we would ask that the Court reconsider that order, to eliminate that elimination of liability of Traveler's simply by depositing the money. We have no problem with them depositing the money into the clerk of court, what remains, even though we don't say that that's really sufficient. They should have probably done this at the beginning by the factual situation that arose. And as soon as they found out the disputes as to ownership, responsibility and what have you -- of course, Farm Bureau had no chance to participate in the adjustment of this claim until advised through the claims department through a proper claim made by its policy holder until almost three years after.

So we would ask the Court that an order be issued

reflecting that they can simply deposit the money with the clerk of court, they being Traveler's, and there is further discovery as to the remaining causes of action as to equitable indemnity, attorney's fees and costs over and above addressing simply an attempt to apply the pro rata statute based on the values that have been put in the record thus far.

So, basically, that's it, Your Honor. We've got it broken down into four grounds for the motion. Essentially, that's it. If it was interpreted to be a consent to the legal approach and full legal approach through the proper pleadings and what have you of an interpleader, we don't think that's been complied with. We think there was confusion in that regard, that what the parties did was simply said Traveler's could deposit the money with the clerk of court, but that these other issues remained to be litigated against Traveler's.

THE COURT: Just for clarification, it looks like at the end of that hearing that I granted the motion to pay the money into court and then held in abeyance -- I took under advisement the cross-claims issuing South Carolina Farm Bureau's equitable indemnity claim.

In my e-mail of November 19th, I granted Traveler's motion for summary judgment as to the cross-claims of Marion Driggers, Shiralee Driggers and Tammy Floyd for bad faith,

breach of contracts, civil conspiracy. I issued an order allowing funds to be deposited with the court. I did a form order regarding the discovery motions that were pending, denied South Carolina Farm Bureau's motion for summary judgments and said it could be renewed at the close of discovery, substituted the Estate of Arthur McKenzie, did another order addressing Mr. Driggers' various motions, did a third form order addressing, looks like, three of Mr. Driggers' motions. It looks like I did a scheduling order. I granted the motion for the parties to change that scheduling order slightly.

I don't see the order granting summary judgment on the cross-claims. And I don't know if that has come to me and it just fell through the cracks. It looks like in that e-mail of November 19th that I did grant, and Mr. Pritchard, I think conceded those claims at the hearing for Shiralee Driggers and Tammy Floyd's bad faith claims against Traveler's.

So that's the only thing that I did not see an actual order on and I just don't recall, it's been so long ago, whether somebody submitted that order to me and it just never got e-filed. I don't know.

So I guess, Mr. Davis, let me hear from you both substantively and then anything you can tell me about those orders.

MR. DAVIS: Yes, ma'am, Your Honor. First, I will address the orders. And to be honest, there was a lot going on in this case, so I literally have spent hours refreshing my memory on a lot of things, but that was not one of them, so with the Court's permission after this hearing, I will look into that and advise the Court. I seem to remember preparing an order, but I could be wrong. And if I haven't, I will do so, a proposed order.

THE COURT: Sure.

Now, in response to the motion, I also read that transcript and our motion was to interplead this money and be discharged. And that motion was clearly granted at the end of the hearing as indicated by the transcript. And it was -- the transcript indicates that it was by consent. That's about the last thing that it said on the transcript and there was no objection. I mean, nobody said no, it's not by consent.

And as far as the import of the grant of a motion to interplead funds, you know, I would simply direct counsel to Rule 22, the last sentence of which says that upon payment in the court -- well, the court may thereupon order such party discharged from liability as to such claims and the action continued as between claimants of such money or property. And I submit that's what we thought happened and that's what I would submit is the order that you did.

In fact, also to address counsel's argument that why didn't we do this sooner, we have been pursuing interpleader for years. It's in our pleadings. Years ago, when we had a lot of motions heard by Judge James before he was sent to the Supreme Court, that was one of them that he took with him, but, of course, then assumed his duties on the court.

So we -- I think just a review of the pleadings that have been filed over the years in this case would indicate we've been seeking to interplead our funds for a long, long time. And that motion was heard at the last hearing and granted by consent without any objection from Farm Bureau or anybody else. We submit that was the correct ruling and that we're prepared to pay the funds in the court and then anyone who claims to have an interest can make a claim for it. My recollection is that was what we argued and that was what was granted.

THE COURT: Well, in Mr. Hudson's defense, it looks like at the end I did say that I was taking under advisement South Carolina Farm Bureau's equitable indemnity claim, so I certainly had not ruled on their claim for equitable indemnification at that point.

MR. DAVIS: Yes, ma'am, I don't dispute that, but as far as the order granting us interpleader, I mean, I would submit that that's appropriate, that's what the Court ruled, and subject to that condition should be granted.

THE COURT: And, I guess, here's what I'm struggling with, it appears to me that the only remaining cause of action against Traveler's would be S.C. Farm Bureau's equitable indemnification claim other than everybody's claim to the remaining funds that you paid into court. So I guess I want to hear your -- what your thought is as to whether Farm Bureau has in an equitable indemnification claim against you, your company, they have some legal basis to require you all to pay more than your policy limits.

MR. DAVIS: Well -- and I have not specifically prepared for that particular argument, but having reviewed this file extensively in preparation for today's hearing, I can say that I can't think of any way that we would owe South Carolina Farm Bureau.

Just to kind of go over the history of this case over the many, many years that we've been dealing with it. When this claim was made, Traveler's stepped up, dealt with its insured and their insured's counsel and adjusted the loss. And we paid that portion of the loss that was not subject to any lien. Then we sought to interplead the balance of $115,140.40 years ago. We did not seek contribution from Farm Bureau and, I guess, only much later did they seek contribution from us.

But, you know, my position is that we paid what we were obligated to pay and we did so to our insured. And the fact

that there may be other insurance available does not affect that fact.

THE COURT: So I guess it's your position that if you had sought contribution from Farm Bureau under the apportionment statute that you could have conceivably paid less than your coverage amount, but you would have in no circumstance have been required to pay more than the coverage?

MR. DAVIS: Yes, ma'am. And I would add that we could have sought contribution from Farm Bureau, we did not. Certainly, if they are going to press this contribution claim against us, then, certainly, we retain the right to do likewise.

THE COURT: Okay. Thank you.

Mr. Corbin, glad to hear from you.

MR. CORBIN: Really have no position with respect to this motion, Your Honor.

THE COURT: Okay. Thank you.

Mr. Pritchard, sir, anything you want to add?

MR. PRITCHARD: Yeah. Really, this motion seems to be about Traveler's and Farm Bureau. Kind of when I listen to the argument, it kind of seems to have to do with me because -- and I'm hearing it and I would like some clarification on this. What I'm understanding is, is that Farm Bureau is, essentially, claiming what would amount to an offset against

anything that I get against Farm Bureau. And, candidly, I don't know how -- we haven't got anything from Traveler's, so at this point, there can't be an offset. I really am confused as to what's being argued here. I mean, I know there's an equitable indemnity claim and that really doesn't have anything to do with me.

I, quite candidly, haven't done this for years. I don't know how one primary can have an equitable indemnity claim against another primary in what amounts to a contract dispute, but that's not my dog to hunt. But I'm trying to understand really what position is being taken here and how it affects my client. Because it sounds to me almost like they're seeking some sort of an offset. And it seems to me we're going to have to go through this argument on the Traveler's money before we ever even get there. I'm just not understanding.

THE COURT: Sure. And let me refer back to Mr. Hudson.

