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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2023-000870

James Dustin Lucas, ... Appellant,

v.

State Farm Mutual Automobile Insurance Company, ... Respondent.

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2303851

James Dustin Lucas
PLAINTIFF(S)

State Farm Mutual Automobile Insurance Company
DEFENDANT(S)

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), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

See page two below.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/24/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter is before the Court on Defendant State Farm Mutual Automobile Insurance Company's Motion for Summary Judgment and Motion to Stay, and Plaintiff James Dustin Lucas's Motion to Compel, Motion to Strike, and Motion for Summary Judgment. Based on a review of the file, the submissions of the parties and oral arguments presented by counsel, Defendant's Motion for Summary Judgment is GRANTED. Therefore, Plaintiff's motions are DENIED. As a result of this ruling, the Motion to Stay is moot. Counsel for the Defendant is to prepare a proposed order and submit it to the Court via email for review.



Greenville Common Pleas

Case Caption: James Dustin Lucas vs. State Farm Mutual Automobile Insurance Company
Case Number: 2022CP2303851
Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

Electronically signed on 2023-02-24 12:55:14 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE 13 th JUDICIAL CIRCUIT
	)	
	)	CIVIL ACTION NO. 2022-CP-23-03851
James Dustin Lucas,	)	
	)	
	)	
Plaintiff,	)	<u>ORDER</u>
	)	
v.	)	
	)	
State Farm Mutual Automobile,	)	
Insurance Company,	)	
Defendant.	)	
	)	

On February 17, 2023, this court heard the Defendant's Motion for Summary Judgment, the Plaintiff's Motion for Summary Judgment, the Defendant's Motion to Stay this Case, the Plaintiff's Motion to Compel Discovery, and the Plaintiff's Motion to Strike the Defendant's Answer. For the following reasons, the Defendant's Motion for Summary Judgment is granted and the Plaintiff's Motion for Summary Judgment is denied. As a result of this ruling, the Motion to Stay is moot, as is the Plaintiff's Motion to Compel Discovery and the Plaintiff's Motion to Strike the Defendant's Answer. Where parties file cross-motions for summary judgment, the issue is decided as a matter of law, USAA v. Pickens, 862 S.E. 2d 442, 444 (S.C. 2021); South Carolina Public Interest Foundation v. Calhoun County, 854 S.E. 2d 836, 827 (S.C. 2021); Quicken Loans v. Wilson, 823 S. E. 2d 697, 700 (S.C. Ct. App. 2019); Duke Energy v. South Carolina Department of Revenue, 764 S.E. 2d 712, 715 (S.C. Ct. App. 2014) – where cross-motions for summary judgment are filed the parties concede the issue before the Court should be decided as a matter of law.

BACKGROUND

The following facts are undisputed based on the parties' submissions to this Court and oral arguments. In 2017 the Plaintiff was a passenger in a car driven by Meghan Seely. An accident occurred when Seely turned left in front of a vehicle driven by Andre Knox. Knox had liability insurance with State Farm of \$25,000.

In June 2020, the Plaintiff filed suit against Seely and Knox – civil action number 2020-CP-23-02877 (“Underlying Lawsuit”). That lawsuit is pending in Greenville County and is scheduled to be tried in several months.

Knox did not timely respond to the complaint, and in December 2020, Judge Donald Hocker issued an order granting Plaintiff's Motion for Default Judgment against Knox. Counsel for Knox then entered an Appearance, and she and counsel for the Plaintiff exchanged emails. These emails are attached to State Farm's motion for summary judgment as Exhibit B.

The emails exchanged between Plaintiff's counsel and counsel for Knox suggest Lucas agreed to allow Knox to file an answer to Lucas' complaint and State Farm, Knox's liability carrier, would negotiate between its reserve and Knox's liability limits of \$25,000.

In September 2021, the underlying lawsuit was mediated, but did not settle. According to Exhibit A of State Farm's Motion for Summary Judgment – part of the Plaintiff's answers to interrogatories in his case against Knox- at the mediation State Farm "only offered \$1,000." Plaintiff argues the amount offered by State Farm at mediation was so small it amounted to essentially a non-offer.

BREACH OF CONTRACT

Plaintiff argues State Farm breached the contract by not mediating between the reserves and policy limits. The evidence indicates Plaintiff was not an insured of State Farm and, therefore, absent privity of contract, a third party such as the Plaintiff has no direct action against the alleged

tortfeasor's liability insurance carrier. Kleckley v. Northwestern Insurance Company, 526 S.E. 2d 218 (S.C. 2000); Gaskins v. Southern Farm Bureau, 541 S.E. 2d 269 (S.C. Ct. App. 2000)

Plaintiff argues a contract did exist between Plaintiff and State Farm, predicated upon the emails exchanged between the Plaintiff's attorney and the attorney for Knox (Exhibit B to State Farm's Motion for Summary Judgment). An initial review of these emails reflect they could not constitute a contract because the emails do not comply with SCRCP 43(k). This rule states, "[N]o agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record or reduced to writing and signed by the parties and their counsel." The emails in question satisfy none of these requirements.

The terms of rule 43(k) are mandatory and it is proper for a court to deny enforcement of an alleged agreement not compliant with this rule. South Carolina Human Affairs Commission v. Chen, 846 S.E. 2d 861 (S.C. Ct. App. 2020) The Chen case establishes that the terms of rule 43(k) are mandatory and it is proper for a court to deny enforcement of an alleged agreement not compliant with this rule. This rule precludes a party from turning to contract or equitable principles to vitiate this rule. Substantial compliance is not sufficient.

Even if the emails exchanged between counsel for Lucas and counsel for State Farm did constitute a contract, the emails reveal that "[State Farm] did negotiate between the reserves and the limits, as we agreed to. Given the liability dispute, however, I do not believe this case is worth the limits, which from my understanding, was your only demand." (Exhibit B to State Farm's motion for Summary Judgment).

State Farm argues that Plaintiff's allegations and arguments are based upon occurrences during a mediation in the underlying lawsuit and consequently violate the confidentiality of ADR Rule 8(a). This rule provides that "[A]ny... communication disclosed during mediation, including,

but not limited to, oral, documentary or electronic information, shall be confidential, and shall not be divulged by anyone in attendance at the mediation or participating in the mediation, except as permitted under this rule or by statute." Although there are some limited exceptions to this rule, none of those exceptions are applicable here. Additionally, ADR Rule 8(h), which the Plaintiff asserted in opposition to State Farm's motion for summary judgment, is inapplicable as the rule provides that information admissible or subject to discovery does not become inadmissible or protected from discovery simply by reason of its disclosure or use in a mediation.

In support of its position, Plaintiff relies on communications during the mediation when it argues the amount offered by State Farm at mediation was so small it amounted to essentially a non-offer. In response to interrogatories in the underlying lawsuit, Plaintiff disclosed that State Farm offered \$1,000 during mediation. (Exhibit A to State Farm's Motion for Summary Judgment). Additionally, Plaintiff's argues that State Farm continued to engage in fraudulent activity during the mediation. In order to prove its case, Plaintiff must present evidence of confidential communications during mediation, which is prohibited. Even if Plaintiff was allowed to use confidential communications from mediation, the evidence indicates State Farm negotiated between the reserves and the limits. (Exhibit B to State Farm's Motion for Summary Judgment). Defendant is entitled to summary judgment as to breach of contract.

BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT

The Plaintiff's second cause of action alleges breach of contract accompanied by a fraudulent act. Proof of a contract is a prerequisite to proving a breach of contract accompanied by a fraudulent act. Armstrong v. Collins, 621 S.E. 2d 368 (S.C. Ct. App. 2005). As discussed above, Plaintiff has failed to show he had a contract with State Farm. Additionally, Plaintiff did not present evidence of a fraudulent act. It appears from the evidence that State Farm agreed to participate in a mediation, and negotiated between the reserves and the limits. (Exhibit B to State Farm's Motion

for Summary Judgment.) The Plaintiff's evidence does not support a breach of contract accompanied by a fraudulent act, and Defendant is entitled to summary judgment.

FRAUD

The third cause of action alleges fraud. There are nine elements to this cause of action, and failure to prove any of these elements is fatal to the claim. Allegro v. Scully, 762 S.E. 2d 54 (S. C. Ct. App. 2014) The nine elements of fraud are: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. M.B. Kahn v. South National Bank of Charleston, 271 S.E.2d 414, 415 (S.C. 1980) The evidence does not show a false statement. Further, the hearer's reliance on the truth cannot be established as it is speculation what Plaintiff's case against Knox would have settled for even if State Farm did what Plaintiff claims it should have done, namely, negotiated between its reserve and the limits of Knox's liability coverage. The evidence does not prove a consequent and proximate injury, nor does any alleged statement relate to a present or pre-existing fact. A false statement cannot be predicated on unfulfilled promises. Making a statement to do something in the future – negotiate between the reserve and the policy limits – does not meet the element. Foxfire Village v. Black, 404 S.E. 2d 912 (S.C. Ct. App. 1991) Beneficial Finance v. Windham, 847 S.E. 2d 793 (S.C. Ct. App. 2020) Any statement by State Farm about what it would do at mediation cannot be the basis of a claim of fraud. Defendant is entitled to summary judgment on this cause of action.

DAMAGES

On the issue of damages as to all causes of action, the evidence does not show what Plaintiff's case would have settled for had there been an enforceable contract. The amount of Plaintiff's damages is speculative. Plaintiff has the burden of proving damages for breach of contract. Depositions And...Inc. v. Campbell, 406 S.E. 2d 390, 391 (S.C. Ct. App. 1991). Generally, for damages to be recoverable, the evidence should be such as to enable a court or jury to determine the amount thereof with reasonable certainty or accuracy. The existence, causation, and amount of damages cannot be left to conjecture, guess, or speculation. Winthrop University v. Pickens Roofing, 791 S.E. 2d 152, 167 (S.C. Ct. App. 2016).

Settlement negotiations, in the context of mediation or otherwise, depend upon a myriad of factors. Even if a valid contract between the Plaintiff and State Farm existed, it is impossible to state with certainty what the underlying case would have settled for. The basis for Plaintiff's lawsuit is an assumption that if State Farm had negotiated between two figures – the amount of State Farm's reserve and the amount of Knox's liability limits – the underlying case would have settled for some amount. That amount is, however, speculative. It is theoretically possible that in the trial of his case against Knox, the Plaintiff could recover more than the amount the Plaintiff would have received had the Plaintiff's case against Knox resolved at mediation.

CONCLUSION

State Farm's motion for summary judgment is granted, and Plaintiff's Motion for summary judgment is denied.

G.D. Morgan, Jr., Presiding Judge

Greenville, S.C.
_____, 2023



Greenville Common Pleas

Case Caption: James Dustin Lucas vs. State Farm Mutual Automobile Insurance Company
Case Number: 2022CP2303851
Type: Order/Summary Judgment

So Ordered

G.D. Morgan Jr.

Electronically signed on 2023-03-19 19:07:13 page 8 of 8

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2303851

James Dustin Lucas
PLAINTIFF(S)

State Farm Mutual Automobile Insurance Company
DEFENDANT(S)

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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

This matter is before the Court on Plaintiff's Motion to Reconsider and to Alter or Amend the Order of the Court Granting Summary Judgment on March 20, 2023. Based on a review of the file and the submissions of the parties, Plaintiff's Motion is hereby Denied. It should be noted as well that the Court's order granting summary judgment was not the same order as the proposed order submitted by Defendant's counsel as argued by Plaintiff in this motion. It is so Ordered.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/23/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Greenville Common Pleas

Case Caption: James Dustin Lucas vs. State Farm Mutual Automobile Insurance Company
Case Number: 2022CP2303851
Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

Electronically signed on 2023-05-23 14:39:03 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
James Dustin Lucas,	)	CASE NO. 2022-CP-23-
	)	
Plaintiff,	)	SUMMONS
	)	
vs.	)	
	)	
State Farm Mutual Automobile	)	
Insurance Company,	)	
	)	
Defendant.	)	

TO THE DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said complaint on the subscriber at his office, 1225 South Church Street, Greenville, South Carolina, 29605, within thirty (30) days after service thereof exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

Hawkins & Jedziniak, LLC

s/ Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar #78470

Helena L. Jedziniak, S.C. Bar #100825

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Attorneys for Plaintiff

Greenville, South Carolina
July 25, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	CASE NO. 2022-CP-23-
James Dustin Lucas,	)	
Plaintiff,	)	COMPLAINT
vs.	)	(Jury Trial Requested)
State Farm Mutual Automobile	)	
Insurance Company,	)	
Defendant.	)	

COMES NOW, the plaintiff, alleging and complaining of the defendant as follows:

PARTIES, JURISDICTION, AND VENUE

1. James Dustin Lucas is a citizen and resident of Madison County, Mississippi.
2. State Farm Mutual Automobile Insurance Company (“State Farm”) is a corporation headquartered in Bloomington, Indiana and doing business across the United States, including in Greenville County, South Carolina.
3. The collision giving rise to this action occurred in Greenville County, South Carolina.
4. The plaintiff stipulates that, for this action, he will seek no more than a total of \$75,000, inclusive of all costs, fees, and any other recoveries so that the total recovery cannot exceed \$75,000. Removal to federal court is therefore improper. Should the defendant improperly remove the action to federal court, the plaintiff reserves the right to amend this paragraph and will file a motion to remand.
5. Venue and jurisdiction are proper for the foregoing reasons.

FACTUAL BACKGROUND

6. The plaintiff repeats the foregoing allegations as if repeated here, verbatim.
7. On June 17, 2017, the plaintiff rode as a passenger in his car, which was driven by Meghan Seely, a permissive driver.

8. The plaintiff and Seely drove on Wade Hampton Boulevard in Greenville, South Carolina and approached the intersection of Wade Hampton and Tappan Drive. Seely was turning left onto Tappan Drive when Andre Knox, who was insured with State Farm, drove toward her at a high rate of speed. Because Knox was acting recklessly and traveling at a rate of speed much higher than the posted speed limit, he smashed into Seely and the plaintiff with such force that the car Seely drove was deemed a total loss.
9. Upon information and belief, Knox was driving too fast for conditions, failed to keep a proper lookout, and failed to slow his vehicle as required by traffic. Both the plaintiff and Seely have confirmed that Knox was speeding and traveled at a high rate of speed when he smashed into the car driven by Seely.
10. On June 7, 2020, the plaintiff filed civil action number 2020-CP-23-02877 in the Greenville County Court of Common Pleas alleging causes of action against Seely and Knox. Upon information and belief, State Farm had knowledge of Knox's negligence and knew that Knox was at least partially responsible for the collision prior to the plaintiff ever suit.
11. The plaintiff served Knox with a copy of the summons, complaint, and discovery requests on June 23, 2020. Neither Knox nor State Farm filed an answer or requested an extension of time to file a responsive pleading. As a result, default was entered against Knox due to State Farm's failure to protect him.
12. After the plaintiff obtained an entry of default against Knox, State Farm hired an insurance defense lawyer, who asked to be let out of default. State Farm had no good reason or good cause for neglecting its insured. Nevertheless, the plaintiff gave State Farm another chance to protect its insured by agreeing to let Knox out of default if State Farm would agree to mediate between the amount of its reserve and its policy limit. State Farm agreed, and the parties scheduled mediation.
13. Notwithstanding State Farm's agreement to attend mediation and negotiate within parameters,

State Farm violated its agreement by, upon information and belief, offering less than its highest reserve. The nominal amount offered was so small it amounted to essentially a non-offer. Upon information and belief, State Farm had no intention of honoring its agreement negotiate within the agreed-to parameters and State Farm fraudulently made the statement that it would negotiate within the agreed-to parameters through its agents. The plaintiff relied to his detriment on State Farm's fraudulent statements.

14. In an effort to avoid filing a second lawsuit, the plaintiff filed a motion to compel in the underlying case and sought claim file materials State Farm refused to produce in discovery. The Court ruled that State Farm was not required to produce reserve information in the claim file, in part, because the plaintiff had not yet filed an action for breach of contract accompanied by fraudulent act. The order, entered by the Honorable "Doc" Morgan, related to the denial of the motion to compel is incorporated into this complaint by reference, and will be used in response to any motions filed related to this lawsuit.
15. Upon information and belief, to date, State Farm has refused to honor its agreement to negotiate between its highest reserve and its policy limit. This is evidenced by State Farm's continued refusal to produce reserve information in the underlying action. State Farm also refused to have its insured present at mediation, as required by ADR rules. This is of particular importance because Knox had a right to be present at mediation and to express his thoughts as to whether State Farm should resolve the case against him.
16. The plaintiff incorporates by reference into this pleading the transcript of Seely's deposition testimony, as well as all correspondence between the plaintiff/plaintiff's representatives and State Farm/State Farm's representatives related to this action.
17. As a direct and proximate result of the defendant's actions, the plaintiff has been damaged. The plaintiff had obtained an entry of default and was entitled to have a hearing to determine an award of damages. Under *Shores v. Weaver*, 315 S.C. 347, 433 S.E.2d 913 (Ct.App. 1993),

the plaintiff would not be precluded from recovering minimum financial limits under Knox's policy even if Knox was determined to have failed to comply with the notice and cooperation duties of his policy with State Farm.

18. State Farm's actions were motivated by the desire for unreasonable financial gain. State Farm breached its agreement and refused to make any good faith effort to resolve this case within its policy limit in order to avoid compensating the plaintiff, an injured third party, for his injuries.
19. This action is not an action for improper claims practice or bad faith. Because the plaintiff has not brought causes of action for improper claims practices or bad faith, any motion that implies and states otherwise is improper.
20. The plaintiff is therefore informed and believes he is entitled to judgment against the defendant for actual and punitive damages.

FOR A FIRST CAUSE OF ACTION
(Negligence and Recklessness)

21. The plaintiff repeats the allegations of Paragraphs 1-20 as if repeated here, verbatim.
22. The defendant owed the plaintiff a duty to use reasonable care to avoid injuring the plaintiff.
23. Breaches of that duty of care constitute negligence and, in some cases, recklessness.
24. The defendant breached its duty of care to the plaintiff and, therefore, was negligent and reckless in its dealings with the plaintiff in one or more of the following ways:
 - a. in making promises it had no intention of keeping in exchange for value;
 - b. in making fraudulent statements;
 - c. in recklessly misleading the plaintiff;
 - d. in refusing to have its insured present at mediation as required by ADR rules;
 - e. in refusing to act with good faith and fair dealing; and,
 - f. in such other ways as will be shown through discovery and at trial.
25. As a direct and proximate result of the defendant's negligence and recklessness, the plaintiff

has suffered some or all of the following injuries and damages:

- a. the expense associated with a fruitless mediation;
- b. costs associated with motions, the filing of this action, and other costs;
- c. inconvenience;
- d. lost time and opportunity to earn income;
- f. recovery of damages in the underlying action; and,
- g. such other damages that will be shown through discovery and at trial.

26. The plaintiff is therefore informed and believes that he is entitled to judgment against the defendant for actual and punitive damages.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

27. The plaintiff repeats the allegations of Paragraphs 1-20 as if repeated here, verbatim.

28. The parties entered into a binding contract. As described above, the plaintiff agreed to let Knox out of default in exchange for State Farm's promise to mediate between the reserve and the policy limit. State Farm breached this contract by failing to negotiate within the agreed-upon parameters.

29. The defendant had a fraudulent intent relating to its breach of contract, as evidenced by its false representations and other circumstances surrounding the breach.

30. The defendant committed a fraudulent act accompanying its breach of contract. State Farm knew that it would not adhere to the agreed-upon parameters, kept its insured from attending the mediation in violation of the ADR rules, and continued to engage in fraudulent activity during the mediation.

31. As a direct and proximate result of the defendant's actions, the plaintiff has suffered some or all of the following injuries and damages:

- a. the expense associated with a fruitless mediation;

- b. costs associated with motions, the filing of this action, and other costs;
- c. inconvenience;
- d. lost time and opportunity to earn income;
- f. recovery of damages in the underlying action; and,
- g. such other damages that will be shown through discovery and at trial.

32. The plaintiff is therefore informed and believes that he is entitled to judgment against the defendant for actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Fraud and Misrepresentation)

33. The plaintiff repeats the allegations of Paragraphs 1-20 as if repeated here, verbatim.

34. The defendant made a false representation concerning an existing fact. The defendant stated that it would negotiate between the reserve and the policy limit knowing that it did not intend to do so. This false representation was characterized by dishonesty in fact and unfair dealing.

35. The defendant's misrepresentation was material. An objective, reasonable person using the misrepresentation would have viewed the representation as sufficiently important and significant that it would have played a role in the decision to enter into a contractual relationship.

36. The defendant made its misrepresentation with knowledge of the statement's falsity and/or a reckless disregard of the statement's truth or falsity.

37. The defendant made its misrepresentation to a person whom it intended and/or had reason to expect to act in reliance upon the fraudulent misrepresentation.

38. The plaintiff was ignorant of the falsity of the defendant's misrepresentation.

39. The plaintiff relied upon the misrepresentation by letting the defendant out of default.

40. The plaintiff had a right to rely upon the defendant's misrepresentation in that his reliance was not reckless or grossly negligent.

41. As a direct and proximate result of the defendant's actions, the plaintiff has suffered some or all of the following injuries and damages:

- a. the expense associated with a fruitless mediation;
- b. costs associated with motions, the filing of this action, and other costs;
- c. inconvenience;
- d. lost time and opportunity to earn income;
- f. recovery of damages in the underlying action; and,
- g. such other damages that will be shown through discovery and at trial.

42. The plaintiff is therefore informed and believes that he is entitled to judgment against the defendant for actual and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays for a jury trial and judgment against the defendant for actual damages, nominal damages, and punitive damages, the costs of this action, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

Hawkins & Jedziniak, LLC

s/ Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar #78470

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1225 South Church Street

Greenville, South Carolina 29605

(864) 275-8142 (telephone)

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josh@hjllesc.com

helena@hjllesc.com

Attorneys for Plaintiff

Greenville, South Carolina

July 25, 2022

Pursuant to Rule 38, *SCRCP*, the plaintiff demands a trial by jury on all issues triable to a jury.

s/ Joshua T. Hawkins

Joshua T. Hawkins

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE 13 th JUDICIAL CIRCUIT
	)	
	)	CIVIL ACTION NO. 2022-CP-23-03851
James Dustin Lucas,	)	
	)	
	)	
Plaintiff,	)	<u>ANSWER OF STATE FARM</u>
	)	<u>MUTUAL AUTOMOBILE</u>
v.	)	<u>INSURANCE COMPANY</u>
	)	<u>(JURY TRIAL REQUESTED)</u>
State Farm Mutual Automobile,	)	
Insurance Company,	)	
Defendant.	)	
	)	

State Farm Mutual Automobile Insurance Company (State Farm) answers the plaintiff's complaint as follows:

FOR A FIRST DEFENSE

1. State Farm is without knowledge or information sufficient to form a belief as to the truth of paragraph 1 and, therefore, this paragraph is denied.

2. Answering paragraph 2, State Farm admits it is a corporation and that it does business across the United States including Greenville County, South Carolina, but the remaining allegations in paragraph 2 are denied.

3. Answering paragraph 3, State Farm denies that an automobile collision gave rise to this lawsuit and, therefore, paragraph 3 is denied.

4. Answering paragraph 4, State Farm admits the plaintiff has stipulated he will seek no more than \$75,000 inclusive of all costs, fees and any other recoveries and that the total recovery can never exceed \$75,000 and, in reliance on this binding stipulation, State Farm is not removing this case to Federal Court and State Farm denies the remaining allegations in paragraph

4.

5. Answering paragraph 5, State Farm would show that venue and jurisdiction are matters of law to be determined by the Court and otherwise paragraph 5 is denied.

6. Answering paragraph 6, State Farm incorporates its answers to paragraphs 1 through 5 as fully and effectually as if set forth verbatim.

7. Answering paragraph 7, State Farm pursuant to SCRCP 10 (c) incorporates the answer of Andre Knox to the plaintiff's complaint in civil action number 2020-CP-23-02877 and otherwise paragraph 7 is denied.

8. Answering paragraph 8, State Farm pursuant to SCRCP 10 (c) incorporates the answer of Andre Knox to the plaintiff's complaint in civil action number 2020-cp-23-02877 and otherwise paragraph 8 is denied.

9. Answering paragraph 9, State Farm pursuant to SCRCP 10(c) incorporates the answer of Andre Knox to the plaintiff's complaint in civil action number 2020-cp-23-02877 and otherwise paragraph 9 is denied.

10. Answering paragraph 10, State Farm admits that in June 2020 the plaintiff filed civil action number 2020-cp-23-02877 in the Greenville County Court of Common Pleas against Seely and Knox, but the remaining allegations in paragraph 10 are denied.

11. Answering paragraph 11, State Farm admits only that it, which was not a party to civil action number 2020-cp-23-02877, did not file an answer or request an extension to file a response and State Farm admits that at some point default was entered against Knox, which default was later retracted, but State Farm is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 11 and, therefore, those allegations are denied.

12. Answering paragraph 12, State Farm admits that after the plaintiff obtained an order of default against Knox, State Farm retained an attorney to defend Knox who requested that

Knox be let out of default and counsel for the plaintiff agreed to let Knox out of default upon State Farm's agreement to an early mediation and Knox's withdrawal of his motion to set aside default and that a mediation was scheduled, but the remaining allegations in paragraph 12 are denied.

13. State Farm denies paragraph 13 and would further show that any reference in the plaintiff's complaint or otherwise in this lawsuit to occurrences during mediation is a direct violation of Alternative Dispute Resolution Rule 8 and that, by virtue of the plaintiff's violation of Rule 8, State Farm is entitled to sanctions under Alternative Dispute Resolution Rule 10(b).

14. Answering paragraph 14, State Farm refers to the order of Judge Morgan in civil action number 2020-cp-23-02877 and, to the extent the allegations in paragraph 14 vary or in any way contradict the order of Judge Morgan, paragraph 14 is denied and otherwise paragraph 14 is denied.

15. State Farm denies paragraph 15.

16. State Farm denies paragraph 16 and would further show the attempted incorporation of a deposition transcript into a pleading is a violation of SCRCP 8, 9 or 10.

17. State Farm denies paragraph 17 because the referenced entry of default has been withdrawn and State Farm further refers to the holding of the case cited in paragraph 17 and, to the extent paragraph 17 purports to summarize that case, State Farm denies paragraph 17 to the extent it inaccurately references the holding in that case.

18. State Farm denies paragraph 18.

19. Answering paragraph 19, State Farm admits this lawsuit is not an action for improper claims practice or bad faith even though paragraph 24 (e) alleges State Farm breached a duty to the plaintiff to act with good faith and fair dealing and State Farm would further show the plaintiff has no standing to bring this lawsuit and the remaining allegations in paragraph 19 are denied.

20. State Farm denies paragraph 20.

21. Answering paragraph 21, State Farm incorporates its answers to paragraphs 1 through 20 as fully and effectually as if set forth verbatim.

22. State Farm denies paragraph 22 and would further show it owed no duty to the plaintiff who is not an insured of State Farm nor an assignee of any claim of a State Farm insured and, therefore, the plaintiff lacks standing to bring this lawsuit.

23. Paragraph 23 is denied because State Farm owed no duty of care to the plaintiff, as set forth in paragraph 22.

24. Paragraph 24 and all subparagraphs therein are denied.

25. State Farm denies paragraph 25 and all subparagraphs therein.

26. State Farm denies paragraph 26.

27. Answering paragraph 27, State Farm incorporates its answers to paragraphs 1 through 26 as fully and effectually as if set forth verbatim.

28. Answering paragraph 28, State Farm admits only that it agreed to mediate the plaintiff's lawsuit against State Farm's insured Knox, but otherwise paragraph 28 is denied.

29. State Farm denies paragraph 29.

30. State Farm denies paragraph 30.

31. State Farm denies paragraph 31 and all subparagraphs therein.

32. State Farm denies paragraph 32.

33. Answering paragraph 33, State Farm incorporates its answers to paragraphs 1 through 32 as fully and effectually as if set forth verbatim.

34. State Farm denies paragraph 34.

35. State Farm denies paragraph 35.

36. State Farm denies paragraph 36.

37. State Farm denies paragraph 37.

38. State Farm denies paragraph 38.

39. State Farm denies paragraph 39.

40. State Farm denies paragraph 40.

41. State Farm denies paragraph 41 and all subparagraphs therein.

42. State Farm denies paragraph 42

43. Except as is specifically admitted, each and every allegation in the complaint and in the prayer of the complaint is denied.

FOR A SECOND DEFENSE

44. If State Farm was negligent and reckless as alleged in the plaintiff's first cause of action, the plaintiff was comparatively negligent and reckless in refusing through plaintiff's counsel to negotiate in good faith and such negligence and recklessness exceeded that of State Farm and the plaintiff is therefore barred from any recovery.

FOR A THIRD DEFENSE

45. In the event the plaintiff's negligence and recklessness as set forth in the preceding defense did not exceed that of State Farm, any award to the plaintiff should be reduced by the percentage of the plaintiff's negligence and recklessness.

FOR A FOURTH DEFENSE

46. The plaintiff lacks standing to bring this lawsuit as the plaintiff was not an insured of State Farm nor an assignee of any claim of an insured of State Farm.

FOR A FIFTH DEFENSE

47. The filing of and the prosecution of this lawsuit is in violation of the South Carolina Frivolous Proceedings Sanctions Act (section 15-36-10 et. seq.) and, should State Farm receive

summary judgment or any other dismissal of the plaintiff's case upon its merits, State Farm is entitled to all remedies provided under this Act.

FOR A SIXTH DEFENSE

48. The plaintiff's complaint, by referencing communications and other occurrences in the context of a mediation, is in direct violation of Alternative Dispute Resolution Rule 8 and State Farm is entitled to sanctions under Alternative Dispute Resolution Rule 10 (b).

FOR A SEVENTH DEFENSE

49. The plaintiff's complaint fails to state facts sufficient to constitute a cause of action.

FOR AN EIGHTH DEFENSE

50. Any award of punitive damages under the facts of this case will violate the South Carolina and United States constitutions.

FOR A NINTH DEFENSE

51. The alleged contract referenced in the plaintiff's complaint did not comply with SCRCP 43(k) and is unenforceable.

WHEREFORE, having fully answered the complaint, State Farm Mutual Automobile Insurance Company prays that the complaint be dismissed, with costs, and for such other and further relief as this Court may deem just and proper.

[Signature Page Follows]

WHELAN MELLEN & NORRIS, LLC

By: /s/ CHARLES R. NORRIS

Charles R. Norris

Bar No. 4238

E-Mail: charles@whelanmellen.com

Post Office Box 939

Charleston, SC 29402

(843) 998-7099

*Attorneys for State Farm Mutual Automobile,
Insurance Company*

August 23, 2022

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
))
James Dustin Lucas,)
))
))
Plaintiff,)
))
v.)
))
State Farm Mutual Automobile,)
Insurance Company,)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE 13th JUDICIAL CIRCUIT
CIVIL ACTION NO. 2022-CP-23-03851

**MOTION FOR SUMMARY
JUDGMENT**

Subject to and reserving its motion to stay, pursuant to SCRCP 56 State Farm Mutual Automobile Insurance Company (State Farm) moves for summary judgment on the following grounds:

1. The complaint is predicated upon an alleged agreement between counsel for the plaintiff and counsel for Andre Knox in civil action number 2020-cp-23-02877 (complaint paragraphs 12, 13) which is unenforceable because it is not compliant with SCRCP 43(k).
2. The complaint is predicated upon information about occurrences during a mediation in civil action number 2020-cp-23-02877 which violates the confidentiality of ADR rule 8 (complaint paragraph 13).
3. Even assuming an enforceable agreement exists which does not reveal information in violation of ADR rule 8, the plaintiff cannot prove a violation of this agreement without information about State Farm's reserve, which information is not discoverable.
4. State Farm was the insurer for Andre Knox. Thus, it owed no duty to the plaintiff as a third-party claimant.
5. No law mandates any offers at mediation and, even assuming an enforceable agreement to mediate between State Farm's reserve and its liability limits for Andre Knox, the plaintiff cannot

prove what the case would have settled for and, accordingly, the amount of the plaintiff's damages are speculative as a matter of law.

6. Even if an enforceable agreement existed as alleged in the complaint and even if revealing offers at mediation would not violate ADR rule 8, it is undisputed State Farm did make an offer before plaintiff terminated the mediation (complaint paragraph 13; plaintiff's interrogatory answers in Lucas v. Knox attached as exhibit A) and the plaintiff therefore cannot prove a violation of the alleged agreement.

7. As to the second cause of action alleging breach of contract accompanied by a fraudulent act, no enforceable contract existed between the plaintiff and State Farm.

8. State Farm is entitled to summary judgment on the third cause of action because there is no evidence of a false representation upon which the plaintiff relied to his detriment.

