

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas  
Roger C. Young, Circuit Court Judge

**RECEIVED**

FEB 02 2021

**SC Court of Appeals**

Appellate Case No. 2020-000915  
Case No. 2018-CP-08-01079

Latarsha Docena-Guerrero, Appellant,

v.

Rafael Docena-Guerrero, Defendant,

and

Government Employees Respondent.  
Insurance Company, as  
underinsured motorist  
insurance carrier,

RECORD ON APPEAL

F. Elliott Quinn IV  
Steven E. Goldberg  
The Steinberg Law Firm, LLP  
103 Grandview Drive  
Summerville, SC 29483  
(843) 871-6522  
Attorneys for Appellant

Thomas H. Milligan  
Milligan & Hems, PC  
721 Long Point Road, Ste. 401  
Mt. Pleasant, SC 29464  
(843) 971-6750  
Attorney for Respondent

INDEX

Order of April 30, 2020 .....1

Order of May 27, 2020.....4

Order of February 21, 2020 .....7

Complaint.....10

Answer of Defendant Raphael Docena-Guerrero .....13

South Carolina Department of Insurance Acceptance of Service.....19

Respondent’s Motion for Relief from Default.....20

Respondent’s Notice of Appearance and Conditional Answer for the Defendant .....22

Appellant’s Motion to Quash the Answer and Appearance by UIM Carrier and Counsel.....26

Respondent’s Memorandum in Support of Motion for Relief from Default .....29

Letter from Jonathan S. Altman.....34

Appellant’s Motion for Reconsideration .....35

Respondent’s Memorandum in Opposition to Appellant’s Motion to Reconsider.....48

Transcript of March 10, 2020 Hearing .....53

Letter from Steven Goldberg dated 4/28/17 .....69

Affidavit of Adjuster Stacie Dumas.....70

Covenant Not to Execute dated 12/19/19 .....72

Emails from Steven Goldberg to Tom Milligan dated 2/21/20 .....76

Respondent’s Motion to Dismiss Interlocutory Appeal .....78

Respondent’s Memorandum in Support of Motion to Dismiss Interlocutory Appeal .....80

Court of Appeals’ Order Denying Motion to Dismiss, September 10, 2020 .....85

Certificate of Appellant.....86

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )  
  
Latarsha Docena-Guerrero, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Rafael Docena-Guerrero, )  
 )  
 )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NUMBER: 2018-CP-08-01079

**ORDER DENYING MOTION TO QUASH THE  
ANSWER AND APPEARANCE BY UIM  
CARRIER AND COUNSEL AND GRANTING  
MOTION FOR RELIEF FROM DEFAULT**

This matter came before the Court on March 10, 2020 upon the motion of the Plaintiff to Quash the Answer and Appearance of UIM Carrier and Counsel, as well as GEICO Insurance Company's corresponding motion as the underinsured motorist carrier ("UIM Carrier") for relief from default or to accept the filing of the Notice of Appearance more than thirty (30) days after service upon it through the Department of Insurance. No default had been entered and no judgment taken.

After hearing argument from counsel, the Court hereby finds that good cause exists to set aside any default (though none has been entered by the court) and to allow the late appearance by the UIM carrier pursuant to SCRCF Rule 55(c). From the evidence submitted and arguments advanced at the hearing, the failure to assign the UIM coverage to a separate lawyer was an inadvertent mistake on the carrier's part which resulted in no prejudice to the plaintiff. Furthermore, there are contested issues of damages. As stated above, there has not been an entry of default entered by any court.

The Court disagrees with the position of Plaintiff's counsel that the UIM carrier has a thirty

(30) day of Statute of Limitations to answer any lawsuit served upon it. It is therefore

ORDERED, ADJUDGED and DECREED that the motion for relief by GEICO Insurance Company is granted, Plaintiff's motion to Quash is denied, and the Notice of Appearance and Conditional Answer is accepted as if timely filed.

\_\_\_\_\_, 2020  
Moncks Corner, SC

\_\_\_\_\_  
Honorable Roger C. Young  
Presiding Judge  
Ninth Judicial Circuit



Berkeley Common Pleas

**Case Caption:** Latarsha Docena-Guerrero VS Rafael Docena-Guerrero  
**Case Number:** 2018CP0801079  
**Type:** Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2020-04-30 16:12:30 page 3 of 3

ELECTRONICALLY FILED - 2020 Apr 30 4:30 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0801079

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )  
  
Latarsha Docena-Guerrero, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Rafael Docena-Guerrero, )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NUMBER: 2018-CP-08-01079

**ORDER DENYING PLAINTIFF’S MOTION  
FOR RECONSIDERATION.**

This matter came before the Court upon the motion of the Plaintiff’s Motion for Reconsideration of the denial of her Motion to Quash the Notice of Appearance by GEICO Insurance Company as the underinsured motorist carrier in this matter.

After reviewing the briefs from counsel, the Court still finds that good cause exists to set aside any default (though none has been entered by the Court) or late appearance by the UIM carrier pursuant to SCRCF Rule 55(c) and that the UIM carrier has the right to appear and defend this claim pursuant to S.C. Code of Laws §38-77-160 and the South Carolina Rules of Civil Procedure.

The Court disagrees with the position of Plaintiff’s counsel that the UIM carrier has a thirty (30) day of Statute of Limitations to answer any lawsuit served upon it. The issue of whether or not the UIM carrier has the right to appear and defend this matter under the circumstances is to be handled under the South Carolina Rules of Civil Procedure to determine the just determination of the action. The South Carolina Rules of Civil Procedure apply to every action in the South Carolina Court of Common Pleas.

The very first rule of the South Carolina Rules of Civil Procedure state that the laws of South Carolina are to be construed to secure the **JUST** determination of every action. SCRCP Rule 1. The United States Constitution and the South Carolina Constitution prohibit takings without Due Process of Law. S.C. Code of Laws §38-77-160 was enacted for the very purpose of ensuring that the UIM carrier have the right to contest its liability for underinsured motorist's benefits. *Williams vs. Selective Insurance Company*, 315 S.C. 532, 446 S.E. 2d 402 (1994). The statute specifically states that the UIM carrier has the right to appear and defend the claim against it.

The Court recognizes that the obligation of good faith in a first party setting is a two-way street. The court in the seminal case of *Nichols vs. State Farm Mutual Insurance Company*, 279 S.C. 336, 306 S.E. 2d 616 (1983) set forth this principle when it stated that the obligation of good faith is an obligation that **NEITHER PARTY** will do anything to impair the other's rights to received benefits under the contract. The court would caution the parties against attempting a collusive arrangement that would deprive and party or entity involved in the action from a fair trial.

Courts should strive so as to promote the ends of justice and dispose of cases on their merits. *In re Estate of Weeks*, 329 S.C. 251, 495 S.E. 2d 454 (S.C. App. 1997). In order to fulfill this purpose to promote the ends of justice and have cases decided on the merits, the Plaintiff's Motion for Reconsideration must be properly denied. It is therefore

ORDERED, ADJUDGED and DECREED that the Plaintiff's Motion for Reconsideration is denied.

\_\_\_\_\_, 2020  
Moncks Corner, SC

\_\_\_\_\_  
Honorable Roger C. Young  
Presiding Judge  
Ninth Judicial Circuit



Berkeley Common Pleas

**Case Caption:** Latarsha Docena-Guerrero VS Rafael Docena-Guerrero

**Case Number:** 2018CP0801079

**Type:** Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2020-05-27 10:27:09 page 3 of 3

ELECTRONICALLY FILED - 2020 May 27 1:15 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0801079

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )  
  
Latarsha Docena-Guerrero, )  
 )  
Plaintiff, )  
 )  
vs )  
 )  
Rafael Docena-Guerrero, )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NUMBER: 2018-CP-08-01079

**CONSENT ORDER FOR THE  
SUBSTITUTION OF COUNSEL**

**WHEREAS**, the Plaintiff has entered into a Covenant Not to Execute with the Defendant;

**WHEREAS**, Margaret Fanning Horn of WILSON & HEYWARD, LLC moves to be excused from taking any further action in these proceedings on behalf of the Defendant; and

**WHEREAS**, Thomas H. Milligan of MILLIGAN & HERNS, PC has already made an appearance on behalf of the Underinsured Motorist Carrier pursuant to Section 38-77-160 of the South Carolina Code Annotated 1976, and consents to the motion;

**NOW, THEREFORE**, Margaret Fanning Horn is hereby relieved as counsel of record and excused from taking any further action in these proceedings on behalf of the Defendant, and Thomas H. Milligan of MILLIGAN & HERNS, PC is hereby substituted as counsel of record appearing and defending this action on behalf of the Underinsured Motorist Carrier.

**AND IT IS SO ORDERED.**

February \_\_\_\_\_, 2020

\_\_\_\_\_  
Presiding Judge

Summerville, South Carolina  
ON MOTION OF:

WILSON & HEYWARD, LLC

By: s/Margaret Fanning Horn  
Margaret Fanning Horn  
Attorney for Defendant

I CONSENT:

MILLIGAN & HERNS, PC

By: s/Thomas H. Milligan  
Thomas H. Milligan  
Attorney for Underinsured  
Motorist Carrier



Berkeley Common Pleas

**Case Caption:** Latarsha Docena-Guerrero VS Rafael Docena-Guerrero  
**Case Number:** 2018CP0801079  
**Type:** Order/Substitution Of Counsel

AND IT IS SO ORDERED!

Special Circuit Court Judge s/Dale E. Van  
Slambrook (3079)

Electronically signed on 2020-02-21 12:00:39 page 3 of 3

ELECTRONICALLY FILED - 2020 Feb 21 12:07 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0801079

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-08-\_\_\_\_\_

Latarsha Docena-Guerrero,  
Plaintiff,

v.

Rafael Docena-Guerrero,  
Defendant.

COMPLAIN

HARRY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

2018 JUN 15 PM 1:18

FILED

TO THE ABOVE NAMED DEFENDANT(S):

Plaintiff, complaining of the Defendant above-named would respectfully allege and show unto this Honorable Court:

1. At the time of the collision herein mentioned, Plaintiff was a resident of Dorchester County, South Carolina, and a passenger in a 2004 Chevrolet pickup truck with South Carolina license plate LMT336 for the year 2017, driven by Defendant.

2. Upon information and belief, at the time of the collision herein mentioned, the Defendant was a resident of Dorchester County, South Carolina and was the driver of a 2004 Chevrolet pickup truck with South Carolina License plate LMT336 for the year 2017.

3. On February 4, 2016, at approximately 6:45 a.m. the Plaintiff was the front seat passenger in her own vehicle driven by Defendant. Defendant was traveling east on Interstate 26, when he unlawfully followed too close to the vehicle in front of him, and failed to stop for traffic ahead of him and slammed into the rear of another vehicle.

4. As a direct and proximate result of the Defendant's negligence,

carelessness, and recklessness, the Plaintiff suffered great physical harm and injury from being thrown about the vehicle, which has and will in the future cause her to undergo much physical pain and suffering, has and will in the future cause her to spend money for medical services.

5. The Defendant was negligent, willful, wanton, careless, reckless, and grossly negligent at the time and place above mentioned in the following particulars:

- (a) In failing to maintain a proper lookout;
- (b) In failing to keep his vehicle under proper control;
- (c) In driving too fast for conditions;
- (d) In failing to yield the right of way;
- (e) In failing to apply his brakes;
- (f) In failing to use that degree of care and caution that a reasonable and prudent person would have used under the circumstances then and there prevailing.

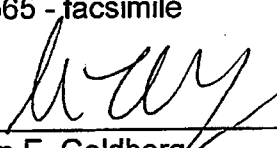
All of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff herein. Said acts being in violation of the statute laws of the State of South Carolina.

6. Plaintiff is informed and believes that she is entitled to judgment against the Defendant for actual and punitive damages in an appropriate amount.

WHEREFORE, Plaintiff prays for judgment against the Defendant for actual damages, together with punitive damages in an appropriate amount, for the costs of this action and for such other and further relief as to this Court may seem just and proper.

