

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

Appeal from Charleston County
Court of Common Pleas
The Honorable Mikell R. Scarborough, Master in Equity
Case No. 2015-CP-10-06684
Appellate Case No. 2025-001339

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SC Court of Appeals

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Palmetto Contract Services, Inc.,
Appellant,

v.

Zurich American Insurance Company of Illinois,
Respondent.

**RESPONDENT'S MOTION TO STRIKE PORTIONS OF
APPELLANT'S DESIGNATION OF MATTER TO BE
INCLUDED ON APPEAL**

Respondent Zurich American Insurance Company of Illinois ("Zurich"), by and through undersigned counsel, moves this Court pursuant to Rules 209 and 210, SCACR, to strike the following items from Appellant's Designation of Matter to be Included on Appeal:

1. Item 11.b. - Defendant's Exhibit 2: Overland Audit for 2009-2010
2. Item 12 - Complaint from prior lawsuit involving different plaintiff, Case Number 2012-CP-10-284
3. Item 13 - Affidavit of William R. Deytens, Jr. - owner of Appellant
4. Item 15 - All other relevant pleadings and documents produced in discovery

In support of this Motion, Respondent states as follows:

INTRODUCTION

Appellant seeks to include in the appellate record materials from a completely separate

lawsuit, materials expressly excluded by the Master in Equity at the summary judgment hearing, and an impermissibly vague catch-all designation that fails to comply with the South Carolina Appellate Court Rules. This Court should strike these improper designations.

BACKGROUND

This case arises from Appellant Palmetto Contract Services, Inc.'s ("Palmetto") refusal to pay workers' compensation insurance premiums determined through Zurich's contractually authorized audit process. By Order dated June 20, 2025, the Master in Equity granted summary judgment in favor of Zurich on both Palmetto's breach of contract counterclaim and Zurich's breach of contract claim.

Notably, this is not the first lawsuit between a Zurich entity and Palmetto regarding workers' compensation premium disputes. A prior lawsuit, *Assurance Company of America v. Palmetto Contract Services, Inc.*, Case No. 2012-CP-10-284, involved a different Zurich company, a different insurance policy, and a different policy period. At the February 24, 2025 summary judgment hearing in this case, the Master expressly declined to consider materials from that prior lawsuit.

ARGUMENT

I. ITEM 11.b. SHOULD BE STRICKEN BECAUSE IT PERTAINS TO A DIFFERENT POLICY, POLICY PERIOD AND A DIFFERENT LAWSUIT

Appellant seeks to include "Defendant's Exhibit 2: Overland Audit for 2009-2010" in the appellate record. This exhibit pertains to an audit for the 2009-2010 policy period, which is entirely different from the February 20, 2012 through February 20, 2013 policy period at issue in this litigation.

Rule 210(h), SCACR, provides that an appellate court "will not consider any matter which

is not in the Record on Appeal." Conversely, the appellate record should not be burdened with matters that were not before the trial court or that are irrelevant to the issues on appeal. The 2009-2010 audit was not relied upon by the Master in ruling on Respondent's Motion for Summary Judgment and is irrelevant to the issues presented in this appeal.

II. ITEM 12 SHOULD BE STRICKEN BECAUSE IT IS FROM A SEPARATE LAWSUIT

Appellant seeks to include the Complaint from a different lawsuit, Case Number, 2012-CP-10-284. This complaint is from the Assurance Company of America lawsuit - a separate case involving a different plaintiff (Assurance Company of America, not Zurich American Insurance Company of Illinois), a different insurance policy, and a different policy period.

At the February 24, 2025 summary judgment hearing, the Master expressly declined to consider materials from the Assurance lawsuit. When Respondent's counsel objected to Appellant's attempt to rely on materials from the prior case, stating that "the affidavit is from the prior case" and "that affidavit is not concerning this case," the Master agreed: "Well, this case was presented in 2015. So if it's from 2013, I can assume it must be in the other case." See Exhibit "1," pp. 15-21, excerpt from MSJ Hearing Transcript on February 24, 2025, attached hereto and incorporated herein by reference. Materials from a separate lawsuit that were not properly before the trial court in this case should not be included in the appellate record. See Rule 210(h), SCACR.

III. ITEM 13 SHOULD BE STRICKEN BECAUSE THE MASTER EXPRESSLY EXCLUDED DEYTENS' AFFIDAVIT

Appellant seeks to include the "Affidavit of William R. Deytens, Jr. - owner of Respondent. [sic]" This affidavit was executed in 2013 by Appellant's owner in connection with the Assurance

lawsuit (Case No. 2012-CP-10-284), not the present case which was filed in December 2015.

