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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2024-002036

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

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court correctly grant Respondent's motion for judgment on the pleadings as to the causes of action for abuse of process, fraud, negligent misrepresentation, and alleged violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, brought by Appellants in their individual capacity because these Appellants lack standing?
2. Did the circuit court correctly grant Respondent's motion for judgment on the pleadings as to the cause of action for alleged violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, because the complained of conduct is exempt therefrom?
3. Did the circuit court correctly grant Respondent's motion for judgment on the pleadings as to the causes of action brought by Appellants in their individual capacity for abuse of process, fraud, and negligent misrepresentation because these Appellants failed to state a claim?

STATEMENT OF THE CASE

The Appellants are Robert C. Workman, both individually and as Personal Representative of the Estate of James K. Workman (the “Estate”), Kelly Workman Tick, and Matthew T. Workman. Robert C. Workman, Kelly Workman, and Matthew T. Workman are the adult children of James K. Workman, who died as a result of a June 12, 2021 collision (“Collision”) which occurred when his vehicle was struck by a vehicle driven by Melvin O. Lamb, III, which was owned and insured by Melvin O. Lamb, Jr., under a policy issued by Respondent (the “Policy”). (Compl. ¶¶ 2-3, 30, 31, 32, R. pp. __.)

Appellants’ lawsuit concerns and seeks redress for a declaratory judgment action Respondent filed on August 16, 2021, against the Estate and other claimants from the Collision in the United States District Court for the District of South Carolina (the “Underlying Suit”). (*See, e.g.,* Compl., R. pp. __.) In the Underlying Suit, Respondent—represented by Gallivan, White & Boyd, P.A. (“GWB”)—sought a declaration of no coverage under the Policy as to the losses arising from the Collision because the insured vehicle was driven by Melvin O. Lamb, III, an excluded driver on the Policy. *See* Compl., *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-cv-02623-MBS at ECF No. 1 (D.S.C. Aug. 16, 2021). The Underlying Suit concluded on July 28, 2022, when the district court granted Respondent’s motion for voluntarily dismissal over the Estate’s objection. *State Farm Mut. Auto. Ins. Co. v. Lamb*, No. 2:21-CV-2623-MBS, 2022 WL 2990764, at *2-4 (D.S.C. July 28, 2022).

Appellants filed this lawsuit on April 14, 2023 against Respondent and GWB. As to Respondent, the Complaint asserted abuse of process, fraud, negligent misrepresentation, fraudulent nondisclosure, civil conspiracy, and violation of the South Carolina Unfair Trade

Practices Act, S.C. Code Ann. § 39-5-10, *et seq.* (“SCUTPA”).¹ (*See gen. Compl.*, R. pp. __.) The SCUTPA cause of action was brought by Kelly Workman Tick, Matthew T. Workman, and Robert C. Workman, in his individual capacity only (the “Individual Appellants”).² (*Compl.* ¶¶ 153, 160, R. pp. __.) The remaining causes of action against Respondent were brought by Appellants collectively. (*See gen. Compl.*, R. pp. __.)

On September 1, 2023, Respondent, relying on Rules 12(c) and 12(h)(2), SCRCF, filed a motion for judgment on the pleadings (the “Motion”) seeking dismissal of each cause of action asserted against it for failure to state a claim, and dismissal of the Individual Appellants based on lack of standing. (*See gen. Mot. for J. on the Pleadings*, Sept. 1, 2023, R. pp. __.) Appellants opposed the Motion, which was heard by the circuit court and taken under advisement on July 10, 2024. (Appellants’ Mem. in Opp. to Respondent’s Mot. for J. on the Pleadings, R. pp. __; July 10, 2024 Hearing Tr. 102:13-17, R. p. __.) At the hearing, Respondent provided the circuit court with and requested the court take judicial notice of its Complaint, the Estate’s Answer, and the Estate’s Rule 26.03 Responses filed in the Underlying Suit. (Hearing Tr. 26:20-27:20 R. pp. __.)

The parties were asked to submit separate proposed orders for the circuit court’s consideration. (Request for Proposed Orders, July 19, 2024, R. pp. __.) In response, Respondent

¹ In their “Statement of the Case,” Appellants claim they also brought a negligence cause of action against Respondent. (Appellants’ Br. 2.) This is incorrect. Appellants asserted negligence against GWB only. (*Compl.* ¶¶ 141-47, R. pp. __.)

In their “Statements of Issues on Appeal,” Appellants suggest a constructive fraud claim was asserted and dismissed. (Appellants’ Br. 1.) This is also incorrect. The Complaint does not allege constructive fraud and the Order from which this appeal is taken does not address constructive fraud. (*See gen. Compl.*, R. pp. __; Am. Order, R. pp. __.)

² Appellants’ “Statements of Issues on Appeal” and “Statement of the Case” indicate the SCUTPA claim was brought by and dismissed with prejudice as to “all Appellants,” not just the Individual Appellants. (Appellants’ Br. 1, 3.) This is incorrect. As set forth in the Complaint, the SCUTPA cause of action was brought by “Robert C. Workman, Kelly Workman Tick and Matthew T. Workman *individually.*” (*Compl.* ¶¶ 153, 160 (emphasis added).)

submitted a proposed order, and the Appellants submitted a “Supplemental Submission.” (Respondent’s Proposed Order with Transmittal Email, Aug. 2, 2024, R. pp. ___; Appellants’ Supplemental Submission, Aug. 2, 2024, R. pp. ___.)

The circuit court granted the Motion on September 20, 2024, dismissing the SCUTPA and civil conspiracy claims with prejudice, dismissing the abuse of process, fraud, negligent misrepresentation, and fraudulent nondisclosure claims without prejudice as to Robert C. Workman as Personal Representative of the Estate, and dismissing the Individual Appellants for lack of standing. (*See gen.* Order as to Respondent’s Mot. for J. on the Pleadings, Sep. 20, 2024, R. pp. ___.) Appellants filed a motion for reconsideration, which was heard and granted in part on October 31, 2024. (Appellants’ Notice and Mot. to Reconsider and Alter or Amend, Sep. 30, 2024, R. pp. ___; Oct. 31, 2024 Form 4 Order, R. pp. ___.)

On November 6, 2024, the circuit court issued an amended Order granting the Motion (the “Amended Order”) which modified the original decision by dismissing the civil conspiracy claim without prejudice. (*See gen.* Am. Order, R. pp. ___.) Thus, the Amended Order dismissed the civil conspiracy, abuse of process, fraud, negligent misrepresentation, and fraudulent nondisclosure claims without prejudice as to Robert C. Workman as Personal Representative of the Estate, dismissed the Individual Appellants’ SCUTPA claim with prejudice, and otherwise dismissed the Individual Appellants for lack of standing. (*See gen.* Am. Order, R. pp. ___.)

Following entry of the Amended Order, Robert C. Workman, in his capacity as Personal Representative of the Estate, filed an Amended Complaint against Respondent asserting abuse of process, fraud, and negligent misrepresentation, and the Appellants collectively filed a Notice of Appeal as to the Amended Order. (Notice of Appeal, Dec. 2, 2024, R. pp. ___.) The action of Robert C. Workman as the Estate’s Personal Representative is stayed pending this appeal.

STANDARD OF REVIEW

When reviewing a circuit court’s grant of a motion for judgment on the pleadings based on failure to state a claim,³ this Court applies the same legal standard as the circuit court. *Ballard v. Admiral Ins. Co.*, 442 S.C. 22, 34, 897 S.E.2d 183, 189 (Ct. App. 2023) (citing *Ziegler v. Dorchester Cnty.*, 426 S.C. 615, 619, 828 S.E.2d 218, 220 (2019)). On review, the Court must regard all properly pleaded factual allegations as true and admitted. *Falk v. Sadler*, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000). However, absent particularized facts in support, conclusory allegations and bald assertions are not properly pleaded and need not be accepted as true. *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 455, 814 S.E.2d 643, 656 n.9 (Ct. App. 2018) (“[T]he circuit court did not err in dismissing [plaintiff]’s SCUTPA claim because [plaintiff] merely stated [the defendants’] conduct satisfied the public interest requirement of SCUTPA without alleging any particularized facts.”) (citing *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986) (holding conclusory allegations are demurrable)).

In evaluating a motion for judgment on the pleadings based on failure to state a claim, the Court may properly consider judicially noticeable facts as well as records specifically referenced in the pleadings even though not attached thereto. *See* Rule 201(f), SCRE (“The court may take judicial notice at any stage of the proceeding.”); *Ballard*, 442 S.C. at 33, 897 S.E.2d at 188 (holding circuit court properly considered a policy of insurance when it evaluated a motion for judgment

³ Pursuant to Rule 12(h)(2), SCRCF, “[a] defense of failure to state a cause of action upon which relief can be granted ... may be made ... by motion for judgment on the pleadings” brought under Rule 12(c), SCRCF. Moreover, motions for judgment on the pleadings under Rule 12(c) and motions to dismiss for failure to state a claim under Rule 12(b)(6) are decided under the same standard. *Compare Sapp v. Ford Motor Co.*, 386 S.C. 143, 146, 687 S.E.2d 47, 49 (2009) (“A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff’s favor.”), *with Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (dismissal under Rule 12(b)(6), SCRCF, is proper “[i]f the facts alleged and inferences reasonably deducible therefrom ... would [not] entitle the plaintiff to relief on any theory”).

on the pleadings because of the plaintiff’s specific references to it throughout her complaint); *Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 497, n.2 (2014) (noting reliance on existence and contents of court filings does not convert a motion for judgment on the pleadings to one for summary judgment). Otherwise, the Court may not consider matters outside the pleadings. *Falk*, 341 S.C. at 286, 533 S.E.2d at 353.

This Court reviews a circuit court’s grant of a motion to dismiss for lack of standing *de novo*. This is because “[a] motion to dismiss for lack of standing challenges the court’s subject matter jurisdiction,” and “[w]hether subject matter jurisdiction exists is a question of law, which this Court is free to decide with no particular deference to the circuit court.” *S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022) (citing *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009)).