THE STEINBERG LAW FIRM, L.L.P.  
PO Box 2670  
Summerville, SC 29484  
(843) 871-6522 - office  
(843) 871-8565 - facsimile

By: \_\_\_\_\_

  
Steven E. Goldberg  
Kelly M. Alfreds  
Attorneys for Plaintiff

Summerville, South Carolina  
June 12, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF THE COMMON PLEAS
COUNTY OF BERKELEY	)	IN THE NINTH JUDICIAL CIRCUIT
	)	CASE NO: 2018-CP-08-1079
LATARSHA DOCENA GUERRERO,	)	
	)	
Plaintiff,	)	
	)	ANSWER TO COMPLAINT
v.	)	(JURY TRIAL DEMANDED)
	)	
RAPHAEL DOCENA GUERRERO,	)	
	)	
Defendant.	)	

---

The Defendant, Raphael Docena Guerrero (hereinafter “Defendant”) and by and through her undersigned attorney, answering the Complaint of Latarsha Docena Guerrero (hereinafter “Plaintiff”), would state and allege as follows:

FOR A FIRST DEFENSE

1. Defendant admits the allegations in Paragraph 1 of Plaintiff’s Complaint on information and belief.
2. Defendant admits the allegations in Paragraph 2 of Plaintiff’s Complaint on information and belief.
3. Defendant admits the allegations in Paragraph 3 of Plaintiff’s Complaint, inasmuch as alleges defendant Guerrero made contact between Plaintiff’s and another vehicle. Defendant Guerrero denies the remaining allegations contained in Paragraph 3.
4. Defendant would state that she lacks sufficient information or knowledge with which to form a belief as to the allegations in Paragraph 4 of Plaintiff’s Complaint, and thus denies said allegations.
5. Defendant denies the allegations in Paragraph 5, subparts a-f of Plaintiff’s Complaint.

6. Defendant denies the allegations in Paragraph 6 of Plaintiff's Complaint.
7. Each and every allegation which is not specifically addressed or admitted is expressly denied.

**FOR A FIRST AFFIRMATIVE DEFENSE  
(Insufficiency of service of Process/Nonservice)**

8. That if the process issued in the within action is insufficient because of non-service as provided by SCRCP 4(d)(2) and therefore the within action should be dismissed pursuant to the provisions of SCRCP Rule(12)(b)(4) and (12)(b)(5).

**FOR A SECOND AFFIRMATIVE DEFENSE  
(Insufficiency of service of Process)**

9. That the Plaintiff has failed to serve process in accordance with the requirements Of S.C. Code of Laws §15-9-370 and §15-9-380, 1976 as amended, or South Carolina Rule of Civil Procedure 4, and therefore the Defendant moves that this action be dismissed pursuant to Rule 12(b)(5) of the south Carolina Rules of Civil Procedure.

**FOR A THIRD AFFIRMATIVE DEFENSE  
(Sudden Emergency)**

10. That at the time and place mentioned in the Complaint, the Defendant Guerrero was faced with a sudden emergency, that said Defendant acted in the face of this sudden emergency, that the Defendant Guerrero was without negligence in causing or contributing to this sudden emergency, and that in the face of this sudden emergency the Defendant Guerrero acted as a reasonably prudent person would act under the same or similar circumstances.

**FOR A FOURTH AFFIRMATIVE DEFENSE  
(Unavoidable Accident)**

11. That the injuries and damages to the Plaintiff, if any, as alleged in the Complaint, were due to and proximately caused by an unavoidable accident or occurrence not proximately caused by or due to any alleged negligence, recklessness or willfulness on the part of the Defendant Guerrero.

**FOR A FIFTH AFFIRMATIVE DEFENSE  
(Punitive Damages – Constitutional Limitations)**

12. Further answering the Complaint, and by way of an affirmative defense, the Defendant would state that the Plaintiff's claim for punitive damages or exemplary damages (hereinafter "punitive damages") violates the Fifth, Sixth, Seventh, Eight and Fourteenth Amendments to the Constitution of the United States and the Constitution of the State of South Carolina, in the following particulars:

- a. The Plaintiff's claim for punitive damages violates the Fifth Amendment to the U.S. Constitution for the following reasons:
  - i. The double jeopardy clause is violated because multiple awards of punitive damages can be imposed upon the Defendant for the same act or omission and because an award of punitive damages can be imposed upon the Defendant even though the Defendant was convicted or acquitted of a factually-related offense in an underlying criminal proceeding;
  - ii. The self-incrimination clause is violated because the Defendant can be compelled to give testimony

against itself;

- b. The Plaintiff's claim for punitive damages violates the Sixth and Fourteenth Amendments to the U.S. Constitution Because such damages may be imposed based upon the Burden of proof applicable in civil cases, whereas punitive Damages are a fine or penalty and are quasi-criminal in nature;
- c. The Plaintiff's claim for punitive damages violates the Defendant's right of access to the courts guaranteed by the Seventh and Fourteenth Amendments to the U.S. Constitution Because the threat of an award of unlimited punitive damages chills the Defendant's exercise of that right;
- d. The Plaintiff's claim for punitive damages violates the guarantee of the Eighth Amendment to the U.S. Constitution that excessive fines shall not be imposed;
- e. The Plaintiff's claim for punitive damages violates equal protection clauses of the Fourteenth Amendment to the U.S. Constitution for the following reasons:
  - i. The standard or test for determining the requisite mental state of the Defendant for imposition of punitive damages is void for vagueness;
  - ii. Insofar as punitive damages are not measured against actual injury to the Plaintiff and are left wholly to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded is indeterminate at the time of the Defendant's alleged egregious conduct;

- iii. In cases involving more than one defendant, the evidence of the net worth of each is admissible, and the jury is permitted to award punitive damages in differing amounts based upon the affluence of a given defendant;
- iv. The tests or standards for the imposition of punitive damages differ from state to state, such that a specific act or omission of a given defendant may or may not result in the imposition of punitive damages, or may result in differing amounts of punitive damages, depending upon the state in which suit filed, such that the defendant is denied equal protection of the law;
- v. Punitive damages may be imposed without a requisite showing of hatred, spite, ill will or wrongful motive.

**FOR A SIXTH AFFIRMATIVE DEFENSE**

**(Punitive Damages – Statutory Limitations of SC Code 15-32-530)**

13. That the Plaintiff's Claim for punitive damages falls within the statutory limitations contained in SC Code of Laws and therefore an award of Punitive Damages in this case may not exceed the greater of three times the amount of compensatory damages awarded to the Plaintiff or the sum of five hundred thousand dollars.

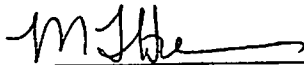
**FOR A SEVENTH AFFIRMATIVE DEFENSE**

**(SCRPC Rule 12(b)(6))**

14. That the Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action, and the Plaintiff's Complaint should be dismissed pursuant to the provisions of SCRPC Rule 12(b)(6).

Respectfully submitted,

WILSON & HEYWARD, LLC



Margaret Fanning Horn (SC Bar No.: 7004)

P.O. Box 13177

Charleston, South Carolina 29422

Telephone: 843-762-4567

Facsimile: 843-762-2345

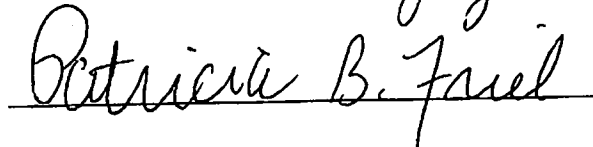
Email: [mfanning@wilsonheyward.com](mailto:mfanning@wilsonheyward.com)

ATTORNEY FOR DEFENDANT

Charleston, South Carolina  
This 17 day of July 2018

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 13th day of July, 2018





# South Carolina Department of Insurance

Capitol Center  
1201 Main Street, Suite 1000  
Columbia, South Carolina 29201

HENRY McMASTER  
Governor

RAYMOND G. FARMER  
Director

Mailing Address:  
P.O. Box 100105, Columbia, S.C. 29202-3105  
Telephone: (803) 737-6160

August 26, 2019

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
GOVERNMENT EMPLOYEES INSURANCE COMPANY  
One GEICO Center  
Macon, GA 31295-0001


Dear Sir:

On August 26, 2019, I accepted service of the attached Summons and Complaint on your behalf. I am, hereby, forwarding that accepted process on to you pursuant to the provisions of S.C. Code Ann. § 38-5-70. By forwarding accepted process on to you, I am meeting a ministerial duty imposed upon me by S.C Code Ann. § 38-77-160. I am not a party to this case. The State of South Carolina Department of Insurance is not a party to this case. The claimant, within this service letter, provided the following additional information regarding this first party claim: POLICY/CLAIM NUMBER 4406465304/054172920-0101-020. It is important for you to realize that service was effected upon your insurer on my date of acceptance for service.

**You must promptly acknowledge in writing your receipt of this accepted process to [sdubois@doi.sc.gov](mailto:sdubois@doi.sc.gov). When replying, please refer to File Number 176056, Latarsha Docen-Guerrero v. Rafael Docena-Guerrero, 2018-CP-08-1079.**

By:

Sincerely Yours,

  
David E. Belton  
Senior Associate General Counsel  
(803)737-6200

Raymond G. Farmer  
Director  
State of South Carolina  
Department of Insurance

Attachment

CC: Steven E. Goldberg  
Post Office Box 2670  
Summerville, SC 29484

ELECTRONICALLY FILED - 2019 Aug 28 4:35 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0801079

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NUMBER: 2018-CP-08-01079

Latarsha Docena-Guerrero, )  
 )  
Plaintiff, )

vs )

**NOTICE OF MOTION AND MOTION  
FOR RELIEF FROM DEFAULT**

Rafael Docena-Guerrero, )  
 )  
Defendant. )

**TO: STEVEN E. GOLDBERG, ESQUIRE AND THE STEINBERG LAW FIRM, LLP,  
ATTORNEYS FOR THE PLAINTIFF:**

**PLEASE TAKE NOTICE** that the Defendant, Rafael Docena-Guerrero, by and through his undersigned attorneys, will move before the Presiding Judge of the Ninth Judicial Circuit, at the Berkeley County Courthouse, Charleston, South Carolina, on the tenth (10<sup>th</sup>) day after service hereof or at such other time and place as shall be convenient to the Court and counsel, for an Order setting aside the default and default judgment, if any, of the Defendant, Rafael Docena-Guerrero for failing to answer, move, or otherwise plead in response to the Summons and Complaint.

The grounds for this Motion are that although the time for taking action as provided by the Rules has expired:

1. There exists good cause to set aside the default pursuant to S.C.R.C.P. Rule 55(c); and
2. Such default was occasioned by mistake, inadvertence, surprise, or excusable neglect, and should therefore be set aside pursuant to S.C.R.C.P. Rule 60(b).

This motion shall be based upon the documents attached hereto and served herewith, or which shall be served hereafter, pursuant to S.C.R.C.P. Rule 55(c) and/or S.C.R.C.P. Rule 60(b), and such additional law and argument as shall be appropriate.

MILLIGAN & HERNS, PC

s/Thomas H. Milligan  
Thomas H. Milligan (SC Bar 12272)  
721 Long Point Road, Suite 401  
Mount Pleasant, SC 29464  
Phone: (843) 971-6750  
Fax: (843) 971-6509  
Email: [tom@milliganlawfirm.com](mailto:tom@milliganlawfirm.com)

ATTORNEYS FOR THE UIM CARRIER

February 19, 2020  
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )  
  
Latarsha Docena-Guerrero, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Rafael Docena-Guerrero, )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NUMBER: 2018-CP-08-01079

**NOTICE OF APPEARANCE  
AND CONDITIONAL ANSWER  
FOR THE DEFENDANT**  
(Jury Trial Requested)

**TO: STEVEN E. GOLDBERG, ESQUIRE AND THE STEINBERG LAW FIRM,  
LLP, ATTORNEYS FOR THE PLAINTIFF:**

**PLEASE TAKE NOTICE** that the undersigned attorney hereby appears on behalf of Government Employees Insurance Company, in the above-entitled action and, further, gives notice that upon settlement of the automobile liability insurer for the putative at-fault Defendant with the Plaintiff herein, this underinsured motorist carrier may join with the automobile liability insurer for the Defendant in providing a defense and, further, request that copies of all pleadings and discovery served in this action by all parties be served upon the undersigned at the address given below. The underinsured motorist carrier specifically demands a trial by jury pursuant to Rule 38 of the South Carolina Rules of Civil Procedure. The undersigned further states this law firm at this time does not represent the Defendant and is not at this time undertaking such representation but is specifically reserving the option to assume control of the defense in the name of the Defendant pursuant to the underinsured motorist statute, should the carrier choose to exercise that option.

In filing this notice, Government Employees Insurance Company makes no representations or admissions as to the existence, applicability or amount of any insurance coverage.

