

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Appellate Case No. 2019-000367

Desa Ballard and Desa Ballard P. A.,
d/b/a Ballard & Watson,

Appellants,

v.

Admiral Insurance Company and Adele
R. Pope, individually and as Special
Administrator of the Estate of Gloria
Corley,

Respondents.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Desa Ballard and Desa Ballard P.A.,	)	C/A No. 3:17-2916-DCC
d/b/a Ballard & Watson,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Admiral Insurance Company, Monitor	)	OPINION AND ORDER
Liability Managers, Mendes & Mount,	)	
LLP, Adele R. Pope, individually and as	)	
Special Administrator of the Estate of	)	
Gloria Corley,	)	
	)	
Defendants.	)	
	)	

Plaintiffs filed an action in the Court of Common Pleas for Richland County, seeking, *inter alia*, to enforce the terms of Plaintiffs' malpractice insurance contract. ECF No. 1-1 at 2–20. Defendants Admiral Insurance Company, Monitor Liability Managers, and Mendes & Mount, LLP, filed a Notice of Removal. ECF No. 1. Thereafter, Plaintiffs filed a Motion to Remand. ECF No. 19. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (D.S.C.), this matter was referred to a United States Magistrate Judge for pre-trial handling. The Magistrate Judge issued a Report and Recommendation ("Report") on March 20, 2018, recommending that the Court remand this matter to State Court. ECF No. 32 at 2. Neither party filed objections to the Report.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270–71. The Court is charged with making a de novo determination of only those portions of the Report that have been specifically objected to, and the

Court may accept, reject, or modify the Report, in whole or in part. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the matter only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (“[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” (quoting Fed. R. Civ. P. 72 advisory committee’s note to 1983 addition)).

Having reviewed the record, the applicable law, and the findings and recommendations of the Magistrate Judge, the Court finds no clear error and adopts the Report by reference in this Order. Therefore, the case is **REMANDED** to the Court of Common Pleas for Richland County.

IT IS SO ORDERED.

April 11, 2018
Spartanburg, South Carolina

s/Donald C. Coggins, Jr.
United States District Judge



A TRUE COPY
ATTEST: ROBIN L. BLUME, CLERK

BY: 
DEPUTY CLERK

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2017-CP-40-05628

Desa Ballard and Desa Ballard, P.A., d/b/a
Ballard & Watson,

Plaintiffs,

v.

Admiral Insurance Company, Monitor Liability
Managers, Mendes & Mount LLP, Adele R.
Pope, individually and as Special Administrator
of the Estate of Gloria Corley,

Defendants.

**CONSENT ORDER TRANSFERRING CASE
TO LEXINGTON COUNTY**

This matter comes before me upon a motion of the Defendant Admiral Insurance Company for an Order Transferring Venue in the above-captioned matter to Lexington County. It appearing that this motion is proper, and it further appearing that all parties have consented, it is

ORDERED, ADJUDGED AND DECREED that the above-captioned case be and hereby is transferred to Lexington County.

AND IT IS SO ORDERED.

We Consent:

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Pro Se



Richland Common Pleas

Case Caption: Desa Ballard , plaintiff, et al vs Admiral Insurance Company ,
defendant, et al
Case Number: 2017CP4005628
Type: Order/Change of Venue

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2018-05-18 15:41:27 page 4 of 4

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

CIVIL ACTION NO: 2018-CP-32-01743

Desa Ballard and Desa Ballard P.A., d/b/a
Ballard & Watson,

Plaintiffs,

v.

Admiral Insurance Company and Adele R.
Pope, individually and as Special
Administrator of the Estate of Gloria Corley,

Defendants.

**ORDER GRANTING DEFENDANT ADMIRAL
INSURANCE COMPANY'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

This matter comes before this court on a Motion for Judgment on the Pleadings (the "Motion") filed by Defendant Admiral Insurance Company ("Admiral"), seeking denial of the Plaintiffs Desa Ballard and Desa Ballard P.A., d/b/a Ballard & Watson's ("Plaintiffs") requested declaratory and injunctive relief, dismissal of Plaintiffs' bad faith claim against Admiral, and the granting of certain declarations sought by Admiral related to its lawyers' professional liability policy issued to Desa Ballard d/b/a Ballard & Watson, Attorneys at Law.

A hearing on the Motion was held on November 14, 2018. Attorneys Eric S. Bland and Ronald L. Richter, Jr. appeared on behalf of the Plaintiffs. Attorney Adam T. Silvernail appeared on behalf of the Estate of Gloria Corley. Attorney Adele J. Pope appeared pro se on her own behalf. Attorney Wesley B. Sawyer appeared on behalf of Admiral. After considering the Motion, Plaintiffs' Response in Opposition, Defendant Pope's Response, and arguments of counsel, the court grants Admiral's Motion, as specified below.

FACTUAL BACKGROUND

For purposes of this Motion, the court assumes the truth of well-pleaded factual allegations. This saga spans a period of years and two currently pending lawsuits. In 2010, Admiral issued a

lawyer's professional liability policy to Desa Ballard d/b/a Ballard & Watson, Attorneys at Law, which was renewed annually. Pls.' Complaint at pgs. 1-4. According to Plaintiffs, the specific policy at issue is the policy issued on July 12, 2014, Policy No. 91200935 (hereinafter the "Admiral Policy"). Pls.' Complaint at pg. 3.

Plaintiffs were retained to defend a lawsuit filed against the late Gloria Corley in March of 2011. Pls.' Complaint at 6. The lawsuit was brought by Ms. Corley's former attorney, Ms. Pope, in her individual capacity, and in that lawsuit, Ms. Pope sought to collect attorney fees that were owed to her by Ms. Corley for legal services regarding Ms. Corley's interest in a trust. Pls.' Complaint at pgs. 6-7. Upon the conclusion of Ms. Pope's services in that matter, Ms. Pope was to receive payment of attorney's fees by receiving a portion of Ms. Corley's annual disbursements from the trust. Pls.' Complaint at pg. 6.

In addition to defending Ms. Corley against Ms. Pope's action for attorney's fees, Plaintiffs also represented Ms. Corley in negotiating a buy-out of Ms. Corley's interests in the trust. Pls.' Complaint at pg. 6. The trust litigation ultimately settled, which resulted in a lump sum payment to Ms. Corley based in part on statutory life expectancy tables. Pls.' Complaint at pg. 7. At that time, it was Plaintiffs' and Ms. Corley's contention that Ms. Pope was no longer owed additional attorney's fees because Ms. Corley's interest in the trust was terminated. Pls.' Complaint at pg. 7. However, on August 21, 2013, Ms. Pope was awarded a judgment of one-third the gross amount of the trust settlement. Pls.' Complaint at pg. 8. On Ms. Corley's behalf, Plaintiffs filed and served an appeal of the judgment to the South Carolina Court of Appeals, which was apparently filed after the applicable deadline for filing such an appeal. Pls.' Complaint at pg. 8. The appeal was determined to be untimely and was dismissed. Pls.' Complaint at pg. 8.

On May 6, 2014, in accordance with their contractual obligations under the 2013-2014 Admiral Policy, Plaintiffs timely notified Admiral that a potential claim could be made against them by Ms. Corley as a result of the untimely appeal of Ms. Pope's judgment. Pls.' Complaint at pg. 9. By letter dated August 19, 2014, Admiral accepted notice of the matter as a circumstance that would fall within the coverage afforded to Plaintiffs under the 2013-2014 Admiral Policy if a claim subsequently arose from the circumstances reported on May 6, 2014. Pls.' Complaint at pg. 9.

Ms. Corley passed away on March 31, 2016, and the Estate of Gloria Corley was opened by the Lexington County Probate Court. Pls.' Complaint at pgs. 10-11. The Lexington County Probate Court appointed Ms. Pope, a creditor of the Estate of Gloria Corley, as the Special Administrator of the Estate of Gloria Corley. Pls.' Complaint at pg. 11. On February 23, 2017, Adele Pope, as the Special Administrator of the Estate of Gloria Corley, filed an underlying legal malpractice action in the Lexington County Court of Common Pleas against Desa Ballard and Desa Ballard, P.A., Civil Action No. 2017-CP-32-00618 (hereinafter the "Underlying Malpractice Action"). Pls.' Complaint at pgs. 5 & 11.

The above-captioned action for declaratory judgment arises from a clear disagreement between Plaintiffs and Admiral on the meaning of the applicable proffered liability policy, specifically their duties to one another based upon these contractual obligations. Pursuant to the Admiral Policy, Admiral is defending Plaintiffs against the claims asserted against them in the Underlying Malpractice Action. Admiral seeks to negotiate with the Estate of Gloria Corley in the Underlying Malpractice Action to determine if there is the possibility of a reasonable settlement. Plaintiffs seek an injunction to prevent Admiral from engaging in any settlement negotiations in the Underlying Malpractice Action. Plaintiffs also seek declarations that: (1)

Admiral may not terminate its defense of Plaintiffs in the Underlying Action; (2) Admiral may not initiate or make any settlement offers in the Underlying Malpractice Action without the express written consent of the Plaintiffs; and (3) Admiral may not withdraw its defense or indemnity coverage from Plaintiffs as a result of Plaintiffs' refusal to consent to settlement in the Underlying Malpractice Action. In addition, Plaintiffs have alleged a bad faith cause of action against Admiral based upon its undertaking of settlement negotiations in the Underlying Malpractice Action and refusal to renew the Admiral Policy after the 2016-2017 term.

By way of Counterclaim, Admiral seeks contrary declarations that: (1) Admiral has the right to negotiate a potential settlement as part of its defense of the Underlying Malpractice Action, including, but not limited to, participation in settlement negotiations at mediation; (2) Plaintiffs owe a duty to cooperate in the defense and settlement of the Underlying Malpractice Action and do not have the right to prevent Admiral from participating in settlement negotiations; (3) if Admiral recommends a settlement to its Named Insured which is acceptable to the Estate of Gloria Corley, and the Named Insured rejects the settlement and chooses to contest the Underlying Malpractice Action, then Admiral's liability for the Claim shall not exceed the amount for which the Claim could have been settled, including any Claim Expense incurred up to the date of such refusal; and (4) if Admiral recommends a settlement to its Named Insured which is acceptable to the Estate of Gloria Corley, and the Named Insured rejects the settlement and chooses to contest the Underlying Malpractice Action, then Admiral's right and duty to defend the Underlying Malpractice Action shall end upon the date of such rejection.

Admiral also requests that the court dismiss Plaintiffs' claim for bad faith on the basis that it fails as a matter of law. Admiral's primary contention in support of the dismissal of the bad faith claim is that an insurance company may choose not to renew a policy for any reason.

STANDARD OF REVIEW

“A judgment on the pleadings shall be granted where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in the plaintiff’s favor.” *Home Builders Ass’n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013). “A judgment on the pleadings is in the nature of a demurrer, and all properly pleaded factual allegations are deemed admitted for purposes of the consideration of a demurrer.” *Douglass ex rel. Louthian v. Boyce*, 336 S.C. 318, 323, 519 S.E.2d 802, 805 (Ct. App. 1999), *aff’d*, 344 S.C. 5, 542 S.E.2d 715 (2001). A motion for judgment on the pleadings “is proper where the pleadings entitled the party to judgment without proof, as where they disclose all the facts, or where the pleadings present no issue of fact or where the pleadings, under other circumstances, present an immaterial issue.” *Wooten v. Standard Life and Casualty Insurance Company*, 239 S.C. 243, 249, 122 S.E.2d 637, 640 (1961).

In determining a motion for judgment on the pleadings, the court may consider documents incorporated by reference in the pleadings. *See Carolina First Corp. v. Whittle*, 343 S.C. 176, 190 n.7, 539 S.E.2d 402, 410 n.7 (Ct. App. 2000) (“Generally, a court may consider documents outside of the complaint if the complaint incorporates the documents by reference.”); *see also Fisher v. City of North Myrtle Beach*, 2012 WL 3638776, *1 (D.S.C. July 26, 2012); *In re MI Windows and Doors, Inc. Products Liability Litigation*, 2013 WL 3207423, *2 (D.S.C. June 24, 2013) (“When considering a motion for judgment on the pleadings, the court may consider the pleadings, exhibits attached thereto, documents referred to in the complaint that are central to the plaintiff’s claims . . .”). Here, in their Complaint, Plaintiffs specifically identify the 2013-2014 policy by its policy number. Moreover, their entire claim rests on the existence of the contract. Therefore, regardless of whether the Complaint is attached, it is incorporated by reference. *See, e.g., Brazell v. Windsor*,

384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (“[A]llowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based.”).

Moreover, Admiral specifically incorporates the Admiral Policy in its Answer and Counterclaim. Admiral originally removed this case to federal court and filed its Answer and Counterclaim concurrently with its Notice of Removal. In Paragraph 114 of the Answer and Counterclaim, Admiral states that it is attaching a copy of the Admiral Policy as Exhibit 1. At the hearing on the Motion, counsel for Admiral provided the court a copy of the policy bearing an electronic file stamp from the federal court with a stamped cover page labeled “Exhibit 1.” Although it appears this filing was attributed to the Notice of Removal filed in federal court, the Notice of Removal did not refer to the policy as Exhibit 1. Thus, it is apparent that the Admiral Policy was filed with the Answer and Counterclaim, and any administrative error in attributing the policy to the Notice of Removal instead of the Answer and Counterclaim does not nullify the filing of the Policy with the Answer. Therefore, because Plaintiffs specifically identify and rely on the Admiral Policy in their Complaint and because Admiral attached a copy of the Admiral Policy as an exhibit with the filing of its Answer and Counterclaim, both parties have incorporated the Admiral Policy by reference into their respective pleadings. The action for declaratory judgment is ripe for a decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the heart of the dispute, Plaintiffs and Admiral disagree about their rights under the Admiral Policy. Plaintiffs seek to keep Admiral from participating in settlement negotiations, and Admiral seeks to enter into negotiations. Because the dispute centers on a written contract, the

terms of the contract control the court's analysis. Moreover, this matter is appropriately before the court on a Motion for Judgment on the Pleadings because the interpretation of the contract is a legal question for the court and a resolution of the contract question is dispositive regardless of the factual allegations. For the reasons set forth below, the court finds the plain and unambiguous terms of the Admiral Policy require entry of an order granting Admiral's Motion as specified in this Order.

I. General rules of insurance contract interpretation.

As a general rule, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or some statutory prohibition. *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 523, 377 S.E.2d 569, 570 (1989). "South Carolina courts have a long history of formalistic interpretation with respect to all contracts and have repeatedly held . . . insurance policies are subject to general rules of contract construction" *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 579, 757 S.E.2d 399, 406 (2014) (quotation omitted). "The foremost rule in interpreting an insurance contract is to give effect to the intent of the parties as shown by the language of the contract itself." *Laidlaw Envtl. Services (TOC), Inc. v. Aetna Cas. & Surety Co. of Illinois*, 338 S.C. 43, 48, 524 S.E.2d 847, 850 (Ct. App. 1999) (internal citation omitted).

"When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used." *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 327, 330 (1999). "The court's duty is limited to the interpretation of the contract made by the parties themselves regardless of its wisdom or folly, apparent unreasonableness, or failure of the parties to guard their interests carefully." *Id.* (internal quotations omitted). These rules guide the court's analysis here.

II. The Complaint alleges “related wrongful acts” and the 2013-2014 Policy is the only applicable policy.

As an initial matter, Plaintiffs argue that multiple policies are at issue because Plaintiffs notified Admiral of a potential claim during the 2013-2014 policy period, but suit was not filed by the Estate of Gloria Corley until a later policy period. Pls.’ Resp. Opp. Def.’s Mot. at pg. 1, n. 1. However, the Admiral Policy states that “[a]ll Claims based upon or arising out of the same Wrongful Act or any Related Wrongful Acts, or one or more series of any similar, repeated or continuous Wrongful Acts or Related Wrongful Acts, shall be considered a single Claim.” Also, “[e]ach Claim shall be deemed to be first made . . . when the earliest Claim arising out of such Wrongful Act or Related Wrongful Acts was first made.” Therefore, all “related wrongful acts” will be deemed a single claim and will be attributed to the policy that was in effect when the first notice of claim was submitted to Admiral.

According to the Admiral Policy, the term “related wrongful acts” is defined as “Wrongful Acts which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decisions.” The Underlying Malpractice Action alleges claims against Desa Ballard and Desa Ballard, P.A. all arising out of Desa Ballard’s legal representation of the late Gloria Corley. Plaintiffs’ Complaint describes acts which are “logically or causally connected by reason of common” facts, circumstances and transactions because all the allegations asserted by the Estate of Gloria Corley in the Underlying Malpractice Action arise out of Plaintiffs’ representation of the late Gloria Corley in the same or substantially related matters.

Plaintiffs have acknowledged that the claims arise out of related acts. In footnote 1 of Plaintiffs’ opposition memorandum, Plaintiffs argue that at least two policies apply. However, in support of that argument, they concede that the claims arise out of the same client matter:

Paragraph 8 of the complaint identifies by policy number only the policy issued on July 14, 2013, and under which Ballard's first notice of potential claim was given. However, the complaint reflects that Ballard gave notice of a possible second claim to Admiral regarding the same client matter on a later occasions, in 2017, under a later policy.

(emphasis added).

The United States Court of Appeals for the Fourth Circuit recently addressed nearly identical policy language in *Stewart Engineering, Inc. v. Continental Cas. Co.*, ___ Fed. Appx. ___, 2018 WL 5832805 (4th Cir. Nov. 7, 2018). In that case, an engineer contracted to design multiple bridges on a college campus. Both bridges collapsed, resulting in claims. The insured firm argued that the separate collapses constituted separate claims. However, the policy treated "related claims" as a single claim, and described "related claims" as "all claims . . . that are logically or causally connected by any common fact, situation, event, transaction, advice or decision." *Id.* at *1. Applying the "related claims" definition, the Fourth Circuit held that the separate bridge collapses were "related claims" and therefore only gave rise to a single claim. *Id.* at *2.

The Admiral Policy definition of "related wrongful acts" is nearly identical to the "related claims" definition at issue in *Stewart Engineering*. Like the claim in that case, the claims asserted by the Estate of Gloria Corley all share common facts, not the least of which is the fact that the claims all arise out of Plaintiffs' representation of Gloria Corley. Therefore, the court is persuaded and finds that the aforementioned claims constitute a single claim. Plaintiffs' Complaint and Response in Opposition states that Plaintiffs' first notice of a potential claim was given under the 2013-2014 policy term. Therefore, the claim is deemed to have occurred during that policy period and only the terms of that policy, Policy No. 91200935, are at issue in this matter.

III. The Admiral Policy allows Admiral to control the defense, which includes negotiations, and Plaintiffs owe a duty to cooperate with Admiral.

As discussed above, this case involves the interpretation of an insurance contract, and “[t]he court’s duty is limited to the interpretation of the contract made by the parties themselves regardless of its wisdom or folly, apparent unreasonableness, or failure of the parties to guard their interests carefully.” *B.L.G. Enters., Inc.*, 334 S.C. at 535, 514 S.E.2d at 330. Therefore, the court finds that its analysis begins—and here, ends—with a plain reading of the insurance contract.

The Admiral Policy sets out the duties of the Plaintiffs and Admiral:

VI. Defense, Cooperation and Settlement

- B. The **Insurer** shall have the sole right and the duty to defend any covered **Claim**, and has the sole right to select defense counsel.
- C. Each **Insured** shall cooperate with the **Insurer** in the defense and settlement of any **Claim** Upon the request of the **Insurer**, the **Insured** shall . . . attend hearings, depositions and trials, assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses . . . and meeting with such representatives for the purposes of investigation or defense, all without charge to the **Insurer**.

By its plain terms, the Admiral Policy gives Admiral the right to control the defense of the case. As the South Carolina Supreme Court held in *Tyger River Pine Co. v. Maryland Cas. Co.*, 170 S.C. 286, 170 S.E.2d 346, 349 (1933), the duty to defend includes the “duty of settling the claim” if that is the reasonable thing to do. Furthermore, Rule 6(b)(4), SCADR, specifically requires a representative of the insurer to attend mediation with “full authority to settle the claim.” Thus, settlement negotiations constitute part of the duty to defend. Because the Admiral Policy gives Admiral the “sole right and duty to defend,” Admiral has control over the decision of how to defend the case and whether to participate in settlement negotiations.

The Admiral Policy also requires Plaintiffs, as insureds, to “cooperate with [Admiral] in the defense and settlement of any Claim.” As noted above, Plaintiffs ask the court to enter an injunction preventing Admiral from participating in settlement negotiations. However, the court

is bound by the plain terms of the parties' contract. The court finds that the Admiral Policy does not give Plaintiffs a right to impede Admiral's efforts to negotiate a potential settlement. To the contrary, the terms of the Admiral Policy specifically require Plaintiffs' cooperation. Therefore, Plaintiffs' request for an injunction is denied, and the court finds that Admiral is entitled to its requested declaration that it has the right to negotiate a potential settlement as part of its defense of the Underlying Malpractice Action and that Plaintiffs owe a duty to cooperate.¹ It follows that Admiral also has a right to participate in settlement negotiations at mediation in the Underlying Malpractice Action.

IV. The Admiral Policy's "consent to settle" clause must be enforced as written.

The Admiral Policy includes a consent to settle clause, commonly referred to as a "Hammer Clause". This clause gives the named insured—Desa Ballard P.A. d/b/a Ballard & Watson, Attorneys at Law—the final right to reject a settlement proposed by Admiral. However, the clause sets forth specific consequences if a settlement recommended by Admiral and acceptable to the Estate of Gloria Corley is rejected:

VI. Defense, Cooperation and Settlement

- D. The **Insurer** shall not settle any **Claim** without the **Named Insured's** consent. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by the **Insurer**, which is acceptable to the claimant, and shall elect to contest the **Claim**, or continue any legal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Insurer's** liability for the **Claim** shall not exceed the amount for which the Claim could have been settled, including **Claims Expense** incurred up to the date of such refusal. Such amounts are subject to the provisions of section V. In the event that the **Named Insured** refuses to consent to any settlement as set forth in this section VI. D., the **Insurer's** right and duty to defend such **Claim** shall end upon the date of such refusal.

¹ As discussed below in Part IV, Admiral has the authority to negotiate a potential settlement, but the Named Insured retains the right to reject a settlement that Admiral recommends and the Estate of Gloria Corley would accept. However, the Admiral Policy sets forth certain consequences if the Named Insured rejects such a proposed settlement.

Plaintiffs do not allege in the Complaint that the terms of this provision are ambiguous. Thus, under the plain terms of the Admiral Policy, if Admiral recommends a settlement to the named insured that is acceptable to the claimant, the Estate of Gloria Corley, then the named insured has the ultimate right to reject the settlement and continue defending the Underlying Malpractice Action. However, rejecting this proposed settlement would end Admiral's duty to defend and limits Admiral's liability to the proposed settlement amount, including claims expenses incurred up to the date of the named insured's rejection of the proposed settlement.

A consent to settle clause that is unambiguous must be enforced as written. *See Auto Owners v. Benjamin*, 415 S.C. 137, 143, 781 S.E.2d 137, 141 (Ct. App. 2015) ("Courts must enforce, not write contracts of insurance, and their language must be given its plain, ordinary and popular meaning." (quoting *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 614, 732 S.E.2d 626, 628 (2012))). Courts in other jurisdictions have enforced similar clauses according to their plain terms. *See, e.g., Security National Insurance Company v. City of Montebello*, 680 Fed. Appx. 525 (9th Cir. 2017); *Cowan v. Codelia*, 50 Fed. Appx. 36 (2d Cir. 2002).

Plaintiffs cite the cases of *Clauson v. New England Ins. Co.*, 254 F.3d 331 (1st Cir. 2001) and *Freedman v. United Nat. Ins. Co.*, No. CV 09-5959 AHM CTX, 2011 WL 781919 (C.D. Cal. Mar. 1, 2011) for the proposition that the consent to settle clause can only be enforced if the insured unreasonably rejects a settlement. (Emphasis added). However, those two cases are distinguishable because the "hammer clauses" in those cases contained specific language limiting the effect of the clause to unreasonable refusals to settle. The Admiral Policy at hand does not contain this limiting language.

The insured in *City of Montebello* raised the same "reasonableness" argument that the Plaintiffs raise here. However, the Ninth Circuit recognized that the policy at issue in that case—

like the Admiral Policy here—did not include similar language limiting the clause to unreasonable refusals to settle. Finding that the policy did not include such language, the Ninth Circuit held “However, the hammer clause does not limit the insurer’s right to invoke the clause to instances where the insured was unreasonable in rejecting an offer. To hold otherwise would impermissibly rewrite the hammer clause to the policyholder’s benefit.”² 680 Fed. Appx. at 527.

South Carolina courts follow the same rule applied by the Ninth Circuit in *City of Montebello*: “Courts must enforce, not write contracts of insurance, and their language must be given its plain, ordinary and popular meaning.” *Benjamin*, 415 S.C. at 143, 781 S.E.2d at 141. Therefore, to the extent that Plaintiffs argue rejection of a settlement can only trigger the consent to settle clause if the rejection is unreasonable, such argument cannot be sustained. For the court to agree, the court would have to change the terms of the Admiral Policy, which was previously agreed to by the parties. Accordingly, the court finds that the consent to settle clause at hand is unambiguous and must be enforced as written.

V. Even if the consent to settle clause is a condition precedent, South Carolina does not prohibit such conditions in this context.

Plaintiffs argue the consent to settle clause is a condition precedent and argue that it is unlawful to include the consent to settle clause in the Admiral Policy. In support of this contention, Plaintiffs cite South Carolina Code § 38-81-300, which provides:

The policy form whether on a claims-made or occurrence basis may not require as a condition precedent to settlement or compromise of any claim the consent or acquiescence of the insured. However, such settlement or compromise is not considered an admission of fault or wrongdoing by the insured.

² The Ninth Circuit in *City of Montebello* specifically distinguished the *Freedman* case because the policy in *Freedman* limited the clause to situations in which the insured “unreasonably withheld” consent to settlement. 680 Fed. Appx. at 527.

S.C. Code Ann. § 38-81-300(C). Plaintiffs' reliance on this statute is misplaced for two reasons. First, this statute applies to policies written by the Legal Professional Liability Insurance Joint Underwriting Association, a legislatively created entity to provide for certain liability insurance if such insurance is not available through normal channels. S.C. Code Ann. §§ 38-81-210, 38-81-230, and 38-81-260. The Admiral Policy was written by Admiral. Therefore, the court finds that S.C. Code Ann. 38-81-300(C) does not apply to the Admiral Policy.

Admiral argued that even if South Carolina Code § 38-81-300 did apply to the Admiral Policy, the statute would actually prohibit an insurance policy from giving the insured the right to objection to a settlement. Because the court finds that the statute is inapplicable to the Admiral Policy, the court declines to address this alternative argument. Further, the court needs not determine whether the consent to settle clause is a condition precedent.

VI. Plaintiffs' bad faith claim is not yet ripe.

Plaintiffs' bad faith claim should be dismissed without prejudice because the action is not yet ripe to be heard on the merits. A bad faith cause of action requires: "(1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) **refusal by the insurer to pay benefits due under the contract**; (3) resulting from the insurer's bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing arising on the contract; (4) causing damage to the insured." *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 6, 466 S.E.2d 727, 730 (1996) (internal citation omitted and emphasis added). A claim that involves a "pure hypothesis and speculation" is not ripe for judicial review. *See Colleton Cty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cty.*, 371 S.C. 224, 243, 638 S.E.2d 685, 695 (2006).

Based on the pleadings, there has not yet been a refusal by Admiral to pay the benefits as there are no benefits yet due under the Admiral Policy. The court notes that its declaratory

judgment will allow the pending litigation to proceed, which may in turn lead to the “anticipatory breach of contract” alleged by Plaintiffs. Pls.’ Complaint at pg. 17. Because the matter is not yet ripe, Plaintiffs’ cause of action for bad faith is merely dismissed without prejudice.

THEREFORE, IT IS HEARBY ORDERED that Admiral’s Motion for Judgment on the Pleadings as to the action for declaratory judgment is GRANTED, as declared below. Likewise, Plaintiffs’ cause of action for bad faith is also DISMISSED but without prejudice.

THIS COURT HEREBY **DECLARES** AS FOLLOWS:

- a. Admiral has the right to negotiate a potential settlement as part of its defense of the Underlying Malpractice Action;
- b. Admiral has a right to participate in settlement negotiations at mediation in the Underlying Malpractice Action;
- c. Plaintiffs owe a duty to cooperate in the defense and settlement of the case and do not have a right to prevent Admiral from participating in settlement negotiations with the Estate of Gloria Corley;
- d. If Admiral recommends a settlement to the Named Insured which is acceptable to the Estate of Gloria Corley, and the Named Insured rejects the settlement and chooses to contest the Underlying Malpractice Action, then Admiral’s liability for the Claim shall not exceed the amount for which the Claim could have been settled, including Claim Expenses incurred up to the date of such refusal; and
- e. If Admiral recommends a settlement to the Named Insured which is acceptable to the Estate of Gloria Corley, and the Named Insured rejects the settlement and chooses to contest the Underlying Malpractice Action, then Admiral’s right and duty to defend the Underlying Malpractice Action shall end upon the date of such rejection.

AND IT IS SO ORDERED.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

Case Caption: Desa Ballard , plaintiff, et al VS Admiral Insurance Company ,
defendant, et al
Case Number: 2018CP3201743
Type: Order/Other

So Ordered

s/Walton J. McLeod, 2765

Electronically signed on 2019-02-15 15:17:33 page 16 of 16

ROA 0022

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

CIVIL ACTION NO: 2018-CP-32-01743

Desa Ballard and Desa Ballard P.A., d/b/a
Ballard & Watson,

Plaintiffs,

v.

Admiral Insurance Company and Adele R.
Pope, individually and as Special
Administrator of the Estate of Gloria Corley,

Defendants.

**ORDER GRANTING
MOTION TO DISMISS**

This matter comes before this court on a Motion to Dismiss or in the Alternative, to Strike and Motion for Attorneys' Fees and Costs (the "Motion") filed jointly by Defendants Adele J. Pope ("Ms. Pope"), individually, and Ms. Pope as the Special Administrator of the Estate of Gloria Corley. In her Motion, Ms. Pope seeks the following: (1) a court order dismissing Ms. Pope from this matter in an individual capacity and in her official capacity as the Special Administrator of the Estate of Gloria Corley pursuant to Rule 12(b)(6), SCRCPP; alternatively, (2) a court order striking certain portions of the Complaint pursuant to Rule 12(f), SCRCPP; and (3) reimbursement of attorneys' fees and costs for bringing the Motion pursuant to Rule 11, SCRCPP.

A hearing on the Motion was held on November 14, 2018. Attorneys Eric S. Bland and Ronald L. Richter, Jr. appeared on behalf of Plaintiffs Desa Ballard and Desa Ballard P.A. d/b/a Ballard & Watson. Attorney Adam T. Silvernail appeared on behalf of the Estate of Gloria Corley. Attorney Adele J. Pope appeared pro se. Attorney Wesley B. Sawyer appeared on behalf of Defendant Admiral Insurance Company ("Admiral"). After considering the Motion, Plaintiffs' Response in Opposition, and arguments of counsel, the court grants the Motion but finds that the

moving Defendants are not entitled to attorney's fees and costs. Further, the court declines to rule on Ms. Pope's alternative motion to strike.

By way of background, Ms. Pope, in her capacity as the Special Administrator of the Estate of Gloria Corley, commenced a legal malpractice claim against Plaintiffs on February 23, 2017. Admiral is defending Plaintiffs in the underlying legal malpractice claim. On September 19, 2017, Plaintiffs filed a Summons and Complaint against the above-captioned Defendants requesting that the court issue a declaratory judgment determining the rights and obligations owed to Plaintiffs by Admiral under its insurance policy. More specifically, Plaintiffs insist that Admiral provide a defense in accordance with the policy but have also expressed their position that they admit no malpractice and do not consent for Admiral to seek to settle the underlying legal malpractice claim with Ms. Pope. In turn, Admiral contends that Plaintiffs are acting in breach of their obligations of good faith and fair dealing under the policy by refusing to allow Admiral and its counsel to attempt to settle the claim. In response to being named individually and as Special Administrator for the Estate of Gloria Corley, Ms. Pope filed the above-referenced Motion.

ANALYSIS

Ms. Pope argues that Plaintiffs' Summons and Complaint make clear that this action is a dispute between Plaintiffs and Admiral regarding the rights and duties of Plaintiffs and Admiral. Ms. Pope provides accurately that Plaintiffs named Ms. Pope, in both capacities, in the Summons and Complaint yet Plaintiffs seek no relief against Ms. Pope, in either capacity, in the prayer for relief. The court agrees that the entirety of the prayer for relief sought is against Admiral.

Plaintiffs counter that they properly named Ms. Pope, in both capacities, and insist it is inescapable that this declaratory judgment action will affect Ms. Pope's ability to recover should her claims in the underlying malpractice action prove successful. Plaintiffs further contend that

the inclusion of Ms. Pope, in both capacities, was not only permissible, it was required under both Rule 19, SCRCP and under the South Carolina Uniform Declaratory Judgement Act (S.C. Code Ann. § 15–53–10, *et. seq.*) as Ms. Pope, in both capacities, is a party who has an interest in the policy. Although Plaintiffs’ interpretation of the South Carolina Uniform Declaratory Judgment Act and Rule 19, SCRCP is reasonable, the court disagrees.

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss an action against him or her due to the plaintiff’s failure to state facts sufficient to constitute a cause of action. In deciding a Rule 12(b)(6), SCRCP motion, “the court looks only at the complaint and, taking the facts alleged as true and construing all reasonable inferences and doubts in the [moving party’s] favor, asks whether the complaint would entitle the plaintiff to relief under any theory.” *Farmer v. CAGC Ins. Co.*, 424 S.C. 579, 588, 819 S.E.2d 142, 147 (Ct. App. 2018), reh’g denied (Oct. 18, 2018).

To prevail under the South Carolina Uniform Declaratory Judgment Act, “a party must demonstrate a justiciable controversy.” *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985)). “A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.” *Id.*, 319 S.C. at 71, 459 S.E.2d at 845 (citing *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970)). This requirement is satisfied by “[a]ny person interested under a deed . . . written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a . . . contract or franchise may have determined any question of construction or validity arising under the instrument, . . . contract[,], or franchise and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code Ann. § 15–53–30. Similarly, Rule 19, SCRCP requires that indispensable parties be joined. *Charleston County Parents for Public Schools, Inc. v. Moseley*,

343 S.C. 509, 514, 541 S.E.2d 533, 535-36 (2001); *see also* *Kiawah Resort Assocs., L.P. v. Kiawah Island Cmty. Ass'n, Inc.*, 421 S.C. 538, 551-52, 808 S.E.2d 521, 528 (Ct. App. 2017), reh'g denied (Jan. 4, 2018) (providing that the “decision to grant or deny a motion to join an action pursuant to Rule 19, SCRCP . . . lies within the sound discretion of the trial judge.”).

The court finds that Ms. Pope, in either capacity, is not a necessary party to this declaratory judgment action, which is a dispute between an insured and the insured's insurance carrier. Although Plaintiffs argue that Ms. Pope and the Estate of Gloria Corley have an interest in the underlying malpractice action, the court finds that neither is a party to the contract at issue¹. Further, Plaintiffs submit that Ms. Pope and the Estate of Gloria Corley should be bound by the factual findings herein, but the court finds that Ms. Pope, as the Special Administrator of the Estate of Gloria Corley, is already litigating the factual issues in the separate underlying malpractice action, and Ms. Pope, individually, is not a party to that case or any other pending litigation related to this matter. It would therefore be improper to force Ms. Pope, in either capacity, to litigate these facts in this contractual dispute, where those which are relevant to the Estate of Gloria Corley were already subject to litigation in another case. For the foregoing reasons, the court finds that Ms. Pope, individually and as Special Administrator of the Estate of Gloria Corley, is not a proper party to this action and as such, Plaintiffs failed to state facts sufficient to support a cause of action against Ms. Pope in either capacity. Therefore, the Motion is granted and Ms. Pope, individually and in her capacity as Special Administrator for the Estate of Gloria Corley, is dismissed from this action. Further, because the action against Ms. Pope, in both capacities, is dismissed, the court need not rule on Ms. Pope's alternative motion to strike.

¹ Whether Admiral covers and defends the malpractice claim against Plaintiffs does not affect the Estate of Gloria Corley's claims. If a judgment is rendered for the Estate of Gloria Corley, the judgment will be owed regardless of the outcome of this declaratory judgment action and whether the insured and/or the insured's insurance carrier pay it.

Next, the court addresses Ms. Pope's request under Rule 11, SCRCP for an award of reasonable attorneys' fees and costs having to respond to Plaintiffs' Summons and Complaint. Under Rule 11, SCRCP, a party and his or her attorney may be sanctioned for filing a frivolous pleading or for making frivolous arguments. *Ex parte Gregory*, 378 S.C. 430, 437-48, 663 S.E.2d 46, 50 (2008). The sanction may include an order to pay the reasonable costs and attorneys' fees incurred by the party defending against the frivolous action. *Id.* Although Ms. Pope ultimately prevailed, the court reasons that Plaintiffs' decision to name Ms. Pope, in both capacities, was not frivolous given the broad language found in S.C. Code Ann. § 15-53-30 (2017) and Rule 19, SCRCP. As such, the motion for attorneys' fees and costs is denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the motion of Adele J. Pope, individually and in her capacity as Special Administrator of the Estate of Gloria Corley, to dismiss her in both capacities is GRANTED. The motion for attorneys' fees and costs are DENIED.

AND IT IS SO ORDERED.

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Lexington Common Pleas

Case Caption: Desa Ballard , plaintiff, et al VS Admiral Insurance Company ,
defendant, et al
Case Number: 2018CP3201743
Type: Order/Dismissal

So Ordered

s/Walton J. McLeod, 2765

Electronically signed on 2019-02-15 14:42:02 page 6 of 6

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ROA 0028

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COPY

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Estate of Gloria P. Corley, by its Special
Administrator,

CASE NO. 2017-CP-~~32~~ 00618

Plaintiff,

SUMMONS

vs.

Desa Ballard and Desa Ballard, P.A.,

Defendants.

2017CP3200618

TO THE DEFENDANTS ABOVE-NAMED:

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 upon the subscriber, W. H. Bundy, Jr., Esquire, of Bundy McDonald, LLC, 1516 Old Trolley Road, 2nd Floor, Summerville, South Carolina 29485, within thirty (30) days after service thereof, exclusive of the day of service; and if you fail to do so judgment by default will be rendered against you for the relief demanded in the Complaint.

BUNDY MCDONALD, LLC


W. H. Bundy, Jr., Esquire, SC Bar # 1012
M. Brent McDonald, Esquire, SC Bar # 78057
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
Telephone: 888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com
Attorneys for Estate of Gloria P. Corley

CLERK OF COURT
JANUARY 2017

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FILED

February 16, 2017
Summerville, South Carolina

ROA 0029

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

COPY

Estate of Gloria P. Corley, by its Special
Administrator,

CASE NO. 2017-CP-32-00618

Plaintiff,

COMPLAINT
(Jury Trial Demanded)

vs.

Desa Ballard and Desa Ballard, P.A

Defendants.

FILED

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2017 CP 32 00618

Plaintiff Estate of Gloria P. Corley, by its Special Administrator, bring this action against Defendants Desa Ballard and Desa Ballard, P.A. and alleges as follows:

1. Plaintiff is the Estate of Gloria P. Corley, who died on March 31, 2016, a resident of Lexington County.
2. Plaintiff acts through its duly appointed Special Administrator, as found in the Lexington County Probate Court record for Case No. 2016-ES-32-0845.
3. Defendant Desa Ballard is an attorney admitted to practice law in South Carolina, having offices located in Lexington County.
4. Defendant Desa Ballard, P.A. is a professional association created and existing under the laws of the State of South Carolina, with its offices located in Lexington County.
5. Prior to her death, Gloria Corley (Hereinafter "Gloria") was married to Martin Corley, who is now deceased. Both Gloria and Mr. Corley had children from previous marriages. As a part of his estate planning, Mr. Corley set up the Martin L. Corley Marital Trust ("the Marital

Trust") in which Gloria had an interest, as did Gloria's adult daughter Andra "Angie" Williams (hereinafter "Angie") and Mr. Corley's adult children from a previous marriage.

6. After Mr. Corley's death, various disputes arose between Gloria and the children of Mr. Corley regarding Mr. Corley's estate

7. In or around 1998, Gloria hired an attorney, Adele Pope, to represent her in the dispute over the Estate and/or the Marital Trust of her late husband. In 1999 an agreement was reached, entitled "Agreement Among Successors to Decedent." (Exhibit A). Under the terms of that agreement, Gloria would receive monthly distributions of \$7,500.00 for her lifetime. In addition, during her lifetime, Gloria would receive an annual distribution to be no less than \$55,000.00.

8. Gloria's fee agreement with Adele Pope provided that Pope would receive a percentage of any monies Gloria received from the Estate or Trust of her husband, in excess of the monthly \$7,500.00 payments:

In addition, commencing August 28, 1998, I will be entitled to ONE-THIRD (1/3) of ALL GROSS MONIES OR PROPERTY you receive from your husband's Estate or Trust and/or his family in excess of \$7,500 per month (\$90,000 per year) FOR THE REST OF YOUR LIFE, OR RECEIVED BY YOUR ESTATE, whether or not I am serving as your lawyer at the time.

Pope Fee agreement dated August 28, 1998 (Exhibit B).

9. For many years, Gloria paid Pope one-third of the annual distribution she received in excess of the \$7,500.00 payments.

10. In or around 2011, Gloria began suffering from diminished capacity. Around that time, Angie took over all of Gloria's finances, pursuant to a power of attorney. When the annual check of \$55,000.00 was distributed to Gloria in 2011, Angie refused to pay Pope one-third of this annual distribution as had traditionally been paid.

11. Pope then filed suit against Gloria ("the Pope suit"). Defendant Desa Ballard and Desa Ballard, P.A. (hereinafter collectively referred to as "Defendant Ballard") were retained to defend Gloria in the Pope suit. Defendant Ballard also represented Angie, individually and as attorney-in-fact for Gloria. However, Defendant Ballard never met with Gloria to assess her mental faculties or to discuss the Pope lawsuit or Gloria's interest in the Marital Trust.

12. On February 22, 2013, the Honorable Frank Addy issued an order in the Pope case, granting Pope's motion for summary judgment as to the validity of her fee agreement with Gloria and finding that Pope was entitled to the fees earned under agreement. Defendant Ballard failed to appeal this order.

13. During the pendency of the Pope suit, Defendant Ballard advocated for the termination of Gloria's interest in the trust, with the incorrect belief that without an annual distribution to Gloria, Pope would not be entitled to any additional monies, despite the broad language of Pope's fee agreement giving her one-third of "of ALL GROSS MONIES OR PROPERTY" that Gloria would receive from Mr. Corley's "Estate or Trust and/or his family in excess of \$7,500 per month (\$90,000 per year)." In fact, in an email to counsel for Samuel Corley (the trustee of the Marital Trust), Defendant Ballard wrote: "Please draft so as to have Gloria waive all future annual payments; settlement will be a buy-out of monthly payments. Adele's fee is only on annual payments." (Exhibit C). Defendant Ballard never considered that Pope might be due any monies from the lump sum payment to Gloria.

14. Defendant Ballard engaged in discussions with Samuel Corley, who was the trustee of the Marital Trust, and his attorney, but did not include Gloria in these discussions. Defendant Ballard then recommended and negotiated a settlement on behalf of Gloria, which was reduced to writing in a document entitled "Agreement to Terminate Interests in the Martin L. Corley

Marital Trust." dated April 19, 2012 ("Termination Agreement") (Exhibit D). The Termination Agreement provided that Gloria would waive any and all future payments and would receive one lump sum in the amount of \$650,000.00 as a single final distribution from the Marital Trust. That amount was significantly less than the amount Gloria would receive under the Marital Trust; the Termination Agreement stated that under Gloria's projected life expectancy of 8.29 years, the monthly payments of \$7500.00 would total \$746,100.00. The Termination Agreement did not include any amount to compensate Gloria for the annual payments of at least \$55,000.00 that she waived under the agreement.

15. With the monthly payments of \$7,500.00 and the guaranteed annual payment of at least \$55,000.00, Gloria was entitled to \$145,000.00 for her lifetime. If the projected life expectancy of 8.29 years was accurate, Gloria was entitled to at least \$1,202,050.00. In other words, Gloria was entitled to almost twice the amount of the lump sum of \$650,000.00 provided for in the Termination Agreement advocated by Defendant Ballard.

16. The Termination Agreement was signed by Angie individually and Angie as the holder of the power of attorney for Gloria.

17. Defendant Ballard failed to consider the long term effect of trading in lifetime monthly payments and a guaranteed annual payment subject to attorneys' fees for a lesser, lump sum amount.

18. The Termination Agreement was approved by Consent Order filed May 1, 2012. (Exhibit E).

19. Under the terms of the Termination Agreement, Gloria was required to deposit \$50,000 of her lump sum of \$650,000 into a designated account, in order to indemnify the Marital Trust and Samuel Corley, individually or as the trustee of the Marital Trust for any claims arising in

connection with Gloria's interest in the Marital Trust, thus reducing Gloria's actual lump sum to \$600,000.00.

20. Angie was a party to the Termination Agreement individually because she had an interest in the Marital Trust, in that she was to receive \$50,000.00 upon the death of her mother. Under the terms of the Termination Agreement, Angie received \$50,000.00 immediately, and that amount was actually deducted from the \$650,000.00 lump sum allocated to Gloria, further reducing the amount Gloria actually received. Angie's termination interest should have been negotiated separately and independently of Gloria's interest.

21. However, Defendant Ballard represented both Angie and Gloria in negotiating the termination of the Marital Trust, which constituted a conflict of interest. Defendant Ballard did not obtain a waiver of this conflict. Furthermore, Defendant Ballard did not seek to have a Guardian ad Litem appointed to ensure that Gloria's interests were protected in either the proceedings to terminate the Marital Trust or the Pope suit.

22. The lump sum payment to Gloria issued by the Marital Trust under the terms of the Termination Agreement was deposited into Defendant Ballard's trust account. After fees and other expenses were deducted, the remaining funds of \$522,818.31 were disbursed by Defendant Ballard by way of a check from her trust account made payable to Gloria Corley. (Exhibit F)

23. Gloria's daughter endorsed the check "Andra Williams POA for Gloria Corley" but did not deposit the money into Gloria's account. Instead, Angie deposited the entire sum into a First Citizens account that was in her own name only. (Exhibit G). Angie has spent at least some of those funds on herself, not for her mother's care.

24. Defendant Ballard did not request that a Guardian ad Litem to be appointed for Gloria, who had diminished capacity, at any time during the Pope suit or the negotiations to terminate

the Marital Trust. At the same time, Defendant Ballard had a conflict of interest in representing Gloria, Angie Williams individually, and Angie Williams as attorney-in-fact, in the termination of the Marital Trust, rendering Defendant Ballard liable for disgorgement of her fees.

25. By order dated August 21, 2013, Pope obtained a judgment of \$248,673.87 for Gloria's breach of the fee agreement, which breach, as noted above, was actually orchestrated by Angie's refusal to pay. On January 15, 2014, the court denied the motion to reconsider filed by Defendant Ballard. Defendant Ballard did not file a Notice of Appeal of the judgment (and purportedly of the 2013 order of summary judgment) until March 12, 2014. Because the appeal was untimely (which Defendant Ballard admitted in return to Pope's Motion to Dismiss (Exhibit H), it was dismissed by Order of the Court of Appeals dated June 30, 2014. (Exhibit I). Despite the dismissal of the appeal, Defendant Ballard did not return all of the fees she charged and collected for representing Gloria in the appeal.

26. In addition, in 2014, the \$55,000.00 check that had been initially issued in 2011 (and the dispute over which formed the basis for the Pope suit) was re-issued by the Marital Trust. Under the requirements of the court-approved Termination Agreement, the Marital Trust was supposed to deposit the \$55,000.00 check with the Lexington County clerk of court. However, the \$55,000.00 was sent to Defendant Ballard who deposited the money into her trust account, deducted certain fees from it, and then sent the remainder to counsel for Pope. Defendant Ballard did not have the authority or the obligation to send the funds to Pope's attorney -- who had not even requested payment -- as apparent partial satisfaction of Pope's judgment.

27. Because Pope had a valid judgment against Gloria, the Lexington County Circuit Court issued an order, filed May 22, 2015, which appointed a receiver, Kathleen Palinski. The order granted the receiver the authority to locate and secure Gloria's assets unless and until the amount

of Pope's judgment had either been paid to Pope or \$250,000 had been paid into the Court. The court found that Gloria's funds were in danger of being depleted due to the fact that Gloria knew very little about her finances and that Angie was in charge. Gloria also did not have financial records showing the whereabouts of her \$650,000 lump sum payment from the Marital Trust.

28. By order dated September 17, 2015 in the in the Pope litigation, Heather Cairns was appointed as Guardian ad Litem for Gloria due to Gloria's diminished capacity. (Exhibit J).

29. Of the \$650,000 obtained under the Termination Agreement settlement, there is approximately \$70,000 left, and those monies are under the control of the receiver as possible satisfaction of the judgment obtained by Pope.

30. Gloria died on March 31, 2016, in Lexington County.

FOR A FIRST CAUSE OF ACTION
(Professional Negligence as to Defendant Ballard)

31. Paragraphs 1 through 29 are herein reiterated and realleged as if set forth verbatim.

32. Gloria had an attorney-client relationship with Defendant Ballard.

33. Defendant Ballard breached the standard of care owed to the Gloria by, among other things: failing to recognize that the termination of the trust was not in the best interest of Gloria; failing to have a Guardian ad Litem appointed for Gloria; representing Gloria, Angie Williams individually, and Angie Williams as attorney-in-fact in violation of the rules governing conflicts of interest; in failing to recognize that Adele Pope's fee agreement entitled her to a percentage of the lump sum payment; and in undertaking a frivolous defense/appeal and or/failing to timely appeal the orders upholding Pope's fee agreement and awarding judgment to Pope. An affidavit of Gloria's expert, John Freeman, as required by S.C. Code 15-36-100 is attached hereto. (Exhibit K).

34. Gloria has suffered damages-which were proximately caused by the above described breaches of the standard of care by Defendant Ballard.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendant Ballard)

35. Paragraphs 1 through 33 are herein reiterated and realleged as if set forth verbatim.

36. Defendant Ballard was in a fiduciary relationship with Gloria such that Defendant Ballard was bound to act with due regard to the interests of Gloria.

37. Defendant Ballard was required to fully disclose to Gloria that: the termination of the Marital Trust would result in Gloria receiving significantly less than that to which she was entitled for her expected life span; and that Adele Pope would be entitled to any distributions of the trust, including a lump sum payout from the dissolution of the Marital Trust.

38. Defendant Ballard breached her fiduciary duties owed to Gloria by failing to make the above-referenced disclosures to Gloria.

39. Gloria has suffered damages which were proximately caused by the above described breaches of fiduciary duty by Defendant Ballard.

FOR A THIRD CAUSE OF ACTION
(Disgorgement as to Defendant Ballard)

40. Paragraphs 1 through 38 are herein reiterated and realleged as if set forth verbatim.

41. Defendant Ballard represented Gloria, Angie Williams, individually, and Angie Williams as attorney in fact for Gloria.

42. Gloria and Angie had different interests in the Marital Trust.

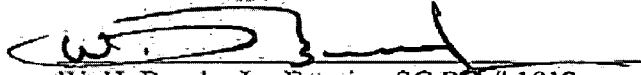
43. Defendant Ballard had a conflict of interest in representing all three.

44. As such, disgorgement of all fees collected is required.

WHEREFORE Gloria P. Corley prays that this Court:

- a. Grant judgment in favor of Gloria on all causes of action and grant actual, consequential and punitive damages;
- b. Award Gloria prejudgment interest;
- c. Award Gloria awarded attorneys' fees and costs if permitted by law; and
- d. That Gloria be awarded such further relief as the Court deems just and proper.

BUNDY MCDONALD, LLC



W. H. Bundy, Jr., Esquire, SC Bar # 1012
M. Brent McDonald, Esquire, SC Bar # 78057
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
Telephone: 888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com

Attorneys for Estate of Gloria P. Corley

February 16, 2017
Summerville, South Carolina

EXHIBIT A

EXHIBIT B

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
AGREEMENT AMONG SUCCESSORS
TO DECEDENT

This is an Agreement Among Successors to Decedent (the "Agreement") executed as of January 15, 1999, by and among SAMUEL M. CORLEY, Individually and on behalf of his issue, as Personal Representative of the Estate of Martin L. Corley and as Trustee under the Will of Martin L. Corley; THERON H. PEACE, as Personal Representative of the Estate of Martin L. Corley; GLORIA P. CORLEY, Individually and on behalf of her issue; DWIGHT L. CORLEY, Individually and on behalf of his issue; JANICE C. LINDLER, Individually and on behalf of her issue; and PATRICIA C. GRANT, Individually and on behalf of her issue.

RECITALS

1. Martin L. Corley, generally known as M. L. Corley (hereinafter "Martin L. Corley") died a resident of Lexington County, South Carolina on August 20, 1997, leaving a Last Will and Testament dated March 22, 1996 (the "Will").
2. Gloria P. Corley is the widow of Martin L. Corley.
3. SAMUEL M. CORLEY, DWIGHT L. CORLEY, JANICE C. LINDLER, and PATRICIA C. GRANT are the children of Martin L. Corley, and, with their issue, are devisees and potential devisees under the Will and/or beneficiaries under the Trusts created under the Will of Martin L. Corley.
4. Mrs. Corley is entitled to the personal and household effects of Martin L. Corley pursuant to Item V of the Will; \$25,000 in cash pursuant to Item VI of the Will; and certain rights in the Marital Trust of Martin L. Corley (the "Marital Trust") created under Items IX and X of the Will.
5. Mrs. Corley has, prior to the date of this Agreement, received the property to which she is entitled under Items V and VI of the Will.
6. Samuel M. Corley and Theron H. Peace are the duly appointed Personal Representatives of the Estate of Martin L. Corley, which is being administered under the jurisdiction of the Probate Court for Lexington County in Probate File Number 97-ES-32-00799.
7. Samuel M. Corley is the sole Trustee of all Trusts under the Will, including the Marital Trust. Patricia C. Grant and the other children of Martin L. Corley are the designated Successor Trustees of such Trusts, in the order set out in the Will.

UNAPPROVED BY PROBATE COURT OF LEXINGTON COUNTY, SOUTH CAROLINA
JANUARY 15, 1999



A TRUE COPY:

ATTEST:

Samuel M. Corley
PROBATE JUDGE, LEXINGTON COUNTY, S.C.

ROA 0040

8. All Interested Persons in the Estate and Trusts of Martin L. Corley, other than Angie R. Williams, whose interest is not affected by this Agreement, are parties ("Parties" or "Party") to this Agreement, as signatories or by representation.
9. All Parties desire to terminate certain litigation related to the Estate of Martin L. Corley and the Marital Trust.
10. As successors in interest to the decedent, Martin L. Corley, and as his fiduciaries, the Parties are authorized pursuant to South Carolina Probate Code Sections 62-3-912 and 62-3-1101 to agree among themselves to alter the interests, shares or amounts to which they are entitled under the Will of Martin L. Corley, and are willing to do so by entering into this Agreement. Further, this is a compromise of a controversy, and, therefore, the Parties contemplate that this Agreement will be approved in a formal proceeding in a Court for that purpose, and will be binding on all Parties hereto.

NOW, THEREFORE, in consideration of the payments, transfers and mutual promises recited herein, the legal sufficiency of which is acknowledged, the undersigned mutually agree as follows:

ARTICLE I APPLICATION OF AGREEMENT

1. Each Party to this Agreement executes this Agreement, and intends to bind himself or herself, in every capacity, fiduciary or other, related to the Estate and Will of Martin L. Corley and all Trusts created by him, and to bind his or her heirs, successors and assigns.
2. When used herein, the term "Agreement" includes this Agreement and the Order approving Agreement and any other Documents related to and contemplated by the Agreement (the "Related Orders and Documents").
3. Each and every Related Order and Document is incorporated herein by reference and made a part of this Agreement.
4. This Agreement and the Related Orders and Documents fully dispose of all issues by and among the Parties with respect to the Estate and Trusts of Martin L. Corley.

ARTICLE II PAYMENTS TO MRS. CORLEY

1. The payments provided for Mrs. Corley under this Agreement are intended to be consistent with the net income payable to her under Item X Paragraph A of the

Marital Trust and as defined in the Will.

2. Mrs. Corley shall, commencing on August 20, 1997, and during her lifetime, receive the greater of the following:

- a. all net income of the Marital Trust and Estate if not closed; or
- b. \$145,000 per year.

3. Payments to Mrs. Corley shall be made as follows:

a. In addition to the \$109,000 she has already received, \$36,000 payable with respect to the Estate's first fiscal year (8/20/97 - 7/31/98) to be paid on or before February 15, 1999.

b. \$7,500 per month, commencing August 1, 1998 and payable monthly each month until her death.

c. Within sixty-five (65) days after the end of each fiscal year of the Estate or Marital Trust, such amount, together with the \$7,500 monthly payments, as will constitute the sum of \$12,083 per month, or the Estate's and/or Marital Trust's net income for each fiscal year, whichever is greater.

d. During any short year of the Estate or Marital Trust; or in any year prior to the complete funding of the Marital Trust; and in the year of Mrs. Corley's death, payments shall be prorated in order to carry out the intention of the Parties as expressed herein.

4.

a. With respect to 1997, 1998, 1999 and 2000 fiscal (or calendar) years, up to \$55,000 of payments to Mrs. Corley per year (but no part of the monthly \$7,500), in the discretion of the Personal Representatives or Trustee, may be made in kind by transfers to Mrs. Corley of undivided fractional interests in the Harvey Tract, based on its \$148,500 estate inventory value, without discount or premium for fractional interests.

b. If the Personal Representatives and Trustee elect to apply this paragraph, they must transfer 100% of the Harvey Tract to Mrs. Corley, if she is still living and the Harvey Tract has not been sold in accordance with this paragraph, on or before September 15, 2001.

c. So long as Mrs. Corley and the Estate or Trust are joint owners, they agree that they will use their best efforts to secure a sale of the Harvey Tract. The net proceeds of any sale shall be pro-rated between the owners based on ownership as of the date the Harvey Tract is sold.

d. So long as the Estate or Trust and Mrs. Corley are undivided owners of the Harvey Tract, the Harvey Tract shall remain on the market at a price (of no less than \$148,500) set by the owner of the majority interest, with a realtor selected by the owner of the majority interest, at the time of each six months' listing. The listing in place at the time of signing of this Agreement is specifically permitted and this paragraph d shall be operative after such listing expires.

e. Real estate taxes on the Harvey Tract shall be pro-rated based on percentage and days of ownership.

f. There shall be no partition of the Harvey Tract prior to September 15, 2001.

g. Notwithstanding anything herein to the contrary, no action by Mrs. Corley with respect to her ownership of the Harvey Tract which is consistent with this paragraph and her rights as an owner shall be deemed a breach of this Agreement.

h. Any transferee of Mrs. Corley of an interest in the Harvey Tract must agree, in writing, to be bound by the terms of this Agreement. The Personal Representatives and Trustee may pay Mrs. Corley's share of the property taxes from distributions otherwise due her if she or any transferee fails to pay Mrs. Corley's share of the property taxes timely.

i. Mrs. Corley shall not transfer any interest in the Harvey Tract to a minor directly into the minor's name; all transfers for a minor's benefit shall be in trust or some other similar arrangement.

ARTICLE III MARITAL RESIDENCE

Notwithstanding anything to the contrary contained herein, this Agreement shall have no effect upon the provisions of the Will (including the Marital Trust) with regard to the home and any accompanying real property referred to in Item IX Paragraph B of the Will.

ARTICLE IV SALE OF LAKE MURRAY PROPERTY AND OTHER REAL ESTATE

1. Both Dwight L. Corley and Samuel M. Corley agree to include their respective interests in the Derrick Tract for sale so that the Estate's 1/3 interest and their interests may be sold simultaneously in an attempt for the Estate to realize the greatest market price for the property. The manner of sale must be agreeable to Mrs. Corley as well as Dwight L. Corley and Samuel M. Corley, and shall generally follow the methodology next set forth. Samuel M. Corley shall make available to

Mrs. Corley information known to him which would have an effect upon the value of the property. Mrs. Corley shall within a reasonable time period following the receipt of such information establish a price for the property. Within a reasonable time of the establishment of price, the issue of Martin L. Corley or any one or more of them may purchase the Estate's or Marital Trust's interest in said property at such price. If the issue or one or more of them do not so purchase the Estate's or Marital Trust's interest, then Mrs. Corley and/or her issue may purchase the entire property (including Samuel and Dwight Corley's interests) at the price set. If the property is not sold pursuant to the prior two sentences, it shall be offered at sealed bid during the Spring of 1999 and sold so long as the minimum price set by Mrs. Corley is obtained. If not so obtained, the property may be retained by the Estate or Marital Trust as the case may be. The property will either be sold from the Marital Trust or the Estate's inventory and the Estate Tax return will reflect 1/3 of the sale value as the date-of-death value; although a supplement or amendment to the return may be used to accomplish this reflection of value.

2. All partial interests as well as non-productive, un-productive or under-productive property (with the exception of the Derrick Tract) may be sold to the Corley family or any member of the Corley family at the inventory value(s) for cash as well as, or in addition to, assumption of any debts on properties, and the assignment to the Estate of the 2/3's interest in the Padgett House Note, or, in the alternative, may be transferred to satisfy the balance of the Residuary Estate due the Corley family pursuant to the use of the unified credit, pursuant to Item XI of the Will, and/or fiduciary fees. If property is transferred to any family member or entity after June 30, 1999, it would be subject to having to be reappraised to fair market value at the time of sale.

ARTICLE V INDIVIDUAL GUARANTY OF SAMUEL M. CORLEY

1. In consideration of the mutual promises made herein, the legal sufficiency of which is acknowledged, Samuel M. Corley, Individually, guarantees that all payments and distributions to Mrs. Corley provided herein shall be timely made.
2. Upon notice to Samuel M. Corley that the Personal Representatives or Trustee have not complied with any provision of this Agreement Samuel M. Corley shall immediately effect such compliance or shall make such payments or distributions, individually.
3.
 - a. If Mrs. Corley at any time after the signing of this Agreement requests in writing for any property which was owned by Martin L. Corley at his death, to be made productive (other than the marital home if she permanently vacates it) then and in that

b. If Mrs. Corley at any time after the signing of this Agreement breaches this Agreement and such breach is finally determined by a Court (with time for appeal having expired) then and in that event, the obligations, undertakings and actions required of the Personal Representatives, Trustee and Samuel M. Corley, individually, under this Agreement shall thereafter be immediately (from the time of such breach) null and void and of no effect; so that among other things, from the time of such breach, Samuel M. Corley's Individual Guaranty ends as does the guaranty of payment of \$145,000 per year. From and after such time, the Marital Trust shall be administered in accordance with its terms, prior to modification by this Agreement; provided, however, all actions prior to such breach shall be governed by this Agreement.

c. No actions permitted or provided for in paragraph 4 of Article II above shall be deemed a breach on Mrs. Corley's part of any provision of this Agreement, including this Article V.

1. Except for the monthly \$7,500 payments, which shall be made directly to her, Mrs. Corley irrevocably designates Adele J. Pope as her agent to receive and disburse all amounts payable to her under the Will, the Marital Trust and/or this Agreement.
2. Mrs. Corley also directs that all accountings, tax returns and other documents to be presented to her in accordance with this Agreement be directed to her at the following address:

WASH DC CODEY: HANFORD 04 24 FE 66 CTIVE US IN 66 2 00 PM 1100 330 2 W 01
127 00 1. 1966 2 01

ARTICLE VII
FUNDING OF MARITAL TRUST, ACCOUNTINGS AND ADMINISTRATIVE MATTERS

1. The Marital Trust may be funded, in whole or in part, at such time or times as the Personal Representatives, after consultation with the Estate's Attorney, Robert Young, determine to be consistent with applicable law and proper administration of the Marital Trust. Provided, however, the principal transferred to the Marital Trust, shall, as of the date(s) of the transfer(s), have a value which is no less than the value of the Marital Trust as reported on Schedule M of the Estate Tax Return filed with respect to Martin L. Corley's Estate. The amount of the Marital Trust shall be no less than \$2,100,000.
2. Within 90 days after the end of each fiscal year of the Estate and Marital Trust, the Personal Representatives or Trustee of the Marital Trust shall provide to Mrs. Corley the following:
 - a. A statement of the transactions of the Estate and/or Marital Trust, as applicable, for the preceding year;
 - b. A statement of the net income of the Estate and/or Marital Trust for the preceding year, with sufficient detail to determine how it was calculated.
 - c. A statement by the accountant or attorney for the Estate or Marital Trust certifying that the computation of net income is consistent with the intent of this Agreement, the governing documents and applicable law.
 - d. A statement of the assets of the Marital Trust as of the end of such year.
3. In addition, the Personal Representatives or Trustee shall provide to Mrs. Corley, within fifteen days after filing, the Estate tax return and all fiduciary income tax returns of the Estate and the Marital Trust, and shall promptly advise Mrs. Corley of any governmental audits to such returns and any final adjustments thereto.
4. So long as the Personal Representatives or Trustees have substantially complied with the terms of Article II and III of this Agreement, Mrs. Corley shall be entitled to seek Court review of the transactions of the Estate or Marital Trust, ONLY if:
 - a. a certified public accountant declares in writing, after a thorough review and preliminary notification under paragraph 5 below, that the computation of net income, when taken as a whole, as presented by the Personal Representatives or Trustee is not reasonable; or

b. the documentation provided by the Personal Representatives or Trustee is inadequate to determine whether the net income calculation is reasonable AND the Personal Representatives and Trustee have refused to provide additional information after receiving a written request from Mrs. Corley specifying what additional documentation or information is needed.

5. The Trustee (with his Counsel) and Mrs. Corley (with her Counsel) agree to consult with each other in an effort to resolve any questions which arise in connection with the computation of net income of the Estate or Marital Trust, if Mrs. Corley's certified public accountant notifies Mrs. Corley or her counsel that it has preliminarily determined the computation of net income as presented is not reasonable and Mrs. Corley shall direct such certified public accountant to provide such preliminary determination prior to the certified public accountant declaring the computation not reasonable.
6. Mrs. Corley certifies that, to the extent she desires, she has caused the Estate's computation of net income for the first fiscal year to be reviewed by her certified public accountant, and that the computation of net income by the Personal Representatives is not inconsistent with the proper administration of the Estate or the terms of this Agreement and is reasonable.
7. Mrs. Corley agrees that in complying with the terms of this Agreement the Personal Representatives and Trustee shall have met her request that non-productive property be made productive.
8. So long as the Personal Representatives and Trustee of the Marital Trust comply with the terms of this Agreement, Mrs. Corley shall have no input into the administration of the Estate or Marital Trust, or the timing of funding of the Marital Trust, all of which shall be exercised by the Personal Representatives and Trustee in their discretion, and in accordance with the controlling documents, as modified by this Agreement, and applicable law.

ARTICLE VIII

WILL AND MARITAL DEDUCTION TO REMAIN IN EFFECT

1. Except as specifically modified by this Agreement, the Will and Trusts of Martin L. Corley shall remain in full force and effect, and shall be administered by the Trustee in accordance with their terms.
2. No part of this Agreement shall be effective if, or to the extent that, it disqualifies the Marital Deduction as established in the Will of Martin L. Corley and preserved under Items IX Paragraph C and X Paragraph D of the Will. Any such clause shall be null and void to such extent, and all other parts of the Agreement shall remain in full

force and effect.

3. Mrs. Corley certifies that, after examination of such books and records of the Estate and Marital Trust as are necessary to make a determination, she is unaware of any action of the Personal Representatives or Trustee prior to the date of this Agreement which is inconsistent with the establishment and preservation of the Marital Deduction as provided in Items IX and X of the Will.
4. If any part of the Agreement is declared null and void, thereby causing questions relating to the interpretation of the remainder of the Agreement, and such questions cannot be resolved between counsel for the Trustee and counsel for Mrs. Corley, they shall ask the Court to interpret the Agreement under the following principles:
 - a. That Mrs. Corley shall be entitled to all net income of the Marital Trust, or \$145,000, whichever is greater, at least annually, for life with any amounts accrued but unpaid at her death payable to her Personal Representative(s); however, if Article V Paragraph 3 hereof has been made operative due to a written request by Mrs. Corley, Mrs. Corley shall thereafter be entitled to benefits only as provided in the Marital Trust.
 - b. So long as the provisions of this Agreement are carried out or adequately provided for, to the extent consistent with the qualification of the Marital Trust for the Marital Deduction (QTIP) treatment under 2056 of the Internal Revenue Code, the Trustee shall have maximum flexibility and discretion in the management and administration of the Marital Trust, and Mrs. Corley shall have no input into such management or administration.

