

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
J.C. Nicholson, Jr., Circuit Court Judge

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Appellate Case No. 2013-0013816577

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Centennial Casualty Co., Inc. .... Respondent

v.

Western Surety Co., d/b/a CNA Surety ..... Appellant

Western Surety Co., d/b/a CNA Surety ..... Defendant/Third-Party Plaintiff

v.

Charleston Auto Auction, A3 Auto Center, LLC,  
and Wylie Mickle ..... Third-Party Defendants

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**INITIAL BRIEF OF RESPONDENT**

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Ian S. Ford  
Bar no. 12463  
FORD & WALLACE LLC  
715 King Street  
Charleston, SC 29403  
T. 843.277.2011  
E. Ian.Ford@FordWallace.com

*Attorney for Respondent*

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**SC Court of Appeals**

## TABLE OF CONTENTS

|                                                                                                                                                        |     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| TABLE OF AUTHORITIES.....                                                                                                                              | iii |
| STATEMENT OF ISSUES ON APPEAL.....                                                                                                                     | iv  |
| STATEMENT OF THE CASE / FACTS.....                                                                                                                     | 1   |
| ARGUMENT.....                                                                                                                                          | 4   |
| I. DID THE LOWER COURT ERR IN DETERMINING THAT CHARLESTON AUTO AUCTION IS A "LEGAL REPRESENTATIVE" UNDER S.C. CODE § 56-15-320?.....                   | 4   |
| A. The statute is clear that an "owner or his legal representative" may recover damages under the bond. ....                                           | 4   |
| i. The statute and evidence are clear and support the Circuit Court's ruling.....                                                                      | 4   |
| ii. Appellant's primary argument is that the statute does not mean legal representative when it specifies "legal representative".....                  | 5   |
| B. Section 56-15-520 does not negate Respondent's status as a legal representative under the statute.....                                              | 7   |
| II. DID THE LOWER COURT ERR WHEN IT REFUSED TO REWRITE THE STATUTE TO EXCLUDE FRAUD IN THE PURCHASE OF MOTOR VEHICLES?.....                            | 8   |
| III. DID THE LOWER COURT ERR IN FAILING TO INTERPRET THE STATUTE TO EXCLUDE PARTIES THAT SOMETIMES ACT AS REPRESENTATIVES FOR BUYERS AND SELLERS?..... | 10  |
| CONCLUSION.....                                                                                                                                        | 11  |

## TABLE OF AUTHORITIES

### CASES

|                                                                                                                |          |
|----------------------------------------------------------------------------------------------------------------|----------|
| <i>Anderson v. S. Carolina Election Comm'n</i> , 397 S.C. 551, 725 S.E.2d 704 (2012).....                      | 4        |
| <i>Bryant Motors, Inc. v. Am. States Ins. Companies</i> , 118 Idaho 796,<br>800 P.2d 683 (Ct. App. 1990).....  | 6, 8     |
| <i>Connecticut Indemnity v. Burdette Chrysler Dodge Corp.</i> , 317 S.C. 406,<br>453 S.E.2d 902 (1994).....    | 8, 10    |
| <i>Grier v. AMISUB of S. Carolina, Inc.</i> , 397 S.C. 532, 725 S.E.2d 693 (2012) .....                        | 7        |
| <i>Hodges v. Rainey</i> , 341 S.C. 79, 533 S.E.2d 578 (2000).....                                              | 4        |
| <i>Jones v. State Farm Mut. Auto Ins. Co.</i> , 364 S.C. 222,<br>612 S.E.2d 719 (Ct. App. 2005).....           | 9        |
| <i>Lawrence v. Ward</i> , 5 Utah 2d 257, 300 P.2d 619 (1956) .....                                             | 7        |
| <i>Massachusetts Bonding &amp; Ins. Co. v. Cent. Fin. Corp.</i> , 124 Colo. 379,<br>237 P.2d 1079 (1951) ..... | 6        |
| <i>Mid-State Auto Auction v. Altman</i> , 324 S.C. 65, 476 S.E.2d 690 (1996).....                              | 5, 8, 10 |
| <i>Pye v. Estate of Fox</i> , 369 S.C. 555, 633 S.E.2d 505 (2006) .....                                        | 9-10     |
| <i>State v. General Ins. Co. of America</i> , 179 N.W.2d 123 (N.D. 1970).....                                  | 6-7      |
| <i>Sun Ins. Co. v. Aetna Ins. Co.</i> , 169 Neb. 94, 98 N.W.2d 692 (1959) .....                                | 6        |