So I initially understood your position to be that your concern was that under the apportionment statute that the 115,000 that Traveler's has paid into court might not be sufficient to cover their side under that apportionment statute. But I guess what I'm also, I think, understanding you to say is that it's your position that they may owe more than the coverage amount, I think it was 285,000, $287,000, that they may owe more than that by this equitable

indemnification theory. So if you wouldn't mind clarifying that for us.

MR. HUDSON: Well, I think that's right, Your Honor. I think the amounts that are recoverable is undetermined at this time. We need to do more discovery. But yes, it could be more than that with what we've had to go through.

People view the situation, Traveler's did, Farm Bureau as far as a claimant didn't know until almost three years later. And we've had to fight to find that information. In fact, who had a lot of the information that we couldn't get anywhere else was Traveler's. We made a motion to get all of it and they opposed it, Traveler's opposed it and said a lot of it was work product and the judge agreed with them.

So there's a lot of stuff that we don't have that we're going to have to get through other types of discovery, on depositions. And the damages, yes, on the equitable indemnity claim could be substantially more.

THE COURT: Well, I guess --

MR. HUDSON: We also fall back to -- as far as trying to get under the interpleader, you were approached and kind of getting almost a summary judgment in that manner is that they offered without any notice to Farm Bureau or really anybody else other than the recipients over half of their alleged coverage.

So there's a lot of issues involved in the discovery

that is in the record and arguments to Your Honor and it has not been completed at all. We have a schedule that we were going to try to talk some settlement and that has not reached fruition, at least, not yet. So that's where we are on that.

Yeah, our damages could exceed what they're talking about based on what we've had to go through and we're still going through all this situation. Not only just a pro rata approach with numbers that really had not been totally established in the matter, only that Traveler's has come up with through their adjustment of the claim without any notice to Farm Bureau.

THE COURT: Well, I mean, Mr. Hudson, what duty did they have to consult with Farm Bureau when they paid their claim to their insured? I mean, I guess I can understand why --

MR. HUDSON: We think they have a duty because there's two policies and all these polices have pro rata provisions for a reason. You find out that there's other insurance, you adjust the claim based on those things and that's how you resolve the thing.

It could have been earlier on everybody pay all their coverages into the court or, at least, with a motion for interpleader to do that and that could have been one approach. But Traveler's chose to move forward and pay a

substantial amount of money to the recipients without any input from Farm Bureau. So Farm Bureau was just locked out and didn't know about anything for three years.

THE COURT: Well, Mr. Hudson, wouldn't that -- if they paid their money into court in the way you're suggesting, the only thing that would have happened is they could have had to pay less than their coverage amounts. They would never have had to pay more than their policy limits.

MR. HUDSON: Well, that would have been an argument, I suppose, but, also, Farm Bureau has had to go through this procedure and chose to -- and never denying the claim, file a declaratory judgment action that has been met with opposition by the parties through it all and they occurred substantial expenses.

So that's why we think our equitable indemnity claim is there. It seems like Traveler's is back in the playing field and then moving the goalpost as it sees fit. Farm Bureau hasn't been allowed to take the field.

THE COURT: I appreciate your position, Mr. Hudson, that y'all were starting out kind of behind the eight ball because the claim was not filed until right close to the statute of limitations. So I totally appreciate the fact that y'all have had to play catchup here. But I guess what I'm still struggling with is how Traveler's had any obligation to anyone other than its own insured.

So there might have been 12 policies on this property, so they could have certainly paid the money into court and said well, no, look, there's all this other coverage and so we don't have to pay as much. But they paid out their -- or trying to pay out their full amount.

So I guess what I'm struggling with, you know, at the heart of this is what duty they had to South Carolina Farm Bureau at all. I mean, did they have any duty to notify them or do anything to notify South Carolina Farm Bureau to protect South Carolina Farm Bureau's insured? Their insured was Arthur McKenzie, that's who they dealt with and paid the money.

MR. HUDSON: I think discovery will be needed to show this and we think that it will, that they found out about Farm Bureau earlier in the game and didn't notify us. They would certainly have a duty with the other policies there and the individuals that were there not to prejudice Farm Bureau's position.

Instead, we've been met with not cooperation, but no cooperation at all to speak of other than all they want to do is get a summary judgment and get out based on what they chose to do without any notice whatsoever or involvement with Farm Bureau that they knew had an interest in this loss through a claimant that had already been in touch with them, i.e., the Driggers.

So yes, we think there is a duty not to prejudice a co-insurer that you know about and that you address that potentiality in your policy with these various provisions, pro rata, other insurance. So you just don't have a trail and go follow it and do what you want to do and say that you're -- you know, the coach and the referee are -- you know, we think that's prejudicial to Farm Bureau and that's why we had to bring this claim through a declaratory judgment action to access fully everybody's position and rights and responsibilities.

The equitable indemnity was alleged later because of what we were having to go through just to get basic information. We still don't have the depositions that need to be taken in the matter. And they have been pursued. It's just been a unique case as far as getting anything completed or accomplished.

THE COURT: Okay. Let me say one thing really quick. I hear y'all still talking about depositions needing to be taken. We have a scheduling order that said those needed to be done by January 1st. We then kicked it back to February 1st. It's now February 18th. Tell me what possible reason we have that we don't have depositions completed in this case, this 2014 case.

MR. HUDSON: We're dealing with this order and we were trying to talk settlement two or three weeks ago. And I'm

not sure what all has taken place with that, but it didn't get accomplished. There's been some serious talk or, at least, indications of desiring to try to settle the case, but it hasn't taken place. And it looks like -- what I feel like, it looks like these depositions will be taken. They were set and we got a notice again set for like the last week in this month to do them.

But in the meantime, the reason they haven't been done is because we continued, all the lawyers did, to see if it could be worked out and that didn't work.

THE COURT: I don't mean to be pessimistic, but the case has been pending since 2014. My feeling is that the chance of getting this worked out by settlement are slim, but y'all may know something that I don't know.

Mr. Pritchard, I think you had something to say, sir.

MR. PRITCHARD: Well, Your Honor, I heard it all. I've got a couple of comments. First of all, regarding the equitable indemnity claim, it sounds to me like, basically, what is lost. We don't really know what's going to happen visa vie Farm Bureau and so they may never even have an equitable indemnity claim against Traveler's. We just don't know what's going to happen there.

And I don't -- I mean, with no disrespect, I have done this for many, many years and I don't mean to step in front of my good friend, Mr. Davis, who is obviously smarter than

I ma, I don't see how Traveler's has any obligation to consult with Farm Bureau on the policy proceeds to their own insured. But what my concern is, frankly, depending on how this goes today, I may have to file a motion for bifurcation, it seems to me that throwing some equitable indemnity claim between Farm Bureau and Traveler's dealing with the coverage between the Driggers and Farm Bureau is only going to confuse the issue further. And it would seem to me that we would have to see how that pans out before we even determine whether or not this is equitable indemnity.

So it seems to me that we're putting the cart before the horse here. And I frankly don't want it because I just think it mucks things up.

The other thing I have to say is with regard to discovery, I mean, unless they changed the rules on me within the last few hours, you can still get discovery from a nonparty. I mean, if Traveler's is discharged, that doesn't stop them from imposing or serving requests -- subpoenas and all that on Traveler's. They're still subject to it. It doesn't stop them from gaining information from Traveler's discoverable under Rule 46.

Furthermore, if Traveler's gets dismissed and Farm Bureau feels as though it needs to bring another lawsuit against Traveler's for equitable indemnity after this is resolved, they could have done discovery then. I just don't

understand why Traveler's would be in and, frankly, I think it's just going to mess things up. There's no reason for them to stay in, really. They've paid their money. And I've done enough to know that that discharges them and that's that. If Farm Bureau thinks they have an independent Tort Claim against Traveler's, they're welcome to bring it somewhere else at some other time, but I don't think Traveler's should be sitting on the sidelines doing nothing in a lawsuit.

