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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2025-001045

Piedmont Roofing Service, LLC, Appellant,

v.

Auto-Owners Insurance Company, Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

SUMTER COUNTY

PIEDMONT ROOFING SERVICES, LLC,

Plaintiff,

vs.

AUTO-OWNERS INSURANCE COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NO.:

SUMMONS

TO THE ABOVE-NAMED DEFENDANT(S).

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint upon the subscriber at 1121 Park West Blvd. #B203, Mount Pleasant, SC 29466 within thirty (30) days after service thereof, exclusive of the day of service, and if you fail to answer within this time, plaintiff will apply to the Court for the relief demanded in the Complaint.

October 21, 2022.

GLEN HUNTER GARRETT, LLC

BY: /s/ Glen H. Garrett
Glen H. Garrett, SCSB #81106
1121 Park West Blvd, #B203
Mt. Pleasant, SC 29466
(843) 323-9910
glen@glenhuntergarrett.com
Attorney for Plaintiff,
Piedmont Roofing Services, LLC

STATE OF SOUTH CAROLINA

SUMTER COUNTY

PIEDMONT ROOFING SERVICES, LLC,

Plaintiff,

vs.

AUTO-OWNERS INSURANCE COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

CASE NO.:

COMPLAINT

NOW COMES the Plaintiff, Piedmont Roofing Services, LLC, by and through counsel, pursuant to the South Carolina Rules of Civil Procedure, and for its Complaint against the defendant, Auto-Owners Insurance Company, alleges and states:

PARTIES

1. Plaintiff Piedmont Roofing Services, LLC (“PRS”) is North Carolina limited liability company doing business as a construction contractor in South Carolina.
2. Auto-Owners Insurance Company (“Auto-Owners”) is a foreign corporation and an “insurance company” as defined by S.C. Code Ann. § 38-1-20 that insures real property for its policyholders throughout the United States, including in South Carolina.

JURISDICTION AND VENUE

3. Jurisdiction is proper in the Circuit Courts of the State of South Carolina where the subject real property is located and where the underlying property damage and the resulting insurance claim arose.

Venue is proper in Sumter County where the subject real property is located and where the underlying property damage and the resulting insurance claim arose.

FACTUAL ALLEGATIONS

4. Roosevelt and Rebecca Sinkler (the “Sinklers” or the “Insureds”) were insured under Auto-Owners insurance policy number 5209084803 (the “Policy”), which was in full force and effect at all times relevant to this Complaint and which covered their real property at 8905 Hwy 261 South, Pinewood, South Carolina (the “Insured Property”) against fire and casualty property damage.

5. On May 12, 2020, a windstorm and hail event caused substantial physical damage to the Insured Property (the “Loss”), which is a covered loss under the Policy.

6. On September 18, 2021, the Sinklers entered into a contract with PRS to perform repairs necessitated by the physical property damage caused by the windstorm and hail event. The Sinkler-PRS contract, a copy of which is attached as Exhibit “A”, includes a valid post-loss Assignment of Insurance Claim and Assignment of Insurance Proceeds whereby the Sinklers assigned to PRS their rights to insurance indemnification payments under the Policy.

7. Auto-Owners generated a repair estimate for the Loss to the Insured Property on September 28, 2021, which estimate failed to include necessary repair items and was wholly inadequate to indemnify the Sinklers and PRS, as the Sinklers’ assignee, for the necessary windstorm and hail damage repairs to the Insured Property.

8. In making necessary repairs to the Insured Property, PRS generated and submitted to Auto-Owners repair estimates that were based on the cost to repair the Loss in accordance with the scope of the damage and were at all times in accordance with applicable building codes with appropriate allowances for contractor overhead and profit (the “Claim”).

9. Upon information and belief, the Auto-Owners estimate is not based upon the cost to repair the Loss in accordance with the full scope of the actual physical property damage and in accordance with applicable building codes, nor does the Auto-Owners estimate include

contractor overhead and profit, all as provided for in the Policy.

10. PRS requested from Auto-Owners its overhead and profit in accordance with the Policy and industry practice, and ordinance and law allowances necessary to make repairs in accordance with the applicable building standards then-prevailing, to which Auto-Owners did not respond or otherwise denied.

11. Despite PRS's submission of the Claim to Auto-Owners, repeated communications from PRS or the Insured to Auto-Owners, and PRS's demand for appraisal, Auto-Owners failed and continues to fail to pay the appropriate costs to repair the Loss, including overhead and profit, ordinance and law allowances, costs attributed to Auto-Owners' refusal to pay the appropriate amounts, and other valid charges, expenses, and costs.

12. Upon information and belief, Auto-Owners has to date paid \$3,839.03 for the wind and hailstorm claim, for which the Sinklers incurred a \$500 claim deductible, leaving \$36,326.59 still unpaid by Auto-Owners for the wind and hailstorm damage repairs to the Insured Property performed by PRS.

13. Any initial offer of resolution or partial payment received from Auto-Owners upon submission of the Claim that failed to include amounts to which PRS or the Insured are entitled under the Policy, if accepted, were accepted due to necessity of immediate repairs.

FIRST CLAIM FOR RELIEF

[Breach of Insurance Contract]

14. PRS restates paragraphs 1 through 14 of this Complaint.

15. The Auto-Owners Policy is a valid and enforceable insurance contract between Auto-Owners and the Sinklers that obligates Auto-Owners to indemnify the Sinklers or their assignee for physical property damage to the Insured Property caused by a covered loss.

16. The Insureds properly assigned to PRS their rights to seek indemnification from Auto-Owners for the physical property damage to the Insured Property caused by the Loss.

17. Auto-Owners has wrongfully refused to indemnify PRS or has failed to acknowledge and honor fully its responsibility to indemnify the Insureds or their assignee for the physical property damage to the Insured Property caused by the Loss.

18. PRS has suffered and will continue to suffer actual and consequential damages as a result of Auto-Owner's breach of the Policy.

SECOND CLAIM FOR RELIEF

[Bad Faith Refusal of Insurance Claim]

19. PRS restates paragraphs 1 through 19 of this Complaint.

20. South Carolina law recognizes an implied covenant of good faith and fair dealing in every insurance contract that neither party will do anything to impair the other's rights to receive benefits under the contract.

21. Auto-Owners owed a duty of good faith and fair dealing to PRS as the lawful and valid post-loss assignee to the Sinklers' claim rights under the Policy.

22. Auto-Owners breached its duty of good faith and fair dealing to PRS when it prepared repair estimates that understated the extent of, and the true cost to repair, the physical property damage to the Insured Property; when it refused to pay the repair estimates it received from PRS; when it refused to participate in a claim appraisal and otherwise refused to engage with PRS regarding its claim for indemnification of the cost to repair the Insured Property necessitated by a covered loss; and when it engaged in other prohibited claim practices under S.C. Code Ann. § 38-59-20.

23. The bad faith position taken by Auto-Owners is in willful or reckless disregard of PRS's rights as the Sinklers' assignee and has delayed payment in full to PRS for repairs it performed to the Insured Property.

24. PRS suffered and continues to suffer actual and consequential damages as a result of Auto-Owners' breach of its duty of good faith and fair dealing.

THIRD CLAIM FOR RELIEF

[Declaratory Judgment]

25. PRS restates paragraphs 1 through 25 of this Complaint.

26. PRS seeks a declaration pursuant to the Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, et seq., that:

(a) PRS is the lawful assignee entitled to recover from Auto-Owners all covered losses under the Policy by virtue of the Sinklers' valid post-loss assignment of their rights to indemnification from Auto-Owners of all covered losses to the Insured Property;

(b) Auto-Owners is obligated by the terms of the Policy to indemnify PRS for overhead and profit for its repairs to the Insured Property; and

(c) Auto-Owners is obligated by the terms of the Policy to indemnify PRS for ordinance and law allowances necessary to make repairs to the Insured Property in accordance with the prevailing building standards.