ARTICLE IX

DISMISSAL OF PENDING ACTION AND APPROVAL OF PENDING AGREEMENT

1. The action now pending in the Probate Court for Lexington, South Carolina entitled Estate of Martin L. Corley, vs. Gloria P. Corley, et al., Case No. 97-ES-32-00799, shall be dismissed with prejudice.
2. The Parties shall seek Court Approval of this Agreement by Court order having substantially the terms set out in the proposed order Approving Agreement which is attached hereto as Exhibit A.

ARTICLE X

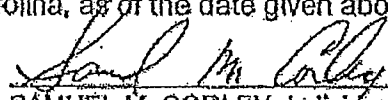
RELEASE OF ALL PARTIES FROM CLAIMS AND RELATED RELIEF

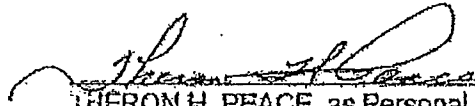
1. Upon the approval by the Court of this Agreement, all Parties hereto shall release each other, their heirs, successors, assigns, and counsel from any and all claims they may have against each other which touch upon or bear any relation to the Estate or Trusts of Martin L. Corley, from the beginning of time until the date of this

Agreement. Notwithstanding the prior sentence, the rights, claims and obligations established under this Agreement and the related Order and documents are preserved.

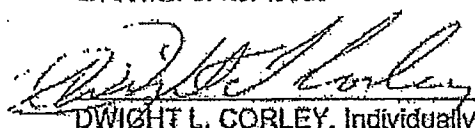
2. Each Party executing this Agreement Among Successors to Decedent does so individually; for his and her heirs, successors and assigns; in any fiduciary capacity he or she holds or may hold with respect to the Estate of Decedent, or any Trust created by Decedent; and the children of Martin L. Corley execute this document on behalf of their issue, born and unborn.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals, in person or by facsimile, at Columbia, South Carolina, as of the date given above.

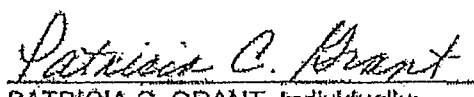

SAMUEL M. CORLEY, Individually;
on behalf of his issue; as Personal
Representative and as Trustee


THERON H. PEACE, as Personal
Representative


GLORIA P. CORLEY, Individually;
on behalf of her issue


DWIGHT L. CORLEY, Individually;
on behalf of his issue; and as
named successor Trustee


JANICE C. LINDLER, Individually;
on behalf of her issue; and as
named successor Trustee


PATRICIA C. GRANT, Individually;
on behalf of her issue; and as
named successor Trustee

I hereby ratify and consent to this Agreement Among Successors to Decedent in my capacity as attorney-in-fact for my mother, Gloria P. Corley.

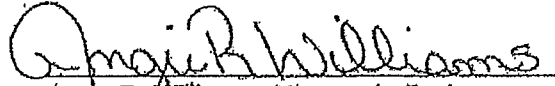

Angie R. Williams, Attorney-in-Fact

EXHIBIT B

EXHIBIT A
LAW OFFICE OF
Adele J. Pope, PC

1507 Richland Street
PO Drawer 7125
Columbia, SC 29202-7125

Telephone (803) 779-1870
Telecopier (803) 779-1673

Adele J. Pope
Certified Specialist in
Estate Planning and Probate Law

Suzanne S. Weston

August 28, 1998

BY HAND-DELIVERY

Mrs. Gloria P. Corley
710 Oak Drive
Lexington, SC 29073

Re: CONTINGENCY FEE PLUS COSTS AGREEMENT

Dear Mrs. Corley:

This letter will confirm that you and Angie, as your Attorney-in-fact, have re-hired me as of today in connection with matters related to your husband's Estate and Trust.

We all agree:

1. You directed me on July 28, 1998, to get out of all suits immediately and to stop representing you.
2. I did so, and notified the Court that I no longer represented you.
3. Except to withdraw, I have not represented you from July 28, 1998, until today.
4. You wish to rehire me on a different, CONTINGENCY FEE PLUS COSTS ARRANGEMENT.

The new Basis of our Representation will be:

1. You will pay all costs of my representation as they are incurred. Costs are the same as defined in our earlier Agreement.
2. In addition, commencing August 28, 1998, I will be entitled to ONE-THIRD (1/3) OF ALL GROSS MONIES OR



Letter to Mrs. Corley
August 28, 1998
Page 2 of 3

PROPERTY you receive from your husband's Estate or Trust and/or his family in excess of \$7,500 per month (\$90,000 per year) FOR THE REST OF YOUR LIFE, OR RECEIVED BY YOUR ESTATE, whether or not I am serving as your lawyer at the time.

3. You have assured me that you will not terminate my representation for at least one year. If you do so, I may elect, INSTEAD OF THE CONTINGENCY FEE, to be paid ON THE TIME PLUS COSTS BASIS which was how I was originally hired, or, I may elect to continue under this Agreement. I MAY NOT DO BOTH.
4. HOYT, as your personal lawyer, has reviewed and approved this Agreement.
5. This Agreement will bind you and your heirs, your successors and your Estate.
6. You agree that I am entitled to permanent access to the Corley Estate and Trust documents which relate to you to verify my fee.
7. You agree to provide me a copy of every check or other evidence of cash or property you receive from the Estate or Trust.
8. You understand that we may settle within a relatively short time, or the negotiation may be lengthy. In any event, I will be entitled to my full fee.
9. You understand that if you terminate me and still receive more than \$7,500 per month, I will be entitled to my full fee.
10. You have seen examples of the calculations and payment of fees under this Contract.
11. Although we hope this will not be the case, if it should become necessary for us to attempt to collect any fees due, we would be entitled to reasonable costs of collection, including Attorney's fees.

Letter to Mrs. Corley
August 28, 1998
Page 3 of 3

Thank you for asking me to work with you again.

Sincerely,

Adele J. Pope

Adele J. Pope

I UNDERSTAND AND AGREE:

Gloria P. Corley
GLORIA P. CORLEY

Andra R. Williams
ANDRA R. WILLIAMS, as
Attorney-in-fact for
Gloria P. Corley and heir
and devisee of her Estate.

A. HOYT ROWELL, III, as
Attorney for Gloria
P. Corley and heir and
devisee of her Estate.

AJP:ws

Enclosure: Fee Agreement Dated October 28, 1997
Schedule A - Examples of Fee and Costs

SCHEDULE A

POSSIBLE FEE EXAMPLE

Litigation lasts 6 months. Mrs Corley receives \$110,000
August 1, 1998 - July 31, 1994 and \$140,000 each
subsequent year for 15 years. Costs = \$2,000.

A.	Mrs. Corley pays cost	\$2,000
B.	Year 1: Mrs. Corley	\$103,333
C.	Law Office of Adele J. Pope; PC gets	\$6,667
D.	Each later year:	
1.	Mrs. Corley gets	\$123,333
2.	Law Office of Adele J. Pope, PC gets	\$16,667

EXHIBIT C

Adam T. Silvernail

From: Richard J. Breibart <rjb@reibartlaw.com>
Sent: Wednesday, April 04, 2012 3:33 PM
To: Desa Ballard
Subject: RE: Corley, Gloria;

What hearing on 11th

From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Wednesday, April 04, 2012 1:57 PM
To: Richard J. Breibart
Cc: Stephanie Weissenstein; Christy Ransone; Mara Ballard
Subject: Corley, Gloria;

Checking on status of draft documents per our phone call a few minutes ago -

Please draft it so as to have Gloria waive all future annual payments; settlement will be a buy-out of monthly payments.
Adele's fee is only on annual payments.

Have hearing on 11th - need to move quickly.

db

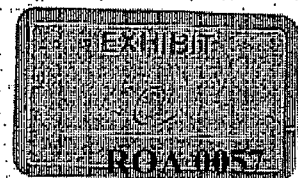


EXHIBIT D

Exhibit A

ORIGINAL

5/1/12

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

) AGREEMENT TO TERMINATE
) INTERESTS IN THE MARTIN L.
) CORLEY MARITAL TRUST

This is an agreement among signatories to a prior Agreement entitled Agreement Among Successors to Decedent dated January 15, 1999, specifically SAMUEL M. CORLEY, individually and as Trustee of the Martin L. Corley Marital Trust (hereafter referred to as "the trust"), and GLORIA P. CORLEY (hereafter referred to as "Gloria Corley" or "Mrs. Corley"), which Agreement was approved and made an Order of the Probate Court by order of the Honorable Daniel R. Eckstrom on January 22, 1999 in Case No. 97-ES-32-00799 (hereafter "the 1999 Agreement and Order"). Also a party to this agreement is ANDRA R. WILLIAMS (hereafter referred to as "Ms. Williams"), the adult daughter and attorney-in-fact for Gloria Corley, who is a beneficiary of the Martin L. Corley Marital Trust.

RECITALS

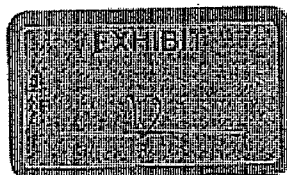
1. Gloria Corley is the widow of Martin L. Corley, deceased, and a beneficiary under the terms of both the will of the deceased and the marital trust.
2. Following the death of Martin L. Corley, there was litigation challenging certain provisions of the will and/or trust, which litigation was settled by the parties in interest by an agreement dated January 15, 1999.
3. The Agreement was reviewed and approved by the Lexington County Probate Court, and incorporated into an Order of Judge Daniel R. Eckstrom dated January 22, 1999, which Agreement and Order constitute the 1999 Agreement and Order referred to herein.
4. All parties to this agreement have fully discharged their duties and obligations under all relevant agreements and orders.

FILED

MAY 1 2012

PROBATE JUDGE
LEXINGTON COUNTY, S.C.

ROA 0059



5. As part of the Agreement, Gloria Corley was to receive certain payments for life, as indicated in Article II of the Agreement, on numerous conditions as spelled out therein.
6. Funds due to Gloria Corley were to be made in two ways under the Agreement and Order: monthly payments from the trust to Mrs. Corley in the amount of \$7,500.00, as well as an annual payment, the precise amount of which was subject to change based on performance of certain assets of the trust, but which was to be no less than \$55,000.00.
7. Ms. Williams is a beneficiary of the trust, and is to receive the sum of \$50,000.00 upon the death of her mother, Gloria Corley.
8. The monthly payments to Mrs. Corley have been made through March, 2012.
9. The annual payment for 2010, was tendered to Mrs. Corley in March, 2011, but remains in custody of the trustee as of the date of this Agreement.
10. The parties wish to terminate any and all interest that Mrs. Corley and Ms. Williams have in the Trust and to waive all future payments to Mrs. Corley from the trust.
11. The parties have negotiated a settlement, the terms of which will waive Mrs. Corley's and Ms. Williams' rights to or interest in the trust in exchange for a payment from the Trust to Mrs. Corley in the amount of Six Hundred and Fifty-Thousand (\$650,000.00) dollars.
12. This sum refers to underlying value in assets generating income, plus life estate interest in home-place. As such, it fairly represents a nontaxable present value return of principle in lieu of a higher taxable value of the income stream. Present value is based on the current South Carolina life expectancy tables codified at S. C. Code Ann. Section 19-1-150.
13. Mrs. Corley is now 83 years of age, and can be expected to live another 8.29 years in accordance with the statute. Mrs. Corley receives monthly payments which total \$90,000

per year. If all monthly payments are made to Mrs. Corley under the terms of the prior Agreement and Order for another 8.29 years, Mrs. Corley will receive the sum of \$746,100.00. This figure does not include any annual payments that would be paid to Mrs. Corley under the terms of the existing Agreement and Order. It also does not include the value of the moneys that would eventually be paid to Ms. Williams under the terms of the Trust.

14. In exchange for Mrs. Corley's agreement to waive any and all future payments from the trust, both annual and monthly, as well as any residual interest she may have in the trust assets by virtue of the will of Martin L. Corley, or the Marital Trust of Martin L. Corley, the Trust shall pay the sum of Six Hundred and Fifty-Thousand (\$650,000.00) dollars, which represents the total payout of all monthly payments due to Mrs. Corley under the terms of the Agreement and Order.

15. Mrs. Corley expressly and specifically waives any and all future annual payments from the Trust as well as any right, title and interest in any property owned by the Trust and the Trust itself.

16. Ms. Williams expressly and specifically waives any and all payments of any kind from the Will of Martin L. Corley, the Trust, as well as any right, title and interest in any property owned by the Trust, outside the \$50,000.00.

17. The parties recognize and agree that the amount being paid to Mrs. Corley represents only the monthly payments due to Mrs. Corley and the bequest to Ms. Williams. Mrs. Corley is not receiving any right, interest or benefit in any annual payments that would have been paid to her for the year 2011 or thereafter.

18. In further consideration of the waiver of Mrs. Corley's interest in the Trust, the Trust shall deposit with the Circuit Court for Lexington County, South Carolina, the sum of \$55,000.00, which represents the annual payment that was tendered to Mrs. Corley for 2010.

19. Mrs. Corley agrees to indemnify and hold harmless the Trust, Samuel L. Corley individually or as trustee of the Trust, and any other beneficiary of the trust, their counsel, agents, employees, insurers, heirs, successors or assigns from pending claims or future claims arising from or connect to Mrs. Corley's interest in the trust.

20. Mrs. Corley shall set aside in a designated account, which account may be the trust account of her counsel, Desa Ballard, the sum of \$50,000.00, which shall be used, if necessary, to meet the indemnity obligations undertaken in the prior paragraph.

21. No supplement to, or modification, waiver, or amendment to this Agreement, or any portion thereof, shall be binding unless executed in writing by the Party against whom enforcement of such supplement, modification, waiver, or amendment is sought.

22. This Agreement may be executed in counterparts by the Parties hereto. Each of said counterparts, when so executed and delivered, shall be deemed an original, and all such counterparts, taken together, shall constitute but one and the same instrument. As so executed, this Agreement shall be as valid and binding on each Party as if all Parties had signed the same copy.

23. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina. Venue and jurisdiction of any action or proceeding arising out of or connected with this Agreement shall lie exclusively in the state courts of competent jurisdiction of Lexington County, South Carolina. The Parties expressly waive all other

jurisdictions and venues. Any provision hereof which in any way may be construed to violate or contravene the laws of this State shall be deemed not to be a part of this Agreement and the remaining terms of the Agreement shall, in all other respects, remain in full force and effect.

24. This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof. Each Party has made its own independent investigation of the matter settled, and has been advised concerning the terms of this Agreement by counsel of its choice, and is not relying upon any representations not specified herein

The undersigned further represent that they have fully read the foregoing Agreement and know its contents and sign the same as their own free act.

SIGNATURES ON PAGES TO FOLLOW

Witnesses:

Christy Kanone
4/19/12

Parties:

Andra Williams
Andra Williams

Christy Kanone
4/19/12

Gloria Corley, Andra Williams POA
Gloria Corley, or Andra Williams pursuant to the
Durable Power of Attorney filed 4/26/2005

(See Next Page)
Samuel Corley, Individually and as Trustee of the
Corley Marital Trust

Witnesses:

Parties:

Andra Williams

Gloria Corley

Cinde Ralab

Samuel M. Corley
Samuel M. Corley Trustee

Samuel Corley, Individually and as Trustee of the
Corley Marital Trust

EXHIBIT E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE PROBATE COURT
CASE NO. 97-ES-32-00799

Estate of Martin L. Corley

Plaintiff.

VS.

Gloria P. Corley, Dwight L. Corley, Janice C.
Lindler and Patricia C. Grant,

Defendants

In The Matter Of: Estate of Martin L. Corley

CONSENT ORDER TO APPROVE
MODIFIED AGREEMENT AS TO CORLEY
MARITAL TRUST

FILED

MAY 1 2012

PROBATE JUDGE
LEXINGTON COUNTY, S.C.

This matter having come before the Court on the motion of the undersigned counsel to enter into the record the attached *Agreement to Terminate Interest in the Martin L. Corley Marital Trust* (herein, the Trust).

On or around October 15, 1998, the parties hereto entered into an *Agreement Among Successors to Decedent*. Samuel M. Corley is the sole Trustee of all trusts under the Will of Martin L. Corley. This Agreement was made a final order by Judge Eckstrom.

Mrs. Corley, by and through her daughter Andra Williams as durable power of attorney, together with Sam Corley as Trustee, desire to terminate the relationship and obligations between Mrs. Corley and the Trust. The parties hereto are authorized pursuant to South Carolina Probate Code Sections 62-3-912 and 62-3-1101 to agree among themselves to alter the interests, shares or amounts to which they are entitled under the will of Mr. Martin Corley and did so by way of the attached Agreement to Terminate Interests.

The Court having considered the motion. it is hereby

ORDERED that the Agreement between the parties hereto is accepted and is entered into the record of this case as final and full disposal the relationship by and among the parties with

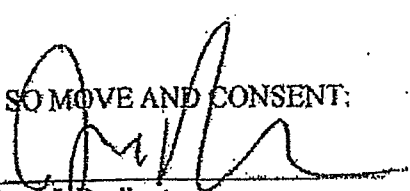


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respect to the Estate and Trust of Martin Corley.

AND IT IS SO ORDERED.

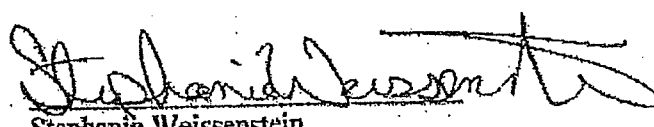
WE SO MOVE AND CONSENT:


Richard J. Breibart
Subscribed with permission
Law Office of Richard Breibart, LLC
201 West Main Street, Suite B
Post Office Box 310
Lexington South Carolina 29072

Attorney for Samuel Corley, individually and
As Trustee of the Corley Martial Trust


~~JUDGE, ELEVENTH JUDICIAL CIRCUIT~~

5-7-12


Stephanie Weissenstein
Desa Ballard
Ballard Watson Weissenstein
Post Office Box 6338
West Columbia, South Carolina 29171

Attorneys for Gloria Corley and Andra
Williams, individually and as Attorney
In fact for Gloria Corley

EXHIBIT F

LAW OFFICES OF DESA BALLARD
IOLTA ACCOUNT
226 STATE ST
WEST COLUMBIA, SC 29189
803-796-9299

SOUTH CAROLINA BANK AND TRUST
COLUMBIA, SC 29212
67-98532

1143

Oct 05/12

PAY TO THE
ORDER OF

Gloria Corley

\$

\$522,818.31

Five Hundred Twenty Two Thousand Eight Hundred Eighteen

31/100

DOLLARS

Gloria Corley

VOID AFTER 60 DAYS

MEMO

Disbursement (in re: Corley Marital Trust)

Stephanie Wessent
AUTHORIZED SIGNATURE

Details on Back
Security Features including

Indira Williams POA for
Gloria Corley

1143 \$522,818.31 10/10/2012

EXHIBIT
ROA 0069

EXHIBIT G

First Citizens
1230 Main Street
PO Box 29
Columbia, SC 29202-0029

SC08

Your Account(s) At A Glance

ANDRA D WILLIAMS
222 COLUMBIA AV

ZE
140

Checking
Balance 500,069.18+

Statement Period: October 9, 2012 Thru October 23, 2012
Branch : 140

Account Number :

Premium Money Market Special
Account Number : 09

Enclosures In Statement: 0

Beginning Balance	0.00	Statement Period Days	15
1 Deposits	522,818.31+	Average Collected Balance	478,841.00+
0 Other Credits	0.00	Annual Percentage Yield Earned*	0.35%
Interest Earned This Period	68.87+	Interest Rate on Statement Day	0.35%
0 Checks	0.00	Total Interest Earned YTD	68.87+
1 Other Debits	22,818.00-	*For this statement period	
Monthly Service Charge	0.00		
Ending Balance	500,069.18+		

Deposits To Your Account

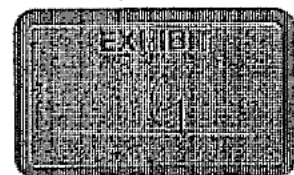
Date	Description	Amount
10-09	Customer Deposit	522,818.31
Total		522,818.31

Other Credits And Interest To Your Account

Date	Description	Amount
10-23	Interest	68.87
Total		68.87

For Customer Inquiry Calls To
FIRST CITIZENS
Call At 1-888-612-4444.

Page 1 of 2



ROA 0071

Statement Period: October 9 , 2012 Thru October 23, 2012
Branch : 140

Account Number : 09

Other Debits From Your Account

Date	Description				Amount
18	Transfer Internet	10-18	Seq # 60676	109	22,818.00
Total					22,818.00
Total Statement Cycle					Total Year-To-Date
Total Overdraft Fees					0.00
Total Insufficient Funds Fees					0.00

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
10-09	522,818.31+	10-18	500,000.31+	10-23	500,069.18+

EXHIBIT H

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
FRANK R. ADDY, CIRCUIT COURT JUDGE
EDGAR W. DICKSON, CIRCUIT COURT JUDGE
Case No. 2011-CP-32-1109

Adele J. Pope,

Respondent,

Vs.

Gloria P. Corley and Samuel M. Corley
Individually and as Trustee of the M. L.
Corley Marital Trust,

Defendants,

Of whom,

Gloria P. Corley is,

Appellant.

RECEIVED

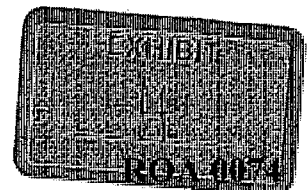
MAY 12 2014

SC Court of Appeals

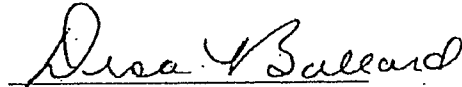
RESPONSE TO MOTION TO DISMISS

Appellant Gloria P. Corley responds to the Motion to Dismiss by Respondent Adele Pope
as follows:

1. Mrs. Pope is correct. The notice of appeal was not timely filed.



Wherefore, Mrs. Corley submits this matter to the Court for consideration and issuance of such orders as may be appropriate.



Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com

ATTORNEY FOR APPELLANT

May 8, 20914

EXHIBIT I

The South Carolina Court of Appeals

Adele J. Pope, Respondent,

v.

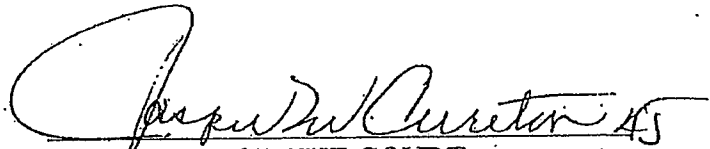
Gloria P. Corley and Samuel M. Corley, individually and
as Trustee of the M.L. Corley Marital Trust, Defendants,

Of whom Gloria P. Corley is the Appellant.

Appellate Case No. 2014-000618

ORDER

Respondent's motion to dismiss is granted. The remittitur will be sent as provided
by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc:

Desa Allen Ballard, Esquire

Adam Tremaine Silvernail, Esquire

FILED

June 30, 2014



EXHIBIT J

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
Adele J. Pope)
)
PLAINTIFF,)
)
VS)
Gloria P. Corley, Samuel M. Corley,)
Individually and as Trustee of the M. L.)
Corley Marital Trust, and Andra R.)
Williams)
)
DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
CASE NO: 2011-CP-32-1109

CONSENT ORDER FOR APPOINTMENT OF
A GUARDIAN *AD LITEM* FOR THE
DEFENDANT, GLORIA P. CORLEY

Kathleen Palinski, as Receiver, has moved this court for an order for the appointment of a
Guardian *ad Litem* for the Defendant Gloria P. Corley.

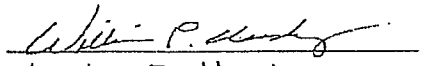
The parties to this action, by and through their attorneys as acknowledged by their
signatures below, have consented to this motion and to the appointment of Heather M. Cairns,
Esquire, as Guardian *ad Litem* for the Defendant Gloria P. Corley.

It appears that there is good cause for granting the motion.

It is therefore ORDERED that

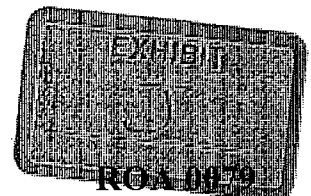
Heather M. Cairns, Esquire is appointed as Guardian *ad Litem* for Defendant Gloria P.
Corley.

AND IT IS SO ORDERED.

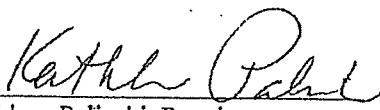

William P. Reesley
Circuit Judge for the Eleventh Circuit

Lexington, South Carolina

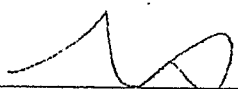
September 17, 2015



I SO MOVE:


Kathleen Palinski, Receiver

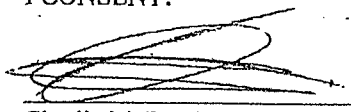
I CONSENT:


Adam t. Silvernail
Attorney for the Plaintiff

I CONSENT:


Steven R. Anderson
Attorney for Defendant Gloria P. Corley

I CONSENT:


Charlie M. Pender
Attorney for Defendant Samuel M. Corley, Individually and
as Trustee for the M.L. Corley Marital Trust

I CONSENT:

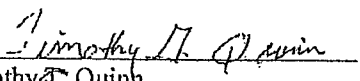

Timothy G. Quinn
Attorney for Defendant Andra R. Williams

EXHIBIT K

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Estate of Gloria P. Corley, by its Special
Administrator,

CASE NO. 2017-CP-29- _____

Plaintiff,

vs.

Desa Ballard, Desa Ballard, P.A., and First
Citizens Bank & Trust Company,

Defendants.

2017 CP 3200618

AFFIDAVIT OF JOHN P. FREEMAN

Personally appeared before me John Freeman who first being duly sworn, deposes
and states as follows:

1. The information contained herein is true and correct to the best of my knowledge,
information, and belief. This affidavit relates to a lawsuit brought by Mrs. Corley by and
through her Guardian ad Litem against Desa Ballard.
2. Following my graduation from the University of Notre Dame Law School in
1970, I worked at the Jones Day law firm (then known as Jones, Day, Cockley and
Reavis). I left Jones Day in 1972 to take a Fellowship at the University of Pennsylvania
Law School's Center for Study of Financial Institutions. I subsequently received my
LL.M. from Penn Law School. In 1973 I joined the faculty of the University of South
Carolina Law School. Besides teaching at USC, I have taught at the University of Texas
Law School and Loyola Law School in Chicago. I have also worked for the Securities
and Exchange Commission as a special counsel. As a law school professor I specialized
in business courses, legal malpractice, and legal ethics. I am familiar with lawyer
disciplinary proceedings, having participated in the litigation of

discipline cases as a defense lawyer, consultant to disciplinary counsel, and as an expert witness on various occasions. I have served as a member of the South Carolina Bar's Ethics Advisory Committee and have written various ethics opinions published by the Bar. I taught agency principles dealing with escrow, trustee and agent duty issues for many years. I taught legal ethics for 35 years at USC Law School, at numerous CLE programs, and at several JCLE programs. I have served as a litigation consultant, or as a testifying expert in numerous legal malpractice cases. I have lectured on the standards applicable to legal malpractice many times, and have written about the topic. I have participated in disputes as to the behavior of lawyers in handling matters with clients many times, and have testified as an expert in such cases many times. I have served as an expert witness various times on questions involving lawyers' obligation to use due care in providing legal advice and in dealing with conflicts of interest. My curriculum vitae is attached as Exhibit 1, which further establishes my qualifications.

3. This affidavit is presented under S.C. Code § 15-36-100 which requires, in a complaint against a lawyer, for the plaintiff to file "an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit." In evaluating the behavior of Ms. Ballard for purposes of this affidavit, I have reviewed her conduct in light of the standard of care applicable to South Carolina lawyers. In a claim for legal malpractice, the plaintiff must prove: (1) the existence of an attorney-client relationship; (2) a breach of duty by the attorney; (3) damage to the client; and (4) proximate cause of the client's damages by the breach. Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010). An attorney is required to render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession. Holy Loch

Distribs., Inc. v. Hitchcock, 340 S.C. 20, 26, 531 S.E.2d 282, 285 (2000). In my opinion, Ms. Ballard's conduct fell below the standard of care established in Holy Loch Distribs.

4. I have reviewed the factual background underlying claims against Ms. Ballard. I have consulted with counsel of Plaintiff, with attorney Adam Silvernail, with GAL Heather Cairns, and have reviewed the proposed complaint, the Depositions of Andra Williams and Adele Pope, and other documents related to the dispute, including deposition exhibits and exhibits attached to the proposed complaint. For purposes of this affidavit, I accept as true the allegations set forth in paras. 5-30 of the proposed complaint. My review of factual information provides me with a reasonable basis for expressing an opinion under S.C. Code § 15-36-100.

5. Based on the facts presented, it is my opinion as an expert in the legal malpractice field that Ms. Ballard engaged in one or more negligent acts and omissions in her dealings with and on behalf of Mrs. Corley, including the following:

a. Causing action to be taken concerning the termination of the Marital Trust that was disadvantageous to Mrs. Corley and not in her best interest;

b. Improperly engaging in a conflicted transaction without proper waivers and in a way harmful to Mrs. Corley;

c. Failure to protect Mrs. Corley's interests by having a Guardian ad Litem appointed to assist her;

d. Failure understand and fully explain the ramifications of the transaction she was handling and causing Mrs. Corley to become embroiled in expensive litigation which she was destined to lose; and

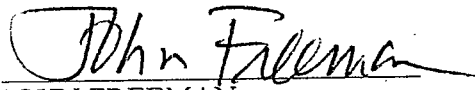
e. Mishandling litigation by missing a filing deadline.

6. Particularly egregious to me is the fact that Ms. Ballard's professed objective was to protect Mrs. Corley's interests by saving her money through proper legal maneuvering. This did not happen. What happened instead, as a result of Ms. Ballard's ill-conceived dealings, is that Mrs. Corley has suffered grave financial loss because her lawyer caused to become involved in improper, surreptitious, bad faith maneuvering that was destined to backfire, and did backfire, inflicting severe financial loss on Mrs. Corley.

7. Having allowed trust and confidence to be reposed in here, and having undertaken to perform services for the benefit of Mrs. Corley, it was Ms. Ballard's duty to act in a competent and loyal manner. It appears she failed to do so, thereby causing injury to Mrs. Corley.

8. In my opinion, Ms. Ballard's conduct, consisting of actions and inaction, fell below the standard of care, skill, diligence and loyalty expected of lawyers in South Carolina. It appears to me that this deficient conduct proximately caused injury to Mrs. Corley, and constitutes actionable malpractice.

9. Further affiant sayeth not.


JOHN FREEMAN

SWORN TO BEFORE ME this ^{29th} day of December, 2015

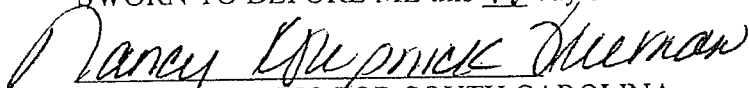

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: July 7, 2018

EXHIBIT 1

RESUME John P. Freeman Professor of Law Emeritus

Address and phone numbers:

2329 Wilmot Avenue
Columbia, South Carolina 29205
803-254-4667 (phone)
753-9870 (fax)

Education history:

LL.M., 1976, University of Pennsylvania Law School; J.D., 1970, University of Notre Dame Law School; B.B.A., 1967, University of Notre Dame (Accounting)

Employment history:

1970-72, Attorney, Jones, Day Law Firm, Cleveland, Ohio

1972-73, Fellow, University of Pennsylvania Law School Center for the Study of Financial Institutions

1973-75, Assistant Professor of Law, University of South Carolina

1974 and 1975 (Summers), Special Counsel, Division of Investment Management, SEC, Washington, D.C.

1975-78, Associate Professor of Law, University of South Carolina; Visiting Associate Professor of Law at Loyola Law School (Chicago) Spring 1977

1978-2008, Professor of Law, University of South Carolina; Visiting Professor of Law at University of Texas Law School, summer 1978

Present:

Distinguished Professor Emeritus and John T. Campbell Chair in Business and Professional Ethics Emeritus

Honors and Awards:

Undergraduate: Member Beta Alpha Psi (Honorary Accounting Fraternity)
Law School: Executive Editor, Notre Dame Lawyer; Distinguished Military Graduate

Professional:

At University of South Carolina Law School: Senior Class Annual Outstanding Faculty Award of 1975, 1976, 1977, 1984

Winston Churchill Award, South Carolina Jury Trial Foundation 1995; Distinguished Service Award, South Carolina Trial Lawyers Association 2000; Appointed Member, South Carolina Judicial Merit Selection Commission (2001-13)
John Belton O'Neill Inn of Court McDonald/Rhodes Award 2010

Admitted to Practice:

Ohio; South Carolina

**Teaching History
Courses Taught:**

Professional Responsibility, Legal Accounting, Business Associations, Corporations, Agency-Partnership, Securities Regulation, Corporate Finance, Business Planning, Legal Research and Writing, Business Crime, Legal Malpractice
Component of Advanced Legal Profession Seminar

Scholarly and Professional Publications

Author, 1999-2008, Regular Legal Ethics Column for South Carolina Lawyer.

Article, Protecting Judicial Independence, 6 Charleston L. Rev. 511 (2012).

Article, Appearance of Impropriety, Recusal, and the *Segars-Andrews* Case, 62 S.C.L. Rev. 485 (2011).

Article (with Stewart Brown and Steve Pomerantz), Mutual Fund Advisory Fees: New Evidence and a Fair Fiduciary Duty Test, 61 Okla. L. Rev. 83 (2008).

Article, The Mutual Fund Distribution Fee Mess, 32 J. Corporation Law 739 (2007).

Viewpoint, Say No to Vending Machine Justice, S.C. Lawyer, July 2007, at 8.

Article, It's the Conflict of Interest, Stupid, Money Mgm't Exec., May 17, 2004, at 14.

Chapter on Legal Opinion Liability in Legal Opinion Letters A Comprehensive Guide to Opinion Letter Practice (M. John Sterba, Jr., ed. 2003) (plus annual updates).

Chapter in South Carolina Damages Treatise on Damages in Securities Cases (2004).

Article, The Ethics of Using Judges to Conceal Wrongdoing, 55 S.C.L. Rev. 829 (2004).

Article (with Stewart Brown), Mutual Fund Advisory Fees: The Cost of Conflicts of Interest, 26 J. Corporation Law 610 (2001).

Article, Liens, Fees and Taxes, South Carolina Trial Lawyer, Summer 2000, at 26.

Article, A Business Lawyer Looks at the Internet, 49 S.C.L. Rev. 903 (1998).

Article, Payments to Medical Care Providers: What Are the Lawyer's Obligations' South Carolina Lawyer, September-October 1994, at 39.

Article, Current Developments in Lawyer Liability: Coping with the Fraudulent Client, Delaware Lawyer, Winter 1993, at 27.

Article, Treble Damage Statutes Can Increase Trust Recoveries, 4 Probate Practice Reporter, June 1992, at 1.

Article (with Nathan Crystal), Scienter in Professional Liability Cases, 42 S.C.L. Rev. 783 (1991).

Article, How Computerized Databases Are Redefining Due Diligence, Carolina Lawyer (July-August 1991).

Article, When Are Lawyers' Gifts to Judges Improper' Carolina Lawyer (November-December 1990).

Article, Current Developments in Legal Opinion Liability, 1989 Col. J. Bus. L. 235.

Article, Understanding the Joint Client Exception to the Attorney-Client Privilege, Carolina Lawyer (July-August 1989).

Article, A RICO Primer, 1985 Small Business Counselor No. 4.

Article, The Use of Mutual Fund Assets to Pay Marketing Costs, 9 Loy. Chi. L.J. 553 (1978).

Article, Marketing Mutual Funds and Individual Life Insurance, 28 S.C.L. Rev. 1 124 (1976), reprinted in Nat'l Ins. L. Rev. Serv. (1977).

Article, Opinion Letters and Professionalism, 1973 Duke L.J. 371 439, reprinted in Securities Law Review 1974 (E. Folk, III, ed.).

Co-author, Multi student Survey, The Mutual Fund Industry: A Legal Survey, 44 Notre Dame Lawyer 732 983 (1969).

Case Comment, Escott v. BarChris Constr. Corp., 44 Notre Dame Lawyer, 122 40 (1968).

Other Scholarly Activities

Speeches (with accompanying outlines) presented at numerous CLE courses sponsored by various entities including the South Carolina Bar, University of South Carolina Law School and the South Carolina Supreme Court.

CLE Presentations 2004-14: 2004-14: S.C. Bar, Business Lawyer Horror Stories II, Oct. 3, 2014; Greenwood, S.C., S.C. Ass'n of Criminal Defense Lawyers, "Whose Theme and Theory is it Anyway?" July 11, 2014; Ft. Worth, Texas, Advice on Duties Owed by Members of the Board of Trustees, May 16, 2014; Charleston Bar Ass'n, 20 Ethics Tips for a Happier Professional Life, Feb. 7, 2014; Ass'n of S.C. Claimants Attorneys for Workers Compensation, Ethics Seminar March 22, 2013; SC Bar, Ethical Issues in Working with Vets and Their Families, Feb. 12, 2012; Expert Witness Participant, SC Bar-ABOTA, Masters in Trial Program, Feb. 1, 2013; SC Bar, Ethical Issues in Handling VA Appeals, Jan. 12, 2013; SC Bar, Ethical Issues in a Non-Adversarial System, Dec. 11, 2012; Richland County Bar Ass'n Ethics CLE, Nov. 9, 2012; University of South Carolina Law School, Alumni Reunion Ethics CLE, Nov. 3, 2012; General Assembly Legal Staff, Ethics for Government Lawyers, Oct. 3, 2012; Setzler Scott Law Firm (In-house CLE), West Columbia, SC, Ethics CLE, Feb. 14, 2012; Charleston Law School, Panel, Symposium on Lawyer and Judicial Fitness, Feb. 10, 2012; Charleston County Bar Ass'n, Ethics CLE, Feb. 3, 2012; SC Bar, Panel on Lawyer Confidentiality, Jan. 19, 2012; Nov. 15, 2011, SC Workers Comp. Comm., Legal Ethics; Richardson Patrick-Sponsored CLE, Charleston, SC, April 29, 2011; National Ass'n State Securities Administrators, Ethics in Securities Litigation, Charleston, Jan. 24, 2011; Richland County Legal Ethics Update, Nov. 5, 2010; S.C. Law Review Symposium, Judicial Recusal, Oct. 21, 2010; League of Women Voters, Lecture on Judicial Selection, Oct. 8, 2010, Charleston, S.C.; KershawHealth Board of Directors, Advice on Your Duties as Board Members, July 15, 2010, Camden, SC; American Ass'n of Matrimonial Lawyers, Ethics in Marital Cases, March 19, 2010 (Aruba), John Belton O'Neill Inn of Court, Ethics Lessons Taught by Lawyers, Nov. 17, 2009; South Carolina Defense Trial Lawyer's Ass'n, Judicial Selection in South Carolina, Nov. 7, 2009; Richland County Bar Ass'n, Legal Ethics, Nov. 6, 2009; South Carolina Legislature Employees, Legal Ethics Update, Oct. 21, 2009; Budget

& Control Board, Ethics Lecture to SC State Employees, Oct. 2, 2009; South Carolina Bar, Family Law Ethics Update, Sept. 18, 2009; Motley Rice Law Firm, Legal Ethics Update, Sept. 11, 2009; South Carolina Judicial Selection Commission, Judicial Ethics, July 31, 2009; John Belton O'Neill Inn of Court, Ethics of Advertising Firms, Jan. 20, 2009; S.C. Bar, Ethics Presentation "Business Lawyer Horror Stories, Nov. 21, 2008; Participant, Mutual Fund Industry Regulation Roundtable, Chicago-Kent Law School, Nov. 7, 2008; SC Legislature, Ethical Duties of Legislative Employees, Oct. 2, 2008; SC Bar, Dealing with Ethical Duties When Dealing with Pro Se Parties, Oct. 10, 2008; Richardson Patrick Local Counsel CLE, Litigation Ethics, May 2, 2008 (Charleston, SC); Inst. of Public Utilities, 39th Ann. Reg. Policy Conf., Panel on Equity and Responsibility in the Public Utilities Sector (Charleston, SC), Dec. 3, 2007; S.C. Attorney General's Office, Litigation Ethics, Nov. 9, 2007; Richland County Bar, Ethics Update, Nov. 2, 2007; SC Bar, Litigation Ethics, Oct. 26, 2007; S.C. Children's Law Center, Ethical Problems in the Child Abuse Area, Oct. 19, 2007; National Ass'n of Medicaid Fraud Control Units, Ethics and the Government Lawyer (Savannah, Ga.), Oct. 1, 2007; SCACPA Litigation Conf., Litigation Ethics (Kiawah Island, SC), Sept. 21, 2007; S.C. Circuit Court Judges, May 17, 2007, Practice Tips in Civil Litigation; Energy & Mineral Law Foundation, May 15, 2007, Panel Member, Legal Ethics, 2 hr.; S.C. Government Investigators, Ethical Duties of Investigators, Feb. 23, 2007; S.C. Bar, Employment Law Section, Ethics Update, Jan. 26, 2007; S.C. Association of Counties, Ethics Update, Dec. 8, 2006; Lexington County Bar Ass'n, Ethics Update, Dec. 6, 2006; Richland County Bar, Ethics Update, Nov. 3, 2006; S.C. State Government Lawyers, Ethics Update, Nov. 3, 2006; S.C. Judicial Merit Selection Commission, Overview of Judicial Ethics, Sept. 14, 2006 (½ hr.); Federal Bar Ass'n, SC Bar, Ethics and Professionalism, Sept. 8, 2006; Commercial Law League of America, Avoiding Grievances and Malpractice Worries in Your Practice, July 6, 2006, Asheville, N.C. (2 hours); National Structured Settlement Trade Ass'n, Ethics in Litigation, Westin Rio Mar, Puerto Rico, May 9, 2006; S.C. Chamber of Commerce, Legal Ethics for the Employment Lawyer, Hilton Head, S.C., May 6, 2006; American Ass'n Matrimonial Lawyers, Ethic Lecture, Los Cabos, Mexico, March 11, 2006; SC Bar, Legal Ethics for Health Care Providers, Jan. 28, 2006; S.C. Association of Counties, Ethics Update, Dec. 9, 2005; SCTLA, Making Money Out of Discovery Abuse, Dec. 2, 2005, Atlanta; Ass'n of S.C. Claimants Attorneys for Workers Compensation, Ethics Seminar, Nov. 4, 2005, Asheville; S.C. Bar, Ethics in Masters Court, Oct. 14, 2005; N.C. Bar-S.C. Bar Construction Law Ethics Program, Asheville, Oct. 1, 2005; S. C. Bar, Unauthorized Practice Problems in Probate Court, Sept. 16, 2005; Greenville County Solicitor's Office, Prosecutorial Ethics, May 9, 2005; Mass Tort Seminar, NYC, Discovery Abuse Issues, March 18, 2005; S.C. Ass'n of Counties, Legal Ethics, Dec. 10, 2004; Federal Bar Ass'n, S.C., Ethics CLE, Dec. 10, 2004 ½ hr.; S.C. Bar Construction Law Section, Ethics CLE on the new Oath; Dec. 3, 2004; NASAA, Salt Lake City, Legal Ethics for Securities Enforcement Lawyers, Dec. 4, 2004; DSS Ethics Training, Dec. 3, 2004; (2-hr. lecture); PIABA, Ethics for Securities Lawyers, and Comments on the Mutual Fund Mess, Oct. 20, 2004 (2 hrs.); Commercial Law League of America, Southern Region Members' Ass'n, Ethical Issues in Commercial Law, Oct. 1, 2004; S.C. Bar, Annual Probate Bench/Bar, Ethics in Probate Court, Sept. 17, 2004; Charleston Bar Ass'n, Lawyer's Oath Seminar, August 27, 2004; S.C. Government Lawyers, Legal Ethics for Government Attorneys, August 20, 2004; S.C. Judiciary, Judicial Ethics Lecture, August 19, 2004; S.C. Bar, Accounting for Non-tax Lawyers, May 2,

2004; Palmetto Land Title Ass'n, Ethics for Closing Attorneys, April, 24, 2004; Richardson, Patrick Law Firm, CLE on Legal Issues Concerning the Mutual Fund Mess, March 26, 2004; S.C. Bar, An Update on Ethical Considerations for the Guardian, March 5, 2004; S.C. Prof. Society on the Abuse of Children, Ethics and Child Abuse, Feb. 26, 2004; National Ass'n of State Boards of Accountancy, Professionalism, Accountability and the Accounting Profession, Feb. 9, 2004; Fidelity Nat'l Title, Ethical Duties of Closing Attorneys, Feb. 5, 2004; S.C. Bar, Annual Convention, Ethical Issues in Handling the Appeal, Jan. 22, 2004 (co-presenter).

Member, ABA Section of Business Law Task Force on Legal Opinions
Participant in Conference on Legal Opinions at Silverado, California, May 31-June 3 (1989).

University and Community Service
Author, Report on Tax Sheltered Annuities to USC Faculty and Staff (1976).
Faculty Senate (1996-98)

University Committees
Promotion and Tenure
Faculty Welfare

Annuities and Insurance
Budget Committee

Law School Committees
Faculty Selection
Academic Standing
Minority Student Affairs
Executive Committee
Dean Evaluation Committee
Dean Search Committee

Chairman, Supreme Court Commission on Continuing Lawyer Competence (1980-83)

President, Leaphart Elementary School PTO (1983)
Chairman, Irmo Middle School School Improvement Council (1985)
Member, Irmo Middle School School Improvement Council (1985-89),
President, Irmo High School Parent, Teacher, Student Association (1988-89, 1992-93) Member
Executive Board (1988-93)
Member, Irmo High School-School Improvement Council (1988-93)
Founder and Past-president, University of Notre Dame Club of South Carolina
Lexington District Five and South Carolina State School Volunteer of the Year 1993

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Desa Ballard and Desa Ballard P.A.,
d/b/a Ballard & Watson,

Plaintiffs,

v.

Admiral Insurance Company,
Monitor Liability Managers,
Mendes & Mount LLP,
Adele R. Pope, individually and
as Special Administrator of the
Estate of Gloria Corley,

Defendants.

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Charleston, South Carolina
September 14, 2017

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SUMMONS
(Non-Jury)

2017 SEP 19 AM 11:30
CLERK OF COURT
CLERK'S OFFICE
CLERK'S OFFICE

ROA 0092

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2017-CP- 40-05628

Desa Ballard and Desa Ballard P.A.,
d/b/a Ballard & Watson,

Plaintiffs,

v.

Admiral Insurance Company,
Monitor Liability Managers,
Mendes & Mount LLP,
Adele R. Pope, individually and
as Special Administrator of the
Estate of Gloria Corley,

Defendants.

COMPLAINT
(Non-Jury)

2017 SEP 19 AM 11:39
CLERK OF COURT
FIFTH JUDICIAL CIRCUIT
SOUTH CAROLINA

I. Introduction

This case presents a unique opportunity for the courts of this state to declare and determine whether it is permissible for a professional liability carrier to place its own financial interests ahead of the directives and best interests of its insured as it relates to an insurer's duty to defend a lawsuit which its insured considers to be without merit. Plaintiffs purchased a professional liability insurance policy annually from the insurer defendants since 2010. This dispute arises from the first claim Plaintiffs have submitted for defense and indemnity under the policy since its inception. The subject policy provides the insured with the right to approve any settlement which the insurer may be inclined to offer in the resolution of a claim. The insurer desires to offer a settlement to the party who has brought a claim against the Plaintiffs in large part to avoid the cost of defending the claim. The Plaintiffs do not wish to authorize any settlement. The question presented in this action is whether the insurer can violate an insured's contractual right to control the final decision to settle a claim or dispute and in order to escape its

financial responsibility to provide a defense to its insureds under its professional liability policy (hereafter the "**Dispute**").

Plaintiffs seek a declaration from the court pursuant to the South Carolina Declaratory Judgment Act that the insurer defendants' policy obligates them to provide a defense to the claim until and unless the Plaintiffs consent to permit them to pursue settlement. Plaintiffs further seek injunctive relief against Admiral Insurance Company, Monitor Liability Managers, and Mendes & Mount LLP (hereafter "**the Insurance Defendants**") to prevent them from taking action in violation of the contractual obligation to defend.

II. Parties and Venue

In support thereof, Plaintiffs would show until the Court:

1. Plaintiff Desa Ballard (hereafter "**Ballard**") is a licensed attorney in South Carolina, who brings this action in her capacity as principal of Desa Ballard P.A. and as an insured under a policy of professional liability insurance issued by Admiral Insurance Company as identified herein.

2. Plaintiff Desa Ballard P.A. (hereafter "**Ballard Law Firm**") is a professional association organized and existing under the laws of the state of South Carolina for the purpose of facilitating its principals in the practice of law, with its principal place of business in Lexington County, South Carolina. Ballard Law Firm is authorized to do business in the State of South Carolina.

3. On information and belief, Admiral Insurance Company (hereafter "**Admiral**") is company which offers professional liability insurance to lawyers in South Carolina. Admiral is apparently not authorized to do business in South Carolina; however, Admiral does business in South Carolina.

4. On information and belief, Monitor Liability Managers (hereafter "**Monitor**") is an entity of unknown organization or structure which acts as an agent for Admiral in some unknown capacity. On information and belief, Monitor is not authorized to do business in South Carolina; however, Monitor does business in South Carolina.

5. On information and belief, Mendes & Mount LLP (hereafter "**Mendes**") is a limited liability corporation organized and existing under a state other than South Carolina, the identity of which is not known, which holds itself out as "the claims administrator" for Monitor. Mendes is not authorized to do business in South Carolina; however, Mendes does business in South Carolina.

6. On information and belief, Adele Pope (hereafter "**Mrs. Pope**") is the special administrator of the Estate of Gloria Corley, by virtue of an order of the Lexington County Probate Court dated August 16, 2016. Mrs. Pope is named in this action individually as a creditor of Mrs. Corley's Estate, and in her representative capacity a special administrator of Mrs. Corley's Estate for purposes of being bound by the judgment of this Court in this proceeding.

7. Jurisdiction and Venue are proper in this Court.

III. Background Facts

8. This is an action for declaratory, injunctive and related relief arising out of a dispute between Plaintiffs and the Insurance Defendants, regarding the respective rights and obligations of the parties under that specific policy of professional liability coverage issued to Plaintiffs on July 12, 2014, Policy No. 91200935 (hereafter "**the Admiral policy**").

9. On information and belief, as part of the pricing for coverage under the Admiral policy, Plaintiffs paid a premium for coverage which reserved to the Plaintiffs the right and final

decision to prohibit settlement of any claim against them which was defended by and covered by the Admiral policy.

10. For the coverage period 2013-2014, Plaintiffs paid an annual premium to Admiral of \$22,545.14 for professional liability insurance coverage.

11. Plaintiffs had been insured by Admiral for professional liability coverage and had paid premiums to Admiral annually for coverage continuously since 2010.

12. Plaintiffs bargained for and were willing to pay the ascribed premium amount in exchange for the promises and commitments contained within the policy, including specifically the promise that the insured would control settlement decisions in the event a claim were to be made against the policy.

13. Plaintiffs renewed the Admiral policy for the policy year 2014-2015, paying the full premium for the coverage provided therein, including the right to refuse a settlement of any claim under the policy, and was provided coverage by Admiral under Policy No. 1291035, for a total annual premium of \$17,967.00.

14. Plaintiffs renewed the Admiral policy for the policy year 2015-2016, paying the full premium for the coverage provided therein, including the right to refuse a settlement of any claim under the policy, and was provided coverage by Admiral under Policy No. 1381669, for a total annual premium of \$14,122.38.

15. Plaintiffs renewed the Admiral policy for the policy year 2016-2017, paying the full premium for the coverage provided therein, including the right to refuse a settlement of any claim under the policy, and was provided coverage by Admiral under Policy No. 147197, for a total annual premium of \$16,176.66.

16. On February 23, 2017, an action alleging professional malpractice was initiated against the Plaintiffs, said action being known and identified as Gloria Corley v. Desa Ballard and Desa Ballard, P.A. (hereafter “**Pope Litigation**”).

17. Having been sued for professional malpractice, the Plaintiffs tendered the claim to the Insurance Defendants and demanded that they provide a defense to the claim in accordance with the terms and conditions of the policy.

18. The Insurance Defendants wished to pursue a settlement of the Pope Litigation.

19. After the Plaintiffs refused to consent to allow Admiral to seek to settle the Pope Litigation, Admiral refused to renew Plaintiffs’ insurance coverage for the policy year 2017-2018, claiming an alleged breach of the terms and conditions of the policy by Plaintiffs .

20. There is a dispute among the parties sufficient to invoke the jurisdiction of this Court for purposes of declaring the rights and obligations of the parties as set forth herein and to grant relief related thereto. The dispute relates to the construction of the Admiral policy and the Plaintiffs’ rights therein.

21. With reference to the injunctive relief sought herein, Plaintiffs are informed and believe that there is no adequate remedy of law sufficient to protect the interests of the Plaintiffs as set forth herein, such that the equitable jurisdiction of this Court is required to issue a temporary and permanent restraining order prohibiting the Insurance Defendants from violating the Admiral policy to the prejudice of the Plaintiffs herein.

IV. Facts Common to All Cause of Action

22. Each and every paragraph set forth above is incorporated herein where relevant as fully as if repeated herein verbatim.

23. Plaintiffs were retained by the daughter of an elderly client named Gloria Corley (hereinafter "**Mrs. Corley**") to defend a lawsuit filed against Mrs. Corley in March, 2011. The suit was brought by Mrs. Corley's former attorney, Mrs. Pope, in her individual capacity.

24. Mrs. Pope had previously represented Mrs. Corley in a matter involving the annual distributions that were due to Mrs. Corley from the Martin L. Corley Trust (hereafter "**Corley Trust**") which had established for her benefit by Mrs. Corley's former husband.

25. Mrs. Pope filed the extraordinary suit against Mrs. Corley to collect attorney fees that Mrs. Pope asserted were due to her by Mrs. Corley for legal services rendered by Mrs. Pope a decade earlier (hereafter "**Mrs. Pope's claim for attorney fees**") even though Mrs. Pope had collected substantial attorney's fees during the representation in the 1990's and had collected approximately \$18,333.33 each year from 1999 through 2010 upon receipt by Mrs. Corley of each annual distribution from the Corley Trust.

26. Plaintiffs represented Mrs. Corley in defending Mrs. Pope's claim for attorney fees, and asserted, among other defenses, that the fee agreement between Mrs. Pope and Mrs. Corley was void as against public policy and that Mrs. Pope was attempting to charge an unreasonable fee to Mrs. Corley and to take advantage of Mrs. Corley who was elderly and in frail health.

27. While defending Mrs. Pope's claim, Plaintiffs also represented Mrs. Corley in negotiating a buy-out of Mrs. Corley's interests in the Martin L. Corley Trust (hereafter "**the trust settlement**").

28. Mrs. Pope was not a party to that proceeding and had no interest in it.

29. The trust settlement and resulting lump sum payment to Mrs. Corley was approved by the Lexington County Probate Court.

30. The trust settlement was structured so that the lump sum payment to Mrs. Corley was calculated on the basis of monthly payments provided for Mrs. Corley in Mr. Corley's Last Will and Testament for the remainder of Mrs. Corley's life based on statutory life expectancy tables.

31. The trust settlement did not include any present or future payments to Mrs. Corley from the trust which were related in any way to the legal representation previously provided to Mrs. Corley and for which Mrs. Pope's claim for attorney fees was related.

32. In addition to the required monthly payments that Mrs. Corley received from the Corley Trust, Mrs. Corley was also to receive an annual lump sum of \$55,000.00 for each year that she continued to live, payments of which were as a result of the prior representation of Mrs. Pope.

33. As a part of her fee for representation, Mrs. Pope claimed an interest in the future lump sum \$55,000.00 payments to Mrs. Corley. From each such payment, Mrs. Pope claimed that she was entitled to \$18,333.33.

34. The trust settlement terminated the future lump sum payments of \$55,000.00 in exchange for an acceleration of the monthly payments. Correspondingly, the trust settlement terminated Mrs. Pope's ongoing attorney's fee claim.

35. In structuring the trust settlement, Plaintiff Ballard met with Aundra Williams (hereafter "**Mrs. Williams**"), Mrs. Corley's attorney-in-fact, and Mrs. Corley's Certified Public Accountant (hereafter "**CPA**") and discussed with them the need to take appropriate and reasonable steps to preserve the funds from the trust settlement for Mrs. Corley's care and for other financial needs of Mrs. Corley.

36. Ballard also advised Mrs. Williams and Mrs. Corley's CPA that Mrs. Pope may attempt to recover some portion of the trust settlement under a theory consistent with Mrs. Pope's claim for attorney fees, although all reasonable steps had been taken to insulate the trust settlement proceeds from Mrs. Pope's claim for attorney fees.

37. The Corley Trust was separately represented by its own counsel in conjunction with the trust settlement who argued to the Probate Court that the modification of the distributions to Mrs. Corley under the Corley Trust was in the best interests of the Trust.

38. Notwithstanding the express language of the trust settlement which rejected and nullified Mrs. Pope's unreasonable fee agreement with Mrs. Corley, Mrs. Pope moved for and obtained an order granting her an award of one-third of the gross amount of the trust settlement (hereafter "**the Pope judgment**").

39. The Pope judgment represented a significant windfall to Mrs. Pope and did not constitute attorney fees earned by her.

40. The Pope judgment provided Mrs. Pope with a windfall judgment for attorney's fees that she most certainly never would have realized if Mrs. Corley's interest in the Corley Trust had not been liquidated and paid to Mrs. Corley. In short, Mrs. Corley would not have lived as long as the statutory life expectancy tables on which the original trust buyout was projected. In fact, Mrs. Corley died in 2016, some four years after the trust settlement.

41. As such, if the Corley Trust was not settled and amended and Mrs. Pope's annual attorney's fees not ended, she would have received no more than \$100,000.00 through the date of Mrs. Corley's death. On Mrs. Corley's behalf, Plaintiffs filed and served an appeal from the Pope judgment to the South Carolina Court of Appeals. The appeal was filed out of time and was dismissed.

42. On May 6, 2014, in accordance with their contractual obligations under the 2013-2014 Admiral policy, Plaintiffs timely notified Admiral that a potential claim could be made against them by Mrs. Corley, as a result of the untimely appeal of the Pope judgment.

43. Admiral assigned the claim for a defense to Mendes and Plaintiffs were notified of the assignment on May 9, 2014.

44. Although not admitting that the failure to file a timely appeal caused any harm to Mrs. Corley, Plaintiffs properly notified Mrs. Corley, through her daughter and attorney-in-fact Aundra Williams, of the missed appeal deadline and the potential that Mrs. Corley may have a legal claim against Plaintiffs. Despite advising their client to seek consultation with separate counsel given the potential for conflict, Plaintiffs were asked by Ms. Williams, on behalf of Mrs. Corley, to continue representing Mrs. Corley, and did so.

45. Plaintiffs kept Admiral properly informed of significant developments in Mrs. Pope's claim for attorney fees as they occurred.

46. By letter dated August 19, 2014, Admiral accepted notice of the matter as a circumstance that would fall within the coverage afforded to the Plaintiffs under the 2013-2014 policy if a claim subsequently arose from the circumstances reported on May 6, 2014.

47. Admiral renewed Plaintiffs' professional liability insurance coverage for the years 2014-2015, 2015-2016, and 2016-2017 after accepting coverage of the potential claim associated with Mrs. Pope's claim for attorney fees.

48. Following the trust settlement, Plaintiff Ballard suggested to Mrs. Williams that Mrs. Williams, as attorney in fact, obtain counsel for the purpose of establishing a conservatorship and/or guardianship to further protect the proceeds of the trust settlement. Plaintiff Ballard made an appointment for Mrs. Williams with a lawyer for that purpose.

49. On information and belief, Mrs. Williams met with the recommended lawyer. However, Mrs. Williams cancelled the meeting before it was concluded, indicated she would return, but never did.

50. Mrs. Pope continued efforts to collect the windfall Pope judgment, and amended her complaint in Mrs. Pope's claim for attorney fees to assert additional claims against third parties.

51. Ballard began to suspect that Williams may have mismanaged and/or misappropriated some or all of the trust settlement money Plaintiffs had recovered for Mrs. Corley in the trust settlement.

52. Plaintiff Ballard advised Mrs. Williams that she (Plaintiff Ballard) would possibly be a witness in further proceedings in Mrs. Pope's claim for attorney fees, and recommended that both Mrs. Williams and Mrs. Corley separately obtain counsel.

53. Plaintiffs were subsequently relieved as counsel for Mrs. Corley, and Mrs. Corley obtained new counsel.

54. On information and belief, Mrs. Williams obtained separate counsel, likely because she was aware she had mismanaged and/or misappropriated some or all of the trust settlement funds from Mrs. Corley.

55. Plaintiffs notified Admiral of the possibility of a potential new claim on August 6, 2015. On information and belief, Admiral involved both Monitor and Mendes in reviewing the matter.

56. On information and belief, Mrs. Corley died on or about March 31, 2016.

57. As a creditor of the Estate of Mrs. Corley, Mrs. Pope petitioned the Probate Court for Lexington County seeking to be appointed as Special Administrator of the Estate of Mrs. Corley.

58. Despite having an obvious conflict in serving as special administrator because she was adverse to Mrs. Corley's Estate as a judgment creditor, Mrs. Pope was appointed as Special Administrator of Mrs. Corley's Estate.

59. On information and belief, Mrs. Pope obtained Mrs. Williams' consent to serve as Special Administrator of the Estate of Mrs. Corley by agreeing that the Estate of Mrs. Corley would not attempt to recover from Mrs. Williams any of the funds that Mrs. Williams had mismanaged or misappropriated from Mrs. Corley.

60. On information and belief, Mrs. Pope also obtained Mrs. Williams' agreement that in exchange for Mrs. Williams not objecting to the appointment of Mrs. Pope as Special Administrator of the Estate of Mrs. Corley, Mrs. Williams would assist Mrs. Pope in pursuing a civil suit against the Plaintiffs herein.

61. After her appointment, Mrs. Pope asserted that Plaintiffs had committed legal malpractice (hereafter the "**legal malpractice claim**") while representing Mrs. Corley in that the trust settlement should not have been made and was not advantageous to Mrs. Corley.

62. On information and belief, by virtue of Mrs. Corley's estate planning, any excess funds recovered by Mrs. Pope as Special Administrator of the Estate of Mrs. Corley that may be recovered in a legal malpractice claim that are not paid to Mrs. Pope in her individual capacity, will be paid to Mrs. Williams in her capacity as Mrs. Corley's beneficiary.

63. Plaintiffs assert the trust settlement was in Mrs. Corley's best interests in light of the circumstances known to and believed to exist by Plaintiffs at the time it was made, and deny any liability to Mrs. Corley's Estate in connection with the trust settlement.

64. Plaintiffs specifically deny that they engaged in negligence with respect to representation of Mrs. Corley in the trust settlement and deny any liability in the legal malpractice matter.

65. In accordance with their rights under the Admiral policy, Plaintiffs notified the Insurance Defendants that no settlement offers were to be extended and no settlements were to be made in the legal malpractice claim with Mrs. Pope in her capacity as Special Administrator of Mrs. Corley's Estate, as was Plaintiffs' rights under the Admiral policy at issue.

66. Agents of Mendes notified Plaintiff Ballard that Admiral wished to engage in pre-suit mediation in the legal malpractice claim with Mrs. Pope for the purpose of attempting to reach a settlement of the legal malpractice claim.

67. Plaintiffs reiterated again that no settlement discussions or mediation were to be initiated by the Insurance Defendants or any attorney retained to represent Plaintiffs by them with respect to the legal malpractice claim, because doing so would violate the Plaintiffs' rights under the Admiral policy.

68. The Insurance Defendants notified Plaintiffs that if they were able to reach a settlement figure on the legal malpractice claim with Mrs. Pope on behalf of Mrs. Corley's Estate and if Plaintiffs refused to agree to the settlement, Admiral would withdraw its defense coverage under the policy and Plaintiffs would be deprived of a defense under the Admiral policy going forward.

69. Plaintiffs reiterated that no settlement discussions should occur in any context in the legal malpractice claim.

70. The Insurance Defendants were repeatedly made aware that Plaintiffs expressly prohibited any settlement discussions being initiated in the legal malpractice claim because any settlement discussions.

71. Mrs. Pope, supposedly acting in her capacity as Special Administrator of Mrs. Corley's Estate, filed suit against Plaintiffs asserting a legal malpractice claim on behalf of Mrs. Corley's Estate.

72. In reality, the suit was brought in an attempt by Mrs. Pope individually to recover funds which Mrs. Corley's Estate would pay to Mrs. Pope in her individual capacity, in satisfaction of the Pope judgment, with any excess funds presumably being paid to Mrs. Williams, who had mismanaged and/or misappropriated the proceeds of the trust settlement.

73. The Insurance Defendants again advised Plaintiffs that they intended to initiate settlement discussions with Mrs. Pope on the legal malpractice claim and if they were successful in reaching a number with which Ms. Pope, Admiral would agree to settle the Estate's claim against Plaintiffs and the Admiral insurance coverage would be withdrawn from Plaintiffs.

74. The Insurance Defendants have stated that the amount of money they intend to offer to Mrs. Corley's Estate as a result of Mrs. Pope's claim as Special Administrator of the Estate of Mrs. Corley exceeds \$100,000.00. As such, it is not a nuisance settlement offer. Such a settlement carries an inference that there was merit to the claims asserted and, as such, would affect Plaintiffs' reputation and future insurability with other professional malpractice carriers. Making a settlement offer of the legal malpractice claim to Mrs. Pope as Special Administrator of the Estate of Mrs. Corley while knowing that Plaintiffs would refuse to authorize the

settlement, would constitute a breach of the Insurance Defendants' obligations to Plaintiff under the Admiral policy, for which no adequate remedy at law exists.

75. Reaching an agreement to settle the legal malpractice claim with Mrs. Pope as Special Administrator of the Estate of Mrs. Corley while knowing that Plaintiffs would refuse to authorize the settlement, would constitute a breach of the Insurance Defendants' obligations to Plaintiffs under the Admiral policy, for which no adequate remedy at law exists.

76. The making of any such settlement offer regarding the legal malpractice claim to Mrs. Corley's Estate would reflect negatively on the Plaintiffs' standing in the legal community and specifically reflect negatively on Plaintiff Ballard's reputation in her field of practice.

77. Plaintiffs lack any adequate remedy at law for the proposed conduct by the Insurance Defendants, such that Plaintiffs are entitled to an injunction, *pendente lite* and permanently, enjoining and restraining the Insurance Defendants from violating their duties to Plaintiffs under the Admiral policy.

78. On May 16, 2017, Monitor notified Plaintiffs that the then-existing Admiral policy would not be renewed "due to the failure to comply with policy terms and conditions."

79. Monitor admitted that Plaintiffs' insurance coverage was being terminated merely because Plaintiffs continued to assert their rights under the Admiral policy.

80. Upon inquiry by Plaintiff Ballard as to how she "failed to comply with the policy terms and conditions," Monitor, acting as agent for Admiral, advised by email on May 24, 2017 that "[t]he basis for the non-renewal is the insured's refusal to consent to settle."

81. On information and belief, the Admiral policy does not contain a term or condition that requires Plaintiffs to "consent to settle" if so requested by the carrier. Quite the

opposite, Plaintiffs purchased a policy which granted them the contractual right not to settle claims under the Admiral policy.

82. Plaintiffs did not violate any term or condition of the Admiral policy, nor did they take any action that was in violation of implied terms of the Admiral policy.

83. On information and belief, the failure and refusal to renew Plaintiffs' coverage was in bad faith and was taken in retaliation for Plaintiffs' exercise of the bargained for contractual rights under the policy to refuse to settle. Moreover, no proposed settlement amount had been agreed upon, so the purported basis for non-renewal was anticipatory only. Therefore, the non-renewal was invidious, retaliatory and against public policy and constituted a denial of first party insurance coverage to Plaintiffs.

