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SC Court of Appeals

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

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

Appellate Case No. 2024-002036

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

v.

**State Farm Mutual Automobile Insurance Company and Gallivan, White &
Boyd, P.A., Defendants,**

**of which State Farm Mutual Automobile Insurance Company is the
Respondent.**

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

Case No. 2023-CP-10-01832

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

Plaintiffs,

vs.

State Farm Mutual Automobile Insurance
 Company and Gallivan, White & Boyd,
 P.A.,

Defendants.

AMENDED ORDER AS TO
DEFENDANT STATE FARM'S RULE
12(c) MOTION FOR JUDGMENT ON
THE PLEADINGS

BEFORE THE COURT is Defendant State Farm Mutual Automobile Insurance Company's ("State Farm") Motion for Judgment on the Pleadings ("Motion") seeking dismissal of Plaintiffs' abuse of process, fraud, negligent misrepresentation, fraudulent nondisclosure, civil conspiracy, and violation of South Carolina Unfair Trade Practices Act ("SCUTPA") causes of action. For the reasons set forth herein, the Court GRANTS the Motion with prejudice as to the SCUTPA claim and without prejudice as to the other claims, and GRANTS the Motion as to all claims of Robert C. Workman Individually, Kelly Workman Tick, and Matthew T. Workman (the "Individual Plaintiffs").

Plaintiffs' Allegations

As set forth in Plaintiffs' Complaint, Melvin O. Lamb, III was driving a Tahoe owned by his father, Melvin O. Lamb, Jr., and insured by State Farm when he caused a fatal multicar collision on June 12, 2021 (the "Accident"). Compl. ¶¶ 2-3, 30, 31, 32. Plaintiffs do not allege they were individually involved in the Accident or that they owned and insured any of the vehicles involved in the Accident. They allege their father, James K. Workman, was involved in the Accident, that

Melvin O. Lamb, III drove the Tahoe into their father's vehicle, and their father died because of the injuries from the crash. Compl. ¶¶ 3, 30-32. Plaintiffs allege Robert Workman is the Personal Representative of the Workman Estate and that he, in his individual capacity, along with Kelly Tick and Matthew Workman (collectively referred to as the "Individual Plaintiffs") are heirs of the Workman Estate. Compl. ¶¶ 20-22.

Plaintiffs are not insureds of State Farm, but Plaintiffs allege Melvin O. Lamb, Jr. and Melvin O. Lamb III were State Farm's insureds under an automobile liability insurance policy covering the Tahoe (the "Policy"). Compl. ¶¶ 33-35. Plaintiffs allege the Policy was not subject to an excluded driver endorsement at the time of the Accident and State Farm initially represented to them, through a "Confirmation of Coverage," the Policy covering the Tahoe on the date of the Accident was "policy number 632318940A". Compl. ¶¶ 5-6, 34-35.

Plaintiffs allege State Farm created a new declarations page for the Policy a month after the accident (the "New Declarations Page") to exclude coverage and avoid payment for claims arising from the Accident. Compl. ¶¶ 7, 40-42, 50. The New Declarations Page identified the Policy's number as 632 3189-B07-40B and stated it "[r]eplaced policy number 632189-40A," the Policy number provided to them in the earlier "Confirmation of Coverage." Compl. ¶¶ 5-6, 51-52. Plaintiffs also allege the New Declarations Page materially misrepresented Melvin O. Lamb, III was an excluded driver and referenced an excluded driver endorsement, Form 6023DC, that was not approved by the South Carolina Department of Insurance and was not previously referenced on the Policy's prior declarations pages (the "Unapproved Form"). Compl. ¶¶ 51, 58-60. According to Plaintiffs, State Farm wanted them to rely upon the New Declarations Page as being true when it was not and State Farm knew Plaintiffs would use it to make decisions about what coverage may be available via "their own automobile insurance policies" and decisions about litigation. Compl. ¶¶ 44, 46-48, 96-97, 99. Plaintiffs allege State Farm then created a certified copy of the Policy using the New Declarations Page, with the certification falsely stating the Policy,

including the New Declarations Page, was a true and accurate record of the terms and conditions of the Policy in effect at the time of the Accident (“Certified Policy”). Compl. ¶¶ 54-56.

State Farm provided the New Declarations Page and Certified Policy to Defendant Gallivan, White & Boyd, P.A. (“GWB”), its counsel, to use in litigation. Compl. ¶ 64. The New Declarations Page and the Unapproved Form were attached to a lawsuit State Farm, through its counsel GWB, filed on August 16, 2021 to deny coverage for claims arising from the Accident (the “Underlying Suit”). Compl. ¶¶ 12, 77.

Plaintiffs allege State Farm falsely stated in the Underlying Suit’s Complaint it had no duty to defend or indemnify Melvin O. Lamb, Jr. or Melvin O. Lamb, III based on the excluded driver endorsement. ¶¶ 75-76. According to Plaintiffs, “State Farm wanted a determination by a court that [it] had no duty to indemnify, defend or pay for damages that occurred because of the collision... to try to make the Plaintiffs and others abandon claims made for coverage available under the actual State Farm policy, to improperly deny coverage, and to avoid paying legitimate claims.” Compl. ¶¶ 63, 72; see also, Compl. ¶ 73. In addition to filing the New Declarations Page as an attachment to its Complaint in the Underlying Suit and making false allegations in the Complaint, Plaintiffs allege Defendants “provided” the Certified Policy in the Underlying Suit’s “discovery process.” Compl. ¶ 13.

State Farm’s Underlying Suit was filed against the Estate of James K. Workman (“Workman Estate”), Melvin O. Lamb, III, Melvin O. Lamb Jr., and others who had personal injury or property damage liability claims arising from the Accident. Compl. ¶ 74. The Individual Plaintiffs were not parties to the Underlying Suit and there are no allegations the Individual Plaintiffs had personal injury or property damage liability claims arising from the Accident *See* Compl. ¶ 74; *see also*, Complaint (Declaratory Judgment), *State Farm Mut. Auto. Ins. Co. v. Lamb*,

C.A. No. 2:21-cv-2623 at ECF No. 1 (Aug. 16, 2021, D.S.C.).¹ Plaintiffs nonetheless allege they “obtained counsel to defend them” in the Underlying Suit “[a]s a result of Defendants’ wrongful conduct.” Compl. ¶ 101. Plaintiffs further allege they “obtained counsel to address issues, including those related to their own automobile policies,” “[a]s a result of Defendants’ wrongful conduct.” Compl. ¶ 102.

According to Plaintiffs, they filed a motion in the Underlying Suit when they discovered the Policy documents filed with State Farm’s Complaint were “fraudulent and created after the [Accident]”. Compl. ¶ 103. Plaintiffs allege State Farm then immediately sought dismissal of the Underlying Suit, “[a]dmitted coverage,” and “[r]emoved all limits on coverage.” Compl. ¶¶ 103-104. The Underlying Suit was eventually dismissed with prejudice. Compl. ¶ 107.

Plaintiffs thereafter filed this action against State Farm and GWB. Plaintiffs allege State Farm’s filing of the Underlying Suit was an abuse of process and that the New Declarations Page filed with the Underlying Suit constitutes actionable fraud. Compl. ¶¶ 110-112, 121-124. With respect to fraud, Plaintiffs further allege State Farm had a duty to disclose to them there was a declarations page to the Policy existing at the time of the Accident which did not show that Melvin O. Lamb, III was an excluded driver and that the excluded driver endorsement it sought to enforce through the Underlying Suit was not approved by the SCDOL. Compl. ¶¶ 93, 118. Plaintiffs allege State Farm negligently misrepresented that the New Declarations Page was “real” and that the excluded driver endorsement State Farm sought to enforce through the Underlying Suit complied with South Carolina law. Compl. ¶ 133. Plaintiffs also assert a claim for civil conspiracy, alleging State Farm “acted together in combination or by agreement” with GWB, its counsel, and that State Farm and GWB “acted together and committed one or more overt acts in furtherance of that

¹ At the July 10, 2024 hearing on this Motion, State Farm requested the Court take judicial notice of its Complaint, the Workman Estate’s Answer, and the Workman Estate’s Rule 26.03 Responses filed in the Underlying Suit, Civil Action No. 2:21-cv-2623-MBS in the United States District Court for the District of South Carolina and provided the Court with file-stamped copies of the same. The court must take judicial notice “if requested by a party and supplied with the necessary information.” S.C. R. Evid. 201(d).

agreement.” Compl. ¶¶ 149, 151. Finally, the Individual Plaintiffs assert State Farm engaged in conduct actionable under SCUTPA. Compl. ¶¶ 153-161. Plaintiffs allege “Defendants’ wrongful conduct” caused Plaintiffs to suffer losses, “including attorney’s fees, costs, and expenses including to defend the [Underlying Suit],” and resulted in them being damaged in “various ways.” Compl. ¶ 105, 108, 113, 131.

Standard of Law

The Court must regard all properly pleaded factual allegations as true and admitted when reviewing a Rule 12(c) motion for judgment on the pleadings. *Falk v. Sadler*, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000). Absent particularized facts in support, conclusory allegations and bald assertions are not properly pleaded and need not be accepted as true. *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 455, 814 S.E.2d 643, 656 n.9 (Ct. App. 2018) (“[T]he circuit court did not err in dismissing [plaintiff]’s SCUTPA claim because [plaintiff] merely stated [the defendants’] conduct satisfied the public interest requirement of SCUTPA without alleging any particularized facts.”) (citing *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986) (holding conclusory allegations are demurrable)).

While the Court may, under Rule 201,² take judicial notice of facts the accuracy of which are “capable of verification by reference to readily available sources of indisputable reliability,” *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 255, 321 S.E.2d 194, 196 (Ct. App. 1984), the Court may not otherwise consider matters outside the pleadings when considering judgment on the pleadings, *Falk*, 341 S.C. at 286, 533 S.E.2d at 353. *See also, Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 497, n.2 (2014) (noting that reliance on the existence and contents of court filings does not convert a motion for judgment on the pleadings to one for summary judgment).

² “A judicially noticed fact must be one not subject to reasonable dispute in that it is ... capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” S.C. R. Evid. 201(b). Judicial notice may be taken at any stage of the proceeding. S.C. R. Evid. 201 (f).

Analysis and Holdings

Considering the properly pleaded factual allegations in the Plaintiffs' Complaint—which are deemed admitted and true for purposes of ruling on the Motion—together with judicially noticeable facts, the Court grants State Farm's Motion (1) without prejudice as to Plaintiffs' claims of abuse of process, fraud, and negligent misrepresentation; (2) with prejudice as to Plaintiffs' claims of civil conspiracy and violation of the SCUPTA; and (3) as to the individual Plaintiffs for lack of standing and failure to state viable claims.

1. Abuse of Process

In South Carolina, there are two “essential elements of an abuse of process claim,” the first being “an ulterior purpose” for the process, the second being “a willful act in the use of process not proper in the regular conduct of the proceeding.” *First Union Mortg. Corp. v. Thomas*, 317 S.C. 63, 73, 451 S.E.2d 907, 914 (Ct. App. 1994). State Farm moves for judgment because there are no well pleaded factual allegations in the Complaint as to the first, ulterior purpose element. Mot. ¶ 1. State Farm also contends the Individual Plaintiffs lack standing to assert an abuse of process claim. Mot. ¶ 6. The Court agrees.

A. No Primary, Ulterior Purpose Outside the Litigation

In terms of the “ulterior purpose” element, a claim for abuse of process lies if the suit is brought not to recover on the cause of action stated in the complaint, but to “primarily” accomplish some other purpose for which the process was not designed. *Food Lion, Inc. v. United Food & Com. Workers Int'l Union*, 351 S.C. 65, 75, 567 S.E.2d 251, 255-56 (Ct. App. 2002); *see also Pallaes v. Seinar*, 407 S.C. 359, 371, 756 S.E.2d 128, 133-34 (2014). Liability for abuse of process “exists not because a party merely seeks to gain a collateral advantage by using some legal process, but because the collateral objective was its sole or paramount reason for acting.” *Food Lion*, 351 S.C. at 75, 567 S.E.2d at 256. Thus, there is no abuse of process if the party has an “incidental or

concurrent” motive outside of the litigation or even seeks “to gain a collateral advantage” outside of the litigation. *Pallares*, 407 S.C. at 371, 756 S.E.2d at 133.

In their Complaint, Plaintiffs only allege “State Farm had an ulterior purpose in filing the lawsuit.” Compl. ¶ 110. Accordingly, the “process” at issue was the filing of the Underlying Suit and, to be entitled to any relief for abuse of process, Plaintiffs “must allege facts sufficient to show” the Underlying Suit was brought *primarily* for an ulterior purpose—that is, collateral reasons. *Food Lion*, 351 S.C. at 74, 567 S.E.2d at 255. Plaintiffs have not alleged such facts. Instead, Plaintiffs allege State Farm “filed the Underlying Suit using the bogus documents seeking a Declaratory Judgment that [the Policy] did not provide coverage, including a duty to defend or indemnify Melvin O. Lamb, III or Melvin O. Lamb, Jr. for the personal injury or property damages arising from the collision.” Compl. ¶ 73. The cause of action brought by State Farm in the Underlying Suit was for a declaratory judgment that there was no coverage under the Policy for the liability claims arising out of the Accident. Complaint (Declaratory Judgment), *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-cv-2623 at ECF No. 1 (Aug. 16, 2021, D.S.C.) (“State Farm seeks a declaratory judgment that it has no obligation or duty to defend or indemnify [Melvin O. Lamb, III] or [Melvin O. Lamb, Jr.] for any claims arising out of the [Accident].”). Thus, there are no allegations of a primary, ulterior purpose of the Underlying Suit. In fact, Plaintiffs’ Complaint acknowledges the Underlying Suit was brought to obtain a declaration that State Farm owed no coverage, which is precisely the relief sought in the Underlying Suit.

Plaintiffs argued the Underlying Suit was also brought for the ulterior purpose of getting the Plaintiffs to use their own automobile insurance policies for coverage. There are no such allegations in the Complaint, nor have Plaintiffs alleged they had any vehicles involved in the Accident for which they could seek coverage under their own insurance policies. In any event, such allegation, if made, would not save Plaintiffs’ abuse of process claim because the Underlying Suit was brought to obtain a declaratory judgment that there was no coverage—that is, it was

brought to recover on the cause of action stated therein. A claim for abuse of process lies if the suit is brought not to recover on the cause of action stated in the complaint, and there is no abuse of process if the party has an “incidental or concurrent” motive outside of the litigation or even seeks “to gain a collateral advantage” outside of the litigation by bringing such action. *Pallares*, 407 S.C. at 371, 756 S.E.2d at 133; *Food Lion*, 351 S.C. at 75, 567 S.E.2d at 255-56.

For the above reasons, Plaintiffs’ properly pleaded allegations of fact do not sufficiently plead a cause of action for abuse of process as required by Rule 12(c). While such a claim may or may not ultimately be remedied by amending the complaint, the Court dismisses this claim without prejudice so the remaining Plaintiff will have another opportunity to plead an abuse of process cause of action.

B. No Standing as to Individual Plaintiffs

As to the standing of the Individual Plaintiffs, the abuse of process claim additionally fails because they were not parties to the Underlying Suit. In this regard, “[t]he tort of abuse of process is intended to compensate *a party* for harm resulting from *another party’s* misuse of the legal system.” *Pallares*, 407 S.C. at 370, 756 S.E.2d at 133 (emphasis added); *see also, e.g., Swanson v. Bixler*, 750 F.2d 810, 814 (10th Cir. 1984) (dismissing abuse of process claims of stepson arising from conservatorship proceedings against stepfather because he had “no standing to complain about the institution of these processes”); *Gurman v. Metro Hous. & Redevelopment Auth.*, 884 F. Supp. 2d 895, 901-02 (D. Minn. 2012) (finding the position that plaintiffs could sue for abuse of process when they were not part of underlying litigation unreasonable); *Martel v. City of Newton, Kan.*, 6 F. Supp. 2d 1243, 1247 (D. Kan. 1998) (“The tort of abuse of process does not provide or implicate an indiscriminate right of third persons, indirectly affected by a prosecution, to separately advance an abuse of process claim.”).

2. Fraud and Negligent Misrepresentation

As to Plaintiffs' fraud and negligent misrepresentation claims, State Farm argues it is entitled to judgment because there are no well-pleaded factual allegations regarding reliance on the truth of the alleged fraudulent and negligent misrepresentations and injury caused by such reliance and, as a judicially noticeable fact, the Workman Estate, which was a party to the Underlying Suit, did not rely on the alleged misrepresentations. Mot. ¶ 2. State Farm also argues the Individual Plaintiffs, to whom the alleged misrepresentations were not made, lack standing. Mot. ¶ 6. The Court agrees.

A. No Detrimental Reliance

Reliance on the truth of a false representation and pecuniary loss proximately caused by such reliance are two essential elements of Plaintiffs' fraud and negligent misrepresentation causes of action. *Carter v. Boyd Const. Co.*, 255 S.C. 274, 280–81, 178 S.E.2d 536, 539 (1971) (holding reliance on the truth of the false representation and consequent and proximate injury are essential elements to fraud); *AMA Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992) (holding plaintiff must allege justifiable reliance on the alleged negligent misrepresentation as well as pecuniary loss he suffered as a proximate result of his reliance). With respect to their fraud cause of action, pursuant to Rule 9, Plaintiffs must allege with specificity their detrimental reliance on false representations.

Plaintiffs cite the following paragraphs of their Complaint as sufficiently alleging reliance:

- ¶ 15 – “After Plaintiffs expended effort, time and expense in defending the lawsuit, including taking the deposition of a State Farm corporate representative, Defendants’ scheme was exposed.”
- ¶ 44 – “State Farm created that declarations page because it wanted Plaintiffs, the Court, and others to rely upon it as being true when it was not.”
- ¶ 46 – “State Farm knew or should have known that Plaintiffs, others harmed by the collision and their automobile insurance carriers would use the false documents to make decisions about available automobile coverage.”

- ¶ 47 – “State Farm knew or should have known Plaintiffs and others involved in the June 12, 2021 collision, including their automobile insurance carriers, would rely on State Farm’s false declarations page in making decisions and determinations about what coverage may be available via their own automobile insurance policies.”
- ¶ 48 – “State Farm knew or should have known that Plaintiffs and others involved in the June 12, 2021 collision, including their automobile insurance carriers, would rely on the State Farm’s false declarations page in making decisions and determinations about litigation.”
- ¶ 101 – “As a result of Defendants’ wrongful conduct, Plaintiffs and others obtained counsel to defend them in the lawsuit brought by Defendants.”
- ¶ 102 – “As a result of Defendants’ wrongful conduct, Plaintiffs and others obtained counsel to address issues, including those related to their own automobile policies.”
- ¶ 105 – “As a direct and proximate result of Defendants’ wrongful conduct, Plaintiffs suffered losses, including attorney’s fees, costs, and expenses including to defend the lawsuit brought by Defendants...”
- ¶ 130 – “Plaintiffs and others had a right to rely on documents State Farm represented as being true.”

Neither the above nor any other allegations in Plaintiffs’ Complaint allege with specificity that Plaintiffs in fact relied on any false representation made to them by State Farm as being true, or that they suffered pecuniary loss as a result of such reliance. The absence of these allegations is fatal to Plaintiffs’ fraud and negligent misrepresentation claims.

In addition, the Court can take judicial notice of the Workman Estate’s Answer to State Farm’s Complaint for Declaratory Judgment Action (the “Answer”) as well as its Local Rule 26.03 Responses, both publicly filed court documents in the Underlying Suit. *See Sun v. Matyushevsky*, No. 2015–UP–146, 2015 WL 1249074, at *1 (S.C. Court App. March 18, 2015); *see also Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n. 2, 754 S.E.2d 494, 497 n. 2 (2014) (recognizing a circuit court may take judicial notice of previously entered, related court orders and consider them when ruling on a Rule 12(b)(6), SCRCp, motion to dismiss); Rule 201(f), SCRE (“Judicial notice may be taken at any stage of the proceeding.”).