At the February 24, 2025 summary judgment hearing, Appellant attempted to rely on the Deytens' Affidavit. Respondent's counsel objected:

[W]hen Mr. Goodwyn said he had an affidavit from his client, it's my understanding that that affidavit is from the prior case. There were two cases. There was an initial case, an earlier policy period with a different Zurich company against Palmetto Contract Services, and the affidavit was entered in that case. So that affidavit is not concerning this case.

The Master agreed, recognizing that the 2013 affidavit predated the 2015 case and therefore belonged to the Assurance 2012 lawsuit: "Well, this case was presented in 2015. So if it's from 2013, I can assume it must be in the other case." Appellant's counsel conceded: "Fair enough." See Exhibit "1," p. 21, lls. 11-14. Deytens' Affidavit was also improperly filed by Appellant Palmetto for the first time on the day of the hearing on Respondent's Motion for Summary Judgment. Rule 56(c), SCRCF, specifies that a party opposing a motion for summary judgment may serve affidavits opposing the motion for summary judgment not later than two days before the hearing.

Having been told at the summary judgment hearing that it could not rely on the Deytens' Affidavit because it was from a different case, Appellant cannot now attempt to resurrect that same excluded affidavit by including it in the appellate record. An appellate court reviews the record that was before the trial court; it does not consider materials that were expressly excluded. See Rule 210(h), SCACR.

IV. ITEM 15 SHOULD BE STRICKEN AS IMPERMISSIBLY VAGUE

Appellant's designation includes "All other relevant pleadings and documents produced in discovery." This catch-all designation fails to comply with Rule 209(b), SCACR, which requires that

a party's designation "shall particularly designate the matter which that party desires to have included in the Record on Appeal."

The word "particularly" requires specificity. A vague reference to "all other relevant pleadings and documents" provides no notice whatsoever of what materials Appellant intends to include in the record. This designation could potentially encompass thousands of pages of discovery materials, the vast majority of which would be irrelevant to the issues on appeal.

This Court has consistently required that designations be specific. See, e.g., Rule 209(b), SCACR (requiring parties to "particularly designate" matters for inclusion). Appellant's catch-all designation should be stricken for failure to comply with the Rules.

CONCLUSION

For the foregoing reasons, Respondent Zurich American Insurance Company of Illinois respectfully requests that this Court strike Items 11.b., 12, 13, and 15 from Appellant's Designation of Matter to be Included on Appeal.

January 6, 2026
Charleston, S.C.

Respectfully submitted,

/s/ Larry D. Cohen
Larry D. Cohen
S.C. Bar No. 6264
Carolyn H. Blue
S.C. Bar No. 68506
Larry D. Cohen, LLC
Attorneys at Law
Post Office Box 30547
Charleston, South Carolina 29417
Tel. (843) 225-4445
Fax (843) 225-2009
Ldcohen@Ldcohenlaw.com
Chblue@Ldcohenlaw.com

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF CONFERENCE

The undersigned affirms that he communicated with opposing counsel via email in a good faith attempt to resolve the subject of this Motion, but was unable to do so.

/s/Larry D. Cohen

Larry D. Cohen

Attorney for Respondent

Charleston, South Carolina
January 6, 2026

EXHIBIT “1”

1 summary judgement, we can, and I can respond to those
2 the best I can.

3 THE COURT: Okay. And to get to that point
4 to respond to the summary judgement motion, you don't
5 have any additional affidavits, but you've got, I
6 assume, the deposition of your client; is that what
7 you presented me with?

8 MR. GOODWYN: There is an old affidavit for
9 my client that I included. And keep in mind, I, this
10 weekend, drafted my response to their motion for
11 summary judgement on their case.

12 Charles had produced a brief in response to
13 their motion for summary judgement against our case,
14 which, like you say, dismissed.

15 THE COURT: A while back.

16 MR. GOODWYN: Yeah. And so I did not have
17 time over the weekend to work on that. If I have to,
18 I rely on his previously submitted brief for that
19 argument.

20 There have been no new documents produced. I
21 don't think there's any new argument or new evidence
22 to revisit.

23 It's just basically they're asking for
24 summary judgement again on the same evidence, which I
25 think is inappropriate. You only get one bite at the

1 apple there.

2 Anyway, again, I don't know if we're arguing
3 that right now or not. But that's where I would go if
4 I'm -- you know, if the motion for continuance is not
5 granted on that.

6 THE COURT: Let me say this and before
7 Ms. Blue responds. It's just the sheer length of time
8 this case has been going on that I find burdensome.
9 Okay.