84. Because of the actions of the Insurance Defendants, it has become necessary for Plaintiffs to retain counsel to bring this action to obtain relief they are entitled to under the Admiral policy.

85. As set forth below, Plaintiffs seek a declaration of the rights and obligations of the parties ordering and requiring the Insurance Defendants to comply with their obligations to Plaintiffs under the Admiral policy, as well as a temporary and permanent injunction prohibiting the Insurance Defendants from continuing to violate Plaintiffs' rights under the Admiral policy and ordering that no settlement offers or agreements be made in the legal malpractice claim without Plaintiffs' consent.

86. The failure and refusal of the Insurance Defendants to honor Plaintiffs' rights under the Admiral policy is a bad faith refusal to provide first party benefits for which Plaintiffs have incurred costs and attorney fees in seeking to protect their rights.

FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

87. Each and every factual allegation set forth above is incorporated herein where relevant as fully as if repeated herein verbatim

88. Plaintiffs seek a declaratory judgment and order of the court, pursuant to the Declaratory Judgment Act, S.C. Code Ann. Section 15-53-10 *et seq.*, of the rights and obligations of the parties with respect to the Admiral policy, to wit:

- a. The Insurance Defendants are required to honor their obligations to Plaintiffs under the Admiral policy in defending the legal malpractice claim and not terminate such defense;
- b. The Insurance Defendants may not initiate or make any settlement offers of the legal malpractice claim or settle the claim without the express written consent of the Plaintiffs herein;
- c. The Insurance Defendants may not withdraw defense or indemnity coverage from the Plaintiffs as a result of Plaintiffs' refusal to consent to settle the legal malpractice claim or any action related thereto.
- d. Plaintiffs have not violated any terms or conditions of the Admiral policy.
- e. The refusal by the Insurance Defendants to renew Plaintiffs' professional liability insurance based on an alleged "violation of terms and conditions of the policy" was retaliatory and in bad faith.
- f. Plaintiffs are entitled to a temporary and permanent injunction prohibiting the Insurance Defendants from taking any further actions to violate their obligations to plaintiffs under the Admiral policy.

- g. Such other and further order as may be necessary to enforce the orders of the court and to protect the rights of the Plaintiffs herein.

SECOND CAUSE OF ACTION
BAD FAITH FAILURE TO PROVIDE FIRST PARTY INSURANCE COVERAGE

89. Each and every allegation set forth above is incorporated herein where relevant as fully as if repeated herein verbatim

90. Plaintiffs purchased and are insured by professional liability insurance benefits under a contract of insurance issued by Admiral, more specifically identified herein as “**the Admiral policy.**”

91. The Admiral policy is a mutually binding contract of insurance between the Plaintiffs and the Insurance Defendants and/or Admiral.

92. The Insurance Defendants and/or Admiral have engaged in bad faith and/or unreasonable action and have breached their obligations to Plaintiffs under the Admiral policy and/or have engaged in an anticipatory breach of contract by undertaking to initiate settlement discussions on the legal malpractice claim over Plaintiffs’ objections.

93. The Insurance Defendants’ conduct was willful or in reckless disregard of the Plaintiffs’ rights under the insurance contract, in the following respects:

- a. In failing to protect Plaintiffs’ under the Admiral policy;
- b. In ignoring Plaintiffs’ instructions not to engage in settlement discussions with respect to the legal malpractice claim;
- c. In threatening to withdraw coverage to which Plaintiffs are entitled under the Admiral policy;

- d. In retaliating against Plaintiffs for exercising their contractual rights;
- e. In construing the Admiral policy to permit them to withdraw defense coverage purchased by Plaintiffs in retaliation for Plaintiffs exercising their contractual rights under the Admiral policy;
- f. In placing their own financial interests against the interests of their insured, the Plaintiffs herein.
- g. By retaliating against Plaintiffs for exercising their rights under the Admiral policy by refusing to renew Plaintiffs' professional liability coverage;
- h. By falsely asserting that Plaintiffs violated the terms and conditions of the Admiral policy as an excuse to fail to renew Plaintiffs' professional liability coverage under the Admiral policy;
- i. By retaliating against Plaintiffs by refusing to permit defense counsel retained by the Insurance Defendants to retain an expert witness designated by and on behalf of Plaintiffs in an effort to force Plaintiffs to abandon their rights under the Admiral policy;
- j. In violating S.C. Code Ann. Section 38-59-20(1), (6), (7) and (8) in the handling of the legal malpractice claim;
- k. By non-renewing the Plaintiffs' coverage in retaliation for the Plaintiffs' insistence that Admiral honor its policy;
- l. In such other and further ways as may be determined by discovery in this action.

94. Plaintiffs have had to incur legal fees and costs in this effort to protect their rights under the Admiral policy, and have incurred and will continue to incur additional costs and expenses in prosecuting this action, which prosecution is necessary to protect the rights of the Plaintiffs under the Admiral policy, as a direct and proximate result of the wrongful acts of the insurance defendants set forth herein.

95. As a direct and proximate result of the bad faith of the Insurance Defendants as set forth herein, Plaintiffs are entitled to recover reasonable attorney's fees and costs in connection with the bringing of this action, both at common law and by statute.

96. On information and belief, Plaintiffs are entitled to a judgment in their favor against the Insurance Defendants for attorney's fees and costs incurred in the bringing and prosecution of this action.

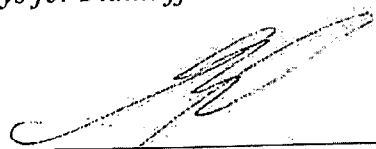
WHEREFORE, Plaintiffs pray for judgment in their favor against the Insurance Defendants as follows:

- A. For an order of declaratory relief as set forth herein;
- B. For a temporary and permanent restraining order preventing the Insurance Defendants from violating Plaintiffs' rights under the Admiral policy by initiating and engaging in any settlement discussions, communicating settlement offers or settling any claim or litigation in connection with the Pope judgment or the legal malpractice claim;
- C. For a determination that the insurance defendants acted in bad faith in connection with their defense of the Plaintiffs in the legal malpractice claim;
- D. For an award of actual damages in an amount to be determined by the court;

- E. For an award of punitive damages in an amount to be determined by the court;
- F. For an award of attorney's fees and costs in connection with this action; and
- G. For such other and further relief as the Court deems just and appropriate in light of the misconduct of the insurance defendants.

Charleston, South Carolina
September 14, 2017

BLAND RICHTER, LLP
Attorneys for Plaintiff



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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Desa Ballard and Desa Ballard P.A.,
d/b/a Ballard & Watson,

Plaintiffs,

vs.

Admiral Insurance Company, Monitor
Liability Managers, Mendes & Mount, LLP,
Adele R. Pope, individually and as Special
Administrator of the Estate of Gloria
Corley,

Defendants.

IN THE CIRCUIT COURT

CASE NO. 2017-CP-40-005628

**AFFIDAVIT OF ADELE J. POPE IN
SUPPORT OF MOTION TO STRIKE
AND MOTION FOR ATTORNEYS' FEES
AND COSTS**

1. This affidavit is based on my own personal knowledge. To the extent it contains legal opinions regarding the standard of care and actions of Plaintiffs and any attorneys working at the relevant time for Plaintiffs, or either of them (collectively "B&W"), such opinions are given to a reasonable degree of professional certainty within my areas of expertise.

2. I have practiced estate planning, probate and trust law in South Carolina for more than thirty years. My practice includes extensive involvement in litigation of cases, large and small, involving trusts and estates.

3. I am the co-author of *Private Foundations, Copyright Heirs, and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...* (Draft, 4/11), which addresses problems associated with the private foundation (a trust) created by entertainer James Brown.

4. I am the author of "Should we be in this Joint?", an article related to certain pitfalls in the use of joint accounts and instruments, and of earlier articles.

5. I hold a J.D. from the University of South Carolina; an LLM in Estate Planning from the University of Miami; and have completed the Harvard Mediation Training program.

6. I am the duly appointed Special Administrator of the Estate of Gloria P. Corley ("Gloria").

7. I elected not to seek appointment as general personal representative under Gloria's will which was prepared by D&B and filed in Lexington County after Gloria's death (the "D&B Will") because I do not believe that the D&B Will reflects Gloria's wishes as I knew and observed them for more than ten years.

8. In addition to dismissing this action, I ask the Court to strike the scurrilous, false and misleading allegations contained in the complaint against Gloria, her daughter Andra Williams ("Angie") and me, and to grant Gloria's estate, and me, attorneys' fees and costs for having to respond.

9. I am informed and believe that the only facts related to Gloria or me which are relevant to this action are: Gloria and Angie engaged D&B in 2011 in a matter related to a contract Gloria had with me. D&B represented Gloria and Angie from 2011 until 2015. D&B failed to timely file an appeal which D&B certified to the South Carolina Court of Appeals was taken in good faith. [See Resp. to Costs, dtd. 8.27.14]. D&B prepared a will for Gloria which excluded her son Hoyt Rowell III ("Hoyt"), and left all of Gloria's assets to Angie. Before Gloria's death, D&B was notified by Camden Lewis that Gloria's GAL intended to make a claim against D&B. Gloria died with an unpaid

judgment against her in excess of \$200,0000, plus interest and all costs of collection, including attorneys' fees. Angie also has a \$1.2 Million judgment against her resulting from the representation transactions. Gloria's estate attempted to settle with D&B before engaging counsel to bring suit. When that failed, Gloria's estate sued.

10. The "facts" as asserted by D&B in the complaint are false, misleading, self-serving and scurrilous, and at least two attorneys at D&B during the relevant period knew them to be largely false and entirely scurrilous when the complaint was filed.

11. The actual facts, known to D&B when the scurrilous complaint was filed are:

- a. On August 28, 1998 Adele Pope ("Adele") and Gloria entered into a contingency fee contract related to litigation with the estate and trust of Gloria's third husband ("ML"). The contract was approved by Angie and Hoyt, a prominent attorney.
- b. The contract provided for Adele to receive 1/3 of all distributions from ML's estate or trust for the benefit of Gloria in excess of \$90,000.00 per year.
- c. By January 22, 1999 Adele had secured a settlement with ML's estate and trust which, in part, guaranteed Gloria \$145,000 per year. In the court-approved settlement Adele was irrevocably designated as the agent to receive and disburse all payments to Gloria in excess of \$90,000.00 per year.
- d. While both Angie and Hoyt had been involved in all matters, after the settlement was concluded Gloria directed Adele not to speak with Angie about her business, and Adele honored the request.
- e. In March 2011 Angie called Adele to meet her to sign, as Gloria had done before, the \$55,000 annual check from ML's Trust. (Gloria received \$90,000 per year outright, \$7,500 each month.)
- f. Adele went to the meeting, where Angie snatched the check; announced she was now in charge; and said she would pay Adele when she felt like it.
- g. Adele sued, asking for ML's Trust to reissue the check, and to continue the contract as it had been carried out for more than a decade.
- h. Before Angie and/or Gloria and Angie hired D&B, Gloria lived in her private apartment; enjoyed an income of about \$170,000.00 per year; a driver; personal

care assistants; low taxes because of her high medical bills (she was over 80); and an obligation to Adele of about \$18,333 per year.

i. In addition, Gloria had a warm personal relationship with both of her children, and a will – drafted by Adele years earlier – which treated Angie and Hoyt equally. Her Power of Attorney, also prepared by Adele, provided that gifts to children were to be equal.

j. As a direct result of the B& W representation, which lasted from 2011 to 2015, when Gloria died in 2016 she was penniless and living in a nursing home which was threatening to evict her for non-payment. Angie, based on advice by D&B, had put all of Gloria's assets in her name, and dissipated many of them. Gloria had paid D&B tens of thousands of dollars and Kenneth Wingate additional thousands; and Gloria had a judgment pending against her, now more than \$200,000, plus interest and costs of collection, including attorneys' fees. Angie, in part as a result of directions from D&B, faces a judgment of more than \$1.2 million.

k. In addition, Gloria's will had been changed to exclude Hoyt, who had always been an equal object of Gloria's affection with Angie.

12. I am informed and believe that D&B's efforts to slander me, as well as Gloria's own family, based on their own failure to meet the standard of care in representing a vulnerable elderly adult, should not be rewarded.

13. I am informed and believe that the record is clear that my service to Gloria met or exceeded the standard of care; that my contingency fee (less than 20% of \$145,000 per year) was modest; and that my appointment under the Probate Code is proper.

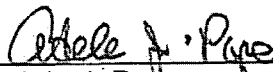
14. I made no promises to anyone in order to secure the appointment. I readily agreed not to sue Gloria's daughter without first notifying the Court.

15. I obtained Gloria's file from Camden Lewis, Esq, immediately after my appointment; interviewed Gloria's GAL Heather Cairns, Esq.; and eventually obtained the D&B file, all of which convinced me that D&B had failed to meet the standard of care in representing Gloria in at least the following ways:

- a. By continuing the joint representation of Gloria and Angie after Gloria's file indicated the 10-year successful payment relationship with Adele; the contract was clearly shown to be valid; Angie's separate interest in ML's Trust was disclosed; and Gloria's age and medical condition were known.
- b. By advising that the Richard Briebart proposal was a good idea where there was clear evidence it was not.
- c. By advising Angie to transfer Gloria's assets to herself in violation of Angie's duty under the POA by which she was representing Gloria.
- d. Apparently, by preparing a will for Gloria, who was a vulnerable adult, which was inconsistent with her long-held estate plan and favored Angie.
- e. By ignoring, rejecting, and apparently not presenting Gloria with numerous offers made by counsel for Adele to mitigate the damages to Gloria.
- f. By directing Gloria to engage an "expert" with knowledge that the "expert," rather than an interest in Gloria's wellbeing, sought to damage Adele because of her role as a witness in the Spence matter. Suggesting that Gloria rely on the "expert" opinion that Adele's less-than- 20% contingency fee contract was void as against public policy.

16. Before engaging counsel for Gloria's estate to respond to the complaint in this action, and responding myself, I requested both for Gloria's estate and for myself that we be removed as parties and the false statements be withdrawn.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO BEFORE ME THIS 23th Day
of October, 2017

 (L.S.)
Notary Public for South Carolina
My commission expires: 1/29/2025

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Desa Ballard and Desa Ballard P.A.,
d/b/a Ballard & Watson,

Plaintiffs,

vs.

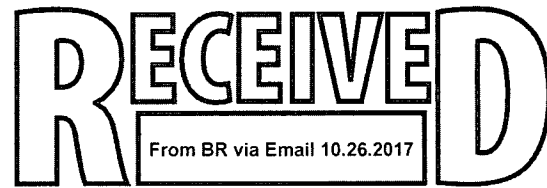
Admiral Insurance Company, Monitor
Liability Managers, Mendes & Mount, LLP,
Adele R. Pope, individually and as Special
Administrator of the Estate of Gloria
Corley,

Defendants.

IN THE CIRCUIT COURT

CASE NO. 2017-CP-40-005628

MOTION TO DISMISS OR,
IN THE ALTERNATIVE, TO STRIKE
AND MOTION FOR ATTORNEYS' FEES
AND COSTS



YOU WILL PLEASE TAKE NOTICE that Defendants Estate of Gloria P. Corley, by its Special Administrator and Adele J. Pope, individually (incorrectly named as "Adele R. Pope" in the caption and body of the Complaint herein), will move ten (10) days after the date of this motion, or as soon thereafter as they may be heard, at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, for an Order dismissing this action as to the Estate of Gloria P. Corley and Pope; alternatively, striking portions of the Complaint herein; and awarding them the attorneys' fees and costs incurred in responding to the inappropriate Complaint herein. The grounds of this motion are as follows:

DISMISSAL IS REQUIRED UNDER RULE 12(b)(6)

1. Plaintiffs fail to state facts sufficient to support a cause of action against either of the movants, and the action must be dismissed pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure*.

2. Specifically, Plaintiffs state in Paragraph 6 of the Complaint herein that Movants are named as Defendants "for purposes of being bound by the judgment of this Court in this proceeding."
3. No relief whatsoever is sought against Movants in the prayer, nor are any allegations made against them within any of Plaintiffs' stated causes of action.
4. As set out in the attached Affidavit of Adele J. Pope, nearly all of the factual allegations regarding Movants are false or misleading, as well as subject to pending litigation between the Estate of Gloria P. Corley and Plaintiffs in the Lexington County Circuit Court.
5. Plaintiffs attempt to bind Movants to potential factual findings in this action, in which no substantive relief is sought against them, is not a recognized cause of action in South Carolina.

DISMISSAL IS REQUIRED UNDER RULE 12(b)(3)

6. Plaintiffs make an unsupported, general allegation in Paragraph 7 that venue is proper in this Court.
7. Nonetheless, Plaintiff Desa Ballard P.A. is situated in Lexington County; the Estate of Gloria P. Corley is being probated in the Lexington County Probate Court; and Defendant Pope is a citizen and resident of Newberry County.
8. There is no allegation in the Complaint that this case has any connection whatsoever to Richland County, and Movants believe that Plaintiffs filed the action in this Court to allow them to litigate the same facts which are before the Lexington County Circuit Court in the pending malpractice action.

9. Because venue is improper in Richland County, this action should be dismissed pursuant to Rule 12(b)(3), *SCRCP*.

ALTERNATIVE MOTION TO STRIKE

10. In the event the Court declines to dismiss the action in its entirety as to Movants, Movants ask that portions of the Complaint making false and/or misleading, immaterial, impertinent and scandalous factual allegations be stricken pursuant to Rule 12(f), *SCRCP*.
11. As set out more fully in the attached Affidavit, nearly all the factual allegations with regard to Movants are false, misleading and/or entirely irrelevant to the causes of action asserted against other Defendants herein.
12. Because no cause of action is stated against Movants, all such immaterial, impertinent and/or scandalous factual allegations should be stricken from the Complaint herein if Movants are not dismissed as parties to this action.
13. Specifically, Movants ask that Paragraphs 24, 25, 39, 40, 41, 50, 58, 59, 60, 71, and 72. Additionally, Movants ask that each reference to "Mrs. Pope" which is in fact a reference to actions taken by the Estate of Gloria P. Corley be stricken in light of the fact that Pope has never made any individual claim against Plaintiffs.

ATTORNEYS' FEES AND COSTS UNDER RULE 11

14. As set out above, Movants have been named as Defendants herein for the express, sole purpose of attempting to bind them to factual findings by this Court, and many of the same facts are currently being litigated before the Lexington County Circuit Court.

15. No cause of action is asserted against Movants, but they have nonetheless been forced to respond to Plaintiffs' baseless filing.

16. Because the Complaint states on its face that Movants are named out of Plaintiffs' desire to have them bound by this Court's judgment, which is not an appropriate purpose for naming a Defendant, Movants submit pursuant to Rule 11 that this Court should award Movants the reasonable attorneys' fees and costs incurred in responding to Plaintiffs' inappropriate complaint.

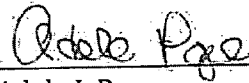
For the foregoing reasons, Movants submit that this Court should dismiss this action against them for failure to state facts sufficient to support a cause of action against Movants and/or for improper venue or, alternatively, strike the immaterial, impertinent and/or scandalous factual allegations set forth in the Complaint. Movants further respectfully request that the Court award them the reasonable attorneys' fees and costs of having to respond to the improper Complaint herein. This motion is based on the Affidavit of Adele J. Pope attached hereto, as well as the South Carolina Rules of Civil Procedure, especially Rules 11, 12(b), and 12(f).

Respectfully submitted,



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*Attorney for Defendant Estate of Gloria P.
Corley*



Adele J. Pope
1228 Walnut Street
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(803) 413-0753
adele@popelawfirm.com

Individual Defendant, pro se

October 24, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 24, 2017, he has served the foregoing document on counsel of record for the Plaintiffs, as well as on Defendants, by depositing a copy of the same into the United States Mail, First-class postage prepaid, addressed as follows:

Ronald L. Richter, Esquire
Bland Richter, LLP
18 Broad Street, Mezzanine
Charleston, SC 29401

Mendes & Mount, LLP
750 Seventh Avenue
New York, NY 10019

Admiral Insurance Company
c/o S.C. Dept. of Insurance
1201 Main Street, Ste. 1000
Columbia, SC 29201

Monitor Liability Managers
c/o CT Corporation System
208 So. Lasalle Street, Suite 814
Chicago, IL 60604



Adam T. Silvernail

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
CASE NUMBER:**

**DESA BALLARD AND DESA BALLARD
P.A., d/b/a BALLARD & WATSON,**

Plaintiffs,

v.

**ADMIRAL INSURANCE COMPANY,
MONITOR LIABILITY MANAGERS,
MENDES & MOUNT, LLP, ADELE R.
POPE, INDIVIDUALLY AND AS
SPECIAL ADMINISTRATOR OF THE
ESTATE OF GLORIA CORLEY**

Defendants.

NOTICE OF REMOVAL

**TO: RONALD L. RICHTER, JR., ESQUIRE, SCOTT M. MONGILLO, ESQUIRE AND
ERIC S. BLAND, ESQUIRE, ATTORNEYS FOR PLAINTIFF AND TO THE
PLAINTIFF ABOVE NAMED:**

Defendants, Admiral Insurance Company, Monitor Liability Managers and Mendes & Mount, LLP, (hereinafter "Defendants"), jointly file this Notice of Removal and would respectfully show in support of this Notice of Removal that:

1. Plaintiffs Desa Ballard and Desa Ballard P.A., d/b/a Ballard & Watson filed this action on September 19, 2017. The Complaint is attached as Exhibit A.
2. This removal notice is based on this Court's diversity jurisdiction pursuant to 28 U.S.C. § 1332 (a) (1). Although the face of the Complaint suggests that complete diversity does

not exist between the Plaintiffs and all of the five defendants, these Defendants assert that the nondiverse defendants have been improperly joined and/or misaligned so that this Court's diversity jurisdiction is proper.

3. The amount in controversy exceeds \$75,000. The insurance policy at issue includes a \$1,000,000 Limit of Liability, and Plaintiffs allege in the Complaint that Admiral desires to offer \$100,000 as a potential settlement for the underlying lawsuit referenced in the Complaint. (Ex. A, Compl. ¶ 74). Moreover, Plaintiffs seek injunctive relief that could cost Admiral substantial sums in additional defense costs and expose Admiral to indemnification for a future judgment against Plaintiffs in the Underlying Lawsuit. (Ex. A, Compl. p. 19). Also, Plaintiffs allege bad faith and seek actual and punitive damages in an indeterminate amount. (Ex. A, Compl. pp. 19-20). See Bell v. Preferred Life Assur. Soc., 320 U.S. 238, 240 (1943) (holding that punitive damages must be considered in determining jurisdictional amount).

4. Venus is proper in the Columbia Division in accordance with 28 U.S.C. §§ 121 (2) and 1441 (a).

5. These Defendants have filed no pleadings with the Court of Common Pleas for Richland County, South Carolina.

6. These Defendants are filing their responsive pleadings to the Complaint in this Court contemporaneously herewith.

7. These Defendants have furnished to the Clerk of Court for Richland County a copy of this Notice of Removal. A copy of the Clerk's Acknowledgment of filing of Notice of Removal will be filed immediately with this Court after it is received from the Richland County Clerk of Court.

8. Plaintiffs allege claims for Declaratory Judgment and Injunctive Relief and Bad Faith Failure to Provide First Party Insurance Coverage all relating to the handling of an insurance claim and defense of an underlying lawsuit asserted against the Plaintiffs by the Estate of Gloria Corley.

9. Plaintiffs allege they are citizens of the State of South Carolina. (Ex. A, Compl. ¶¶ 1-2).

10. Plaintiffs allege that the Estate of Gloria Corley filed a legal malpractice action against Plaintiffs. (Ex. A, Comp. ¶ 71).

11. Plaintiffs allege they are entitled to a defense from Admiral under a Lawyers Professional Liability Insurance policy issued by Admiral to Desa Ballard P.A. dba Balalrd Watson Weissenstein.

12. Plaintiffs allege they have the right under the policy to prevent Admiral from participating in settlement negotiations or mediation with the Estate of Gloria Corley in the Underlying Lawsuit. (Ex. A, Compl. ¶¶ 67, 69, 88.b.).

13. In Count I of the Complaint, Plaintiffs seek a declaratory judgment and injunction prohibiting Admiral from making any settlement offers, withdrawing defense or indemnity of the claim, and finding that Admiral has acted in bad faith. (Ex. A, Compl. ¶ 88).

14. In Count II of the Complaint, Plaintiffs allege these Defendants have acted in bad faith and seek damages, including attorney's fees and costs. (Ex. A, Compl. ¶¶ 90-96).

15. In Plaintiffs' Wherefore Paragraph of the Complaint, Plaintiffs seek actual and punitive damages in an unstated amount as well as attorney's fees and costs. (Ex. A, Compl. pp. 19-20).

16. Defendant Admiral Insurance Company is an insurance corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business located in the State of Arizona. Admiral was served through the South Carolina Department of Insurance on October 9, 2017.

17. Defendant Monitor Liability Managers is not its own legal entity, but is instead an underwriting division on behalf of Admiral Insurance Company. Monitor Liability Managers is not a proper party to this suit. Even if Monitor Liability Managers were a proper party, it is not situated in South Carolina.

18. Defendant Mendes and Mount, LLP is a domestic registered limited liability partnership organized and existing pursuant to the laws of the State of New York with its principal place of business located in New York. Mendes and Mount, LLP has no partners residing in the State of South Carolina. Mendes was served on September 28, 2017.

19. Plaintiff names Adele Pope, individually and as the Special Administrator of the Estate of Gloria Corley as a purported defendant. (Ex. A, Compl. ¶ 6). Adele Pope is a citizen and resident of the State of South Carolina. However, the Complaint does not seek any relief from the Estate of Gloria Corley. Adele Pope, both individually and as Special Administrator of the Estate of Gloria Corley has filed a Motion to Dismiss or, in the Alternative, Motion to Strike and Motion for Attorneys Fees and Costs in the Richland County Court of Common Pleas, a copy of which is attached hereto as Exhibit B.

20. Although it appears based on the face of the Complaint that complete diversity of parties is lacking, diversity jurisdiction is proper if these Defendants demonstrate that the nondiverse parties – Adele Pope, individually and as Special Administrator for the Estate of Gloria Corley – have been improperly joined and/or misaligned. See Mayes v. Rapaport, 198 F.3d 457,

461 (4th Cir. 1999) (stating that fraudulent joinder provides an exception to the complete diversity requirement); Gressette v. Sunset Grille, Inc., 447 F. Supp. 3d 533, 537 (D.S.C. 2006) (ruling that diversity jurisdiction was proper after realigning nondiverse defendant as plaintiff).

21. The party seeking removal bears the burden of establishing that jurisdiction properly exists in federal court. Lovern v. Edwards, 190 F.3d 648, 654 (4th Cir. 1999). Because removal jurisdiction can raise federalism concerns, federal courts must strictly construe removal, and the case should be remanded if doubt exists. Mulcahey v. Columbia Organic Chems. Co., 29 F.3d 148, 151 (4th Cir. 1994).

22. “Fraudulent joinder is a judicially created doctrine that provides an exception to the requirement of complete diversity.” Mayes, 198 F.3d at 461 (quoting Triggs v. John Crump Toyota, Inc., 154 F.3d 1284, 1287 (11th Cir. 1998)).

23. Under the fraudulent joinder doctrine, “a district court can assume jurisdiction over a case even if, inter alia, there are nondiverse named defendants at the time the case is removed. This doctrine effectively permits a district court to disregard, for jurisdictional purposes, the citizenship of certain nondiverse defendants, assume jurisdiction over a case, dismiss the nondiverse defendants, and thereby retain jurisdiction.” Mayes, 198 F.3d at 461 (internal citations omitted).

24. To establish that a nondiverse defendant has been improperly joined, the party removing the action to federal court must demonstrate that (1) the plaintiff has fraudulently pleaded jurisdictional facts; or (2) there is no possibility that the plaintiff would be able to establish a cause of action against the improperly joined defendant in state court. Marshall v. Manville Sales Corp., 6 F.3d 229, 232 (4th Cir. 1993).

25. A defendant claiming fraudulent joinder must show that the plaintiff cannot establish a claim against the nondiverse defendant even after resolving all issues of fact and law in the plaintiff's favor. Id. at 232-33. Although this is a "heavy" burden, see id., these defendants, as demonstrated below, will meet their burden in this Notice of Removal by showing that there is no possibility that the plaintiff could establish a cause of action against the nondiverse defendants.

26. A removing party can defeat a motion to remand by showing that the state court would not recognize a particular cause of action and if the plaintiff fails to "demonstrate any possibility that a negligence claim is cognizable against [the improperly joined defendant] in South Carolina state court." Meixner v. Emerson Elec. Co., 2006 WL 3489031, *3 (D.S.C. 2006) (unpublished); see Grubbs v. Westfield Ins. Co., 430 F. Supp. 2d 563, 569 (N.D.W.Va. 2006) (denying motion to remand because nondiverse employee adjuster improperly joined; adjuster owed no duty to insured so no possible cause of action could be established).

27. In this case, Plaintiffs seek declaratory judgment and injunctive relief against these Defendants, but not against the non-diverse defendants. Likewise, Plaintiffs allege bad faith against these Defendants, but not against the non-diverse defendants. Plaintiffs do not seek any relief against the non-diverse defendants.

28. Because Plaintiffs do not seek any relief from or against the non-diverse defendants, they are not proper parties to this action. There is no allegation that the non-diverse defendants are parties to the insurance contract or that they have committed any tort for which Plaintiffs seek recovery.

29. Therefore, there is no possibility that Plaintiffs would be able to establish a cause of action against the non-diverse defendants based upon the allegations in the Complaint.

30. In the alternative, if the Court were to determine that there is some possibility that Plaintiffs could establish a cause of action against the non-diverse defendants as the Complaint is currently written, any such claim would not destroy this Court's diversity jurisdiction because Plaintiffs have the same interest as the non-diverse defendants in the "principal purpose" of any declaratory judgment action and, therefore, the non-diverse defendants should be realigned as plaintiffs along with Plaintiffs for purposes of the declaratory judgment action.

31. The United States Supreme Court held in Indianapolis v. Chase Nat. Bank, 314 U.S. 63, 69 (1941), that "[d]iversity jurisdiction cannot be conferred upon the federal courts by the parties' own determination of who are plaintiffs and who defendants. It is our duty, as it is that of the lower federal courts, to 'look beyond the pleadings, and arrange the parties according to their sides in the dispute.' . . . Whether the necessary 'collision of interest' exists, is therefore not to be determined by mechanical rules. It must be ascertained from the 'principal purpose of the suit' and the 'primary and controlling matter in dispute.'" (emphasis added) (internal citations omitted).

32. Contrary to other circuits which follow the "substantial controversy" test, the Fourth Circuit has specifically adopted the "principal purpose" test in deciding how to properly align parties. United States Fid. and Guar. Co. v. A & S Mfg. Co., 48 F.3d 131, 133 (4th Cir. 1995).

33. Applying the "principal purpose" test entails two steps. "First, the court must determine the primary issue in the controversy. Next, the court should align the parties according to their positions with respect to the primary issue." Id.

34. If the court determines that the parties should be realigned based on the "principal purpose" test, then the court must determine whether complete diversity exists based on the realignment of the parties. Id.

35. First, the primary purpose of the declaratory judgment action brought by Plaintiffs is, ostensibly, for a declaration requiring these Defendants to “honor their obligations to Plaintiffs under the Admiral policy” and “not withdraw defense or indemnity coverage from the Plaintiffs” (Ex. A, Compl. ¶ 88).

36. The non-diverse defendants are potential judgment creditors of the Plaintiffs. As such, their interest in the primary purpose of the declaratory judgment action would be aligned with Plaintiffs to ensure that there is indemnity coverage under the Admiral policy.

37. Because the Plaintiffs and the non-diverse defendants share the same interest in a finding that Admiral provide indemnification for any potential judgment that the non-diverse defendants may obtain against the Plaintiffs, the non-diverse defendants must be realigned as plaintiffs.

38. Once the non-diverse defendants are realigned as plaintiffs, their putative South Carolina citizenship does not destroy this Court’s diversity jurisdiction over the parties. See Gressette, 447 F. Supp. 2d at 536 (realigning defendant as plaintiff and denying original plaintiff’s motion to remand).

39. These Defendants are unaware whether the non-diverse defendants have been served with the Summons and Complaint. These defendants are also unaware whether the non-diverse defendants would consent to removal. Whether the non-diverse defendants consent to removal is immaterial under the circumstances. In Gressette, the putative defendant did not consent to removal, and the plaintiff argued that the putative defendant’s failure to consent required remand to state court. 447 F. Supp. 2d at 537 n.6. The District Court for the District of South Carolina realigned the nonconsenting defendant as a plaintiff thereby creating complete diversity. The District Court denied the motion to remand to state court, holding that it was “of no moment”

whether the realigned party consented to removal because the Court must evaluate jurisdiction after the parties are realigned. Id.

40. In conclusion, there is complete diversity between the properly joined and/or realigned parties. There is no possible negligence cause of action against the non-diverse defendants, and Plaintiffs do not seek any relief against or from the non-diverse defendants. Therefore, the non-diverse defendants are not proper parties to this action. Moreover, even if the non-diverse defendants were proper parties for purposes of the declaratory judgment action, the non-diverse defendants should be realigned as plaintiffs because the non-diverse defendants' interest in relation to the "primary purpose" of this litigation is the same as Plaintiffs'. Both Plaintiffs and the non-diverse defendants want Admiral to be held liable to indemnify any potential judgment that the non-diverse defendants may obtain against the Plaintiffs.

41. After disregarding the citizenship of the improperly joined defendants, there is complete diversity of citizenship between Plaintiffs, South Carolina citizens, on the one side and Admiral, Monitor, and Mendes, non-South Carolina entities, on the other. If, in the alternative the Court realigns the non-diverse defendants, complete diversity still exists.

WHEREFORE, Defendants Admiral Insurance Company, Monitor Liability Managers, and Mendes and Mount, LLP respectfully remove this action from the Richland County Court of Common Pleas to this Court.

MURPHY & GRANTLAND, P.A.

s/ Wesley B. Sawyer

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Attorneys for the Defendants Admiral Insurance
Company, Monitor Liability Managers and
Mendes & Mount LLP

Columbia, South Carolina
October 27, 2017

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
CASE NUMBER:**

**DESA BALLARD AND DESA BALLARD
P.A., d/b/a BALLARD & WATSON,**

Plaintiffs,

v.

**ADMIRAL INSURANCE COMPANY,
MONITOR LIABILITY MANAGERS,
MENDES & MOUNT, LLP, ADELE R.
POPE, INDIVIDUALLY AND AS
SPECIAL ADMINISTRATOR OF THE
ESTATE OF GLORIA CORLEY**

Defendants.

**ANSWER OF DEFENDANTS ADMIRAL
INSURANCE COMPANY, MONITOR
LIABILITY MANAGERS, AND MENDES
& MOUNT, LLP AND COUNTERCLAIM
AND CROSSCLAIM OF DEFENDANT
ADMIRAL INSURANCE COMPANY**

**TO: RONALD L. RICHTER, JR., ESQUIRE, SCOTT M. MONGILLO, ESQUIRE AND
ERIC S. BLAND, ESQUIRE, ATTORNEYS FOR PLAINTIFF AND TO THE
PLAINTIFF ABOVE NAMED:**

These Defendants, Admiral Insurance Company, Monitor Liability Managers and Mendes & Mount, LLP, (hereinafter "Defendants"), answering the Plaintiff's Complaint herein, would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. These Defendants deny each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.

2. Paragraph 1 of the Plaintiff's Complaint is admitted upon information and belief.

3. Paragraph 2 of the Plaintiff's Complaint is admitted.

4. In response to Paragraph 3 of the Plaintiff's Complaint, Defendant, Admiral Insurance Company, admits it is an insurance company organized and existing pursuant to the laws of the State of Delaware with its principal place of business located in the State of Arizona. Admiral Insurance Company is authorized by the South Carolina Department of Insurance to issue policies in the State of South Carolina as an eligible surplus lines carrier.

5. In response to the allegations contained in Paragraph 4 of the Complaint, Defendant Monitor Liability Managers responds that it is not a corporation, it is an underwriting division, writing insurance on behalf of Admiral Insurance Company. Therefore, Monitor Liability Managers is not a proper defendant and should not be a party to this suit. The remaining allegations contained in Paragraph 4 of the Complaint are denied.

6. In response to Paragraph 5 of the Plaintiff's Complaint, Mendes and Mount, LLP is a domestic registered limited liability partnership organized and existing pursuant to the laws of the State of New York with its principal place of business located in New York. Mendes and Mount, LLP has no partners residing in the State of South Carolina. The remaining allegations contained in Paragraph 5 of the Plaintiffs' Complaint are denied.

7. In response to the allegations contained in Paragraph 6 of the Complaint, these defendants admit upon information and belief that Adele Pope is a resident of Lexington County and serves as the special administrator of the Estate of Gloria Corley by order of the Lexington County Probate Court dated August 16, 2016. The remaining allegations of Paragraph 6 of the Plaintiffs' Complaint are denied.

8. Paragraph 7 of the Complaint is denied. The proper venue for this action is Lexington County. No party to this action is a resident of or principally located in Richland County

and the underlying lawsuit at issue in this case is situated in the Lexington County Court of Common Pleas.

9. Paragraph 8 of the Plaintiff's Complaint is denied as there is a dispute between Plaintiff and Admiral Insurance Company. There is no contractual agreement between Mendes & Mount and Plaintiff and, therefore, Mendes & Mount is not a proper defendant in this action. Likewise, the insurance contract is underwritten by Admiral Insurance Company, not Monitor Liability Managers. Therefore, Monitor Liability Managers is not a proper defendant in this action.

10. In response to Paragraph 9 of the Plaintiff's Complaint, the Admiral policy speaks for itself and is incorporated by reference.

11. In response to Paragraph 10 of the Plaintiff's Complaint, Defendants admit that Plaintiff paid the annual premium for the policy, but deny that the premium was \$22,545.14.

12. Paragraph 11 is denied.

13. Paragraph 12 of the Complaint is denied and this Defendant craves reference to the policy for all of its terms and conditions. The policy states in pertinent part:

VI. Defense, Cooperation and Settlement

* * *

- B. The **Insurer** shall have the sole right and the duty to defend any covered **Claim**, and has the sole right to select defense counsel.
- ...
- C. Each **Insured** shall cooperate with the **Insurer** in the defense and settlement of any **Claim** Upon the request of the **Insurer**, the **Insured** shall . . . attend hearings, depositions and trials, assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, as well as giving written statements to the **Insurer's** representatives, and meeting with such representatives for purposes of investigation or defense, all without charge to the **Insurer**.
- D. The **Insurer** shall not settle any **Claims** without the **Named Insured's** consent. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by the

Insurer, which is acceptable to the claimant, and shall elect to contest the **Claim**, or continue any legal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Insurer's** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been settled, including **Claim Expense** incurred up to the date of such refusal. Such amounts are subject to the provisions of Section V. In the event that the **Named Insured** refuses to consent to any settlement as set forth in this Section VI. D., the **Insurer's** right and duty to defend such **Claim** shall end upon the date of such refusal.

14. Paragraph 13 of the Plaintiff's Complaint is denied and is irrelevant and immaterial.
15. Paragraph 14 of the Plaintiff's Complaint is denied and is irrelevant and immaterial.
16. Paragraph 15 of the Plaintiff's Complaint is denied and is irrelevant and immaterial.
17. In response to the allegations contained in Paragraph 16 of the Complaint, these Defendants admit that a lawsuit was filed against Plaintiffs on February 23, 2017 in a lawsuit captioned Estate of Gloria P. Corley, by its Special Administrator vs. Desa Ballard and Desa Ballard, P.A., Civil Action No. 2017-CP-32-618. The remaining allegations contained in Paragraph 16 of the Plaintiff's Complaint are denied.
18. Paragraph 17 of the Plaintiff's Complaint is denied as the claim was tendered to Admiral Insurance Company before the Pope Litigation was filed. However, Defendants admit that Plaintiffs tendered the claim to Admiral Insurance Company.
19. In response to Paragraph 18 of the Plaintiff's Complaint, Admiral Insurance Company wishes to pursue settlement negotiations in the Pope Litigation in accordance with the terms of the policy.
20. In response to the allegations contained in Paragraph 19 of the Plaintiff's Complaint, Defendants admit that Admiral Insurance Company chose not to renew the policy for the 2017-2018 policy year.
21. Paragraph 20 of the Plaintiff's Complaint is denied.

22. Paragraph 21 of the Plaintiff's Complaint is denied.

23. In response to the allegations contained in Paragraph 22 of the Plaintiff's Complaint, these defendants repeat and re-allege their responses to Paragraph 1 through 21 above as if set forth verbatim below.

24. In response to allegations contained in Paragraphs 23 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

25. In response to allegations contained in Paragraphs 24 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

26. In response to allegations contained in Paragraphs 25 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

27. In response to allegations contained in Paragraphs 26 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

28. In response to allegations contained in Paragraphs 27 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

29. In response to allegations contained in Paragraphs 28 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

30. In response to allegations contained in Paragraphs 29 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

31. In response to allegations contained in Paragraphs 30 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

32. In response to allegations contained in Paragraphs 31 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

33. In response to allegations contained in Paragraphs 32 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

34. In response to allegations contained in Paragraphs 33 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

35. In response to allegations contained in Paragraphs 34 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

36. In response to allegations contained in Paragraphs 35 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

37. In response to allegations contained in Paragraphs 36 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

38. In response to allegations contained in Paragraphs 37 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

39. In response to allegations contained in Paragraphs 38 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

40. In response to allegations contained in Paragraphs 39 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

41. In response to allegations contained in Paragraphs 40 of the Plaintiff's Complaint, this Defendant admits that Mrs. Corley died in 2016, but otherwise lacks sufficient knowledge or information to form a response and therefore denies the same.

42. In response to allegations contained in Paragraphs 41 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

43. Paragraph 42 of the Plaintiff's Complaint is admitted.

44. Paragraph 43 of the Plaintiff's Complaint is denied inasmuch as Mendes acted as monitoring counsel, not defense counsel.

45. In response to allegations contained in Paragraphs 44 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

46. In response to allegations contained in Paragraphs 45 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

47. In response to the allegations contained in Paragraph 46 of the Plaintiff's Complaint, Admiral admits that a letter was sent to the Plaintiffs on August 19, 2014 by Vanessa Pelletier. Admiral craves reference to the letter, which speaks for itself. Admiral denies the remaining allegations of Paragraph 46 of the Plaintiff's Complaint.

48. In response to the allegations contained in Paragraph 47 of the Plaintiff's Complaint, Admiral admits that it renewed the policy for years 2014-2015, 2015-2016, and 2016-2017. The remaining allegations contained in Paragraph 47 of the Plaintiff's Complaint are denied.

49. In response to allegations contained in Paragraphs 48 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

50. In response to allegations contained in Paragraphs 49 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

51. In response to allegations contained in Paragraphs 50 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

52. In response to allegations contained in Paragraphs 51 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

53. In response to allegations contained in Paragraphs 52 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

54. In response to allegations contained in Paragraphs 53 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

55. In response to allegations contained in Paragraphs 54 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

56. Paragraph 55 of the Plaintiff's Complaint is denied as to any potential new claim. Defendants admit that Monitor and Mendes were involved in the ongoing review of the matter.

57. Paragraph 56 of the Plaintiff's Complaint is admitted upon information and belief.

58. Paragraph 57 of the Plaintiff's Complaint is admitted upon information and belief.

59. In response to allegations contained in Paragraphs 58 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

60. In response to allegations contained in Paragraphs 59 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

61. In response to allegations contained in Paragraphs 60 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

62. Paragraph 61 of the Plaintiff's Complaint is admitted.

63. In response to allegations contained in Paragraphs 62 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

64. In response to Paragraph 63 of the Plaintiff's Complaint, it is admitted that Plaintiff makes this contention.

65. In response to Paragraph 64 of the Plaintiff's Complaint, it is admitted that Plaintiff makes this contention.

66. In response to Paragraph 65 of the Plaintiff's Complaint, it is admitted that Plaintiff Desa Ballard stated that no settlement offers were to be extended and no settlements were to be made in the legal malpractice action, but Defendants deny that Plaintiffs have a right under the policy to prevent settlement negotiations. The Policy expressly states that Plaintiffs "shall cooperate with the Insurer in the defense and settlement of any Claim"

67. Paragraph 66 of the Plaintiff's Complaint is admitted.

68. In response to Paragraph 67 of the Plaintiff's Complaint, it is admitted that Plaintiff Desa Ballard stated that no settlement discussions or mediation were to be made, but Defendants deny that initiation of settlement negotiations or mediation would violate Plaintiffs' rights under the policy. The Policy expressly states that Plaintiffs "shall cooperate with the Insurer in the defense and settlement of any Claim"

69. In response to Paragraph 68 of the Plaintiff's Complaint, Defendants crave reference to all prior written communications for their full terms. Defendants admit that the policy issued by Admiral provides in pertinent part:

D. The **Insurer** shall not settle any **Claims** without the **Named Insured's** consent. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by the **Insurer**, which is acceptable to the claimant, and shall elect to contest the **Claim**, or continue any legal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Insurer's** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been settled, including **Claim Expense** incurred up to the date of such refusal. Such amounts are subject to the provisions of Section V. In the event that the **Named Insured** refuses to consent to any settlement as set forth in this Section VI. D., the **Insurer's** right and duty to defend such **Claim** shall end upon the date of such refusal.

70. In response to allegations contained in Paragraphs 69 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

71. Paragraph 70 of the Plaintiff's Complaint is an incomplete sentence and therefore Defendant denies the same for lack of clarity.

72. Paragraph 71 of the Plaintiff's Complaint is admitted.

73. In response to allegations contained in Paragraphs 72 of the Plaintiff's Complaint, this Defendant lacks sufficient knowledge or information to form a response and therefore denies the same.

74. Paragraph 73 of the Plaintiff's Complaint is an incomplete or incomprehensible sentence, and is therefore denied.

75. Paragraph 74 of the Plaintiff's Complaint is denied. Defendant admits that it would have offered \$100,000.00, otherwise the remainder of said paragraph is denied.

76. Paragraph 75 of the Plaintiff's Complaint is denied.

77. Paragraph 76 of the Plaintiff's Complaint is denied.

78. Paragraph 77 of the Plaintiff's Complaint is denied.

79. Paragraph 78 of the Plaintiff's Complaint is admitted.

80. Paragraph 79 of the Plaintiff's Complaint is denied.

81. In response to allegations contained in Paragraphs 80 of the Plaintiff's Complaint, this Defendant admits that the email speaks for itself. Plaintiff refused to allow Admiral to participate in settlement negotiations.

82. In response to allegations contained in Paragraphs 81 of the Plaintiff's Complaint, policy gives Admiral right and duty to control defense, which includes negotiating settlement. The policy also states that the insured "shall cooperate with the Insurer in the defense and settlement of any Claim" The policy merely gives insured right to reject a proposed settlement, but also lays out what happens in that event, providing:

D. The **Insurer** shall not settle any **Claims** without the **Named Insured's** consent. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by the **Insurer**, which is acceptable to the claimant, and shall elect to contest the **Claim**, or continue any legal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Insurer's** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been settled, including **Claim Expense** incurred up to the date of such refusal. Such amounts are subject to the provisions of Section V. In the event that the **Named Insured** refuses to consent to any settlement as set forth in this Section VI. D., the **Insurer's** right and duty to defend such **Claim** shall end upon the date of such refusal.

83. Paragraph 82 of the Plaintiff's Complaint is denied.

84. Paragraph 83 of the Plaintiff's Complaint is denied.

85. Paragraph 84 of the Plaintiff's Complaint is denied.

86. Paragraph 85 of the Plaintiff's Complaint is denied.

87. Paragraph 86 of the Plaintiff's Complaint is denied.

88. In response to the allegation contained in Paragraph 87 of the Plaintiffs' Complaint, Defendants repeat and re-allege their responses to Paragraphs 1 through 86 above as if set forth verbatim below.

89. The allegations contained in Paragraph 88 of the Plaintiff's Complaint are denied.

90. In response to the allegations contained in Paragraph 89 of the Plaintiffs' Complaint, Defendants repeat and re-allege their responses to Paragraphs 1 through 88 above as if set forth verbatim below.

91. In response to the allegations contained in Paragraph 90, Defendants admit that Admiral issued a Lawyers Professional Liability Insurance policy identified by policy number 91200935 to Desa Ballard P.A. dba Ballard & Watson, Attorneys at Law. Defendants crave reference to the policy for all of its terms and conditions.

92. In response to the allegations contained in Paragraph 91 of the Plaintiff's Complaint, Defendants admit that the policy is a mutually binding contract between Plaintiffs and Admiral, but deny that the policy is a contract that binds Monitor or Mendes.

93. Paragraph 92 of the Plaintiff's Complaint is denied. Moreover, Plaintiff lacks standing and privity of contract with Monitor or Mendes and Mount.

94. The allegations contained in Paragraph 93 of the Plaintiff's Complaint are denied.

95. The allegations contained in Paragraph 94 of the Plaintiff's Complaint are denied.

96. Paragraph 95 of the Plaintiff's Complaint is denied and Defendants moves to strike the same.

97. Paragraph 96 of the Plaintiff's Complaint is denied.

98. Plaintiff's WHEREFORE paragraph is denied.

FOR A SECOND DEFENSE

99. The Complaint fails to state a claim upon which relief can be based and accordingly, this Defendant is entitled to judgment as a matter of law pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

100. The Defendants Mendes and Monitor allege that no contract exists between these Defendants and the Plaintiffs, no breach of any contract occurred and no claim for breach of contract against these Defendants exists.

FOR A FOURTH DEFENSE

101. Plaintiffs had a duty to read and become familiar with all of the terms and limitations of the insurance contract and their failure to do so precludes recovery for any alleged misrepresentations or misunderstandings that could have been discovered by a review of the contract language.

FOR A FIFTH DEFENSE

102. The Defendants would show, upon information and belief, that venue is improper in Richland County. Therefore, pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure, the Defendants pray that the Plaintiff's Complaint be dismissed with costs or transferred the proper venue.

FOR A SIXTH DEFENSE

103. Any award of punitive damages should not exceed the greater of three (3) times the amount of compensatory damages as provided for in S.C. Code Ann. §15-32-530.

FOR A SEVENTH DEFENSE

104. Pursuant to S.C. Code Ann. §15-32-520, any proceeding to determine punitive damages should be bifurcated from any trial to determine liability and compensatory damages.

FOR AN EIGHTH DEFENSE

105. This Defendant would show, upon information and belief, that the Plaintiff's claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates this Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

FOR A NINTH DEFENSE

106. These Defendants would show that the Plaintiff has failed to state a claim for which punitive damages are recoverable under any applicable law as there is no reckless, willful, wanton, or grossly negligent conduct on the part of these Defendants; therefore, Plaintiff's claims for punitive damages should be dismissed.

FOR A TENTH DEFENSE

107. One or more matters alleged in the Complaint have already been litigated in case to which Plaintiffs were either parties or were in privity with parties. Therefore, those issues are barred by the doctrine offensive collateral estoppel.

FOR AN ELEVENTH DEFENSE

108. The Defendants would reserve their right to amend the Answer once the process of discovery and depositions has been conducted to raise any other affirmative defense or bar to this action which may reasonably be supported by the facts and testimony presented, and reserves the right to move to amend this Answer at the appropriate time should the evidence so warrant.

FOR A TWELFTH DEFENSE AND BY WAS OF COUNTERCLAIM AND CROSS-CLAIM BY ADMIRAL INSURANCE COMPANY

109. Counterclaimant Admiral Insurance Company is an insurance corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business located in the State of New Jersey.

110. Counterclaim Defendants Desa Ballard is a citizen and resident of the State of South Carolina.

111. Counterclaim Defendant Desa Ballard P.A. is a professional association organized and existing under the laws of the State of South Carolina with its principal place of business located in Lexington County, South Carolina.

112. Cross-claim defendant Adele R. Pope, as Special Administrator of the Estate of Gloria Corley is the special administrator for the Estate of Gloria Corley, by virtue of an order of the Lexington County Probate Court dated August 16, 2016.

113. This matter is brought pursuant to Rule 57 of the Federal Rules of Civil Procedure and pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.; there is a real or justiciable controversy between the parties, and by these proceedings Counterclaimant Admiral asks this Court to inquire into and declare the rights and obligations of the parties hereto arising out of the facts set forth below.

FACTS

114. Admiral issued a Lawyers Professional Liability Insurance policy (hereinafter “Policy”) to Desa Ballard P.A. d/b/a Ballard & Watson, Attorneys at Law, identified by policy number 91200935, with effective dates of July 1, 2013 to July 1, 2014. The Policy includes a Limit of Liability inclusive of all “Damages” and “Claims Expenses” as those terms are defined in the policy up to \$1,000,000 for each “Claim.” A copy of the Policy is attached to this Counterclaim and Crossclaim as Exhibit 1.

115. Defendant Desa Ballard, P.A. d/b/a Ballard & Watson notified Admiral of a potential claim arising out of the firm’s representation of Gloria Corley and failure to meet a deadline to file an appeal.

116. On February 23, 2017, the Estate of Gloria P. Corley, by its Special Administrator, filed a Summons and Complaint in the Lexington County Court of Common Pleas, Case Number

2017-CP-32-00618, captioned Estate of Gloria P. Corley, by its Special Administrator vs. Desa Ballard and Desa Ballard, P.A. (hereinafter "Underlying Lawsuit").

117. Defendants Desa Ballard, P.A. d/b/a Ballard & Watson tendered the defense of the Underlying Lawsuit to Admiral, and Admiral assigned defense counsel.

118. The Policy provides in pertinent part:

VI. Defense, Cooperation and Settlement

* * *

- B. The **Insurer** shall have the sole right and the duty to defend any covered **Claim**, and has the sole right to select defense counsel.
...
- C. Each **Insured** shall cooperate with the **Insurer** in the defense and settlement of any **Claim** Upon the request of the **Insurer**, the **Insured** shall . . . attend hearings, depositions and trials, assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, as well as giving written statements to the **Insurer's** representatives, and meeting with such representatives for purposes of investigation or defense, all without charge to the **Insurer**.
- D. The **Insurer** shall not settle any **Claims** without the **Named Insured's** consent. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by the **Insurer**, which is acceptable to the claimant, and shall elect to contest the **Claim**, or continue any legal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Insurer's** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been settled, including **Claim Expense** incurred up to the date of such refusal. Such amounts are subject to the provisions of Section V. In the event that the **Named Insured** refuses to consent to any settlement as set forth in this Section VI. D., the **Insurer's** right and duty to defend such **Claim** shall end upon the date of such refusal.

119. By the terms of the Policy, Admiral has the sole right and duty to defend the claim.

120. The South Carolina Alternative Dispute Resolution Rules encourage settlement and will mandate mediation in the Underlying Lawsuit.

121. By the terms of the Policy, Desa Ballard and Desa Ballard, P.A. d/b/a Ballard & Watson owe a duty to cooperate in the defense and settlement of any claim.

122. Desa Ballard has opposed and refused to cooperate in any efforts of Admiral to participate in settlement negotiations with the Estate of Gloria Corley, and she has indicated that any efforts to negotiate or mediate the case and she has further indicated her belief that any effort to engage in such negotiations would be a violation of the Policy.

123. Therefore, there is a real and justiciable controversy between the parties.

FOR A FIRST DECLARATION

124. Admiral repeats and realleges the allegations contained in Paragraph 114 through 12 above as if set forth verbatim below.

125. The Policy states that Admiral has the “sole right and duty to defend” the Underlying Lawsuit.

126. Under the South Carolina Alternative Dispute Resolution Rules, Admiral will be required to participate in a mediation of the Underlying Lawsuit.

127. Therefore, Admiral is entitled a declaratory judgment that it has the right to negotiate a potential settlement as part of its defense of the Underlying Lawsuit.

128. Admiral is also entitled a declaratory judgment that it has a right to participate in settlement negotiations at mediation.

FOR A SECOND DECLARATION

129. Admiral repeats and realleges the allegations contained in Paragraph 114 through 128 above as if set forth verbatim below.

130. The Policy states that Desa Ballard and Desa Ballard dba Ballard & Watson, Attorneys at Law – as purported Insureds – “shall cooperate with the Insurer in the defense and settlement of any Claim”

131. Therefore, Admiral is entitled to a declaratory judgment that Desa Ballard and Dessa Ballard P.A. d/b/a Ballard Watson owe a duty to cooperate in the defense and settlement of the case and do not have a right to prevent Admiral from participating in settlement negotiations with the Estate of Gloria Corley.

FOR A THIRD DECLARATION

132. Admiral repeats and realleges the allegations contained in Paragraph 114 through 132 above as if set forth verbatim below.

133. The Policy specifically addresses what happens if Admiral recommends a settlement which is acceptable to the Estate of Gloria Corley.

134. Under the terms of the Policy, the Named Insured – Desa Ballard dba Ballard & Watson, Attorneys at Law – has the right to reject the settlement.

135. However, if the Named Insured rejects the settlement, “then the **Insurer’s** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been settled, including **Claim Expense** incurred up to the date of such refusal.” Furthermore, “the **Insurer’s** right and duty to defend such **Claim** shall end upon the date of such refusal.”

136. Therefore, Admiral is entitled to a declaratory judgment that, if it recommends a settlement to the Named Insured which is acceptable to the Estate of Gloria Corley, and the Named Insured rejects the settlement and chooses to contest the Underlying Lawsuit, then Admiral’s liability for the Claim shall not exceed the amount for which the Claim could have been settled, including Claim Expense incurred up to the date of such refusal.

137. Therefore, Admiral is entitled to a declaratory judgment that, if it recommends a settlement to the Named Insured which is acceptable to the Estate of Gloria Corley, and the Named Insured rejects the settlement and chooses to contest the Underlying Lawsuit, then Admiral's right and duty to defend the Underlying Lawsuit shall end upon the date of such refusal.

WHEREFORE, having fully answered, Defendant prays that:

- (1) The Plaintiff's Complaint be dismissed with costs.
- (2) The Court enter the following declarations in favor of Admiral:
 - a. Admiral has the right to negotiate a potential settlement as part of its defense of the Underlying Lawsuit;
 - b. Admiral has a right to participate in settlement negotiations at mediation in the Underlying Lawsuit;
 - c. Desa Ballard and Dessa Ballard P.A. d/b/a Ballard Watson owe a duty to cooperate in the defense and settlement of the case and do not have a right to prevent Admiral from participating in settlement negotiations with the Estate of Gloria Corley;
 - d. If Admiral recommends a settlement to the Named Insured which is acceptable to the Estate of Gloria Corley, and the Named Insured rejects the settlement and chooses to contest the Underlying Lawsuit, then Admiral's liability for the Claim shall not exceed the amount for which the Claim could have been settled, including Claim Expense incurred up to the date of such refusal;
 - e. If Admiral if recommends a settlement to the Named Insured which is acceptable to the Estate of Gloria Corley, and the Named Insured rejects the settlement and chooses to contest the Underlying Lawsuit, then Admiral's right

and duty to defend the Underlying Lawsuit shall end upon the date of such refusal; and

(3) For such other and further relief as the Court deems just and proper.

Defendants demand a jury trial.

MURPHY & GRANTLAND, P.A.

s/ Wesley B. Sawyer

Wesley B. Sawyer, Esquire

Fed I.D. No. 11244

4406-B Forest Drive

PO Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for the Defendants Admiral Insurance
Company, Monitor Liability Managers and
Mendes & Mount LLP

Columbia, South Carolina
October 27, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

DESA BALLARD AND DESA
BALLARD P.A., d/b/a BALLARD
&WATSON,

Plaintiff,

vs.

ADMIRAL INSURANCE COMPANY,
MONITOR LIABILITY MANAGERS,
MENDES & MOUNT, LLP, ADELE R.
POPE, INDIVIDUALLY AND AS
SPECIAL ADMINISTRATOR OF THE
ESTATE OF GLORIA CORLEY,

Civil Action No. 3:17-cv-2916-JFA-SVH

**DEFENDANT ESTATE OF GLORIA
CORLEY'S REPLY TO CROSSCLAIM
OF DEFENDANTS ADMIRAL
INSURANCE COMPANY, MONITOR
LIABILITY MANAGERS, AND
MENDES & MOUNT, LLP**

Defendants.

**TO: DEFENDANTS ADMIRAL INSURANCE COMPANY, MONITOR LIABILITY
MANAGERS, AND MENDES & MOUNT, LLP**

Defendant Estate of Gloria Corley, answering the crossclaim of Defendants Admiral Insurance Company, Monitor Liability Managers, and Mendes & Mount, LLP, and subject to its motion to be dismissed from this action, would show unto the Court:

1. Each and every allegation not herein specifically admitted or qualified is denied, and strict proof is demanded thereof.
2. This Defendant lacks sufficient knowledge on which to form a belief as to the allegations contained in Paragraph 109 and therefore denies the same.
3. This Defendant admits the allegations contained in Paragraphs 110 and 111 on information and belief.
4. This Defendant admits the allegations contained in Paragraph 112, except to state that

the Special Administrator is improperly identified as “Adele R. Pope,” where her name is actually Adele J. Pope.

5. This Defendant lacks sufficient knowledge on which to form a belief as to the allegations contained in Paragraphs 113 through 115 and therefore denies the same.
6. This Defendant admits the allegations contained in Paragraph 116.
7. This Defendant lacks sufficient knowledge on which to form a belief as to the allegations contained in Paragraphs 117 through 137, therefore denies the same and would further show that the controversy alleged is between Plaintiffs and the insurance Defendants herein.
8. As to the Prayer, this Defendant denies that crossclaim Plaintiffs are entitled to any relief against the Estate of Gloria Corley.

WHEREFORE, having fully answered the crossclaim herein, Defendant Estate of Gloria Corley prays that this Court dismiss the crossclaims against this Defendant; award this Defendant the reasonable attorneys’ fees and costs incurred in in defense of same; and grant this Defendant such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

s/Adam T. Silvernail

Adam T. Silvernail

Federal ID#11024

Law Office of Adam T. Silvernail, LLC

1905 Marion Street (29201)

Post Office Box 7995

Columbia, South Carolina 29202-7995

(803) 779-1770

**ATTORNEY FOR DEFENDANT ESTATE OF
GLORIA P. CORLEY**

November 8, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

DESA BALLARD AND DESA)
BALLARD P.A., d/b/a BALLARD)
&WATSON,)
Plaintiff,)
)
vs.)
)
ADMIRAL INSURANCE COMPANY,)
MONITOR LIABILITY MANAGERS,)
MENDES & MOUNT, LLP, ADELE R.)
POPE, INDIVIDUALLY AND AS)
SPECIAL ADMINISTRATOR OF THE)
ESTATE OF GLORIA CORLEY,)
)
)
Defendants.)

Civil Action No. 3:17-cv-2916-JFA-SVH

**DEFENDANT ESTATE OF GLORIA
CORLEY'S ANSWERS TO
LOCAL RULE 26.01
INTERROGATORIES**

TO: THE UNITED STATES DISTRICT COURT

Pursuant to Local Rule 26.01, Defendant Estate of Gloria Corley, subject to its pending motion to dismiss, answers the following interrogatories propounded by the Court:

A. State the full name, address, and telephone number of all persons or legal entities who have a subrogation interest in each claim, and state the basis and extent of said interest.

Response: None.

B. As to each claim, state whether it should be tried jury or nonjury and why.

Response: This Defendant submits that the actions for declaratory judgment and injunctive relief are equitable and should be tried non-jury. The tort cause of action for bad faith should be tried by a jury.

C. State whether the party submitting these responses is a publicly owned company and separately identify: (1) each publicly owned company of which it is a parent,

subsidiary, partner, or affiliate; (2) each publicly owned company which owns ten percent or more of the outstanding shares or other indicia of ownership of the party; and (3) each publicly owned company in which the party owns ten percent or more of the outstanding shares.

Response: This Defendant is not a publicly owned company; is not owned in whole or part by any publicly owned company; and does not own ten percent or more of any publicly owned company.

D. State the basis for asserting your claim in the division in which it was filed.

Response: This action was removed from the Richland County Circuit Court by other Defendants to this action.

E. Is this action related to any other matter (civil or criminal) filed in this district? If so, provide (1) a short caption and full case number of the related action; (2) an explanation of how the matters are related; and (3) a statement of the status of the related action. Whether cases are related such that they should be assigned to a single judge will be determined by the Clerk of Court based on a determination of whether the cases: arise from the same or identical transactions, happenings or events; involve the identical parties or property; or for any reason would entail substantial duplication of labor if heard by different judges.

Response: No.

F. [Defendants only] If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct identification.

Response: Defendant is improperly identified as "Adele R. Pope, ... as Special

Administrator of the Estate of Gloria Corley.” This Defendant is properly identified as Estate of Gloria P. Corley, by its Special Administrator Adele J. Pope. The undersigned will accept service of an amended summons and pleading correcting this error.

G. [Defendants only] If you contend some other person or legal entity is, in whole or in part, liable to you or the party asserting a claim against you in this matter, identify such person or entity and describe the basis of said liability.

Response: Not applicable.

s/Adam T. Silvernail

Adam T. Silvernail

Federal ID#11024

Law Office of Adam T. Silvernail, LLC

1905 Marion Street (29201)

Post Office Box 7995

Columbia, South Carolina 29202-7995

(803) 779-1770

November 8, 2017

**ATTORNEY FOR DEFENDANT ESTATE OF
GLORIA P. CORLEY**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

DESA BALLARD AND DESA
BALLARD P.A., d/b/a BALLARD
&WATSON,

Plaintiff,

vs.

ADMIRAL INSURANCE COMPANY,
MONITOR LIABILITY MANAGERS,
MENDES & MOUNT, LLP, ADELE R.
POPE, INDIVIDUALLY AND AS
SPECIAL ADMINISTRATOR OF THE
ESTATE OF GLORIA CORLEY,

Defendants.

Civil Action No. 3:17-cv-2916-JFA-SVH

DEFENDANT ADELE J. POPE'S
ANSWERS TO
LOCAL RULE 26.01
INTERROGATORIES

TO: THE UNITED STATES DISTRICT COURT

Pursuant to Local Rule 26.01, Defendant Estate of Gloria Corley, subject to its pending motion to dismiss, answers the following interrogatories propounded by the Court:

- A. State the full name, address, and telephone number of all persons or legal entities who have a subrogation interest in each claim, and state the basis and extent of said interest.

Response: None.

- B. As to each claim, state whether it should be tried jury or nonjury and why.

Response: This Defendant submits that the actions for declaratory judgment and injunctive relief are equitable and should be tried non-jury. The tort cause of action for bad faith should be tried by a jury.

- C. State whether the party submitting these responses is a publicly owned company and separately identify: (1) each publicly owned company of which it is a parent,

subsidiary, partner, or affiliate; (2) each publicly owned company which owns ten percent or more of the outstanding shares or other indicia of ownership of the party; and (3) each publicly owned company in which the party owns ten percent or more of the outstanding shares.

Response: This Defendant is not a publicly owned company; is not owned in whole or part by any publicly owned company; and does not own ten percent or more of any publicly owned company.

D. State the basis for asserting your claim in the division in which it was filed.

Response: This action was removed from the Richland County Circuit Court by other Defendants to this action.

E. Is this action related to any other matter (civil or criminal) filed in this district? If so, provide (1) a short caption and full case number of the related action; (2) an explanation of how the matters are related; and (3) a statement of the status of the related action. Whether cases are related such that they should be assigned to a single judge will be determined by the Clerk of Court based on a determination of whether the cases: arise from the same or identical transactions, happenings or events; involve the identical parties or property; or for any reason would entail substantial duplication of labor if heard by different judges.

Response: No.

F. [Defendants only] If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct identification.

Response: Defendant is improperly identified as “Adele R. Pope.” This Defendant is

properly identified as Adele J. Pope. The undersigned will accept service of an amended summons and pleading correcting this error.

G. [Defendants only] If you contend some other person or legal entity is, in whole or in part, liable to you or the party asserting a claim against you in this matter, identify such person or entity and describe the basis of said liability.

Response: Not applicable.

November 8, 2017

s/Adele J. Pope
Adele J. Pope
Federal ID#3091
Law Office of Adele J. Pope, P.C.
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753

INDIVIDUAL DEFENDANT, *PRO SE*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

DESA BALLARD AND DESA
BALLARD P.A., d/b/a BALLARD
&WATSON,

Plaintiff,

VS.