WHEREFORE, Piedmont Roofing Services, LLC requests that this Court:

- A. Order judgment against defendant Auto-Owners Insurance Company in an amount to be determined at trial plus pre- and post-judgment interest as provided by law, punitive damages, attorney fees, and costs incurred in this action;
- B. Issue a declaratory judgment finding that Piedmont Roofing Services, LLC is a valid assignee of Roosevelt and Rebecca Sinkler's claim for indemnification from Auto-Owners Insurance Company;
- C. Issue a declaratory judgment finding Auto-Owners Insurance Company is obligated by the terms of the Policy to indemnify Piedmont Roofing Services, LLC for overhead and profit and for ordinance and law allowances necessary to complete the repairs to the Insured Property; and
- D. Order such other further relief as this Court deems just and proper.

GLEN HUNTER GARRETT, LLC

BY: /s/ Glen H. Garrett
Glen H. Garrett, SCSB #81106
1121 Park West Blvd., Suite #B203
Mt. Pleasant, SC 29466
(843) 323-9910
glen@glenhuntergarrett.com
Attorney for Plaintiff,
Piedmont Roofing Services, LLC

EXHIBIT A

PIEDMONT ROOFING SERVICES, L.L.C.

4917 Cedar Forest Drive
Charlotte, NC 28226
704-236-3884
piedmontdisasterservicesllc@twc.com

ELECTRONICALLY FILED - 2022 OCT 21 12:41 PM - SUMNER - CON

EAS - CASE#2022CP4301681

PROPOSAL AND CONTRACT

This Agreement made this September day of 20 by and between Piedmont Roofing Services, L.L.C. and
Owner(s) Roosevelt & Rebecca Sinkler
Address 8905 Hwy 261 S. Pinewood SC. 29125
Phon 111 N/A

1. SCOPE OF WORK AND PRICE: Piedmont Roofing Services, L L C shall provide all labor and materials necessary lo perform the roofing work described below ("Work") in exchange for a lump sum payment in the amount of \$ _____

Color: _____ Roof Brand: 0 Year: D O
Fiberglass Shingles: _____

Special Provisions: (If none, so state) In accordance with insurance summary & supplements as required

ASSILINMENT OF INSURANCE CLAIM:

}, 1 :5 K!tf{ Assignor"), for good and valuable consideration, hereby aS5ign to Ronald Pierce/Piedmont Roofing Services, L.L.C., ("Assignee") the following:

1. Any and all rights, title and interest (both legal and equitable) set forth in the insurance policy between Assignor and H oY \$MmM ("Insurer"), Policy Number f+ • 6 9 0 ^ " I (the "Policy"), with respect to any and all claims which Assignor may possess as against Insurer pursuant to the Policy for or relating to any loss which may be associated with claim number _____ or associated with the event of loss that occurred on fi HCL in ISO (the "Insurance Claim"); and

2. Any and all causes of actions (both legal and equitable) which Assignor may have as against Insurer in connection with Insurance Claim at issue and/ or arising out of the failure of Insurer to pay for said loss pursuant to the terms of the policy.

ASSIGNMENT OF INSURANCE PROCEEDS:

I hereby authorize and direct any and all insurance carriers, attorneys, agencies, governmental departments, companies, and individuals ("payers"), which may elect or be obligated to pay, provide, or distribute insurance proceeds or damages to me based on any property insurance policies I may have, to pay directly and exclusively to Piedmont Roofing Services, L.L.C. by me. The assignment of proceeds hereunder shall include, but not be limited to, proceeds from any insurance claim, settlement, judgement, or verdict.

This agreement constitutes the complete agreement between the parties and shall be binding upon each of the parties and their respective heirs, executors, administrators, successors, agents and assigns.

IN WITNESS WHEREOF, by signing below, the parties hereto agree to be bound to each other by the terms and conditions contained in this Agreement.

EXHIBIT A

Piedmont Roofing Services, L.L.C.: Pierce Print Name Ronald Pierce Date 9.19.21
Owner Signature: Roosevelt Sinkler Print Name ROOSEVELT SINKL Date 9.18.21

ADDITIONAL WORK

It is not uncommon for additional damage, including water damaged, de-laminated, cracked or rotted materials to be discovered during removal of existing materials. Such additional damage may require repair before the Work can be completed. Piedmont Roofing Services, L.L.C. cannot and does not assume responsibility for any unseen or additional damages. Piedmont Roofing Services, L.L.C. will replace damaged or rotten materials for an additional charge(s).

PAYMENT

Piedmont Roofing Services, L.L.C. will issue a final invoice upon completion of the Work. Payment for all Work shall be due in full upon receipt of the final invoice. Any outstanding amounts not paid within five (5) days of receipt of the final invoice shall incur service charges equal to 1.5% per month, and Owners agree to pay in full all costs and eapenses, including reasonable attorneys' fees, incurred in collecting any past due amounts.

NOTICE

Due to the nature of the Work, it is common for sawdust, fasteners and other debris to accumulate in the attic. The Owners are responsible for covering the attic floor and any other personal property lo prevent damage, and holds Piedmont Roofing Services. L.L.C. harmless for any damages to Owner's attic or personal property caused by debris.

WARRANTY

Piedmont Roofing Services, L.L.C. hereby transfers to Owner upon final payment all manufacturers' warranties on materials installed. Piedmont Roofing Services. L.L.C. hereby further warrants for a period of five (5) years that all Work was performed in a workmanlike manner, so as to meet the standard of workmanlike quality then prevailing at the time and place of construction, Piedmont Roofing Services, L.L.C. liability under this warranty shall be limited to replacing or repairing defective workmanship.

TO THE FULLEST EXTENT ALLOWED BY LAW, ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF HABITABILITY OR FITNESS FOR PARTICULAR USE, ARE HEREBY DISCLAIMED AND WAIVED, NO ONE CAN ADD TO OR VARY THE TERMS OF THIS WARRANTY, ORALLY OR IN WRITING.

ABBITRATION

Any controversy, dispute, or claim. arising out of or relating to this Agreement shall be settled by binding arbitration in Charlotte, North Carolina, before a single arbitrator, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The prevailing party shall be entitled to recover from the non-prevailing party its reasonable costs of the action, including attorneys' fees. This arbitration clause shall not prevent nor bar Piedmont Roofing Services, L.L.C. from filing or enforcing any liens it may have under N.C. Gen. Stat. \$ 44A-8, ct, *seq.* or otherwise in a court of competent jurisdiction,

CANCELLATION

You the POLICY OWNER wish to cancel this contract have three (3) days in North Carolina: or five (5) in South Carolina, to sign and date, faa r or email to Piedmont Roofing Services, L.L.C. on the same date as signed.

LA - 3 business days

Signature: _____ Date: _____

EXHIBIT B

VERIFICATION

I, Ronald L. Pierce, Member and Manager for Piedmont Roofing Services, LLC, being first duly sworn, deposes and states that I have read the foregoing Complaint and know the contents thereof; that I am authorized to execute this Verification on behalf of the Plaintiff; that the facts stated in the Complaint are based on my personal knowledge and/or are consistent with the books and records of Piedmont Roofing Services, LLC, except as to those contained therein alleged upon information and belief, and as to those matters, I believe them to be true.

Ronald L. Pierce
RONALD L. PIERCE

STATE OF NORTH CAROLINA)
COUNTY OF)

ACKNOWLEDGEMENT

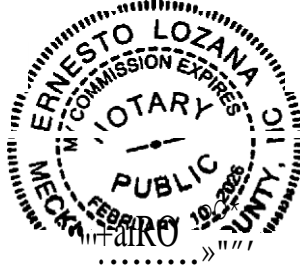
Mecklenburg

On this day of August 2022, before me personally appeared the within named Ronald L. Pierce who acknowledged to me that he executed the foregoing document; and who is personally known to me, or who was proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument.