The Government Employees Insurance Company, as the purported underinsured motorist carrier (hereinafter referred to as "UIM Carrier"), responding to the Complaint of the Plaintiff in place of the Defendant, named-above, hereby alleges and says as follows:

**FOR A FIRST DEFENSE**  
**(General Denial)**

1. The UIM Carrier admits the allegations of paragraphs 1 and 2, upon information and belief, regarding the residency of the parties.
2. The UIM Carrier denies the allegations contained in paragraphs 3, 4, 5, including all subparts (a) through (f), and 6, being all the remaining allegations of the Plaintiff's Complaint.
3. The UIM Carrier denies each and every allegation of the Plaintiff's Complaint that is not hereinabove specifically admitted, qualified, or explained.

**FURTHER ANSWERING AND AS A SECOND DEFENSE**  
**(S.C. Code §15-32-510, et seq., Limitations on Punitive Damages)**

4. That, even if Defendant were negligent as alleged in the Amended Complaint, which is specifically denied, Defendant is entitled to and asserts the protections afforded under the S.C. Code Ann. §15-32-510 through §15-32-540, in its entirety, including limitations on punitive damages and bifurcation of trials.

**FURTHER ANSWERING AND AS A THIRD DEFENSE**  
**(Violation of Constitutional Guarantees to Procedural Due Process)**

5. That the Plaintiff, to the extent that she seeks punitive or exemplary damages, if any, is in violation of the right of the Defendant to procedural due process under the 14<sup>th</sup> Amendment of the United States Constitution and the Constitution of the State of South Carolina and, therefore, fails to state a cause of action upon which either punitive or exemplary damages may be awarded.

**FURTHER ANSWERING AND AS A FOURTH DEFENSE**  
**(Violation of Constitutional Guarantees to  
Substantive Due Process Against Excessive Fines)**

6. That the Plaintiff, to the extent that she seeks punitive or exemplary damages, if any, is in violation of the right of the Defendants to protection from excessive fines as provided in the 8<sup>th</sup> Amendment of the United States Constitution and the Constitution of the State of South Carolina and, furthermore, are in violation of the right of the Defendants to substantive due process as provided in the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution and the Constitution of the State of South Carolina, and therefore, fails to state a cause of action upon which either punitive or exemplary damages may be awarded.

WHEREFORE, having fully answered the Plaintiff's Complaint, the UIM Carrier prays for a trial by jury and that the Plaintiff's Complaint be dismissed, for the costs of the action and for such other and further relief as this Honorable Court deems just and proper.

MILLIGAN & HERNS, PC

s/Thomas H. Milligan  
Thomas H. Milligan (SC Bar 12272)  
721 Long Point Road, Suite 401  
Mount Pleasant, SC 29464  
Phone: (843) 971-6750  
Fax: (843) 971-6509  
Email: [tom@milliganlawfirm.com](mailto:tom@milliganlawfirm.com)

Attorney for Government Employees Insurance  
Company appearing pursuant to S.C. Code §38-77-  
160 on behalf of Government Employees Insurance  
Company

February 19, 2020  
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-08-1079

Latarsha Docena-Guerrero,

Plaintiff,

v.

Rafael Docena-Guerrero,

Defendant.

**NOTICE OF MOTION AND MOTION TO  
QUASH THE ANSWER AND  
APPEARANCE BY UIM CARRIER AND  
COUNSEL**

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This matter commenced with the filing of the Summons and Complaint on June 15, 2018. Margaret F. Horn, Esquire, on behalf of the Defendant, timely filed an Answer. During the course of discovery, it appeared that Plaintiff's damages would exceed the liability carrier's limits of liability. Therefore, on August 26, 2019, Plaintiff served a copy of the Summons and Complaint upon Government Employees Insurance Company (GEICO), the UIM Carrier, through the South Carolina Department of Insurance pursuant to S.C. Code Ann. § 38-77-160. Such service is the exclusive method to serve an insurance company in South Carolina.

Plaintiff electronically filed a copy of the Acceptance of Service by the South Carolina Department of Insurance with the Court on August 28, 2019. All parties received an electronic copy of said service. More than thirty-five (35) days elapsed without the UIM carrier making an appearance in the case.

On or about December 19, 2019, Plaintiff and Defendant settled the liability portion of this claim memorialized by the execution of a Covenant Not to Execute. The Covenant

protects Defendant against any judgments against him. At the time the parties executed the Covenant, GEICO had not made an appearance.

On February 19, 2020, Thomas H. Milligan, Esq, on behalf of GEICO, filed a Notice of Appearance and Conditional Answer for the Defendant. The Answer specifically states Mr. Milligan would not be representing the Defendant personally.

Pursuant to S.C. Code Ann. § 38-77-160, "the insurer has the right to appear and defend in the name of the underinsured motorist in any action which may affect its liability *and has thirty days after service of process on it in which to appear.*" The plain language of Section 38-77-160 provides a limitation of an UIM carrier's timely appearance. Because the UIM Carrier was served with and had notice of this action but elected not to answer, demure, file any other responsive pleading, or file a notice of appearance until six months following service, the late filed Answer should be stricken and the UIM Carrier and its representatives should not be allowed to make an appearance pursuant to statutory law.

Therefore, Plaintiff prays for the following relief:

1. An Order striking the Answer of GEICO, the UIM Carrier;
2. An Order striking the appearance of GEICO's counsel; and
3. Any other relief the Court deems just and necessary.

[Signature on following page]

Respectfully Submitted,

**THE STEINBERG LAW FIRM LLP**  
P.O. Box 2670  
Summerville, South Carolina 29484  
(843) 871-6522

By: s/Steven E. Goldberg  
Steven E. Goldberg  
Attorney for Plaintiff

Summerville, South Carolina  
February 20, 2020

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )  
  
Latarsha Docena-Guerrero, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Rafael Docena-Guerrero, )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NUMBER: 2018-CP-08-01079

**MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM  
DEFAULT**

GEICO Insurance Company, as the underinsured motorist carrier, submits the following in support of its motion for relief from default.

**I. STATEMENT OF FACTS:**

The Plaintiff Latarsha Docena-Guerrero was a passenger in the vehicle being driven by her husband Rafael Docena-Guerrero when the accident giving rise to this lawsuit occurred. The Guerreros were insured with GEICO Insurance Company at the time of the accident. GEICO provided liability coverage and underinsured motorist coverage on the vehicle.

This case arises from an automobile accident that occurred on February 4, 2016 on I-26. Mr. Guerrero was driving to work early in the morning. It was raining at the time of the accident. Jarrett Wright was in the vehicle traveling in front of Mr. Guerrero. Traffic slowed down on I-26. Mr. Guerrero slowed down but failed to stop in time, bumping into the rear of the Mr. Wright’s vehicle. This was a minor accident that does not appear to justify any significant injuries.

Although it is admitted that Mr. Guerrero was negligent in causing the contact between the vehicles, proximate cause and damages are strongly contested. Thus, there is a meritorious defense to the Plaintiff’s claim.

On June 15, 2018, the Plaintiff Latarsha Docena-Guerrero filed suit against her husband Rafael Docena- Guerrero. GEICO assigned the defense of Mr. Guerrero to attorney Meg Horn under the liability portion of the lawsuit. Ms. Horn timely answered the Complaint and defended the case.

On or about August 26, 2019, counsel for the Plaintiff served GEICO as the underinsured motorist carrier through the South Carolina Department of Insurance. When the notification from the Department of Insurance was received in the mail room at GEICO, it was mistakenly classified as a redundant copy of the lawsuit, instead of a new claim for UIM coverage. It was sent to the adjuster handling the liability defense, instead of having a separate adjuster assigned. (Affidavit of Stacie Dumas, attached hereto as Exhibit # 1). Because of this mistake, the UIM portion of the case was not immediately assigned to defense counsel.

Counsel for the Plaintiff never placed GEICO into default as the UIM carrier. There has been no entry of default. The Plaintiff could not have possibly changed her position in reliance on any entry of default or default judgment.

The Plaintiff Latarsha Docena-Guerrero settled the claim against her husband and GEICO as the liability carrier for less than the liability limits. On or about December 23, 2019, counsel for the Plaintiff returned the signed Covenant Not to Execute to defense counsel Meg Horn. Attorney Meg Horn remained as the defense counsel until an order substituting counsel was filed on February 21, 2020.

The undersigned counsel was retained by GEICO as the UIM carrier on or about February 18, 2020. On February 19, 2020, the undersigned filed a Notice of Appearance and Conditional Answer with the court. Although there had never been any entry of default filed, and even though the case was still being actively defended by attorney Meg Horn, the undersigned filed a Motion for Relief from Default because the Notice of

Appearance had not been filed within thirty (30) days of the date of service upon the insurance commissioner.

Counsel for the Plaintiff takes the position that a UIM carrier has no recourse at all if the Notice of Appearance is not filed within thirty (30) days of service. Such a position is unreasonable and ignores the South Carolina Rules of Civil Procedure and South Carolina common law on relief from default.

In this case, there is a meritorious defense to this lawsuit between husband and wife, that the impact was too minor to justify the Plaintiff's claim for injuries and need for treatment. Good cause exists to set aside failure to file the Notice of Appearance within thirty (30) days, as it occurred due to a mistaken classification by the mailroom of the Complaint as a redundant copy. The Plaintiff, who is suing her husband, has incurred no prejudice as no change in position occurred in reliance on the delay in filing the Notice of Appearance.

**I. Legal argument:**

SCRCF Rule 60(b) governs motions for relief from judgment or orders. Rule 60(b) provides:

**Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment order, or proceeding, for the following reasons:

- 1) Mistake, inadvertence, surprise, or excusable neglect;
- 2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- 3) Fraud, misrepresentation, or other misconduct of an adverse party;
- 4) The judgment is void;
- 5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or vacated, or it is no longer equitable that the judgment should have prospective application.

The decision to grant relief from default is solely within the sound discretion of the trial court. *Wham v. Shearson Lehman Brothers, Inc.*, 289 S.C. 462, 381 S.E. 2d 499 (S.C. App. 1989).

In determining if relief should be granted from a simple entry of default, the court should examine the following factors:

1. The timing of the motion for relief;
2. Whether the Defendant has a meritorious defense; and
3. The degree of prejudice to the Plaintiff if relief is granted.

*Maxwell v. Genez and Doe*, 350 S.C. 563, 567 S.E. 2d 496 (S.C. App., 2002); *Wham*, supra. Courts should strive so as to promote the ends of justice and dispose of cases on their merits. *In re Estate of Weeks*, 329 S.C. 251, 495 S.E. 2d 454 (S.C. App. 1997).

The standard for relief from failure to timely file a Notice of Appearance is not governed by the strict requirements of Rule 60, as no judgment has been entered. The standard is the much lower standard of only having to show good cause for relief under SCRCP Rule 55.

In this case, there is a meritorious defense to this lawsuit between husband and wife, that the impact was too minor to justify the Plaintiff's claim for injuries and need for treatment. Good cause exists to set aside failure to file the Notice of Appearance within thirty (30) days, as it occurred due to a mistaken classification by the mailroom of the Complaint as a redundant copy. The Plaintiff, who is suing her husband, has incurred no prejudice as no change in position occurred in reliance on the delay in filing the Notice of Appearance.

The UIM carrier has shown that good reason exists for relief from the default judgment in this case. The Defendant respectfully requests that this motion for relief from default be granted.

MILLIGAN & HERNS, PC

s/ *Tom Milligan*

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Thomas H. Milligan, Esquire  
721 Long Point Road, Suite 401  
Mount Pleasant, SC 29464  
(843) 971-6750

ATTORNEYS FOR GEICO INSURANCE  
COMPANY, as the purported UIM Carrier

February 26, 2020  
Mount Pleasant, SC

D · & · A

D E R F N E R  
& A L T M A N

March 10, 2020

VIA EMAIL: ryoungsc@sccourts.org

The Honorable Roger M. Young, Sr.  
Charleston County Judicial Center  
100 Broad Street, Suite 368  
Charleston, SC 29401

RE: Latarsha Docena-Guerrero vs. Rafael Docena-Guerrero  
2018-CP-08-01079

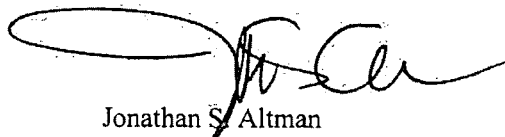
Dear Judge Young:

I am the attorney of record for Defendant Rafael Docena-Guerrero in the above matter. I have reviewed the pleadings filed in the above matter including the motions set to be heard this afternoon at 1:30pm. Regarding the Motion for Relief from Default, it should be noted that Mr. Milligan does not represent my client and my client has not been placed in default. Thus, it is my belief that the Motion for Relief from Default filed by Mr. Milligan is unnecessary and should be denied. Furthermore, as the Plaintiff has signed a Covenant Not to Execute as to my client, he is not at risk of any excess judgment.