STATEMENT OF FACTS

Appellants allege James K. Workman died as a result of the Collision, Robert C. Workman is the Personal Representative of the Estate, and the Individual Appellants are heirs of the Estate. (Compl. ¶¶ 2-3, 20-22, 30, 31, 32, R. pp. __.) Appellants further allege Melvin O. Lamb, Jr., and Melvin O. Lamb, III (collectively, the “Lambs”), were Respondent’s insureds under the Policy, which had bodily injury liability limits of \$25,000 per person. (Compl. ¶¶ 33-35, R. p. __; Compl. ¶ 6 (showing Confirmation of Coverage stating “coverages and limits of liability” on June 12, 2021 were “25/50/25”), R. p. __.) Appellants do not allege the Estate or the Individual Appellants were insureds of Respondent. Nor do the Individual Appellants allege they were involved in the Collision or that they owned or insured any of the vehicles involved in the Collision.

Appellants allege the Policy was not subject to an excluded driver endorsement at the time of the Collision and that Respondent initially represented, through a “Confirmation of Coverage,” the Policy was “policy number 632318940A.” (Compl. ¶¶ 5-6, 34-35, R. pp. __.)⁴ Appellants allege Respondent created a new declarations page for the Policy (the “New Declarations Page”) a month after the Collision and after it had made representations of coverage and that it did so to exclude coverage and avoid payment for claims arising from the Collision. (Compl. ¶¶ 7, 40-42, 50, R. pp. __.) Appellants point out the New Declarations Page identified the Policy’s number as 632 3189-B07-40B and stated it “[r]eplaced policy number 632189-40A,” the Policy number provided by Respondent in the earlier “Confirmation of Coverage.” (Compl. ¶¶ 5-6, 51-52 R. pp. __ (emphasis

⁴ The coverage representations referenced in Appellants’ Complaint consist of letters from Respondent to the Lambs and to counsel for the Estate. *See* Estate’s Mot. for Sanctions, *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-CV-02623-MBS at ECF No. 66, p. 11, n. 26 (D.S.C. May 24, 2022) (stating State Farm confirmed coverage and citing Exhibit 2 in support); Ex. 2 to Estate’s Mot. for Sanctions, *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-CV-02623-MBS at ECF No. 66-2 (D.S.C. May 24, 2022) (setting forth the letters).

added).) *See* New Declarations Page, *State Farm Mut. Auto. Ins. Co. v. Lamb*, ECF No. 1-1 at p. 1, C.A. No. 2:21-cv-02623-MBS (D.S.C. Aug. 16, 2021).⁵

Appellants allege the New Declarations Page materially misrepresented Melvin O. Lamb, III, was an excluded driver and referenced an excluded driver endorsement, form 6023DC, that was not approved by the South Carolina Department of Insurance (“SCDOI”) and was not referenced on the Policy’s prior declarations pages. (Compl. ¶¶ 51, 58-60, R. pp. __.) According to Appellants, Respondent wanted them to rely upon the New Declarations Page as being true when it was not, and Respondent knew Appellants would use it to make decisions about what coverage may be available via “their own automobile insurance policies” and decisions about litigation. (Compl. ¶¶ 44, 46-48, 96-97, 99, R. pp. __.) The Individual Appellants, who were not

⁵ In fact, Melvin O. Lamb, Jr., the insured vehicle’s owner and policyholder, had signed an excluded driver endorsement at the Policy’s inception in 2020, agreeing there would be no coverage afforded if Melvin O. Lamb, III, was driving the insured vehicle. *See* Decl. of Shay Anderson ¶¶ 6-11, *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-CV-02623-MBS at ECF No. 81-1 (D.S.C. May 24, 2022). *See also*, Melvin O. Lamb, Jr.’s Answer ¶ 1, *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-CV-02623-MBS at ECF No. 41 (D.S.C. Nov. 15, 2021) (admitting Melvin O. Lamb, Jr., signed the excluded driver endorsement on the Policy). The existence of this endorsement was not reflected on the Policy’s declarations pages prior to or at the time of the Collision and was, therefore, initially unknown to claim representatives communicating with the Estate’s counsel and the Lambs because Respondent had not fully processed the endorsement, which it received in 2020. The processing omission was corrected once discovered after the Collision, which triggered the creation of a new declarations page listing the endorsement. *See* Opp. to Mot. for Sanctions, *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-CV-02623-MBS at ECF No. 81 (D.S.C. May 24, 2022); Decl. of Shay Anderson, *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-CV-02623-MBS at ECF No. 81-1 (D.S.C. May 24, 2022); Decl. of Darren Murdoch, *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-CV-02623-MBS at ECF No. 81-2 (D.S.C. May 24, 2022).

Appellants’ counsel is acutely aware of these facts because they were presented by Respondent in response to the Estate’s motion for sanctions against Respondent in the Underlying Suit. *See* Estate’s Mot. for Sanctions, *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-cv-2623 at ECF No. 66 (D.S.C. Feb. 10, 2022); Resp. in Opp. to Mot. for Sanctions, *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-cv-2623 at ECF No. 81 (D.S.C. May 24, 2022). The district court denied the motion for sanctions, which was predicated on the same facts alleged in Appellants’ Complaint, based on the law and “in light of the testimonial evidence provided in State Farm’s response to the Motion for Sanctions.” *Lamb*, 2022 WL 2990764, at *3, n.2, *5-6.

parties to the Underlying Suit and who were not involved in or witnesses to the Collision, fail to allege in the Complaint or explain in their brief how “their own automobile insurance policies” would even be tangentially related—let alone relevant—to the Underlying Suit involving coverage under the Policy for claims arising out of the Collision.

Appellants also allege Respondent created a “Certified Policy Record” of the Policy which included a certification falsely stating the Policy, including the New Declarations Page, was a true and accurate record of the terms and conditions of the Policy in effect at the time of the Collision. (Compl. ¶¶ 54-56, R. pp. __.)

Appellants allege Respondent provided the New Declarations Page and Certified Policy Record to GWB, its counsel, to use in litigation (Compl. ¶¶ 57, 64, R. pp. __), and that the New Declarations Page and the unapproved excluded driver endorsement signed by Melvin O. Lamb, Jr., were attached to Respondent’s Complaint in the Underlying Suit,⁶ which was filed on August 16, 2021, to deny coverage for claims arising from the Collision, (Compl. ¶¶ 12, 77, R. pp. __).

Appellants allege Respondent falsely stated in the Underlying Suit’s Complaint it had no duty to defend or indemnify the Lambs based on the excluded driver endorsement that had been signed by Melvin O. Lamb, Jr., for the Policy. (Compl. ¶¶ 75-76, R. p. __.) As alleged in Appellants’ Complaint, Respondent “wanted a determination by a court that [it] had no duty to indemnify, defend or pay for damages that occurred because of the [C]ollision...to try to make the [Appellants] and others abandon claims made for coverage available under the actual State Farm policy, to improperly deny coverage, and to avoid paying legitimate claims.” (Compl. ¶¶ 63, 72, R. pp. __; *see also*, Compl. ¶ 73, R. p. __.)

⁶ While not alleged in their Complaint, Appellants state in their brief that the Certified Policy Record was also filed by Respondent in the Underlying Suit. (Appellants’ Br. 9, 10.) In fact, the Certified Policy Record was *not* attached as an exhibit to the Complaint in the Underlying Suit. *See Ex. to Compl., State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-cv-02623-MBS at ECF No. 1-1 (D.S.C. Aug. 16, 2021).

In addition to naming the Lambs as defendants, the Underlying Suit was filed against the Estate and those who had personal injury or property damage liability claims arising from the Collision. (Compl. ¶ 74, R. p. ___.) The Individual Appellants were not parties to the Underlying Suit. *See* Compl., *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-cv-02623-MBS at ECF No. 1 (D.S.C. Aug. 16, 2021). Appellants nonetheless allege they “obtained counsel to defend them” in the Underlying Suit “[a]s a result of Defendants’ wrongful conduct.” (Compl. ¶ 101, R. p. ___.) Although the Individual Appellants did not own or insure any of the vehicles involved in the Collision, the Appellants collectively allege they “and others” “obtained counsel to address issues, including those related to their own automobile policies,” “[a]s a result of Defendants’ wrongful conduct.” (Compl. ¶¶ 74, 102, R. pp. ___.)

According to Appellants, they filed a motion in the Underlying Suit when they discovered the Policy documents filed with Respondent’s Complaint were “fraudulent and created after the [Collision].” (Compl. ¶ 103, R. p. ___.) *See also*, Estate’s Mot. for Sanctions, *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-cv-2623 at ECF No. 66 (D.S.C. Feb. 10, 2022). Appellants further allege Respondent then immediately sought dismissal of the Underlying Suit, “[a]dmitted coverage,” and “[r]emoved all limits on coverage.” (Compl. ¶¶ 103-104, R. p. ___.) *See also*, Mot. to Dismiss, *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-cv-2623 at ECF No. 64 (D.S.C. Jan. 28, 2022); Resp. in Opp. to Mot. for Sanctions, *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-cv-2623 at ECF No. 81 (D.S.C. May 24, 2022).

Appellants allege Respondent’s filing of the Underlying Suit was an abuse of process through which it committed fraud or negligent misrepresentation. (Compl. ¶¶ 75-78, 110-112, 121-124, R. pp. ___.) The Individual Appellants also asserted Respondent’s alleged conduct was actionable under SCUTPA. (Compl. ¶¶ 153-161, R. pp. ___.)⁷

⁷ The allegations pertaining to the civil conspiracy and fraudulent nondisclosure causes of action are not discussed because Appellants do not argue the circuit court erred in dismissing those

ARGUMENT

Distilled to its essence, the Complaint seeks to hold the Respondent liable for its handling of an insurance claim. Because the Estate and the Individual Appellants are not Respondent's insureds and the Estate was a third-party liability claimant against the Lambs' Policy, none of the Appellants have a right of action against Respondent for any failure to determine coverage or its claim handling. *See Kennedy v. Henderson*, 289 S.C. 393, 397, 346 S.E.2d 526, 528 (1986) ("Under the laws of South Carolina, no cause of action exists against an insurer for negligence in failing to determine coverage or adjust a third party claim against the insured under an insurance policy."); *see also, Kleckley v. Nw. Nat. Cas. Co.*, 338 S.C. 131, 134, 526 S.E.2d 218, 219 (2000) ("A tort action for an insurer's bad faith refusal to pay benefits does not extend to third parties who are not named insureds.").