ADMIRAL INSURANCE COMPANY,
MONITOR LIABILITY MANAGERS,
MENDES & MOUNT, LLP, ADELE R.
POPE, INDIVIDUALLY AND AS
SPECIAL ADMINISTRATOR OF THE
ESTATE OF GLORIA CORLEY,

Civil Action No. 3:17-cv-2916-JFA-SVH

DEFENDANT ADELE J. POPE'S
REPLY TO CROSSCLAIM OF
DEFENDANTS ADMIRAL
INSURANCE COMPANY, MONITOR
LIABILITY MANAGERS, AND
MEHNDES & MOUNT, LLP

Defendants.

TO: DEFENDANTS ADMIRAL INSURANCE COMPANY, MONITOR LIABILITY MANAGERS, AND MENDES & MOUNT, LLP

Defendant Adele J. Pope, improperly designated by Plaintiffs as “Adele R. Pope,” answering the crossclaim of Defendants Admiral Insurance Company, Monitor Liability Managers, and Mendes & Mount, LLP, and subject to her motion to be dismissed from this action, would show unto the Court:

1. Each and every allegation not herein specifically admitted or qualified is denied, and strict proof is demanded thereof.
2. This Defendant lacks sufficient knowledge on which to form a belief as to the allegations contained in Paragraph 109 and therefore denies the same.
3. This Defendant admits the allegations contained in Paragraphs 110 and 111 on information and belief.

ROA 00163

4. This Defendant admits the allegations contained in Paragraph 112, except to state that the Special Administrator is improperly identified as “Adele R. Pope,” where her name is actually Adele J. Pope.
5. This Defendant lacks sufficient knowledge on which to form a belief as to the allegations contained in Paragraphs 113 through 115 and therefore denies the same.
6. This Defendant admits the allegations contained in Paragraph 116.
7. This Defendant lacks sufficient knowledge on which to form a belief as to the allegations contained in Paragraphs 117 through 137, therefore denies the same and would further show that the controversy alleged is between Plaintiffs and the insurance Defendants herein.
8. As to the Prayer, this Defendant denies that crossclaim Plaintiffs are entitled to any relief against her.

WHEREFORE, having fully answered the crossclaim herein, Defendant Adele J. Pope prays that this Court dismiss the crossclaims against this Defendant; award this Defendant the reasonable attorneys’ fees and costs incurred in in defense of same; and grant this Defendant such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

s/Adele J. Pope
Adele J. Pope
Federal ID#3091
Law Office of Adele J. Pope, P.C.
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753

November 8, 2017

INDIVIDUAL DEFENDANT, *PRO SE*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

DESA BALLARD AND DESA	)	C/A No. 3:17-cv-02916-JFA-SVH
BALLARD, P.A., d/b/a BALLARD &	)	
WATSON,	)	
	)	
Plaintiffs,	)	
	)	
ADMIRAL INSURANCE COMPANY,	)	PLAINTIFFS AND COUNTERCLAIM
MONITOR LIABILITY MANAGERS,	)	DEFENDANTS DESA BALLARD'S AND
MENDES & MOUNT, LLP, ADELE R.	)	DESA BALLARD, P.A. D/B/A BALLARD
POPE, INDIVIDUALLY AND AS	)	& WATSON'S ANSWER TO
SPECIAL ADMINSTRATOR OF THE	)	DEFENDANT ADMIRAL INSURANCE
ESTATE OF GLORIA CORLEY,	)	COMPANY'S COUNTERCLAIM
	)	
Defendants.	)	

Plaintiffs and Counterclaim Defendants Desa Ballard and Desa Ballard P.A., d/b/a Ballard & Watson (collectively hereinafter referred to as "Plaintiffs and Counterclaim Defendants") answering Defendant Admiral Insurance Company's ("Defendant") Counterclaim would respectfully show as follows:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(General Denial)

1. Each and every allegation of the Counterclaim, not expressly admitted herein, is denied and strict proof thereof is demanded.
2. Plaintiffs and Counterclaim Defendants deny all the allegations contained in the Counterclaim and deny Defendant is entitled to any relief requested in the Counterclaim.

FOR A SECOND DEFENSE AND BY WAY OF ANSWER
(Rule 12(b)(1), FRCP)

3. Paragraphs enumerated above are incorporated herein as if alleged and restated in full.

4. In accordance with Rule 12(b)(1), FRCP, this Court lacks subject matter jurisdiction to hear this controversy because there is not complete diversity amongst the parties.

5. As per the Complaint, Plaintiff and Counterclaim Defendant Desa Ballard P.A., d/b/a Ballard & Watson is a South Carolina entity.

6. As per the Complaint, Defendant Adele R. Pope is a South Carolina citizen.

7. Defendant Adele R. Pope is a necessary party to this action because she is the claimant in the “Underlying Lawsuit” (see paragraph 116 of the Counterclaim for a description of the “Underlying Lawsuit”); therefore, she is an interested party in this litigation and if she was not made a party there exists the possibility of re-litigating the same coverage issues in the future.

8. Defendant Adele R. Pope has not been improperly joined in State Court in an effort to deny Federal Court jurisdiction.

9. The requirements of 28 U.S.C. §1332(a)(1) are not met because Plaintiff and Counterclaim Defendant Desa Ballard, P.A d/b/a Ballard & Watson is a South Carolina citizen and Defendant Adele R. Pope is a South Carolina citizen.

FOR A THIRD DEFENSE AND BY WAY OF ANSWER

10. Paragraphs enumerated above are incorporated herein as if alleged and restated in full.

11. Defendant's Counterclaim begins at paragraph 109 and any allegation contained in previous paragraphs not expressly admitted herein, is denied and strict proof thereof is demanded.

12. Upon information and belief, paragraph 109 is admitted.

13. Paragraph 110 is denied as Plaintiff and Counterclaim Defendant Desa Ballard is a citizen and resident of the State of Florida.

14. Paragraph 111 is admitted. Plaintiff and Counterclaim Defendant Desa Ballard P.A., d/b/a Ballard & Watson is a South Carolina entity.

15. Paragraph 112 is admitted, and once again Defendant Adele R. Pope is a citizen of South Carolina.

16. Paragraph 113 is admitted to the extent that it alleges that a justiciable controversy exists. Paragraph 113 is denied to the extent that this Court lacks jurisdiction to hear this matter.

17. The allegations of Paragraph 114 concern a written document identified as the "Policy" the terms of which speak for themselves and any allegations contradictory thereto are denied.

18. Paragraph 115 is admitted and in further answering Plaintiff and Counterclaim Defendants sent two notices of claims. One notice of claim was under the "Policy" identified in the Counterclaim. The second notice of claim sent by Plaintiff and Counterclaim Defendant concerned Policy No. 1477197 covering the period July 1, 2016 to July 1, 2017. This notice of claim was acknowledged by Admiral Insurance Company and Monitor Liability Managers via email on July 13, 2016.

19. Paragraph 116 is admitted.

20. Paragraph 117 is admitted.

21. The allegations of Paragraph 118 concern a written document identified as the “Policy” the terms of which speak for themselves and any allegations contradictory thereto are denied.

22. The allegations of paragraph 119 are denied as characterized.

23. Paragraph 120 is admitted in part. Further answering Paragraph 120, the applicable ADR rules permit exemptions from mediation in the discretion of the forum court.

24. The allegations of paragraph 121 are denied as characterized.

25. The allegations of paragraph 122 are denied as characterized.

26. The allegations of paragraph 123 are admitted to the extent that they describe a justiciable controversy and denied to the extent that this Court lacks subject matter jurisdiction to hear this controversy because there is not complete diversity amongst the parties.

27. The allegations of paragraph 124 are denied.

28. The allegations of Paragraph 125 concern a written document identified as the “Policy” the terms of which speak for themselves and any allegations contradictory thereto are denied.

29. Paragraph 126 is denied. See Paragraph 23 above.

30. The allegations of paragraph 127 are denied because this Court lacks subject matter jurisdiction to hear this controversy as there is not complete diversity amongst the parties.

31. The allegations of paragraph 128 are denied because this Court lacks subject matter jurisdiction to hear this controversy as there is not complete diversity amongst the parties.

32. The allegations of paragraph 129 are denied.

33. The allegations of Paragraph 130 concern a written document identified as the “Policy” the terms of which speak for themselves and any allegations contradictory thereto are denied.

34. The allegations of paragraph 131 are denied because this Court lacks subject matter jurisdiction to hear this controversy as there is not complete diversity amongst the parties.

35. The allegations of paragraph 132 are denied.

36. The allegations of Paragraph 133 concern a written document identified as the “Policy” the terms of which speak for themselves and any allegations contradictory thereto are denied.

37. The allegations of Paragraph 134 concern a written document identified as the “Policy” the terms of which speak for themselves and any allegations contradictory thereto are denied.

38. The allegations of Paragraph 135 concern a written document identified as the “Policy” the terms of which speak for themselves and any allegations contradictory thereto are denied.

39. The allegations of paragraph 136 are denied because this Court lacks subject matter jurisdiction to hear this controversy as there is not complete diversity amongst the parties.

40. The allegations of paragraph 137 are denied because this Court lacks subject matter jurisdiction to hear this controversy as there is not complete diversity amongst the parties.

41. Plaintiffs and Counterclaim Defendants deny that Defendant is entitled to any of the relief requested in the “WHEREFORE” paragraph.

FOR A FOURTH DEFENSE

42. Paragraphs enumerated above are incorporated herein as if alleged and restated in full.

43. Plaintiffs and Counterclaim Defendants reserve the right to amend their answer to assert any such other and further defenses that may become apparent during the course of discovery or otherwise in this case.

WHEREFORE, having fully answered Defendant's Counterclaim Plaintiffs and Counterclaim Defendants pray for the following relief:

1. For an Order remanding this litigation back to the South Carolina Circuit Court from which it was improperly removed;
2. For the dismissal of the Defendant's Counterclaim with prejudice; and,
3. For such other and further relief as this Honorable Court deems just and proper including an award of their attorney's fees and costs.

BLAND RICHTER, LLP
Attorneys for Plaintiffs and Counterclaim
Defendants

s/Ronald L. Richter, Jr.
Ronald L. Richter, Jr. (Federal Bar No. 6264)
s/Scott M. Mongillo
Scott M. Mongillo (Federal Bar No. 7436)
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s/Eric S. Bland
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Charleston, South Carolina
November 13, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

DESA BALLARD AND DESA)	C/A No. 3:17-cv-02916-JFA-SVH
BALLARD, P.A., d/b/a BALLARD &)	
WATSON,)	
)	
Plaintiffs,)	PLAINTIFFS' NOTICE OF MOTION
)	AND MOTION TO REMAND
ADMIRAL INSURANCE COMPANY,)	
MONITOR LIABILITY MANAGERS,)	
MENDES & MOUNT, LLP, ADELE R.)	
POPE, INDIVIDUALLY AND AS)	
SPECIAL ADMINSTRATOR OF THE)	
ESTATE OF GLORIA CORLEY,)	
)	
Defendants.)	

Plaintiffs and Counterclaim Defendants ("Plaintiffs") hereby move this Honorable Court pursuant to 28 USC §1447(c) for an order remanding this action to the South Carolina Court of Common Pleas. This Motion is based upon the following arguments, as well as upon such additional argument or authority as may be presented at the time of hearing.

FACTUAL BACKGROUND

This claim arises out of a complex procedural past spanning several legal actions. Gloria Corley was designated in the Will of her late husband as the recipient of certain trust monies from the M.L. Corley Marital Trust (the "Trust"). Adele R. Pope ("Pope") represented Mrs. Corley in litigation in 1998 and 1999 to obtain additional funds from the Trust, beyond those funds which were left to Mrs. Corley. The litigation settled when the "Agreement Among Successors to Decedent" (the "Successors' Agreement") was reached. Under the Successors' Agreement, Mrs. Corley would receive monthly distributions of \$7,500.00 for her lifetime. In addition, Mrs. Corley would receive an annual distribution of no less than \$55,000.00.

After the litigation ended, Pope took a contingency fee of one-third of the \$55,000.00 annual distribution (or approximately \$18,333.33 per year) pursuant to the Fee Agreement. Pope received this fee each year through 2010. In 2011, Mrs. Corley's attorney-in-fact, Andra Williams, decided that Mrs. Corley would not pay Pope her yearly contingency fee, which prompted Pope to sue Mrs. Corley and the Trust. The Plaintiffs herein ("Ballard") were retained to defend Mrs. Corley in Pope's lawsuit against Mrs. Corley.

During their defense of Mrs. Corley in the lawsuit filed by Pope, Ballard negotiated a lump sum buyout of the future monthly payments to Mrs. Corley by the Trust, as memorialized in the "Agreement to Terminate Interests in the Martin L. Corley Trust" (the "Termination Agreement") executed on April 19, 2012 by Mrs. Corley's attorney-in-fact, Andra Williams. The lump sum buyout did not include the annual distribution Pope achieved for Mrs. Corley, which Ballard maintained was the basis for Pope's ongoing yearly contingency fee. Pursuant to the Termination Agreement, Mrs. Corley received a lump sum payment of \$650,000.00 from the trust. Ballard made Ms. Williams aware of the possibility that Pope could make a claim on some of the funds under the Fee Agreement.

Pope won a judgment against Corley in August, 2013 of \$248,673.87, plus daily interest and costs of collection. This amount was based on a portion of the lump sum payment received by Corley pursuant to the Termination Agreement. Ballard moved for reconsideration, and the motion was denied. Thereafter, Ballard appealed the judgment, and the appeal was dismissed on grounds that it was not timely filed.

Gloria Corley died on March 31, 2016. At the time of her death, a portion of Pope's judgment remained unsatisfied. On June 27, 2016, Pope, petitioned the Probate Court of Lexington County, South Carolina, to be appointed Special Administrator of Mrs. Corley's

Estate. Pope represented to the court that she was granted a judgment against Mrs. Corley, and she petitioned for appointment as Special Administrator of the Estate in order to “marshal Gloria’s assets; timely pursue one or more of Gloria’s claims; and pay Petitioner’s [Pope’s] judgment.” Pope petitioned to be appointed as Special Administrator of the Estate so as to “protect her rights as a judgment creditor of Gloria.” The Probate Court appointed Pope as Special Administrator of the Estate and directed the Estate not to file suit against Ms. Williams, or initiate her involvement in litigation, absent further Order of the Probate Court. Pope thereafter brought a legal malpractice action against Ballard on behalf of the Estate in order to attempt to satisfy her judgment against Mrs. Corley.

Ballard reported the malpractice claim to her carrier, Admiral Insurance Company (“Admiral”).¹ Pope made demands for settlement of the alleged malpractice claims on Admiral. It is Ballard’s contention in this action that her policy of insurance includes clear consent language, such that no settlement of the malpractice action can be made without her express consent. Ballard does not consent to any settlement of the claims made against her. Admiral has taken the position that even over Ballard’s objection, it may initiate settlement discussions with Pope and tender the cost of defense in the malpractice action and be relieved of any continuing obligation to defend or indemnify under the policy.

A justiciable controversy has arisen among the parties regarding their respective rights, obligations and entitlements under the Admiral insurance policy. This action was commenced in part under the South Carolina Uniform Declaratory Judgment Act seeking a judicial determination of several central issues, including a declaration that:

¹ The roles and relationships between the other “insurance defendants” remains largely unknown, but it has been pleaded on information and belief that they too insure Ballard and/or play integral roles in coverage decisions regarding the malpractice policy.

- a. The Insurance Defendants are required to honor their obligations to Plaintiffs under the Admiral policies in defending the legal malpractice claim and not terminate such defense;
- b. The Insurance Defendants may not initiate or make any settlement offers of the legal malpractice claim or settle the claim without the express written consent of the Plaintiffs herein;
- c. The Insurance Defendants may not withdraw defense or indemnity coverage from the Plaintiffs as a result of Plaintiffs' refusal to consent to settle the legal malpractice claim or any action related thereto.

All parties to this action are parties whose rights and interests may be impacted by the Court's ruling on these and other key issues presented. While facts are certainly pleaded for background purposes, the Court is not asked in the declaratory judgment action to make any factual finding, and certainly not to make factual finding adverse to Pope.

LEGAL ARGUMENT

This Court lacks jurisdiction over this controversy because there is no diversity among the parties. In order to suggest that diversity exists, Defendant Pope, Individually and as the Special Administrator of the Estate of Gloria Corley, Defendant Admiral Insurance Company and Defendant Monitor Liability Managers contend that Pope was added as a "sham Defendant" in an effort by the Plaintiffs to destroy diversity and in an effort to divest this Court of jurisdiction. These Defendants are incorrect. This is a declaratory judgment action. Pope seeks to collect against Ballard's legal malpractice insurance policies. Ballard seeks a declaration that the same policies should not initiate settlement discussions with or ever pay Pope. Pope's rights

and any interest she claims in the policies will necessarily be impacted by the Court's decision on the issues presented by the declaratory judgment action.

"To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." *Graham*, 319 S.C. at 71, 459 S.E.2d at 845 (citing *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985)). "A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party." *Graham*, at 71, 459 S.E.2d at 845 (citing *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970)). This requirement is satisfied by "[a]ny person interested under a deed ... written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a ... contract or franchise may have determined any question of construction or validity arising under the instrument, ... contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." S.C. Code Ann. § 15-53-30 (1977). "The Declaratory Judgment Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationships." *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing *Williams Furniture Corp. v. Southern Coatings & Chemical Co.*, 216 S.C. 1, 56 S.E.2d 576 (1949)); S.C. Code Ann. § 15-53-130 (1977). See also S.C. Code Ann. § 15-53-80 (1977) which mandates that "all persons **shall** be made parties who have or claim **any** interest which would be affected by the declaration..." (Emphasis supplied.)

Pope first contends that she has been added as a sham Defendant to destroy diversity. Nothing could be further from the truth. In fact, after service of the complaint in this case, Pope's individual counsel Adam Silvernail (who is not involved in the legal malpractice claim)

wrote an email to Plaintiffs' counsel on October 19, 2017, on behalf of the Estate of Gloria P. Corley (and ostensibly for Pope) in which he demanded that the Estate and Pope be dismissed from the action. In response, the undersigned counsel replied:

- Adam. The Estate and Ms. Pope were added as parties to the extent that their interests in Ms. Ballard's insurance policy may be impacted by the Court's ruling. If you will stipulate to be bound by the decision of the court on the issues presented, then we will agree to dismiss your clients from the pending action. Let us know.

In response, Mr. Silvernail replied:

- I am responding on behalf of the Estate of Gloria Corley. We wish you had contacted us before Mrs. Corley's Estate had to incur additional expenses. Your proposal is not acceptable.

Mr. Silvernail was then further asked:

- Well, do you agree and will you stipulate that your clients have no direct interest in Ms. Ballard's policy?"

To this inquiry, there was no reply. A copy of the email exchange is attached hereto as **Exhibit A**.

To refuse to stipulate to be bound by the Court's decision as it pertains to the Admiral malpractice policy without her participation is demonstrative of the fact that Pope must believe that she has an interest in the policy which may be impacted. To put it otherwise, although Pope complains that she was added to the present action for illegitimate purposes, her wish to be freed from the litigation required only her consent to be bound by the Court's decision, and her refusal to agree to be bound only heightens the concern that she remain a party. Simply put, Pope is a necessary party to the litigation.

Pope argues further that if she were to remain in the litigation, she should be realigned as a party plaintiff because her interests align with those of Ballard as it relates to Admiral. Pope is mistaken. Pope hopes to collect against the Ballard policy. Ballard seeks to ensure that the

Admiral policy never pays Pope. It is hard to imagine two more diametrically opposed positions. Pope is properly named as a Defendant.

CONCLUSION

This Court lacks diversity jurisdiction. Pope was not added to this action as a sham Defendant, but rather because her interests will necessarily be impacted by the Court's determination of the issues presented. For the reasons stated herein, Plaintiffs request for an order remanding this action to the South Carolina Court of Common Pleas should be granted.

BLAND RICHTER, LLP
Attorneys for Plaintiff

s/Ronald L. Richter, Jr.

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s/Scott M. Mongillo

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Charleston, South Carolina
November 13, 2017

Ronnie Richter

From: Ronnie Richter
Sent: Thursday, October 26, 2017 2:20 PM
To: Adam Silvernail
Cc: Scott Mongillo; Eric S. Bland; Adele Pope
Subject: RE: Ballard v. Admiral and others

Well, do you agree and will you stipulate that your clients have no direct interest in Ms. Ballard's policy? Ronnie

From: Adam Silvernail [mailto:adam@silvernailfirm.com]
Sent: Thursday, October 26, 2017 2:18 PM
To: Ronnie Richter <Ronnie@blandrichter.com>
Cc: Scott Mongillo <Scott@blandrichter.com>; Eric S. Bland <ericbland@blandrichter.com>; Adele Pope <adele@popelawfirm.com>
Subject: Re: Ballard v. Admiral and others

Ronnie:

I am responding on behalf of the Estate of Gloria Corley. We wish you had contacted us before Mrs. Corley's Estate had to incur additional expenses. Your proposal is not acceptable.

Best,
Adam

On Thu, Oct 26, 2017 at 1:52 PM, Ronnie Richter <Ronnie@blandrichter.com> wrote:

Adam. The Estate and Ms. Pope were added as parties to the extent that their interests in Ms. Ballard's insurance policy may be impacted by the Court's ruling. If you will stipulate to be bound by the decision of the court on the issues presented, then we will agree to dismiss your clients from the pending action. Let us know. Ronnie

From: Adam Silvernail [mailto:adam@silvernailfirm.com]
Sent: Thursday, October 19, 2017 9:47 AM
To: Ronnie Richter <Ronnie@blandrichter.com>; Scott Mongillo <Scott@blandrichter.com>; Eric S. Bland <ericbland@blandrichter.com>
Cc: Adele Pope <adele@popelawfirm.com>
Subject: Ballard v. Admiral and others

Dear Ronnie, Scott, and Eric:

I am writing you on behalf of the Estate of Gloria P. Corley, but advise you that Adele J. Pope, individually, joins in my request. The complaint which was served on Mrs. Corley's Estate and Mrs. Pope contains various false and scurrilous allegations about Mrs. Corley, her family and Mrs. Pope. In addition, it fails to state any cause of action against either

Mrs. Corley's Estate or Mrs. Pope. The apparent attempt is to bind Mrs. Corley's Estate and Mrs. Pope to scurrilous, false statements of fact which are being litigated in another matter.

I ask that you advise me by 5:00 p.m. tomorrow that you will remove the Estate of Gloria Corley and Mrs. Pope as Defendants in the action, and that you will work with me to strike the false claims made in the complaint.

As you know, the Estate of Gloria Corley engaged in a serious effort to resolve the issues with Ballard & Watson without having to engage contingency-fee counsel for Mrs. Corley's Estate. Your complaint now puts the Estate of Ballard & Watson's former client in the position of having to engage a second set of attorneys.

We ask that you give this immediate consideration and contact us no later than tomorrow. Thank you in advance.

Adam

cc:

Adele J. Pope

Walter H. Bundy, Esquire

--
--
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

DESA BALLARD AND DESA)	C/A No. 3:17-cv-02916-JFA-SVH
BALLARD, P.A., d/b/a BALLARD &)	
WATSON,)	
)	
Plaintiffs,)	PLAINTIFFS' RESPONSE TO
)	DEFENDANT ADELE R. POPE,
ADMIRAL INSURANCE COMPANY,)	INDIVIDUALLY AND AS SPECIAL
MONITOR LIABILITY MANAGERS,)	ADMINISTRATOR OF THE ESTATE OF
MENDES & MOUNT, LLP, ADELE R.)	GLORIA CORLEY'S MOTION TO
POPE, INDIVIDUALLY AND AS)	DISMISS OR, IN THE ALTERNATIVE,
SPECIAL ADMINSTRATOR OF THE)	TO STRIKE AND MOTION FOR
ESTATE OF GLORIA CORLEY,)	ATTORNEYS' FEES AND COSTS
)	
Defendants.)	

Plaintiffs and Counterclaim Defendants (“Plaintiffs”) oppose the Motion to Dismiss or in the Alternative to Strike and Motion for Attorneys’ Fees and Costs advanced by Defendant Adele R. Pope, individually and as the Special Administrator of the Estate of Gloria Corley.¹ In her motion, Defendant Pope ignores the fact that she is named both as an individual and critically, as the Special Administrator of the Estate of Gloria Corley. In her capacity as the Special Administrator, Defendant Pope is a person who is materially interested in this litigation and without whom a complete determination cannot be made. Therefore, Defendant Pope is a necessary party to this litigation and her motion must be denied.

¹ Please note, that the Court ruled that Plaintiff must respond to this motion by November 13, 2017 in its 10-31-17 Text Order. In submitting this response, Plaintiffs are not waiving and are hereby preserving their contention that pursuant to Rule 12(b)(1), FRCP and 28 U.S.C. §1332(a)(1) this Court lacks subject matter jurisdiction to hear this matter because Defendant Pope and Plaintiff and Counterclaim Defendant Desa Ballard, P.A d/b/a Ballard & Watson are both South Carolina citizens, as a result of which there is no diversity.

LEGAL STANDARDS

A. Rule 19, SCRCP

This action was commenced in the Court of Common Pleas for the State of South Carolina. The moving party complains in part that Pope and the Estate were improperly joined to this action as sham Defendants. As it pertains to the joinder of parties, however, South Carolina Rule of Civil Procedure Rule 19(a) provides:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action **shall be joined** as a party in the action if (1) in his absence **complete relief cannot be accorded** among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) **leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest**. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. (Emphasis supplied.)

In *Gillman v. City of Beaufort*, 368 S.C. 24, 28, 627 S.E.2d 746, 748 (Ct. App. 2006), the South Carolina Court of Appeals interpreted Rule 19(a) to require joinder “whenever possible, [of all] persons *materially interested* in an action so that a *complete determination may be made*.” (Emphasis supplied). In addition, in *Shah v. Richland Mem. Hospital*, 350 S.C. 139, 564 S.E.2d 681, 685 (Ct. App. 2002), our Court held that “Rule 19(a)(1), SCRCP, provides in pertinent part that a person subject to process shall be joined as a party in the action if ‘in his absence complete relief cannot be accorded among those already parties.’ The notes to Rule 19 indicate that *this rule is the same as the federal rule*, and that the principle behind the rule is ‘that *whenever possible* persons materially interested in the action shall be joined so that they may be heard and a *complete determination made*.’” (Emphasis supplied).

B. Rule 12(b)(6), SCRCP

In her Motion to Dismiss, Defendant Pope further relies on Rule 12(b)(6) which states as follows:

(b) How Presented. Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion ... (6) failure to state facts sufficient to constitute a cause of action ...

Under well-established South Carolina law, “[a] motion to dismiss pursuant to Rule 12(b)(6) must be based *solely* on the allegations set forth in the complaint and we *must* presume all well-pled facts to be true.” *Gressette v. South Carolina Electric and Gas Co.*, 370 S.C. 377, 379, 635 S.E.2d 538, 539 (2006), citing *Overcash v. South Carolina Elec. and Gas Co.*, 364 S.C. 569, 614 S.E.2d 619 (2005).” (Emphasis supplied.)

C. Rule 12(f), SCRCF

In the alternative to dismissing this action, Defendant Pope moves the Court pursuant to Rule 12(f) to strike certain allegations from the Complaint. The Rule provides in pertinent part as follows:

Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

In *Robinson v. Code*, 384 S.C. 582, 682 S.E.2d 495 (Ct. App. 2009), the Court explained that “[i]n ruling on such a motion, a Court decides whether a party should be allowed to plead a defense or other matter, not whether there are facts supporting what has been pleaded.” Citing, *Alladin Plastics, Inc. v. Wintenna, Inc.*, 301 S.C. 90, 390 S.E.2d 370 (Ct. App. 1990).

FACTS²

Plaintiffs were retained by the daughter and attorney-in-fact of an elderly client named Gloria Corley (hereinafter “**Mrs. Corley**”) to defend a lawsuit filed against Mrs. Corley in March, 2011. This lawsuit was brought by Mrs. Corley’s former attorney, Defendant Pope, in her individual capacity to collect attorney fees.

Defendant Pope’s lawsuit concerned her prior representation of Mrs. Corley in a matter involving the annual distributions that were due to Mrs. Corley from the Martin L. Corley Trust (hereafter “**Corley Trust**”) which had established for her benefit by Mrs. Corley’s former husband.

Defendant Pope filed the lawsuit against Mrs. Corley to collect attorney fees that she asserted were due to her by Mrs. Corley for legal services rendered by Defendant Pope a decade earlier (hereafter “**Defendant Pope’s claim for attorney fees**”).

Plaintiffs represented Mrs. Corley in defending Defendant Pope’s claim for attorney fees, and asserted, among other defenses, that the fee agreement between Defendant Pope and Mrs. Corley was void as against public policy and that Defendant Pope was attempting to charge an unreasonable fee to Mrs. Corley and to take advantage of Mrs. Corley who was elderly and in frail health.

While defending Defendant Pope’s claim, Plaintiffs also represented Mrs. Corley in negotiating a buy-out of Mrs. Corley’s interests in the Martin L. Corley Trust (hereafter “**the trust settlement**”). Defendant Pope was not a party to that proceeding and had no interest in it. The trust settlement and resulting lump sum payment to Mrs. Corley was approved by the Lexington County Probate Court. The trust settlement was structured so that the lump sum

² All facts are derived from the four corners of Plaintiff’s Complaint. For purposes of a motion under Rule 12(b)(6), all facts and all inferences derived therefrom are presumed true.

payment to Mrs. Corley was calculated solely on the basis of the monthly payments provided for Mrs. Corley in Mr. Corley's Last Will and Testament for the remainder of Mrs. Corley's life based on statutory life expectancy tables. The trust settlement did not include any present or future payments to Mrs. Corley from the trust which were related in any way to the legal representation previously provided to Mrs. Corley and for which Defendant Pope's claim for attorney fees was related. In addition to the required monthly payments that Mrs. Corley received from the Corley Trust, Mrs. Corley was also to receive an annual lump sum of \$55,000.00 for each year that she continued to live, payments of which were as a result of the prior representation of Defendant Pope.

As a part of her fee for representation, Defendant Pope claimed an interest in the future lump sum \$55,000.00 payments to Mrs. Corley. From each such payment, Defendant Pope claimed that she was entitled to \$18,333.33 annually, in perpetuity. The trust settlement negotiated by Plaintiffs terminated the future lump sum payments of \$55,000.00 in exchange for an acceleration of the monthly payments. The result of the trust settlement was to disclaim the alleged benefits that Pope had obtained for Mrs. Corley, and from which Pope was receiving an attorney's fee. As a result, the trust settlement terminated Defendant Pope's ongoing attorney's fee claim or the lump sum trust settlement.

In structuring the trust settlement, Plaintiff Ballard met with Audra Williams (hereafter "**Mrs. Williams**"), Mrs. Corley's attorney-in-fact, and Mrs. Corley's Certified Public Accountant (hereafter "**CPA**") and discussed with them the need to take appropriate and reasonable steps to preserve the funds from the trust settlement for Mrs. Corley's care and for other financial needs of Mrs. Corley. Plaintiff Ballard also advised Mrs. Williams and Mrs. Corley's CPA that *Defendant Pope may attempt to recover some portion of the trust settlement*

under a theory consistent with Defendant Pope's claim for attorney fees, although all reasonable steps had been taken to insulate the trust settlement proceeds from Defendant Pope's claim for attorney fees.

The Corley Trust was separately represented by its own counsel in conjunction with the trust settlement who argued to the Probate Court that the modification of the distributions to Mrs. Corley under the Corley Trust was in the best interests of the Trust. Notwithstanding the express language of the trust settlement which rejected and nullified Defendant Pope's unreasonable fee agreement with Mrs. Corley, *Defendant Pope moved for and obtained an order granting her an award of one-third of the gross amount of the trust settlement* (hereafter "**the Pope judgment**"). The Pope judgment provided Defendant Pope with a windfall judgment for attorney's fees that she has not earned, and most certainly never would have realized if Mrs. Corley's interest in the Corley Trust had not been liquidated and paid to Mrs. Corley.

Approximately four years after the trust settlement, Mrs. Corley passed away on March 16, 2016. If the Corley Trust was not settled and Defendant Pope's annual attorney's fees not ended, she would have received no more than \$100,000.00 through the date of Mrs. Corley's death. On Mrs. Corley's behalf, Plaintiffs filed and served an appeal from the Pope judgment to the South Carolina Court of Appeals.

The appeal was filed out of time and was dismissed. On May 6, 2014, in accordance with their contractual obligations under the 2013-2014 Defendant Admiral Insurance Company's (hereafter "**Admiral**") policy, Plaintiffs timely notified Admiral that a potential claim could be made against them by Mrs. Corley, as a result of the untimely appeal of the Pope judgment.

As a creditor of the Estate of Mrs. Corley, Defendant Pope petitioned the Probate Court for Lexington County seeking to be appointed as Special Administrator of the Estate of Mrs.

Corley and she was appointed as such. After her appointment, Defendant Pope asserted that Plaintiffs had committed legal malpractice (hereafter the “**legal malpractice claim**”) while representing Mrs. Corley in that the trust settlement should not have been made and was not advantageous to Mrs. Corley. As it turned out, however, it was extremely beneficial to Pope, who received a windfall judgment for work she never performed.

On February 23, 2017, an action alleging professional malpractice was initiated against the Plaintiffs, said action being known and identified as *Gloria Corley v. Desa Ballard and Desa Ballard, P.A.* (hereafter “**Pope Litigation**”). Having been sued for professional malpractice, the Plaintiffs tendered the claim to Admiral, Monitor Liability Managers, and Mendes & Mount LLP (hereafter “**the Insurance Defendants**”) and demanded that they provide a defense to the claim in accordance with the terms and conditions of the policy.

The Insurance Defendants advised Plaintiffs that they intended to initiate settlement discussions with Defendant Pope on the legal malpractice claim and if they were successful in reaching a number with which Defendant Pope would agree to settle, Admiral would agree to settle the Estate’s liability claim against Plaintiffs. If Plaintiffs did not approve the settlement (as they had a right to do under the Admiral policy) then the Admiral insurance defense coverage would be withdrawn from Plaintiffs. Admiral’s interpretation of its policy would have gutted Plaintiff’s right to prevent a settlement, by forcing them to agree to it or suffer the consequences of Admiral’s punitive action.

The Insurance Defendants’ position was unacceptable to the Plaintiffs because initiating settlement discussions and reaching an agreement to settle the legal malpractice claim with Defendant Pope as Special Administrator of the Estate of Mrs. Corley, while knowing that Plaintiffs would refuse to authorize the settlement, would constitute a breach of the Insurance

Defendants' obligations to Plaintiffs under the Admiral policy. In addition, the making of any such settlement offer regarding the legal malpractice claim to Mrs. Corley's Estate would reflect negatively on the Plaintiffs' standing in the legal community and specifically reflect negatively on Plaintiff Ballard's reputation in her field of practice.

Therefore, in the now removed state court action³, Plaintiffs seek a declaration from the court pursuant to the South Carolina Declaratory Judgment Act that the Insurance Defendants' policy obligates them to provide a defense to the claim until and unless the Plaintiffs consent to permit them to pursue settlement with Defendant Pope. Separately, the Plaintiffs seek recovery from the insurance defendants for bad faith breach of their contract of insurance.

ARGUMENT

Defendants' arguments in support of dismissing the present action and/or striking certain allegations from the Complaint evidence a fundamental misunderstanding of the action itself. The Ballard Plaintiffs have commenced a lawsuit with two distinct causes of action seeking two distinct remedies. First, Ballard has identified a number of legal issues which she has posited to Court for determination under the South Carolina Uniform Declaratory Judgment Act. Secondly, the Ballard Plaintiffs seek a judgment against the Insurer Defendants (i.e. all Defendants other than Pope and the Estate) for their alleged bad faith in the manner in which they have interpreted and sought to apply Ballard's policy of professional malpractice insurance.

As it pertains to the declaratory judgment cause of action, the issues presented to the Court for determination pertain to the interpretation of Ballard's policy of professional malpractice insurance and to the authority of the insurer Defendants to negotiate a resolution of the Pope claims over Ballard's objection. No question presented by the declaratory judgment

³ Again, the removal by the Insurance Defendants is based on a claim of diversity jurisdiction, which does not exist here.

cause of action seeks or requires any factual finding which could arguably be adverse to Pope. The declaratory judgment cause of action may, however, have a direct and material impact on the ability of Pope and/or the Estate to collect a judgment against Ballard should they succeed in their claims of professional negligence, and for that reason Pope was added as a party.

“To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy.” *Graham*, 319 S.C. at 71, 459 S.E.2d at 845 (citing *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985)). “A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.” *Graham*, at 71, 459 S.E.2d at 845 (citing *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970)). This requirement is satisfied by “[a]ny person interested under a deed ... written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a ... contract or franchise may have determined any question of construction or validity arising under the instrument, ... contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code Ann. § 15–53–30 (1977). “The Declaratory Judgment Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationships.” *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing *Williams Furniture Corp. v. Southern Coatings & Chemical Co.*, 216 S.C. 1, 56 S.E.2d 576 (1949)); S.C. Code Ann. § 15–53–130 (1977).

Defendant Pope, both individually and in her capacity as Special Administrator of the Estate of Gloria Corley, is a person with a material interest in this litigation and without whom a complete determination cannot be made. Pursuant to S.C. Code Ann. Section 15-53-80, Pope

must be a part to the declaratory judgment action; otherwise, Pope would not be bound by the decision of this Court as it relates to the availability of coverage for the claims she has asserted. If Pope is not bound by the judgment of the Court in this case, she may justifiably be heard to take that very position in the future should she succeed in obtaining a judgment against Ballard. Defendant Pope is a necessary party to this litigation. (See Rule 19(a), SCRCp.) The facts listed above make this abundantly clear.

Pope contends that she has been added as a sham Defendant to destroy diversity. Nothing could be further from the truth. In fact, after service of the complaint in this case, Adam Silvernail wrote an email to Plaintiffs' counsel on October 19, 2017 on behalf of the Estate of Gloria P. Corley (and ostensibly for Pope) in which he demanded that the Estate and Pope be dismissed from the action. In response, the undersigned counsel replied:

- Adam. The Estate and Ms. Pope were added as parties to the extent that their interests in Ms. Ballard's insurance policy may be impacted by the Court's ruling. If you will stipulate to be bound by the decision of the court on the issues presented, then we will agree to dismiss your clients from the pending action. Let us know.

In response, Mr. Silvernail replied:

- I am responding on behalf of the Estate of Gloria Corley. We wish you had contacted us before Mrs. Corley's Estate had to incur additional expenses. Your proposal is not acceptable.

Mr. Silvernail was then further asked, "Well, do you agree and will you stipulate that your clients have no direct interest in Ms. Ballard's policy?" To this inquiry, there was no reply. A copy of the email exchange is attached hereto as **Exhibit A**.

All protests and motions aside, Pope has never taken the position that she has no interest in the malpractice insurance policy which is the subject of this action. To refuse to stipulate to be bound by the Court's decision as it pertains to the malpractice policy without her participation

is demonstrative of the fact that Pope must believe that she has an interest in the policy which may be impacted. To put it otherwise, although Pope complains that she was added to the present action for illegitimate purposes, her wish to be freed from the litigation required only her consent to be bound by the Court's decision and her refusal to agree to be bound only heightens the concern that she remain a party. Pope is a necessary party to the litigation, voluntary or not.

As it relates to Plaintiffs' second cause of action, it is clear from the Complaint that the only relief sought is a judgment against the insurer Defendants. Like the declaratory judgment action, no factual finding adverse to Pope is sought or required. While Pope may object to the facts as set forth in the Complaint, the facts alleged form in part the basis of Ballard's claim that the insurer Defendants are conducting themselves in bad faith by seeking to negotiate a resolution of Pope's claims over Ballard's objection. Ballard contends in part that efforts to settle the malpractice claims are solely for the financial benefit of the insurer Defendants and that she is justified in insisting that they continue to provide the legal defense promised by their policy given the facts and circumstances giving rise to Pope's claims of malpractice.

If one thing here is abundantly clear, it is that the Plaintiffs' and Defendant Pope's interests are at odds. Therefore, if Defendant Pope is dismissed from this litigation, there exists the possibility of re-litigating the same coverage issues which is inefficient for both the parties and the Court. It is clear that Defendant Pope is an underlying claimant concerning the legal malpractice action. As such, naming her as a party is mandatory and will prevent potential re-litigation of the same coverage issues.

Defendant Pope's remaining grounds for her motion are marginal. Simply put, Rule 12(b)(6) fails because the complaint is well pleaded and the Court must accept the allegations as true. To say any more would be a waste of the Court's time. The Rule 12(f) motion should be

denied because nothing contained in the complaint contains “scandalous factual allegations.”⁴ To the contrary, the facts are the basis for Ballard’s contention that the insurance Defendants are acting in bad faith by seeking to extract themselves financially from the defense of an action which she believes to be completely without merit.

Respectfully, there is simply no basis for Pope to seek relief under Rule 11 for fees and costs. This is a significant dispute. The Complaint is not a “baseless filing.”⁵ To suggest such is disingenuous especially in light of the fact that Plaintiffs offered to dismiss Defendant Pope if she would simply agree to be bound by the Court’s ruling. She refused. Her refusal speaks volumes regarding Defendant Pope’s future litigious intent against Plaintiffs.

CONCLUSION

For the reasons listed above, Defendant Pope is a necessary party to this litigation and her motion must be denied.

BLAND RICHTER, LLP
*Attorneys for Plaintiffs and Counterclaim
Defendants*

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⁴ See paragraph 12 of the motion.

⁵ See paragraph 15 of the motion.

s/Eric S. Bland

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Charleston, South Carolina

November 13, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Desa Ballard and Desa Ballard P.A.,	)	C/A No.: 3:17-2916-DCC-SVH
d/b/a Ballard & Watson,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Admiral Insurance Company, Monitor	)	REPORT AND RECOMMENDATION
Liability Managers, Mendes & Mount,	)	
LLP, Adele R. Pope, individually and as	)	
Special Administrator of the Estate Of	)	
Gloria Corley,	)	
	)	
Defendants.	)	
	)	

Desa Ballard (“Ballard”) and her law firm Desa Ballard P.A., d/b/a Ballard & Watson (“Firm”) (collectively “Plaintiffs”) filed this action in the Court of Common Pleas for Richland County on September 19, 2017 (“State Action”), seeking, *inter alia*, to enforce the terms of her malpractice insurance contract. Plaintiffs sue their malpractice insurer Admiral Insurance Company (“Admiral”), Admiral’s underwriting division Monitor Liability Managers, and Mendes & Mount, LLP (collectively “Insurer Defendants”), as well as the parties that brought the underlying malpractice claim (“Underlying Claim”), attorney Adele R. Pope (“Pope”), individually and as Special Administrator of the Estate of Gloria Corley (collectively “Pope Defendants”).

Insurer Defendants removed the action to this court on October 27, 2017, on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1). [ECF No. 1]. The Insurer Defendants note that although the face of the complaint suggests complete

diversity does not exist between Plaintiffs and the five defendants, they assert improper joinder or misalignment of the Pope Defendants. The amount in controversy does not appear at issue. This matter was referred to the undersigned pursuant to Local Civ. Rule 73.02(B)(2)(e) (D.S.C.) because Pope is proceeding pro se in her individual capacity.

Several days prior to removal of the State Action, Pope filed a motion to dismiss [ECF No. 3], which has since been fully briefed [ECF Nos. 20, 21]. On November 13, 2017, Plaintiffs filed a motion to remand [ECF No. 19], which has been fully briefed [ECF Nos. 22, 28]. Thereafter, Insurer Defendants filed a motion for judgment on the pleadings [ECF No. 23], briefing on which the undersigned stayed [ECF No. 24] pending a resolution of the motion to remand. The motion to remand and the motion to dismiss are ripe for disposition. After a review of the pleadings, the undersigned finds that this case should be remanded because the court lacks subject matter jurisdiction, and therefore makes no determination on the motion to dismiss and the motion for judgment on the pleadings.

I. Factual Background

In the complaint, Plaintiffs allege they purchased a professional liability insurance policy annually from the Insurer Defendants since 2010. [Compl. at 5–6 (available at ECF No. 1-1)]. Plaintiffs submit the Underlying Claim is the first claim submitted for defense and indemnity under the policy since its inception. *Id.* Plaintiffs allege the Insurer Defendants wish to settle the malpractice claim to avoid the cost of defending the claim,

but that Plaintiffs do not wish to authorize the settlement. *Id.* According to Plaintiffs, Insurer Defendants contend that they may engage in settlement discussions with the Pope Defendants and tender the cost of defense in the Underlying Claim and be relieved of any continuing obligation to defend or indemnify Plaintiffs under the policy. Plaintiffs posit the question at issue as “whether the insurer can violate an insured’s contractual right to control the final decision to settle a claim or dispute and in order to escape its financial responsibility to provide a defense to its insured under its professional liability policy.” *Id.* at 5–6.

Insurer Defendants removed this action on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332. Specifically, they assert that Pope has been fraudulently joined and should not be considered for purposes of determining whether diversity jurisdiction exists. *Id.* In their motion to remand, Plaintiffs argue that this court does not have diversity jurisdiction over this matter and that the removal was defective.

II. Discussion

A. Magistrate Judge’s Authority to Remand

The motion to remand has been referred to the undersigned for disposition pursuant to 28 U.S.C. § 636. A motion to remand does not explicitly fall within any of the dispositive motions set forth in 28 U.S.C. § 636. This omission has led to a split of authority as to whether a United States Magistrate Judge has the authority to remand a matter to state court. While some courts have held that remand motions are nondispositive and orders of remand can be issued by a Magistrate Judge in a

non-consent case, the law in the Fourth Circuit remains unclear whether an order or a report and recommendation should be entered. *See, e.g., Jonas v. Unisun Ins. Co.*, No. 00-1217, 2000 WL 1350648, *1 (4th Cir. Sept. 20, 2000) (noting that the Fourth Circuit “has not addressed whether a magistrate judge may issue an order of remand (as opposed to issuing a report and recommendation for the district court’s review)”). At least one district court in this district has addressed this issue in a published opinion and held that a Magistrate Judge did not have such authority. *See Long v. Lockheed Missiles & Space Co., Inc.*, 783 F. Supp. 249, 250 (D.S.C. 1992) (“[A] remand order is the equivalent of a dismissal. The Magistrate’s Order thus sought to effect an ‘involuntary dismissal’ of the action.”) (quoting *Giangola v. Walt Disney World Co.*, 753 F. Supp. 148, 152 (D.N.J. 1990)); *see also Mortg. Elec. Registration Sys., Inc. v. Hunt*, 6:07-1763-HMH (D.S.C. July 30, 2007) (unpublished opinion collecting cases and finding report and recommendation appropriate when considering motion to remand).

Although the United States Supreme Court has not addressed the issue directly, it has suggested that a remand motion is functionally indistinguishable from a dispositive motion listed in 28 U.S.C. § 636(b)(1)(A). *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 714 (1996) (“No less than an order staying a federal court action pending adjudication of the dispute in state court, [an order of remand] puts the litigants in this case effectively out of court, and its effect is precisely to surrender jurisdiction of a federal suit to a state court.”) (internal quotation and citation omitted). The federal circuit courts addressing this matter have determined in published opinions that remand motions

are dispositive. *See Williams v. Beemiller, Inc.*, 527 F.3d 259, 264–66 (2d Cir. 2008); *Vogel v. U.S. Office Prods. Co.*, 258 F.3d 509, 514–17 (6th Cir. 2001); *First Union Mortg. Corp. v. Smith*, 229 F.3d 992, 994–97 (10th Cir. 2000); and *In re U.S. Healthcare*, 159 F.3d 142, 145–46 (3d Cir. 1998).

The practical impact on the parties of this seemingly-academic dispute is the applicable standard of review in an appeal of the Magistrate Judge’s decision on the motion to remand. If the motion to remand is considered nondispositive, the more deferential standard of “clearly erroneous or contrary to law” found in 28 U.S.C. § 636(b)(1)(A) applies to an appeal of the Magistrate Judge’s order of remand. If the motion to remand is considered dispositive, the Magistrate Judge should enter a report and recommendation under 28 U.S.C. § 636(b)(1)(B), pursuant to which objections are considered on a *de novo* standard of review under Fed. R. Civ. P. 72.

In light of the unsettled state of the law within this district as to whether motions to remand are considered dispositive, out of an abundance of caution, a report and recommendation, instead of an order, is being entered. This route preserves the prerogative of the District Judge to whom this case is assigned, as well as any potentially aggrieved party to secure a *de novo* review upon timely objection, prior to final action on the remand motion.

B. Analysis

Federal courts are courts of limited jurisdiction, *see Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994), and a district court is charged with

ensuring that all cases before it are properly subject to such jurisdiction. *In re Bulldog Trucking, Inc.*, 147 F.3d 347, 352 (4th Cir. 1998). Generally, a case may be filed in federal district court if there is federal question jurisdiction under 28 U.S.C. § 1331 or diversity of citizenship under 28 U.S.C. § 1332. The removal statute, 28 U.S.C. § 1441, allows a state court defendant to remove a case to a federal district court if the state court action could have originally been filed there. *See Darcangelo v. Verizon Commc'ns, Inc.*, 292 F.3d 181, 186 (4th Cir. 2002). However, the removing defendant has the burden of establishing subject matter jurisdiction, *Mulcahey v. Columbia Organic Chems. Co., Inc.*, 29 F.3d 148, 151 (4th Cir. 1994), and a district court may remand a case *sua sponte* or pursuant to a motion if federal jurisdiction is lacking. *Ellenburg v. Spartan Motors Chassis, Inc.*, 519 F.3d 192, 196 (4th Cir. 2008).

This matter was removed on the basis of diversity jurisdiction. However, before determining whether there is a complete diversity of parties, the court must determine whether the parties are properly before the court and whether their interests are properly aligned.

1. Fraudulent Joinder

“To show fraudulent joinder, the removing party must demonstrate either ‘outright fraud in the plaintiff’s pleading of jurisdictional facts’ or that ‘there is no possibility that the plaintiff would be able to establish a cause of action against the in-state defendant in state court.’” *Hartley v. CSX Transp., Inc.* 187 F.3d 422, 424 (4th Cir. 1999) (internal citations omitted). The Fourth Circuit has described this standard as “even more

favorable to the plaintiff than the standard for ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6).” *Id.* (citations omitted). All the plaintiff needs to show is that there is a “glimmer of hope,” *Mayes v. Rapoport*, 198 F.3d 457, 466 (4th Cir. 1999), or a “slight possibility of a right to relief” in state court. *Hartley*, 187 F.3d at 426.

The standard set forth in *Hartley* supports finding fraudulent joinder in this case because there is no possibility that Plaintiffs can state a cause of action against the Pope Defendants. However, as noted by this court in *Bi-Lo v. Nat’l Union Fire Ins. Co. of Pittsburgh*, No. 0:14-CV-00355-CMC, 2014 WL 12605522, at *1 (D.S.C. Apr. 30, 2014), such a straightforward application of *Hartley* is complicated by the South Carolina Declaratory Judgement Act, which provides in relevant part: “[1] When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration and [2] no declaration shall prejudice the rights of persons not parties to the proceeding.” S.C. Code Ann. § 15-53-80. As the court noted in *Bi-Lo*, the first part of the quoted sentence suggests that the insured might be required to join a claimant in some capacity. This is particularly true in the instant case, as Plaintiffs agreed to dismiss the Pope Defendants if they would stipulate to be bound by the decision of the court. [ECF No. 19-1]. The Pope Defendants declined to so stipulate. *Id.*

Because there is an argument that Plaintiffs were required to join the Pope Defendants as parties in their declaratory judgment claim under the state statute, the undersigned cannot find that the Pope Defendants were fraudulently joined. Additionally, because the Pope Defendants refused to stipulate to be bound by the decision in this

action, the undersigned cannot conclude that they are nominal parties. However, the court still must analyze whether Pope Defendants should be realigned in order to determine whether the court has subject matter jurisdiction over this matter.

2. Realignment

To determine the proper alignment of parties, the Fourth Circuit has adopted the “principal purpose test,” as opposed to the “substantial controversy test.” *U.S. Fid. & Guar. Co. v. A & S Mfg. Co.*, 48 F.3d 131, 133 (4th Cir. 1995). The principal purpose test involves a two-step process: (1) the court determines the primary issue in the controversy; and (2) the court aligns the parties according to their positions with respect to the primary issue. *Id.*; *Palisades Collections LLC v. Shorts*, 552 F.3d 327, 337 (4th Cir.2008) (same). After the parties are correctly aligned, the court determines whether complete diversity exists. *Id.*

Insurer Defendants argue that realignment is necessary because Plaintiffs and the Pope Defendants “both want the Admiral Policy to provide as much liability insurance coverage as possible to satisfy any potential judgment in the underlying case.” [ECF No. 28]. Plaintiffs argue that the Pope Defendants are correctly aligned as adverse because Pope hopes to collect against the Policy and Plaintiffs seek “to ensure that the Admiral policy never pays Pope.” [ECF No. 19 at 7].

The undersigned finds that realignment is not appropriate in this circumstance. Although Plaintiffs and the Pope Defendants both want the Insurer Defendants to cover the claims in the Underlying Claim, this issue does not appear to be disputed. Rather, the

declaration sought concerns: (1) whether Plaintiffs can prevent Insurer Defendants from engaging in settlement negotiations with the Pope Defendants absent Plaintiffs' consent, and (2) the effect on the obligations of the parties if a settlement agreement is reached without Plaintiffs' consent. Therefore, a determination in Insurer Defendants' favor is best for the Pope Defendants, as they lose nothing and would have a possibility of negotiating a settlement without Plaintiffs' consent. If Plaintiffs prevail in this declaratory judgment action, the Pope Defendants' possibility of settlement is at best more rigorous, and at worst nonexistent, if Plaintiffs intend to bar any settlement. Therefore, the undersigned finds that realignment is not appropriate in this case, as all defendants are adverse to Plaintiffs for purposes of this declaratory judgment.

3. Diversity Jurisdiction

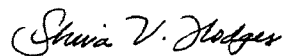
If the district judge adopts the recommendation that the Pope Defendants were not fraudulently joined and are properly aligned as defendants, the undersigned recommends this matter be remanded for lack of subject matter jurisdiction. It is undisputed that Pope is a citizen of South Carolina. Therefore, complete diversity of citizenship does not exist in this matter and the undersigned recommends that the district judge grant Plaintiffs' motion to remand because Insurer Defendants have failed to establish federal subject matter jurisdiction over Plaintiff's claims.¹

¹ The undersigned has not addressed the issue of whether all defendants timely and properly consented to removal in light of the recommendation of remand based on a lack of subject matter jurisdiction.

III. Conclusion and Recommendation

For the foregoing reasons, it is recommended that the district judge grant Plaintiffs' motion to remand [ECF No. 19] and remand this matter to the Court of Common Pleas for Richland County, South Carolina. If the district judge accepts this recommendation, all other motions pending in this action will be included in the remand for disposition by the state court.

IT IS SO RECOMMENDED.



March 20, 2018
Columbia, South Carolina

Shiva V. Hodges
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2017-CP-40-5628
	)	
Desa Ballard and Desa Ballard P.A.,	)	
d/b/a Ballard & Watson,	)	
	)	
Plaintiffs,	)	STIPULATION OF DISMISSAL
	)	WITH PREJUDICE
v.	)	
	)	
Admiral Insurance Company,	)	
Monitor Liability Managers,	)	
Mendes & Mount LLP,	)	
Adele R. Pope, individually and	)	
as Special Administrator of	)	
the Estate of Gloria Corley,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 41(a)(1), SCRCP, Plaintiff stipulates to dismissal WITH prejudice of defendants Monitor Liability Managers and Mendes & Mount LLP, based on the following stipulations of Admiral Insurance Company:

1. Monitor is an underwriting division and operating unit within the Berkley group of insurance companies, but is not a separate corporate entity. Admiral agrees that Monitor acted as its agent for all matters related to this action, and Monitor and Admiral agree that Monitor will be bound by any order, non-monetary judgment or non-monetary verdict issued in this case, including but not limited to injunctive relief and any other written agreement entered into between Admiral and the Plaintiffs. This stipulation is solely for purposes of this litigation and will not be used for any purposes outside of this specific litigation.
2. Admiral has removed Mendes & Mount, LLP from any involvement in this matter and such removal is permanent. Admiral agrees that Mendes & Mount LLP acted as its

agent for all matters arising out of the subject matter of this action, including communications with Plaintiffs. This stipulation is solely for purposes of this litigation and will not be used for any purposes outside of this specific litigation.

Each party shall be responsible for its attorney's fees and costs with regard to this stipulation.

IT IS SO STIPULATED.

s/Ronnie L. Richter, Jr.

Ronnie L. Richter Jr.
Scott M. Mongillo
Peoples Building
28 Broad Street, Mezzanine
Charleston, South Carolina 29401
Telephone 843.573.9900
Facsimile 843.573.0200
ronnie@blandrichter.com
scott@blandrichter.com

Eric S. Bland
1500 Calhoun Street
Post Office Box 72
Columbia, South Carolina 29202
Telephone 803.256.9664
Facsimile 803.256.3056
ericbland@blandrichter.com

ATTORNEYS FOR PLAINTIFF

We so stipulate:

s/Wesley B. Sawyer

Wesley B. Sawyer
Murphy & Grantland P.A.
Post Office Box 6648
Columbia, South Carolina 29260

Counsel for Defendants Admiral Insurance Company,
Monitor Liability Managers, and Mendes & Mount LLP
for purposes of this stipulation

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2018-CP-32-01743

Desa Ballard and Desa Ballard P.A., d/b/a
Ballard & Watson,

Plaintiffs,

v.

Admiral Insurance Company, Monitor
Liability Managers, Mendes & Mount, LLP,
Adele R. Pope, individually and as Special
Administrator of the Estate of Gloria Corley,

Defendants.

**DEFENDANT' ADMIRAL INSURANCE
COMPANY'S MOTION FOR JUDGMENT
ON THE PLEADINGS**

**TO: ERIC BLAND, ESQUIRE, ATTORNEY FOR PLAINTIFFS AND TO THE
PLAINTIFFS ABOVE-NAMED:**

Defendant Admiral Insurance Company, by and through its undersigned counsel, moves pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure for entry of judgment on the pleadings in its favor. The dispute between Plaintiffs and Defendant Admiral centers around application of a lawyer's professional liability insurance policy issued by Admiral to Desa Ballard dba Ballard & Watson, Attorneys at Law ("Admiral Policy"). Admiral is defending Plaintiffs in an underlying legal malpractice action filed by Adele Pope, as the Special Administrator of the Estate of Gloria Corley ("Underlying Case"). As part of its defense of the Underlying Case, Admiral seeks to negotiate with the Estate to determine if there is a possibility of a reasonable settlement. Plaintiffs seek to prevent Admiral from participating in any settlement negotiations with the Estate.

The Admiral Policy includes three relevant terms, all under Section VI. Defense, Cooperation and Settlement. First, Admiral, as the Insurer, “shall have the sole right and duty to defend any covered Claim . . .” (Ex. A, Policy, LPL 9300 (04-09), p. 5). Therefore, Admiral has the right to control the defense of the case and participate in settlement negotiations as part of that defense. Second, Plaintiffs, as insureds, “shall cooperate with the Insurer in the defense and settlement of any Claim . . .” (Ex. A, Policy, LPL 9300 (04-09), p. 5) (emphasis added). Therefore, Plaintiffs owe a duty under the Admiral Policy to cooperate with Admiral in the defense and settlement of the case, and they do not have the right to impede Admiral’s efforts.

Third, the Admiral Policy includes a consent to settle clause, commonly referred to as a “Hammer Clause,” which sets out what happens if Admiral recommends a settlement that is acceptable to the Estate and which the Plaintiffs reject:

The **Insurer** shall not settle any **Claim** without the **Named Insured’s** consent. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by the **Insurer**, which is acceptable to the claimant, and shall elect to contest the **Claim**, or continue any legal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Insurer’s** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been settled, including **Claims Expenses** incurred up to the date of such refusal. Such amounts are subject to the provisions of section V. In the event that the **Named Insured** refuses to consent to any settlement as set forth in this section VI. D., the **Insurer’s** right and duty to defend such **Claim** shall end upon the date of such refusal.

(Ex. A, Policy, LPL 9300 (04-09), p. 5). Therefore, if Admiral recommends a settlement to the Named Insured that is acceptable to the Estate, then the Named Insured has the ultimate right to reject the settlement and continue defending the Underlying Case. However, doing so ends Admiral’s duty to defend and limits Admiral’s liability to the proposed settlement amount, including claims expenses incurred up to the date of the Named Insured’s rejection of the proposed settlement.

In spite of the plain language of the Hammer Clause and Admiral's right to control the defense of the case, Plaintiffs seek to enjoin Admiral from conducting any negotiations with the Estate. However, the Admiral Policy gives control of the defense to Admiral and requires Plaintiffs to cooperate in the "defense and settlement" of the case. Therefore, although the Named Insured may have the ability to reject a settlement proposed by Admiral, Plaintiffs do not have the ability to prevent Admiral from participating in settlement negotiations.

Plaintiffs also allege Admiral has acted in bad faith by choosing not to renew the insurance policy. However, there is no duty to renew an insurance policy. The purchase of insurance is an arm's-length transaction. *See Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 319, 574 S.E.2d 502 (Ct. App. 2002). The duty of good faith does not attach to a decision of whether to renew an insurance policy, and the insurer or the insured can choose not to renew a policy for any reason whatsoever. *See e.g., New York University v. Continental Ins. Co.*, 87 N.Y.2d 308, 319, 662 N.E.2d 763, 289 (1995); *Gautreau v. Southern Farm Bureau Cas. Ins. Co.*, 429 So. 2d 866, 869 (La. 1983); *Greene v. Safeco Ins. Co. of America*, 189 Cal. Rptr. 616, 618-19 (Ct. App. 2d Dist. Div. 5 1983); *Travelers Ins. Co. v. Leshner*, 187 Cal. Rptr. 791, 803 (Ct. App. 1st Dist., Div. 3 1987); *Stanley v. Farmers Ins. Co., Inc.*, 2006 WL 3300461, *4 (W.D. Okla. 2006). Therefore, Admiral had the right to not renew the policy at its discretion, and its decision to do so cannot support a claim for bad faith.

For the above-stated reasons, Defendants are entitled to judgment on the pleadings denying Plaintiff's requested declaratory and injunctive relief, dismissing Plaintiff's bad faith claim, and granting Admiral's request for the following declarations:

- a. Admiral has the right to negotiate a potential settlement as part of its defense of the Underlying Lawsuit;

- b. Admiral has a right to participate in settlement negotiations at mediation in the Underlying Lawsuit;
- c. Plaintiffs owe a duty to cooperate in the defense and settlement of the case and do not have a right to prevent Admiral from participating in settlement negotiations with the Estate of Gloria Corley;
- d. If Admiral recommends a settlement to the Named Insured which is acceptable to the Estate of Gloria Corley, and the Named Insured rejects the settlement and chooses to contest the Underlying Lawsuit, then Admiral's liability for the Claim shall not exceed the amount for which the Claim could have been settled, including any Claim Expense incurred up to the date of such refusal; and
- e. If Admiral recommends a settlement to the Named Insured which is acceptable to the Estate of Gloria Corley, and the Named Insured rejects the settlement and chooses to contest the Underlying Lawsuit, then Admiral's right and duty to defend the Underlying Lawsuit shall end upon the date of such relief.

This Motion is supported by the Memorandum in Support and exhibits filed contemporaneously with this Motion along with the pleadings in this case.

MURPHY & GRANTLAND, P.A.

s/ Wesley B. Sawyer

Wesley B. Sawyer, Esquire

S.C. Bar No.: 100229

PO Box 6648

Columbia, South Carolina 29260

(803) 782-4100

Attorneys for the Defendant Admiral Insurance Company

Columbia, South Carolina
May 30, 2018

EXHIBIT A



2850 West Golf Road, Suite 800
Rolling Meadows, IL 60008-4039
(847) 806-6590
Fax (847) 806-6282

Lawyers Professional Liability Insurance

July 12, 2013

Mara Ballard
Desa Ballard P.A. dba Ballard Watson Weissenstein
226 State Street
West Columbia, SC 29169

Policy Number: 91200935

Dear Mara,

Thank you for choosing Monitor Liability Managers and the W.R. Berkley Corporation for your professional liability insurance needs. We know that you have many choices for your insurance and we appreciate your choosing Monitor.

Monitor and all its employees are proud of our tradition of providing an exceptional insurance facility and making every effort to assure your satisfaction with our product and service. The people behind the promise to pay are critical to the value of any insurance policy. Like most services, you get what you pay for - the premium is only one part of the value of an insurance policy.

The most important service we provide and the greatest value you receive does not come from delivering the policy - it comes from handling your claims. While we help our policyholders with loss control and crisis avoidance, if the day comes when you face a claim, we will be there to help you navigate through the complexities of a professional liability claim.

Attached is a narrative from Mr. Jason A. Fogg, Esq., Vice President - Claims, outlining claims reporting guidelines in the event that a claim does occur. With many years of experience handling complex professional liability claims, I am confident you will be pleased to have Monitor on your side.

Once again, thank you for choosing Monitor and the W.R. Berkley Corporation. We hope that you will see the value in the people behind the promise and we hope to be your choice for your professional liability needs for years to come. Please call your professional liability insurance agent if you have any questions about Monitor, or any comments about our service to you. Your satisfaction is important to us.

Regards,

Joseph G. Shores
President

ELECTRONICALLY FILED - 2018 May 31 8:37 AM - LEXINGTON - COMMON PLEAS - CASE#2018CP3201743

ROA 00213

Claims Reporting Guidelines for the Insured

These guidelines should be followed to help Monitor Liability Managers provide efficient claims service.

Claim Notices

All claim notices shall be sent to Monitor Liability Managers, Claims Department. The notices must be reported as required by the policy to avoid problems regarding timely notice. The address of the Monitor Claims Department is as follows:

Monitor Liability Managers
Claims Department
2850 West Golf Road ■ Suite 800 ■ Rolling Meadows, IL 60008-4039
Mr. Jason A. Fogg, Esq., Vice President - Claims
Phone: 847.806.6590
Claim Dept. Fax: (847) 806-4017
E-mail: newclaim@monitorliability.com

Notice of claim requiring immediate action:

If immediate action on the notice is needed the Insured should express mail the notice to Monitor's Claims Department. Situations requiring immediate action may include:

1. The Insured being served with a summons and complaint.
2. The Insured needs to provide a response to the claimant immediately.

Correspondence from the Insured

The claim notice should include a written narrative of the circumstances surrounding the claim or potential claim. The narrative should include, but not be limited to:

1. Names of the insureds, policy number and effective dates.
2. Names and addresses of the claimant.
3. Details of the underlying claim, including its current status and the amount in controversy or relief demanded.
4. All pertinent letters or documents necessary to properly evaluate the claim.

Please provide carbon copies to your professional liability insurance agent
of all claim notices and correspondence sent to Monitor Liability Managers

MI0PI2 (06-06)

ROA 00214

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, New Jersey 08034

SOUTH CAROLINA DISCLOSURE NOTICE

**This Company Is Not Licensed To Do Business In This State, and the S.C.
Guaranty Act does not apply to this policy.**

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

Declarations Page

Lawyers Professional Liability Insurance

CLAIMS MADE WARNING FOR DECLARATIONS: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.

CLAIMS MADE WARNING FOR DECLARATIONS: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.

Whenever printed in this Declarations Page, the boldface type terms shall have the same meanings as indicated in the Policy.

Policy Form: LPL 9300 (04-09)

Policy Number: 91200935

Item 1. Name and Address of **Named Insured**:

Desa Ballard P.A. dba Ballard Watson Weissenstein
226 State Street
West Columbia, SC 29169

Person designated to receive all correspondence from the **Insurer**:

Mara Ballard
Manager/Secretary/Treasurer

Item 2. **Policy Period:** From July 1, 2013 (inception date) to July 1, 2014 (expiration date)

(Both dates at 12:01 a.m. Standard Time at the address of the **Named Insured**)

Item 3. **Limit of Liability for the Policy Period (inclusive of Damages and Claims Expense):**

- A. \$1,000,000 each **Claim**, but in no event exceeding
- B. \$2,000,000 in the aggregate for all **Claims**.