This motion is based upon SCRPC 56, the court file in Lucas v. Knox of which this court can take judicial notice, the plaintiff's interrogatory answer in Lucas v. Knox attached as exhibit A, emails between counsel for Lucas and counsel for Knox attached as exhibit B, the traffic collision report attached as exhibit C, the ADR rules and applicable cases and statutes.

WHELAN MELLEN & NORRIS, LLC

By: /s/ CHARLES R. NORRIS

Charles R. Norris

Bar No. 4238

E-Mail: charles@whelanmellen.com

89 Broad Street

Charleston, SC 29401

(843) 998-7099

*Attorneys for State Farm Mutual Automobile
Insurance Company*

November 3, 2022
Charleston, South Carolina

- (f) Whether you settled or received any money or judgment for property damage or personal injury in any of these accidents and, if so, for what amount.

RESPONSE: See responses to Defendant Seely's discovery requests. The plaintiff will supplement if necessary. Knox's insurance company did not mediate in good faith and has only offered \$1,000. The insurance company violated ADR rules and did not have Knox present at mediation. This constitutes bad faith because a verdict is likely to exceed all available coverage. The insurance company the insurance defense attorney it hired attended mediation (without the insured) so this information should already be known.

13. Please describe in detail your medical history within the last ten (10) years, including, but not limited to, all illnesses, surgical procedures, hospital stays and treatment by any medical personnel.

RESPONSE: See responses to Defendant Seely's discovery requests. The plaintiff will supplement if necessary.

14. Provide the name and address of all health care facilities and professionals, including, but not limited to medical practices, hospitals, emergency rooms, treatment centers, chiropractic clinics, mental health facilities, doctors, chiropractors, therapists, mental health physicians or any other medical center and/or professional of any kind where Plaintiff has received medical treatment or care in the previous ten (10) years.

RESPONSE: See responses to Defendant Seely's discovery requests. The plaintiff will supplement if necessary.

15. Provide the name and address of Plaintiff's primary care physician(s) for the past ten (10) years, including, but not limited to any family doctor(s), emergency room(s) and/or urgent care facilities.



SFMAIC_Lucas_0358

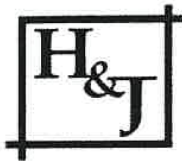
From: Josh Hawkins
Sent: April 20, 2021 2:57 PM
To: Jeanmarie Tankersley; Stephen Anderson
Cc: Helena Jedziniak; Paralegal; Assistant
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Jeanmarie,

We are happy to let yall out if yall agree to mediate the case in the next 30 days and negotiate between the amount of your reserve and the policy limit.

Otherwise, since there is no good cause for letting the defendant out of default, I think it would be counter to the best interest of my client to voluntarily let a defendant out of default where liability is clear and the default is solely the fault of the insurance company. I think we even have email correspondence between us and the insurer showing the insurance company just refused to do anything. I think when we present this to the Court, and since no attorney was involved, the Court will be slow to set aside the default.

Sincerely,



Joshua T. Hawkins
 Partner • Hawkins & Jedziniak, LLC
 Office (864) 275-8142 | Fax (864) 752-0911
 Email: josh@hjlsc.com
 1225 South Church Street | Greenville, SC 29605
www.hawkinsandjedziniak.com

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Date: Tuesday, April 20, 2021 at 1:49 PM
To: Josh Hawkins <josh@hjlsc.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Stephen and Josh,

I've been retained to represent Defendant Knox. It's my understanding default has been entered. Josh, please let me know if you'll agree to allow us out of default. I'm going to go ahead and file a motion today but of course will withdraw it if you agree to let us out.

If any discovery requests or responses have been exchanged yet in the case, will y'all please send that my way?

Thank you,

Jeanmarie



CLAWSON STAUBES LLC

Jeanmarie Tankersley
Licensed in SC and GA

1000 E North St., Suite 200 | Greenville SC | 29601

Office: 864 331 8940 Ext. 2405 | Fax: 864 232 2921

Driving Instructions: [Using GPS](#) | [Print Map](#)

Website: www.clawsonandstaubes.com | Email: jtankersley@cslaw.com | Location: [Map](#)

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From: Josh Hawkins
Sent: April 22, 2021 2:47 PM
To: Jeanmarie Tankersley; Stephen Anderson
Cc: Helena Jedziniak; Paralegal; Assistant
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

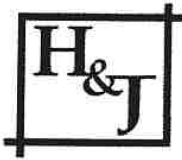
Jeanmarie,

I never heard back from you after sending this, I don't think. If you did email me back, please forward that to me.

We offered to let Knox out if State Farm would mediate, and it appears State Farm chose not to protect Knox's interest by taking action that would guarantee Knox being let out of default. Instead, State Farm filed a motion to protect its own interests.

If any of this is incorrect, please let me know.

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From: [Jeanmarie Tankersley](#)
Sent: April 23, 2021 9:23 AM
To: [Josh Hawkins](#); [Stephen Anderson](#)
Cc: [Helena Jedziniak](#); [Paralegal](#); [Assistant](#)
Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Josh,

I have not had an opportunity to discuss your request for mediation yet with State Farm. As I indicated in my email, I was planning on filing a motion but would withdraw it if we were let out of default.

Can you send me the email correspondence you referenced in your email?

Thank you,

Jeanmarie



Jeanmarie Tankersley
Licensed in SC and GA

1000 E North St., Suite 200 | Greenville SC | 29601
Office: 864 331 8940 Ext. 2405 | Fax: 864 232 2921
Driving Instructions: [Using GPS](#) | [Print Map](#)
Website: www.clawsonandstaubes.com | Email: jtankersley@cslaw.com | Location: [Map](#)

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Cc: Helena Jedziniak <Helena@hjlsc.com>; Paralegal <monica@hjlsc.com>; Assistant <assistant@hjlsc.com>
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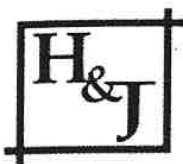
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To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>, Stephen Anderson <sanderson@clarksonwalsh.com>

Cc: Helena Jedziniak <Helena@hjllcsc.com>, Paralegal <monica@hjllcsc.com>, Assistant <assistant@hjllcsc.com>

Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

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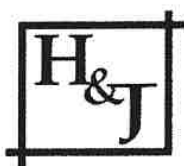
Sincerely,

From: [Josh Hawkins](#)
Sent: May 3, 2021 7:58 AM
To: [Jeanmarie Tankersley](#); [Stephen Anderson](#)
Cc: [Helena Jedziniak](#); [Paralegal](#); [Assistant](#)
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Jeanmarie,

Did you have a chance to talk to your client about this?

Sincerely,



Joshua T. Hawkins
Partner • Hawkins & Jedziniak, LLC
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josh@hjlsc.com
1225 South Church Street | Greenville, SC 29605
www.hawkinsandjedziniak.com

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Date: Friday, April 23, 2021 at 9:23 AM
To: Josh Hawkins <josh@hjlsc.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
Cc: Helena Jedziniak <Helena@hjlsc.com>, Paralegal <monica@hjlsc.com>, Assistant <assistant@hjlsc.com>
Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Josh,

I have not had an opportunity to discuss your request for mediation yet with State Farm. As I indicated in my email, I was planning on filing a motion but would withdraw it if we were let out of default.

Can you send me the email correspondence you referenced in your email?

Thank you,

Jeanmarie



Jeanmarie Tankersley

From: [Jeanmarie Tankersley](#)
Sent: May 4, 2021 10:44 AM
To: [Josh Hawkins](#); [Stephen Anderson](#)
Cc: [Helena Jedziniak](#); [Paralegal](#); [Assistant](#)
Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Josh,

She's out of the office right now because her spouse is undergoing heart surgery. I believe she'll be back in a week or so, but I'll let you know if I hear back earlier than that.



Jeanmarie Tankersley
Licensed in SC and GA

1000 E North St., Suite 200 | Greenville SC | 29601
Office: 864 331 8940 Ext. 2405 | Fax: 864 232 2921
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Sent: May 3, 2021 7:58 AM
To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>; Stephen Anderson <sanderson@clarksonwalsh.com>
Cc: Helena Jedziniak <Helena@hjlsc.com>; Paralegal <monica@hjlsc.com>; Assistant <assistant@hjlsc.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Jeanmarie,

Did you have a chance to talk to your client about this?

Sincerely,

From: [Ginny May](#)
Sent: May 11, 2021 2:32 PM
To: josh@hjlsc.com; mcoulter@clarksonwalsh.com; sanderson@clarksonwalsh.com
Cc: [Tracy Brown](#); [Crystal Fuller](#); david@hjlsc.com; monica@hjlsc.com
Subject: FW: Motion "MSETAS-Def/Andre Knox Motion/Set Aside Default" for Case "2020CP2302877-James Dustin Lucas vs. Meghan Seely , defendant, et al" was added to a Motions Roster for 6/30/2021 at 2:00 PM

Just wanted to be sure that all of you received this notification. One more to follow.



Ginny May
Legal Assistant to Jeanmarie Tankersley
1000 E North St., Suite 200 | Greenville SC | 29601
Direct Dial: 864 546 4385 | Office: 864 331 8940 Ext. 2401 | Fax: 864 232 2921
Website: www.clawsonandstaubes.com | Email: gmay@clawsonandstaubes.com
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-----Original Message-----

From: roster@greenvillecounty.org <roster@greenvillecounty.org>
Sent: May 11, 2021 1:46 PM
To: Ginny May <gmay@clawsonandstaubes.com>
Cc: njcoord@greenvillecounty.org
Subject: Motion "MSETAS-Def/Andre Knox Motion/Set Aside Default" for Case "2020CP2302877-James Dustin Lucas vs. Meghan Seely , defendant, et al" was added to a Motions Roster for 6/30/2021 at 2:00 PM

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

An in-person hearing in this case is RE-SCHEDULED - NEW DATE & TIME on Subject line above-

Location: Greenville County Courthouse, 305 East North Street, Greenville, SC 29601

MOVANT IS RESPONSIBLE TO NOTIFY OPPOSING COUNSEL AND PRO SE PARTIES Check the online roster at <https://us-west-2.protection.sophos.com?d=greenvillecounty.org&u=aHR0cDovL3d3dy5ncmVlbnZpbGxIY291bnR5Lm9yZy9zY2pkL2NvdXJ0cm9zdGVycy8=&i=NTIkn2U3MjBjMDA2NTUxMmRjZDRhZTY1&t=YyswMGdGSHZ1NGtReDU4QjBkNmF3SVpjb1NtRi84alE2L3BycGhlN2ZxST0=&h=3376795e80714ccbb949aa2b42143465>

CONTINUANCE, RESOLVED, WITHDRAWN - send detailed e-mail (copy opposing counsel/party) to Non-Jury Coordinator at: vritchie@greenvillecounty.org

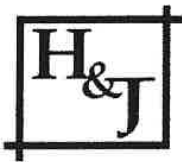
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From: [Josh Hawkins](#)
Sent: May 11, 2021 2:33 PM
To: [Ginny May](#); mcoulter@clarksonwalsh.com;
sanderson@clarksonwalsh.com
Cc: [Tracy Brown](#); [Crystal Fuller](#); [Paralegal](#)
Subject: Re: Motion "MSETAS-Def/Andre Knox Motion/Set Aside Default" for Case "2020CP2302877-James Dustin Lucas vs. Meghan Seely , defendant, et al" was added to a Motions Roster for 6/30/2021 at 2:00 PM

Yes, and good thing too!

For some reason, I was thinking it was tomorrow and was going to be there. I am glad I know that it is off. See yall when it s rescheduled!

Sincerely,



Joshua T. Hawkins

Partner • Hawkins & Jedziniak, LLC

Office (864) 275-8142 | Fax (864) 752-0911

josh@hjlsc.com

1225 South Church Street | Greenville, SC 29605

www.hawkinsandjedziniak.com

From: Ginny May <gmay@clawsonandstaubes.com>
Date: Tuesday, May 11, 2021 at 2:31 PM
To: Josh Hawkins <josh@hjlsc.com>, "mcoulter@clarksonwalsh.com" <mcoulter@clarksonwalsh.com>, "sanderson@clarksonwalsh.com" <sanderson@clarksonwalsh.com>
Cc: Tracy Brown <tbrown@clarksonwalsh.com>, Crystal Fuller <cfuller@clarksonwalsh.com>, Paralegal <monica@hjlsc.com>, Paralegal <monica@hjlsc.com>
Subject: FW: Motion "MSETAS-Def/Andre Knox Motion/Set Aside Default" for Case "2020CP2302877-James Dustin Lucas vs. Meghan Seely , defendant, et al" was added to a Motions Roster for 6/30/2021 at 2:00 PM

Just wanted to be sure that all of you received this notification. One more to follow.

**CLAWSON
STAUBES**
LLC

Ginny May
Legal Assistant to Jeanmarie Tankersley

From: [Ginny May](#)
Sent: May 11, 2021 2:35 PM
To: 'Josh Hawkins'; mcoulter@clarksonwalsh.com;
sanderson@clarksonwalsh.com
Cc: [Tracy Brown](#); [Crystal Fuller](#); [Paralegal](#)
Subject: RE: Motion "MSETAS-Def/Andre Knox Motion/Set Aside Default" for Case "2020CP2302877-James Dustin Lucas vs. Meghan Seely , defendant, et al" was added to a Motions Roster for 6/30/2021 at 2:00 PM

It was rescheduled from tomorrow to June 30, per my earlier e-mail.



Ginny May
Legal Assistant to Jeanmarie Tankersley
1000 E North St., Suite 200 | Greenville SC | 29601
Direct Dial: 864 546 4385 | Office: 864 331 8940 Ext. 2401 | Fax: 864 232 2921
Website: www.clawsonandstaubes.com | Email: gmay@clawsonandstaubes.com
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Cc: Tracy Brown <tbrown@clarksonwalsh.com>; Crystal Fuller <cfuller@clarksonwalsh.com>; Paralegal <monica@hjlsc.com>
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From: Crystal Fuller
Sent: July 6, 2021 10:42 AM
To: Ginny May; Paralegal
Cc: Tracy Brown
Subject: RE: James Dustin Lucas vs. Meghan Seely and Andre Knox

Good morning ladies,

I have added Tracy Brown to this email to confirm. She is the one who schedules mediations for Mr. Coulter. Tracy is out of the office but has been checking her emails so she will respond when she has a moment.

Thanks!

Crystal Fuller

****Yo Hablo Español****

Paralegal to Michael T. Coulter, Raymond D. Turner, & Stephen T. Anderson
Direct Dial: 864-372-3967



CLARKSON | WALSH | COULTER
1164A Woodruff Road | Greenville, SC 29607
P.O. Box 6728 | Greenville, SC 29606
Office: 864.232.4400 | Fax: 864.235.4399

Visit our website at
www.clarksonwalsh.com

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From: Ginny May <gmay@clawsonandstaubes.com>
Sent: Tuesday, July 6, 2021 10:39 AM
To: Paralegal <monica@hjlsc.com>; Crystal Fuller <cfuller@clarksonwalsh.com>
Subject: James Dustin Lucas vs. Meghan Seely and Andre Knox

Good morning, ladies.

Are we confirmed for mediation with Lee Plumblee on September 10 in the above-referenced matter?



Ginny May
Legal Assistant to Jeanmarie Tankersley
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Website: www.clawsonandstaubes.com | Email: gmay@clawsonandstaubes.com
Driving Instructions: [Using GPS](#) | [Print Map](#)

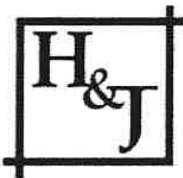
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From: Paralegal <monica@hjlsc.com>
Sent: June 22, 2021 9:44 AM
To: Ginny May <gmay@clawsonandstaubes.com>
Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Hi Ginny!

Yes, I went ahead and reserved the date first thing this morning. I gave Mr. Anderson's office a call as well to confirm with him, but haven't heard back yet. If something happens with that date, I'll be sure to let yall know.

Sincerely,



Monica Brody
Certified Paralegal | Hawkins and Jedziniak, LLC
Phone 864-275-8142 Fax 864-752-0911
Web www.hawkinsandjedziniak.com
Email monica@hjlsc.com
1225 South Church Street Greenville SC 29605

From: Ginny May <gmay@clawsonandstaubes.com>
Sent: Tuesday, June 22, 2021 8:16 AM
To: Paralegal <monica@hjlsc.com>
Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Good morning, Monica.

I assume you'll book September 10 with Mr. Plumblee's office, pending confirmation from Stephen Anderson as to his availability. Let me know if that is not the case.

Thank you.

Ginny

From: Josh Hawkins <josh@hjllcsc.com>
Sent: June 21, 2021 4:29 PM
To: Ginny May <gmay@clawsonandstaubes.com>
Cc: Paralegal <monica@hjllcsc.com>; Helena Jedziniak <Helena@hjllcsc.com>; Assistant <assistant@hjllcsc.com>; Ethan Jedziniak <jedziniak.ethan@gmail.com>; Stephen Anderson <sanderson@clarksonwalsh.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

We would prefer he attend by zoom rather than phone so that works out.

Sincerely,

Joshua T. Hawkins
Hawkins & Jedziniak, LLC
1225 South Church Street
Greenville, South Carolina 29605
Phone: (864) 275-8142
Fax: (864) 752-0911

On Jun 21, 2021, at 2:20 PM, Ginny May <gmay@clawsonandstaubes.com> wrote:

Our adjuster is available September 10. He is not available September 3.

He also said he would prefer to attend via Zoom rather than just by telephone, so please let me know if anyone objects to that.

I will hold September 10. Hopefully Mr. Anderson is available then, too.

<image001.png>

Ginny May
Legal Assistant to Jeanmarie Tankersley
1000 E North St., Suite 200 | Greenville SC | 29601
Direct Dial: 864 546 4385 | Office: 864 331 8940 Ext. 2401 | Fax: 864 232 2921
Website: www.clawsonandstaubes.com | Email: gmay@clawsonandstaubes.com
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From: Ginny May
Sent: June 21, 2021 3:07 PM
To: Paralegal <monica@hjlsc.com>
Cc: Helena Jedziniak <Helena@hjlsc.com>; Assistant <assistant@hjlsc.com>; Ethan Jedziniak <jedziniak.ethan@gmail.com>; Stephen Anderson <sanderson@clarksonwalsh.com>; Josh Hawkins <josh@hjlsc.com>
Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Jeanmarie is not available on August 30. I'll get back to you as soon as I know our adjuster's availability. If any of the attorneys has an objection to our adjuster's attendance *by telephone*, please let me know.

<image001.png>

Ginny May
Legal Assistant to Jeanmarie Tankersley
1000 E North St., Suite 200 | Greenville SC | 29601
Direct Dial: 864 546 4385 | Office: 864 331 8940 Ext. 2401 | Fax: 864 232 2921
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From: Paralegal <monica@hjlsc.com>
Sent: June 21, 2021 3:04 PM
To: Ginny May <gmay@clawsonandstaubes.com>
Cc: Helena Jedziniak <Helena@hjlsc.com>; Assistant <assistant@hjlsc.com>; Ethan Jedziniak <jedziniak.ethan@gmail.com>; Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>; Stephen Anderson <sanderson@clarksonwalsh.com>; Josh Hawkins <josh@hjlsc.com>
Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Hi Ginny,

I apologize, I missed that email. We do have August 30th available if that works for Jeanmarie and Mr. Anderson. If not, our next available would be September 3rd or 10th of the dates you provided.

Sincerely,

<image002.png>

Monica Brody

Certified Paralegal | Hawkins and Jedziniak, LLC

Phone 864-275-8142 Fax 864-752-0911

Web www.hawkinsandjedziniak.com

Email monica@hjlsc.com

1225 South Church Street Greenville SC 29605

From: Ginny May <gmay@clawsonandstaubes.com>

Sent: Monday, June 21, 2021 3:00 PM

To: Paralegal <monica@hjlsc.com>

Cc: Helena Jedziniak <Helena@hjlsc.com>; Assistant <assistant@hjlsc.com>; Ethan

Jedziniak <jedziniak.ethan@gmail.com>; Jeanmarie Tankersley

<jtankersley@clawsonandstaubes.com>; Stephen Anderson

<sanderson@clarksonwalsh.com>; Josh Hawkins <josh@hjlsc.com>

Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Hi, Monica.

Per the June 2 e-mail exchange between Jeanmarie and Mr. Hawkins, they've agreed to using Lee Plumblee as mediator in this case. I've checked his online calendar, and the only date he has available in August is the 30th. Both he and Jeanmarie are available September 3, 10, 13, 14, 16, 17, 20, 21, 23, 24, and 27 through 30. I have not yet checked these dates with our adjuster, and I would need to know if Mr. Hawkins and counsel for Defendant Seely will agree to our adjuster's attendance by telephone.

<image001.png>

Ginny May

Legal Assistant to Jeanmarie Tankersley

1000 E North St., Suite 200 | Greenville SC | 29601

Direct Dial: 864 546 4385 | Office: 864 331 8940 Ext. 2401 | Fax: 864 232 2921

Website: www.clawsonandstaubes.com | **Email:**

gmay@clawsonandstaubes.com

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From: Paralegal <monica@hjlsc.com>

Sent: June 21, 2021 2:44 PM

To: Josh Hawkins <josh@hjlsc.com>; Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>; Stephen Anderson <sanderson@clarksonwalsh.com>

Cc: Ginny May <gmay@clawsonandstaubes.com>; Helena Jedziniak <Helena@hjlsc.com>; Assistant <assistant@hjlsc.com>; Ethan Jedziniak <jedziniak.ethan@gmail.com>

Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Good afternoon,

Following up on the below, please advise dates available for mediation. We have the following open:

August 2, 3, 4, 5, 6, 9, 10, 11, 24, 25.

I will be happy to check with Lee Plumblee, Joe Mooneyham, or Rob Hassold's offices for their schedule, as those are typically the mediators we suggest. If another has been agreed upon, or should be suggested, please advise and I can check there as well. Thank you.

Sincerely,

<image002.png>

Monica Brody

Certified Paralegal | Hawkins and Jedziniak, LLC

Phone 864-275-8142 Fax 864-752-0911

Web www.hawkinsandjedziniak.com

Email monica@hjlsc.com

1225 South Church Street Greenville SC 29605

From: Josh Hawkins <josh@hjlsc.com>

Sent: Wednesday, June 2, 2021 11:15 AM

To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>; Stephen Anderson <sanderson@clarksonwalsh.com>

Cc: Ginny May <gmay@clawsonandstaubes.com>; Helena Jedziniak <Helena@hjlsc.com>; Paralegal <monica@hjlsc.com>; Assistant <assistant@hjlsc.com>; Ethan Jedziniak <jedziniak.ethan@gmail.com>

Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Ok sorry, let me look back at the email I sent. I am juggling emails and trying to finish a brief in a civil rights case, so I might have forgotten something. Will look back and email you shortly.

Sincerely,
<image003.png>

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Date: Wednesday, June 2, 2021 at 11:12 AM
To: Josh Hawkins <josh@hjlsc.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
Cc: Ginny May <gmay@clawsonandstaubes.com>, Helena Jedziniak <Helena@hjlsc.com>, Paralegal <monica@hjlsc.com>, Assistant <assistant@hjlsc.com>, Ethan Jedziniak <jedziniak.ethan@gmail.com>
Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Go forward with the default hearing or go forward with discovery?

It was my understanding that you would let us out of default if we agreed to an early mediation. Otherwise, we could have just gone forward with the motion to set aside default hearing when it was originally scheduled. Is that not the case?

<image004.png>

Jeanmarie Tankersley
Licensed in SC and GA

1000 E North St., Suite 200 | Greenville SC | 29601
Office: 864 331 8940 Ext. 2405 | Fax: 864 232 2921
Driving Instructions: [Using GPS](#) | [Print Map](#)
Website: www.clawsonandstaubes.com | Email: jtankersley@cslaw.com |
Location: [Map](#)

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From: Josh Hawkins <josh@hjlsc.com>
Sent: June 2, 2021 11:09 AM
To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>; Stephen Anderson <sanderson@clarksonwalsh.com>
Cc: Ginny May <gmay@clawsonandstaubes.com>; Helena Jedziniak

<Helena@hjlsc.com>; Paralegal <monica@hjlsc.com>; Assistant
<assistant@hjlsc.com>; Ethan Jedziniak <jedziniak.ethan@gmail.com>

Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

We can continue it until after mediation. That way, if we resolve the case, a stipulation will be entered and the case will end. If we don't resolve it, we can go forward. Monica please look on Lee's calendar and bounce dates around with Ginny May.

Sincerely,
<image005.png>

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>

Date: Wednesday, June 2, 2021 at 11:04 AM

To: Josh Hawkins <josh@hjlsc.com>, Stephen Anderson

<sanderson@clarksonwalsh.com>

Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

That's fine with me. Please loop Ginny May (gmay@clawsonandstaubes.com) in on the scheduling emails.

I'll go ahead and withdraw our Motion to Set Aside Default and will file an Answer. I can't tell based on the age of the Motion for Default Judgment if that has already been withdrawn or not. If not, do you want us to tell the Court that a hearing for that Motion is also no longer needed?

Thanks,

Jeanmarie

<image006.png>

Jeanmarie Tankersley
Licensed in SC and GA

1000 E North St., Suite 200 | Greenville SC | 29601

Office: 864 331 8940 Ext. 2405 | Fax: 864 232 2921

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Website: www.clawsonandstaubes.com | Email: jtankersley@cslaw.com |

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From: Josh Hawkins <josh@hjlsc.com>
Sent: June 2, 2021 10:47 AM
To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>; Stephen Anderson <sanderson@clarksonwalsh.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Thanks, Jeanmarie. I have had good results with Lee Plumblee. If youre good with him, we will reach out to him.

Sincerely,
<image007.png>

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Date: Wednesday, June 2, 2021 at 10:39 AM
To: Josh Hawkins <josh@hjlsc.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Josh,

We can move forward with the early mediation now. Who do you want us to use as the mediator?

Thanks,

Jeanmarie

<image008.png>

Jeanmarie Tankersley
Licensed in SC and GA

1000 E North St., Suite 200 | Greenville SC | 29601
Office: 864 331 8940 Ext. 2405 | Fax: 864 232 2921
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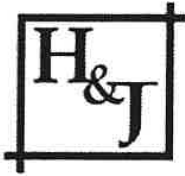
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Sent: June 22, 2021 9:44 AM
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Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

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Monica Brody
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Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

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Greenville, South Carolina 29605
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Fax: (864) 752-0911

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<image001.png>

Ginny May

Legal Assistant to Jeanmarie Tankersley

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Website: www.clawsonandstaubes.com | Email:

gmay@clawsonandstaubes.com

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From: Ginny May

Sent: June 21, 2021 3:07 PM

To: Paralegal <monica@hjlsc.com>

Cc: Helena Jedziniak <Helena@hjlsc.com>; Assistant <assistant@hjlsc.com>; Ethan Jedziniak <jedziniak.ethan@gmail.com>; Stephen Anderson

<sanderson@clarksonwalsh.com>; Josh Hawkins <josh@hjlsc.com>

Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

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Jeanmarie Tankersley
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From: Josh Hawkins <josh@hjllcsc.com>
Sent: June 2, 2021 11:09 AM
To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>; Stephen Anderson <sanderson@clarksonwalsh.com>
Cc: Ginny May <gmay@clawsonandstaubes.com>; Helena Jedziniak <Helena@hjllcsc.com>; Paralegal <monica@hjllcsc.com>; Assistant <assistant@hjllcsc.com>; Ethan Jedziniak <jedziniak.ethan@gmail.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

We can continue it until after mediation. That way, if we resolve the case, a stipulation will be entered and the case will end. If we don't resolve it, we can go forward. Monica please look on Lee's calendar and bounce dates around with Ginny May.

Sincerely,
<image005.png>

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Date: Wednesday, June 2, 2021 at 11:04 AM
To: Josh Hawkins <josh@hjllcsc.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

That's fine with me. Please loop Ginny May (gmay@clawsonandstaubes.com) in on the scheduling emails.

I'll go ahead and withdraw our Motion to Set Aside Default and will file an Answer. I can't tell based on the age of the Motion for Default Judgment if that has already been withdrawn or not. If not, do you want us to tell the Court that a hearing for that Motion is also no longer needed?

Thanks,

Jeanmarie

<image006.png>

Jeanmarie Tankersley
Licensed in SC and GA

1000 E North St., Suite 200 | Greenville SC | 29601
Office: 864 331 8940 Ext. 2405 | Fax: 864 232 2921
Driving Instructions: [Using GPS](#) | [Print Map](#)
Website: www.clawsonandstaubes.com | Email: jtankersley@cslaw.com |
Location: [Map](#)

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From: Josh Hawkins <josh@hjlsc.com>

Sent: June 2, 2021 10:47 AM

To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>; Stephen Anderson <sanderson@clarksonwalsh.com>

Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Thanks, Jeanmarie. I have had good results with Lee Plumblee. If you're good with him, we will reach out to him.

Sincerely,

<image007.png>

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>

Date: Wednesday, June 2, 2021 at 10:39 AM

To: Josh Hawkins <josh@hjlsc.com>, Stephen Anderson

August 2, 3, 4, 5, 6, 9, 10, 11, 24, 25.

I will be happy to check with Lee Plumblee, Joe Mooneyham, or Rob Hassold's offices for their schedule, as those are typically the mediators we suggest. If another has been agreed upon, or should be suggested, please advise and I can check there as well. Thank you.

Sincerely,

<image002.png>

Monica Brody
 Certified Paralegal | Hawkins and Jedziniak,
 LLC
 Phone 864-275-8142 Fax 864-752-0911
 Web www.hawkinsandjedziniak.com
 Email monica@hjlsc.com
 1225 South Church Street Greenville SC 29605

From: Josh Hawkins <josh@hjlsc.com>
Sent: Wednesday, June 2, 2021 11:15 AM
To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>; Stephen Anderson <sanderson@clarksonwalsh.com>
Cc: Ginny May <gmay@clawsonandstaubes.com>; Helena Jedziniak <Helena@hjlsc.com>; Paralegal <monica@hjlsc.com>; Assistant <assistant@hjlsc.com>; Ethan Jedziniak <jedziniak.ethan@gmail.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Ok sorry, let me look back at the email I sent. I am juggling emails and trying to finish a brief in a civil rights case, so I might have forgotten something. Will look back and email you shortly.

Sincerely,

<image003.png>

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Date: Wednesday, June 2, 2021 at 11:12 AM
To: Josh Hawkins <josh@hjlsc.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
Cc: Ginny May <gmay@clawsonandstaubes.com>, Helena Jedziniak <Helena@hjlsc.com>, Paralegal <monica@hjlsc.com>, Assistant <assistant@hjlsc.com>, Ethan Jedziniak <jedziniak.ethan@gmail.com>
Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Go forward with the default hearing or go forward with discovery?

From: Josh Hawkins
Sent: July 23, 2021 10:32 AM
To: Jeanmarie Tankersley; Helena Jedziniak; Paralegal
Subject: Lucas v. Knox and Seely: Case No.: 2020-CP-23-02877
Attachments: image001.png; offer of judgment (clocked).pdf; FAX_greenville memorial itemization.pdf

JeanMarie,

Attached are medical bills and our clocked offer of judgment as to def. Knox/State Farm.

In exchange for your agreement to negotiate between the reserve and the policy limit, we let State Farm out of default.

Mediation is scheduled for Sept. 10, 2021.

With liability clear and the meds alone near the policy limit, I don't think we should waste time with mediation. We agreed and we will go through the motions if y'all insist, but I don't see any scenario where this case settles for less than the policy limit, and with the offer of judgment in place, costs going forward and interest will be taxed against State Farm if we try the case, anyway.

Can you get State Farm to tender the limits on a covenant so y'all don't have to incur the costs of mediation, depositions, and trial since we know what the case has to settle for?

That way we can close part of the file and y'all can save some money.

Sincerely,

Joshua T. Hawkins

From: Josh Hawkins
Sent: September 10, 2021 12:20 PM
To: Jeanmarie Tankersley
Cc: Paralegal; Helena Jedziniak
Subject: Re: Lucas v. Knox and Seely: Case No.: 2020-CP-23-02877

Jeanmarie,

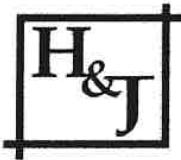
We were disappointed by the carrier's bad faith at mediation today, especially since we agreed to let the defendant (who was not present) out of default. part of the deal for letting state farm out of default was an agreement to negotiate between the reserve (not after it was changed to zero if it was changed at all) and the policy limit. State farm breached that agreement and did not mediate in good faith or make any interest to protect its insured's interest.

We are going to file an action against state farm and knox for breach of contract accompanied by fraudulent act and all other appropriate causes of action.