In its Answer, the Workman Estate **denied** State Farm's coverage position it now claims was fraudulent, and, in fact, affirmatively averred both that State Farm had previously represented there was coverage, and that the Unapproved Form was inapplicable, ineffective, and invalid. *See* Answer ¶¶ 9, 16, 17, *State Farm Mut. Auto. Ins. Co. v. Workman*, C.A. No. 2:21-cv-02623-MBS, ECF No. 35 (D.S.C., Oct. 26, 2021). Likewise, the Workman Estate's Local Rule 26.03 Responses stated a State Farm representative would "testify that coverage applies or at least that State Farm cannot show the exclusion applies based on the allegations of the Complaint and documents it has produced." *See* Rule 26.01 Responses ¶ 2, *State Farm Mut. Auto. Ins. Co. v. Workman*, C.A. No. 2:21-cv-02623-MBS, ECF No. 39 (D.S.C., Oct. 26, 2021) (emphasis added). If the alleged misrepresentations were relied upon as true, the Workman Estate would have admitted instead of denied State Farm's coverage position, and it would not have challenged the position through its averments. Consequently, Plaintiffs cannot establish the necessary allegations to support their fraud and negligent misrepresentation claims, and State Farm's Motion must be granted. *See Ivy v. Travelers Ins. Co.*, No. 1:22-cv-01228-TWP-MG, 2023 WL 3225690, at *1 (S.D. Ind. 2023) (granting motion for judgment on the pleadings where lawsuit alleged abuse of process and fraud based on the defendant's filing, in another lawsuit, false affidavits with a response in opposition to a motion for summary judgment based on lack of reliance because the plaintiff opposed the affidavits and raised their falsity to the court in the underlying action); *Alvarado v. Rainbow Inn, Inc.*, 312 F.R.D. 23, 31 (D.D.C. 2015) (noting a party asserting fraud must allege reliance and finding defendant's counterclaim, which asserted plaintiff's complaint constituted actionable fraud, failed because defendant did not allege reliance and its answer "reveal[ed] ... it at no time believed the representations plaintiff made").

The Court has also considered Plaintiffs' arguments made under Rule 9(b), S.C. R. Civ. P., *Bailey v. Glover*, 88 U.S. 342, 349 (1874), *Slack v. James*, 364 S.C. 609, 614 S.E.2d 636, 641 (2005), and the Omnibus Insurance Fraud and Reporting Immunity Act and finds them

unpersuasive. First, Plaintiffs argue reliance is a condition of mind that need not be stated with particularity under Rule 9(b). This position is without legal support. *Cf. Truauto MC, LLC v. Textron Specialized Vehicles, Inc.*, No. 2:19-CV-1381-RMG, 2020 WL 438310, at *4 (D.S.C. Jan. 28, 2020) (applying South Carolina law and stating, under analogous Rule 9, FRCP, reliance must be pleaded with particularity and finding plaintiffs' fraud-based claims subject to dismissal because they did not allege reliance with particularity), *appeal dismissed and remanded*, No. 20-1341, 2020 WL 5642025 (4th Cir. Sept. 18, 2020).

Second, Plaintiffs argue, under *Bailey*, State Farm may not claim lack of reliance as a bar to their claims. *Bailey* concerned the two-year statute of limitations in the Bankruptcy Act of 1867 and whether it could protect "persons fraudulently obtaining property from the bankrupt party, in the enjoyment of the fruits of their fraud, if they are able to conceal from the assignee the knowledge of their fraud for two years." 88 U.S. at 345. The Supreme Court answered that question in the negative, noting the statute of limitations should not begin to accrue on a fraud claim until the fraud is or should have been discovered, and "[t]o hold that by concealing a fraud, or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was designed to prevent fraud the means by which it is made successful and secure." 88 U.S. at 349. *Bailey* has no application to the Court's ruling as no statute of limitations defense has been asserted by State Farm, and *Bailey* in no way dispenses of the requirement of detrimental reliance in claims of fraud and negligent misrepresentation.

Third, Plaintiffs argue, under *Slack*, their claims cannot be dismissed for lack of reliance. Reliance, however, is an essential element of every negligent misrepresentation and fraud cause of action which must be sufficiently alleged in the plaintiff's pleading, and *Slack* states nothing to the contrary. *Slack* held that general non-reliance clause in a contract did not prevent parties to the contract from suing for pre-contract negligent misrepresentation and fraud. 364 S.C. at 618, 614

S.E.2d at 641. There are no allegations of a contract between State Farm and any of the Plaintiffs and there is no non-reliance clause at issue in the allegations or the affirmative defenses. In short, *Slack* has no bearing on whether Plaintiffs have stated an actionable claim for fraud or negligent misrepresentation.

Fourth, based on the definition of “false statement or misrepresentation” in the Omnibus Insurance Fraud and Reporting Immunity Act,³ S.C. Code § 38-55-530(D), Plaintiffs argue there is no need to plead or show reliance because it is “fraud per se.” Plaintiffs cite no case law recognizing a “fraud per se” cause of action and no case law citing the Act as eliminating reliance as an element to common law fraud or negligent misrepresentation claims. Plaintiffs are not the first to assert fraud and negligent misrepresentation against an insurer in South Carolina, and there appears to be no Supreme Court, Court of Appeals, and/or District Court cases of South Carolina modifying or reducing the necessary elements of these causes of action in such suits based on the Omnibus Insurance Fraud and Reporting Immunity Act’s definition of “false statement or misrepresentation.” The Court rejects Plaintiffs’ attempt to circumvent the requirement they sufficiently allege detrimental reliance for both their fraud and negligent misrepresentation claims and finds the Act has no application to Plaintiffs’ common law claims.

For the above reasons, the Court grants State Farm’s Motion as to the fraud and negligent misrepresentation claims. While such claims may or may not ultimately be remedied by amending

³ There is no private right of action under the Act. “The purpose of [the Act] is to confront aggressively the problem of insurance fraud in South Carolina by facilitating the detection of insurance fraud; to allow reporting of suspected insurance fraud; to grant immunity for reporting suspected insurance fraud; to prescribe penalties for insurance fraud; to require restitution for victims of insurance fraud; to establish a division within the Office of the Attorney General to prosecute insurance fraud; and to require the investigation of alleged insurance fraud by State Law Enforcement Division.” S.C. Code Ann. § 38-55-520. In addition to criminal liability, the Act provides a civil penalty that must be paid to the director of the Insurance Fraud Division, who may also be awarded attorneys’ fees and costs.

the Complaint, the Court dismisses these claims without prejudice so the remaining Plaintiff will have another opportunity to plead fraud and negligent misrepresentation causes of action.

A. No Standing as to Individual Plaintiffs

The fraud and negligent misrepresentation claims, as brought by the Individual Plaintiffs additionally and separately require dismissal based on lack of standing because the alleged fraudulent and negligent misrepresentations were made in the Underlying Suit, to which the Individual Plaintiffs were not parties. Both fraud and negligent misrepresentation require that false representation of fact be made by the defendant to the plaintiff. In the Complaint, Plaintiffs allege the false representations were contained in the New Declarations Page, which was filed as an attachment to State Farm's Complaint in the Underlying Suit. Compl. ¶¶ 12, 121, 122. The Individual Plaintiffs were not parties to the Underlying Suit and there are no allegations that New Declarations Page was given to them directly or published in any other setting. *See gen.* Compl.

3. Fraudulent Nondisclosure

In addition to fraudulent misrepresentations, Plaintiffs, under their fraud cause of action, allege State Farm had a duty but failed to disclose certain facts and information to them. Compl. ¶¶ 118-119. Nondisclosure becomes fraudulent only when a party having knowledge of the facts has a duty to disclose them to the other party, which occurs in three instances: (1) where it arises from a pre-existing definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in which the nondisclosure occurred; and (3) where the parties are involved in a contract or transaction that is itself intrinsically fiduciary in nature and necessarily calls for perfect good faith and full disclosure. *See, e.g., Jacobson v. Yaschik*, 155 S.E.2d 601, 605 (S.C. 1967). State Farm argues none of these instances is alleged in Plaintiffs' Complaint, nor are they implicated by the nature of the claims. Mot. ¶ 3.

The filing of a declaratory judgment action on coverage, an inherently adversarial litigation proceeding, is not an undertaking to speak on the issue of coverage and it does not create on the part of the insurer a duty of full disclosure owed to non-insured claimants named in and served with the action nor any other person who might come across the action. Even if the filing of a declaratory judgment action did give rise to a duty of disclosure, State Farm's filing of the Underlying Suit would not give rise to a duty of disclosure owed to the Individual Plaintiffs because they were not parties to the Underlying Suit. In sum, because there are three distinct instances where a party having knowledge of a fact may commit actionable fraud by failing to disclose that fact to another, none of those instances are alleged in or implicated by the Complaint, and separately because the Individual Plaintiffs were not parties to the Underlying Suit, the Court grants State Farm's Motion as to these Plaintiffs. While such a claim may or may not ultimately be remedied by amending the Complaint, the Court dismisses this claim without prejudice so the remaining Plaintiff will have another opportunity to plead a fraudulent nondisclosure cause of action.

4. Civil Conspiracy

Plaintiffs assert a civil conspiracy existed between State Farm and GWB. To assert an actionable claim for civil conspiracy, Plaintiffs must allege "(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to [them]." *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021).

State Farm argues it is entitled to judgment because civil conspiracy between State Farm and GWB is impossible based on the allegations in Plaintiffs' Complaint and, in any event, Plaintiffs have failed to plead additional facts in furtherance of the conspiracy separate and independent from the other wrongful acts alleged in the Complaint. Mot. ¶ 4. State Farm also

argues the civil conspiracy claim must be dismissed as to the Individual Plaintiffs for lack of standing. Mot. ¶ 6. The Court agrees.

A. State Farm and GWB Acted Together in an Attorney-Client, Principal-Agent Relationship

With respect to the first element of Plaintiffs' claim, "a civil conspiracy cannot exist when the alleged acts arise in the context of a principal-agent relationship because by virtue of the relationship such acts do not involve separate entities." *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886–87 (2006), *overruled on other grounds by Paradis*, 433 S.C. at 574, 861 S.E.2d at 780 (overruling prior precedent, like *McMillan*, "to the extent they impose or appear to impose a requirement of pleading (and proving) special damages" in a civil conspiracy claim); *see also*, 15A C.J.S. Conspiracy § 10 ("Because acts of agent are considered in law to be acts of principal, a conspiracy cannot exist between a principal and an agent. In other words, the identity between an agent and principal leads to a legal impossibility in the context of conspiracy."). Significant to this case, the attorney-client relationship is a principal-agent relationship. *State v. Goettie*, 41 S.C.L. 126, 128 (S.C. App. L. 1854) ("That the relations of attorney and client, and principal and agent, are identical...are propositions that will scarcely be questioned.").

As alleged by Plaintiffs in their Complaint, the Defendants were acting together in an attorney-client relationship. Compl. ¶¶ 8, 10, 12, 13. Citing Paragraphs 68 through 73 of their Complaint, Plaintiffs argue the Complaint alleges GWB acted in its own interests and owed separate duties and, therefore, GWB and State Farm could conspire together. Paragraphs 68 through 73 of the Complaint do not allege GWB was acting as anything other than State Farm's counsel. To the contrary, those allegations are premised on GWB acting as State Farm's counsel, as was the Plaintiff's motion for sanctions that was heard and denied in the earlier federal court action. Because a civil conspiracy cannot exist when the alleged act arises in an agent-principal relationship, a civil conspiracy between Defendants, as alleged in Plaintiffs' Complaint, cannot

exist. *See Myrtle Beach Lumber Co. v. Globe Int'l Corp.*, 315 S.E.2d 142, 143 (S.C. Ct. App. 1984) (“One of the significant features of our whole judicial system is that parties ... may be, and usually are, represented by attorneys learned in the law, and these attorneys by virtue of the very name of their office stand for and in place of their clients. An attorney is the alter ego of his client.”). For this reason, the Court grants State Farm’s Motion with respect to the civil conspiracy claim. While such a claim may or may not ultimately be remedied by amending the complaint, the Court dismisses this claim without prejudice so the remaining Plaintiff will have another opportunity to plead a civil conspiracy cause of action.

B. No Separate, Overt Acts

Plaintiffs’ failure to plead separate, additional acts in furtherance of the alleged conspiracy is another basis for dismissal. With respect to the third, “overt act” element of civil conspiracy, the Supreme Court of South Carolina has recently affirmed a plaintiff’s repetition of the same acts that serve as the basis for other claims is insufficient. *See Paradis*, 433 S.C. at 573, 861 S.E.2d at 779–80 (noting prior precedent, other grounds of which were overruled by the Court, “correctly concluded the civil conspiracy claim failed as a matter of law” because “the only wrongful acts alleged were those for which damages had already been sought” and “the plaintiff’s repetition of the same acts as the prior claims was insufficient to salvage the claim”). Instead, “[i]n a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim.” *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct. App. 2009), *overruled on other grounds by Paradis*, 433 S.C. at 574, 861 S.E.2d at 780 (overruling prior precedent, like *Hackworth*, “to the extent they impose or appear to impose a requirement of pleading (and proving) special damages” in a civil conspiracy claim, while affirming pleading requirement for separate overt act in furtherance of conspiracy). Plaintiffs’ Complaint alleges no “additional acts” “separate and independent from

other wrongful acts alleged in the Complaint” and under *Hackworth* and *Paradis*, the civil conspiracy claim fails as a matter of law.

A. No Standing as to Individual Plaintiffs

Given the civil conspiracy claim merely incorporates by reference the alleged wrongful acts that serve as the bases for the other claims, the Individual Plaintiffs, through the civil conspiracy claim, seek to recover for the same acts that serve as the basis for their other claims. They face the same obstacle to standing as they do with the other claims discussed herein, and the Individual Plaintiffs’ lack of standing serves as an additional basis for dismissal of the civil conspiracy claim.

5. SCUTPA

Finally, construing the Complaint liberally, the Individual Plaintiffs’ claim under SCUTPA must be dismissed. Under SCUTPA, “Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 [of SCUTPA] may bring an action individually, but not in a representative capacity, to recover actual damages.” S.C. Code Ann. § 39-5-140. However, “[n]othing in [SCUTPA] shall apply to ... unfair trade practices covered and regulated under Title 38, Chapter 57, Sections 38-57-10 through 38-5[7]-320,” South Carolina’s Insurance Trade Practices Act. S.C. Code Ann. § 39-5-40(c). Thus, courts interpreting South Carolina law have consistently held “all unfair trade practices regarding the insurance business...are exempt from the coverage of SCUTPA.” *Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F. Supp. 128, 130–31 (D.S.C. 1994); *see also*, *Cleveland Ridge Homeowner's Ass'n, Inc. v. State Farm Fire & Cas. Co.*, No. 2006-UP-295, 2006 WL 7286092, at *3 (S.C. Ct. App. June 26, 2006) (“Clearly, the legislature intended SCUTPA to exempt cases of unfair trade practices regarding the insurance business . . .”). Indeed, “by precluding unfair trade practices covered and regulated under Chapter 57,” the Insurance Trade Practices Act, Section 39-

5-40(c) “exempts from the coverage of SCUTPA *all unfair trade practices in the business of insurance.*” *Id.* This is because the Insurance Trade Practices Act governs any “unfair or deceptive act or practice in the business of insurance.” *Id.*; *see also e.g., Lewis v. Omni Indem. Co.*, 970 F. Supp. 2d 437, 451 (D.S.C. 2013).

The Individual Plaintiffs allege State Farm engaged in improper claim practices under Sections 38-59-20 and 38-77-341 of the South Carolina Code, and that such conduct is declared unlawful and recoverable under SCUTPA. Compl. ¶¶ 154-158. The Court finds no support in the law for the Individual Plaintiffs’ arguments.

Section 38-59-20 is part of the Insurance Claims Practices Act, S.C. Code Ann. §§ 38-59-10, *et seq.*, which “provides relief for a third-party victim of an improper claims practice” in the form of administrative review before the Chief Insurance Commissioner. *Masterclean, Inc. v. Star Ins. Co.*, 347 S.C. 405, 415, 556 S.E.2d 371, 377 (2001); *see also, Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 673, 541 S.E.2d 269, 272 (Ct. App. 2000) (“Section 38–59–20 declares that a third party may pursue *administrative action* before the Chief Insurance Commissioner if an insurer *inter alia* ‘[k]nowingly misrepresent[s] to insureds or third-party claimants pertinent facts or policy provisions relating to coverages at issue or providing deceptive or misleading information with respect to coverages.’”), *aff’d as modified*, 354 S.C. 416, 581 S.E.2d 169 (2003). “This relief is important because South Carolina does not recognize a third party action for bad faith refusal to pay insurance benefits” and “[t]hird parties do not have a private right of action under S.C. Code Ann. § 38–59–20.” *Id.*

Based on the allegations of their Complaint, it is well settled under the law that Individual Plaintiffs are third parties with no standing to sue State Farm for bad faith and no private right of action for State Farm’s alleged violation of the Insurance Claims Practices Act. It also cannot be disputed the Individual Plaintiffs’ SCUTPA claim alleges State Farm engaged in unfair trade practices in the business of insurance, and all unfair trade practices in the business of insurance

are exempt from SCUTPA's reach. Accordingly, the Court finds no legal support for the Individual Plaintiffs' attempt to use SCUTPA as a means of pursuing these otherwise unavailable claims.

Section 38-77-341, the other statute the Individual Plaintiffs assert State Farm violated, prohibits insureds and third-parties from submitting inflated insurance claims to insurance companies and provides such conduct is unlawful under SCUTPA. *See* S.C. Code § 38-77-341(1). State Farm argues the plain language, subject matter, and preamble of Section 38-77-341 reveals the legislature did not intend to subject automobile insurers to SCUTPA, and the Court agrees.

A cardinal rule of statutory construction is that a court must ascertain and effectuate the actual intent of the legislature. *Burns v. State Farm Mut. Auto Ins. Co.*, 377 S.E. 2d 569 (S.C. 1989). The legislative intent undergirding Section 38-77-341 is demonstrated by the statute's plain language—it applies to persons *seeking* payment from insurance companies. Notably, subsection 1, upon which Plaintiffs rely, concerns “a false statement or representation of a material fact for use in an application **for payment** or for use in determining the right **to payment** under this chapter.” (emphasis added). Thus, its plain language was meant to apply to claimants seeking to be paid, not insurance companies. This is further demonstrated by the totality of the statute which is concerned entirely with reducing fraudulent or inflated claims: through submitting bills in excess of customary charges (subsection 2); through charging more for work covered by insurance (subsection 3); through bill inflation to cover deductibles (subsection 4); through excessive healthcare provider billing (subsection 5); or through exaggeration or false statements when seeking payment (subsection 1). Plaintiffs' interpretation—in which Section 38-77-341 would allow insurance companies subject to SCUTPA—is at odds with the plain language and subject matter of the statute. *See Mun. Ass'n of S.C. v. AT&T Comm. of S. States, Inc.*, 606 S.E.2d 468, 471 (S.C. 2004) (noting a court should affect legislative intent through “giving the words [of the statute] their ordinary meaning and harmonizing the language with [the statute's] subject matter”).

Any doubt concerning the legislature's intent is resolved through the statute's preamble, which underscores the statute's purpose was to reduce fraudulent or exaggerated claims. Courts often look to the preamble as an indicator of legislative intent. *S.C. Pipeline Corp. v. Lone Star Steel Co.*, 546 S.E.2d 654, 656 (S.C. 2001). The entirety of the preamble enacting Section 38-77-341 states: "Whereas, it is the purpose and intent of the General Assembly in enacting this legislation to reduce insurance losses, including those of the Reinsurance Facility, and, consequently, the cost of mandatory automobile insurance." 1989 S.C. Acts 148, Page 440. This "purpose and intent" would be advanced by reducing inflated claims, but would not be advanced by removing the insurance industry's exemption from SCUTPA.