Ernesto Lozana
Signature of Notary Public

Printed Name: Ernesto Lozana

My Commission Expires: 12/10/2023



STATE OF SOUTH CAROLINA
SUMTER COUNTY

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NO.: 2022-CP-43-01681

PIEDMONT ROOFING SERVICES, LLC,

Plaintiff,

vs.

AUTO-OWNERS INSURANCE
COMPANY,

Defendant.

AFFIDAVIT OF SERVICE

I, Glen H. Garrett, being first duly sworn, hereby depose and say that I am an attorney licensed to practice law in the State of South Carolina and I represent the plaintiff in this civil action. This Affidavit is based on personal knowledge.

File-stamped copies of the Summons and Complaint in the captioned civil action were served on defendant Auto-Owners Insurance Company on October 26, 2022 by delivering them in duplicate to the Acting Director of the State of South Carolina Department of Insurance via FedEx delivery pursuant to S.C. Code Ann. § 38-5-70 and § 15-9-270, and Rules 4(d)(3) and 4(d)(9) of the South Carolina Rules of Civil Procedure, as shown on the attached FedEx delivery receipt and the attached letter from the Department of Insurance acknowledging their receipt.


November 7, 2022.



GLEN H. GARRETT

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

This instrument was acknowledged before me on November , 2022 by Glen H. Garrett.



NOTARY PUBLIC LIC (signature)


(prfx/ itaitte)

My commission expires: 1 "

[SEAL]

Dear Customer,

The following is the proof-of-delivery for tracking number: 770274716891

Delivery Information:

Status:	Delivered	Delivered To:	Receptionist/Front Desk
Signed for by:	M.TOLIVER	Delivery Location:	1201 MAIN ST 430
Service type:	FedEx Express Saver		
Special Handling:	Deliver Weekday; Adult Signature Required		COLUMBIA, SC, 29201
		Delivery date:	Oct 25, 2022 10:28

Shipping Information:

Tracking number:	770274716891	Ship Date:	Oct 21, 2022
		Weight:	1.0 LB/0.45 KG

Recipient:
Michael Wise, Acting Director, SC Department of Insurance
1201 Main St.
Suite 1000
COLUMBIA, SC, US, 29201

Shipper:
Glen Garrett, Glen Garrett
1121 Park West Blvd.
Suite #B203
Mount Pleasant, SC, US, 29466

Reference PRS Hup and Sinkler

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Thank you for choosing FedEx

South Carolina
Department of Insurance

Capital Center
1015 Columbia Street, Suite 1100
Columbia, South Carolina 29201

HENRY McMASTER
Governor

MICHAEL WISE
Acting Director

Mailing Address:
1015 Columbia Street

October 26, 2022

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AUTO-OWNERS INSURANCE COMPANY
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223-0000

Dear Sir:

On October 26, 2022, I accepted service of the attached Summons and Complaint on your behalf. I am, hereby, forwarding that accepted process on to you pursuant to the provisions of S.C. Code Ann. § 38-5-70. By forwarding accepted process on to you, I am meeting a ministerial duty imposed upon me by S.C Code Ann. § 15-9-270. I am not a party to this case. The State of South Carolina Department of Insurance is not a party to this case. It is important for you to realize that service was effected upon your insurer on my date of acceptance for service.

You must promptly acknowledge in writing your receipt of this accepted process to s.purvis@doi.sc.gov. When replying, please refer to File Number 191069, Piedmont Roofing Services, LLC v. AUTO-OWNERS INSURANCE COMPANY, 2022-CP-43-01681

By: _____, Sincerely Yours,

Gwendolyn McGriff
General Counsel
(803)737-6732

Michael Wise
Acting Director
State of South Carolina
Department of Insurance

Attachment

CC: Glen H. Garrett
1121 Park West Boulevard, #B203
Mount Pleasant, SC 29466

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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
PIEDMONT ROOFING SERVICES, LLC,
Plaintiff,
vs.
AUTO-OWNERS INSURANCE COMPANY,
Defendant.

ANSWER
IN THE COURT OF COMMON PLEAS
Civil Action No. 2022-CP-43-01681
**DEFENDANT AUTO-OWNERS
INSURANCE COMPANY'S ANSWER
TO PLAINTIFF'S COMPLAINT
(Jury trial demanded)**

Defendant Auto-Owners Insurance Company (hereinafter the “Defendant” or “Auto-Owners”), hereby answers Plaintiff’s¹ Complaint as follows. Unless specifically admitted herein, Defendant denies each and every allegation contained in Plaintiff’s Complaint. Further, Defendant hereby requests a trial by jury. Defendant files this Answer in South Carolina State Court based on the representation by the Plaintiff that the amount in controversy shall not exceed \$74,999.99, though all liability is expressly denied. All rights to remove this matter are hereby reserved.

FOR A FIRST DEFENSE

1. Auto-Owners has insufficient information to admit or deny the allegations of Paragraph 1; therefore, it neither admits nor denies the allegations.
2. Auto-Owners admits the allegations of Paragraph 2 of the Complaint insofar as the Defendant is a foreign corporation and an “insurance company” that is licensed to do business in South Carolina. Further, Auto-Owners provides insurance coverage subject to the declarations,

¹ To the extent the Plaintiff in this action is named as Piedmont Roofing Services, LLC, Defendants understand Plaintiff’s standing is based on assignment from the Insureds, Roosevelt and Rebecca Sinkler. Defendants, therefore, assert this Answer, and the defenses therein, as to Plaintiff Piedmont Roofing Services, LLC, interest through Insureds’ underlying insurance claim and policy. However, to the extent that any defenses are asserted throughout this answer as to Piedmont Roofing Services, LLC, they are imputed to Roosevelt and Rebecca Sinkler by this reference.

terms, conditions, exclusions, and limitations of its various lines of coverage. All remaining allegations of Paragraph 2 are denied.

3. The allegations of Paragraph 3, including all subparts thereof, set forth legal conclusions, which do not require a response. To the extent a response may be required, Auto-Owners denies the allegations.

4. The allegations of Paragraph 4 set forth a legal conclusion, which does not require a response. To the extent a response may be required, Auto-Owners denies the allegations.

5. Auto-Owners admits only so much of the allegations of Paragraph 5 as would allege that Roosevelt and Rebecca Sinkler (hereinafter the “Insureds”) are owners of a home located at 8905 Hwy 261 South, Pinewood, South Carolina and purchased a policy of homeowners insurance on that home from Defendant. The policy so referenced is identified as Policy No. 300-0516184-2021, speaks for itself, and is incorporated herein in its entirety by this reference. All remaining allegations of Paragraph 5 are denied.

6. The allegations of Paragraphs 6 and 7, including all subparts thereof, are predicated on and set forth legal conclusions, which do not require a response. To the extent a response may be required to Paragraph 6 or 7, Auto-Owners denies the allegations.

7. The allegations of Paragraph 8 are denied as stated.

8. The allegations of Paragraph 9 set forth and are predicated on a legal conclusion, which does not require a response. To the extent a response may be required, Auto-Owners denies the allegations.

9. The allegations of Paragraph 10 are denied.

10. The allegations of Paragraph 11 are denied.

11. Auto-Owners denies the allegations of Paragraph 12 and 13.

12. The allegations in Paragraph 14 are denied.

13. The allegations of Paragraph 15 are summary in nature and do not require a response. To the extent that a response is required, Auto-Owners incorporates all previously enumerated responses herein and denies any additional allegations.

14. Auto-Owners admits the allegations of Paragraph 16 insofar as the allegations state that Auto-Owners issued a homeowner's policy to the Insureds for their home located at 8905 Hwy 261 South, Pinewood, South Carolina. However, Auto-Owners denies any remaining allegations contained in Paragraph 16 and responds that the policy, which is incorporated herein in its entirety, is subject to its declarations, terms, conditions, exclusions, and limitations.

15. Auto-Owners lacks sufficient information to either admit or deny the allegations of Paragraph 17, and, therefore, Auto-Owners neither admits nor denies the allegations of Paragraph 17. However, to the extent that a response is required, Auto-Owners denies the allegations of Paragraph 17.

