

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

**RICHARD KENNETH
WEATHERFORD, JR.**

Plaintiff,

v.

TIMOTHY JAMES DAVIDSON

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2025-CP-08-00820

**ORDER GRANTING PLAINTIFF'S
RULE TO SHOW CAUSE**

RECEIVED

Feb 11 2026

SC Court of Appeals

I. FACTUAL AND PROCEDURAL BACKGROUND

This matter came before the Court on August 20, 2025 pursuant to Plaintiff's motion on a Rule to Show Cause seeking production of Progressive Direct Insurance Company's ("Progressive") complete claim file. Plaintiff was represented by Trip Riesen of Riesen DuRant, LLC. Progressive was represented by W. Tradd Stover of Murphy and Grantland, P.A.

Plaintiff contends he is entitled to the complete claim file, all materials including claim log notes concerning coverage and reserves, as well as all materials created **prior to retention of counsel**. Progressive contends all claim log notes created after receipt of Plaintiff's February 18, 2025 demand letter constitutes work product.

This action arises from a hit-and-run collision that occurred on November 22, 2024, when Defendant Timothy Davidson struck Plaintiff's vehicle and fled the scene. Whether Defendant was impaired at the time of the wreck is in dispute. Plaintiff obtained the Defendant's license plate number and traced the vehicle to an address in Goose Creek, SC. According to Plaintiff, he went to the address and spoke with a man who identified himself as the Defendant's son. When asked why his father left the scene, Defendant's son stated, his father, "had a drinking problem." Defendant later claimed his flight from the scene resulted from a "medical emergency."

According to Plaintiff, an investigation of the Defendant's criminal history reveals three (3) prior DUI convictions and a fourth DUI charge that was reduced to Reckless Driving, which Plaintiff believes supports the son's admission about his father's drinking problem, rather than any claimed medical emergency.

Based on these inconsistencies, Plaintiff subpoenaed Defendant's claim file from Progressive to determine what, if any, investigation was done by Progressive related to the hit and run and, more importantly, what it revealed regarding Defendant's alleged impairment. Progressive has refused to produce (1) notes in its claim log which concerned coverage and/or reserves and (2) claim log notes created after Progressive received Plaintiff's February 18, 2025 demand letter. (Progressive's Opp. to Pl.'s Mot. and RTSC at 2). Progressive asserts these materials were prepared in anticipation of litigation and are protected by the work product privilege.

Having considered the arguments of counsel, the memoranda submitted, and the applicable law, the Court finds that the requested materials should be produced.

II. LEGAL ANALYSIS

A. Relevance of Coverage and Reserve Information

Progressive contends that claim log notes concerning coverage and reserves are not relevant to this automobile collision case. The Court disagrees. In South Carolina, the scope of discovery is very broad and "an objection on relevance grounds is likely to limit only the most excessive discovery request." *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (S.C. App. 1997). "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 401, SCRE.

Coverage determinations and reserve information are relevant to understanding Progressive's investigation and evaluation of this claim. The record demonstrates that Progressive initially declined to tender property damage limits when Plaintiff made his demand, requiring suit to be filed. Subsequently, on April 4, 2025—without receiving any new medical records—Progressive reversed course and offered the full property damage limits. This change in position suggests that Progressive's investigation may have uncovered information relevant to the underlying collision. Not all coverage and reserve information constitutes asserted protected financial evaluations and reserves setting. Coverage and reserve notes may reveal information about:

- Progressive's investigation into the facts of the collision, including whether Mr. Davidson fled the scene because of a medical emergency or because he was impaired;
- The basis for Progressive's initial evaluation and subsequent change in position;
- Information gathered during Progressive's claim investigation that bears on liability or damages.

This information is reasonably calculated to lead to the discovery of admissible evidence regarding the collision and the claims at issue in this litigation. To the extent that any information constitutes purely financial reserves amounts unrelated to factual investigation, Progressive may redact such information, but the Court finds that Progressive's wholesale withholding of all coverage and reserve information is overbroad.

