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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable G.D. Morgan, Jr., Circuit Court Judge

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James Dustin Lucas, .....Appellant,

v.

State Farm Mutual Automobile Insurance Company, .....Respondent.

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Appellate Case No.: 2023-000870

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**PETITION FOR REHEARING**

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Pursuant to SCACR Rule 221(a), the appellant respectfully moves for rehearing or *en banc* review so the ruling of the Court of Appeals may be corrected to adhere to existing law, or in the alternative, so the ruling may be clarified.

State Farm promised to negotiate between its reserve and the policy limit if the plaintiff would allow its insured to be removed from default. After State Farm achieved its objective, it failed to negotiate within those parameters and did not bring its insured to mediation as required by our ADR rules. If the Court of Appeals' ruling stands, it endorses lies made in writing and a violation of our ADR rules, which our Legislature has made mandatory. The appellant respectfully requests that the Court of Appeals correct the ruling.

**ARGUMENT**

The appellant has a constitutional right under the South Carolina Constitution and the United States Constitution[1] to have his case decided by a jury. Denial of this right and any form of recourse deprives the appellant of due process and the jury trial guarantees provided by the federal and state constitutions, violating fundamental principles of fairness.[2]

The Court's opinion overlooks that State Farm acted in bad faith by knowingly making a false statement, which caused harm to the appellant. Following this deception, counsel hired by State Farm immediately contacted the Circuit Court to cancel the damages hearing before anything further—such as wet signatures or other formalities—could solidify the clear and unambiguous agreement. The opinion ignores the fact that attorneys reflected the bargained-for and consideration-supported agreement in writing with signature blocks.

The Court's opinions hold "The intent of Rule 43(k) is to require all agreements regarding pending litigation 'to satisfy the requirements of the rule.'" *Ashfort Corp. v. Palmetto Constr. Grp, Inc.*, 318 S.C. 492, 495, 458 S.E.2d 533, 535 (1995). But *Ashfort* also makes it clear that the purpose of Rule 43(k) is to "prevent a fraudulent claim." *Id*. at 535. State Farm not only made a fraudulent claim through its insurance defense lawyer in writing, but the fraudulent statement caused reliance and change in position. Again, all of that is in writing and part of the Record on Appeal. It is outrageous that State Farm can literally lie, get what it wants, and get away with it to the detriment of the appellant. There is also no portion of Rule 43(k), *Ashfort*, or any other authority that permits or endorses an insurer telling a lie to get out of default, which is confirmed in writing.

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[1] Although the Seventh Amendment has never been fully incorporated against the States, it clearly provides a right to a jury trial in both state and federal courts, should be incorporated, and the appellant preserves this issue for further appellate review. The right to a trial by jury guarantee was made before the Judiciary Act of 1789, which created the federal court system.

[2] See *Ex parte Dibble*, 310 S.E.2d 440 (Ct. App. 1983): "Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible."

If State Farm may tell a lie as outrageous as this one through its hired counsel, with impunity, then what was traded for the lie should be undone, and State Farm's insured should be held in default. If State Farm is allowed to attend mediation without its insured, a party required to attend by the ADR rules and offer $1,000 in a case where cars were flipped, totaled, and people were transported to the hospital, then no rules should apply to any party. As it sits currently, the opinion means that the ADR rules mean nothing – by that rationale, Rule 43(k) means nothing. Of course, both Rules should be enforced and respected, and fraud by insurance companies should not be permitted. The purpose of our courts is to seek and uphold the truth, not to foster unfairness and deception aimed at saving insurers money.

This is not a case where a party "[m]erely describing an alleged agreement for the purpose of defending against it does not satisfy this condition," as stated in the Court's opinion. It is a case where State Farm made an agreement in writing, for its own benefit, to the appellant's detriment. State Farm then used the change in position it gained from the lie to willfully violate our ADR rules, without apology to the Court or anyone else.

The opinion cites as support for affirming the Circuit Court's decision that "[t]he parties did not reach a settlement during mediation," but that hurts, not helps, State Farm. Of course, the parties did not reach a resolution – because State Farm offered $1,000, an amount less than its highest reserve, in violation of its agreement, without the defendant present to see what his insurer was doing. The fact that State Farm offered an amount lower than its reserve is demonstrated by State Farm's repeated refusals to provide this information, even when requested on camera.

The appellant respectfully submits that the Court erred in stating he could not prove his case without presenting confidential communications made during mediation. Simply being in mediation does not provide a license to lie, cheat, and steal. Furthermore, numerous statements

made outside of mediation confirm that State Farm knowingly lied and gained significant benefits to the appellant's detriment as a result. The Record on Appeal includes emails exchanged outside of mediation and transcripts of in-court statements proving that State Farm gained a benefit through deception, refused to perform, and violated ADR rules. It is unclear whether the defendant was even aware that mediation took place. That is the opposite of what our Legislature requires.

## CONCLUSION

Because State Farm gained a benefit to the detriment of the appellant by lying to the appellant in order to get out of default, and because that should not be endorsed or permitted, the appellant respectfully requests that the Court of Appeals alter or amend its decision to conform with the law and basic notions of fairness. In the alternative, the appellant requests an in-person hearing and/or *en banc* review. The appellant respectfully preserves all issues raised or addressed in the Court below and any filings related to this appeal for further appellate review, including issues related to Due Process, the right to a jury trial, and all other state and federal constitutional issues.

Respectfully submitted,

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**PROOF OF SERVICE**

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I certify that on this date, January 22, 2025, I filed the foregoing Petition for Rehearing with the South Carolina Court of Appeals via electronic filing, to ctappfilings@sccourts.org. A copy was also served on Respondents via electronic service, addressed to the attorney of record below by the CM/ECF system:

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