Relative to Plaintiff's Motion to Strike the Answer and Appearance of UIM Carrier, we take no position as to that motion. However, in the event said motion is granted, I will continue to represent the Defendant throughout this process to ensure that his rights are protected. In light of the above, I do not plan on attending this afternoon's hearing but provide the above information to remove any question as to Defendant's position as to these motions.

Yours Very Truly,

DERFNER & ALTMAN, LLC



Jonathan S. Altman

JSA/rs

cc: Steven Goldberg, Esq.  
Thomas H. Milligan, Esq.

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-08-1079

Latarsha Docena-Guerrero,

Plaintiff,

**MOTION FOR RECONSIDERATION**

v.

Rafael Docena-Guerrero,

Defendant.

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Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiff respectfully requests the Court reconsider its April 30, 2020 Order Denying Motion to Quash the Answer and Appearance by UIM Carrier and Granting Motion for Relief from Default (the "Order"). Plaintiff submits the Order is deficient, GEICO should not be permitted to make a late appearance, and Plaintiff's Motion to Quash should be granted because:

- (1) The Order applies Rule 55(c), SCRCF and its good cause standard for relief from an entry of default, but there has been no entry of default. Rule 55(c) does not apply here. The applicable law here is Section 38-77-160 of the South Carolina Code.
- (2) The issue before the Court is the application of Section 38-77-160. That statute's language is plain and unambiguous that a UIM carrier has thirty days after service to appear and defend. The statute contains no good cause exception, nor is there any ambiguity that would permit a court to interpret the statute as containing such

an exception. Moreover, even were there any ambiguity, the language of the Section 38-77-160, the overarching statutory scheme, comparison of the statute to other statutes, courts' interpretations of Section 38-77-160, and courts' interpretations of analogous statutes all indicate Section 38-77-160 cannot be interpreted as containing a good cause exception to the thirty-day requirement.

- (3) Even were there a good cause exception to the thirty-day requirement in Section 38-77-160, GEICO failed to establish good cause because it did not provide a satisfactory explanation for failing to timely appear and because Plaintiff relied on GEICO's failure to appear and would suffer substantial prejudice were GEICO permitted to now appear.

Accordingly, Plaintiff submits Section 38-77-160 should be applied to strike GEICO's late appearance and answer in this action.

## **ARGUMENT**

### **I. Rule 55(c) Does Not Apply Here Because There Has Been No Entry of Default**

The Order applies Rule 55(c) of the South Carolina Rules of Civil Procedure as the basis for permitting the UIM carrier to answer and appear, but Rule 55(c) and its "good cause" standard applies only where there has been an entry of default. Rule 55(c) states: "For good cause shown the court may set aside an entry of default." Rule 55(c)'s explicit language limits its application to setting aside an entry of default, and the rule's language contains no indication the rule can apply in any other situation.

Here, while applying Rule 55(c) as the applicable legal standard, the Order acknowledges there has been no entry of default. The Order states: "No default had

been entered . . . .” The Order goes on to state: “the Court hereby finds that good cause exists to set aside any default (though none has been entered by the Court) . . . .”<sup>1</sup> Having found there was no default, Rule 55(c) is inapplicable here and is not a proper basis for deciding the motions.

**II. Whether GEICO Can Appear is a Matter of Applying Section 38-77-160, and the Statute Does not Permit GEICO to Appear More than Thirty Days After Service**

Section 38-77-160 of the South Carolina Code provides: “The insurer has the right to appear and defend in the name of the underinsured motorist in any action which may affect its liability and has thirty days after service of process on it in which to appear.” The plain language of the statute does not contain any exception to the requirement that a UIM carrier appear within thirty days of service of process on it, nor is the statute susceptible to any interpretation which reads an exception into the statute.

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<sup>1</sup> The parties do not contend there has been any entry of default. Despite filing a motion entitled “Motion for Relief from Default,” GEICO admits that “Counsel for the Plaintiff never placed GEICO into default as the UIM carrier. There has been no entry of default.” (Mem. in Support of Mot. for Relief from Default 2.) Plaintiff moved to quash the answer and appearance of the UIM carrier in this action solely based on Section 38-77-160 of the South Carolina Code, and Plaintiff’s motion made no mention of any entry of default.

Moreover, Plaintiff could not have obtained an entry of default against the UIM carrier. The defendant in this action, Rafael Docena-Guerrero, had appeared and was defended by counsel appointed by GEICO. GEICO acknowledged as much in its filings in support of its motion. (Mem. in Support of Mot. for Relief from Default 2 (“GEICO assigned the defense of Mr. Guerrero to attorney Meg Horn under the liability portion of the lawsuit. Ms. Horn timely answered the Complaint and defended the case.”)) Rafael Docena-Guerrero was the sole defendant in this action, and once he appeared there was no party to seek an entry of default against. See Rule 55(a), SCRCP (“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).” (emphasis added)). GEICO was not a party to this action, and even if permitted to appear at this point, still will not be a party to this action. The defendant party is and will remain Rafael Docena-Guerrero. Under South Carolina’s automobile insurance statutory scheme, Chapter 77 of Title 38 of the South Carolina Code, a UIM carrier has a statutory right, subject to certain conditions, to “appear and defend *in the name of the underinsured motorist.*” S.C. Code Ann. § 38-77-160 (emphasis added). Accordingly, the UIM carrier is not a party to the action against whom an entry of default can be entered, and rather the UIM carrier has a limited statutory right to step into the shoes of the defendant and defend against liability on a plaintiff’s claims.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Id.* “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” *Id.* (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)).

The language of Section 38-77-160 is plain, unambiguous, and conveys a clear and definite meaning: a UIM carrier may appear and defend in the name of the defendant if the UIM carrier does so within thirty days of service on it. The statute does not provide an exception to the requirement that a UIM carrier appear within thirty days of service. The statute does not state any “good cause” exception to the thirty-day requirement. There also is no ambiguity in the statutory language. Accordingly, South Carolina’s courts are to give effect to the plain language of the statute and bar any appearance by a UIM carrier more than thirty days after service on that carrier.

GEICO identified no purported ambiguity in Section 38-77-160. GEICO presented no reason why the Court should interpret Section 38-77-160 to apply anything other than its plain language. GEICO presented no explanation as to how Section 38-77-160 could be interpreted to include a “good cause” exception to the statute’s thirty-day requirement. The Court’s Order also does not address these issues of statutory construction and application.

Moreover, even were the Court to consider anything beyond the plain language of the statute to determine the General Assembly's intent in Section 38-77-160, which the Court should not do given the unambiguous plain language of the statute, the Court would reach the same result. First, South Carolina courts previously considered analogous language in statutes of limitations and statutes of repose and held that the statutes applied as written without any good cause exceptions. In *Columbia/CSA-HS Greater Columbia Healthcare System, LP v. South Carolina Medical Malpractice Liability Joint Underwriting Association*, the South Carolina Supreme Court considered whether the medical malpractice statute of repose in Section 15-3-545 of the South Carolina Code barred a hospital's equitable indemnification claim against a doctor. 411 S.C. 557, 769 S.E.2d 847 (2015). The Court found the statute of repose's language covered the claim, and accordingly applied the statute to bar the claim. *Id.* In doing so, the Court rejected an argument that an exception should be read into the statute of repose and instead applied the plain language of the statute of repose. See *id.* at 561–63, 769 S.E.2d at 849–50. The Court explained its rejection of that argument as arising from the fact that “[i]f the General Assembly desires to expand [the] exceptions [to the statute of repose] to include the situation presented here, that decision lies exclusively in the Legislative Branch.” *Id.* at 562, 769 S.E.2d at 849.

Similarly, in *Sims v. Amisub of South Carolina, Inc.*, the Supreme Court considered whether an insanity tolling exception exists for the three-year statute of limitations for medical malpractice claims. 414 S.C. 109, 777 S.E.2d 379 (2015). Finding the “clear language” and “unambiguous language” of the statute did not provide for such an

exception, the Court held that insanity did not toll the statute of limitations. *Id.* at 116, 777 S.E.2d at 383. The Court noted the appellant's "equitable argument that fairness dictates" such an exception to the statute of limitations but rejected that argument because the plain language of the statute set forth the General Assembly's intent and "the fairness of such decisions remains within the prerogative of the legislature." *Id.* at 117, 777 S.E.2d at 383.

The reasoning applied in *Columbia/CSA-HS* and *Sims* applies here. While one rational policy choice may be to allow UIM carriers to participate in the at-fault driver's defense even when they do not appear within thirty days of service, another rational policy choice is to permit UIM carriers to participate in the at-fault driver's defense only when they appear within thirty days of service. The weighing of policy options and the decision as to which policy option to enact as law is for the General Assembly. Here, the General Assembly set out in the plain language of Section 38-77-160 that UIM carriers have a limited right to participate in the defense of at-fault drivers, and one limitation on that statutory right is that the UIM carrier must appear within thirty days of service.

Second, "[t]he General Assembly is presumed to know the law." *Williams v. Government Employees Ins. Co. (GEICO)*, 409 S.C. 586, 602, 762 S.E.2d 705, 714 (2014). The General Assembly is aware of Rule 55(c) and the good cause standard in the rule because the General Assembly reviews rules of civil procedure in deciding whether to disapprove them or permit them to take effect. S.C. Const. Art. V, § 4A. The General Assembly also knows how to provide for a good cause exception when it intends to do so as evidenced by the General Assembly employing a "good cause" standard in

numerous statutes.<sup>2</sup> Therefore, had the General Assembly intended to provide a good cause exception to the thirty-day requirement in Section 38-77-160, the General Assembly would have included such an exception in the statute, and the absence of such an exception indicates the General Assembly did not intend to provide for such an exception. See *Columbia/CSA-HS*, 411 S.C. at 562–63, 769 S.E.2d at 849–50 (finding that where the General Assembly provided a specific exception in one statute but did not provide that exception in the language of a second statute, that meant the General Assembly did not intend for such an exception to apply to the second statute).

Third, in essentially the opposite situation as presented here, South Carolina courts applied Section 38-77-160 to bar an insured from pursuing a UIM carrier where the insured did not precisely comply with the requirements of Section 38-77-160, and courts did so without applying any good cause exception. In *Williams v. Selective Ins. Co.*, the South Carolina Supreme Court considered the grant of summary judgment for a UIM carrier where the plaintiff insured settled with the at-fault driver's liability carrier for the policy limits in exchange for a covenant not to execute, then filed a claim with the plaintiff's

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<sup>2</sup> See, e.g., S.C. Code Ann. § 23-50-45 (South Carolina Crimestoppers Act: "Except as otherwise provided by this section, evidence of privileged communications, protected information, and protected identities is not admissible in a civil proceeding unless good cause is shown to the court."); § 49-19-1840 (Drainage Districts under 1920 Act: "All suits instituted under the preceding sections shall stand for trial as other equitable actions unless a continuance be granted for good cause shown within the discretion of the court."); § 56-16-40 (Regulation of Motorcycle Manufacturers, Distributors, Dealers, and Wholesalers: "Thereafter, the manufacturer shall not establish or relocate the proposed new motorcycle dealership unless the court has determined that there is good cause for permitting the establishment or relocation of the motorcycle dealership."); § 58-33-140 (statute governing certification of major utility facilities: "The commission may, in extraordinary circumstances for good cause shown, and giving consideration to the need for timely start of construction of the facility, grant a petition for leave to intervene as a party to participate in subsequent phases of the proceeding . . ."); § 63-9-780 (South Carolina Adoption Act: "No person may have access to the records except for good cause shown by order of the judge of the court in which the decree of adoption was entered."); § 63-9-1110 (South Carolina Adoption Act: providing that the court may waive certain requirements "upon good cause shown").

UIM carrier. 315 S.C. 532, 533, 446 S.E.2d 402, 403 (1994). The UIM carrier refused to pay the UIM benefits, and the plaintiff insured filed suit against the UIM carrier. *Id.* On appeal from the grant of summary judgment for the UIM carrier, the Court held Section 38-77-160's requirement that the insured serve the UIM carrier in the liability action is an absolute prerequisite to recovering from a UIM carrier. *Id.* at 534, 446 S.E.2d at 404. The Court did not consider whether the insured had good cause for failing to serve the UIM carrier and did not give any indication that any exception may exist to the requirement that the insured file suit against the at-fault driver and serve the UIM carrier in that suit.