THE COURT: Mr. Davis.

MR. DAVIS: The thing that I'd like to add to that, Your Honor, is this, it seems that a large part of Farm Bureau's complaint is that when this claim came along, Traveler's didn't pick up the phone and notify them, which leads me to wonder -- since, apparently, they didn't receive notification for quite some time and, therefore, apparently, have a late notice defense, that leads me to wonder that if Traveler's had done that, would Farm Bureau today be arguing that Traveler's had breached some duty to them by notifying them of the claim and, essentially, depriving them of potential late notice defense. That just simply -- that duty to advise Farm Bureau of this claim was that of Farm Bureau's insured, not Traveler's. Traveler's did what it was supposed to do. It received a claim. It went in and adjusted it and resolved it.

You know, Farm Bureau, their coverage is completely separate and Traveler's, I submit, handled this exactly right. They're insured is satisfied and there's money left over, which we want to pay into court and let everybody make their claim against it and tells they're entitled to some of it.

THE COURT: Mr. Hudson, I'm going to let you have the last word, sir, but let me also hear from Mr. Driggers.

Are you still with us, sir?

MR. DRIGGERS: Yes, ma'am, I am.

THE COURT: Okay. I know any time you're dealing with attorneys, and I count myself in that group, we like to hear ourselves talk. So we didn't mean to leave you out, sir, I just kind of wanted to get everybody's position clear.

But Mr. Driggers, first of all, anything that you want to let me know with respect to Traveler's being able to pay their money into court and then released from the litigation?

MR. DRIGGERS: Well, yes, ma'am, I do. I don't think they should be released. I don't think they should have ever paid out $172,000 of the money against the house. What I need to know from Mr. Davis, has he honored us as somebody that we should be insured?

THE COURT: Well, I don't know that that's really an appropriate question for this. This is your turn to let me

know what you want to tell me.

MR. DRIGGERS: Okay. Well, first of all, I thought it was going to be a jury trial.

THE COURT: Well, sir, this is not the trial. This is just a motion hearing.

MR. DRIGGERS: I understand, but it's all, basically, up to a jury trial. If we let Traveler's go right now, the jury won't ever hear from them. But I need to know do I have a contract with Arthur McKenzie. Mr. Corbin could answer that because he was part of it. He was in on the contract. I mean, they're acting like we do not have a contract. They've got a judge's order and a contract.

THE COURT: You're talking about the contract of sale where he was required to insure the property and have y'all named as the insured? Is that what you're referring to, Mr. Driggers?

MR. DRIGGERS: Absolutely. Absolutely. That was a judge's order and a contract that Mr. Corbin signed. If Mr. Corbin's comes in, he and Mr. Davis works out a deal where they get $172,000 -- and then see, I was trying to negotiate with Mr. Pritchard the other day about it. Come to find out, he's saying that the IRS has got a claim against it. Why didn't the IRS get a claim against -- they have a superior claim to Mr. Corbin for sure. I don't think they have a superior claim to me, but I haven't heard from them,

so we really haven't found out anything from anybody.

You know, I called your office and I said it would be premature to hold this until we had the IRS and the tax commission involved. And my reading of the interpleader is just like Mr. Hudson is saying, you throw all the money in the pot and then you decide. But if you've done got $172,000 out of 287,000, I don't have any room to negotiate. Because with my wife's check and gave it to Mr. Pritchard where we come up with like 200,000 or $300,000 just to break even, not counting my time and all the motions I've filed. I've probably filed a thousand dollars worth of motions, haven't won but one. I don't even think I won it.

But I wanted to go before a jury, let Traveler's stay in because if they're innocent and the jury is not going to rule against them, they don't have anything to worry about.

THE COURT: Well, I think we've got two different issues, Mr. Driggers. One is what Traveler's responsibility was to y'all and the second -- and I've already ruled on that. And the second is to what Mr. McKenzie's obligation was to y'all. And I don't think that those are the same thing necessarily.

MR. DRIGGERS: Well, think about it, Judge, that's a contract that states that he's -- if that's the case, if you're going to rule like that, his contract was broken when he didn't take the insurance out.

THE COURT: That may very well be, but Traveler's --

MR. DRIGGERS: And the contract --

THE COURT: Mr. McKenzie came to Traveler's, so Traveler's didn't have a contract with you, only Mr. McKenzie did.

MR. DRIGGERS: You know what the contract and the order say, what does the judge's order say? Judge Shuler's order, it says that if he failed to get insurance and send us a copy by the 15th of January, he's out. It's over with. He has no claim. This --

THE COURT: You're talking about the 1994 order in the separate action, Mr. Driggers? That was in a separate action -- Judge Shuler's order was in a separate action for an eviction, I believe, back in the 90s, was it not? 1994 or 1998? Before you entered into the contract of sale with Mr. McKenzie.

MR. DRIGGERS: The judge's order says that if he failed to buzz down on the insurance clause, he's in contempt, he's out, that the contract would be no good. That would throw him out right at that moment. Okay, he failed to do it and Traveler's knows it was part of the policy. That was admitted. And also, the little investigator, Tina Kennedy, that's never been deposed or talked to, she said that Traveler's said that we had already been taken care of. In other words, they had already paid us.

And on the sworn statement proof of loss, Mr. McKenzie list purchaser under contract, as contract seller, Tammy Floyd. And I need for a jury to look and see because I -- I mean, if I've got a contract, then somebody's got to obey it. I've got that contract that also says my attorney's fees and all. Who will pay then? Is Traveler's going to pay any of it?

THE COURT: Mr. Driggers, anything else you want me to address, sir?

MR. DRIGGERS: Yes, there was something else. Oh, yes, also, in your order, you're saying that Mr. Davis would get a summary judgment and state his cause of action and all, why we should be granted summary judgment. But we never got a chance to even see that. I thought that was part of your order.

THE COURT: You're talking about my e-mail back in November? Yeah --

MR. DRIGGERS: It was an order, I think, that was releasing Traveler's. I would assume it's an order.

THE COURT: Yes, sir. I --

MR. DRIGGERS: Another thing, on the thing he sent at the last minute that I didn't have time to really look at, I want the chance to get with that court reporter because I don't remember the last part. Everything looks acceptable up to the last part. Because you remember, when he

deposited that money, I asked you, I said was Traveler's released and you said no. And I don't see that on there.

And I don't see -- did y'all do any talking after I left? There's nothing in there. I wanted the court reporter to be drafting that the whole time. And it shows in there on the thing he sent me that they told her not to do some of it. Did y'all have a hearing after I left?

THE COURT: No, sir, we did not.

MR. DRIGGERS: Okay, then something is wrong with the transcript.

THE COURT: Well, the end of the transcript says that the Court's ruling on other motions continued. Those would have been your motions, Mr. Driggers, and I believe the motions -- Mr. Corbin's motion to substitute the estate, et cetera. But they only requested --

MR. DRIGGERS: See, I didn't hear any of that.

THE COURT: Yes, sir, you were there. They were your motions. We addressed them with you --

MR. DRIGGERS: I --

THE COURT: Listen to what I'm saying, sir. Whoever is paying for the transcripts doesn't want to pay for the entire transcript if they're only using a portion of it for this hearing. So if you want to contact the court reporter, she'll give you the entire transcript. It's just --

MR. DRIGGERS: Well, that's what I want to do.