B. Work Product Analysis

Progressive also argues that all claim log notes created after receiving Plaintiff's February 18, 2025 demand letter are privileged and protected as "work product" as they were created in anticipation of litigation. This position is not supported by South Carolina law or the facts of this case. The phrase "in anticipation of litigation" means something more than the possibility that a

lawsuit looms. As explained by then Circuit Judge Garrison Hill in *Holder v. Lebo*, Civil Action No. 2011-CP-23-4455 (Greenville County Feb. 21, 2012),

“The phrase in anticipation of litigation means something more than the possibility that a lawsuit looms. Some courts have unthinkingly, blithely gestured to our 'litigious society' and waved on the conclusion that an insurance adjuster anticipates litigation with every breath. This sets the ground for the next logical misstep: that all actions, regardless of their nature, are taken in anticipation of litigation, and that the 'ordinary course of business' is to perpetually arrange one's affairs mindful of the inevitable, fateful knock of the process server. Such a notion, surprisingly adopted by some courts, cannot long withstand the scrutiny of reason.”
Id. at 4

South Carolina law does not recognize any "work-product" privilege for pre-litigation files created by insurance adjusters. Most insurance claims are settled without resort to litigation. Furthermore, "documents constituting any part of a factual inquiry into or evaluation of a claim, undertaken in order to arrive at a claim decision, are produced in the ordinary course of an insurer's business and not work product." *Harper v. Auto-Owners Ins. Co.*, 138 F.R.D. 655, 662 (S.D. Ind. 1991).

In *Holder*, Judge Hill further explained:

It is important to remember what an insurance adjuster does: she adjusts claims. She does not prepare cases for trial in courts. Rather, as an agent of the insurer she fulfills the contractual responsibility to investigate and decide whether to pay or deny a claim. Neither the insurer nor the adjuster can defend the insured in court. While it is not necessary to have retained counsel to invoke protection of the work product doctrine, the point at which counsel was engaged is relevant. This is so because a seasoned insurance adjuster who reasonably anticipates litigation will not delay in hiring a lawyer. Nor would an experienced adjuster continue unilaterally investigating a matter expected to be the subject of litigation without some guidance from counsel. *Id.* at 7-8.

Progressive continued to actively engage in settlement negotiations after February 18, 2025.

The record shows communications between Progressive's adjusters and Plaintiff's counsel on March 6, April 4, and April 7, 2025, including continued settlement discussions. These communications demonstrate that Progressive's post-demand conduct constituted routine claims handling rather than preparation for litigation.

It appears settlement negotiations finally broke down on April 7, 2025, after the last conversation between Plaintiff's counsel and Progressive's adjuster, as an Answer was filed on behalf of Defendant the following day—April 8, 2025.

South Carolina trial courts have consistently addressed similar arguments regarding “work product.” In *Brown v. Owens*, C.A. No. 2022-CP-39-01116 (Pickens County Sept. 27, 2023), Judge Alex Kinlaw found Progressive's work-product cutoff date of August 4, 2022, the date it received Plaintiff's timed demand, “arbitrary and contradicted by Progressive's own actions and words,” noting:

[T]his court finds Progressive's selection of August 4, 2022 as the date upon which its claim file became protected is arbitrary and contradicted by Progressive's own actions and words. Progressive did not reject the demand on August 4 and did not retain defense counsel for several months. After receiving the time demand letter, Progressive continued to investigate the claim, gather information, and negotiate with Plaintiff's counsel. *Id.* at 3.

The circumstances in the present case mirror those in *Owens*. Here, Progressive advances the identical position—that receipt of Plaintiff's demand letter rendered all subsequently created documents work product. As in *Owens*, Progressive's adjusters continued to investigate the claim and engage in settlement negotiations with Plaintiff's counsel well after receiving the demand. Significantly, the same law firm representing Progressive in *Owens* is making these same arguments in the present case.

Other South Carolina courts have reached the same conclusion regarding the discoverability of insurance claim files. In *Birt v. Lowcountry Greens, LLC*, C.A. No. 2020-CP-18-02021 (Dorchester County Feb. 21, 2021), Judge Murphy analyzed the discoverability of an insurance company's claim file materials:

The claim file by its very nature is a document that contains discoverable facts. An adjuster may compile photographs, diagrams, statements, witnesses, **evaluations**, measurements, **internal liability memoranda**, information regarding the Plaintiff,

statistical reports or any other number of types of information relevant to the matter at hand that are not otherwise available to the Plaintiff. **The contents of the claim file are always discoverable** because the information contained within the file is not protected or privileged as the majority of claim files are not construed by an attorney or because litigation has not commenced. (emphasis added).