Further evidencing Section 38-77-341(1) is inapplicable to insurers, Chapter 57 and Chapter 59 of the insurance code governs precisely that conduct and charges the Insurance Commissioner with regulating it. *See, e.g.*, S.C. Code § 38-57-40 ("No person may make ... [a] statement misrepresenting the terms of a policy issued...."); S.C. Code § 38-59-40 (prohibiting insurers from "Knowingly misrepresenting to insureds or third-party claimants' pertinent facts or policy provisions relating to coverages at issue"); *see also, Masterclean, Inc.*, 556 S.E.2d at 377 ("The Insurance Trade Practices Act prohibits insurers from misrepresenting an insurance policy with the intent to settle the claim 'on less favorable terms than those provided in and contemplated by the contract or policy.'") (quoting S.C. Code § 38-57-70 (1989)).

In short, Section 38-77-341(1) does not govern policy representations made by insurance companies, and the portions of the insurance code that do speak to such policy representations charge the insurance commissioner with addressing that conduct and do not serve as the grounds for private rights of action. As *Masterclean Inc.*, *Trustees of Grace*, and their progeny confirm, this regulated conduct—indeed the entire "insurance business"—is not subject to SCUTPA. Based on Plaintiffs' allegations and the law of South Carolina, Plaintiffs have not and cannot state a claim against State Farm under SCUTPA. State Farm's Motion is granted, and the SCUTPA claim is

dismissed with prejudice because any amendment of the Complaint would not change the well-settled law regarding the inapplicability of the SCUTPA to “the insurance business.”

Conclusion

In sum, the Court grants State Farm’s Rule 12(c) Motion for Judgment on the Pleadings: (1) without prejudice as to Plaintiffs’ claims of abuse of process, fraud, negligent misrepresentation, and civil conspiracy such that the remaining Plaintiff may file an amended pleading to address the issues discussed herein within 30 days; (2) with prejudice as to Plaintiffs’ claim of violation of the SCUTPA; and (3) as to the Individual Plaintiffs because they lack standing and have failed to assert any claims sufficient to withstand the Motion. Accordingly, the sole remaining Plaintiff in this matter is Robert C. Workman as Personal Representative of the Estate of James K. Workman.

AND IT IS SO ORDERED.



Charleston Common Pleas

Case Caption: Robert C Workman , plaintiff, et al VS State Farm Mutual
Automobile Insurance Company , defendant, et al

Case Number: 2023CP1001832

Type: Order/Amend

So Ordered

s/ Thomas W. McGee III, Judge Code 2786

Electronically signed on 2024-11-06 10:55:47 page 23 of 23

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ROBERT C. WORKMAN, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE ESTATE
OF JAMES K. WORKMAN, KELLY WORKMAN
TICK AND MATTHEW T. WORKMAN,

PLAINTIFFS,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY AND
GALLIVAN, WHITE & BOYD, P.A.,

DEFENDANTS.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE No. 23-CP-10-

SUMMONS

Jury Trial Requested

TO: DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is attached and served upon you, and to serve your Answer to said Complaint on attorneys for Plaintiffs at P.O. Box 31397, Charleston, SC 29417-1397, within 30 days after the service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time allowed by the South Carolina Rules of Civil Procedure, Plaintiffs will apply to the Court for the relief demanded in the Complaint.

KAHN LAW FIRM, LLP

S/ JUSTIN S. KAHN

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ATTORNEYS FOR PLAINTIFFS

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE No. 23-CP-10-

ROBERT C. WORKMAN, INDIVIDUALLY
AND AS PERSONAL REPRESENTATIVE OF
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KELLY WORKMAN TICK AND MATTHEW
T. WORKMAN,

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STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY AND
GALLIVAN, WHITE & BOYD, P.A.,

DEFENDANTS.

COMPLAINT

Jury Trial Requested

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Plaintiffs, complaining of Defendants, allege:

I. INTRODUCTION

- 1) The Estate of James K. Workman and the children who are the heirs of the Estate, Robert C. Workman, individually and as personal representative, Kelly Workman Tick, and Matthew T. Workman allege **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY** (“**STATE FARM**”) and the law firm **GALLIVAN, WHITE & BOYD, P.A.** (“**GWB**”) worked together in various ways, including creating and filing false documents in U.S. District Court, in a coordinated effort to deny Plaintiffs and others the benefit of insurance coverage.
- 2) The underlying incident was a car collision that took place June 12, 2021.

- 3) On that day, James K. Workman was killed as a result of an automobile collision caused by Melvin O. Lamb, III, who was driving a Tahoe insured by **STATE FARM** and owned by his father Melvin O. Lamb, Jr.
- 4) On June 29, 2021, **STATE FARM** stated in separate letters to its insureds Mr. Lamb, III and Mr. Lamb, Jr., “Your insurance policy with State Farm® provides you with specific amounts of coverage for this claim” and “We will make every reasonable attempt to resolve the liability claims within your available policy limits.”
- 5) That same day, as to Plaintiffs’ claim, **STATE FARM** sent and enclosed a “Confirmation of Coverage for the policy that was in force on behalf of Melvin O Lamb Jr.”
- 6) That document stated in part: “This certifies that policy number 632318940A, covering a(n) 2004 Chevrolet TAHOE, 1GNEK13Z54R235227, was issued to Melvin O Lamb Jr and was in effect on the accident date of June 12, 2021.”

	Confirmation of Coverage	40-21B2-49D Claim Number																
This policy is issued by:																		
<table style="width: 100%; border: none;"> <tr> <td style="width: 20px; text-align: center;">☒</td> <td>State Farm Mutual Automobile Insurance Company</td> </tr> <tr> <td style="text-align: center;">☐</td> <td>State Farm County Mutual Insurance Company of Texas</td> </tr> <tr> <td style="text-align: center;">☐</td> <td>State Farm Fire and Casualty Company</td> </tr> <tr> <td style="text-align: center;">☐</td> <td>State Farm Lloyds</td> </tr> <tr> <td style="text-align: center;">☐</td> <td>State Farm Indemnity Company</td> </tr> <tr> <td style="text-align: center;">☐</td> <td>State Farm Guaranty Insurance Company</td> </tr> <tr> <td style="text-align: center;">☐</td> <td>State Farm Florida Insurance Company</td> </tr> <tr> <td style="text-align: center;">☐</td> <td>_____</td> </tr> </table>			☒	State Farm Mutual Automobile Insurance Company	☐	State Farm County Mutual Insurance Company of Texas	☐	State Farm Fire and Casualty Company	☐	State Farm Lloyds	☐	State Farm Indemnity Company	☐	State Farm Guaranty Insurance Company	☐	State Farm Florida Insurance Company	☐	_____
☒	State Farm Mutual Automobile Insurance Company																	
☐	State Farm County Mutual Insurance Company of Texas																	
☐	State Farm Fire and Casualty Company																	
☐	State Farm Lloyds																	
☐	State Farm Indemnity Company																	
☐	State Farm Guaranty Insurance Company																	
☐	State Farm Florida Insurance Company																	
☐	_____																	
(Write in the name of the appropriate State Farm® affiliate)																		
This certifies that policy number 632318940A, covering a(n) 2004 Chevrolet TAHOE, 1GNEK13Z54R235227, was issued to Melvin O Lamb Jr and was in effect on the accident date of June 12, 2021. The coverages and limits of liability for this policy on that date were:																		
A 25/50/25, U 25/50/25																		

- 7) On or about July 14, 2021, **STATE FARM** in an effort to avoid duties it owed to Plaintiffs and others, made a conscious choice to create a forged and false declarations page to replace the existing declarations page and use it in litigation against Plaintiffs and others to deny coverage.
- 8) By July 26, 2021, **STATE FARM** had contacted **GWB** concerning the collision and its legal representation in the matter.
- 9) On July 26, 2021, **GWB** sent a letter regarding Plaintiffs stating it had been retained to represent Melvin O. Lamb in the matter and referenced **GWB** File No. 6384-2825.
- 10) On August 3, 2021, **GWB** sent a letter stating “an attorney with our law firm, wrote you a letter indicating our firm was retained to represent Melvin O. Lamb in the above referenced matter. This was an oversight, and we apologize for the confusion. Our firm has been retained on behalf of **STATE FARM** as it relates to the above referenced matter” and referenced **GWB** File No. 6384-2825.
- 11) On or about August 5, 2021, in its ongoing effort to mislead and misrepresent the lack of insurance coverage available to Plaintiffs and others, **STATE FARM** created a false “Certified Policy Record” to provide to Plaintiffs.

- 12) On or about August 16, 2021, Defendants used and attached the forged and false declarations page in the lawsuit it filed against Plaintiffs and others in an improper attempt to deny coverage for the benefit of Plaintiffs, Melvin O. Lamb, III and his father, who owned the car.
- 13) Defendants provided that forged and false “Certified Policy Record” in the discovery process of the lawsuit to further misrepresent and mislead the Plaintiffs and others as to the actual terms of the applicable insurance policy.
- 14) Defendants affirmatively represented to Plaintiffs and others that the declarations page and the Certified Policy Record, both created after the crash, represented truthful information about the policy at issue when those documents were forged and/or false.
- 15) After Plaintiffs expended effort, time and expense in defending the lawsuit, including taking the deposition of a **STATE FARM** corporate representative, Defendants’ scheme was exposed.
- 16) It was only then that **STATE FARM** sought to dismiss its own lawsuit, agreed to pay for the underlying claims for which it previously denied coverage, and admitted documents and other representations filed in Court and provided to the Plaintiffs and others in the discovery process were not truthful.

- 17) A purpose of this lawsuit is to hold the Defendants responsible for their improper actions and conduct in the creation and use of false documents as part of a scheme to harm Plaintiffs and others.

II. PARTIES

- 18) Plaintiff Estate of James K. Workman (Estate) at all pertinent times was and is an estate existing in Charleston County, South Carolina.
- 19) Estate was created because James K. Workman was killed in an automobile collision June 12, 2021, which is the subject of this matter.
- 20) At all pertinent times, Plaintiff Robert C. Workman was the Estate's Personal Representative, son of James K. Workman and an heir of Estate.
- 21) At all pertinent times, Plaintiff Kelly Workman Tick was the daughter of James K. Workman and an heir of Estate.
- 22) At all pertinent times, Plaintiff Matthew T. Workman was the son of James K. Workman and an heir of Estate.
- 23) On information and belief, **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY (STATE FARM)** is an insurance company and engaged in the business of insuring people and property in South Carolina.

- 24) On information and belief, the net worth for **STATE FARM** ended the year 2021 at \$143.2 billion.¹
- 25) On information and belief, at all times relevant, the law firm Defendant **GALLIVAN, WHITE & BOYD, P.A. (GWB)** was a South Carolina corporation organized and existing under South Carolina law with its principal place of business in Greenville County.

III. JURISDICTION - SUBJECT MATTER AND PERSONAL

- 26) This Court has subject matter jurisdiction of this matter.
- 27) This Court has personal jurisdiction over Defendants for reasons, including the actions and conduct occurred or had effects in Charleston County.

IV. VENUE AND AFFIDAVIT

- 28) Venue is proper in this Court for various reasons, including the Defendants' wrongful conduct occurred and had material effects in Charleston County.
- 29) In further support of this lawsuit against **GWB**, to the extent needed, pursuant to S.C. Code Ann. § 15-36-100 and other law, Plaintiffs incorporate herein the attached affidavit of Thomas A. Pendarvis, Esq., specifying one or more negligent acts or omissions of **GWB**. (**Exhibit A, Affidavit and CV**)

¹ See **STATE FARM** announces 2021 financial results. <https://newsroom.statefarm.com/2021-by-the-numbers/> last visited Feb. 14, 2023.

V. FACTUAL ALLEGATIONS

A. JUNE 12, 2021 COLLISION - TAHOE INSURED BY STATE FARM

- 30) On June 12, 2021, Melvin O. Lamb, III was driving a 2004 Chevrolet Tahoe (Tahoe) owned by his father, Melvin O. Lamb, Jr., when he caused a multi-car collision on U.S. 17 North in Mt. Pleasant.
- 31) Melvin O. Lamb, III recklessly drove the Tahoe into Mr. James K. Workman's car (Mr. Workman).
- 32) Mr. Workman suffered and died because of the injuries from this crash.
- 33) At the time of the collision, the Tahoe was insured by **STATE FARM**.
- 34) At the time of the collision, the **STATE FARM** policy related to the Tahoe, did not exclude Melvin O. Lamb, III from coverage.
- 35) As to the Tahoe, no **STATE FARM** policy declarations page in existence up to and including the time of the collision showed Melvin O. Lamb, III was an excluded driver or referred to a Driver Exclusion Form 6023DC.

B. JUNE 13, 2021 STATE FARM POLICY CANCELLED

- 36) On information and belief, the **STATE FARM** insurance policy related to the Tahoe was cancelled effective June 13, 2021, one day after the crash.

C. JUNE 29, 2021 STATE FARM LETTERS TO INSUREDS CONFIRMS COVERAGE AND EXPOSURE POTENTIAL

- 37) By June 29, 2021, **STATE FARM** knew of the June 12, 2021 collision.

38) On June 29, 2021, **STATE FARM** wrote a letter addressed to Melvin O. Lamb, Jr. and a separate letter addressed to Melvin O. Lamb, III.

39) In both letters, **STATE FARM** stated in part:

Our preliminary investigation of the claim(s) against you as a result of the loss indicates there is a potential for exposure beyond the limits of liability coverage afforded you under your policy as a result of the injuries sustained by Estate of James Workman.

Your insurance policy with State Farm® provides you with specific amounts of coverage for the claim.

* * *

We will make every reasonable attempt to resolve the liability claims within your available policy limits.

D. JULY 14, 2021 STATE FARM CREATES FALSE DECLARATIONS PAGE FOR PLAINTIFFS AND OTHERS TO RELY UPON

40) Around July 9, 2021, a request was made by one part or unit of **STATE FARM** to another part of **STATE FARM** to create one or more documents showing Melvin O. Lamb, III was an excluded driver.

41) On or about July 14, 2021, as a result of the improper request, **STATE FARM** created a false and/or forged declarations page for the Tahoe and Melvin O. Lamb, III.

42) **STATE FARM** intentionally created the false and/or forged declarations page after it knew claims were made or to be made for damages sustained by Plaintiffs, and others arising out of the June 12, 2021 collision.

- 43) Defendants later chose to use a redacted version of the declarations page **STATE FARM** created as Exhibit A to a Complaint filed by Defendants as discussed herein.
- 44) **STATE FARM** created that declarations page because it wanted Plaintiffs, the Court, and others to rely upon it as being true when it was not.
- 45) **STATE FARM** created the false declarations page after Plaintiffs and others involved in the June 12, 2021 collision made claims.
- 46) **STATE FARM** knew or should have known that Plaintiffs, others harmed by the collision and their automobile insurance carriers would use the false documents to make decisions about available automobile coverage.
- 47) **STATE FARM** knew or should have known Plaintiffs and others involved in the June 12, 2021 collision, including their automobile insurance carriers, would rely on **STATE FARM**'s false declarations page in making decisions and determinations about what coverage may be available via their own automobile insurance policies.
- 48) **STATE FARM** knew or should have known that Plaintiffs and others involved in the June 12, 2021 collision, including their automobile insurance carriers, would rely on the **STATE FARM**'s false declarations page in making decisions and determinations about litigation.

- 49) Another reason and purpose **STATE FARM** created a false declarations page was to provide it to its lawyers at **GWB** and to use in litigation.
- 50) **STATE FARM** created a false declarations page for many improper reasons and purposes, including to avoid paying Plaintiffs and others.
- 51) **STATE FARM**'s declarations page unfairly, improperly, and falsely:
- i) added Melvin O. Lamb, III as an excluded driver when no **STATE FARM** declarations page concerning the Tahoe had ever listed him as an excluded driver before the collision;
 - ii) added reference to a **STATE FARM** Form 6023DC Driver Exclusion endorsement and Melvin O. Lamb, III, when that reference never existed on any declarations page concerning the Tahoe before the collision;
 - iii) changed the policy period concerning the Tahoe to June 10, 2021 to Feb. 7, 2022 12:01 A.M. Standard Time; and
 - iv) stated under IMPORTANT MESSAGES that as to the Tahoe, it
"Replaced policy number 6323189-40A".
- 52) **STATE FARM** created the false declarations page to make material misrepresentations, including those shown and listed below:
- i) Policy number 632 3189-B07-40B, when that policy number never existed at the time of the collision;

POLICY NUMBER 632 3189-B07-40B

- ii) Policy period of June 10, 2021 (two days before the collision) to February 7, 2022 when no such policy period ever existed for the Tahoe;

POLICY PERIOD JUN 10 2021 to FEB 07 2022
12:01 A.M. Standard Time

- iii) Under **IMPORTANT MESSAGES**, it stated “Replaced policy number 6323189-40A” when that was false because that policy was cancelled June 13, 2021;

Replaced policy number 6323189-40A.

- iv) Listed a driver exclusion for Melvin O. Lamb, III when there was never any such exclusion on the declarations page that applied to the collision; and

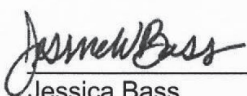
6023DC DRIVER EXCLUSION-MELVIN O LAMB III.

- v) Other false or misleading statements.

E. AUGUST 5, 2021 STATE FARM CREATES FALSE CERTIFIED POLICY RECORD

- 53) Around August 4, 2021, State Farm underwriting received a request from a **STATE FARM** employee to create a certified copy of the policy to provide to **STATE FARM’s** counsel, **GWB**.

- 54) On August 5, 2021, to further its improper scheme and purposes, **STATE FARM** created a “Certified Policy Record” using its logo and signed by a **STATE FARM** underwriter.
- 55) This “Certified Policy Record” is in part, shown below.

 Certified Policy Record I, the undersigned, do hereby confirm that I am custodian of the records pertaining to the issuance of policies by State Farm Mutual Automobile Insurance Company. I certify that the attached documents represent a true and accurate record of the terms and conditions of Policy Number 632 3189-B07-40B including any endorsements, if applicable, for the policy term(s) 06/10/2021 to 06/13/2021 and insuring LAMB, MELVIN O JR based on available records. It is State Farm's business practice to print a new Declarations Page only when a policy issuance transaction such as a change of coverage occurs. Therefore, the included Declarations Page which was in effect at the time of loss will indicate the policy period of the last policy issuance transaction. The policy was in effect on the loss date of 06/12/2021.  _____ Jessica Bass Underwriter Date: 08/05/2021

- 56) The **STATE FARM** created Certified Policy Record attached the bogus declarations page and made false or misleading statements for Plaintiffs and others to rely on, including:
- i) “the attached documents represent a true and accurate record of the terms and conditions of Policy...”;

- ii) “the included Declarations Page which was in effect at the time of the loss will indicate the policy period of the last policy issuance transaction.”;
- iii) “The policy [referenced] was in effect on the loss date of 06/12/2021”;
- and
- iv) The “attached documents represent a true and accurate record of the terms and conditions of Policy Number 632 3189-B07-40B including any endorsements ...”

57) **STATE FARM** provided the Certified Policy Record to State Farm’s counsel **GWB** to use in litigation and otherwise.

F. STATE FARM USES FORM NEVER SUBMITTED NOR APPROVED BY SCDOI

- 58) At all times relevant, **STATE FARM** knew it was unlawful for an insurer doing business in South Carolina to issue or sell a policy, contract, or certificate until it had been filed with and approved by the Director of the Department of Insurance. S.C. Code Ann. § 38-61-20.
- 59) **STATE FARM** knew the 6023DC Driver exclusion form it used with Melvin O. Lamb, Jr. had never been submitted and approved by the South Carolina Department of Insurance (SCDOI) as required by law.