Similarly, in *Ex parte Allstate Ins. Co.*, the plaintiff insured did not serve the UIM carrier with the lawsuit against the at-fault driver until after a trial of the claims against the at-fault driver. 339 S.C. 202, 203–204, 528 S.E.2d 679, 679–80 (Ct. App. 2000). The trial court granted summary judgment for the UIM carrier on the grounds the plaintiff insured failed to timely serve the UIM carrier with the lawsuit as required by Section 38-77-160. *Id.* at 204, 528 S.E.2d at 680. On appeal, the Court of Appeals rejected the plaintiff insured's explanations as to why it was permissible to serve the UIM carrier after the trial against the at-fault driver on the basis that the language of "the statute is absolute." *Id.* at 205, 528 S.E.2d at 680. The Court of Appeals held that because the plaintiff insured had not complied with the requirements stated in Section 38-77-160, the plaintiff insured had no right to UIM benefits. *Id.* at 205, 528 S.E.2d at 681. The Court of Appeals did so without any consideration of whether the plaintiff insured had good cause for failing to serve the UIM carrier until after the trial against the at-fault driver.

Fourth and finally, permitting a UIM carrier only thirty days in which to appear and participate in the defense without any good cause exception to the thirty-day requirement comports with the larger statutory scheme enacted by the General Assembly. UIM insurance coverage is a “creature of the legislature” and the right to recover from a first-party insurer for a loss caused by an uninsured or underinsured driver does not exist “except for the statute.” *Criterion Ins. Co. v. Hoffmann*, 258 S.C. 282, 290, 188 S.E.2d 459, 462 (1972). UIM coverage is a form of first-party insurance, and a first-party insurer normally has no right to participate in a suit against a third-party. See *Burgess v. Nationwide Mut. Ins. Co.*, 373 S.C. 37, 41, 644 S.E.2d 40, 42 (2007); *Criterion*, 258 S.C. at 290, 188 S.E.2d at 462; *Squires v. Nat’l Grange Mut. Ins. Co.*, 247 S.C. 58, 66, 145 S.E.2d 673, 677 (1965); *Uptegraft v. Home Ins. Co.*, 662 P.2d 681, 684 (Okla. 1983); 9 Couch on Ins. § 122:1.

Having created the UIM form of first-party insurance and given the unique nature of that coverage where an insured’s carrier pays for the liability of a third-party, the General Assembly decided to provide a UIM carrier with a limited right to participate in the defense of the at-fault driver. See *Ex parte Allstate Ins. Co.*, 339 S.C. at 207, 528 S.E.2d at 681. That limited right is an exception to the normal rule that a first-party insurer has no right to defend litigation between an insured and a third-party tortfeasor. The General Assembly could have not provided any right for the UIM carrier to defend the litigation, and then the UIM carrier would be limited to contesting coverage through a later action between the insured and the insurer. *Squires*, 247 S.C. at 66, 145 S.E.2d at 677.

However, there are reasons a UIM carrier may elect not to participate in the litigation between an insured and an at-fault driver. The UIM carrier may believe an insurance policy provision bars coverage regardless of the outcome in the liability litigation. The UIM carrier may believe the claim against the at-fault driver is so strong that the UIM carrier will be obligated to pay and any defense in the liability litigation would be a waste of attorney's fees. The UIM carrier may believe the claim against the at-fault driver is so weak or the damages so small that the UIM coverage will never be obligated to pay. Given that there are reasons a UIM carrier may choose not to participate in the defense of an at-fault driver, the General Assembly presumably intended to provide a limited period of time in which a UIM carrier can choose to participate in the defense and after which the injured party can presume the UIM carrier does not intend to participate and carry on accordingly.

**III. Even were there a Good Cause Exception to the Thirty-Day Requirement in Section 38-77-160, Good Cause Does Not Exist Here**

While there is no good cause exception to the thirty-day requirement in Section 38-77-160 as explained in the preceding sections, even were there a good cause exception, GEICO has not met it here. The good cause standard requires a party to "provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). In applying the good cause standard, "[o]nce a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a

meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *Id.* at 607–08, 681 S.E.2d at 888.

Here, GEICO did not provide a “satisfactory explanation” for failing to appear within thirty days of service. Not only was GEICO served with the suit through the Department of Insurance, but GEICO also already had notice of the suit at that time. GEICO was the liability carrier for the at-fault driver, and the counsel it appointed to defend the driver appeared prior to when Plaintiff filed the certificate of service for GEICO as the UIM carrier. The only explanation GEICO offers for its failure to appear until 177 days after service is that GEICO’s mailroom “mistakenly classified” the pleading. (Aff. of Stacie Dumas ¶ 7.) The negligence of GEICO in handling legal papers is not a satisfactory explanation.

South Carolina’s courts have affirmed findings that a party lacked good cause in similar circumstances. The Court of Appeals affirmed a finding that a defendant lacked good cause to set aside an entry of default where the explanation was the defendant’s “mistaken belief” that a co-defendant was filing an answer for both defendants. *Regions Bank v. Owens*, 402 S.C. 642, 741 S.E.2d 51 (Ct. App. 2013). The Supreme Court affirmed a finding that a defendant lacked good cause where the explanation was that the defendant lost the complaint. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 753 S.E.2d 537 (2014).

GEICO’s explanation is the same as that found not to satisfy the good cause standard in *Regions Bank* and *White Oak Manor*. GEICO effectively claims it had a “mistaken belief” as to the nature of the legal papers and that mistaken belief caused the

papers to be lost within GEICO's office. Accordingly, GEICO fails to provide a satisfactory explanation for failing to timely appear and does not satisfy a good cause standard.

Moreover, even were GEICO able to offer a satisfactory explanation, which it cannot do for the reasons stated, GEICO fails to satisfy the good cause standard due to the substantial prejudice Plaintiff would suffer by GEICO being permitted to appear now. As discussed previously herein, a UIM carrier served with a lawsuit against an at-fault driver must make a decision as to whether to appear and defend, and there are circumstances in which a UIM carrier may choose not to appear and defend. Having served GEICO as the UIM carrier in this action, Plaintiff waited more than thirty days for GEICO to appear and defend. When GEICO did not appear, Plaintiff reasonably relied on that as an indication that GEICO did not intend to appear and defend in this action. Plaintiff further reasonably relied on GEICO's decision not to appear and defend by entering into a covenant not to execute with the at-fault driver in exchange for the at-fault driver agreeing to pay less than the limits of the at-fault driver's liability policy. Plaintiff did so knowing that the UIM carrier was not appearing to contest the liability component of Plaintiff recovering UIM benefits. Because GEICO did not appear, Plaintiff entered into the covenant not to execute and relinquished its options to:

- (1) Make a *Tyger River*<sup>3</sup> policy limits demand to GEICO as the liability carrier for the at-fault driver, and

---

<sup>3</sup> *Tyger River Pine Co. v. Maryland Casualty Co.*, 170 S.C. 286, 170 S.E. 346 (1933).

- (2) Proceed to trial against the at-fault driver to recover the full amount of the at-fault driver's liability policy.

Accordingly, Plaintiff substantially relied on and altered her position due to GEICO's failure to appear in this action. Should the Court allow GEICO to make an untimely appearance, Plaintiff would suffer substantial prejudice.

Because GEICO cannot establish a satisfactory explanation for its failure to appear and because Plaintiff would suffer substantial prejudice from GEICO's late appearance, GEICO cannot establish good cause. Therefore, even were there a good cause exception to the requirement in Section 38-77-160 that a UIM carrier appear within thirty days of service, GEICO would not satisfy the requirements of such an exception.

**CONCLUSION**

For the reasons stated herein, the Court should withdraw its order and enter an order granting Plaintiff's Motion to Quash and denying GEICO's Motion for Relief from Default.

Respectfully Submitted,

**THE STEINBERG LAW FIRM LLP**  
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Summerville, South Carolina 29484  
(843) 871-6522

By: s/Steven E. Goldberg  
Steven E. Goldberg  
F. Elliotte Quinn IV  
Attorneys for Plaintiff

Summerville, South Carolina  
May 11, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NUMBER: 2018-CP-08-01079
Latarsha Docena-Guerrero,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>MEMORANDUM IN OPPOSITION</b>
	)	<b>TO PLAINTIFF'S MOTION TO</b>
Rafael Docena-Guerrero,	)	<b>RECONSIDER</b>
	)	
Defendant.	)	
_____	)	

GEICO Insurance Company, as the underinsured motorist carrier, submits the following in opposition to the Plaintiff's Motion for Reconsideration of the Court's order denying the Plaintiff's Motion to Quash GEICO's Notice of Appearance and Conditional Answer.

**STATEMENT OF FACTS:**

This matter arose from GEICO's Motion for Relief from Default and the Plaintiff's Motion to Quash the appearance by GEICO as the UIM Carrier. The Court agreed that the UIM carrier should have the right to defend this claim, denied the Plaintiff's Motion to Quash, and accepted GEICO's Notice of Appearance as if timely filed. Counsel for the Plaintiff filed a Motion for Reconsideration, asserting that the only law that applied to this situation is S.C. Code of Laws §38-77-160 and that GEICO cannot seek relief under the South Carolina Rules of Civil Procedure. The Plaintiff claims that §38-77-160 sets forth a thirty (30) day Statute of Limitations. The Court disagreed and denied the Plaintiff's Motion to Quash.

The Statement of Facts concerning GEICO's Motion for Relief was set forth in the original memorandum in support of its Motion for Relief from Default and will not be repeated here. The prior statement of facts is incorporated herein by reference.

The Plaintiff asserts that she relied on the late response by GEICO in determining to settle with GEICO as the primary carrier for less than the primary limits. However, the Plaintiff actually offered to settle with GEICO for less than the limits on a full release prior to the lawsuit being filed. On April 28, 2017, the Plaintiff made a demand to settle within the primary liability limits for \$24,000 on a full release. (Letter from Steven Goldberg dated 4/28/17, attached hereto as Exhibit # 1). Thus, the current position that the Plaintiff was prejudiced by settling for less than the policy limits is inconsistent with the prior written demand.

Counsel for the Plaintiff never filed for an Entry of Default nor placed GEICO into default. There was no entry of default in this case. No Default Judgment was ever obtained or filed. The Plaintiff could not have possibly changed her position in reliance on any Entry of Default or Default Judgment in this case, as there was none.

Counsel for the Plaintiff claims that the thirty (30) day time limit in S.C. Code of Laws §38-77-160 is a Statute of Limitations, beyond which there is no means for a UIM carrier to file an appearance and defend a case. The Plaintiff is attempting to prohibit her own insurance carrier from defending this claim on the merits. Such a position is improper. There is no Statute of Limitations under South Carolina law that is so short and eliminates the rights of any party or entity. The acceptance of the late filing should be handled under the South Carolina Rules of Civil Procedure, just as any filing of an answer, motion for relief from default, or motion to extend the time to answer.

To further undermine the UIM carrier's ability to defend the claim, counsel for the Plaintiff then sent a message to the Defendant Rafael Docena through his client Latarsha Docena to retain Mr. Goldberg's friend Jonathan Altman as personal counsel. Emails from Steven Goldberg to Tom Milligan dated 2/21/20, attached hereto as Exhibit # 2). This action occurred when the Defendant was already personally protected by a

covenant and there was no known legitimate need for him to retain personal counsel. The Defendant and Plaintiff's spouse Rafael Docena then hired Mr. Goldberg's friend Jonathan Altman to represent him. (Letter of Representation from Jon Altman, attached hereto as Exhibit # 3.) This means that the associated attorneys are now representing both the Plaintiff and the Defendant in the case.

Counsel for the Plaintiff takes the position that (1) a UIM carrier has no recourse at all if the Notice of Appearance is not filed within thirty (30) days of service and (2) that it is proper for the Plaintiff's team to represent both the Plaintiff and the Defendant at trial. The apparent purpose of these actions is to prevent the UIM carrier from having any ability to defend the claim against it by its insured. Indeed, if counsel for the Plaintiff has his way, the Plaintiff's team would be conducting both the offense and defense at the trial of this matter with no input from the target UIM carrier. Unless there is some rational, legitimate explanation for these actions, this is not proper and should not be allowed.

**LEGAL ARGUMENT:**

The very first rule of the South Carolina Rules of Civil Procedure state that the laws of South Carolina are to be construed to secure the **JUST** determination of every action. SCRPC Rule 1. The United States Constitution and the South Carolina Constitution prohibit takings without Due Process of Law. S.C. Code of Laws §38-77-160 was enacted for the very purpose of ensuring that the UIM carrier have the right to contest its liability for underinsured motorist's benefits. *Williams vs. Selective Insurance Company*, 315 S.C. 532, 446 S.E. 2d 402 (1994). The statute specifically states that the UIM carrier has the right to appear and defend the claim against it.