Likewise, in *Moulton v. Lowe's Home Centers, LLC*, C.A. No. 2023-CP-10-05684 (Charleston County Nov. 20, 2024), Judge Van Slambrook found that "any part of a factual inquiry into or evaluation of a claim, undertaken in order to arrive at a claim decision, are produced in the ordinary course of an insurer's business and not work product."

The facts in *Moulton* are substantially similar to the present case. In *Moulton*, Sedgwick argued that claim file materials created after February 13, 2022, when the plaintiff retained counsel, were protected work product. However, the court found that Sedgwick and the plaintiff continued to investigate, analyze, and evaluate the claim well after the date of counsel's retention, including ongoing settlement negotiations through November 6, 2023, when litigation became imminent. The court determined that these activities constituted factual inquiry and evaluation in the ordinary course of Sedgwick's claims adjusting business, not litigation preparation. Here, Progressive similarly continued settlement negotiations after receiving Plaintiff's February 18, 2025 demand letter, demonstrating ongoing claims handling rather than litigation preparation.

Judge Van Slambrook's decision in *Moulton* compiled extensive authority from circuit court judges throughout South Carolina, including Judges Addy, Newman, McIntosh, and Murphy, all reaching the consistent conclusion that continued settlement discussions constitutes claims handling, not litigation preparation. The *Moulton* court specifically noted the "exceptionally persuasive and well-reasoned" nature of these prior trial court orders on this issue, reflecting a clear consensus among South Carolina circuit courts that pre-litigation insurance claim files remain discoverable when created during ordinary business operations.

These decisions reflect the established principle that continued settlement discussions after a demand letter constitute routine claims handling rather than litigation preparation.

Progressive's blanket assertion of work product protection for all claim log notes created after February 18, 2025, is further undermined by its own inconsistent production. Progressive states in its brief that it "produced every document in its file—715 pages¹—which was created or obtained prior to the date this lawsuit was filed" while withholding only "(1) notes in its claims log which concerned only coverage and/or reserves; and (2) claims log notes created after Progressive Direct received Plaintiff's February 18, 2025 demand letter." This admission reveals that Progressive has already produced some documents created after the February 18, 2025 demand letter, while selectively withholding others from the same time period. Progressive cannot assert blanket work product protection for an entire time period while simultaneously producing documents from that same period. By producing some post-demand materials, Progressive has waived any work product protection for all materials from that time frame. *In re Martin Marietta Corp.*, 856 F.2d 619, 625 (4th Cir. 1988) (work product protection waived by inconsistent conduct and selective disclosure).

Progressive's work product assertion fails for the additional reason that the appropriate cutoff date for work product protection is the retention of defense counsel, not the filing of suit or receipt of a demand letter. South Carolina law requires an inquiry into whether documents were prepared "in anticipation of litigation," not simply whether litigation was pending. *Tobacoville USA, Inc. v. McMaster*, 387 S.C. 287, 299, 692 S.E.2d 526 (2010). The filing of a lawsuit does not

¹ Plaintiff pointed out at oral argument that the vast majority of documents produced, 554 pages, were Plaintiff's own documents, many of which were his own medicals produced in triplicate, which Defense counsel conceded.

create a per se rule that all claim handling thereafter is litigation preparation. Courts must look to the insurer's actual conduct.

South Carolina courts consistently apply this principle. In *Owens*, Judge Kinlaw specifically emphasized that Progressive did not retain defense counsel for several months after receiving the demand letter, treating counsel retention as the trigger for work product protection. Similarly, other jurisdictions have adopted the rule that the work product cutoff occurs when "the insurance adjuster assigned the file to an attorney for the insured's defense." *Langdon v. Champion*, 752 P.2d 999, 1005-6 (Alaska 1988).

The facts in this case show that Progressive continued routine claims handling after receipt of the demand and even after suit was filed. Progressive's adjusters contacted Plaintiff's counsel for settlement discussions on March 6, April 4, and April 7, 2025—all after this lawsuit was initiated on March 10, 2025. These continued settlement efforts confirm that Progressive remained in claims evaluation mode, not litigation preparation mode, until negotiations finally broke down on April 7, 2025. The filing of Defendant's Answer the following day on April 8, 2025, demonstrates that defense counsel's involvement began no earlier than April 7, 2025. Accordingly, the appropriate cutoff date for any work product protection is April 7, 2025.