10 And apparently it languished over in circuit
11 court for about six years before it got sent over
12 here. It got referred to me in July of 2022. It is
13 in the top 12 cases on my oldest roster. That's
14 something I'm very much interested in whittling down
15 this year.

16 I'm moving cases best I can. I'd like to get
17 to the merits of the case if we can. Sometimes it's a
18 procedural issue, or it can be a dispositive motion.

19 So I am interested in entertaining the
20 motions. That's one of my reasons here. I didn't
21 fully understand why, back in December, or I guess it
22 was late November, why I got a motion for continuance
23 at the last minute. And then here again, I got one at
24 the last minute on this particular motion.

25 I'm like, okay, I've got to get these guys

1 down here from Columbia and they need to explain to me
2 what's going on. Is there a problem with the client?
3 Is there a problem getting information?

4 What I'm hearing you say is there's no new
5 information to share. One of the things I know they
6 asked for was answers to interrogatories verified by
7 the client. I know that's part of the issue that
8 we've discussed.

9 But if there's no new information and the
10 record is basically complete, then I would think the
11 Court is in a position to entertain the motions for
12 summary judgement.

13 Okay. That's my gut.

14 MR. GOODWYN: And I agree that it is ready to
15 be entertained. My motion for continuance was just
16 that I didn't have what I felt was enough opportunity
17 to get refamiliarized with the case and prepare briefs
18 in response in light of Mr. Blackburn leaving at the
19 end of January.

20 THE COURT: And let me explore that just a
21 minute.

22 Mr. Blackburn, y'all worked together for a
23 number of years, I assume?

24 MR. BLACKBURN: Three years.

25 THE COURT: And you have now moved on to a

1 new firm?

2 MR. BLACKBURN: My own firm. Before I worked
3 with Mr. Goodwyn, I had my own firm.

4 THE COURT: All right. So you started that,
5 I assume, first of February or so this year?

6 MR. BLACKBURN: Yes.

7 THE COURT: And got rolling with that? This
8 has been your file to handle up until recently?

9 MR. BLACKBURN: It was with Jeff before I got
10 there, and Jeff gave it to me. I worked on it
11 primarily.

12 THE COURT: All right. So would you be
13 prepared -- your motion for summary judgement is both
14 offensive and defensive, correct?

15 MS. BLUE: Yes, sir. We have not reviewed
16 anything that Mr. Goodwyn has filed with the Court
17 this morning because we had already left to drive down
18 here. Not from Columbia but from James Island.

19 THE COURT: It's a much shorter trip, and
20 y'all are here on time. I appreciate that.

21 MS. BLUE: However, there are two points I
22 would like to make.

23 And there is -- the discovery was originally
24 signed by Bill Scott, who was Palmetto Contract
25 Services' original counsel before he filed a motion to

1 be relieved and they switched to the Goodwyn Law Firm.

2 And under the rules, you know, they were not
3 sworn. We don't understand because we have -- and we
4 have entered into evidence going back to 2019 asking
5 for these things to be sworn, and that was in the
6 motion to compel, the order you entered in December.

7 And then, secondly, when Mr. Goodwyn said he
8 had an affidavit from his client, it's my
9 understanding that that affidavit is from the prior
10 case.

11 There were two cases. There was an initial
12 case, an earlier policy period with a different Zurich
13 company against Palmetto Contract Services, and the
14 affidavit was entered in that case.

15 So that affidavit is not concerning this
16 case. It's a different case. So we would say that
17 that is not accurate and true and that it needs to
18 be -- if they're going to submit an affidavit that it
19 should be with the current case, not a case that was
20 settled and with a sister company of Zurich and I
21 guess the same --

22 THE COURT: Different plaintiff, I assume?

23 MS. BLUE: We weren't the plaintiff, yes. It
24 was a sister company. And it was Assurance versus
25 Zurich, and it was a different policy period.

1 And that case has been settled. We handled
2 that for Zurich and their sister companies.

3 THE COURT: Okay. Got you. I'm with you.
4 All right. But then you ended up with what looks like
5 a pretty voluminous copy of -- is that the entire
6 deposition?

7 MR. GOODWYN: It's a whole deposition and
8 exhibits. The exhibits are important to the argument.

9 THE COURT: Well, the gist of this lawsuit is
10 about the categorization of employees and what leads
11 them to a charge, an insurance premium?

12 And that also came after the fact at the end
13 of the policy.

14 MR. GOODWYN: The audit didn't take place
15 until after the policy period was over.

16 THE COURT: All right. So gentlemen, if
17 y'all are prepared to respond to plaintiff's motion
18 for summary judgement, I am going to entertain that.