16. Auto-Owners denies the allegations of Paragraphs 18 and 19 of the Complaint.

17. The allegations of Paragraph 20 are summary in nature and do not require a response. To the extent that a response is required, Auto-Owners incorporates all previously enumerated responses herein and denies any additional allegations.

18. The allegations of Paragraph 21 and 22, including all subparts thereof, are predicated on or set forth legal conclusions, which do not require a response. To the extent a response may be required, Auto-Owners denies the allegations.

19. Auto-Owners denies the allegations of Paragraph 23 through 25.

20. The allegations of Paragraph 26 are summary in nature and do not require a response. To the extent that a response is required, Auto-Owners incorporates all previously enumerated responses herein and denies any additional allegations.

21. The allegations of Paragraph 27, including but not limited to subparts (a) through (c), are denied.

22. As to the final unnumbered paragraph containing Plaintiff's prayer for relief, including but not limited to subparts (A.) through (D.), Auto-Owners denies that Plaintiff is entitled to any recovery in connection with this action.

FOR A SECOND DEFENSE

23. Auto-Owners adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

24. Plaintiff fails to state a claim for which relief may be granted as to their cause of action for breach of contract as Plaintiff cannot prove that Defendant breached any duty owed to Plaintiff thereby causing them damages. Therefore, the Court should dismiss the Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

25. Auto-Owners adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

26. Plaintiff fails to state a claim for which relief may be granted on their cause of action for bad faith refusal to prepare accurate estimates, engage with Plaintiff regarding their claim, and pay benefits since Plaintiff cannot show a refusal of obligations by Auto-Owners to investigate the claim and pay benefits owed under the subject policy. Thus, the Complaint should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

27. Alternatively, Plaintiff fails to state a claim for relief which may be granted on their cause of action for bad faith since Plaintiff cannot show Auto-Owners lacked a good-faith basis for its actions or inactions. Thus, the Complaint should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

28. Alternatively, Plaintiff fails to state a claim for relief which may be granted on their cause of action for bad faith refusal to prepare accurate estimates, engage with Plaintiff regarding their claim, and pay benefits since Plaintiff cannot show valid assignment of Insureds' interest in the insurance policy in question. Thus, the Complaint should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A FOURTH DEFENSE

29. Auto-Owners adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

30. The damages suffered by Plaintiff, if any, were the result of the acts or omissions by other parties, named or unnamed in this action, for which Auto-Owners bears no responsibility.

FOR A FIFTH DEFENSE

31. Auto-Owners adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

32. The facts not having been fully developed, Auto-Owners affirmatively pleads any of the following defenses that may become applicable to this action: accord and satisfaction, agency, assumption of the risk, breach of contract, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, reverse bad faith, satisfaction, statute of limitations, unclean hands, waiver, and any other matter constituting an affirmative defense or an avoidance.

FOR A SIXTH DEFENSE

33. Auto-Owners adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

34. To the extent Plaintiff seeks relief against Auto-Owners, any such claim is subject to or precluded by the declarations, terms, conditions, exclusions, and limitations of the Policy which speaks for itself, is unambiguous and is incorporated herein by reference in its entirety. All rights, defenses and claims available under the Policy are hereby reserved.

FOR A SEVENTH DEFENSE

35. Auto-Owners adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

36. Plaintiff's claims are for losses or damages are, in whole or in part, limited or excluded under the Policy.

FOR AN EIGHTH DEFENSE

37. Auto-Owners adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

38. Auto-Owners at all times acted reasonably and in good faith in the exercise of their legal rights and at no time breached any duty, acted with any malice or ill-will toward the Plaintiff, or recklessly or wantonly, or with a conscious disregard for the Plaintiff's rights. Thus, Plaintiff cannot sustain a claim for punitive damages. Further, punitive damages as sought by the Plaintiff are excessive, unconstitutional and violate the Due Process Clause of the United States and South Carolina Constitutions.

39. Some or all of Plaintiff's claims may be barred, limited and/or bifurcated pursuant to S.C. Code Ann. §15-32-510 *et seq.*, including but not limited to §15-32-520 and §15-32-530, which are hereby incorporated in their entirety by this reference.

FOR A NINTH DEFENSE

40. Auto-Owners adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

41. Auto-Owners alleges that any actions were reasonable and made in good faith.

FOR A TENTH DEFENSE

42. Auto-Owners adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

43. Auto-Owners alleges that if any injuries and damages were sustained by the Plaintiff, and the existence of such alleged injuries and damages is denied, said injuries and damages were caused by the sol negligence and/or willfulness of the Plaintiff, without which negligence and/or willfulness by the Plaintiff, said alleged injury or damage would not have occurred or been sustained and, for this reason, Plaintiff is wholly barred from recovery.

FOR AN ELEVENTH DEFENSE

44. Auto-Owners adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

45. Alternatively, Auto-Owners alleges that if any injuries and damages were sustained by the Plaintiff, and the existence of such alleged injuries and damages is denied, said injuries and damages were caused by the negligence and or willfulness of the Plaintiff, combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of Auto-Owners and,

for that reason, the Plaintiff's recovery, if any, must be reduced in proportion to the amount of Plaintiff's own negligence.

FOR A TWELFTH DEFENSE

46. Auto-Owners adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

47. Auto-Owners invokes, reserves, and incorporates by reference all remaining defenses available under S.C. Code Ann. § 39-5-10 *et. seq.* and § 38-59-10 *et. seq.*

FOR A THIRTEENTH DEFENSE

48. Auto-Owners adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

49. Plaintiff may have failed to comply with the contractual conditions precedent to this action, thereby extinguishing the right to maintain the action herein or to be eligible for more coverage.

FOR A FOURTEENTH DEFENSE

50. Auto-Owners adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

51. The facts not having been fully developed, Auto-Owners reserves any additional and further defenses as may be revealed through the course of discovery and investigation, in a manner that is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Complaint of Plaintiff, Auto-Owners prays for the relief requested and any other such relief this Court may deem appropriate and just.

s/ Mary D. LaFave
Mary D. LaFave, SC BAR #75366

Samuel C. McGlothlin, SC BAR #102777
CROWE LAFAVE GARFIELD & BAGLEY
2019 Park Street
Columbia, South Carolina 29201
mary@crowelafave.com (Mary)
sam@crowelafave.com (Sam)
(803) 726-6756 (office)

*Attorneys for Auto-Owners Insurance
Company*

November 22, 2022

DEFENDANT'S MOTION for SUMMARY JUDGEMENT

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Piedmont Roofing Services, LLC,

Plaintiff,

vs.

Auto-Owners Insurance Company,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2022-CP-43-01681

**DEFENDANT AUTO-OWNERS
INSURANCE COMPANY'S MOTION
FOR PARTIAL JUDGMENT ON THE
PLEADINGS OR ALTERNATIVELY
PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure, Defendant Auto-Owners Insurance Company, by and through its undersigned counsel, hereby moves this Honorable Court for partial judgment on the pleadings in favor of Auto-Owners as to Plaintiff's bad faith claim in the above-captioned case. Alternatively, Auto-Owners moves the Court for an Order granting summary judgment, pursuant to Rule 56(a) of the South Carolina Rules of Civil Procedure, as to Plaintiff's bad faith claim. This motion is on the grounds that Plaintiff cannot establish, through any admissible evidence causing reasonable minds to differ under the laws of the State of South Carolina, facts necessary to sustain their claim of bad faith by Auto-Owners brought under an assignment of rights.

Plaintiff brings claims for breach of contract, bad faith refusal of insurance claim, and declaratory judgment. *See* Complaint. This is an insurance coverage action whereby Plaintiff has obtained an assignment of rights from the named insureds on a policy issued by the Defendant for replacement of a residential roof. *Id.* at ¶ 7. Plaintiff attached a copy of the Assignment of Rights forming the basis of their contention that they have standing to bring such an action to the Complaint; thus, such assignment is now part of the record. *See also*, Exhibit A, Assignment.