Even if Progressive's materials were protected work product, which they are not, Plaintiff has demonstrated substantial need under Rule 26(b)(3), SCRCP. Progressive has exclusive control over its investigation and claim notes. What the investigation and notes may have revealed regarding the various explanations for why the Defendant fled the scene and whether he was impaired is a relevant inquiry and Plaintiff is entitled to those facts. The Court finds Plaintiff cannot obtain the substantial equivalent of Progressive's investigative materials through other means without undue hardship.

III. COSTS

Pursuant to Rule 37(a)(4), SCRPC, the Court, having granted Plaintiff's Order, will require Defendant pay to Plaintiff the cost of reasonable expenses incurred in obtaining the order in the amount of \$500.00. The necessity of this motion supports an award of reasonable expenses to Plaintiff. Therefore, Defendant shall make payment to Plaintiff in the amount of \$500.00 as award of reasonable expenses incurred by Plaintiff in obtaining the order attached herein.

IV. CONCLUSION

Progressive's refusal to produce complete claim file materials prior to retention of counsel is inconsistent with established South Carolina discovery law. The Court finds that the requested materials are relevant under South Carolina's broad discovery standard and that Progressive's work product assertions are not supported by the facts or applicable law.

Progressive's settlement activities after receiving Plaintiff's demand letter demonstrate continued routine claim handling rather than a shift to litigation preparation. Accordingly, the Court orders that the materials to be produced.

V. ORDER

IT IS HEREBY ORDERED that:

1. Plaintiff's Rule to Show Cause is **GRANTED**.
2. The Court finds that Progressive's continued settlement negotiations after Plaintiff's demand of February 18, 2025. Negotiations continued on at least March 6, April 4 and April 7, 2025. These continued settlement efforts confirm that Progressive remained in claims evaluation mode, not litigation preparation mode, until negotiations finally broke down on April 7, 2025. The filing of Defendant's Answer the following day on April 8, 2025, demonstrates that defense counsel's involvement began no earlier than April 7, 2025.
3. Progressive shall produce within twenty (20) days of this Order: (a) All claim log notes concerning coverage and reserves created prior to April 7, 2025, with redaction permitted only for pure financial reserves amounts unrelated to factual investigation and (b) All claim log notes and materials created prior to April 7, 2025.

4. Reasonable expenses incurred in obtaining this order are awarded to Plaintiff pursuant to Rule 37(a)(4), SCRCP, for the necessity of bringing this motion to compel production of discoverable materials.

5. Progressive shall pay costs in the amount of \$500.00 within twenty (20) days of this Order.

IT IS SO ORDERED.

The Honorable Charles J. McCutchen
Presiding Judge

_____, South Carolina
_____, 2025



Berkeley Common Pleas

Case Caption: Richard Kenneth Weatherford Jr. VS Timothy James Davidson

Case Number: 2025CP0800820

Type: Order/Compel

IT IS SO ORDERED

Charles J. McCutchen

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

**RICHARD KENNETH
WEATHERFORD, JR.**

Plaintiff,

v.
TIMOTHY JAMES DAVIDSON

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2025-CP-08-00820

**ORDER GRANTING IN PART AND
DENYING IN PART PROGRESSIVE
DIRECT INSURANCE COMPANY'S
MOTION TO ALTER OR AMEND AND
RELIEF FROM PRIOR ORDER**

RECEIVED
Feb 11 2026
SC Court of Appeals

Non-Party Progressive Direct Insurance Company (“Progressive Direct”), pursuant to Rules 59(e) and 60(b), SCRCP, hereby moves the Court for an Order to alter, amend, vacate, or otherwise provide relief from the Court’s September 19, 2025, Order requiring Progressive Direct to produce claim log notes and materials and to pay costs in the amount of \$500.00 to Plaintiff. This Motion, filed September 26, 2025, is hereby granted in part and denied in part.

I. FACTUAL AND PROCEDURAL BACKGROUND

This matter came before the Court on August 20, 2025, pursuant to Plaintiff's motion on a Rule to Show Cause seeking production of Progressive Direct Insurance Company's ("Progressive") complete claim file. Plaintiff was represented by Trip Riesen of Riesen DuRant, LLC. Progressive was represented by W. Tradd Stover of Murphy and Grantland, P.A. Plaintiff contends he is entitled to the complete claim file, all materials including claim log notes concerning

coverage and reserves, as well as all materials created prior to retention of counsel. Progressive contends all claim log notes created after receipt of Plaintiff's February 18, 2025, demand letter constitutes work product.