19 I want to make sure -- before I let
20 Mr. Blackburn go, if he's the one that is prepared to
21 respond to the offensive motion, I will be glad to
22 hear from him.

23 MR. GOODWYN: He's not prepared to respond to
24 anything today. I'm just saying --

25 THE COURT: Y'all are going to rely on the

1 memoranda that was previously submitted?

2 MR. GOODWYN: If we have to. That's all we
3 have. I can argue it orally. But, you know, as she
4 said, this is in response to their motion for summary
5 judgement on their case.

6 The affidavit that I submitted, it was a 2013
7 affidavit that I found in the file. Maybe it does
8 relate to the prior case, but it's a very old
9 affidavit. But it said things that -- really, it's
10 the same issues in that case as it was in this case.

11 THE COURT: Well, this case was presented in
12 2015. So if it's from 2013, I can assume it must be
13 in the other case.

14 MR. GOODWYN: Fair enough. Anyway, again,
15 that's another reason I'm asking for the continuance
16 to get an opportunity to get his affidavit and do
17 that.

18 THE COURT: I thought I read somewhere in
19 your motion for continuance that he was in the
20 hospital.

21 MR. GOODWYN: He was for the last -- I did
22 speak to him Thursday and he had been in the hospital
23 for the prior week and a half or so. But he was out
24 as of Thursday.

25 THE COURT: Okay.

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v.

Zurich American Insurance Company of Illinois,
Respondent.

CERTIFICATE OF SERVICE

I, Larry D. Cohen, do hereby certify that I served Appellant Palmetto Contract Services, Inc., with copies of Respondent's Motion to Strike Portions of Appellant's Designation of Matter to Be Included on Appeal, with Exhibit "1," attached, Respondent's Initial Brief, Respondent's Designation of Matters to be included in the Record on Appeal and this Certificate of Service, by sending on January 6, 2026 to Appellant's attorney of record, T. Jeff Goodwyn, Jr., via his email address, jgoodwyn@goodwynlaw.com.

Respectfully submitted,

/s/Larry D. Cohen

Larry D. Cohen
S.C. Bar No. 6264
Larry D. Cohen, LLC
Attorneys at Law
P.O. Box 30547

Charleston, South Carolina
January 6, 2026

Charleston, SC 29417
Tel. (843) 225-4445
Fax (843) 225-2008
Ldcohen@Ldcohenlaw.com

ATTORNEY FOR RESPONDENT

LARRY D. COHEN, LLC
Attorneys at Law
Post Office Box 30547
Charleston, S.C. 29417

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JAN 07 2026

SC Court of Appeals

Telephone: (843) 225-4445
Facsimile: (843) 225-2009

Larry D. Cohen *▼
Debra L. Redman ♦▼
Carolyn H. Blue (Of Counsel) +●

* Member SC, FL, GA & TX
▼♦ Member SC & TX Bars
+Member SC & Florida Bars
▼TX- inactive ● FLA-inactive

Ldcohen@Ldcohenlaw.com

January 6, 2026

Via FEDEX AIRBILL# 8081 9461 0875

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Zurich American Insurance Company of Illinois, Respondent
v.
Palmetto Contract Services, Inc., Appellant
Appellate Case: 2025-001339

Dear Ms. Kitchings:

Enclosed, please find an original and one copy of the following documents filed on behalf of our client, Respondent Zurich American Insurance Company of Illinois:

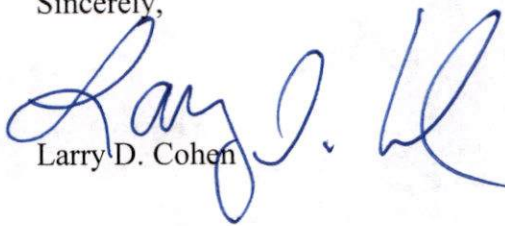
1. Our Check No. 7729 in the amount of \$50.00 for the motion fee;
2. Respondent's Motion to Strike Portions of Appellant's Designation of Matter to Be Included on Appeal, with Exhibit "1," attached, and Certificate of Conference;
3. Initial Brief of Respondent;
4. Respondent's Designation of Matter to be Included in Record on Appeal, with Counsel's Certification; and
5. Certificate of Service.

Letter to The Honorable Jenny Abbott Kitchings
January 6, 2026
Page 2 of 2

Please return to me a receipt for the motion fee in the enclosed self-addressed stamped envelope provided.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Larry D. Cohen

LDC/jmr
enclosures

cc: Jeff Goodwyn, Esq.
Goodwyn Law Firm, LLC
2309 Devine St.
Columbia, SC 29205
w/enclosures
jgoodwyn@goodwynlaw.com
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