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**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Thomas W. McGee, III, Circuit Court Judge

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Appellate Case No. 2024-002036

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Robert C. Workman, Individually and as  
Personal Representative of the Estate of  
James K. Workman, Kelly Workman Tick  
and Matthew T. Workman.....Plaintiffs/Appellants,

v.

State Farm Mutual Automobile Insurance  
Company and Gallivan, White & Boyd, P.A.....Defendants

of which

State Farm Mutual Automobile Insurance Company is the  
.....Defendant/Respondent.

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**INITIAL BRIEF OF APPELLANTS**

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**STATEMENT OF ISSUES ON APPEAL**

- A. DID THE TRIAL COURT ERR IN DISMISSING ALL APPELLANTS' CLAIMS UNDER THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT (SCUTPA) BY DETERMINING, AS A MATTER OF LAW, INSURANCE COMPANIES ARE EXEMPT?**
- B. DID THE TRIAL COURT ERR IN DISMISSING THE INDIVIDUAL APPELLANTS' CLAIMS—INCLUDING ABUSE OF PROCESS, FRAUD, CONSTRUCTIVE FRAUD, NEGLIGENT MISREPRESENTATION, ETC.—FOR LACK OF STANDING AND FAILURE TO STATE A CLAIM, DESPITE SUFFICIENT ALLEGATIONS OF CONCRETE HARM?**

## STATEMENT OF THE CASE

Appellants filed this lawsuit on April 14, 2023 against State Farm Mutual Automobile Insurance Company (State Farm). (R. \_\_\_ Comp.). Appellants are Robert C. Workman, individually and as Personal Representative of the Estate of James K. Workman, and his siblings, Kelly Workman Tick and Matthew T. Workman (“Plaintiffs” or “Appellants”) Their father was killed in a multicar collision caused by a State Farm insured driver.

Appellants alleged several causes action against State Farm, including Abuse of Process, Fraud, Negligent Misrepresentation, Negligence, and violations of the South Carolina Unfair Trade Practices Act (SCUTPA).<sup>1</sup>

State Farm filed a motion for a judgment on the pleadings. (R. \_\_\_) (Motion for Judgment on Pleadings Sept. 1, 2023). Appellants submitted a memorandum in opposition. (R. \_\_\_ Plaintiffs Memo in Opposition to State Farm’s Judgment on the Pleadings July 11, 2024). The motion was heard. (R. \_ Transcript 2024.07.11.)

The trial court granted State Farm’s motion September 20, 2024.

Appellants timely filed a motion for reconsideration September 30, 2024. (R. \_\_\_) A

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<sup>1</sup> The lawsuit also alleged several causes of action against Gallivan, White & Boyd, P.A. (GWB), State Farm’s attorneys. An order disposed of claims against GWB. Plaintiffs have not filed an amended complaint against GWB.

requested supplemental memo was submitted. (R. \_\_\_ 2024.09.30 Plaintiffs' Supplemental Submission as Requested by the Court.)

The trial court issued an amended order November 6, 2024, granting State Farm's motion for judgment on the pleadings as to all Appellants for the SCUTPA claim and to dismiss all claims by the late James Workman's children for lack of standing, with prejudice. (R. \_\_\_). The Estate was allowed to file an amended complaint. That was done December 2, 2024. (R. \_\_\_). Appellants appeal the amended Order. Notice of appeal was timely filed and served December 2, 2024.

This Court has jurisdiction of this appeal pursuant to S.C. Code Ann. § 14-8-200 (a) and the fact that substantial rights of the parties have been determined.

## STANDARD OF REVIEW

### A. JUDGMENT ON THE PLEADINGS – *DE NOVO*

This Court reviews a trial court’s decision to grant judgment on the pleadings under SCRCP, Rule 12(c), *de novo*.

A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment. All properly pleaded factual allegations are deemed admitted. When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties. A judgment on the pleadings is a drastic procedure.

*Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)

(internal citations omitted).

“A motion for judgment on the pleadings will be sustained only where the pleadings are so defective that, taking all the facts alleged in the pleadings as admitted, no cause of action or defense is stated.” *Diminich v. 2001 Enters., Inc.*, 292 S.C. 141, 142, 355 S.E.2d 275, 275 (Ct. App. 1987). When a court hears a Rule 12(c) motion for judgment on the pleadings against a plaintiff, all factual allegations must be accepted as true and construed liberally in favor of the plaintiff.

## **B. STATE CAUSES OF ACTION AND STANDING – *DE NOVO***

This Court reviews a trial court’s decision as to a party’s standing and the dismissal pursuant to SCRCP, Rule 12(b)(6) *de novo*. To have standing, “one must be a real party in interest. ‘A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action.’” *Protopapas v. Wall, Templeton & Haldrup, P.A.*, 442 S.C. 217, 225–26, 898 S.E.2d 150, 154 (Ct. App. 2023), *reh’g denied* (Mar. 18, 2024), *cert. denied* (Feb. 12, 2025).

“On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court.” *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). “That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the ‘facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.’” *Hager v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 746, 869 S.E.2d 886, 889 (Ct. App. 2022) (quoting *Morris*, 381 S.C. at 646, 675 S.E.2d at 433). “If the facts and inferences would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper.” *Id. Santos v. Harris Inv.*

*Holdings, LLC*, 439 S.C. 214, 218–19, 886 S.E.2d 483, 485 (Ct. App. 2023), *reh’g denied* (May 15, 2023).

