

RECEIVED

Dec 12 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE
SOUTH CAROLINA COURT OF APPEALS

Appellate Case Number 2025-002243

Steven M. Brant, Employee, Claimant,

-vs-

Core Services, LLC and South Carolina Department of Transportation, Employer, Berkshire Hathaway Direct Insurance Co., Carrier, Markel Ins. Co. and South Carolina State Accident Fund, and South Carolina Workers' Compensation Uninsured Employers' Fund; Defendants.

Of which Berkshire Hathaway Direct Insurance Company is the Appellant,
And South Carolina Department of Transportation, South Carolina State Accident Fund, and South Carolina Workers' Compensation Uninsured Employers' Fund are the Respondents.

BERKSHIRE HATHAWAY DIRECT INSURANCE COMPANY'S JOINT REPLY TO
STATE ACCIDENT FUND'S AND UNINSURED EMPLOYERS FUND'S RETURNS TO
PETITION FOR WRIT OF CERTIORARI

This Reply is intended to jointly counter arguments advanced by the UEF and SAF in their respective Returns to Berkshire Hathaway Direct Insurance Company's ("biBERK") Petition for Writ of Certiorari. This Reply will focus specifically on these issues raised by Respondents: 1) Respondents cannot exercise Core's contractual right to contest cancellation of the Policy with biBERK; 2) Cancellation of the Policy should be governed by Kentucky law; and 3) The Policy was properly cancelled under either South Carolina or Kentucky law.

I. Respondents cannot exercise Core's contractual right to contest cancellation of the Policy with biBERK.

Respondents rely on their assertion that they have "standing" to contest biBERK's cancellation of the Policy. In support of this, SAF cites this Court's opinion in *Sea Pines* to argue that Respondents are a "real party in interest...in the subject matter of the action." *Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291

(2001). However, they admit that this definition of “standing” applies only to whether a party may file a lawsuit against another party. That admission highlights the primary flaw in Respondents’ arguments. A party’s standing to file suit does not confer the right to exercise the contractual rights of a third party. The right to contest the validity of the cancellation of the contract between Core and biBERK is a right given solely to the parties in privity of contract, i.e. Core and biBERK.

For example, assume a sporting goods store selling baseballs sits across from an empty lot. A third party contracts to buy the lot and build a baseball field, then cancels the deal. The store clearly has a stake in the project and is harmed by its cancellation, but it is not in privity with either contracting party. Although the store may have standing to sue civilly under certain theories, it cannot step into the lot owner’s shoes to challenge the validity of the contract’s cancellation solely because its interests were negatively affected. Accepting Respondents’ position would set a dangerous precedent and undermine longstanding legal principles limiting the rights of non-parties to challenge contracts.

Improper cancellation of an insurance policy is a breach of contract issue. *See Glover v. North Carolina Mut. Life Ins. Co.*, 295 S.C. 251, 368 S.E.2d 68 (S.C. App. 1988) (“It is therefore apparent to us that our Supreme Court would continue to apply the rationale of Herndon to bar an action for breach of contract by wrongful cancellation....”). *See also Davis v. Bankers Life and Casualty Company*, 227 S.C. 587, 591, 88 S.E.2d 658, 659-660 (1955); *McLaughlin v. Brotherhood of Railroad Trainmen*, 216 S.C. 233, 240, 57 S.E.2d 411, 414 (1950). “Only parties to a contract may be sued for a breach of contract cause of action.” *Murphy v. Jefferson Pilot Commc'ns. Co.*, 657 F. Supp. 2d 683, 693 (D.S.C. 2008) (citing *Coakley v. Horace Mann Ins. Co.*, 656 S.E.2d 17, 18-19 (2007)); *See also Bob Hammond Constr. Co. v. Banks Constr. Co.*, 312 S.C. 422, 424, 440 S.E.2d 890, 891 (Ct. App. 1994) (“Generally, one not in privity of contract with

another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of a contract between the defendant and a third party is not, as such, recoverable by the plaintiff.").

Respondent UEF cites § 42-7-200 in its Return and argues that, although the legislature created a specific statutory remedy for the UEF to recover funds from uninsured employers, the UEF also holds the independent authority to contest whether an employer is uninsured. If the legislature intended to give Respondents the additional power to litigate the validity of insurance-policy cancellations—and thereby avoid statutory liability—it would have said so. It did not. “[S]tatutory language must be given its plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation. Sloan Const. v. Southco Grassing, 377 S.C. 108, 117, 659 S.E.2d 158 (2008) (citing Cohen's Drywall Co. Inc. v. Sea Spray Homes, 374 S.C. 195, 200, 648 S.E.2d 598, 600 (2007)). See also Hodges v. Rainey, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000) (holding that when statutory language is clear and unambiguous, the court has no right to impose another meaning).

In Brown v. Southeastern, the Court of Appeals reinforced this point as it relates to UEF by explaining that any concern over who pays interim benefits while coverage disputes are resolved “has less force” when the UEF is involved because the UEF already possesses a complete statutory recovery mechanism against an uninsured employer under § 42-7-200. Brown v. Southeastern Services H.H.I., LLC, 917 S.E.2d 925 (S.C. App. 2025). Brown underscores that the legislature intended the UEF to rely on that remedy against an uninsured employer—not to insert itself into private contractual disputes or challenge cancellations between carriers and insureds. Respondents have a specific remedy, prescribed by § 42-7-200, to recover funds from an uninsured employer. No statute grants Respondents the right to contest cancellation of the policy and

precedent clearly prohibits them from doing so as a third party who is neither in privity, nor a beneficiary, of the contract between Core and biBERK.