### STATUTES

|                            |                  |
|----------------------------|------------------|
| S.C. Code § 8-11-620.....  | 6                |
| S.C. Code § 17-25-530..... | 6                |
| S.C. Code § 56-15-320..... | 1, 4, 5, 7, 8, 9 |
| S.C. Code § 56-15-520..... | 7                |
| S.C. Code § 56-19-360..... | 10               |

## STATEMENT OF ISSUES ON APPEAL

- I. DID THE LOWER COURT ERR IN DETERMINING THAT CHARLESTON AUTO AUCTION IS A "LEGAL REPRESENTATIVE" UNDER S.C. CODE § 56-15-320?
  - A. The statute is clear that an "owner or his legal representative" may recover damages under the bond.
    - i. The statute and evidence are clear and support the Circuit Court's ruling.
    - ii. Appellant's primary argument is that the statute does not mean legal representative when it specifies "legal representative".
  - B. Section 56-15-520 does not negate Respondent's status as a legal representative under the statute.
- II. DID THE LOWER COURT ERR WHEN IT REFUSED TO REWRITE THE STATUTE TO EXCLUDE FRAUD IN THE PURCHASE OF MOTOR VEHICLES?
- III. DID THE LOWER COURT ERR IN FAILING TO INTERPRET THE STATUTE TO EXCLUDE PARTIES THAT SOMETIMES ACT AS REPRESENTATIVES FOR BUYERS AND SELLERS?

## STATEMENT OF THE CASE / FACTS

Appellant's brief summarizes the procedural chronology of this action. The action centers on South Carolina's licensing statute for motor vehicle dealers, which requires a surety bond under S.C. Code § 56-15-320(B) (2009) (the "Dealer Bond Statute"). The Dealer Bond Statute requires motor vehicle wholesalers or dealers to obtain a bond in order to, *inter alia*, indemnify:

for loss or damage suffered by an owner of a motor vehicle, or **his legal representative**, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter.

*Id.* (emphasis added). "An owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter." *Id.*

Charleston Auto Auction is a wholesale auctioneer that facilitates the sale and purchase of automobiles among dealers. Charleston Auto Auction acts as the agent and legal representative for dealerships in the transactions; collects and conveys the funds for the automobiles; and conveys (but does not assume) the title to the automobiles between the parties. R. p. \_\_\_ (Affidavit of Laura Taylor ¶ 3).

Before Charleston Auto Auction will facilitate the sale of an automobile, dealers must enter into an agreement with Charleston Auto Auction, which makes Charleston

Auto Auction their legal representative in the transaction. R. p. \_\_\_ (Affidavit of Laura Taylor ¶ 4).

A3 Auto Center is an automobile dealer in South Carolina. In March 2008, A3 Auto Center purchased three automobiles using Charleston Auto Auction (the "Vehicles"). A Plus Auto Sales, Priceless Automotive, and Automotive Rentals, Inc. / ARI Fleet Ltd (collectively the "Selling Dealerships") each sold one of the Vehicles. R. p. \_\_\_ (Affidavit of Laura Taylor ¶ 5). Charleston Auto Auction was the auctioneer, the agent and legal representative pursuant to the Dealer Bond Statute. R. p. \_\_\_ (Affidavit of Laura Taylor ¶ 6). Pursuant to the Dealer Bond Statute, A3 Auto Center obtained a Bond from CNA Surety under the Dealer Bond Statute. R. p. \_\_\_ (Ex. 7 to motion for summary judgment).

A3 Auto Center paid for the Vehicles with worthless checks, causing at least \$35,305.00 in damage. R. p. \_\_\_ (Affidavit of Laura Taylor ¶¶ 7-8).

In the case below, Charleston Auto Auction, as the legal representative, sought reimbursement under the Bond for A3 Auto Center's worthless checks. Centennial has repaid Charleston Auto Auction on those claims. As the legal subrogee of Charleston Auto Auction, Centennial has the right to proceed in the place of Charleston Auto Auction in this matter. Centennial made demands on Appellant for payment under the Bond, which CNA Surety has rejected. R. p. \_\_\_ (Ex. 8 to motion to summary judgment). CNA Surety's primary contention is that neither Centennial nor Charleston Auto Auction is the "owner" or "legal representative" as required by the Dealer Bond Statute. The Circuit Court ruled in Respondent's favor, holding that Respondent qualified as a

“legal representative” under the Dealer Bond Statute. R. p. \_\_\_\_\_. Appellant has appealed that issue of statutory interpretation.

## ARGUMENT

### I. DID THE LOWER COURT ERR IN DETERMINING THAT CHARLESTON AUTO AUCTION IS A "LEGAL REPRESENTATIVE" UNDER S.C. CODE § 56-15-320?