This action arises from a hit-and-run collision that occurred on November 22, 2024, when Defendant Timothy Davidson struck Plaintiff's vehicle and fled the scene. Whether Defendant was impaired at the time of the wreck is in dispute. Plaintiff obtained the Defendant's license plate number and traced the vehicle to an address in Goose Creek, SC. According to Plaintiff, he went to the address and spoke with a man who identified himself as the Defendant's son. When asked why his father left the scene, Defendant's son stated, his father, "had a drinking problem." Defendant later claimed his flight from the scene resulted from a "medical emergency."

According to Plaintiff, an investigation of the Defendant's criminal history reveals three (3) prior DUI convictions and a fourth DUI charge that was reduced to Reckless Driving, which Plaintiff believes supports the son's admission about his father's drinking problem, rather than any claimed medical emergency.

Based on these inconsistencies, Plaintiff subpoenaed Defendant's claim file from Progressive to determine what, if any, investigation was done by Progressive related to the hit and run and, more importantly, what it revealed regarding Defendant's alleged impairment. Progressive has refused to produce (1) notes in its

claim log which concerned coverage and/or reserves and (2) claim log notes created after Progressive received Plaintiff's February 18, 2025, demand letter. (Progressive's Opp. to Pl.'s Mot. and RTSC at 2). Progressive asserts these materials were prepared in anticipation of litigation and are protected by the work product privilege.

Having considered the arguments of counsel, the memoranda submitted, and the applicable law, the Court submitted an Order granting Plaintiff's Rule to Show Cause on September 19, 2026. Progressive Direct filed its Motion to Alter or Amend and for Relief from Judgment ("Alter or Amend") on September 26, 2025.

II. Legal Analysis

1. Relief Granted

Progressive Direct argues that the Court granted relief beyond the scope of relief requested by Plaintiff (Alter or Amend, p. 1-2). Despite Progressive's contention, and Plaintiff's admission, that Plaintiff requested in its memorandum that the Court "[o]rder Progressive to produce all claims file materials from the date of creation through the filing of the lawsuit" (Alter or Amend, p. 1), the controlling document is Plaintiff's subpoena, attached to Plaintiff's Rule to Show Cause as Exhibit A. The subpoena itself states, "Please produce [files/materials]... PRIOR TO Progressive Direct Insurance Company retention of counsel relative to

this claim.” (Pl.’s Mem. In Supp. Exh. A), which was the time frame argued before the Court at the August 20, 2025, hearing.

Based on the arguments made before the Court and materials provided by the parties, this Court understood and has previously ruled under the belief that Progressive Direct obtained counsel pertaining to this matter on or about April 7, 2025, (the date in which Defense Counsel filed its Answer) thereby ordering Progressive Direct to produce all claim files prior to that date as was stated in Plaintiff’s subpoena. Progressive Direct now contends that it obtained counsel pertaining to this matter “[o]n March 24, 2025, and that Progressive Direct was acting in anticipation of litigation as of the date of the *Tyger River Demand letter* (February 18, 2025).” (Alter or Amend, p. 4). However, while the date in which Progressive Direct obtained counsel or began generally anticipating litigation is relevant to the determination of privilege for certain materials, it does not automatically determine a cut off for documents to be blanketly withheld from discoverability.

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and

location of persons having knowledge of any discoverable matter. SCRCP Rule 26(b)(1). A party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and *prepared in anticipation of litigation* or for the trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, *the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.* Rule 26(b)(3), SCRCP.

There are generally two types of work product: “opinion” work product and “ordinary” work product. “Opinion” work product includes a lawyer’s mental impressions, strategies, and thoughts drawn from review of his client’s case. Opinion work product is guarded more vigilantly than ordinary work product; indeed, it is virtually undiscoverable. No. 2011-CP-23-04455 (Greenville Cnty. Com. Pl. Feb. 21, 2012, p. 3). The second category of work product... involves “documents and tangible things” prepared by a party or his representative “in anticipation of litigation or for the trial.” *Id.*, citing Rule 26(b)(3), SCRCP. The

phrase “in anticipation of litigation” means something more than the possibility that a lawsuit looms. To say that an action is taken in anticipation of some future event means that the likelihood of the future event motivated the action to a significant degree. *Id.* at 4.