The Appellants attempted to get around this legal blockade and the United States District Court for the District of South Carolina's denial of the Estate's motion for sanctions against Respondent in the Underlying Suit by asserting abuse of process, fraud, negligent misrepresentation, and violation of SCUTPA. Looking beyond its length, rhetorical embellishments, and conclusory assertions, the Complaint fails to allege standing of the Individual Appellants or state any cognizable claim for relief against Respondent.

claims. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("An unappealed ruling, right or wrong, is the law of the case."); *ABB, Inc. v. Integrated Recycling Grp. of SC, LLC*, 432 S.C. 545, 553, 854 S.E.2d 171, 175 (Ct. App. 2021) ("[A] party cannot raise an issue for the first time in an appellate reply brief."); *Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989) ("An appellant may not use either oral argument or the reply brief as a vehicle to argue issues not argued in the appellant's brief.").

I. The circuit court’s Order dismissing the Individual Appellants for lack of standing should be affirmed.

The Individual Appellants contend the Underlying Suit was an “abuse of process,” and seek recovery for any misrepresentation made in the Complaint or the exhibit to the Complaint the Respondent filed in the Underlying Suit. The circuit court decided the Individual Appellants lack standing to sue Respondent for its filing of the Underlying Suit against other parties.⁸ (Am. Order 8, 14, R. pp. __.) This Court should affirm.

A. Under the two-issue rule, this Court should affirm the circuit court’s decision that the Individual Appellants lack standing to sue for fraud and negligent misrepresentation.

“An unappealed ruling is the law of the case and requires affirmance.” *Dreher v. S.C. Dep’t of Health & Env’t Control*, 412 S.C. 244, 249–50, 772 S.E.2d 505, 508 (2015) (quoting *Shirley’s Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013)). If the appellant “fail[s] to raise all of the grounds upon which a lower court’s decision was based, those unappealed findings—whether correct or not—become the law of the case.” *Dreher*, 412 S.C. at 250, 772 S.E.2d at 508. Accordingly, under the “two-issue rule,” a decision that is based on more than one ground must be affirmed if the appellant does not appeal all grounds. *Atl. Coast Builders & Contractors, LLC*, 398 S.C. at 328, 730 S.E.2d at 284.

The Individual Appellants’ fraud and negligent misrepresentation claims are premised on false statements allegedly made by Respondent in the pleading it filed in the Underlying Suit, an action in which the Individual Appellants were not parties. As the circuit court pointed out, the Individual Appellants do not allege the misrepresentations were made to the Individual Appellants

⁸ The circuit court’s rulings as to the Individual Appellants’ lack of standing to bring the civil conspiracy and fraudulent nondisclosure claims included in their Complaint (Am. Order 14-15, 18, R. pp. __) are not addressed in Appellants’ brief and, therefore, are not preserved for this Court’s review. *See Atl. Coast Builders & Contractors, LLC*, 398 S.C. at 329, 730 S.E.2d at 285; *ABB, Inc.*, 432 S.C. at 553, 854 S.E.2d at 175; *Bochette*, 300 S.C. at 112, 386 S.E.2d at 477.

directly or published in any setting other than the Underlying Suit. (Am. Order 14, R. p. __.) And since the Individual Appellants were not parties to the Underlying Suit, Respondent did not make any representations to them by filing its pleading. (Am. Order 14, R. p. __.)

Appellants' brief does not mention these grounds for the circuit court's decision on standing. Instead, the Individual Appellants argue they have standing generally because they alleged particularized harm (Appellants' Br. 12-13, 25-28), and that they adequately alleged reliance (Appellants' Br. 31).

The Individual Appellants' arguments, however, miss the point. They do not allege the purported misrepresentations were made to them by Respondent, nor can they given their allegations of how and where the alleged misrepresentations were made. This is a fatal flaw to both the fraud and negligent misrepresentation claims. *See Burns v. Gardner*, 328 S.C. 608, 616, 493 S.E.2d 356, 360 (Ct. App. 1997) (affirming dismissal of appellants' amended complaint and holding "appellants can state no fraud or misrepresentation claim" against the authors of a position paper provided to the South Carolina General Assembly because even if it contained misrepresentations, "the misrepresentation was made to members of the South Carolina General Assembly, not the appellants"). Consequently, the circuit court's decision that the Individual Appellants lack standing to assert fraud and negligent misrepresentation because the alleged misrepresentations were not made to them is the law of the case and must be affirmed.

B. The Court should affirm the circuit court's decision that the Individual Appellants lack standing to assert abuse of process because they were not parties to the alleged "process."

The circuit court held the Individual Appellants lacked standing to bring their abuse of process claim because they were not parties to the Underlying Suit, the "process" allegedly abused by Respondent. (Am. Order 8, R. p. __.) As the circuit court correctly pointed out, only a party injured through abuse of process can sue for its abuse, as an abuse of process claim "is intended to

compensate *a party* for harm resulting from *another party's* misuse of the legal system.” (Am. Order 8, R. p. __ (quoting *Pallares v. Seinar*, 407 S.C. 359, 370, 756 S.E.2d 128, 133 (2014).)

The Individual Appellants assert the law does not require them to have been parties to assert the Underlying Suit was an abuse of process. In support, they cite *Dobbs on Torts* and the Restatement (Second) of Torts (“Restatement”). As an initial matter, the Restatement does not, as Appellants contend in their brief, “explain[,]” in “comment c” to section 682, that “[i]t is immaterial ... that the process was directed at a third party.” (Appellants’ Br. 29 (purporting to quote Restatement (Second) of Torts § 682 (1977), comment c).) There is no comment c to section 682 of the Restatement and the quote included in the brief—“that the process was directed at a third party”—appears nowhere in the Restatement. In fact, the Restatement supports the circuit court’s decision. Section 682 of the Restatement states, “One who uses a legal process, whether criminal or civil, *against another* primarily to accomplish a purpose for which it is not designed, is subject to liability *to the other* for harm caused by the abuse of process.” Restatement (Second) of Torts § 682 (1977).

The *complete* quote in *Dobbs on Torts* states the victim of abuse of process “might even be a person who is not sued at all but who is directly affected by the process, **as where the court’s injunction forbids the conduct of nonparties or a *lis pendens* filed that ties up property of a person against whom no suit has been filed.**” 3 Dan B. Dobbs, *et al.* THE LAW OF TORTS (2d Ed. 2011) § 594 (emphasis added). The Individual Appellants’ purported abuse of process claim bears no similarity to the examples provided in *Dobbs*. The Underlying Suit did not seek nor result in an injunction forbidding any conduct of the Individual Appellants, nor did it tie up any property belonging to the Individual Appellants. The Complaint does not contain a single allegation the Individual Appellants, separate and apart from the Estate to which they were heirs, were personally

affected by the alleged abuse of process—the filing of the Underlying Suit—and they do not make such an argument here.

The Underlying Suit sought a declaration as to whether there was coverage under the Policy for liability claims arising from the Collision. Respondent brought the Underlying Suit against those with such claims: the Estate and the other defendants. *See* Compl. ¶ 26, *State Farm Mut. Auto. Ins. Co. v. Lamb*, 2:21-cv-02623-MBS at ECF No. 1 (D.S.C. Aug. 16, 2021). Respondent’s act of filing the Underlying Suit did not affect the Individual Appellants because they were not parties and were not served with a summons and complaint. The Individual Appellants did not appear or participate in the Underlying Suit. Moreover, the Underlying Suit was voluntarily dismissed—at Respondent’s request—with prejudice because the controversy presented by Respondent’s Complaint was resolved. Indeed, Respondent had withdrawn its reservation of rights and agreed to defend and indemnify the Lambs. *Lamb*, 2022 WL 2990764, at *2-4. Accordingly, a declaration regarding coverage was never issued.

Finally, the Individual Appellants do not cite any South Carolina case law adopting the incomplete statement they quote from *Dobbs* or otherwise permitting a third-party to pursue an abuse of process claim over the filing of a declaratory judgment action concerning insurance coverage. Based upon a review of this Court’s and the South Carolina Supreme Court’s reported decisions regarding abuse of process over the past 100 years, it does not appear such case law exists. Given the purpose of an abuse of process cause of action is to compensate a party for harm resulting from another party’s misuse of the legal system and the fact the Individual Appellants were not parties to the Underlying Suit, this Court should affirm the circuit court’s decision as to lack of standing. *See Pallares v. Seinar*, 407 S.C. 359, 370, 756 S.E.2d 128, 133 (2014) (“The tort

of abuse of process is intended to compensate a party for harm resulting from another party's misuse of the legal system.").

C. Constitutional standing was not raised to and ruled on by the circuit court; in any event, the Individual Appellants, who do not allege injury-in-fact that affected them individually and personally and were in fact not harmed, lack constitutional standing.

The Individual Appellants argue the circuit court erred because they have constitutional standing, generally, because they alleged concrete, particularized injuries, causation, and redressability. (Appellants' Br. 26-30.) As an initial matter, this argument was not timely raised to and ruled upon by the circuit court and, therefore, is not preserved for this Court's review. In any event, the actual allegations in the Complaint do not sufficiently plead standing, and the judicially noticeable facts show the Individual Appellants have not suffered any injury-in-fact.

1. This issue is not preserved for appellate review.

"It is axiomatic that an issue cannot be raised for the first time on appeal." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). To preserve an issue for appellate review, the issue must "be raised to and ruled upon by the trial judge" in a way that is "sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge." *Malloy v. Thompson*, 409 S.C. 557, 561, 762 S.E.2d 690, 692 (2014) (citing *Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733).

The Individual Appellants' argument as to constitutional standing was not raised to and ruled upon by the circuit court. At the hearing on the Motion, Appellants' counsel argued the Individual Appellants' interest in the Estate gave them standing:

[U]nder South Carolina Law, the Estate is the one that has the power to bring an action on behalf of its beneficiaries. My argument is pretty simple, that the Estate exists for the benefit of the children. That when [Respondent] attempted to deprive the Estate of money, that would affect their interest. And under South Carolina Law, that's enough standing – that's enough for them to have skin in the game.

