

FORM 4

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

CERTIFIED COPY

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1801892

2013 APR 29 AM 9:12

Cynthia Bales

Frank R Bales

Christy Blakemore
CLERK OF COURT
DORCHESTER COUNTY

Buy Right Autos, Inc

Northbrook Idemnity Co

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- See attached order; (formal order to follow)
- Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Edgar Dickson	2153	4/29/2013
Circuit Court Judge	Judge Code	Date

Clerk of Court Office Use Only

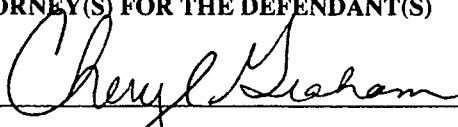
This judgment was entered on **4/29/2013**, and a copy mailed first class or placed in the appropriate attorney's box on **4/29/2013**, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



 Cheryl Graham - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

CERTIFIED COPY

2013 APR 29 AM 9:12

IN THE COURT OF COMMON PLEAS
OF THE FIRST JUDICIAL CIRCUIT

C.A. No. 2011-CP-18-1892

Cynthia D. Bales, individually and as Personal
Representative of the Estate of Frank R. Bales,
on behalf of the Estate and Statutory
Beneficiaries,

[Signature]
CLERK OF COURT
DORCHESTER COUNTY

Plaintiffs,

ORDER

vs.

Buy Right Autos, Inc., and Northbrook
Indemnity Co.,

Defendants.

This matter is before the Court on a motion of summary judgment regarding the claims of Plaintiff Cynthia D. Bales, individually and as Personal Representative of the Estate of Frank R. Bales, on behalf of the Estate and Statutory Beneficiaries (collectively "Plaintiff") filed by Defendant Northbrook Indemnity Company ("Northbrook"), pursuant to South Carolina Rule of Civil Procedure 56. The Court conducted a hearing on January 10, 2013, in the Dorchester County Court of Common Pleas. Appearing for Plaintiff was Eric Poulin of the firm Anastopoulos Law Firm, and appearing for Northbrook was John T. Lay of the law firm Gallivan, White and Boyd, P.A. After due deliberation, review of the memoranda, case law, exhibits, and arguments of counsel, the Court finds that the motion is properly supported and should be granted. Accordingly, for the reasons set forth below, Northbrook's motion for summary judgment is hereby granted, and judgment shall be entered as a matter of law in favor of Northbrook with respect to all of Plaintiff's claims raised in the Complaint.

49 *[Signature]*

SUMMARY JUDGMENT STANDARD

Summary judgment should be granted when no genuine dispute of material fact exists and the moving party is entitled to judgment as a matter of law. SCRCP 56. The purpose of summary judgment is to expedite disposition of cases that do not require the services of a finder of fact. *Rife v. Hitachi Const. Machinery Co., Ltd.*, 363 S.C. 209, 215, 609 S.E.2d 565, 568 (Ct. App. 2005) (citing *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003)). Summary judgment depends upon the existence of plain, undisputable facts on which reasonable minds cannot differ. *Allen v. Long Mfg. NC, Inc.*, 332 S.C. 422, 426, 505 S.E.2d 354, 356 (Ct. App. 1998) (citing *Priest v. Brown*, 302 S.C. 305, 396 S.E.2d 638 (Ct. App. 1990)). "To survive summary judgment, the evidence presented must amount to more than mere speculation and conjecture." *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (S.C. 2010) (citing *McKnight v. S.C. Dep't of Corrs.*, 385 S.C. 380, 390, 684 S.E.2d 566, 571 (Ct. App. 2009)). In cases applying the preponderance of the evidence burden of proof, the non-moving party is required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. See *Hancock v. Mid-South Mgmt. Co. Inc.*, 381 S.C. 326 (2009). The Court finds that Plaintiff has failed to meet her burden and summary judgment is appropriate in this case as to all of Plaintiff's claims.

FINDINGS OF FACT

The allegations in Plaintiff's Complaint arise out of an automobile accident that occurred on October 15, 2008, in which Abel Martinez struck the motorcycle on which Plaintiff's decedent, Frank Bales, was riding. Bales died as a result of the injuries sustained during the accident.

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Martinez was insured by an automobile policy issued by Northbrook under which he and his wife, Rosa Felix, were insureds. On November 30, 2007, Martinez and Felix completed an application for automobile insurance through Jerry Bacon Insurance. In support of the application, Martinez and Felix provided their Mexican-issued drivers' licenses.

In her Complaint, Plaintiff alleges Northbrook is liable for Bales' death and resulting damages because it issued the automobile policy to Martinez. Plaintiff also alleges that Northbrook owed a fiduciary duty to the public at large, including Plaintiff and Bales, in issuing insurance policies. During her deposition, Plaintiff testified as follows regarding the nature of the claims raised in the Complaint:

Q: What is your understanding about this lawsuit?