A. The statute is clear that an "owner or his legal representative" may recover damages under the bond.

i. The statute and evidence are clear and support the Circuit Court's ruling.

The core issue is whether Charleston Auto Auction (or Centennial as its subrogee) is a "legal representative" under the Dealer Bond Statute. Where a statute's language is plain and unambiguous, the rules of statutory interpretation are not needed and a court may not impose another meaning. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *see also Anderson v. S. Carolina Election Comm'n*, 397 S.C. 551, 556-57, 725 S.E.2d 704, 707 (2012) ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.")

The Dealer Bond Statute is clear that an owner's legal representative may recover under the bond:

An owner **or his legal representative** who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter. . . .

S.C. Code § 56-15-320(B) (emphasis added). The purpose of the bond is to, *inter alia*, indemnify:

for loss or damage suffered by an owner of a motor vehicle, **or his legal representative**, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a

licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter.

*Id.* (emphasis added). The South Carolina Supreme Court has stated:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, **or the owner's legal representative**, with a cause of action against the surety on a bond issued pursuant to that statute.

*Mid-State Auto Auction v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (emphasis added). The undisputed evidence before the Circuit Court was that each vehicle's Bill of Sale explicitly made Charleston Auto Auction the "legal representative" by stating: "Seller and Buyer each appoint Auction Company as their **agent and legal representative** for the purpose of processing this transaction through Auction Company . . . ." R. p. \_\_\_ (terms of Purchase Agreement and Bill of Sale (p. 4, para. 2); emphasis added); R. p. \_\_\_ (title clerk authorizations).

Based on this clear language and evidence, the Circuit Court correctly found that Respondent was a "legal representative" under the statute.

ii. **Appellant's primary argument is that the statute does not mean legal representative when it specifies "legal representative".**

Appellant admits that Respondent is a legal representative. *See* App. Initial Br. at p. 10 ("CAA was merely an agent or legal representative for facilitating the transaction . . ."). Appellant's primary argument is that, in the statute, "legal representative" does not mean legal representative. Instead, Appellant argues, "legal representative" has a different, narrow meaning that excludes some legal representatives and includes other legal representatives, depending on the circumstances and context, which are not

specified in the statute. Appellant would have this Court create a new, separate, complex definition of "legal representative" that apparently would apply only in certain situations.

For example, Appellant argues that the Court should construe the statute to apply to legal representatives of criminal offenders (under S.C. Code § 17-25-530, which allows victims to sue criminal offenders), and to legal representatives who seek unpaid leave of deceased state employees (under S.C. Code § 8-11-620), and to bankruptcy trustees, and to executors, and to administrators, and under the Probate Code.

Appellant acknowledges that the term "legal representative" may have other meanings. *See* App. Initial Br. at p. 9. Other states' courts have construed dealer bond statutes to apply to persons beyond those argued by Appellant here. *Cf. Bryant Motors, Inc. v. Am. States Ins. Companies*, 118 Idaho 796, 799, 800 P.2d 683, 686 (Ct. App. 1990) (joint venturer allowed to recover under dealer bond statute: "We note, however, that the statute draws no such distinction between the consuming public and business merchants; the legislature did not limit the scope of the statute to buyers or consumers, nor did it exclude creditors, joint venturers, or other non-consumer classes."); *Massachusetts Bonding & Ins. Co. v. Cent. Fin. Corp.*, 124 Colo. 379, 381, 237 P.2d 1079, 1080 (1951) (finance company could recover under dealer bond statute); *Sun Ins. Co. v. Aetna Ins. Co.*, 169 Neb. 94, 109-112, 98 N.W.2d 692 (1959) (statutory motor vehicle dealer's bond was not limited to protecting buyers only, and the coverage afforded by bond extended to dealer's creditors as well); *State v. General Ins. Co. of America*, 179 N.W.2d 123, 125-27 (N.D. 1970) (dealer bond statute covered lending bank); *Lawrence v.*

*Ward*, 5 Utah 2d 257, 260-62, 300 P.2d 619 (1956) (mortgagee was entitled to recover under bond).

Appellant's interpretation of "legal representative" under the statute is not supported by the statutory language, or the legislative history, or the relevant case law. Instead, "[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Grier v. AMISUB of S. Carolina, Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) ("Thus, we must follow the plain and unambiguous language in a statute and have 'no right to impose another meaning.'" (internal citations omitted)). The Circuit Court correctly ruled that a legal representative was a "legal representative" under the statute.