(Hearing Tr. 73:7-14, R. p. __.)

When the circuit court in response asked why it would matter, then, if the Individual Appellants were dismissed and the Estate remained in the case, Appellants' counsel stated:

I've pled that it applies to all children. ... I think that each child has – may – the argument is that they may have experienced different effects by the [Underlying L]awsuit being brought. So shortly after their father's death, which affected them emotionally, which they are allowed to argue to a jury about how [Respondent]'s conduct affected them, that they were first told there was coverage, then – then they were told there wasn't coverage and they had to litigate it not knowing what would happen. Now, I've pled that a jury may or may not buy it, but I've pled that that's sufficiently in order to keep them in.

(Hearing Tr. 73:21-74:12, R. pp. __.)

During the hearing, Appellants' counsel also stated standing was addressed “on page 32” of a memorandum he handed the circuit court which would be filed after the hearing. (Hearing Tr. 72:10-73:6, R. pp. __.) Appellants filed two memoranda after the hearing: one in opposition to Respondent's Motion, another in opposition to GWB's motion for judgment on the pleadings. Appellants have designated only the former to be included in the record on appeal, but standing is not addressed on page 32 or on any other page of that memorandum. While standing is addressed by Appellants in their memorandum in opposition to GWB's motion, it is not the constitutional standing argument presented to this Court in their brief. Rather, in the memorandum opposing GWB's motion, Appellants argued they had standing because they were beneficiaries of the Estate:

The law states that only the personal representative may bring claims on behalf of the heirs. “Every such action shall be brought by or in the name of the executor or administrator of such person.” S.C. Code Ann. § 15-51-20. Further, “[e]very such action shall be *for the benefit of the...children...*” S.C. Code Ann. § 15-51-20. As the children are the beneficiaries of the Estate and the Estate was sued seeking to deprive benefits to the children who are the beneficiaries, they have standing. The fact that they were not named is irrelevant because they are the beneficiaries as matter of law to the policy proceeds. As there is a statute that provides actions are for the benefit of the children, they

have standing to bring a claim against those who acted against their interests and sought to deprive them of the proceeds.

(Appellants' Memo. in Opp. to GWB's Mot. 32-33, July 11, 2024.)

While both dismissed the Individual Appellants for lack of standing, neither the initial Order nor the Amended Order addressed the issue of constitutional standing. (*See gen. Am. Order*, R. pp. __.) The Appellants' motion for reconsideration of the initial Order argued the court erred on the issue of standing because the Individual Appellants "had an interest in the policy proceeds and were harmed by [Respondent] by paying for counsel and defending the lawsuit," and "[s]tanding require[d] no more" than that. (Appellants' Mot. for Reconsideration 8-9, R. pp. __.)

In short, the issues of constitutional standing and whether the Individual Appellants satisfy the three-part test for constitutional standing were not issues raised to and ruled upon by the circuit court. Accordingly, this Court should disregard the argument of constitutional standing raised for the first time in the Appellants' brief.

2. The Individual Appellants lack constitutional standing.

The Individual Appellants argue they have constitutional standing because they alleged in the Complaint "personal," "direct," "distinct," "concrete" injuries which "stemmed from [Appellant]'s use of fabricated documents" and their "causes of action sought legal and equitable relief available under South Carolina law."⁹ (Appellants' Br. 11, 12, 26, 28.) In support, the Individual Appellants blithely cite—but do not quote—numerous paragraphs of their Complaint. A review of the *actual* allegations in these paragraphs, however, reveals the inadequacy of the Complaint.

Accepting as true any well pleaded allegations of fact and disregarding the unsupported conclusory allegations in the Complaint, the Individual Appellants failed to allege sufficient facts

⁹ There is no claim for equitable relief in the Complaint. (*See gen. Compl.*, R. pp. __.)

to show standing. *See Skywaves I Corp.*, 423 S.C. at 455, 814 S.E.2d at 656 (“[T]he circuit court did not err in dismissing Skywaves’ SCUTPA claim because Skywaves merely stated [the defendants’] conduct satisfied the public interest requirement of SCUTPA without alleging any particularized facts.”; *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986) (providing that even under the liberal standard applicable on a motion to dismiss, a mere conclusory allegation, unsupported by any particularized allegations of fact, is insufficient). Moreover, the judicially noticeable facts reveal the Individual Appellants, who each received nearly \$2 million, were not harmed by Respondent’s alleged conduct. For these reasons, the Court should affirm dismissal of the Individual Appellants’ fraud, negligent misrepresentation, abuse of process, and SCUTPA claims.

a. The Complaint does not allege the Individual Appellants suffered concrete, particularized injury-in-fact.

“For a plaintiff to possess standing three elements must be satisfied,” the first of which is “the plaintiff must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest.” *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 75, 753 S.E.2d 846, 850 (2014). “In order for an injury to be particularized, it must affect the plaintiff in a personal and individual way.” *Id.* Because a review of the Complaint reveals the Individual Appellants failed to allege and have not argued any injury that affected them personally and individually, they lack standing.

i. No allegations of “direct, concrete injuries, separate from those of the Estate”

First, the Individual Appellants cite paragraphs 100, 101, 102, 105, 108, 113, 116, 131, 140, and 160 of the Complaint as alleging they “suffered direct, concrete injuries, separate from those of the Estate” (Appellants’ Br. 11, 12, 25), but none of these paragraphs refer to “direct” injuries “separate from those of the Estate” as a result of Respondent’s alleged conduct.

Paragraphs 100, 108, 113, 131, 140, and 160 are conclusory allegations that the Appellants “and others”¹⁰ generally suffered unidentified damage, harm, or loss and these paragraphs do not allege injuries that affected the Individual Appellants personally and individually. (Compl. ¶ 100, R. p. ___ (“STATE FARM engaged in fraud and other misconduct ... and as a direct and proximate result, Plaintiffs and others were damaged and harmed.”); Compl. ¶ 108 (“As a direct and proximate result of Defendants’ wrongful conduct, Plaintiffs and others suffered losses and were otherwise injured and damaged.”); Compl. ¶ 113, R. p. ___ (“As a direct and proximate result of Defendants’ conduct, Plaintiffs and others were injured and damaged in various ways.”); Compl. ¶ 131, R. p. ___ (“As a result of STATE FARM’s improper conduct, ... Plaintiffs and others had consequent and proximate injuries and damages.”); Compl. ¶ 140, R. p. ___ (“Plaintiffs and others suffered losses, including pecuniary, as a proximate result of their reliance on the representations and associated conduct of the Defendants.”); Compl. ¶ 160, R. p. ___ (“As a direct and proximate result of STATE FARM’s conduct and unfair trade practices, Plaintiffs Robert C. Workman, Kelly Workman Tick and Matthew T. Workman individually suffered ascertainable losses of money or other damages.”).

Paragraph 116 alleges the Appellants “and others” generally—not the Individual Appellants personally and individually—“suffered damages and losses, including but not limited to attorney’s fees, litigation expenses, and emotional distress”—and that those damages were “a direct result of GWB’s conduct.” (Compl. ¶ 116, R. p. ___.) This paragraph does not allege any emotional distress was suffered as a result of Respondent’s conduct. Even if it did, such allegation

¹⁰ As seen throughout the conclusory allegations of general, unparticularized damages, Appellants repeatedly reference themselves “and others” in the Complaint. Appellants, of course, are the only plaintiffs in this action. Appellants neither alleged a class action in the Complaint, nor attempted to comply with the necessary requirements to assert a class-based claim. *See* Rule 23, SCRCF.

would not give rise to standing for the abuse of process, fraud, negligent misrepresentation, or SCUTPA claims. The “concrete, particularized harm” must be “to a legally protected interest.” *Carnival Corp.*, 407 S.C. at 75, 753 S.E.2d at 850. The Individual Appellants do not have a legally protected interest in being free from emotional distress they allegedly experienced as a result of Respondent filing a declaratory judgment action against others. With respect to SCUTPA, alleged emotional damages would also not suffice to establish standing because a civil action for violation of SCUTPA only permits the recovery of actual damages for any ascertainable loss of money or property. *See* S.C. Code Ann. § 39-5-140(a) (stating a person “who suffers any ascertainable loss of money or property, real or personal” as a result of another’s trade practice “declared unlawful by Section 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages”).

Paragraphs 101 and 105 allege the Appellants “and others” generally had to obtain counsel to defend them in the Underlying Suit and loss in the form of “attorney’s fees, costs, and expenses including to defend the [Underlying Suit].” (Compl. ¶ 101, R. p. __ (“As a result of Defendants’ wrongful conduct, Plaintiffs and others obtained counsel to defend them in the lawsuit brought by Defendants.”); Compl. ¶ 105, R. p. __ (“As a direct and proximate result of Defendants’ wrongful conduct, Plaintiffs suffered losses, including incurring attorney’s fees, costs, and expenses including to defend the lawsuit brought by Defendants and against Melvin O. Lamb, Jr. and Melvin O. Lamb, III.”).) These paragraphs do not allege harm that affected the Individual Appellants personally and individually, particularly given the Estate defended the Underlying Suit, not the Individual Appellants, who were not parties.