A: Well, I understand that this person was given a license—he had no driver's license and was given insurance to drive. And, this—we're supposed to be protected with insurance, and they gave him the—basically the man had no training, no formal training, no license, and no—he was given a right to drive and he used his vehicle as a deadly weapon, I mean, basically.

When asked whether she had any evidence to support her claims against Northbrook, Plaintiff testified she did not:

Q: What information do you have that he would have driven—that he only drove because of the insurance and he would have driven but for the fact that he had insurance? Do you have any evidence to that effect?

A: I don't have any evidence, but I'm saying they kind of let him go off. He had no—he was a risk to everyone. He had no proper training, he had no proper—by not having a driver's license, he didn't know the signals, the traffic lights. So he was a nuisance to the public by getting out there on the road. He killed my husband by doing that.

Q: Does your insurance company give you any sort of training on how to drive?

A: No, but I have a driver's license.

Q: And if he had a driver's license of some sort, that would be an indication

to you he had a right to drive?

A: He had knowledge of the roads and signs and stuff, yes.

She also testified that insurance companies do not have an obligation to teach its insureds to drive: "Q: Does your insurance company train you to drive? A: No...." She also acknowledged that Martinez had previously driven without a license and without insurance:

Q: So in the past, despite not having insurance, in the past, despite not having a U.S. driver's license, he had driven; is that correct?

A: Yes.

Q: So the fact that he didn't have insurance had not kept him off the road in the past; is that correct?

A: No.

Q: How is that not correct if he's been busted before without a driver's license, without insurance?

A: That didn't keep him off the road.

Q: Correct. He made a decision to go ahead and drive anyway; is that right?

A: Yes.

In addition, Plaintiff testified her entire Complaint was based on mere conjecture:

Q: Well, if a person is going to drive without a driver's license, is there any reason to believe that having insurance or not having insurance is going to affect whether they drive? Is there any reason to think—

A: Well, if he gets caught again, at least he's not going to get charged without having insurance, will he?

Q: He'll get charged for not having a driver's license.

A: But he's got insurance, that's something else he won't be charged for.

Q: So you really don't know whether or not it would have had an impact, is that right, you really don't? I mean, we're under oath, we're trying to be straight here.

A: I still feel personally that it had an impact on it.

Q: Not based on any conversations you had with him, not based on any

conversations he had with police officers?

A: No.

Q: *Not based on anything other than your own conjecture; is that correct?*

A: *That's correct.*

Plaintiff also testified that people who have driver's licenses also have automobile accidents:

Q: ...I mean, I know he had an accident. People who have driver's licenses, insurance, been driving for a long time have accidents; you understand that?

A: Yes.

Q: People who have had a driver's license, been driving for a long time that are typically very good drivers sometimes run red lights, it happens; is that correct?

A: That's correct.

CONCLUSIONS OF LAW

Based on the record presented, the Court finds that there is no genuine issue of material fact as to whether Northbrook had any fiduciary duty to the Plaintiff or that any action taken by Northbrook was the proximate cause of the Plaintiff's injuries. Plaintiff's cause of action seems to arise from the presumption that an insurer owes a duty to drivers in general with which it has no relationship. Under South Carolina law, "[t]o establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant." *RFT Mgmt. Co., L.L.C. v. Tinsely & Adams L.L.P.*, 399 S.C. 322, 335-336, 732 S.E.2d 166, 173 (S.C. 2012) (citing *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004)). Where no fiduciary duty exists, there can be no breach. Also, South Carolina courts have determined that "[a] confidential or fiduciary relationship exists when one imposes a

special confidence in another, so that the latter, in equity and good conscience is bound to act in good faith and with due regard to the interests of the one imposing the confidence.” *RFT Mgmt. Co.*, 2012 WL 3524812, at * 6. Further, “[a] relationship must be more than casual to equal a fiduciary relationship.” *Pitts v. Jackson Nat’l Life Ins. Co.*, 352 S.C. 319, 330, 574 S.E.2d 502, 507 (Ct. App. 2002) (citing *Steele v. Victory Sav. Bank*, 295 S.C. 290, 368 S.E.2d 91 (Ct. App. 1988)). To determine whether a fiduciary relationship exists, South Carolina courts will “look at the particulars of their relationship.” *Pitts*, 352 S.C. at 330, 574 S.E.2d at 507. Generally, “a claim of a fiduciary relationship [can] not ‘rest upon the mere relationship of insurer and insured.’” *Id.*, 352 S.C. at 332, 574 S.E.2d at 508 (quoting *Moses v. Mfrs. Life Ins. Co.*, 298 F. Supp. 321 (D.S.C. 1968)).

In *Pitts*, the court determined whether a fiduciary relationship existed between an applicant for insurance and the insurance company. After examining the relationship between the parties, the court determined a fiduciary relationship did not exist. Specifically, the court explained:

Although the relationship between the insurer and an insured has at times been characterized as ‘special,’ this has occurred only after the parties have entered into a mutually binding contract for insurance, specifically in the posture of an insured’s claim for bad faith refusal to pay benefits dues under an insurance contract. The conduct at issue in these cases arose based on the insurer’s established contractual obligations.

