

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM Horry COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge
Case No. 2010-CP-26-4112

RECEIVED

JUL 12 2013

S.C. Supreme Court

Elisa Narruhn..... Respondent

v.

Alea London Limited and Anderson
General Insurance..... Defendants

Of whom, Alea London Limited is..... Petitioner

**Reply to Narruhn’s Return to Alea London Limited’s
Petition for Rehearing**

Alea London Limited (“Petitioner”) replies to the Return of Elisa Narruhn (“Respondent”) as follows:

I. Petitioner suffered an injury sufficient to establish constitutional standing.

Respondent argues that Petitioner has not sustained an injury sufficient to establish constitutional standing. She is incorrect.

For the purposes of constitutional standing, a denial of procedural due process constitutes legal injury even if it has not yet resulted in substantial damages. As the Supreme Court of the United States has held, “the denial of procedural due process should be actionable for nominal damages without proof of actual injury.” *Carey v. Piphus*, 435 U.S. 247, 266, 98 S.Ct. 1042, 1054, (1978). Because any denial of procedural due process is “actionable,” it must mean that

such a denial constitutes an “injury” sufficient to establish constitutional standing. Otherwise, the Supreme Court would not have described such denial as “actionable.”

Petitioner has been denied every element of procedural due process and has constitutional standing such that it can maintain an action to rectify that denial of its rights. This denial can be, and should be, rectified by this Court.

II. The question of whether Petitioner has standing to raise the violation of its due process rights is preserved for review by this Court.

Respondent argues that Petitioner did not preserve the issue of standing for appellate review. She is incorrect.

The issue of standing does not need to be specifically plead in order to be reviewed by an appellate court. It is axiomatic that Petitioner's seeking relief and appealing the denial of that relief is a de facto assertion of standing sufficient to invoke review by this Court. Rule 201, SCACR, moreover, does not require that appellant plead standing. Standing is implicitly established by a showing that the appellant is an aggrieved party. Thus, Petitioner is entitled to have this Court address the errors committed by the circuit court and special referee.

A party has standing if the facts alleged entitle it to relief. "At the core of the standing doctrine is the requirement that a plaintiff 'allege [an] injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'" *County of Riverside v. McLaughlin*, 500 U.S. 44, 51, 111 S.Ct. 1661, 1667 (1991) (citations omitted). Furthermore, as the Supreme Court of the United States has held, "the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute on particular issues." *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 2205 (1975).

Petitioner was denied due process protection by the special referee and circuit court. The denial of due process was alleged by Petitioner (R. 278-280) and, as explained above, is

"actionable." Petitioner has sought redress of its injury at every stage of this proceeding and has thereby consistently maintained that it had standing to do so at every step of this litigation.

III. Respondent ignores the fact that the Special Referee failed to comply with the specific statutory requirements for Supplementary Proceedings.

Respondent argues Petitioner was not injured by the special referee's failure to provide it notice of the supplementary proceedings, because S.C. Code Ann. § 15-39-350 provided the special referee with discretion as to whether to provide such notice. As stated in section one above, Petitioner has been injured, thus Respondent's argument is without merit. Furthermore, this argument is a red herring.

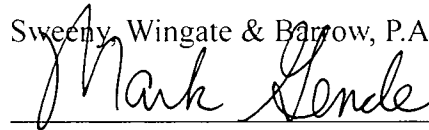
S.C. Code Ann. § 15-39-350 does not apply until it is determined that a "person or corporation has property of such judgment debtor or is indebted to him in any amount exceeding ten dollars..." This determination, for an insurance company such as Petitioner, is that there is coverage under the insurance policy issued to the insured/debtor for the debt of the insured. A judgment holder needs to offer proof that such coverage exists. One way to offer such proof is by affidavit. *See Johnson v. Service Management, Inc.*, 319 S.C. 165, 168-69, 900, 902-03 (Ct. App. 1995) (holding that an affidavit was prima facie evidence that a company was indebted to a judgment holder). In this case there was no affidavit or other evidence to establish a prima facie case that Petitioner owed anything to the alleged insured. There was no basis for Petitioner's interest to be before the special referee and, therefore, the failure to provide notice and the assignment of rights to Respondent was a violation of Petitioner's right to procedural due process.

CONCLUSION

The Court should withdraw its original opinion, issue a revised opinion consistent with Petitioner's argument here and in its original petition, and remand this case with instructions to the Circuit Court.

Respectfully submitted,

Sweeny, Wingate & Barrow, P.A.



Mark S. Barrow

Mark V. Gende

William R. Calhoun, Jr.

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2010-CP-26-4112

RECEIVED

JUL 12 2013

S.C. Supreme Court

Elisa NarruhnRespondent

v.

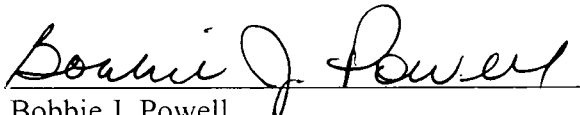
Alea London Limited and Anderson
General InsuranceDefendant

Of whom, Alea London Limited isAppellant

PROOF OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., certify that I have served the Reply of Narruhn's Return to Alea London Limited's Petition for Rehearing by depositing a copy of it in the United States Mail, postage prepaid, on July 12, 2013, addressed to her attorney of record, Gene M. Connell, Jr., Esquire, Kelaher, Connell & Connor, P.C., 1500 U.S. Highway 17 North, The Courtyard, Suite 209, Post Office Box 14547, Surfside Beach, SC 29587-4547 and on Defendant Anderson General Insurance by depositing a copy of it in the United States Mail, postage prepaid, on July 12, 2013, addressed to their attorney of record, Susan Taylor Wall, Esquire, Parker Poe Adams & Bernstein L.L.P., 100 Calhoun Street, Suite 400, Charleston, 29402.

July 12, 2013


Bobbie J. Powell