The Courts have repeatedly stated that they will not stand for underhanded tactics to unfairly thwart the UIM carrier's rights. See, *Broome vs. Watts*, 319 S.C. 337, 461 S.E. 2d 46 (1995)(The Court refused to allow the Plaintiff to get the Defendant to waive the

rights of the UIM carrier.) The South Carolina Department of Insurance addressed the issue that §38-77-160 does not sanction collusive settlements or to otherwise circumvent the underinsured motorist insurer's right or opportunity to defend. S.C. Dept. of Ins. Bulletin No. 4-89(1989)(Bulletin 4-89 withdrawn by Bulletin 2002-10).

In this case, Counsel for the Plaintiff claims that the Plaintiff is somehow unfairly prejudiced because she accepted an amount less than the policy limits on a covenant. This position is inconsistent with the pre-trial demand to settle on a full release for less than the policy limits. The only "prejudice" to the Plaintiff in this case is that she will have to try her case on the merits, with someone actually defending the case on behalf of the UIM carrier. Having to try a case on the merits should not be considered to be "prejudicial".

It should also be pointed out that the obligation of good faith in a first party setting is a two-way street. The court in the seminal case of *Nichols vs. State Farm Mutual Insurance Company*, 279 S.C. 336, 306 S.E. 2d 616 (1983) stated that the obligation of good faith is an obligation that **NEITHER PARTY** will do anything to impair the other's rights to received benefits under the contract. The attempt by the insured to prohibit the UIM carrier from defending a claim and substituting a member of the Plaintiff's team as counsel for the Defendant is a clear violation of the Plaintiff's duty of good faith to the insurance carrier. It takes twisted logic to think that this scenario is in any way "just".

Courts should strive so as to promote the ends of justice and dispose of cases on their merits. *In re Estate of Weeks*, 329 S.C. 251, 495 S.E. 2d 454 (S.C. App. 1997). In this case, the Plaintiff's Motion for Reconsideration should properly be denied. The Court should also examine the appropriateness of this tactic of Plaintiff's counsel getting his

friend to represent the Defendant, effectively establishing the Plaintiff's team as representing both the Plaintiff and the Defendant.

MILLIGAN & HERNS, PC

s/ *Tom Milligan*

---

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ATTORNEYS FOR GEICO INSURANCE  
COMPANY, as the purported UIM Carrier

May 21, 2020  
Mount Pleasant, SC

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
	)	
Latarsha Docena-Guerrero,	)	CASE NO. 2018-CP-08-01079
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	ORIGINAL
	)	
Rafael Docena-Guerrero,	)	
	)	
DEFENDANT.	)	
	)	

March 10, 2020

Moncks Corner, South Carolina

B E F O R E:

The Honorable Roger Young

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

Steven E. Goldberg, Esquire  
For the Plaintiff

Thomas H. Milligan, Esquire  
For the Defense

*Certified Transcript Provided For: Steven Goldberg*

***Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter***  
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464  
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I N D E X

HEARING -- 03

EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT -- 16

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1

1 THE COURT: Somebody tell me what is going on here. It  
2 says his client isn't in default.

3 MR. GOLDBERG: Correct, Your Honor. I guess I will go  
4 first and then Mr. Milligan can kind of answer. Yes, so, Your  
5 Honor, this matter started -- Steven Goldberg here on behalf  
6 of the plaintiff, Latarsha Docena-Guerrero.

7 The summons and complaint was filed back in June of 2018.  
8 Geico assigned Meg Van Horn to be the attorney for the  
9 defendant in defense of the case. Through the course of  
10 discovery we thought that we could exceed the limits of the  
11 minimum on this policy so therefore we filed on August 26,  
12 2019, pleadings upon the Department of Insurance against the  
13 UIM carrier which also happens to be Geico.

14 We did receive a letter from the Department of Insurance  
15 verifying that service has been effectuated. And then I  
16 actually filed that letter with the court immediately and send  
17 it electronically to all of the parties involved.

18 No answer, no appearance, no demur. Had been filed on  
19 behalf of the UIM carrier within 30 days. In fact, it was  
20 about six or seven months; but I will get back to that.

21 So eventually the matter between the defendant and  
22 plaintiff was settled by way of a covenant not to execute in  
23 December of 2019. And then two months later on February 19th  
24 a conditional answer on behalf of the UIM was filed. In that  
25 filing the filing states that Mr. Milligan represents only the

1 UIM carrier.

2 But also -- and again, this is now seven months now  
3 post-service. But also on that date Mr. Milligan files a  
4 motion, relief from default. As you have kind of noted and as  
5 Mr. Altman stated, there is no order of default.

6 You know, he says he is also filing on behalf of the  
7 defendant. I think that was just a mistake, because he  
8 doesn't represent the defendant technically. But, again, as  
9 mentions in his conditional answer, he only represents UIM.

10 Too -- or more importantly, like I said, there is no  
11 order of default. Never was. So I think we can all agree  
12 that motion -- I don't even know if the word fail is  
13 appropriate. There is -- there is nothing to get out of  
14 default. There is no order. There is no post-judgment  
15 relief.

16 I have, and as you see, filed a motion to strike the  
17 answer of the UIM carrier and the appearance based on the  
18 clear terms of 38-77-160 which I will be able to discuss.

19 Then the UIM carrier file a memorandum in support of the  
20 relief from default. Again, just for arguments sake, I don't  
21 believe that was necessary because there is no default.

22 And I assume - I am making assumptions here. Mr.  
23 Milligan will get to talk after me obviously - that he is  
24 using the terms of getting out of default under 60(b), Rule  
25 60(b) or 55 and will make the same considerations that he

1 should be allowed to jump in seven months later.

2 And his memo obviously -- or his memo doesn't even  
3 address the statutory requirement, so I am not sure what his  
4 argument is going to be.

5 Again, the trial judge has wide discretion to interpret  
6 the Rules of Civil Procedure. But in this case we believe the  
7 statute controls.

8 Remember, UIM is not a party to this case. They have no  
9 rights until they go through the appropriate methods and that  
10 of being served and then answering within those 30 days.

11 The insurer has a right to appear to defend in the name  
12 of the underinsured motorist in any action which may affect  
13 its liability and has 30 days after service of process in  
14 which to appear. You know, in essence this is a statute of  
15 limitations for them.

16 Again, according to the affidavit that was filed by Mr.  
17 Milligan, they received it. That's not an issue here whether  
18 they got it or didn't get it. They stated they got it from  
19 the Department of Insurance. They thought it was duplicative  
20 so they didn't do anything with it. We will get back to that  
21 in a second.

22 But I'm not sure what the Court can rule on this at this  
23 point. Because this, again, I compare this to a statute of  
24 limitations case. Let's say I miss a statute of limitations  
25 by a month because I forgot to file it, I thought my associate

1 did, I don't think I can come here and say Judge can you  
2 expand the statute of limitations by another 30 days for me.

3 Sure, you can make determinations on what a date of an  
4 event is -- I mean the date of discovery or last injurious  
5 exposure and those type of cases. But once the date of events  
6 happens I have got three years to file that or else I am out  
7 on the statute of limitations.

8 I don't think I can invoke the Rules of Civil Procedure,  
9 like Rule 55 or Rule 60 and say well it was a mistake and I  
10 have a good argument and, you know, they didn't change their  
11 positions or the things he is going to argue. I don't think  
12 that the Court has really jurisdictional on this matter to  
13 allow them in.

14 So, again, they didn't file and now they cannot make  
15 appearance by the strict statute - by the strict  
16 interpretation of the statute.

17 So but for arguments sake let's go through the arguments  
18 that -- let's say that the rules under 60(b) they do apply.  
19 The first thing they talk about is it was a mistake, it was  
20 just -- you know, they thought it was duplicative, they got  
21 the pleadings, they just didn't do anything with it because  
22 they thought they already had done something.

23 Well, I would take exception to that argument because it  
24 can't be duplicative. Sure they got a copy of the summons and  
25 complaint; but they also got the letter which I referenced

1 earlier which is made a part of this file of August 26th,  
2 2019, which states you have been served -- as Geico has been  
3 served as the UIM carrier in the matter and you have, you  
4 know, a time to -- here is the statute, go figure out what you  
5 need to do.

6 So for them to say, well, I got it and it was just  
7 duplicative, it was a simple mistake, kind of negates the fact  
8 that there was a letter with it and it wasn't duplicative.

9 This letter, you know, I have checked with the Department  
10 of Insurance. They have admitted in their affidavit they got  
11 this from the Department of Insurance.

12 One of the other things that Mr. Milligan argues is that,  
13 well, I didn't change my -- nothing has changed for me because  
14 of this, because of the 30 days, I have incurred no prejudice  
15 as a change in position based on the reliance on the delay and  
16 the notice of appearance.

17 Well, I have. And here's how: I settled this matter on  
18 a covenant not to execute for a little bit less than the full  
19 amount. And why did I do that? Well, it was four months post  
20 UIM having a right to file. And I think, well, if they are  
21 not going to have a lawyer it may make, I admit, an easier  
22 path to get to the UIM coverage. Also I have given up my  
23 right for Tiger River in case we got an excess verdict and  
24 they didn't want to pay it. I have given up rights to  
25 appeals. I have given up a lot. I have changed my

1 complete -- I have actually changed the way I have handled  
2 this case based on the fact that they failed to make an  
3 appearance. So for them to say, well, I haven't done anything  
4 differently is just not correct.

5       Again, this case was, you know -- by the way, the case  
6 was settled for months post there period where the UIM should  
7 have filed. So it wasn't like it was filed the next day. We  
8 spend four months. I never got -- maybe if they would have  
9 filed in that period they can make the argument. But I  
10 settled this case based on that reliance.

11       So, again, Your Honor, to recaptulate- -- to recapture  
12 what I've talked about, we believe statutory construction  
13 governs how a non defendant can appear in a filed case, not  
14 the Rules of Civil Procedure. And even if the Rules of Civil  
15 Procedure were to apply, it is not duplicative; it is not a  
16 mistake. It may have been a mistake for them not answering,  
17 but it wasn't -- you know, they -- there is nothing -- there  
18 is no reason why they shouldn't have or didn't know to. And  
19 also that I relied heavily on this.

20       THE COURT: Okay. Mr. Milligan.

21       MR. MILLIGAN: May it please the Court. Your Honor, I  
22 think it is ridiculous to classify this statute as a statute  
23 of limitations. It is not. It is a time period for filing  
24 notice of appearance after service, just like it is for the  
25 defendant to file an answer after they have been served. And

1 those things are frequently allowed to be answered late,  
2 either by consent or by order from the court.

3 And in this case what happened is -- and, first of all,  
4 this is a wife suing a husband under the same policy. The  
5 husband is the driver. He is the at-fault person in here.  
6 And so there's obviously a big opportunity here for collusion  
7 in this case.

8 But it is a very minor accident that doesn't justify any  
9 significant claim for injuries. And, in fact, Mr. Goldberg  
10 originally offered to settle this case within the limits for a  
11 complete release, not just a covenant.

12 And so in this case they filed suit. They served Geico  
13 on August 26, 2019, through the Department of Insurance.  
14 Geico admits that the complaint was received in their mail  
15 room. It was mistakenly classified as a redundant complaint  
16 and sent to the same adjuster who was defending the case as  
17 opposed to a separate adjuster, which is what they normally  
18 do, they separate out liability from UIM coverage. And  
19 because of that mistake it wasn't assigned out to defense  
20 counsel.

21 Geico had hired Meg Horn who was actively defending the  
22 case. And the case didn't settle until December of 2019. And  
23 the case never got put into default. The case got assigned to  
24 us in February. We filed our notice of appearance. It wasn't  
25 in default. I filed a motion for relief from default simply

1 because the answer hadn't been made within the 30 days, the  
2 appearance hadn't been made within the 30 days.

3 But there is no default. There is no prejudice at all to  
4 the plaintiff. And this is a case in which the standard for  
5 allowing us to file this notice of appearance is the lowest  
6 standard, good cause shown. And when there is a mistake like  
7 this made, no prejudice, there is certainly the grounds for  
8 allowing us to file this answer and defend this case.

9 What Mr. Goldberg wants is to be able to prosecute this  
10 case without the UIM carrier having any right to defend it.  
11 And that is what shouldn't be allowed. We should try this  
12 case for the merits.