Finally, Paragraph 102 alleges the Appellants “and others” had to obtain counsel to address unidentified “issues, including those related to their own automobile policies” (Compl. ¶ 102, R.

p. __ (“As a result of Defendants’ wrongful conduct, Plaintiffs and others obtained counsel to address issues, including those related to their own automobile policies.”.) The allegation that Appellants “and others” obtained counsel to address issues about “their own” automobile policies does not suffice to show an injury-in-fact that affected the Individual Appellants personally and individually. The Individual Appellants do not allege in their Complaint or argue in their brief that they owned or insured any of the vehicles involved in the Collision, that they were present at the time of the Collision, that they suffered any bodily injury or property damage as a result of the Collision, or that they had policies that would provide coverage for any such injuries.

ii. No allegations of “distinct, non-derivative harms”

The Individual Appellants also claim they each alleged “[d]istinct, non-derivative harms” in paragraphs 67 through 70 and paragraphs 79 and 80 of the Complaint. (Appellants’ Br. 25-26.) None of these paragraphs mentions or contains allegations suggesting any harm, much less “[d]istinct, non-derivative harms.” Moreover, Paragraphs 67 through 70 contain allegations of GWB’s conduct, not Respondent’s alleged conduct. (Compl. ¶ 67, R. p. __ (“On information and belief, without a reasonably adequate investigation into the law or facts, GWB used the bogus documents and filed a complaint in U.S. District Court, civil action number 2:21-cv-2623-MBS. (Complaint.”); Compl. ¶ 68, R. p. __ (“GWB owed various duties to Plaintiffs and others to reasonably investigate the facts and law before filing a lawsuit for STATE FARM, to not use bogus and false documents and to not assist STATE FARM in the use of these bogus and false documents against Plaintiffs and others.”); Compl. ¶ 69, R. p. __ (“In breach of these and other duties owed to Plaintiffs and others, GWB substantially assisted STATE FARM in the litigation, in part, by negligently, recklessly and/or knowingly using and continuing to use bogus documents against Plaintiffs and others without adequately or reasonably investigating the validity and/or propriety of those documents.”); Compl. ¶ 70, R. p. __ (“In part the inadequate or unreasonable investigation

by GWB consisted of pleading that a form attached to the Complaint complied with the law and that the endorsement attached existed before the collision.”.)¹¹

iii. No allegations of “emotional and financial injuries”

Next, the Individual Appellants argue they alleged “[e]motional and financial injuries from State Farm’s use of fabricated documents” in paragraphs 40 through 57 and paragraphs 79 and 80 of their Complaint. (Appellants’ Br. 26.) This is incorrect. These paragraphs only contain allegations of Respondent’s conduct. (*See* Compl. ¶¶ 40-57, 79-80, R. pp. __.) Neither paragraphs 40 through 57 nor paragraphs 79 and 80 mention or suggest the existence of any emotional or financial injuries. (*See* Compl. ¶¶ 40-57, 79-80, R. pp. __.)

iv. No other allegations of injury-in-fact

Finally, the Individual Appellants claim their allegations of harm were “cited in further detail in [their] Supplemental submission.” (Appellants’ Br. 26.) With respect to standing, the “Supplemental submission”—the document Appellants submitted to the circuit court in response to its request for proposed orders—did not give further detail; it stated only that the Individual Appellants “had an interest in the policy proceeds and were harmed by Defendants,” arguing “[s]tanding require[d] no more.” (Appellants’ Supp. Submission 7, 13, R. pp. __.)

Thus, even if the issue of constitutional standing were preserved for this Court’s review, the paragraphs relied on by the Individual Appellants bely their argument the circuit court “disregard[ed] critical allegations in the Complaint.” (Appellants’ Br. 25.) The Individual Appellants have not alleged injury-in-fact that affected them personally and individually. Consequently, the Individual Appellants lack standing to assert fraud, negligent misrepresentation,

¹¹ If some argument exists to construe these paragraphs as alleging distinct, non-derivative harm to the Individual Appellants caused by Respondent, they failed to articulate that argument in their brief and may not do so for the first time in a reply. *See ABB, Inc.*, 432 S.C. at 553, 854 S.E.2d at 175; *Bochette*, 300 S.C. at 112, 386 S.E.2d at 477.

abuse of process, or SCUTPA causes of action against Respondent, and this Court should affirm dismissal of the Individual Appellants.

b. The Individual Appellants were not harmed by the Underlying Suit.

The Individual Appellants rely on their characterization of the Complaint rather than the actual allegations because they know they did not plead or actually suffer injury as a result of Respondent's alleged conduct. As alleged in the Complaint, Respondent withdrew its reservation of rights under the Policy, agreed to defend and indemnify the Lambs, and sought voluntarily dismissal of the Underlying Suit. (Compl. ¶ 104, R. p. __.) The Estate was represented by counsel in the Underlying Suit, and that same counsel represents the Appellants in this action.

As established in a sworn, filed petition of Robert C. Workman as its Personal Representative, Respondent paid the Estate \$10,000,000 to settle its liability claims against the Lambs, as opposed to the Policy's \$25,000 bodily injury liability limit; Robert C. Workman, both in his individual capacity and as Personal Representative of the Estate, approved the settlement amount and believed it "to be just, reasonable, and in the best interests of and for the Estate, its heirs, survivors, beneficiaries, and all persons represented by [him in his capacity as Personal Representative of the Estate]"; he approved attorney's fees totaling \$4,000,000 being paid from the \$10,000,000 paid by Respondent; and he asked that the circuit court approve the distribution of \$1,930,552.10 to each of the Individual Appellants. *See* Pet. for Approval of Settlement of Claims with Statement of Settlement, *Workman v. Lamb*, C.A. 2021-CP-10-03743 & 2022-CP-10-00511 (Chas. Cnty. Ct. of Common Pleas May 5, 2022).

The circuit court entered an order approving the settlement, noting Robert C. Workman as the Personal Representative of the Estate had "[a]greed to pay all attorney's fees of [his] counsel] ... as well as any outstanding bills or expenses ... from the proceeds of the settlement." *See* Order Approving Settlement, C.A. 2021-CP-10-03743 & 2022-CP-10-00511 (Chas. Cnty. Ct. of

Common Pleas May 11, 2022). As part of a Verified Petition for Approval of Settlement and an Order Approving Settlement, Respondent asks this Court to take judicial notice of these facts. *See* Rule 201(a), SCRE (“A judicially noticed fact must be one not subject to reasonable dispute in that it is ... capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”); Rule 201(d), SCRE (“A court shall take judicial notice if requested by a party and supplied with the necessary information.”); Rule 201(f), SCRE (“Judicial notice may be taken at any stage of the proceeding.”).¹²

Collectively, these records show the Individual Appellants received \$1,930,552.10 each, more than seventy times the Policy’s per person liability limits, and that attorneys’ fees were paid out of the \$10 million paid by Respondent. Given this and the Complaint’s failure to allege any particularized harm caused by Respondent which affected each of them individually and personally, the Individual Appellants have no standing, and the circuit court’s order dismissing them with prejudice should be affirmed.

II. The circuit court’s Order dismissing the Individual Appellants’ SCUTPA claim should be affirmed.

Under SCUTPA, “Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 [of SCUTPA] may bring an action individually, but not in a representative capacity, to recover actual damages.” S.C. Code Ann. § 39-5-140(a). Importantly, pursuant to the exemption set forth in Section 39-5-40(c) (“subsection

¹² In addition to public court records available through the judiciary’s public index for Charleston County, the cited Verified Petition for Approval of Settlement and Order Approving Settlement were also filed with the United States District Court for the District of South Carolina in this case. *See* Petition, *Workman v. State Farm Mut. Auto. Ins. Co.*, 2:25-cv-00035-RMG at ECF No. 12-2 (D.S.C. Feb. 17, 2025); Order, *Workman v. State Farm Mut. Auto. Ins. Co.*, 2:25-cv-00035-RMG at ECF No. 12-3 (D.S.C. Feb. 17, 2025).

(c)), “[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,” which is South Carolina’s Insurance Trade Practices Act (“ITPA”). S.C. Code Ann. § 39-5-40(c).¹³ Based on subsection (c), the circuit court correctly held the Individual Appellants’ SCUTPA claim must be dismissed. (*See* Am. Order 18-19, 21-22, R. pp. ___.)

A. Robert C. Workman in his capacity as the Estate’s Personal Representative lacks standing to appeal the circuit court’s decision as to SCUTPA.

As an initial matter, Appellants’ brief asserts the SCUTPA claim was dismissed with prejudice as to “all Appellants” and states “[t]he Estate and individual Appellants appeal from the trial court’s judgment as a matter of law dismissing their SCUTPA cause of action” (Appellants’ Br. 3, 14). This is incorrect. In fact, Robert C. Workman, as Personal Representative of the Estate, did *not* assert a SCUTPA claim against Respondent in Appellants’ Complaint.¹⁴ (Compl. ¶¶ 153, 160, R. pp. ___.) Because he did not bring a SCUTPA claim on behalf of the Estate (nor could he),

¹³ The quoted exemption states “unfair trade practices covered and regulated under Title 38, Chapter 57, Sections 38-57-10 through 38-55-320” are exempt from SCUTPA. S.C. Code Ann. § 39-5-40(c) (emphasis added). It is understood that the section’s reference to Title 38, *Chapter 55* is a mistake, and that the legislature intended to reference Chapter 57. This is because until 1987, when it was designated as Chapter 57, the ITPA was designated as Chapter 55 of Title 38. “It is obvious that when the [ITPA] was recodified as Chapter 57 in 1987, § 39-5-40(c), which has not been amended since 1971, inadvertently was not revised to reflect the change.” *Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F. Supp. 128, 131 (D.S.C. 1994). *See also*, *Kiriakides v. United Artists Commc’ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) (“However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention. If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect.”) (internal citation omitted).

¹⁴ If Robert C. Workman had brought a SCUTPA claim in his capacity as the Estate’s Personal Representative, the claim would have failed not just for the reasons set forth in the Amended Order, but also because a SCUTPA action cannot be brought in a representative capacity. *See* S.C. Code Ann. § 39-5-140(a) (providing a “person who suffers any ascertainable loss of money or property” due to another’s violation of SCUTPA “may bring an action individually, but not in a representative capacity”).

Robert C. Workman in his capacity as the Estate’s Personal Representative has not been aggrieved by and lacks standing to appeal the circuit court’s decision to dismiss the SCUTPA claim. *See* Rule 201(b), SCACR (“Only a party aggrieved by an order, judgment, sentence or decision may appeal.”); *Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 301, 551 S.E.2d 588, 589–90 (Ct. App. 2001) (“A party cannot appeal from a decision which does not affect his or her interest, however erroneous and prejudicial it may be to some other person’s rights and interests.”). Accordingly, the appeal of the SCUTPA decision by Robert C. Workman *as Personal Representative of the Estate* should be disregarded or dismissed.