- 60) **STATE FARM** knew the 6023DC Driver exclusion form used with Melvin O. Lamb, Jr. had never been approved by the SCDOI as required by law.
- 61) Despite **STATE FARM**'s knowledge the 6023DC Driver exclusion form used with Melvin O. Lamb, Jr. had never been submitted or approved by the SCDOI as required by law, **STATE FARM** chose to use and assert that unapproved document to try to deny coverage to Plaintiffs and others.

G. STATE FARM CONTACTS AND HIRES GWB LAW FIRM

- 62) On information and belief, after the collision, **STATE FARM** contacted **GWB**, in part to file a lawsuit to avoid having to indemnify, defend or pay for damages that occurred because of the collision.
- 63) On information and belief, **STATE FARM** wanted a determination by a court that **STATE FARM** had no duty to indemnify, defend or pay for damages that occurred because of the collision.
- 64) **STATE FARM** knowingly provided the bogus documents and/or unapproved forms it created to **GWB** to use in litigation to further its unlawful purposes.
- 65) On information and belief, without a reasonably adequate investigation into the law or facts, **GWB** advised or otherwise participated with **STATE FARM** in the improper use of the documents, litigation, and proceedings when such acts were improper and/or unlawful.

- 66) On information and belief, without a reasonably adequate investigation into the law or facts, **GWB** drafted and filed a complaint using false documents on behalf of **STATE FARM** seeking a determination that there was no insurance coverage or duty to defend for this collision.
- 67) On information and belief, without a reasonably adequate investigation into the law or facts, **GWB** used the bogus documents and filed a complaint in U.S. District Court, civil action number 2:21-cv-2623-MBS. (Complaint).
- 68) **GWB** owed various duties to Plaintiffs and others to reasonably investigate the facts and law before filing a lawsuit for **STATE FARM**, to not use bogus and false documents and to not assist **STATE FARM** in the use of these bogus and false documents against Plaintiffs and others.
- 69) In breach of these and other duties owed to Plaintiffs and others, **GWB** substantially assisted **STATE FARM** in the litigation, in part, by negligently, recklessly and/or knowingly using and continuing to use bogus documents against Plaintiffs and others without adequately or reasonably investigating the validity and/or propriety of those documents.
- 70) In part the inadequate or unreasonable investigation by **GWB** consisted of pleading that a form attached to the Complaint complied with the law and that the endorsement attached existed before the collision.

- 71) An adequate and reasonable investigation by **GWB** would have shown:
- a) the form attached to the Complaint had not been submitted and approved by the SCDOI as required by the law as asserted. *See e.g.* “Pursuant to S.C. Code Ann. §38-77-340, the exclusion was signed by Father...” Complaint ¶ 19; and
 - b) the endorsement attached to the Complaint which states “Prepared Jul 14 2021” was created after the June 12, 2021 collision and did not exist before. *See. e.g.* “A copy of the endorsement, which remained in effect on subsequent policies issued by State Farm including the Policy at issue, is included in Exhibit A...” Complaint ¶ 19.
- 72) Defendants created, filed and pursued the litigation using bogus documents for improper purposes, including to try to make the Plaintiffs and others abandon claims made for coverage available under the actual **STATE FARM** policy, to improperly deny coverage, and to avoid paying legitimate claims.
- 73) Defendants filed the lawsuit using the bogus documents seeking a Declaratory Judgment that **STATE FARM**’s policy did not provide coverage, including a duty to defend or indemnify Melvin O. Lamb, III or Melvin O. Lamb, Jr. for the personal injury or property damages arising from the collision and that it did not have to pay claims of Plaintiffs and others.

- 74) The lawsuit named as defendants Melvin O. Lamb, Jr. and Melvin O. Lamb, III as well as the Estate of James K. Workman and other drivers and passengers who had personal injury and property damage claims arising from the June 12, 2021 multi car collision.
- 75) In the Complaint filed by Defendants, they assert “State Farm *has investigated this matter and believes, based upon the Policy exclusion referenced herein* and applicable South Carolina law, it has no duty to defend or indemnify Father or Son [Melvin O. Lamb, Jr. and Melvin O. Lamb, III] from any claim arising out of the accident described herein, and seeks a declaration from this Court concerning the same.” (Emphasis added).
- 76) The above statement was false, in reckless disregard for the truth, or otherwise negligently made for various reasons, including:
- i) **STATE FARM** had no evidence that the document 6023DC form it attached to the Complaint had ever been submitted to the SCDOI as required by law;
 - ii) **STATE FARM** had no evidence that the document 6023DC form it attached to the Complaint had ever been approved by the SCDOI; and
 - iii) **STATE FARM** knew it created a forgery in the form of a bogus declarations page to use in the litigation to attempt to avoid its obligations; and

- iv) For other improper reasons.
- 77) Defendants attached the false declarations page and the unapproved 6023DC form to the complaint and claimed they were a part of the **STATE FARM** policy concerning the Tahoe when Defendants knew or should have known that was misleading or false.
- 78) Defendants attached a copy of the false declarations page containing an endorsement purportedly excluding Melvin O. Lamb, III from coverage and negligently and/or falsely stated that the endorsement “remained in effect” on policies issued by **STATE FARM**, “including the Policy at issue.”
- 79) Defendants, in breach of various duties owed to Plaintiffs and others, intentionally tried to hide the actual facts and their misconduct by redacting parts of the declarations page attached to the Complaint as Exhibit A, as in part shown below.

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID. NUMBER	CLASS
2004	CHEVROLET	TAHOE	SPORT WG	1GNEK13Z54R235227	405H521000
SYMBOLS		COVERAGE & LIMITS		PREMIUMS	
A	Liability Coverage				
	Bodily Injury Limits				
	Each Person, Each Accident				
	\$25,000 \$50,000				
	Property Damage Limit				
	Each Accident				
	\$25,000				
U	Uninsured Motor Vehicle Coverage				
	Bodily Injury Limits				
	Each Person, Each Accident				
	\$25,000 \$50,000				
	Property Damage Limit				
	Each Accident				
	\$25,000				
* Total premium for JUN 10 2021 to FEB 07 2022.				This is not a bill.	

- 80) In footnote 1 of the Complaint, Defendants stated “Premium information and Father’s address have been redacted.”
- 81) On information and belief, this statement was not to redact premium information for a proper purpose but rather to improperly obscure and hide facts and amounts on the forged document that were different than those existing on the actual policy from Plaintiffs, the Court, and others.
- 82) Had the information not been intentionally redacted by Defendants for improper purposes, it would have shown amounts different than the actual charges for the policy existing on the day of collision and risk Defendants’ deception being exposed.

H. STATE FARM VIOLATES ITS CODE OF CONDUCT

- 83) **STATE FARM** undertook to create a Code of Conduct² setting forth various duties **STATE FARM** and its employees have when dealing with customers and others like Plaintiffs. **Exhibit B** Portions of **STATE FARM**’s Code of Conduct.
- 84) In part, **STATE FARM**’s Code of Conduct stated:

The Code of Conduct applies to all State Farm Mutual Automobile Insurance Company directors, officers and employees, as well as to directors, officers and employees

² Available at **STATE FARM** <https://www.statefarm.com/content/dam/sf-library/en-us/secure/legacy/pdf/V-code-of-conduct.pdf>. Last checked October 17, 2022.

of each affiliate of State Farm Mutual Automobile Insurance Company.

Exhibit B, p. 5.

85) In part, this Code of Conduct stated:

We must follow our policies, rules and guidelines, and comply with all laws and regulations applicable to Company business.

Exhibit B, p. 5

86) **STATE FARM**, including its Chairman, President and CEO Michael L.

Tipsord, stated:

The Code of Conduct is a resource that helps us live our shared values and sets the expectation for appropriate behavior.

We hold ourselves to the highest standards of ethics and integrity. When representing our Company, apply good judgment, be honest and treat others with respect.

We also have a responsibility – and an obligation – to question any practice or business behavior that doesn't measure up. If you see something that falls outside the boundaries of appropriate behavior, I want you to speak up. No matter what the issue is, no matter who is involved. We must have the courage and confidence to act.

Exhibit B, p. 4.

87) **STATE FARM** defined fraud in its Code of Conduct as follows:

Fraud is intentional or reckless conduct that deceives or is intended to deceive someone. This includes fraudulent, illegal, unauthorized or dishonest acts.

Exhibit B, p. 17 (shown below).

Preventing Fraud

Fraud is intentional or reckless conduct that deceives or is intended to deceive someone. This includes fraudulent, illegal, unauthorized or dishonest acts. We manage the risk of fraud through our shared value of integrity, utilizing our business processes, controls and the standards in this Code.

88) **STATE FARM** stated duties it, its employees and agents owed to Plaintiffs and others to include:

We all have a duty to follow established procedures and report suspected fraud, misconduct or dishonesty to your supervisor, another member of leadership, Human Resources & Development, the Open Door policy or contact the Compliance & Ethics Hotline.

Exhibit B, p. 17 (shown below).

We all have a duty to follow established procedures and report suspected fraud, misconduct or dishonesty to your supervisor, another member of leadership, Human Resources & Development, the Open Door policy or contact the Compliance & Ethics Hotline.

89) **STATE FARM** required its employees to complete and submit the Code of Conduct Form annually with the annual Code of Conduct training course.

Exhibit B, p. 28.

90) The Form is to be filled out any time an actual or potential violation of this Code occurs and consists of an acknowledgment to adhere to the Code of Conduct. **Exhibit B**, p. 28.

- 91) In creating the Declarations Page after the June 12, 2021 collision, **STATE FARM** engaged in the crime of forgery in violation of South Carolina law by falsely making and causing to be made a declarations page to be used against Plaintiffs and others for the purpose of denying coverage or paying claims to them. *See e.g.* S.C. Code Ann. § 16-13-10.
- 92) **STATE FARM** intentionally made misrepresentations that Melvin O. Lamb, III was an excluded driver using a bogus declarations page it created after the collision.
- 93) The creation and use of this manufactured declarations page was false or otherwise improper.
- 94) The use of this bogus document was material to **STATE FARM**'s scheme to avoid coverage and paying for the harms and losses arising from the June 12, 2021 collision.
- 95) As to this and other documents, **STATE FARM** had actual knowledge they were false.
- 96) **STATE FARM** intended the representations contained in the bogus declarations page and other documents it improperly created to be relied on by Plaintiffs and others.

- 97) **STATE FARM** intended that Plaintiffs, the Court and others would rely on the documents as true or the truth in making determinations about coverage as to the **STATE FARM** policy.
- 98) On information and belief, **STATE FARM** used the unapproved form with others and failed to disclose the form was improper or did not comply with the law.
- 99) **STATE FARM** intended that Plaintiffs, the Court and others would rely on the documents as true or the truth in making determinations about Plaintiffs' and others own automobile insurance policies.
- 100) In violation of the law, its own Code of Conduct, duties, responsibilities and policies, **STATE FARM** engaged in fraud and other misconduct as stated herein, and its various employees violated these duties by failing to act, stop or report the misconduct and as a direct and proximate result, Plaintiffs and others were damaged and harmed.

I. DEFENDANTS CAUSE PLAINTIFFS' LOSSES, INJURIES AND DAMAGES

- 101) As a result of Defendants' wrongful conduct, Plaintiffs and others obtained counsel to defend them in the lawsuit brought by Defendants.

- 102) As a result of Defendants' wrongful conduct, Plaintiffs and others obtained counsel to address issues, including those related to their own automobile policies.
- 103) When Plaintiffs discovered that the policy the Defendants filed in the declaratory judgment was fraudulent and created after the car accident, Plaintiffs filed a motion.
- 104) In response, **STATE FARM** immediately:
- a) Sought to dismiss its own declaratory judgment;
 - b) Admitted coverage when it previously claimed it did not owe it;
 - c) Removed all limits on coverage, ultimately paying on a claim it previously asserted was "excluded" using false documents; and
 - d) Claimed that the documents it filed were merely "mistakes" resulting from a series of improbable errors that no one with **STATE FARM** thought were improper.
- 105) As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs suffered losses, including incurring attorney's fees, costs, and expenses including to defend the lawsuit brought by Defendants and against Melvin O. Lamb, Jr. and Melvin O. Lamb, III.
- 106) Eventually, the Complaint filed by Defendants was dismissed with prejudice.

- 107) The dismissal was in favor of Plaintiffs because **STATE FARM**'s requested relief, that its policy precluded coverage because of the declarations page and form 6023DC, was not granted.
- 108) As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and others suffered losses and were otherwise injured and damaged.

VI. FIRST CAUSE OF ACTION: ABUSE OF PROCESS

- 109) Plaintiffs incorporate the above by reference.
- 110) **STATE FARM** had an ulterior purpose in filing the lawsuit.
- 111) In part, the ulterior purpose involved perverting justice and the process by:
- i) Creating a false declarations page;
 - ii) Creating a false declarations page to use in litigation;
 - iii) Attempting to have a determination that the bogus declarations page attached to the Complaint as Exhibit A was real and valid when it was a forgery;
 - iv) Using a false declarations page in litigation;
 - v) Stating the false declarations page was part of the actual Policy when it was not;

- vi) Claiming a form [6023DC attached to the Complaint filed] complied with the law when the form had never been submitted for approval to the SCDOI and had not been approved; and
 - vii) Other improper motives and purposes.
- 112) **STATE FARM**'s intentional actions in using the process, filing, and pursuing of the lawsuit was neither proper in the regular conduct of litigation nor aimed at an objective that was a legitimate use of the process.
- 113) As a direct and proximate result of Defendants' conduct, Plaintiffs and others were injured and damaged in various ways.

VII. SECOND CAUSE OF ACTION: AIDING AND ABETTING ABUSE OF PROCESS

- 114) Plaintiffs incorporate the above by reference.
- 115) **GWB** aided and abetted in and participated in the conduct described, including abuse of process in one or more ways, including:
- i) Participating in drafting the Complaint;
 - ii) Filing the Complaint;
 - iii) Failing to make a reasonable investigation and determine that the documents used by **STATE FARM** were forged or not proper, when it knew or should have known the documents **STATE FARM** used to support its claim were improperly manufactured;

- iv) Perpetuating the litigation, including requesting and obtaining defaults against parties who did not file Answers to the declaratory judgment suit; and
 - v) Continued to represent **STATE FARM** while failing to take affirmative steps to disassociate from the lawsuit, amend the Complaint or alert the Court, the Plaintiffs and others about the false documents, illegal actions and conduct of **STATE FARM**.
- 116) As a direct and proximate result of **GWB**'s conduct, Plaintiffs and others suffered damages and losses, including but not limited to attorneys' fees, litigation expenses, and emotional distress.

VIII. THIRD CAUSE OF ACTION: FRAUD

- 117) Plaintiffs incorporate the above by reference.
- 118) **STATE FARM** had a duty to disclose to Plaintiffs and others that:
- i) There was a declarations page existing at the time of the collision which did not show Melvin O. Lamb, III was an excluded driver;
 - ii) **STATE FARM** failed to submit and have approved by the SCDOI the form 6023DC it affirmatively used and represented it complied with law to deny coverage; and

- iii) Disclose other material facts and information accessible to **STATE FARM** and not to Plaintiffs and others.
- 119) **STATE FARM** intentionally concealed, chose to suppress or otherwise not disclose material information and facts which it was required to disclose.
- 120) **STATE FARM**'s conduct described constitutes actual fraud.
- 121) In addition, after the collision, **STATE FARM** made material false statements, including creating and using a fabricated declarations page.
- 122) After the collision, **STATE FARM** made false representations that Mr. Lamb, III was an excluded driver using a fabricated and bogus declarations page.
- 123) **STATE FARM** engaged in the criminal act of forgery in violation of South Carolina law, including S.C. Code Ann. § 16-13-10, by falsely making and causing to be made a declarations page to be used against Plaintiffs and others to deny coverage or pay claims to them.
- 124) The creation and use of this fabricated declarations page was false or otherwise improper.
- 125) The use of this bogus document was material to **STATE FARM**'s scheme to avoid indemnifying or paying for the harms and losses to Plaintiffs and others arising from the June 12, 2021 collision.

- 126) **STATE FARM** had actual knowledge of the falsity of the document it fabricated after the collision and with reckless disregard of its truth or falsity represented it as being true.
- 127) **STATE FARM** intended the representations in the bogus declarations page and other documents it created be acted on by Plaintiffs and others.
- 128) Plaintiffs were ignorant of the falsity of the documents.
- 129) **STATE FARM** intended that Plaintiffs, the Court and others would rely on the documents as true or the truth.
- 130) Plaintiffs and others had a right to rely on documents State Farm represented as being true.
- 131) As a result of **STATE FARM**'s improper conduct, whether affirmatively failing to disclose material information or manufacturing false documents to affirmatively use, Plaintiffs and others had consequent and proximate injuries and damages.

IX. FOURTH CAUSE OF ACTION: NEGLIGENT MISREPRESENTATION

- 132) Plaintiffs incorporate the above by reference.
- 133) Defendants negligently and/or intentionally made misrepresentations to the Plaintiffs, including that the bogus declarations page was real and that the form complied with South Carolina law.

- 134) Defendants affirmatively failed to disclose material statements and/or truthful facts even though possessing expertise or special knowledge that would ordinarily make it reasonable for another to rely on such statements.
- 135) Defendants had a pecuniary interest in making these representations.
- 136) Defendants were in a superior position to Plaintiffs, the Court and others as **STATE FARM** knew of the falsity of the documents and statements therein.
- 137) Defendants owed a duty of care to investigate the facts and law and communicate truthful information to the Plaintiffs and others.
- 138) Defendants breached that duty by failing to exercise due or reasonable care.
- 139) Plaintiffs and others justifiably relied on the representations.
- 140) Plaintiffs and others suffered losses, including pecuniary, as a proximate result of their reliance on the representations and associated conduct of the Defendants.

X. FIFTH CAUSE OF ACTION: NEGLIGENCE

- 141) Plaintiffs incorporate the above and the attached affidavit of Mr. Pendarvis by reference. (**Exhibit A**)
- 142) **GWB** attorneys, being members of the legal profession are officers of the legal system having special responsibility for the quality of justice.

- 143) **GWB** attorneys had a duty to use the law's procedures only for legitimate purposes and not to mislead, harass or intimidate others.
- 144) **GWB** attorneys have and had a duty to uphold legal process.
- 145) **GWB** and its attorneys owed duties to the Plaintiffs to not act negligently in the commencement of and continuation of litigation against them.
- 146) **GWB** and its attorneys were negligent and breached various duties owed to Plaintiffs and others in the litigation in one or more of the following ways:
- a) in failing to adequately and properly investigate the matter;
 - b) in drafting, filing and serving Plaintiffs with documents that included multiple misrepresentations;
 - c) breaching independent duties to the opposing parties and the Court to not submit, use or rely on false or fraudulent documents in litigation;
 - d) failing to take reasonable remedial measures, including, affirmative disclosure to the tribunal and Plaintiffs;
 - e) using false or fraudulently created documents for means that have no legitimate or substantial purpose and which created delay, expense or burden on Plaintiffs and others;
 - f) attaching documents that were fraudulently created to use in litigation; and
 - g) such other negligent acts as may be shown in discovery.

- 147) As a proximate result of **GWB**'s negligent acts and omissions, Plaintiffs were injured and damaged.

XI. SIXTH CAUSE OF ACTION: CONSPIRACY

- 148) Plaintiffs incorporate the above by reference.
- 149) Defendants acted together in combination or by agreement.
- 150) Defendants committed at least one unlawful act or a lawful act by unlawful means.
- 151) Defendants acted together and committed one or more overt acts in furtherance of that agreement.
- 152) As a proximate result of Defendants' civil conspiracy, Plaintiffs were injured and damaged.