THE COURT: You can get whatever portion of it you want.

MR. DRIGGERS: Also, on the motion about punitive damages --

THE COURT: Sir, you have already --

MR. DRIGGERS: On --

THE COURT: You have already -- listen to me, Mr. Driggers. You are already asking for punitive damages. And we've been through this now multiple times. That is granted. Back in -- and listen to what I'm saying and then I'll be glad to hear from you.

You filed a motion to revise your answer, counterclaim and cross-claim to include a request for punitive damages and those issues were already asserted when you -- through when you were represented, I believe, by Mr. Pritchard. They moved to amend. He filed a motion to alter or amend back -- or a motion to amend his pleadings back in 2015. That was granted by Judge James in an order on January 7th, 2016. And that amended answer and counterclaim asserts a claim for punitive damages.

MR. DRIGGERS: Okay. So if I've been granted -- see, I misunderstood the thing on that.

Also, I want to know about Mr. Corbin being in this thing with a forged assignment. I mean, you know --

THE COURT: Sir, we've already addressed your motion

regarding the assignment. I have already ruled on that. That's been addressed by numerous judges, so we're not going to plow this same ground over and over again.

MR. DRIGGERS: But I'm saying, how -- you said you ruled on the merit, but, I mean, it's in the judge's order that any agreement, any assignment cannot be legal without all parties involved.

THE COURT: My previous ruling on your motion was that your motion requiring them to quote, produce a valid assignment is denied. In other words, they can't produce something they don't have. If they haven't produced it, it means, they don't have it.

MR. DRIGGERS: But if they can't produce it, he shouldn't even be in on the -- Arthur McKenzie is not even involved on the case.

THE COURT: Well, that's a legal argument you can make down the road, sir, but I can't make them produce something that they say doesn't exist.

MR. DRIGGERS: Well, I'm making it now. You know, down the road won't matter. That's why I want to get to the jury and make that argument.

THE COURT: Well, if you're going to make the argument to the jury, you're not going to make it here.

What other motions do you have?

MR. DRIGGERS: All right. That's all I got to say.

THE COURT: Thank you, sir.

Mr. Hudson, I told you that you would have the last word, sir, if there's anything you want to tell me.

MR. HUDSON: Judge, other than my client just handed me a note here. Part of my DJ action, and I didn't mention this, I don't think I did, we asked the Court to declare the Driggers loss I think under the Traveler's policy because it developed through what we've had so far and we haven't gotten all the details, but, apparently, it was a land sale contract. And then as Your Honor knows, depending on how much has been paid, that goes to can you cancel the contract, do you have to go through foreclosure proceeding or who's the legal owner?

So those are issues that have never been determined and that we, in bringing this declaratory judgment action, we think was the proper thing to do and we just haven't been allowed to complete and do that. And it's broken up into the Pritchard's firm representing all or part of the family at different times and all or part of the family are either insureds under our policy or title owners or -- it's an amazingly confusing thing. And it's turned to everybody wanting to -- to us trying to straighten out something we were not properly advised of and prejudiced by not being advised us, that everybody is wanting to make a claim against Farm Bureau.

THE COURT: Mr. Hudson, not everybody is making a claim against Farm Bureau, just the Driggers. If I understand your argument correctly, it's that by virtue of the contract of sale between Mr. McKenzie and Ms. Floyd that that would have been, I believe, recorded in the courthouse, so Traveler's should have had record notice of that and that that would spur some duty for them to treat them as an insured?

MR. HUDSON: Well, to, at least, explore -- yeah, our motion, absolutely, to try to determine what you've been put on notice of there being a dispute. Obviously, there was a dispute and still is, as we understand it, as to who owns that house. That's my understanding. We don't have a clear understanding yet, but that was always a dispute, who owns the house and, you know, who owes who money in regards to that, that house and payments.

So it's been an ongoing moving target through just about all issues. And you can see how Farm Bureau couldn't get its arms around very much, despite its best attempts to do so.

THE COURT: Okay.

MR. HUDSON: Our motion is now we didn't intentionally consent to absolving Traveler's from all responsibility simply by depositing the remainder of what they say is left based on their numbers and their compensation, the coverages

that they say is involved.

And I believe in Mr. Driggers' arguments, too, it was my recollection from the arguments that he didn't consent to releasing Traveler's either. I don't think he ever specifically said that in his comments to the Court, but it was my understanding that he had not, just like we didn't intentionally do that. We did say sure, go ahead and put it in with the clerk of court, but not without parameters or ramifications of a more formal pleading and has merits to an interpleader action.

So, basically, just through the side door, the way the matter stands now is Traveler's is getting a summary judgment and absolving all responsibility by simply depositing the money with the clerk of court of what they say is the remaining coverage.

THE COURT: Okay.

Mr. Pritchard, you look like you've got something you want to say to me, sir. Let me unmute you. Yes, sir?

MR. PRITCHARD: I just want to make one point, when we say we're willing to -- meaning Mr. Driggers and Ms. Floyd, willing to allow Traveler's to be discharged from the action, that doesn't mean we're not entitled to any of the money being paid into the court. We still very much have a claim to that.

So removing Traveler's from the action doesn't -- and

Mr. Corbin will tell you this, we had discussions. We're still making claim to the money. But since there seems to be some confusion that we're somehow releasing that, we are not. So to be clear, just because Traveler's is paying in and we're saying Traveler's can leave doesn't mean that we are not making a claim to those funds.

THE COURT: Thank you, sir.

Mr. Davis.

MR. DAVIS: I would just add to that, that yes, I think Farm Bureau and their insureds -- their insureds are not our insureds. We took care of our insured, resolved it and had money left over and we propose to pay that into the court and let anybody who has a claim against it make that claim. That's all we're asking. That's what interpleader is all about.

I would just add in response to the argument that, you know, we didn't know, that would mean a discharge, the very last sentence of Rule 22 on interpleader says that upon payment of the money to the court, the court may thereupon order such discharge from liability as to such claims and the action continued as between claimants of such money or property. So what we were asking for is certainly not anything unusual.

THE COURT: I think I understand everybody's position. Anything else anybody wants me to know?

MR. DRIGGERS: May I say something, Your Honor?

THE COURT: Sure.

MR. DRIGGERS: If all the money is placed in there, you can do an interpleader, but he didn't place all the money in there. There was $172,000 that wasn't replaced on the house. The house is titled in my daughter's name, you know, speaking about who the house's name is in. And that's the reason I cannot settle until Mr. Pritchard tells me that the IRS has still got a claim against that house, but I don't see how. It was sold through tax sale and it went from there. So if they've got a claim, I need to know it. There's no way we can settle -- and my wife is pushing me, you can believe it, because Mr. Pritchard is pushing her. But I can't settle until we get the facts on everything.

THE COURT: Okay. Thank you, Mr. Driggers.

MR. DRIGGERS: All right.

THE COURT: I'm going to take this under advisement. I'm looking at the scheduling order. It does have a deadline in place for mediation by March 1st. I need y'all to do whatever mediation you're going to do so that we can get this case put on the trial roster.

I would venture to say this has got to be dealt with in Williamsburg County and we need to get a resolution of it. So just remind her that y'all are still under that deadline to mediate this case and get it moving along.

I will give y'all a ruling very shortly. I'm not going to let this sit out there because I know y'all need some certainty to be able to meaningfully mediate the case.

So thank you all. I really appreciate everybody being able to join in by WebEx. You know, as awkward as the pandemic has made everything, it is also fairly convenient that you all on this rainy, miserable day can be in your offices and we can still be able to communicate. Technology is a great thing. I hope we'll keep using it after we're -- I keep thinking any month now when we get things back on track and have jury trials again.