Item 4. **Applicable Deductible:** \$10,000

Item 5. **Premium:** \$21,119

Item 6. **Endorsements attached:**
SER-00-ADM (05-13) Service of Suit

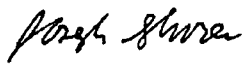
Item 7. Notice to the **Insurer** as provided in sections VII. A. and VII. B. and any information furnished to the **Insurer** as provided in section VI. A. shall be sent to:

Monitor Liability Managers, Claims Department
Address: 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039
Fax: (847) 806-4017 Email: newclaim@monitorliability.com

All other notices required to be given to the **Insurer** under this Policy shall be sent to:

Monitor Liability Managers
Address: 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039
Fax: (847) 806-6282

These Declarations along with the completed and signed **Proposal** and the Lawyers Professional Liability Insurance Policy shall constitute the contract between the **Insureds** and the **Insurer**.

Authorized Representative: 

Date Issued: July 12, 2013

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

Page 1 of 1

SERVICE OF SUIT

It is understood and agreed that in the event of the failure of the Insurer hereon to pay any amount claimed to be due hereunder, the Insurer, at the request of the Insured (or Reinsured), will submit to the jurisdiction of any court of competent jurisdiction within the United States of America or Canada and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court. Nothing in this endorsement constitutes or should be understood to constitute a waiver of the Insurer's rights to commence an action in any court of competent jurisdiction in the United States or Canada, to remove an action to a United States District Court, or to seek a transfer of an action to another court as permitted by law.

It is further agreed that service of process in such suit may be made upon Daniel A. MacDonald, Senior Vice President of Admiral Insurance Company, 1255 Caldwell Road, P.O. Box 5725, Cherry Hill, New Jersey 08034-3220, or his/her designee, and that in any suit instituted against any one of them upon this contract, the Insurer will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named is authorized and directed to accept service of process on behalf of the Insurer in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) that it or they will enter a general appearance upon the Insurer's behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America or province of Canada, which makes provision therefor, the Insurer hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and the Insurer hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Desa Ballard P.A. dba Ballard Watson Weissenstein		Policy Number 91200935
Effective Date of This Endorsement 07/01/2013	Authorized Representative	

Policy Form: LPL 9300 (04-09)

26426-1200935-1039842

SER-00-ADM (05-13)

ROA 00217

ELECTRONICALLY FILED - 2018 May 31 8:37 AM - LEXINGTON - COMMON PLEAS - CASE#2018CP3201743

Admiral Insurance Company

Lawyers Professional Liability Insurance Policy

This is a Claims Made Policy. Please read it carefully.

CLAIMS MADE WARNING FOR POLICY

NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.

PLEASE READ AND REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

In consideration of the payment of the premium, in reliance on all statements in the **Proposal** and all other information provided to the **Insurer**, and subject to all provisions of this Policy, the **Insurer** and **Insureds** agree as follows:

I. Insuring Agreement

Lawyers Professional Liability Insurance

This Policy shall pay on behalf of the **Insured** all **Damages** and **Claims Expense** that the **Insured** shall become legally obligated to pay, arising from any **Claim** first made against the **Insured** during the **Policy Period** and reported to the **Insurer** in writing during the **Policy Period** or within 60 days thereafter, for any actual or alleged **Wrongful Act**, provided that prior to the inception date of the first Lawyers Professional Liability Insurance Policy issued by the **Insurer** to the **Named Insured**, which has been continuously renewed and maintained in effect to the inception of this **Policy Period**, any **Insured** did not know, or could not reasonably foresee that such actual or alleged **Wrongful Act** might reasonably be expected to be the basis of a **Claim**.

II. Extended Reporting Periods

- A. If the **Named Insured** cancels or if the **Insurer** or the **Named Insured** refuses to renew this Policy, then the **Named Insured** shall have the right, upon payment of the appropriate percentage of the "full annual premium", as provided in section II: B., to an extension of the coverage granted by this Policy with respect to any **Claim** first made and reported during the appropriate period of months after the date upon which the **Policy Period** ends, but only with respect to any **Wrongful Act** fully occurring prior to the end of the **Policy Period** and otherwise covered by this Policy. Such appropriate period of months shall be referred to as the **Extended Reporting Period**. As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the **Policy Period**. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the **Insurer** within 60 days of the effective date of cancellation or non-renewal.
- B. The percentage of the "full annual premium" and period of months for the **Extended Reporting Period** shall be:
 1. 12 months **Extended Reporting Period** for 100 percent of the "full annual premium" of the Policy, or
 2. 24 months **Extended Reporting Period** for 150 percent of the "full annual premium" of the Policy, or
 3. 36 months **Extended Reporting Period** for 185 percent of the "full annual premium" of the Policy, or
 4. 60 months **Extended Reporting Period** for 250 percent of the "full annual premium" of the Policy.
- C. The additional premium for the **Extended Reporting Period** shall be fully earned at the inception of the **Extended Reporting Period**. The **Extended Reporting Period** is not cancelable.
- D. As a condition precedent to the right to purchase the **Extended Reporting Period**, the total premium for this Policy and all Deductible obligations must have been paid.

ADMIRAL INSURANCE COMPANY

- E. Without any additional premium being required, there shall be an automatic extension of the coverage granted by this Policy with respect to any **Claim** first made and reported during a period of 60 days after the date upon which the **Policy Period** ends, but only with respect to any **Wrongful Act** fully occurring prior to the end of the **Policy Period** and otherwise covered by this Policy and only if there is no other policy or policies that would otherwise provide insurance for such **Wrongful Act**. This 60 day period shall be referred to as the Automatic Extended Reporting Period.
- F. The Automatic Extended Reporting Period or the Extended Reporting Period shall not be available if the **Insured's** license is revoked, suspended by or surrendered at the request of any regulating authority.

III. Definitions

Whenever printed in boldface type, and whether in the singular or plural form in this Policy, the following terms shall have the meanings indicated below.

- A. "**Claim**" means a written demand for **Damages** or non-monetary relief by reason of a **Wrongful Act**, including, but not limited to:
 - 1. a civil, criminal, administrative or arbitration proceeding, or
 - 2. a request that an **Insured** agree to waive a legal right or sign an agreement to toll the statute of limitations.**Claim** shall not include any proceedings before a state licensing board or similar authority, except as otherwise provided in Section V. Supplemental Coverages of this Policy. A **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.
- B. "**Claim Expense**" means reasonable and necessary fees, costs and expenses (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a covered or potentially covered **Claim** against the **Insureds**, but excluding salaries, wages, overhead or benefit expenses associated with any **Insured**, or any amount covered by the duty to defend obligation of any other insurer.
- C. "**Damages**" means a monetary judgment, award or settlement, pre-judgment interest and post-judgment interest; provided, however, **Damages** shall not include:
 - 1. taxes, civil or criminal fines, or penalties imposed by law, or
 - 2. punitive or exemplary damages, or any multiplied damages award in excess of the amount so multiplied, or
 - 3. matters which are uninsurable under the law pursuant to which this Policy is construed, or
 - 4. legal fees, costs and expenses paid, incurred or charged by the **Insured**, whether claimed as forfeiture, restitution of specific funds, financial loss, set-off or otherwise, and injuries that are a consequence of any of the foregoing, or
 - 5. legal fees, costs, fines, penalties, sanctions, or other amounts awarded against an **Insured** or any client of an **Insured** based upon the actual or alleged filing of pleadings or other papers under any federal or state statute, administrative rule, court rule or case law, including, but not limited to Rule 11, Federal Rules of Civil Procedure, any successor thereto or state rule counterpart.
- D. "**Electronic Mail**" means the transmission of messages and information over a closed, private network, or a semi-public network that provides a public access to an on-line service for a fee, the Internet, an electronic chat room or Blog.
- E. "**Insured**" means:
 - 1. the **Named Insured** and any **Predecessor Firm**, or
 - 2. any individual or professional corporation who is or becomes a partner, officer, director, stockholder, or employee of the **Named Insured**, but solely while acting within the scope of their duties on behalf of the **Named Insured**, or
 - 3. any individual or professional corporation who was a partner, officer, director, stockholder, or employee of the **Named Insured** or **Predecessor Firm**, but solely while acting within the scope of their duties on behalf of the **Named Insured** or **Predecessor Firm**, or
 - 4. any independent contractor, individual or professional corporation designated "counsel" or "of counsel" to the **Named Insured**, but solely while acting within the scope of their duties on behalf of the **Named Insured**, or
 - 5. the heirs, executors, administrators, and legal representatives of each **Insured** in the event of death, incapacity or bankruptcy, but solely with respect to the liability of each **Insured** as otherwise covered by this Policy.
- F. "**Insurer**" means the entity issuing this Policy as listed on the Declarations Page.
- G. "**Named Insured**" means the corporation, individual, limited liability corporation, limited liability partnership, partnership, or professional association designated in Item 1. of the Declarations.
- H. "**Personal Injury**" means invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel, slander, mental anguish, humiliation, or emotional distress, oral or written publication of defamatory or disparaging material, or the inadvertent disclosure of confidential or privileged information communicated by **Electronic Mail**.
- I. "**Policy Period**" means the period of time from the inception date shown in Item 2. of the Declarations to the earlier of the expiration date shown in Item 2. of the Declarations or the effective date of cancellation of this Policy.

ADMIRAL INSURANCE COMPANY

- J. **"Predecessor Firm"** means any corporation, individual, limited liability corporation, limited liability partnership, partnership, or professional association to whose financial assets and liabilities the **Named Insured** is the majority successor in interest. **Predecessor Firm** does not include any corporation, individual, limited liability corporation, limited liability partnership, partnership, or professional association to whose financial assets and liabilities the **Named Insured** becomes the majority successor in interest during the **Policy Period** unless the **Insurer**, in its sole discretion, and the **Named Insured** agree to include such corporation, individual, limited liability corporation, limited liability partnership, partnership, or professional association as a **Predecessor Firm**. The **Named Insured** shall accept any premium adjustment or coverage revisions which the **Insurer** may require.
- K. **"Professional Services"** means services:
1. rendered by an **Insured** solely as a lawyer, mediator, arbitrator, or notary public for others, or
 2. performed by an **Insured** as an administrator, conservator, receiver, executor, guardian, trustee, or in any other fiduciary capacity, or
 3. performed by an **Insured** as a title insurance agent, provided such services are connected with and incidental to the **Insured's** practice of law and are pursuant to a written agency agreement with a licensed title insurance company, or
 4. performed by an **Insured** in their capacity as a member of a bar association, ethics, peer review, formal accreditation, licensing, or similar professional board or committee related to the legal profession, or
 5. performed by an **Insured** as an author, strictly in the publication or presentation of research papers or similar materials and only if the fees, royalties or other revenue generated from such work are not greater than \$10,000;
- provided, however, that in all events, coverage as is afforded with respect to **Professional Services** shall only apply for such services performed by an **Insured**:
- a. for remuneration inuring to the benefit of the **Named Insured** or a **Predecessor Firm**; or
 - b. on a pro bono basis, but solely if, prior to the performance of such services, a partner, director or officer of the **Named Insured** or a **Predecessor Firm** approved the performance of such services without a fee.
- L. **"Proposal"** means the Proposal Form and any material submitted therewith.
- M. **"Related Wrongful Acts"** means **Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.
- N. **"Wrongful Act"** means any actual or alleged act, omission, or **Personal Injury** arising out of **Professional Services** rendered by an **Insured** or by any person for whose act or omission the **Insured** is legally responsible.

IV. Exclusions

The **Insurer** shall not be liable to defend, or to make any payment for any **Damages** or **Claims Expense** in connection with a **Claim** made against any **Insured**:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving a dishonest, fraudulent, criminal, or malicious act or omission committed by or at the direction of, or ratified by any **Insured**; provided, however, the **Insurer** will provide a defense for any such **Claims**, unless or until the dishonest, fraudulent, criminal, or malicious act or omission has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not;
INNOCENT INSURED PROVISION: Whenever coverage under this Policy would be excluded, suspended, or lost because of Exclusion A., the **Insurer** agrees that such insurance, as would otherwise be afforded under this Policy, shall be applicable with respect to an **Insured**, other than the **Named Insured** and any **Predecessor Firm**, who did not personally participate or personally acquiesce in or remain passive after having knowledge of such conduct.
- B. by any **Insured**;
- C. as the beneficiary or distributee of any trust or estate;
- D. for bodily injury, sickness, disease, death, assault, or battery of any person, or damage to, or destruction of any tangible property, including loss of use thereof;
- E. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Insured's** activities or their capacity as:
 1. an officer, director, partner, trustee, or employee of a business enterprise; not named in Item 1. of the Declarations, a nonprofit organization, or a pension, welfare, profit sharing, mutual or investment trust or fund, or
 2. a public official, employee, or agent of a governmental body, subdivision, or agency, unless the **Insured** is deemed to be a public official, employee, or agent of such entity solely by virtue of rendering **Professional Services** to it, or
 3. a fiduciary under the Employee Retirement Income Security Act of 1974, including amendments thereto, or any similar provisions of state statutory law or common law;
 This exclusion E. applies whether or not the **Insured's** activities or capacity also constitute or involve **Professional Services**.

ADMIRAL INSURANCE COMPANY

- F. by or in connection with any pre or post formation business enterprise, not named in Item 1. of the Declarations, in which any **Insured** owns or owned, or controls or controlled, more than a 10 percent interest, or in which any **Insured** is or was an owner, partner, or employee, or which is directly or indirectly controlled, operated, or managed by any **Insured**, other than solely in a fiduciary capacity, but only if the fiduciary act or omission in dispute is in the rendering of services ordinarily performed as a lawyer, and then only to the extent of such services;
- This exclusion F. applies whether or not the **Insured's** activities also constitute or involve **Professional Services**.
- G. which is insured in whole or in part by another valid policy, except with respect to any excess beyond the amount or amounts of coverage under such other policy whether such other policy is stated to be primary, contributory, excess, contingent, or otherwise;
- H. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged nuclear reaction, radiation or contamination, regardless of cause;
- I. for any actual or alleged seepage, pollution or contamination of any kind;
- J. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the Securities Act of 1933, the Securities Exchange Act of 1934, including amendments thereto, or any similar provisions of any federal, state, local or foreign statutory or common law;
- K. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any **Wrongful Act** alleged in any claim which has been reported, or in any circumstance of which notice has been given, prior to the **Policy Period** under any other policy, or
 2. any other **Wrongful Act** whenever occurring, which together with a **Wrongful Act** which has been the subject of such claim or notice, would constitute **Related Wrongful Acts**;
- L. for discrimination or harassment because of race, color, religion, age, sex, disability, pregnancy, national origin, sexual orientation, marital status, or any other basis prohibited by law;
- M. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. defects in title of which any **Insured** had knowledge at the date of issuance of such title insurance whether or not a matter of public record, or
 2. any intentional breach of underwriting authority by any **Insured** functioning as a title insurance agent, or
 3. any liability assumed by an **Insured** under any contract or agreement whereby the **Insured** has agreed to participate in the payment of a loss under a title insurance policy, including, attorneys' fees, court costs and expenses, unless such liability would have attached to the **Insured** even in the absence of such agreement.

V. Limits of Liability and Deductible

- A. The Limits of Liability stated in Item 3. of the Declarations are the limits of the **Insurer's** liability for all **Damages** and **Claims Expense** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** and any Extended Reporting Period(s) that may apply. The Limits of Liability for any Extended Reporting Period(s) that may apply shall be part of, and not in addition to, the Limits of Liability stated in Item 3. of the Declarations. In the event the Limits of Liability stated in Item 3. of the Declarations are exhausted by payment of **Damages** and/or **Claims Expense**, or have been tendered to or on behalf of the **Insured**, then any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished.
- B. The maximum Limit of Liability for all **Claims** under this Policy shall not exceed the aggregate Limit of Liability stated in Item 3. B. of the Declarations.
- C. The first \$2,500 in **Claims Expense** incurred during the **Policy Period** shall not be applied to the Deductible; provided, however, all subsequent **Claims Expense** shall first be applied against the Deductible.
- D. The Deductible amount stated in Item 4. of the Declarations shall be borne by the **Named Insured** and shall apply to each and every **Claim**. The **Insurer** shall only be liable for the amount of **Damages** and/or **Claims Expense** arising from a **Claim** which is in excess of the Deductible amount stated in Item 4. of the Declarations.
- Such amounts shall, upon written demand by the **Insurer**, be paid by the **Named Insured** within 30 days. If the **Named Insured** fails to pay the Deductible, then all the **Insureds** shall be jointly and severally obligated to pay the Deductible. Any funds advanced by the **Insurer**, at its option, shall serve to reduce the Limits of Liability. If the **Insurer** brings suit to collect the Deductible, then the **Insured** responsible to pay the Deductible also shall pay the legal fees, costs and expenses incurred by the **Insurer** to collect the Deductible.

ADMIRAL INSURANCE COMPANY**Supplemental Coverages**

The Insurer will pay:

- E. up to a maximum aggregate limit of \$10,000 per **Policy Period** for all **Insureds** for reasonable legal fees, costs and expenses resulting from the investigation or defense of an **Insured** in a proceeding before a state licensing board or similar authority arising out of any **Wrongful Act** by such **Insured**, but only if such legal fees, costs, or expenses are incurred after notice is first received by the **Insured** during the **Policy Period** and reported to the **Insurer** in writing during the **Policy Period**. The Deductible shall not apply to this coverage and any payments made hereunder shall not reduce the Limits of Liability stated in Item 3. of the Declarations.
- F. up to \$500 for actual loss of earnings to each **Insured** for each day or part of a day of such **Insured's** attendance, at the **Insurer's** written request, at a trial, hearing, or arbitration proceeding involving a **Claim** against an **Insured**, up to a maximum aggregate limit of \$10,000 per **Policy Period** for all **Insureds**. The Deductible shall not apply to this coverage and any payments made hereunder shall not reduce the Limits of Liability stated in Item 3. of the Declarations.
- G. an additional 10 percent of the Limit of Liability stated in Item 3. A. of the Declarations up to a maximum aggregate limit of \$100,000 per **Policy Period** for **Claims Expense**, but only for a single **Claim** occurring after the aggregate limit of Liability stated in Item 3. B. of the Declarations is exhausted by payment under this Policy. The Deductible shall not apply to this coverage.
- H. up to a maximum aggregate limit of \$2,500 per **Policy Period** for expenses incurred with the **Insurer's** prior written consent resulting from subpoenas for documents or testimony including legal advice, legal counsel and the production of documents arising out of any **Wrongful Act** otherwise covered under this Policy. Any notice the **Insured** provides to the **Insurer** of such subpoena shall be deemed a notification of a potential claim under section VII. B. Any such legal fees and expenses incurred by the **Insurer** in responding to such subpoena shall be part of, and not in addition to, the Limits of Liability stated in item 3. of the Declarations. No Deductible will apply to such legal fees and expenses.

VI. Defense, Cooperation and Settlement

- A. An **Insured** shall not admit liability, enter into any settlement agreement, stipulate to any judgment, agree to arbitration, or incur **Claims Expense** without the **Insurer's** prior written consent. The **Insurer** shall be entitled to full information and all particulars it may request in order to reach a decision regarding such consent. Any **Damages** and/or **Claims Expense** incurred and settlements agreed to prior to the **Insurer** giving its consent shall not be covered hereunder.
- B. The **Insurer** shall have the sole right and the duty to defend any covered **Claim**, and has the sole right to select defense counsel. If an **Insured** is entitled to independent defense counsel, then the **Insured** may select independent defense counsel, subject to the consent of the **Insurer**. Such counsel shall have at least 10 years of experience in the defense of similar **Claims**, and maintain error and omissions insurance coverage. The **Insured** and independent defense counsel shall provide full information, documentation and cooperation with respect to the defense, investigation and settlement of any **Claim**. The **Insurer** shall be liable only for reasonable and necessary defense costs at rates customarily paid by the **Insurer** for the defense of similar **Claims** in the area where the **Claim** is being defended. Any such defense costs shall be considered **Claims Expense**. The **Insurer's** right and duty to defend any **Claim** shall end when the Limit of Liability has been exhausted by payment of **Damages** and/or **Claims Expense**, or has been tendered to, or on behalf of, the **Insured**, or to a court of competent jurisdiction.
- C. Each **Insured** shall cooperate with the **Insurer** in the defense and settlement of any **Claim**, and in enforcing any right of contribution or indemnity against any person or organization that may be liable to the **Insured**, at no cost to the **Insurer**. Upon the request of the **Insurer**, the **Insured** shall submit to examination and interrogation, under oath if required by a representative of the **Insurer**, and shall attend hearings, depositions and trials, assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, as well as giving written statements to the **Insurer's** representatives, and meeting with such representatives for purposes of investigation or defense, all without charge to the **Insurer**.
- D. The **Insurer** shall not settle any **Claim** without the **Named Insured's** consent. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by the **Insurer**, which is acceptable to the claimant, and shall elect to contest the **Claim**, or continue any legal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Insurer's** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been settled, including **Claims Expense** incurred up to the date of such refusal. Such amounts are subject to the provisions of section V. In the event that the **Named Insured** refuses to consent to any settlement as set forth in this section VI. D., the **Insurer's** right and duty to defend such **Claim** shall end upon the date of such refusal.

ADMIRAL INSURANCE COMPANY**VII. Notice of Claim and Multiple Claims**

- A. As a condition precedent to their rights under this Policy, an **Insured** shall give the **Insurer** written notice of any **Claim** first made against the **Insureds** during the **Policy Period**, as soon as practicable, but in no event later than 60 days after the expiration of the **Policy Period**.
- B. If during the **Policy Period** the **Insureds** become aware of any fact, circumstance or situation which may reasonably be expected to give rise to a **Claim** being made against any **Insured** and shall give written notice to the **Insurer**, as soon as practicable (but prior to the expiration of or cancellation of the **Policy**), of:
1. the specific fact, circumstance or situation, with full details as to dates, persons, and entities involved; and
 2. the injury or damages which may result therefrom; and
 3. the circumstances by which the **Insured** first became aware thereof;
- then any **Claim** subsequently made arising out of such fact, circumstance or situation shall be deemed to have been made when notice was first given to the **Insurer**.
- C. All **Claims** based upon or arising out of the same **Wrongful Act** or any **Related Wrongful Acts**, or one or more series of any similar, repeated or continuous **Wrongful Acts** or **Related Wrongful Acts**, shall be considered a single **Claim**. Each **Claim** shall be deemed to be first made at the earliest of the following times:
1. when the earliest **Claim** arising out of such **Wrongful Act** or **Related Wrongful Acts** was first made, or
 2. when notice pursuant to section VII. B. of a fact, circumstance or situation giving rise to such **Claim** is given;
- D. In addition to furnishing the notice as provided in sections VII. A. and VII. B. above, the **Insureds** shall give the **Insurer** such information and cooperation as it may reasonably require and shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith.

VIII. General Conditions**A. Termination of Policy and Non-Renewal**

1. This Policy shall terminate at the earliest of the following times:
 - a. upon the receipt by the **Insurer** of written notice of cancellation from the **Named Insured**;
 - b. upon expiration of the **Policy Period** as set forth in Item 2. of the Declarations;
 - c. at such other time as may be agreed between the **Named Insured** and the **Insurer**; or
 - d. upon written notice by the **Insurer** of cancellation for non-payment of premium.
2. The **Insurer** may not cancel this Policy except for non-payment of any premium when due. The **Insurer** shall provide at least 20 days written notice to the **Named Insured** prior to any cancellation for non-payment of any premium.
3. If this Policy is cancelled by the **Named Insured**, the **Insurer** shall retain the customary short rate proportion of the premium herein. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
4. If the **Insurer** decides not to renew this Policy, the **Insurer** shall provide written notice to the **Named Insured** at least 60 days prior to the end of the **Policy Period**. The notice shall include the reason for such non-renewal.
5. Any notices to be given to the **Named Insured** under this section shall be provided to the **Named Insured** at the last known principal address and to its insurance agent or broker. The mailing by certified mail of such notice shall be sufficient.

B. Proposal

The **Proposal** is the basis of this Policy and is incorporated in and constitutes a part of this Policy. A copy of the Proposal Form(s) is attached hereto. Any material submitted with the Proposal Form(s) shall be maintained on file with the **Insurer** and shall be deemed to be attached hereto as if physically attached. It is agreed by all **Insureds** that the statements in the **Proposal** are their representations, that they are material and that this Policy is issued in reliance upon the truth and accuracy of such statements.

C. Action Against the Insurer

No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insureds'** obligation to pay shall have been finally determined either by judgment against the **Insureds** after actual trial or by written agreement of the **Insureds**, the claimant and the **Insurer**.

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Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the **Insurer** as party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the **Insurer** be impleaded by the **Insureds**, or their legal representatives. Bankruptcy or insolvency of the **Insureds** or of their estates shall not relieve the **Insurer** of any of its obligations hereunder.

D. Changes in Exposure

If during the **Policy Period** there is a 50 percent or greater change in the **Named Insured's** total lawyer population, then the **Named Insured** shall give the **Insurer** written notice of such changes as soon as practicable but not later than 60 days after the effective date of such change; provided, however, that this provision shall not apply if the **Named Insured** had less than 6 lawyers who met the definition of **Insured** at the Policy inception date. The **Named Insured** shall accept any premium adjustment or coverage revisions which the **Insurer** may require.

E. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery thereof, and the **Insureds** shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insureds**.

Any amount recovered pursuant to the exercise of such rights of subrogation shall be applied as follows: (1) to the repayment of expenses incurred toward subrogation; (2) to **Damages** and/or **Claim Expenses** paid by the **Insured** in excess of the Limits of Liability hereunder; (3) to **Damages** and/or **Claim Expenses** paid by the **Insurer**; (4) to **Damages** and **Claim Expenses** paid by the **Insured** in excess of the Deductible; and (5) to repayment of the Deductible.

F. Assignment

This Policy and any and all rights hereunder are not assignable without the written consent of the **Insurer**.

G. Entire Agreement

By acceptance of this Policy, the **Insureds** and the **Insurer** agree that this Policy (including the **Proposal**) and any written endorsements attached hereto constitute the entire agreement between the parties.

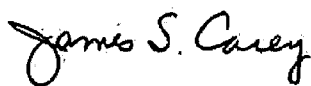
H. Representation by Named Insured

It is agreed that the **Named Insured** shall act on behalf of the **Insureds** with respect to the giving and receiving of notices, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the receipt and acceptance of any endorsements issued to form a part of this Policy and the exercising or declining to exercise any right to an Extended Reporting Period.

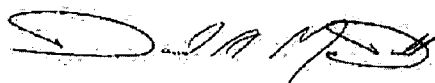
I. Coverage Territory

This **Policy** applies to any **Wrongful Act** taking place anywhere in the world, but only if the **Claim** is made and suit is brought against the **Insured** within the United States of America, its territories or possessions.

In witness whereof, the **Insurer** has caused this Policy to be signed by its President and Chief Executive Officer and Secretary, but this Policy shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the **Insurer**.



President and Chief Executive Officer



Secretary

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

Renewal Proposal Form**Lawyers Professional Liability Insurance**

CLAIMS MADE WARNING FOR APPLICATION: This Proposal Form is for a Claims Made and Reported Policy, relating to claims made against the Insureds during the Policy Period or any Extended Reporting Period that may apply.

Whenever printed in this Proposal Form, the terms in boldface type shall have the same meanings as indicated in the Policy. This Proposal Form is to be completed with respect to the entire Applicant Firm.

Desa Ballard P.A. dba Ballard Watson Weissenstein
 Name of Applicant Firm
226 State St.
 Street Address
West Columbia Lexington SC 29169
 City County State Zip Code
www.Desaballard.com 58-2331294
 Website Address (if applicable) Federal Employer Identification Number (FEIN)

The person designated as agent of the Applicant Firm and of all Insureds to receive any and all notices from the Insurer or their authorized representatives concerning this insurance:

Mara Ballard Mgr./Sec./Treas.
 Contact Name Title
Mara@desaballard.com 803-796-9299 803-796-1066
 E-mail Address Telephone Number Fax Number

Producer Information

VIG
 Submitted by (Agency Name)
F. Barksdale
 Agent's Name (Individual's Name)
 Dated
 Agent's License Number

General Information

1. Indicate the total number of personnel for the Applicant Firm by designation.
 Lawyers: 3 Law Clerks: 5 Paralegals: 2 Legal Secretaries: 1
 Of-Counsel: 1 Independent Contractors: 1 Clerical: 1 Other: 1

COMPLETE THE INDIVIDUAL INSURED SUPPLEMENTAL FORM (LPL 9600) FOR ALL LAWYERS IN THE APPLICANT FIRM.

2. During the last 12 months, has any lawyer in the Applicant Firm served as a director, officer, trustee or partner of, or exercised any fiduciary control over, any organization other than the Applicant Firm?
 If "Yes", complete the following. ☒ Yes ☐ No

Name of Lawyer	Name of Organization	Is Organization For Profit or Nonprofit?	Is the Organization a Firm Client?	Position Held by Lawyer	Percentage of Equity Held	Percentage of Total Firm Billings
<u>Desa Ballard</u>	<u>Link to LLC</u>	☒ Yes ☐ No	☒ Yes ☐ No	<u>owner</u>	<u>97%</u>	<u>—</u>
<u>Desa Ballard</u>	<u>Lawyer's Inst.</u>	☒ Yes ☐ No	☒ Yes ☐ No	<u>member</u>	<u>30%</u>	<u>—</u>

Nature of Practice Information

3. Indicate the gross income for the applicable fiscal year (gross income means all sums billed to clients for services rendered, or if your Applicant Firm deals primarily with contingency fee cases, your average annual gross revenue):
 (a) Actual for immediate past fiscal year: \$ 932,000
 (b) Estimate for current fiscal year: \$ 900,000

ADMIRAL INSURANCE COMPANY

4. During the last 12 months, has there been any change in the Applicant Firm's area of practice? ☒ Yes ☐ No
 If "Yes", indicate the percentage of gross income for the past fiscal year derived from the following areas of practice:

Area of Practice	%	Area of Practice	%
Administrative Law - General	%	International Law	%
Admiralty/Maritime	%	Labor Relations - Labor	%
Antitrust/Trade Regulation	%	Labor Relations - Management	%
Arbitration/Mediation	%	Litigation (Civil) - Defense	18 %
Bankruptcy	%	Litigation (Civil) - Plaintiff	14 %
Banks/Savings and Loans	%	Local Government Law - without Bonds	%
Civil Rights and Discrimination	%	Mergers and Acquisitions	%
Collection/Repossession	%	Oil and Gas	%
Commercial Law	%	Pension and Employee Benefits	%
Commercial Litigation - Defense	0.3 %	Personal Injury and Negligence Litigation - Defense	%
Commercial Litigation - Plaintiff	0.3 %	Personal Injury and Negligence Litigation - Plaintiff	%
Communications (FCC)	%	Public Contract Law	%
Construction Law	%	Public Utilities	%
Corporate Organization/Formation	%	Real Property (Conveyance) - Commercial	%
Criminal Law	%	Real Property (Conveyance) - Foreclosure	%
Entertainment/Sports - with Money Management	%	Real Property (Conveyance) - Residential	%
Entertainment/Sports - without Money Management	%	Real Property - Development	%
Environmental Law	%	Real Property - Title Examination	%
Estate, Trust and Probate	%	Securities Law - Including Municipal Bonds	%
Family Law	%	Taxation - Opinions	%
General Corporate/Business	0.8 %	Taxation - Preparation	%
Healthcare	%	Workers' Compensation Litigation - Defense	%
Immigration and Naturalization	%	Workers' Compensation Litigation - Plaintiff	%
Insurance Coverage	%	Other (list): <u>Appellate</u>	6.13 %
Insurance Defense Litigation	%	<u>Professional Rep.</u>	6.1 %
Intellectual Property	%	TOTAL:	100%

5. Indicate the percentage of the Applicant Firm's plaintiff cases that are class actions suits. 0 %

General Policy and Procedures Information

6. Since the completion of the last application, have there been any changes to the Applicant Firm's docket or conflict of interest systems or any other office procedures? ☐ Yes ☒ No
 If "Yes", provide details.
7. During the last 12 months, how many lawyers of the Applicant Firm have participated in formal continuing legal education programs of at least 7 hours? 3
8. During the last 12 months, how many suits for collection of fees have been filed by the Applicant Firm? 0
9. Does the Applicant Firm share office space, expenses, cases, or letterhead with any other individual, of counsel partnership, firm, or organization? If "Yes", provide, on separate attachment, the name of the entity(ies). ☐ Yes ☒ No

Litigation and Claim Information (Provide details to all "Yes" answers)

10. Has any lawyer in the Applicant Firm ever been refused admission to practice, disbarred, or suspended from practice, reprimanded, sanctioned, or disciplined by any court or administrative agency? ☐ Yes ☒ No
 If "Yes", provide details.
11. During the last 12 months, has:
 (a) any professional liability claim or suit been made against the Applicant Firm, or any predecessor in business, or any past or present lawyers in the Applicant Firm? ☐ Yes ☒ No
 (b) there been any change in the status of claims reported to other companies? ☐ Yes ☒ No
12. Is the Applicant Firm or any lawyer in the Applicant Firm aware of any fact, circumstance or situation that might reasonably be expected to result in any professional liability claim or suit against the Applicant Firm, or any predecessor in business, or any past or present lawyers in the Applicant Firm? ☐ Yes ☒ No

IF "YES" TO QUESTION 11. OR 12., PROVIDE FULL DETAILS ON THE CLAIM / INCIDENT SUPPLEMENTAL FORM (LPL 9510).

6.25.2013

ADMIRAL INSURANCE COMPANY

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NOTICE TO NEW MEXICO, PENNSYLVANIA APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES.

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NOTICE TO APPLICANTS OF MINNESOTA, NEW JERSEY, OHIO, AND OKLAHOMA: ANY PERSON WHO KNOWINGLY, AND WITH INTENT TO INJURE, DEFRAUDS OR DECEIVES ANY INSURER OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM FOR THE PROCEEDS OF AN INSURANCE POLICY CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, IS GUILTY OF A FELONY AND IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.

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NOTICE TO ARKANSAS, DISTRICT OF COLUMBIA, LOUISIANA, MARYLAND, AND RHODE ISLAND APPLICANTS: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO FINES AND CONFINEMENT IN PRISON.

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Please Read Carefully

The undersigned, acting on behalf of all proposed Insureds, declare that the statements set forth herein are true and correct and that thorough efforts have been made to obtain sufficient information from each Insured proposed for this Insurance to facilitate the proper and accurate completion of this Proposal Form.

The undersigned agree that the particulars and statements contained in the Proposal Form and any material submitted herewith are their representations and that they are material and are the basis of the insurance contract. The undersigned further agree that the Proposal Form and any material submitted herewith shall be considered attached to and a part of the Policy. Any material submitted with the Proposal Form shall be maintained on file (either electronically or paper) with the Insurer and shall be deemed to be attached hereto as if physically attached.

It is further agreed that:

- if any significant change in the condition of the applicant is discovered between the date of this Proposal Form and the Policy inception date, which would render this Proposal Form inaccurate or incomplete, notice of such change will be reported in writing to the Insurer immediately;
- the information contained in this Proposal Form shall not be used by the Applicant Firm and/or any Insureds as notice of Claims, nor will the Insurer recognize and/or accept the information contained herein as notice of Claims as provided for in section VII. of the Policy;
- any Policy, if issued, will be in reliance upon the truth of such representations;
- this Proposal Form has been completed as respects the entire Applicant Firm;
- and the signing of this Proposal Form does not bind the undersigned to purchase the insurance.

6.25.2018

Dated

Partner, Owner, Officer or Principal (Signature)

Title

Partner, Owner, Officer or Principal (Print Name)

This Admiral Insurance Company Proposal Form, including any material submitted herewith, shall be held in strictest confidence.

A POLICY CANNOT BE ISSUED UNLESS THE PROPOSAL FORM IS PROPERLY SIGNED AND DATED.

Please submit this Proposal Form including appropriate documentation to:

Monitor Liability Managers, LLC, 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

Plaintiff
Supplemental Form

Lawyers Professional Liability Insurance

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Desa Ballard PA dba Ballard Watson Weissenstein
Name of Applicant Firm

APPLICANT FIRM'S INSTRUCTIONS:

IF SPACE IS INSUFFICIENT TO ANSWER ANY QUESTION FULLY, PROVIDE SEPARATE ATTACHMENTS.

Plaintiff Information

1. Total number of ~~personal injury~~ commercial/civil cases during the past 12 months: 14
2. What percentage of your plaintiff cases are class action suits? 0 %
3. Average number of cases each attorney handles per year: 5
4. Percentage of cases settled before trial: XX %
5. Percentage of cases tried to conclusion: XX %
6. Percentage of cases referred to you by other law firms: 5 %
7. Do you use written referral agreements in all cases which are referred to you? if applicable ☒ Yes ☐ No
8. Percentage of cases your firm refers to other firms and retains a portion of the fees: 0 %
9. Do you use written referral agreements and obtain certificates of insurance, in all cases referred out? would be applicable ☐ Yes ☒ No
10. Average dollar value of cases: \$ unknown XXX
11. Maximum dollar value of any one case: \$ unknown XXX
12. Average percentage of recovery your firm takes as fees: 40% or hourly
13. Have you advertised during the past 12 months through any of the following:
 - (a) Yellow pages ☐ Yes ☒ No
 - (b) Newspaper ☐ Yes ☒ No
 - (c) Radio ☐ Yes ☒ No
 - (d) Television ☐ Yes ☒ No

*** Cases are pending and no dollar value has yet to be requested.

* Ms. Ballard supervises all case with Harvey Watson or Stephanie Weissenstein being primary on each Mr. Watson is/was primary on 4 cases Ms. Weissenstein on 10.

XX 2 cases we associated with, but are primarily handled by other Counsel (and we are no longer involved)
1 case we requested to be relieved 1 case is stayed by bankruptcy. 2 cases are associate departure cases and are settling or have settled (one \$)

ROA 00228

1 Case did not go forward

ADMIRAL INSURANCE COMPANY

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Signature Required

I understand that the information submitted herein becomes a part of the Applicant Firm's Lawyers Professional Liability Insurance Proposal Form and is subject to the same representations and conditions.

6-25-2013

Dated

Partner, Owner, Officer or Principal (Signature)

Title

Partner, Owner, Officer or Principal (Print Name)

Please submit this Proposal Form including appropriate documentation to:
Monitor Liability Managers, LLC, 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

**Individual Insured
Supplemental Form****Lawyers Professional Liability Insurance**

CLAIMS MADE WARNING FOR APPLICATION: This Proposal Form is for a Claims Made and Reported Policy, relating to claims made against the insureds during the Policy Period or any Extended Reporting Period that may apply.

Desa Ballard P.A. & Ballard Watson Weissenstein
Name of Applicant Firm

**NAME ALL OWNERS, PARTNERS, OFFICERS, DIRECTORS, STOCKHOLDER EMPLOYEES, AND EMPLOYED LAWYERS.
ATTACH AN ADDITIONAL INDIVIDUAL INSURED SUPPLEMENTAL FORM IF THE FIRM SIZE EXCEEDS 20.**

Individual Insured Information

*Use the following Designations to complete the table below.

"O" Officers, Directors, or Shareholders of the Applicant Firm who are licensed lawyers

"P" Partners of a partnership

"S" Sole Proprietor / Individual

"E" Employed lawyers (must be employee of Applicant Firm)

"C" "Of Counsel" attorneys for whom coverage is desired

"A" Associate for whom coverage is desired

"IC" Independent Contractor

"PT" Part Time

"R" Retired

Name of Lawyer	Designation*	For IC/PT Indicate # of hours worked	Admitted to the Bar Mo/Yr	Years in Practice	Lawyer's Individual Specialty	Member in Good Standing of the following Bar Association(s)
1. <u>Desa Ballard</u>	<u>O</u>	<u>N/A</u>	<u>11/1983</u>	<u>30</u>	<u>Professional</u>	<u>SC, Wash. DC</u>
2. <u>Harvey M. Watson</u>	<u>O</u>	<u>N/A</u>	<u>11/2005</u>	<u>8</u>	<u>"</u>	<u>SC</u>
3. <u>Stephanie Weissenstein</u>	<u>O</u>	<u>N/A</u>	<u>11/2004</u>	<u>9</u>	<u>"</u>	<u>SC</u>
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CUB
6-25-2013

ADMIRAL INSURANCE COMPANY

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Signature Required

I understand that the information submitted herein becomes a part of the Applicant Firm's Lawyers Professional Liability Insurance Proposal Form and is subject to the same representations and conditions.

6.25.2018

Dated

Debra L. Beeland
Partner, Owner, Officer or Principal (Signature)

Title

Partner, Owner, Officer or Principal (Print Name)

Please submit this Proposal Form including appropriate documentation to:
Monitor Liability Managers, LLC, 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039

Lawyers Professional Liability Insurance

CLAIMS MADE WARNING FOR DECLARATIONS: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.

PLEASE READ AND REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

Whenever printed in this Declarations Page, the boldface type terms shall have the same meanings as indicated in the Policy.

Policy Form: LPL 9300 (04-09)

Policy Number: 91200935

Item 1. Name and Address of Named Insured:

Desa Ballard dba Ballard & Watson, Attorneys at Law
226 State Street
West Columbia, SC 29169

Person designated to receive all correspondence from the Insurer:

Mara Ballard
Manager/Secretary/Treasurer

Item 2. Policy Period: From July 1, 2013 (inception date) to July 1, 2014 (expiration date)

(Both dates at 12:01 a.m. Standard Time at the address of the Named Insured)

Item 3. Limit of Liability for the Policy Period (inclusive of Damages and Claims Expense):

- A. \$1,000,000 each Claim, but in no event exceeding
- B. \$2,000,000 in the aggregate for all Claims.

Item 4. Applicable Deductible: \$10,000

Item 5. Premium: \$21,119

Item 6. Endorsements attached:

SER-00-ADM (05-13) Service of Suit

LPL 99010 (04-09) Modification to Item 1. of the Declarations, Name and Address of Named Insured

Item 7. Notice to the Insurer as provided in sections VII. A. and VII. B. and any information furnished to the Insurer as provided in section VI. A. shall be sent to:

Monitor Liability Managers, Claims Department

Address: 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039

Fax: (847) 806-4017 Email: newclaim@monitorliability.com

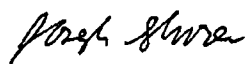
All other notices required to be given to the Insurer under this Policy shall be sent to:

Monitor Liability Managers

Address: 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039

Fax: (847) 806-8282

These Declarations along with the completed and signed Proposal and the Lawyers Professional Liability Insurance Policy shall constitute the contract between the Insureds and the Insurer.

Authorized Representative: 

Date Issued: April 28, 2014

Modification to Item 1. of the Declarations Name and Address of Named Insured

In consideration of the premium paid for this Policy, it is understood and agreed that Item 1. Name and Address of Named Insured, of the Declarations is hereby amended to read as follows:

Item 1. Name and Address of **Named Insured**:

Desa Ballard dba Ballard & Watson, Attorneys at Law

226 State Street

West Columbia, SC 29169

Person designated to receive all correspondence from the **Insurer**:

Mara Ballard

Manager/Secretary/Treasurer

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Desa Ballard dba Ballard & Watson, Attorneys at Law		Policy Number 91200935
Effective Date of This Endorsement 04/09/2014	Authorized Representative	

Policy Form: LPL 9300 (04-09)

22332-1200935-1145556

LPL 99010 (04-09)

ROA 00234

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2018-CP-32-01743

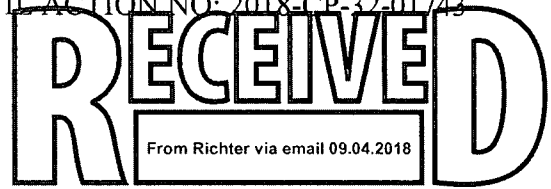
Desa Ballard and Desa Ballard P.A., d/b/a
Ballard & Watson,

Plaintiffs,

v.

Admiral Insurance Company, Monitor
Liability Managers, Mendes & Mount, LLP,
Adele R. Pope, individually and as Special
Administrator of the Estate of Gloria Corley,

Defendants.



**DEFENDANT ADMIRAL INSURANCE
COMPANY'S MEMORANDUM IN
SUPPORT OF MOTION FOR
JUDGMENT ON THE PLEADINGS**

**TO: ERIC BLAND, ESQUIRE, ATTORNEY FOR PLAINTIFFS AND TO THE
PLAINTIFFS ABOVE-NAMED:**

Defendant, Admiral Insurance Company, by and through its undersigned counsel, hereby
submits this Memorandum of Law in support of its Motion for Judgment on the Pleadings.

SUMMARY

Admiral Insurance Company issued a lawyer's professional liability insurance policy (hereinafter the "Admiral Policy") to Desa Ballard dba Ballard & Watson, Attorneys at Law. (Ex. A, Admiral Policy, Revised Declarations Page). The Admiral Policy gives Admiral the sole right and duty to defend, requires the insured to cooperate in "the defense and settlement" of the case, and includes a consent to settle clause that authorizes the Named Insured to reject a proposed settlement that Admiral recommends and which is acceptable to the underlying claimant. However, if the Named Insured rejects the proposed settlement, then Admiral's duty to defend ends, and its obligations are capped at the amount of the proposed settlement, inclusive of incurred costs. (Ex. A, Policy, LPL 9300 (04-09), p. 5).

Defendant Adele Pope, as the Special Administrator of the Estate of Gloria Corley (hereinafter "Estate"), filed a legal malpractice suit against Plaintiffs (hereinafter collectively

referred to as “Desa Ballard Litigants”) in the South Carolina Court of Common Pleas, Lexington County (hereinafter “Underlying Case”). Admiral is currently defending the Desa Ballard Litigants under the Admiral Policy.¹

As part of its defense of the Underlying Case, Admiral seeks to negotiate with the Estate to determine if there is an amount that is “acceptable to the claimant” – i.e., the Estate – that Admiral would recommend. The Desa Ballard Litigants seek to prevent Admiral from conducting those negotiations. (Compl. ¶ 65). By its plain terms, the Admiral Policy addresses the specific type of dispute between the Desa Ballard Litigants and Admiral in this case. Therefore, Admiral moves for entry of judgment on the pleadings seeking a determination that: (1) Admiral has a right to participate in settlement negotiations with the Estate; (2) The Desa Ballard Litigants owe a duty to cooperate in the defense and settlement of the case and do not have a right to prevent Admiral from participating in settlement negotiations with the Estate; and (3) Desa Ballard d/b/a Ballard & Watson, Attorneys at Law has a right to reject a settlement recommended by Admiral and which is acceptable to the Estate, but in the event of such a rejection, Admiral’s liability for the claim shall not exceed the amount for which the claim could have been settled, including claims expenses incurred up to the date of such refusal, and Admiral’s right and duty to defend shall end upon the date of such refusal. In other words, Admiral asks the Court to enforce the contract as it is written.

The Desa Ballard Litigants also assert Admiral acted in bad faith by refusing to renew the insurance policy. However, Admiral has no duty to renew the policy. Therefore, the Complaint fails to state a cause of action with respect to bad faith.

¹ Plaintiffs have dismissed Monitor Liability Managers and Mendes & Mount, LLP.

FACTS

A. The Admiral Insurance Policy

Admiral issued a lawyers' professional liability policy, Policy No. 91200935, to Desa Ballard P.A. dba Ballard & Watson, Attorneys at Law, with effective dates of July 1, 2013 to July 1, 2014. (Ex. A, Policy, Declarations Page). The Admiral Policy includes a per claim liability limit of \$1,000,000, and provides in pertinent part:

VI. Defense, Cooperation and Settlement

* * *

- B. The **Insurer** shall have the sole right and the duty to defend any covered **Claim**, and has the sole right to select defense counsel.
- ...
- C. Each **Insured** shall cooperate with the **Insurer** in the defense and settlement of any **Claim** Upon the request of the **Insurer**, the **Insured** shall . . . attend hearings, depositions and trials, assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, as well as giving written statements to the **Insurer's** representatives, and meeting with such representatives for purposes of investigation or defense, all without charge to the **Insurer**.
- D. The **Insurer** shall not settle any **Claims** without the **Named Insured's** consent. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by the **Insurer**, which is acceptable to the claimant, and shall elect to contest the **Claim**, or continue any legal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Insurer's** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been settled, including **Claim Expense** incurred up to the date of such refusal. Such amounts are subject to the provisions of Section V. In the event that the **Named Insured** refuses to consent to any settlement as set forth in this Section VI. D., the **Insurer's** right and duty to defend such **Claim** shall end upon the date of such refusal.

(Ex. A, Policy, LPL 9300 (04-09), p. 5) (underline added for emphasis).

B. The Underlying Case

Gloria Corley, deceased, hired the Desa Ballard Litigants to defend her in a breach of contract action filed by Adele Pope, Esquire in March of 2011. (Compl. ¶ 23). Pope sued Corley for recovery of fees under a written fee agreement based upon a prior matter in which Pope represented Corley. (Compl. ¶ 25). Corley lost the fee agreement dispute. (Ex. D, Form 4 Judgment in a Civil Case, p. 1, Adele J. Pope v. Gloria P. Corley and Samuel M. Corley, Individually and as Trustee of the M. L. Corley Marital Trust, Case No. 2011-CP-32-1109, Feb. 15, 2013) (“The court finds that the fee agreement is neither unreasonable nor unconscionable”).

While representing Corley in the fee agreement litigation, the Desa Ballard Litigants also represented Corley and her daughter, Aundra Williams, in negotiating a buyout of their interests in a family trust. (Comp. ¶ 27). Corley accepted a reduced buyout, in part, because the Desa Ballard Defendants believed the structure of the buyout would preclude Corley from having to pay any additional amounts to Pope. (Compl. ¶¶ 31-34 & 36). When Pope learned about the buyout, she petitioned this Court in the fee agreement dispute for her share of the buyout based on the fee agreement. This Court agreed with Pope and awarded Pope a judgment against Corley in the amount of \$248,673.87. (Ex. C, Order Granting Judgment to Plaintiff Adele J. Pope as to Claims Against Gloria P. Corley, p. 10). The Desa Ballard Litigants filed an appeal on Corley’s behalf, but the appeal was filed untimely and was dismissed. (Compl. ¶ 41).

To add insult to Corley’s injury, the lump-sum payment for the trust buyout was given to Corley’s attorney-in-fact, Williams, rather than being paid to a guardian ad litem or paid into a restricted account for Corley’s benefit. (Ex. B, Underlying Compl. ¶¶ 22-23). The Desa Ballard Litigants allege Williams “may have” subsequently “mismanaged and/or misappropriated some or

all of the trust settlement money” (Compl. ¶ 51). Therefore, Corley did not have sufficient funds to satisfy the Pope judgment.

Corley passed away on or about March 31, 2016. (Compl. ¶ 56). As a judgment creditor of the Estate, Pope sought and obtained appointment as Special Administrator of Corley’s Estate. (Compl. ¶¶ 57-58). Pope, acting as the administrator for the Estate, initiated the Underlying Case by filing a Summons and Complaint in the Lexington County Court of Common Pleas, Case Number 2017-CP-32-00618, captioned Estate of Gloria P. Corley, by its Special Administrator vs. Desa Ballard and Desa Ballard, P.A. (hereinafter “Underlying Complaint”). (Ex. B, Underlying Complaint).

The Underlying Complaint alleges the Desa Ballard Litigants were negligent in the following ways:

- 1) Failing to recognize that termination of the trust was not in the best interest of Corley;
- 2) Failing to have a Guardian ad Litem appointed for Corley;
- 3) Representing Corley, Williams individually, and Williams as attorney-in-fact in violation of the rules governing conflicts of interest;
- 4) Failing to recognize that Pope’s fee agreement entitled her to a percentage of the lump sum buyout payment;
- 5) Undertaking a frivolous defense and appeal of the Pope Action and failing to timely appeal the order.

(Ex. B, Underlying Complaint, ¶ 33).

C. The Current Dispute.

The Desa Ballard Litigants tendered defense of the Underlying Case to Admiral. Pursuant to the 2013-2014 Admiral Policy, Admiral is defending the Desa Ballard Litigants in the

Underlying Complaint.² Admiral, as it does in many cases, sought to investigate the possibility of resolving the Underlying Case. Admiral communicated this decision to the Desa Ballard Litigants, and Desa Ballard stated that “no settlement offers were to be extended and no settlements were to be made in the legal malpractice claim” (Compl. ¶¶ 65-70). South Carolina’s Alternative Dispute Resolution Rules will require Admiral to participate in mediation in the Underlying Case and to send “a representative . . . who has full authority to settle the claim.” Rule 6(b)(4), SCADR. Moreover, the Admiral Policy gives Admiral control over the defense of the case and even requires the Desa Ballard Litigants to cooperate “in the defense and settlement of any Claim.” (Ex. A, Policy, LPL 9300 (04-09), p. 5) (emphasis added). Therefore, Admiral seeks a declaration regarding its rights and obligations under the Admiral Policy.

On May 16, 2017, Admiral communicated in writing its decision not to renew the insurance policy. (Compl. ¶ 78-81). The Desa Ballard Litigants claim Admiral’s decision not to renew the policy was made in bad faith.

² The Desa Ballard Litigants claim in their Answer to Admiral’s Counterclaim that the Underlying Complaint triggered a new “claim” under a policy issued by Admiral for the 2016-2017 policy period. [ECF No. 18, ¶ 18]. However, the Desa Ballard Litigants gave notice of the missed appeal deadline during the 2013-2014 policy year. (Compl. ¶¶ 42-46). Pursuant to section VII. B. of the Admiral Policy, “If during the Policy Period the Insureds become aware of any fact, circumstance or situation which may reasonably be expected to give rise to a Claim . . . and shall give written notice to the insurer . . . then any Claim subsequently made arising out of such fact, circumstance or situation shall be deemed to have been made when notice was first given to the Insurer.” (Ex. A, Policy, LPL 9300 (04-09), p. 6). Moreover, “[a]ll claims based upon or arising out of the same Wrongful Act or any Related Wrongful Acts, or one or more series of any similar, repeated or continuous Wrongful Acts or Related Wrongful Acts, shall be considered a single Claim. Each Claim shall be deemed to be first made at the earliest of the following times: . . . 2. When notice pursuant to section VII. B. of a fact, circumstance or situation giving rise to such Claim is given.” (Ex. A, Policy, LPL 9300 (04-09), p. 6). Therefore, the Underlying Complaint falls within the 2013-2014 policy year.

ARGUMENT

- I. The Court must apply the plain terms of the Admiral Policy, which give Admiral the “sole right and duty to defend,” require the Desa Ballard Litigants to “cooperate in the defense and settlement” of the Underlying Case, and address the contingency of Admiral and the Estate reaching a settlement that the Named Insured rejects.**

One of the primary goals when drafting a contract is to anticipate potential disputes between the parties and to set out – at the time of the contract and before the dispute ever arises – how the dispute will be handled. *See e.g., Severn Peanut Co., Inc. v. Industrial Fumigant Co.*, 807 F.3d 88, 91 (4th Cir. 2015) (discussing freedom of contract, which allows “parties to bargain over the allocation of risk”). Insurance is a transfer of risk, and the insurance contract communicates between the parties what risks the insurance company is assuming and what risks it is not willing to assume. *See e.g., Union Labor Life Ins. v. Pireno*, 458 U.S. 119, 130, 102 S. Ct. 3002, 3009 (1982) (“The transfer of risk from insured to insurer is effected by means of the contract between the parties – the insurance policy – and the transfer is complete at the time that the contract is entered.”); *LM Ins. Corp. v. Kobys*, 2017 WL 1073352, *7 (D.N.J. March 20, 2017) (“The fundamental concept of insurance centers on the transfer of risk.”).

Admiral agreed to take on certain risks – including the duty to defend and indemnify the Desa Ballard Litigants – but that transfer of risk was not absolute. In fact, the Admiral Policy anticipates the precise dispute between the parties here and addresses the allocation of risk. Admiral has control of the defense.³ The Desa Ballard Litigants have a duty to cooperate in the defense and settlement of the case.⁴ Although the Named Insured retains the ultimate right to

³ Section “VI. Defense, Cooperation and Settlement,” Paragraph B. states, “The Insurer shall have the **sole** right and duty to defend any covered claim”

⁴ Section “VI. Defense, Cooperation and Settlement,” Paragraph C. states, “Each Insured shall cooperate with the Insurer in the defense **and settlement** of any Claim”

reject a potential settlement, Admiral is not willing to accept the risk of fighting a case to the bloody end merely because its insured rejects a settlement. Instead, if the insured rejects a proposed settlement recommended by Admiral that is acceptable to the Estate, then Admiral's exposure is limited.⁵ Because the Admiral Policy addresses each of these matters by its plain terms, the policy must be enforced as written.

"South Carolina courts have a long history of formalistic interpretation with respect to all contracts and have repeatedly held . . . insurance policies are subject to general rules of contract construction" *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 579, 757 S.E.2d 399, 406 (2014) (quotation omitted). "The foremost rule in interpreting an insurance contract is to give effect to the intent of the parties as shown by the language of the contract itself." *Laidlaw Envtl. Services (TOC), Inc. v. Aetna Cas. & Surety Co. of Illinois*, 338 S.C. 43, 48, 524 S.E.2d 847, 850 (Ct. App. 1999) (citation omitted). "When the contract language is clear and unambiguous, the language alone determines the contract's force, and terms must be construed to give effect to their plain, ordinary, and popular meaning." *Id.* (internal quotations omitted). Stated differently, "[w]hen a contract is unambiguous, it must be construed according to the terms the parties have used." *Bennett & Bennett Const., Inc. v. Auto Owners Ins. Co.*, 405 S.C. 1, 4, 747 S.E.2d 426, 428 (2013) (citing *B.L.G. Enterprises, Inc. v. First Financial Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 326, 330 (1999)).

"The court's duty is limited to the interpretation of the contract made by the parties themselves regardless of its wisdom or folly, apparent unreasonableness, or failure of the parties to guard their interests carefully." *B.L.G. Enterprises, Inc.*, 334 S.C. at 535, 514 S.E.2d at 330 (internal quotations omitted). While exclusions are construed against an insurer, "insurers have

⁵ See quote below on page 10.

the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or a statutory prohibition.” *Id.* at 535-36, 514 S.E.2d at 330 (citations omitted).

Three provisions in the Admiral Policy control the Court’s analysis here. First, Paragraph VI. B. states, “The Insurer shall have the sole right and duty to defend any covered Claim” (Ex. A, Admiral Policy, Form LPL 9300 (04-09), p. 5). Under South Carolina law, the duty to defend has included the duty to settle, when settlement is the reasonable thing to do, for at least as far back as 1933 when the South Carolina Supreme Court issued its decision in *Tyger River Pine Co. v. Maryland Cas. Co.*, 170 S.C. 286, 170 S.E.2d 346 (1933). The Supreme Court in *Tyger River* held, “an insurer against liability for accidents which assumes the duty of defending a claim owes the assured the duty of settling the claim if that is the reasonable thing to do.” *Id.* at 349 (quotation omitted)). The South Carolina Alternative Dispute Resolution Rules incorporate this expectation, requiring attendance at mediation, by “a representative of the insurance carrier who is not the carrier’s outside counsel and who has full authority to settle the claim.” Rule 6(b)(4), SCADR. Therefore, by having the sole right and duty to defend the Underlying Case, Admiral also bears the right to negotiate a potential settlement of the claim.

Second, Paragraph IV. C. states, “Each Insured shall cooperate with the Insurer in the defense and settlement of any Claim” (Ex. A, Admiral Policy, Form LPL 9300 (04-09), p. 5). In addition to Admiral having control of the defense, the Desa Ballard Litigants – as insureds – have an obligation to cooperate in the defense and settlement of the case. Therefore, they do not have authority under the contract to prohibit Admiral from participating in settlement negotiations. In fact, to the contrary, they are obligated to cooperate.

Third, Paragraph IV. D., the consent to settle clause, addresses the rights of the Desa Ballard Litigants and Admiral if Admiral reaches a point where it is willing to offer a settlement and the Estate finds the settlement acceptable:

The Insurer shall not settle any Claim without the Named Insured's consent. If, however, the Named Insured shall refuse to consent to any settlement recommended by the Insurer, which is acceptable to the claimant, and shall elect to contest the Claim, or continue any legal, administrative, or arbitration proceedings in connection with such Claim, then the Insurer's liability for the Claim shall not exceed the amount for which the claim could have been settled, including Claims Expense incurred up to the date of such refusal. Such amounts are subject to the provisions of Section V. In the event that the Named Insured refuses to consent to any settlement as set forth in this section VI. D., the Insurer's right and duty to defend such Claim shall end upon the date of such refusal.

(Ex. A, Policy, Form LPL 9300 (04-09), p. 5). The consent to settle clause sets out the respective rights and obligations of the parties. The Named Insured – Desa Ballard, P.A. dba Ballard and Watson Attorneys at Law – has the right to consent to or reject a proposed settlement. However, Admiral does not assume the risk that the insured will insist on defending a case when Admiral believes the case should be settled for an amount that the claimant is willing to accept. In that instance, the Named Insured can choose to continue litigating the case, but the risk of any liability or exposure over and above the amount of the proposed settlement rests with the Named Insured.

The consent to settle clause in the Admiral Policy is plain and unambiguous. Therefore, it must be enforced as written. *See Auto Owners v. Benjamin*, 415 S.C. 137, 143, 781 S.E.2d 137, 141 (Ct. App. 2015) (“Courts must enforce, not write contracts of insurance, and their language must be given its plain, ordinary and popular meaning.” (quoting *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 614, 732 S.E.2d 626, 628 (2012))).

Although consent to settle clauses are not often litigated, those courts that have dealt with similar clauses enforce them where an insurer shows that it recommended a settlement that the

claimant would have accepted but the insured rejected the proposed settlement. For example, the United States Court of Appeals for the Ninth Circuit recently enforced a similar clause in *Security National Insurance Company v. City of Montebello*, 680 Fed. Appx. 525 (9th Cir. 2017). The underlying claimant filed suit against the insured alleging racial discrimination in the work place. The claimant made a demand of \$1.5 million but also demanded continuing employment. The insurer tendered its portion of the settlement, but the insured rejected the settlement because it did not want to continue employing the claimant. *Id.* at 526. The insurer then filed a declaratory judgment action seeking to enforce the consent to settle clause. *Id.*

The insured in *City of Montebello* raised two arguments against enforcement of the clause. First, the insured argued the claimant's demand was not made in good faith.⁶ However, the Ninth Circuit rejected this argument and found the settlement demand was made in good faith. *Id.* at 527. Second, the insured argued the consent to settle clause could only be enforced when the insured unreasonably rejected a settlement. *Id.* In doing so, the insured cited to a case from the Central District of California interpreting a different consent to settle clause that stated the insured's consent could not be "unreasonably withheld." See *Freedman v. United Nat. Ins. Co.*, 2011 WL 781919, *4 (C.D. Cal. March 1, 2011). Unlike the consent to settle clause in *Freedman*, the consent to settle clause in *City of Montebello* – and the consent to settle clause in the Admiral Policy – did not include the language limiting the effect of the clause to unreasonable refusals to settle. *Id.* Therefore, the Ninth Circuit held the issue of whether the insured was reasonable in

⁶ Unlike the consent to settle clause in the Admiral Policy, the clause at issue in *City of Montebello* included a provision allowing the insurer to accept a "bona fide, good faith settlement demand . . . the payment of which would result in the full and final disposition" of the lawsuit. *Id.* The Admiral Policy does not include any similar qualifying language.

rejecting the settlement was irrelevant. “To hold otherwise would impermissibly rewrite the hammer clause⁷ to the policyholder’s benefit.” *Id.* (citations omitted).

The United States Court of Appeals for the Second Circuit affirmed application of a consent to settle clause in *Cowan v. Codelia*, 50 Fed. Appx. 36 (2d Cir. 2002). In *Cowan*, the insurer issued a professional liability policy to a criminal defense attorney who was sued for various claims relating to alleged intimidation of the claimant – a prosecutor – in connection with the insured’s representation of a criminal defendant. *Cowan v. Codelia*, 2001 WL 3050, *1 (S.D.N.Y. Jan. 12, 2001). The insurer recommended a settlement of \$50,000, which the claimants indicated they were willing to accept. *Id.* at *5. Because the insureds rejected the proposed settlement, the District Court held the insured’s rejection cut off the insurer’s obligations, limiting the insurer’s exposure to the defense costs incurred up to the date of the rejection and the \$50,000 proposed settlement amount. *Id.* On appeal, the Second Circuit affirmed. 50 Fed. Appx. at 2-3.

Like the consent to settle clause enforced by the Courts of Appeals in *City of Montebello* and *Cowan*, the consent to settle clause in the Admiral Policy is clear and unambiguous and must be enforced as written. The Admiral Policy anticipates the very dispute between the parties and allocates the risks. Admiral has the sole right and duty to defend – which includes negotiating potential settlements. The Desa Ballard Litigants have a duty to cooperate “in the defense and settlement” of the Underlying Case. If Admiral and the Estate agree on a settlement amount that Admiral recommends to the Deas Ballard Litigants, then the Named Insured has the right to reject the settlement, but that rejection will limit Admiral’s obligations under the Admiral Policy and end Admiral’s duty to defend.

⁷ Consent to settle clauses are commonly referred to as “hammer clauses.”

II. The Desa Ballard Litigants' claim for bad faith fails as a matter of law because an insurance company can choose not to renew a policy for any reason.

An insurer has no duty to renew a policy of insurance. “[T]he cases clearly establish the sale of insurance is an arm’s length commercial transaction, which does not give rise to a fiduciary relationship.” *Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 319, 331, 574 S.E.2d 502, 508 (Ct. App. 2002). Therefore, unless the contract states otherwise, both the insurer and the insured can choose not to renew the policy for any reason whatsoever.⁸

The Admiral Policy provides that it will terminate “upon expiration of the Policy Period as set forth” in the declarations page. Admiral retains the right to decide not to renew the policy: “If the Insurer decides not to renew this Policy, the Insurer shall provide written notice to the Named Insured at least 60 days prior to the end of the Policy Period. The notice shall include the reason for such non-renewal.” (Ex. A, Admiral Policy, LPL 9300 (04-09), p. 6). On May 16, 2017, Admiral sent a Notice of Non-Renewal to the Desa Ballard Litigants advising that it was not going to renew the policy. (Compl. ¶ 78). The Notice of Non-Renewal cited the Desa Ballard Litigants’ failure to comply with the policy terms and conditions. (Compl. ¶ 78).

Courts from other jurisdictions have rejected claims that nonrenewal by an insurer can support a claim for bad faith. *See e.g., New York University v. Continental Ins. Co.*, 87 N.Y.2d 308, 319, 662 N.E.2d 763, 289 (1995) (finding that even “vindictive” nonrenewal would not support a claim for bad faith); *Gautreau v. Southern Farm Bureau Cas. Ins. Co.*, 429 So. 2d 866, 869 (La. 1983) (holding insurer cannot be subject to bad faith for nonrenewal even if nonrenewal is arbitrary and capricious); *Greene v. Safeco Ins. Co. of America*, 189 Cal. Rptr. 616, 618-19 (Ct.

⁸ The South Carolina General Assembly has enacted specific statutes prohibiting nonrenewal for certain lines of insurance for certain reasons. For example, a homeowners insurance policy cannot be nonrenewed “because the insured has filed a claim with that insurer for damages resulting from an act of god.” S.C. Code Ann. § 38-75-790. The fact that no similar statute applies here indicates that Admiral was allowed to nonrenew the policy.

App. 2d Dist. Div. 5 1983); *Travelers Ins. Co. v. Leshner*, 187 Cal. Rptr. 791, 803 (Ct. App. 1st Dist., Div. 3 1987) (finding evidence of insurer's nonrenewal during coverage dispute was improperly admitted in subsequent bad faith action because insurer has no legal duty to renew an insurance policy); *Stanley v. Farmers Ins. Co., Inc.*, 2006 WL 3300461, *4 (W.D. Okla. 2006) (finding action for bad faith in attempting to not renew policy was not actionable). The consensus from courts finding nonrenewal cannot support a claim for bad faith is the fact that insurers have a right not to renew a policy. *See e.g., Greene*, 189 Cal. Rptr. at 618 ("Both property and liability policies are considered to be term policies. Accordingly, in the absence of any statutory provisions to the contrary, the insurer may refuse to renew them *for any reason whatsoever, or for no reason at all.*" (quotation omitted) (emphasis in original)).