XII. SEVENTH CAUSE OF ACTION: UNFAIR TRADE PRACTICES

- 153) Plaintiffs Robert C. Workman, Kelly Workman Tick and Matthew T. Workman individually incorporate the above by reference.
- 154) **STATE FARM** violated S.C. Code Ann. § 38-59-20 (Improper Claim Practices) in one or more of the following ways:
- i) Knowingly misrepresenting to third-party claimants, including Plaintiffs, pertinent facts or policy provisions relating to coverage at issue;
 - ii) Providing deceptive or misleading information with respect to coverages;

iii) Not attempting in good faith to effect prompt, fair and equitable settlement of claims by failing to timely pay claims of Plaintiffs and others in part by filing a lawsuit containing false or misleading documents and/or facts.

155) **STATE FARM**'s conduct was an unfairly competitive practice having as its purpose or effect evasion of the insurance coverages in violation of the law. *See e.g.* S.C. Code Ann. § 38-77-10 (3).

156) **STATE FARM** engaged in an unfair trade practice in violation of S.C. Code Ann. § 39-5-10, *et seq.*, and as contained in S.C. Code Ann. § 38-77-341, in one or more ways, including by express malice or gross negligence:

- i) knowingly making or causing to be made any false statement of material fact for use in determining the right to payment of insurance;
- ii) knowingly making or causing to be made any representation of material fact for use in determining the right to payment of insurance;
- iii) willfully making or causing to be made any false statement of material fact for use in determining the right to payment of insurance;
- iv) willfully making or causing to be made any false representation of material fact for use in determining the right to payment of insurance; and
- v) in such other ways as may be determined in discovery.

- 157) In South Carolina, unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. S.C. Code Ann. § 39-5-20(a).
- 158) **STATE FARM**'s conduct violates S.C. Code Ann. § 39-5-20.
- 159) **STATE FARM**'s conduct is capable of repetition, and/or was repeated here and has an impact on or affects the public interest.
- 160) As a direct and proximate result of **STATE FARM**'s conduct and unfair trade practices, Plaintiffs Robert C. Workman, Kelly Workman Tick and Matthew T. Workman individually suffered ascertainable losses of money or other damages.
- 161) The use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation and in violation of S.C. Code Ann. § 39-5-20, justifying the Court in awarding three times the actual damages sustained, attorney's fees and such other proper relief as it deems just, necessary, or proper.

XIII. RELIEF

WHEREFORE, Plaintiffs pray for a judgment against the Defendants in such amount of damages, including actual, punitive, whether statutory or otherwise, as may be determined by the trier of fact and/or the Court, for an award of attorneys' fees and costs, pre-judgment interest and for such other and further relief as is deemed just and proper.

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ATTORNEYS FOR PLAINTIFFS

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2023-CP-10-_____

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

v.)

**AFFDAVIT OF
THOMAS A. PENDARVIS**

STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY and GALLIVAN,)
WHITE & BOYD, P.A.,)
))
Defendants.)

Personally appeared before me, Thomas A. Pendarvis, who, first being duly sworn, says:

It is my expert opinion, to a reasonable degree of professional certainty, based upon my review of the available evidence, the lawyers practicing law with GALLIVAN, WHITE & BOYD, P.A. ("the Law Firm") committed at least one act or omission of professional negligence in breach of their independent duties to Plaintiffs, Robert C. Workman, Individually and as Personal Representative of the Estate of James K. Workman, Kelly Workman Tick, and Matthew T. Workman ("the Plaintiffs"), was a proximate cause of damages to Plaintiffs as more particularly set forth below:

Background Facts

The Law Firm is a Professional Association formed under South Carolina law through which its partners and lawyer employees, who are licensed to practice law in South Carolina, provide legal services. Lawyers practicing with the Law Firm accepted the representation of STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ("State Farm") on the matter giving rise to the claims asserted in this lawsuit.

On June 12, 2021, James K. Workman ("Mr. Workman") was killed in a multi-car collision ("the Collision") by a vehicle driven by Melvin O. Lamb, III ("Insured Son") and owned by Mr. Lamb's father Melvin O. Lamb, Jr. ("Insured Father").

Insured Father's vehicle was insured by a State Farm policy ("the Policy") providing bodily injury liability limits of \$25,000 per person/\$50,000 per accident and property damage limits of \$25,000 per accident.

Mr. Workman was survived by Plaintiffs, who are his children, Robert C. Workman, Kelly Workman Tick, and Matthew T. Workman, all of whom were statutory beneficiaries of the South Carolina provisions creating a civil action for the wrongful death of their parent (S.C. CODE ANN. § 15-51-10 et seq.) and beneficiaries of Mr. Workman's estate for the "survival claims" (S.C. CODE ANN. § 15-5-90).

On August 16, 2021, a little more than two months after the Collision, lawyers with the Law Firm filed a Complaint on behalf of State Farm in the United States District Court for the District of South Carolina seeking a declaratory judgment against the Insured Father, Insured Son, Mr. Workman's Estate, and nine other individuals injured or whose vehicles were damaged in the Collision ("the Federal Lawsuit").

The Law Firm alleged in the Federal Lawsuit that on "February 26, 2020, State Farm issued form 6023DC, a driver exclusion endorsement ("the Exclusion") excluding [Insured] Son from coverage under the Policy." The Law Firm alleged the "Exclusion was signed by [Insured] Father and confirmed that either the driver's license of the [Insured] Son had been turned in to the Department of Motor Vehicles or that [Insured] Son obtained appropriate insurance through another policy." The Law Firm alleged that State Farm had complied with S.C. CODE ANN. §38-77-340 in obtaining the Exclusion from the Insured Father. The Law Firm filed as an exhibit to the Complaint, documents purporting to be a copy of the Policy and the Exclusion.

The Law Firm sought to have the federal court declare:

1. the Exclusion for the Policy "is an effective and valid endorsement excluding coverage for any loss occurring as a result of [Insured] Son's operation of the Motor Vehicle";
2. the Exclusion "issued by State Farm excludes coverage for any bodily injury, loss, or damage occurring while [Insured] Son is operating a motor vehicle"; and
3. "State Farm has no duty to defend or indemnify [Insured] Father or [Insured] Son for bodily injury, loss, or damage occurring as a result of [Insured] Son operating a motor vehicle[.]"

Discovery by Plaintiffs in the Federal Lawsuit revealed the following:

1. The Policy declaration page identified as policy number “632 3189-B07-40 B” (“Policy 40B”) that the Law Firm filed with the Complaint did not exist when the Collision occurred but was instead *created 31 days after the Collision*. Policy 40B purports to show it was effective two days before the Collision, purports to exclude the Insured Son from the coverage, creates a new policy number, and changes the policy period to have a retroactive date two days before the Collision and extends coverage to the following year.
2. The actual Policy declaration page identified as policy number “632 3189-B07-40 A” (“Policy 40A”) in effect at the time of the Collision did not exclude the [Insured] Son or refer to the Exclusion. Policy 40A provided coverage between February 7, 2021 – August 7, 2021, and was effective when the Collision occurred on June 12, 2021.
3. After the Collision State Farm represented to its insureds and others that Policy 40A provided coverage.
4. The Exclusion was never submitted or approved for use by the South Carolina Department of Insurance as required for it to be effective under S.C. CODE ANN. § 38-77-340. The South Carolina Department of Insurance confirmed the Exclusion purportedly dated October 16, 2013, was not submitted or approved.
5. The Law Firm produced to Plaintiffs a “Certified Policy Record” from the “custodian of the records pertaining to the issuance of policies by State Farm Mutual Automobile Insurance Company” falsely certifying Policy 40B “was in effect on the loss date of 06/12/2021.”

Rules Governing Lawyer Conduct and the Professional Standard of Care

This portion of the Affidavit sets forth the Rules governing lawyer conduct in South Carolina and includes a summary of the professional standard of care for litigators concerning advocating meritorious claims and the evidence available to support claims.

Lawyers’ Oath

The Lawyer’s Oath found at Rule 402(h), SCACR, contains the following statements that are accepted and sworn by all lawyers admitted to practice law in South Carolina, including the lawyers practicing with the Law Firm:

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

I will not pursue or maintain any suit or proceeding which appears to me to be unjust nor maintain any defenses except those I believe to be honestly debatable under the law of the land, ...; [and]

I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the judge, or jury by a false statement of fact or law[.]

Rule 3.1, RPC, Rule 407, SCACR -- Meritorious Claims and Contentions

Rule 3.1, RPC, provides, in relevant part,

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

Comments [1] and [2] to Rule 3.1, RPC, provide, with emphasis added,

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, *but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed.* However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. *What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions.* Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by good faith argument for an extension, modification or reversal of existing laws.

Lawyers in South Carolina have been reprimanded for filing a lawsuit with no supporting facts and failing to conduct legal research before filing. See In re Young, 371 S.C. 394, 639 S.E.2d 674 (2007) (public reprimand).

Rule 3.3, RPC, Rule 407, SCACR -- Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the

lawyer;

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

FED. R. CIV. P. 11(b)

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(3) the *factual contentions have evidentiary support* or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery[.] (Emphasis added.)

The purpose of Rule 11 is “to deter conduct that frustrates the just, speedy, and inexpensive determination of civil actions,” which can be satisfied by a showing unfairness, undue delay, or expense. ContraVest Inc. v. Mt. Hawley Ins. Co., No. 9:15-CV-00304-DCN, 2018 WL 5793601, at *5 (D.S.C. Mar. 30, 2018); Hunter v. Earthgrains Co. Bakery, 281 F.3d 144, at 154–55 (4th Cir. 2002) (“Even if the law could colorably support a claim, a party violates Rule 11(b)(3) where there is no factual support for the asserted claims.”); Morris v. Wachovia Sec., Inc., 448 F.3d 268, 277 (4th Cir. 2006) (“Factual allegations violate Rule 11(b)(3) when they are unsupported by any information obtained prior to filing.”) (internal quotation mark omitted).

Although the lawyers with the Law Firm litigated the Federal Lawsuit in federal court, the South Carolina Supreme Court's rulings applying South Carolina's analogous Rule 11 are instructive. “Under Rule 11(a), SCRCF, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments.” Ex parte Gregory, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008). The Ex parte Gregory opinion is instructive here because it provides some important guidance into lawyers' duties to investigate claims before filing lawsuits and about exercising professional judgment. Mr. Gregory's client had settled a personal injury lawsuit, the proceeds from which were subject to Medicaid lien. While the lawyer who handled the personal injury lawsuit, Mr. Malloy, was trying to resolve the Medicaid lien, Mr. Gregory and his co-counsel filed a lawsuit against Mr. Malloy asserting claims for an accounting

and conversion. Mr. Malloy transferred the settlement proceeds from his trust account to Mr. Gregory's co-counsel's trust account, and the Medicaid lien was resolved not long afterwards. Mr. Malloy filed a motion for sanctions against Mr. Gregory contending the claims, particularly the conversion claim, were frivolous. The trial court found the conversion claim was frivolous and that Mr. Gregory had not conducted a reasonable investigation before filing the claim. The South Carolina Supreme Court affirmed the trial court's rulings finding Mr. Gregory was subject to sanctions because of his failure to conduct a reasonable investigation into the claim before filing the lawsuit. The Opinion emphasized multiple failures in Mr. Gregory's pre-lawsuit investigation:

- Mr. Gregory had time to investigate whether Mr. Malloy had contacted Medicaid but failed to do so. Had he done so he would have learned much sooner that there was no basis for the conversion action.
- Mr. Gregory did not request a copy of Malloy's file.
- Mr. Gregory did not attempt to contact Mr. Malloy about the matter, even though his co-counsel suggested that he do so.
- Mr. Gregory relied on his client's unsubstantiated statements that Mr. Malloy had taken the settlement funds and made these accusations to a reporter even though he lacked any basis other than his client's statements for making these allegations.

In summary, under FED. R. CIV. P. 11(b) or South Carolina's Rule 11(a), SCRCP, lawyers have an affirmative duty to make a reasonable inquiry to determine whether there is evidence supporting their factual allegations before filing a lawsuit.

RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 110(1)

(1) A lawyer may not bring or defend a proceeding or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good-faith argument for an extension, modification, or reversal of existing law.

Cmt. b. Rationale. Frivolous advocacy inflicts distress, wastes time, and causes increased expense to the tribunal and adversaries and may achieve results for a client that are unjust. Nonetheless, disciplinary enforcement against frivolous litigation is rare. Most bar disciplinary agencies rely on the courts in which litigation occurs to deal with abuse. Tribunals usually sanction only extreme abuse. Administration and interpretation of prohibitions against frivolous litigation should be tempered by concern to avoid overenforcement.

Cmt. c. Procedural sanction against unfounded assertions in litigation. Procedural rules modeled on Rule 11 of the Federal Rules of Civil Procedure impose affirmative obligations going beyond a requirement of minimally plausible position. In addition, courts have inherent power to impose sanctions against frivolous or otherwise abusive litigation tactics (see generally § 1, Comment b).

Such procedural rules generally have four elements, although jurisdictions differ on particulars. First, a lawyer may file a pleading, motion, or other paper only after making an inquiry about facts and law that is reasonable in the circumstances. Second, the lawyer's conclusions as to the facts and law must meet an objective, minimal standard of supportability. Third, litigation measures may not be taken for an improper purpose, even in instances in which they are otherwise minimally supportable. Finally, remedies provided for violations may include sanctions such as fee shifting, which in appropriate cases may be imposed directly on an offending lawyer (see Comment g).

Expert Opinions

It is my opinion to a reasonable degree of legal professional certainty based upon the available evidence that the Law Firm through its lawyers had—and *breached*—their independent duties to Plaintiffs to investigate and confirm the evidence they submitted in support of State Farm's claims in the Federal Lawsuit provided a non-frivolous basis to support the claims before filing the Federal Lawsuit. The lawyers at the Law Firm apparently either did not conduct a reasonable investigation to evaluate the evidence that State Farm provided to support the claim, or they may have proceeded with the Federal Lawsuit to maintain their relationship with State Farm, notwithstanding whether the evidence appeared to support a meritorious claim.

Lawyers at the Law Firm had, among other duties, professional duties as lawyers representing State Farm to, among other things, provide competent representation, including, but not limited to, avoiding pursuing claims that lacked merit and conducting a reasonable investigation into the evidence their client contended supported the claims. One of the first professional responsibility issues lawyers must confront is whether a potential lawsuit or other proceeding is sufficiently well-founded to satisfy the evidentiary standards for the court and ethical standards for the lawyer. Once a lawsuit is filed, similar evidentiary standards and ethical standards apply to whether the lawsuit should be continued. The standard of care and standard of conduct for lawyers in South Carolina required the lawyers at the Law Firm conduct a reasonable investigation into the merits of the claim State Farm wanted to pursue, including evaluating the evidence allegedly supporting the claim.

There is an important distinction between claims that are meritorious and claims that are frivolous. A frivolous issue is one lacking any basis in law or fact but is distinguishable from an issue that simply lacks merit. See In re Houston, 382 S.C. 164, 675 S.E.2d 721, 723 n. 1 (2009) (rejecting ODC's argument the lawyer violated Rule 3.1, RPC, by arguing ODC engaged in racial

profiling, the Supreme Court found the lawyer's claim was meritless but not frivolous). See also, THE RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 110 cmt. d (2000) (a claim or contention is frivolous when it is one "that a lawyer of ordinary competence would recognize as so lacking in merit that there is no substantial possibility that the tribunal will accept it.").

To meet the professional standard of care and ethical standard of conduct, a lawyer in South Carolina must make a reasonable inquiry into the factual and legal basis for the client's intended claims and contentions before filing suit. As stated earlier, it is my professional opinion to a reasonable degree of legal certainty based on the available evidence that the lawyers at the Law Firm failed to make a reasonable inquiry into the factual basis for State Farm's purported claims they asserted in the Federal Lawsuit.

The nature and extent of the investigation the lawyers were required to exercise before filing suit depended on several factors, including the complexity or nature of the claims or contentions, the time in which the investigation must be conducted, the resources available to conduct the investigation, the availability and cooperation of fact and expert witnesses, the availability of evidence that can be obtained without discovery, and the existence of parallel proceedings which may complicate or expedite the matters. All these factors reasonably support my opinion because whether the Exclusion was valid and enforceable and what version of the Insurance Policy was applicable were all straightforward factual determinations and not complex matters requiring extraordinary investigation measures; and State Farm's witnesses and witnesses at the South Carolina Department of Insurance were readily available as were the documents related to the Exclusion and the applicable Insurance Policy.

Under the circumstances, the lawyers at the Law Firm had, in my opinion, sufficient time and resources to reasonably investigate the factual basis and legal basis supporting State Farm's purported claims or contentions before filing the Federal Lawsuit. There were no statutes of limitations about to expire or any other justification for proceeding with the Federal Lawsuit before conducting a reasonable and prudent investigation into the evidence purporting to support State Farm's claims.

Based on the available evidence, it is my professional opinion to a reasonable degree of legal certainty based on the available evidence that the lawyers at the Law Firm were negligent, failed to meet the standard of care, and thereby breached their independent professional duties to the Federal Court and by natural extension, to Plaintiffs, by, among other things, failing to

reasonably investigate and evaluate the purported evidence State Farm filed with its Complaint to support the declaratory judgment claim sought in the Federal Lawsuit.

It is my opinion that as a direct result of the Law Firm's acts and omissions, Plaintiffs suffered losses, including legal fees incurred in defending the Federal Lawsuit, emotional distress in having to focus on their father's death during the pendency of the Federal Lawsuit, and loss of the value of their time as well.

Lawyers play a critical role in upholding the integrity of the legal system by ensuring that only meritorious claims are brought before the courts. By diligently evaluating evidence, lawyers can avoid filing frivolous lawsuits, reduce unnecessary litigation involving third parties, and better serve their clients' interests. The failures of the lawyers, at the Law Firm, in this regard, in my professional opinion to a reasonable degree of legal certainty, were a breach of their independent duties to the Court and their client's adversaries – the Plaintiffs, which proximately resulted in damages to Plaintiffs.

Qualifications

1. My resume, summarizing my professional qualifications, is attached as Exhibit 1.
2. I am a lawyer licensed to practice law in the State of South Carolina and in the State of Georgia since 1992.

3. I am the sole shareholder of PENDARVIS LAW OFFICES, P.C., located at 710 Boundary Street, Unit A1, Beaufort, South Carolina.

4. My areas of practice and expertise generally relate to litigation matters, including litigation of legal malpractice claims, breach of fiduciary duty claims, business tort claims, personal injury claims, and on occasion appeals from those litigated matters. I also provide lawyers with advice on ethics and professional responsibility matters, including representing lawyers on disciplinary matters before the South Carolina Supreme Court's Office of Disciplinary Counsel and the Commission on Lawyer Conduct. I have been regularly engaged in these areas of practice since 1992. In addition, I obtained board certification in legal malpractice litigation by the American Board of Professional Liability Attorneys, and that Board Certification is recognized by the South Carolina Supreme Court.