In 2021, South Carolina's Supreme Court opined that South Carolina has never recognized the validity of the assignment of a bad faith claim. Based on the opinion of the high court, Plaintiff lacks standing to bring a bad faith claim against Auto-Owners because Plaintiff's bad faith claim is improperly based on an assignment from the named insureds to the insurance contract. Accordingly, Plaintiff's bad faith claim is invalid as a matter of law. *See Reeves v. South Carolina Mun. Ins. and Risk Fin. Fund*, 862 S.E. 2d 248, 255 (S.C. 2021) ("This Court has never recognized the validity of any assignment of a bad faith claim."); *Jacobs v. Zurich Am. Ins. Co.*, No. CV 5:21-2617-MGL, 2022 WL 16952013, at *3 (D.S.C. Nov. 15, 2022) ("Under South Carolina law, an insured is precluded from assigning its rights to pursue a bad faith claim."); *see also Horton v. New South Ins. Co.*, 468 S.E.2d 856 (1996) (Holding assignments of personal tort claims are void as against public policy and bad faith claims, specifically, cannot be assigned because they are personal to the insured.). *See also, Piedmont Roofing Services, LLC v. State Farm Fire and Casualty Company*, 4:22-cv-04114-JD (Dkt. 23, April 11, 2023) (granting carrier's Motion to Dismiss bad faith refusal of insurance claim).

A bad faith claim on the insurance policy in question is a personal tort and cannot be assigned as a normal contract right could be assigned. Furthermore, an assignment does not create new rights and duties owed to the assignee. Therefore, Plaintiff cannot establish through any evidence their claim of bad faith by Auto-Owners and partial summary disposition as to the bad faith claim is appropriate.

This motion is based upon the pleadings and the discovery responses of the parties in this case, oral arguments of counsel and applicable law.

CROWE LAFAVE GARFIELD & BAGLEY, LLC

s/Mary D. LaFave

Mary D. LaFave, Esq. SC BAR #75366

Sam McGlothin, Esq. SC Bar #102777

2019 Park Street

Columbia, South Carolina 29201

mary@crowelafave.com

sam@crowelafave.com

803.726.6756 (office)

*Attorneys for Auto-Owners Insurance
Company*

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Piedmont Roofing Services, LLC,

Plaintiff,

vs.

Auto-Owners Insurance Company,

Defendant.

OCT 13 2023 ORDER (PARTIAL SUMMARY JUDGEMENT)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Civil Action No. 2022-CP-43-01681

**ORDER GRANTING DEFENDANT AUTO-
OWNERS INSURANCE COMPANY'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

This case came before the Court on October 11, 2023, for a hearing on the motion of the Defendant Auto-Owners Insurance Company (“Defendant”) for partial summary judgment pursuant to Rule 56, SCRPC. Present at the hearing was counsel for the Defendant, Joseph E. Thoensen of Crowe LaFave Garfield & Bagley. Despite having been given notice of the hearing by the Clerk of Court’s office, the Plaintiff did not appear at the hearing. After careful consideration of the pleadings and the written memorandum submitted by the Defendant, the Court, for the reasons set forth below, finds and concludes that there are no genuine issues of material fact and that the Defendant is entitled to judgment as a matter of law on the Plaintiff’s bad faith cause of action. The Court, accordingly, grants the Defendant’s motion for partial summary judgment.

NATURE OF THE CASE

Plaintiff in this case brings claims for breach of contract, bad faith refusal of insurance claim, and declaratory judgment. This is an insurance coverage action whereby Plaintiff has obtained an assignment of rights from the named insureds on a policy issued by the Defendant for

replacement of a residential roof. Plaintiff attached a copy of the Assignment of Rights forming the basis of their contention that they have standing to bring such an action to the Complaint; thus, such assignment is now part of the record.

Defendant has moved for partial judgment on the pleadings as to Plaintiff's bad faith claim. Alternatively, Defendant has moved for partial summary judgment, pursuant to Rule 56(a) of the South Carolina Rules of Civil Procedure, as to Plaintiff's bad faith claim. Defendant's motion is brought on the grounds that Plaintiff cannot establish, through any admissible evidence causing reasonable minds to differ under the laws of the State of South Carolina, facts necessary to sustain their claim of bad faith by the Defendant.

STANDARD OF REVIEW

The Court initially notes that because the Assignment of Rights is outside the four corners of the Complaint and has been considered as part of the Court's analysis, it is deciding this matter as a Motion for Partial Summary Judgment.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCPP; Etheredge v. Richland School District One, 341 S.C. 307, 311, 534 S.E. 2d 275, 277 (2000). "For purposes of summary judgment, an issue is 'material' if the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the result of the action." Nelson v. Piggly Wiggly Central, Inc., 390 S.C. 382, 388, 701 S.E.2d 776, 779 (Ct. App. 2010).

The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact for trial. Baughman v. American Tel. and Tel. Co., 306 S.C.

101, 410 S.E. 2d 537 (1991). “The plain language of Rule 56(c), SCRPC, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial.” Carolina Alliance for Fair Employment v. S.C. Department of Labor, Licensing and Regulation, 337 S.C.476, 485, 523 S.E. 2d 795, 800 (Ct. App. 1999).

A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. Rule 56(e), SCRPC. It is well established that the Court, in considering a motion for summary judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment is warranted. Ellis v. Davidson, 358 S.C. 509, 517-518, 595 S.E.2d 817, 821 (Ct. App. 2004).

LEGAL DISCUSSION AND ANALYSIS

In 2021, South Carolina’s Supreme Court opined that South Carolina has never recognized the validity of the assignment of a bad faith claim. Based on the opinion of the high court, Plaintiff lacks standing to bring a bad faith claim against Defendant because Plaintiff’s bad faith claim is improperly based on an assignment from the named insureds to the insurance contract. *See Reeves v. South Carolina Mun. Ins. and Risk Fin. Fund*, 862 S.E. 2d 248, 255 (S.C. 2021)(“This Court has never recognized the validity of any assignment of a bad faith claim.”); *Jacobs v. Zurich Am. Ins. Co.*, No. CV 5:21-2617-MGL, 2022 WL 16952013, at *3 (D.S.C. Nov. 15, 2022)(“Under South Carolina law, an insured is precluded from assigning its rights to pursue a bad faith claim.”); *see also Horton v. New South Ins. Co.*, 468 S.E.2d 856 (1996)(Holding assignments of personal

tort claims are void as against public policy and bad faith claims, specifically, cannot be assigned because they are personal to the insured.). *See also, Piedmont Roofing Services, LLC v. State Farm Fire and Casualty Company*, 4:22-cv-04114-JD (Dkt. 23, April 11, 2023) (granting carrier's Motion to Dismiss bad faith refusal of insurance claim).

A bad faith claim on the insurance policy in question is a personal tort and cannot be assigned as a normal contract right could be assigned. Furthermore, an assignment does not create new rights and duties owed to the assignee. Therefore, Plaintiff cannot establish through any evidence their claim of bad faith by Defendant, and partial summary disposition as to the bad faith cause of action is appropriate.

DECISION AND ORDER

For the reasons discussed above, the Court finds and concludes that there are no genuine issues of material fact, and the Defendant is entitled to partial judgment as a matter of law on the Plaintiff's bad faith cause of action. Additionally, the Plaintiff's remaining causes of action for breach of contract and declaratory judgment were not at issue at the hearing on Defendant's motion, and this Order has no application to or effect on those causes of action.

Accordingly, **IT IS ORDERED** that the motion of Auto-Owners Insurance Company for partial summary judgment as to Plaintiff's bad faith cause of action is **GRANTED**.

AND IT IS SO ORDERED.