And the next time state farm wants out of default on a case, make sure they know I will remember their dishonesty and fraudulent conduct.

As for this action, your discovery responses are incomplete. Please provide complete responses within 1 week. Please consider this email our consultation.

Sincerely,



Joshua T. Hawkins
Partner • Hawkins & Jedziniak, LLC
Office (864) 275-8142 | Fax (864) 752-0911
josh@hjlsc.com
1225 South Church Street | Greenville, SC 29605
www.hawkinsandjedziniak.com

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Date: Sunday, August 15, 2021 at 10:10 PM
To: Josh Hawkins <josh@hjlsc.com>
Cc: Paralegal <monica@hjlsc.com>, Helena Jedziniak <Helena@hjlsc.com>
Subject: RE: Lucas v. Knox and Seely: Case No.: 2020-CP-23-02877

Josh,

Liability is disputed in this case. My client was not found to be contributing the accident. Seely is the driver that caused the collision.

From: Jeanmarie Tankersley
Sent: September 10, 2021 1:07 PM
To: Josh Hawkins
Cc: Paralegal; Helena Jedziniak
Subject: RE: Lucas v. Knox and Seely: Case No.: 2020-CP-23-02877

Josh,

I'm sorry to hear you were disappointed. We did negotiate between the reserves and the limits, as we agreed to. Given the liability dispute, however, I do not believe this case is worth the limits, which from my understanding was your only demand. If you file suit, please send me a copy.

We have provided discovery responses in this case. If there is something specific that you believe we did not fully respond to, please let me know. We have not received your discovery responses yet to our discovery requests which we served in June. I believe I have already sent a 10 day letter on that issue.

Thank you,

Jeanmarie



Jeanmarie Tankersley
 Licensed in SC and GA

1000 E North St., Suite 200 | Greenville SC | 29601
Office: 864 331 8940 Ext. 2405 | Fax: 864 232 2921
Driving Instructions: [Using GPS](#) | [Print Map](#)
Website: www.clawsonandstaubes.com | Email: jtankersley@cslaw.com | Location: [Map](#)

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From: Josh Hawkins <josh@hjlsc.com>
Sent: September 10, 2021 12:20 PM
To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Cc: Paralegal <monica@hjlsc.com>; Helena Jedziniak <Helena@hjlsc.com>
Subject: Re: Lucas v. Knox and Seely: Case No.: 2020-CP-23-02877

ORIGINAL

SOUTH CAROLINA OPS/DHS & DMV USE ONLY				SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 11/2011)				# Of Units 03		Amended - Attach Copy of Original Report Corrected		Notified 1798		Arrived 1715	
Date 08-17-2017		Time of Collision 1658		County 23		1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- PP		Collision Location (Rt. # / Name) 1 TAPPAN DR				Miles: 2.66		In Near City or Town of GREENVILLE	
Lane # / Dir. 1 Of 2 S W		Distance Offsets N 20		Direction N E		1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- Other		Base Intersection (Rt. # / Name) 28 / WADE HAMPTON BLVD				GPS COORDINATES 00 00 00.00 DEGREES MINUTES SECONDS			
RR. Id.		From N E		To S W		1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- Other		Second Intersection (Rt. # / Name) B77 / E WAREHOUSE CT				Latitude 34 54 31.07		Longitude 82 19 48.52	
R-171855 Unit # 01 Sex M Race B DOB 1897 City, State, & Zip GREENVILLE SC 29615 Driver's License # DL# Class D Insurance Company: STATE FARM Year 2000 Body PK Vehicle Make FORD VIN # 1FTNW20F0YEE4B102 State SC Year 2017 License Plate # LQK317 Owner's D.L. # UNKNOWN Name Telephone (854) 3488578 Owner's Full Name MILLER CODEY ANDREW Street 390 TANYARD RD City, State, & Zip GREENVILLE SC 29608330 Contributed To Collision Yes City, State, & Zip GREENVILLE SC 29608330 Estimated Speed 35 Speed Limit 35 C.D.L. Res: Yes (No) T/B S Res: Yes (No) Atc/Drg Info (see back): Yes (No) Code Summons # Code Towed By Yes (No)								R-171856 Unit # 02 Sex M Race W DOB 1892 City, State, & Zip TAYLORS SC 29687 Driver's License # DL# Class O Insurance Company: USAA Year 2008 Body SU Vehicle Make KIA VIN # KNDJD735085855285 State SC Year 2017 License Plate # HHQ972 Owner's D.L. # Name Telephone (810) 2877230 Owner's Full Name POPE MICHAEL DOUGLAS Street 42 MADELINE CIR City, State, & Zip TAYLORS SC 29687 Contributed To Collision Yes City, State, & Zip TAYLORS SC 29687 Estimated Speed 35 Speed Limit 35 C.D.L. Res: Yes (No) T/B S Res: Yes (No) Atc/Drg Info (see back): Yes (No) Code Summons # Code Towed By Yes (No)							
R-171861 Unit # 03 Sex F Race W DOB 1885 City, State, & Zip GREENVILLE SC 29687 Driver's License # NONE Class Insurance Company: PROGRESSIVE Year 2003 Body AS Vehicle Make INFI VIN # JNKDA31A73T110827 State MS Year 2016 License Plate # MCM965 Owner's D.L. # NONE Name Telephone (864) 2681486 Owner's Full Name LUCAS JAMES D Street 127 STONEGATE DR City, State, & Zip MADISON MS 39110 Contributed To Collision Yes City, State, & Zip MADISON MS 39110 Estimated Speed 15 Speed Limit 35 C.D.L. Res: Yes (No) T/B S Res: Yes (No) Atc/Drg Info (see back): Yes (No) Code Summons # 0272437 Code Towed By Yes (No) HENSONS (ROT)															
Dir. of Travel: Unit 1: N S (E) W Unit 2: N S E W Unit 3: (N) S E W Unit 1 Dam. Unit 2 Dam. Unit 3 Dam. Prop. Dam. 1 Prop. Dam. 2 \$ 1000 \$ 1000 \$ 1000 \$ 5 Property Owner/Witness: Address: State Zip: Phone: State Zip: Phone: Photo: Describe What Happened (Refer to Units by Number) (V) N UNIT #1 WAS TRAVELING EAST ON TAPPAN DRIVE. UNIT #2 WAS STOPPED AT A STOP SIGN ON A PRIVATE DRIVE. UNIT #3 WAS TRAVELING WEST ON TAPPAN DRIVE. UNIT #3, FAILED TO YIELD, BEING STRUCK BY UNIT #1 AND WAS PUSHED INTO UNIT #2.															
NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF. Investigating Officer's Name: MORTON - J C M Rank: TRP Badge #: T 191 Jurisdiction Code: H P Q 3 Review Date: 08-28-2017 Reviewer's Name: W M Hott Rank: F/SGT Internal Agency Code: 17GV112981															

EXHIBIT

SFMAIC_Lucas_0530

2017584432

Unit	Date of Birth	Sex	Race	HLT	Seat	R/S/D	A.B.D.	Ejected	LAI	Trans	Name	Street Address	Zip Code
01	DOB 1997	M	B	0	01	13	4	3	1	1	2	KNOX ANDRE CHRIS	111 AZALEA CT GREENVILLE SC 29615
02	1982	M	W	0	01	13	4	3	1	1	2	POPE MICHAEL DOUGL	42 MADELINE CIR TAYLORS SC 29687
03	1985	F	W	1	01	13	2	3	1	1	2	SEELY MEGHAN NICOL	510 HAVENHURST DR GREENVILLE SC 29667
03	1988	M	W	3	03	08	2	3	1	1	1	LUCAS JAMES D	510 HAVENHURST DR GREENVILLE SC 29667
03	1992	F	W	0	04	00	2	3	1	1	2		
03	1982	M	W	3	05	00	2	3	1	1	1	ANDERSON WILLIAM D	126 WOODSIDE RD SIMPSONVIL SC 29690
02	1983	F	W	0	03	13	4	3	1	1	2		
02	2014	M	W	0	05	21	4	3	1	1	2		

Race		W - Caucasian		Injury Status		Seating Loc.		20-Pedestrian		60-Sweeper of Cab		Restraint/Safety Device	
1-African American	2-Hispanic	3-Other	4-Unknown	1-Not Injured	2-Non-Incapacitating	3-Incapacitating	4-Fatal	1-01	2-02	3-03	4-04	1-Child	2-Child
5-Asian	6-Native American	7-Other	8-Unknown	5-Not Injured	5-Non-Incapacitating	6-Incapacitating	7-Fatal	5-01	6-02	7-03	8-04	5-Child	6-Child

Air Bag Deployment / Switch		Ejection		Location After Impact		3-Transferred to Medical Facility		1-Yes		2-Unknown		3-By: 1-EMS 2-Police 3-Other 4-Unknown	
1-Deployed Front	2-Not Deployed	1-Not Ejected	2-Part Ejected	1-Not Trapped	2-Extricated (Mechanical Means)	3-Transferred to Medical Facility	4-Unknown	1-Yes	2-Unknown	3-By: 1-EMS	2-Police	3-Other	4-Unknown

Non-Collision		Collision		Collision: Not Fixed		Collision: Fixed Object		47-Embedded		50-After Exit		58-Other	
1-Carped/Ejected from Seat	2-Crossed National Center	3-Crossed National Center	4-Crossed National Center	1-Not Injured	2-Non-Incapacitating	3-Incapacitating	4-Fatal	1-01	2-02	3-03	4-04	1-Child	2-Child

Manner of Collision (Struck Vehicle)		30-Rear-End		50-Side-Swipe Same Dir.		60-Side-Swipe Opposite Dir.		70-Backed Into		80-Unknown	
1-Not Coll. w/ Motor Veh.	2-Coll. w/ Motor Veh.	3-01	3-02	4-01	4-02	5-01	5-02	6-01	6-02	7-01	7-02

Vehicle Type		15-Full Size Van		27-Pedestrian		61-School Bus		70-Backed Into		80-Unknown	
1-Automobile	2-Mini Van	3-Animal/Drawn Veh.	4-Passenger Bus	1-Not Injured	2-Non-Incapacitating	3-Incapacitating	4-Fatal	1-01	2-02	3-03	4-04

Vehicle Use Code		04-Ambulance		06-Farm Use		12-Fire Fighting		13-Logging		14-Pedestrian	
1-None	2-Farm Trailer	3-Farm Trailer	4-Lowboy Trailer	5-Twin Trailers	6-Other	7-Other	8-Other	9-Other	10-Other	11-Other	12-Other

Action Prior to Impact (Vehicle)		(Non-Motorist)		01-Stop and Go Light		21-Officer or Flagman		22-Oncoming Emergency Vehicle		23-Flashing Traffic Signal	
1-Backing	2-Parried	3-Approaching/Leaving Vehicle	4-Entering/Crossing Location	5-Playing/Working on Vehicle	6-Pushing Vehicle	7-Standing	8-Walking, Playing, Cycling	9-Other	10-Unknown	11-Working	12-Working

Weather Condition		3-Cloudy		5-Fog, Smog, Stratus		6-Severe Crosswinds		7-Dark (Street Lamp Not Lit)		8-Other	
1-Clear (no adverse conditions)	2-Rain	3-Sleet	4-Snow	5-Other	6-Unknown	7-Other	8-Unknown	9-Other	10-Unknown	11-Other	12-Unknown

Light Condition		3-Dusk		5-Dark (Street Lamp Not Lit)		6-Dark (Street Lamp Not Lit)		7-Dark (No Lights)		8-Other	
1-Daylight	2-Dark (Lighting Unspecified)	3-Dark (Street Lamp Not Lit)	4-Dark (Street Lamp Not Lit)	5-Other	6-Unknown	7-Other	8-Unknown	9-Other	10-Unknown	11-Other	12-Unknown

Junction Type		03-Five More Points		07-Shared Use Paths or Trail		12-Y-Intersection		13-T-Intersection		14-Other	
1-Crossroad	2-Driveway	3-Fourway Intersection	4-Traffic Circle	5-Other	6-Unknown	7-Other	8-Unknown	9-Other	10-Unknown	11-Other	12-Unknown

Contributing Factors		09-Made an Improper Turn		10-Medical Related		11-Aggressive Operation of Vehicle		12-Overcoming/Oversteering		13-Swerving to Avoiding Object	
1-Disregarded Signs, Signals, Etc.	2-Distracted/Inattention	3-Driving Too Fast for Conditions	4-Exceeded Authorized Speed Limit	5-Failed to Yield Right of Way	6-Run off Road	7-Fatigued/Asleep	8-Followed Too Closely	9-Other	10-Unknown	11-Other	12-Unknown

Roadway		30-Debris <th colspan="2">40-Other <th colspan="2">50-Inadequate <th colspan="2">60-Lying &/or Sagging in Roadway <th colspan="2">70-Failure to Yield R. of W. </th></th></th></th>		40-Other <th colspan="2">50-Inadequate <th colspan="2">60-Lying &/or Sagging in Roadway <th colspan="2">70-Failure to Yield R. of W. </th></th></th>		50-Inadequate <th colspan="2">60-Lying &/or Sagging in Roadway <th colspan="2">70-Failure to Yield R. of W. </th></th>		60-Lying &/or Sagging in Roadway <th colspan="2">70-Failure to Yield R. of W. </th>		70-Failure to Yield R. of W.	
1-Not-Highway Work	2-Obstruction in Roadway	3-Road Surface Condition (i.e., Wet)	4-Rail, Holes, Bumps	5-Shoulders (None, Low, Soft, High)	6-Traffic Control Device (i.e., Missing)	7-Work Zone (Const./Maint./Utility)	8-Worn Travel/Polished Surface	9-Other	10-Unknown	11-Other	12-Unknown

Environmental		60-Animal in Road		61-Gate		62-Obstruction		63-Weather Cond.		64-Other	
1-Animal in Road	2-Gate	3-Obstruction	4-Weather Cond.	5-Other	6-Unknown	7-Other	8-Unknown	9-Other	10-Unknown	11-Other	12-Unknown

SFMAIC_Lucas_0531

01/23/2018 13:00

8642337516

VARNER AND SEGURA

PAGE 04/05

ORIGINAL

SOUTH CAROLINA DP5/DHS & DMV USE ONLY										SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM TR-310 (Rev. 11/2011)										# Of Units		Amended - Action Code of Original Report		Notified		Arrived											
Page # 2										Collision Location (Rt. # / Name)										# Of Units		Amended - Action Code of Original Report		Notified		Arrived											
Date: 06-17-2017										Time of Collision: 10:58										County: 23		1- Interstate		4- Secondary		Collision Location (Rt. # / Name): 1 TAPPAN DR		Main Line		6- Connection		Miles: 2.68		Dir: 19 E		In (Near City or Town of): GREENVILLE	
Lane # / Dir: 1 OF 2 N/E S/W										Distance Offset: .20 Miles										Direction: N E		1- Interstate		4- Secondary		Base Intersection (Rt. # / Name): 29 WADE HAMPTON BLVD		Main Line		6- Connection		GPS COORDINATES 00 00 00.00		DEGREES MINUTES SECONDS			
R.R. Id.										From: N E										To: S W		1- Interstate		4- Secondary		Second Intersection (Rt. # / Name): 677 E WAREHOUSE CT		Main Line		6- Connection		Latitude: 34 54 31.07		Longitude: 82 10 49.02			
Driver/Pedestrian's Full Name										Driver/Pedestrian's Full Name																											
Unit # Sex Race Street										Unit # Sex Race Street																											
DOB Birth Date City, State, & Zip										DOB Birth Date City, State, & Zip																											
State Driver's License # Class Insurance Company										State Driver's License # Class Insurance Company																											
Year Body Vehicle Make VIN #										Year Body Vehicle Make VIN #																											
State Year License Plate # Owner's D.L. #										State Year License Plate # Owner's D.L. #																											
Home Telephone () Owner's Full Name										Home Telephone () Owner's Full Name																											
Bus. Telephone () Street										Bus. Telephone () Street																											
Contributed To Collision Yes No City, State, & Zip										Contributed To Collision Yes No City, State, & Zip																											
Estimated Speed Speed Limit C.D.L. Req: Yes No T/B S Req: Yes No A/C/Drg Info (see back): Yes No										Estimated Speed Speed Limit C.D.L. Req: Yes No T/B S Req: Yes No A/C/Drg Info (see back): Yes No																											
Code Summons # Code Summons # Code Towed By Yes No										Code Summons # Code Summons # Code Towed By Yes No																											
Driver/Pedestrian's Full Name										Driver/Pedestrian's Full Name																											
Unit # Sex Race Street										Unit # Sex Race Street																											
DOB Birth Date City, State, & Zip										DOB Birth Date City, State, & Zip																											
State Driver's License # Class Insurance Company										State Driver's License # Class Insurance Company																											
Year Body Vehicle Make VIN #										Year Body Vehicle Make VIN #																											
State Year License Plate # Owner's D.L. #										State Year License Plate # Owner's D.L. #																											
Home Telephone () Owner's Full Name										Home Telephone () Owner's Full Name																											
Bus. Telephone () Street										Bus. Telephone () Street																											
Contributed To Collision Yes No City, State, & Zip										Contributed To Collision Yes No City, State, & Zip																											
Estimated Speed Speed Limit C.D.L. Req: Yes No T/B S Req: Yes No A/C/Drg Info (see back): Yes No										Estimated Speed Speed Limit C.D.L. Req: Yes No T/B S Req: Yes No A/C/Drg Info (see back): Yes No																											
Code Summons # Code Summons # Code Towed By Yes No										Code Summons # Code Summons # Code Towed By Yes No																											
Dir. of Travel: Unit 1: N S E W Unit 2: N S E W Unit 3: N S E W										Dir. of Travel: Unit 1: N S E W Unit 2: N S E W Unit 3: N S E W																											
Unit 1 Dam. Unit 2 Dam. Unit 3 Dam. Prop. Dam. 1 P. Prop. Dam. 2										Unit 1 Dam. Unit 2 Dam. Unit 3 Dam. Prop. Dam. 1 P. Prop. Dam. 2																											
Property Owner/Witness: Address State Zip Phone										Property Owner/Witness: Address State Zip Phone																											
Photo: Describe What Happened (Refer to Units by Number)										Photo: Describe What Happened (Refer to Units by Number)																											
(Y) N										(Y) N																											
NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.										NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF.																											
Investigating Officer's Name: MORTON - JCM Rank: TRP Badge #: T 1 9 1 Jurisdiction Code: H P O 3 Review Date: 06-28-2017 Reviewer's Name: W M Hloff										Investigating Officer's Name: MORTON - JCM Rank: TRP Badge #: T 1 9 1 Jurisdiction Code: H P O 3 Review Date: 06-28-2017 Reviewer's Name: W M Hloff																											
Rank: F/BGT Internal Agency Code: 17GV112861										Rank: F/BGT Internal Agency Code: 17GV112861																											

SFMAIC_Lucas_0532

2017584432

Unit	Date of Birth	Sex	Race	INJ	Seal	R/S/D	A/S/D	Eject	LAI	Trans	Name	Street Address	Zip Code
02	DOB 2012	M	W	0	04	21	4	3	1	1	2		
02	2011	M	W	0	06	13	4	3	1	1	2		

Race		A - Asian/Pacific Islander		W - Caucasian		01 Injury Status		2-Non-Incapacitating		Seating Loc.		20-Pedestrian		60-Sleeper of Cab		Restraint/Safety Device	
B - African American		H - Hispanic		O - Other		0-Not Injured		3-Incapacitating		01 02 03		20-Trailing Unit		70-Riding on Unit Exterior		00-None Used	
I - Alaskan Native or American Indian		U - Unknown				1-Possible Injury		4-Fatal		04 05 06		40-Bus or Van (4th row or Higher)		90-Lap		11-Shoulder belt	
										07 08 09		50-Other Enclosed Area (nontrailing)		99-Unknown		12-Lap Belt Only	
												51-Other Unenclosed Area (nontrailing)				13-Shoulder & Lap Belt	
																99-Other	
																Pedestrian, Motor/Pedalcycle Only	
																31-Helmet	
																51-Reflective Clothing	
																41-Protective Pads	
																61-Lighting	

Air Bag Deployment / Switch		Section		b) 2 or 3 Wheel Motorized Vehicle		Head Injury		1-Yes		2-No		3-Food (non-mech.)		4-Not Applicable		5-Unknown	
1-Deployed Front		4-Not Deployed		1-Not Ejected		2-Part Ejected		3-Total Ejected		7-Not App.		1-Not Trapped		2-Extorted (Mechanical Means)		3-Unknown	
2-Deployed Side		7-Not Applicable		2-Part Ejected		3-Total Ejected		7-Not App.				4-Not Trapped		5-Unknown			
3-Deployed Both		8-Deployment Link		2-Part Ejected		3-Total Ejected		7-Not App.				4-Not Trapped		5-Unknown			
1-Switch in On Position		3-No Switch		2-Part Ejected		3-Total Ejected		7-Not App.				4-Not Trapped		5-Unknown			
2-Switch in Off Position		9-Unknown		2-Part Ejected		3-Total Ejected		7-Not App.				4-Not Trapped		5-Unknown			

Non-Collision		Collision, Not Fined		Collision, Fixed Object		47-Smearment		55-Mat Box		68-Other	
01-Cargo/Load Loss or Shift		04-Equipment Fail. Att.		27-Pedestrian		48-Bridge Overhead Structure		56-Machine Barrier		69-Unknown	
02-Cross Median/Center		05-Passenger		28-Railway Veh.		49-Bridge Pier/Post End		57-Overhead Sign Support			
03-Overhead Structure		06-Jamming		29-Animal (All Other)		50-Work Zone Night Equip.		58-Other (Post, Pole, Support, Etc.)			
		07-Jamming		20-Work Zone Night Equip.		51-Guardrail Face		59-Other (Wall, Building, Tunnel, Etc.)			
						52-Highway Traffic Sign Post		60-Tree			
						53-Impact Attenuator/Crash Cushion		61-Utility Pole			
						54-Light/Warning Support		62-Work Zone Main Equipment			

Manner of Collision (Struck Veh.)		30-Rear-to-Rear		50-Side-swipe Same Dir.		1st / Most Deformed Area		1st Deformed		2nd Deformed	
1-90-Deg. Coll. w/ Motor Veh.		41-Angle (↖↗)		60-Side-swipe Opposite Dir.		2-3-4-5-6-7-8-9-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100		1-3-4-5-6-7-8-9-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100		1-3-4-5-6-7-8-9-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100	
2-10-Deg. Coll. w/ Motor Veh.		42-Angle (↖↗)		70-Backed Into							
3-Head On		43-Angle (↖↗)		99-Unknown							

Vehicle Type		15-Full Size Van		27-Pedalcycle		61-School Bus		Alcohol / Drug Test Given		3-Given - Pending		Special Use Only	
01-Automobile		16-Mini Van		38-Animal Drawn Veh.		62-Passenger Bus		1-Given - Known Results		4-None		1-Under-Compartment Intrusion	
12-Pickup Truck		17-Sport Utility		39-Animal (Ridden)		98-Other		2-Given - Unusable		5-Refused		2-Under-No Intrusion	
13-Truck Tractor		28-Motorcycle		41-Pedestrian		99-Unknown						3-Under-Unknown	
14-Other Truck		29-Other Motorcycle		61-Train		Run Only						4-Over-MV in Transport	
												5-Over-Other Vehicle	
												6-None	
												7-Under-Unknown	
												8-Under-Unknown	
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												100-Under-Unknown	

Weather Condition		3-Cloudy		6-Fog, Smog, Smoke		02-Flashing Traffic Signal		22-Oncoming Emergency Vehicle		43-Yield Sign		51-Flashing Beacon	
1-Clear (no adverse conditions)		4-Sleet, Hail		7-Blowing Sand		11-RR (X-bucks, Lights & Gates)		21-Pavement Markings (only)		44-Work Zone		98-None	
2-Rain		5-Snow		8-Severe Crosswinds		12-RR (X-bucks & Lights)		31-Pavement Markings (only)		45-Other Warning Signs		99-Unknown	
						13-RR (X-bucks Only)		41-School zone Sign		46-Other Warning Signs			
								42-School zone Sign		47-Other Warning Signs			
								43-School zone Sign		48-Other Warning Signs			
								44-School zone Sign		49-Other Warning Signs			

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
James Dustin Lucas,	)	CASE NO. 2022-CP-23-03851
	)	
Plaintiff,	)	
	)	PLAINTIFF’S RESPONSE TO
vs.	)	STATE FARM’S MOTION FOR
	)	SUMMARY JUDGMENT
State Farm Mutual Automobile	)	
Insurance Company,	)	
	)	
Defendant.	)	

COMES NOW, Plaintiff James Dustin Lucas, by and through his undersigned counsel, and respectfully requests that this Court deny Defendant State Farm Mutual Automobile Insurance Company’s (“State Farm”) Motion for Summary Judgment.

By moving for summary judgment, State Farm seeks to be rewarded for allowing its insured to go into default, violating the terms of a valid contract to negotiate between its reserve amount and the insured’s policy limits, and willfully and intentionally violating the Alternative Dispute Resolution requirement that its insured be present at mediation. Pursuant to *Hancock v. Mid-South Mgmt. Co. Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009), basic contract law, and the law of equity, State Farm’s motion for summary judgment must be denied.

Standard of Review

Summary judgment is appropriate where there is no genuine issue of material fact, and it is clear that the moving party is entitled to judgment as a matter of law. Rule 56(c), *SCRCP*. “In determining whether any triable issues of fact exist, the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” *Hancock v. Mid-South Mgmt. Co. Inc.*, 381 S.C. 326, 329-30 673 S.E.2d 801,

802 (2009). In cases with a preponderance of the evidence burden of proof, “the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *See Id. See also, Anders v. S.C. Farm Bureau Mut. Ins. Co.*, 307 S.C. 371, 375, 415 S.E. 2d 406, 408 (Ct. App. 1992).

I. At least a scintilla of evidence supports the plaintiff’s claims.

It is well settled in South Carolina that, where at least a mere scintilla of evidence exists to support a claim, a motion for summary judgment as to that claim must be denied. *Hancock*, 381 S.C. 326, 673 S.E.2d 801. State Farm’s exhibits to its motion alone create enough evidence in the support of the plaintiff’s claims for the plaintiff to survive a motion for summary judgment. The plaintiff has also submitted emails to rebut State Farm’s Motion (**Exhibit A**). These emails show that State Farm entered into an agreement to let their insured out of default to the detriment of the plaintiff.

The plaintiff has also asserted a negligence cause of action against State Farm. State Farm’s recklessness in making statements it knew would damage the plaintiff is actionable. The plaintiff has set forth facts in his complaint that show State Farm’s duty, breach, and damages proximately caused by the breach. Further, the plaintiff has supported his negligence cause of action with more than a scintilla of evidence submitted in this response, as well as the plaintiff’s motion for summary judgment and the plaintiff’s motion to strike State Farm’s answer. State Farm also owed a duty to the plaintiff to have its insured present at mediation as required by the ADR rule. By breaching this duty, State Farm proximately caused the plaintiff to be prejudiced and damaged.

II. State Farm made a valid contract, then breached the contract that it made.

A contract is a bargained for exchange. It is well established in South Carolina that “the necessary elements of a contract are an offer, acceptance, and valuable consideration.” *Sauner v.*

Pub. Serv. Auth. of S.C. 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). A valid offer “identifies the bargained for exchange and creates a power of acceptance in the offeree.” *Carolina Amusement Co. v. Connecticut Nat’l Life Ins. Co.*, 315 S.C. 215, 437 S.E.2d 122 (Ct. App. 1993). “Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer.” *Elctro-Lab of Aiken, Inc. v. Sharp Contr. Co. of Sumter, Inc.* 357 S.C. 363, 369, 593 S.E.2d 170, 173 (Ct. App. 2004) (Quoting RESTATEMENT (SECOND) OF CONTRACTS § 50 cmt. c (1981)). “Valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.” *Prestwick Golf Club, Inc. v. Prestwick Ltd. P’ship*, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct. App. 1998).

A valid contract between the two parties existed. On April 20, 2021, defendant’s counsel asked if plaintiff’s counsel would be willing to let the defendant out of default. Plaintiff’s counsel then made a valid offer by stating that the plaintiff would agree to let the defendant out of default “if yall agree to mediate the case in the next 30 days and negotiate between the amount of your reserve and the policy limit.” (**Exhibit B**). Defendant’s counsel accepted the offer on June 2, by stating “We can move forward with the early mediation now. Who do you want to use as a mediator?” (**Exhibit C**). Between the offer on April 20 and the acceptance on June 2, no counteroffers were made by defendant’s counsel. The plaintiff even reiterated that State Farm’s agreement was a condition to the damages hearing being cancelled when State Farm’s counsel contacted the Clerk of Court. (**Exhibit D**). State Farm’s counsel again confirmed State Farm’s valid acceptance of the offer. Further, although it is not necessary for the Court to delve into the adequacy of consideration, the plaintiff suffered a detriment by letting the defendant out of default judgment, and the defendant *agreed* to suffer a detriment by negotiating between the amount of

the reserve and the policy limit.

III. Because there have been no agreements between counsel in this case, *SCRCP* 43(k) is inapplicable.

State Farm erroneously attempts to use a rule that it contends applies to an agreement in another case and attempts to apply it to this case. State Farm has taken the position that because State Farm damaged a plaintiff in another case with a fraudulent promise in order to get out of default, Rule 43(k) of the South Carolina Rules of Civil Procedure applies to the current action at bar. Since there have been no agreements between counsel in this case, *SCRCP* 43(k) has no application to this action.

IV. Equity forbids rewarding State Farm from benefiting from a contract and then breaching the contract to the plaintiff's detriment.

It is the plaintiff's position that a valid, enforceable contract existed, that State Farm breached the contract, and that the breach was accompanied by a fraudulent act. However, should the court find that there is no contract, equity should estop State Farm from denying the existence of the contract. It is undisputed that State Farm made a deal whereby it agreed to negotiate above its reserve in exchange for the plaintiff letting its insured out of default. Not only did State Farm breach the agreement that it made, but, in its motion for summary judgment, State Farm argued that it does not have to produce documents which prove that it fraudulently breached its agreement, believing it may breach the agreement with impunity.

State Farm's fraud is underscored by the fact that it filed an offer of judgment for more than twice the amount offered at mediation – the same mediation in which State Farm did not have its insured present as required by the ADR rules. State Farm's actions run afoul of the spirit and purpose of the ADR rules.

V. Financial Reserves Information is Discoverable in South Carolina

The defendant asserts that the plaintiff cannot prove a violation of the agreement because financial reserve information is not discoverable. However, financial reserve information is discoverable pursuant to *Franklin v. Russell* (2017-CP-36-00143), *Rice v. Ahearn Rentals* (2014-CP-43-02294), *Holder v. Lebo* (2011-CP-23-04455), *Pinckney v. Varnadoe* (2008-CP-15-00291), *Brown v. White* (2001-CP-10-04760), and *Henry v. Harris* (2000-CP-23-06494).

Financial reserve information is central to this case. Judge Morgan reasoned that, in the underlying case of *Lucas v. Seely and Knox*, financial reserve information would not be relevant to determining liability or damages *in that case*. However, when State Farm made an agreement that it would negotiate above its reserve, it put reserve information front and center in *this* case. Reserve information is also important because State Farm violated the ADR requirement to have its insured present, and in so doing was able to hide its breach from its insured. Further, State Farm only offered \$1,000 in a case where there is evidence that its insured's high speed contributed to the collision in the underlying case. **(Exhibit E).**

VI. This case has not been mediated, and State Farm's assertion that its tortious conduct in another case is protected by ADR Rule 8 case is incorrect.

The parties have not mediated this case. State Farm breached a contract that it made in an independent case, giving rise to this lawsuit. This lawsuit is entirely separate from the underlying case. Even if State Farm were correct and the mediation it references had taken place in this case, communications during mediation may be used to show legal duties and determine issues, including insurers' obligations to pay.

Additionally, ADR Rule 8(c)(4) allows information from mediations to be used at legal proceedings to establish, refute, void, or reform settlement agreements. ADR Rule 8(h) states "Information that would be admissible or subject to discovery does not become inadmissible or

protected from discovery by reason of its disclosure or use in a mediation.” State Farm’s promise to negotiate above its policy limit and its subsequent breach of that promise are the crux of this lawsuit. That information does not “become inadmissible or protected from discovery” because it was referenced at mediation.

Respectfully submitted,

Hawkins & Jedziniak, LLC

s/ Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar #78470

Helena L. Jedziniak, S.C. Bar #100825

1225 South Church Street

Greenville, South Carolina 29605

(864) 275-8142 (telephone)

(864) 752-0911 (facsimile)

josh@hjlsc.com

helena@hjlsc.com

Attorneys for Plaintiff

A

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Date: Tuesday, April 20, 2021 at 1:49 PM
To: Josh Hawkins <josh@hjlsc.com>, Stephen Anderson <sanderson@clarksonwaisn.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Stephen and Josh,

I've been retained to represent Defendant Knox. It's my understanding default has been entered. Josh, please let me know if you'll agree to allow us out of default. I'm going to go ahead and file a motion today but of course will withdraw it if you agree to let us out.