B. The Individual Appellants do not address the circuit court’s basis for dismissing the SCUTPA claim.

In dismissing the SCUTPA claim, the circuit court specifically relied on subsection (c), which exempts any “unfair trade practices covered by” the Insurance Trade Practices Act. (Am. Order. 18-22, R. pp. __.) While the Individual Appellants mention subsection (c) by name in their brief, they never discuss the substance of that exemption. Instead, the Individual Appellants substantively address the exemption in S.C. Code Ann. § 39-5-40(a) (“subsection (a)”), which excludes from SCUTPA’s reach “[a]ctions ... **permitted** under laws administered by any regulatory body” or “by any other South Carolina State law” (emphasis added). (*See* Appellants’ Br. 15 (“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 a blanket immunity for all conduct within regulated industries.”) (emphasis added); Appellants’ Br. 16 (arguing the complained of conduct “is not ‘**permitted**’ conduct under Title 38 or any other regulatory authority”) (emphasis added); Appellants’ Br. 18 (“State Farm . . . cited no authority **authorizing** the conduct alleged” and “Appellants’ allegations fall outside the scope of **permitted** regulated conduct, rendering SCUTPA fully applicable”) (emphasis added); Appellants’ Br. 18

“State Farm’s [alleged conduct] is neither expressly **authorized** nor affirmatively permissively regulated by the DOI” and, therefore, “it falls outside the scope of the SCUTPA exemption...” (emphasis added.) Accordingly, the Individual Appellants base their appeal on the incorrect premise that the circuit court “conclud[ed] the insurance industry, because it is regulated, is categorically exempt from SCUTPA” under subsection (a) (Appellants’ Br. 14), when in fact the circuit court dismissed the SCUTPA claim because the Complaint alleged Respondent engaged in unfair insurance trade practices which are exempt from SCUTPA pursuant to subsection (c), (Am. Order 18-22, R. pp. ___).

Subsection (a) was not one of the grounds for the circuit court’s dismissal of the SCUTPA claim. (*See* Am. Order 18-22, R. pp. ___.) The Individual Appellants’ arguments regarding the inapplicability of subsection (a) (Appellants’ Br. 14-16), and whether Respondent has met its burden with respect to the exemption set forth in subsection (a) (Appellants’ Br. 18), are, therefore, not germane to this appeal.

Moreover, the Individual Appellants’ failure to address subsection (c), the basis for the circuit court’s decision, constitutes abandonment of the issue. *See, e.g., Fields v. Melrose Ltd. P’ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) (“An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.”). The Individual Appellants may not, on reply or in oral argument, argue inapplicability of subsection (c). *See ABB, Inc.*, 432 S.C. at 553, 854 S.E.2d at 175; *Bochette*, 300 S.C. at 112, 386 S.E.2d at 477. Accordingly, the Individual Appellants have not preserved for this Court’s review the dismissal of the SCUTPA claim and the decision of the circuit court should be affirmed.

C. Section 38-77-341(1) does not permit the Individual Appellants’ SCUTPA claim.

The Individual Appellants rely on S.C. Code Ann. § 38-77-341(1), set forth as follows, to argue the circuit court erred when it dismissed their SCUTPA claim:

It is an unfair trade practice as defined in Section 39-5-20 [of SCUTPA] to ... knowingly and wilfully [sic] make or cause to be made any false statement or representation of a material fact for use in an application for payment or for use in determining the right to payment under this chapter.

(Appellants' Br. 19-20, 21-22.) Based on this subsection, the Individual Appellants argue, "when an automobile insurer such as [Respondent] knowingly makes false statements 'for use in determining the right to payment under [Chapter 77],' it commits an unfair trade practice actionable under SCUTPA." (Appellants' Br. 20.) They also argue Section 38-77-341 "makes clear that knowingly making false statements related to insurance coverage constitutes a SCUTPA violation 'notwithstanding any other provision of law.'"¹⁵ (Appellants' Br. 21.) This is incorrect, and the circuit court soundly rejected the Individual Appellants' arguments regarding Section 38-77-341(1).¹⁶ This Court should affirm.

1. The legislature did not intend for Section 38-77-341 to subject automobile insurers to SCUTPA.

A cardinal rule of statutory construction is that a court must ascertain and effectuate the actual intent of the legislature. *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). The legislature's intent is ascertained through the plain language of the statute, read in context so that it harmonizes with its subject matter and general purpose. *See e.g., Mun. Ass'n of S.C. v. AT & T Commc'ns of S. States, Inc.*, 361 S.C. 576, 580, 606 S.E.2d 468, 471 (2004) (noting a court should effect legislative intent through "giving the words [of the statute]

¹⁵ Appellants do not include a cite for the quoted language—"notwithstanding any other provision of law"—which does not appear in Section 38-77-341.

¹⁶ The circuit court also considered and rejected the Individual Appellants' claim that Respondent engaged in improper claim practices under Section 38-59-20 and that such wrongful conduct was redressable through SCUTPA. (Am. Order 19-20, R. pp. __.) Appellants do not dispute this decision in their Brief and therefore the issue is waived. *See, e.g., Fields*, 312 S.C. at 106, 439 S.E.2d at 285 (Ct. App. 1993) ("An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.").

their ordinary meaning and harmonizing the language with [the statute's] subject matter"); *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) ("The language [of the statute] must also be read in a sense which harmonizes with its subject matter and accords with its general purpose."). In addition to the plain language of the statute itself, legislative intent may also be gleaned from the statute's preamble. See *S.C. Pipeline Corp. v. Lone Star Steel Co.*, 345 S.C. 151, 154–55, 546 S.E.2d 654, 656 (2001) (holding the plain and ordinary meaning of the words in a statute as well as the statute's preamble determine the legislature's intent).

The plain language and subject matter of Section 38-77-341 establish the legislature's intent to enumerate five categories of unfair trade practices that may be committed by those seeking payment in connection with automobile insurance: (1) making false representations for use in an application for payment or for use in determining the right to such payment of automobile insurance benefits; (2) submitting bills or requests for payment with higher than customary charges; (3) submitting bills or requests for payment for work covered by insurance that are higher than those submitted for similar work not covered by insurance; (4) submitting inflated bills or requests for payment for the purpose of relieving the insured of having to pay a deductible or copayment; and (5) with respect to health care facilities and providers, charging certain fees for the search, duplication, and handling of medical records. S.C. Code Ann. § 38-77-341(1)-(5).

While all five subsections concern those *seeking* insurance benefits, any doubt concerning the legislature's intent is resolved through the statute's preamble, which underscores the purpose of Section 38-77-341 is to reduce fraudulent or exaggerated claims. The entirety of the preamble enacting Section 38-77-341 states: "Whereas, it is the purpose and intent of the General Assembly in enacting this legislation to **reduce insurance losses**, including those of the Reinsurance Facility, and, consequently, the cost of mandatory automobile insurance." 1989 S.C. Acts 148, Page 440

(emphasis added). The “purpose and intent” of “reduc[ing] insurance losses” is advanced by applying Section 38-77-341 to persons seeking payment but would not be advanced by applying Section 38-77-341 to automobile insurers.

2. A different intent of Section 38-77-341 cannot be gleaned by considering, in a vacuum, a single phrase within one of its subsections.

The Individual Appellants rely solely on Section 38-77-341(1)’s phrase “for use in determining the right to payment under this chapter”¹⁷ and the fact that automobile insurers determine the right to payment of automobile insurance to argue an automobile insurer like Respondent “commits an unfair trade practice actionable under SCUTPA” when it “knowingly makes false statements ‘for use in determining the right to payment under this chapter.’” (Appellants’ Br. 20 (quoting S.C. Code Ann. § 38-77-341(1).) This argument is illogical and contrary to South Carolina law.

While it makes sense that a person seeking payment of automobile insurance could make a false representation for the automobile insurer’s use in determining his or her right to payment, the same cannot be said of an automobile insurer. An automobile insurer does not seek payment

¹⁷ A plain reading of this language consistent with the text of the statute, the preamble, and legislative intent is that it refers to applicants *seeking* a right to payment of insurance benefits. Language nearly identical to Section 38-77-341(1) is included in statements required of disability benefit applicants under the Social Security Act, further indicating the phrase “for use in determining the right to payment” applies to those seeking payments of insurance benefits. *See, e.g., Sheldon v. Cooper Health Sys.*, No. A-4954-18, 2021 WL 1115986, at *3 (N.J. Super. Ct. App. Div. Mar. 24, 2021) (noting applicant had to acknowledge “anyone who makes ... a false statement or representation of material fact in an application or for use in determining a right to payment ... [of SSDI benefits] commits a crime”); *Jones v. Southcentral Emp. Corp.*, 488 F. Supp. 2d 475, 479 n.2 (M.D. Pa. 2007) (noting applicant had to acknowledge “I KNOW THAT ANYONE WHO MAKES OR CAUSES TO BE MADE A FALSE STATEMENT OR REPRESENTATION OF MATERIAL FACT IN AN APPLICATION OR FOR USE IN DETERMINING A RIGHT TO PAYMENT ... UNDER THE SOCIAL SECURITY ACT COMMITS A CRIME” and affirm all information applicant gives in connection with the claim is true); *Cooper v. F.A.A.*, 816 F. Supp. 2d 778, 789 (N.D. Cal. 2008) (noting application stated “anyone making a false statement or representation of a material fact for use in determining a right to payment under the Social Security Act commits a crime”).

from itself and cannot be deceived into paying more on an insurance claim by “mak[ing] or caus[ing] to be made a[] false statement or representation of a material fact...for [its own] use in determining the right to payment under [Chapter 77].” That automobile insurers may determine the right to payment of automobile insurance generally is not determinative of Section 38-77-341(1)’s intended application, particularly given South Carolina’s law on statutory construction.

By isolating a phrase within subsection (1) and examining it in a vacuum, the Individual Appellants ignore the subject matter and context of the Section 38-77-341. It is well established, “words in a statute must be construed in context.” *Southern Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass’n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991). The courts “may not, in order to give effect to particular words, virtually destroy the meaning of the entire context; that is, give the particular words a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent.” *Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 129, 750 S.E.2d 61, 63 (2013) (quoting *Southern Mut. Church Ins. Co.*, 306 S.C. at 342, 412 S.E.2d at 379). To construe Section 38-77-341(1) as applying to insurers based solely on the phrase “for use in determining the right to payment” would virtually destroy the meaning of the entire context of and be clearly repugnant to Section 38-77-341, which as a whole unequivocally speaks to those who submit applications, information, statements, records, and bills for payment of automobile insurance benefits and medical facilities and providers seeking payment from automobile insurers for medical records requested in connection with automobile insurance.