5. I have been retained by Justin S. Kahn, Esq. with KAHN LAW FIRM, LLP as an expert witness in this matter.

6. In rendering my opinions, I have reviewed the available evidence of the kinds of

factual sources and legal authorities customarily relied upon by experts in the field of legal ethics, lawyer malpractice, and the liability of lawyers and law firms. I have had access to the factual materials available, including the following:

- a. August 16, 2021, Complaint filed on behalf of STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY.
- b. August 16, 2021, Exhibit 1 of the Complaint filed on behalf of STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, including the purported Policy and the Exclusion;
- c. February 10, 2022, The Estate of James K. Workman's Notice, Motion and Memorandum in Support of Motion for Sanction against State Farm;
- d. December 14, 2021, Rule 30(b)(6) Deposition transcript of Shay Anderson, on behalf of State Farm;
- e. June 18, 2021, State Farm claim letter addressed to Melvin O. Lamb, III;
- f. June 29, 2021, State Farm confirmation of coverage letter addressed to Kahn Law Firm;
- g. June 29, 2021, State Farm investigation of claims letter addressed to Melvin O. Lamb, III;
- h. June 29, 2021, State Farm investigation of claims letter addressed to Melvin O. Lamb, Jr.;
- i. July 16, 2021, State Farm Confirmation of Coverage, digitally signed by Darren P. Murdoch;
- j. August 5, 2021, State Farm Certified Policy Record with Declarations Page;
- k. November 23, 2021, Plaintiff's Responses to The Estate of James K. Workman's First Discovery Requests;
- l. State Farm Declarations Page for Policy Period of February 07, 2020 to August 7, 2020;
- m. State Farm Declarations Page for Policy Period August 23, 2020 to February 07, 2021;
- n. Melvin O. Lamb, Jr.'s photo of South Carolina Insurance Card with State Farm;
- o. State Farm Declarations Page for Policy Period June 10, 2021 to February

07, 2022;

p. January 28, 2022, Plaintiff's Objections and Responses to The Estate of James K. Workman's Request for Admission and Third Discovery Requests;

q. December 13, 2021, Justin S. Kahn, Esq.'s letter addressed to Gwen Fuller-McGriff., Esq., Deputy Director and General Counsel for State Farm as to a FOIA Request with the enclosed blank Form 6023DC Driver Exclusion Form;

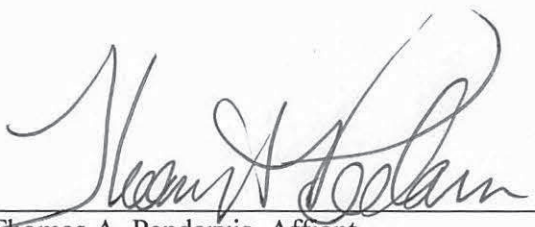
r. January 4, 2022, SOUTH CAROLINA DEPARTMENT OF INSURANCE letter to Justin S. Kahn, Esq., as to FOIA Request;

s. January 28, 2022, Plaintiff's Objections and Responses to The Estate of James K. Workman's Second Discovery Requests;

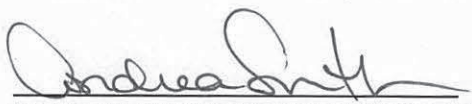
t. October 17, 2022, draft Complaint of Robert C. Workman, Individually and as Personal Representative of the Estate of James K. Workman, Kelly Workman Tick, and Matthew Workman vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and GALLIVAN, WHITE & BOYD, P.A.; and

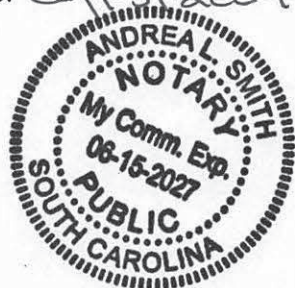
u. March 28, 2023, draft Complaint of Robert C. Workman, Individually and as Personal Representative of the Estate of James K. Workman, Kelly Workman Tick, and Matthew T. Workman vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and GALLIVAN, WHITE & BOYD, P.A.

The Affiant further sayeth not.


Thomas A. Pendarvis, Affiant

SWORN to before me this 4th day of April, 2023

 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 6/15/2027



CURRICULUM VITAE

THOMAS A. PENDARVIS, ESQ.

BORN:

Augusta, Georgia, 1961

FAMILY:

Elizabeth Ann Pendarvis (wife)
A. Miciah Pendarvis (daughter, age 21)
Camille S. Pendarvis (daughter, age 19)
Tallie C. Pendarvis (daughter, age 17)

EDUCATION:

University of South Carolina, School of Law
Graduated May 1992
Juris Doctor

University of Georgia, School of Business
Graduated August 1984
Bachelor of Business Administration

Westside High School, Augusta, Georgia
Graduated 1979

EMPLOYMENT:

PENDARVIS LAW OFFICES, P.C.
Owner / President (May 2004 - present)

LEWIS, BABCOCK & HAWKINS, L.L.P.
Law Clerk (May 1990 - May 1992)
Associate (June 1992 - March 1997)
Partner (April 1997 - April 2004)

PENDARVIS CHEVROLET-OLDS CO., INC.
Shareholder / General Manager (1984 -1989)

BOARD CERTIFICATIONS:

American Board of Professional Liability Attorneys
Board Certified in Legal Malpractice (2011 - present)

EXHIBIT 1

ORGANIZATIONS:

American Bar Association (1992 - present)
 Torts and Insurance Practice Section (1993 - present)
 Litigation Section (1993 - present)
 Lawyers' Professional Liability Consortium (2006 - present)

Association of Professional Responsibility Lawyers (2020 – present)

Association of Trial Lawyers of America (1992 - 2007)
 Professional Negligence

American Association of Justice (2007 - present)
 Professional Negligence

Beaufort County Bar Association (2004 - present)

Ducks Unlimited (intermittent 1985 - present)

State Bar of Georgia (1992 - present)

National Wild Turkey Federation (intermittent 1984 - present)

Richland County Bar Association (1992 - 2004)

Rotary Club, Sea Island - Beaufort (March 2005 - 2009; inactive status)

South Carolina Bar (1992 - present)
 Torts and Insurance Practice Section Council (2006-2008)
 Professional Responsibility Committee (2009 - 2014; 2016 - present)
 Professional Liability Committee (2014 - 2016)

South Carolina Trial Lawyers Association (1992 - 2008)

South Carolina Association of Ethics Counsel (2008 - present)

South Carolina Association of Justice (2008 - present)

South Carolina Trial Lawyers Association Student Chapter (1990 -1992)

United States Court of Appeals for the Eleventh Judicial Circuit (1997 - present)

United States Court of Appeals for the Fourth Judicial Circuit (1992 - present)

United States Court of Appeals for the Ninth Judicial Circuit (2002 - present)

United States Court of Federal Claims (1997 - present)

United States District Court for the District of South Carolina (1993 - present)

United States District Court for the Middle District of Georgia (1995 - present)

United States District Court for the Northern District of Georgia (1995 - present)

United States District Court for the Southern District of Florida (1992 - present)

University of Georgia Martial Arts Club
President & Resident Black Belt (1981 - 1984)

University of South Carolina Environmental Law Journal
Member (1991 - 1992)

HONORS:

University of South Carolina School of Law Dean's List (Fall 1990, Spring 1991, Fall 1992)

University of South Carolina School of Law President's List (Spring 1992)

LECTURES / OTHER:

Moot Court Judge University of South Carolina School of Law (Fall 1995 - Fall 1997)

St. Mary's Hospital, Athens, Georgia (March 9, 2002) (Survivor 2002: The Litigation Labyrinth: Tips to Avoid Needless Professional Negligence Claims)

South Carolina Bar (March 2004) (Electronic Discovery)

South Carolina Trial Lawyers Association (August 2005) (Digital Discovery For the Trial Lawyer)

South Carolina Trial Lawyers Association (August 2006) (Paperless Office)

South Carolina Trial Lawyers Association (August 2007) (Legal Malpractice Claims)

South Carolina Bar (February 2007) (Ethical Issues to Consider in Avoiding Legal Malpractice Claims)

- South Carolina Bar (December 2008) (Ethical Rules and Principles to Consider to Minimize Legal Malpractice Exposure)
- South Carolina Association of Justice (August 2009) (Better Than The Bailout, Faster Than A Speeding Bullet: CaseMap and Other Case Management Programs)
- South Carolina Bar (February 2011) (20/20: An Optimal View of 2010 – Current Issues in Professional Responsibility: Lawyers Leaving Law Firms and What Constitutes the Client ‘s File)
- South Carolina Association of Justice (August 2012) (Avoiding Legal Malpractice Traps in Litigation)
- South Carolina Bar (October 2012) (Deposition Essentials: Ethics in Witness Preparation and Deposition Conduct)
- South Carolina Association of Ethics Counsel (January 2013) (Overview of Lawyer’s Duty to Report Professional Misconduct by Other Lawyers: The Lawyer ‘s Whistle-Blower Rule)
- South Carolina Association of Justice (August 2013) (Digital Law Practice: So You Want to Go Paperless.....)
- South Carolina Association of Ethics Counsel (January 2014) (Lawyer’s Professional Responsibility / Joint or Vicarious Liability for Co-Counsel’s Errors – “Fee Splitting”)
- South Carolina Bar (February 2014) (Lawyer’s Professional Responsibility / Joint or Vicarious Liability for Co-Counsel ‘s Errors – “Fee Splitting”)
- South Carolina Bar (May 2014) (Deposition Essentials: Ethics in Witness Preparation and Deposition Conduct)
- South Carolina Association of Justice (August 2014) (Ethics Update & Co-Counsel Tips)
- South Carolina Association of Ethics Counsel (January 2015) (Just What Are You Doing?: Defining and Limiting the Scope of the Representation)
- Richardson, Patrick, law firm CLE (April 2015) (Just What Are You Doing?: Defining and Limiting the Scope of the Representation)
- Inaugural CLE Program - (May 2015) (Law Firm Technology)
- South Carolina Association of Justice (August 2015) (Just What Are You Doing?: Defining and Limiting the Scope of the Representation)

South Carolina Bar (September 2015) (Lawyer's Duty to Report Professional Misconduct by Other Lawyers: The Lawyer's Whistle-Blower Rule.)

South Carolina Bar (February 2016) (Torts Update – Ethics Panel)

South Carolina School of Law (March 2016) (Technology For a Paperless Small Law Firm)

South Carolina Association of Justice (August 2016) (Grieving from Grievance: “Don’t Threaten Me with a Good Time at ODC”)

South Carolina Bar (January 2017) ((Its Better in Beaufort CLE: “Deposition Essentials: Ethics in Witness Preparation and Deposition Conduct”)

South Carolina School of Law (January 2018) (Technology For a Paperless Small Law Firm)

South Carolina Bar (March 2018) (Its Better in Beaufort CLE: Technology For a Paperless Small Law Firm)

South Carolina School of Law (March 2018) (CaseMap - A Litigation Solution)

South Carolina Association of Justice (August 2018) (Just What Are You Doing?: Defining and Limiting the Scope of the Representation)

South Carolina Association of Justice (August 2018) (Preserving Sanity and Coverage: Whatcha Need to Say to Your Client and Carrier if Something Might Have Gone South)

South Carolina Bar (October 2018) (Managing your time: A Paradigm Adjusted for Ethical Compliance and Lawyer Sanity)

South Carolina Bar (November 2018) (The Ethics of Lawyer Accounting: Trust Accounts, Safe Keeping of Client Property; and Encryption of Sensitive Financial Data)

South Carolina Association of Justice (August 2019) (Ethics Rules – Confidentiality and Advertising in light of Recent Supreme Court Order)

RICHARDSON PATRICK WESTBROOK & BRICKMAN Litigation Seminar (November 2019) ((Deposition Essentials: Ethics in Witness Preparation and Deposition Conduct)

South Carolina Bar (February 2020) (Ethics in Motion Practice)

South Carolina Bar (September 2020) (Hot Tips Family Court - Video Conferencing Risk Management Considerations)

South Carolina Bar (October 2020) (Managing Time: Client Communications, Calendaring & Docket Management, File Storage & Document Retention)

South Carolina Association of Justice (August 2021) (The Ethics of Virtual Law Practice - We've got to draw the line on ethics somewhere, at least in pencil)

South Carolina Bar (October 2021) (Managing Time: Client Communications, Calendaring & Docket Management, File Storage & Document Retention)

South Carolina Bar (January 2022) (Ethics Overview for the Government Lawyer)

South Carolina Association of Justice (August 2022) (Professional Responsibility – Ethics: Lawyer's obligations in responding to a Subpoena for a client's file)

South Carolina School of Law (September 2022) (I'd Love to Tell You, But ..., - Confidentiality for Prospective Clients + Responding to Subpoena for Client File)

BAR ADMISSIONS:

South Carolina Supreme Court

South Carolina Court of Appeals

Delaware Supreme Court

United States District Court for the District of South Carolina

United States District Court for the Southern District of Florida

United States Court of Appeals for the Fourth Circuit

United States Court of Appeals for the Eleventh Circuit

United States Court of Appeals for the Ninth Circuit

November 4, 2022



DOING THE RIGHT THING

Code of Conduct

ELECTRONICALLY FILED - 2023 Apr 14 3:43 PM - CHARLESTON - COM. MON. PLEASE - CASE#2023CP1001832

EX. B



1

Our Commitment

- 4 A Message from Michael Tipsord
- 5 What You Should Do
- 6 Leading by Example
- 6 Making Good Decisions
- 7 Sharing Concerns
- 7 How to Use the Compliance & Ethics Hotline
- 8 Zero Tolerance for Retaliation

2

Mutual Trust

- 10 A Respectful Workplace
- 11 Discrimination and Harassment
- 12 Workplace Safety and Security
- 13 Drugs and Alcohol

3

Integrity

- 15 Gifts, Gratuities and Improper Incentives
- 16 Conflicts of Interest
- 17 Preventing Fraud
- 17 Improper Payments
- 18 Anti-Money Laundering and Terrorist Financing
- 18 Restrictions on Employment

4

Financial Strength

- 20 Intellectual Property and Confidential Information
- 22 Company Resources and Information Systems
- 23 Information Retention
- 23 Accurate Record Keeping and Reporting
- 23 Protecting Inside Information

5

Quality Service and Relationships

- 25 Fair Dealing
- 26 Fair Competition
- 27 Speaking on Behalf of Our Company
- 27 Environmental Protection

6

Code of Conduct Form Completion

A Message from Michael Tipsord



As a team, we help people live life confidently. This is our mission, simply stated.

We have thousands of opportunities to build confidence with customers – and each other – every day. This starts with each of us consistently demonstrating our shared values of quality service and relationships, mutual trust, integrity and financial strength.

The Code of Conduct is a resource that helps us live our shared values and sets the expectation for appropriate behavior.

We hold ourselves to the highest standards of ethics and integrity. When representing our Company, apply good judgment, be honest and treat others with respect.

We also have a responsibility – and an obligation – to question any practice or business behavior that doesn't measure up. If you see something that falls outside the boundaries of appropriate behavior, I want you to speak up. No matter what the issue is, no matter who is involved. We must have the courage and confidence to act.

Leaders have an additional role – you help create an environment where we can talk openly about how we do business. Our Company will not tolerate retaliation against any employee who raises issues of potential concern, and we expect all leaders to model this commitment.

Our customers expect us to do the right thing.

We depend on each other to do the right thing.

Please look to our Code for guidance if you need to raise concerns or need help on a matter of ethics or compliance.

We define our Company through our actions and how we interact with each other, our customers and our communities. We have built a trusted brand by living our values and keeping our promises. By protecting our brand, we will continue to be there for our customers, helping more people in more ways.

A handwritten signature in black ink that reads "Michael L. Tipsord". The signature is written in a cursive, flowing style.

Michael L. Tipsord

Chairman, President and CEO
State Farm Mutual Automobile Insurance Company

Scope

The Code of Conduct applies to all State Farm Mutual Automobile Insurance Company directors, officers and employees, as well as to directors, officers and employees of each affiliate of State Farm Mutual Automobile Insurance Company. State Farm Mutual Automobile Insurance Company and its affiliates are referred to herein collectively as “Company.”

What You Should Do

This Code of Conduct, or “Code,” is based around our mission, our vision and our shared values of mutual trust, integrity, financial strength and quality service and relationships.

As employees, we are accountable for our own actions. We must follow our policies, rules and guidelines, and comply with all laws and regulations applicable to Company business. This Code does not cover every situation. Additional information that complements the Code can be found in the resources at the end of this document. In some instances, you may need additional information and guidance from your supervisor, another member of leadership or Human Resources & Development. You may also use the Open Door policy, or contact the Compliance & Ethics Hotline.

We have an obligation to raise our concerns if we know of or suspect improper conduct or a breakdown of business or security controls. This includes situations where we believe we have observed or have been instructed to do something that is illegal or unethical or violates Company policy. Remember that resources are available to help, including those listed in this Code. You are expected to cooperate fully with any investigative efforts.

Generally, people try to do the right thing, but for those unfortunate situations where employees do not follow Company expectations, disciplinary action may result.

Doing the Right Thing:

- **Exemplify our mission, vision and shared values.**
- **Act in an honest, legal and ethical manner. Be aware that your behavior reflects on the Company.**
- **Adhere to the Sales Practices Philosophy and Principles.**
- **Be familiar with the information contained in this Code and Company policies.**
- **Remember, pressures or demands due to business or personal conditions are not an excuse for violating the law, our Code or any Company policy.**

Preventing Fraud

Fraud is intentional or reckless conduct that deceives or is intended to deceive someone. This includes fraudulent, illegal, unauthorized or dishonest acts. We manage the risk of fraud through our shared value of integrity, utilizing our business processes, controls and the standards in this Code.

We all have a duty to follow established procedures and report suspected fraud, misconduct or dishonesty to your supervisor, another member of leadership, Human Resources & Development, the Open Door policy or contact the Compliance & Ethics Hotline.

Improper Payments

Acts of bribery or corruption are designed to influence, obtain or retain an unethical business advantage. We select supplies, materials and services objectively and ethically, without gaining any advantage for the Company or for us personally. Corruption, bribery and kickbacks are contrary to our business standards. We comply with all applicable laws that forbid bribery both of public officials and within the private sector. We also comply fully with the Foreign Corrupt Practices Act, which is intended to prevent corrupt practices in international business transactions, prohibiting bribery of officials and employees who work for foreign governments.

There can be severe consequences if an employee violates anti-bribery or anti-corruption laws. Even the perception by others that we may have acted illegally can be damaging. For this reason, be aware of how our actions might be viewed by others.



Code of Conduct Form Completion

We believe in following all applicable laws and regulations, and in behaving ethically and honestly. In accordance with these principles, we all must complete and submit the Code of Conduct Form annually, alongside the annual Code of Conduct training course. The form should also be filled out any time an actual or potential violation of this Code or conflict of interest arises.

The form includes two parts: an acknowledgement to adhere to the Code of Conduct and its underlying policies, and a disclosure, which is an opportunity to disclose any actual or potential violation of this Code or conflict of interest. Submitting the form indicates that you have read and understood the Code of Conduct and:

- Have considered possible conflicts of interest.
- Have disclosed information about convictions for certain offenses.
- Have complied with the Code of Conduct to the best of your knowledge, with the exception of any situations described on the Code of Conduct Form.
- Will inform your immediate supervisor, or Human Resources & Development of any changes to any of these listed items.
- Will contact leadership, Human Resources & Development, use the Open Door policy or contact the Compliance & Ethics Hotline if you have concerns related to employee or business conduct.

Our company supports our employees' rights to speak out about matters of public concern or engage in certain activities related to the terms and conditions of their employment. Nothing in this Code or in any of our policies is intended to limit or interfere with the right to engage in activities protected under Section 7 of the U.S. National Labor Relations Act, such as discussions related to wages, hours, working conditions, health hazards and safety issues.

The existence and content of this Code of Conduct will be disclosed to policyholders and will be available on the company website.

The provisions of this Code are in addition to, and do not modify, replace or supersede the company's other policies or procedures.

