

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Andria Bucknor, )  
 )  
Plaintiff, )

Civil Action No. 2023-CP-40-06332

vs. )

InsureMax Insurance Company and )  
Erian Jerod Williams, )  
 )  
Defendants. )

**ORDER GRANTING MOTION TO**  
**DISMISS DEFENDANT(S),**  
**INSUREMAX INSURANCE**  
**COMPANY AND/OR**  
**ASSURANCEAMERICA INSURANCE**  
**COMPANY**

---

This matter came before the court on August 22, 2023, upon defendant(s)' InsureMax Insurance Company ("InsureMax") and/or AssuranceAmerica Insurance Company ("AssuranceAmerica"), Motion(s) to Dismiss. Douglas Edward Leadbitter, Esquire, appeared on behalf of the defendant, Erian Jerod Williams, and Haley M. Saxby, Esquire, appeared on behalf of InsureMax and AssuranceAmerica. The Court confirmed that it sent notice of the hearing to the plaintiff, Andria Bucknor, but she failed to appear.

**BACKGROUND**

This case arises out of a motor vehicle incident that occurred on Farrow Road in Richland County on December 18, 2021. The pro se plaintiff, Andria Bucknor, allege she was traveling Northbound when the defendant, Erian Jerrod Williams, collided with her vehicle. The vehicle driven by Mr. Williams was insured by InsureMax Insurance Company, a subsidiary of AssuranceAmerica Insurance Company, through a liability policy issued to its named insured, Gwendolyn F. Williams and bearing Policy No. RSC1907688.

The plaintiff filed a Summons and Complaint in the Richland County Court of Common Pleas on November 29, 2023, naming InsureMax Insurance Company and Erian Jerrod Williams as defendants. She alleged Mr. Williams was negligent in failing to keep a proper lookout, speeding, failing to keep vehicle under proper control, and in operating the vehicle in an unsafe, reckless, or indiscriminate manner without due regard for the safety of others. The plaintiff's Complaint does not contain any allegations specifically as to InsureMax. Therefore, InsureMax filed a Motion to Dismiss the plaintiff's Complaint on January 2, 2024.

In response, the plaintiff filed an "Answer" to the Motion on January 30, 2024, substituting AssuranceAmerica Insurance Company as a defendant and refiled her Complaint with the same allegations. This purported Amended Complaint does not contain any allegations specifically as to AssuranceAmerica. While the Court did not grant leave to the plaintiff to amend her Complaint, AssuranceAmerica filed a Motion to Dismiss on April 15, 2024. The plaintiff then filed "Answers" to this Motion on May 13, 2024, the first one seeking dismissal of AssuranceAmerica, and the second entitled "Motion Asking to Reconsider Adding InsureMax Insurance Company." She once more changed the Case Caption to include InsureMax as a defendant.

### **LEGAL STANDARD**

A motion to dismiss a claim pursuant to Rule 12(b)(6), SCRCP, must be based "solely on allegations set forth in the complaint." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). A motion to dismiss should be granted if the facts and inferences therefrom would not entitle a plaintiff to "any relief on any theory of the case." Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Doe, 373 S.C. at 395, 645 S.E.2d at 247-48.

## ANALYSIS

The defendants, InsureMax Insurance Company and AssuranceAmerica Insurance Company, are not real parties in interest. Therefore, these defendants have no capacity to be sued. “A real party in interest is ‘the party who, by the substantive law, has the right sought to be enforced.’” Patton v. Miller, 420 S.C. 471, 479, 804 S.E.2d 252, 256 (2017) (quoting Bank of Am., N.A. v. Draper, 405 S.C. 241, 220, 746 S.E.2d 478, 4821) (Ct. App. 2013)). In South Carolina, injured parties do not have the right to seek damages from liability insurance carriers of at-fault drivers. “[I]n a tort action, suit must first be brought against the insured or party claimed to be liable,” and “an insurance carrier cannot be joined in such a suit, or suit brought individually against such a company.” Ford v. Glens Falls Indem. Co., 80 F. Supp. 347, 348 (D.S.C. 1948) (granting defendant’s motion to dismiss and finding “there is no direct liability by the insurance company to the plaintiff”). “[I]n fact, it is universally forbidden that any evidence or reference made to the fact that the defendant is protected by insurance.” Id.

InsureMax Insurance Company insured the vehicle driven by Mr. Williams on the date in question. This is the only connection InsureMax has to the allegations set forth in the plaintiff’s Complaint. As the District Court found in Ford, “[i]t is hardly necessary to cite cases or authorities” to establish that Mr. Williams’ liability insurer is an improper party in this action. Ford, 80 F. Supp. 347 at 348. “In South Carolina such has long been the law.” (citing Horsford v. Carolina Glass Co., 92 S.C. 236–258, 75 S.E. 533 (1912); Cox v. Emp. Liab. Assur. Corp., 191 S.C. 233, 196 S.E. 549 (1938)). Accordingly, based upon well-settled South Carolina law, the defendants, InsureMax and AssuranceAmerica, are not real parties in interest and are not proper defendants in this action.

**CONCLUSION**

For the reasons set forth above, the plaintiff has failed to state a valid claim for relief against the defendants, InsureMax Insurance Company and AssuranceAmerica Insurance Company. Accordingly, the Motions to Dismiss of InsureMax Insurance Company and AssuranceAmerica Insurance Company are hereby granted.

---

The Honorable Jocelyn Newman  
5th Judicial Circuit

Columbia, South Carolina

\_\_\_\_\_, 2024



Richland Common Pleas

**Case Caption:** Andria Bucknor vs Insuremax Insurance Company , defendant, et al

**Case Number:** 2023CP4006332

**Type:** Order/Dismissal

So Ordered

Jocelyn Newman