3. The Individual Appellants’ interpretation of Section 38-77-341(1) conflicts with subsection (c) and attempts to create a private right of action where none exists.

According to the Individual Appellants, because Section 38-77-341 sets forth unfair trade practices actionable under SCUTPA, “[t]he 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.” (Appellants’ Br. 19.) This argument ignores the plain language of subsection (c), which unequivocally states SCUTPA “does not supersede or apply to **unfair trade practices covered under Title 38**, Chapter 57” S.C. Code Ann. § 39-5-40(c) (emphasis added). Interpreting Section 38-77-341(1) as giving third parties, like the Individual Appellants, a right to pursue an automobile insurer, like Respondent, under SCUTPA for alleged misrepresentations about coverage made by the insurer creates a conflict between Section 38-77-341(1) and subsection (c), the SCUTPA exemption relied on by the circuit court.

Title 38, Chapter 57 is the ITPA, “[t]he purpose of [which] is to regulate **trade practices in the business of insurance** ... by defining, or providing for the determination of, **all the practices in this State** which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.” S.C. Code Ann. § 38-57-10 (emphasis added). The ITPA specifically applies to those “engaged in the business of insurance,” including companies, agents, brokers, and adjusters. S.C. Code Ann. § 38-57-20 (defining “person” as used in the ITPA). It prohibits those persons from engaging “in any trade practice which is defined in [the ITPA] as, or determined pursuant to [the ITPA] to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.” S.C. Code Ann. § 38-57-30. For example, under the ITPA, it is an unfair insurance trade practice for an insurance company to make, issue, or circulate any “statement misrepresenting the terms of a policy ... or the benefits or advantages represented thereby.” S.C. Code Ann. § 38-57-40.

The Individual Appellants seek to bring a SCUTPA claim against Respondent for its alleged misrepresentation of the terms of the Policy. But the ITPA specifically covers the alleged conduct as an unfair insurance trade practice. S.C. Code Ann. § 38-57-40. Because subsection (c)

exempts from SCUTPA the unfair trade practices covered by ITPA, including the unfair trade practice set forth in Section 38-57-40 and alleged in the Complaint, Respondent's alleged conduct is not actionable under SCUTPA. *See, e.g., Ins. Prods. Mktg., Inc. v. Conseco Life Ins. Co.*, No. 9:11-CV-01269-PMD, 2011 WL 3841269, at *8 (D.S.C. Aug. 29, 2011) ("The Court finds that because the alleged conduct is expressly governed by the South Carolina Insurance Trade Practices Act, Plaintiffs cannot recover under the South Carolina Unfair Trade Practices Act.").

Moreover, the Individual Appellants' reliance on Section 38-77-341(1) as a means of asserting a SCUTPA claim against Respondent cannot be reconciled with the well-established law that third-parties, like the Individual Appellants, lack any private right of action against insurance companies, like Respondent, for an alleged violation of the ITPA, which covers the exact conduct complained of by Individual Appellants:

The Insurance Trade Practices Act prohibits insurers from misrepresenting an insurance policy The statute mandates the penalties for violating the statute. ... The Department of Insurance is vested with determining whether an insurer has violated the insurance code. ... The statute clearly manifests legislative intent to create an administrative remedy and not a private right of action.

Masterclean, Inc. v. Star Ins. Co., 347 S.C. 405, 415, 556 S.E.2d 371, 377 (2001) (internal citations omitted).

4. Section 38-77-341(1) should be construed so that both it and subsection (c) can stand.

South Carolina law provides that if the provisions of two statutes can be construed so that both can stand, the Court must construe them that way. *Branch v. City of Myrtle Beach*, 340 S.C. 405, 412, 532 S.E.2d 289, 293 (2000); *In Int. of Shaw*, 274 S.C. 534, 539, 265 S.E.2d 522, 524 (1980). Accordingly, if Section 38-77-341(1) can be construed so that both it and subsection (c) can stand, the Court must do so.

Construing Section 38-77-341(1) as identifying an unfair trade practice that may be committed by someone *seeking* payment of automobile insurance, not an automobile insurer, creates no conflict with the SCUTPA exemption under subsection (c), the ITPA, or any other statutes. Accordingly, it must be construed that way. In addition to avoiding unnecessary conflict, such construction is in accord with the plain language, subject matter, and purpose of Section 38-77-341, all as discussed above. For these reasons, the Court should reject the Individual Appellants' interpretation of Section 38-77-341(1) and affirm dismissal of the SCUTPA claim.

D. Any reliance by the circuit court on an unpublished decision is not an error preserved for this Court's review.

In the Amended Order, the circuit court discussed the fact that courts interpreting South Carolina law have consistently held unfair trade practices regarding the insurance business exempt from SCUTPA's coverage. (Am. Order 18-19, R. pp. __.) The circuit court cited *Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F. Supp. 128, 130–31 (D.S.C. 1994), as well as *Cleveland Ridge Homeowner's Ass'n, Inc. v. State Farm Fire & Cas. Co.*, No. 2006-UP-295, 2006 WL 7286092, at *3 (S.C. Ct. App. June 26, 2006).

The Individual Appellants argue the circuit court improperly relied on *Cleveland Ridge*, an unpublished decision of this Court, and committed reversible error by doing so. (Appellants' Br. 23.) This issue is not preserved for this Court's review. The Individual Appellants did not object to this portion of the Amended Order and they cannot complain of it for the first time on appeal. *See, e.g., Higgins v. Med. Univ. of S.C.*, 326 S.C. 592, 601, 486 S.E.2d 269, 274 (Ct. App. 1997) ("Since the [appellants] did not object [to the circuit judge's reliance on other circuit court orders], the issue is not preserved."). The Individual Appellants filed a motion under Rule 59(e), SCRCF, but did not include this issue. (*See gen.* Appellants' Mot. for Reconsideration, R. pp. __.) Had they done so, the circuit court judge would have been given a chance to clarify whether his decision

would have been the same without citation to *Cleveland Ridge*. See *Higgins*, 326 S.C. at 602, 486 S.E.2d at 274. See also, *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 813 S.E.2d 292, 298, 422 S.C. 544, 556 (Ct. App. 2018) (finding circuit court’s citation to unpublished decision was not material or prejudicial where circuit court also cited to published decision and so did not rely solely on unpublished decision).

Furthermore, while *Cleveland Ridge* is not controlling precedent, its reasoning is persuasive on the issue of whether the Individual Appellants can assert the SCUTPA claim alleged in their Complaint. *Cleveland Ridge* simply represents this Court’s acceptance of the federal court’s interpretation of South Carolina law. See, e.g., *Colonial Life & Acc. Ins. Co. v. Am. Fam. Life Assur. Co. of Columbus*, 846 F. Supp. 454, 463 (D.S.C. 1994) (granting summary judgment on SCUTPA claim that was premised on conduct prohibited by the Insurance Trade Practices Act because “conduct proscribed therein fall within the exemption from the SCUTPA set forth in Section 39–5–40(c)”; *Coxe v. Gov’t Pers. Mut. Life Ins. Co.*, No. 3:23-CV-389-SAL, 2023 WL 11885972, at *11 (D.S.C. Aug. 17, 2023) (“This court has consistently recognized SCUTPA, specifically S.C. Code Ann. § 39-5-40(c), exempts from coverage all unfair trade practices regarding the business of insurance.”); *Thomas v. Tramaine-Frost*, No. 4:16-cv-1266, 2017 WL 9287004, at *5 (D.S.C. Jan. 12, 2017) (dismissing SCUTPA claim because “SCUTPA does not create a private right of action against insurers”).

III. The Complaint failed to state abuse of process, fraud, and negligent misrepresentation causes of action.

In addition to dismissing the Individual Appellants for lack of standing, the circuit court held the Complaint failed to state claims for abuse of process, fraud, and negligent

misrepresentation.¹⁸ (Am. Order 6-14, R. pp. __.) The Individual Appellants argue the circuit court erred in doing so. (Appellants' Br. 29-30.) This Court should affirm.

A. The Complaint failed to state a claim for abuse of process.

The circuit court correctly decided the Complaint failed to allege the necessary “ulterior purpose” element of an abuse of process claim. (Am. Order. 6-8, R. pp. __.) Citing *Food Lion, Inc. v. United Food & Com. Workers Int'l Union*, 351 S.C. 65, 75, 567 S.E.2d 251, 255-56 (Ct. App. 2002) in support, the circuit court held, “a claim for abuse of process lies if the suit is brought not to recover on the cause of action stated in the complaint, but to ‘primarily’ accomplish some other purpose for which the process was not designed,” and “[l]iability for abuse of process exists not because a party merely seeks to gain a collateral advantage by using some legal process, but because the collateral objective was its sole or paramount reason for acting.” (Am. Order 6 (internal quotations omitted).)

The circuit court found, based on the allegations in the Complaint, the “process” at issue was Respondent’s filing of the Underlying Suit, and, therefore the Appellants needed to allege facts sufficient to show the Underlying Suit was brought primarily for a purpose other than a determination of no coverage under the Policy. (Am. Order 7, R. p. __.) The circuit court correctly determined the Individual Appellants had not alleged any collateral objective as the primary reason for Respondent’s filing of the Underlying Suit. (Am. Order 7-8, R. p. __.)

The Individual Appellants do not specifically address the circuit court’s reasoning in their brief. (Appellants’ Br. 29-30). Instead, they argue “[t]hey were injured by [Appellant]’s use of the court system” and the circuit court “ignore[d] detailed pleadings that allege State Farm filed the [Underlying Suit] specifically to legitimize false documents, gain leverage in coverage litigation,

¹⁸ See note 8 *supra*.

and harm Appellants by denying insurance benefits and requiring them to invoke or use other coverage and incur expense.” (Appellants’ Br. 30.)