If any discovery requests or responses have been exchanged yet in the case, will y'all please send that my way?

Thank you,

Jeanmarie



Jeanmarie Tankersley
Licensed in SC and GA

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Office: 864 331 8940 Ext. 2405 | Fax: 864 232 2921
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To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>; Stephen Anderson <sanderson@clarksonwalsh.com>
Cc: Helena Jedziniak <Helena@hjlsc.com>; Paralegal <monica@hjlsc.com>; Assistant <assistant@hjlsc.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Ok, Jeanmarie I found it.

Yes, we will withdraw our motion based on what we sent.

Yall do agree to negotiate between the amount of your reserve and the policy limit, correct?

Sincerely,



Joshua T. Hawkins
 Partner • Hawkins & Jedziniak, LLC
 Office (864) 275-8142 | Fax (864) 752-0911
 josh@hjlsc.com
 1225 South Church Street | Greenville, SC 29605
 www.hawkinsandjedziniak.com

From: Josh Hawkins <josh@hjlsc.com>
Date: Tuesday, April 20, 2021 at 2:57 PM
To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
Cc: Helena Jedziniak <Helena@hjlsc.com>, Paralegal <monica@hjlsc.com>, Assistant <assistant@hjlsc.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Jeanmarie,

We are happy to let yall out if yall agree to mediate the case in the next 30 days and negotiate between the amount of your reserve and the policy limit.

Otherwise, since there is no good cause for letting the defendant out of default, I think it would be counter to the best interest of my client to voluntarily let a defendant out of default where liability is clear and the default is solely the fault of the insurance company. I think we even have email correspondence between us and the insurer showing the insurance company just refused to do anything. I think when we present this to the Court, and since no attorney was involved, the Court will be slow to set aside the default.

Sincerely,



Joshua T. Hawkins
 Partner • Hawkins & Jedziniak, LLC
 Office (864) 275-8142 | Fax (864) 752-0911
 josh@hjlsc.com
 1225 South Church Street | Greenville, SC 29605
 www.hawkinsandjedziniak.com

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Date: Wednesday, June 2, 2021 at 11:56 AM
To: Josh Hawkins <josh@hjlsc.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
Cc: Helena Jedziniak <Helena@hjlsc.com>, Paralegal <monica@hjlsc.com>, Assistant <assistant@hjlsc.com>
Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Correct. We'll let the court know about the motions.



Jeanmarie Tankersley
Licensed in SC and GA

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From: Josh Hawkins <josh@hjlsc.com>
Sent: June 2, 2021 11:18 AM

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From: Josh Hawkins <josh@hillcsc.com>

Sent: June 2, 2021 10:47 AM

To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>; Stephen Anderson <sanderson@clarksonwalsh.com>

Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Thanks, Jeanmarie. I have had good results with Lee Plumblee. If youre good with him, we will reach out to him.

Sincerely,



Joshua T. Hawkins

Partner • Hawkins & Jedziniak, LLC

Office (864) 275-8142 | Fax (864) 752-0911

josh@hillcsc.com

1225 South Church Street | Greenville, SC 29605

www.hawkinsandjedziniak.com

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>

Date: Wednesday, June 2, 2021 at 10:39 AM

To: Josh Hawkins <josh@hillcsc.com>, Stephen Anderson <sanderson@clarksonwalsh.com>

Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Josh,

We can move forward with the early mediation now. Who do you want us to use as the mediator?

Thanks,

Jeanmarie



Jeanmarie Tankersley

Licensed in SC and GA

1000 E North St., Suite 200 | Greenville SC | 29601

Office: 864 331 8940 Ext. 2405 | Fax: 864 232 2921

Driving Instructions: [Using GPS](#) | [Print Map](#)

Website: www.clawsonandstaubes.com | Email: jtankersley@cslaw.com | Location: [Map](#)

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From: Josh Hawkins <josh@hjlsc.com>

Sent: June 2, 2021 11:09 AM

To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>; Stephen Anderson <sanderson@clarksonwalsh.com>

Cc: Ginny May <gmay@clawsonandstaubes.com>; Helena Jedziniak <Helena@hjlsc.com>; Paralegal <monica@hjlsc.com>; Assistant <assistant@hjlsc.com>; Ethan Jedziniak <jedziniak.ethan@gmail.com>

Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

We can continue it until after mediation. That way, if we resolve the case, a stipulation will be entered and the case will end. If we don't resolve it, we can go forward. Monica please look on Lee's calendar and bounce dates around with Ginny May.

Sincerely,



Joshua T. Hawkins

Partner • Hawkins & Jedziniak, LLC

Office (864) 275-8142 | Fax (864) 752-0911

josh@hjlsc.com

1225 South Church Street | Greenville, SC 29605

www.hawkinsandjedziniak.com

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>

Date: Wednesday, June 2, 2021 at 11:04 AM

To: Josh Hawkins <josh@hjlsc.com>, Stephen Anderson <sanderson@clarksonwalsh.com>

Subject: RE: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

That's fine with me. Please loop Ginny May (gmay@clawsonandstaubes.com) in on the scheduling emails.

I'll go ahead and withdraw our Motion to Set Aside Default and will file an Answer. I can't tell based on the age of the Motion for Default Judgment if that has already been withdrawn or not. If not, do you want us to tell the Court that a hearing for that Motion is also no longer needed?

Thanks,

Jeanmarie



Jeanmarie Tankersley

Licensed in SC and GA

1000 E North St., Suite 200 | Greenville SC | 29601

Office: 864 331 8940 Ext. 2405 | Fax: 864 232 2921

Driving Instructions: [Using GPS](#) | [Print Map](#)

Website: www.clawsonandstaubes.com | Email: jtankersley@cslaw.com | Location: [Map](#)

Joshua T. Hawkins
Hawkins & Jedziniak, LLC
1225 South Church Street
Greenville, South Carolina 29605
Phone: (864) 275-8142
Fax: (864) 752-0911

On Jun 3, 2021, at 4:38 PM, Ritchie, Virginia <VRitchie@greenvillecounty.org> wrote:

Thank you for your e-mail regarding the withdrawal of the motions in the above-referenced case. I have removed them from the motions roster and cancelled the hearings, accordingly.

Ginger Ritchie

Non-Jury/Motions Coordinator
Greenville County Clerk of Court
Ph (864) 467-8546
Fax (864) 467-8519
e-mail: njcoord@greenvillecounty.org

From: Ginny May <gmay@clawsonandstaubes.com>
Sent: Thursday, June 3, 2021 4:01 PM
To: NJCoord <NJCoord@greenvillecounty.org>
Cc: Josh Hawkins <josh@hjlsc.com>; mcoulter@clarksonwalsh.com; Paralegal <monica@hjlsc.com>; Crystal Fuller <cfuller@clarksonwalsh.com>; Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Subject: C.A. No. 2020-CP-23-02877 - James Dustin Lucas vs. Meghan Seely and Andre Knox

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Good afternoon, Ms. Ritchie. I am writing on behalf of Jeanmarie Tankersley, who represents Defendant Andre Knox in the above-numbered and entitled action.

Please be advised that, per agreement of counsel, the Plaintiff is withdrawing his Motion for Default Judgment, Summary Judgment, and Damages Hearing, and Defendant Knox is in turn withdrawing his Motion to Set Aside Default. Both motions are currently scheduled for hearing on June 28 at 2:00 p.m.

I have copied counsel of record with this e-mail. Please **reply to all** and confirm that these hearings are canceled.

Thank you.

<image001.png>

Ginny May

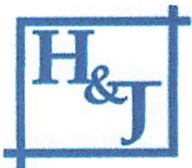
From: Josh Hawkins <josh@hillcsc.com>
Date: Tuesday, April 20, 2021 at 2:57 PM
To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
Cc: Helena Jedziniak <Helena@hillcsc.com>, Paralegal <monica@hillcsc.com>, Assistant <assistant@hillcsc.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Jeanmarie,

We are happy to let yall out if yall agree to mediate the case in the next 30 days and negotiate between the amount of your reserve and the policy limit.

Otherwise, since there is no good cause for letting the defendant out of default, I think it would be counter to the best interest of my client to voluntarily let a defendant out of default where liability is clear and the default is solely the fault of the insurance company. I think we even have email correspondence between us and the insurer showing the insurance company just refused to do anything. I think when we present this to the Court, and since no attorney was involved, the Court will be slow to set aside the default.

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www.hawkinsandjedziniak.com

From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Date: Wednesday, June 2, 2021 at 10:39 AM
To: Josh Hawkins <josh@hjlsc.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

Josh,

We can move forward with the early mediation now. Who do you want us to use as the mediator?

Thanks,

Jeanmarie



Jeanmarie Tankersley
Licensed in SC and GA

1000 E North St., Suite 200 | Greenville SC | 29601
Office: 864 331 8940 Ext. 2405 | Fax: 864 232 2921
Driving Instructions: [Using GPS](#) | [Print Map](#)
Website: www.clawsonandstaubes.com | Email: jtankersley@cslaw.com | Location: [Map](#)

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D

From: Ginny May <gmay@clawsonandstaubes.com>
Sent: Thursday, June 3, 2021 4:01 PM
To: NJCoord <NJCoord@greenvillecounty.org>
Cc: Josh Hawkins <josh@hjlsc.com>; mcoulter@clarksonwalsh.com; Paralegal <monica@hjlsc.com>; Crystal Fuller <cfuller@clarksonwalsh.com>; Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Subject: C.A. No. 2020-CP-23-02877 - James Dustin Lucas vs. Meghan Seely and Andre Knox

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Good afternoon, Ms. Ritchie. I am writing on behalf of Jeanmarie Tankersley, who represents Defendant Andre Knox in the above-numbered and entitled action.

Please be advised that, per agreement of counsel, the Plaintiff is withdrawing his Motion for Default Judgment, Summary Judgment, and Damages Hearing, and Defendant Knox is in turn withdrawing his Motion to Set Aside Default. Both motions are currently scheduled for hearing on June 28 at 2:00 p.m.

I have copied counsel of record with this e-mail. Please **reply to all** and confirm that these hearings are canceled.

Thank you.

<image001.png>

Ginny May

1 question. The reason she asked you do you take
2 responsibility is because when we try this case, she
3 wants to say that Knox has no responsibility even
4 though he was going faster than the posted speed limit.
5 And so I want to make sure that we're clear on the
6 record. Is it fair to say, from all the evidence I've
7 seen, I think this is clear, is it fair to say that
8 Knox had some responsibility, for this collision, for
9 his speeding?

10 BY MS. TANKERSLEY:

11 Object to the form.

12 EXAMINATION RESUMED BY MR. HAWKINS:

13 Q. Is that fair to say?

14 A. Yeah.

15 Q. And it's fair to say that he's -- I mean, you were
16 turning, but he was speeding with a trailer behind him.
17 It's fair to say he was more than fifty-one percent at
18 fault. That's fair to say, right?

19 A. Yeah.

20 BY MS. TANKERSLEY:

21 Object to the form.

22 EXAMINATION RESUMED BY MR. HAWKINS:

23 Q. And that's a "yes"?

24 A. Yes.

25 Q. Okay, no further questions.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	CASE NO. 2022-CP-23-03851
James Dustin Lucas,	)	
Plaintiff,	)	PLAINTIFF'S MOTION FOR
vs.	)	SUMMARY JUDGMENT
State Farm Mutual Automobile	)	
Insurance Company,	)	
Defendant.	)	

COMES NOW, the plaintiff, and respectfully requests that the Court grant the plaintiff's motion for summary judgment against Defendant State Farm.

Standard of Review

The South Carolina Rules of Civil Procedure "shall be construed to secure the just, speedy, and inexpensive determination of every action." *SCRCP* 1. Pursuant to Rule 56(c), summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *SCRCP* 56(c). When considering a motion for summary judgment, the evidence and its reasonable inferences must be drawn in a light most favorable to the nonmoving party. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Hackworth v. Greenville County*, 371 S.C. 99, 102, 637 S.E.2d 320, 322 (Ct. App. 2006) (citing *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 355, 559 S.E.2d 327, 336 (Ct. App. 2001)).

"Summary judgment is completely appropriate when a properly supported motion sets

forth facts that remain undisputed or are contested in a deficient manner.” *Davis v. McLeon Reg’l Med. Center*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). As discussed in *Hancock v. Mid-South Mgmt. Co.*, “in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” 381 S.C. 326, 331, 673 S.E.2d 801, 803 (2009). Regardless, even a scintilla of evidence must meet the prerequisite of being probative. *See McDowell v. Stilley Plywood Co.*, 210 S.C. 173, 41 S.E.2d 872 (1947) (holding that although there was a scintilla of testimony that could be used to support the claimants' position, when the entire testimony of the witnesses was viewed as a whole, it was obvious the testimony in support of claimants' position rested on speculation and thus had no probative value). Therefore, to survive a motion for summary judgment, the nonmoving party must present a scintilla of probative evidence that does not rest on mere speculation alone.

Argument and Legal Authority

1. State Farm Breached a Valid Contract with the Plaintiff

A contract is a bargained for exchange. It is well established in South Carolina that “the necessary elements of a contract are an offer, acceptance, and valuable consideration.” *Sauner v. Pub. Serv. Auth. of S.C.* 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). A valid offer “identifies the bargained for exchange and creates a power of acceptance in the offeree.” *Carolina Amusement Co. v. Connecticut Nat’l Life Ins. Co.*, 315 S.C. 215, 437 S.E.2d 122 (Ct. App. 1993). “Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer.” *Electro-Lab of Aiken, Inc. v. Sharp Contr. Co. of Sumter, Inc.* 357 S.C. 363, 369, 593 S.E.2d 170, 173 (Ct. App. 2004) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 50 cmt. c (1981)). “Valuable consideration to support a contract may consist of some right,

interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.” *Prestwick Golf Club, Inc. v. Prestwick Ltd. P’ship*, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct. App. 1998).

The plaintiff and the defendant entered into a valid contract. On April 20, 2021, defense counsel asked if plaintiff’s counsel would be willing to let the defendant out of default. Plaintiff’s counsel then made a valid offer, stating that the plaintiff would let the defendant out of default “if yall (sic) agree to mediate the case in the next 30 days and negotiate between the amount of your reserve and the policy limit.” (**Exhibit A**). Defense counsel accepted this offer on June 2, stating “[w]e can move forward with the early mediation now. Who do you want to use as a mediator?” (**Exhibit B**). Between the offer on April 20 and the acceptance on June 2, defense counsel did not make any counteroffers. Therefore, this response constitutes a valid acceptance. Further, although it is not necessary for the Court to delve into the adequacy of consideration, the plaintiff suffered a detriment by letting the defendant out of default judgment, and the defendant *agreed* to suffer a detriment by negotiating between the amount of the reserve and the policy limit.

In this case, State Farm had an agreement with the plaintiff, that the plaintiff relied upon the agreement to his detriment, and that State Farm then breached the agreement. Defendant State Farm has admitted the same in its Motion for Summary Judgment and even submitted documents that prove the contract was created and that State Farm should have been bound by the terms of the agreement. State Farm breached the terms of the contract and should be held liable for such breach. As such, no genuine issue of material fact exists, and this Court should summary judgment in favor of the plaintiff.

2. State Farm’s Violation of the ADR Rules, Accompanied with its Breach of Contract, Constitutes Breach of Contract Accompanied by a Fraudulent Act

The South Carolina Alternative Dispute Resolution (“ADR”) Rules address the duties of

parties at mediation. Rule 6(b)(4) requires that “[t]he following persons shall physically attend a mediation settlement conference unless otherwise agreed to by the mediator and all parties . . . the mediator; all individual parties; the party’s counsel of record, if any; *and* for an insured party against whom a claim is made, a representative . . . with full authority to settle the claim.” *SCRADR* 6(b)(4) (emphasis added).

It is undisputed that State Farm’s insured failed to attend mediation either in person or virtually. By refusing to have its insured present for mediation, State Farm willfully and intentionally violated the South Carolina ADR Rules. This is of particular importance in the case at bar because State Farm’s insured could suffer harm by State Farm’s failure to comply with the Rules of ADR. Further, State Farm’s insured’s absence at mediation in violation of the ADR rules allowed State Farm to violate its written and enforceable contract with the plaintiff without the insured’s knowledge.

State Farm’s willful and intentional violation of the South Carolina ADR rules constitutes a fraudulent act. A fraudulent act is one characterized by dishonesty in fact, unfair dealing, or unlawful appropriation of someone else’s property. *See, Harper v. Ethridge*, 290 S.C. 112, 348 S.E.2d 374. Again, it is undisputed that State Farm’s insured failed to attend mediation. Counsel for State Farm, as a sworn officer of the Court, cannot make a good faith argument that it did not violate the ADR rules. Simply put, violating the ADR rules must be characterized as dishonesty in fact and as an unfair dealing in carrying out the agreement between the plaintiff and the defendant. Therefore, because no genuine issue of material fact exists as to whether State Farm violated the SCRARD, the plaintiff is entitled to summary judgment.

Conclusion

State Farm cannot present a scintilla of probative non-speculative evidence as to why it

breached a valid contract by a fraudulent act. The only probative non-speculative evidence that State Farm can produce is that, as evidenced by State Farm's own exhibit to their motion for summary judgment, State Farm made a valid and enforceable contract with the plaintiff. The terms of that contract were unambiguous – State Farm's insured would be let out of default if, and only if, the case was mediated in the next 30 days and negotiated between the amount of State Farm's reserve and the insured's policy limit. State Farm agreed by both words of acceptance and by actions expressing acceptance. However, State Farm breached the contract by a fraudulent act when it violated the South Carolina ADR rules and refused to abide by the bargained for terms of the contract. This violation of the rules constitutes dishonesty in fact and an unfair dealing.

Respectfully submitted,

Hawkins & Jedziniak, LLC

s/ Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar #78470

Helena L. Jedziniak, S.C. Bar #100825

1225 South Church Street

Greenville, South Carolina 29605

(864) 275-8142 (telephone)

(864) 752-0911 (facsimile)

josh@hjlsc.com

helena@hjlsc.com

Attorneys for Plaintiff

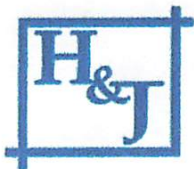
From: Josh Hawkins <josh@hillcsc.com>
Date: Tuesday, April 20, 2021 at 2:57 PM
To: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
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Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

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From: Jeanmarie Tankersley <jtankersley@clawsonandstaubes.com>
Date: Wednesday, June 2, 2021 at 10:39 AM
To: Josh Hawkins <josh@hillcsc.com>, Stephen Anderson <sanderson@clarksonwalsh.com>
Subject: Re: Lucas, James Dustin vs. Seely, Meghan and Knox, Andre

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Thanks,

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE 13 th JUDICIAL CIRCUIT
	)	
	)	CIVIL ACTION NO. 2022-CP-23-03851
James Dustin Lucas,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<u>MEMORANDUM IN SUPPORT</u>
	)	<u>OF MOTION FOR SUMMARY</u>
	)	<u>JUDGMENT</u>
State Farm Mutual Automobile,	)	
Insurance Company,	)	
Defendant.	)	
	)	

On June 17, 2017, Plaintiff was a passenger in a car driven by Meghan Seely when, according to the traffic report (Exhibit C to the motion for summary judgment of State Farm Mutual Automobile Insurance Company (State Farm)), Seely turned left in front of a vehicle driven by Andre Knox. The investigating officer assigned fault for causing the accident to Seely. (Exhibit C)

Almost three years later, on June 7, 2020, Plaintiff filed suit against Seely and Knox – civil – action number 2020-CP-23-02877. Knox did not timely respond to the complaint and on December 10, 2020, Judge Donald Hocker issued an order granting Plaintiff’s motion for default judgment against Knox and a hearing to determine damages was scheduled.

Counsel for Knox then entered an appearance and she and counsel for Plaintiff exchanged emails. The e-mails suggest Knox agreed to file an answer to Lucas’ complaint and State Farm, Knox’s liability carrier, would negotiate between its reserve and Knox’s liability limits (\$25,000). These emails are attached as Exhibit B to State Farm’s motion for summary judgment.

On September 10, 2021, the case was mediated before Lee Plumblee. According to Exhibit A of State Farm’s motion for summary judgment, at mediation State Farm offered \$1,000. Paragraph 13 of Plaintiff’s complaint characterizes this as a “nominal amount.” It is unclear what, if any,

offer Plaintiff made at mediation. The case did not settle at mediation and, after Plaintiff's counsel expressed disappointment at State Farm's offer, Knox's counsel replied, "I'm sorry to hear you were disappointed. We did negotiate between the reserves and the limits, as we agreed to. Given the liability dispute, however, I do not believe this case is worth the limits, which from my understanding was your only demand." (Exhibit B to State Farm's motion for summary judgement)

On July 25, 2022, Plaintiff filed this action against State Farm. In essence, Plaintiff alleges State Farm breached an alleged agreement wherein Plaintiff would let Knox out of default if State Farm agreed to mediate between the amount of its reserve and its policy limit. (Plaintiff's complaint, paragraph 12). For a multitude of reasons, State Farm is entitled to summary judgment.

I. THE COMPLAINT IS PREDICATED UPON AN ALLEGED AGREEMENT BETWEEN COUNSEL FOR THE PLAINTIFF AND COUNSEL FOR KNOX IN CIVIL ACTION NUMBER 2020-CP-23-02877 (COMPLAINT, PARAGRAPHS 12, 13) WHICH IS UNENFORCEABLE BECAUSE IT IS NOT COMPLIANT WITH SCRPC 43(K).

In South Carolina, "[n]o agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record or reduced to writing and signed by the parties and their counsel." SCRPC 43(k). Rule 43(k) applies even if the agreement has been admitted. Substantial compliance also is not sufficient. The terms of Rule 43(k) are mandatory and it is proper for a court to deny enforcement of an alleged agreement not compliant with this rule. South Carolina Human Affairs Commission v. Chen, 846 S.E. 2d 861 (SC App. 2020).

In this case, Plaintiff's complaint against State Farm is predicated on an agreement purportedly memorialized in an exchange of emails. (Ex. B). The e-mails were not reduced to a consent order or stipulation, nor were the terms of any alleged agreement memorialized in the record in open court. Furthermore, although the e-mails arguably reduced an agreement to writing, it was not

signed by the parties **and** their counsel. In short, the exchange of e-mails does not satisfy the strict requirements of Rule 43(k). Thus, there was no binding agreement between the parties and State Farm is entitled to judgment as a matter of law.

II. THE COMPLAINT IS PREDICATED UPON INFORMATION ABOUT OCCURRENCES DURING A MEDIATION IN CIVIL ACTION NUMBER 2020-CP-23-02877 WHICH VIOLATES THE CONFIDENTIALITY OF ADR RULE 8.

“Any . . . communication disclosed during a mediation, including, but not limited to, oral, documentary, or electronic information, shall be confidential, and shall not be divulged by anyone in attendance at the mediation or participating in the mediation, except as permitted under this rule or by statute.” ADR, Rule 8(a). Although there are some limited exceptions to this Rule, none of those exceptions apply here. (See ADR, Rule 8(c)).

Plaintiff’s complaint, however, explicitly relies on communications during a mediation. In fact, Plaintiff alleges the amount offered by State Farm at mediation “was so small it amounted to essentially a non-offer.” (Complaint, paragraph 13). In response to Interrogatories, Plaintiff disclosed State Farm offered \$1,000 during mediation. (Ex. A). It is unclear if Plaintiff responded to this offer, but Plaintiff does not claim that State Farm failed to negotiate. In any event, the mediator declared an impasse.

Similarly, paragraph 30 of Plaintiff’s complaint alleges State Farm “continued to engage in fraudulent activity during the mediation.” This statement not only is conclusory and devoid of any factual support, but also establishes Plaintiff cannot prove the claims in his complaint without violating the sanctity of mediation, which is explicitly prohibited by the South Carolina Supreme Court. Thus, State Farm is entitled to summary judgment on Plaintiff’s Complaint.

III. EVEN ASSUMING AN ENFORCEABLE AGREEMENT EXISTS WHICH DOES NOT REVEAL INFORMATION IN VIOLATION OF ADR RULE 8, THE PLAINTIFF CANNOT PROVE A VIOLATION OF THIS

AGREEMENT WITHOUT INFORMATION ABOUT STATE FARM'S RESERVE, WHICH IS NOT DISCOVERABLE.

Plaintiff alleges State Farm agreed to mediate between its reserve and the policy limit of Knox's liability coverage and then did not do so. (Plaintiff's complaint, paragraph 28). At the outset, evidence does not support this theory. Indeed, e-mails exchanged between counsel reflect "[State Farm] did negotiate between the reserves and the limits, as we agreed to. Given the liability dispute, however, I do not believe this case is worth the limits, which from my understanding was your only demand." (Exhibit B). Even assuming such an agreement existed and was enforceable, the Plaintiff must prove the amount of State Farm's reserve. The Plaintiff's entitlement to this information has already been denied.

In Plaintiff's lawsuit against Andre Knox, he moved to compel documents related to State Farm's reserve on the Plaintiff's claim. Plaintiff's motion to compel stated "the defendant has not produced any documents related to the reserve or stating the amount of reserve." On December 7, 2021, Judge G. D. Morgan, Jr. issued a ruling stating "the defendant is not required to produce any claim notes or documents from the claim file relating to the internal claim evaluation or analysis by the company's claim personnel, including any documents related to the company's reserve on the claim." Judge Morgan later denied Plaintiff's motion to reconsider this ruling.

The Plaintiff cannot now, having his request for information on reserves denied by Judge Morgan, relitigate that issue in a separate case. Accordingly, because the Plaintiff is not entitled to information on State Farm's reserve for the Plaintiff's claim against Andre Knox, the Plaintiff cannot establish State Farm breached an alleged agreement to mediate between its reserve and Knox's policy limits. State Farm is therefore entitled to summary judgment.

IV. STATE FARM WAS THE INSURER FOR ANDRE KNOX. THUS, IT OWED NO DUTY TO THE PLAINTIFF AS A THIRD-PARTY CLAIMANT.

Every lawsuit must be predicated upon some duty owed by the defendant to the plaintiff. Duties may be created by contract, by statute, or by relations between the parties. Oulla v. Patten Seed, 831 S.E. 2d 450 (S.C. App. 2019) South Carolina will not extend the concept of a legal duty of care in tort liability beyond reasonable limits. Shaw v. Psychemedics, 826 S.E. 2d 281 (SC 2019). Whether a duty exists is a matter of law to be determined by the court. Oulla, supra.

In this case, Plaintiff claims an alleged tortfeasor's insurer has a duty to the injured party to negotiate within parameters set by the injured party. State Farm had no contractual relationship with Plaintiff and the duty of good faith and fair dealing implied into contracts of insurance does not exist, a fact conceded in the Plaintiff's complaint. (Plaintiff's complaint, paragraph 19). In sum, State Farm does not owe any duty to Plaintiff.

Even assuming State Farm assumed some duty, there is no question of fact whether State Farm breached that duty. Plaintiff alleges he agreed to vacate a default if State Farm would negotiate between the amount of its reserve—which Plaintiff did not know—and its policy limits. (Exhibit B). Plaintiff concedes a mediation occurred and State Farm made an offer at the mediation (Plaintiff's complaint, ¶13). Plaintiff does not—and cannot—allege the offer was less than State Farm's reserve. In fact, evidence suggests State Farm “did negotiate between the reserves and the limits, as we agreed to.” (Exhibit B). Plaintiff also does not claim State Farm refused to negotiate. Thus, it is fair to characterize any offer from State Farm as an opening offer and the complaint is silent about whether Plaintiff even responded to the offer. In short, the complaint suggests **Plaintiff** failed to negotiate during the mediation.

The Plaintiff's complaint attempts to impose a duty on the adverse party's liability insurer to make an offer the Plaintiff deems adequate. There is simply no foundation for any such duty by State Farm, as liability carrier for Andre Knox, to the Plaintiff. In fact, State Farm was in an

adversarial position against the Plaintiff. Imposing a duty upon one adversary to another is unreasonable and nonsensical.

V. NO LAW MANDATES ANY OFFERS AT MEDIATION AND, EVEN ASSUMING AN ENFORCEABLE AGREEMENT EXISTED, PLAINTIFF CANNOT PROVE WHAT THE CASE WOULD HAVE SETTLED FOR AND, ACCORDINGLY, THE AMOUNT OF THE PLAINTIFF'S DAMAGES ARE SPECULATIVE.

Plaintiff alleges State Farm breached an agreement to negotiate within certain parameters during mediation. To prevail on an alleged breach of contract, Plaintiff must demonstrate damages. Chen v. Thompson, 395 S.E. 2d 731 (S.C. App. 1990) – the Plaintiff has the burden of proving damages for breach of contract; Depositions and ... v. Campbell, 406 S.E. 2d 390 (S.C. App. 1991) Plaintiff, however, cannot establish any damages. First, the *Lucas v. Knox* case remains pending, so there is no finding Plaintiff is entitled to **any** damages in that case. Second, there is no basis to conclude State Farm's alleged conduct caused any damage beyond what its insured's alleged negligence caused.

Generally, for damages to be recoverable the evidence should be such as to enable a court or jury to determine the amount thereof with reasonable certainty or accuracy. The existence, causation and amount of damages cannot be left to conjecture, guess or speculation. Winthrop University v. Pickens Roofing, 791 S.E. 2d 152 (SC App. 2016) The estimation of damages cannot be based on conjecture or speculation; rather, it must pass the realm of opinion not founded on facts and must rest on evidence from which a reasonably accurate conclusion regarding the amount of loss can be logically and rationally drawn. Thornton-Crosby Development v. T.R. Tucker, 399 S.E. 2d 8 (SC App. 1990)

In this case, Plaintiff presumes he is entitled to an amount of money between State Farm's reserve—which he does not know—and Knox's policy limits. This alleged entitlement, however, is premised on Knox's liability in the *Lucas v. Knox* case. In that case, Plaintiff—who was a

passenger in Seely's car—allegedly was injured when Seely turned left in front of Knox, who had the right of way. If a jury determines Knox is not liable for Plaintiff's injuries, he is not entitled to any recovery from Knox (or State Farm). Plaintiff cannot establish that State Farm's alleged failure to negotiate resulted in any damages until he demonstrates he is entitled to damages from Knox in the underlying case. The *Lucas v. Knox* case, however, is still pending.

Second, even if Knox is found liable in the underlying case, Plaintiff must demonstrate State Farm's alleged failure to negotiate during mediation somehow caused additional damage. An unsuccessful mediation simply means the Plaintiff must litigate the case he filed. Indeed, there is no law mandating any offers during mediation. In fact, involving the courts in litigating the propriety of offers and counter offers in mediation will negatively impact, if not ruin, the mediation process. This Pandora's Box should not be opened.

Even where a duty of good faith exists, this duty "does not necessarily entail a duty to make a settlement offer." Snyder v. State Farm, 586 F. Supp. 2d 453, 458 (D.S.C. 2008). In Snyder, Judge Michael Duffy further stated: "it is not the role of the courts to impose rigid rules and guidelines upon the conduct of parties in the settlement process. Settlement negotiations are best served by as much flexibility as possible so long as the parties are negotiating in good faith, as this allows both parties to make proposals which are best suited to serve their particular needs. Artificial constraints or requirements placed upon the options available to the bargaining parties would generally only serve to frustrate attempts to reach a mutually agreeable settlement." 586 F. Supp. 2d at 460

The Plaintiff's damages allegedly resulting from an unsuccessful mediation are not only premature, but also inherently speculative. Therefore, State Farm is entitled to summary judgment.

VI. EVEN IF AN ENFORCEABLE AGREEMENT EXISTED AND REVEALING OFFERS AT MEDIATION WOULD NOT VIOLATE ADR

RULE 8, IT IS UNDISPUTED STATE FARM DID MAKE AN OFFER AT MEDIATION (COMPLAINT, PARAGRAPH 13; PLAINTIFF'S INTERROGATORY ANSWER IN LUCAS VERSUS KNOX ATTACHED AS EXHIBIT A TO MOTION FOR SUMMARY JUDGMENT) AND THE PLAINTIFF THEREFORE CANNOT PROVE A VIOLATION OF THE ALLEGED AGREEMENT.

Plaintiff admits State Farm made an offer at mediation. (Complaint, paragraph 13) According to Plaintiff's interrogatory answers in *Lucas v. Knox*, the amount of this offer was \$1,000. (Exhibit A) It is unclear whether Plaintiff responded to this offer, but the Complaint nowhere asserts State Farm refused to negotiate or refused to increase its offer. In short, the complaint establishes State Farm agreed to negotiate and made an offer. Further, State Farm "did negotiate between the reserves and the limits, as we agreed to." (Ex. B).