Whether Appellants, who are Mr. Workman’s children, had standing and stated causes of action is a question of law based on the pleadings, not a question of fact.

## SUMMARY OF THE FACTS

State Farm forged documents, created a new declarations page adding an excluded driver endorsement and used unapproved forms to avoid paying coverage for a multicar collision that resulted in the death of Plaintiffs' father. (R. \_\_\_ Comp. pp. 4-5 ¶¶ 7, 13-15) State Farm then filed a declaratory judgment action using those documents and falsely claimed they were true to deny coverage for the benefit of Plaintiffs.<sup>2</sup> R. \_\_\_ Comp. p. 5 ¶¶ 12-15) As a result of State Farm's conduct, Plaintiffs allege various causes of action against State Farm and that they sustained various damages. (*See e.g.* R. \_\_\_ Complaint, pp. 5, 9-24, ¶¶ 12-15, 40-100; pp. 26-35, ¶¶ 109-161).

### A. MULTI CAR COLLISION, DEATH, STATE FARM FORGES NEW POLICY

State Farm's insured caused a multicar collision. This resulted in the death of the individual plaintiffs' father James K. Workman (Mr. Workman). Initially, State Farm confirmed coverage to Appellants (R. \_ Comp. p. 3 ¶¶ 5, 6) and its insureds (R. \_ Comp. pp. 8-9 ¶¶ 37-39). Later, State Farm committed forgery in violation of S.C. Code Ann. § 16-13-10 and created a false declarations page to exclude coverage. R. \_ Comp. pp. 4, -13, 18, 22, ¶¶ 7, 30-35, 40 – 57, 76, 91. State Farm also created a new policy number along with a new period of coverage and

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<sup>2</sup> The State Farm declaratory judgment action was filed in United States District Court on August 16, 2021. (R. \_\_\_ p. 2, 5, ¶¶ 5, 12.)

claimed the new forged policy “replaced” the actual policy. (R. \_\_ Comp. p. 12, ¶¶ 50-52). Before the collision, nothing in the policy excluded the at-fault driver from coverage. (R. \_\_ Comp. pp. 4, 8 ¶¶ 7, 34-35.) It is undisputed that the portions of the forged policy appearing below *never* existed until weeks after the collision. (R. \_\_ Transcript, p. 8, lines 10–19, - p. 14).

6023DC DRIVER EXCLUSION-MELVIN O LAMB III.

The above shows the language State Farm added to the declaration page after the collision to falsely assert Lamb as an Excluded Driver, even though he wasn't before. (R. \_\_ Comp. p. 11 ¶ 51)

POLICY NUMBER 632 3189-B07-40B

The above shows State Farm created a new policy number -40B after the collision even though policy 40A was the policy in place at the time of the collision. (R. \_\_ Comp. p. 11 ¶ 51)

Replaced policy number 6323189-40A.

The above that State Farm falsely claimed that the policy that existed -40A that did not exclude the driver was replaced by policy -40B which showed the driver as excluded. (R. \_\_ Comp. p. 11 ¶ 51)

POLICY PERIOD JUN 10 2021 to FEB 07 2022  
12:01 A.M. Standard Time

Even though the policy was terminated on June 13, 2021, State Farm altered the policy period to start two days before the collision and extend to February 7, 2022. (R. \_\_ Comp. pp. 8, 11 ¶¶ 36, 51)

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID. NUMBER	CLASS
2004	CHEVROLET	TAHOE	SPORT WG	1GNEK13Z54R235227	405H521000

SYMBOLS	COVERAGE & LIMITS	PREMIUMS
A	Liability Coverage	
	Bodily Injury Limits	
	Each Person, Each Accident	
	\$25,000 \$50,000	
	Property Damage Limit	
	Each Accident	
	\$25,000	
U	Uninsured Motor Vehicle Coverage	
	Bodily Injury Limits	
	Each Person, Each Accident	
	\$25,000 \$50,000	
	Property Damage Limit	
	Each Accident	
	\$25,000	
* Total premium for JUN 10 2021 to FEB 07 2022.		This is not a bill.

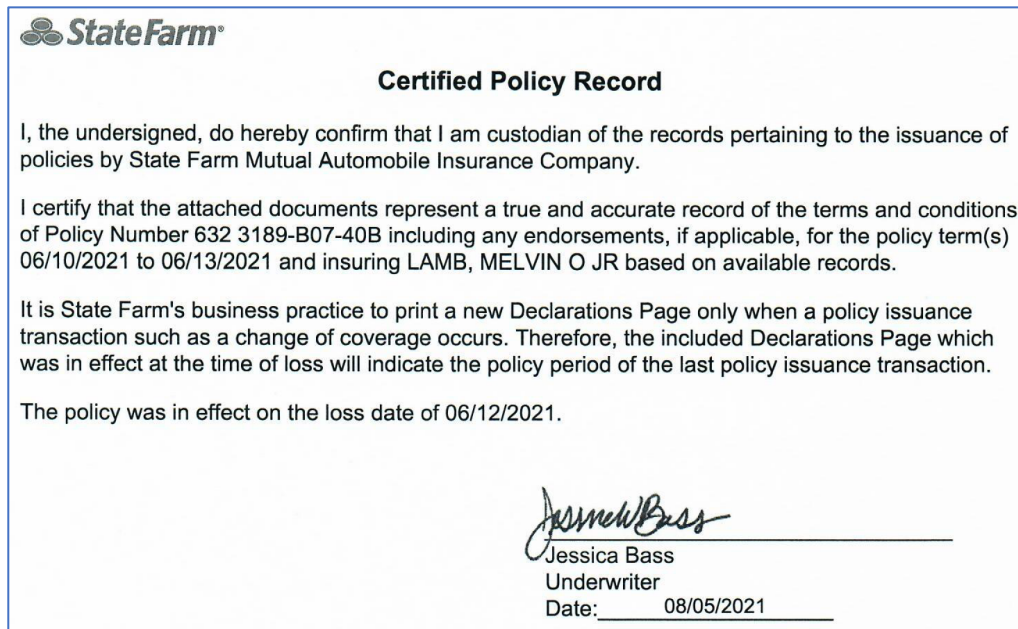
State Farm then intentionally hid facts and their misconduct by redacting parts of the bogus declarations page attached to the DJA. For example, premium information would reveal amounts never charged. (R. \_\_ Comp. pp. 19-20 ¶¶ 79-82.)

