

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Ninth Judicial Circuit

Kristi F. Curtis, Circuit Court Judge

Appellate Case No. 2023-000423
Circuit Court Case No. 2018-CP-10-00666

Therese Hood,

Petitioner,

v.

United Services Automobile Association

Respondent.

PETITIONER’S PETITION FOR REHEARING

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Petitioner hereby files this Petition for Rehearing on Opinion No. 28249, which was filed January 8, 2025.

Petitioner files this Petition for Rehearing not with the expectation or request that the Court change the outcome of the decision in this case—Petitioner accepts and respects the opinion of this Court, but to request the Court amend its decision by deleting statements that the undersigned pursued a “meritless” case. Even if that request is not granted, Petitioner files this Petition in an effort to explain the conduct of the undersigned attorneys, which the Court found inappropriate.

It is clear from the opinions in this case that the Court may believe we intentionally brought a meritless claim in this instance. We want you to know that we value our reputations as attorneys, and we would never pursue a case we thought would call into question our professional reputation or one which we believed was meritless.

Our objective in this case, as is our objective in every matter that we have handled over the course of our careers, was to zealously represent our client and advance any argument that we believed was legally viable to pursue her claims. More than seven years have elapsed since the original direct action against USAA was filed on February 21, 2017, and we would not have put so much of our time and effort into this matter if we had not believed this was a legally viable case.

We also believe providing further context concerning our decision to pursue this case may be helpful to the Court in considering whether our conduct was inappropriate. When we filed this case, we were all relatively new attorneys. The case was referred to us by more experienced lawyers, and we attempted to do our due diligence in evaluating the case by discussing the case's viability with other experienced attorneys and insurance law experts. App. 1476 ¶¶ 16-18. All of those conversations and consultations persuaded us that it was a viable – if difficult – case. Not being one to shy away from challenging or difficult cases, we agreed to take the case.

Our belief in the case strengthened as we prevailed on two summary judgment motions as to the negligence and bad faith claims before two different circuit court judges.¹ App. at 6, 10-11 ¶¶ 23-24. We also survived a motion for directed verdict at trial as to both the bad faith and negligence causes of action. App. at 1549 ¶¶ 18-21, and 1550 ¶¶ 3-5. Additionally, the jury found in our client's favor, awarding her the maximum actual damages permitted by the court, and

¹ The first motion for summary judgment was denied with leave to refile due to ongoing discovery, but if there had been no duty, additionally discovery would not have been necessary.

punitive damages on top of that thus furthering our belief in the merit of the claims. App. at 15-16; 1550 ¶¶ 6-11. Against this success at trial, when JNOV was granted, we felt it was incumbent on us to honor our client's desire to pursue an appeal. Perhaps, with the benefit of hindsight, this action on our part may appear to have been improvidently taken, but at that point, having succeeded in surviving summary judgment and a motion for directed verdict plus receiving a jury verdict in our client's favor, we did not believe an appeal was meritless.

The concurring opinion noted the following from oral argument:

Counsel acknowledged to the court of appeals that the jury's 49% allocation came from Ms. Hood's "stipulation at trial" that she would not contend her headlights were on. Counsel stated the stipulation was "a trial tactic," because "the headlights had to be taken off the table in order for [Ms. Hood's] credibility not to be wrecked." The fear Ms. Hood's credibility might be wrecked obviously arose from the accounts of five eyewitnesses that Ms. Hood's headlights were not on and from evidence that it was dark when the accident occurred.

While counsel acknowledges that a lawyer is bound by the stipulations of another attorney representing the same client, the undersigned counsel believes it is important to note the context of this stipulation. Mr. Smith testified in the case against USAA and explained that he attempted to make that stipulation because:

[W]hat was going on at this point, Robbie, we had a hurricane coming down on the courthouse. The courthouse was closing in a matter of hours. The judge needed us to wrap it up. This I believe was one of the last witnesses if not the last witness to testify. The point of this, and if, right, if this witness is going to simply testify to the headlights, we would offer in exchange for cutting off the testimony and letting the jury go out and deliberate and moving this case along we would stipulate. I was not taken up on that stipulation. So unless there is another page where there is an offer and acceptance of the stipulation where the parties agreed, I would not contend that would be a stipulation. It was rejected.

App. 1507 ¶¶ 11-25. Mr. Smith's explanation of why he made that statement certainly is conclusive on the undersigned attorneys. The record demonstrates that during oral argument, the undersigned counsel was simply mistaken as to that point.

At the underlying trial, whether the lights were on or not was less of an issue because Ms. Hood's position was that the headlights were not required to be on at that time of day, so she did not forcefully contest the light issue except to the extent they were not required. Nevertheless, Ms. Hood did maintain her lights were on automatic and that she did not switch them off. App. 1509 ¶¶ 1-25, 1510 ¶¶1-6 (Q: And as you were driving did it seem to you that you didn't have your headlights on? A: No, I always have my headlights on. I have newer vehicles that has automatic lights and I don't turn them off. Q: All right. Do you remember switching it to running lights? A: No.)

We raise these examples simply to show that there were contested facts in this matter, and therefore, we did not believe that Ms. Hood's position was meritless. The sincerity of our belief in the merit of our client's position is further illustrated by the fact that we undertook representation on a contingency fee basis, so our client has paid and will pay nothing for the costs, effort and time expended on her behalf. Moreover, we did not charge any separate amount for pursuing the appeal; rather, the appeal was taken subject to the original contingency fee agreement.² We could have taken our part of the fee on the seven-figure underinsured motorist recovery after the underlying jury verdict in her favor, wished her well, and informed her to find another attorney to pursue her bad faith claim against USAA, but we did not do so. We now know that our sincere belief in her case was in error based upon the Court's opinion, which we accept and respect.

It is our hope that explanation to the Court of the reasons we pursued this appeal will alter, at least somewhat, your personal opinions of our advocacy in this matter. It is important to us that

² We understand that a petition for rehearing is generally limited to the evidence in the record, and although attorney's fees are discussed in the record the exact agreement is not referenced, but we provide this context in an attempt to demonstrate that we did not intentionally pursue a meritless lawsuit.

you know that we took your opinion in this case to heart, and that we have nothing but the greatest respect for this Court and for our profession.

Respectfully submitted

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