

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

Alison Renee. Lee, Circuit Court Judge

Appellate Case Number: 2012-212896

RECEIVED

AUG 06 2013

SC Court of Appeals

Charles Taylor,

Appellant,

v.

Thomas Davis and State Farm
Mutual Automobile Insurance Company,

Respondents,

REVISED INITIAL BRIEF OF THOMAS DAVIS-RESPONDENT

THOMAS DAVIS
P O BOX 773
MANNING, SC. 29105
Respondent

CONTENTS TABLE P.1

Authorities Table ----- 2

Issues on Appeal Statement ----- 3

The Case Statement ----- 3

Facts that's Relevant ----- 4

Arguments p. 5

S. C. Appeals Court Should Reverse Lower Court Rulings 12-17 p.7

For Reasons and upon Grounds 1-11 p.5-6 and 17-24 p.7-8

Final Conclusions and Specific Relief ----- p. 8

AUTHORITIES TABLE P.2

CASES

Ref: State Farm Mutual Auto. Ins. Co. v. Campbell p. 6

STATUTES

Ref: S. C. Law Section 38-77-160 last 3-2 lines p. 6

Other Authorities

SCACR 205-221&242 ----- p. 3,4,5&8

Notice 6.8.11 Appeal to S. C. Appeals Court ----- p. 3&5

S. C. Court of Appeals Order Dated 6.27.11 ----- p.3,4,7

All Applicable Authorities per Case Appeal ----- p. 1-8

Issues on Appeal Statement P.3

Once Notice of Appeal was filed 6.8.11 (R.p.23) the Lower Court lacked Jurisdiction-Authority (scacr 205-221&242) and/or otherwise (erred) ruling #12-17 on p.7 herein

CASE STATEMENT P.3

Respondent Davis adopt Appellant's amended briefs and additionally wish to add on as follows:

On 12.14.2007, Charles Taylor, {hereafter Taylor}, brought a \$10,000,000.00 suit--later it was amended to \$40,000,000.00 for negligence against me, Thomas Davis, {hereafter Davis}, for damages I cause him in a truck accident on 9.7.2007 to which I had no defense. Taylor suffered lifetime disability (R.p.41-42) among other injuries and losses, with extensive medical bills and property damages as stated in the "Appeals Court Settlement Agreement of 6.27.11", (R.p.2-5);

The losses stated therein all resulted regrettably from my rear ending Taylor into the Brown family car in the truck I was driving at the time. Because I was at fault for the accident, my rental truck company paid their limits \$25,000 to Taylor; and I signed a covenant on 11.13.08 (3pages total) (R.p.59-61) making clear what was agreed to in total by the covenant which allowed Taylor and the Brown family to go after whatever coverage that might be available to them, including the--any additionally I believed I had with the truck company.

The covenant I signed 11.13.08 forbade anyone from violating any provisions I put in place (R.p. 59 last paragraph), for my best interest to guard me against a larger judgment because I had no other coverage protection. If such provisions were violated without my written permission first, such covenant would become null and void. Later State Farm violated such provisions, causing such to become null-void, in their attempt to avoid full payment to Taylor in the course of Taylor pursuing his under insured claim against them, as State Farm paid \$25,000 of \$100,000 (Rp.44)

coverage and promised the remainder but later breached on that promise; forcing a risky trial for possibly up to a \$40,000,000.00 judgment **against me**, wherein if the worse happened, I would be the one liable, per State Farm. On 5.17.11 the case was tried (I couldn't attend). A jury award Taylor \$615 in damages. On 6.8.11 Taylor filed an appeal. I happened upon what had happen at trial for a \$615 award for such losses, which I stated in my affidavit attached-(**R. p. 67**).

FACTS HERE THAT'S RELEVANT P.4

In any case, because I had received and reviewed all the documentations per all Taylor's losses, as-1-example, (**R. p. 41 - 42**), thus it was my opinion his appeal would ultimately be successful for this among many reasons, **and I again**, would be put in jeopardy up to possibly \$40,000,000. by State Farm; which I begged them to settle with Taylor, (**R. p. 53 - 54**), to avoid putting me in such a predicament and that if they would not, then I would, for the \$1,735,000 that Taylor demanded to give up his appeal of the up to \$40,000,000.00 that he would again, still be seeking.