In breach of various duties owed to the Appellants, the forged documents were used to replace the existing policy and in litigation to hide the actual facts and State Farm’s misconduct. (R. \_\_ Comp. pp. 4, 19, 24 ¶¶ 7, 79, 100)

### **B. STATE FARM USES FORGED POLICY TO DENY COVERAGE**

The forged declarations page including the changes made to exclude coverage was part of a State Farm “Certified Policy Record” (R. \_\_ Comp. pp. 4, 12-14, ¶¶ 11, 52-56). This false certification was an Exhibit to a Declaratory Judgment Action that State Farm filed against Mr. Workman’s Estate to exclude coverage for damages arising from his wrongful death. (R. \_\_ Comp. pp. 15-17, ¶¶ 61, 71). The Certified Policy Record falsely states attached documents represented

the policy, with the terms and conditions in effect on the date of loss. (R. \_\_\_ Comp. pp. 19, 23, 29 ¶¶ 78, 91, 123). State Farm knew Appellants, the District Court and others would rely on those statements as being true and would make decisions about whether to invoke their own available uninsured coverage, instead of State Farm's liability coverage. (R. \_\_\_ Comp. pp. 5, 10, 13-14, 23-24, 30 ¶¶ 12-15, 44-48, 56, 77, 91-99, 129. R. \_ Transcript pp. 56-57).



(R. \_\_\_ Comp. p. 13 ¶55.)

State Farm used these false documents to convince Appellants, others involved in the collision and a court that it had no obligation to indemnify, defend, or pay for damages. (R. \_\_\_ Comp. pp. 15, 17 ¶¶ 63-64, 72-73.)

State Farm falsely stated it had investigated the matter and “believes, based upon the Policy exclusion...it has no duty” to pay the claims. (R. \_\_\_ Comp. pp. 18-19, ¶¶ 74-76). Other false and misleading statements were made as part of State Farm’s criminal and other misconduct. (R. \_\_\_ Comp. pp. 4, 5, 10, 18-20 ¶¶ 7, 12-14, 41, 42, 76, 79-83, 91.)

### **C. STATE FARM USES UNAPPROVED INSURANCE FORM**

State Farm also falsely asserted that a form purportedly excluding the driver—referred to as Form 6023DC—was valid when it knew that the form had never been approved by the South Carolina Department of Insurance (DOI) for use as required by law. (R. \_\_\_ Comp. pp. 4-5, 14-15 ¶¶ 11-12, 58, 60-61.) State Farm admits that prior to the collision it failed to have the exclusion form it tried to use to exclude coverage approved by the DOI. (R. \_\_\_ Transcript, p. 9, lines 1-6).

### **D. STATE FARM’S CONDUCT CAUSES HARM TO PLAINTIFFS AND OTHERS**

As a direct and proximate result of State Farm’s illegal, fraudulent and improper conduct, Plaintiffs suffered direct, concrete injuries, separate from those of the Estate. (R. \_\_\_ Comp. pp. 24-27, 30, 31, 35 ¶¶ 100-102, 105, 108, 113, 131, 140, 160.) Appellants hired counsel, incurred significant attorneys’ fees, costs, and litigation expenses and suffered emotional distress as a result of State Farm’s wrongful and tortious conduct “in responding to the fraudulent and false

documents created by State Farm.” (R. \_\_\_ Comp. pp. 24-28, 30-31, 35 ¶¶ 101-105, 108, 113, 116, 131, 140, 160. R. \_\_\_ Aff. ¶ 9. R. \_\_\_ Transcript p. 44 lines 14-21)

#### **E. REVERSAL IS PROPER BECAUSE OF TRIAL COURT ERRORS**

Despite these well-pleaded allegations, the trial court dismissed Appellants’ claims, erroneously concluding in its Amended Order (R. \_\_\_ Amended Order pp. 14–22) that Appellants lacked standing, in part because they were not parties to the declaratory judgment action filed by State Farm. (R. \_\_\_ Amended Order, pp. 6, 9, 14, 16) The trial court failed to accept the factual allegations as true, as required under Rule 12(c) and under the liberal pleading standard articulated in *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991). A “judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment.” *Russell*, 305 S.C. at 89, 406 S.E.2d at 339.

Appellants alleged sufficient facts to assert various causes of action and standing: a personal, concrete injury; a causal link to the State Farm’s conduct; and redressability through damages or injunctive relief. The trial court’s misapplication of standing, its erroneous reliance on Appellants’ absence from a prior lawsuit, and its failure to credit specific factual allegations are reversible errors. Accordingly,

this Court should reinstate the individual claims of SCUTPA, abuse of process, fraud and negligent misrepresentation, etc. and remand for further proceedings.