R. Kirk Griffin, Circuit Court Judge

October ____, 2023



Sumter Common Pleas

Case Caption: Piedmont Roofing Services, Llc VS Auto-Owners Insurance Company

Case Number: 2022CP4301681

Type: Order/Summary Judgment

So Ordered

s/ R. Kirk Griffin 2768

Electronically signed on 2023-10-13 10:25:30 page 5 of 5

STATE OF SOUTH CAROLINA
SUMTER COUNTY

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 22-CP-43-01681

PIEDMONT ROOFING SERVICES,)
LLC)

Plaintiff,)

v.)

**PLAINTIFF’S RULE 54(b) MOTION
TO REVISE THE JUDGMENT**

AUTO-OWNERS INSURANCE)
COMPANY)

Defendant.)

Pursuant to Rule 54(b) of the South Carolina Rules of Civil Procedure, Plaintiff Piedmont Roofing Services, LLC, by and through its undersigned counsel, hereby moves this Honorable Court to revise its judgment on Defendant Auto-Owners Insurance Company’s Motion for Summary Judgment, for which it granted Partial Summary Judgment. Alternatively, Plaintiff Piedmont Roofing Services, LLC respectfully requests the Court revise said judgment to include a Rule 54(b) certification, indicating its finality for purposes of appeal. This motion is on the grounds that Rule 54(b) states judgments, unless so otherwise indicated, may be revised at any time until a final judgment on all claims is entered. Additionally, that Plaintiff’s prior counsel failed to appear for the Summary Judgment hearing and, therefore, Plaintiff was unable to present arguments and evidence in the alternative to those proffered by the Defendant. *See* Order Granting Defendant’s Motion for Partial Summary Judgment, ¶ 1.

GOVERNING LAW

Rule 54(b) of the South Carolina Rules of Civil Procedure states:

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

[Emphasis added.]

ARGUMENT

1. The Court should revise its ruling pursuant to Rule 54(b) due to common law rulings validating such assignments.

The Court has the discretion to revise its ruling at any time until the case has been finally and completely resolved, or such orders are certified final. *See* Rule 54(b); "An appeal following a Rule 54(b) certification is the exception rather than the rule." *Griffin Plumbing & Heating v. JJ & G*, 351 S.C. 459, 570 S.E.2d 197 (S.C. App. 2002). For the reasons articulated below, Plaintiff respectfully requests the Court exercise such discretion as principles of law and equity would justify.

First, regarding the issue of whether assignments of insurance bad faith claims are assignable, the Court should revise its decision based on additional information and/or distinctions and clarifications. The cases cited to justify granting partial summary judgment in

favor of the Defendant are distinguishable on multiple grounds. In *Reeves v. S.C. Mun. Ins. & Risk Fin. Fund*, 434 S.C. 18, 862 S.E.2d 248 (S.C. 2021), the Supreme Court held: "The assignment in *Schneider*, however, appears considerably different from the assignment in this case. The party making the assignment was an individual, not a town." (Citing *Schneider v. Allstate Insurance Co.*, 487 F. Supp. 239 (D.S.C. 1980)) [Emphasis added.]. It was based on this distinction that the Supreme Court held bad faith claims were not assignable, a distinction that is inapplicable to the case at bar since Plaintiff received the assignment from an individual. *Ibid.* Moreover, the footnote cited by the Supreme Court when it held "This Court has never recognized the validity of any assignment of a bad faith claim" does not point to a clear, unambiguous ruling that South Carolina never recognizes assignments of bad faith claims. *Id.* at fn. 8. To the contrary, it stated that *some* assignments have been held invalid but that such cases "illustrate[] reasons it may not be appropriate to permit assignment of bad faith claims under all circumstances. *But see* Constance A. Anastopoulo, A New Twist on Remedies: Judicial Assignment of Bad Faith Claims , 50 Ind. L. Rev. 727 (2017) (arguing bad faith claims should be assignable)." *Ibid.* [Emphasis added.] Indeed, the operative word in the Court's statement "This Court has never recognized the validity of any assignment of a bad faith claim" appears to be "any," meaning *all* assignments would be valid. *Id.* at 255. However, this does not mean that *no* assignments of bad faith claims are valid.

The other case cited when granting Defendant's Motion for Partial Summary Judgment, *Jacobs v. Zurich Am. Ins. Co.*, Civil Action 5:21-2617-MGL (D. S.C. Nov 15, 2022), cites the same statement from the South Carolina Supreme Court. For the foregoing reasons, this precedent is likewise inapplicable in reaching the conclusion that *no* assignments of bad faith claims are valid. Similarly to the case at bar, the plaintiff in *Jacobs* failed to respond to this

argument and, therefore, the District Court likely failed to receive any contradictory cases or arguments on this point. *Jacobs*, at ¶ 6. Accordingly, this should not be interpreted as either controlling or persuasive precedent. Lastly, the remaining cases cited by Defendant when moving for Partial Summary Judgment, *Horton v. New South Ins. Co.*, 468 S.E.2d 856 (1996) and *Piedmont Roofing Services, LLC v. State Farm Fire and Casualty Company*, 4:22-cv-04114-JD (Dkt. 23, April 11, 2023), are North Carolina cases and are therefore not controlling on this Court.

In the case at bar, since there is not unambiguous, unequivocal South Carolina precedent that all assignments of bad faith claims are invalid, and those holding so are distinguishable on factual grounds, the Court should revise its ruling. Furthermore, public policy reasons behind barring certain assignments are not applicable in the instant matter. Courts and legislatures are rightfully concerned about profiteers receiving assignments in personal injury actions or other matters where public morals and conventional equitable principles would preclude such contracts. That is not the case here, as Plaintiff has merely received an assignment of a bundle of claims, including bad faith, that are economic in nature. Since neither law nor equity requires the Court to find this assignment invalid, Plaintiff respectfully requests the court revise its ruling.

2. In the alternative, the Court should issue a Rule 54(b) certification regarding its decision on Defendant's Motion for Partial Summary Judgment

If the Court is not persuaded by the foregoing arguments, Plaintiff respectfully requests that it issue a Rule 54(b) certification. Without such certification, since the language of the rule allows the order to be revised at any time, the decision is considered not final for purposes of appeal. *See* S.C. R. Civ. P. Rule 54(b); *Shirley's Iron Works v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013); *Griffin Plumbing & Heating v. JJ & G*, 351 S.C. 459, 570 S.E.2d

197 (S.C. App. 2002). Based on the circumstances of the case at bar and the foregoing arguments, Plaintiff intends to appeal the Court’s ruling on Defendant’s Motion for Partial Summary Judgment if the same remains unrevised. Plaintiff contends that receiving a Rule 54(b) certification, for purposes of this argument, is necessary under multiple grounds. Primarily, being able to appeal the subject order is necessary to prevent “piecemeal appeals” and spare the appellate courts from “relearning the facts of [the] case on successive appeals.” *Griffin*, at 467. Arguments based on judicial economy are in addition to the legal arguments raised above. Plaintiff does not intend any disrespect to the Court or opposing counsel, or possess ulterior motives in making such appeal, but rather seeks to efficiently resolve the necessary issues in this matter before proceeding through trial. If such issues remain unresolved, the appellate and trial courts will be burdened by motions, appeals, and, at worst, multiple trials. For these reasons, Plaintiff respectfully asks the Court to issue a Rule 54(b) certification if it decides not to revise its order on Defendant’s Motion for Partial Summary Judgment.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court:

1. Revise its Order on Defendant’s Motion for Partial Summary Judgment, or in the alternative
2. Issue a Rule 54(b) Certification regarding its Order on Defendant’s Motion for Partial Summary Judgment.
3. Plaintiff respectfully requests a hearing on this matter.