State Farm ignored me by not responding and thus I settled the matter in my best interest to limit my potential liability to \$1,735,000.00-amount involved per this appeal-and the **Appeals Court Agreement Order of 6.27.2011**, (**R. p. 2 - 5**), that ended appellant Taylor's first (1st) appeal and the original case against me for good. As to that Appeals Court Agreement Order, State Farm never appealed per scacr 221 & 242; until almost a year later at the hearing of, **5.17.12**, (**R.p.6 1st paragraph lines 3-4**), to enter into the Lower Court record, the above final \$1,735,000.00 judgment, did State Farm begin to "appeal" (not back to the S. C. Court of Appeals or the S. C. Supreme Court—but back); to the lower court-arguing that they should not be liable to pay; but only I--Davis should; and such was simply rule in the order--which rulings 12-17 on p.7 herein, caused the, issues on appeal-top p.3 above, and the same rulings for reversal on p.7 following;

ARGUMENTS P.5
Discussion-Citations-Authority

#1. Once the notice of appeal was filed on 6.8.11 (R. p. 23) the lower court had no jurisdiction-authority (scacr 205-221&242) otherwise (erred) ruling #12-17 p.7 herein; and same should be reversed and Respondent State Farm order to pay whole \$1.735M Judgment it caused because;

#1-a. Taylor offered-demanded at one point or another (R.p.69) & other letters dated as follows: 10.15.08 demand bal. of policy limits; **and** 7.10.2010 demand bal. of his policy limits \$75,000; **and** 4.26.11 demanded much less than policy limits; **and** 3.28.2012 demanded bal. policy limits; **and** 4.23.2012 demanded bal. policy limits or less than; **and** 5.14.2012 demanded balance policy limits or less than; **and** 1.5.2013 demanded balance policy limits; **and** in all instances to present, his under insurer State Farm refused; **and** additionally-I-Davis by letter of 11.30.2009 demanded also State Farm settle within its policy limits with its insured Taylor; **and** 6.3.2011 another letter from me-Davis to them-demanded same, (R. p. 53 - 54), and-State Farm did not respond and;

#2.In each instance, Taylor offered a full and final release of all claims against all parties, including especially me-Davis, and State Farm refused, and;

#3.State Farm was-is Taylor contract insurer (R.p.44) who Taylor paid his premiums to and thus state farm had no right to put me-Davis in such liability jeopardy to benefit state farm only, and;

#4.I got the best possible deal \$1,735,000.00 of the \$40,000,000.00 Taylor was seeking, and if it wanted, State Farm could've appeal to the S. C. Appeals or Supreme Courts any issue per the agreement order, (R. p. 2 - 5), within 15-30 days scacr 221&242, but it chose not to do so and;

#5. State Farm was notified-warned beforehand, (R. p. 53 - 54), but ignored me--Davis and;

#6. In any case per, S.C. Law Section 38-77-160, in relevant part, 2nd paragraph- last 3-2 lines says: no underinsured motorist policy may contain a clause requiring the insurer's consent to settle with the at-fault party, (R. p. 40), and;

#7. State Farm acted in unreasonable bad faith every opportune moment when it refused to settle the matter within Taylor's own policy limits for a full release, which refusal ultimately forced and cause the subject \$1,735,000. 00 Judgment--forcing me to protect my own best interest, and;

#8. The only other choice available to me-Davis, was to let Taylor's first appeal run its course and if such resulted in a judgment up to \$40,000,000.00 in a worse case scenario as happened in a landmark case--*State Farm Mutu. Auto. Ins. Co. v. Campbell*** \$145,000,000.00; **then what?;**

#9. State Farm would now be arguing that I-Davis should have taken action to limit my liability exposure and settle the case for the \$1,735,000.00 (R.p.2-5 l. 4d p.4) when offered by Taylor so;

#10. The predicament that I was put in, was that I would be blamed if I did, as in the instant case, and blamed if I didn't, if the worse case scenario happened per #8 and 9 above; but as shown and seen; it was State Farm's refusal to come to terms with Taylor within his own policy limits as he demand, (see #1-a above), and as I demanded before settling the matter, (R. p. 53 - 54), and;

#11. Again, State Farm never appealed anything per that Appeals Court Agreement Order of 6.27.11, or complained thereabout, (R. p. 2 - 5), from 6.27.11; until first (1st) time 5.17.12.