Because the process of selling (or renewing) a contract is an arm's length transaction, an insurer owes no obligations – either contractual or under the duty of good faith – to an insured with respect to the transaction. *Stanley*, 2006 WL 3300461, at *4. The District Court in *Stanley* held:

Finally, the Stanleys base their bad faith claim in part upon Farmers' attempted non-renewal of their policy. The conduct of the insurer and the agent in selling and issuing the insurance policy, cannot give rise to the tort of bad faith breach of an insurance contract. Further, the tort of bad faith breach of an insurance contract must be based upon an insurer's wrongful denial of a claim; it cannot be based upon the conduct of the insurer in selling and issuing the policy. Accordingly, the Court finds that the Stanleys cannot maintain a bad faith claim based upon Farmers' conduct in attempting not to renew the Stanley's insurance policy.

Id. (internal quotations omitted).

The South Carolina Court of Appeals in *Pitts* applied similar reasoning to that used by the District Court in *Stanley*. In *Pitts*, insurance applicants brought a class action against an insurer arising out of the sale of life insurance policies. *Id.* at 325-26, 574 S.E.2d at 505. The claimants

alleged the insurance company owed a duty to advise applicants when they qualified for a less expensive insurance product that provided the same coverage. *Id.* Because the insurer failed to do so, the claimants alleged damages including the increased premiums they paid for the more expensive coverage. *Id.* at 327-28, 574 S.E.2d at 505.

To support their claims, the claimants argued the insurance company owed “the duty of good faith and fair dealing” which obligated it to act in good faith in the sale of the insurance policies. *Id.* at 330, 574 S.E.2d at 507. The Court of Appeals disagreed. After reviewing the “context of an insurer/insured relationship from its inception, specifically, at the point of the application for insurance,” the Court of Appeals held “the sale of insurance is an arm’s length commercial transaction, which does not give rise to a fiduciary relationship.” *Id.* at 331, 574 S.E.2d at 507-08.

The Supreme Court of South Carolina has repeatedly held that a renewal policy is a new contract. *See e.g., Webb v. South Carolina Ins. Co.*, 305 S.C. 211, 213, 407 S.E.2d 635, 636 (1991); *Allstate Ins. Co. v. Thatcher*, 283 S.C. 585, 325 S.E.2d 59, 61 (1985) (“In one sense of the word, the renewal of any contract creates a new contract. Except for the renewal, the contract would be dead.”). Therefore, a renewal – like the initial policy purchase – is an arm’s length transaction for which the insurer owes no duties to the insured, and vice versa.

Absent a contractual or statutory provision to the contrary, both the insurer and the insured have the right not to renew an insurance policy. The Admiral Policy was a term contract. The duty of good faith does not require two parties to enter into a new contract after the prior policy expires, but merely requires that they both act in good faith with respect to the existing contract. The decision of whether to renew relates to a non-existent, future contract. In relation to the

potential renewal, the parties stand at arm's length. Therefore, Admiral had discretion not to renew the policy, and its decision to do so cannot subject Admiral to bad faith.⁹

CONCLUSION

For the above-stated reasons, the Admiral's Motion for Judgment on the Pleadings should be granted. The Admiral Policy sets forth the parties' respective obligations. Admiral has "the sole right and duty to defend" the case, which includes participating in settlement negotiations. The Desa Ballard Litigants have a duty to "cooperate in the defense and settlement" of the case. Pursuant to the consent to settle clause, if Admiral recommends a settlement that is acceptable to the Estate and the Named Insured rejects that settlement, Admiral's liability for the Claim will not exceed the amount of the proposed settlement, including Claims Expenses that have already incurred up to the date of the rejection. Moreover, Admiral's duty to defend ends upon the date of the rejection. Because the Admiral Policy is plain and unambiguous, it must be enforced as written.

Admiral is also entitled to judgment on the pleadings with respect to the Desa Ballard Litigants' bad faith claim. Admiral has no duty to renew a policy and re-enter a contractual relationship with an insured. Both the Desa Ballard Litigants and Admiral have an equal right not to renew the policy. Admiral could not sue the Desa Ballard Litigants for bad faith if they chose

⁹ The duty of good faith runs both ways. See e.g., *Garrison Prop. and Cas. Ins. Co. v. Cothran*, 2016 WL 3753219, *2 n.3 (D.S.C. July 14, 2016) ("Under South Carolina law, '[e]very contract contains an implied covenant of good faith and fair dealing that *neither party* will do anything which will injure the right of the other to receive the benefits of the agreement.'" (emphasis added) (quoting *Shiflet v. Allstate Ins. Co.*, 451 F. Supp. 2d 763, 771 (D.S.C. 2006)); see also *Commercial Union Assurance Companies v. Safeway Stores, Inc.*, 26 Cal. 3d 912, 918, 610 P.2d 1038, 1041 (1980) ("We have no quarrel with the proposition that a duty of good faith and fair dealing in an insurance policy is a two-way street, running from the insured to his insurer as well as vice versa."). Certainly, it would not be bad faith for an insured – who disagrees with her insurer's decisions during the handling of a claim – to choose not to renew an insurance policy. Therefore, it likewise cannot be bad faith for an insurer to choose not to renew an insurance policy.

not to renew the policy because they were unhappy with Admiral's position with respect to settlement negotiations. Likewise, Admiral does not violate the duty of good faith and fair dealing by choosing not to renew the policy. Therefore, Admiral is entitled to judgment on the pleadings denying the Desa Ballard Litigants' requested declaratory and injunctive relief, dismissing their bad faith claim, and granting Admiral's request for the following declarations:

- a. Admiral has the right to negotiate a potential settlement as part of its defense of the Underlying Lawsuit;
- b. Admiral has a right to participate in settlement negotiations at mediation in the Underlying Lawsuit;
- c. Plaintiffs owe a duty to cooperate in the defense and settlement of the case and do not have a right to prevent Admiral from participating in settlement negotiations with the Estate of Gloria Corley;
- d. If Admiral recommends a settlement to the Named Insured which is acceptable to the Estate of Gloria Corley, and the Named Insured rejects the settlement and chooses to contest the Underlying Lawsuit, then Admiral's liability for the Claim shall not exceed the amount for which the Claim could have been settled, including Claim Expense incurred up to the date of such refusal; and
- e. If Admiral recommends a settlement to the Named Insured which is acceptable to the Estate of Gloria Corley, and the Named Insured rejects the settlement and chooses to contest the Underlying Lawsuit, then Admiral's right and duty to defend the Underlying Lawsuit shall end upon the date of such relief.

MURPHY & GRANTLAND, P.A.

s/Wesley B. Sawyer

Wesley B. Sawyer, Esquire

S.C. Bar # 100229

PO Box 6648

Columbia, South Carolina 29260

(803) 782-4100

wsawyer@murphygrantland.com

Attorneys for the Defendant Admiral Insurance Company

Columbia, South Carolina
August_31, 2017

EXHIBIT A



2850 West Golf Road, Suite 800
Rolling Meadows, IL 60008-4059
(847) 805-6500
Fax (847) 805-6282

Lawyers Professional Liability Insurance

July 12, 2013

Mara Ballard
Desa Ballard P.A. dba Ballard Watson Weissenstein
226 State Street
West Columbia, SC 29169

Policy Number: 91200935

Dear Mara,

Thank you for choosing Monitor Liability Managers and the W.R. Berkley Corporation for your professional liability insurance needs. We know that you have many choices for your insurance and we appreciate your choosing Monitor.

Monitor and all its employees are proud of our tradition of providing an exceptional insurance facility and making every effort to assure your satisfaction with our product and service. The people behind the promise to pay are critical to the value of any insurance policy. Like most services, you get what you pay for - the premium is only one part of the value of an insurance policy.

The most important service we provide and the greatest value you receive does not come from delivering the policy - it comes from handling your claims. While we help our policyholders with loss control and crisis avoidance, if the day comes when you face a claim, we will be there to help you navigate through the complexities of a professional liability claim.

Attached is a narrative from Mr. Jason A. Fogg, Esq., Vice President - Claims, outlining claims reporting guidelines in the event that a claim does occur. With many years of experience handling complex professional liability claims, I am confident you will be pleased to have Monitor on your side.

Once again, thank you for choosing Monitor and the W.R. Berkley Corporation. We hope that you will see the value in the people behind the promise and we hope to be your choice for your professional liability needs for years to come. Please call your professional liability insurance agent if you have any questions about Monitor, or any comments about our service to you. Your satisfaction is important to us.

Regards,

A handwritten signature in cursive script, reading 'Joseph G. Shores'.

Joseph G. Shores
President

ROA 00253



Claims Reporting Guidelines for the Insured

These guidelines should be followed to help Monitor Liability Managers provide efficient claims service.

Claim Notices

All claim notices shall be sent to Monitor Liability Managers, Claims Department. The notices must be reported as required by the policy to avoid problems regarding timely notice. The address of the Monitor Claims Department is as follows:

Monitor Liability Managers
Claims Department
2850 West Golf Road ■ Suite 800 ■ Rolling Meadows, IL 60008-4039
Mr. Jason A. Fogg, Esq., Vice President - Claims
Phone: 847.806.6590
Claims Dept. Fax: (847) 806-4017
E-mail: newclaim@monitorliability.com

Notice of claim requiring immediate action:

If immediate action on the notice is needed the Insured should express mail the notice to Monitor's Claims Department. Situations requiring immediate action may include:

1. The Insured being served with a summons and complaint.
2. The Insured needs to provide a response to the claimant immediately.

Correspondence from the Insured

The claim notice should include a written narrative of the circumstances surrounding the claim or potential claim. The narrative should include, but not be limited to:

1. Names of the insureds, policy number and effective dates.
2. Names and addresses of the claimant.
3. Details of the underlying claim, including its current status and the amount in controversy or relief demanded.
4. All pertinent letters or documents necessary to properly evaluate the claim.

Please provide carbon copies to your professional liability insurance agent of all claim notices and correspondence sent to Monitor Liability Managers.

MIDPE2 (08-08)

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, New Jersey 08034

SOUTH CAROLINA DISCLOSURE NOTICE

This Company is Not Licensed To Do Business In This State, and the S.C. Guaranty Act does not apply to this policy.

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

Declarations Page

Lawyers Professional Liability Insurance

CLAIMS MADE WARNING FOR DECLARATIONS: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.

CLAIMS MADE WARNING FOR DECLARATIONS: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.

Whenever printed in this Declarations Page, the boldface type terms shall have the same meanings as indicated in the Policy.

Policy Form: LPL 9300 (04-09)

Policy Number: 91200935

Item 1. Name and Address of Named Insured:

Desa Ballard P.A. dba Ballard Watson Weissenstein
226 State Street
West Columbia, SC 29169

Person designated to receive all correspondence from the Insurer:

Mara Ballard
Manager/Secretary/Treasurer

Item 2. Policy Period: From July 1, 2013 (inception date) to July 1, 2014 (expiration date)

(Both dates at 12:01 a.m. Standard Time at the address of the Named Insured)

Item 3. Limit of Liability for the Policy Period (inclusive of Damages and Claims Expense):

A. \$1,000,000 each Claim, but in no event exceeding
B. \$2,000,000 in the aggregate for all Claims.

Item 4. Applicable Deductible: \$10,000

Item 5. Premium: \$21,119

Item 6. Endorsements attached:
SER-00-ADM (05-13) Service of Suit

Item 7. Notice to the Insurer as provided in sections VII A. and VII B. and any information furnished to the Insurer as provided in section VI. A. shall be sent to:

Monitor Liability Managers, Claims Department
Address: 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039
Fax: (847) 806-4017 Email: newclaim@monitorliability.com

All other notices required to be given to the Insurer under this Policy shall be sent to:

Monitor Liability Managers
Address: 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039
Fax: (847) 806-6282

These Declarations along with the completed and signed Proposal and the Lawyers Professional Liability Insurance Policy shall constitute the contract between the Insureds and the Insurer.

Authorized Representative: 

Date Issued: July 12, 2013

LPL 9301 (rev. 12-11)

91200935 Desa Ballard P.A. dba Ballard Watson Weissenstein

Page 1 of 1

ROA 00256

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Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

Page 1 of 1

SERVICE OF SUIT

It is understood and agreed that in the event of the failure of the Insurer hereon to pay any amount claimed to be due hereunder, the Insurer, at the request of the Insured (or Reinsured), will submit to the jurisdiction of any court of competent jurisdiction within the United States of America or Canada and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court. Nothing in this endorsement constitutes or should be understood to constitute a waiver of the Insurer's rights to commence an action in any court of competent jurisdiction in the United States or Canada, to remove an action to a United States District Court, or to seek a transfer of an action to another court as permitted by law.

It is further agreed that service of process in such suit may be made upon Daniel A. MacDonald, Senior Vice President of Admiral Insurance Company, 1255 Caldwell Road, P.O. Box 5725, Cherry Hill, New Jersey 08034-3220, or his/her designee, and that in any suit instituted against any one of them upon this contract, the Insurer will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named is authorized and directed to accept service of process on behalf of the Insurer in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) that it or they will enter a general appearance upon the Insurer's behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America or province of Canada, which makes provision therefor, the Insurer hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance); and the Insurer hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Dea Ballard P.A. dba Ballard Wilson Weissenstein	Policy Number 91200935
Effective Date of This Endorsement 07/01/2013	Authorized Representative

Policy Form: LPL 9300 (04-09)

25425-1200935-103R842

SER-00-ADM (05-13)

ROA 00257

Admiral Insurance Company

Lawyers Professional Liability Insurance Policy

This is a Claims Made Policy. Please read it carefully.

CLAIMS MADE WARNING FOR POLICY

NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.

PLEASE READ AND REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

In consideration of the payment of the premium, in reliance on all statements in the Proposal and all other information provided to the Insurer, and subject to all provisions of this Policy, the Insurer and Insureds agree as follows:

I. Insuring Agreement

Lawyers Professional Liability Insurance

This Policy shall pay on behalf of the Insured all Damages and Claims Expense that the Insured shall become legally obligated to pay, arising from any Claim first made against the Insured during the Policy Period and reported to the Insurer in writing during the Policy Period or within 60 days thereafter, for any actual or alleged Wrongful Act, provided that prior to the inception date of the first Lawyers Professional Liability Insurance Policy issued by the Insurer to the Named Insured, which has been continuously renewed and maintained in effect to the inception of this Policy Period, any Insured did not know, or could not reasonably foresee, that such actual or alleged Wrongful Act might reasonably be expected to be the basis of a Claim.

II. Extended Reporting Periods

- A. If the Named Insured cancels or if the Insurer or the Named Insured refuses to renew this Policy, then the Named Insured shall have the right, upon payment of the appropriate percentage of the "full annual premium", as provided in section II, B., to an extension of the coverage granted by this Policy with respect to any Claim first made and reported during the appropriate period of months after the date upon which the Policy Period ends, but only with respect to any Wrongful Act fully occurring prior to the end of the Policy Period and otherwise covered by this Policy. Such appropriate period of months shall be referred to as the Extended Reporting Period. As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the Policy Period. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the Insurer within 60 days of the effective date of cancellation or non-renewal.
- B. The percentage of the "full annual premium" and period of months for the Extended Reporting Period shall be:
 1. 12 months Extended Reporting Period for 100 percent of the "full annual premium" of the Policy, or
 2. 24 months Extended Reporting Period for 150 percent of the "full annual premium" of the Policy, or
 3. 36 months Extended Reporting Period for 185 percent of the "full annual premium" of the Policy, or
 4. 60 months Extended Reporting Period for 250 percent of the "full annual premium" of the Policy.
- C. The additional premium for the Extended Reporting Period shall be fully earned at the inception of the Extended Reporting Period. The Extended Reporting Period is not cancelable.
- D. As a condition precedent to the right to purchase the Extended Reporting Period, the total premium for this Policy and all Deductible obligations must have been paid.

ADMIRAL INSURANCE COMPANY

- E. Without any additional premium being required, there shall be an automatic extension of the coverage granted by this Policy with respect to any **Claim** first made and reported during a period of 60 days after the date upon which the Policy Period ends, but only with respect to any **Wrongful Act** fully occurring prior to the end of the Policy Period and otherwise covered by this Policy and only if there is no other policy or policies that would otherwise provide insurance for such **Wrongful Act**. This 60 day period shall be referred to as the Automatic Extended Reporting Period.
- F. The Automatic Extended Reporting Period or the Extended Reporting Period shall not be available if the Insured's license is revoked, suspended by or surrendered at the request of any regulating authority.

III. Definitions

Whenever printed in boldface type, and whether in the singular or plural form in this Policy, the following terms shall have the meanings indicated below.

- A. "**Claim**" means a written demand for Damages or non-monetary relief by reason of a **Wrongful Act**, including, but not limited to:
1. a civil, criminal, administrative or arbitration proceeding, or
 2. a request that an Insured agree to waive a legal right or sign an agreement to toll the statute of limitations.
- Claim** shall not include any proceedings before a state licensing board or similar authority, except as otherwise provided in section V, Supplemental Coverages of this Policy. A **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any Insured.
- B. "**Claim Expense**" means reasonable and necessary fees, costs and expenses (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a covered or potentially covered **Claim** against the Insureds, but excluding salaries, wages, overhead or benefit expenses associated with any Insured, or any amounts covered by the duty to defend obligation of any other insurer.
- C. "**Damages**" means a monetary judgment, award or settlement, pre-judgment interest and post-judgment interest; provided, however, **Damages** shall not include:
1. taxes, civil or criminal fines, or penalties imposed by law, or
 2. punitive or exemplary damages, or any multiplied damages award in excess of the amount so multiplied, or
 3. matters which are unreviewable under the law pursuant to which this Policy is construed, or
 4. legal fees, costs and expenses paid, incurred or charged by the Insured, whether claimed as tortfeasure, restitution of specific funds, financial loss, set-off or otherwise, and injuries that are a consequence of any of the foregoing, or
 5. legal fees, costs, fines, penalties, sanctions, or other amounts awarded against an Insured or any claim of an Insured based upon the actual or alleged filing of pleadings or other papers under any federal or state statute, administrative rule, court rule or case law, including, but not limited to Rule 11, Federal Rules of Civil Procedure, any successor thereto or state rule counterpart.
- D. "**Electronic Mail**" means the transmission of messages and information over a closed, private network, or a semi-public network that provides a public access to an on-line service for a fee, the Internet, an electronic chat room or Blog.
- E. "**Insured**" means:
1. the Named Insured and any Predecessor Firm, or
 2. any individual or professional corporation who is or becomes a partner, officer, director, stockholder, or employee of the Named Insured, but solely while acting within the scope of their duties on behalf of the Named Insured, or
 3. any individual or professional corporation who was a partner, officer, director, stockholder, or employee of the Named Insured or Predecessor Firm, but solely while acting within the scope of their duties on behalf of the Named Insured or Predecessor Firm, or
 4. any independent contractor, individual or professional corporation designated "counsel" or "of counsel" to the Named Insured, but solely while acting within the scope of their duties on behalf of the Named Insured, or
 5. the heirs, executors, administrators, and legal representatives of each Insured in the event of death, incapacity or bankruptcy, but solely with respect to the liability of each Insured as otherwise covered by this Policy.
- F. "**Insurer**" means the entity issuing this Policy as listed on the Declarations Page.
- G. "**Named Insured**" means the corporation, individual, limited liability corporation, limited liability partnership, partnership, or professional association designated in Item 1. of the Declarations.
- H. "**Personal Injury**" means invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel, slander, mental anguish, humiliation, or emotional distress, oral or written publication of defamatory or disparaging material, or the inadvertent disclosure of confidential or privileged information communicated by **Electronic Mail**.
- I. "**Policy Period**" means the period of time from the inception date shown in Item 2. of the Declarations to the earlier of the expiration date shown in Item 2. of the Declarations or the effective date of cancellation of this Policy.

ADMIRAL INSURANCE COMPANY

- I. **"Predecessor Firm"** means any corporation, individual, limited liability corporation, limited liability partnership, partnership, or professional association to whose financial assets and liabilities the Named Insured is the majority successor in interest. Predecessor Firm does not include any corporation, individual, limited liability corporation, limited liability partnership, partnership, or professional association to whose financial assets and liabilities the Named Insured becomes the majority successor in interest during the Policy Period unless the Insurer, in its sole discretion, and the Named Insured agree to include such corporation, individual, limited liability corporation, limited liability partnership, partnership, or professional association as a Predecessor Firm. The Named Insured shall accept any premium adjustment or coverage revisions which the Insurer may require.
- K. **"Professional Services"** means services:
1. rendered by an Insured solely as a lawyer, mediator, arbitrator, or notary public for others, or
 2. performed by an Insured as an administrator, conservator, receiver, executor, guardian, trustee, or in any other fiduciary capacity, or
 3. performed by an Insured as a title insurance agent, provided such services are connected with and incidental to the Insured's practice of law and are pursuant to a written agency agreement with a licensed title insurance company, or
 4. performed by an Insured in their capacity as a member of a bar association, ethics, peer review, formal accreditation, licensing, or similar professional board or committee related to the legal profession, or
 5. performed by an Insured as an author, strictly in the publication or presentation of research papers or similar materials and only if the fees, royalties or other revenue generated from such work are not greater than \$10,000;
- provided, however, that in all events, coverage as is afforded with respect to Professional Services shall only apply for such services performed by an Insured:
- a. for remuneration inuring to the benefit of the Named Insured or a Predecessor Firm; or
 - b. on a pro bono basis, but solely if, prior to the performance of such services, a partner, director or officer of the Named Insured or a Predecessor Firm approved the performance of such services without a fee.
- L. **"Proposal"** means the Proposal Form and any material submitted therewith.
- M. **"Related Wrongful Acts"** means Wrongful Acts which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.
- N. **"Wrongful Act"** means any actual or alleged act, omission, or Personal Injury arising out of Professional Services rendered by an Insured or by any person for whose act or omission the Insured is legally responsible.

IV. Exclusions

The Insurer shall not be liable to defend, or to make any payment for any Damages or Claims Expense in connection with a Claim made against any Insured:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving a dishonest, fraudulent, criminal, or malicious act or omission committed by or at the direction of, or ratified by any Insured; provided, however, the Insurer will provide a defense for any such Claims, unless or until the dishonest, fraudulent, criminal, or malicious act or omission has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not;
- INNOCENT INSURED PROVISION: Whenever coverage under this Policy would be excluded, suspended, or lost because of Exclusion A., the Insurer agrees that such insurance, as would otherwise be afforded under this Policy, shall be applicable with respect to an Insured, other than the Named Insured and any Predecessor Firm, who did not personally participate or personally acquiesce in or remain passive after having knowledge of such conduct.
- B. by any Insured;
- C. as the beneficiary or distributee of any trust or estate;
- D. for bodily injury, sickness, disease, death, assault, or battery of any person, or damage to, or destruction of any tangible property, including loss of use thereof;
- E. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any Insured's activities or their capacity as:
1. an officer, director, partner, trustee, or employee of a business enterprise, not named in Item I. of the Declarations, a nonprofit organization, or a pension, welfare, profit sharing, mutual or investment trust or fund, or
 2. a public official, employee, or agent of a governmental body, subdivision, or agency, unless the Insured is deemed to be a public official, employee, or agent of such entity solely by virtue of rendering Professional Services to it, or
 3. a fiduciary under the Employee Retirement Income Security Act of 1974, including amendments thereto, or any similar provisions of state statutory law or common law;
- This exclusion E. applies whether or not the Insured's activities or capacity also constitute or involve Professional Services.

ADMIRAL INSURANCE COMPANY

- F. by or in connection with any pre or post formation business enterprise, not named in Item 1. of the Declarations, in which any Insured owns or owned, or controls or controlled, more than a 10 percent interest; or in which any Insured is or was an owner, partner, or employee, or which is directly or indirectly controlled, operated, or managed by any Insured, other than solely in a fiduciary capacity, but only if the fiduciary act or omission in dispute is in the rendering of services ordinarily performed as a lawyer, and then only to the extent of such services.
This exclusion F. applies whether or not the Insured's activities also constitute or involve Professional Services.
- G. which is insured in whole or in part by another valid policy, except with respect to any excess beyond the amount or amounts of coverage under such other policy, whether such other policy is stated to be primary, contributory, excess, contingent, or otherwise;
- H. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged nuclear reaction, radiation or contamination, regardless of cause;
- I. for any actual or alleged seepage, pollution or contamination of any kind;
- J. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the Securities Act of 1933; the Securities Exchange Act of 1934, including amendments thereto, or any similar provisions of any federal, state, local or foreign statutory or common law;
- K. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any Wrongful Act alleged in any claim which has been reported, or in any circumstance of which notice has been given, prior to the Policy Period under any other policy, or
 2. any other Wrongful Act whenever occurring, which together with a Wrongful Act which has been the subject of such claim or notice, would constitute Related Wrongful Acts;
- L. for discrimination or harassment because of race, color, religion, age, sex, disability, pregnancy, national origin, sexual orientation, marital status, or any other basis prohibited by law;
- M. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. defects in title of which any Insured had knowledge at the date of issuance of such title insurance whether or not a matter of public record, or
 2. any intentional breach of underwriting authority by any Insured functioning as a title insurance agent, or
 3. any liability assumed by an Insured under any contract or agreement whereby the Insured has agreed to participate in the payment of a loss under a title insurance policy, including attorneys' fees, court costs and expenses, unless such liability would have attached to the Insured even in the absence of such agreement.

V. Limits of Liability and Deductible

- A. The Limits of Liability stated in Item 3. of the Declarations are the limits of the Insurer's liability for all Damages and Claims Expense arising out of all Claims first made against the Insureds during the Policy Period and any Extended Reporting Period(s) that may apply. The Limits of Liability for any Extended Reporting Period(s) that may apply shall be part of, and not in addition to, the Limits of Liability stated in Item 3. of the Declarations. In the event the Limits of Liability stated in Item 3. of the Declarations are exhausted by payment of Damages and/or Claims Expense, or have been tendered to or on behalf of the Insured, then any and all obligations of the Insurer hereunder shall be deemed to be completely fulfilled and extinguished.
- B. The maximum Limit of Liability for all Claims under this Policy shall not exceed the aggregate Limit of Liability stated in Item 3. B. of the Declarations.
- C. The first \$2,500 in Claims Expense incurred during the Policy Period shall not be applied to the Deductible; provided, however, all subsequent Claims Expense shall first be applied against the Deductible.
- D. The Deductible amount stated in Item 4. of the Declarations shall be borne by the Named Insured and shall apply to each and every Claim. The Insurer shall only be liable for the amount of Damages and/or Claims Expense arising from a Claim which is in excess of the Deductible amount stated in Item 4. of the Declarations.

Such amounts shall, upon written demand by the Insurer, be paid by the Named Insured within 30 days. If the Named Insured fails to pay the Deductible, then all the Insureds shall be jointly and severally obligated to pay the Deductible. Any funds advanced by the Insurer, at its option, shall serve to reduce the Limits of Liability. If the Insurer brings suit to collect the Deductible, then the Insured responsible to pay the Deductible also shall pay the legal fees, costs and expenses incurred by the Insurer to collect the Deductible.

ADMIRAL INSURANCE COMPANY**Supplemental Coverages**

The Insurer will pay:

- E. up to a maximum aggregate limit of \$10,000 per Policy Period for all Insureds for reasonable legal fees, costs and expenses resulting from the investigation or defense of an Insured in a proceeding before a state licensing board or similar authority arising out of any Wrongful Act by such Insured, but only if such legal fees, costs, or expenses are incurred after notice is first received by the Insured during the Policy Period and reported to the Insurer in writing during the Policy Period. The Deductible shall not apply to this coverage and any payments made hereunder shall not reduce the Limits of Liability stated in Item 3. of the Declarations.
- F. up to \$500 for actual loss of earnings to each Insured for each day or part of a day of such Insured's attendance, at the Insurer's written request, at a trial, hearing, or arbitration proceeding involving a Claim against an Insured, up to a maximum aggregate limit of \$10,000 per Policy Period for all Insureds. The Deductible shall not apply to this coverage and any payments made hereunder shall not reduce the Limits of Liability stated in Item 3. of the Declarations.
- G. an additional 10 percent of the Limit of Liability stated in Item 3. A. of the Declarations up to a maximum aggregate limit of \$100,000 per Policy Period for Claims Expense, but only for a single Claim occurring after the aggregate Limit of Liability stated in Item 3. D. of the Declarations is exhausted by payment under this Policy. The Deductible shall not apply to this coverage.
- H. up to a maximum aggregate limit of \$2,500 per Policy Period for expenses incurred with the Insurer's prior written consent resulting from subpoenas for documents or testimony including legal advice, legal counsel and the production of documents arising out of any Wrongful Act otherwise covered under this Policy. Any notice the Insured provides to the Insurer of such subpoena shall be deemed a notification of a potential claim under section VII. B. Any such legal fees and expenses incurred by the Insurer in responding to such subpoena shall be part of, and not in addition to, the Limits of Liability stated in Item 3. of the Declarations. No Deductible will apply to such legal fees and expenses.

VI. Defense, Cooperation and Settlement

- A. An Insured shall not admit liability, enter into any settlement agreement, stipulate to any judgment, agree to arbitration, or incur Claims Expense without the Insurer's prior written consent. The Insurer shall be entitled to full information and all particulars it may request in order to reach a decision regarding such consent. Any Damages and/or Claims Expense incurred and settlements agreed to prior to the Insurer giving its consent shall not be covered hereunder.
- B. The Insurer shall have the sole right and the duty to defend any covered Claim, and has the sole right to select defense counsel. If an Insured is entitled to independent defense counsel, then the Insured may select independent defense counsel, subject to the consent of the Insurer. Such counsel shall have at least 10 years of experience in the defense of similar Claims, and maintain error and omissions insurance coverage. The Insured and independent defense counsel shall provide full information, documentation and cooperation with respect to the defense, investigation and settlement of any Claim. The Insurer shall be liable only for reasonable and necessary defense costs at rates customarily paid by the Insurer for the defense of similar Claims in the area where the Claim is being defended. Any such defense costs shall be considered Claims Expense. The Insurer's right and duty to defend any Claim shall end when the Limit of Liability has been exhausted by payment of Damages and/or Claims Expense, or has been tendered to, or on behalf of, the Insured, or to a court of competent jurisdiction.
- C. Each Insured shall cooperate with the Insurer in the defense and settlement of any Claim, and in enforcing any right of contribution or indemnity against any person or organization that may be liable to the Insured, at no cost to the Insurer. Upon the request of the Insurer, the Insured shall submit to examination and interrogation, under oath if required by a representative of the Insurer, and shall attend hearings, depositions and trials, assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, as well as giving written statements to the Insurer's representatives, and meeting with such representatives for purposes of investigation or defense, all without charge to the Insurer.
- D. The Insurer shall not settle any Claim without the Named Insured's consent. If, however, the Named Insured shall refuse to consent to any settlement recommended by the Insurer, which is acceptable to the claimant, and shall elect to contest the Claim, or continue any legal, administrative, or arbitration proceedings in connection with such Claim, then the Insurer's liability for the Claim shall not exceed the amount for which the Claim could have been settled, including Claims Expense incurred up to the date of such refusal. Such amounts are subject to the provisions of section V. In the event that the Named Insured refuses to consent to any settlement as set forth in this section VI. D., the Insurer's right and duty to defend such Claim shall end upon the date of such refusal.

ADMIRAL INSURANCE COMPANY**VII. Notice of Claim and Multiple Claims**

- A. As a condition precedent to their rights under this Policy, an Insured shall give the Insurer written notice of any Claim first made against the Insureds during the Policy Period, as soon as practicable, but in no event later than 60 days after the expiration of the Policy Period.
- B. If during the Policy Period the Insureds become aware of any fact, circumstance or situation which may reasonably be expected to give rise to a Claim being made against any Insured and shall give written notice to the Insurer, as soon as practicable (but prior to the expiration of or cancellation of the Policy), of:
1. the specific fact, circumstance or situation, with full details as to dates, persons, and entities involved; and
 2. the injury or damages which may result therefrom; and
 3. the circumstances by which the Insured first became aware thereof;
- then any Claim subsequently made arising out of such fact, circumstance or situation shall be deemed to have been made when notice was first given to the Insurer.
- C. All Claims based upon or arising out of the same Wrongful Act or any Related Wrongful Acts, or one or more series of any similar, repeated or continuous Wrongful Acts or Related Wrongful Acts, shall be considered a single Claim. Each Claim shall be deemed to be first made at the earliest of the following times:
1. when the earliest Claim arising out of such Wrongful Act or Related Wrongful Acts was first made; or
 2. when notice pursuant to section VII. B. of a fact, circumstance or situation giving rise to such Claim is given;
- D. In addition to furnishing the notice as provided in sections VII. A. and VII. B. above, the Insureds shall give the Insurer such information and cooperation as it may reasonably require and shall, as soon as practicable, furnish the Insurer with copies of reports, investigations, pleadings and other papers in connection therewith.

VIII. General Conditions**A. Termination of Policy and Non-Renewal**

1. This Policy shall terminate at the earliest of the following times:
 - a. upon the receipt by the Insurer of written notice of cancellation from the Named Insured;
 - b. upon expiration of the Policy Period as set forth in Item 2. of the Declarations;
 - c. at such other time as may be agreed between the Named Insured and the Insurer; or
 - d. upon written notice by the Insurer of cancellation for non-payment of premium.
2. The Insurer may not cancel this Policy except for non-payment of any premium when due. The Insurer shall provide at least 20 days written notice to the Named Insured prior to any cancellation for non-payment of any premium.
3. If this Policy is cancelled by the Named Insured, the Insurer shall retain the customary short rate proportion of the premium herein. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
4. If the Insurer decides not to renew this Policy, the Insurer shall provide written notice to the Named Insured at least 60 days prior to the end of the Policy Period. The notice shall include the reason for such non-renewal.
5. Any notices to be given to the Named Insured under this section shall be provided to the Named Insured at the last known principal address and to its insurance agent or broker. The mailing by certified mail of such notice shall be sufficient.

B. Proposal

The Proposal is the basis of this Policy and is incorporated in and constitutes a part of this Policy. A copy of the Proposal Form(s) is attached hereto. Any material submitted with the Proposal Form(s) shall be maintained on file with the Insurer and shall be deemed to be attached hereto as if physically attached. It is agreed by all Insureds that the statements in the Proposal and their representations, that they are material and that this Policy is issued in reliance upon the truth and accuracy of such statements.

C. Action Against the Insurer

No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the Insureds' obligation to pay shall have been finally determined either by judgment against the Insureds after actual trial or by written agreement of the Insureds, the claimant and the Insurer.

ADMIRAL INSURANCE COMPANY

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the Insurer as party to any action against the Insureds to determine the Insureds' liability; nor shall the Insurer be impleaded by the Insureds or their legal representatives. Bankruptcy or insolvency of the Insureds or of their estates shall not relieve the Insurer of any of its obligations hereunder.

D. Changes in Exposure

If during the Policy Period there is a 50 percent or greater change in the Named Insured's total lawyer population, then the Named Insured shall give the Insurer written notice of such changes as soon as practicable but not later than 60 days after the effective date of such change; provided, however, that this provision shall not apply if the Named Insured had less than 6 lawyers who met the definition of Insured at the Policy inception date. The Named Insured shall accept any premium adjustment or coverage revisions which the Insurer may require.

E. Subrogation

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all the Insured's rights of recovery thereof, and the Insureds shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the Insurer to effectively bring suit in the name of the Insureds.

Any amount recovered pursuant to the exercise of such rights of subrogation shall be applied as follows: (1) to the repayment of expenses incurred toward subrogation; (2) to Damages and/or Claim Expenses paid by the Insured in excess of the Limits of Liability hereunder; (3) to Damages and/or Claim Expenses paid by the Insurer; (4) to Damages and Claim Expenses paid by the Insured in excess of the Deductible; and (5) to repayment of the Deductible.

F. Assignment

This Policy and any and all rights hereunder are not assignable without the written consent of the Insurer.

G. Entire Agreement

By acceptance of this Policy, the Insureds and the Insurer agree that this Policy (including the Proposal) and any written endorsements attached hereto constitute the entire agreement between the parties.

H. Representation by Named Insured

It is agreed that the Named Insured shall act on behalf of the Insureds with respect to the giving and receiving of notices, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the receipt and acceptance of any endorsements issued to form a part of this Policy and the exercising or declining to exercise any right to an Extended Reporting Period.

I. Coverage Territory

This Policy applies to any Wrongful Act taking place anywhere in the world, but only if the Claim is made and suit is brought against the Insured within the United States of America, its territories or possessions.

In witness whereof, the Insurer has caused this Policy to be signed by its President and Chief Executive Officer and Secretary, but this Policy shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the Insurer.

James S. Carey

President and Chief Executive Officer

[Signature]

Secretary

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

Renewal Proposal Form**Lawyers Professional Liability Insurance**

CLAIMS MADE WARNING FOR APPLICATION: This Proposal Form is for a Claims Made and Reported Policy, relating to claims made against the insureds during the Policy Period or any Extended Reporting Period that may apply.

Whenever printed in this Proposal Form, the terms in boldface type shall have the same meanings as indicated in the Policy. This Proposal Form is to be completed with respect to the entire Applicant Firm.

Name of Applicant Firm Desa Ballard P.A. dba Ballard Watson Weissenstein
 Street Address 226 State St.
 City West Columbia County Lexington State SC Zip Code 29169
 Website Address (if applicable) www.Desaballard.com Federal Employer Identification Number (FEIN) 58-2331294

The person designated as agent of the Applicant Firm and of all insureds to receive any and all notices from the insurer or their authorized representatives concerning this insurance:

Contact Name Mara Ballard Title Mgr./Sec./Treas.
 E-mail Address maru@desaballard.com Telephone Number 803-796-9299 Fax Number 803-796-1066

Producer Information

Submitted by (Agency Name) VIG Dated _____
 Agent's Name (Individual's Name) F. Barksdale Agent's License Number _____

General Information

1. Indicate the total number of personnel for the Applicant Firm by designation.
 Lawyers: 3 Law Clerks: 5 Paralegals: 2 Legal Secretaries: _____
 Of-Counsel: _____ Independent Contractors: _____ Clerical: _____ Other: _____

COMPLETE THE INDIVIDUAL INSURED SUPPLEMENTAL FORM (LPL 960D) FOR ALL LAWYERS IN THE APPLICANT FIRM.

2. During the last 12 months, has any lawyer in the Applicant Firm served as a director, officer, trustee or partner of, or exercised any fiduciary control over, any organization other than the Applicant Firm? ☒ Yes ☐ No

If "Yes", complete the following:

Name of Lawyer	Name of Organization	Is Organization For Profit or Nonprofit?	Is the Organization a Firm Client?	Position Held by Lawyer	Percentage of Equity Held	Percentage of Total Firm Billings
<u>Desa Ballard</u>	<u>First Capital LLC</u>	<u>Yes</u>	☒ Yes ☐ No	<u>owner</u>	<u>97%</u>	<u>—</u>
<u>Desa Ballard</u>	<u>Lawyers United</u>	<u>Yes</u>	☒ Yes ☐ No	<u>member</u>	<u>50%</u>	<u>—</u>

Nature of Practice Information

3. Indicate the gross income for the applicable fiscal year (gross income means all sums billed to clients for services rendered, or if your Applicant Firm deals primarily with contingency fee cases, your average annual gross revenue):
 (a) Actual for immediate past fiscal year: \$ 932,000
 (b) Estimate for current fiscal year: \$ 900,000

ADMIRAL INSURANCE COMPANY

4. During the last 12 months, has there been any change in the Applicant Firm's area of practice? ☒ Yes ☐ No
 If "Yes", indicate the percentage of gross income for the past fiscal year derived from the following areas of practice:

Area of Practice	%	Area of Practice	%
Administrative Law - General	%	International Law	%
Admiralty/Maritime	%	Labor Relations - Labor	%
Antitrust/Trade Regulation	%	Labor Relations - Management	%
Arbitration/Mediation	1%	Litigation (Civ) - Defense	18%
Bankruptcy	%	Litigation (Civ) - Plaintiff	14%
Bank/Financing and Loans	%	Local Government Law - without Bonds	%
Civil Rights and Discrimination	%	Mergers and Acquisitions	%
Collection/Repossession	%	Oil and Gas	%
Commercial Law	%	Pension and Employee Benefits	%
Commercial Litigation - Defense	0.5%	Personal Injury and Negligence Litigation - Defense	%
Commercial Litigation - Plaintiff	0.5%	Personal Injury and Negligence Litigation - Plaintiff	%
Communications (FCC)	%	Public Contract Law	%
Construction Law	%	Public Utilities	%
Corporate Organization/Formation	%	Real Property (Conveyance) - Commercial	%
Criminal Law	%	Real Property (Conveyance) - Foreclosure	%
Entertainment/Sports - with Money Management	%	Real Property (Conveyance) - Residential	%
Entertainment/Sports - without Money Management	%	Real Property - Development	%
Environmental Law	%	Real Property - Title Examination	%
Estate, Trust and Probate	%	Securities Law - including Municipal Bonds	%
Family Law	0.8%	Taxation - Opinions	%
General Corporate/Business	%	Taxation - Preparation	%
Healthcare	%	Workers' Compensation Litigation - Defense	%
Immigration and Naturalization	%	Workers' Compensation Litigation - Plaintiff	%
Insurance Coverage	%	Other (list): <u>Appellate</u>	6.13%
Insurance Defense Litigation	%	<u>Professional Rep.</u>	6.13%
Intellectual Property	%	TOTAL:	100%

5. Indicate the percentage of the Applicant Firm's plaintiff cases that are class actions suits. 0 %

General Policy and Procedures Information

6. Since the completion of the last application, have there been any changes to the Applicant Firm's docket or conflict of interest systems or any other office procedures? ☐ Yes ☒ No
 If "Yes", provide details: _____

7. During the last 12 months, how many lawyers of the Applicant Firm have participated in formal continuing legal education programs of at least 7 hours? 3

8. During the last 12 months, how many fees for collection of fees have been filed by the Applicant Firm? 0

9. Does the Applicant Firm share office space, expenses, cases, or letterhead with any other individual, or counsel partnership, firm, or organization? If "Yes", provide, on separate attachment, the name of the entity(ies). ☐ Yes ☒ No

Litigation and Claim Information (Provide details to all "Yes" answers)

10. Has any lawyer in the Applicant Firm ever been refused admission to practice, disbarred, or suspended from practice, reprimanded, sanctioned, or disciplined by any court or administrative agency? ☐ Yes ☒ No
 If "Yes", provide details: _____

11. During the last 12 months, has:

(a) any professional liability claim or suit been made against the Applicant Firm, or any predecessor in business, or any past or present lawyers in the Applicant Firm? ☐ Yes ☒ No

(b) there been any change in the status of claims reported to other companies? ☐ Yes ☒ No

12. Is the Applicant Firm or any lawyer in the Applicant Firm aware of any fact, circumstance or situation that might reasonably be expected to result in any professional liability claim or suit against the Applicant Firm, or any predecessor in business, or any past or present lawyers in the Applicant Firm? ☐ Yes ☒ No

IF "YES" TO QUESTION 11 OR 12, PROVIDE FULL DETAILS ON THE CLAIM / INCIDENT SUPPLEMENTAL FORM (LPL 9510).

ADMIRAL INSURANCE COMPANY

NOTICE TO COLORADO APPLICANTS: IT IS UNLAWFUL TO KNOWINGLY PROVIDE FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE COMPANY. PENALTIES MAY INCLUDE IMPRISONMENT, FINES, DENIAL OF INSURANCE, AND CIVIL DAMAGES. ANY INSURANCE COMPANY OR AGENT OF AN INSURANCE COMPANY WHO KNOWINGLY PROVIDES FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO A POLICY HOLDER OR CLAIMANT FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE POLICY HOLDER OR CLAIMANT WITH REGARD TO A SETTLEMENT OR AWARD PAYABLE FROM INSURANCE PROCEEDS SHALL BE REPORTED TO THE COLORADO DIVISION OF INSURANCE WITHIN THE DEPARTMENT OF REGULATORY AGENCIES.

NOTICE TO NEW MEXICO, PENNSYLVANIA APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES.

NOTICE TO APPLICANTS OF KENTUCKY: ANY PERSON WHO KNOWINGLY, AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS, FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME.

NOTICE TO APPLICANTS OF MINNESOTA, NEW JERSEY, OHIO, AND OKLAHOMA: ANY PERSON WHO KNOWINGLY, AND WITH INTENT TO INJURE, DEFRAUDS OR DECEIVES ANY INSURER OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM FOR THE PROCEEDS OF AN INSURANCE POLICY CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, IS GUILTY OF A FELONY AND IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.

NOTICE TO MAINE, MASSACHUSETTS, TENNESSEE, VIRGINIA, AND WASHINGTON APPLICANTS: IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE OR MISLEADING INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING THE COMPANY. PENALTIES INCLUDE IMPRISONMENT, FINES AND DENIAL OF INSURANCE BENEFITS.

NOTICE TO APPLICANTS OF FLORIDA: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO INJURE, DEFRAUD OR DECEIVE ANY INSURER FILES A STATEMENT OF CLAIM OR AN APPLICATION CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION IS GUILTY OF A FELONY OF THE THIRD DEGREE.

NOTICE TO ARKANSAS, DISTRICT OF COLUMBIA, LOUISIANA, MARYLAND, AND RHODE ISLAND APPLICANTS: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO FINES AND CONFINEMENT IN PRISON.

NOTICE TO NEW YORK APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME, AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION.

Please Read Carefully

The undersigned, acting on behalf of all proposed insureds, declare that the statements set forth herein are true and correct and that thorough efforts have been made to obtain sufficient information from each insured proposed for this insurance to facilitate the proper and accurate completion of this Proposal Form.

The undersigned agree that the particulars and statements contained in the Proposal Form and any material submitted herewith are their representations and that they are material and are the basis of the insurance contract. The undersigned further agree that the Proposal Form and any material submitted herewith shall be considered attached to and a part of the Policy. Any material submitted with the Proposal Form shall be maintained on file (either electronically or paper) with the insurer and shall be deemed to be attached hereto as if physically attached.

It is further agreed that:

- if any significant change in the condition of the applicant is discovered between the date of this Proposal Form and the Policy inception date, which would render this Proposal Form inaccurate or incomplete, notice of such change will be reported in writing to the insurer immediately;
- the information contained in this Proposal Form shall not be used by the Applicant firm and/or any insureds as notice of Claims; nor will the insurer recognize and/or accept the information contained herein as notice of Claims as provided for in section VII. of the Policy;
- any Policy, if issued, will be in reliance upon the truth of such representations;
- this Proposal Form has been completed as respects the entire Applicant firm;
- and the signing of this Proposal Form does not bind the undersigned to purchasing the insurance.

6.26.2018
Dated

[Signature]
Partner, Owner, Officer or Principal (Signature)

Title Partner, Owner, Officer or Principal (Print Name)

This Admiral Insurance Company Proposal Form, including any material submitted herewith, shall be held in strictest confidence.

A POLICY CANNOT BE ISSUED UNLESS THE PROPOSAL FORM IS PROPERLY SIGNED AND DATED.

Please submit this Proposal Form including appropriate documentation to:

Monitor Liability Managers, LLC, 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-6039

deb
6.25.2018

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

Plaintiff
Supplemental Form

Lawyers Professional Liability Insurance

CLAIMS MADE WARNING FOR APPLICATION: This Proposal Form is for a Claims Made and Reported Policy, relating to claims made against the Insureds during the Policy Period or any Extended Reporting Period that may apply.

Desa Ballard PA aka Ballard Watson Weissenstein
Name of Applicant Firm

APPLICANT FIRM'S INSTRUCTIONS:

IF SPACE IS INSUFFICIENT TO ANSWER ANY QUESTION FULLY, PROVIDE SEPARATE ATTACHMENTS.

Plaintiff Information

1. Total number of personal injury cases during the past 12 months:	<u>14</u>
2. What percentage of your plaintiff cases are class action suits?	<u>0</u> %
3. Average number of cases each attorney handles per year:	<u>15</u>
4. Percentage of cases settled before trial:	<u>XX</u> %
5. Percentage of cases tried to conclusion:	<u>XX</u> %
6. Percentage of cases referred to you by other law firms:	<u>5</u> %
7. Do you use written referral agreements in all cases which are referred to you?	<u>ie. appx. 10%</u> Yes ☒ No ☐
8. Percentage of cases your firm refers to other firms and retains a portion of the fees:	<u>0</u> %
9. Do you use written referral agreements and obtain certificates of insurance, in all cases referred out?	<u>would be appx. 10%</u> Yes ☐ No ☒
10. Average dollar value of cases:	<u>\$ unknown</u> <u>XXX</u>
11. Maximum dollar value of any one case:	<u>\$ unknown</u> <u>XX</u>
12. Average percentage of recovery your firm takes as fees:	<u>40% or less</u>
13. Have you advertised during the past 12 months through any of the following:	
(a) Yellow pages	☐ Yes ☒ No
(b) Newspaper	☐ Yes ☒ No
(c) Radio	☐ Yes ☒ No
(d) Television	☐ Yes ☒ No

*** Cases are pending and no dollar value has yet to be requested.

* Ms Ballard Supervises all case with Harvey Watson or Stephanie Weissenstein being primary on each. Mr Watson is/was primary on 4 cases Ms Weissenstein on 10.

XX 2 cases we associated with, but are primarily handled by other Counsel and we are no longer involved. 1 case we requested to be relieved 1 case is stayed by bankruptcy. 2 cases are associate departure cases and are settling or have settled (involved)

LPL 9730 (rev. 04-03)

1 Case did not go forward

ADMIRAL INSURANCE COMPANY

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Signature Required

I understand that the information submitted herein becomes a part of the Applicant Firm's Lawyers Professional Liability Insurance Proposal Form and is subject to the same representations and conditions.

6-25-2018

Dated

Partner, Owner, Officer or Principal (Signature)

Title

Partner, Owner, Officer or Principal (Print Name)

Please submit this Proposal Form including appropriate documentation to:
Monitor Liability Managers, LLC, 2850 West Golf Road, Suite 600, Rolling Meadows, IL 60008-4039

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

**Individual Insured
Supplemental Form****Lawyers Professional Liability Insurance**

CLAIMS MADE WARNING FOR APPLICATION: This Proposal Form is for a Claims Made and Reported Policy, relating to claims made against the Insureds during the Policy Period or any Extended Reporting Period that may apply.

Desa Ballard P.A. dba Ballard Watson Weissenstein

Name of Applicant Firm

**NAME ALL OWNERS, PARTNERS, OFFICERS, DIRECTORS, STOCKHOLDER EMPLOYEES, AND EMPLOYED LAWYERS.
ATTACH AN ADDITIONAL INDIVIDUAL INSURED SUPPLEMENTAL FORM IF THE FIRM SIZE EXCEEDS 20.**

Individual Insured Information

*Use the following Designations to complete the table below:

"O" Offices, Directors, or Shareholders of the Applicant Firm who are licensed lawyers	"A" Associate for whom coverage is desired
"P" Partners of a partnership	"IC" Independent Contractor
"S" Sole Proprietor / Individual	"PT" Part Time
"E" Employed lawyers (must be employee of Applicant Firm)	"R" Retired
"C" "Of Counsel" attorneys for whom coverage is desired	

Name of Lawyer	Designation	Full/PT insured # of hours worked	Admitted to the Bar Month	Years in Practice	Lawyer's Individual Specialty	Member in Good Standing of the following Bar Association(s)
1. <u>Desa Ballard</u>	<u>O</u>	<u>N/A</u>	<u>11/1983</u>	<u>30</u>	<u>Professional</u>	<u>SC, Wash. DC</u>
2. <u>Harvey M. Watson</u>	<u>O</u>	<u>N/A</u>	<u>11/2005</u>	<u>8</u>	<u>"</u>	<u>SC</u>
3. <u>Stephanie Weissenstein</u>	<u>O</u>	<u>N/A</u>	<u>11/2004</u>	<u>9</u>	<u>"</u>	<u>SC</u>
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ADMIRAL INSURANCE COMPANY

NOTICE TO COLORADO APPLICANTS: IT IS UNLAWFUL TO KNOWINGLY PROVIDE FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE COMPANY. PENALTIES MAY INCLUDE IMPRISONMENT, FINES, DENIAL OF INSURANCE, AND CIVIL DAMAGES. ANY INSURANCE COMPANY OR AGENT OF AN INSURANCE COMPANY WHO KNOWINGLY PROVIDES FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO A POLICY HOLDER OR CLAIMANT FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE POLICY HOLDER OR CLAIMANT WITH REGARD TO A SETTLEMENT OR AWARD PAYABLE FROM INSURANCE PROCEEDS SHALL BE REPORTED TO THE COLORADO DIVISION OF INSURANCE WITHIN THE DEPARTMENT OF REGULATORY AGENCIES.

NOTICE TO NEW MEXICO, PENNSYLVANIA APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES.

NOTICE TO APPLICANTS OF KENTUCKY: ANY PERSON WHO KNOWINGLY, AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS, FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME.

NOTICE TO APPLICANTS OF MINNESOTA, NEW JERSEY, OHIO, AND OKLAHOMA: ANY PERSON WHO KNOWINGLY, AND WITH INTENT TO INJURE, DEFRAUDS OR DECEIVES ANY INSURER OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM FOR THE PROCEEDS OF AN INSURANCE POLICY CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, IS GUILTY OF A FELONY AND IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.

NOTICE TO MAINE, MASSACHUSETTS, TENNESSEE, VIRGINIA, AND WASHINGTON APPLICANTS: IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE OR MISLEADING INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING THE COMPANY. PENALTIES INCLUDE IMPRISONMENT, FINES AND DENIAL OF INSURANCE BENEFITS.

NOTICE TO APPLICANTS OF FLORIDA: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO INJURE, DEFRAUD OR DECEIVE ANY INSURER FILES A STATEMENT OF CLAIM OR AN APPLICATION CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION IS GUILTY OF A FELONY OF THE THIRD DEGREE.

NOTICE TO ARKANSAS, DISTRICT OF COLUMBIA, LOUISIANA, MARYLAND, AND RHODE ISLAND APPLICANTS: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO FINES AND CONFINEMENT IN PRISON.

NOTICE TO NEW YORK APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME, AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION.

Signature Required

I understand that the information submitted herein becomes a part of the Applicant Firm's Lawyers Professional Liability Insurance Proposal Form and is subject to the same representations and conditions.

6.05.2018

Dated

Partner, Owner, Officer or Principal (Signature)

Title

Partner, Owner, Officer or Principal (Print Name)

Please submit this Proposal Form including appropriate documentation to:
Monitor Liability Managers, LLC, 2850 West Golf Road, Suite 600, Rolling Meadows, IL 60008-4039

Admiral Insurance Company

Revised
Declarations Page

Lawyers Professional Liability Insurance

CLAIMS MADE WARNING FOR DECLARATIONS: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.

PLEASE READ AND REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

Whenever printed in this Declarations Page, the boldface type terms shall have the same meanings as indicated in the Policy.

Policy Form: LPL 9300 (04-09)

Policy Number: 91200935

Item 1. Name and Address of Named Insured:

Dana Ballard dba Ballard & Watson, Attorneys at Law
228 State Street
West Columbia, SC 29169

Person designated to receive all correspondence from the Insurer:

Mara Ballard
Manager/Secretary/Treasurer

Item 2. Policy Period:

From July 1, 2013 (inception date) to July 1, 2014 (expiration date)
(Both dates at 12:01 a.m. Standard Time at the address of the Named Insured)

Item 3. Limit of Liability for the Policy Period (inclusive of Damages and Claims Expense):

- A. \$1,000,000 each Claim, but in no event exceeding:
B. \$2,000,000 in the aggregate for all Claims.
\$10,000
\$21,119

Item 4. Applicable Deductible:

Item 5. Premium:

Item 6. Endorsements attached:

SER-00-ADM (05-13) Service of Suit

LPL 99010 (04-09) Modification to Item 1. of the Declarations: Name and Address of Named Insured

Item 7. Notice to the Insurer as provided in sections VII. A. and VII. B. and any information furnished to the Insurer as provided in section VI. A. shall be sent to:

Monitor Liability Managers, Claims Department
Address: 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039
Fax: (847) 808-4017 Email: newclaim@monitorliability.com

All other notices required to be given to the Insurer under this Policy shall be sent to:

Monitor Liability Managers
Address: 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039
Fax: (847) 808-6292

These Declarations along with the completed and signed Proposal and the Lawyers Professional Liability Insurance Policy shall constitute the contract between the Insureds and the Insurer.

Authorized Representative:

Date Issued: April 26, 2014

LPL 9300 (rev. 12-11)

91200935 Dana Ballard dba Ballard & Watson, Attorneys at Law

Page 1 of 1

ROA 00273

Modification to Item 1. of the Declarations Name and Address of Named Insured

In consideration of the premium paid for this Policy, it is understood and agreed that Item 1. Name and Address of Named Insured, of the Declarations is hereby amended to read as follows:

Item 1. Name and Address of Named Insured:
Dosa Ballard dba Ballard & Watson, Attorneys at Law
226 State Street
West Columbia, SC 29169
Person designated to receive all correspondence from the Insurer:
Mara Ballard
Manager/Secretary/Treasurer

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured: Dosa Ballard dba Ballard & Watson, Attorneys at Law	Policy Number 91200935
Effective Date of This Endorsement 04/09/2014	Authorized Representative

Policy Form LPL 99010 (04-09)

22332-1200935-1145556

LPL 99010 (04-09)

ROA 00274

EXHIBIT B

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-32-01109

Adele J. Pope

Gloria P. Corley, et al.

ORIGINAL

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: COURT

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion for Summary Judgment is DENIED. Reviewing the factors outlined in Rule 1.5, RPC, Rule 407, SCACR, the court finds that the fee agreement is neither unreasonable nor unconscionable. Although Plaintiff may not have devoted significant time and labor to the matter, and she was not precluded from other employment, Plaintiff nevertheless was instrumental in finalizing the settlement in question. Furthermore, this is a contingency fee arrangement that is typical of probate cases. The fee only provides for compensation of one-third (1/3) of the amount above the settlement Defendant negotiated without advice of counsel. Finally, Plaintiff is a certified specialist in estate and probate law, and had a longstanding relationship with Defendant. The fact that Defendant was advised by her son, who is a licensed attorney, also militates against a finding that the agreement is unconscionable. Therefore, Plaintiff is entitled to the fees earned under the agreement. Accordingly, Plaintiff's Motion to for Summary Judgment and her Motion to Strike Defendant's unconscionability defense are GRANTED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$

		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order.		

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

Paul D. G. B. 2159 2/13/2013
Circuit Court Judge Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on the 21st day of Feb, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of FEB, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Adam T. Silvermail COCKRELL

ATTORNEY(S) FOR THE PLAINTIFF(S)

Stephanie M. Weissenstein SHEALY
Dessa Ballard WOODLAND
David W. Siodons
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Margaret Woods

FILED
2018 FEB 15 AM 10:28

EXHIBIT C

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Adele J. Pope,

Plaintiff

vs.

Gloria P. Corley and Samuel M.
Corley, Individually and as
Trustee of the M. L. Corley
Marital Trust,
Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-32-1169

RECEIVED
Via US Mail 08-29-2013

ORDER GRANTING JUDGMENT
TO PLAINTIFF ADELE J. POPE
AS TO CLAIMS AGAINST
GLORIA P. CORLEY

This matter came before me on July 15, 2013 for a damages hearing to set the amount due to Plaintiff Adele J. Pope ("Plaintiff") as a result of Defendant Gloria P. Corley's ("Mrs. Corley") breach of contract. By Orders dated February 13, 2013 and May 14, 2013, the Honorable Frank R. Addy, Jr. found that the fee agreement at issue was valid and enforceable. For the reasons set out below, the Court finds that Plaintiff is entitled to a judgment against Mrs. Corley in the amount of \$248,673.87.

Findings of Fact and Conclusions of Law

This case was commenced by the filing of a Summons and Complaint on March 21, 2011. Pope sought to enforce her rights under a fee contract dated August 28, 1998 (the "fee contract") and an Agreement Among Successors dated January 22, 1999 (the "Corley Agreement").

Under the fee contract, Plaintiff is entitled to:

ONE-THIRD (1/3) OF ALL GROSS MONIES OR PROPERTY [Mrs. Corley receives] from [her] husband's Estate or Trust and/or

1/10

ROA 00279

his family in excess of \$7,500 per month (\$90,000 per year)
 FOR THE REST OF [Mrs. Corley's] LIFE OR RECEIVED BY [her]
 ESTATE. ...

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Additionally, the Corley Agreement included the following provision:

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 LEXINGTON, SC

ARTICLE VI
 IRREVOCABLE DESIGNATION BY SPOUSE OF
 AGENT TO RECEIVE PROCEEDS.

1. Except for the monthly \$7,500 payments, which shall be made directly to her, Mrs. Corley irrevocably designates Adele J. Pope as her agent to receive and disburse all amounts payable to her under the Will, the Marital Trust and/or this Agreement.

Both of these contracts had been in force for more than a decade at the time this litigation began, and both had been honored until Mrs. Corley's agent attempted to circumvent both in early 2011. Plaintiff has testified extensively in her deposition and affidavits¹ regarding her representation of Corley and the collection and disbursement of amounts due to Plaintiff and Mrs. Corley over the more-than 10 years since the Settlement. Mrs. Corley has introduced no factual testimony other than an affidavit of A. Hoyt Rowell, Esquire.²

In 1997 Mrs. Corley engaged Plaintiff on an hourly basis to represent her in relation to the

¹ Included with Plaintiff's affidavits are numerous exhibits comprised of historical documents and correspondence generated during Plaintiff's representation of Mrs. Corley and over the years since.

² Although Mr. Rowell's affidavit purports to bear on certain facts of this case, it also plainly states that Mr. Rowell has little independent memory of the facts and has not reviewed the relevant documents. Judge Keesley struck a portion of Mr. Rowell's affidavit because it contained what appeared to be expert testimony from a fact witness.

2/10 

estate of Mrs. Corley's third husband, M. L. Corley ("Decedent"), who had recently died. The matter was both factually and legally complex. In addition to other assets, Decedent owned over 10 acres on Lake Murray, and a number of large tracts along Highway 378 between Columbia and Lexington. His first wife, to whom he had been married for many years, had predeceased him.

Mrs. Corley did not have a close relationship with Decedent's children. One of Decedent's children, Sam ("Trustee"), is the trustee of the trust established by Decedent's will. Trustee and Theron Peace, Decedent's accountant, were Decedent's personal representatives. Decedent's fiduciaries were represented by litigator Keith Babcock, Esquire, and tax attorneys Robert Young, Esquire and David Siddons, Esquire. Plaintiff was Mrs. Corley's sole attorney.

At the time of the engagement, Plaintiff held an LLM in Estate Planning from the University of Miami and had practiced law for more than 20 years. The fee agreement provided for attorney's fees and costs of collection. It also provided that Plaintiff could speak freely about the matter with Mrs. Corley's daughter Angie or son Hoyt ("Son"), an attorney. The fee agreement included an acknowledgement that Son served as Mrs. Corley's personal attorney and approved the Fee Contract. Although the record does not contain a copy of this document signed by Son, both Mrs. Corley and her Attorney-in-Fact acknowledged that fact by signing the agreement.

Mrs. Corley's goal was to receive regular income "beginning as soon as possible," but there were substantial impediments to this goal. Although Plaintiff worked vigorously, attempts to speed up this process met with considerable resistance from Decedent's fiduciaries and their attorneys. Plaintiff kept Mrs. Corley and Son informed of what actions she was taking and the

3/10 

resistance with which it was being met.

In July 1998, with hearings scheduled, Mrs. Corley notified Plaintiff that she was too ill to continue the litigation and that her doctor directed that she immediately withdraw. Plaintiff immediately notified the court and other parties of Mrs. Corley's illness, withdrew the actions filed on behalf of Mrs. Corley, and notified the parties of Plaintiff's termination. Approximately three weeks later Plaintiff learned that Mrs. Corley's doctor had not directed her to stop the litigation, but that Mrs. Corley had decided to negotiate with the trust on her own.

By August 1998, Son was in contact with Plaintiff regarding Mrs. Corley's failed negotiations and requesting that Plaintiff take Mrs. Corley back as a client. Plaintiff, in light of Mrs. Corley's unwillingness or inability to bear the ongoing and substantial costs of a full representation on an hourly basis, proposed at least two alternatives. She offered to be engaged on a limited basis as a consultant to Son, who would act as Mrs. Corley's attorney. Alternatively, she was willing to work under a contingency-fee agreement. Mrs. Corley elected the contingency fee agreement. Although Mrs. Corley had not secured any agreement for herself after terminating Plaintiff, the contingency fee relates only to amounts over \$90,000 per year Plaintiff was able to secure for Mrs. Corley.

Plaintiff then engaged in negotiations with counsel over fiduciary income and trust concepts and the best way to make Decedent's multi-million dollar estate and trust work for Mrs. Corley and Decedent's children. In January 1999, a detailed agreement was reached, presented to the court, and approved. The settlement, which was thoroughly reviewed by Mrs. Corley and her family, provided Mrs. Corley with a guaranteed income of \$145,000 for the rest of her life provided she take no active role in the trust except to allow her own accountant to

4/10 *ES*

review the annual reports. \$90,000 was disbursed directly to Mrs. Corley each year, in monthly installments. The remainder, at least \$55,000, was paid directly to Plaintiff, as the irrevocably designated agent to receive and disburse, and was intended to be the source of the payment of Plaintiff's fees within the framework set out in the Corley Agreement.

After the approval of the settlement, the estate was wound up and closed within a couple of years. On a few occasions, Trustee made the check out directly to Mrs. Corley rather than to Plaintiff as agent for Mrs. Corley. The Trustee always delivered the checks to Plaintiff. Aside from these minor mistakes, Trustee fully complied with the agreement until after this suit was filed. On those instances where the check was improperly made out, Mrs. Corley signed the check and endorsed it to Plaintiff's trust account instead of returning the check to Trustee and delaying payment. Plaintiff would then disburse the check according to the agreement.

After the settlement, through 2010, Mrs. Corley-- after payments to Plaintiff-- retained at least \$125,000 per year. Plaintiff received annual payments of approximately \$18,333. The contingency fee paid to Plaintiff each year was less than 15% of the \$145,000 she secured for Mrs. Corley.

At one point shortly after the settlement, Mrs. Corley wrote Trustee and directed him to pay the annual check directly to her. Plaintiff engaged John Freeman, Esquire to assist her; Professor Freeman contacted Son and the matter was corrected. However, in March 2011 Mrs. Corley's attorney-in-fact took the check from Plaintiff and announced that she was now in charge and that she would pay Plaintiff what she felt like paying. Plaintiff filed this suit the following week.

Plaintiff and Mrs. Corley filed cross-motions for summary judgment. The court denied

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CLERK OF COURTS
LEXINGTON, SC

Mrs. Corley's motions and granted Plaintiff's in a form 4 order dated February 13, 2012. Mrs. Corley sought reconsideration of that Order, but the court affirmed its findings by Order dated May 14, 2013. It also ordered a damages hearing, noting that "complicating factors" had arisen during this litigation.

Developments During this Litigation

In 2012, more than a year after this action was commenced, the Trustee and Mrs. Corley's attorney-in-fact reached an agreement to terminate Mrs. Corley's payments under the Corley Agreement in exchange for a lump sum paid to Mrs. Corley in 2012. Despite the pendency of this action, to which both Mrs. Corley and Trustee are parties, Trustee made one or more substantial distributions to Mrs. Corley in contravention of the Corley Agreement which he had honored for more than a decade.

No notice was given to Plaintiff or this Court of the 2012 agreement, and Plaintiff's counsel discovered the agreement in the Probate Court in August 2012.

The 2012 agreement purports to terminate Mrs. Corley's interest in the Trust in exchange for a single, immediate³ payment of \$650,000. According to the terms of the 2012 agreement, Mrs. Corley had already received \$22,500 from the Trust in 2012. Thus, the total amount distributed to Mrs. Corley by the Trust in 2012 was \$672,500.

The Fee Agreement provides that Plaintiff's fee will be "ONE-THIRD (1/3) OF ALL GROSS MONIES OR PROPERTY you receive from your husband's Estate or Trust and/or his family in excess of \$7,500 per month," and Plaintiff has consistently taken the position that she

³ Although issues arose as to the timing of the payment, all amounts due to Mrs. Corley under the 2012 Agreement were undisputedly paid in 2012.

