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**Oct 09 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

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Appellate Case No. 2023-001289

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Tasha Jones and Shaniqua Thompson, ..... Respondents,

v.

Lyndon Southern Insurance Company,  
Safe Choice Insurance, LLC, and  
Jupiter Managing General Agency, Inc, Defendants,

Of which

Lyndon Southern Insurance Company is the ..... Appellant.

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**RETURN TO  
MOTION TO REMAND**

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Appellant Lyndon Southern Insurance Company (“Lyndon”), through undersigned counsel, respectfully submits this Return to the Motion to Remand filed by Respondents Tasha Jones and Shaniqua Thompson. Lyndon agrees with Respondents that a limited remand to the circuit court is necessary to clarify the status of Lyndon’s post-trial motion—and for a ruling on that motion, if necessary—so that this Court will have appellate jurisdiction. However, it is not necessary to remand for resolution of Respondents’ claims against Jupiter Managing General Agency, Inc. (“Jupiter”). Once

Respondents' claims against Lyndon are fully and finally resolved, an appeal as to those claims will be ripe regardless of whether the claims against Jupiter remain pending.

### BACKGROUND

The matter underlying this appeal is a first-party breach of contract and bad-faith action arising out of an uninsured motorist ("UM") claim under S.C. CODE ANN. § 38-77-150. Respondents are Tasha Jones, the named insured under a vehicle insurance policy issued by Lyndon, and Shaniqua Thompson, who is covered under the policy as an occupant of Ms. Thompson's vehicle at the relevant time. Respondents were injured on June 15, 2017, when an unknown driver rear-ended Ms. Thompson's car and then fled the scene. As a necessary predicate to obtaining coverage under the UM provision of the Lyndon policy, Respondents pursued a "John Doe" action against the unknown driver. Although only \$42,000 in UM coverage remained,<sup>1</sup> the John Doe action resulted in a judgment of \$50,000 for each Respondent.

Subsequently, Respondents filed the underlying action against Lyndon,<sup>2</sup> alleging breach of contract and bad faith. A true and correct copy of the docket sheet for this action is attached hereto as **Exhibit A**. The second amended complaint, filed on March 19, 2021, added Jupiter as a defendant and alleged additional claims. Jupiter did not file or serve an answer to the second amended complaint. On March 18, 2022, the circuit court entered a Form 4 order granting Respondents' motion for default judgment against Jupiter. *See*

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<sup>1</sup> A second passenger settled his claims with Lyndon and did not participate in the litigation.

<sup>2</sup> Safe Choice Insurance, LLC was also named as a defendant and subsequently settled the claims against it.

Ex. A, at 4. Jupiter thereafter moved to set aside the entry of default. *See id.* That motion remains pending.

Respondents' claims against Lyndon were tried before a jury on June 21-22, 2023. After the circuit court directed a verdict in Respondents' favor as to breach of contract, the jury returned damages on that claim for Ms. Jones in the amount of \$50,300 and for Ms. Thompson in the amount of \$50,000. The jury further found that Lyndon acted in bad faith in refusing to pay, awarding each Respondent \$75,000. Finally, the jury awarded each Respondent \$350,000 in punitive damages.

The docket events relevant to the Motion to Remand are as follows:

- **June 23, 2023:** The verdict form is entered into the docket. *See* Ex. A, at 2.
- **June 23, 2023:** The docket reflects four entries for "Judgment," although there is no document associated with any of these entries. *See* Ex. A, at 1-2; *cf.* Rule 58(a)(2), SCRCP ("Every judgment shall be set forth on a separate document.").
- **July 3, 2023:** Lyndon filed its post-trial motion seeking relief under Rules 50(b) and/or 59(a) and 59(e), SCRCP. *See* Rule 59(b), (e), SCRCP (providing that a motion for a new trial or a motion to alter or amend a judgment must be filed "not later than 10 days" after return of the jury verdict or notice of the entry of judgment). A true and correct copy of Lyndon's post-trial motion is attached hereto as **Exhibit B**.
- **July 14, 2023:** The docket reflects an entry for "Order/Electronic Form 4." Ex. A, at 1. The document associated with this docket entry is a Form 4 order, on which the box for "Jury Verdict" is checked, and the text of which reflects the jury's verdict. The order does not reference Lyndon's post-trial motion. A true and correct copy of the Form 4 order is attached hereto as **Exhibit C**.
- **August 11, 2023:** Lyndon filed its notice of appeal.

## ARGUMENT

Once the judgment of the trial court becomes final and appealable, an aggrieved party by the judgment has 30 days to file a notice of appeal. *See* Rule 203(b)(1), SCACR. “The service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended by this Court.” *Hill v. S.C. Dept. of Health & Envt’l Ctrl.*, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010).

If the circuit court intended its July 14, 2023 Form 4 order to be a denial of Lyndon’s post-trial motion, then Lyndon’s notice of appeal was due on or before August 13, 2023. On the other hand, if the circuit court intended its July 14, 2023 Form 4 order to be a “separate document” setting forth the judgment under Rule 58(a)(2) – such that Lyndon’s post-trial motion was not decided and remains pending – then the time for Lyndon to file its notice of appeal has not yet begun to run. *See* Rule 203(b)(1), SCACR (providing that when a timely motion has been filed under Rule 50, 52, or 59, SCRCP, the time to file a notice of appeal “shall run from receipt of written notice of entry of the order granting or denying such motion”); *see also Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006) (“An appeal ordinarily may be pursued only after a party has obtained a final judgment.”).

Lyndon agrees with Respondents that if the circuit court has not yet ruled on its post-trial motion, then its notice of appeal was filed prematurely. However, given the ambiguity in the docket with respect to finality and the consequences of a failure to timely notice of appeal, Lyndon filed a notice of appeal within 30 days of the July 14, 2023 order out of an abundance of caution. In view of these circumstances, Lyndon does not oppose

Respondents' motion to remand to the circuit court for the purposes of clarifying whether the July 14, 2023 order was intended to be a ruling on Lyndon's post-trial motion (and if it was not, then for a ruling on that motion).

However, Respondents' secondary contention—that Lyndon cannot appeal the judgment against it until a final judgment has been entered on the claims against Jupiter—is without merit. Where an action involves multiple defendants, an order or judgment resolving all claims against one defendant is final as to that defendant and must be appealed within 30 days, or the right of appeal is forever lost. *See Rodriguez v. Eline*, No. 2006-UP-048, 2006 WL 7285681, at \*3 (S.C. Ct. App. Jan. 20, 2006) (where order was final as to one defendant, plaintiffs were required to appeal as to that defendant within 30 days) (citing *Olson v. Fac. House of Carolina, Inc.*, 344 S.C. 194, 213-14, 544 S.E.2d 38, 48 (Ct. App. 2001)). Accordingly, Lyndon can appeal—indeed, it *must* do so—within 30 days of entry of a final judgment against it, regardless of whether the claims against Jupiter have been resolved by a final judgment.

### CONCLUSION

For the reasons set forth herein, Lyndon agrees that a remand is necessary for the circuit court to clarify whether the July 14, 2023 was intended as a ruling on Lyndon's post-trial motion, or whether that motion remains pending (and if so, to rule on the motion).

*Signature page follows*

*s/Kirsten E. Small*

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