(Remainder of this page intentionally left blank. Signature block follows.)

s/ Adam G. Wood
Adam G. Wood (SC Bar No. 105646)
Wood Law Offices, PLLC
885 Gold Hill Rd. Ste. 3013
Fort Mill, SC 29708
Tel.: 704-565-3164
E-mail: agwoodlaw4@gmail.com
Attorney for Plaintiff Piedmont Roofing Services, LLC

Fort Mill, South Carolina

State of South Carolina)
) In the Family Court
 County of Sumter)
)
)
 Piedmont Roofing Services,)
 LLC,)
)
 Plaintiff,)
)
 vs.) Case #: 2022-CP-43-01681
)
 Auto-Owners Insurance)
 Company,)
)
 Defendant.)
 _____)

Sumter County Courthouse
 September 11, 2024

TRANSCRIPT OF HEARING

B E F O R E

The Honorable Kirk Griffin

A P P E A R A N C E S:

Adam Gabriel Wood, Esquire
 Attorney for Plaintiff

Joseph E. Thoensen, Esquire
 Attorney for Defendant

FOR COPIES CONTACT: Melissa R. Singletary
Certified Verbatim Court Reporter
msingletary@sccourts.org

I N D E X

<u>WITNESS (ES)</u>	<u>PAGE</u>
Certificate of Service	8

E X H I B I T S

(There were no exhibits marked during this hearing)

1 THE COURT: The next matter is Piedmont Roofing
2 vs. Auto Owners. There are two motions before the court.
3 Motion to be relieved and then a reconsideration motion. Is
4 that correct?

5 MR. WOOD: That's correct, Your Honor. I don't
6 believe that former plaintiff's counsel is here today for
7 that motion.

8 THE COURT: Okay. All right. We will, I guess
9 take up the reconsideration motion.

10 MR. WOOD: Yes, Your Honor. Plaintiff is asking
11 that the court revise its ruling on summary judgment that
12 was issued back in October, I believe. Pursuant to Rule
13 54(b) this order, since it was a partial, can be revised at
14 any time since it did not include any of the finality
15 language contained in that rule. Specifically, there's no
16 just reason for delay. And in the alternative, we're
17 requesting that the court add that language for purposes of
18 appealability, Your Honor.

19 THE COURT: All right, I'll be happy to hear from
20 you.

21 MR. THOENSEN: Thank you, Your Honor, may it
22 please the court.

23 THE COURT: Yes, sir.

24 MR. THOENSEN: Joe Thoensen, on behalf of Auto-
25 Owners Insurance Company. Your Honor, as the initial

1 matter, the Order that you issued approximately eleven (11)
2 months ago, in October of last year, is not a judgment
3 under Rule 54. It does not assign finality of rights as to
4 any party. It granted dispositive relief as to one cause
5 of action among three in the Complaint and it specifically
6 provided that the other two causes of action are not
7 affected and that the case is not dismissed and those two
8 causes of action survived and the case survives and
9 proceeds. So as an initial matter our position is that
10 what you issued is not a judgment and therefore it is not
11 subject to Rule 54, any of their provisions, including
12 54(b).

13 In addition to that, Your Honor, what the
14 plaintiff seeks to do is to appeal a ruling that you made
15 eleven (11) months ago, not having filed a 59(e) motion,
16 not having done anything that should have been done in the
17 rules to reserve their right to appeal and then use Rule 54
18 to try to go around their own, you know, their own failure
19 to act as they should act. The right to appeal has long
20 expired. It was never preserved. The time to do that has
21 long passed and I understand at the hearing back eleven
22 months ago that resulted in the order that we're talking
23 about. Plaintiff's counsel did not appear, and I
24 appreciate that; however, similar to a default situation,
25 the negligence of an attorney is imputable to the client

1 and so they can't come to the court now eleven months later
2 and seek relief on the basis that, well, our lawyer didn't
3 show up for us and we should have done this but we didn't,
4 that's not appropriate either. And so, in addition to that,
5 my final point is, in the plaintiff's motion that he's
6 arguing now, he asked the court to either add language to
7 that order from eleven months ago so that the plaintiff can
8 appeal it, which I believe is inappropriate, or to
9 completely revisit and revise that order, which again the
10 mechanism for doing that is a motion for reconsideration
11 under Rule 59. There is no mechanism for that under Rule
12 54. So we believe that the present motion should be denied
13 and that your order issued last October should stand as you
14 issued it.

15 THE COURT: All right, anything else from either
16 side?

17 MR. WOOD: Yes, Your Honor, real briefly, the
18 arguments that defendant's counsel is raising, with regards
19 to the timeliness of this, I don't feel are applicable
20 because Rule 54(b) says that, excuse me, I was just pulling
21 it up. It says that the order or other form of decision is
22 subject to revision at any time before the entry of
23 judgment adjudicating all the claims. So for that reason,
24 since this was only a partial summary judgment, I do
25 believe that it does meet the definition of a judgment for

1 purposes of this rule, Your Honor. And as section(b)
2 states, it is subject to revision at any time. And with
3 respect to the merits of that ruling, Your Honor, with
4 respect, I don't believe that the court was fully briefed
5 of the issues since, as defendant's counsel mentioned,
6 former plaintiff's counsel failed to appear. So I don't
7 believe that the court was given the opportunity to fully
8 considered the issues as to why that summary judgment
9 should or should not have been granted you.

10 THE COURT: I appreciate the arguments on both
11 sides, but I feel like my ruling back in October was
12 appropriate, so I therefore deny the motion for
13 reconsideration.

14 MR. THOENSEN: Thank you, Your Honor.

15 THE COURT: Could you give us your name for the
16 record, sir?

17 MR. WOOD: Yes, I apologize. Adam Wood.

18 THE COURT: Thank you, sir.

19 MR. THOENSEN: Will that be a Form Four? Do you
20 want me to submit anything?

21 THE COURT: If you will submit an order outlining
22 this --- this may be one that --- Since a cause of action
23 was dismissed pursuant to a summary judgment, I feel like
24 it would be better if the order had a little more meat to
25 it. So if you will submit that via e-file, I will sign the

1 Order. Thank you.

2 MR. WOOD: Excuse me. Your Honor. Before we go, I
3 just wanted to get a ruling on the issue of the inclusion
4 of that? No just reason for delay language, because for the
5 purposes of appeal or finality to make this a final
6 judgment I do believe that it's ...

7 The Court: Well, I think my --- I think the
8 basis of my ruling is that the underlying decision back in
9 October was correct. So I'm not making a ruling on the
10 timeliness of it. I believe that there's no error in the
11 decision that I made back in October, and that's the basis
12 for the denial of the motion for reconsideration. But that
13 ground is preserved for the record. Thank you.

14 MR. ADAMS: Thank you, Your Honor.

15 MR. THOENSEN: Thank you, Judge.

16 End of Hearing

17

18

19

20

21

22

1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF SUMTER)
4

5 Be it known that I, the undersigned Melissa R.
6 Singletary, Certified Verbatim Reporter, for the State of
7 South Carolina, do hereby certify that the foregoing
8 transcript represents a true, accurate and complete
9 transcript of record of the testimony and evidence
10 introduced in during this testimony of the captioned case,
11 before the Circuit Court for Sumter County, South Carolina,
12 so given on September 11, 2024, to the best of my skill and
13 ability;

14 That I am not related to nor an employee of any of
15 the parties hereto, nor a relative or employee of any
16 attorney or counsel employed by the parties hereto, nor
17 interested in the outcome of this action.

18 IN WITNESS WHEREOF I have here unto set my hand this
19 14TH day of March, 2025.

20 *Melissa R. Singletary*

21 _____

22 Melissa R. Singletary, CVR
23 Certified Verbatim Reporter

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Piedmont Roofing Services, LLC,

Plaintiff,

vs.

Auto-Owners Insurance Company,

Defendant.

ORDER DENYING RULE 54 (b) MOTION
IN THE COURT OF COMMON PLEAS

Civil Action No. 2022-CP-43-01681

**ORDER DENYING THE PLAINTIFF'S
MOTION FOR RECONSIDERATION
PURSUANT TO RULE 54, SCRPC**

PROCEDURAL BACKGROUND

On April 14, 2023, Defendant filed a Motion for Judgment on the Pleadings or in the alternative Summary Judgment on the Plaintiff's bad faith cause of action alleged in the Complaint. A hearing was held on Defendant's motion for partial summary judgment on October 11, 2023. Despite receiving notice of the Defendant's Motion, Counsel for Plaintiff (Cochran) did not appear. It must be noted that on October 11, 2023 Cochran, had still not been relieved as Counsel for the Plaintiff. The Court granted the Motion for Partial Summary Judgment by Order dated October 13, 2023.