Again, thank you so much. I will e-mail everyone out at the same time in short order.

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

December 27, 2021

Penny M. Johnson
Penny M. Johnson
Court Reporter III

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June 20, 2022

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SC Court of Appeals

E-mail and U.S. Mail: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: South Carolina Farm Bureau Mutual Ins. Co., Appellant v. Marion L. Driggers, et al.
Of Which The Travelers Home and Marine Insurance Company is the Respondent
Appellate Case No.: 2021-000835
Our File No.: 7746.1749

Dear Ms. Kitchings:

Attached to this email for filing in the above-referenced matter please find Respondent The Travelers Home and Marine Insurance Company's Motion to Strike Matters Designated by Appellant for the Record on Appeal. Our firm's check in the amount of $50.00 to cover the filing fee for the motion is being provided by U.S. Mail.

By copy of this letter, the same is being served upon all counsel of record via electronic mail. The proof of service will be filed separately.

If you have any questions concerning this letter, please do not hesitate to contact me.

Sincerely yours,

Mariel D. Norton by Susan DeRose

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SC Court of Appeals

EXHIBIT B

ELECTRONICALLY FILED - 2021 Mar 04 7:55 AM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP450132

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF WILLIAMSBURG	)	C/A NO.: 2014-CP-44-00132
	)	
South Carolina Farm Bureau Ins. Co.,	)	
	)	
Plaintiff,	)	
	)	**ORDER GRANTING CROSS-DEFENDANT THE TRAVELERS HOME AND MARINE INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT**
vs.	)	
	)	
Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, Arthur McKenzie, a/k/a Arther McKenzie, The Travelers Home and Marine Insurance Company, The United States of America acting by and through its agency, The Internal Revenue Service and The South Carolina Tax Commission	)	
	)	
Defendant.	)	

This matter came before the Court on Cross-Defendant The Travelers Home and Marine Insurance Company's ("Travelers") Motion for Summary Judgment. For the reasons set forth below, Travelers's motion is **GRANTED**.

FACTUAL BACKGROUND

This declaratory judgment action arises out of two insurance policies issued by two different insurers to different insureds on the same house located in Williamsburg County:

(1) Policy number 984761288 633 1 –Travelers issued this homeowner's policy to Defendant Arthur McKenzie on a home located at 200 W. Highway 378 By-pass in Lake City, South Carolina for the period from May 7, 2009 to May 7, 2010.

(2) Policy number FI 0401219 – Plaintiff South Carolina Farm Bureau Insurance Company ("Farm Bureau") issued this dwelling fire policy on the same property to Defendant Marion L. Driggers for the period from May 24, 2009 to May 24, 2010.

On or about April 25, 1997, Defendant Tammy Floyd and Lisa Gamble entered into a

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Contract for Sale and Purchase of the property. On or about October 13, 2006, Ms. Gamble assigned the Contract for Sale and Purchase to Defendant McKenzie.

On or about November 26, 2009, the insured home was damaged by fire, and Defendant McKenzie made a claim under his Travelers policy. The adjustment of Defendant McKenzie's losses was complicated by tax liens of Defendants The United States of America, acting by and through its agency, The Internal Revenue Service, and The South Carolina Tax Commission. Travelers settled Defendant McKenzie's claims for $232,073.45, of which the sum of $116,933.05 has been paid for his attorneys' fees and expenses in connection with said claim, leaving a balance of $115,140.40. Travelers moved to deposit that amount with the Court pursuant to its interpleader cross-claims. This Court granted that motion under a separate order.

In their Answer to the within action, Mr. and Mrs. Driggers and Tammy D. Floyd asserted cross-claims against Travelers alleging that:

(1) Travelers and Mr. McKenzie "have conspired with one another with the object . . . of avoiding the payment by the Travelers of any sums toward the lawful claims of Mr. and Mrs. Driggers and Tammy D. Floyd;

(2) Travelers' "delay in investigating, processing, and paying the McKenzie claim has damaged [them] in that they have not yet been paid the value of their claim; and that they have had to claim against their own policy of insurance, which should have been secondary; and in that they have had to defend this action"; and

(3) Travelers has "acted in legal bad faith toward the rights [of] these defendants and have damaged these defendants."

Travelers's Answer to the cross-claims denies these allegations and includes several affirmative defenses, including that the cross-claimants are without standing to prosecute their cross-claims against Travelers and that the cross-claimants are strangers to the subject insurance contract with no rights thereunder.

SUMMARY JUDGMENT STANDARD

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Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. The purpose of summary judgment is to expedite disposition of cases not requiring the services of the factfinder. *Bankers Trust of S.C. v. Benson*, 267 S.C. 152, 155 226 S.E.2d 703, 705 (1976).

DISCUSSION

"Standing to sue is a fundamental requirement in instituting an action." *Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 84, 644 S.E.2d 58, 60 (2007). It is a part of the concept of justiciability that concerns whether a party may make a legal claim or argument. *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct.App.2008). The general rule in South Carolina is that for parties to have standing, they must have (1) a personal stake in the subject matter of a lawsuit and (2) be a real party in interest. *Ex Parte Gov't Employee's Ins. Co.*, 373 S.C. 132, 644 S.E.2d 699 (2007). "A real party in interest ... is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action." *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994).

Beyond the general rule are three elements that must be met: (1) the plaintiff must have suffered an injury in fact - an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of - the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court; and (3) it must be likely, as opposed to merely

ELECTRONICALLY FILED - 2021 Mar 04 7:55 AM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

speculative, that the injury will be redressed by a favorable decision. *Smiley v. S.C. Dep't of Health and Env'tl Control*, 374 S.C. 326, 649 S.E.2d 31 (2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)). "The party seeking to establish standing carries the burden of demonstrating each of the three elements." *Sea Pines Ass'n for the Protection of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).

Travelers cites *Park v. Safeco* to support its position that the Cross-Claimants are strangers to its policy and therefore do not have standing to assert any of the cross-claims asserted against it. *See Park v. Safeco Insurance Company of America,* 251 S.C. 410, 162 S.E.2d 709 (1968). In *Park v. Safeco*, Mr. Park, who alleged that he had been injured in a motor vehicle accident in which a Mr. McCall was at fault, brought a declaratory judgment action against McCall's automobile liability carrier, Safeco Insurance Company ("Safeco"). Mr. Park also named his own uninsured motorist carrier, Southern Home Insurance Company ("Southern Home"), as a defendant. He sought a judicial determination as to whether Safeco had successfully denied liability coverage to McCall, among other things. He had not brought suit against McCall. The Supreme Court affirmed the lower court's having sustained Safeco's demurrer. One of the grounds was that, because Mr. Park had not procured a judgment against McCall, and was a stranger to the Safeco insurance contract, he lacked standing to seek declaratory judgment as to that policy:

> Counsel for plaintiff argues, with some appeal, that an injured party should have as much right to ask the court to determine the validity of a tortfeasor's liability insurance policy as the insurer or the insured. We think the fallacy of this argument lies in the fact that the injured person is not a party to the contract and has, under the facts of this case, no primary standing to litigate a dispute between the insured and insurer until and unless he establishes liability against McCall.

Id. at 415, 162 S.E.2d at 711.

Travelers contends that *Park v. Safeco* is controlling, as the Cross-Claimants are not

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parties to the insurance policy issued by Travelers and therefore do not have primary standing to litigate their allegations against Travelers.