RESPONDENT DAVIS CONCLUSIONS P.7

The lower court 7.17.12 rulings below That

- #12. State Farm had no other financial duty to appellant in the matter; (R. p. 9 L.20);
- #13. State Farm obligations were exhausted with initial \$615 award; (R. p. 9 L. 17);
- #14. State Farm not required to participate in \$1,735,000.00 judgment; (R. p. 10 L. 1);
- #15. State Farm recovery to appellant can't exceed \$615 in this case; (R. p. 9 L. 19);
- #16. State Farm never represented me--Davis in the subject case; (R. p. 9 Line 21);
- #17. See appellant brief;

All should be reversed per #1-11 p.5-6 above and furthermore importantly #17-24 below

#17.Because State Farm and I knew Taylor damages-losses were basically what Taylor said because he provided us both--all the documentations to back up his claim and again as 1 example (R. p. 41 - 42) and any contrary statement by them was but deliberate misrepresentations and;

#18.Because it was State Farm misrepresentations and such, in such a case with such losses, that cause a \$615 award in the first (1st) instance, (R. p. 67), and the first (1st) appeal, (R. p.23), and;

#19.Because it was State Farm actions that voided my 11.13.08 protection covenant as stated in last paragraph on p.3 above, and, left me without protection in a \$40,000,000.00 suit they caused to continue to appeal rather than settle w-Taylor within own policy limits per #1-a p5 above and;

#20.Because the lower court rulings #12-17 above, was done erroneously per #1 p.5 above and;

#21.Because State Farm Mut. Auto. Ins. Co. in now a respondent-(this court 2.15.13 order) and;

#22. Because the 1st Appeals Court Case was **over** on 6.27.11, (**R. p. 2 - 5**), unless State Farm appeal from that Order to the Supreme Court--(it didn't)--so it was final 30 days thereafter, and;

#23. Because State Farm-themselves-in each and every instance could've avoided such situation-judgment if they wanted to as I tried to do per (**R.p.53-54**) but they chose not to #1-a p.5 above;

#24. Because State Farm gambled--rather than pay Taylor fully per his documented damages; they gambled on trying the case and if they luck out, they keep the money; if they-ultimately-lose, I-Davis would be saddle with the big judgment; so either way-State Farm couldn't loose. What their gamble didn't reckon on was Taylor appealing; (after--which) any rulings sought by State Farm in its favor should've been properly filed to the S. C. Court of Appeals, and thereafter to the Supreme Court scacr 221&242 not to lower court lest it be err thereafter.

Respondent Davis Final Conclusions and Specific Relief P.8

- a. Accordingly; the Appeals Court should reverse any-all #12-17 rulings p.7, on any-all #1-11 grounds p.5-6 and on further grounds #17-24 p.7-8 herein; and accordingly, order State Farm to pay the whole or its part of the \$1,735,000.00 final Judgment (**R. p.10 L.4**) it caused or help caused; or;
- b. Because: State Farm Mut. Auto. Ins. Co. is now a respondent-(this court's 2.15.13 order), it's a defacto reversal of #12-17 above, making State Farm automatically liable for whole or its part of the \$1.735M final Judgment (**R. p. 10 L. 4**) State Farm caused or help caused; which judgment was not appealed but only the rulings #12-17 herein on p. 7.

August 5, 2013

p.8

Submitted to This Court,
HUMBLY and RESPECTFULLY:



Thomas Davis/Respondent
P O Box 773
Manning, S. C. 29105

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
Alison Renee. Lee, Circuit Court Judge

Case: 2012-212-212896

Charles Taylor, Appellant,
v.
Thomas Davis and State Farm
Mutual Automobile Insurance Company, Respondents,

Proof of Service

I hereby certify that a copy; **Revised** Initial Brief of Thomas Davis Respondent; was served upon Appellant Charles Taylor and Respondent State Farm Mutual Automobile Insurance Company by depositing said papers in the United States Mail, Manning; South Carolina 29105, on the 5th day of August, 2013, with first class postage duly affixed and a return address clearly indicated on the envelope, addressed as follows:



Thomas Davis, Respondent
P O Box 773
Manning, S. C. 29105

Appellant Charles Taylor
Post Office Box 3652
Sumter, South Carolina 29151

Respondent State Farm Mutual Automobile Insurance Company
Attorney: James B. Lybrand, Jr.
Post Office Box 58, Columbia, South Carolina 29202