Because it is undisputed State Farm did make an offer of \$1,000, which the Plaintiff has characterized as a "nominal amount" (Plaintiff's complaint, paragraph 13),¹ the Plaintiff cannot prove a violation of any purported agreement with State Farm. At most, the Plaintiff was dissatisfied with the defendant's initial offer at mediation. If an adversary's supposed unsatisfactory offer at mediation can serve as the basis of a lawsuit, the courts should gird themselves for an avalanche of litigation. In any event, even if an enforceable agreement existed and revealing offers at mediation would not violate ADR rule 8, it is undisputed State Farm did make an offer and the Plaintiff therefore cannot prove a violation of the alleged agreement.

VII. STATE FARM IS ENTITLED TO SUMMARY JUDGMENT ON THE SECOND CAUSE OF ACTION ALLEGING BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT BECAUSE NO ENFORCEABLE CONTRACT EXISTED BETWEEN THE PLAINTIFF AND STATE FARM.

Having a contract is a prerequisite to proving breach of contract accompanied by a fraudulent act. *Armstrong v. Collins*, 621 S.E. 2d 368 (S.C. App. 2005) Here, however, there was

¹ The amount may have been "nominal," or at least unsatisfactory to Plaintiff, based on the "liability dispute" in the case against Knox. (Ex. B).

no contract, as explained in section I of this memorandum. Furthermore, the complaint does not identify any fraudulent act. On the contrary, the allegations of the complaint demonstrate State Farm agreed to and participated in a mediation. State Farm is therefore entitled to summary judgment on the second cause of action.

VIII. STATE FARM IS ENTITLED TO SUMMARY JUDGMENT ON THE THIRD CAUSE OF ACTION BECAUSE THERE IS NO EVIDENCE OF A FALSE REPRESENTATION UPON WHICH THE PLAINTIFF RELIED TO HIS DETRIMENT.

The third cause of action alleges fraud. There are 9 elements to this cause of action. Failure to prove any of these elements is fatal to the claim. Allegro v. Scully, 762 S.E. 2d 54 (S.C. App. 2014). The 9 elements of fraud are: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard for its truth; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury. Allegro v. Scully, 762 S.E. 2d 54 (S.C. App. 2014).

At most, Plaintiff's complaint is based upon an unenforceable contract and an offer at mediation the Plaintiff claims was "so small it amounted essentially to a non-offer." (Complaint, paragraph 13). This is a far cry from a false statement. Further, another element of common law fraud, the hearer's reliance on the truth, cannot be established as it is pure speculation if the Plaintiff's case against Knox would have settled and for what amount even if State Farm did what the Plaintiff claims it should have done – negotiate between its reserve and the limits of Knox's liability coverage. Not only can the Plaintiff not prove the falsity and reliance elements of fraud, but the Plaintiff also cannot prove a consequent and proximate injury. Additionally, to be actionable a statement must relate to a present or pre-existing fact and cannot be predicated on unfilled promises. Making a statement to do something in the future – negotiate between the

reserve and policy limits - that is not done does not qualify as fraudulent. Foxfire Village v. Black, 404 S.E. 2d 912 (S.C. App 1991); Beneficial Finance v. Windham, 847 S.E. 793 (S.C. App. 2020). Thus, State Farm's statement about what it would do at mediation cannot be the basis of a claim of fraud.

CONCLUSION

This lawsuit is fatally flawed in numerous respects – it is predicated upon an unenforceable agreement, it violates the rule of confidentiality in ADR rule 8, State Farm as an alleged tortfeasor's liability insurer owed no duty to the Plaintiff, the Plaintiff is not entitled to information on the amount of State Farm's reserve, the Plaintiff's alleged damages are speculative, even if an agreement existed Plaintiff cannot prove any violation of the agreement, the Plaintiff cannot prove a contract and the Plaintiff cannot prove the 9 elements of fraud. For all these reasons State Farm is entitled to summary judgment.

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*Attorneys for State Farm Mutual Automobile
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November 14, 2022

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE 13 th JUDICIAL CIRCUIT
	)	
	)	CIVIL ACTION NO. 2022-CP-23-03851
James Dustin Lucas,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
State Farm Mutual Automobile,	)	
Insurance Company,	)	
Defendant.	)	
	)	

**MEMORANDUM OF STATE
FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY (STATE FARM) IN
OPPOSITION TO
PLAINTIFF'S MOTION TO
STRIKE ANSWER AND IN
OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

This lawsuit arises out of litigation between the plaintiff and Andre Knox, an insured of State Farm. That lawsuit arose out of an accident on June 17, 2017 when the plaintiff, a passenger in a car driven by Megan Seely, was in an accident with Andre Knox. The accident occurred when Seely turned left in front of the vehicle driven by Knox. The basis for these facts is set forth in State Farm's memorandum in support of its motion for summary judgment.

Almost 3 years later, on June 7, 2020, the plaintiff filed suit against Seely and Knox – civil action number 2020-CP-23-02877. The procedural aspects of that case are detailed in State Farm's memorandum in support of its motion for summary judgment.

The Lucas versus Knox case is upon information and belief scheduled for trial on or after May 2023. State Farm has filed two motions regarding the case against it:

1. A motion to stay the Lucas case against State Farm until the case of Lucas versus Knox is completely resolved. That motion was filed September 2, 2022.
2. A motion for summary judgment filed November 3, 2022. There are 8 grounds for that motion.

The plaintiff has filed 2 motions subsequent to the 2 motions filed by State Farm – a motion to strike State Farm's answer under SCRCP 37 and a motion for summary judgment. Both motions are devoid of merit and the plaintiff's motion for summary judgment even provides further support for State Farm's motion for summary judgment.

I. THE PLAINTIFF'S MOTION TO STRIKE STATE FARM'S ANSWER.

This motion alleges State Farm has refused to comply with discovery in both the underlying case of Lucas versus Knox and in this lawsuit.¹ There is, however, no order regarding discovery which State Farm has violated. In fact, on September 8, 2022, the plaintiff filed a motion to compel discovery responses from State Farm which, among other things, seeks the production of State Farm's claim file while the plaintiff's case against State Farm's insured Knox is pending. There has been no hearing on that motion and State Farm's motion to stay this lawsuit pending adjudication of the plaintiff's case against Knox explains why it would be improper for State Farm to produce the discovery requested by the plaintiff while the plaintiff's case is pending against State Farm's insured.²

Rule 37 (a)(4) provides for an award of expenses if a motion for an order compelling discovery is granted. This section also provides that if the motion is denied the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion – State Farm – the reasonable expenses incurred in opposing the motion including attorneys' fees unless the court finds the making of the motion was substantially justified or that other circumstances make an award of

¹ Any motion concerning discovery in *Lucas v. Knox* should be addressed in that case, not this case.

² Specifically, the State Farm claim file regarding this matter includes privileged communications that include such topics as litigation strategy regarding the defense in the *Lucas v. Knox* case.

expenses unjust. This motion is completely unjustified and State Farm should be awarded attorneys' fees incurred in opposing this motion.

Subsection (b) of rule 37 provides sanctions for failure to comply with an order. Rule 37 (b)(2)(C) provides the remedy of striking a pleading, but that remedy is conditioned upon disobedience of a court order. That condition has not occurred. Simply put, rule 37 (b) does not provide for the remedy sought by the plaintiff. See, Richardson v. White, 846 S.E. 2d 14 (SC App. 2020), that there must be an order of the court which has not been complied with before sanctions are imposed under rule 37 (b).³

Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction. Rogers v. Rogers, 851 S.E. 447, 455 (SC App. 2020); Skywaves v. Branch Banking and Trust Company, 814 S.E. 2d 643, 657 (SC App. 2018) A sanction that results in a default or dismissal is a severe punishment that should be imposed only if there is some showing of bad faith, misconduct, willful disobedience or gross indifference to the rights of the adverse party. Rickerson v. Karl, 770 S.E. 2d 767, 770 (SC App. 2015) Here, there is no misconduct at all and State Farm has properly responded to the plaintiff's discovery with legitimate objections. The plaintiff's motion to strike State Farm's answer should therefore be dismissed and State Farm should be awarded its costs and fees in opposing this motion.

II. THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

³ The Richardson case holds sanctions may be imposed under Rule 37 (d) without obtaining an order compelling discovery, but if the party from whom discovery is sought complies with the rule in question by making the initial response he has the right to refuse discovery until compelled by court order. In other words, Rule 37 (d) applies if a party has simply not responded to discovery. State Farm has responded to the plaintiff's request to produce, request to admit and interrogatories, copies which are attached as Exhibit A. In any event, the plaintiff's motion does not specify whether if it is under rule 37 (b) or 37 (d), nor does it explain why State Farm's objections to discovery are improper.

The grounds for this motion are that State Farm breached a valid contract with the plaintiff and that State Farm violated the ADR rules. These allegations are refuted in State Farm's motion for summary judgment which establishes there was no enforceable contract between the plaintiff and State Farm and the plaintiff cannot prove any violation of the Alternative Dispute Resolution rules.⁴

Additionally, the fact of the plaintiff's moving for summary judgment provides further support for State Farm's motion for summary judgment because when parties file cross motions for summary judgment the issue is decided as a matter of law. USAA v. Pickens, 862 S.E. 2d 442, 444 (SC 2021); South Carolina Public Interest Foundation v. Calhoun County, 854 S.E. 2d 836, 837 (SC 2021); Quicken Loans v. Wilson, 823 S.E. 2d 697, 700 (SC App. 2019); Duke Energy Corporation v. South Carolina Department of Revenue, 764 S.E. 2d 712, 715 (SC App. 2014) – where cross motions for summary judgment are filed the parties concede the issue before the court should be decided as a matter of law.

CONCLUSION

The plaintiff's motion to strike State Farm's answer is in conflict with the very rule – rule 37 – under which the motion is filed and under these facts striking State Farm's answer would constitute an error of law. Additionally, the very fact of the plaintiff's filing his own motion for summary judgment renders the summary judgement motions matters of law for determination by the court.

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⁴ State Farm's hereby incorporates its motion for summary judgment herein.

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February 13, 2023
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE 13 th JUDICIAL CIRCUIT
	)	CIVIL ACTION NO. 2020-CP-32-03557
James Dustin Lucas ,	)	
	)	
	)	
Plaintiff,	)	<u>DEFENDANT'S ANSWERS TO</u>
	)	<u>PLAINTIFF'S FIRST SET OF</u>
v.	)	<u>INTERROGATORIES</u>
	)	
State Farm Mutual Automobile	)	
Insurance Company,	)	
	)	
Defendant.	)	
_____	)	

Pursuant to SCRCP 33, State Farm Mutual Automobile Insurance Company (State Farm) answers the plaintiff's interrogatories served with the complaint and dated July 28, 2022 as follows:

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case, state whether or not written or recorded statements have been taken from the witnesses, and state who has possession of such statements.

ANSWER: (a) Jason Moore, Rob Hannus, care of counsel for State Farm. These persons have supervised the lawsuit of the plaintiff against State Farm's insured; (b) Jeanmarie Tankersley. This witness is the attorney retained by State Farm to defend Andre Knox and has knowledge of her written communications with the plaintiff's attorney; (c) Josh Hawkins – this witness is the attorney for the plaintiff and has knowledge about his communications with the attorney representing Andre Knox. State Farm does not have possession of statements of witnesses relating to this lawsuit. Further, in summarizing important facts known to or observed by witnesses, State Farm will not reveal any communications during mediation as doing so will violate ADR rule 8, nor will State Farm reveal information in its claim file.

2. For each person known to the defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See the answer to interrogatory 1.

3. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the parties or counsel that relate to any claim or the defense of the case.

ANSWER: State Farm has no photographs, plats or sketches. To the extent there are any prepared documents, those documents consist of written communications between counsel for Andre Knox and counsel for the plaintiff. State Farm objects to identifying any documents concerning what occurred at the mediation of Lucas v. Knox as doing so will violate ADR rule 8. State Farm further objects to identifying documents in the claim file of Lucas v. Knox for the reasons set forth in State Farm's response to the plaintiff's Request to Produce which is incorporated herein.

4. List the names and addresses of any expert witnesses the defendant proposes to use as a witness at the trial of this case. With regard to such expert witness, please provide:

- a. all facts known or opinions held by such expert;
- b. a current curriculum vitae of such expert; and
- c. each and every document provided to such expert, whether or not such expert relied upon the document in formulating his or her opinion.

ANSWER: None at present.

5. List each insurance policy related to this action and list the policy number and limits for each.

ANSWER: No insurance policy is related to this lawsuit.

6. Provide the claims reserve history associated with the collision giving rise to CA No. 2020-CP-23-02877.

ANSWER: State Farm objects to providing information on reserves as that information is not within the scope of discovery under SCRCP 26, providing information from State Farm's claim file will prejudice State Farm's duty to provide a defense to its insured Knox and, finally, see the December 7, 2021 order of Judge G. D. Morgan in the case of Lucas v. Knox which held State Farm was not required to produce "any documents relating to the company's reserve on the claim."

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*Attorneys for State Farm Mutual Automobile
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September 1, 2022

Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Whelan Mellen Norris, LLC, attorneys for Defendants, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by electronic mail only to the following address(es):

Pleading: **DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Counsel Served: Joshua T. Hawkins
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Traci Corallo
Administrative Assistant

September 1, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE 13 th JUDICIAL CIRCUIT
	)	CIVIL ACTION NO. 2020-CP-32-03557
James Dustin Lucas,	)	
	)	
	)	
Plaintiff,	)	<u>DEFENDANT'S RESPONSE</u>
	)	<u>TO PLAINTIFF'S</u>
v.	)	<u>FIRST REQUEST FOR</u>
	)	<u>PRODUCTION</u>
State Farm Mutual Automobile	)	
Insurance Company,	)	
	)	
Defendant.	)	
_____	)	

Pursuant to SCRCP 34, State Farm Mutual Automobile Insurance Company (State Farm) responds to the plaintiff's request for production of documents dated July 28, 2022 and served with the complaint as follows:

REQUESTS FOR PRODUCTION

1. All documents, including letters, files, notes, documents, reports, photographs, diagrams, drawings, or other similar material related to the allegations of the complaint or any defenses of the defendant and/or related to this litigation in any way.

RESPONSE: State Farm objects to paragraph 1 because it is overbroad and, if interpreted literally, will encompass documents subject to the attorney-client privilege, documents prepared after the filing of this lawsuit, documents protected from discovery under SCRCP 26(b)(3), documents which concern or reference communications at mediation and any documents from State Farm's claim file. Some documents responsive to paragraph 1 have already been produced in the Lucas v. Knox case pursuant to the December 7, 2021 order of Judge G. D. Morgan. In objecting to paragraph 1 State Farm would show that production of any claim notes or documents from the claim file relating to the internal claim evaluation or analysis by State Farm's claim

personnel or Counsel for Knox is protected by virtue of Judge Morgan's order and, further, producing such documents will compromise State Farm's obligation to defend its insured Andre Knox.

2. All statements of possible witnesses, whether written, oral, summarized, or otherwise reproduced in any manner, relating to the incident described in the complaint and/or this litigation in any way.

RESPONSE: State Farm has no statements "relating to the incident described in the complaint..." Additionally, the incident described in the complaint concerns what occurred at mediation and providing any statement about occurrences at mediation would be in violation of ADR rule 8.

3. Each and every document, file, chart, drawing, sketch, or other document or exhibit that the party or party's attorney intends to use as an exhibit during the trial of this case.

RESPONSE: State Farm objects to paragraph 3 because documents its attorney intends to use as exhibits at trial is protected from discovery under SCRCP 26(b)(3).

4. Any and all documents and files, whether in hard copy or electronic form, of any expert witnesses, including, but not limited to, reports, studies, drawings, measurements, calculations, diagrams, videos, photographs, tests, analyses, emails, correspondences, notes, opinions, or other documentation. This request includes all surveillance footage and any other video/still images related to this action.

RESPONSE: Not applicable.

5. Copies of all correspondence between the plaintiffs and the defendant or any representative of the defendant.

RESPONSE: State Farm is unaware of any correspondence between James Dustin Lucas and Andre Knox or any representative of Andre Knox.

6. Copies of all investigative reports related to the plaintiffs claim or documentation related to any investigative measures in any way. This request includes all insurance claim files and all documents generated by any insurance company and/or employee, including statements of parties and witnesses, notes, estimates, and any other documents gathered or generated by an insurance company. This information is pivotal to the plaintiffs' case and is discoverable pursuant to Franklin v. Russell (2017-CP-36-00143), Rice v. Ahearn Rentals (2014-CP-43-02294), Holder v. Lebo (2011-CP-23-04455), Pinckney v. Varnadoe (2008-CP-15-00291), Brown v. White (2001-CP-10-04760), and Henry v. Harris (2000-CP-23-06494).

RESPONSE: See the response to paragraph 1 which is incorporated herein. Additionally, the plaintiff has already requested this information in the case of Lucas versus Knox and the order of Judge G. D. Morgan dated December 7, 2021 denied the plaintiff's entitlement to such documents.

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September 1, 2022

Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Whelan Mellen Norris, LLC, attorneys for Defendants, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by electronic mail only to the following address(es):

Pleading: **DEFENDANT'S RESPONSE TO PLAINTIFF'S
FIRST REQUEST FOR PRODUCTION**

Counsel Served: Joshua T. Hawkins
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Traci Corallo
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September 1, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE 13 th JUDICIAL CIRCUIT
	)	CIVIL ACTION NO. 2020-CP-32-03557
James Dustin Lucas,	)	
	)	
	)	
Plaintiff,	)	<u>DEFENDANT'S RESPONSE</u>
	)	<u>TO PLAINTIFF'S FIRST</u>
v.	)	<u>REQUEST FOR ADMISSIONS</u>
	)	
State Farm Mutual Automobile	)	
Insurance Company,	)	
	)	
Defendant.	)	
_____	)	

Pursuant to SCRCP 36, State Farm Mutual Automobile Insurance Company (State Farm) responds to the plaintiff's request for admissions served with the complaint dated July 28, 2022 as follows:

REQUESTS FOR ADMISSIONS

1. Admit that Knox failed to respond to the complaint associated with CA No. 2020-CP-23-02877 within 30 days of service.

RESPONSE: According to the court file in civil action number 2020-CP-23-02877, Knox did fail to respond to the complaint served upon him within 30 days, but the plaintiff later withdrew the order of default against Knox.

2. Admit that an entry of default was proper against Knox.

RESPONSE: State Farm objects to paragraph 2 because the propriety of an entry of default is a legal conclusion and under SCRCP 36 paragraph 2 is improper.

3. Admit that the plaintiff agreed to let Knox out of default in exchange for State Farm's agreement to mediate between the amount of its reserve and the policy limit.

RESPONSE: State Farm admits only that in an exchange of emails between counsel for the plaintiff and counsel for Knox, Knox was let out of default if State Farm agreed to negotiate between the amount of its reserve and the limits of liability coverage, but State Farm denies any enforceable agreement exists in compliance with SCRCP 43(k).

4. Admit that State Farm failed to mediate between the amount of its reserve and the policy limit.

RESPONSE: This paragraph is denied.

5. Admit that Knox's failure to comply with the duties of the notice and cooperation clauses of his policy with State Farm would not preclude the plaintiff from recovering minimum financial responsibility limits from State Farm, Knox's insurer.

RESPONSE: State Farm admits Knox's failure to timely forward to Knox's liability insurance carrier a summons and complaint properly served upon Knox does not relieve Knox's liability carrier from avoiding all liability insurance otherwise available to a cooperating insured, but whether and to what extent the plaintiff can make a recovery against Knox is dependent upon the outcome of the trial of the plaintiff's case against Knox. The existence of minimum liability limits does not itself entitle the plaintiff to any recovery.

[Signature Page Follows]

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*Attorneys for State Farm Mutual Automobile
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September 1, 2022

Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Whelan Mellen Norris, LLC, attorneys for Defendants, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by electronic mail only to the following address(es):

Pleading: **DEFENDANT'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS**

Counsel Served: Joshua T. Hawkins
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Traci Corallo
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September 1, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. NO.: 2022-CP-23-03851
	)	
James Dustin Lucas,	)	
	)	PLAINTIFF'S MOTION TO
Plaintiff,	)	RECONSIDER AND TO
	)	ALTER OR AMEND THE
v.	)	JUDGMENT
	)	
State Farm Automobile Insurance	)	
Company,	)	
	)	
Defendant.	)	
	)	

COMES NOW, the plaintiff, and files his Motion to Reconsider in order to have the Court alter or amend its judgment and preserve all issues for appeal.

On February 17, 2023, the Court heard the defendant's motion for summary judgment and other motions. On February 24, 2023, a Form 4 was entered granting summary judgment in favor of the defendant. The plaintiff files this Motion to Reconsider, Alter, or Amend the Court's ruling to move the Court to reconsider its ruling and to preserve all issues related to the ruling for appeal.

A GENUINE ISSUE OF MATERIAL FACT EXISTS

It is inappropriate to award summary judgment to the defendant in this matter primarily because genuine issues of material fact exist for a jury's determination. Dismissal is inconsistent with *Hancock v Mid-South Mgmt., Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009), *Nexsen v. Haddock*, 353 S.C. 74, 576 S.E.2d 183 (Ct. App. 2002), *Tremont Constr. Co., Inc. v. Dunlap*, 310 S.C. 180, 425, S.E.2d 792 (Ct. App. 1992), and the vast body of case law interpreting South Carolina Rule of Civil Procedure 56 and summary judgment rulings. The plaintiff submitted far more than the mere scintilla of evidence required to cross the low threshold to survive a summary judgment motion. The plaintiff submitted plain, direct evidence that establishes State Farm proximately

caused the plaintiff's damages with fraudulent acts and caused the plaintiff to detrimentally rely upon State Farm's promises. The defendant's motion for summary judgment should have been denied, and this case should be decided by a jury.

Despite State Farm's arguments, a valid contract existed between the parties. On April 20, 2021, counsel for State Farm asked if plaintiff's counsel would be willing to let its insured out of default. Plaintiff's counsel then made a valid offer, stating that the plaintiff would let the insured out of default, "if yall (sic) agree to mediate the case in the next 30 days and negotiate between the amount of your reserve and the policy limit." Defense counsel accepted this offer on June 2, stating "[w]e can move forward with the early mediation now. Who do you want to use as a mediator?" The parties continued to communicate, with the plaintiff confirming and making absolutely sure, in writing, that the defense understood and agreed to what the plaintiff required in exchange for letting its insured out of default. All of those communications were submitted to rebut the summary judgment motion and are incorporated herein by reference. Between the offer on April 20 and the acceptance on June 2, defense counsel did not make any counteroffers. Therefore, this response constitutes a valid acceptance. Further, although it is not necessary for the Court to delve into the adequacy of consideration, the plaintiff suffered a detriment by letting the defendant out of default judgment, and the defendant *agreed* to suffer a detriment by negotiating between the amount of the reserve and the policy limit. It should also be noted that State Farm refused to conduct mediation pursuant to the ADR rules, which required State Farm to have its insured, a defendant in the underlying action, present at mediation. In short, State Farm agreed to 1) produce its insured (because ADR rules require that for mediation) and 2) to negotiate above its reserves. State Farm then refused to do either, despite gaining the benefit of the bargained for exchange.

The simple fact that the parties dispute whether a valid contract was formed demonstrates the existence of a genuine issue of material fact. Summary judgment, therefore, is inappropriate in this case, and the Court's order should be altered and amended to comply with the law.

The plaintiff also notes that the Court's ruling is directly at odds with *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101 (1991), which held "[s]ummary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery." See *Dawkins v. Fields*, 354 S.C. 58, 71, 580 S.E.2d 433, 439-40 (2003). The plaintiff sought discovery from State Farm with a deposition notice, and State Farm responded with the following:

On November 18 Judge Gibbons continued until February 17 all motions, one of which was SF's motion to stay this case while the underlying case is pending. Judge Gibbons issued a form 4 order which referenced the filed motions and which stated "in the interest of efficiency and fairness, these matters are administratively continued until the February term of court for Judge Morgan to hear all motions. **The court sua sponte orders the case to remain status quo until that time.**" (emphasis added) Your deposition notice is in violation of this order. Have you forgotten about the order, or are you intending to violate the order? Either way, there will be no discovery until the motions are adjudicated by Judge Morgan at the hearing February 17.

The letter, deposition notice, and related emails (including the email from which this is extracted) are incorporated herein by reference. After receiving this email above from State Farm, the plaintiff contacted Judge Gibbons for clarification. The Honorable Judge Gibbons verified that no discovery may occur until the hearing on February 17, 2023. Because the plaintiff was not allowed to conduct discovery prior to the February 17, 2023 hearing, the plaintiff has not had a "full and fair opportunity to conduct discovery," and summary judgment should not have been granted pursuant to *Baughman*.

DAMAGES ARE NOT SPECULATIVE

Contrary to State Farm's argument, damages in this case are not speculative. In *Shores v. Weaver*, 315 S.C. 347, 356, 433 S.E.2d 913, 917 (Ct. App. 1993), the South Carolina Court of Appeals held that an insurer must pay the minimum limits required by law even if it could prove substantial prejudice. In this case, State Farm's insured was in default, and State Farm entered into a valid and enforceable contract to avoid its responsibilities under *Shores*. But for the valid and enforceable agreement between the plaintiff and State Farm, State Farm would have been required to pay minimum limits of \$25,000.00. However, by entering into a valid contract, and then unilaterally refusing to perform, State Farm has caused the plaintiff \$25,000.00 in damages – \$25,000.00 the plaintiff would have been entitled to but for the breach of contract.

Had State Farm performed what it agreed to perform in exchange for the plaintiff letting it out of default, the case almost certainly would have been resolved. Since State Farm did not produce its insured as required by the ADR rules and did not make any offers above its highest reserve, the plaintiff incurred the following costs: 1) the cost of a worthless mediation that did not comply with ADR rules; 2) the cost of a second mediation so that the ADR rules are satisfied; 3) the cost of continued litigation in the underlying case, as well as the costs associated with this action, which would not be necessary but for State Farm's breach; 4) the costs associated with the plaintiff's motion for a damages hearing, which the plaintiff gave up in exchange for mediation; 5) the difference in the amount offered in breach of the agreement at issue and the actual value of the plaintiff's case; and 6) other consequential damages to be determined by a jury.

DEFENDANT STATE FARM INAPPROPRIATELY ILLICITED TESTIMONY OF A WITNESS AT THE SUMMARY JUDGMENT HEARING

The case law is clear that a trial court may grant a motion for summary judgment based upon the "pleadings, depositions, answers to interrogatories, and admissions on file, together with

any affidavits, if any.” *Madison ex rel. Bryant v. Babcock Center, Inc.*, 317 S.C. 123, 638 S.E.2d 650 (2006) (citing *Rule 56(c), SCRPC*); *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997)).

At the summary judgment hearing, State Farm called Jeanmarie Tankersley, the attorney hired by State Farm in the underlying action, as a fact witness to offer testimony to the Court. South Carolina courts have not ruled upon the issue of whether a fact witness may testify at a summary judgment hearing, but the courts of several states with almost identical procedural rules have. While the Federal Rules of Civil Procedure allow oral testimony at summary judgment hearings, Federal Courts have opined that it “should be rare.”¹ South Carolina has not adopted a rule similar to Rule 43, which, according to Federal Courts, allows oral testimony to be taken.²

Further, several state courts have outright denied the ability to present oral testimony at summary judgment hearings. *See Ogden Trucking Co. v. Heller Bros. & Co.*, 130 So. 2d 295 (Fla. Dist. Ct. App. 1961) (noting that under the Federal Rules of Civil Procedure oral testimony is admissible, but that Florida had not adopted a rule equivalent to Rule 43); *Tisei v. Town of Ogunquit*, 491 A.2d 564 (Me. 1985) (holding that a testimonial hearing on a motion for summary judgment was completely irregular and unauthorized); *St. Francis Hosp., Inc. v. Group Hosp.*

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² To accept and consider oral testimony at a summary judgment hearing is beyond what our legislature intended when it adopted Rule 56 of the South Carolina Rules of Civil Procedure and failed to adopt a rule similar to Rule 43 of the Federal Rules of Civil Procedure.

Serv., 598 P.2d 238 (1979) (holding that oral testimony was not admissible at a summary judgment hearing); *Toliver v. Bergman*, 297 S.W.2d 208 (Tex. Civ. App. 1956) (declaring that state rules of civil procedure which mentioned only depositions, pleadings, admissions on file, and affidavits as the proper bases for judicial action under the rule, oral testimony was inappropriate at a summary judgment hearing).

The plaintiff was neither given notice that a witness would testify at the hearing nor was the plaintiff given a chance to cross-examine the witness at the hearing. In *South Carolina Dept. of Social Services ex rel. Texas v. Holden*, our state’s Supreme Court acknowledged, “[t]he right to confrontation, although historically limited to criminal prosecutions, has been applied in the civil context.” 319 S.C. 72, 78 459 S.E.2d 846, 849 (1995). Further, the Supreme Court in *Brown v. South Carolina State Board of Education* held, “[w]here important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.” 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990).

As discussed above, State Farm presented a witness who testified at a hearing as to her factual role in the proceedings and contract formation. In this situation, under South Carolina case law, the plaintiff should have been afforded the opportunity to cross-examine the witness. Because the plaintiff was not able to cross-examine the fact witness after her testimony, the plaintiff was denied a meaningful opportunity to be heard as guaranteed by the Due Process Clause of the Constitution, the Supreme Court of the United States, and the South Carolina Supreme Court.

The oral testimony of a witness testifying to the facts of the case alone is wholly inappropriate and is an attempt to persuade this Court to weigh the facts of the case – a function expressly reserved for the jury. Likewise, the inability of plaintiff’s counsel to cross-examine the witness creates a serious and significant due process issue. Therefore, this Court should reverse its

grant of summary judgment or, in the alternative, reconduct the summary judgment hearing and exclude any oral testimony consistent with Rule 56(c).

**STATE FARM MISCHARACTERIZED THE CLAIM OF BREACH OF A CONTRACT
ACCOMPANIED BY A FRAUDULENT ACT**

As clearly indicated in *Harper v. Ethridge*, “[t]he action for breach of contract accompanied by a fraudulent act is not based on the same elements as the action in tort for fraud and deceit.” 290 S.C. 112, 118, 348 S.E.2d 374, 378 (Ct. App. 1986). As *Harper* denotes, the elements for breach of a contract accompanied by a fraudulent act are: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach.” *Id.* Contrary to State Farm’s assertion, a fraudulent act “is any act characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another's property by design” *Id.* Our Supreme Court has noted:

[Fraud] assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.

Sullivan v. Calhoun, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921).

As previously discussed, a genuine issue of material fact exists as to whether a contract exists. Further, a genuine issue of material fact exists as to whether State Farm had a fraudulent intent.³ State Farm’s mischaracterization of the well-established cause of action seeks to mislead the Court away from a genuine issue of material fact.

³ However, it seems abundantly clear that State Farm did have fraudulent intent since it agreed to mediate within parameters in exchange for being let out of default and then, after default was lifted, it refused to make its insured present for an ADR-compliant mediation and refused to negotiate within the agreed-to parameters.

State Farm has been dishonest in fact and unfair in its dealings with the plaintiff. State Farm entered into a valid contract to avoid its obligations under law. However, State Farm failed to conform its conduct to the terms of the contract it negotiated. In fact, after agreeing to negotiate between reserves and minimum limits, State Farm failed to indicate what the reserve limits were, refused to participate in mediation pursuant to the SC ADR rules, and continued to state falsehoods surrounding litigation. It also appears that State Farm has breached duties to its insured by refusing to produce him at mediation, where he could have participated and considered how State Farm's actions will harm and prejudice him and his assets in the future.

**STATE FARM WAS NEGLIGENT IN ITS INTERACTIONS WITH THE PLAINTIFF
BY FAILING TO DISCLOSE KEY TERMS OF ITS CONTRACT WITH THE
PLAINTIFF**

Despite State Farm's claims to the contrary, this is not a bad faith case.⁴ The plaintiff admits that, in the underlying action, no privity of contract exists between the plaintiff and State Farm. However, in the case at bar, privity of contract *does* exist. State Farm had an affirmative duty to mediate pursuant to the rules, disclose the terms of its contract, and answer truthfully when asked. State Farm failed to do each of these things.