6/10 

is entitled to a corresponding fee from the proceeds received by Mrs. Corley in 2012:

Judge Addy has previously concluded that the fee contract between Plaintiff and Mrs. Corley is valid and enforceable, and that contract provides that Plaintiff is entitled to 1/3 of all amounts received by Mrs. Corley beyond \$90,000 per year from the Trust. The Trustee continues to hold the payment originally issued in 2011 of \$55,000, which should have been received and disbursed by Plaintiff in accordance with the Corley Agreement and Fee Contract. Plaintiff is entitled to \$18,333.33 from that payment, in addition to the amounts set out below. In the complaint herein, Plaintiff requested pre-judgment interest on this amount. Because Plaintiff's fee from the 2011 payment is a sum-certain, she is entitled to pre-judgment interest at the legal rate. *See Dixie Bell, Inc. vs. Redd*, 376 S.C. 361, 656 S.E.2d 765 (Ct. App. 2007).

Instead of the customary \$55,000 lump-sum payment to Mrs. Corley in 2012, the Trustee distributed \$650,000 to Mrs. Corley in exchange for Mrs. Corley's relinquishing her rights under the Corley Agreement to any future payments. This amount was distributed in addition to \$22,500 in monthly payments to Mrs. Corley, so that Mrs. Corley received \$672,500 in distributions in 2012.

Although the propriety and effect of the 2012 transactions are in dispute, no party disputes that Mrs. Corley received \$672,500 from the Trust in 2012. Thus, Plaintiff asserts that she is entitled to 1/3 of \$582,500 under the Fee Agreement.

Upon receipt of the 2012 payment, Mrs. Corley had received more than \$2 million from the Trust as a result of Plaintiff's efforts. Plaintiff's total fee, if the Fee Agreement is applied to the 2012 distributions to Mrs. Corley, will be approximately \$420,000.

Mrs. Corley argued that there are both questions of law and fact as to whether the fee

7/10 

agreement between Plaintiff and Mrs. Corley applied to the 2012 disbursement. Plaintiff asserts that she is entitled to 1/3 of \$582,500 under the Fee Agreement. I find that the contract at issue is unambiguous, and Plaintiff is entitled to damages based on the amounts paid to Mrs. Corley in 2012. The 2012 settlement agreement explicitly references the Corley Agreement in calculating the lump-sum payment to Mrs. Corley, and I find that the 2012 payment flows directly from the settlement Plaintiff negotiated more than a decade ago.

The above-quoted language in the contract plainly states that Plaintiff's fee shall be calculated as 1/3 of amounts beyond \$90,000 per year received by Mrs. Corley, and the Court has previously found the contract to be enforceable. "When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense. *C.A.N. Enterprises, Inc. v. South Carolina Heath and Human Services Finances Com'n*, 373 S.E.2d 584, 296 S.C. 373 (1988).

Mrs. Corley also argued that damages could not be awarded to Plaintiff based on the 2012 payments, because Plaintiff's complaint had sought to enforce the contract in the context of the March 2011 payment. The complaint herein sought to enforce the fee contract, and the Court has found the contract to be enforceable. The 2012 payments were negotiated a year after this action was commenced, and Mrs. Corley was on notice of Plaintiff's proceeding to enforce the contract. To allow circumvention of the contract under these circumstances would be unjust, and I find that the damages set out below are appropriate.

Calculation of Damages

Counsel for Mrs. Corley conceded at the hearing that Plaintiff is entitled to her fee of \$18,333.33 from the payment issued in March 2011. Additionally, Mrs. Corley concedes that

8/10 

Plaintiff is entitled to prejudgment interest and reasonable attorneys' fees under the contract.

I find that Plaintiff, in addition to the amounts due from the 2011 payment, is entitled to \$194,166.66 as a result of the 2012 distribution, and I find that this fee remains reasonable under the analysis set out in Judge Addy's Order Denying Motion for Reconsideration. Because this is also a sum-certain, Plaintiff is entitled to pre-judgment interest from January 1, 2013.⁴

The Fee Agreement further provides that Plaintiff is entitled to the reasonable costs of collecting any amounts due under the Fee Agreement, including attorneys' fees. This action to enforce the Fee Agreement and collect the fees due was necessitated by the conduct of Mrs. Corley, through her Attorney-in-Fact. Counsel for Plaintiff has presented an affidavit showing he has spent 125.5 hours on this matter to date and Plaintiff has expended \$1,082 in costs. Plaintiff's counsel asks that Plaintiff be awarded \$25,100 in attorneys' fees in connection with this action to date, plus the costs incurred.

Under the factors set out in *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991), I find that this fee is reasonable. The record shows that this matter was commenced more than 2 years ago, and Plaintiff's counsel has diligently pursued it through discovery, mediation and hearings. This matter, although initially straightforward, was both complicated and drawn out by Mrs. Corley's actions and the 2012 agreement with the Trust and Sam. As set out in this Order, counsel has obtained beneficial results for Plaintiff. An award of \$25,100 would compensate Plaintiff's counsel at a rate of \$200/hour, which is in line with Mr. Silvernail's experience and time in practice.

⁴ Although the record does not show the exact date Mrs. Corley received the 2012 payment(s), all were received by the end of that year.

9/10 

I find that \$26,182 in fees and costs, plus any additional fees and costs incurred in collecting the amounts due under this Order, is a reasonable award and should be taxed to Mrs. Corley under the fee agreement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff is granted judgment against Gloria P. Corley for the following amounts in actual damages, interest and attorneys' fees and costs:

Fee due Plaintiff from the March 2011 Payment	\$ 18,333.33
Fee due Plaintiff from payments to Mrs. Corley in 2012	\$194,166.66
Pre-judgment interest on above amounts	\$ 9,961.88 ¹
Attorneys' fees and costs to date ²	\$ 26,182.00
Total	\$248,673.87

Additionally, Plaintiff is granted daily interest in the amount of \$42.21 from July 15, 2013 to the date of this Order, and such additional reasonable and necessary costs of collection as are provided in the fee contract.

AND IT IS SO ORDERED.

August 21, 2013
Orangeburg, South Carolina


 Edgar W. Dickson

FILED
 CLERK OF COURT
 LEXINGTON
 AUG 31 2018

¹ This includes \$2,923.34 in interest on the \$18,333.33 from March 15, 2011 through July 1, 2013, and \$7,038.54 in interest on the \$194,166.66 from January 1, 2013 through July 1, 2013.

² Payable by Mrs. Corley in accordance with the fee contract.

10/10 

EXHIBIT D

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Estate of Gloria P. Corley, by its Special
Administrator,

CASE NO. 2017-CP-29- _____

Plaintiff,

SUMMONS

vs.

Desa Ballard and Desa Ballard, P.A.,

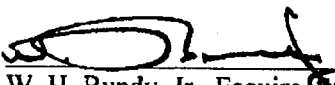
2017CP3200618

Defendants.

TO THE DEFENDANTS ABOVE-NAMED:

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 upon the subscriber, W. H. Bundy, Jr., Esquire, of Bundy McDonald, LLC, 1516 Old Trolley Road, 2nd Floor, Summerville, South Carolina 29485, within thirty (30) days after service thereof, exclusive of the day of service; and if you fail to do so judgment by default will be rendered against you for the relief demanded in the Complaint.

BUNDY MCDONALD, LLC


W. H. Bundy, Jr., Esquire, SC Bar # 1012
M. Brent McDonald, Esquire, SC Bar # 78057
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FILED

February 16, 2017
Summerville, South Carolina

ROA 00290

ORIGINAL

**STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON**

Estate of Gloria P. Corley, by its Special
Administrator,

Plaintiff,

vs.

Desa Ballard and Desa Ballard, P.A

Defendants.

) **IN THE COURT OF COMMON PLEAS**
) **ELEVENTH JUDICIAL CIRCUIT**
)

) **CASE NO. 2017-CP-29-**
)
)

) **COMPLAINT**
) **(Jury Trial Demanded)**
)

) **2017 CP 3200618**
)
)

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Plaintiff Estate of Gloria P. Corley, by its Special Administrator, bring this action against Defendants Desa Ballard and Desa Ballard, P.A. and alleges as follows:

1. Plaintiff is the Estate of Gloria P. Corley, who died on March 31, 2016, a resident of Lexington County.
2. Plaintiff acts through its duly appointed Special Administrator, as found in the Lexington County Probate Court record for Case No. 2016-ES-32-0845.
3. Defendant Desa Ballard is an attorney admitted to practice law in South Carolina, having offices located in Lexington County.
4. Defendant Desa Ballard, P.A. is a professional association created and existing under the laws of the State of South Carolina, with its offices located in Lexington County.
5. Prior to her death, Gloria Corley (Hereinafter "Gloria") was married to Martin Corley, who is now deceased. Both Gloria and Mr. Corley had children from previous marriages. As a part of his estate planning, Mr. Corley set up the Martin L. Corley Marital Trust ("the Marital

Trust") in which Gloria had an interest, as did Gloria's adult daughter Andra "Angie" Williams (hereinafter "Angie") and Mr. Corley's adult children from a previous marriage.

6. After Mr. Corley's death, various disputes arose between Gloria and the children of Mr. Corley regarding Mr. Corley's estate

7. In or around 1998, Gloria hired an attorney, Adele Pope, to represent her in the dispute over the Estate and/or the Marital Trust of her late husband. In 1999 an agreement was reached, entitled "Agreement Among Successors to Decedent." (Exhibit A). Under the terms of that agreement, Gloria would receive monthly distributions of \$7,500.00 for her lifetime. In addition, during her lifetime, Gloria would receive an annual distribution to be no less than \$55,000.00.

8. Gloria's fee agreement with Adele Pope provided that Pope would receive a percentage of any monies Gloria received from the Estate or Trust of her husband, in excess of the monthly \$7,500.00 payments:

In addition, commencing August 28, 1998, I will be entitled to ONE-THIRD (1/3) of ALL GROSS MONIES OR PROPERTY you receive from your husband's Estate or Trust and/or his family in excess of \$7,500 per month (\$90,000 per year) FOR THE REST OF YOUR LIFE, OR RECEIVED BY YOUR ESTATE, whether or not I am serving as your lawyer at the time.

Pope Fee agreement dated August 28, 1998 (Exhibit B).

9. For many years, Gloria paid Pope one-third of the annual distribution she received in excess of the \$7,500.00 payments.

10. In or around 2011, Gloria began suffering from diminished capacity. Around that time, Angie took over all of Gloria's finances, pursuant to a power of attorney. When the annual check of \$55,000.00 was distributed to Gloria in 2011, Angie refused to pay Pope one-third of this annual distribution as had traditionally been paid.

11. Pope then filed suit against Gloria ("the Pope suit"). Defendant Desa Ballard and Desa Ballard, P.A. (hereinafter collectively referred to as "Defendant Ballard") were retained to defend Gloria in the Pope suit. Defendant Ballard also represented Angie, individually and as attorney-in-fact for Gloria. However, Defendant Ballard never met with Gloria to assess her mental faculties or to discuss the Pope lawsuit or Gloria's interest in the Marital Trust.

12. On February 22, 2013, the Honorable Frank Addy issued an order in the Pope case, granting Pope's motion for summary judgment as to the validity of her fee agreement with Gloria and finding that Pope was entitled to the fees earned under agreement. Defendant Ballard failed to appeal this order.

13. During the pendency of the Pope suit, Defendant Ballard advocated for the termination of Gloria's interest in the trust, with the incorrect belief that without an annual distribution to Gloria, Pope would not be entitled to any additional monies, despite the broad language of Pope's fee agreement giving her one-third of "of ALL GROSS MONIES OR PROPERTY" that Gloria would receive from Mr. Corley's "Estate or Trust and/or his family in excess of \$7,500 per month (\$90,000 per year)." In fact, in an email to counsel for Samuel Corley (the trustee of the Marital Trust), Defendant Ballard wrote: "Please draft so as to have Gloria waive all future annual payments; settlement will be a buy-out of monthly payments. Adele's fee is only on annual payments." (**Exhibit C**). Defendant Ballard never considered that Pope might be due any monies from the lump sum payment to Gloria.

14. Defendant Ballard engaged in discussions with Samuel Corley, who was the trustee of the Marital Trust, and his attorney, but did not include Gloria in these discussions. Defendant Ballard then recommended and negotiated a settlement on behalf of Gloria, which was reduced to writing in a document entitled "Agreement to Terminate Interests in the Martin L. Corley

Marital Trust." dated April 19, 2012 ("Termination Agreement") (**Exhibit D**). The Termination Agreement provided that Gloria would waive any and all future payments and would receive one lump sum in the amount of \$650,000.00 as a single final distribution from the Marital Trust. That amount was significantly less than the amount Gloria would receive under the Marital Trust; the Termination Agreement stated that under Gloria's projected life expectancy of 8.29 years, the monthly payments of \$7500.00 would total \$746,100.00. The Termination Agreement did not include any amount to compensate Gloria for the annual payments of at least \$55,000.00 that she waived under the agreement.

15. With the monthly payments of \$7,500.00 and the guaranteed annual payment of at least \$55,000.00, Gloria was entitled to \$145,000.00 for her lifetime. If the projected life expectancy of 8.29 years was accurate, Gloria was entitled to at least \$1,202,050.00. In other words, Gloria was entitled to almost twice the amount of the lump sum of \$650,000.00 provided for in the Termination Agreement advocated by Defendant Ballard.

16. The Termination Agreement was signed by Angie individually and Angie as the holder of the power of attorney for Gloria.

17. Defendant Ballard failed to consider the long term effect of trading in lifetime monthly payments and a guaranteed annual payment subject to attorneys' fees for a lesser, lump sum amount.

18. The Termination Agreement was approved by Consent Order filed May 1, 2012. (**Exhibit E**).

19. Under the terms of the Termination Agreement, Gloria was required to deposit \$50,000 of her lump sum of \$650,000 into a designated account, in order to indemnify the Marital Trust and Samuel Corley, individually or as the trustee of the Marital Trust for any claims arising in

connection with Gloria's interest in the Marital Trust, thus reducing Gloria's actual lump sum to \$600,000.00.

20. Angie was a party to the Termination Agreement individually because she had an interest in the Marital Trust, in that she was to receive \$50,000.00 upon the death of her mother. Under the terms of the Termination Agreement, Angie received \$50,000.00 immediately, and that amount was actually deducted from the \$650,000.00 lump sum allocated to Gloria, further reducing the amount Gloria actually received. Angie's termination interest should have been negotiated separately and independently of Gloria's interest.

21. However, Defendant Ballard represented both Angie and Gloria in negotiating the termination of the Marital Trust, which constituted a conflict of interest. Defendant Ballard did not obtain a waiver of this conflict. Furthermore, Defendant Ballard did not seek to have a Guardian ad Litem appointed to ensure that Gloria's interests were protected in either the proceedings to terminate the Marital Trust or the Pope suit.

22. The lump sum payment to Gloria issued by the Marital Trust under the terms of the Termination Agreement was deposited into Defendant Ballard's trust account. After fees and other expenses were deducted, the remaining funds of \$522,818.31 were disbursed by Defendant Ballard by way of a check from her trust account made payable to Gloria Corley. (Exhibit F)

23. Gloria's daughter endorsed the check "Andra Williams POA for Gloria Corley" but did not deposit the money into Gloria's account. Instead, Angie deposited the entire sum into a First Citizens account that was in her own name only. (Exhibit G). Angie has spent at least some of those funds on herself, not for her mother's care.

24. Defendant Ballard did not request that a Guardian ad Litem to be appointed for Gloria, who had diminished capacity, at any time during the Pope suit or the negotiations to terminate

the Marital Trust. At the same time, Defendant Ballard had a conflict of interest in representing Gloria, Angie Williams individually, and Angie Williams as attorney-in-fact, in the termination of the Marital Trust, rendering Defendant Ballard liable for disgorgement of her fees.

25. By order dated August 21, 2013, Pope obtained a judgment of \$248,673.87 for Gloria's breach of the fee agreement, which breach, as noted above, was actually orchestrated by Angie's refusal to pay. On January 15, 2014, the court denied the motion to reconsider filed by Defendant Ballard. Defendant Ballard did not file a Notice of Appeal of the judgment (and purportedly of the 2013 order of summary judgment) until March 12, 2014. Because the appeal was untimely (which Defendant Ballard admitted in return to Pope's Motion to Dismiss (**Exhibit H**), it was dismissed by Order of the Court of Appeals dated June 30, 2014. (**Exhibit I**). Despite the dismissal of the appeal, Defendant Ballard did not return all of the fees she charged and collected for representing Gloria in the appeal.

26. In addition, in 2014, the \$55,000.00 check that had been initially issued in 2011 (and the dispute over which formed the basis for the Pope suit) was re-issued by the Marital Trust. Under the requirements of the court-approved Termination Agreement, the Marital Trust was supposed to deposit the \$55,000.00 check with the Lexington County clerk of court. However, the \$55,000.00 was sent to Defendant Ballard who deposited the money into her trust account, deducted certain fees from it, and then sent the remainder to counsel for Pope. Defendant Ballard did not have the authority or the obligation to send the funds to Pope's attorney -- who had not even requested payment -- as apparent partial satisfaction of Pope's judgment.

27. Because Pope had a valid judgment against Gloria, the Lexington County Circuit Court issued an order, filed May 22, 2015, which appointed a receiver, Kathleen Palinski. The order granted the receiver the authority to locate and secure Gloria's assets unless and until the amount

of Pope's judgment had either been paid to Pope or \$250,000 had been paid into the Court. The court found that Gloria's funds were in danger of being depleted due to the fact that Gloria knew very little about her finances and that Angie was in charge. Gloria also did not have financial records showing the whereabouts of her \$650,000 lump sum payment from the Marital Trust.

28. By order dated September 17, 2015 in the in the Pope litigation, Heather Cairns was appointed as Guardian ad Litem for Gloria due to Gloria's diminished capacity. (**Exhibit J**).

29. Of the \$650,000 obtained under the Termination Agreement settlement, there is approximately \$70,000 left, and those monies are under the control of the receiver as possible satisfaction of the judgment obtained by Pope.

30. Gloria died on March 31, 2016, in Lexington County.

FOR A FIRST CAUSE OF ACTION
(Professional Negligence as to Defendant Ballard)

31. Paragraphs 1 through 29 are herein reiterated and realleged as if set forth verbatim.

32. Gloria had an attorney-client relationship with Defendant Ballard.

33. Defendant Ballard breached the standard of care owed to the Gloria by, among other things: failing to recognize that the termination of the trust was not in the best interest of Gloria; failing to have a Guardian ad Litem appointed for Gloria; representing Gloria, Angie Williams individually, and Angie Williams as attorney-in-fact in violation of the rules governing conflicts of interest; in failing to recognize that Adele Pope's fee agreement entitled her to a percentage of the lump sum payment; and in undertaking a frivolous defense/appeal and or/failing to timely appeal the orders upholding Pope's fee agreement and awarding judgment to Pope. An affidavit of Gloria's expert, John Freeman, as required by S.C. Code 15-36-100 is attached hereto. (**Exhibit K**).

34. Gloria has suffered damages-which were proximately caused by the above described breaches of the standard of care by Defendant Ballard.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendant Ballard)

35. Paragraphs 1 through 33 are herein reiterated and realleged as if set forth verbatim.

36. Defendant Ballard was in a fiduciary relationship with Gloria such that Defendant Ballard was bound to act with due regard to the interests of Gloria.

37. Defendant Ballard was required to fully disclose to Gloria that: the termination of the Marital Trust would result in Gloria receiving significantly less than that to which she was entitled for her expected life span; and that Adele Pope would be entitled to any distributions of the trust, including a lump sum payout from the dissolution of the Marital Trust.

38. Defendant Ballard breached her fiduciary duties owed to Gloria by failing to make the above-referenced disclosures to Gloria.

39. Gloria has suffered damages which were proximately caused by the above described breaches of fiduciary duty by Defendant Ballard.

FOR A THIRD CAUSE OF ACTION
(Disgorgement as to Defendant Ballard)

40. Paragraphs 1 through 38 are herein reiterated and realleged as if set forth verbatim.

41. Defendant Ballard represented Gloria, Angie Williams, individually, and Angie Williams as attorney in fact for Gloria.

42. Gloria and Angie had different interests in the Marital Trust.

43. Defendant Ballard had a conflict of interest in representing all three.

44. As such, disgorgement of all fees collected is required.

WHEREFORE Gloria P. Corley prays that this Court:

- a. Grant judgment in favor-of Gloria on-all causes of action and grant actual, consequential and punitive damages;
- b. Award Gloria prejudgment interest;
- c. Award Gloria awarded attorneys' fees and costs if permitted by law; and
- d. That Gloria be awarded such further relief as the Court deems just and proper.

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Attorneys for Estate of Gloria P. Corley

February 16, 2017
Summerville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Desa Ballard and Desa Ballard, P.A. d/b/a
Ballard & Watson,

Plaintiffs,

v.

Admiral Insurance Company, Monitor
Liability Managers, Mendes and Mount, LLP,
Adele R. Pope, individually and as a Special
Administrator of the Estate of Gloria Corley,

Defendants

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2018-CP-32-01743

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANT
ADMIRAL'S MOTION FOR
JUDGMENT ON THE PLEADINGS****TO: WESLEY B. SAWYER, ESQUIRE, COUNSEL FOR DEFENDANT ADMIRAL
INSURANCE COMPANY AND TO DEFENDANT**

The Plaintiffs Desa Ballard and Desa Ballard, P.A. d/b/a Ballard & Watson ("Ballard"), oppose respond to Defendant Admiral's Motion for Judgment on the Pleadings. In support of her position, Ballard will show:

Defendant Admiral Insurance Company ("Admiral") seeks a declaration **as a matter of law** that its interpretation of a lawyer's professional liability policy¹ is correct and Ballard's claims (which primarily seek declaratory relief) should be dismissed as lacking merit.

¹ There are at least two (2) policies (each covers a one-year period) which govern the rights of the parties, although only one is specifically identified by policy number in the complaint. (Complaint ¶ 8). The facts, as pleaded in the complaint, establish, for purposes of this motion, the following facts: Ballard purchased coverage for herself and her law firm from Admiral repeatedly from 2010 through 2017, when Admiral refused to renew. See Complaint ¶¶ 10 – 15; 42, 46, 55. Paragraph 8 of the complaint identifies by policy number only the policy issued on July 14, 2013, and under which Ballard's first notice of potential claim was given. However, the complaint reflects that Ballard gave notice of a possible second claim to Admiral regarding the same client matter on a later occasion, in 2017, under a later policy. (Complaint ¶ 17, 42, 55). Admiral is defending both claims. None of the actual policies are of record and the Court is unable to consider the isolated policy language quoted by Admiral in its motion lacking context. Additionally, the exhibit to the Motion for Judgment on the Pleadings is are not part of the pleadings. The record does not even reflect from which year's policy the language quoted by Admiral has been extracted. This record also lacks any exhibits upon which to determine if the policy language is the same in all policies from 2014 until Admiral refused to renew Ballard's coverage.

Under Admiral's theory, this Court should grant its Motion for Judgment on the Pleadings despite there being insufficient information before the Court for any ruling as a matter of law.

A motion for judgment on the pleadings should be considered on the basis of the allegations of the complaint, which, for purposes of the motion, are presumed to be true. Home Builders Association of South Carolina v. School District No. 2 of Dorchester County, 405 S.C. 458, 748 S.E.2d 230 (2013). Normally when documents beyond the complaint are introduced (which has not occurred here), the matter would be construed as one for summary judgment. Preferred Research Inc. v. Reeve, 292 S.C. 545, 357 S.E.2d 489 (Ct.App. 1987). In the absence of the policies themselves as a part of the pleadings², this inquiry is premature.

The SCRCP provide a means by which a party *can* include documents as exhibits to the pleadings themselves (such as when the case only presents an issue of law for which only legal construction is required to adjudicate the claim). Rule 10(c), SCRCP sets forth the requirements to make an exhibit a part of a pleading; Admiral did not follow the prescribed procedure to make the policy or policies a part of the pleadings³. Had Admiral done so, the language of the policy referenced in Paragraph 10 of Admiral's answer (dated 10-27-2017) or whatever additional policies govern the rights of the parties here, could perhaps be considered at this stage of the proceedings. *See Gregory v. Gregory*, 292 S.C. 587, 358 S.E.2d 147 (Ct.App. 1987).

As Admiral is presenting the issue to the Court, it is requesting ruling as a matter of law based on its selections isolated of provisions from one version of the applicable policy without allowing the court the benefit of the entire document. Additionally, it is making that request

² In paragraph 10 of its answer, Admiral attempts to "incorporate" the terms of "the policy" into the answer, but it does not identify which policy, nor does it attach a copy of the policy, which would be required to be considered as a part of the pleading itself. Rule 10(c), SCRCP).

³ Admiral filed its answer while the case was pending in United States District Court on its unsuccessful attempt to remove this case to federal court. However, the federal counterpart of Rule 10(c) provides the same requirements for making an exhibit a part of a pleading. FRCP Rule 10(c).

despite any inquiry that may be required into genuine issues of material fact that would be examined on summary judgment.

Pleaded Facts.

Ballard purchased professional liability insurance policies from Admiral covering claims for legal malpractice for the policy years 2010 through 2017. (Complaint ¶¶ 8, 13-15). Admiral argues that Ballard has an obligation to cooperate in the defense and settlement of the claim. At the same time, Admiral concedes that it cannot settle a claim without Ballard's consent. Admiral then claims that, because Ballard objects to it affirmatively seeking to initiate settlement discussions in order to find a number it could force upon her, she is not cooperating. Once past that hurdle, then and only then could Admiral set Ballard up to try to use its "hammer" clause. Admiral is doing what insurance companies do: looking after its own interests and ignoring those of the insured. Admiral desires to create a scenario that will enable it to try to rid itself of its obligation to defend and indemnify Ballard. That is why it is called a "hammer" clause.

Admiral seeks a declaration **as a matter of law** that it interprets a policy that is not before the court, to conclude that it is entitled to initiate discussions with the underlying claimant to agree upon a settlement figure that the underlying claimant will accept. It further seeks a ruling **as a matter of law**, that if a settlement figure is recommended to Ballard by Admiral, and Admiral simply represents that the underlying claimant has agreed to accept it, Ballard has to make a decision regarding settlement without any more information. It asserts its policy allows for that. Under Admiral's interpretation of its "hammer" clause, Ballard must either accept the settlement or lose all rights under her policy, including the obligation to defend Ballard further if she does not allow Admiral to settle the underlying claim. Admiral ignores the fact that it already engaged in settlement negotiations with Claimant despite Ballard's expressed disapproval of any settlement

discussions even being initiated, which in itself could be a breach of its duty to Ballard, which is an inquiry for another day.

In seeking the Court's permission to engage in further settlement negotiations, Admiral effectively admits that its policy language is ambiguous in that it is unclear how Admiral's right to control the litigation and Ballard's right to refuse settlement should both be upheld.

South Carolina law is clear that when a policy is ambiguous, it should be interpreted in favor of the insured. Reynolds v. Wabash Life Ins. Co., 251 S.C. 165, 168, 161 S.E.2d 168, 169 (1968). Here, Admiral's policy requires Ballard to participate in the defense and settlement of the case. The term, "settlement" is not defined in the policy. When a term is not defined in the policy, the courts will often look at Black's Law Dictionary for its plain and ordinary meaning. Interstate Fire & Cas. Co. v. Dimensions Assurance Ltd., 843 F.3d 133, 139 (4th Cir. 2016). The Black's Law Dictionary defines settlement as "An agreement between two or more persons to settle matters in dispute between them; an agreement for the settlement of a real or supposed claim in which each party surrenders something in concession to the other." Black's Law Dictionary (10th ed. 2014).

Clearly, no settlement figure has been reached that Ballard could approve (or if it has been, no one has told Ballard). As to participating in the defense of the case, there is no dispute that Ballard has freely and freely cooperated with the defense by producing all documents requested by Admiral. Admiral's only allegation against Ballard is that she has plainly stated her position that she does not agree to offer Claimant any money. Under Admiral's theory, whether Ballard may have been negligent is of no consequence.

It is well settled that under South Carolina law "an insurer, seeking to relieve itself of liability because of the violation by the insured of a cooperation clause in the policy, has the burden

of showing not only that the insured failed to cooperate within the meaning of the policy provision but that it was substantially prejudiced thereby.” Vaught v. Nationwide Mut. Ins. Co., 156 S.E.2d 627, 630 (S.C. 1967). “Under the law of South Carolina, the question whether or not the insured has met his obligation to cooperate is ordinarily one to be determined by the trier of the facts.” Shiftlet v. Allstate Ins. Co., 451 F. Supp. 2d 763, 770-71 (D.S.C. 2006).

Furthermore, where an insured has failed to cooperate, the question of whether the failure to cooperate caused prejudice to the insurer is also generally a question of fact for the jury. See Puckett v. State Farm General Ins. Co., 444 S.E.2d 523, 524 (S.C. 1994) (holding that “[w]hether Insurer suffered prejudice from [Insured’s] alleged failure to cooperate is an issue to be determined by the trier of fact on the merits of the action”).

Discovery will show that Ballard has cooperated in every aspect of the investigation of the claim and in the defense of the case, has provided all requested information, and has been in continuous communication with Admiral. Admiral contends that it is not able to control the defense because Ballard will not consent in advance to a settlement and will not give Admiral *carte blanche* to make offers on her behalf when she genuinely believes the claim has no merit. As far as Ballard knows, Admiral has not agreed to pay a settlement figure to the underlying claimant that is acceptable to the underlying claimant, so Ballard has not yet rejected any proposed settlement. Ballard has merely continued to state her entirely reasonable position that she believes the claim lacks merit and she does not intend to agree to settle. Admiral wants this court’s permission to go around her and ignore her wishes.

Admiral also takes the position that the hammer clause contained in the policy gives it the right to withdraw its defense and limit its exposure to an as yet undetermined amount it might recommend for settlement, that might be accepted by the underlying Claimant, if Ballard refuses

to consent to some set of facts that may never occur. Admiral's motion seeks the Court's prospective construction of the policy based on speculative facts and circumstances that have not yet occurred as a matter of law, without any inquiry into the facts. None.

According to Admiral, the hammer clause provides:

The **Insurer** shall not settle any **Claim** without the **Named Insured's** consent. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by the **Insurer**, which is acceptable to the claimant, and shall elect to contest the **Claim**, or continue any legal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Insurer's** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been settled, including **Claims Expenses** incurred up to the date of such refusal. Such amounts are subject to the provisions of section V. In the event that the **Named Insured** refuses to consent to any settlement as set forth in this section VI. D., the **Insurer's** right and duty to defend such **Claim** shall end upon the date of such refusal

(Ex. A to Admiral's Motion for Judgment on the Pleadings, Policy, LPL 9300 (04-09), p. 5⁴).

This clause gives the insured the right withhold consent to any proposed settlement. Admiral concedes in its brief that Ballard has the *ultimate right to reject settlement*, but claims that in doing so, she will lose the rights she has purchased from Admiral. As construed by Admiral, it can hammer Ballard to bend to its wishes. In essence, the provision of the policy giving an insured the right to reject a settlement illusory as it strips the insured of coverage simply based on Admiral's insistence that her duty to cooperate includes the ability to initiate settlement discussions, the duty to make offers and negotiate the settlement of the Claim. B.L.G. Enters., Inc. v. First Fin. Ins. Co., 334 S.C. 529, 537 n.5, 514 S.E.2d 327, 331 n.5 (1999) (recognizing that an "illusory" exclusion is unenforceable). In other words, Admiral doesn't want to defend if it can

⁴ For the reasons stated above, this Court cannot consider the language Admiral cites in its answer or motion, so this argument is primarily academic.

settle for a number that Admiral likes. It does not matter what Ballard wants or what coverage she purchased.

While South Carolina Courts have not yet interpreted a hammer clause such as the one contained in the subject policy, other courts have examined similar provisions and found that an insured has the right to reasonably withhold consent, and in doing so, cannot be deprived of the protection of the defense provided under the policy. Assuming Admiral had properly quoted its chosen provisions of the policy, there is no such requirement of reasonability. Ballard is free to withhold consent for any reason or no reason at all.) In Clauson v. New England Ins. Co., 254 F.3d 331, 337 (1st Cir. 2001), the First Circuit interpreted a similar clause where the policy provided:

The Company shall have the right to make any investigation it deems necessary and with the written consent of the insured, said consent not to be unreasonably withheld, any settlement of any claim covered by the terms of this policy.

If the Insured shall refuse to consent to any settlement or compromise recommended by the Company and acceptable to the claimant, and elects to contest the claim, suit or proceeding, then the Company's liability shall not exceed the amount for which the Company would have been liable for damages if the claim or suit or proceeding had been so settled or compromised, when so recommended. The Company shall have no liability for claims expenses accruing thereafter and the Company shall have the right to withdraw from the further defense thereof by tendering control of said defense to the Insured.

There, the court held that “[t]he insured's refusal to consent to a settlement, however reasonable, would deprive the insured of the full indemnification protection for which he contracted” *Id.* See also Freedman v. United Nat. Ins. Co., No. CV 09-5959 AHM CTX, 2011 WL 781919, at *6 (C.D. Cal. Mar. 1, 2011) (The “hammer” clause may be invoked only if the insured *unreasonably* refuses to consent to a settlement).

In both Clauson and Freedman, the courts were focused on the illusory nature of the coverage if the insurers were to be allowed to terminate their defense when the insureds exercise their rights under the policy to withhold consent to settlement.

The hammer clause which Admiral has recited does not give the insured the right to *reasonably* reject settlement. In other words, coupled with the cooperation clause, Admiral's construction of the hammer clause would give it the absolute right to control the defense and settlement without permitting the insured the right to evaluate and reject a settlement without losing coverage. Construing the policy in the manner Admiral proposes here would transform the hammer clause into a condition precedent to coverage, especially as to the duty to defend. South Carolina law specifically prohibits such clauses as condition precedent:

The policy form whether on a claims-made or occurrence basis may not require as a condition precedent to settlement or compromise of any claim the consent or acquiescence of the insured. However, such settlement or compromise is not considered an admission of fault or wrongdoing by the insured.

S.C. Code Ann. § 38-81-300.

The Fourth Circuit held that a duty-to-cooperate clause creates a condition precedent to an insurer's liability under the policy Miller v. Augusta Mut. Ins. Co., 157 F. App'x 632, 638 (4th Cir. 2005) because an insurer could escape coverage when the insured fails to cooperate. Similarly, here, if Admiral is allowed to escape its duty to defend or indemnify under the policy because Ballard might reject a settlement offer, no matter how reasonable that rejection would be, the hammer clause becomes simply a requirement that insured consents to settlement under any circumstances, effectively transforming the hammer clause into a prohibited condition-precedent clause. The purported policy language here provides that if the insured rejects settlement, then the Insurer's liability for the Claim shall not exceed the amount for which the Claim could have been

settled, **including Claims Expenses incurred up to the date of such refusal.** (emphasis added), effectively stripping Ballard of any defense.

At this stage of the litigation, it is premature for this court to adopt Admiral's construction of the subject policy and force Ballard into giving Admiral *carte blanche* to initiate settlement discussion with the underlying claimant, and to settle what Ballard reasonably believes is a meritless claim or risk losing her right to reject settlement and the very valuable defense afforded to her under the policy.

CONCLUSION

For the reasons set forth above Ballard requests that Admiral's Motion for Judgment on the Pleadings be denied. At summary judgment, the Court will be asked whether there is a genuine issue of material fact as to Plaintiff's duty to cooperate and whether her position is reasonable. However, invoking the hammer clause, or ruling on its applicability as a matter of law since there is no recommended settlement amount that has been accepted by underlying claimant.

For the reasons set forth above, Admiral's motion should be denied.

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Columbia, South Carolina

October 10, 2018

ORIGINAL

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2019 FEB -5 } AM 10:16

PROOF OF ADR OR EXEMPTION

DESA BALLARD and DESA BALLARD,
P.A., d/b/a BALLARD & WATSON,
Plaintiff,

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

vs.

FILE NO.: 2018-CP-32-01743

ADMIRAL INSURANCE COMPANY, et.
al.

Defendant.

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

PURSUANT to the Court's Standing Order for Alternative Dispute Resolution dated _____

- A. _____ I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

- B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

Mediation

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

H. Ronald Stanley

3. The ADR was conducted on January 29, , 200 2019

ROA 00310

4. As a result of ADR, this case should be considered (please check one);

() Fully Settled.

() by Consent Judgment, to be filed by _____

or () Voluntary Dismissal to be filed by _____

() Partially Settled.

(X) At an Impasse.

(X) In need of further ADR I ☒ am ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____

5. Plaintiff ☒ was present ☐ was not present
Defendant ☒ was present ☐ was not present

6. Other participants were:

X Lawyer for Defendant Wesley B. Sawyer and Charles A. Kinney

X Lawyer for Plaintiff Ronnie Richter and Eric S. Bland

Representative for Insurance Carrier _____

Guardian *ad Litem* _____

Experts _____

Others _____

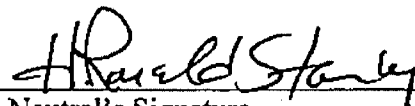
7. Choice of the neutral was by:

X Stipulation

Court Order

8. The total number of hours spent in ADR was: 4.5 hours.

9. Further comments of the neutral:



Neutral's Signature

Date: 2/1/19

SCADR 104B (5/2007)

ROA 00312

State of South Carolina
County of Lexington

Court of Common Pleas

Desa Ballard and	)	
Desa Ballard, P.A.,	)	
d/b/a Ballard & Watson,	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2018-CP-32-78402
	)	
Admiral Insurance	)	
Company, et al.,	)	
	)	
Defendant.	)	

November 14, 2018
Lexington, South Carolina

B E F O R E:

The Honorable Walton J. McLeod, IV, Judge.

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

Eric Bland, Esquire
Ronnie Richter, Esquire
Attorneys for the Plaintiff

Wesley Sawyer, Esquire
Adam Silvernail, Esquire
Adele Pope, Esquire
Attorneys for the Defendants

Bethanie K. Creppon
Circuit Court Reporter

ROA 00313

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P R O C E E D I N G S

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THE COURT: I understand this is --

MR. BLAND: I thought there was only the judgment on the pleadings today, Your Honor.

THE COURT: I don't know. I'm looking at it.

MS. POPE: They're both on the roster. I've been here for that.

THE COURT: Okay. Bear with me. It looks like a pretty thick file on the computer.

MR. BLAND: Thick file with no discovery yet.

THE COURT: All right. So who's going first?

MR. SAWYER: I'm happy to go first, if there's no objection in terms of the order of the filings, Judge.

THE COURT: Okay. Fair enough. Try to be as good as possible in your brief synopsis of the facts, that way nobody has to present four different versions of it.

MR. SAWYER: I appreciate that, Judge.

THE COURT: Let's just get to the meat of what you need and why you need it.

MR. SAWYER: I'll do my best, Judge. May it please the Court? I represent Admiral Insurance Company. This is a very unusual coverage dispute.

1 There's a bit of a lengthy background and,
2 unfortunately, I do think it's necessary to go into
3 it in some detail, just to walk you into it.

4 THE COURT: Sure.

5 MR. SAWYER: Judge, Adele Pope is the special
6 administrator for the Estate of a lady named Gloria
7 Corley. Years ago, Ms. Pope represented Ms. Corley
8 in a trust dispute and, as part of that
9 representation, entered into a fee agreement. And
10 that fee agreement said that Adele would receive
11 one-third of any amounts that Ms. Corley received in
12 excess of \$90,000 in any given year. That's not a
13 quote verbatim, but that's essentially what the fee
14 agreement said.

15 They were able to work out a resolution on the
16 trust. That fee agreement was honored for a number
17 of years. And Ms. Corley made the annual payments
18 to Ms. Pope pursuant to that agreement. After
19 several years of honoring that fee agreement,
20 Ms. Corley's daughter, Aundra Williams, became
21 involved and the payments stopped coming. As a
22 result, Ms. Pope brought a breach of contract over
23 an action to enforce her fee agreement to recover
24 her fees in that action.

25 Ms. Corley and Ms. Williams both hired

1 Ms. Ballard and her firm to represent them in that
2 litigation, the fee-dispute litigation. During the
3 process of that litigation, Ms. Pope won at pretty
4 much every turn. This Court -- it was pending here
5 in this court -- found that the fee agreement was
6 enforceable and was reasonable and that Ms. Corley
7 was required to pay one-third of any amounts above
8 90,000 that had been withheld up to that point.

9 Moreover, during the process of representing
10 Ms. Corley and Ms. Williams in that dispute,
11 Ms. Ballard communicated with Richard Breibart, who
12 represented the Trust, and they negotiated a buyout
13 of Ms. Corley and Ms. Corley's daughter's interests
14 in that trust for a lump sum payment.

15 The expectation and the intent was that that
16 lump sum buyout wouldn't be subject to the fee
17 agreement; it would be outside of the fee agreement
18 based upon Ms. Ballard and, presumably, Ms. Corley's
19 reading of the terms of the fee agreement.

20 So the buyout was done at a reduced value based
21 upon the life expectancy tables. Ms. Pope learned
22 about the buyout, brought an action -- or in the
23 same action that was already pending, asked the
24 Court also to require payment of her third of the
25 amount of that buyout that was over the \$90,000 for

1 that year.

2 Again, the Court agreed. And, ultimately, what
3 happened at the end of that litigation is that
4 Ms. Pope had a judgment against Ms. Corley for about
5 a quarter of million dollars with interests and
6 costs. To add --

7 THE COURT: How much --

8 MR. SAWYER: -- a little bit of insult to -- go
9 ahead.

10 THE COURT: How much was it?

11 MR. SAWYER: \$248,673.87 at the time, Judge.

12 Judge, to add insult to injury, two other
13 factors in that case: One, Desa Ballard filed a
14 notice of appeal. But the notice of appeal was
15 untimely, so it was dismissed. And also, Judge,
16 Aundra Williams was acting on behalf of her mother
17 as sort of a guardian, I believe.

18 The trust sum -- the trust lump sum payment for
19 the buyout of the trust went to Aundra Williams and
20 did not go into a restricted account. And the
21 claim, at least from the Estate, is that Aundra
22 Williams may have mismanaged or absconded with some
23 or all of those -- of that lump sum payment. And,
24 again, Ms. Ballard represented both the daughter and
25 Ms. Corley throughout that transaction and during

1 the litigation.

2 Because the -- eventually, Ms. Corley passed
3 away. Because the judgment that Adele Pope had
4 obtained had not been satisfied because the funds
5 had been mismanaged or just now used and not paid
6 for, Judge, Ms. Pope got herself appointed as the
7 special administrator of Ms. Corley's estate upon
8 her death and filed a malpractice action against
9 Desa Ballard and her law firm.

10 That brings Admiral in. Admiral is the
11 professional malpractice carrier for Ms. Ballard's
12 firm. And, Judge, the policy here has a provision
13 that is very typical in professional liability
14 policies, not just with lawyers, but with doctors
15 and all other forms of professions, and it's called
16 a consent to settle policy. Sometimes it's called a
17 hammer clause.

18 And what that provision says, Judge, is if the
19 carrier and the underlying plaintiff reach a term
20 that the carrier is willing to recommend as a
21 payment for settlement and that the plaintiff would
22 accept, the insured, Ms. Ballard's firm, does have
23 the right to reject that settlement. If you want to
24 protect your good name or, for some reason, you want
25 to object to the settlement, you can do so. But

1 there's a stick that comes along with that right,
2 and that is this: The liability of the carrier is
3 is capped at the amount of the settlement plus the
4 costs that have already been incurred and, also, the
5 duty to defend ends.

6 In other words, if you want to fight to protect
7 your good name or for something other than -- or for
8 something of those lines, you can do so, but you
9 can't do it with house money. You take on the risk.
10 And, of course, insurance is a transfer of risk.
11 The carrier says here's the risks we'll take through
12 the coverage grant, here's the risks we won't take
13 through exclusions and other provisions of the
14 policy.

15 Admiral took on the risk of defending
16 Ms. Ballard and indemnifying her, but it did not
17 take a risk of doing so over her objection when
18 there's a settlement that Admirable believes is
19 reasonable and which the plaintiff in the underlying
20 case -- in this case, the Estate -- is willing to
21 accept. And that's a typical clause. There are
22 varieties of the clause in different policies, but
23 that's a typical policy.

24 And, Judge, I want to bring that up to you just
25 so that way you'll have it as we reference these.

1 These are just two pages from the policy.

2 MR. RICHTER: Your Honor, I have to state for
3 the record that the policies are not before the
4 Court and this is judgment on the pleadings, so we
5 don't consent to convert this to summary judgment.
6 I don't want to interrupt Mr. Sawyer's argument, but
7 what's before the Court is a motion for judgment on
8 the pleadings.

9 MR. BLAND: Right. And we don't know which
10 policy here is in effect. She was a policyholder
11 for seven years, and so she had made claims two
12 times for coverage, one in 2012 and again in 2017.
13 So, like Mr. Richter said, this is a judgment on the
14 pleadings and we're not consenting to that
15 conversion.

16 MR. SAWYER: Judge, I'll address that very
17 briefly. Also, I don't know who is going to be
18 arguing this, of course, for the other side. But
19 here's the portion of the policy that I'm quoting:
20 Judge, Rule 10 says that a document that's
21 incorporated by reference and attached to a pleading
22 is made a part of the record, it is proper for
23 consideration on judgment on the pleadings or a
24 motion to dismiss.

25 In our answer and counterclaim filed in the

1 federal court, we attached a complete copy of the
2 policy as Exhibit 1. In fact, Judge, I have the
3 copy that was filed with the federal court that has
4 the ECF filing number at the top. So it was indeed
5 filed with the Court, it is indeed part of the
6 record. And, more importantly, Judge, when they
7 talk about not knowing which policy we're dealing
8 with, their complaint cites the policy by policy
9 number.

10 And Admiral's policies get a new policy number
11 every year. So when we have their policy numbers
12 cited in the complaint, we know which policy they're
13 talking about because there's only one policy with
14 that policy number. The next year, previous year,
15 have different policy numbers.

16 So certainly, Judge, the complaint is -- what
17 their entire complaint is based upon is the
18 contract. So it's certainly part of this case and
19 proper for judgment on the pleadings. It's attached
20 to the answer and counterclaim where we're seeking
21 this declaratory judgment, so it's certainly proper
22 for the Court to consider the policy as part of a
23 motion for judgment on the pleadings. So I don't
24 think there's any real argument on that issue.

25 Judge, getting to the terms of the policy,

1 there really are three provisions that are highly
2 relevant in this case. They're all on this front
3 page that I gave you and they're all cited in our
4 brief. And, Judge, just by way of background -- I
5 didn't quite finish how we got here.

6 So Admiral wanted to negotiate. And Desa
7 Ballard, knowing about the hammer clause, about the
8 consent to settle clause, wanted to cut that off at
9 the pass. So she decided, hey, here's what I'll do:
10 Admiral, you cannot negotiate at all; not, hey,
11 submit a settlement number and then I can reject it.
12 She tried to cut it off and avoid ever reaching the
13 consent to settle clause by telling Admiral, as its
14 insured, you can't enter into any negotiations at
15 all with the Estate in the underlying case. And
16 then when Admiral wanted to negotiate, they brought
17 this suit seeking an injunction preventing any
18 negotiations between the parties.

19 THE COURT: Okay. What was the -- what was the
20 final outcome of the malpractice case against
21 Ms. Ballard?

22 MR. SAWYER: It has been stayed, pending this
23 case, yeah, over a year ago, Judge, since this case
24 has been filed.

25 So, Judge, they sought an injunction and a

1 declaration from the Court in that regard. They
2 also asserted a claim for bad faith because Admiral
3 decided not to renew the insurance policy. Judge,
4 there are three provisions in the policy that are
5 highly critical to this case. All Admiral seeks in
6 this action is for the Court simply to apply the
7 contract according to its plain terms.

8 Under Defense Cooperation in Settlement, first
9 page that I gave you, paragraph 6(b), it says: The
10 insurer shall have the sole right and duty to defend
11 any covered claim. And, Judge, at least going back
12 to the 1930s when the South Carolina Supreme Court
13 issued its decision in Tiger River, part of the duty
14 of the insurance carrier has been to negotiate
15 claims when they're defending a case. And we
16 certainly all know what the consequences can be of
17 failing to do so under certain circumstances.

18 The ADR rules incorporate that. The ADR rules
19 in the malpractice action will require that the
20 parties mediate the case, and not that the parties
21 mediate the case, but they're going to require
22 Admiral, as the insurance carrier, to send a
23 representative with full settlement authority.

24 And then, more importantly, Judge, of course,
25 South Carolina public policy encourages settlements

1 as well. And that's well-established throughout the
2 case law. So the policy gives Admiral the sole
3 right and duty to defend, and part of that includes
4 the right to negotiate and to engage in
5 negotiations.

6 Then, Judge, very importantly, paragraph 6(c),
7 it says: Each insured shall cooperate with the
8 insurer in the defense and settlement of any claim.
9 So not only does Admiral have the right to negotiate
10 as part of its sole duty to defend, but, more
11 importantly, Ms. Ballard and her firm have a duty to
12 cooperate not only in the defense of the case, but
13 also in the settlement of the case. So the policy
14 specifically states they have the obligation to do
15 so. And certainly, Judge, filing for an injunction
16 to prevent negotiations is the very opposite of
17 cooperating in the defense and settlement of the
18 case.

19 And then, Judge, lastly is the consent to
20 settle clause, which I've already referenced. You
21 know, the gold standard in creating a contract with
22 another party is to anticipate the conflicts or
23 disputes that may arise in the performance of that
24 contract and then address how those disputes will be
25 handled. And here, Judge, Admiral succeeded in

1 that. They predicted this issue and said if this
2 happens, if we negotiate, and there's a number that
3 we reach, then here's what the rights of the parties
4 are and how they're going to be played out.

5 And, Judge, of course, the law in South
6 Carolina, especially for a policy like this, to not
7 a mandatory auto liability policy, is you apply it
8 according to its plain terms. So, Judge, that's all
9 that we're asking for in this case is, first of all,
10 they can't get an injunction preventing
11 negotiations. First of all, there's no contractual
12 right to it. There's no case law that I know of
13 anywhere that says you can force another party not
14 to negotiate. And, in fact, to the contrary, the
15 Court's ADR rules and the policy will require and
16 allow negotiations.

17 Secondly, Judge, if we get to a number that the
18 Estate is willing to accept to settle and that
19 Admiral recommends, simply that the -- that the
20 consent to settlement -- to settle clause will be
21 enforced as written. And that means, of course,
22 that Ms. Ballard can choose, her firm can choose, as
23 the named insured, to either accept the settlement
24 or they can reject it. But then Admiral's
25 liabilities are cut off by the amount of that

1 settlement and their duty to defend ends. We're not
2 asking for anything outside of what the contract
3 itself says. We're just saying, Court, enforce the
4 contract exactly as it is written.

5 Now, Judge, there are very few cases in the
6 country that deal with these consent to settle
7 clauses. But the Courts that have looked at the
8 them, including the Ninth Circuit, which is cited in
9 our brief, Judge -- and that's the City of
10 Montebello case -- and the Second Circuit both have
11 upheld and enforced the consent to settle clause.

12 Now, Judge, you may notice, if you read the
13 plaintiff's opposition memorandum, that they cite
14 two other cases. They cite to an intermediate court
15 from California, a California District Court, in an
16 unpublished decision --

17 THE COURT: What page are you on?

18 MR. SAWYER: On their brief, Judge, I am
19 talking about pages 7 and 8.

20 And, Judge, critically, the two cases that they
21 cite deal with a very different consent to settle
22 clause. And if you look in the block quote on page
23 7 of their brief, the first paragraph of that block
24 quote says: The company shall have the right to
25 make any investigation it deems necessary, and with

1 the written consent of the insured, said consent not
2 to be unreasonably withheld, any settlement of any
3 claim covered by the terms of this policy. Blah,
4 blah, blah.

5 Judge, the critical language there is "not to
6 be unreasonably withheld." That language is not in
7 Admiral's consent to settle clause. And, in fact,
8 the Ninth Circuit in the City of Montebello case
9 also had a consent to settlement clause that did not
10 have the unreasonableness standard in it. And it
11 contrasted the decision in that case with the
12 Friedman case cited by the plaintiffs, because in
13 Friedman, there was unreasonableness language, and
14 in City of Montebello, there was not.

15 And what the Ninth Circuit said is you can't
16 read reasonableness into it because that would be an
17 impermissible rewriting of the contract. Some of
18 these provisions have it, some don't. So you must
19 enforce the provision you have, not the provision
20 you wish that you had.

21 So, Judge, ultimately, the cases cited on our
22 side, the Ninth Circuit case of City of Montebello
23 and the Second Circuit case of Cowan vs. Codelia,
24 both deal with this type of clause; both of them
25 enforce them plainly, according to their language.

1 Judge, the only other aspect of the case that I
2 think stands out is that the claim for bad faith for
3 nonrenewal of the policy, there's no duty to renew a
4 policy. In fact, the South Carolina Court of
5 Appeals in the Pitts case said that the sale of an
6 insurance policy is an arm's length transaction that
7 doesn't give rise to any bad faith claim. The
8 renewal of a policy is the same thing as a sale of a
9 policy: You decide whether you want to re-enter the
10 contractual relationship or not.

11 And we cite a New York Court of Appeals
12 decision, the highest appellate court from New York;
13 we also cite a Louisiana Supreme Court decision; we
14 also cite a Western District of Oklahoma decision,
15 all of which say that there's no cause of action for
16 a refusal to renew a policy.

17 In fact, the New York Court says it can be
18 vindictive; it still doesn't give rise to a cause of
19 action. The Louisiana Court says it can be
20 arbitrary and capricious; still doesn't give rise to
21 a cause of action, because you have no duty to
22 re-enter it. And, Judge, just to give it context,
23 the South Carolina law says that the duty of good
24 faith goes both ways.

25 So could Admiral then say -- if Desa Ballard

1 said, oh, I don't want to renew the policy because I
2 don't like how this claim is going, could Admiral
3 sue her for bad faith for non-renewal of the policy?
4 Absolutely not. It certainly doesn't work that way,
5 it can't work that way because the duty of good
6 faith flows in both directions.

7 Again, the way the authority from other
8 jurisdictions is there's no cause of action for
9 non-renewal; it's a free choice of the carrier. So,
10 Judge, for that reason, that cause of action should
11 also be dismissed. So at the end of the day, Judge,
12 all we're asking for is this: Declaratory judgment
13 that we can negotiate. The ADR rules are going to
14 require it. The contract doesn't give Ms. Ballard
15 the right to object or to prevent negotiations.

16 But if we ultimately reach a negotiation
17 that -- a point in negotiations where the Estate is
18 willing to take a sum that Admiral recommends to
19 pay, at that point triggers the consent to settle
20 clause. And either Ms. Ballard and her firm can
21 accept the settlement and the case will be done, or
22 they can reject the settlement.

23 But, if so, they don't play with house money,
24 the duty to defend is over, and the liability is
25 capped at the amount of what that settlement could

1 have been. It's exactly what the contract says.
2 All we want is enforcement of the contract according
3 to what is written.

4 Judge, the memo cites, states what we're
5 seeking. I won't read it in front of you because
6 you can read it, obviously, Judge. That's really
7 what we're seeking.

8 Two other items that are in their brief, one
9 that sort of stood out to me, Judge, on the next
10 page, on page 8, they cite South Carolina Statute
11 38-81-300. First of all, Judge, this applies to the
12 Joint Underwriting Association. This policy, to my
13 understanding, is not part of the Joint Underwriting
14 Association, so this statute wouldn't apply. But I
15 also think the plaintiffs don't want the statute to
16 apply because what this statute says is you can't
17 have a consent to settle clause.

18 It says, and I'll just read it verbatim: The
19 policy form, whether on a claims-made or occurrence
20 basis, may not require the condition precedent to
21 settlement or a compromise of any claim, the consent
22 or acquiescence of the insured; however, such
23 settlement or compromise is not considered an
24 admission of fault or wrongdoing by the insured.

25 In other words, for joint underwriting

1 policies, you can't have a consent to settle; that
2 the right to settle stays solely within the
3 insurance company. But if they settle, it's not
4 going to be deemed an admission of fault by the
5 insured because they don't have the right to object.
6 So, certainly, the statute doesn't apply. But if it
7 did, it would actually be in our favor and there
8 would be no right of Desa Ballard at all to object
9 to the settlement. I can't imagine that's actually
10 what they would want.

11 Lastly, Judge, their memorandum talks about
12 prejudice. The key thing here is we're not dealing
13 with duty to cooperate at this time. We're dealing
14 with the consent to settle clause. There's no
15 prejudice requirement. It is a simple contract
16 term. There's no reasonableness requirement because
17 they didn't choose a contract that has a
18 reasonableness standard in it. That's an option
19 with some carriers, not here. And there's no
20 prejudice required.

21 It simply says: If there's a number that
22 Admiral would recommend that the plaintiff will
23 accept, you can say no, but if so, here are the
24 consequences. And there's no case law anywhere that
25 I've seen that requires prejudice in that. In fact,

1 the Second Circuit and the Ninth Circuit case very
2 plainly just applied according to its terms. So
3 that's what we're asking the Court to do today based
4 upon that background. I'm sure that
5 Mr. Silvernail or Ms. Pope can better explain the
6 background of the underlying cases. But that's what
7 we're here for today.

8 THE COURT: Okay.

9 MR. RICHTER: May it please the Court, Your
10 Honor? Ronnie Richter here for Desa Ballard. Your
11 Honor, I think the only thing Mr. Sawyer said that I
12 agree with is that the duty of good faith flows both
13 ways. And the problem with this motion is manyfold.
14 All right?

15 Central to the motion is they want you, as a
16 matter of law, at a judgment on the pleadings stage,
17 to effectively find that Desa Ballard is acting
18 unreasonably in her approach to the resolution of
19 this claim. It's a consent policy for which she
20 paid an enhanced premium. And we're not unfamiliar
21 with consent policies. We -- doctors have them all
22 the time. It's the power of an insurer to say I
23 think this claim is wholly without merit, which is
24 her position, and I refuse for you to pay money to
25 resolve this case. That's a pretty simple position.

1 We're at the judgment on the pleadings stage.

2 I heard Mr. Sawyer suggest to you there's not a
3 reasonableness standard. Some courts see one, some
4 courts don't; some policies call for one, some
5 policies don't. This is a contract entered into in
6 the state of South Carolina. It's baked in the
7 cake. There's an obligation of good faith and fair
8 dealing that overlies everything that we're talking
9 about here.

10 And essentially what they want to say is, she's
11 acting unreasonably, she's breaching her obligation
12 of good faith and fair dealing by preemptively
13 saying I don't want to discuss settlement in this
14 case because I think it's wholly without merit.

15 Now really what they want from you is a
16 permission slip. This is an advisory opinion.
17 Judge, can we please go? Our insured says she
18 doesn't want to settle the case. Would you let us
19 please go talk about settlement, and then if we can
20 actually come up with a number that the other side
21 will take, would you let us use the hammer clause to
22 drive it down on our insured who said that she
23 doesn't want to settle? And would you find, as a
24 matter of law, that if she doesn't cooperate in this
25 plan, she's acting unreasonably and she's in breach

1 of the contract? That's crazy.

2 You know, if they want to do this, then do it.
3 Have your negotiation, see if you can find a number
4 over the objection of your insured, and let the
5 chips fall where they may. But to come to the Court
6 preemptively and say, can I please have permission
7 to go do that which my insured said she does not
8 consent to, that's not what this proceeding is for.
9 And it's certainly not appropriate for judgment on
10 the pleadings. There's not a DJ claim here.
11 There's not -- they're not asking anything
12 affirmatively of you. I don't know why we're here,
13 frankly. The policy is inherently conflicted and
14 ambiguous.

15 So Clause No. 1: You can't settle without the
16 consent of the insured. Boom. I understand that.
17 It's crystal clear in my mind. I know the legion of
18 cases in South Carolina, as you do, that say we
19 interpret policies in favor of coverage and we
20 interpret policies in favor of the insured, and if
21 there's any ambiguity, it's in favor of the insured,
22 not the insurance company.

23 So then you go on from there to say, well, if,
24 however, we can come up with a settlement that is
25 satisfactory to us and you don't like it, we can jam

1 it down on you with the hammer clause and exit the
2 scene. Well, I find those things inherently
3 conflicted, inherently ambiguous. And if I'm going
4 to apply South Carolina law to this situation, I'm
5 going to say I have to look at that in favor of
6 Ms. Ballard and go with Clause No. 1 that says we
7 have the right to refuse to consent. And she looks
8 at this case and the action brought by Ms. Pope and
9 says it's wholly without merit, it's brought for
10 improper purposes, I'm not playing, I don't want to
11 support settlement here.

12 I think if a physician were standing here and
13 not a lawyer, I don't know that the conversation
14 would last this long. Physicians routinely say, in
15 med-mal cases, we're not consenting to settling this
16 case. You can't create a condition precedent to
17 coverage.

18 And that's the last part of our brief is,
19 really what happens is, the consent is rendered
20 elusory by the clause that follows that says unless
21 we can find terms satisfactory to us, in which case,
22 we can jam it down on you.

23 That renders elusory the very consent that she
24 contracted to buy. And it sets up a condition
25 precedent to the coverage in its entirety that you,

1 Desa, have to play and have to entertain settlement,
2 and if you don't do that, we're not going to cover
3 you at all. And that's where we are. We are at the
4 infancy of this case, judgment on the pleadings with
5 the insurance company, saying we'd like to leave
6 now, we'd like to leave now, and we want you, Your
7 Honor, to say, as a matter of law, that she's not
8 cooperating, that's she's in breach of that promise,
9 and that they have the right to withdraw and to jam
10 down the result that they ultimately want.

11 We don't even know if they can reach the
12 satisfactory terms with Ms. Pope. What it would
13 look like -- this is so premature to be here at all.
14 This is a permission slip. This is an advisory
15 opinion. This is not judgment on the pleadings and
16 it's not proper.

17 I'm going to go outside the pleadings for a
18 second. She's cooperated in every regard, in every
19 regard in the merits of the case, in providing
20 documents, in communicating with counsel. She says
21 I don't want to settle this case. I think it's
22 without merit, I think it's defamatory, I think it's
23 for improper purposes, I don't want to settle. And
24 cooperation is who's acting reasonably and who's not
25 acting reasonably, how that is not a factual issue

1 is beyond me. That's rife with facts.

2 THE COURT: So she wants to have her day in
3 court on the malpractice case?

4 MR. RICHTER: Yes.

5 THE COURT: Okay. But just for my
6 informational purposes, y'all are saying Admirable
7 doesn't want to take it to trial or doesn't want to
8 defend it or --

9 MR. RICHTER: They want to cut ties now. They
10 want to find a number that's satisfactory today that
11 represents to them perhaps the cost of that defense
12 and to be able to tender that and walk away. That's
13 what they want to do. When the duty to defend is
14 severable from the duty to indemnify, there's
15 legions of cases that say that as well.

16 So as it relates to their duty to defend that
17 action and an insurer who is saying I want the
18 defense, I don't want you to settle this action, I
19 don't think it's with merit, and I don't want
20 anybody to think they can bring an action against me
21 that's not meritorious, and then I'm going to
22 capitulate and pay, so, no, I don't want that claim
23 paid. So they're trying to escape today, not just
24 the duty to indemnify later, but the duty to defend
25 going forward.

1 MR. BLAND: Your Honor, may I say one thing?

2 THE COURT: Sure.

3 MR. BLAND: Okay. Desa is a legal malpractice
4 attorney like us. So her reputation throughout the
5 Bar is a legal malpractice attorney. She also
6 represents attorneys before the grievance committee,
7 she also sits on a number of professional
8 responsibility committees. So her being attacked
9 for legal malpractice is the root of who she is. So
10 in her -- she bought coverage, paid an enhanced
11 premium to be able to have the say of, no, I don't
12 want to settle a case that I believe is
13 unmeritorious.

14 You're being asked to tell her right now,
15 you're being unreasonable if they come to you with a
16 number and you say no. They don't even have a
17 number. We don't even know what Ms. Pope would
18 agree to. But we presume that they've made, as
19 Mr. Richter said, a calculation into what the
20 defense is going to be which then puts the burden on
21 her to say yes and she admits to the malpractice
22 because --

23 THE COURT: Is she at least willing to
24 entertain settlement?

25 MR. BLAND: She's willing to let them go

1 negotiate, but she's not willing to have you issue
2 an order --

3 THE COURT: No, no, no, no. I'm saying -- I
4 mean, just for my purposes --

5 MR. BLAND: She's going to comply with all
6 orders of the Court whether it's --

7 THE COURT: No, no, no, no. I just want to
8 know, is she just opposed to settlement of any kind?

9 MR. BLAND: She wants to hear what those
10 settlement terms are before she's going to let them
11 go do that. So she will comply --

12 THE COURT: So she's willing to negotiate?

13 MR. BLAND: She's willing to participate, as
14 her duty of cooperation requires under the policy.
15 But she's not going to give them authority right
16 away to say, I'm going to settle. Who knows? If
17 they go to mediation and Ms. Pope says I'll take
18 \$10, that may be something that she does. But if
19 Ms. Pope goes in there and says, no, I only want a
20 million dollars and the carrier says, well, we think
21 that's a reasonable proposal under the circumstances
22 and we're going to hammer you with it, that's a
23 completely different thing.

24 They're asking you for an advisory opinion
25 right now. Whatever we negotiate, she's bound to.

1 And she has a duty to cooperate, under the policy.
2 And you'd be making a finding right now, without any
3 discovery being made, that she's not cooperating
4 and, therefore, they get the hammer clause now.

5 I think we need to go through discovery, I
6 think they need to schedule mediation, as the court
7 requires here in Lexington, and then apply for
8 summary judgment if she makes a decision that is
9 unreasonable or is not cooperative.

10 THE COURT: But the case -- the originating
11 case against Ms. Ballard has been stayed, right?

12 MR. BLAND: Right. Because Ms. Pope wants
13 money and she smells the insurance company is ready
14 to pay. So she's happy getting paid. They're
15 sitting there together. I mean, somebody is going
16 to be throwing a check at her.

17 MR. SAWYER: Judge, briefly. First of all, the
18 Estate opposed the stay. They did not consent to
19 the stay of the underlying case --

20 THE COURT: The Estate opposed?

21 MR. SAWYER: They opposed the stay. So the
22 idea that we're sitting together in this is a little
23 bit problematic in my mind. Judge, secondly,
24 there's no argument from Admiral here about lack of
25 cooperation or duty to cooperate. There's the duty

1 in terms of not interrupting a settlement. And,
2 Judge, this is the first time there's ever been a
3 representation that Ms. Ballard is open to
4 negotiations or allowed the mediation.

5 They sought -- first of all, they filed the
6 suit not, Admiral. And their suit sought an
7 injunction preventing negotiation. The reason we
8 don't have a number right now is because we haven't
9 been able to negotiate for a year because they've
10 sought an injunction. And we figured, well, if they
11 are filing that with the Court, we should probably
12 be careful before we go and just start negotiating
13 without having the Court address this issue.

14 We didn't bring this to the Court's attention.
15 They brought this action, ran off to the presses
16 about it, by the way, and now they're saying, for
17 the first time after a year, actually, you know,
18 yeah, you guys can go negotiate, you know, that's --
19 that's what their complaint says. Their complaint
20 says you cannot negotiate. That's what they sought
21 when they brought this action.

22 All we ask -- and we do counterclaim for a DJ,
23 Judge. It starts at paragraph 115 of our answer and
24 counterclaim, because we had to deal with 100-some
25 allegations of their complaint. We certainly seek a

1 declaratory judgment. It's absolutely requested in
2 our answer and counterclaim.

3 But, Judge, I think it's really important, two
4 things: Ninety percent of the argument that they
5 made focused on reasonableness and on cooperation.
6 We're not raising cooperation; we're raising the
7 consent to settle clause. And the consent to settle
8 clause does not have a reasonableness standard.
9 When Mr. Richter said some courts say this, some
10 courts say that, the bottom line is the courts that
11 deal with the consent to settle clause that says
12 reasonable settlement say that it has to be
13 unreasonable to reject the settlement.

14 The Courts that deal with the consent to settle
15 clause, like this one, say you just apply the clause
16 as it's written. That's all. And, Judge, motions
17 for judgment on the pleadings are for issues of law.
18 We're asking solely for an interpretation of the
19 policy between the parties in counterclaim to an
20 action that they brought on the contract. And the
21 interpretation of the contract is a pure question of
22 law.

23 Assuming everything that they've alleged,
24 assuming every single fact that they've alleged, at
25 the end of the day, you can assume those all in the

1 light most favorable to Ms. Ballard. The contract
2 says what it says and we're entitled to judgment on
3 the pleadings. That's what this motion is for and
4 that's what it's appropriate for, Judge.

