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**Commercial Litigation
Division**

April 5, 2023

Sent via U.S. Mail and E-Mail suptcfilings@sccourts.org

The Honorable Patricia A. Howard
Clerk of Court, Supreme Court of South Carolina
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RE: *Therese Hood v. United Services Automobile Association*
Appellate Case No.: 2023-000423

Dear Ms. Howard:

On April 5, 2023, the South Carolina Court of Appeals decided *Glenn v. 3M Company*, Op. No. 5975 (S.C. Ct. App. filed April 5, 2023) (Davis Adv. Sh. No. 13 at 102). In *Glenn*, the appellant manufacturer (“Manufacturer”) argued that it was “entitled to a new trial because the jury’s verdicts on the strict liability and negligence theories of relief” (that is, for Manufacturer on strict liability and against Manufacturer on negligence) “were inconsistent and the circuit court failed to instruct the jury to correct the inconsistency.” *Id.* at 106. But according to the Court of Appeals, the trial court correctly denied Manufacturer’s motion for a new trial. *Ibid.*

In her Petition for Writ of Certiorari, Petitioner argues that the trial court erred in granting JNOV for Respondent where an apparently inconsistent verdict can be reconciled. (Pet. Cert. pp. 9-11). Specifically, the jury did not find that Respondent “breached its duty of good faith and fair dealing” “by a preponderance of the evidence,” but it did find that Respondent’s “bad faith was intentional, reckless, willful, wanton, or malicious” “by clear and convincing evidence” and awarded punitive damages. (Pet. Cert. pp. 5-6).

Pages 106 to 114 of the *Glenn* opinion discuss a similar issue. The most pertinent portions are as follows.

1. The Court cited *Vinson v. Jackson* for the proposition that “when a verdict is *so confused that the jury’s intent is unclear*, the safest and best course is to order a new trial.” *Glenn*, Op. No. 5975 at 108 (quoting 327 S.C. 290, 293, 491 S.E.2d 249, 250 (1997)). It then held that “the general verdict form, in its entirety, clearly shows the jury’s intent to hold [Manufacturer] liable for the unreasonably dangerous products it

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sold . . . regardless of the theories on which [the respondent] sought recovery.” *Id.* at 109. The jury’s punitive-damages award was additional evidence of this intent. *Id.* at 113.

2. The Court found an apparent discrepancy. That is, it found that “it appears that the jury found one of the three elements of strict liability was missing, and all three of these elements are also required for a negligence claim.” *Id.* at 110. Nonetheless, the Court found that a slight variation in jury instructions between the two claims could have produced that apparent inconsistency. *Id.* at 112–13. This was so even though the jury had a question about strict liability, where the judge provided additional instructions. *Id.* at 113.
3. Finally, the Court held that it would be “speculative to attribute the strict liability verdict to a specific finding regarding the product’s condition where because “the strict liability theory . . . has two other elements.” *Id.* at 110.

Respectfully submitted,

s/Angeline Larrivee

c: Robert William Whelan, Esq.