## ARGUMENTS

### I. THE TRIAL COURT ERRED IN DISMISSING PLAINTIFFS' SCUTPA CLAIMS

The Estate and individual Appellants appeal from the trial court's judgment as a matter of law dismissing their SCUTPA causes of action. The trial court misapplied S.C. Code Ann. § 39-5-40(c) by concluding the insurance industry, because it is regulated, is categorically exempt from SCUTPA. *See* (R. \_\_\_ Amended Order, pp. 18–21.) The trial court also erroneously relied on nonbinding and unpublished authority and misinterpreted S.C. Code Ann. § 38-77-341.

#### A. SCUTPA'S PURPOSE AND LIMITED EXEMPTION

The South Carolina Unfair Trade Practices Act (SCUTPA) is a remedial law. It “declares unfair or deceptive acts or practices in trade or commerce unlawful.” *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 414 S.C. 33, 56, 777 S.E.2d 176, 188 (2015). *See* S.C. Code Ann. § 39-5-20.<sup>3</sup> “In considering a remedial act designed to protect a class of persons or the public at large, the courts

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<sup>3</sup> Trade and commerce involve “[e]very business occupation carried on for subsistence or profit and involving the elements of bargain and sale, barter, exchange, or traffic.” *Black’s Law Dictionary* (12th ed. 2024); *see Bretton v. State Lottery Comm’n*, 41 Mass.App.Ct. 736, 673 N.E.2d 76, 78–79 (1996) (recognizing that “the proscription in § 2 of ‘unfair or deceptive acts or practices in the conduct of any trade or commerce’ must be read to apply to those acts or practices which are perpetrated in a business context” (citations omitted)).” *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 639, 743 S.E.2d 808, 816 (2013). (Board regulation did not constitute trade or commerce within SCUTPA).

liberally construe the act to carry out its purposes.” *Spencer v. Barnwell Cnty. Hosp.*, 314 S.C. 405, 408, 444 S.E.2d 538, 540 (Ct. App. 1994).

SCUTPA does not define the terms “unfair” and “deceptive.” Rather, the legislature intended the courts to be guided by federal interpretations of those terms. S.C. Code Ann. § 39-5-20(b) (instructing South Carolina courts to take guidance from “the interpretations given by the Federal Trade Commission and the Federal Courts to § 5(a)(1)” of the FTCA). *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 414 S.C. 33, 69, 777 S.E.2d 176, 195 (2015). As to SCUPTA, South Carolina courts have consistently held that an act is unfair if it is immoral, unethical, oppressive, or offensive to public policy or deceptive if it has a tendency to deceive. *Id.*, 414 S.C. at 56–57, 777 S.E.2d at 188–89.

## **B. REGULATED INDUSTRIES NOT EXEMPT**

Although SCUTPA includes a limited exemption under § 39-5-40(c) for actions “permitted under laws administered by” a regulatory body, this does not amount to blanket immunity for all conduct within regulated industries. As the Supreme Court held in *State ex rel. Wilson*, 414 S.C. 33, 777 S.E.2d 176 (2015), “[t]he exemption does not apply simply because the defendant is in a regulated industry. It applies only if the challenged conduct is specifically regulated.” *See also Taylor v. Medenica*, 324 S.C. 200, 218, 479 S.E.2d 35, 44 (1996). The Supreme

Court makes clear that if the SCUTPA exempted all conduct by a regulated entity, as the trial court held, “the UTPA would be rendered without meaning. Almost every business is subject to some type of regulation.” *Ward v. Dick Dyer & Assocs., Inc.*, 304 S.C. 152, 154–55, 403 S.E.2d 310, 311 (1991).

### **C. SCUTPA ALLEGATIONS SATISFIED**

Appellants allege State Farm fabricated and used documents after a fatal collision to avoid providing coverage for its insured, the at-fault driver. This is not “permitted” conduct under Title 38 or any other regulatory authority. The trial court erred in holding the UTPA claims were barred as a matter of law.

The Complaint details how State Farm tried to deceptively deny coverage. *See e.g.* (R. \_\_\_ Comp. pp. 9-14). It forged documents, created a false declarations page, plead that a form (Form 6023DC) was approved by the DOI as required by law, when it was not,<sup>4</sup> and represented the modified documents as genuine using a fraudulent “Certified Policy Record.” (R. \_\_\_ Comp. pp. 9-14 ¶¶ 40–57). These bogus documents were created post-accident to be relied on by Appellants and others in making decisions about the lack of coverage and the use of their own uninsured coverage. (*Id.* and R. \_\_\_ Transcript pp. 56 - 58.)

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<sup>4</sup> State Farm admits that “all insurers have to get forms approved before use.” (R. \_\_\_ Transcript p. 17, lines 8-9). Further, State Farm confesses that it did not submit “the form to the DOI for approval...” *Id.* p. 20, lines 13-14.

The Complaint alleges State Farm used these documents to deny, delay and avoid coverage, including in litigation while representing them as genuine (R. \_\_\_ Comp. p. 13 ¶¶ 54–56). State Farm knowingly used these forged documents in communications with Appellants, their counsel, and courts, falsely representing them as accurately reflecting the insurance coverage. (R. \_\_\_ Comp. pp. 10-11 ¶¶ 47, 49, 53, 55–56). These actions were to deny Appellants the benefit of coverage, delay or obstruct recovery and for all to rely upon as being true. (R. \_\_\_ Comp. p. 2, 4-6, 9-12 ¶¶ 1, 7, 11–17, 40–52).