5 THE COURT: All right. Okay. I'll have to
6 take some time to review these.

7 MR. RICHTER: Can I say one thing briefly in
8 reply?

9 THE COURT: Sure.

10 MR. RICHTER: I certainly did not say -- and if
11 I did, I want to make sure the record is clear --
12 that we consent to them negotiating. What I said
13 was, just go do it and let the chips fall where they
14 may. We know what the policy says, we know what
15 your duties are. And for him to argue, well,
16 we're --

17 THE COURT: You're saying go ahead and see if
18 you can find a number and we'll cross that bridge
19 when we get to it?

20 MR. RICHTER: Just do it. I mean, if that's
21 what you intend to do, if that's what you want to
22 do, whether that violates any provisions of the
23 policy in either direction, we'll find out later.

24 MR. BLAND: When you bring the number to us.

25 MR. SAWYER: Except when they allege that it's

1 bad faith to do that, Judge. I mean, that's -- that
2 puts the issue before the Court, I think.

3 MR. RICHTER: No. But, Your Honor, this is
4 their brief. And it's throughout the brief --

5 THE COURT: I tell you what, I don't want you
6 to read the brief. I mean, we've gone back and
7 forth.

8 MR. RICHTER: Well, they just repeatedly say
9 Desa Ballard has a duty to cooperate. And their
10 thrust to you is she's not doing that. That has to
11 be a factual issue, whether she's being unreasonable
12 in her position, whether she's not cooperating is
13 inherently factual. They say it's de facto because
14 we want her to participate in settlement
15 negotiations and she won't do it. And you can't
16 rule that as a matter of law, with all due respect.

17 THE COURT: Define participation.

18 MR. SAWYER: Judge, we're not asking her to
19 participate in settlement negotiations. She's
20 saying you cannot do negotiations at all. That's
21 what the injunction seeks. We're not saying that
22 she has a duty to cooperate in terms of negotiating
23 with us.

24 What we're saying is the duty to cooperate says
25 she's got a duty to cooperate in the settlement,

1 which means she doesn't have a legal right to seek
2 an injunction saying you can't negotiate. That's
3 all we're using that provision in the policy for,
4 Judge.

5 THE COURT: Okay.

6 MR. RICHTER: Your Honor, I'm sorry. Page 7,
7 their brief: Desa Ballard has a duty to cooperate
8 in the defense and settlement of the case. That's
9 their position.

10 THE COURT: All right. What's our other
11 motion?

12 MR. SILVERNAIL: Your Honor, I'm Adam
13 Silvernail here for the Estate of Gloria Corley. We
14 filed a motion to dismiss or, in the alternative, to
15 strike portions of the complaint and attorneys'
16 fees. And I think my argument can be a little
17 simpler than the last one, I hope. But -- not to
18 comment badly, but those issues, I don't think, have
19 anything to do with us. And that is the thrust of
20 our motion.

21 Ms. Pope individually and as special
22 administrator of the Estate were named defendants in
23 this case. I represent her in her representative
24 capacity. She's here pro se in her individual
25 capacity. But we filed this motion jointly because

1 it appeared that these two parties were treated the
2 same and have the same bases for relief.

3 Our argument is very simple as to dismissal. A
4 full reading of the plaintiffs' complaint from
5 beginning to end, as has already been observed,
6 loads of factual allegations. The relief sought in
7 the complaint for every cause of action is against
8 what were defined in the complaint as the insurance
9 defendants. Those were defined not to include
10 Ms. Pope or the Estate.

11 And I'll take a moment here to point out there
12 seems to be vast confusion, intentional or
13 otherwise, here about Ms. Pope and the Estate. The
14 malpractice claim was brought by the Estate of
15 Gloria Corley. Ms. Pope was appointed special
16 administrator in the probate court.

17 But, as Your Honor is aware, a special
18 administrator, personal representative, trustee, or
19 any other number of representative capacities create
20 a new legal being, which is not the same as the
21 individual. Ms. Pope, as an individual, is not a
22 party to the malpractice case and never has been.

23 The Estate of Gloria Corley asserts claims in
24 that case on behalf of Gloria Corley who died before
25 they could be brought. And, frankly, the history

1 about Ms. Pope's appointment and the previous
2 litigation, insofar as I can tell, for the actual
3 claims at issue in this case are really irrelevant.

4 Now, we filed an affidavit for Ms. Pope showing
5 that, to the extent they want us, being the Estate
6 and Ms. Pope, bound by those factual findings,
7 should they receive them, they're incorrect. But
8 the relief sought in the complaint doesn't ask for
9 anything against Ms. Pope or the Estate.

10 And the complaint actually says on its face
11 that Ms. Pope and the Estate are named as defendants
12 to ensure they're bound by the outcome of this
13 action, which, presumably, is only factual findings
14 because neither -- none of the relief, the
15 injunctive relief, obviously the bad faith insurance
16 issues, none of those are asserted against Ms. Pope
17 or the Estate. We don't know why we're here.

18 In their return to our motion, the plaintiffs
19 point out that, you know, we need to be bound by
20 this result for reasons that don't entirely make
21 sense to me. Ms. Pope is not a party of the
22 malpractice action; the Estate is. But the result
23 of that action, insofar as it concerns the Estate,
24 is really not relevant to the issues between
25 Ms. Ballard, her firm, and the insurance defendants.

1 If the Estate should receive a judgment in the
2 course of the malpractice case, Ms. Ballard is the
3 object for collection. If Ms. Ballard has coverage
4 that applies or there is some dispute about
5 application, as far as we can tell, that's between
6 Ms. Ballard, her firm, and the insurance defendants.

7 But we appear to have been brought into this
8 solely to bind us to facts that are alleged
9 incorrect. And it was puzzling to us when this case
10 was filed because the malpractice case is where
11 those facts are directly at issue. I don't
12 represent anybody in the malpractice case. There's
13 separate litigation counsel handling that on behalf
14 of the Estate.

15 But the facts alleged in the complaint in this
16 case -- and apparently, which they want to force us
17 to dispute and avoid an outcome adverse to us, are
18 the very same facts about liability and conduct that
19 are at issue in the other case. Frankly, when this
20 one was filed, we were gravely concerned about this
21 because this case that we're hearing today was
22 originally filed in Richland County for reasons that
23 never became clear to anybody, as far as I know;
24 eventually removed to the federal court, remanded to
25 Richland County, and then transferred by consent to

1 Lexington County where it appeared venue was proper.

2 When this case was filed though, it appeared
3 that Ms. Ballard was seeking factual findings in
4 Richland County about a case that was already
5 pending in Lexington County. Now they're both here.
6 Hopefully they wouldn't have two separate outcomes;
7 however, the malpractice case is stayed. I think
8 that stay expires in a couple of weeks. I don't
9 know whether any movement has been made to adjust
10 that or what the plan is from there. But this case
11 has been pending well over a year.

12 So the relief we sought was, primarily, dismiss
13 the Estate and Ms. Pope because nothing is sought
14 against them. There's no requests for damages
15 against them, the injunctive relief sought, the
16 declaratory relief sought, we aren't a party to this
17 insurance contract.

18 At very most, the Estate may, at some point,
19 have the right to collect from Ms. Ballard or her
20 firm. And the insurance carrier will cover that,
21 not cover that, whatever comes out of that. And if
22 they don't, it will be collected against
23 Ms. Ballard. She's the defendant there.

24 The insurance coverage issues have nothing to
25 do with the plaintiff in a malpractice case. And

1 they certainly have nothing to do with an individual
2 who isn't even a party to that case. So our
3 argument is that these two parties should be
4 dismissed.

5 Alternatively, if we were to stay in, all of
6 these really irrelevant factual and incorrect
7 factual allegations should be struck from the
8 complaint so that we're not relitigating issues that
9 are already before -- were already before and
10 continue to be before this Court in a totally
11 separate case.

12 And so that's the basis of our motion. We
13 believe the addition of the Estate and Ms. Pope had
14 no basis. And we should also be awarded attorneys'
15 fees against the plaintiffs for naming us and
16 causing the Estate and Ms. Pope to incur fees and
17 costs in appearing, filing, and defending this
18 matter up to the point they're dismissed.

19 MS. POPE: Your Honor, if I might individually
20 speak for a moment.

21 THE COURT: Yes, ma'am.

22 MS. POPE: I was made a party to this action
23 although I have absolutely no individual interest in
24 it. I am one of four or five known creditors of
25 Ms. Corley's estate. The largest creditor may turn

1 out to be the malpractice carrier that, as her
2 personal representative, I was forced to hire
3 because we have been unable to reach any sort of
4 conclusion with the malpractice defendant and the
5 Corley estate.

6 But there has been a -- I can only describe it
7 as vicious attempt to impugn my reputation and
8 character. I was very interested to hear from
9 Plaintiffs' counsel that the plaintiff is concerned
10 about her reputation. But I would refer Your Honor
11 to my affidavit of October 24th, 2017, because the
12 whole purpose of naming me, a person with absolutely
13 no interest other than one of many creditors of the
14 estate of Gloria Corley in this, and as the properly
15 appointed personal -- special administrator of my
16 former longtime client Gloria Corley.

17 And I particularly want to point out that if
18 the Court had to look and see if there were bad
19 faith, the Court might look at my affidavit which
20 explains the terrible, egregious position in which
21 the plaintiff and her law firm put Gloria Corley.

22 Gloria Corley, when her attorney in fact walked
23 in her door, was making about \$190,000 a year, 145-
24 of which I had earned for her about ten years
25 earlier. The record is replete that Ms. Corley's

1 attorney in fact's failure to pay the \$18,000 she
2 owed me and the less than \$110,000 she would have
3 owed me for the rest of her life as her former
4 lawyer has resulted in this: A refusal to settle
5 for something like \$48,000 and then a judgment and
6 another refusal to settle.

7 And then a will drafted -- and I have given my
8 professional opinion to that effect in this
9 affidavit. And then a will drafted, which, after
10 instructing one of Ms. Corley's two children to take
11 all of her money and put it in her name, ignores,
12 first, Ms. Corley's power of attorney, which I
13 drafted as her attorney, and says that if you make
14 any gifts, you must make them to my two equally
15 beloved children equally, and then a will which cuts
16 out the second of the two beloved children so he
17 won't complain.

18 This is not only a case about a failure to file
19 an appeal. This is a case about the ruination of
20 Gloria Corley and her daughter. Adele Pope secured,
21 as a result of Ms. Ballard's actions, a \$1.2
22 million against Ms. Corley's daughter and a more
23 than \$249,000 judgment, plus collection costs which
24 are now accruing against poor Ms. Corley, all
25 because Ms. Ballard advised her, while

1 simultaneously advising her daughter, do not pay the
2 \$18,333 you owe of your \$145,000 you get a year as a
3 result of Ms. Pope's work; instead, make a deal with
4 Richard Breibart, write yourself an e-mail saying
5 we're going to save \$50,000 because Ms. Pope --

6 MR. BLAND: Your Honor, I'm going to object.
7 Now she's arguing summary judgment. I'm going --
8 now I'm going to have a half an hour of facts going
9 back. We're here on --

10 MS. POPE: That would be fine, Your Honor.
11 That would be fine, because they're all in the file.

12 THE COURT: Well, as to your -- back to your
13 motion to strike, Ms. Pope.

14 MS. POPE: I have -- there's no basis for me to
15 be here. I have an hourly rate of \$350 an hour. I
16 have spent more than 30 hours in the last -- since I
17 was made a defendant in this case. There was
18 absolutely no basis to name me. It was done in bad
19 faith. I rest on my affidavit.

20 THE COURT: Why does Ms. Pope need to be in
21 this case individually?

22 MR. BLAND: Because she, one, is an interested
23 party. She took her own judgment, took it to court
24 to become appointed as a special administrator to
25 take a claim on behalf of Ms. Ballard's former

1 client. The very facts that she talks about are the
2 facts that Ms. Ballard wants to raise to Admiral to
3 say why I do not want to settle.

4 What Ms. Pope neglected to say is, what
5 Ms. Ballard did is took \$140,000 right that her
6 client had, Ms. Corley, for the rest of her life
7 annually when she was very sick and elderly to
8 compress that and sell it back to the Trust for
9 \$680,000.

10 She banked on the fact, based on the actuarial
11 tables, that this lady wasn't going to live to be
12 able to collect \$680,000. And, sure enough, she
13 died before, if you would add up that money. So
14 Ms. Ballard was correct on an actuarial table.

15 What the claim was from Ms. Pope is, well, you
16 did it to manufacture so that I didn't have to get
17 my \$18,000 a year. She's a necessary party because
18 they are now going to be negotiating with the legal
19 malpractice claim and then they're going to
20 negotiate with Ms. Pope as a creditor against
21 Ms. Corley. We named her as a necessary party. The
22 very facts that you just heard from Ms. Pope,
23 Ms. Ballard is going to raise right back to her
24 carrier and say they are unmeritorious, here's why,
25 and that is why I may not choose to settle this

1 case.

2 I don't know what you're going to pay her. If
3 it's \$5, \$10, a hundred, a thousand, five thousand,
4 I may say yes. But if you're going to pay this
5 woman \$1,200,000, then she may invoke her right to
6 say I'm not going to give consent.

7 MS. POPE: Your Honor, if I could briefly
8 respond.

9 THE COURT: Go ahead.

10 MS. POPE: It is my duty, as the special
11 administrator of the Estate of Glroia Corley, to
12 receive the maximum reasonable settlement I can
13 receive for the Estate of Gloria Corley. Desa
14 Ballard has absolutely no right whatsoever to meddle
15 in the administration of a former client of hers,
16 who is suing her, in how that settlement may
17 ultimately end up.

18 She never filed a claim against Ms. Corley's
19 estate and she has absolutely no right to meddle in
20 the administration of the estate of a former client
21 who -- when she is a defendant in a malpractice case
22 against that client.

23 MR. BLAND: The very purpose of her malpractice
24 claim is to get the funds to be able to pay Adele.
25 That's the very purpose of it. Ms. Ballard

1 absolutely believes that Ms. Corley didn't want to
2 pay Ms. Pope another dime. That's why she
3 represented her from 2008 all the way through her
4 death. It's the daughter who, it's true, has
5 absconded with the money who now has aligned herself
6 with Desa to bring money into the estate to be able
7 to pay -- I mean, Ms. Pope, to bring money into the
8 estate to be able to go back and pay Ms. Pope.

9 MR. SILVERNAIL: Very briefly, Your Honor, just
10 on behalf of the Estate, this background business
11 about how or why or under what circumstances
12 Ms. Pope came to be appointed as the administrator
13 of the estate, I want to point out that was done
14 through a formal litigated proceeding in the probate
15 court, which Ms. Ballard made no attempt to appear
16 in and could not have made any attempt to appear in
17 because she has no interest in the estate. She was
18 not a creditor, she is not a beneficiary, she is not
19 an heir. She has no interest in the administration
20 of the estate.

21 If a recovery is made in the malpractice case,
22 it will be paid over to the Estate, and under
23 probate court's supervision of Ms. Pope's
24 administration, will be distributed to whatever --
25 in whatever shares, to whatever creditors and/or

1 heirs or beneficiaries there are.

2 But there is no circumstance that I can
3 envision in this world in which Ms. Ballard would
4 have any opportunity to be involved in the
5 disposition of any recovery in the estate at all.
6 But it's alarming that she takes the position that
7 she could have been, which she never tried to be, or
8 could be involved in the disposition of the Estate's
9 funds recovered from Ms. Ballard for malpractice.

10 So, again, all of these factual allegations, to
11 the extent they may be relevant, to reasonableness
12 or unreasonableness, neither the Estate nor
13 Ms. Pope, individually or a party or takes the
14 position that they are a party to the contract
15 between these two. And the interpretation of that
16 contract is what it is.

17 But it's dangerous for this Court in this case
18 to attempt to make factual findings that, as
19 opposing counsel mentioned a moment ago, would have
20 a direct -- these are the facts that are at issue.
21 We don't need to be here for this. We shouldn't be
22 here for this. The Estate is already litigating
23 these facts in a case where it's properly a party.

24 So our position is we should be dismissed, it
25 was inappropriate for us to ever have been added.

1 And, in addition to Ms. Pope, I, as counsel for the
2 Estate of Gloria Corley, have also incurred
3 substantial time in preparing documents and
4 defending this case to try to protect the Estate
5 from any adverse outcome here binding it to facts
6 that could affect a claim already pending in another
7 matter.

8 THE COURT: All right. Okay, folks.

9 MR. BLAND: Thank you, Your Honor.

10 THE COURT: No. Thank you.

11 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 14th of November, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 8, 2019

s/Bethanie K. CrepponBethanie K. Creppon
Circuit Court Reporter



2850 West Golf Road, Suite 800
Rolling Meadows, IL 60008-4039
(847) 806-6590
Fax (847) 806-6282

Lawyers Professional Liability Insurance

July 12, 2013

Mara Ballard
Desa Ballard P.A. dba Ballard Watson Weissenstein
226 State Street
West Columbia, SC 29169

Policy Number: 91200935

Dear Mara,

Thank you for choosing Monitor Liability Managers and the W.R. Berkley Corporation for your professional liability insurance needs. We know that you have many choices for your insurance and we appreciate your choosing Monitor.

Monitor and all its employees are proud of our tradition of providing an exceptional insurance facility and making every effort to assure your satisfaction with our product and service. The people behind the promise to pay are critical to the value of any insurance policy. Like most services, you get what you pay for - the premium is only one part of the value of an insurance policy.

The most important service we provide and the greatest value you receive does not come from delivering the policy - it comes from handling your claims. While we help our policyholders with loss control and crisis avoidance, if the day comes when you face a claim, we will be there to help you navigate through the complexities of a professional liability claim.

Attached is a narrative from Mr. Jason A. Fogg, Esq., Vice President - Claims, outlining claims reporting guidelines in the event that a claim does occur. With many years of experience handling complex professional liability claims, I am confident you will be pleased to have Monitor on your side.

Once again, thank you for choosing Monitor and the W.R. Berkley Corporation. We hope that you will see the value in the people behind the promise and we hope to be your choice for your professional liability needs for years to come. Please call your professional liability insurance agent if you have any questions about Monitor, or any comments about our service to you. Your satisfaction is important to us.

Regards,

A handwritten signature in cursive script, appearing to read 'Joseph G. Shores'.

Joseph G. Shores
President

ROA 00362



Claims Reporting Guidelines for the Insured

These guidelines should be followed to help Monitor Liability Managers provide efficient claims service.

Claim Notices

All claim notices shall be sent to Monitor Liability Managers, Claims Department. The notices must be reported as required by the policy to avoid problems regarding timely notice. The address of the Monitor Claims Department is as follows:

Monitor Liability Managers
Claims Department
2850 West Golf Road ■ Suite 800 ■ Rolling Meadows, IL 60008-4039
Mr. Jason A. Fogg, Esq., Vice President - Claims
Phone: 847.806.6590
Claim Dept. Fax: (847) 806-4017
E-mail: newclaim@monitorliability.com

Notice of claim requiring immediate action:

If immediate action on the notice is needed the Insured should express mail the notice to Monitor's Claims Department. Situations requiring immediate action may include:

1. The Insured being served with a summons and complaint.
2. The Insured needs to provide a response to the claimant immediately.

Correspondence from the Insured

The claim notice should include a written narrative of the circumstances surrounding the claim or potential claim. The narrative should include, but not be limited to:

1. Names of the insureds, policy number and effective dates.
2. Names and addresses of the claimant.
3. Details of the underlying claim, including its current status and the amount in controversy or relief demanded.
4. All pertinent letters or documents necessary to properly evaluate the claim.

Please provide carbon copies to your professional liability insurance agent of all claim notices and correspondence sent to Monitor Liability Managers

MI0PI2 (06-06)

ROA 00363

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, New Jersey 08034

SOUTH CAROLINA DISCLOSURE NOTICE

This Company is Not Licensed To Do Business In This State, and the S.C. Guaranty Act does not apply to this policy.

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

Declarations Page

Lawyers Professional Liability Insurance

CLAIMS MADE WARNING FOR DECLARATIONS: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.

CLAIMS MADE WARNING FOR DECLARATIONS: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.

Whenever printed in this Declarations Page, the boldface type terms shall have the same meanings as indicated in the Policy.

Policy Form: LPL 9300 (04-09)

Policy Number: 91200935

Item 1. Name and Address of **Named Insured**:

Desa Ballard P.A. dba Ballard Watson Weissenstein
226 State Street
West Columbia, SC 29169

Person designated to receive all correspondence from the **Insurer**:

Mara Ballard
Manager/Secretary/Treasurer

Item 2. **Policy Period:** From July 1, 2013 (inception date) to July 1, 2014 (expiration date)
(Both dates at 12:01 a.m. Standard Time at the address of the **Named Insured**)

Item 3. Limit of Liability for the **Policy Period** (inclusive of **Damages** and **Claims Expense**):
A. \$1,000,000 each **Claim**, but in no event exceeding
B. \$2,000,000 in the aggregate for all **Claims**.

Item 4. Applicable Deductible: \$10,000

Item 5. Premium: \$21,119

Item 6. Endorsements attached:
SER-00-ADM (05-13) Service of Suit

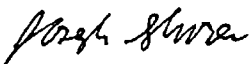
Item 7. Notice to the **Insurer** as provided in sections VII. A. and VII. B. and any information furnished to the **Insurer** as provided in section VI. A. shall be sent to:

Monitor Liability Managers, Claims Department
Address: 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039
Fax: (847) 806-4017 Email: newclaim@monitorliability.com

All other notices required to be given to the **Insurer** under this Policy shall be sent to:

Monitor Liability Managers
Address: 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039
Fax: (847) 806-6282

These Declarations along with the completed and signed **Proposal** and the Lawyers Professional Liability Insurance Policy shall constitute the contract between the **Insureds** and the **Insurer**.

Authorized Representative: 

Date Issued: July 12, 2013

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

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SERVICE OF SUIT

It is understood and agreed that in the event of the failure of the Insurer hereon to pay any amount claimed to be due hereunder, the Insurer, at the request of the Insured (or Reinsured), will submit to the jurisdiction of any court of competent jurisdiction within the United States of America or Canada and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court. Nothing in this endorsement constitutes or should be understood to constitute a waiver of the Insurer's rights to commence an action in any court of competent jurisdiction in the United States or Canada, to remove an action to a United States District Court, or to seek a transfer of an action to another court as permitted by law.

It is further agreed that service of process in such suit may be made upon Daniel A. MacDonald, Senior Vice President of Admiral Insurance Company, 1255 Caldwell Road, P.O. Box 5725, Cherry Hill, New Jersey 08034-3220, or his/her designee, and that in any suit instituted against any one of them upon this contract, the Insurer will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named is authorized and directed to accept service of process on behalf of the Insurer in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) that it or they will enter a general appearance upon the Insurer's behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America or province of Canada, which makes provision therefor, the Insurer hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and the Insurer hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Desa Ballard P.A. dba Ballard Watson Weissenstein	Policy Number 91200935
Effective Date of This Endorsement 07/01/2013	Authorized Representative

Admiral Insurance Company

Lawyers Professional Liability Insurance Policy

This is a Claims Made Policy. Please read it carefully.

CLAIMS MADE WARNING FOR POLICY

NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.

PLEASE READ AND REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

In consideration of the payment of the premium, in reliance on all statements in the **Proposal** and all other information provided to the **Insurer**, and subject to all provisions of this Policy, the **Insurer** and **Insureds** agree as follows:

I. Insuring Agreement

Lawyers Professional Liability Insurance

This Policy shall pay on behalf of the **Insured** all **Damages** and **Claims Expense** that the **Insured** shall become legally obligated to pay, arising from any **Claim** first made against the **Insured** during the **Policy Period** and reported to the **Insurer** in writing during the **Policy Period** or within 60 days thereafter, for any actual or alleged **Wrongful Act**, provided that prior to the inception date of the first Lawyers Professional Liability Insurance Policy issued by the **Insurer** to the **Named Insured**, which has been continuously renewed and maintained in effect to the inception of this **Policy Period**, any **Insured** did not know, or could not reasonably foresee that such actual or alleged **Wrongful Act** might reasonably be expected to be the basis of a **Claim**.

II. Extended Reporting Periods

- A. If the **Named Insured** cancels or if the **Insurer** or the **Named Insured** refuses to renew this Policy, then the **Named Insured** shall have the right, upon payment of the appropriate percentage of the "full annual premium", as provided in section II. B., to an extension of the coverage granted by this Policy with respect to any **Claim** first made and reported during the appropriate period of months after the date upon which the **Policy Period** ends, but only with respect to any **Wrongful Act** fully occurring prior to the end of the **Policy Period** and otherwise covered by this Policy. Such appropriate period of months shall be referred to as the Extended Reporting Period. As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the **Policy Period**. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the **Insurer** within 60 days of the effective date of cancellation or non-renewal.
- B. The percentage of the "full annual premium" and period of months for the Extended Reporting Period shall be:
 1. 12 months Extended Reporting Period for 100 percent of the "full annual premium" of the Policy, or
 2. 24 months Extended Reporting Period for 150 percent of the "full annual premium" of the Policy, or
 3. 36 months Extended Reporting Period for 185 percent of the "full annual premium" of the Policy, or
 4. 60 months Extended Reporting Period for 250 percent of the "full annual premium" of the Policy.
- C. The additional premium for the Extended Reporting Period shall be fully earned at the inception of the Extended Reporting Period. The Extended Reporting Period is not cancelable.
- D. As a condition precedent to the right to purchase the Extended Reporting Period, the total premium for this Policy and all Deductible obligations must have been paid.

ADMIRAL INSURANCE COMPANY

- E. Without any additional premium being required, there shall be an automatic extension of the coverage granted by this Policy with respect to any **Claim** first made and reported during a period of 60 days after the date upon which the **Policy Period** ends, but only with respect to any **Wrongful Act** fully occurring prior to the end of the **Policy Period** and otherwise covered by this Policy and only if there is no other policy or policies that would otherwise provide insurance for such **Wrongful Act**. This 60 day period shall be referred to as the Automatic Extended Reporting Period.
- F. The Automatic Extended Reporting Period or the Extended Reporting Period shall not be available if the **Insured's** license is revoked, suspended by or surrendered at the request of any regulating authority.

III. Definitions

Whenever printed in boldface type, and whether in the singular or plural form in this Policy, the following terms shall have the meanings indicated below.

- A. "**Claim**" means a written demand for **Damages** or non-monetary relief by reason of a **Wrongful Act**, including, but not limited to:
 - 1. a civil, criminal, administrative or arbitration proceeding, or
 - 2. a request that an **Insured** agree to waive a legal right or sign an agreement to toll the statute of limitations.

Claim shall not include any proceedings before a state licensing board or similar authority, except as otherwise provided in section V. Supplemental Coverages of this Policy. A **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.
- B. "**Claim Expense**" means reasonable and necessary fees, costs and expenses (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a covered or potentially covered **Claim** against the **Insureds**, but excluding salaries, wages, overhead or benefit expenses associated with any **Insured**, or any amount covered by the duty to defend obligation of any other insurer.
- C. "**Damages**" means a monetary judgment, award or settlement, pre-judgment interest and post-judgment interest; provided, however, **Damages** shall not include:
 - 1. taxes, civil or criminal fines, or penalties imposed by law, or
 - 2. punitive or exemplary damages, or any multiplied damages award in excess of the amount so multiplied, or
 - 3. matters which are uninsurable under the law pursuant to which this Policy is construed, or
 - 4. legal fees, costs and expenses paid, incurred or charged by the **Insured**, whether claimed as forfeiture, restitution of specific funds, financial loss, set-off or otherwise, and injuries that are a consequence of any of the foregoing, or
 - 5. legal fees, costs, fines, penalties, sanctions, or other amounts awarded against an **Insured** or any client of an **Insured** based upon the actual or alleged filing of pleadings or other papers under any federal or state statute, administrative rule, court rule or case law, including, but not limited to Rule 11, Federal Rules of Civil Procedure, any successor thereto or state rule counterpart.
- D. "**Electronic Mail**" means the transmission of messages and information over a closed, private network, or a semi-public network that provides a public access to an on-line service for a fee, the Internet, an electronic chat room or Blog.
- E. "**Insured**" means:
 - 1. the **Named Insured** and any **Predecessor Firm**, or
 - 2. any individual or professional corporation who is or becomes a partner, officer, director, stockholder, or employee of the **Named Insured**, but solely while acting within the scope of their duties on behalf of the **Named Insured**, or
 - 3. any individual or professional corporation who was a partner, officer, director, stockholder, or employee of the **Named Insured** or **Predecessor Firm**, but solely while acting within the scope of their duties on behalf of the **Named Insured** or **Predecessor Firm**, or
 - 4. any independent contractor, individual or professional corporation designated "counsel" or "of counsel" to the **Named Insured**, but solely while acting within the scope of their duties on behalf of the **Named Insured**, or
 - 5. the heirs, executors, administrators, and legal representatives of each **Insured** in the event of death, incapacity or bankruptcy, but solely with respect to the liability of each **Insured** as otherwise covered by this Policy.
- F. "**Insurer**" means the entity issuing this Policy as listed on the Declarations Page.
- G. "**Named Insured**" means the corporation, individual, limited liability corporation, limited liability partnership, partnership, or professional association designated in Item 1. of the Declarations.
- H. "**Personal Injury**" means invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, libel, slander, mental anguish, humiliation, or emotional distress, oral or written publication of defamatory or disparaging material, or the inadvertent disclosure of confidential or privileged information communicated by **Electronic Mail**.
- I. "**Policy Period**" means the period of time from the inception date shown in Item 2. of the Declarations to the earlier of the expiration date shown in Item 2. of the Declarations or the effective date of cancellation of this Policy.

ADMIRAL INSURANCE COMPANY

- J. **"Predecessor Firm"** means any corporation, individual, limited liability corporation, limited liability partnership, partnership, or professional association to whose financial assets and liabilities the **Named Insured** is the majority successor in interest. **Predecessor Firm** does not include any corporation, individual, limited liability corporation, limited liability partnership, partnership, or professional association to whose financial assets and liabilities the **Named Insured** becomes the majority successor in interest during the **Policy Period** unless the **Insurer**, in its sole discretion, and the **Named Insured** agree to include such corporation, individual, limited liability corporation, limited liability partnership, partnership, or professional association as a **Predecessor Firm**. The **Named Insured** shall accept any premium adjustment or coverage revisions which the **Insurer** may require.
- K. **"Professional Services"** means services:
1. rendered by an **Insured** solely as a lawyer, mediator, arbitrator, or notary public for others, or
 2. performed by an **Insured** as an administrator, conservator, receiver, executor, guardian, trustee, or in any other fiduciary capacity, or
 3. performed by an **Insured** as a title insurance agent, provided such services are connected with and incidental to the **Insured's** practice of law and are pursuant to a written agency agreement with a licensed title insurance company, or
 4. performed by an **Insured** in their capacity as a member of a bar association, ethics, peer review, formal accreditation, licensing, or similar professional board or committee related to the legal profession, or
 5. performed by an **Insured** as an author, strictly in the publication or presentation of research papers or similar materials and only if the fees, royalties or other revenue generated from such work are not greater than \$10,000;
- provided, however, that in all events, coverage as is afforded with respect to **Professional Services** shall only apply for such services performed by an **Insured**:
- a. for remuneration inuring to the benefit of the **Named Insured** or a **Predecessor Firm**, or
 - b. on a pro bono basis, but solely if, prior to the performance of such services, a partner, director or officer of the **Named Insured** or a **Predecessor Firm** approved the performance of such services without a fee.
- L. **"Proposal"** means the Proposal Form and any material submitted therewith.
- M. **"Related Wrongful Acts"** means **Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event or decision.
- N. **"Wrongful Act"** means any actual or alleged act, omission, or **Personal Injury** arising out of **Professional Services** rendered by an **Insured** or by any person for whose act or omission the **Insured** is legally responsible.

IV. Exclusions

The **Insurer** shall not be liable to defend, or to make any payment for any **Damages** or **Claims Expense** in connection with a **Claim** made against any **Insured**:

- A. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving a dishonest, fraudulent, criminal, or malicious act or omission committed by or at the direction of, or ratified by any **Insured**; provided, however, the **Insurer** will provide a defense for any such **Claims**, unless or until the dishonest, fraudulent, criminal, or malicious act or omission has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not;
- INNOCENT INSURED PROVISION: Whenever coverage under this Policy would be excluded, suspended, or lost because of Exclusion A., the **Insurer** agrees that such insurance, as would otherwise be afforded under this Policy, shall be applicable with respect to an **Insured**, other than the **Named Insured** and any **Predecessor Firm**, who did not personally participate or personally acquiesce in or remain passive after having knowledge of such conduct.
- B. by any **Insured**;
- C. as the beneficiary or distributee of any trust or estate;
- D. for bodily injury, sickness, disease, death, assault, or battery of any person, or damage to, or destruction of any tangible property, including loss of use thereof;
- E. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any **Insured's** activities or their capacity as:
1. an officer, director, partner, trustee, or employee of a business enterprise, not named in Item 1. of the Declarations, a nonprofit organization, or a pension, welfare, profit sharing, mutual or investment trust or fund, or
 2. a public official, employee, or agent of a governmental body, subdivision, or agency, unless the **Insured** is deemed to be a public official, employee, or agent of such entity solely by virtue of rendering **Professional Services** to it, or
 3. a fiduciary under the Employee Retirement Income Security Act of 1974, including amendments thereto, or any similar provisions of state statutory law or common law;

This exclusion E. applies whether or not the **Insured's** activities or capacity also constitute or involve **Professional Services**.

ADMIRAL INSURANCE COMPANY

- F. by or in connection with any pre or post formation business enterprise, not named in Item 1. of the Declarations, in which any **Insured** owns or owned, or controls or controlled, more than a 10 percent interest, or in which any **Insured** is or was an owner, partner, or employee, or which is directly or indirectly controlled, operated, or managed by any **Insured**, other than solely in a fiduciary capacity, but only if the fiduciary act or omission in dispute is in the rendering of services ordinarily performed as a lawyer, and then only to the extent of such services;
This exclusion F. applies whether or not the **Insured's** activities also constitute or involve **Professional Services**.
- G. which is insured in whole or in part by another valid policy, except with respect to any excess beyond the amount or amounts of coverage under such other policy whether such other policy is stated to be primary, contributory, excess, contingent, or otherwise;
- H. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any actual or alleged nuclear reaction, radiation or contamination, regardless of cause;
- I. for any actual or alleged seepage, pollution or contamination of any kind;
- J. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the Securities Act of 1933, the Securities Exchange Act of 1934, including amendments thereto, or any similar provisions of any federal, state, local or foreign statutory or common law;
- K. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. any **Wrongful Act** alleged in any claim which has been reported, or in any circumstance of which notice has been given, prior to the **Policy Period** under any other policy, or
 2. any other **Wrongful Act** whenever occurring, which together with a **Wrongful Act** which has been the subject of such claim or notice, would constitute **Related Wrongful Acts**;
- L. for discrimination or harassment because of race, color, religion, age, sex, disability, pregnancy, national origin, sexual orientation, marital status, or any other basis prohibited by law;
- M. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
1. defects in title of which any **Insured** had knowledge at the date of issuance of such title insurance whether or not a matter of public record, or
 2. any intentional breach of underwriting authority by any **Insured** functioning as a title insurance agent, or
 3. any liability assumed by an **Insured** under any contract or agreement whereby the **Insured** has agreed to participate in the payment of a loss under a title insurance policy, including, attorneys' fees, court costs and expenses, unless such liability would have attached to the **Insured** even in the absence of such agreement.

V. Limits of Liability and Deductible

- A. The Limits of Liability stated in Item 3. of the Declarations are the limits of the **Insurer's** liability for all **Damages** and **Claims Expense** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** and any Extended Reporting Period(s) that may apply. The Limits of Liability for any Extended Reporting Period(s) that may apply shall be part of, and not in addition to, the Limits of Liability stated in Item 3. of the Declarations. In the event the Limits of Liability stated in Item 3. of the Declarations are exhausted by payment of **Damages** and/or **Claims Expense**, or have been tendered to or on behalf of the **Insured**, then any and all obligations of the **Insurer** hereunder shall be deemed to be completely fulfilled and extinguished.
- B. The maximum Limit of Liability for all **Claims** under this Policy shall not exceed the aggregate Limit of Liability stated in Item 3. B. of the Declarations.
- C. The first \$2,500 in **Claims Expense** incurred during the **Policy Period** shall not be applied to the Deductible; provided, however, all subsequent **Claims Expense** shall first be applied against the Deductible.
- D. The Deductible amount stated in Item 4. of the Declarations shall be borne by the **Named Insured** and shall apply to each and every **Claim**. The **Insurer** shall only be liable for the amount of **Damages** and/or **Claims Expense** arising from a **Claim** which is in excess of the Deductible amount stated in Item 4. of the Declarations.
Such amounts shall, upon written demand by the **Insurer**, be paid by the **Named Insured** within 30 days. If the **Named Insured** fails to pay the Deductible, then all the **Insureds** shall be jointly and severally obligated to pay the Deductible. Any funds advanced by the **Insurer**, at its option, shall serve to reduce the Limits of Liability. If the **Insurer** brings suit to collect the Deductible, then the **Insured** responsible to pay the Deductible also shall pay the legal fees, costs and expenses incurred by the **Insurer** to collect the Deductible.

ADMIRAL INSURANCE COMPANY**Supplemental Coverages**

The **Insurer** will pay:

- E. up to a maximum aggregate limit of \$10,000 per **Policy Period** for all **Insureds** for reasonable legal fees, costs and expenses resulting from the investigation or defense of an **Insured** in a proceeding before a state licensing board or similar authority arising out of any **Wrongful Act** by such **Insured**, but only if such legal fees, costs, or expenses are incurred after notice is first received by the **Insured** during the **Policy Period** and reported to the **Insurer** in writing during the **Policy Period**. The Deductible shall not apply to this coverage and any payments made hereunder shall not reduce the Limits of Liability stated in Item 3. of the Declarations.
- F. up to \$500 for actual loss of earnings to each **Insured** for each day or part of a day of such **Insured's** attendance, at the **Insurer's** written request, at a trial, hearing, or arbitration proceeding involving a **Claim** against an **Insured**, up to a maximum aggregate limit of \$10,000 per **Policy Period** for all **Insureds**. The Deductible shall not apply to this coverage and any payments made hereunder shall not reduce the Limits of Liability stated in Item 3. of the Declarations.
- G. an additional 10 percent of the Limit of Liability stated in Item 3. A. of the Declarations up to a maximum aggregate limit of \$100,000 per **Policy Period** for **Claims Expense**, but only for a single **Claim** occurring after the aggregate Limit of Liability stated in Item 3. B. of the Declarations is exhausted by payment under this Policy. The Deductible shall not apply to this coverage.
- H. up to a maximum aggregate limit of \$2,500 per **Policy Period** for expenses incurred with the **Insurer's** prior written consent resulting from subpoenas for documents or testimony including legal advice, legal counsel and the production of documents arising out of any **Wrongful Act** otherwise covered under this Policy. Any notice the **Insured** provides to the **Insurer** of such subpoena shall be deemed a notification of a potential claim under section VII. B. Any such legal fees and expenses incurred by the **Insurer** in responding to such subpoena shall be part of, and not in addition to, the Limits of Liability stated in item 3. of the Declarations. No Deductible will apply to such legal fees and expenses.

VI. Defense, Cooperation and Settlement

- A. An **Insured** shall not admit liability, enter into any settlement agreement, stipulate to any judgment, agree to arbitration, or incur **Claims Expense** without the **Insurer's** prior written consent. The **Insurer** shall be entitled to full information and all particulars it may request in order to reach a decision regarding such consent. Any **Damages** and/or **Claims Expense** incurred and settlements agreed to prior to the **Insurer** giving its consent shall not be covered hereunder.
- B. The **Insurer** shall have the sole right and the duty to defend any covered **Claim**, and has the sole right to select defense counsel. If an **Insured** is entitled to independent defense counsel, then the **Insured** may select independent defense counsel, subject to the consent of the **Insurer**. Such counsel shall have at least 10 years of experience in the defense of similar **Claims**, and maintain error and omissions insurance coverage. The **Insured** and independent defense counsel shall provide full information, documentation and cooperation with respect to the defense, investigation and settlement of any **Claim**. The **Insurer** shall be liable only for reasonable and necessary defense costs at rates customarily paid by the **Insurer** for the defense of similar **Claims** in the area where the **Claim** is being defended. Any such defense costs shall be considered **Claims Expense**. The **Insurer's** right and duty to defend any **Claim** shall end when the Limit of Liability has been exhausted by payment of **Damages** and/or **Claims Expense**, or has been tendered to, or on behalf of, the **Insured**, or to a court of competent jurisdiction.
- C. Each **Insured** shall cooperate with the **Insurer** in the defense and settlement of any **Claim**, and in enforcing any right of contribution or indemnity against any person or organization that may be liable to the **Insured**, at no cost to the **Insurer**. Upon the request of the **Insurer**, the **Insured** shall submit to examination and interrogation, under oath if required by a representative of the **Insurer**, and shall attend hearings, depositions and trials, assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, as well as giving written statements to the **Insurer's** representatives, and meeting with such representatives for purposes of investigation or defense, all without charge to the **Insurer**.
- D. The **Insurer** shall not settle any **Claim** without the **Named Insured's** consent. If, however, the **Named Insured** shall refuse to consent to any settlement recommended by the **Insurer**, which is acceptable to the claimant, and shall elect to contest the **Claim**, or continue any legal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Insurer's** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been settled, including **Claims Expense** incurred up to the date of such refusal. Such amounts are subject to the provisions of section V. In the event that the **Named Insured** refuses to consent to any settlement as set forth in this section VI. D., the **Insurer's** right and duty to defend such **Claim** shall end upon the date of such refusal.

ADMIRAL INSURANCE COMPANY**VII. Notice of Claim and Multiple Claims**

- A. As a condition precedent to their rights under this Policy, an **Insured** shall give the **Insurer** written notice of any **Claim** first made against the **Insureds** during the **Policy Period**, as soon as practicable, but in no event later than 60 days after the expiration of the **Policy Period**.
- B. If during the **Policy Period** the **Insureds** become aware of any fact, circumstance or situation which may reasonably be expected to give rise to a **Claim** being made against any **Insured** and shall give written notice to the **Insurer**, as soon as practicable (but prior to the expiration of or cancellation of the **Policy**), of:
1. the specific fact, circumstance or situation, with full details as to dates, persons, and entities involved; and
 2. the injury or damages which may result therefrom; and
 3. the circumstances by which the **Insured** first became aware thereof;
- then any **Claim** subsequently made arising out of such fact, circumstance or situation shall be deemed to have been made when notice was first given to the **Insurer**.
- C. All **Claims** based upon or arising out of the same **Wrongful Act** or any **Related Wrongful Acts**, or one or more series of any similar, repeated or continuous **Wrongful Acts** or **Related Wrongful Acts**, shall be considered a single **Claim**. Each **Claim** shall be deemed to be first made at the earliest of the following times:
1. when the earliest **Claim** arising out of such **Wrongful Act** or **Related Wrongful Acts** was first made, or
 2. when notice pursuant to section VII. B. of a fact, circumstance or situation giving rise to such **Claim** is given.
- D. In addition to furnishing the notice as provided in sections VII. A. and VII. B. above, the **Insureds** shall give the **Insurer** such information and cooperation as it may reasonably require and shall, as soon as practicable, furnish the **Insurer** with copies of reports, investigations, pleadings and other papers in connection therewith.

VIII. General Conditions**A. Termination of Policy and Non-Renewal**

1. This Policy shall terminate at the earliest of the following times:
 - a. upon the receipt by the **Insurer** of written notice of cancellation from the **Named Insured**;
 - b. upon expiration of the **Policy Period** as set forth in Item 2. of the Declarations;
 - c. at such other time as may be agreed between the **Named Insured** and the **Insurer**; or
 - d. upon written notice by the **Insurer** of cancellation for non-payment of premium.
2. The **Insurer** may not cancel this Policy except for non-payment of any premium when due. The **Insurer** shall provide at least 20 days written notice to the **Named Insured** prior to any cancellation for non-payment of any premium.
3. If this Policy is cancelled by the **Named Insured**, the **Insurer** shall retain the customary short rate proportion of the premium herein. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
4. If the **Insurer** decides not to renew this Policy, the **Insurer** shall provide written notice to the **Named Insured** at least 60 days prior to the end of the **Policy Period**. The notice shall include the reason for such non-renewal.
5. Any notices to be given to the **Named Insured** under this section shall be provided to the **Named Insured** at the last known principal address and to its insurance agent or broker. The mailing by certified mail of such notice shall be sufficient.

B. Proposal

The **Proposal** is the basis of this Policy and is incorporated in and constitutes a part of this Policy. A copy of the Proposal Form(s) is attached hereto. Any material submitted with the Proposal Form(s) shall be maintained on file with the **Insurer** and shall be deemed to be attached hereto as if physically attached. It is agreed by all **Insureds** that the statements in the **Proposal** are their representations, that they are material and that this Policy is issued in reliance upon the truth and accuracy of such statements.

C. Action Against the Insurer

No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insureds'** obligation to pay shall have been finally determined either by judgment against the **Insureds** after actual trial or by written agreement of the **Insureds**, the claimant and the **Insurer**.

ADMIRAL INSURANCE COMPANY

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the **Insurer** as party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the **Insurer** be impleaded by the **Insureds** or their legal representatives. Bankruptcy or insolvency of the **Insureds** or of their estates shall not relieve the **Insurer** of any of its obligations hereunder.

D. Changes in Exposure

If during the **Policy Period** there is a 50 percent or greater change in the **Named Insured's** total lawyer population, then the **Named Insured** shall give the **Insurer** written notice of such changes as soon as practicable but not later than 60 days after the effective date of such change; provided, however, that this provision shall not apply if the **Named Insured** had less than 6 lawyers who met the definition of **Insured** at the Policy inception date. The **Named Insured** shall accept any premium adjustment or coverage revisions which the **Insurer** may require.

E. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery thereof, and the **Insureds** shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insureds**.

Any amount recovered pursuant to the exercise of such rights of subrogation shall be applied as follows: (1) to the repayment of expenses incurred toward subrogation; (2) to **Damages** and/or **Claim Expenses** paid by the **Insured** in excess of the Limits of Liability hereunder; (3) to **Damages** and/or **Claim Expenses** paid by the **Insurer**; (4) to **Damages** and **Claim Expenses** paid by the **Insured** in excess of the Deductible; and (5) to repayment of the Deductible.

F. Assignment

This Policy and any and all rights hereunder are not assignable without the written consent of the **Insurer**.

G. Entire Agreement

By acceptance of this Policy, the **Insureds** and the **Insurer** agree that this Policy (including the **Proposal**) and any written endorsements attached hereto constitute the entire agreement between the parties.

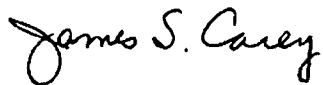
H. Representation by Named Insured

It is agreed that the **Named Insured** shall act on behalf of the **Insureds** with respect to the giving and receiving of notices, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the receipt and acceptance of any endorsements issued to form a part of this Policy and the exercising or declining to exercise any right to an Extended Reporting Period.

I. Coverage Territory

This **Policy** applies to any **Wrongful Act** taking place anywhere in the world, but only if the **Claim** is made and suit is brought against the **Insured** within the United States of America, its territories or possessions.

In witness whereof, the **Insurer** has caused this Policy to be signed by its President and Chief Executive Officer and Secretary, but this Policy shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the **Insurer**.



President and Chief Executive Officer



Secretary

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

Renewal Proposal Form**Lawyers Professional Liability Insurance**

CLAIMS MADE WARNING FOR APPLICATION: This Proposal Form is for a Claims Made and Reported Policy, relating to claims made against the Insureds during the Policy Period or any Extended Reporting Period that may apply.

Whenever printed in this Proposal Form, the terms in boldface type shall have the same meanings as indicated in the Policy. This Proposal Form is to be completed with respect to the entire Applicant Firm.

Desa Ballard P.A. dba Ballard Watson Weissenstein
 Name of Applicant Firm
226 State St.
 Street Address
West Columbia Lexington SC 29169
 City County State Zip Code
www.Desaballard.com
 Website Address (if applicable) 58-2331294
 Federal Employer Identification Number (FEIN)

The person designated as agent of the Applicant Firm and of all Insureds to receive any and all notices from the Insurer or their authorized representatives concerning this insurance:

Mara Ballard Mgr./Sec./Treas.
 Contact Name Title
mara@desaballard.com 803-796-9299 803-796-1066
 E-mail Address Telephone Number Fax Number

Producer Information

VIG
 Submitted by (Agency Name) Dated
F. Barksdale
 Agent's Name (Individual's Name) Agent's License Number

General Information

1. Indicate the total number of personnel for the Applicant Firm by designation.
 Lawyers: 3 Law Clerks: 5 Paralegals: 2 Legal Secretaries:
 Of-Counsel: Independent Contractors: Clerical: 1 Other: 1

COMPLETE THE INDIVIDUAL INSURED SUPPLEMENTAL FORM (LPL 9600) FOR ALL LAWYERS IN THE APPLICANT FIRM.

2. During the last 12 months, has any lawyer in the Applicant Firm served as a director, officer, trustee or partner of, or exercised any fiduciary control over, any organization other than the Applicant Firm? ☒ Yes ☐ No
 If "Yes", complete the following.

Name of Lawyer	Name of Organization	Is Organization For Profit or Nonprofit?	Is the Organization a Firm Client?	Position Held by Lawyer	Percentage of Equity Held	Percentage of Total Firm Billings
<u>Desa Ballard</u>	<u>Pink to LLC</u>	☒ Yes ☐ No	☐ Yes ☒ No	<u>owner</u>	<u>97%</u>	<u> </u>
<u>Desa Ballard</u>	<u>Lawyer's Trust</u>	☐ Yes ☒ No	☐ Yes ☒ No	<u>member</u>	<u>50%</u>	<u> </u>
		☐ Yes ☒ No	☐ Yes ☒ No			

Nature of Practice Information

3. Indicate the gross income for the applicable fiscal year (gross income means all sums billed to clients for services rendered, or if your Applicant Firm deals primarily with contingency fee cases, your average annual gross revenue):
 (a) Actual for immediate past fiscal year: \$ 932,000
 (b) Estimate for current fiscal year: \$ 900,000

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4. During the last 12 months, has there been any change in the Applicant Firm's area of practice? ☒ Yes ☐ No
 If "Yes", indicate the percentage of gross income for the past fiscal year derived from the following areas of practice:

Area of Practice	%	Area of Practice	%
Administrative Law - General	%	International Law	%
Admiralty/Maritime	%	Labor Relations - Labor	%
Antitrust/Trade Regulation	%	Labor Relations - Management	%
Arbitration/Mediation	1 %	Litigation (Civil) - Defense	18 3 %
Bankruptcy	%	Litigation (Civil) - Plaintiff	14 4 %
Banks/Savings and Loans	%	Local Government Law - without Bonds	%
Civil Rights and Discrimination	%	Mergers and Acquisitions	%
Collection/Repossession	%	Oil and Gas	%
Commercial Law	%	Pension and Employee Benefits	%
Commercial Litigation - Defense	0.3 %	Personal Injury and Negligence Litigation - Defense	%
Commercial Litigation - Plaintiff	0.3 %	Personal Injury and Negligence Litigation - Plaintiff	%
Communications (FCC)	%	Public Contract Law	%
Construction Law	%	Public Utilities	%
Corporate Organization/Formation	%	Real Property (Conveyance) - Commercial	%
Criminal Law	%	Real Property (Conveyance) - Foreclosure	%
Entertainment/Sports - with Money Management	%	Real Property (Conveyance) - Residential	%
Entertainment/Sports - without Money Management	%	Real Property - Development	%
Environmental Law	%	Real Property - Title Examination	%
Estate, Trust and Probate	%	Securities Law - including Municipal Bonds	%
Family Law	0.8 %	Taxation - Opinions	%
General Corporate/Business	%	Taxation - Preparation	%
Healthcare	%	Workers' Compensation Litigation - Defense	%
Immigration and Naturalization	%	Workers' Compensation Litigation - Plaintiff	%
Insurance Coverage	%	Other (list): <u>Appellate</u>	6 13 %
Insurance Defense Litigation	%	<u>Professional Rep.</u>	6 68 %
Intellectual Property	%	TOTAL:	100 %

5. Indicate the percentage of the Applicant Firm's plaintiff cases that are class actions suits. 0 %

General Policy and Procedures Information

6. Since the completion of the last application, have there been any changes to the Applicant Firm's docket or conflict of interest systems or any other office procedures?
 If "Yes", provide details. ☐ Yes ☒ No
7. During the last 12 months, how many lawyers of the Applicant Firm have participated in formal continuing legal education programs of at least 7 hours? 3
8. During the last 12 months, how many suits for collection of fees have been filed by the Applicant Firm? 0
9. Does the Applicant Firm share office space, expenses, cases, or letterhead with any other individual, of counsel partnership, firm, or organization? If "Yes", provide, on separate attachment, the name of the entity(ies). ☐ Yes ☒ No

Litigation and Claim Information (Provide details to all "Yes" answers)

10. Has any lawyer in the Applicant Firm ever been refused admission to practice, disbarred, or suspended from practice, reprimanded, sanctioned, or disciplined by any court or administrative agency?
 If "Yes", provide details. ☐ Yes ☒ No
11. During the last 12 months, has:
 (a) any professional liability claim or suit been made against the Applicant Firm, or any predecessor in business, or any past or present lawyers in the Applicant Firm? ☐ Yes ☒ No
 (b) there been any change in the status of claims reported to other companies? ☐ Yes ☒ No
12. Is the Applicant Firm or any lawyer in the Applicant Firm aware of any fact, circumstance or situation that might reasonably be expected to result in any professional liability claim or suit against the Applicant Firm, or any predecessor in business, or any past or present lawyers in the Applicant Firm? ☐ Yes ☒ No

IF "YES" TO QUESTION 11. OR 12., PROVIDE FULL DETAILS ON THE CLAIM / INCIDENT SUPPLEMENTAL FORM (LPL 9610).

ADMIRAL INSURANCE COMPANY

NOTICE TO COLORADO APPLICANTS: IT IS UNLAWFUL TO KNOWINGLY PROVIDE FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE COMPANY. PENALTIES MAY INCLUDE IMPRISONMENT, FINES, DENIAL OF INSURANCE, AND CIVIL DAMAGES. ANY INSURANCE COMPANY OR AGENT OF AN INSURANCE COMPANY WHO KNOWINGLY PROVIDES FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO A POLICY HOLDER OR CLAIMANT FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE POLICY HOLDER OR CLAIMANT WITH REGARD TO A SETTLEMENT OR AWARD PAYABLE FROM INSURANCE PROCEEDS SHALL BE REPORTED TO THE COLORADO DIVISION OF INSURANCE WITHIN THE DEPARTMENT OF REGULATORY AGENCIES.

NOTICE TO NEW MEXICO, PENNSYLVANIA APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES.

NOTICE TO APPLICANTS OF KENTUCKY: ANY PERSON WHO KNOWINGLY, AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS, FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME.

NOTICE TO APPLICANTS OF MINNESOTA, NEW JERSEY, OHIO, AND OKLAHOMA: ANY PERSON WHO KNOWINGLY, AND WITH INTENT TO INJURE, DEFRAUDS OR DECEIVES ANY INSURER OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM FOR THE PROCEEDS OF AN INSURANCE POLICY CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, IS GUILTY OF A FELONY AND IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.

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NOTICE TO APPLICANTS OF FLORIDA: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO INJURE, DEFRAUD OR DECEIVE ANY INSURER FILES A STATEMENT OF CLAIM OR AN APPLICATION CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION IS GUILTY OF A FELONY OF THE THIRD DEGREE.

NOTICE TO ARKANSAS, DISTRICT OF COLUMBIA, LOUISIANA, MARYLAND, AND RHODE ISLAND APPLICANTS: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO FINES AND CONFINEMENT IN PRISON.

NOTICE TO NEW YORK APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME, AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION.

Please Read Carefully

The undersigned, acting on behalf of all proposed Insureds, declare that the statements set forth herein are true and correct and that thorough efforts have been made to obtain sufficient information from each Insured proposed for this insurance to facilitate the proper and accurate completion of this Proposal Form.

The undersigned agree that the particulars and statements contained in the Proposal Form and any material submitted herewith are their representations and that they are material and are the basis of the insurance contract. The undersigned further agree that the Proposal Form and any material submitted herewith shall be considered attached to and a part of the Policy. Any material submitted with the Proposal Form shall be maintained on file (either electronically or paper) with the Insurer and shall be deemed to be attached hereto as if physically attached.

It is further agreed that:

- if any significant change in the condition of the applicant is discovered between the date of this Proposal Form and the Policy inception date, which would render this Proposal Form inaccurate or incomplete, notice of such change will be reported in writing to the Insurer immediately;
- the information contained in this Proposal Form shall not be used by the Applicant Firm and/or any Insureds as notice of Claims, nor will the Insurer recognize and/or accept the information contained herein as notice of Claims as provided for in section VII. of the Policy;
- any Policy, if issued, will be in reliance upon the truth of such representations;
- this Proposal Form has been completed as respects the entire Applicant Firm;
- and the signing of this Proposal Form does not bind the undersigned to purchase the insurance.

6.25.2013
Dated

[Signature]
Partner, Owner, Officer or Principal (Signature)

Title

Partner, Owner, Officer or Principal (Print Name)

This Admiral Insurance Company Proposal Form, including any material submitted herewith, shall be held in strictest confidence.

A POLICY CANNOT BE ISSUED UNLESS THE PROPOSAL FORM IS PROPERLY SIGNED AND DATED.

Please submit this Proposal Form including appropriate documentation to:

Monitor Liability Managers, LLC, 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

Plaintiff
Supplemental Formclb
6.25.2017**Lawyers Professional Liability Insurance****CLAIMS MADE WARNING FOR APPLICATION:** This Proposal Form is for a Claims Made and Reported Policy, relating to claims made against the Insureds during the Policy Period or any Extended Reporting Period that may apply.Desa Ballard PA dba Ballard Watson Weissenstein

Name of Applicant Firm

APPLICANT FIRM'S INSTRUCTIONS:**IF SPACE IS INSUFFICIENT TO ANSWER ANY QUESTION FULLY, PROVIDE SEPARATE ATTACHMENTS.****Plaintiff Information**

1. Total number of ~~personal injury~~ ^{commercial/civil} cases during the past 12 months: 14
2. What percentage of your plaintiff cases are class action suits? 0 %
3. Average number of cases each attorney handles per year: 1
4. Percentage of cases settled before trial: XX %
5. Percentage of cases tried to conclusion: XX %
6. Percentage of cases referred to you by other law firms: 5 %
7. Do you use written referral agreements in all cases which are referred to you? ie applic. ☒ Yes ☐ No
8. Percentage of cases your firm refers to other firms and retains a portion of the fees: 0 %
9. Do you use written referral agreements and obtain certificates of insurance, in all cases referred out? would if applic. ☐ Yes ☒ No
10. Average dollar value of cases: \$ unknown XXX
11. Maximum dollar value of any one case: \$ unknown XXX
12. Average percentage of recovery your firm takes as fees: 40% or lower
13. Have you advertised during the past 12 months through any of the following:
 - (a) Yellow pages ☐ Yes ☒ No
 - (b) Newspaper ☐ Yes ☒ No
 - (c) Radio ☐ Yes ☒ No
 - (d) Television ☐ Yes ☒ No

*** Cases are pending and no dollar value has yet to be requested.

* Ms. Ballard supervises all case with Harvey Watson or Stephanie Weissenstein being primary on each. Mr. Watson is/was primary on 4 cases. Ms. Weissenstein on 10.

XX 2 cases we assisted with, but are primarily handled by other Counsel (and we are no longer involved). 1 case we requested to be relieved 1 case is stayed by bankruptcy. 2 cases are associate departure cases and are settling or have settled. ROA 00377

1 case did not go forward

ADMIRAL INSURANCE COMPANY

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Signature Required

I understand that the information submitted herein becomes a part of the Applicant Firm's Lawyers Professional Liability Insurance Proposal Form and is subject to the same representations and conditions.

6-25-2013

Dated

Partner, Owner, Officer or Principal (Signature)

Title

Partner, Owner, Officer or Principal (Print Name)

Please submit this Proposal Form including appropriate documentation to:
Monitor Liability Managers, LLC, 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039

Admiral Insurance Company

1255 Caldwell Road, Cherry Hill, NJ 08034

Individual Insured Supplemental Form

Lawyers Professional Liability Insurance

CLAIMS MADE WARNING FOR APPLICATION: This Proposal Form is for a Claims Made and Reported Policy, relating to claims made against the Insureds during the Policy Period or any Extended Reporting Period that may apply.

Desa Ballard P.A. dba Ballard Watson Weissenstein

Name of Applicant Firm

NAME ALL OWNERS, PARTNERS, OFFICERS, DIRECTORS, STOCKHOLDER EMPLOYEES, AND EMPLOYED LAWYERS. ATTACH AN ADDITIONAL INDIVIDUAL INSURED SUPPLEMENTAL FORM IF THE FIRM SIZE EXCEEDS 20.

Individual Insured Information

*Use the following Designations to complete the table below.

"O"	Officers, Directors, or Shareholders of the Applicant Firm who are licensed lawyers	"A"	Associate for whom coverage is desired
"P"	Partners of a partnership	"IC"	Independent Contractor
"S"	Sole Proprietor / Individual	"PT"	Part Time
"E"	Employed lawyers (must be employee of Applicant Firm).	"R"	Retired
"C"	"Of Counsel" attorneys for whom coverage is desired		

Name of Lawyer	Designation*	For IC/PT Indicate # of hours worked	Admitted to the Bar Mo/Yr	Years in Practice	Lawyer's Individual Specialty	Member in Good Standing of the following Bar Association(s)
1. <u>Desa Ballard</u>	<u>O</u>	<u>N/A</u>	<u>11/1983</u>	<u>30</u>	<u>Professional</u>	<u>SC, Wash. DC</u>
2. <u>Harvey M. Watson</u>	<u>O</u>	<u>N/A</u>	<u>11/2005</u>	<u>8</u>	<u>"</u>	<u>SC</u>
3. <u>Stephanie Weissenstein</u>	<u>O</u>	<u>N/A</u>	<u>11/2004</u>	<u>9</u>	<u>"</u>	<u>SC</u>
4.						
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CLB
6-25-2013

ADMIRAL INSURANCE COMPANY

NOTICE TO COLORADO APPLICANTS: IT IS UNLAWFUL TO KNOWINGLY PROVIDE FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE COMPANY. PENALTIES MAY INCLUDE IMPRISONMENT, FINES, DENIAL OF INSURANCE, AND CIVIL DAMAGES. ANY INSURANCE COMPANY OR AGENT OF AN INSURANCE COMPANY WHO KNOWINGLY PROVIDES FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO A POLICY HOLDER OR CLAIMANT FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE POLICY HOLDER OR CLAIMANT WITH REGARD TO A SETTLEMENT OR AWARD PAYABLE FROM INSURANCE PROCEEDS SHALL BE REPORTED TO THE COLORADO DIVISION OF INSURANCE WITHIN THE DEPARTMENT OF REGULATORY AGENCIES.

NOTICE TO NEW MEXICO, PENNSYLVANIA APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES.

NOTICE TO APPLICANTS OF KENTUCKY: ANY PERSON WHO KNOWINGLY, AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS, FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME.

NOTICE TO APPLICANTS OF MINNESOTA, NEW JERSEY, OHIO, AND OKLAHOMA: ANY PERSON WHO KNOWINGLY, AND WITH INTENT TO INJURE, DEFRAUDS OR DECEIVES ANY INSURER OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM FOR THE PROCEEDS OF AN INSURANCE POLICY CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, IS GUILTY OF A FELONY AND IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.

NOTICE TO MAINE, MASSACHUSETTS, TENNESSEE, VIRGINIA, AND WASHINGTON APPLICANTS: IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE OR MISLEADING INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING THE COMPANY. PENALTIES INCLUDE IMPRISONMENT, FINES AND DENIAL OF INSURANCE BENEFITS.

NOTICE TO APPLICANTS OF FLORIDA: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO INJURE, DEFRAUD OR DECEIVE ANY INSURER FILES A STATEMENT OF CLAIM OR AN APPLICATION CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION IS GUILTY OF A FELONY OF THE THIRD DEGREE.

NOTICE TO ARKANSAS, DISTRICT OF COLUMBIA, LOUISIANA, MARYLAND, AND RHODE ISLAND APPLICANTS: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO FINES AND CONFINEMENT IN PRISON.

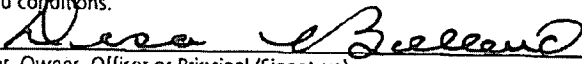
NOTICE TO NEW YORK APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME, AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION.

Signature Required

I understand that the information submitted herein becomes a part of the Applicant Firm's Lawyers Professional Liability Insurance Proposal Form and is subject to the same representations and conditions.

6.25.2018

Dated



Partner, Owner, Officer or Principal (Signature)

Title

Partner, Owner, Officer or Principal (Print Name)

Please submit this Proposal Form including appropriate documentation to:
Monitor Liability Managers, LLC, 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039

Admiral Insurance Company

Revised
Declarations Page

Lawyers Professional Liability Insurance

CLAIMS MADE WARNING FOR DECLARATIONS: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.

PLEASE READ AND REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

Whenever printed in this Declarations Page, the boldface type terms shall have the same meanings as indicated in the Policy.

Policy Form: LPL 9300 (04-09)

Policy Number: 91200935

Item 1. Name and Address of **Named Insured**:

Desa Ballard dba Ballard & Watson, Attorneys at Law
226 State Street
West Columbia, SC 29169

Person designated to receive all correspondence from the **Insurer**:

Mara Ballard
Manager/Secretary/Treasurer

Item 2. **Policy Period:** From July 1, 2013 (inception date) to July 1, 2014 (expiration date)

(Both dates at 12:01 a.m. Standard Time at the address of the **Named Insured**)

Item 3. Limit of Liability for the **Policy Period** (inclusive of **Damages** and **Claims Expense**):

A. \$1,000,000 each **Claim**, but in no event exceeding

B. \$2,000,000 in the aggregate for all **Claims**.

Item 4. Applicable Deductible:

\$10,000

Item 5. Premium:

\$21,119

Item 6. Endorsements attached:

SER-00-ADM (05-13) Service of Suit

LPL 99010 (04-09) Modification to Item 1. of the Declarations, Name and Address of **Named Insured**

Item 7. Notice to the **Insurer** as provided in sections VII. A. and VII. B. and any information furnished to the **Insurer** as provided in section VI. A. shall be sent to:

Monitor Liability Managers, Claims Department

Address: 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039

Fax: (847) 806-4017 Email: newclaim@monitorliability.com

All other notices required to be given to the **Insurer** under this Policy shall be sent to:

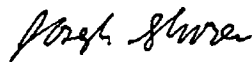
Monitor Liability Managers

Address: 2850 West Golf Road, Suite 800, Rolling Meadows, IL 60008-4039

Fax: (847) 806-6282

These Declarations along with the completed and signed **Proposal** and the Lawyers Professional Liability Insurance Policy shall constitute the contract between the **Insureds** and the **Insurer**.

Authorized Representative:



Date Issued: April 28, 2014

Admiral Insurance Company

Page 1 of 1

Modification to Item 1. of the Declarations Name and Address of Named Insured

In consideration of the premium paid for this Policy, it is understood and agreed that Item 1. Name and Address of **Named Insured**, of the Declarations is hereby amended to read as follows:

Item 1. Name and Address of **Named Insured**:

Desa Ballard dba Ballard & Watson, Attorneys at Law

226 State Street

West Columbia, SC 29169

Person designated to receive all correspondence from the Insurer:

Mara Ballard

Manager/Secretary/Treasurer

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

Insured Desa Ballard dba Ballard & Watson, Attorneys at Law	Policy Number 91200935
Effective Date of This Endorsement 04/09/2014	Authorized Representative

Policy Form: LPL 9300 (04-09)

22332-1200935-1145556

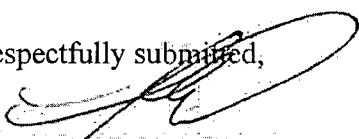
LPL 99010 (04-09)

ROA 00383

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.

Respectfully submitted,



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ATTORNEYS FOR APPELLANT

March 21, 2020