Although the Court of Appeals declined to address the issue, in *Hood v. USAA*, the Court noted that, "[i]t may be that USAA [the insurer] had a **duty** to answer truthfully if asked whether it was offering the maximum amount of its authority, but that question was not asked here and is not before us." (Appellate Case No. 2019-001942, emphasis added). In this case, State Farm breached its duty when it failed to truthfully answer whether it was offering the maximum amount of its reserve. Therefore, an issue of fact and law exists, and summary judgment must be denied.

⁴ State Farm almost certainly has acted in bad faith as to its insured, who may sue State Farm if he chooses, but the plaintiff has not brought a bad faith action since he is not allowed to bring a bad faith action in this context.

**SUMMARY JUDGMENT VIOLATES THE SEVENTH AMENDMENT OF THE
UNITED STATES CONSTITUTION**

By granting summary judgment, the plaintiffs' rights under the Seventh Amendment of the United States Constitution and the South Carolina Constitution have been violated. The Seventh Amendment states that, "[i]n suits at common law . . . the right of trial by jury shall be preserved." U.S. CONST. amend. VII.

CONCLUSION

For the foregoing reasons, the plaintiff respectfully requests that this Honorable Court amend and alter its ruling and deny Defendant's Motion for Summary Judgment. The plaintiff respectfully submits that the current ruling contradicts settled case law in South Carolina and constitutes reversible error. The plaintiff moves pursuant to SCRCP 54, 59, 50, their subparts, and all other applicable rules, and preserves all issues related to the motions before the Court and contained in the transcript of the hearing, which is incorporated herein by reference. The plaintiff submits that an appeal will cause the parties to incur costs, which may be avoided by altering the judgment so that the plaintiff is allowed to proceed with his claims.

Respectfully submitted,

HAWKINS & JEDZINIAK, LLC

s/ Joshua T. Hawkins

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Helena L. Jedziniak, S.C. Bar #100825

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Greenville, South Carolina
March 6, 2023

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. NO.: 2022-CP-23-03851
	)	
James Dustin Lucas,	)	
	)	PLAINTIFF'S MOTION TO
Plaintiff,	)	RECONSIDER AND TO
	)	ALTER OR AMEND THE
v.	)	ORDER OF THE COURT
	)	GRANTING SUMMARY
State Farm Automobile Insurance	)	JUDGMENT ON
Company,	)	MARCH 20, 2023
	)	
Defendant.	)	
	)	

COMES NOW, the plaintiff, and files his Motion to Reconsider in order to have the Court alter or amend its judgment and preserve all issues for appeal.

On February 17, 2023, the Court heard the defendant's motion for summary judgment and other motions. On February 24, 2023, a Form 4 was entered granting summary judgment in favor of the defendant, and the plaintiff timely filed a SCRCP 59(e) motion.¹ On March 20, 2023, the Court entered a formal Order, it appears, accepting State Farm's legally flawed positions. The plaintiff files this Motion to Reconsider, Alter, or Amend the Court's formal Order, and respectfully moves the Court to reconsider its ruling and to preserve all issues related to the ruling for appeal.

¹ That motion and the transcript of the hearing on this matter are incorporated by reference. The plaintiff preserves for appeal all issues related to all motions related to the hearing, discussed in those motions, and discussed in this motion. The plaintiff also preserves for appeal all violations of the United State Constitution, including violations of the plaintiff's right to Due Process, the Equal Protection Clause, and the right to a jury trial. Should the plaintiff exhaust all appellate options without redress, the plaintiff preserves issue for appeal to the United States Supreme Court.

GENUINE ISSUES OF MATERIAL FACT EXIST

The Court's ruling is in direct contradiction to the ruling in *Hancock v Mid-South Mgmt., Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009). It is inappropriate to award summary judgment to the defendant in this matter primarily because genuine issues of material fact exist for a jury's determination. *Id.* See also *Nexsen v. Haddock*, 353 S.C. 74, 576 S.E.2d 183 (Ct. App. 2002), *Tremont Constr. Co., Inc. v. Dunlap*, 310 S.C. 180, 425, S.E.2d 792 (Ct. App. 1992). The vast body of case law interpreting South Carolina Rule of Civil Procedure 56 and summary judgment rulings makes clear that where a mere scintilla of evidence is submitted to support a claim, a summary judgment motion must be denied. The plaintiff submitted far more than the mere scintilla of evidence required to cross the low threshold to survive a summary judgment motion. The plaintiff submitted plain, direct evidence that establishes State Farm proximately caused the plaintiff's damages with fraudulent acts and caused the plaintiff to detrimentally rely upon State Farm's promises.

It appears that the Court adopted State Farm's (knowingly) false statement that "...emails between Plaintiff's counsel and counsel for Knox suggest Lucas agreed to allow Knox to file an answer to Lucas' complaint and State Farm, Knox's liability carrier, would negotiate between its reserve and Knox's liability limits of \$25,000." There is no suggestion or implied message in the emails exchanged between the parties. There is a clear, unambiguous offer made by the plaintiff's agent and a clear, unambiguous acceptance by State Farm's agent. The plaintiff performed, to his detriment, and State Farm did not perform the act it (knowingly) fraudulently promised that it would. State Farm then benefited from its fraud and violated the ADR rules in doing so. State Farm's conduct cannot go unaccounted for, and the defendant's motion for summary judgment

should have been denied. South Carolina's constitution is clear –the plaintiff's right to a jury trial against State Farm should be "preserved inviolate."

This is not the first time State Farm has engaged in misconduct, not even the first time in this Court. In 2021, in *Mattison v. Hana and Me et al.*, 2018-CP-23-03187, this Court sanctioned State Farm, ordering it to pay costs for discovery misconduct and violating this Court's Order. As this Court noted in that case, "...State Farm has literally ignored discovery and ADR rules for years, and the plaintiff has had to file numerous motions due to State Farm's repeated attempts to delay discovery, delay mediation, refusal to follow ADR rules, and refusal to comply with court orders." The Order is attached hereto as **Exhibit A**. As the Court determines whether or not it will reconsider, alter, or amend its ruling, the plaintiff respectfully submits that State Farm will continue to thumb its nose at ADR rules and continue to defend its fraudulent statements in open Court until this Court holds it accountable.

State Farm cannot sincerely argue that "if yall (sic) agree to mediate the case in the next 30 days and negotiate between the amount of your reserve and the policy limit" is ambiguous. State Farm accepted this crystal-clear offer, stating "[w]e can move forward with the early mediation now. Who do you want to use as a mediator?" To reiterate the terms and make absolutely sure, in writing, that State Farm knew, understood, and agreed to what was mandatory and required before being let out of default, the plaintiff followed up and continued to emphasize the terms. All of those communications were submitted to rebut the summary judgment motion and are incorporated herein by reference.

Further, although it is not necessary for the Court to delve into the adequacy of consideration, the plaintiff suffered a detriment by letting the defendant out of default judgment, and State Farm *agreed* to suffer a detriment by negotiating between the amount of the reserve and

the policy limit. State Farm also refused to conduct mediation pursuant to the ADR rules, which required State Farm to have its insured, a defendant in the underlying action, present at mediation. That violation alone constitutes a breach of contract, because the deal it entered into included participating in ADR-compliant mediation. In short, State Farm agreed to: 1) produce its insured (because ADR rules require that for mediation); and, 2) to negotiate above its reserves. State Farm then refused to do either, despite gaining the benefit of the bargained for exchange.

The plaintiff also respectfully submits that the Court erred because the ruling is directly at odds with *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101 (1991), which held “[s]ummary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” See *Dawkins v. Fields*, 354 S.C. 58, 71, 580 S.E.2d 433, 439-40 (2003). The plaintiff sought discovery from State Farm with a deposition notice, and State Farm responded with the following:

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The letter, deposition notice, and related emails (including the email from which this is extracted) are incorporated herein by reference. After receiving this email above from State Farm, the plaintiff contacted Judge Gibbons for clarification. The Honorable Judge Gibbons verified that no discovery may occur until the hearing on February 17, 2023. Because the plaintiff was not allowed to conduct discovery prior to the February 17, 2023 hearing, the plaintiff has not had a

“full and fair opportunity to conduct discovery,” and summary judgment should not have been granted pursuant to *Baughman*.

DAMAGES ARE NOT SPECULATIVE

The fact that the plaintiff has to incur the cost of a second mediation because State Farm violated the ADR rules is, by itself, enough to show damages are demonstrable, triable to a jury, and far from speculative. In *Shores v. Weaver*, 315 S.C. 347, 356, 433 S.E.2d 913, 917 (Ct. App. 1993), the South Carolina Court of Appeals held that an insurer must pay the minimum limits required by law even if it could prove substantial prejudice. That means because State Farm allowed its insured to go into default, and State Farm entered into a valid and enforceable contract to gain an opportunity to avoid its responsibilities under *Shores*, State Farm benefited – to an articulable monetary amount – from the plaintiff’s performance to his detriment. But for the valid and enforceable agreement between the plaintiff and State Farm, State Farm would have been required to pay minimum limits of \$25,000.00. By entering into a valid contract with a fraudulent statement, and then unilaterally refusing to perform, State Farm has caused the plaintiff \$25,000.00 in damages – \$25,000.00 the plaintiff would have been entitled to but for the breach of contract.

Had State Farm performed what it agreed to perform in exchange for the plaintiff letting it out of default, the case almost certainly would have been resolved. Since State Farm did not produce its insured as required by the ADR rules and did not make any offers above its highest reserve, the plaintiff incurred the following costs: 1) the cost of a mediation that did not comply with ADR rules; 2) the cost of a second mediation so that the ADR rules are satisfied; 3) the cost of continued litigation in the underlying case, as well as the costs associated with this action, which would not be necessary but for State Farm’s breach; 4) the costs associated with the plaintiff’s motion for a damages hearing, which the plaintiff gave up in exchange for mediation; 5) the

difference in the amount offered in breach of the agreement at issue and the actual value of the plaintiff's case; and, 6) other consequential damages to be determined by a jury.

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The case law is clear that a trial court may grant a motion for summary judgment based upon the “pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, if any.” *Madison ex rel. Bryant v. Babcock Center, Inc.*, 317 S.C. 123, 638 S.E.2d 650 (2006) (citing *Rule 56(c), SCRCP*); *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997)).

At the summary judgment hearing, State Farm called Jeanmarie Tankersley, the attorney hired by State Farm in the underlying action, as a fact witness to offer testimony to the Court. South Carolina courts have not ruled upon the issue of whether a fact witness may testify at a summary judgment hearing, but the courts of several states with almost identical procedural rules have. While the Federal Rules of Civil Procedure allow oral testimony at summary judgment hearings, Federal Courts have opined that it “should be rare.”² South Carolina has not adopted a rule similar to Rule 43, which, according to Federal Courts, allows oral testimony to be taken.³

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³ To accept and consider oral testimony at a summary judgment hearing is beyond what our legislature intended when it adopted Rule 56 of the South Carolina Rules of Civil Procedure and failed to adopt a rule similar to Rule 43 of the Federal Rules of Civil Procedure.

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As clearly indicated in *Harper v. Ethridge*, “[t]he action for breach of contract accompanied by a fraudulent act is not based on the same elements as the action in tort for fraud and deceit.” 290 S.C. 112, 118, 348 S.E.2d 374, 378 (Ct. App. 1986). As *Harper* denotes, the elements for breach of a contract accompanied by a fraudulent act are: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and, (3) a fraudulent act accompanying the breach.” *Id.* Contrary to State Farm’s assertion, a fraudulent act “is any act characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another's property by design” *Id.* Our Supreme Court has noted:

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**STATE FARM WAS NEGLIGENT IN ITS INTERACTIONS WITH THE PLAINTIFF
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Despite State Farm's claims to the contrary, this is not a bad faith case.⁵ The plaintiff admits that, in the underlying action, no privity of contract exists between the plaintiff and State Farm. However, in the case at bar, privity of contract *does* exist. State Farm had an affirmative duty to mediate pursuant to the rules, disclose the terms of its contract, and answer truthfully when asked. State Farm failed to do each of these things.

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⁴ However, it seems abundantly clear that State Farm did have fraudulent intent since it agreed to mediate within parameters in exchange for being let out of default and then, after default was lifted, it refused to make its insured present for an ADR-compliant mediation and refused to negotiate within the agreed-to parameters.

⁵ State Farm almost certainly has acted in bad faith as to its insured, who may sue State Farm if he chooses, but the plaintiff has not brought a bad faith action since he is not allowed to bring a bad faith action in this context.

it was offering the maximum amount of its authority, but that question was not asked here and is not before us.” (Appellate Case No. 2019-001942, emphasis added). In this case, State Farm breached its duty when it failed to truthfully answer whether it was offering the maximum amount of its reserve. Therefore, an issue of fact and law exists, and summary judgment must be denied.

**SUMMARY JUDGMENT VIOLATES THE SEVENTH AMENDMENT OF THE
UNITED STATES CONSTITUTION**

By granting summary judgment, the plaintiffs’ rights under the Seventh Amendment of the United States Constitution and the South Carolina Constitution have been violated. The Seventh Amendment states that, “[i]n suits at common law . . . the right of trial by jury shall be preserved.” U.S. CONST. amend. VII.

CONCLUSION

For the foregoing reasons, the plaintiff respectfully requests that this Honorable Court amend and alter its ruling and deny Defendant’s Motion for Summary Judgment. The plaintiff respectfully submits that the current ruling contradicts settled case law in South Carolina and constitutes reversible error. The plaintiff moves pursuant to SCRCP 54, 59, 50, their subparts, and all other applicable rules, and preserves all issues related to the motions before the Court and contained in the transcript of the hearing, which is incorporated herein by reference. The plaintiff submits that an appeal will cause the parties to incur costs, which may be avoided by altering the judgment so that the plaintiff is allowed to proceed with his claims.

**** Space left intentionally blank – Signature block to follow on next page. ****

Respectfully submitted,

HAWKINS & JEDZINIAK, LLC

s/ Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar #78470

Helena L. Jedziniak, S.C. Bar #100825

Ethan L. Jedziniak, S.C. Bar #105785

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Attorneys for Plaintiff

Greenville, South Carolina

March 20, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE NO. 2018-CP-23-03187
	)	
Russell Lane Mattison, Jr.,	)	ORDER COMPELLING STATE
	)	FARM TO MAKE GOOD FAITH
Plaintiff,	)	EFFORTS TO PRODUCE HALIM
	)	KITOUS TO APPEAR FOR A
vs.	)	DEPOSITION
	)	
Hana and Me, LLC d/b/a Dragon Breath,	)	
	)	
Defendant.	)	
_____	)	

This matter came before the Court on the plaintiff’s motion for State Farm to show cause why its insured, Halim Katous, refused to appear for a Court ordered deposition. Present at the hearing was Joshua T. Hawkins for the plaintiff and Chris Smith for the defendant.

The plaintiff has worked diligently to schedule depositions and complete discovery for years. The plaintiff first made efforts to schedule depositions at least July 24, 2019 more than two years ago. State Farm is the carrier for the claim giving rise to this action, and the attorneys hired by State Farm have communicated with and defended both Halim Kitous and Sam Aliane, employees of Hana and Me, LLC. There does not appear to be any dispute that State Farm is responsible to pay a settlement or judgment resulting from the acts of Kitous or Aliane since their actions in the scope and course of their employment with Hana and Me, LLC are the subject of this action.

The plaintiff has had to file motions for and attend multiple hearings related to discovery and mediation. The plaintiff attended a hearing related to the depositions of Aliane and Kitous, where State Farm resisted the depositions. The Court allowed the plaintiff to incur his own travel expenses and ordered the depositions may go forward. As a result, the plaintiff’s counsel traveled to Massachusetts and deposed Aliane. The plaintiff also had to file a motion to compel mediation. When the parties finally scheduled mediation, State Farm refused to appear in violation of the

ADR rules, and the plaintiff had to file a second motion. The Court did not compel State Farm to comply with the ADR rules since the parties appeared to be unlikely to resolve the case. Then, the plaintiff filed a motion to compel Kitous' deposition, which the Court granted. When the plaintiff properly noticed and served Kitous with a deposition notice and subpoena, he did not appear for his Court ordered deposition. The plaintiff's counsel incurred the expense associated with preparation for the deposition and the cost of a court reporter. Since Kitous refused to comply with a Court order, the plaintiff filed a motion for a rule to show cause and asked that State Farm be held accountable for its actions and allowing its insured to violate of a Court order.

State Farm has taken the position that the attorneys it hired to defend this action do not represent Kitous, and so State Farm should not have any consequences for violation of the Court order. However, State Farm has paid attorneys to defend Kitous, who was named as a defendant. It matters not that Kitous was dismissed by consent – indeed, attorneys are encouraged to resolve issues such as these between themselves, and in this case, the plaintiff agreed to voluntarily dismiss Kitous as a defendant because State Farm's attorneys filed a motion to dismiss on behalf of Kitous. The plaintiff agreed to dismiss Kitous by consent since State Farm provides coverage, and State Farm should not be allowed to seek a dismissal of a defendant being represented by counsel State Farm hired to represent all defendants and then use that agreement against party who agreed to the dismissal.

State Farm's attorneys filed a motion to dismiss its insured (Halim Kitous), on May 20, 2021, which the plaintiff agreed to. State Farm then refused to make any effort to get Kitous to his Court-ordered deposition. At the hearing on the Motion for Rule to Show Cause, the Court instructed defense counsel to make good faith efforts to locate Mr. Kitous. The plaintiff files this motion so that State Farm has a pending hearing where its answer may be stricken if it does not comply with the Court's orders.

A party's failure to cooperate in discovery may result in the Court awarding expenses associated with a motion. Rule 37(a)(4), *SCRCP*. The Court also has the power to strike the defendant's answer for failure to cooperate in discovery. Rule 37(b)(2)(C), *SCRCP*. In *McNair v. Fairfield County*, 379 S.C. 462, 665 S.E.2d 830 (Ct. App. 2008), the Court of Appeals upheld the decision of the Circuit Court to strike an answer, in part, because the defendant failed to produce documents requested through discovery "...7 ½ months after [the] Court passed an Order granting plaintiff's motion to compel." *Id.* at 467. Here, State Farm has literally ignored discovery and ADR rules for years, and the plaintiff has had to file numerous motions due to State Farm's repeated attempts to delay discovery, delay mediation, refusal to follow ADR rules, and refusal to comply with court orders.

State Farm is therefore ordered to produce Kitous for a deposition within 30 days and is ordered to pay costs and fees associated for the properly noticed deposition of Kitous on July 1, 2021, when Kitous refused to comply with the Court's order for him to appear. If State Farm does not produce Kitous for deposition within 30 days, the Court will consider striking the defendant's answer pursuant to Rule 37 *SCRCP*.

IT IS ORDERED.

The Honorable Alex Kinlaw

_____, 2021
Greenville, South Carolina

Kinlaw, Alex Secretary (Shannon N. Thurman)

From: Kinlaw, Alex
Sent: Tuesday, August 3, 2021 10:04 AM
To: Kinlaw, Alex Secretary (Shannon N. Thurman)
Subject: FW: Mattison v. Hana and Me, LLC d/b/a Dragon Breath
Attachments: proposed order State Farm to produce Kitous.docx

Print out email and attachment

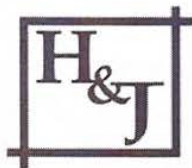
From: Josh Hawkins <josh@hjlsc.com>
Sent: Monday, August 2, 2021 5:34 PM
To: Kinlaw, Alex Secretary (Shannon N. Thurman) <akinlawsc@sccourts.org>; Kinlaw, Alex Law Clerk () <akinlawlc@sccourts.org>; Kinlaw, Alex <akinlawj@sccourts.org>
Cc: Helena Jedziniak <Helena@hjlsc.com>; Paralegal <monica@hjlsc.com>; Chris Smith <csmith@clarksonwalsh.com>
Subject: Mattison v. Hana and Me, LLC d/b/a Dragon Breath

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Judge Kinlaw,

Attached is our proposed order on the plaintiff's motion for the defendant to show cause why State Farm's insured refused to appear for a Court-ordered deposition. Counsel for the defendant (Chris Smith) and I traded drafts of orders, but it appears we cannot agree on a version for the Court. I emailed Chris this version a few minutes ago, and of course, we have copied him on this email. We will efile a proposed order unless the Court prefers that we proceed differently. Should the Court need anything further from us, please let us know. We will try to get the proposed order filed before we leave today, but I imagine it will not be available on the website until tomorrow.

Sincerely,



Joshua T. Hawkins
Partner • Hawkins & Jedziniak, LLC
Office (864) 275-8142 | Fax (864) 752-0911
josh@hjlsc.com
1225 South Church Street | Greenville, SC 29605
www.hawkinsandjedziniak.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE NO. 2018-CP-23-03187
	)	
Russell Lane Mattison, Jr.,	)	ORDER COMPELLING STATE
	)	FARM TO MAKE GOOD FAITH
Plaintiff,	)	EFFORTS TO PRODUCE HALIM
	)	KITOUS TO APPEAR FOR A
vs.	)	DEPOSITION
	)	
Hana and Me, LLC d/b/a Dragon Breath,	)	
	)	
Defendant.	)	
_____	)	

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IT IS ORDERED.

The Honorable Alex Kinlaw

_____, 2021
Greenville, South Carolina



Greenville Common Pleas

Case Caption: Russell Lane Mattison Jr vs. Dragon Breath , defendant, et al
Case Number: 2018CP2303187
Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2021-08-03 15:36:36 page 8 of 8

ELECTRONICALLY FILED - 2021 Aug 04 9:38 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303187
ELECTRONICALLY FILED - 2023 Mar 20 5:42 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2303851

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE 13 th JUDICIAL CIRCUIT
	)	
	)	CIVIL ACTION NO. 2022-CP-23-03851
James Dustin Lucas,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
State Farm Mutual Automobile,	)	
Insurance Company,	)	
Defendant.	)	
	)	

MEMORANDUM OF STATE
FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY IN OPPOSITION
TO PLAINTIFF'S MOTION TO
ALTER OR AMEND
JUDGMENT

State Farm Mutual Automobile Insurance Company (State Farm), incorrectly referenced in the caption of the plaintiff's motion as "State Farm Automobile Insurance Company", requests the Plaintiff's motion to alter or amend the judgment be denied for the following reasons.

I. THE PLAINTIFF'S MOTION IGNORES SCRCP 43(K) AND THE CHEN CASE APPLYING THAT RULE.

Pages 2 and 3 of the Plaintiff's motion argue a question of fact exists as to whether a valid contract was formed between State Farm and the plaintiff. The motion omits any discussion of Rule 43(k) and the Chen case applying that rule. Rule 43(k) and Chen were the basis of State Farm's motion for summary judgment and are referenced in the order granting summary judgment but the rule and the case are ignored by the Plaintiff's motion.

II. THE PLAINTIFF HAS NOT SHOWN HOW ANY DISCOVERY WILL CREATE A QUESTION OF FACT ON STATE FARM'S MOTION, NOR DID THE PLAINTIFF FILE A MOTION FOR CONTINUANCE OF THE HEARING.

The hearing on February 17, 2023 had been scheduled since November 2022. At no time prior to the hearing on February 17, 2023, nor at the hearing itself did the plaintiff file a motion to

continue the hearing. In fact, the plaintiff filed his own motion for summary judgment and argued that motion at the hearing on February 17.

If a non-moving party to a summary judgment motion wishes to engage in discovery to contest the motion, the non-moving party must demonstrate the likelihood further discovery will uncover additional relevant evidence and the party is not merely engaged in a fishing expedition. Guinan v. Tenet Health Systems, 677 S.E. 32 (SC App. 2009); CEL Products v. Rozelle, 591 S.E. 2d 643 (SC App. 2004) Other cases hold there is no abuse of discretion in refusing the party opposing summary judgment request for additional time for discovery. Savannah Bank v. Stalliart, 734 S.E. 2d 161 (SC 2012); Gecy v. Hamner, 812 S.E. 2d 750 (SC App. 2018) Neither at the hearing nor in the Plaintiff's motion for reconsideration has the Plaintiff explained what specific discovery could create a question of fact on any of the multiple grounds asserted in State Farm's motion for summary judgment.

III. **THE PLAINTIFF'S MOTION MISSTATES THE HOLDING IN SHORES V. WEAVER.**

The Shores v. Weaver case, 433 S.E 2d 913 (S.C. App. 1993), simply holds where an insurer is not given timely notice of a complaint and the complaint is in default, the liability insurer cannot deny coverage up to the mandatory liability limits required by law. The Plaintiff's motion at page 4 cites Shores for the proposition an insurer must **pay** the minimum limits. Shores does not, however, state the insurer must **pay** the minimum limits. All Shores holds is that a liability insurer cannot avoid **coverage** where a complaint against the insured is in default before the insurer has notice of the suit. Page 4 the Plaintiff's motion therefore misstates the holding in Shores v. Weaver. Indeed, were the Plaintiff's position correct it would not be necessary to try the Lucas v. Knox case.

IV. THE PLAINTIFF'S MOTION IMPROPERLY STATES JEAN MARIE TANKERSLY GAVE TESTIMONY AT THE HEARING ON FEBRUARY 17.

Page 6 of the Plaintiff's motion claims Jean Marie Tankersley, counsel for Knox hired by State Farm, was called as a fact witness to offer testimony to the court at the hearing. This is a false statement. While Tankersley did attend the hearing by Zoom, she never testified.

V. STATE FARM HAS NEVER CLAIMED THE PLAINTIFF'S CASE IS A BAD FAITH CASE.

Page 9 of the Plaintiff's motion states "despite State Farm's claims to the contrary, this is not a bad faith case." This is a false statement because State Farm has never claimed the Plaintiff's lawsuit is a bad faith case.

VI. THE PLAINTIFF'S DAMAGES ARE SPECULATIVE.

Page 5 of the Plaintiff's motion claims that had State Farm "performed" the "case almost certainly would have resolved." Missing from the Plaintiff's brief is what the case "almost certainly" would have resolved for. Furthermore, the Plaintiff has not contradicted the email of Jean Marie Tankersley attached to State Farm's motion for summary judgment that State Farm did negotiate between the reserves and the limits.

CONCLUSION

The Plaintiff's motion should be denied for the reasons stated in this memorandum.

[Signature Page Follows]

WHELAN MELLEN & NORRIS, LLC

By: /s/ CHARLES R. NORRIS

Charles R. Norris

Bar No. 4238

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89 Broad Street

Charleston, SC 29401

(843) 998-7099

*Attorneys for State Farm Mutual Automobile
Insurance Company*

Charleston, South Carolina

April 13, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. NO.: 2022-CP-23-03851
	)	
James Dustin Lucas,	)	
	)	
Plaintiff,	)	PLAINTIFF'S REPLY TO
	)	DEFENDANT STATE FARM'S
	)	MEMORANDUM IN
v.	)	OPPOSITION TO
	)	PLAINTIFF'S MOTION TO
State Farm Automobile Insurance	)	ALTER OR AMEND
Company,	)	JUDGMENT
	)	
Defendant.	)	
	)	

COMES NOW, the plaintiff, and files his Reply to Defendant State Farm's Memorandum in Opposition to Plaintiff's Motion to Alter or Amend Judgment.

State Farm continues to argue flawed and legally untenable positions. The plaintiff respectfully submits that the Court's acceptance of these flawed positions will amount to reversible error.

DEFENDANT STATE FARM MISAPPLIES CHEN AND RULE 43(K)

State Farm argues that the Court's Order analyzing the South Carolina Rules of Civil Procedure and *South Carolina Human Affairs Commission v. Chen*, 430 S.C. 509, 846 S.E.2d 861 (2020) support its position. In doing so, State Farm ignores the fact that the Court adopted the Order *as drafted by State Farm* – flawed positions and all. This case is distinguishable from *Chen*, which addressed a motion to enforce a settlement based on SCRCP 43(k). First, the plaintiff did not move to enforce a settlement under 43(k). Rather, the plaintiff sued for breach of contract accompanied by fraudulent act because State Farm knowingly made false statements for the purpose of realizing a benefit, and then breached a valid agreement after it realized the benefit. Second, the offer and acceptance at issue were traded in written emails with counsel for both

parties' attorneys. State Farm's misconduct and refusal to follow the ADR rules at the mediation is certainly concerning, but it is the agreement beforehand that solidified a bargained-for exchange between the parties.

State Farm cannot argue in good faith that everything giving rise to its culpability happened at the mediation. One of State Farm's major fraudulent statements was made well in advance of mediation when State Farm said, through its agent, in an unprotected and non-confidential email, that it would agree to negotiate above its reserve if the plaintiff would let the defendant out of default. State Farm has seemingly confirmed that this statement was lie it has refused to confirm the amount of the reserve, even refusing to make the information available for *in camera* review.

More importantly, State Farm disregards the part of the *Chen* decision that acknowledges that a party – like State Farm – is bound when a condition of 43(k) is satisfied. *Id.* (citing *Farnsworth v. Davis Heating*, 367 S.C. 634, 627 S.E.2d 724 (2006)). Upon information and belief, in the underlying tort action, counsel for State Farm, Jeanmarie Tankersley, has acknowledged that the plaintiff let State Farm's insured out of default in exchange for State Farm's agreement to negotiate above the reserve, satisfying the “made in open court” method of binding in the Rule. (Importantly, the Rule does not say the open court statement must precede the breach.)

Directly on point, however, is the fact that State Farm's lawyer executed the agreement with a written email which contained her signature block, satisfying the “reduced to writing and signed by the parties and their counsel” method of binding. The plaintiff had given written authority to his attorney to sign settlement documents before the agreement at issue was made (that authorization is incorporated herein by reference). As Rule 43(k) specifically states, “the signature

of counsel retained by an insurer on behalf of the Defendant(s)...shall suffice in place of the signature of the insured party.”

Chen’s facts are limited to a situation where a party is moving to enforce a settlement and do not apply where the benefited party has elicited performance and then breached the contract after receiving its benefit. That is why *Chen* refers to “withdraw[ing] assent.” (*Id.* at 520). Withdrawal of assent is something that happens before either party acts, not after a party receives, and retains, the bargained-for benefit and then fails to perform. *Chen* does not address causes of action for breach of contract accompanied by fraudulent act, fraud and misrepresentation, or negligence, and certainly does not overrule *Hancock v Mid-South Mgmt., Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009). Simply put, *Chen* is off point.

Further, and importantly, State Farm argues that pursuant to Rule 43(k), any email, phone conversation, or exchange of words by counsel is not binding. This means that agreements for extensions of time, conferring under Rule 11 on discovery disputes, and agreeing to show up and mediate cases on a certain date would be meaningless. This is simply not how law is practiced and cannot be what the legislature intended with its adoption of Rule 43(k). Despite not agreeing to mediate in open court or having the individual parties and counsel sign agreements, State Farm mediated the case as agreed upon by email.

State Farm argues that the plaintiff violated the ADR rules when it in fact brazenly violated the rules by refusing to produce its insured for mediation. This case stems from State Farm’s agreement, which took place in a non-confidential setting. The fact that part of State Farm’s breach occurred at mediation does not change the fact that State Farm lied and breached a valid contractual agreement after it realized a benefit. Further, State Farm’s fraudulent acts and statements, which

accompanied the breach, took place in a non-confidential setting. As a result, these acts and statements are not protected by the ADR rules.

**UNDER THE IN-ISSUE WAIVER OR AT-ISSUE DOCTRINE, RESERVE
INFORMATION IS DIRECTLY AT ISSUE AND DISCOVERY OF THE
INFORMATION WOULD CREATE A GENUINE ISSUE OF MATERIAL FACT**

State Farm stating that its reserves are not discoverable does not, substantively, mean anything. State Farm put its reserves at issue when it fraudulently made the agreement that gave it the benefit of getting out of default and then breached the agreement. Now, State Farm is trying to hide behind discovery rules and shelter itself from information that it put directly at issue.

The at-issue doctrine or in-issue waiver provides that “a client impliedly waives the privilege when he relies on confidential communications with his attorney to make out a claim or defense.” *Davis v. Parkview Apartments*, 409 S.C. 266, 293, 762 S.E.2d 535, 550 (2014) (Pleicones, J. concurring). In cases such as this, where the “privilege holder asserts a claim or defense and attempts to prove that claim or defense by reference to the otherwise privileged material,” the information is discoverable. *Pennsylvania v. Harris* 612 Pa. 576, 32 A.3d 243 (2011). Indeed, many states and courts have held that this information is discoverable and directly relevant. *See e.g., Savino v. Luciano*, 92 So.2d 817 (Fla. 1957) (holding that “when a party has filed a claim, based upon a matter ordinarily privileged, the proof of which will necessarily require that the privileged matter be offered in evidence, we think that he has waived his right to insist that the matter is privileged.”); *Hoechst Celanese Corp. v. National Union Fire Ins. Co. of Pitts. Pa.*, 623 A.2d 1118 (Del. Super. Ct. 1992) (holding that where the facts contained in the otherwise privileged material have been placed in issue, a client may not invoke the attorney-client privilege as a shield for discovery); *Pittston Co. v. Allianz Insurance Co.*, 143 F.R.D 66 (D.N.J. 1992) (noting that “the ‘in issue’ doctrine is operative when the party has asserted a claim or defense that

he intends to prove by use of the privileged materials.”); *State v Hydrate Chemical Co.*, 220 Wis.2d 51, 582 N.W.2d 411, 416 (Ct. App. 1998) (adopting the *Pittston* Court’s analysis).