“To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant’s unfair or deceptive act(s).” *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). “An act is ‘unfair’ when it is offensive to public policy or when it is immoral, unethical, or oppressive.” *Gentry v. Yonce*, 337 S.C. 1, 12, 522 S.E.2d 137, 143 (1999), *overruled on other grounds by Proctor v. Whitlark & Whitlark, Inc.*, 414 S.C. 318, 778 S.E.2d 888 (2015). “An act is ‘deceptive’ when it has a tendency to deceive.” *Id.* The Court did not hold the allegations did not satisfy the UTPA, rather that the UTPA does not permit a claim against an insurer as a matter of law.

(*See e.g.* “the legislature did not intend to subject automobile insurers to SCUTPA, and the Court agrees.” R. \_\_\_ Amended Order p. 20). This is reversible error.

**D. STATE FARM FAILS TO MEET ITS BURDEN TO ESTABLISH EXEMPTION**

Under § 39-5-40, the burden of proving exemption “shall be upon the person claiming the exemption.” State Farm failed to meet its burden and cited no authority authorizing the conduct alleged. It identified no statutory provision *authorizing* the fabrication of post-accident declarations pages, the use of forms not authorized for use by the DOI, or the filing of litigation using forged documents to deny coverage. Appellants’ allegations fall outside the scope of permitted regulated conduct, rendering SCUTPA fully applicable.

State Farm’s forgery, misrepresentation and fabrication of multiple insurance documents and their use to deny coverage—is neither expressly authorized nor affirmatively permissively regulated by the DOI. As such, it falls outside the scope of the SCUTPA exemption in § 39-5-40(c). State Farm’s attempt to shield its actions under this exemption fails as a matter of law, and the trial court erred in concluding otherwise.

To hold otherwise would provide immunity for egregious criminal conduct that directly impacts the proper administration of justice and our judicial system.

**E. STATUTORY CROSS-REFERENCE IN § 38-77-341 CONFIRMS SCUTPA  
APPLIES TO AUTOMOBILE INSURERS**

S.C. Code Ann. § 38-77-341 begins with the clause, “It is an unfair trade practice *as defined in Section 39-5-20* [SCUTPA]...” This language and its scope is unambiguous. By expressly incorporating § 39-5-20—the core operative provision of SCUTPA—into Title 38, the Legislature made clear that certain conduct by those operating under Title 38 (including automobile insurers) constitutes a violation of SCUTPA. The explicit reference affirms that SCUTPA is the legal mechanism through which violations of § 38-77-341 may be enforced.

To conclude that SCUTPA never applies to insurance companies, as the trial court held, nullifies the legislative cross-reference to § 39-5-20 [SCUTPA] and renders the enforcement mechanism in § 38-77-341 meaningless. The only logical interpretation is that the South Carolina General Assembly intended SCUTPA to apply to all, including insurers, when they engage in the types of unfair or deceptive practices specifically identified in Title 38.

Under standard principles of statutory construction, statutes should be interpreted to give effect to all provisions. Courts do not presume the Legislature included surplusage or meaningless text. “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.” *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).

Thus, when an automobile insurer such as State Farm knowingly makes false statements “for use in determining the right to payment under this chapter,” it commits an unfair trade practice actionable under SCUTPA—just as the statute explicitly states. Insurance companies like State Farm are precisely the parties responsible for determining the *right to payment* under Chapter 77. When an insurer fabricates declarations pages or relies on unauthorized exclusion forms to deny claims, it is engaging in wrongful conduct explicitly covered by the statute.

This interpretation aligns with South Carolina precedent, holding that unfair practices include conduct that is “oppressive, unethical, or contrary to public policy,” and that deception may arise from conduct that has merely a tendency to deceive. *See State ex rel. Wilson*, 414 S.C. 33, 56–57, 777 S.E.2d 176, 188–89 (2015). This reading is further supported by S.C. Code Ann. § 39-5-160, which provides that “[t]he powers and remedies provided by this article shall be cumulative and supplementary to all powers and remedies otherwise provided by law.” *See Ward v. Dick Dyer & Assocs., Inc.*, 304 S.C. 152, 156, 403 S.E.2d 310, 312 (1991).

The trial court’s contrary view effectively immunizes insurer misconduct and frustrates the statute’s plain language and remedial purpose.

## **F. PUBLIC IMPACT AND SYSTEMIC DECEPTION**

Appellants alleged State Farm’s conduct had broad public impact. The manipulation of legal documents and coverage determinations extended beyond Plaintiffs to other accident victims, policyholders, and the courts. (R. \_\_\_ Comp. pp. 2, 4-6, 9-10, 15-17 ¶¶ 1, 7, 11-17, 40-50, 64-66, 72-73). State Farm’s actions was and is capable of repetition. (R. \_\_\_ Comp. p. 39 ¶ 159) It was alleged that State Farm acted to influence coverage litigation for multiple parties and potentially judicial precedent with the fabricated documentation. (R. \_\_\_ Comp. p. 17 ¶¶ 72-73). The intentional deception to Appellants and others has broad public policy implications and is the kind of unfair and deceptive conduct prohibited by the SCUTPA.

This systemic pattern of deception satisfies SCUTPA’s public interest element. *See Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006).