Pursuant to the arguments and authorities above, and in Appellants' Petition for Writ of Certiorari, Respondents were not in privity of contract with biBERK and cannot assert Core's contractual right to contest cancellation of its workers' compensation policy with biBERK.

II. Cancellation of the Policy should be governed by Kentucky law.

Respondents' arguments that South Carolina law should govern cancellation of the Policy is based primarily on jurisdiction, not the applicable conflicts of laws concepts. Appellants acknowledge that the S.C. Workers' Compensation Commission has jurisdiction over this claim because the accident occurred in South Carolina. However, that jurisdiction does not mean South Carolina law governs cancellation of the Policy. The Policy provided multi-state coverage and was executed in Kentucky, where Core is headquartered. Further, the mere fact that the Commission has jurisdiction to decide coverage and cancellation issues does not, in itself, mean that South Carolina law applies to the cancellation of the policy. Respondents correctly note that § 38-61-10 requires insurance contracts on property, lives, or interests with South Carolina to be subject to the laws of this State. However, Respondents fail adequately to address the valid choice of law provision in the policy, which is clearly entitled "Kentucky Cancellation and Nonrenewal Endorsement." R. p. 74. Respondent SAF clearly misapprehends the language of the Court of Appeals in Team IA Inc. v. Lucas, in coming to their conclusion that § 38-61-10 means that South Carolina law applies to the cancellation of the policy. In Team IA, the Court of Appeals stated:

In Livingston v. Atlantic Coast Line Railroad, 176 S.C. 385, 391, 180 S.E. 343, 345 (1935), our supreme court discussed traditional choice of law rules in the absence of a choice of law provision: "It is fundamental that unless there be something

intrinsic in, or extrinsic of, the contract that another place of enforcement was intended, the *lex loci contractu* governs.” (emphasis added). “*If the contract be silent thereabout*, the presumption is that the law governing the enforcement is the law of the place where the contract is made.” *Id.* (emphasis added).

Team IA Inc. v. Lucas, 395 S.C. 237, 717 S.E.2d 103 (Ct. App. 2011).

Respondent SAF ignores this portion of the decision entirely in arguing that the “express provision” referenced by the Court of Appeals to govern the contract is § 38-61-10. In fact, that decision clearly outlines that the Court should look first for **choice of law provisions intrinsic in the contract**, then to choice of law provisions extrinsic of the contract, then to *lex loci contractu* to determine what law applies to the contract. In the case at hand, there is a clear choice of law provision intrinsic in the Policy, the “Kentucky Cancellation and Nonrenewal Endorsement.” R. p. 74. Had that provision not been included in the Policy, the court would then need to look to choice of law provisions extrinsic of the contract (i.e. § 38-61-10). Further, Respondents fail to argue or cite any evidence that could indicate the choice of law provision in the Policy would violate South Carolina law or would be against South Carolina public interest. They provide no basis for the implication that the choice of law provision in the policy should not be enforced pursuant to the principles noted in their citation to Nucor Corp v. Bell, 482 F.Supp.2d 714, 728, 2007 WL 1020842 (D. S.C. 2007).

Pursuant to the arguments and authorities above, in Appellants’ Petition for Writ of Certiorari, the Commission’s decision was controlled by an error of a law. As such, the case should be remanded back to the Commission with instructions to apply Kentucky law to the cancellation of the Policy.

III. The Policy was properly cancelled under either South Carolina or Kentucky law.

First, Core unequivocally admitted in the capitulation agreement that it was uninsured at the time of Claimant's accident. Core also did not exercise its contractual right to contest cancellation under the agreement or the Policy. Second, Respondents' arguments that the policy was improperly cancelled in violation of S.C. Code § 38-75-730 is based entirely on the premise that Core's private mailbox ("PMB") was not included on the proof of mailing and therefore, the cancellation was not mailed to the address "listed in the policy". *Id.* Respondents do not contest that, absent the discrepancy in the address listed on the Mailing Ledger Proof of Mailing, the cancellation would have been effective under either South Carolina or Kentucky law. *See R. p. 182.*

While the Mailing Ledger does not show Core's full address as listed in the Policy, the documents actually mailed clearly show they were sent to the correct address, including the PMB number. *R. p. 180.* The first page of the notice of cancellation clearly shows the full address, including the PMB number, in the upper left side of the page – in the precise location where the transparent window is in a windowed envelope. *Id.* At no point did Core deny they received that cancellation notice. In fact, via the Capitulation Agreement, they admitted that they were not covered by their policy with biBERK at the time of the accident. Respondents' arguments that the policy was not effectively cancelled under South Carolina law due to the discrepancy between the mailing address on the Mailing Ledger and the Policy are baseless given the cover page of the cancellation notice itself, which is clear evidence that the notice of cancellation was properly mailed to Core's address as listed in the policy, including the PMB number.

Pursuant to the arguments and authorities above, and in Appellants' Petition for Writ of Certiorari, Core's Policy was effectively cancelled under both South Carolina and Kentucky law.

IV. CONCLUSION

For all the aforementioned reasons, in conjunction with arguments posited in Appellants' Petition for Writ of Certiorari, Appellant prays that this Court grant its Petition for Writ of Certiorari.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "George D. Gallagher", with a long horizontal flourish extending to the right.

George D. Gallagher
Speed, Seta, Martin, Trivett, & Stublely, LLC
PO Box 11669
Columbia, SC 29211
(803) 748-2919
Attorney for Employer and Carrier

Columbia, South Carolina
December 12, 2025