**STATE FARM HAD A DUTY TO ANSWER TRUTHFULLY WHEN ASKED
WHETHER IT ABIDED BY THE TERMS OF THE CONTRACT IT
VOLUNTARILY ENTERED INTO**

State Farm’s argument related to duty defies logic. State Farm asked to be let out of default, and then accepted the offer to be let out of default in exchange for mediating the case between its reserve and its policy limit. State Farm’s argument is now that it has no duty to the performing party and no duty to tell the truth. If this position were correct, there would never be any cause of action against any person or entity for breach of contract accompanied by fraudulent act, fraud and deception, or negligence, ever.

**DAMAGES ARE NOT SPECULATIVE AND STATE FARM’S
BREACH ATTEMPTS TO SUBVERT SOUTH CAROLINA LAW**

State Farm continues to argue that the plaintiff does not have damages, even after the plaintiff has demonstrated and articulated damages. Under § 38-77-142(B), an insurance company cannot avoid its obligation to pay at least minimum limits because its insured is in default. In this case, but for its agreement to mediate between the reserve and the policy limit, State Farm would have been obligated to pay minimum financial responsibility limits of \$25,00.00. State Farm again attempts to point the Court in the direction of a red herring by claiming that this lawsuit stems from an unsuccessful mediation. To be clear, the lawsuit stems from State Farm voluntarily contracting with the plaintiff, reducing that contract to writing with an attorney’s signature block, receiving a benefit from contract, then refusing to perform. State Farm breached this contract accompanied by a fraudulent act in an attempt to avoid its responsibilities under South Carolina Law.

**TANKERSLY, A FACT WITNESS, TESTIFIED AT THE SUMMARY JUDGMENT
HEARING REGARDING THE UNDERLYING CASE THAT IS CURRENTLY IN
DISPUTE**

Testimony is a “solemn declaration or affirmation made for the purpose of establishing or proving some fact.” *State v. Stewart*, 435 S.C. 405, 416, 867 S.E.2d 33, 39 (Ct. App. 2021) (citing *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354 (2001)). Oxford Languages defines testimony as “a formal written or spoken statement, especially one given in a court of law, and evidence or proof provided by the existence or appearance of something.” Testimony, GOOGLE, <http://google.com> (search “Testimony”).

Using the plain ordinary meaning of the word testimony, well-established law from the South Carolina Supreme Court, and well-established law from the United States Supreme Court, Jeanmarie Tankersley proffered testimony to this Court about the status of the underlying claim, which directly led to this action. Tankersley is not an attorney of record in this case. Her statements, in open court, on the record, count as declarations or affirmations made for the purpose of establishing or proving a fact.

Respectfully submitted,

HAWKINS & JEDZINIAK, LLC

s/ Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar #78470

Helena L. Jedziniak, S.C. Bar #100825

Ethan L. Jedziniak, S.C. Bar #105785

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Attorneys for Plaintiff

Greenville, South Carolina
April 13, 2023

State of South Carolina)
)
County of Greenville)
) Court of General Sessions
) 2022-CP-23-03851

James Dustin Lucas)
)
 vs.) Transcript of Record
)
State Farm Mutual Insurance)
Company)

February 17, 2023
Greenville, South Carolina

B E F O R E:

The Honorable G.D. Morgan, Jr., Judge.

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

Ethan Jedziniak
Helena L. Jedziniak
Attorneys for the Plaintiff

Charles R. Norris
Attorney for the Defendant

Jeanmarie Tankersley, Attorney in related case

Cylia Israel
Proofreader



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Ruling of the Court

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E X H I B I T S

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NO EXHIBITS INTRODUCED

1 THE COURT: All right. This matter is Lucas v. State
2 Farm, 2022-CP-23-03851. We've got a number of motions --
3 motions for summary judgment, motions to compel, motions to
4 stay, motions to strike.

5 How do you all want to proceed? Do you want to go in the
6 order of the motions? I'm fine with whatever you all want to
7 do, what you all feel is better logistically.

8 MR. NORRIS: I'm Charles Norris. I'm here for State
9 Farm. And by the way, participating remotely is Jeanmarie
10 Tankersley. Ms. Tankersley was hired by State Farm to defend
11 State Farm's insured, Andre Knox, because this case is
12 connected with another case pending in Greenville, Lucas v.
13 Knox, in which Ms. Tankersley represents Knox. And she may
14 have something to say, and she may be able to answer any
15 questions the Court has about the status of that case.

16 We have two motions, the motion to stay and a motion for
17 summary judgment. The plaintiff has three motions. I think
18 it would be more efficient for me, while I'm talking, to argue
19 both motions, but we can go in order. Whatever the Court
20 wants to do.

21 THE COURT: Yes, sir?

22 MR. JEDZINIAK: Your Honor, Ethan Jedziniak, representing
23 the plaintiff, James Lucas. I'm here with my cocounsel,
24 Helena Jedziniak. I think it's probably best to proceed in
25 order, starting with the motion to stay.

1 THE COURT: I think you could that. That was kind of my
2 inclination, but I was going to give you all the opportunity
3 if there was some other way you all wanted to argue it, I was
4 going to be fine with that. But that was kind of what I, in
5 my review of the file, thought would be the best way.

6 All right. So I'll then hear from the defendant, Mr.
7 Norris?

8 MR. NORRIS: Yes, sir. And by the way, Your Honor, I
9 have paper copies of everything for you and your clerk, if you
10 don't want to read it online.

11 THE COURT: Yeah. Has everything been e-filed?

12 MR. NORRIS: Yes, sir.

13 THE COURT: Okay. Yeah, I've got it all, so I don't need
14 it.

15 MR. NORRIS: Okay. Well, before we get into the merits
16 of the motions, it would be helpful for me to give the Court a
17 little bit of a background of this thing, so the Court can
18 understand the context of the motions.

19 In 2017, there was an automobile accident. Mr. Lucas was
20 a passenger in a car driven by Meghan Seely. According to the
21 police report, Seely turned left in front of Andre Knox. That
22 was in 2017. A little under three years later, Mr. Lucas
23 filed a suit in Greenville against Knox. Knox goes into
24 default, and after he is in default -- and if I say something
25 incorrect about the history of that case, Ms. Tankersley can

1 step in and correct me. But after he was in default, then
2 State Farm retained Ms. Tankersley to defend Knox.

3 There was then an exchange of emails between Ms.
4 Tankersley and Josh Hawkins, who is one of the attorneys for
5 Mr. Lucas, about mediating the case if State Farm would agree
6 to negotiate between its reserve and Knox's liability limits
7 which were the minimum limits of 25,000 dollars. There was a
8 mediation, I think, in the fall of 2021. The plaintiff's
9 complaint alleges that State Farm made what the plaintiff
10 characterized as a nominal offer at the mediation.

11 Plaintiff has stated in answers to interrogatories in
12 that case, State Farm's offer was 1,000 dollars. And we don't
13 know what, if any, counteroffer was made at the mediation by
14 the plaintiff. In any event, the mediation was unsuccessful.

15 This lawsuit was then filed against State Farm on the
16 theory that there was a valid contract by virtue of the email
17 exchange for State Farm to negotiate between the amount of its
18 reserve and the liability limits and that State Farm had
19 breached that contract.

20 During the underlying case, the plaintiff tried to get
21 discovery of State Farm's claim file, and there was a motion
22 heard on that, and it was heard by Your Honor.

23 THE COURT: Yeah.

24 MR. NORRIS: And your order says what it says, but as I
25 recall, you ordered the production of external things such as

1 police reports but denied the motion for internal things such
2 as claim notes and things like that. That case, it's my
3 understanding, is scheduled for trial sometime in May of this
4 year.

5 Then we come to this case. Now, in this case, Mr.
6 Hawkins served us with discovery, with a request to produce
7 with interrogatories, and a request to admit, all of which we
8 responded to. But we objected to producing what he wanted
9 which was, among other things, the claim file because here's
10 the thing. State Farm has a contractual duty to defend Mr.
11 Knox, and if the plaintiff can get State Farm's claim filed
12 before that case goes to trial, that is going to compromise
13 the defense. And I think Ms. Tankersley, as counsel for Knox,
14 had an obligation to resist that. So the reason that we moved
15 to stay this case pending the resolution of Lucas v. Knox is
16 to make sure that no part of State Farm's claim file fell into
17 the hands of the plaintiff and thereby compromised the defense
18 of Mr. Knox.

19 The other thing is that when the case is tried in May,
20 one of two things is going to happen. It's either going to be
21 a verdict for the defendant, or it's going to be a verdict for
22 the plaintiff. And if it's a verdict for the plaintiff and
23 there are no appellate issues, then State Farm, I presume,
24 will pay whatever the judgment is up to the limits of Knox's
25 liability coverage. And that's the end of that.

1 Now, if we get to that point without State Farm's motion
2 for summary judgment having been granted, that's yet another
3 ground why State Farm is entitled to summary judgment in this
4 case. Having said that, I would like to go ahead and argue
5 State Farm's motion for summary judgment today. So that's the
6 reason that we believe that this case should be stayed until
7 the underlying case is completely resolved.

8 I will, at this point, defer to Ms. Tankersley in case
9 she has anything to add in addition to what I've said.

10 THE COURT: Anything, Ms. Tankersley?

11 MS. TANKERSLEY: Yes, Your Honor. That's essentially the
12 gist of it. It's an underlying car accident disputed
13 liability case, and as a result of the discovery dispute that
14 we had in that case, this case, then, arose and is, in my
15 opinion, a backdoor attempt at getting the discovery he was
16 denied in our case. And so obviously, if he was awarded it in
17 this case. It would be the factual equivalent of him getting
18 it in our case, which he shouldn't have access to until the
19 case is tried.

20 For what it's worth, we did have a couple hearings
21 scheduled earlier in this week -- I believe you might have --
22 I think you were likely the one that was going to hear them --
23 that we moved at the opposing counsel's request because they
24 said that the results of the arguments in these motions would
25 impact our case or that these needed to be resolved before the

1 motions in our case could be heard. So I don't know if that's
2 still their position, that they need the rulings on these
3 matters before ours can go forward or if that has changed.
4 But I just wanted to make the Court aware of that.

5 THE COURT: All right. Let me hear from the plaintiff.
6 Mr. or Ms. Jedziniak?

7 MR. JEDZINIAK: Yeah. Yes, Your Honor.

8 THE COURT: Yes, sir. Let me hear on the motion to stay.

9 MR. JEDZINIAK: Yeah. As I indicated to Mr. Norris
10 yesterday, we consent to the motion to stay. I don't
11 necessarily agree with his characterization of the facts in
12 this case. However, I've no issue staying the case, and I
13 think that would be in the interest of judicial economy in
14 fully and fairly litigating the merits of this case.

15 With that being said, this case is really simple. We
16 just need to know the reserves and whether they, in fact,
17 agreed and mediated within their valid contract of reserves
18 and policy limits. If they tell us that, then this case goes
19 away.

20 THE COURT: But if we stay this case until the underlying
21 action is resolved, doesn't that really, from a judicial
22 economy standpoint, resolve it one way or the other because if
23 you get -- depending on what happens in the underlying case,
24 if you get a verdict for 25,000 or 50,000 dollars or whatever,
25 I mean, doesn't that make everything moot and you get the full

1 amount of the value?

2 Because at this stage, what are you -- and it goes to the
3 motion to stay more than anything or as much as the other
4 motions, but what are your damages at this point before the
5 underlying action's even resolved?

6 MR. JEDZINIAK: Right. And that's an issue. I do
7 believe there are consequential damages, and I do believe
8 there are damages and if I'm not mistaken, breach of a
9 contract accompanied by a fraudulent act. I might be wrong
10 here -- correct me if I am, Mr. Norris -- and would entitle us
11 to punitive damages.

12 THE COURT: But you've got to get -- the thing is, I
13 think you'd have to get actual damages before you get
14 punitive.

15 MR. JEDZINIAK: Right. Yes, Your Honor. And I think the
16 actual damages lie between what the reserve rate is and what
17 the policy limits are. And I agree that this won't actually
18 turn out until the case is tried in --

19 THE COURT: Yeah, because I mean, under your theory that
20 the damages are between the reserves and the 25,000, but that
21 goes back to my original statement. You only get one. If you
22 get 50,000 dollars --

23 MR. JEDZINIAK: Right. Yes, Your Honor.

24 THE COURT: -- then you don't have any damages, and so it
25 seems to me at this point that it's a little premature. And

1 that's why I think that you all's agreement to stay this is
2 the right move because in order for you to proceed in this
3 action, there's got to be some damages. And your client may
4 not have any damages because you may get a verdict more than
5 the limits. And so I think at this stage, I think we just
6 stay this case and see what happens with your all's red case.

7 Mr. Norris, anything, any response on that? I mean,
8 that's the way I see it. I think that you all may get on the
9 plaintiff's side with everything you wanted in that red case.
10 And you're good to go, and you don't have any damages. And at
11 this point, you can't establish any damages until that
12 happens.

13 And so I think probably from a judicial economy and from
14 a legal standpoint, I think the motion to stay is the way --
15 and I've read it, and I've read all the briefs yesterday and
16 this morning. So I have a good ideal of all you all's
17 arguments and your positions and was ready to hear everything
18 and rule. But anything in response, Mr. Norris, on the
19 defense side of that?

20 MR. NORRIS: Well, only to say that if this case is
21 stayed, I still feel that the Court should hear and consider
22 today State Farm's motion for summary judgment because if you
23 look at the grounds in the motion for summary judgment, I
24 don't care what happens in that underlying trial. The grounds
25 aren't going to change.

1 One of the grounds is that there simply was not a valid
2 contract. That's not going to change. The other things are
3 never going to change. So yeah, we can just stop it right now
4 with these two motions, although they've got motions to strike
5 State Farm's answer, which I'll be glad to argue against. But
6 if the Court doesn't hear and take under consideration our
7 motion for summary judgment, then I'm going to have to come
8 back up here for a third time, sometime after that trial and
9 argue the motion for summary judgment either before Your Honor
10 or before another judge.

11 So when we're talking about judicial economy, the most
12 efficient thing to do would be to hear and take under
13 consideration today State Farm's motion for summary judgment.
14 And by the way, one of the grounds for the motion for summary
15 judgment is that their damages are inherently speculative.
16 You have to prove damages to a reasonable degree of medical
17 certainty. We don't know and we never will know what the case
18 would have settled for. Would it have settled for 2,000,
19 5,000, 10,000, 15,000? We'll never know.

20 MR. JEDZINIAK: Your Honor, I'm sorry to interrupt. I
21 just think Mr. Norris is getting into the merits of his
22 summary judgment argument.

23 THE COURT: Well, let me -- what about the position of
24 going ahead and arguing the summary judgment because it -- I
25 mean, what about the point that nothing's really going to

1 change as far as this case is concerned?

2 MR. JEDZINIAK: Your Honor, before I address that, and
3 real quick, I tried to prevent Mr. Norris from coming up here,
4 and I'm sorry that I sent you a late email yesterday. But I
5 did email him yesterday saying we consent. We'll put it on
6 the record. I have the email exchanges printed for you if
7 Your Honor would like to see them.

8 THE COURT: I saw it.

9 MR. JEDZINIAK: I mean, I tried. I kind of got in a
10 sticky situation with this. I did not expect to be arguing
11 this. But as I got into the weeds, I thought the best thing
12 to do was stay the case. And I think to that point, there is
13 a valid contract. I think we're going to fight over whether
14 or not there's a valid contract the entire day. And I think
15 that, right there, kind of is a genuine issue of material fact
16 and when it's summary judgment and this issue goes to a jury.

17 I do think that if this case is tried that the damages
18 aren't speculative. I think there's attorneys' fees. I think
19 there's consequential damages based on that. There's cost to
20 prepare for trial. Those are all consequential damages;
21 whereas, had they operated and conformed to the voluntary
22 contract that they entered into to agree to mediate the case,
23 we wouldn't have been in this situation, and we probably
24 wouldn't be here today right now.

25 THE COURT: Isn't that, though, speculation there?

1 MR. JEDZINIAK: Yeah, Your Honor. I'm sorry. I also
2 forgot to mention this again. Trying not to get into the
3 arguments here. We're just talking about the motion to stay.
4 But under Shores v. Weaver, they are just trying to backdoor
5 their way out of paying minimum policy limits which is
6 required by the legislature and the minimum financial
7 responsibility laws under Title 38 and by Shores v. Weaver and
8 the plethora of case law that comes under it. They were
9 required. They were in default. They were required to pay
10 25,000 dollars at a minimum. At a minimum, our damages are
11 25,000 dollars in this case.

12 THE COURT: Well, going back to -- I may be inclined to
13 hear the motions because I'm not sure anything changes. If we
14 stay this action, from a summary judgment standpoint, I'm not
15 sure that anything necessarily changes because the oral
16 arguments, whether there is a contract, whether there is a
17 duty or damages, and I don't think that necessarily changes as
18 a result of anything in the underlying action. Do you think
19 it changes in any way?

20 MR. JEDZINIAK: Yes, Your Honor. I do think it changes.
21 I don't think that staying this case actually impacts the
22 damages at all. Like I said, I believe the damages are
23 essentially cut and dry. They owe 25,000 dollars under Shores
24 v. Weaver, and it's actually a matter for this case because
25 they tried to backdoor their way out of it with an agreement,

1 and then they breached that agreement. So it's just a rampant
2 violation of public policy.

3 And I understand where you're getting with the damages
4 don't change, but there are damages in this case. And even if
5 we just get one dollar, if the jury finds one dollar, then we
6 could open up punitive damages.

7 MR. NORRIS: Your Honor, they have filed a motion for
8 summary judgment which is scheduled for argument today. So
9 it's a little odd for them to say that State Farm's motion for
10 summary judgment should not be heard when they filed their own
11 motion for summary judgment, which we're prepared to argue
12 against.

13 MR. JEDZINIAK: And we're prepared to stay that motion as
14 well, Your Honor.

15 MR. NORRIS: That motion ain't going to change either.

16 THE COURT: And that, Mr. Jedziniak, that's my -- my
17 query here, is I don't see anything changing as a result of
18 the underlying auto case because the arguments from the
19 defense side and your arguments on the plaintiff's side, I
20 think, will be the same. Their argument is no contract, no
21 duty, no damages; therefore, they're entitled to summary
22 judgment. So I don't think that would change.

23 I do want to go ahead -- I do want to go ahead and hear
24 the summary judgment. I need to determine one way or the
25 other what I will do, one way or the other. But --

1 MS. TANKERSLEY: Your Honor?

2 THE COURT: I can hold off on it if -- but I do want to
3 hear the -- yes, sir.

4 MS. TANKERSLEY: Oh, sorry, Judge. Do you mind if I
5 interrupt for just one second?

6 THE COURT: Yes. I mean, no, I don't. Feel free to
7 proceed.

8 MS. TANKERSLEY: Okay. Thank you. I just want to weigh
9 in because it may go to whether or not you decide to rule on
10 this motion before or after the trial in our case. But the
11 motions that were supposed to be heard in our underlying case
12 earlier this week were plaintiff's motions for rule to show
13 cause and to strike my client's answer.

14 Their arguments for that are the same arguments that
15 they're making in this case which is why they told me we
16 needed to move the motions because the outcome of the motions
17 in this case would be determinative of the motion in that
18 case. So for purposes of the underlying case, they are
19 repeatedly making this argument in every motion, I believe,
20 that they've filed. And so to get a resolution in this case
21 would be incredibly helpful for resolving the issues that are
22 arising out of the same facts in the underlying case.

23 MR. JEDZINIAK: Your Honor, again, I have no problem
24 proceeding on the motions today if that's what the Court would
25 like.

1 THE COURT: Yeah.

2 MR. JEDZINIAK: That being said, the motion to strike in
3 the underlying case was because their client violated the ADR
4 rules and did not show up to mediation. So I kind of think
5 those are separate.

6 THE COURT: All right. So why don't we -- because there
7 are a number of motions here. So we have the motion to stay
8 and then the motion for summary judgment by State Farm; is
9 that correct, Mr. Norris?

10 MR. NORRIS: Yes. Yes, Your Honor. What we have -- we
11 filed a motion for summary judgment. They filed a motion to
12 strike State Farm's answer in this case, and they filed their
13 own motion for summary judgment. So they've consented to the
14 motion to stay. I think Your Honor has ruled that their
15 motion to compel is premature, so we have three motions
16 remaining: State Farm's motion for summary judgment, their
17 motion to strike State Farm's answer, and their own motion for
18 summary judgment -- their cross-motion for summary judgment.

19 THE COURT: All right. So then let's go with the
20 defendant's motion for summary judgment.

21 MR. NORRIS: Yes, sir.

22 THE COURT: All right. And I think you started a little
23 bit on that. Let's start with that, and we'll go forward.

24 MR. NORRIS: Okay. And again, Your Honor, I've got paper
25 copies of the motion and the attachments. And I've got paper

1 copies, if you want it, for both you and your law clerk. I'll
2 defer to that about whether you want me to hand those over or
3 not.

4 THE COURT: Yeah. We've got them all there? Yeah, we're
5 good. Thank you, anyway, but we got them.

6 MR. NORRIS: Okay.

7 THE COURT: They're filed. And we'll just --

8 MR. NORRIS: All right.

9 THE COURT: -- review them online.

10 MR. NORRIS: Sure. Well, I'll go in order. The first
11 ground as a complaint is predicated upon an alleged agreement
12 between counsel for the plaintiff and counsel for Andre Knox
13 in the underlying case. And I refer to their complaint in
14 this case, paragraphs 12 and 13. The problem is, is that this
15 quote-unquote, "contract" is unenforceable because it is not
16 compliant with Rule 43(k).

17 Now, Rule 43(k), agreements of counsel, gives several
18 instances in which agreements are binding. This exchange of
19 emails does not satisfy any of them. So the complaint is
20 predicated upon an exchange of emails. It is what it is, and
21 none of the emails exchanged fall within any of the grounds in
22 43(k).

23 Now, in reading their opposition to State Farm's motion
24 for summary judgment, they raised an equitable argument that
25 in equity, this should be allowed to proceed in spite of the

1 failure to comply with Rule 43(k). That argument has been
2 addressed and rejected in the case of Chen, C-H-E-N, v. Human
3 Affairs Commission. I've got two copies. I'll give one to
4 Your Honor and one for your law clerk. Now, in the Chen case,
5 what the court said -- and I've highlighted it -- there, the
6 Circuit Court denied a motion to enforce a settlement
7 agreement because it didn't comply with Rule 43(k).

8 And the Appellate Court agreed with the Circuit Court's
9 ruling. And it said Rule 43(k), where it applies, which would
10 be here, the court has held its terms of mandatory which
11 precludes a party from turning to contract or equitable
12 principles or counter public policy arguments to vitiate those
13 terms. Substantial compliance is not sufficient. So that
14 kind of shoots down their equitable argument.

15 So point number one -- I'll call it defect number one in
16 this lawsuit is that this entire case assumes the existence of
17 a contract when there was no contract. And again, I get back
18 to the fact, nothing's going to change. The emails aren't
19 going to change. The law's not going to change. Rule 43(k)
20 isn't going to change. Nothing's going to change. So that's
21 ground number one.

22 Now, ground number two goes to the mediation rules. The
23 complaint is predicated upon information about occurrences
24 during a mediation in the underlying case. And the problem
25 with that is that it violates the mediation rules. I'm

1 looking at Rule 8 of the ADR rules. Any mediation
2 communication disclosure during mediation shall be
3 confidential and shall not be divulged by anyone. The parties
4 and any other person present shall maintain the
5 confidentiality of the mediation and shall not rely on or
6 introduce evidence in any arbitral, judicial, or other
7 proceeding. And in fact, Rule 10(b) actually provides for
8 sanctions if a person violates those rules.

9 Now, what they have done in this lawsuit by getting into
10 what happened at the mediation, they violated the ADR rules.
11 And I'll add an editorial comment which may not necessarily be
12 germane to the motion for summary judgment. But if we're
13 going to start litigating in these courts whether somebody
14 properly negotiated in the context of a mediation, then Judge
15 Beatty needs to go across the street and ask for more money
16 because we're going to need a lot more judges. That's a huge
17 problem with this lawsuit, and that's the second ground of the
18 motion for summary judgment.

19 The third thing is that even if there was an enforceable
20 agreement which did not reveal information in violation of ADR
21 Rule 8, the plaintiff can't prove a violation of the agreement
22 without information about State Farm's reserve which is not
23 discoverable. Now, one thing that we attached, we attached to
24 the motion for summary judgment the emails upon this alleged
25 contract is supposedly based. One of the emails that is

1 attached is an email from Ms. Tankersley to Josh Hawkins on
2 September 10th of 2021.

3 "Josh" -- and this is right after the unsuccessful
4 mediation -- "I'm sorry to hear you were disappointed. We did
5 negotiate between the reserves and the limits as we agreed to.
6 Given the liability to dispute, however, I do not believe this
7 case is worth the limits, which from my understanding, was
8 your only demand. If you file suit, please send me a copy".

9 So we have -- even if there was a contract, we've got
10 uncontroverted evidence in Ms. Tankersley's September 10th,
11 2021 email to Mr. Hawkins that State Farm did negotiate
12 between the reserves and the limits. And there's been nothing
13 submitted in opposition to this motion for summary judgment to
14 contradict that. And by the way, Mr. Hawkins can't be a
15 witness because you can't an advocate and a witness in the
16 same case. So that's defect number three.

17 Defect number four, State Farm was the insurer for Andre
18 Knox, and it owed no duty to the plaintiff as a third party
19 claimant. Now, the only duty that they've come up with is a
20 contractual duty. But there was no contract because Rule
21 43(k) governs these kinds of things, so there was no contract.
22 There are cases that are not cited in the brief that I'm going
23 to hand to the Court.

24 I'm going to hand to the Court Hood v. USAA, which is an
25 unpublished decision that came out last month by the Court of

1 Appeals. So because it's unpublished, it has no precedential
2 value, but it can be of persuasive value. And I've marked the
3 part of the case that says, we're not aware of any authority
4 supporting the proposition that an insurance company acts in
5 bad faith by not offering to settle the case for the full
6 amount of its authority or reserve.

7 Now, that was a case against the insurance company's own
8 insured. Here, the case is even weaker because it's a third-
9 party claimant. The other case not cited in our brief that I
10 thought about later on -- and the reason I thought about it is
11 it was actually cited in the Hood v. USAA case is -- let me
12 find it. It's Collins v. Auto-Owners. It's yet another case
13 where they -- Auto-Owners -- were sued for bad faith for not
14 negotiating and not making a certain offer.

15 And I've tabbed for the Court the pertinent parts of that
16 decision. Plaintiff asserts that an uninsured motors carrier
17 owes their insured a duty of honesty, good faith, and fair
18 dealing. Such duty requires the carrier to do an honest
19 evaluation of the claim and pay the honest internal valuation
20 to the insured. But Judge Wooten went on to say, if there's a
21 reasonable ground for offering less than the full amount
22 demanded on a claim, there is no bad faith in negotiations and
23 granted summary judgment to USAA. But I guess, back to the
24 point, State Farm owed no duty to the plaintiff as a third-
25 party plaintiff.

1 Defect number five, there is no law that mandates any
2 offer at mediation. And even if there was an enforceable
3 agreement, the problem is the plaintiff will never able to
4 prove what the case would have settled for. And accordingly,
5 the amount of the plaintiff's damages are speculative as a
6 matter of law. That's where we get into the brief we
7 submitted in support of the motion for summary judgment that
8 cites a number of cases, that while damages do not need to be
9 proven to a mathematical certainty, they also cannot be
10 speculative or conjectural.

11 Now, Mr. Jedziniak said that State Farm owes 25,000
12 dollars. I don't know how he came up with that because I
13 thought that what, if anything, is owed in the underlying case
14 is going to be tried in May. Liability is very much an issue
15 in that case, but as I've said before, that case is either
16 going to be a defense verdict or a verdict for the plaintiff.
17 And it can be zero or some amount between zero and 25,000
18 dollars, but how are they ever going to prove what the case
19 would have settled for? Because as we all know, having been
20 in mediations, negotiations are a two-way street. And that
21 would be inherently speculative.

22 So I don't know. I mean, suppose they don't like the
23 verdict in the underlying case. Suppose it's a defense
24 verdict. Suppose it's a verdict for 5,000 dollars, and they
25 come into court and argue that, well, if you had -- if there

1 had been a valid contract and you negotiated in good faith,
2 the case would have settled for 15,000 dollars. But we tried
3 the case, and we only got 5,000 dollars. Therefore, our
4 damages are the difference of 10,000 dollars. How are they
5 ever going to prove what the case would have settled for?
6 They can't do it, and they never will be able to do it.

7 Ground number six, even if an enforceable agreement
8 existed, as they've alleged in their complaint, and even if
9 revealing offers at mediation would not violate ADR Rule 8,
10 it's undisputed State Farm did make an offer before the
11 plaintiff terminated the mediation. I refer to the
12 plaintiff's complaint, paragraph 13, the plaintiff's
13 interrogatory answers in the underlying case, which we've
14 attached.

15 So the plaintiff can't prove a violation of the alleged
16 agreement because again, it's undisputed State Farm did make
17 an offer. It's undisputed it offered 1,000 dollars. We don't
18 know what, if anything, the counterdemand was.

19 Ground number seven, as to the second cause of action
20 alleging breach of contract accompanied by a fraudulent act,
21 no enforceable contract existed between the plaintiff and
22 State Farm. One of the elements of breach of contract
23 accompanied by a fraudulent act is there must be a contract,
24 and there was none here because, again, the basis for the
25 alleged contract is emails between Josh Hawkins and Jeanmarie

1 Tankersley. But they didn't fall within Rule 43(k).

2 The last ground is that State Farm's entitled to summary
3 judgment on the third cause of action because there's no
4 evidence of a false representation upon which the plaintiff
5 relied to his detriment. I don't know what kind of
6 representation, much less a false representation, they're
7 talking about.

8 So that's eight defects in this case. It ain't going to
9 change. Your Honor can defer ruling on it, but I can come
10 back in May, June, or whatever, and it's still going to be the
11 same thing. So for any or all of those reasons, this case
12 should be thrown out. I'll answer any questions that Your
13 Honor has.

14 THE COURT: I'll hear first from Mr. Jedziniak.

15 MR. JEDZINIAK: Yes. Thank you, Your Honor. I'm going
16 to take the points sort of the same Mr. Norris did in turn,
17 and co-counsel, Helena, might jump in as we've kind of handled
18 different things here. From the outset, I'd also like to
19 point out that Mr. Norris is completely correct. So Ms.
20 Tankersley would also be disqualified, obviously, from
21 participating in these actions as well if Mr. Hawkins is.

22 I'd like to point out that State Farm argues that this
23 valid contract is unenforceable under 43(k). But I think that
24 they're missing the crux of 43(k). This agreement is no
25 different than scheduling a deposition or allowing an

1 extension of time to answer a pleading or discovery. And we
2 all know in practice, the way these work are agreements made
3 just like this.

4 It seems like their position is that any and all
5 conversations between counsel either must be assigned writing
6 by the parties or it must be put on record in the open court.
7 Further, Mr. Norris's citing of Chen is extremely off-base.
8 Chen involves a settlement agreement. This does not involve a
9 settlement agreement. This purely involves parameters of
10 mediation. It does not affect the proceedings. It just
11 creates parameters which we do all the time through email, and
12 it's a common course of dealings.

13 In fact, if you do a dive into 43(k) case law, it only
14 concerns settlement agreements. It does not concern
15 parameters of mediation or agreements for time and resources
16 like that. The plain language only contemplates agreements
17 affecting proceedings, not the parameters.

18 Further, State Farm argues that Rule 8(a) of the ADR
19 rules applies and bars these communications. But Rule 8(h) of
20 the ADR rules is applicable in this case. And Rule 8(h) says
21 that "information that would be admissible or subject to
22 discovery does not become inadmissible or protected from
23 disclosure by reason of its disclosure or use in ... mediation."

24 Now, State Farm sort of brought this upon themselves.
25 They created this conflict because they agreed to negotiate

1 between reserves and policy limits. They made reserves and
2 policy limits at issue when they agreed to do it. Now, this
3 is a valid contract, which we will argue in a minute. But
4 because they put this at issue and it is the terms of the
5 contract, simply by hiding it under the guise of mediation,
6 under Rule 8(h), we are allowed to use that. And it is
7 directly applicable to this action. They cannot hide behind
8 confidentiality rules. That's exactly why 8(h) exists.