Relevant to the disclosure of “opinion” work product, Plaintiff’s subpoena is clear in stating that any production materials are subject to redaction of, “notes, comments, writings, remarks, or other writings/materials contained therein which represent subjective mental impressions, analysis, opinions, evaluations, and/or financial evaluations and reserves setting of Progressive Direct Insurance Company and/or its legal counsel.” (Pl.’s Mem. In Supp. Exh. A). Similarly relevant to the disclosure of “ordinary” work product, Rule 26(b)(3), SCRCF protects documents prepared in anticipation of litigation, but South Carolina law does not recognize any “work-product” privilege for pre-litigation files created by insurance adjusters. No. 2022-CP-39-01116 (Pickens Cnty. Com. Pl. Sep. 27, 2023, p. 2-3). An insurance company cannot in good faith argue that ‘the entirety of its claim file was accumulated in anticipation of litigation. *Id.* citing Ring v. Commercial Union Ins. Co., 159 F.R.D. 653, 656 (M.D.N.C. 1995). Investigations [by insurers] are made regularly and in the ordinary course of business. No. 2011-CP-23-04455 (Greenville Cnty. Com. Pl. Feb. 21, 2012, p. 9).

Here, Progressive Direct contends that the relief granted in the Court's September 19, 2025, Order is inconsistent, as it orders the production of all claim file materials through April 7, 2025, while Progressive Direct now asserts for the first time that it obtained counsel on March 24, 2025, and began anticipating litigation on February 18, 2025, neither of which is entirely dispositive as to the extent of materials to be produced. Wherefore, Progressive is **Ordered** to produce a complete copy of the materials requested in Plaintiff's subpoena through April 7, 2025, as previously ordered. To the extent that Progressive Direct seeks protection of privileged material; namely attorney-client communications or "opinion work product" as discussed above, Progressive Direct is **hereby ordered** to create a privilege log of such materials to be submitted to the Court and opposing counsel. To the extent Progressive Direct seeks to protect "ordinary work product" as discussed above, those materials must also be listed in said privilege log, but Progressive Direct is reminded that such materials must have been the *type created outside the ordinary course of business and significantly motivated by anticipated litigation*. Wherefore, Progressive Direct's Motion to Alter or Amend is **Granted** in part and **Denied** in part as to the relief granted.

2. Costs

Progressive Direct contends that the Court failed to consider that Progressive Direct was substantially justified in withholding information from production, and

therefore, should not be required to pay Plaintiff's costs associated in obtaining the September 19, 2025, Order.

Rule 37 of the SCRCP permits a party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. Rule 37(a)(4), SCRCP.

This Court takes a stance in line with Judge Kinlaw as stated in the Court's September 27, 2023, Order Granting Plaintiff's Motion to Compel against Progressive Direct in the case of *Brown v. Owens*. As stated in the aforementioned Order, Progressive Direct in the present case has again selected an arbitrary date contradicted by its own actions and words. Progressive Direct did not reject the February 18, 2025, *Tyger River Demand* and continued to engage in settlement negotiations up to April 7, 2025, as shown by the record. This repeated argument and tactic reaffirms this Court's prior ruling that Progressive Direct was not substantially justified in withholding information from production, and that such

withholding is inconsistent not only with South Carolina discovery law as a whole, but also with prior rulings specifically against Progressive Direct on substantially similar arguments. Therefore, Progressive Direct shall make Payment to Plaintiff in the amount of \$500.00 as an award of reasonable expenses incurred by Plaintiff in obtaining the order attached herein, consistent with Rule 37(a)(4), SCRPC.

Progressive Direct's Motion to Alter or Amend is **Denied** as to this issue.

3. Patent Ambiguities

This Court agrees with Progressive Direct that there were two occasions of error in the Court's Order Granting Plaintiff's Rule to Show Cause containing ambiguities by listing "Defendant" instead of "Progressive Direct" (Order, p. 9). To the extent of those ambiguities, Progressive Direct's Motion to Alter or Amend is **Granted** to reflect that those errors should reflect "Progressive Direct" as the party to pay \$500.00 in costs instead of Defendant Timothy James Davidson. Progressive Direct's Motion to Alter or Amend is hereby **Granted** on this issue.