13 Now, as you know, the case law states that the court  
14 should strive to have cases tried on their merits and not this  
15 type of collusive, you know, atmosphere where the wife is  
16 suing the husband.

17 And this is a case in which Mr. Goldberg suggested to the  
18 wife that the husband get Mr. Altman, his friend, involved.  
19 And so now I have to go through Mr. Altman in order to contact  
20 the defendant.

21 And so those are situations that just aren't right and  
22 shouldn't be allowed. We should be allowed to defend this  
23 case.

24 MR. GOLDBERG: If I could just briefly. He -- Mr.  
25 Milligan makes my exact point in argument. He is mushing

1 these things together. He says that there is 30 days to  
2 answer and you can always let them out. There is 30 days to  
3 answer under the Rules of Civil Procedure which you control.  
4 And if you thought it was a mistake and they missed that  
5 30-day period there is nothing statutory which says if I file  
6 a summons and complaint that the defendant has 30 days to  
7 answer. That is under the Rules of Civil Procedure. And if  
8 they miss that then I can go to default. And if they then say  
9 we want to get relief from that default you can relieve them  
10 from that default.

11 But the statute says they have 30 days in which to file  
12 an answer. What is the purpose of that? The Legislature  
13 didn't say 30 days unless good cause is shown. It says you  
14 have got 30 days. It is exactly like a statute of  
15 limitations. It is exactly it is.

16 And as far as -- he says, well, Geico should have a right  
17 to defend. They had a right to defend. They should have  
18 filed within the 30-day period. They didn't.

19 To say this is collusion -- yes, John is my friend; but  
20 John is going to advise his client, and I don't think John is  
21 going to risk his career -- his reputation and all for this  
22 guy just to help me out. He wrote a letter. He says he's not  
23 taking a position on that second thing. He could have taken a  
24 position and say yeah, kick them out. He didn't.

25 So, again, we are putting together Rules of Civil

1 Procedure and statutory construction. And what he said was  
2 the 30 days. There is nothing in the statute that says you  
3 have 30 days to file an answer to a complaint. That is under  
4 the Rules of Civil Procedure; and, yes, Your Honor, you are  
5 the master of that domain.

6 But as far as the statutory is concerned, they have 30  
7 days. It is a policy that my client bought. And he talks  
8 about fairness. My client bought.

9 They say, well, it is not a bad injury. Why did they pay  
10 \$22,000 on a case that was minor injuries on it; for Geico,  
11 for all people.

12 She needs surgery. They want -- so, again, my lady buys  
13 a policy. They have to -- it is captive what her UIM limits  
14 are, which is I think minimum limits. I am sorry that they  
15 didn't -- you know, these are tough things. But Geico could  
16 have settled with me beforehand. If we want to go back far  
17 enough before it had to file the suit for a reasonable amount  
18 we wouldn't be here. They take the risk of saying, hey, let's  
19 go play by the rules -- let's go play by the court rules. We  
20 are not going to pay you, so I had to file a suit. Their  
21 first offer was \$8,000. That is why I filed this suit.

22 And now we go through the system that they made me go  
23 through and they are now upset that, well, I know we didn't  
24 follow the rules but why should everybody else.

25 So, again, we just think that -- I understand try it on

1 the merits and all that. It will be tried on the merits, and  
2 the person will have -- you know, a defendant will be  
3 protected. And UIM is not a party to this case. Geico --  
4 there's only one way they can be a party to this case, and  
5 that is following the statute that I quoted earlier.

6 Thank you.

7 THE COURT: Do you want to respond?

8 MR. MILLIGAN: Just briefly, Your Honor. The court in  
9 Williams versus Selective Insurance Company stated that the  
10 very intent of this statute is to allow the UIM carrier the  
11 right to defend itself.

12 In Broome versus Watts the Supreme Court described the  
13 UIM carrier as the actual defendant in the case when the  
14 primary carrier had settled out and the defendant was  
15 protected.

16 The only person -- the only entity exposed to the -- for  
17 the loss in this case is the UIM carrier, and they should have  
18 the right to defend this case.

19 Our motion for relief from default was filed before Meg  
20 Horn got out of this case. And so the case has always been  
21 defended by an attorney who was hired by Geico.

22 There is absolutely no prejudice, no reason not -- for  
23 this motion not to be granted.

24 MR. GOLDBERG: Your Honor, I would only respond that Ms.  
25 Horn does not represent Geico. There's lots of case law I

1 didn't bring with me. And so she represents the defendant. I  
2 don't know if she is the one that told Geico or how Geico  
3 found out nine months later.

4 But, again, Your Honor, I have been prejudiced. I have  
5 given up my -- I have signed a covenant not to execute that I  
6 would not have signed had they have filed their pleadings. So  
7 I have been prejudiced.

8 And, you know, again, those cases he cites talks about  
9 them having the right. And here's the mechanism on how they  
10 need to do it, by filing an answer within 30 days. They get a  
11 letter from the South Carolina Department of Insurance. This  
12 letter was sent to Geico's lawyer. Meg Horn had this letter.  
13 I am sure Meg sent it on to the insurance company.

14 You know, it is like me missing the statute of  
15 limitations. You would be like, Mr. Goldberg, I'm sorry, I -  
16 I thought -- my computer was broken. You would be like I  
17 can't extend the statute of limitations for you. You know.  
18 Thank you.

19 THE COURT: I haven't had to deal with this one before.  
20 Let me think it over. I haven't got an answer right now. So  
21 I am not one to say poor insurance company. That doesn't  
22 usually go in the same sentence with me. But at the same time  
23 we usually try to -- people just make a mistake on a  
24 procedural matter we usually try to fix it and get a case  
25 tried on its merits. But I will take a look at it and give it

1 some thought. I will let you know.

2 MR. MILLIGAN: Thank you, Your Honor.

3 MR. GOLDBERG: Thank you, Your Honor.

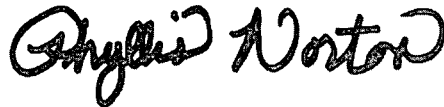
4 (WHEREUPON, the hearing adjourned.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on March 10, 2020.

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



PHYLLIS NORTON, CVR

Date: April 1, 2020

*Certified Transcript Provided For: Steven Goldberg*  
*Certification Reference #2020-0401 Original*

DAVID T. PEARLMAN  
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MICHAEL J. JORDAN  
BENJAMIN W. AKERY



CATHERINE D. MEEHAN  
KELLY M. ALFREDS  
CHARLES S. GOLDBERG, I.L.C.  
OF COUNSEL  
HUGO M. SPITZ (RETIRED)  
IRVING STEINBERG (1902-1980)

103 Grandview Dr, Suite A | P.O. Box 2670 | Summerville | SC | 29484 | (843) 871-6522 | (843) 871-8565 fax | steinberglawfirm.com

April 28, 2017

Sam McKenzie  
Geico  
One Geico Center  
Macon, GA 31296

Re: Claim No.: 051472920-0101-020  
Your Insured: Raphael Docena  
Our Client: Latarsha Docena-Guerrero  
DOA: February 4, 2016  
Our File No.: 201612016

Dear Sam:

We are in receipt of your offer of \$5,165.14 to settle the above-referenced claim. Unfortunately, we are unable to accept your offer. At this time we would be willing to accept \$24,000.00 in exchange for a Release. Please review this claim at your earliest convenience and contact me to discuss. I look forward to speaking with you.

With kind regards, I am

Sincerely,

Steven E. Goldberg  
Email: sgoldberg@steinberglawfirm.com  
Direct Fax: (843) 735-6351

SEG/bgc

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )  
  
Latarsha Docena-Guerrero, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Rafael Docena-Guerrero, )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NUMBER: 2018-CP-08-01079

**AFFIDAVIT OF STACIE DUMAS**

Personally appeared before me, Stacie Dumas, who being duly sworn, deposes and says  
as follows:

1. That I am an adjuster with GEICO Insurance Company.
2. That I am over the age of eighteen years old and I am competent to make this statement.
3. That this is a case in which the Plaintiff Latarsha Docena-Guerrero was a passenger in the vehicle being operated by her husband Rafael Docena-Guerrero.
4. That GEICO provided both liability coverage and underinsured motorist coverage (UIM) in the vehicle that the Defendant was operating.
5. I was assigned to handle the liability portion of the above referenced case.
6. That I assigned defense counsel Meg Horn to defend the case.
7. That, when the Summons & Complaint was received by the mail room from the South Carolina Department of Insurance for service on the underinsured motorist carrier, the subsequent pleading was mistakenly classified as a redundant copy of the original pleading instead of as service on GEICO as the UIM carrier.
8. That there has never been an entry of default in this case.
9. That, upon learning that GEICO had been served as the UIM carrier, the UIM defense

was assigned to defense counsel Tom Milligan.

- 10. That on or about February 21, 2020, defense counsel filed a motion for relief from default and a notice of appearance on behalf of GEICO as the UIM carrier.
- 11. That defense counsel Tom Milligan substituted in for Meg Horn to defend the case.
- 12. That GEICO has provided a defense of this action throughout the handling of this file.
- 13. That there exists good cause to set aside the failure to timely file a notice of appearance on behalf of GEICO as the UIM carrier due to the mistake in classifying the subsequent service of the Complaint on GEICO as a redundant copy of the original pleading.
- 14. That the Plaintiff has not filed for an entry of default nor obtained a default judgment.

Therefore, there is no prejudice to the Plaintiff in allowing defense counsel Tom Milligan to assume the defense of the case to its conclusion.

FURTHER AFFIANT SAYETH NOT.

Stacie Dumas  
Stacie Dumas

Sworn before me this 24<sup>th</sup> day of

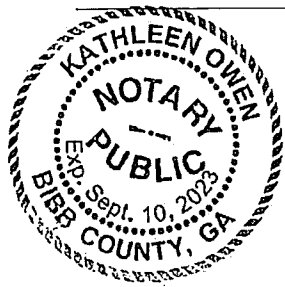
February, 2020

Kathleen Owen

Notary Public

State of Georgia

My commission expires: 9/10/23



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

COVENANT NOT TO EXECUTE

KNOW ALL MEN BY THESE PRESENTS that we, LATARSHA DOCENA-GUERRERO AND RAFAEL DOCENA-GUERRERO, HUSBAND AND WIFE, , for the sole consideration of TWENTY TWO THOUSAND AND NO/100 (\$22,000.00) DOLLARS to us in hand paid by and on behalf of RAFAEL DOCENA-GUERRERO and his insurance company, GEICO INDEMNITY COMPANY, under its policy number, 4406465304, do hereby covenant for myself, my heirs, executors, administrators, and assigns, not to execute against the said RAFAEL DOCENA-GUERRERO and his successors or assigns on account of bodily injuries, medical expenses, future medical expenses, pain and suffering, or death, including emotional or mental suffering, resulting or to result from injuries sustained by LATARSHA DOCENA-GUERRERO, when She was injured on or about February 16, 2016, as a result of an automobile accident occurring in Berkeley County, South Carolina.

FURTHERMORE, in consideration for the amount paid, the undersigned hereby covenants and agrees that if she obtains a judgment against RAFAEL DOCENA-GUERRERO, that she will not execute against them on the judgment and, upon obtaining any such judgment, he and his attorney will cause the judgment to be marked and entered as satisfied.

In consideration of the above payment, the undersigned also agrees that this settlement is a compromise of a doubtful and disputed claim and that the payment made in settlement thereof is not to be construed as an admission of liability on the part of the party or parties or any of them benefitting from said Covenant.

The undersigned further declares and represents that no promise or inducement or agreement not herein expressed has been made to the undersigned and that this Covenant contains the entire agreement between the parties hereto, and the terms of this Covenant are contractual and not a mere recital.

The undersigned expressly agrees to indemnify RAFAEL DOCENA-GUERRERO and his insurance company, GEICO INDEMNITY COMPANY against loss from any and all claims, demands, or actions that may hereafter be brought against RAFAEL DOCENA-GUERRERO and his insurance company, GEICO INDEMNITY COMPANY or anyone on their behalf for the purpose of enforcing any claim for damages or claims for contribution regarding the automobile accident of February 16, 2016.

In making this Covenant, the undersigned relies wholly on their own judgment, belief and knowledge of the nature, extent and duration of such injuries and damages. No representations or statements regarding these injuries or damages or any matter made by RAFAEL DOCENA-GUERRERO and his insurance company, GEICO INDEMNITY COMPANY, or by their agents or representatives, have been relied on to any extent whatsoever in making this Covenant.

