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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Appellate Case No.: 2023-000239

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Case No.: 2021-CP-26-07668

Gloria Ormand-Ward, by and through her Guardian and Conservator, CDM Corporation, through its Representative, Stephen Mantell . . . . . Appellant

vs.

David Litt, Homedebone, LLC, Rosaria A. Alagna aka Rose Alagna; Chris Parker; Chicago Land Agency Services, Inc.; Chicago Title Insurance Company; Pereira Partners, LLC; NB Labor LLC d/b/a Newman Brothers General Contractors; John Newman; and Toorak Capital, LLC . . . . . Defendants

Of which,

Chicago Title Insurance Company is the . . . . . Respondent

MOTION FOR PERMISSION TO ADDRESS THE ADDITIONAL CASE SUBMITTED BY RESPONDENT

COMES NOW the Appellant, by and through her Guardian and Conservator, CDM Corporation, through its Representative, Stephen Mantell, and submits this request to respond to the case of *Tyco Fire Products, LP v. AIU et al.*, C.A. No 2:23-2384-RMG, 2023, W.L. 6846686 at **4-5 (D.S.C. October 17, 2023), submitted by the attorney for the Respondent in his letter to the Honorable Jenny Abbott Kitchings, dated January 29, 2025.

ISSUE:

WHETHER THE CASE OF *TYCO FIRE* SHOULD BE CONSIDERED PERSUASIVE ON THE ISSUE OF WHETHER AN ADMITTED FOREIGN INSURANCE COMPANY'S LICENSURE IN SOUTH CAROLINA SHOULD NOT CONSTITUTE CONSENT TO PERSONAL JURISDICTION IN THIS STATE.

ARGUMENT AND DISCUSSION

In *Tyco Fire,* the plaintiff filed a lawsuit against its liability insurance carriers seeking both damages and declaratory relief. The insurance companies filed motions to dismiss, one of the grounds being that the United States District Court ("District Court") lacked personal jurisdiction over them.

Regarding the motions to dismiss for lack of personal jurisdiction, the District Court granted the insurance companies' Fed. R. Civ. P. 12(b)(2) motions, ruling that the District Court did not have personal jurisdiction over the carriers. The District Court held that an insurance carrier's licensure with the State, including its appointment of the Director of the South Carolina Department of Insurance as its agent for service of process, pursuant to S.C. Code Ann. § 38-5-70, did not constitute consent to be subject to be personal jurisdiction in South Carolina.

In its ruling, the District Court referenced that in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023), interpreting the case for the proposition that in order to be subject to the state's personal jurisdiction, the business registration statute must explicitly say that the requesting company consents to personal jurisdiction in the state. The District Court held that:

> . . . *Mallory* is limited to the situation where a state's business registration statute provides that a foreign corporation must consent to personal jurisdiction within the state as a condition of doing business. Otherwise, *Mallory* would require any foreign corporation registered to do business within a state, regardless

> of where it was incorporated or had its principal place of business, and regardless of its contacts with the state, to submit to personal jurisdiction within the state. This plainly exceeds the very limited scope of *Mallory*.

The District Court treated the licensure of an insurance company in South Carolina as the same as a regular foreign business obtaining a certificate of authority pursuant to S.C. Code Ann. § 33-15-101, *et seq*. However, a business entity obtaining a certificate of authorization is in no way comparable to a foreign insurance company becoming licensed as an insurer in this state.

In support of its reasoning the District Court also cited the Fourth Circuit's decision in *Fidrych v. Marriot Int'l Inc.*, 952 F.3d 124 (4th Cir. 2020), which held that South Carolina's general business registration statute (§ 33-15-101, *et seq*.) does not constitute consent to jurisdiction. *Fidrych*, however, involved a general business entity and not the licensure of an insurance company.