Cross-Claimants contend that, as a required loss payee and the actual owners of the insured property, they have rights under Travelers's policy. Specifically, Cross-Claimants allege that they have, at a minimum, an equitable lien on the subject property that Travelers is legally obligated to pay.

The Cross-Claimants do not allege that they have any contractual relationship with Travelers. Rather, they admit the allegations in paragraph ten (10) of the Complaint that Defendant McKenzie occupied the house in question pursuant to a "rent to own" agreement, according to which he was to have insured the property and listed Cross-Claimants as loss payees, insureds or additional insureds. Cross-Claimants were not listed as loss payees, insureds or additional insureds on the Travelers policy. Apparently concerned that was the case, Cross-Claimants purchased their own policy insuring their own interests in the property.

- **Cross-Claimants are not insureds under the Travelers policy and do not have standing to pursue a cause of action for civil conspiracy.**

Cross-Claimants' allegations of civil conspiracy fail as a matter of law. A civil conspiracy is "(1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage." *Lee v. Chesterfield Gen'l Hosp, Inc.*, 289 S.C. 6, 10-11, 344 S.E.2d 379, 381-82 (Ct. App. 1986), citing *Charles v. Texas Co. (Charles I),* 192 S.C. 82, 5 S.E.2d 464 (1939). It cannot be contended that Travelers's adjustment and resolution of the claim of its insured, Defendant McKenzie, pursuant to their contract injured Cross-Claimants – let alone that it was done for that purpose. Cross-Claimants are strangers to Travelers contract, a fact of which they were very well aware as evidenced by their procurement of an insurance contract of their own with Plaintiff Farm Bureau.

ELECTRONICALLY FILED - 2021 Mar 04 7:55 AM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

Even if Travelers had breached a contract with Cross-Claimants, it would not amount to civil conspiracy. "A mere breach of contract is not a civil conspiracy; the damages for breach of contract cannot satisfy the requirement of special damages." HUBBARD AND FELIX, THE SOUTH CAROLINA LAW OF TORTS, 2d ed. p. 387, citing *Vaught v. Waites*, 300 S.C. 201, 387 S.E.2d 91 (Ct. App. 1989).

- **Cross-Claimants are not insureds under the Travelers policy and do not have standing to pursue a cause of action for breach of contract.**

Next, Cross-Claimants allege that Travelers's purported delay in adjusting its named insured's claim has damaged them. The fallacy of this allegation is that Travelers's duties with regard to the adjustment of the claim were owed to its name insured – not to Cross-Claimants.

Similar to the situation presented in *Park v. Safeco*, Cross-Claimants are not parties to the Travelers insurance contract and have no standing to complain about how the claim of the named insured, Defendant McKenzie, was resolved. After all, when they became concerned that their alleged interests had not been protected under Defendant McKenzie's policy, they could have taken steps then to enforce the provision in the buy and sell agreement that purportedly required that their interests be protected under the policy. Instead, they chose to purchase a policy of their own to protect their interests.

- **Cross-Claimants are not insureds under the Travelers policy and do not have standing to pursue a cause of action for bad faith.**

Finally, Cross-Claimants cannot assert a bad faith claim against Travelers because they are not parties to the Travelers insurance contract. "The elements of an action for bad faith refusal to pay benefits under an insurance contract include: (1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer's bad faith or unreasonable

action in breach of an implied covenant of good faith and fair dealing arising on the contract; (4) causing damage to the insured." *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 6, 466 S.E.2d 727, 730 (quoting *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359-60, 415 S.E.2d 393, 396-97 (1992).

CONCLUSION

Ultimately, Cross-Claimants are strangers to the insurance contract between Travelers and Defendant McKenzie. As such, Cross-Claimants' claims are without legal foundation, as a result of which Travelers is entitled to summary judgment.

For the forgoing reasons, Travelers's motion for summary judgment is hereby **GRANTED** and all the cross-claims against Travelers are hereby dismissed with prejudice.

AND IT IS SO ORDERED.

The Honorable Kristi F. Curtis

ELECTRONICALLY FILED - 2021 Mar 04 7:55 AM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

ELECTRONICALLY FILED - 2021 Mar 04 7:55 AM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

Williamsburg Common Pleas

Case Caption: South Carolina Farm Bureau VS Marion L Driggers , defendant, et al

Case Number: 2014CP4500132

Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

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SEP 01 2021
SC Court of Appeals

SC FARM BUREAU V DRIGGERS 2014-CP-45-00132

March 15, 2021

Motion to Reconsider

To: Judge Kristi Curtis

Dear Judge Curtis;

There are some serious errors that Mr. Davis stated in his Motion for Summary Judgement. This contract was forged by Mr. McKenzie in 2006. But it was not recorded until just before his fire. In S.C., a forged contract will not stand.

Also, as I stated to you before, the contract that he is using to make a claim states in Judge Shuler's order that any paperwork not signed by both parties is null and void. This has already been tried by Thomas Cooper in Williamsburg County and found that S.C. Code 27-35—60 controls on real estate contracts and that it cannot be transferred without the permission of the landlord. This was appealed by me and a friend and it was tried by the Court of Appeals. Judges Cureton, Hearn and Huff upheld this verdict.

I am enclosing a Proof of Loss written to Moore & Associates, which is Travelers' agent. This statement shows clearly that Tammy Floyd is the contract holder. This should tell a person of average intelligence that a lien is on the property. And sure enough, Travelers' Investigator found it and gave it to her boss and told him that Travelers was on notice. This would appear that Mr. Davis is distorting the truth.

I am attaching a few opinions that state the laws of S.C. Judge Shuler's order states in Part 8 that no changes can be made without a separate agreement. The way I interpret this is that it can't be altered by another circuit judge. It would need to go to a higher court and this was not done.

I think that I have already mentioned that I have received no discovery from either insurance company regarding Judge David Norton's order nor have I heard from you about it being a valid order.

For the foregoing reasons, I ask the Court to Reconsider the Summary Judgement as premature.

Sincerely,

Marion L.Driggers

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP4500132

South Carolina Farm Bureau
PLAINTIFF(S)

Marion L Driggers et al
DEFENDANT(S)

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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **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:

On March 17, 2021, Marion Driggers filed a motion to reconsider the Court's order granting Summary Judgment in favor of Defendant Travelers Insurance as to the cross claims asserted against Travelers by Driggers. It appears Mr. Driggers' motion was filed with the Williamsburg County Clerk of Court on 3-17-2021, although as of this date no documents to that effect appear in the e-filing system or public index. (There is an entry for the motion in the e-filing system with no corresponding document or attachment.) Nevertheless, the Clerk's office is in receipt of those documents and has provided a copy to the court. After review, Mr. Driggers' motion to reconsider is DENIED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/25/2021 .