## **G. SCUTPA APPLIES TO INSURERS UNDER § 38-77-341**

S.C. Code Ann. § 38-77-341 makes clear that knowingly making false statements related to insurance coverage constitutes a SCUTPA violation “notwithstanding any other provision of law.” This statute directly undermines the trial court’s blanket exemption and the reasoning in *Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F. Supp. 128 (D.S.C. 1994). It was

argued to the trial court that the district court decision was wrong and did not address the application of S.C. Code Ann. § 38-77-341 to automobile insurers like State Farm. (R. \_\_\_ p. 31 2024.07.11 Plaintiffs’ Memo, R. \_\_\_ Transcript pp. 69-72.)

Contrary to the trial court’s holding that § 38-77-341 targets only claimants (R. \_\_\_ Amended Order, p. 20), the statute is designed to prevent systemic insurer misconduct and is to be “liberally construed.” *See* S.C. Code Ann. § 38-77-20. Several subsections refer to institutional actors like health care providers and facilities, underscoring that § 38-77-341 is directed at both consumers and businesses—including insurers. The plain language—“any person”—includes insurers who influence payment determinations using false information.

A plain reading of the statute confirms that it targets institutional actors, including insurers—not just claimants. Nothing in § 38-77-341 limits its scope to individual claimants. Subsection (1) prohibits “[k]nowingly and willfully mak[ing] or caus[ing] to be made any false statement or representation of a material fact... for use in determining the *right to payment* under this chapter.” (*See e.g.* R. \_\_\_ July 11, 2024 Plaintiff’s Memo, p. 29.)

## **H. TRIAL COURT IMPROPERLY RELIED ON UNPUBLISHED AND NONBINDING AUTHORITY**

Finally, in making its determination, the trial court relied on an unpublished decision, *Cleveland Ridge Homeowner's Ass'n, Inc. v. State Farm Fire & Cas. Co.*, No. 2006-UP-295, 2006 WL 7286092 (S.C. Ct. App. June 26, 2006). (R. \_\_\_ Amended Order p. 10). This violates Rule 268(d)(2), SCACR. Appellants were not parties to that case, and it has no precedential value. As explained in *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 555, 813 S.E.2d 292, 298 (Ct. App. 2018), legal error is reversible when it is material and prejudicial. Reliance on *Cleveland Ridge* to support a sweeping exemption was both.

## **I. CONCLUSION SCUTPA CLAIM SHOULD BE REINSTATED**

The trial court's interpretation of § 39-5-40(c) was legally flawed and unsupported by the statutory text or precedent. The trial court committed reversible error in at least the following ways:

- holding that because insurance is regulated,<sup>5</sup> the entire “insurance business” — is not subject to SCUTPA and State Farm is exempt from a UTPA claim; (R. \_\_\_ Amended Order pp. 18-20);

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<sup>5</sup> R. \_\_\_ Amended Order p. 18 *See e.g.* The lower court stated “[n]othing in [SCUTPA] shall apply to ... unfair trade practices covered and regulated under Title 38, Chapter 57, Sections 38-57-10 through 38-5[7]-320,’ South Carolina’s Insurance [sic] Trade Practices Act. S.C. Code Ann. § 39-5-40(c).”

- holding “all unfair trade practices in the business of insurance are exempt from SCUTPA’s reach.” (R. \_\_\_ Amended Order pp. 18-20);
- determining and relying on a district court decision and an unpublished Court of Appeals decision that all unfair trade practices in the business of insurance are exempt from SCUTPA. (R. \_ Amended Order pp. 10, 18-19);
- holding that the Insurance Trade Practices Act governs unfair or deceptive acts or practices in the business of insurance to the exclusion of the UTPA. (R. \_\_\_ Amended Order pp. 19-20); and
- holding after Plaintiffs requested the right to amend (*See e.g.* R. \_\_\_ Jul 11, 2024 Memo, pp. 31-32) that “any amendment” to the pleadings would be futile. (R. \_\_\_ Amended Order, p. 22).<sup>6</sup>

Appellants pled detailed allegations of post-claim and litigation-based unfair and deceptive conduct that were neither permitted nor regulated.

Accordingly, Appellants stated a valid SCUTPA claim, and the trial court’s dismissal must be reversed and all of the Plaintiffs’ SCUTPA claims reinstated.

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<sup>6</sup> Appellants requested the opportunity to amend the Complaint if needed. (R. \_\_\_ p. 14 Plaintiffs’ supplemental submission). The Court did not allow this for the individual Appellants.

## **II. THE TRIAL COURT ERRED IN DISMISSING INDIVIDUAL PLAINTIFFS' CLAIMS: ABUSE OF PROCESS, FRAUD, AND NEGLIGENT MISREPRESENTATION**

The trial court's dismissal of the individual claims of Appellants Robert Workman, Kelly Workman Tick and Matthew T. Workman for lack of standing and failure to plead essential elements was legally erroneous and contrary to South Carolina law. The trial court overlooked well-pleaded factual allegations, misapplied the standard for judgment on the pleadings, and erroneously found the children of Mr. Workman lacked standing in the abuse of process claim because they were not parties to the underlying litigation. (R. \_\_\_ Amended Order, pp. 14–15).