The Individual Appellants do not refer by number to any paragraphs of their Complaint as containing these purported allegations, but refer to paragraphs 1, 44, 45, 46, 47, 48, 66, 67, 101, 102, 103, 104, and 105 for their assertion that the Underlying Suit, “while naming only the Estate, was part of a broader scheme intended to defeat claims involving the individual Appellants as potential insureds or beneficiaries.” (Appellants’ Br. 30.) However, paragraphs 1, 44, and 66 allege Respondent’s purpose for filing the Underlying Suit was the same as the relief expressly sought in the Underlying Suit: a determination of no coverage under the Policy for any claims arising from the Collision. (Compl. ¶¶ 1, 44, 66, R. pp. __.) And paragraphs 45-48, 67, and 101-105 do not allege and have nothing to do with Respondent having any “ulterior purpose” for filing the Underlying Suit. (Compl. ¶¶ 45-48, 67, 101-105, R. pp. __.)

In short, none of these paragraphs alleges Respondent had a collateral objective for filing the Underlying Suit. If any of the paragraphs in the Complaint can be construed as alleging an objective apart from obtaining a declaration of no coverage, there are no allegations that such collateral objective was Respondent’s primary or paramount objective, which is fatal to the abuse of process claim. *See Food Lion, Inc.*, 351 S.C. at 75, 567 S.E.2d at 256; *Pallares*, 407 S.C. at 371, 756 S.E.2d at 133. For these reasons, the Complaint fails to state an abuse of process claim

B. The Complaint failed to state a claim for fraud or negligent misrepresentation.

In addition to finding the claims barred because the alleged misrepresentations were not made by Respondent to the Individual Appellants,¹⁹ the circuit court properly dismissed the fraud and negligent misrepresentation claims because the Complaint failed to sufficiently allege the

¹⁹ *See* discussion *supra* Argument I.A.

Individual Appellants relied on any false representation or suffered pecuniary loss as a result of such reliance. (Am. Order 9-10, R. pp. __.) As an additional basis for finding the Complaint failed to state fraud or negligent misrepresentation, the circuit court took judicial notice of the Estate's Answer to Respondent's Complaint in the Underlying Suit and the Estate's filed responses to Local Civil Rule 26.03, D.S.C., which denied the truth of the alleged fraudulent and negligent misrepresentations. (Am. Order 10-11, R. pp. __.) This Court should affirm for the same reasons.

1. There are no allegations of detrimental reliance.

According to the Individual Appellants, they "need only show that the misrepresentation caused them to act or refrain from acting in a way that led to injury" and the Complaint alleges they "were forced to expend resources and individually [sic] suffered emotional distress as a result." (Appellants' Br. 31.) Appellants again point to paragraphs 67-70 and 79-80 of the Complaint, but again these paragraphs do not contain these allegations. (Compl. ¶ 67, R. p. __ ("On information and belief, without a reasonably adequate investigation into the law or facts, GWB used the bogus documents and filed a complaint in U.S. District Court, civil action number 2:21-cv-2623-MBS. (Complaint)."); Compl. ¶ 68, R. p. __ ("GWB owed various duties to Plaintiffs and others to reasonably investigate the facts and law before filing a lawsuit for STATE FARM, to not use bogus and false documents and to not assist STATE FARM in the use of these bogus and false documents against Plaintiffs and others."); Compl. ¶ 69, R. p. __ ("In breach of these and other duties owed to Plaintiffs and others, GWB substantially assisted STATE FARM in the litigation, in part, by negligently, recklessly and/or knowingly using and continuing to use bogus documents against Plaintiffs and others without adequately or reasonably investigating the validity and/or propriety of those documents."); Compl. ¶ 70, R. p. __ ("In part the inadequate or unreasonable investigation by GWB consisted of pleading that a form attached to the Complaint complied with the law and that the endorsement attached existed before the collision."); Compl. ¶

79, R. p. __ (“Defendants, in breach of various duties owed to Plaintiffs and others, intentionally tried to hide the actual facts and their misconduct by redacting parts of the declarations page attached to the Complaint as Exhibit A, as in part shown below.”); Compl. ¶ 80, R. p. __ (“In footnote 1 of the Complaint, Defendants stated ‘Premium information and Father’s address have been redacted.’”).)

Appellants also point to paragraphs 100 through 105 of the Complaint. Again, these paragraphs do not allege the Appellants relied on a false representation of fact to their detriment. (Compl. ¶ 101, R. p. __ (“As a result of Defendants’ wrongful conduct, Plaintiffs and others obtained counsel to defend them in the lawsuit brought by Defendants.”); Compl. ¶ 102, R. p. __ (“As a result of Defendants’ wrongful conduct, Plaintiffs and others obtained counsel to address issues, including those related to their own automobile policies.”); Compl. ¶ 103, R. p. __ (“When Plaintiffs discovered that the policy the Defendants filed in the declaratory judgment was fraudulent and created after the [Collision], Plaintiffs filed a motion.”); Compl. ¶ 104, R. p. __ (“In response, STATE FARM immediately: a) Sought to dismiss its own declaratory judgment; b) Admitted coverage when it previously claimed it did not owe it; c) Removed all limits on coverage, ultimately paying on a claim it previously asserted was "excluded" using false documents; and d) Claimed that the documents it filed were merely ‘mistakes’ resulting from a series of improbable errors that no one with STATE FARM thought were improper.”); Compl. ¶ 105, R. p. __ (“As a direct and proximate result of Defendants’ wrongful conduct, Plaintiffs suffered losses, including attorney’s fees, costs, and expenses including to defend the lawsuit brought by Defendants...”).)

Assuming arguendo the alleged misrepresentations in the Underlying Suit had been made to the Individual Appellants, the Complaint is devoid of any allegation the Individual Appellants in fact relied upon the truth of the alleged misrepresentations, much less to their detriment. With

respect to fraud, these allegations are required to be specifically pleaded. *See* Rule 9(b), SCRC. The lack of these allegations is fatal to both the fraud and negligent misrepresentation claims, and the circuit court properly dismissed them.

2. Judicial notice of the Estate's denials is appropriate.

The circuit court appropriately took judicial notice of the Estate's denial of Respondent's allegations in the Underlying Suit. Pursuant to Rule 201, SCRE, a court may take judicial notice of facts the accuracy of which are "capable of verification by reference to readily available sources of indisputable reliability." *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 255, 321 S.E.2d 194, 196 (Ct. App. 1984). "A judicially noticed fact must be one not subject to reasonable dispute in that it is ... capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Rule 201(b), SCRE. Judicial notice may be taken at any stage of the proceeding. Rule 201(f), SCRE; *see also, Doe*, 407 S.C. at 134, 754 S.E.2d at 497, n.2 (noting reliance on existence and contents of court filings did not convert a motion for judgment on the pleadings to one for summary judgment).

In the Answer and Local Rule 26.03 responses it filed in the Underlying Suit, the Estate denied the truth of Respondent's alleged misrepresentations. These are judicially noticeable facts under Rule 201. Rule 201(b), SCRE. Acknowledging the Estate's denials, the Individual Appellants, while not parties, state they "challenged" the truth of the representations in the Underlying Suit. (Appellants' Br. 32.) Thus, while the Estate's fraud and negligent misrepresentation claims are not on appeal, the Estate's denial lends support to the circuit court's dismissal of the Individual Appellants' claims, given reliance on the truth of the alleged misrepresentation is a required element of both fraud and negligent misrepresentation.

According to the Individual Appellants, they can assert fraud and negligent misrepresentation causes of action against Respondent even if the misrepresentations were made

to the Estate, and even if they did not believe—that is, were not deceived by—any fraudulent or negligent misrepresentation allegedly made by Respondent because “[r]eliance in tort is not limited to belief in the misrepresentation.” (Appellants’ Br. 31.) The Individual Appellants argue “[t]hat [they] challenged”—that is, *denied the truth of*—“the representations ... does not negate reliance or preclude tort liability” for fraud and negligent misrepresentation. (Appellants’ Br. 32.) Seemingly conceding lack of detrimental reliance on a misrepresentation, Appellants further argue it was “[t]he improper process itself [that] inflicted harm.” (Appellants’ Br. 32.)

The argument that “[r]eliance in tort is not limited to belief in the misrepresentation” was not made to the circuit court. Nor is the argument developed in Appellants’ brief. To support the argument, the Individual Appellants, without any discussion or explanation, merely quote a treatise on torts as stating, it “has long been settled since the 1700s that privity is not required to support an action for fraudulent misrepresentation.” (Appellants’ Br. 31.) No one has argued that privity between parties would be necessary for one to defraud another, and it appears the quote in Appellants’ brief is of no relevance.

In any event, the Individual Appellants’ argument is not supported by the law. The Individual Appellants are improperly equating the concepts of causation and reliance to relieve themselves from the necessary elements of justifiable, detrimental reliance. If the Individual Appellants’ theory were true, every allegation in a litigant’s complaint that proved false—the truth of which the answering party denied—could serve as the basis of a fraud or negligent misrepresentation action so long as the answering party incurred costs in answering the complaint. This is not the law of South Carolina. South Carolina requires the person to whom a fraudulent or negligent misrepresentation is made rely on the truth of the misrepresentation. *McLaughlin v. Williams*, 379 S.C. 451, 456, 665 S.E.2d 667, 670 (Ct. App. 2008). There being no allegations of

detrimental reliance, much less allegations with specificity, the Complaint failed to state a claim for negligent misrepresentation and fraud and the circuit court properly dismissed these claims.

CONCLUSION

The circuit court's decisions and its reasoning in the Amended Order are sound. The Individual Appellants, heirs of the Estate who were not parties to the Underlying Suit, fail to allege injury-in-fact affecting any of them individually and personally; accordingly, they lack standing. Even if they had standing, the Individual Appellants could not, as a matter of law, assert a claim under SCUTPA based on Respondent's alleged misrepresentations in the Underlying Suit. Finally, even if they had standing, the Individual Appellants failed to state legally cognizable fraud, negligent misrepresentation, and abuse of process claims. Accordingly, the Court should affirm the Amended Order.

Respectfully submitted,

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