Id. at 330, 574 S.E.2d at 507. However, the court explained it was to determine whether a fiduciary relationship existed in “the context of an insurer/insured relationship from its inception, specifically at the point of the application for insurance.” *Id.* at 331, 574 S.E.2d at 507. The court noted the Supreme Court of South Carolina had expressly “found an applicant for an insurance policy does not stand in a fiduciary relationship with the insurer.” *Id.*, 574 S.E.2d at 508 (citing *Gordon v. Fidelity & Cas. Co. of N.Y.*, 238 S.C. 438, 120 S.E.2d 509 (1961)).

Here the relationship is even more attenuated than the relationship at issue in *Pitts*, Plaintiff has not alleged that she applied for insurance with Northbrook; much less that she was an insured of Northbrook subject to the policy covering Martinez's vehicle. Rather, Plaintiff is arguing that Northbrook owes a fiduciary duty to everyone in the public, including her, even if it is not the insurer of everyone in the public, including her. No South Carolina court has made the determination that an insurer owes a fiduciary duty to the public at large.

Further, other jurisdictions considering similar arguments have determined no such public duty exists. See, e.g., *Hiller v. Allstate Prop. & Cas. Ins. Co.*, No. 11-CV-0291-TOR, 2012 WL 2325603, at * 11 (E.D. Wash. June 19, 2012) ("As an initial matter, the Hillers have not cited any authority for the broad proposition that insurance companies operating in Washington owe a duty of good faith to the general public. Accordingly, the court finds that this cause of action fails to state a claim for relief."); *White v. State, Dep't of Pub. Safety & Corrections Office of Motor Vehicles*, 569 So.2d 1001, 1003, 1004 (La. App. 1990) (declining to extend policy that liability insurance is purchased for the "protection of the general public as well as the insured" "to say that an insurance agency owes a duty to the public to insure only persons who are physically able to drive safely."); and *Sterling v. Hartenstein*, 341 P.2d 90, 98-99 (Kan. 1959) (Knowledge on the part of an insurance company that a motor carrier for which it issues an indemnity policy should comply with the Public Motor Carrier Act is not in and of itself sufficient to force direct liability upon the insurance carrier by reading the statute (66-1, 128, supra) into the policy."). Plaintiff has failed to offer any law from any jurisdiction tending to impose this duty.

Also, evidence presented at the hearing showed that Northbrook issued a policy to Martinez, who presented his Mexican-issued license at the time of the application, and the

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issuance of the policy was in keeping with common practice at the time of issuance of the policy in the automobile insurance industry. Plaintiff has failed to offer any evidence or law refuting Northbrook's contentions.

In addition, Plaintiff also failed to offer any evidence to show that, but for Northbrook's issuance of a policy to Mr. Martinez, Northbrook's insured, the accident would not have occurred. Under South Carolina law, to prove "[p]roximate cause requires proof of both causation in fact and legal cause." *Madison ex rel. Bryant*, 275 S.C. at 48, 267 S.E.2d at 533 (citing *Oliver v. S.C. Dep't. of Highway & Pub. Transp.*, 309 S.C. 313, 316, 422 S.E.2d 128, 130 (1992)). "Causation in fact is proved by establishing the injury would not have occurred 'but for' the defendant's negligence[, and l]legal cause is proved by establishing foreseeability." *Id.* at 48, 267 S.E.2d at 533 (citing *Oliver*, 309 S.C. at 316, 422 S.E.2d at 130 and *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994)).

There is no genuine issue of material fact that the issuance of the insurance policy was not the proximate cause of Bales' death. At the hearing, Northbrook presented evidence that Martinez had been cited for driving without insurance or a license before the subject incident involved in this case. Plaintiff acknowledged this fact during her deposition. Plaintiff has failed to present any evidence demonstrating that the issuance of the policy was a proximate cause of Bales' death.

The Court hereby finds that Northbrook owed no duty to the Plaintiff. The Court further finds that neither any alleged breach of duty by Northbrook nor the issuance of the automobile policy was the proximate cause of Plaintiff's injuries. Because the Court has determined that Plaintiff has failed to meet her burden to withstand Northbrook's motion, it need not reach the

issue regarding whether the South Carolina Code of Laws §§ 38-77-112 and 56-1-20 provide Plaintiff with a private right of action.

WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that Northbrook Indemnity Company's Motion for Summary Judgment is hereby GRANTED. The claims of Plaintiff Cynthia D. Bales, individually and as Personal Representative of the Estate of Frank R. Bales, on behalf of the Estate and Statutory Beneficiaries, are DISMISSED WITH PREJUDICE as to Northbrook Indemnity Company.

AND IT IS SO ORDERED.



Judge Edgar W. Dickson
Circuit Court Judge

Orangelung, South Carolina

4/16, 2013