The District Court conflated the South Carolina general business registration statute, S.C. Code Ann. § 33-15-101 and § 33-15-105, with the requirements of S.C. Code Ann. § 38-5-70. The Appellant is not basing her claim that Respondent is subject to personal jurisdiction in this state because of filing a general business registration pursuant to § 33-15-101, but rather on § 38-5-70, which requires that a foreign insurance carrier in order to become an admitted insurance company to expressly consent appoint the Director of the South Carolina Insurance Commission as its agent for service of all process. These statutes are not the same and should not be treated as such.[1]

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[1] An insurer must be duly qualified to transact business in this state. See S.C. Code Ann. § 38-5-90(a). This would include complying with the general business registration statutes found in S.C. Code Ann. § 33-15-101,

The primary reason that *Tyco Fire* should not be considered persuasive in this appeal is that the District Court misapprehended the significance of the *Mallory* decision, which expressly affirmed the United States Supreme Court's prior decision in *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917). Justice Gorsuch, for the Court, stated that "*Pennsylvania Fire* controls this case." The District Court did not mention *Pennsylvania Fire* in its ruling. *Pennsylvania Fire* is directly on point to this appeal and should be considered as controlling. The Appellant discusses the applicability of *Pennsylvania Fire* to this appeal in pages 10-13 and 19 of her Final Brief.

Most importantly, the District Court either overlooked or misapprehended the significance of South Carolina cases that address the issue of whether a foreign insurer licensed in South Carolina has consented to jurisdiction within the state. The cases overlooked are the:

***Wofford* Decision:**

The District Court did not consider the earlier federal precedent in *Wofford v. Prudential Ins. Co. of America*, 65 F. Supp. 637 (D.S.C. 1946), which supports the rule that a foreign insurer licensed in South Carolina consents to jurisdiction within the state.

***Equilease* Decision:**

The District Court failed to mention the South Carolina case of *Equilease Corp. v. Weathers*, 275 S.C. 478, 272 S.E.2d 789 (1980), which establishes that South Carolina recognizes that a foreign insurer that becomes licensed in South Carolina has consented to jurisdiction in the state.

***White Oak* Decision:**

Similarly, the District Court overlooked the South Carolina Supreme Court decision of *White Oak Manor, Inc. v. Lexington Ins. Co.,* 407 S.C. 1, 753 S.E.2d 537(2014), which further supports the argument that a foreign insurer licensed in South Carolina consents to jurisdiction within the state. This case, along with *Equilease* and *Wofford*, establishes a clear precedent that was not properly considered in *Tyco Fire*.

Wofford, Equilease, and *White Oak* establish that South Carolina recognizes that a foreign insurer that becomes licensed in South Carolina has consented to jurisdiction in the state. This is discussed in the Appellant's Final Brief at pages 16-18 and 21.

In summary, the District Court in *Tyco Fire* did not properly consider these critical decisions, which collectively establish that a foreign insurer's licensure in South Carolina constitutes consent to personal jurisdiction in the state. This oversight undermines the persuasiveness of the *Tyco Fire* ruling on this issue.

For the above and foregoing reasons, the Appellant respectfully prays that this Court allow this motion to serve as her response to the applicability of *Tyco Fire* to this appeal.

Respectfully submitted,

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Case No.: 2021-CP-26-07330

Gloria Ormand-Ward by and through her Guardian and Conservator, CDM Corporation, Through its Representative, Stephen Mantell . . . . . Appellant

vs.

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February 5, 2025

PROOF OF SERVICE

I certify that I have served the **Appellant's Motion to Address the Additional Authority Submitted by Respondent** via electronic mail in the U.S. Mail on February 5, 2025, addressed to the attorney of record for the Respondent:

Denny P. Major, Esquire
Haynsworth, Sinkler, Boyd
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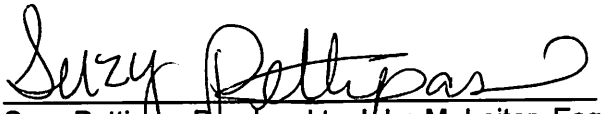

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