9 Further, I think Mr. Norris is confusing the cause of
10 action, breach of a contract accompanied by fraudulent act.
11 At the outset, a contract is offer, acceptance, consideration;
12 we have an offer and a counteroffer. Those are clear in the
13 emails that both of us submitted. There's consideration: the
14 consideration is, we'll let you out of default if you agree to
15 mediate.

16 And this is where I think it gets confusing. State Farm
17 says that the elements of fraud apply, but that's not true.
18 In Harper v. Ethridge -- and I have a copy of that if the
19 Court would like -- it says that breach of a contract
20 accompanied by fraudulent act is unfair or -- I'm sorry, wait
21 one second -- unfair acts or dishonesty in fact and their
22 dealings. Now, from the outset, this is clearly an unfair
23 act. They created a contract. They agreed to mediate between
24 the reserves and the policy limits, and they just didn't.
25 That's unfair. They had that intent when they breached.

1 And second, they're extremely dishonest in their
2 dealings, and I think that's essentially uncontroverted. We
3 had this agreement. There are emails relating to this
4 agreement, and they breached it.

5 THE COURT: What about the email that says, we did
6 negotiate within the reserves?

7 MR. JEDZINIAK: We don't know if that's true. We haven't
8 seen the reserves. State Farm has directly made the reserves
9 at issue multiple times, and they have refused each and every
10 time we've inquired to give us the reserves. Like I said
11 earlier, if they told us the reserves --

12 THE COURT: Well, the problem with that is when you all
13 first -- or the plaintiff first asked for the reserves and
14 that information because that came before me. That was in the
15 underlying RET (phonetic) case. And as you know from my
16 order, I did not allow the plaintiff to have that because I
17 don't think in a RET case that the parties are entitled to get
18 what the reserves are in the underlying RET case. And so
19 that's why I ruled in that particular case. So I think it's a
20 little bit different.

21 Yes, ma'am?

22 MS. JEDZINIAK: Your Honor, if I may? Helena Jedziniak
23 on behalf of the plaintiff. Your Honor, I certainly
24 understand the Court's position that the reserve would not be
25 discoverable in the underlying case and further information in

1 the claim file, for that matter. However, it became an issue
2 and became a discoverable issue when State Farm agreed to
3 mediate within the amount of the reserve and the policy limit
4 in order to be let out of default.

5 If we had not reached that agreement, then under Shores,
6 we would have been entitled to minimum limits. We already had
7 an entry of default. We wouldn't have needed -- there
8 wouldn't have been a trial on the damages. There may have
9 been a hearing on the damages, but there certainly wouldn't
10 have been a jury trial on that. There had been no attorney
11 who appeared, anything like that. We're not arguing that the
12 law mandates that an offer be made at mediation. We're
13 arguing that a party be held to the terms of a contract that
14 they enter into.

15 And I understand Ms. Tankersley sent an email saying that
16 the reserve -- they did mediate between the reserve and the
17 policy limits. Your Honor, that's not evidence. We can't, in
18 the best interests of our client, rely upon that without any
19 showing. If that's true, if we get documentation, if we get
20 an affidavit from anybody involved saying that the reserve was
21 1,000, then that's fine. Then this whole case goes away. Our
22 position is that that simply isn't true. And so again, all we
23 need to know is that answer.

24 And I don't -- we don't need the entire claim file to do
25 that. We could get an affidavit from an adjuster just simply

1 stating it was 1,000 dollars. And Your Honor, just to further
2 clarify something Ms. Tankersley said, I don't believe it's
3 relevant for purposes of this. But the reason I actually
4 asked for a continuance from her for the hearing earlier this
5 week is because I had to drive Durham. When she agreed to the
6 continuance, I let the Court know that it might be -- in our
7 opinion, it was best to wait until these motions were resolved
8 rather than trying to reschedule that hearing for some time
9 later this week.

10 THE COURT: All right. Anything else on the summary
11 judgment?

12 MS. JEDZINIAK: Your Honor, very briefly, one more thing.
13 It is the plaintiff's position that the summary judgment
14 motions are premature at this time because there has been no
15 discovery conducted. However, once Mr. Norris filed a summary
16 judgment motion, we, in the best interests of our client, need
17 to file a summary judgment motion as well. If his position is
18 that now is the time for summary judgment, then again, we need
19 to make sure that we're on equal footing there and that we
20 also have the opportunity to argue for summary judgment.

21 So the plaintiff's position is that the motions are
22 premature. There's been no discovery done in the underlying
23 action, and it would be very minimal -- or I'm sorry -- no
24 discovery in this action. And it will be very minimal
25 discovery that would be required because again, all we need is

1 some proof that that's the amount of the reserve. And if
2 that's something that the Court would be more comfortable
3 being offered in camera, then certainly we would be okay with
4 that.

5 THE COURT: All right. All right. Mr. Norris?

6 MR. NORRIS: Yeah. Several points. First of all, Ms.
7 Tankersley is not disqualified as a witness in this case
8 because she's not an attorney in this case. Mr. Hawkins,
9 however, is an attorney in this case, point number one.

10 Point number two, the Chen case says that 43(k) is to be
11 strictly applied, and it says no agreement between counsel
12 affecting the proceedings in an action, so forth and so on. I
13 don't know where they get the argument that's only related to
14 settlement agreements. There's no case that says that. And
15 Rule 43(k) does not say that. As for their reference to
16 43(h), what that says is that if information is otherwise
17 admissible or subject to discovery, it doesn't become
18 inadmissible just because it's disclosed in a mediation.

19 THE COURT: I think that's 8(h).

20 MR. NORRIS: Yeah. 48(h) as in Harry. That's not what
21 we're talking about.

22 THE COURT: You talking about 8(h) or --

23 MR. NORRIS: They say 48 -- I'm sorry. Rule 8 of the
24 ADR.

25 THE COURT: Yeah. Their argument is 8(h).

1 MR. NORRIS: "H" as in Harry, yes, yes. And what I'm
2 saying is that what that rule says, if something is admissible
3 anyway, it doesn't become inadmissible just because you talk
4 about it at mediation, which quite frankly, is just common
5 sense. That's not what we're talking about here. What we're
6 talking about is figures exchanged and who said what in a
7 mediation. I mean, if you take their position on ADR Rule h,
8 then it basically swallows the confidentiality rule. I don't
9 know how they're going to get around the confidentiality rule.

10 Lastly, in anticipation, I thought they might come here
11 and say that we need to engage in discovery, and therefore,
12 this should be postponed. And I looked up a couple of cases,
13 and they're not cited in the brief. But I'll give it to Your
14 Honor. I'll give you the cites. CEL Products v. Rozelle, 591
15 SE 2d 643, SC App, 2004. A nonmoving party to a summary
16 judgment motion must demonstrate the likelihood that further
17 discovery will uncover additional relevant evidence, and the
18 party is not merely engaged in a fishing expedition.

19 Guinan, G-U-I-N-A-N, v. Tennant Health Systems, 677 SE 2d
20 32, SC App, 2009 says the same thing. It says the party
21 opposing summary judgment must show why further discovery
22 would uncover additional relevant evidence and create a
23 genuine issue of material fact.

24 Also Savannah Bank v. Stalliard, S-T-A-L-L-I-A-R-T, 734
25 SE 2d 161, and Gecy, G-E-C-Y, v. Hamner, 812 SE 2d 750, SC

1 App, 2018, where the courts held there was no abuse of
2 discretion in refusing the party's opposing summary judgment
3 request for additional time for discovery.

4 We can take 50 depositions, and that's not going to
5 change the fact that this so-called agreement is not an
6 enforceable agreement at all because it violates Rule 43(k).
7 They can take as many depositions as they want, and it's not
8 going to change the fact that this entire lawsuit is in
9 violation of Rule 8 of the ADR rules. It's not going to
10 change anything. So yes, the Court should hear and should
11 take under consideration the motion for summary judgment. The
12 alternative is I can just come up here and argue the same
13 thing several months from now before Your Honor or another
14 judge.

15 THE COURT: Mr. or Ms. Jedziniak. I'll get that right.
16 Am I pronouncing it right?

17 MS. JEDZINIAK: Yes, Your Honor.

18 THE COURT: Okay. Let me ask you this, what is the duty
19 between State Farm and your client, a third-party? There's
20 clearly not a duty in bad faith. South Carolina is clear in
21 the case law that there's no duty between an insurer and a
22 third-party claimant. You've got to go through your law suit
23 and get an assignment from the third party to the insurer.
24 Where is the duty here, even though, I mean, it's not
25 necessarily a bad faith case, but the parameters or the

1 framework of the lawsuit seems, in essence, a bad faith case?

2 MR. JEDZINIAK: Yes, Your Honor. Now, I realize in the
3 complaint, negligence is alleged. But to be fair, this is
4 more of a breach of a contract action. When they engaged in
5 negotiations per this contract, they took on a duty to not
6 only negotiate with us in good faith. And I'm not talking
7 negotiate numbers in mediation. I'm talking negotiate the
8 terms of the contract at issue.

9 Now, they're negotiating that -- and I believe that
10 there's a duty inherent there to negotiate in good faith and
11 to follow the contract. Now, like I said, I know we allege
12 negligence, but I think more so falls squarely under breach of
13 a contract accompanied by a fraudulent act.

14 And I would like to point out that the cases that Mr.
15 Norris has handed up to the Court are pure bad-faith cases.
16 This is not a pure bad-faith case. I believe it was Collins
17 v. Auto-Owners was an insured suing his insurer. I just
18 looked at this briefly. This is the first time I've seen
19 this. But that's not the case. This isn't insured versus
20 insurer. This is a third-party who made a valid contract with
21 insurer to negotiate, and then insurer reneged on those terms
22 and breached the contract.

23 Also to the discovery issue, if I can for a second, we
24 sent discovery. They sent what I believe is not a good faith
25 attempt at discovery. These interrogatories are unsigned

1 under Rule 33. I don't know who wrote them. Mr. Norris
2 signed them. I'm assuming Mr. Norris wrote them, but they are
3 not under oath by the party that is party to the case. And
4 they assert several claims of privilege in their request for
5 production. We have no privilege log. We don't know what's
6 privileged, what's not privileged. No privilege law was
7 produced under 26(b)(5).

8 And further, a case that actually just came out of
9 Berkeley County, I believe, two days ago -- and I have a copy
10 of the order from Judge Jefferson that sets a new form of
11 parameters, and I'm happy to pass that up if you'd like.

12 THE COURT: As you know, Circuit Court orders have no
13 precedential value --

14 MR. JEDZINIAK: Right. Yes, Your Honor. I mean, it's
15 similar to citing an unpublished opinion. Right? We're just
16 using it to guide the Court.

17 THE COURT: Yeah, and I issue orders myself. And so I'm,
18 I guess, on the record saying all orders don't have
19 precedential value either, but yeah. I normally do not really
20 consider circuit judge orders, although they are very
21 articulate and well-reasoned and -- oh, and Judge Jefferson --
22 I know Judge Jefferson well, and she is a very good judge, and
23 I'm sure her order is outstanding. But I just go with the
24 appellate decisions though or any other cases that do have
25 precedential decisions.

1 What would the -- what other discovery would the
2 plaintiff need in the case, anyway? The only issue I'm seeing
3 is what was the reserve, and did they negotiate within the
4 reserve? That's your all's argument, correct?

5 MS. JEDZINIAK: Yes, Your Honor. I mean, that's the crux
6 of the case. And really, if we get that information, then
7 that is pretty much all the discovery we need. If it turns
8 out that they did negotiate within those parameters, then we
9 dismiss the case. We have no case because there's no breach
10 of contract. If it turns out that they did not negotiate
11 within those parameters, then there may be additional
12 discovery required to the extent that there are communications
13 about that.

14 I'm not sure what would be privileged, what would not be.
15 As Mr. Jedziniak indicated, we don't have a privilege log.
16 All of that would come after. But if we establish, by
17 conducting minimal discovery -- and again, even just an
18 affidavit, anything to prove that 1,000 dollars was the
19 reserve. If we establish that, then we move forward with the
20 case. If we don't, then the case is resolved.

21 THE COURT: Mr. Norris, let me ask you this. What if
22 they go to trial and say there's a defense verdict and so
23 there's no recovery by the plaintiff, would they then have an
24 argument on damages that at least at that point then say
25 reserves are discoverable -- and this is just assuming that

1 there is a finding of the contract and there's issue there --
2 so they go to trial; they don't get anything, but they would
3 have then said if State Farm had negotiated within the
4 reserves, they would have recovered at least some money at the
5 mediation back then; and therefore, there were damages?

6 MR. NORRIS: Here's the problem with that argument. They
7 would have to prove that if State Farm had negotiated between
8 the reserves and the policy limits. And again, we have an
9 email from Ms. Tankersley who is a witness in this case who
10 says exactly that, and it's contradicted. But be that as it
11 may, they would have to prove that at some point, there would
12 have been an agreement on an amount of money because even if
13 State Farm negotiated within the reserve and the amount of the
14 limits, which again, Ms. Tankersley happened, they would have
15 had -- the plaintiff would have had to agree to some figure.

16 How are they ever going to prove that? You know, if they
17 get a defense verdict, if Ms. Tankersley gets a defense
18 verdict, what if they came into court and said, well, we would
19 have settled the case for 10,000 dollars; therefore, our
20 damages are 10,000 dollars? How, at this point, are they ever
21 going to prove what the case would have settled for? Because
22 we all know, negotiation is a two-way street. So they would
23 have to prove that if you, State Farm, had offered X, we would
24 have accepted it.

25 And it appears to me that the only thing -- I go back to

1 Ms. Tankersley's email -- the only demand they made was the
2 policy limits of 25,000 dollars.

3 THE COURT: What if they come back and say that -- let's
4 say Ms. Tankersley gets a defense verdict, and so they come --
5 we circle back to this case, and they have testimony that we
6 would have settled for 10,000 dollars?

7 MR. NORRIS: I don't see, Your Honor, how they could
8 possibly do that at this point. Who's going to say that? You
9 would have to go back in time, I guess, you know, like the
10 DeLorean machine in Back to the Future. You can't -- you'd
11 have to go back in time to September of 2021 and recreate the
12 entire dynamics of what was going on at that time, which you
13 can't do. Who's going to say that at this point in time? You
14 can't do it. It's absolutely (indiscernible).

15 THE COURT: Would the plaintiff's lawyer or the client
16 themselves provide testimony that yes, this is what we would
17 have taken, and would that still be speculation in your mind?

18 MR. NORRIS: Yes, absolutely. I mean, quite frankly, at
19 this point, I have no doubt that they would try to do that.
20 If Ms. Tankersley gets a defense verdict, I have no doubt that
21 they're going to come back into court and say well, gee, if
22 you had negotiated between the reserve and 25,000 dollars and
23 offered X amount, I would have taken that. But you can't go
24 back and recreate the past. What happened, happened. And
25 again, I don't want to beat a dead horse, but Ms. Tankersley's

1 email that's attached to our motion is uncontradicted.

2 THE COURT: All right.

3 MR. NORRIS: And she is a witness in this case.

4 MS. JEDZINIAK: Your Honor, if I may briefly respond?

5 THE COURT: Yes, ma'am.

6 MR. NORRIS: Wait. Let me add one other thing. Mr.
7 Jedziniak made the statement, well, this is not a pure bad
8 faith case. It's not a bad faith case at all. In fact, their
9 own complaint says it's not a bad faith case. There is only
10 one legal basis for this entire lawsuit, and that is the
11 exchange of emails. That's it. And it simply doesn't satisfy
12 43(k).

13 THE COURT: All right. Yes, ma'am?

14 MS. JEDZINIAK: Thank you, Your Honor. If I may, Mr.
15 Norris has just indicated that he has no doubt that we would
16 come back if we were to get a defense verdict at trial and say
17 that we would have accepted X amount of money to settle the
18 case. I just take umbrage with the fact that he's essentially
19 saying he has no doubt that we would make a misrepresentation
20 to the Court. We certainly would not do anything like that.

21 I believe we could establish, if it came to that -- could
22 establish that would have settled the case for a certain
23 amount by testimony from the plaintiff and documentation of
24 what, if any, internal communications we had establishing --
25 between our office and the plaintiff establishing what amount

1 he would be willing the case for. However, I don't think we
2 need to do that. I don't think the damages that we would be
3 entitled to at that stage for what we would have settled for;
4 the damages would be the reserve and then any consequential
5 damages that flowed from us having to litigate the case.

6 So if, for example, the reserve was 10,000 dollars, then
7 that would be the damage because had there not been a breach
8 of contract, that would have been -- that would have been the
9 money that the plaintiff would have been entitled to, not
10 saying they needed to offer the 25,000. It doesn't really
11 matter whether we made a counterdemand or how far we got in
12 the negotiation process. The issue here is whether that 1,000
13 dollars is the reserve.

14 And I understand that Ms. Tankersley sent an email. You
15 know, if the position is that she's a witness -- that she's
16 not a witness but Mr. Hawkins is, as Your Honor's very well
17 aware, Mr. Norris can make a motion to disqualify --

18 THE COURT: I think it's the other way around. She would
19 be a witness in this case. Mr. Hawkins would not because he's
20 the lawyer.

21 MS. JEDZINIAK: He's not because he'd be disqualified.
22 Yes, Your Honor. If that's the case, then Mr. Norris can make
23 a motion to disqualify Mr. Hawkins as counsel, if that is
24 something he wants to do. We certainly could screen him off.
25 It doesn't mean our firm would be precluded from proceeding

1 with the suit, just as a result of that.

2 THE COURT: Yeah. And I don't think Mr. Norris was
3 saying that you all are coming in misrepresenting. He's just
4 making the argument that if there was a defense verdict in the
5 underlying case, then a legal argument would be made by the
6 plaintiff in this particular case that there's a -- because I
7 actually raised that -- I asked that question. And so I think
8 that's an argument that Mr. Norris is saying lawyers would
9 make, that to come in, all right, we would have settled for X
10 amount. So I don't think he's misrepresenting. I think he's
11 just making an argument.

12 All right. All right. And I'll take that under
13 advisement. So we've got the motion to stay, motion for
14 summary judgment. And then the plaintiff's motions, are those
15 that need to be taken up? I think there's a motion to strike.

16 MR. JEDZINIAK: Yes, Your Honor. I believe our motion
17 for summary judgment is first. And I'm sorry it's sort of the
18 same argument that you're going to hear, but just to put in
19 the record in open court here. Our position is there's a
20 valid, enforceable contract. There was an offer. You can see
21 it in the emails. There was an acceptance. You can see it in
22 the emails that are attached as exhibits. There was valid
23 consideration. There's no statute of frauds issue. There's a
24 valid contract.

25 And again, we are alleging breach of a contract

1 accompanied by a fraudulent act. A fraudulent act is one that
2 is unfair or fraudulent in the course of the dealings, if I'm
3 correct on that. I don't know why I keep forgetting that.
4 But again, these are unfair advantages. All State Farm is
5 trying to do is circumvent their way out of having to pay
6 minimal policy limits as promulgated by the legislature and as
7 acknowledged by our Supreme Court. State Farm had a valid
8 contract, and they breached the valid contract with fraudulent
9 intent.

10 The emails show there was a valid contract. There was an
11 offer, there was acceptance, there was consideration. Again,
12 and the course of dealings say that that was a great way that
13 we've talked to them in the past. And I think what it boils
14 down to is all State Farm is trying to do -- and this isn't
15 personal to Mr. Norris, and this isn't personal to Ms.
16 Tankersley -- all State Farm is trying to do is get out of
17 protecting an innocent third-party victim in the underlying
18 case. That's all this is about.

19 State Farm is fighting this case so they don't have to
20 reveal their reserves, which that's their prerogative. I
21 don't think it's attorney-client privilege. But second, all
22 they're trying to do is pass this burden onto the innocent
23 third-party victim in that car. And that is the entire point
24 of minimum financial responsibility limits. And Title 38, is
25 to protect innocent third-party victims. Not only are they

1 feeling --

2 THE COURT: The purpose of that statute is that the
3 citizens of South Carolina have minimum limits. That's the
4 legislative intent, the purpose of that statute. And that's
5 not violated here because they are -- the defendant in the
6 case did have the legal statutory limit.

7 MR. JEDZINIAK: Yes, Your Honor. He had the legal
8 statutory limits. But under Shores, they were in default.
9 They would be obligated to pay minimal financial limits which
10 would be 25,000 in this case. And by getting out of default,
11 by making this valid contract to get out of default judgment
12 and then breaching it by unfair and fraudulent acts, they
13 don't have to pay --

14 THE COURT: What's the fraudulent act?

15 MR. JEDZINIAK: So --

16 THE COURT: Even if you -- even if you accept that
17 there's a contract and a breach of contract, where is the
18 fraudulent act?

19 MR. JEDZINIAK: The fraudulent act is in their actions
20 and the way they breached the contract. They agreed, and they
21 went to mediation with the intent of apparently not
22 negotiating between the reserves and their policy limits. And
23 that's something we don't know, and that's something that
24 discovery will uncover. But that being said, there is a valid
25 contract. And whether they breached it or not and whether it

1 was fraudulent intent is a question for the jury. And I think
2 we inherently disagree on the material fact.

3 THE COURT: What's the evidence, though, of fraudulent
4 intent? At the summary judgment stage here, there's got to be
5 some evidence. What -- and that's just assuming there's a
6 contract and a breach of contract. Where is the fraudulent
7 intent on behalf of State Farm? What evidence is fraudulent
8 in this case? That's a significant cause of action and
9 accusation.

10 MS. JEDZINIAK: It is, Your Honor, and certainly at the
11 stage that we're looking at the pleadings where there's a
12 12(b)(6) motion, obviously, we wouldn't need the factual basis
13 that we do arguing the summary judgment motion. However, I do
14 think, as Mr. Jedziniak said, the fact that State Farm
15 established that they mediate the case, went to the mediation,
16 and then did not offer the amount of the reserve would be
17 proof of a fraudulent intent.

18 THE COURT: That arguably -- and again, this is just
19 assuming for this purpose there's a contract and a breach of
20 contract by not doing it. But how do you get to the next step
21 of fraudulent intent? I don't -- I just -- even if there is a
22 contract, fraudulent intent is a high burden.

23 MS. JEDZINIAK: It is, Your Honor. And if that's the
24 Court's position that we need evidence of fraudulent intent
25 for you to fairly weigh our motion for summary judgment, then

1 I would say we need to conduct further discovery before the
2 Court should rule upon either motion for summary judgment
3 because we've conducted, essentially, no discovery in this
4 case.

5 And I appreciate Mr. Norris continually saying about how
6 Ms. Tankersley sent this email. Your Honor, I would just
7 simply ask if that's right, then just some written
8 documentation of it that we can take to our client that's not
9 the word of an attorney, that we couldn't use as evidence,
10 that would just be a simple affidavit or something that we can
11 show to our client to say, hey, they mediated within good
12 faith, so we're going to drop this lawsuit.

13 THE COURT: And do you realize just in a general analysis
14 here that in any kind of lawsuit -- underlying lawsuit. And
15 let's just use a RET case, for example, that you're not
16 entitled to get claim documents, reserve. I mean, that's my
17 ruling in the underlying action, and I believe that's the law.
18 But couldn't any lawsuit -- and let's just use again as an
19 example a RET case, that you bring an action -- your
20 underlying lawsuit, and then bring an action against the
21 insurance company every time to get that information which you
22 couldn't get in the front door, you get around in the back
23 door; isn't that --

24 MS. JEDZINIAK: That wouldn't have been an issue in this
25 case, Your Honor, had they not agreed. The letter we sent

1 out, the demand letter laid out several different options for
2 the plaintiff agreeing to let the defendant out of default.
3 They chose the option that required them to mediate between
4 the reserve and the policy limit. Had they not chosen that
5 option, we wouldn't be in this case to begin with.

6 THE COURT: Okay. All right.

7 Mr. Norris, as far as a response, isn't it the same
8 arguments for your motion for summary judgment? I'll let you
9 respond, but.

10 MR. NORRIS: I mean, it is. I mean, of course, for them
11 to get summary judgment, first base is proving there was a
12 contract. And then they'd have to prove that the contract was
13 breached. Then they'd have to prove damages. But I agree,
14 it's two sides of the same coin on our motion for summary
15 judgment and their motion for summary judgment.

16 We also submitted a brief earlier this week to make the
17 point when parties file cross motions for summary judgment, as
18 we have here, they can concede it's a matter of law for the
19 court. And I've cited multiple cases saying that, and that's
20 in the brief we filed in opposition to their motion for
21 summary judgment. So I don't know what else to say. I think
22 I've beaten a dead horse. And there's no counter --

23 THE COURT: Yeah. I've heard both of your all's or all
24 of your all's arguments on the summary judgment. So that
25 leaves, then, the motion to strike. Is that the only one

1 left?

2 MR. NORRIS: Well, they had a motion to compel. I don't
3 know if we've --

4 THE COURT: All right. So there's a motion to compel and
5 a motion to strike?

6 MR. JEDZINIAK: Yes, Your Honor. As far as the motion to
7 compel, we also have the motion to rule to show cause in the
8 underlying case. I think I laid my points out that they
9 submitted discovery. This discovery is incomplete pursuant to
10 the South Carolina Rules of Civil Procedure. Pursuant to Rule
11 33(a), the interrogatories must be signed by a party. Mr.
12 Norris's signature is the only one on this document. And
13 again, he claims privilege in a couple requests for
14 production, and there's no privilege log. We can't tell
15 what's privileged and what is being --

16 THE COURT: Well, what about that, Mr. Norris?

17 MR. NORRIS: Well, we did file a responses. First of
18 all, I'm looking at their motion to compel, which I can't find
19 it. Give me a second. It's in here somewhere. First of all,
20 they did not attach our responses to discovery to their motion
21 to compel. Here's the motion to compel. They want claim file
22 materials, reserve information, and quote, "other properly
23 requested information", unquote, whatever that is.

24 Now, they wanted the claim file. I think that's been
25 adjudicated by Your Honor.

1 THE COURT: That was in the underlying RET case.

2 MR. NORRIS: Yeah. So again, they're trying to get here
3 what they couldn't get the same thing in the underlying case.
4 We did respond. We answered their discovery. And what the
5 objection was was that they're not entitled to these materials
6 while the underlying case is pending. And quite frankly,
7 there's plenty of cases that say that in any event, you're not
8 entitled to reserve information.

9 But again, that's where Ms. Tankersley comes in. They're
10 trying to get a sneak peek at State Farm's claim file while
11 the underlying case is pending. So quite frankly, I don't
12 know how to respond to a motion to compel where they want,
13 number one, the claim file materials, which the Court has
14 already ruled they're not entitled to. They want reserve
15 information that I don't think they're entitled to, and they
16 want, quote-unquote, "other properly requested information",
17 whatever that is. So I don't -- I think the motion to compel
18 should be denied.

19 THE COURT: Mr. Jedziniak, I would -- if you're trying to
20 get the claim file and the reserve information, and I'm not
21 sure what the other requested information is. But what is
22 your argument? Because I'm not inclined to allow you all to
23 get -- the plaintiff to get the claim file, the reserve
24 information because of the underlying lawsuit. And I
25 understand your arguments on the contract and the breach of

1 contract.

2 At a minimum, I would stay any motion to allow you to get
3 those materials until the underlying lawsuit because even
4 if -- let's assume, and again, this is just for argument
5 purposes. I'm not ruling in any way. But assume that this
6 lawsuit does go forward down the road. You would not be
7 entitled to any of that anyway until that underlying lawsuit
8 is resolved. I just would not allow that because it allows
9 you to get material for a third-party lawsuit that would not
10 be allowed. But what are you wanting in your motion to
11 compel?

12 MS. JEDZINIAK: Yes, Your Honor. And I apologize, and
13 not to throw my law partner under the bus. But he drafted
14 this motion. He is currently fishing in New Zealand. He has
15 not really let me know more specific grounds for the motion.

16 THE COURT: All right.

17 MS. JEDZINIAK: If Your Honor would allow it, I would ask
18 that we have the opportunity to create a more detailed motion
19 maybe to send a deficiency letter first, see if we can resolve
20 it, and go from there, like we would normally do.

21 RULING OF THE COURT

22 THE COURT: All right. Well, I think what I'll do at
23 this point because there is a pending motion to compel, I will
24 deny that motion at this point. You certainly have the
25 opportunity down the road to try to get that information. And

1 if they don't produce it and the Court finds it is relevant at
2 that point, you certainly have that opportunity. You're not
3 foreclosed from that. So at this point in this particular
4 case that we're here about today, I will deny that motion. I
5 previously denied it in the underlying lawsuit.

6 And again, there's no law-of-the-case argument. You're
7 certainly free down the road to make that argument again.

8 When there is a objection to discovery on any kind of
9 attorney-client privilege or anything like that, make sure
10 that a privilege log is filed. The blanket objection based on
11 attorney-client does need to have a privilege log. So again,
12 I'm denying it right now.

13 But Mr. Norris, down the road, if this comes back up
14 again and there's an objection on attorney-client, that a
15 privilege log does need to be submitted. All right. So
16 that's the motion to compel. I'll deny it at this time.

17 All right. So now, we've got the motion to strike; is
18 that right?

19 MR. NORRIS: I think the only thing left is the
20 plaintiff's motion to strike State Farm's answer.

21 THE COURT: All right. So Mr. and Ms. Jedziniak?

22 MS. JEDZINIAK: Yeah. I apologize, Your Honor. We're
23 just discussing the best way to proceed with that. I think in
24 light of the Court's ruling so far, we would ask that we be
25 able to withdraw that motion --

1 THE COURT: All right.

2 MS. JEDZINIAK: -- and refile at a later time.

3 THE COURT: All right. So that motion's withdrawn. You
4 certainly have the opportunity to refile that.

5 MS. JEDZINIAK: Yes, Your Honor. And if I may, and I
6 apologize. This is jumping back. I know we've kind of
7 handled the motions together but out of order in a way. If I
8 could just put on the record that if State Farm's position is
9 that Ms. Tankersley is a witness in this case, then I
10 certainly would object to her participation in this hearing
11 and to speaking on the record as an attorney for State Farm's
12 insured.

13 THE COURT: Mr. Norris, I have to agree with that. I
14 mean, she has already spoken, but that was kind of before we
15 discussed this issue. For purposes -- I'm not going to -- I
16 don't know if she wants to speak anyway right now. But I do
17 agree if she's going to be a witness in this particular case,
18 I'm not going to hear from her anymore. I don't know if she
19 was going to speak anyway, but --

20 MS. TANKERSLEY: I wasn't, Your Honor.

21 MR. NORRIS: Yes.

22 THE COURT: Okay. All right. So that solves that.
23 Yeah, I was not going to allow her.

24 MR. NORRIS: Yeah. And let me address that concern. The
25 reason that Ms. Tankersley was participating today is because

1 this case is related to the underlying case.

2 THE COURT: And I certainly understand that.

3 MR. NORRIS: And if there were any questions about what's
4 going on in the underlying case, what's happening in the
5 underlying case, because I really don't know -- and that's the
6 reason she was here -- she has not made any arguments on the
7 merits of any of these motions today. And I agree. I think
8 it would be improper for her to do that.

9 THE COURT: All right.

10 MR. NORRIS: I mean, I represent State Farm. She does
11 not.

12 THE COURT: Right. And so I do agree with plaintiff's
13 counsel on that that Ms. Tankersley would be foreclosed from
14 making any kind of argument. So she has indicated she is not
15 making any argument, going forward. So that resolves that.

16 All right. Anything else? Any other motion?

17 MR. NORRIS: No, Your Honor. Not from us. We covered
18 everything.

19 THE COURT: Anything from the plaintiff?

20 MR. JEDZINIAK: No, Your Honor.

21 THE COURT: All right. I will take this under
22 advisement. I will let you know. Thank you all three of you
23 for your arguments, and good to see you all. I will let you
24 know.

25 MR. JEDZINIAK: Thanks, Your Honor.

1 MR. NORRIS: Thank you, Judge.

2 MS. TANKERSLEY: Thanks, Judge. And thanks for letting
3 me Zoom in.

4 THE COURT: Yes, ma'am.

5 MS. JEDZINIAK: Your Honor, may I approach?

6 THE COURT: Yes, ma'am.

7 (End of Transcript of Record)

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CERTIFICATE OF PROOFREADER

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I, CYLIA ISRAEL, a court-approved proofreader, do hereby
certify that the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and evidence
introduced in the trial of the captioned case, relative to
appeal, in the Court of General Sessions for Greenville
County, South Carolina, on the 17th day of February, 2023.

I do further certify that I am neither of kin, counsel,
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April 24, 2023



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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.

November 21, 2023

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