### **A. INDIVIDUAL PLAINTIFFS PLED CONCRETE, PARTICULARIZED INJURIES**

A motion for judgment on the pleadings should not be granted unless “it is clear that the nonmoving party cannot prevail under any set of facts.” *Russell v. City of Columbia*, 305 S.C. 86, 89–90, 406 S.E.2d 338, 339–40 (1991). Courts must accept all well-pleaded allegations as true and resolve all inferences in favor of the plaintiff. The Amended Order (R. \_\_\_ pp. 5–6) claims to apply this standard but then disregards critical allegations in the Complaint and construes well plead facts against the Appellants. Each individual Appellant alleged sufficient facts including:

- Harm as a direct and proximate result of State Farm's improper conduct (R. \_\_\_ Comp. pp. 24-28, 35 ¶ 100, 105, 108, 113, 116, 160)

- Distinct, non-derivative harms (R. \_\_\_ Comp. pp. 16, 19-20 ¶¶ 67-70, 79-80);
- Emotional and financial injuries from State Farm’s use of fabricated documents (R. \_\_\_ Comp. pp. 9-14, 19-20 ¶¶ 40-57, 79-80);
- A direct connection between State Farm’s conduct and the injuries suffered (R. \_\_\_ Comp. pp. 24-25 ¶¶ 101-105).

The allegations supporting each cause of action was cited in further detail in Plaintiffs’ Supplemental submission. (R. \_\_\_ pp. 3-14.)

These pleadings satisfy South Carolina’s liberal standard under *Russell* and *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444-45, 665 S.E.2d 237, 241 (Ct. App. 2008).

These injuries are neither speculative nor derivative. They represent distinct, personal harms that satisfy the injury-in-fact requirement under South Carolina law and support a finding of standing.

**B. SOUTH CAROLINA LAW DOES NOT REQUIRE PRIOR PARTY STATUS FOR STANDING**

Second, the trial court erroneously concluded that the individual Appellants lacked standing because they were not named in State Farm’s prior declaratory

judgment action. (See e.g. R. \_\_\_ Amended Order, p. 15.) This conclusion is unsupported by South Carolina law.

To have standing, “one must be a real party in interest. ‘A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action.’” *Protopapas v. Wall, Templeton & Haldrup, P.A.*, 442 S.C. 217, 225–26, 898 S.E.2d 150, 154 (Ct. App. 2023), *reh’g denied* (Mar. 18, 2024), *cert. denied* (Feb. 12, 2025). “A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a ‘real party in interest.’” *Stoney v. Stoney*, 425 S.C. 47, 64, 819 S.E.2d 201, 210 (Ct. App. 2018) (quoting *Ex Parte Gov’t Emps. Ins. Co.*, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007)); see also *Sea Pines Ass’n for the Prot. of Wildlife, Inc. v. S.C. Dep’t of Nat. Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001).

Standing is also determined by whether the plaintiff has a personal stake in the outcome of the litigation. “As a general rule, to have standing, a litigant must have a personal stake in the subject matter of the litigation.” See *Ex parte Morris*, 367 S.C. 56, 62, 624 S.E.2d 649, 652 (2006). “One must be a real party in interest, *i.e.*, a party who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the

action.” *Id.* In its most basic sense, “[s]tanding refers to a party’s right to make a legal claim or seek judicial enforcement of a duty or right.” *S.C. Dep’t of Soc. Servs. v. Boulware*, 422 S.C. 1, 7, 809 S.E.2d 223, 226 (2018). In *Smiley v. S.C. Dep’t of Health & Env’tl Control*, 374 S.C. 326, 329, 649 S.E.2d 31, 32–33 (2007), the Supreme Court adopted a three-part test for standing:

1. **Injury-in-fact** – (R. \_\_\_ Comp. pp. 16, 19-20 ¶¶ 67–70, 79–80);
2. **Causation** –injuries stemmed from State Farm’s use of fabricated documents (R. \_\_\_ Comp. pp. 9-13 ¶¶ 40–57);
3. **Redressability** – All causes of action sought legal and equitable relief available under South Carolina law.

This line of reasoning is consistent with South Carolina’s liberal view of standing, as reiterated in *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991), and *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444–45, 665 S.E.2d 237, 241 (Ct. App. 2008).

The law does not require a plaintiff alleging abuse of process to have been a party to the lawsuit. The tort focuses on the misuse of legal process—not the identity of the plaintiff. As *Dobbs on Torts* makes clear: “The gist of the abuse of process tort is said to be the misuse of legal process primarily to accomplish a purpose for which it was not designed, usually to compel the victim to yield on

some matter not involved in the suit, or to harass litigation opponents by clearly wrongful conduct. *The victim might even be a person who is not sued at all* but who is directly affected by the process...” 3 DAB B. DOBBS, ET AL., **THE LAW OF TORTS** (2D ED. 2011) § 594. The **RESTATEMENT (SECOND) OF TORTS** § 682 (1977), comment c, similarly explains: “It is immaterial that the process was properly issued, and that the process was directed at a third party.”

The Complaint alleges that State Farm filed and prosecuted the declaratory judgment action based on fabricated documents-to force the Appellants to rely on the Estate’s uninsured coverage, delay payment, and create improper legal precedent (R. \_\_\_ Comp. pp. 9-12, 15-16, 17, 24-26 ¶¶ 40-52, 63-66, 73, 101-105. R. \_\_\_ Transcript p. 47 lines 2-7, 49-50.). These facts support the elements of abuse of process under South Carolina law as set forth in *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153 S.E.2d 693 (1967): (1) an ulterior purpose and (2) a willful act not proper in the regular conduct of the proceeding. *See also Guider v. Churpeyes, Inc.*, 370 S.C. 424, 431-32, 635 S.E.2d 562, 566 (Ct. App. 2006).

Even where an individual is not a party to a lawsuit, they may still suffer actionable harm from the abuse of that process.