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
	)	Case No. 2023-CP-10-01832
Robert C. Workman, Individually and as	)	
Personal Representative of the Estate of	)	
James K. Workman, Kelly Workman	)	
Tick and Matthew T. Workman,	)	
	)	
	)	<u>DEFENDANT</u>
Plaintiffs,	)	<u>STATE FARM MUTUAL</u>
	)	<u>AUTOMOBILE INSURANCE</u>
vs.	)	<u>COMPANY'S MOTION FOR</u>
	)	<u>JUDGMENT ON THE PLEADINGS</u>
State Farm Mutual Automobile Insurance	)	
Company and Gallivan, White & Boyd,	)	
P.A.,	)	
	)	
Defendants.	)	
	)	

Plaintiffs are suing State Farm Mutual Automobile Insurance Company (“State Farm”) and its attorneys, Gallivan, White & Boyd, P.A. (“GWB”), for filing a declaratory judgment action over insurance coverage. Pursuant to Rule 12(c) and Rule 12(h)(2) of the South Carolina Rules of Civil Procedure, State Farm moves for judgment on the pleadings.

Plaintiffs fail to state a legally cognizable claim against State Farm and this motion should, therefore, be granted because:

1. ***Abuse of Process.*** There are two “essential elements of an abuse of process claim”—first, “an ulterior purpose,” second “a willful act in the use of process not proper in the regular conduct of the proceeding.” *First Union Mortg. Corp. v. Thomas*, 451 S.E.2d 907, 914 (S.C. Ct. App. 1994). There are no well pleaded factual allegations in the Complaint supporting the first, ulterior purpose element.

2. ***Fraud and Negligent Misrepresentation.*** Reasonable and detrimental reliance on a misrepresentation are essential elements of fraud and negligent misrepresentation claims. *Warr*

v. Carolina Power & Light Co., 115 S.E.2d 799, 802 (S.C. 1960); *AMA Mgmt. Corp. v. Strasburger*, 420 S.E.2d 868, 874 (S.C. Ct. App. 1992). Further, with respect to fraud, these elements must be alleged with particularity. S.C. R. Civ. P. 9(b). There are no well pleaded factual allegations in the Complaint supporting the elements of reasonable, detrimental reliance on a misrepresentation. Moreover, the judicially noticeable facts are that the Estate denied the allegations of the declaratory judgment action and opposed the relief sought. *See* Estate's Answer, *State Farm Mutual Automobile Insurance Company v. Estate of Workman*, C.A. No. 2:21-cv-02623-MBS (Oct. 26, 2021, ECF No. 35); Estate's Rule 26.01 Responses ¶ 2, *State Farm Mutual Automobile Insurance Company v. Estate of Workman*, C.A. No. 2:21-cv-02623-MBS (Oct. 26, 2021, ECF No. 39).

3. ***Fraudulent Nondisclosure.*** Nondisclosure becomes fraudulent only when a party having knowledge of the facts has a duty to disclose them to the other party, which occurs in three instances: (1) where it arises from a pre-existing definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in which the nondisclosure occurred; and (3) where the parties are involved in a contract or transaction that is itself intrinsically fiduciary in nature and necessarily calls for perfect good faith and full disclosure. *See, e.g., Jacobson v. Yaschik*, 155 S.E.2d 601, 605 (S.C. 1967). None of these instances is alleged in Plaintiffs' Complaint, nor are they implicated by the nature of the claims.

4. ***Civil Conspiracy.*** First, Plaintiffs allege State Farm and GWB were co-conspirators, but an actionable civil conspiracy could not exist between client and attorney given Plaintiffs' allegations GWB was at all times acting as State Farm's attorney, an attorney-client relationship is, by definition, an agent-principal relationship, *State v. Goettie*, 41 S.C.L. 126, 128

(S.C. App. L. 1854), and “civil conspiracy cannot exist when the alleged act arises in an agent-principal relationship,” *McMillan v. Oconee Mem'l Hosp., Inc.*, 626 S.E.2d 884, 886–87 (S.C. 2006), *overruled on other grounds by Paradis v. Charleston Cnty. Sch. Dist.*, 861 S.E.2d 774 (S.C. 2021).

Second, Plaintiffs are required but have failed to “plead additional facts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint,” and “the failure to properly plead such acts [] merit[s] the dismissal of the claim.” *Hackworth v. Greywood at Hammett, LLC*, 682 S.E.2d 871, 875 (S.C. Ct. App. 2009), *overruled on other grounds by Paradis*, 861 S.E.2d 774.

5. **SCUTPA.** Plaintiffs’ SCUTPA cause of action alleges unfair or deceptive acts or practices in the business of insurance, but for nearly thirty years, courts interpreting South Carolina law have consistently held “all unfair trade practices regarding the insurance business...are exempt from the coverage of SCUPTA.” *Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F. Supp. 128, 130–31 (D.S.C. 1994); *see also, Cleveland Ridge Homeowner's Ass'n, Inc. v. State Farm Fire & Cas. Co.*, No. 2006-UP-295, 2006 WL 7286092, at *3 (S.C. Ct. App. June 26, 2006) (“Clearly, the legislature intended SCUTPA to exempt cases of unfair trade practices regarding the insurance business because the Insurance Trade Practice Act specifically covers such cases.”).

6. **Standing.** Plaintiffs in their individual capacity allege they are heirs of Workman and, therefore, have an interest in the Estate, but that itself does not give rise to standing in this action against State Farm, a party with which they have no direct relationship regarding the matters in the Complaint. *See Estate of Corley*, 386 S.E.2d 264, 265 (S.C. Ct. App. 1989) (holding “the heirs [of the estate] were not real parties in interest [in an action to recover property of the

decendent] because they were not the legal representatives of the estate and therefore did not have standing to pursue the action”). Accordingly, Plaintiffs’ Complaint does not confer standing and, therefore, with respect to the Plaintiffs’ claims in their individual capacity, the Court lacks subject matter jurisdiction.

For the foregoing reasons and as further supported by the case and statutory law of South Carolina and any memorandum of law that may be submitted in connection with this motion, this Court should grant judgment on the pleadings in favor of State Farm, thereby dismissing Plaintiffs’ Complaint against it.

WHELAN MELLEN & NORRIS, LLC

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Charleston, South Carolina

September 1, 2023

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Case No. 2023-CP-10-01832

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

Plaintiffs,

VS.

State Farm Mutual Automobile Insurance
Company and Gallivan, White & Boyd,
P.A.,

Defendants.

DEFENDANT
STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY'S ANSWER

(Jury Trial Requested)

Defendant State Farm Mutual Automobile Insurance Company (“State Farm”) answers Plaintiffs’ Complaint as follows, with each and every allegation denied unless expressly admitted or otherwise qualified herein.

FOR A FIRST DEFENSE

1. The allegations of paragraph 1 are denied.
2. Answering paragraph 2, State Farm admits a June 12, 2021, automobile accident led the Estate of James K. Workman (the “Estate”) to assert a liability claim, Claim No. 40-21B2-49D, with State Farm.
3. The allegations of paragraph 3 are admitted.
4. Answering paragraph 4, State Farm admits it sent a letter to its insured Melvin O. Lamb, Jr. dated June 29, 2021, it sent a letter to Melvin O. Lamb III dated June 29, 2021, and that both letters included the quoted statements in paragraph 4. The remaining allegations in paragraph 4 are denied.

5. Answering paragraph 5, State Farm admits it sent the Kahn Law Firm as counsel for the Estate a letter dated June 29, 2021 enclosing a Confirmation of Coverage in relation to Claim No. 40-21B2-49D and that the letter included the quoted statement in paragraph 5. The remaining allegations in paragraph 5 are denied.

6. Answering paragraph 6, State Farm admits the Confirmation of Coverage included the quoted statement in paragraph 6.

7. The allegations of paragraph 7 are denied.

8. Answering paragraph 8, State Farm admits it contacted the law firm of Gallivan White & Boyd, P.A., (“GWB”) before July 26, 2021 to obtain legal representation in relation to the liability claims made under Claim No. 40-21B2-49D. Any remaining allegations in paragraph 8 are denied.

9. State Farm lacks information or knowledge sufficient to determine the truth of the allegations in paragraph 9 and, therefore, those allegations are denied.

10. State Farm lacks information or knowledge sufficient to determine the truth of the allegations in paragraph 10 and, therefore, those allegations are denied.

11. The allegations of paragraph 11 are denied.

12. The allegations of paragraph 12 are denied.

13. The allegations of paragraph 13 are denied.

14. The allegations of paragraph 14 are denied.

15. The allegations of paragraph 15 are denied.

16. Answering paragraph 16, State Farm admits it sought to dismiss the Declaratory Judgment Action it filed, Civil Action No. 2:21-cv-2623-MBS (the “DJA”), and it extended coverage on Claim No. 40-21B2-49D. The remaining allegations in paragraph 16 are denied.

17. The allegations of paragraph 17 are denied.

18. The allegations of paragraph 18 are admitted, upon information and belief.

19. The allegations of paragraph 19 are admitted, upon information and belief.

20. The allegations of paragraph 20 are admitted, upon information and belief.

21. The allegations of paragraph 21 are admitted, upon information and belief.

22. The allegations of paragraph 22 are admitted, upon information and belief.

23. The allegations of paragraph 23 are admitted.

24. The allegations of paragraph 24 require no response because they are immaterial, impertinent, and beyond the information allowed under Rule 8(a) (1) through (3). State Farm moves to strike these allegations.

25. The allegations of paragraph 25 are admitted, upon information and belief.

26. Answering paragraph 26, State Farm admits the Court of Common Pleas has subject matter jurisdiction over the claims of Robert C. Workman as Personal Representative of the Estate at the time of this Answer. Otherwise, State Farm denies the allegations in paragraph 26 and incorporates by reference its affirmative defense of lack of standing.

27. Answering paragraph 27, State Farm denies the alleged actions and conduct referenced as set forth throughout this Answer. Otherwise, State Farm admits the Court has personal jurisdiction over it in this action.

28. Answering paragraph 28, State Farm denies the allegations of wrongful conduct and material effects. Otherwise, State Farm, at this time, agrees venue is appropriate in Charleston County, South Carolina.

29. Paragraph 29 does not contain any allegations and therefore requires no response. To the extent a response is required, State Farm denies the paragraph, its incorporation of the affidavit of Thomas A. Pendarvis, Esq., and any allegations therein.

30. The allegations of paragraph 30 are admitted, upon information and belief.

31. The allegations of paragraph 31 require no response because they are immaterial, impertinent, and beyond the information allowed under Rule 8(a) (1) through (3). State Farm moves to strike these allegations.

32. Answering paragraph 32, State Farm admits James K. Workman died as a result of the June 12, 2021 collision. The remaining allegations of paragraph 32 require no response because they are immaterial, impertinent, and beyond the information allowed under Rule 8(a) (1) through (3). State Farm moves to strike those remaining allegations.

33. The allegations of paragraph 33 are admitted.

34. The allegations of paragraph 34 are denied because before the June 12, 2021 collision, Melvin O. Lamb, Jr., the named insured of the State Farm policy insuring the 2004 Tahoe involved in the collision (the “Tahoe Policy”), signed and accepted an endorsement to the policy excluding Melvin O. Lamb, III from coverage (the “Lamb Excluded Driver Endorsement”).

35. Answering paragraph 35, State Farm admits that the Tahoe Policy’s declarations pages created prior to the June 12, 2021 collision did not specifically identify Melvin O. Lamb, III as an excluded driver or specifically identify Driver Exclusion Form 6023DC, but avers that each and every one of the Tahoe Policy’s declaration pages stated the Tahoe Policy consisted of the declarations page, the policy booklet, and “any endorsements that apply,” and further avers that before the June 12, 2021 collision, Melvin O. Lamb, Jr., the named insured of the Tahoe Policy, signed and accepted the Lamb Excluded Driver Endorsement.

36. Answering paragraph 36, State Farm admits Melvin O. Lamb, Jr. requested cancellation of the Tahoe Policy on July 26, 2021, and on August 2, 2021, his cancellation request was processed, with the effective date of cancellation being June 13, 2021.

37. The allegations of paragraph 37 are admitted.

38. The allegations of paragraph 38 are admitted.

39. Answering paragraph 39, State Farm craves reference to the June 29, 2021 letters, misquoted in paragraph 39, for the content thereof and, therefore, denies the allegations of paragraph 39 as stated.

40. Answering paragraph 40, State Farm admits only that after its underwriting department discovered a processing omission with respect to the Lamb Excluded Driver Endorsement, which occurred on or around July 9, 2021, a service request was initiated for the complex unit of State Farm's underwriting department to complete the entry of the Lamb Excluded Driver Endorsement on the Tahoe Policy. Any remaining allegations in paragraph 40 are denied.

41. The allegations of paragraph 41 are denied.

42. The allegations of paragraph 42 are denied.

43. Answering paragraph 43, State Farm admits only that the declarations page attached to the Complaint filed in the DJA was redacted.

44. The allegations of paragraph 44 are denied.

45. The allegations of paragraph 45 are denied; State Farm did not create nor use a "false declarations page."

46. The allegations of paragraph 46 are denied; State Farm did not create nor use "false documents."

47. The allegations of paragraph 47 are denied; State Farm did not create nor use a “false declarations page.”

48. The allegations of paragraph 48 are denied; State Farm did not create nor use a “false declarations page.”

49. The allegations of paragraph 49 are denied; State Farm did not create nor use a “false declarations page.”

50. The allegations of paragraph 50 are denied; State Farm did not create nor use a “false declarations page.”

51. The allegations of paragraph 51, including its subparagraphs, are denied.

52. The allegations of paragraph 52, including its subparagraphs, are denied.

53. The allegations of paragraph 53 are admitted.

54. Answering paragraph 54, State Farm admits a Certified Policy Record dated August 5, 2021 for the Tahoe Policy bears a State Farm logo and was signed by a State Farm underwriter, but otherwise the remaining allegations of paragraph 54 are denied.

55. Answering paragraph 55, State Farm admits the paragraph shows a part of a Certified Policy Record dated August 5, 2021 for the Tahoe Policy.

56. The allegations of paragraph 56, including its subparagraphs, are denied.

57. Answering paragraph 57, State Farm admits the Certified Policy Record dated August 5, 2021 for the Tahoe Policy was provided to GWB for purposes of its legal representation of State Farm. The remaining allegations in paragraph 57 are denied.

58. Answering paragraph 58, State Farm admits S.C. Code Ann. § 38-61-20 provides, in part, “It is unlawful for an insurer doing business in this State to issue or sell in this State a

policy, contract, or certificate until it has been filed with and approved by the director or his designee.”

59. The allegations of paragraph 59 are denied as stated. The South Carolina Department of Insurance approved form 6023DC in April 2010. The approved form satisfied the statutory requirements for driver exclusions in South Carolina set forth under S.C. Code Ann. § 38-77-340. After the form was placed in use, State Farm added identifying information, including three lines so the policyholder’s name, policy number and effective date could be added to the approved form:

Named Insured	_____
Policy Number	_____
Effective Date	_____

- 60. The allegations of paragraph 60 are denied.
- 61. The allegations of paragraph 61 are denied.
- 62. The allegations of paragraph 62 are denied.
- 63. The allegations of paragraph 63 are admitted to the extent they refer to the purpose of the DJA; otherwise, the allegations are denied.
- 64. The allegations of paragraph 64 are denied.
- 65. The allegations of paragraph 65 are denied.
- 66. The allegations of paragraph 66 are denied.
- 67. The allegations of paragraph 67 are denied.
- 68. The allegations of paragraph 68 are denied.
- 69. The allegations of paragraph 69 are denied.
- 70. The allegations of paragraph 70 are denied.
- 71. The allegations of paragraph 71, including its subparagraphs, are denied.

72. The allegations of paragraph 72 are denied.

73. Answering paragraph 73, State Farm denies using “bogus documents” but admits the purpose of the DJA was to determine coverage, State Farm’s position in the DJA was the Tahoe Policy did not provide coverage for losses arising from the June 12, 2021 collision, and GWB filed the DJA only as State Farm’s counsel. The remaining allegations in paragraph 73 are denied.

74. The allegations of paragraph 74 are admitted.

75. Answering paragraph 75, State Farm admits the quoted language (without the emphasis or bracketed language added by Plaintiffs) appeared in paragraph 27 of the Complaint filed in the DJA.

76. The allegations of paragraph 76, including its subparagraphs, are denied.

77. The allegations of paragraph 77 are denied.

78. The allegations of paragraph 78 are denied.

79. The allegations of paragraph 79 are denied.

80. Answering paragraph 80, State Farm admits the quoted language appeared in footnote 1 of the Complaint filed in the DJA.

81. The allegations of paragraph 81 are denied.

82. The allegations of paragraph 82 are denied.

83. The allegations of paragraph 83 require no response because they are immaterial, impertinent, and beyond the information allowed under Rule 8(a) (1) through (3). State Farm moves to strike the allegations of paragraph 83. To the extent a response is required, State Farm admits it has a Code of Conduct and that Exhibit B to Plaintiffs’ Complaint contains parts of the Code of Conduct, but State Farm denies the remaining allegations in paragraph 83.

84. The allegations of paragraph 84 require no response because they are immaterial, impertinent, and beyond the information allowed under Rule 8(a) (1) through (3). State Farm moves to strike the allegations of paragraph 84.

85. The allegations of paragraph 85 require no response because they are immaterial, impertinent, and beyond the information allowed under Rule 8(a) (1) through (3). State Farm moves to strike the allegations of paragraph 85.

86. The allegations of paragraph 86 require no response because they are immaterial, impertinent, and beyond the information allowed under Rule 8(a) (1) through (3). State Farm moves to strike the allegations of paragraph 86. To the extent a response is required, State Farm admits that Exhibit B to Plaintiffs' Complaint contains the message of State Farm through Michael L. Tipsord which is, in part, quoted in paragraph 86.

87. The allegations of paragraph 87 require no response because they are immaterial, impertinent, and beyond the information allowed under Rule 8(a) (1) through (3). State Farm moves to strike the allegations of paragraph 87.

88. The allegations of paragraph 88 require no response because they are immaterial, impertinent, and beyond the information allowed under Rule 8(a) (1) through (3). State Farm moves to strike the allegations of paragraph 88. To the extent a response is required, State Farm admits that Exhibit B to Plaintiffs' Complaint contains a portion of the Code of Conduct which is, in part, quoted in paragraph 88, but State Farm denies the remaining allegations.

89. The allegations of paragraph 89 require no response because they are immaterial, impertinent, and beyond the information allowed under Rule 8(a) (1) through (3). State Farm moves to strike the allegations of paragraph 89.

90. The allegations of paragraph 90 require no response because they are immaterial, impertinent, and beyond the information allowed under Rule 8(a) (1) through (3). State Farm moves to strike the allegations of paragraph 90.

91. The allegations of paragraph 91 are denied.

92. The allegations of paragraph 92 are denied.

93. The allegations of paragraph 93 are denied.

94. The allegations of paragraph 94 are denied.

95. The allegations of paragraph 95 are denied.

96. The allegations of paragraph 96 are denied; State Farm did not create nor use a “bogus declarations page.”

97. “[T]he documents” referred to in paragraph 97 are not identified by Plaintiffs. To the extent “the documents” refers to a “bogus” or “false” declarations page, State Farm denies the allegations in paragraph 97 because State Farm did not create nor file a bogus or false declarations page. Otherwise, State Farm lacks knowledge or information sufficient to admit or deny the truth of the allegations in paragraph 97 and, therefore, those allegations are denied.

98. The allegations of paragraph 98 are denied.

99. “[T]he documents” referred to in paragraph 99 are not identified by Plaintiffs. To the extent “the documents” refers to a “bogus” or “false” declarations page, State Farm denies the allegations in paragraph 99 because State Farm did not create nor file a bogus or false declarations page. Otherwise, State Farm lacks knowledge or information sufficient to admit or deny the truth of the allegations in paragraph 99 and, therefore, those allegations are denied.