Marion L Driggers for Marion L Driggers
Marion L Driggers for Marion L Driggers

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2021 Jun 25 12:15 PM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2021 Jun 25 12:15 PM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

ELECTRONICALLY FILED - 2021 Jun 25 12:15 PM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

Williamsburg Common Pleas

Case Caption: South Carolina Farm Bureau VS Marion L Driggers , defendant, et al

Case Number: 2014CP4500132

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

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Jun 20 2022
SC Court of Appeals

EXHIBIT C

ELECTRONICALLY FILED - 2021 Jan 05 3:51 PM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP450132

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF WILLIAMSBURG	)	C/A NO.: 2014-CP-44-00132
South Carolina Farm Bureau Ins. Co.,	)	
	)	
Plaintiff,	)	
	)	**ORDER ALLOWING FUNDS TO BE DEPOSITED WITH THE COURT PURSUANT TO RULE 22(b), SCRCP**
vs.	)	
	)	
Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, Arthur McKenzie, a/k/a Arther McKenzie, The Travelers Home and Marine Insurance Company, The United States of America acting by and through its agency, The Internal Revenue Service and The South Carolina Tax Commission	)	
	)	
	)	
Defendant.	)	

It appearing that Defendant The Travelers Home and Marine Insurance Company ("Travelers") filed an interpleader cross-claim and has settled the claims of its insured, Defendant Arthur McKenzie ("McKenzie"), relative to the policy issued to him by Defendant Travelers, for the sum of Two Hundred Thirty-Two Thousand Seventy-Three and 45/100 ($232,073.45) Dollars; and

It further appearing that Travelers filed a motion on February 12, 2015 for an order allowing it to deposit with the court the sum of One Hundred Fifteen Thousand One Hundred Forty and 40/100 ($115,140.40) Dollars of the aforementioned settlement amount, reflecting the deduction of attorneys' fees and expenses of Defendant McKenzie in the amount of One Hundred Sixteen Thousand Nine Hundred Thirty-Three and 05/100 ($116,933.05) Dollars, and that all parties were served with said motion; and

ELECTRONICALLY FILED - 2021 Jan 05 3:51 PM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

It further appearing that the aforementioned sum ($115,140.40) is sufficient to cover the claims asserted against Travelers's policy proceeds by some or all of the other defendants in this action;

NOW, THEREFORE, pursuant to Rule 22, SCRCP, upon Travelers's deposit of the aforementioned funds with the court, Travelers will be discharged from liability as to such claims, with the claimants to assert their claims against the aforementioned fund.

_____

The Honorable Kristi F. Curtis
Judge, Third Judicial Circuit

September __, 2020
Kingstree, South Carolina

ELECTRONICALLY FILED - 2021 Jan 05 3:51 PM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

Williamsburg Common Pleas

Case Caption: South Carolina Farm Bureau VS Marion L Driggers , defendant, et al

Case Number: 2014CP4500132

Type: Order/Deposit Money

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

ELECTRONICALLY FILED - 2021 Jan 14 2:50 PM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG	)	Case No: 2014CP4500132
South Carolina Farm Bureau Mutual Insurance Company,	)	
Plaintiff,	)	
vs.	)	**NOTICE OF MOTION & MOTION TO ALTER/AMEND/RECONSIDER AND/OR TO CLARIFY**
Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, Arthur McKenzie, a/k/a Auther McKenzie, The Travelers Home and Marine Insurance Company, The United States of America acting by and through its agency, The Internal Revenue Service and The South Carolina Tax Commission,	)	
Defendants.	)	

TO: THE PARTIES AND COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE the undersigned counsel moves the Court to alter or amend its **"Order Allowing Funds To Be Deposited With The Court Pursuant To Rule 22(b), SCRCP"** (dated, filed and received January 5, 2021; hereinafter referred to as "the Order") and/or in the alternative that the Court grant Plaintiffs relief from "the Order", and/or that the Court reconsider "the Order" and/or that the Court clarify the Order, all within the meaning of the SC Rules of Civil Procedure, including Rules 59 and 60, and within the meaning of the statutes and common law of the state of South Carolina.

The grounds for this Motion are as follows:

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1. The Order errs in providing that the remaining coverage of $115,140.40 suffices to cover some or all of the claims asserted by some or all of the other Defendants. This errs in failing to consider the pending claims against Travelers by the Plaintiff. These include direct claims against Travelers for: (1) Application of the Pro Rata Statute; (2) Equitable Indemnity and (3) Attorney Fees and Costs.

2. In holding that upon Traveler's deposit of the funds that Traveler's would be discharged of liability as to such claims, with the claimants to assert their claims against the fund. This errs in: (1) discharging Traveler's from liability; (2) discharging Traveler's from liability to Farm Bureau; (3) operating as a grant of Summary Judgment to Traveler's as to Farm Bureau's claims against Traveler's without affording Farm Bureau due process or evaluating the pro rata statute factors and findings, the attorney fees and costs incurred by Farm Bureau or weighing the equities in the matter; and (4) in relieving Traveler's from liability to others, including Farm Bureau, prior to the completion of discovery.

3. If the Order does not discharge Traveler's from liability to Farm Bureau, then the undersigned seeks an Order clarifying and so stating.

4. If the Order does discharge Traveler's from liability to Farm Bureau, then the undersigned seeks an Order clarify, so stating, and providing Findings of Fact and Conclusions of Law addressing the specifics of the balancing of equities, the pro rata statute and attorney fees and costs.

This Motion is based upon the record in this cause and upon such further and additional arguments, affidavits, material or memoranda as may be hereafter submitted, and upon South Carolina law, common law, statutes and rules.

I SO MOVE:

s/ J. Dwight Hudson, Esq.
J. Dwight Hudson, Esquire
SC Bar # 2753
Hudson Law Offices
PO Box 70218
Myrtle Beach, SC 29572
(843) 692-9889

Attorney For: Plaintiff

Dated: January 14, 2021

ELECTRONICALLY FILED - 2021 Jan 14 2:50 PM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP4500132

South Carolina Farm Bureau
PLAINTIFF(S)

Marion L Driggers et al
DEFENDANT(S)

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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **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:

Plaintiff's Motion to Alter or Amend the Court's Order of January 5, 2021 is DENIED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/09/2021 .

Edward K. Pritchard, III for Marion L Driggers,Shiralee Driggers,Tammy D Floyd
Thornwell F. Sowell, III
John Witherspoon Foster
William Pearce Davis for The Travelers Home and Marine Insurance Company
Daryl James Corbin for Alice Peterson,Arthur McKenzie a/k/a,Auther McKenzie
The South Carolina Tax Commission
Marion L Driggers for Marion L Driggers
Mariel D. Norton for The Travelers Home and Marine Insurance Company
John Dwight Hudson for South Carolina Farm Bureau
William Greyson Land for Shiralee Driggers,Tammy D Floyd
George John Conits for The Internal Revenue Service,The United States of America
Marion L Driggers for Marion L Driggers

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2021 Apr 12 12:53 PM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2021 Apr 12 12:53 PM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

ELECTRONICALLY FILED - 2021 Apr 12 12:53 PM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

Williamsburg Common Pleas

Case Caption: South Carolina Farm Bureau VS Marion L Driggers , defendant, et al

Case Number: 2014CP4500132

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

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Jun 20 2022
SC Court of Appeals

EXHIBIT D

ELECTRONICALLY FILED - 2021 Apr 19 10:59 AM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF WILLIAMSBURG	)	C/A NO.: 2014-CP-45-00132
	)	
South Carolina Farm Bureau Ins. Co.,	)	
	)	
Plaintiff,	)	**ORDER OF DISMISSAL WITH PREJUDICE**
	)	
vs.	)	
	)	
Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, Arthur McKenzie, a/k/a Arther McKenzie, The Travelers Home and Marine Insurance Company, The United States of America acting by and through its agency, The Internal Revenue Service and The South Carolina Tax Commission	)	
	)	
Defendant.	)	

It appearing that Defendant The Travelers Home and Marine Insurance Company ("Travelers") has paid the sum of One Hundred Fifteen Thousand, One Hundred Forty Dollars and Forty Cents ($115,140.40) pursuant to this Court's Order of March 30, 2021, Travelers is hereby dismissed from this action with prejudice.