It is hereby expressly agreed and understood that this instrument is not intended as a release or discharge nor as an accord or satisfaction with any person whomsoever, but only as a Covenant Not to Execute against RAFAEL DOCENA-GUERRERO and his insurance company, GEICO INDEMNITY COMPANY and/or their representatives, successors and assigns, and to the effect that his representatives hereby purchase peace upon any and all claims and matters whatsoever which have been or may be made against the said RAFAEL DOCENA-GUERRERO and his

insurance company, GEICO INDEMNITY COMPANY and/or their representatives, successors, and assigns, by the undersigned.

The undersigned agrees that if there exists any subrogation or assignment, lien or interest, whether created by contract, statute, or otherwise, that he will settle and satisfy any such lien or interest from the proceeds of this settlement, that he will obtain a Release from the persons or entities holding such interest, and that he will protect, save, defend, hold harmless, and indemnify RAFAEL DOCENA-GUERRERO and his insurance company, GEICO INDEMNITY COMPANY from any such subrogation or assignment, claims or interest.

It is further expressly understood and agreed that nothing herein contained shall in any way tend to release or discharge or shall in any way be construed as releasing or discharging any other persons or any corporation against whom the undersigned may have or assert any claim as a result of the aforementioned accident. The undersigned expressly reserves the right to pursue against all other potential tortfeasors and any other person, company, or corporations against whom he may have any claim as a result of the aforementioned accident.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 19<sup>th</sup> day of December 2019, in the presence of the below-named witnesses.

I have read the foregoing Covenant Not to Execute and accept the terms hereof as witnessed by the signatures hereon.

WITNESSES:

Rene S. J.

Shanondrah Elliott

Latarsha Docena-Guerrero

LATARSHA DOCENA-GUERRERO individually  
and as WIFE of RAFAEL DOCENA-GUERRERO

Rene S. J.

Shanondrah Elliott

Rafael Docena-Guerrero

RAFAEL DOCENA-GUERRERO individually and  
as HUSBAND of LATARSHA DOCENA-  
GUERRERO

## Monica Correa

---

**From:** Steven Goldberg  
**Sent:** Friday, February 21, 2020 9:14 AM  
**To:** 'tom@milliganlawfirm.com'  
**Subject:** Regarding: Docena-Guerrero, Latarsha vs. Docena-Guerrero, Rafael (File #: 201612016)

Tom,

I got an NEF from the court stating a you filed a substitution of counsel. Are you personally now going to represent Mr. Docena? Your answer for GEICO states you are not representing him.

Also I noticed you filed a motion for relief from Default. In that document you hold out that you represent Mr. Docena as it says "the defendant, by and through his undersigned attorneys" and of course you have not been substituted at this point. Nonetheless, he is not in default so I think the motion is moot.

In reviewing the file, it appears that the named insured is my client only according to a letter I received from GEICO.

I have given my client Jon Altman's name and asked her to have her husband call him to see if he can have personal counsel to help us all sort out what roles you and Meg have at this point.

Feel free to call me to discuss.

Steven Goldberg, Esquire  
The Steinberg Law Firm, LLP  
103 Grand View Drive  
Summerville, South Carolina 29485

Ph. 843-871-6522  
sgoldberg@steinberglawfirm.com

### CONFIDENTIALITY NOTICE

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**From:** [Steven Goldberg](#)  
**To:** [tom@milliganlawfirm.com](mailto:tom@milliganlawfirm.com)  
**Subject:** Regarding: Docena-Guerrero, Latarsha vs. Docena-Guerrero, Rafael (File #: 201612016)  
**Date:** Friday, February 21, 2020 12:50:51 PM

---

Hey,

Saw the actual order which makes more sense. Not an actual substitution... Jon Altman is meeting with Mr. Docena next week.

Have a good weekend and speak to you soon about this.

Steven Goldberg, Esquire  
The Steinberg Law Firm, LLP  
103 Grand View Drive  
Summerville, South Carolina 29485

Ph. 843-871-6522  
[sgoldberg@steinberglawfirm.com](mailto:sgoldberg@steinberglawfirm.com)

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92842

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas  
Roger C. Young, Circuit Court Judge

**RECEIVED**  
JUN 19 2020  
SC Court of Appeals

Case No. 2018-CP-08-01079

Latarsha Docena-Guerrero,

Appellant,

v.

Rafael Docena-Guerrero,

Defendant

And

Government Employees Insurance  
Company, as underinsured motorist  
insurance carrier,

Respondent.

RESPONDENT GEICO'S MOTION TO DISMISS  
INTERLOCUTORY APPEAL

The Respondent Government Employees Insurance Company (hereinafter "GEICO") moves to dismiss this appeal on the basis that the Appellant is attempting to appeal an interlocutory order. Only final decisions may be appealed pursuant to the South Carolina Rules of Civil Procedure Rule 72 and the South Carolina Appellate Court Rules, Rule 201 *Right to Appeal*.

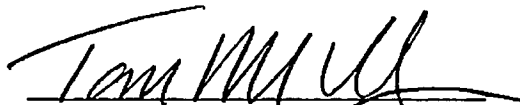
The appellant is attempting to appeal the circuit court's Order Denying Motion to Quash the Answer and Appearance by the UIM Carrier and Granting Motion for Relief from Default, and the denial of the follow up Motion for Reconsideration. Such orders are not final judgments.

South Carolina adheres to the Final Judgment Rule, which provides that, with limited exceptions, an appeal lies only from a final judgment. Brunson vs. American Koyo Bearings, 367 S.C. 161, 623 S.E. 2d 870 (S.C. App. 2005). An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review is considered an interlocutory order from which no immediate appeal is allowed. Hagood vs. Summerville, 363 S.C. 191, 607 S.E. 2d 707 (2005). An order setting aside an entry of default is not appealable until after final judgment. Ateyah vs. United of Omaha Life Insurance Company, 293 S.C. 436, 361 S.E. 2d 340 (S.C. App. 1987).

The Plaintiff's attempt to appeal the court's decision to grant a motion for relief from default and denying the Plaintiff's attempt to quash the appearance of the UIM carrier is clearly not immediately appealable. Therefore, the Respondent GEICO moves that the appeal be stricken.

Respectfully submitted,

MILLIGAN & HERNES, PC



Thomas H. Milligan (SC Bar # 12272)  
721 Long Point Road, Suite 401  
Mt. Pleasant, SC 29464  
(843) 971-6750  
Email: [tom@milliganlawfirm.com](mailto:tom@milliganlawfirm.com)

June 17, 2020  
Mt. Pleasant, SC

ATTORNEY FOR RESPONDENT  
GEICO

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas  
Roger C. Young, Circuit Court Judge

---

Case No. 2018-CP-08-01079

---

Latarsha Docena-Guerrero,

Appellant,

v.

Rafael Docena-Guerrero,

Defendant

And

Government Employees Insurance  
Company, as underinsured motorist  
insurance carrier,

Respondent.

---

RESPONDENT GEICO'S MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS INTERLOCUTORY APPEAL

---

The Respondent Government Employees Insurance Company (hereinafter "GEICO") has moved to dismiss this appeal on the basis that the Appellant is attempting to appeal an interlocutory order. Only final decisions may be appealed pursuant to the South Carolina Rules of Civil Procedure Rule 72 and the South Carolina Appellate Court Rules, Rule 201 *Right to Appeal*.

In this case, the Respondent GEICO as the UIM carrier filed a Motion for Relief from Default for failure to timely file a Notice of Appearance. The Plaintiff filed Motion to Quash the appearance of GEICO. The Honorable Roger Young granted GEICO's Motion for Relief and

denied the Plaintiff's Motion to Quash and Motion for Reconsideration. These are not final judgments and these decisions do not end the case. These decisions set the case on course for trial on the merits.

The appellant is attempting to appeal the circuit court's Order Denying Motion to Quash the Answer and Appearance by the UIM Carrier and Granting Motion for Relief from Default, and the denial of the follow up Motion for Reconsideration. Such orders are not final judgments. South Carolina adheres to the Final Judgment Rule, which provides that, with limited exceptions, an appeal lies only from a final judgment. Brunson vs. American Koyo Bearings, 367 S.C. 161, 623 S.E. 2d 870 (S.C. App. 2005). An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review is considered an interlocutory order from which no immediate appeal is allowed. Hagood vs. Summerville, 363 S.C. 191, 607 S.E. 2d 707 (2005). An order setting aside an entry of default is not appealable until after final judgment. Ateyah vs. United of Omaha Life Insurance Company, 293 S.C. 436, 361 S.E. 2d 340 (S.C. App. 1987).

The Plaintiff's attempt to appeal the court's decision to grant a motion for relief from default and denying the Plaintiff's attempt to quash the appearance of the UIM carrier is clearly not immediately appealable. Therefore, the Respondent GEICO moves that the appeal be stricken.

*This section left intentionally blank.*

*Signature block on next page.*

Respectfully submitted,

MILLIGAN & HERNS, PC

A handwritten signature in black ink, appearing to read 'Tom Milligan', with a long horizontal flourish extending to the right.

Thomas H. Milligan (SC Bar # 12272)

721 Long Point Road, Suite 401

Mt. Pleasant, SC 29464

(843) 971-6750

Email: [tom@milliganlawfirm.com](mailto:tom@milliganlawfirm.com)

June 17, 2020  
Mt. Pleasant, SC

ATTORNEY FOR RESPONDENT  
GEICO

**CITATION OF AUTHORITIES:**

1. South Carolina Rules of Civil Procedure Rule 72
2. South Carolina Appellate Court Rules, Rule 201 *Right to Appeal*.
3. Brunson vs. American Koyo Bearings, 367 S.C. 161, 623 S.E. 2d 870 (S.C. App. 2005).
4. Hagood vs. Summerville, 363 S.C. 191, 607 S.E. 2d 707 (2005).
5. Ateyah vs. United of Omaha Life Insurance Company, 293 S.C. 436, 361 S.E. 2d 340 (S.C. App. 1987).

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas  
Roger C. Young, Circuit Court Judge

**RECEIVED**  
JUN 19 2020  
SC Court of Appeals

Case No. 2018-CP-08-01079

Latarsha Docena-Guerrero,

Appellant,

v.

Rafael Docena-Guerrero,

Defendant

And

Government Employees Insurance  
Company, as underinsured motorist  
insurance carrier,

Respondent.

CERTIFICATE OF SERVICE

I, certify that I have served the MOTION TO DISMISS THIS INTERLOCUTORY APPEAL AND SUPPORTING MEMORANDUM upon the Appellant and Defendant herein by mailing same via U.S. First Class Mail, postage prepaid, on June 17, 2020, addressed to:

Steven Goldberg, Esquire  
Steinberg Law Firm  
Post Office Box 2670  
Summerville, SC 29484

Jonathan Scott Altman, Esquire  
Derfner & Altman, LLC  
575 King Street, Suite B  
Charleston, SC 29403

  
Thomas H. Milligan, Esquire

(SC Bar # 12272)  
721 Long Point Road, Suite 401  
Mt. Pleasant, SC 29464  
(843) 971-6750

# The South Carolina Court of Appeals

Latarsha Docena-Guerrero, Appellant,

v.

Rafael Docena-Guerrero, Respondent.

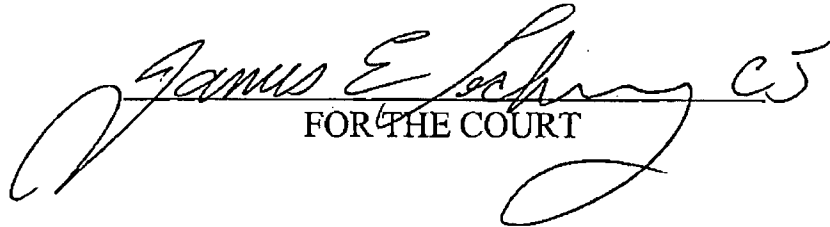
Appellate Case No. 2020-000915

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## ORDER

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After careful consideration, the motion to dismiss is denied. Nothing prevents the parties from arguing the issue of appealability in their briefs.

 c5  
FOR THE COURT

Columbia, South Carolina

cc:

Steven Eric Goldberg, Esquire  
Frederick Elliotte Quinn, IV, Esquire  
Thomas H. Milligan, Esquire  
Jonathan Scott Altman, Esquire

**FILED**  
**Sep 10 2020**

RECEIVED

FEB 02 2021

SC Court of Appeals

Certificate of Counsel

---

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

January 13, 2021

/s/ F. Elliotte

Quinn IV  
F. Elliotte Quinn IV  
The Steinberg Law Firm, LLP  
103 Grandview Drive  
Summerville, SC 29483  
(843) 871-6522  
Attorneys for Appellant