**B. Section 56-15-520 does not negate Respondent's status as a legal representative under the statute.**

Appellant argues that S.C. Code § 56-15-520 excludes Respondent from the statute because that section states that wholesale motor vehicle auctions are not the owner, seller, transferor or assigner of the vehicle by reason of their name appearing on the title for the purpose of a transaction. The Circuit Court correctly pointed out that the statute's definitions and provisions do not prohibit an auction company from being the "legal representative" of a vehicle's owner. Moreover, the Circuit Court noted that a primary purpose of that provision is to prevent an auction company from being an owner of a vehicle for purposes of property taxation. R. p. \_\_\_\_\_. There is no indication

that § 56-15-520 changes whether an auction company is a “legal representative” under § 56-15-320.<sup>1</sup>

**II. DID THE LOWER COURT ERR WHEN IT REFUSED TO REWRITE THE STATUTE TO EXCLUDE FRAUD IN THE PURCHASE OF MOTOR VEHICLES?**

Appellant next argues that the statute only protects against fraud in the sale of motor vehicles, but excludes fraud in the purchase of motor vehicles. The language of the statute has no such limitation. Instead, the statute is deliberately broad and includes fraud “made in connection with the sale or transfer of a motor vehicle . . . .” S.C. Code § 56-15-320(B) (emphasis added). The language “in connection with” the “transfer” of a motor vehicle does not, under any reasonable interpretation, exclude purchases. It would be a significant, unfounded change for the Court to now limit the statute as suggested by the Appellant. Such a change would require rewriting of the entire statutory section.

Appellant is incorrect in arguing that the Court so limited the statute in *Mid-State Auto Auction*, 324 S.C. at 69-70, 476 S.E.2d at 692. In *Mid-State*, the issue presented was whether a person other than an “owner or his legal representative” may recover under

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<sup>1</sup> In its brief, Appellant also argues that Charleston Auto Auction made a business decision, and could have required cash or otherwise protected its interests. Appellant does not cite to the Record on Appeal in support of this assertion. See App. Initial Br. at pp. 10-11. Regardless, this assertion does not change Charleston Auto Auction’s position as a “legal representative” under the statute. Cf. *Bryant Motors, Inc.*, 118 Idaho at 799, 800 P.2d at 686 (“American States further maintains that merchants have better means available for protection against non-payment than does an individual member of the general public. Such argument, however, is misplaced. The bond required by statute is not a bond against insolvency, but a bond conditioned against fraud. A merchant is in no better position to protect against the deception of a dealer than is the general public.”).

the bond. The Court held that the statute allowed a cause of action only to “the owner of a motor vehicle, or the owner’s legal representative.” *Id.* There is no indication in the ruling that the Court was limiting the statute to exclude fraud in the purchase of a vehicle.

Appellant also is incorrect in arguing that *Connecticut Indemnity v. Burdette Chrysler Dodge Corp.*, 317 S.C. 406, 453 S.E.2d 902 (1994), limited the statute. As an initial matter, *Burdette* was overruled by *Mid-State*, 324 S.C. at 69-70, 476 S.E.2d at 692. Moreover, the ruling in *Burdette* was based on the understanding that the purchaser had not established “fraud” under the statute. In this action, there is no serious dispute that “fraud” was committed by (1) the two NSF checks (which were not for preexisting debts), and (2) the stop-payment placed on the third check. R. p. \_\_\_\_.

Moreover, Appellant’s argument makes no sense under the statute. A cardinal rule of statutory construction is that a statute must receive a practical and fair interpretation, which harmonizes its subject matter. *See Jones v. State Farm Mut. Auto Ins. Co.*, 364 S.C. 222, 232, 612 S.E.2d 719, 724 (Ct. App. 2005). For example, the statute requires Charleston Auto Auction to obtain a bond. *See* S.C. Code § 56-15-320; R. p. \_\_\_\_ (Ex. A to Supp. Memo. of Authorities); R. p. \_\_\_\_ (Respondent Motion at Ex. 2 (Aff. of Laura Taylor)). If Appellant’s arguments were correct—that because the auction is “neither the buyer nor the seller”<sup>2</sup> the statute and bond do not apply—the bonds that Charleston Auto Auction and similar auctions must purchase under the statute would be worthless, and nobody could legally make a claim on those bonds. The only

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<sup>2</sup> App. Initial Br. at p. 14.

reasonable interpretation is that dealers and auction companies are permitted to make claims on the bond "in connection" with the "transfer" of an automobile.

**III. DID THE LOWER COURT ERR IN FAILING TO INTERPRET THE STATUTE TO EXCLUDE PARTIES THAT SOMETIMES ACT AS REPRESENTATIVES FOR BUYERS AND SELLERS?**

Appellant argues that the Circuit Court should be reversed because, at times, an automobile auction acts as a representative for buyers and sellers. As an initial matter, it is not clear that this issue has been preserved for appeal. *See Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("[A]n issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.").