III. Order

IT IS HEREBY ORDERED that:

1. Progressive Direct remains Ordered to produce the entire claims handling file up to April 7, 2025, as stated in the Court's prior Order. To the extent that Progressive Direct contends that it retained counsel prior to that date,

that such materials contain privileged communications, and/or contain privileged work product created in anticipation of litigation, Progressive Direct is hereby ordered to create a privilege log of such materials to be submitted to the Court and opposing counsel.

2. Progressive Direct shall pay costs in the amount of \$500.00 within twenty (20) days of this Order.
3. Progressive Direct's Motion to Alter or Amend regarding ambiguities in the Court's prior Order listing "Defendant" shall be corrected to reflect "Progressive Direct".

IT IS SO ORDERED.

The Honorable Charles J. McCutchen
Presiding Judge

Orangeburg, South Carolina

October __, 2025



Berkeley Common Pleas

Case Caption: Richard Kenneth Weatherford Jr. VS Timothy James Davidson

Case Number: 2025CP0800820

Type: Order/Other

IT IS SO ORDERED

Charles J. McCutchen

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
RICHARD KENNETH)
WEATHERFORD, JR.,)
)
Plaintiff,)
)
vs.)
TIMOTHY JAMES DAVIDSON,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No.: 2025-CP-08-00820

RECEIVED
Feb 11 2026
SC Court of Appeals

**ORDER HOLDING PROGRESSIVE
DIRECT INSURANCE COMPANY
IN CONTEMPT AND IMPOSING
SANCTIONS**

This matter came before the Court on January 7, 2026, on Plaintiff’s Motion for a Rule to Show Cause for Compliance with a Court Order and/or Motion for Sanctions. Plaintiff appeared through counsel, Trip Riesen of Riesen DuRant, LLC. Non-party Progressive Direct Insurance Company (“Progressive”) appeared through counsel, Jay Thompson of Murphy & Grantland, P.A. The Court, having reviewed the pleadings and court filings, considered the arguments of counsel, and examined the record, finds as follows:

FINDINGS OF FACT

1. On September 19, 2025, Judge McCutchen entered an Order granting Plaintiff’s Rule to Show Cause and required Progressive to produce within twenty (20) days: (a) All claim log notes concerning coverage and reserves created prior to April 7, 2025, with redaction permitted only for pure financial reserves amounts unrelated to factual investigation and (b) All claim log notes and materials created

prior to April 7, 2025. He also ordered Progressive to pay costs in the amount of \$500.00.

2. On September 26, 2025, Progressive filed a Motion to Alter or Amend seeking relief from Judge McCutchen's Order. In its Motion, Progressive criticized Judge McCutchen for not requesting or conducting an *in camera* review of the documents for privilege or relevance. (Prog. Mot. to Amend p. 2). However, Progressive had never requested such a procedure. Progressive then requested for the first time that the Court allow it to submit a privilege log and materials for *in camera* review, stating: "Upon the Court's request, Progressive Direct will provide an unredacted version of the claim log for the Court's in-camera review of the material redacted from the documents produced to Plaintiff." (Prog. Mot. to Amend pp. 4-5).

3. On October 8, 2025, Judge McCutchen entered an Amended Order granting in part and denying in part Progressive's Motion to Alter or Amend. The Amended Order required Progressive to: (a) produce the entire claims handling file up to April 7, 2025; (b) create a privilege log of any materials Progressive contended were privileged for submission to the Court and opposing counsel; and (c) pay costs in the amount of \$500.00 within twenty (20) days.

4. The October 8, 2025 Amended Order specifically accommodated Progressive's concerns regarding privilege by ordering the creation of a privilege log—the very relief Progressive sought in its Motion to Alter or Amend.

5. The twenty (20) day compliance deadline expired on October 28, 2025.

6. Progressive refused to produce any documents in compliance with the Amended Order.

7. Progressive refused to submit any privilege log to the Court or opposing counsel as ordered.

8. Progressive refused to pay the \$500.00 in costs as ordered.

9. Progressive's counsel admitted on the record that Progressive deliberately chose to disobey the Court's Order. When this Court asked counsel if his client was asking to be held in contempt, counsel responded, "Yes."

10. Progressive's stated purpose for its deliberate non-compliance was to invite a ruling for contempt so Progressive could create an immediately appealable contempt order, thereby constructing an avenue to challenge Judge McCutchen's underlying discovery rulings.