Nevertheless, Plaintiff's newest attorney, Mr. Adam Wood filed a Motion To Revise the Judgment pursuant to Rule 54, SCRPC on August 1, 2024.

ARGUMENT

A hearing on Plaintiff's Rule 54, SCRPC motion filed by Mr. Wood was held on September 11, 2024. Mr. Wood appeared for Plaintiff, and Joseph Thoensen appeared for Defendant.

At the September 11, 2024 hearing, Counsel for Plaintiff argued the prior Order lacked “finality language” and thus could be revised because it was only a “partial grant of summary judgment”.

Counsel for Defendant argued that Plaintiff was not entitled to any relief from the October 13, 2023 Order. Counsel for Defendant argued that Plaintiff failed to file a timely motion to reconsider in accordance with Rule 59 (e), SCRCPC and that the October 13, 2023 Order dismissing the bad faith cause of action should stand.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court finds the arguments by Plaintiff’s newest counsel requesting relief under Rule 54, SCRCPC are completely without merit. The Court agrees with Defendant and finds that the proper procedural avenue for the Plaintiff to seek reconsideration of the October 13, 2023 Order would have been to file a motion under Rule 59(e) SCRCPC in a timely matter as clearly set forth in that rule. Clearly, Plaintiff failed to file a Rule 59 (e), SCRCPC motion timely.

IT IS THEREFORE ORDERED:

Plaintiff’s motion is denied, the Order of the Court dated October 13, 2023 granting partial summary judgment on the bad faith cause of action is final.

AND IT IS SO ORDERED.

The Honorable Kirk Griffin, Judge of the Third Judicial Circuit

Date: _____, 2025



Sumter Common Pleas

Case Caption: Piedmont Roofing Services, Llc VS Auto-Owners Insurance Company

Case Number: 2022CP4301681

Type: Order/Other

So Ordered

s/ R. Kirk Griffin 2768

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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
PIEDMONT ROOFING SERVICES, LLC,
Plaintiff,
vs.
AUTO-OWNERS INSURANCE COMPANY,
Defendant.

IN THE COURT OF COMMON PLEAS
Civil Action No. 2022-CP-43-01681

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the Plaintiff, PIEDMONT ROOFING SERVICES, LLC, hereby appeals to the South Carolina Court of Appeals from the Order Granting Partial Summary Judgment entered by the Honorable Judge Ryan Griffin on October 13, 2023, which was rendered final as to the Plaintiff's bad faith cause of action by subsequent Order entered on May 1, 2025, pursuant to Rule 54(b), SCRCF.

This appeal is taken pursuant to Rules 201 and 203 of the South Carolina Appellate Court Rules.

s/Adam G. Wood
Adam G. Wood (SC Bar No. 105646)
Wood Law Offices, PLLC
885 Gold Hill Rd. Ste. 3013
Fort Mill, SC 29708
Tel.: 704-992-7546
E-mail: agwood@wood-lawoffices.com

*Attorney for Plaintiff Piedmont Roofing
Services, LLC*

May 12, 2025

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
PIEDMONT ROOFING SERVICES, LLC,
Plaintiff,
vs.
AUTO-OWNERS INSURANCE COMPANY,
Defendant.

IN THE COURT OF COMMON PLEAS
Civil Action No. 2022-CP-43-01681

MOTION TO STAY PENDING APPEAL

COMES NOW the Plaintiff, PIEDMONT ROOFING SERVICES, LLC, and respectfully moves the Court to stay all further proceedings in this matter pending resolution of Plaintiff's appeal to the South Carolina Court of Appeals.

In support of this Motion, Plaintiff shows the following:

1. On October 13, 2023, this Court entered an Order granting partial summary judgment in favor of Defendant as to Plaintiff's bad faith cause of action. That Order did not contain language redering it final under Rule 54(b), SCRCP.
2. On May 1, 2025, this Court entered a subsequent Order denying Plaintiff's Rule 54 motion and expressly directing that the October 13, 2023 Order is final as to the bad faith claim, pursuant to Rule 54(b), SCRCP.
3. Plaintiff has timely filed a Notice of Appeal to the South Carolina Court of Appeals pursuant to Rules 201 and 203, SCACR.
4. The appeal concerns substantial rights of the Plaintiff, and allowing litigation to proceed on the remaining claims while that appeal is pending would risk inconsistent outcomes, undermine judicial economy, and potentially prejudice the parties.

5. A stay pending appeal will not unduly prejudice Defendant and is in the interest of conserving judicial resources.

WHEREFORE, Plaintiff respectfully requests that this Court stay all proceedings in this matter pending the final disposition of Plaintiff's appeal.

s/Adam G. Wood
Adam G. Wood (SC Bar No. 105646)
Wood Law Offices, PLLC
885 Gold Hill Rd. Ste. 3013
Fort Mill, SC 29708
Tel.: 704-992-7546
E-mail: agwood@wood-lawoffices.com

*Attorney for Plaintiff Piedmont Roofing
Services, LLC*

May 12, 2025

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
PIEDMONT ROOFING SERVICES, LLC,
Plaintiff,
vs.
AUTO-OWNERS INSURANCE COMPANY,
Defendant.

IN THE COURT OF COMMON PLEAS
Civil Action No. 2022-CP-43-01681

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the following documents:

- Notice of Appeal, and
- Motion to Stay Pending Appeal

upon all counsel of record via the South Carolina Judicial Branch E-Filing System, which provides notice and service by electronic mail to the following registered e-mail addresses:

Mary D. LaFave (SC Bar No. 75366)
Douglas E. Leadbitter (SC Bar No. 68430)
LaFave Bagley, LLC
2019 Park Street
Columbia, SC 29201
mary@lafavebagley.com
doug@lafavebagley.com

Attorneys for Auto-Owners Insurance Company

This the 12th day of May, 2025.

s/Adam G. Wood
Adam G. Wood (SC Bar No. 105646)
Wood Law Offices, PLLC
885 Gold Hill Rd. Ste. 3013
Fort Mill, SC 29708

Tel.: 704-992-7546
E-mail: agwood@wood-lawoffices.com

*Attorney for Plaintiff Piedmont Roofing
Services, LLC*

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
PIEDMONT ROOFING SERVICES, LLC,
Plaintiff,
vs.
AUTO-OWNERS INSURANCE COMPANY,
Defendant.

ORDER GRANTING STAY
IN THE COURT OF COMMON PLEAS

Civil Action No. 2022-CP-43-01681

**ORDER ON PLAINTIFF'S MOTION
TO STAY PENDING APPEAL**

THIS MATTER is before the Court on Plaintiff's Motion to Stay Pending Appeal. The Court, having reviewed the motion and considered the record, finds that the Plaintiff has filed a timely Notice of Appeal from this Court's Order granting partial summary judgment on Plaintiff's bad faith cause of action, which was made final pursuant to Rule 54(b), SCRPC. The Court further finds that proceeding on the remaining claims while that appeal is pending could result in inconsistent outcomes, duplication of effort, or undue prejudice, and that a stay would serve the interests of judicial economy.

IT IS THEREFORE ORDERED that all further proceedings in this matter are hereby **STAYED** pending final resolution of Plaintiff's appeal to the South Carolina Court of Appeals.

This the ___ day of May, 2025.

(Judge's signature on following page.)



Sumter Common Pleas

Case Caption: Piedmont Roofing Services, Llc VS Auto-Owners Insurance Company

Case Number: 2022CP4301681

Type: Order/Other

So Ordered

s/ R. Kirk Griffin 2768

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