Moreover, Appellant's argument here is based on a different situation in a case that has been overruled. *See Mid-State*, 324 S.C. at 65, 476 S.E.2d at 690 (overruling *Burdette*, 317 S.C. at 406, 453 S.E.2d at 902, and holding that only motor vehicle owner or his legal representative could recover under statutory dealer's bond). The conduct referred to in *Burdette* was very different from what occurred here: in *Burdette*, the dealer (*Burdette*) had failed to transfer title to Eagle Auto, in violation of a different statutory requirement (S.C. Code § 56-19-360). *Burdette* then transferred the titles to the ultimate consumer purchasers in exchange for those consumers' claims against Eagle Auto. *See Burdette*, 317 S.C. at 410, 453 S.E.2d at 904. The court refused to allow *Burdette* to recover for the unlawful act of failing to transfer the titles to Eagle Auto. In contrast, in this action there is no allegation that Respondent engaged in any sort of unlawful act. And Appellant provides no law or evidence that Respondent is somehow barred under

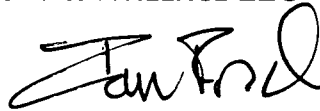
the statute because, at times, automobile auctions may serve as legal representatives for buyers and sellers in transactions.

**CONCLUSION**

For these reasons, the rulings of the Circuit Court should be affirmed.

Respectfully submitted,

FORD & WALLACE LLC



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Ian S. Ford  
Bar no. 12463  
715 King Street  
Charleston, SC 29403  
T. 843.277.2011  
E. Ian.Ford@FordWallace.com

*Attorney for Respondent*

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v.

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and Wylie Mickle ..... Third-Party Defendants

**RESPONDENT'S DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL**

1. Order of the Honorable Judge Nicholson denying motion for reconsideration dated 5/8/13
2. Order of Summary Judgment with the Honorable Judge Nicholson filed March 4, 2013
3. Complaint filed October 19, 2009
4. Answer and Third-Party Complaint filed November 16, 2009
5. Answer of Third-Party Defendant filed December 11, 2009
6. Stipulation of Facts dated May 22, 2012

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7. Centennial Casualty and Charleston Auto Auction's Motion For Summary Judgment with attachments filed July 12, 2010
8. Western Surety's Motion for Summary Judgment filed September 22, 2010
9. Centennial Casualty Co., Inc.'s Supplemental Memorandum of Authorities dated May 29, 2012 with exhibits
10. Proposed Order of Centennial Casualty Co., Inc.
11. Defendant Western Surety's Motion in Opposition to Centennial Casualty Co., Inc.'s brief dated May 29, 2012
12. Proposed Order of Defendant Western Surety
13. Western Surety's Notice of Motion and Motion for Reconsideration filed March 25, 2013
14. Centennial Casualty Co., Inc.'s Opposition to Defendant's Motion for Reconsideration filed April 15, 2013

Respectfully submitted,



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Ian S. Ford  
Bar no. 12463  
FORD & WALLACE LLC  
715 King Street  
Charleston, SC 29403  
T. 843.277.2011  
E. Ian.Ford@FordWallace.com

*Attorney for Respondent*

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**PROOF OF SERVICE**

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I, Ian S. Ford, attorney for Respondent Centennial Casualty Co., Inc. do hereby certify that I have on this 18th day of September, 2013, served all counsel of record with copies of Respondent's Designation of Matter to be Included in the Record, Certificate for the Designation of Matter, Initial Brief of Respondent, and Proof of Service my mailing copies by United States Mail, first class postage pre-paid, to counsel at the following address:

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APPELLANT'S COUNSEL OF RECORD:

S. Markey Stubbs, Esq.  
Baker, Ravenel & Bender, L.L.P.  
P.O. Box 8057  
Columbia, SC 29202



---

Ian S. Ford  
Bar no. 12463  
FORD & WALLACE LLC  
715 King Street  
Charleston, SC 29403  
T. 843.277.2011  
E. Ian.Ford@FordWallace.com

*Attorney for Respondent*

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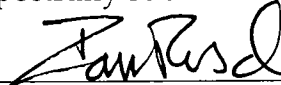
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**CERTIFICATION**

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The matter designated herein contains no matter irrelevant to the appeal.

Respectfully submitted,



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Ian S. Ford  
Bar no. 12463  
FORD & WALLACE LLC  
715 King Street  
Charleston, SC 29403  
T. 843.277.2011  
E. Ian.Ford@FordWallace.com

*Attorney for Respondent*