11. As of the date of this hearing, Progressive has been in continuous non-compliance with the October 8, 2025 Amended Order for seventy-one (71) days.

CONCLUSIONS OF LAW

1. Contempt results from willful disobedience of a court order. *Lindsay v. Lindsay*, 328 S.C. 329, 345, 491 S.E.2d 583, 592 (Ct. App. 1997).

2. Progressive's non-compliance was not merely willful—it was intentional and strategic. Progressive's counsel expressly requested that this Court hold Progressive in contempt. Such deliberate defiance of judicial authority constitutes contempt as a matter of law.

3. Rule 37(b)(2), SCRCF, authorizes courts to treat as contempt the failure to obey any order to provide or permit discovery. The Rule further provides that “the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.”

4. Progressive’s failure to comply was not substantially justified. Progressive criticized Judge McCutchen for not conducting an *in camera* review, then expressly requested the privilege log and *in camera* review procedure in its Motion to Alter or Amend. Judge McCutchen granted that request. Progressive then refused to utilize the very procedure it had requested. Progressive cannot claim justification for ignoring an accommodation it sought and received.

5. In a civil contempt proceeding, a contemnor may be required to reimburse a complainant for the costs incurred in enforcing the court’s prior order, including reasonable attorney’s fees. The award of attorney’s fees is not a punishment but an indemnification to the party who instituted the contempt proceeding. *Poston v. Poston*, 331 S.C. 106, 114, 502 S.E.2d 86, 90 (1998).

6. The Court finds Plaintiff’s requested attorney’s fees of \$2,125.00, representing 4.25 hours at \$500.00 per hour, reasonable and necessary under the circumstances and as outlined in the filed “Affidavit of Compliance and Attorney’s Fees.”

7. The purpose of civil contempt is to coerce the contemnor to do the thing required by the order for the benefit of the complainant. In civil contempt cases, sanctions are conditioned on compliance with the court's order. The conditional nature of the punishment renders the relief civil because the contemnor can end the sentence and discharge himself at any moment by doing what he had previously refused to do. *Miller v. Miller*, 375 S.C. 443, 456-57, 652 S.E.2d 754, 761 (Ct. App. 2007).

8. A per diem fine is civil and coercive when the contemnor has the opportunity to purge the contempt by complying with the court's order. *Int'l Union, United Mine Workers v. Bagwell*, 512 U.S. 821, 829 (1994).

9. Progressive's deliberate seventy-one (71) day delay in compliance has delayed and prejudiced Plaintiff's case and forced him to file additional motions to enforce Judge McCutchen's Amended Order. Modest Monetary sanctions for the period of non-compliance are appropriate to compensate Plaintiff for this prejudice and to deter similar conduct.

IT IS THEREFORE ORDERED:

1. Progressive Direct Insurance Company is held in civil contempt for the willful and deliberate violation of Judge McCutchen's October 8, 2025 Amended Order.

2. Progressive shall produce to Plaintiff the entire claims handling file through April 7, 2025. Having failed to submit the privilege log this Court ordered,

Progressive has waived any claim of privilege for the materials covered by the October 8, 2025 Amended Order.

3. Progressive shall pay to Plaintiff the \$500.00 in costs previously ordered by Judge McCutchen in the October 8, 2025 Amended Order within ten (10) days of entry of this Order.

4. Progressive shall pay to Plaintiff's counsel attorney's fees in the amount of \$2,125.00 within ten (10) days of entry of this Order as compensation for bringing this Motion for Rule to Show Cause, pursuant to Rule 37(b)(2), SCRCF, and the Court's inherent contempt power.

5. As a remedial sanction for Progressive's seventy-one (71) days of deliberate non-compliance from October 29, 2025 through January 7, 2026, Progressive shall pay to Plaintiff the sum of \$1,775.00, representing \$25.00 per day for each day of non-compliance.

6. Failure to timely pay the monetary sanctions imposed herein may result in further contempt proceedings to include additional per diem sanctions.

IT IS SO ORDERED.

The Honorable Dale VanSlambrook
Presiding Judge

Berkeley County, South Carolina
January ____, 2026



Berkeley Common Pleas

Case Caption: Richard Kenneth Weatherford Jr. VS Timothy James Davidson

Case Number: 2025CP0800820

Type: Order/Sanctions

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge
#2781