_____
The Honorable Kristi F. Curtis

April __, 2021

ELECTRONICALLY FILED - 2021 Apr 19 10:59 AM - WILLIAMSBURG - COMMON PLEAS - CASE#2014CP4500132

Williamsburg Common Pleas

Case Caption: South Carolina Farm Bureau VS Marion L Driggers , defendant, et al

Case Number: 2014CP4500132

Type: Order/Dismissal

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

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Jun 20 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis
Circuit Court Judge

Case No.: 2014-CP-45-00132
(Court of Appeals Case No.: 2021-000835)

South Carolina Farm Bureau Ins. Co. . . . . Plaintiff,

v.

Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, Arthur McKenzie, a/k/a Arther McKenzie, The Travelers Home and Marine Insurance Company, The United States of America acting by and through Its agency, The Internal Revenue Services and The South Carolina Tax Commission, ... Defendants,

Of whom Marion L. Driggers is Appellant and The Travelers Home and Marine Insurance Company is the Respondent.

PROOF OF SERVICE

I, Susan Drake DuBose, attorney at Baker, Ravenel & Bender, LLP, on behalf of Mariel D. Norton, Attorney for Respondent, hereby certify that, on this 20th day of June 2022, I have served the following with the foregoing Respondent The Travelers Home and Marine Insurance Company's Motion to Strike Matters Designated by Appellant for the Record on Appeal with Exhibits A-D via electronic mail of same to counsel of record at the e-mail addresses shown below:

J. Dwight Hudson, Esquire
Hudson Law Offices
PO Box 70218

Daryl J. Corbin, Esquire
Corbin Law Firm
PO Box 447

2513 North Oak St., Ste 210
Myrtle Beach SC 29572
hudsonlaw@hudsonlawoffice.com
Attorneys for Farm Bureau

George John Conits, Esquire
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Attorney for IRS

Tasha B. Thompson, Esquire
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Vannie Williams, Jr., Esquire
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Attorney for Audrey Graham, as PR of the Estate of Arthur McKenzie

Florence, South Carolina 29503-0447
corbinlawfirm@corbinlawsc.com
Attorney for Estate of Arthur McKenzie

Edward K. Pritchard, III, Esquire
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8 Cumberland Street, Suite 200
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Attorney for Defendants Shiralee Driggers and Tammy Floyd

Reese R. Boyd, III, Esquire
Davis & Boyd, LLC
1110 London St. Suite 201 (29577)
Post Office Box 70517
Myrtle Beach, SC 29572
reese@davisboydlaw.com
Attorney for Appellant

A copy of the emails serving same are attached.

Susan Drake DuBose
S.C. Bar No.: 11543
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Phone:(803) 799-9091; Fax:(803) 779-3423
File No.: 7746.1749
Attorneys for Respondent The Travelers Home and Marine Insurance Company
Columbia, South Carolina
June 20, 2022

DuBose, Susan

From:	DuBose, Susan
Sent:	Monday, June 20, 2022 4:12 PM
To:	'ctappfilings@sccourts.org'
Cc:	'hudsonlaw@hudsonlawoffice.com'; 'reese@davisboydlaw.com'; 'george.conits@usdoj.gov'; 'tasha.thompson@schousing.com'; 'epritchard@pritchardlawgroup.com'; 'williams.vannie@att.net'; 'corbinlawfirm@corbinlawsc.com'; 'ccstewart@corbinlawsc.com'; Norton, Mariel
Subject:	RE: Appellate Case No.: 2021-000835 SC Farm Bureau vs. Marion L. Driggers, et al. of Whom Marion L. Driggers is the Appellant and The Travelers Insurance Company is the Respondent- Respondent's Motion to Strike and Exhibit A
Attachments:	Signed - letter to Court of Appeals filing motion to strike - DRIGGERS APPEAL (01072683xA5D7B).pdf; Signed - Respondent The Travelers Home and Maring Insurance Company's Motion to Strike Matters Designated by Appellant for The Record (01072624xA5D7B).pdf; Exhibit A (01072686xA5D7B).pdf

Dear Ms. Kitchings-

Attached please find correspondence from Mariel D. Norton, attorney for the Respondent in the above-referenced matter, and a copy of Respondent The Travelers Home and Marine Insurance Company's Motion to Strike Matters Designated by Appellant for the Record on Appeal with Exhibit A for filing in this case. Exhibits B-D will follow separately. The initial email with all attachments was returned as too large. By copy hereof, all counsel of record are being served with the same. A proof of service will follow separately. I appreciate your assistance in filing these documents. Please let me know if you have any issues.

Sincerely,

Susan DuBose

Susan Drake DuBose
Baker, Ravenel, & Bender, L.L.P.
sdubose@brblegal.com
(803) 343-3868- direct

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DuBose, Susan

From: DuBose, Susan
Sent: Monday, June 20, 2022 4:17 PM
To: 'ctappfilings@sccourts.org'
Cc: 'hudsonlaw@hudsonlawoffice.com'; 'reese@davisboydlaw.com'; 'george.conits@usdoj.gov'; 'tasha.thompson@schousing.com'; 'epritchard@pritchardlawgroup.com'; 'williams.vannie@att.net'; 'corbinlawfirm@corbinlawsc.com'; 'cstewart@corbinlawsc.com'; Norton, Mariel
Subject: RE: Appellate Case No.: 2021-000835 SC Farm Bureau vs. Marion L. Driggers, et al. of Whom Marion L. Driggers is the Appellant and The Travelers Insurance Company is the Respondent- Respondent's Motion to Strike Exhibits B-D
Attachments: Exhibit B - Motion to Strike (01072593xA5D7B).pdf; Exhibit C - Motion to Strike (01072594xA5D7B).pdf; Exhibit D - Motion to Strike (01072596xA5D7B).pdf

Dear Ms. Kitchings-

Respondent The Travelers Home and Marine Insurance Company's Motion to Strike Matters Designated by Appellant for the Record on Appeal in the above-referenced matter with exhibit A was filed in a prior email. This email contains Exhibits B-D. By copy hereof, all counsel of record are being served with the same. A proof of service will follow separately. I appreciate your assistance in filing these documents. Please let me know if you have any issues.

Sincerely,

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From:	DuBose, Susan
To:	Court Of Appeals Filings
Cc:	"hudsonlaw@hudsonlawoffice.com"; "reese@davisboydlaw.com"; "george.conits@usdoj.gov"; "tasha.thompson@schousing.com"; "epritchard@pritchardlawgroup.com"; "williams.vannie@att.net"; "corbinlawfirm@corbinlawsc.com"; "ccstewart@corbinlawsc.com"; Norton, Mariel
Subject:	RE: Appellate Case No.: 2021-000835 SC Farm Bureau vs. Marion L. Driggers, et al. of Whom Marion L. Driggers is the Appellant and The Travelers Insurance Company is the Respondent- Respondent"s Motion to Strike and Exhibit A
Date:	Monday, June 20, 2022 4:12:40 PM
Attachments:	Signed - letter to Court of Appeals filing motion to strike - DRIGGERS APPEAL (01072683xA5D7B).pdf Signed - Respondent The Travelers Home and Maring Insurance Company"s Motion to Strike Matters Designated by Appellant for The Record (01072624xA5D7B).pdf Exhibit A (01072686xA5D7B).pdf

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

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Attached please find correspondence from Mariel D. Norton, attorney for the Respondent in the above-referenced matter, and a copy of Respondent The Travelers Home and Marine Insurance Company's Motion to Strike Matters Designated by Appellant for the Record on Appeal with Exhibit A for filing in this case. Exhibits B-D will follow separately. The initial email with all attachments was returned as too large. By copy hereof, all counsel of record are being served with the same. A proof of service will follow separately. I appreciate your assistance in filing these documents. Please let me know if you have any issues.

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