In this case, the Complaint alleges that the individual Appellants (Robert Workman, Kelly Workman Tick and Matthew T. Workman) were:

- **Directly targeted** by State Farm’s use of false documents in litigation;
- **Affected by the denial of coverage** that would have otherwise protected them in litigation or settlement;
- **Forced to incur legal fees and respond to the consequences** of the DJA, even if not named as defendants.

*See* R. \_\_\_ Comp. pp. 16, 24-25 ¶¶ 67–70, 101–105.

The trial court mischaracterized Appellants’ allegations, claiming they merely asserted “State Farm had an ulterior purpose” (R. \_\_\_ Amended Order, pp. 6–7), without identifying specific conduct. This ignores detailed pleadings that allege State Farm filed the DJA specifically to legitimize false documents, gain leverage in coverage litigation, and harm Appellants by denying insurance benefits and requiring them to invoke or use other coverage and incur expense. (R. \_\_\_ Complaint, R. \_ Plaintiffs Supp. Memo Sep. 30, 2024) The DJA, while naming only the Estate, was part of a broader scheme intended to defeat claims involving the individual Appellants as potential insureds or beneficiaries. (R. \_\_\_ Comp. pp. 2,4, 10, 16, 24-25 ¶¶ 1, 7, 45–48, 66–67, 101–105). They were injured by State Farm’s use of the court system to present false evidence, obtain declaratory relief, and apply that relief to preclude their rights. Therefore, the trial court should be reversed.

### **C. THE TRIAL COURT IMPROPERLY REJECTED WELL-PLEADED ALLEGATIONS OF FRAUD AND MISREPRESENTATION**

Finally, the trial court found the fraud and negligent misrepresentation claims against State Farms were deficient because Appellants denied State Farm's allegations in the DJA, and therefore could not have relied on them (R. \_\_ Amended Order, pp. 10–11). This reasoning is flawed. Reliance in tort is not limited to belief in the misrepresentation. It “has long been settled since the 1700s that privity is not required to support an action for fraudulent misrepresentation.” 3 DAB B. DOBBS, ET AL., **THE LAW OF TORTS** (2D ED. 2011) § 679.

Appellants need only show that the misrepresentation caused them to act or refrain from acting in a way that led to injury. Here, the Complaint alleges that:

- State Farm fabricated declarations pages and made false representations about coverage (R. \_\_ Comp. pp. 13-14 ¶¶ 54–56);
- Appellants were forced to expend resources and individually suffered emotional distress as a result (R. \_\_ Comp. pp. 16, 19-20, 24-25 ¶¶ 67–70, 79–80, 101–105);
- The litigation initiated by State Farm was based on documents it knew to be false. (R. \_\_ Comp. pp. 10, 18, 19, 31 ¶¶ 46, 76, 77 136.)

That Appellants challenged the representations in the declaratory judgment action (DJA) State Farm filed does not negate reliance or preclude tort liability. The misrepresentations were relied upon and required Appellants to hire counsel who answered the action. (R. \_\_\_ Comp. pp. 24-25 ¶ 101-102) The improper process itself inflicted harm, as Appellants were compelled to respond, incur costs, and suffer delay—all traceable to State Farm’s misconduct. (R. \_\_\_ Comp. p. 25 ¶ 105).

#### **D. JUDICIAL NOTICE IMPROPER**

The trial court improperly took judicial notice of and considered materials outside of the pleadings, an Answer filed by the Workman Estate in response to State Farm’s DJA. Further, the trial court failed to consider that just because the allegations of the DJA filed by State Farm were denied in the answer does not mean that Appellants did not rely and act upon those to hire counsel and to continue defending the lawsuit. (R. \_\_\_ Plaintiffs Notice and Motion for Reconsideration, pp. 7-8.) As pointed out to the trial court:

*Quare:* When Plaintiffs denied the allegations of the Complaint, did Defendants suddenly say, “Oh you’re right, these are false documents, sorry for the confusion and waste of time?” No, they kept moving forward with litigation, forcing Plaintiffs to continue defending the bogus lawsuit.

*Id.* p. 21.

As a result of State Farm's improper conduct, Appellants were forced to engage in discovery, file a motion to compel discovery, take a deposition of State Farm, incur costs, expenses and sustained other damage. (R. \_\_\_ Plaintiffs' Memo in Opposition to State Farm's Judgment on Pleadings July 11, 2024 pp. 20-21).

#### **E. CONCLUSION ON INDIVIDUAL CLAIMS**

The Amended Order dismissing the individual Appellants' claims misapplies South Carolina law on standing and tort pleading. The Complaint states viable claims for abuse of process, fraud, and negligent misrepresentation based on well-pleaded facts that must be taken as true. The trial court's reliance on party status in prior litigation and misinterpretation of reliance and injury elements constitute reversible legal error. The appellate court should reverse and remand for reinstatement of the individual Appellants' claims, including for SCUTPA, Fraud, Negligent Misrepresentation, etc.

## CONCLUSION

The trial court's dismissal was based upon a misinterpretation of the statutory exemption, failure to consider explicit legislative intent and judicial admissions, and improper factual resolution at the pleadings stage. Appellants respectfully request this Court reverse the trial court's dismissal of both the SCUTPA and the individual claims, remanding this matter for further proceedings, including allowing the Appellants to move forward with their SCUPTA claims and individual claims. Further, if needed, Appellants should be allowed to amend the pleadings and grant such other and further relief as is just and proper.

Respectfully Submitted  
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