100. The allegations of paragraph 100 are denied.

101. The allegations of paragraph 101 are denied.

102. The allegations of paragraph 102 are denied.

103. The allegations of paragraph 103 are denied.

104. The allegations of paragraph 104, including its subparagraphs, are denied.

105. The allegations of paragraph 105 are denied.

106. The allegations of paragraph 106 are admitted—the DJA was dismissed with prejudice pursuant to State Farm’s motion for voluntary dismissal—with the caveat that GWB “filed” the Complaint in the DJA only as State Farm’s counsel.

107. The allegations of paragraph 107 are denied.

108. The allegations of paragraph 108 are denied.

As to Plaintiffs’ First Cause of Action: Abuse of Process

109. Answering paragraph 109, State Farm incorporates by reference each of its above answers.

110. The allegations of paragraph 110 are denied.

111. The allegations of paragraph 111, including its subparagraphs, are denied.

112. The allegations of paragraph 112 are denied.

113. The allegations of paragraph 113 are denied.

As to Plaintiffs’ Second Cause of Action: Aiding and Abetting Abuse of Process

114. Answering paragraph 114, State Farm incorporates by reference each of its above answers.

115. The allegations of paragraph 115 do not purport to state a cause of action against State Farm and therefore require no response. To the extent a response is required, the allegations of paragraph 115, including its subparagraphs, are denied.

116. The allegations of paragraph 116 do not purport to state a cause of action against State Farm and therefore require no response. To the extent a response is required, the allegations of paragraph 116 are denied.

As to Plaintiffs' Third Cause of Action: Fraud

117. Answering paragraph 117, State Farm incorporates by reference each of its above answers.

118. The allegations of paragraph 118, including its subparagraphs, are denied.

119. The allegations of paragraph 119 are denied.

120. The allegations of paragraph 120 are denied.

121. The allegations of paragraph 121 are denied.

122. The allegations of paragraph 122 are denied.

123. The allegations of paragraph 123 are denied.

124. The allegations of paragraph 124 are denied.

125. The allegations of paragraph 125 are denied.

126. The allegations of paragraph 126 are denied.

127. The “others” referenced in paragraph 127 and elsewhere in the Complaint are not identified by Plaintiffs and are otherwise unknown to State Farm. Accordingly, State Farm lacks knowledge or information sufficient to form a belief as to the truth of allegations concerning “others” and, therefore, those allegations are denied in paragraph 127 and elsewhere in the Complaint. State Farm denies the remaining allegations in paragraph 127 because State Farm did not create nor use a “bogus declarations page.”

128. Assuming “the documents” referenced in paragraph 128 is the alleged “fabricated,” “bogus,” and “falsely” made declarations page to the Tahoe Policy otherwise referenced under the

same cause of action, the allegations of paragraph 128 are denied because State Farm did not make nor use a false, fabricated, or bogus declarations page to the Tahoe Policy. Further, with respect to the Estate's state of mind, State Farm craves reference to the Estate's Answer in the DJA, through which the Estate denied the truth of State Farm's allegations concerning the Lamb Excluded Driver Endorsement. Otherwise, State Farm lacks knowledge or information sufficient to admit or deny the truth of the allegations in paragraph 128 and, therefore, those allegations are denied.

129. Assuming "the documents" referenced in paragraph 129 is the alleged "fabricated," "bogus," and "falsely" made declarations page to the Tahoe Policy otherwise referenced under the same cause of action, the allegations of paragraph 129 are denied because State Farm did not make nor use a false, fabricated, or bogus declarations page to the Tahoe Policy. Otherwise, State Farm lacks knowledge or information sufficient to admit or deny the truth of the allegations in paragraph 129 and, therefore, those allegations are denied.

130. Assuming "documents State Farm represented as being true" referenced in paragraph 130 is the alleged "fabricated," "bogus," and "falsely" made declarations page to the Tahoe Policy otherwise referenced under the same cause of action, the allegations of paragraph 130 are denied because State Farm did not make nor use a false, fabricated, or bogus declarations page to the Tahoe Policy. Further answering paragraph 130, State Farm denies Plaintiffs relied on any allegation or attachment to the Complaint filed in the DJA given the Estate's Answer denying the truth thereof. Otherwise, State Farm lacks knowledge or information sufficient to admit or deny the allegations in paragraph 130 and, therefore, those allegations are denied.

131. The allegations of paragraph 131 are denied.

As to Plaintiffs' Fourth Cause of Action: Negligent Misrepresentation

132. Answering paragraph 132, State Farm incorporates by reference each of its above answers.

133. The allegations of paragraph 133 are denied.

134. The allegations of paragraph 134 are denied.

135. The allegations of paragraph 135 are denied.

136. Assuming “the documents and statements therein” referenced in paragraph 136 is the alleged “bogus declarations page” to the Tahoe Policy otherwise referenced under the same cause of action, the allegations of paragraph 136 are denied because State Farm did not make nor use a “bogus declarations page” to the Tahoe Policy. Furthermore, State Farm avers the Estate answered the Complaint filed in the DJA by denying State Farm’s allegations therein. Otherwise, State Farm lacks knowledge or information sufficient to admit or deny the allegations in paragraph 136 and, therefore, those allegations are denied.

137. The “others” referenced in paragraph 137 and elsewhere in the Complaint are not identified by Plaintiffs and are otherwise unknown to State Farm. Accordingly, State Farm lacks knowledge or information sufficient to form a belief as to the truth of allegations concerning “others” and, therefore, those allegations are denied in paragraph 137 and elsewhere in the Complaint. The remaining allegations of paragraph 137 are denied.

138. The allegations of paragraph 138 are denied.

139. The “others” referenced in paragraph 139 and elsewhere in the Complaint are not identified by Plaintiffs and are otherwise unknown to State Farm. Accordingly, State Farm lacks knowledge or information sufficient to form a belief as to the truth of allegations concerning

“others” and, therefore, those allegations are denied in paragraph 139 and elsewhere in the Complaint. The remaining allegations in paragraph 139 are denied.

140. The allegations of paragraph 140 are denied.

As to Plaintiffs’ Fifth Cause of Action: Negligence

141. Answering paragraph 141, State Farm incorporates by reference each of its above answers.

142. The allegations of paragraph 142 do not purport to state a cause of action against State Farm and therefore require no response. To the extent a response is required, the allegations of paragraph 142 are denied.

143. The allegations of paragraph 143 do not purport to state a cause of action against State Farm and therefore require no response. To the extent a response is required, the allegations of paragraph 143 are denied.

144. The allegations of paragraph 144 do not purport to state a cause of action against State Farm and also state conclusions of law and therefore require no response. To the extent a response is required, the allegations of paragraph 144 are denied.

145. The allegations of paragraph 145 do not purport to state a cause of action against State Farm and therefore require no response. To the extent a response is required, the allegations of paragraph 145 are denied.

146. The allegations of paragraph 146 do not purport to state a cause of action against State Farm and therefore require no response. To the extent a response is required the allegations of paragraph 146, including its subparagraphs, are denied.

147. The allegations of paragraph 147 do not purport to state a cause of action against State Farm and therefore require no response. To the extent a response is required, the allegations of paragraph 147 are denied.

As to Plaintiffs' Sixth Cause of Action: Conspiracy

148. Answering paragraph 148, State Farm incorporates by reference each of its above answers.

149. The allegations of paragraph 149 are denied.

150. The allegations of paragraph 150 are denied.

151. The allegations of paragraph 151 are denied.

152. The allegations of paragraph 152 are denied.

As to Plaintiffs' Seventh Cause of Action: Unfair Trade Practices

153. Answering paragraph 153, State Farm incorporates by reference each of its above answers.

154. The allegations of paragraph 154, including its subparagraphs, are denied.

155. The allegations of paragraph 155 are denied.

156. The allegations of paragraph 156, including its subparagraphs, are denied.

157. The allegations of paragraph 157 are denied.

158. The allegations of paragraph 158 are denied.

159. The allegations of paragraph 159 are denied.

160. The allegations of paragraph 160 are denied.

161. The allegations of paragraph 161 are denied.

162. Answering the Plaintiffs' prayer for relief, State Farm denies Plaintiffs are entitled to any of the relief requested.

FOR A FURTHER AND AFFIRMATIVE DEFENSE

163. Plaintiffs' Complaint fails to state, in whole or in part, a legally cognizable claim of relief against State Farm and, therefore, some or all the causes of action should be dismissed under Rule 12(b)(6), SCRPC.

FOR A FURTHER AND AFFIRMATIVE DEFENSE

164. Plaintiffs' fraud claims are not pleaded with the specificity required under Rule 9(b), SCRPC, and, therefore, should be dismissed.

FOR A FURTHER AND AFFIRMATIVE DEFENSE

165. Plaintiffs' claims are barred by the doctrine of res judicata, collateral estoppel, issue preclusion, claim preclusion, or waiver.

FOR A FURTHER AND AFFIRMATIVE DEFENSE

166. Plaintiffs cannot assert against State Farm a cause of action for alleged violations of the South Carolina Unfair Trade Practices Act because it is inapplicable to the business of insurance and the complained of conduct.

FOR A FURTHER AND AFFIRMATIVE DEFENSE

167. The cause of action for alleged violations of the South Carolina Unfair Trade Practices Act should be dismissed to the extent it is brought by any of the Plaintiffs in a representative capacity.

FOR A FURTHER AND AFFIRMATIVE DEFENSE

168. Plaintiffs' claims should be barred or reduced in proportion to their own comparative fault and/or that of their agents.

FOR A FURTHER AND AFFIRMATIVE DEFENSE

169. As brought in their individual capacity, Plaintiffs' claims are barred for lack of standing and, therefore, should be dismissed based on lack of subject matter jurisdiction.

FOR A FURTHER AND AFFIRMATIVE DEFENSE

170. Plaintiffs' claims are barred, in whole or in part, because statements made in litigation are subject to an absolute privilege.

FOR A FURTHER AND AFFIRMATIVE DEFENSE

171. Plaintiffs' Complaint fails to state a valid claim for punitive damages. Plaintiffs' claim for punitive damages is, moreover, barred or limited by South Carolina law or by the procedural and substantive due process guarantees, the guarantees against the taking of property in an arbitrary or irrational manner or without adequate compensation, the guarantees of equal protection of the laws, and guarantees against undue burden upon commerce set forth in the United States Constitution. State Farm will rely on the protections and limitations of S.C. Code section 15-32-510 through -540.

FOR A FURTHER AND AFFIRMATIVE DEFENSE

172. Some or all of Plaintiffs' claims are barred in whole or in part by their failure to mitigate damages, if any.

173. State Farm reserves the right to amend and supplement its affirmative defenses to include any applicable defense, whether legal or factual in nature.

WHEREFORE, having fully answered Plaintiffs' Complaint, State Farm prays the Complaint be dismissed, and for such other and further relief as this Court may deem just and proper.

[Signature Block on Following Page]

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EXHIBITS

(None marked)

24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: Afternoon all, before we get started, if we
2 could just have everybody introduce yourself and state who
3 you're representing here today, please.

4 We start over here.

5 MR. KAHN: Good afternoon, Judge McGee. I'm sorry.
6 They have their first motion, which threw me off, but I've
7 been plaintiff, so I went first ---

8 THE COURT: No -- no -- no.

9 MR. KAHN: I'm not trying to steal their motion.

10 THE COURT: It -- it -- it doesn't matter.

11 MR. KAHN: The -- I -- I represent the Plaintiffs Robert
12 C. Workman, individually and personal representative, and
13 he's here with us today. And the Estate of James K. Workman.
14 Kelly Workman Tick is also here, and Matthew T. Workman is
15 not here. So I represent the Plaintiffs.

16 MR. ALLISON: Allison, also representing Plaintiffs.
17 We, Allison, also.

18 MR. WILKERSON: Thank you, Your Honor, I'm John
19 Wilkerson of Turner Padget. I, along with Lindsey, thank
20 you. We represent the law firm, (inaudible), and present
21 also is Jocelyn Kotz representing the firm (inaudible)
22 afternoon.

23 MS. MELLEN: Good afternoon, Katie Mellen here with my
24 partner, Robbie Whelan, both of the firm, Whelan Mellen &
25 Norris. And we represent State Farm Mutual Automobile

1 Insurance Company, a Defendant in this case.

2 THE COURT: Thank you. Okay. I know we've got four
3 motions, I think two discovery, two motions for judgment on
4 the pleadings. Is that -- is that right?

5 MR. KAHN: I think that's correct.

6 THE COURT: How do you all -- is there any consensus if
7 you all talk about the order and how you want to do this?
8 Let -- let's -- let's try to. I've read as much as I
9 possibly could. There's quite a bit of this, but I -- I -- I
10 think I've read almost all of it going -- going into it. So
11 I think I've got a -- a decent grasp of -- of the facts here.
12 What is the most efficient way for us to move forward on
13 these motions? Which one's first?

14 MS. MELLEN: Your Honor, if I may, I think it makes
15 sense to move forward with the first file of motions for
16 judgment on the pleadings. I have conferred with
17 co-Defendant's counsel and while their motion for judgment on
18 the pleadings is filed shortly before State Farm's, we have
19 agreed that it would probably be more efficient if State Farm
20 went first with the motion for judgment on pleadings and I'll
21 begin with a -- a pretty robust overview that relieves them
22 from having to go over it again.

23 THE COURT: Right. Understood. All right. Well, do
24 you want to -- you want to do both -- do you want to do both
25 of the -- the motions and then you reply to both or do you

1 ---

2 MR. KAHN: I'll do either and both is fine. Whatever's
3 easier.

4 THE COURT: What -- you all tell me, you know more about
5 this case than I do. You all tell me what the easiest, most
6 efficient way to -- to deal with.

7 MR. KAHN: It's probably going to be overlap, so why not
8 have them both go to the extent they need to?

9 THE COURT: Excellent. Okay. We'll do that.

10 MS. MELLEN: Okay. Thank you, Your Honor. And I -- I
11 beg the Court's indulgence. I realize it is almost 4:00
12 p.m., and I'm loathed to be up here and -- and speak for a
13 long period of time. And I promise once I get through this
14 background that I will be much more efficient after that and
15 move pretty promptly. I -- I hope to give the court a
16 backbone of information, some context for all four of these
17 motions. And I want to give you an overview of the events
18 that are the subject of this lawsuit and some of the
19 positions of the parties.

20 And try not to shed this in a light that is only
21 favorable to my client, but instead tell you what I view some
22 of the positions to be. Plaintiffs bring this lawsuit
23 against State Farm and its counsel, Gallivan White Boyd for
24 conduct that occurred in prior litigation. And that prior
25 litigation was a declaratory judgment action filed by State

1 Farm through its counsel in the District of South Carolina in
2 August of 2021.

3 The individual Plaintiffs in this lawsuit were not
4 parties to the dec action based on an excluded driver
5 endorsement State Farm alleged was valid and enforceable.
6 The dec action sought the court's determination, the federal
7 court's determination that State Farm had no duty to defend
8 or indemnify its named insured or its named insured's son
9 against third-party liability claims. And those claims arose
10 from a significant auto accident. Neither the named insured
11 or his son are parties to this lawsuit. In the accident, the
12 son -- the insured son was the at-fault driver, and he was
13 driving a vehicle owned by the insured and covered under a
14 State Farm policy.

15 THE COURT: Is it filed?

16 MS. MELLEN: Yes. And that was a minimum limit --
17 minimum liability limits policy. As alleged by State Farm in
18 the dec action. There was an excluded driver endorsement on
19 the policy that precluded any coverage if the son was
20 driving. The accident injured multiple parties and most
21 significantly, and most tragically resulted in the death of
22 an individual named Mr. Workman. The Workman Estate had
23 wrongful death and survival claims against the named insured
24 and his son.

25 Mr. Workman's Estate was therefore a third-party

1 liability claimant and a Defendant named in State Farm's dec
2 action. State Farm's named insured and his son were also
3 Defendants in the dec action and the Workman estate in the
4 dec action was represented by Mr. Kahn, counsel for
5 Plaintiffs here today. When State Farm filed the dec action,
6 it attached a copy of the auto policy, including among other
7 things, other policy parts, the declarations page, the
8 excluded driver endorsement. And the excluded driver
9 endorsement is sought to enforce the policy declarations page
10 filed with the dec action.

11 And this is, I would argue one of the most significant
12 aspects of this suit was as Plaintiffs will highlight for
13 you, prepared after the accident at issue in the dec action,
14 that particular declarations page that was filed as an
15 attachment to the complaint didn't exist at the time of the
16 accident. That post-accident declarations page was prepared
17 as a result of the excluded driver endorsement, the one State
18 Farm sought to enforce in the dec action being processed on
19 the policy after the accident.

20 Now, the big question will be why was an excluded driver
21 endorsement processed on this policy after and not before the
22 accident? To back up a little, State Farm's insured, again,
23 not a party to this case, had signed and accepted that
24 endorsement around the time of the policy's inception in
25 early 2020. State Farm's Underwriting Department had

1 received the insured signed endorsement to the policy in
2 March of 2020, more than a year before the accident, but it
3 never processed the endorsement. That is the act which would
4 create a new declarations page that listed the various policy
5 forms and endorsements, including that specific excluded
6 driver endorsement.

7 THE COURT: Let me -- let me stop you there real quick.
8 When was the -- when did he sign the exclusion?

9 MS. MELLEN: The particular date would've been sometime
10 between February 6th, 2020 and March either 10th or 20th. I
11 don't have the exact date --- in front of me -- at 2020 in
12 that window. It was received by State Farm, I believe on
13 March 10th -- 20th, 2020. So it would be before then.

14 THE COURT: Okay. And so they received it on, and this
15 -- this is the -- this is the area that I'm a little murky
16 on.

17 MS. MELLEN: Yeah.

18 THE COURT: So State Farm receives that form back
19 because presumably the premium was based on excluding the
20 son.

21 MS. MELLEN: That's correct. He was not a rated driver
22 on the policy.

23 THE COURT: Right. And so -- so you all get the -- the
24 signed acceptance exclusion back on or about March 10th,
25 2020. And what -- what happens -- what happens then?

1 MS. MELLEN: Well, it was not processed. Instead that
2 endorsement sat imaged amidst other underwriting records for
3 that policy, but never administratively processed. So while
4 that endorsement existed and had undoubtedly been accepted by
5 the named insured as a part of his policy and signed, it was
6 not listed as an endorsement on the dec page, that policies
7 declarations page that existed at the time of the accident.

8 THE COURT: So typically what would've happened?

9 MS. MELLEN: If it ---

10 THE COURT: If you all received it in, on or about March
11 10, 2020, you received it back. What -- what didn't happen
12 here? That -- that typically happens?

13 MS. MELLEN: It -- it would have been processed -- added
14 to this policy, and the act of doing that would have
15 automatically generated the new -- the new dec page, which is
16 actually what caused some of the claims in this suit, is that
17 when this error was discovered after the accident, which I'm
18 about to get to, it was processed and that act resulted in a
19 new dec page being created.

20 THE COURT: Understood.

21 MS. MELLEN: So what was interesting is at the outset of
22 the liability claims, State Farm's insured, the driver's
23 father, notified claims, and this is reflected in the claim
24 file we have produced that he thought there was an excluded
25 driver endorsement and that there was no coverage, but the

1 existence of the endorsement, because it had not been
2 processed by underwriting, was unknown or not realized to
3 State Farm and that claim, therefore, the liability claims
4 was initially handled as if there were no excluded driver
5 endorsement on this policy.

6 THE COURT: Because the -- even though he said that.

7 MS. MELLEN: Yes.

8 THE COURT: They -- they said, oh, well let's look at
9 that. They went and pulled it up and said, well, there's no
10 exclusion on the dec page.

11 MS. MELLEN: That is correct.

12 THE COURT: So it must just be mistaken or ---

13 MS. MELLEN: That is exactly what is documented in the
14 claim file. Okay. Now the investigation of whether there
15 was an excluded driver endorsement continued after that
16 though, because the insured's son was an excluded driver on
17 all of the insured's auto policies, and there were many over
18 the history of this insured having auto policies with State
19 Farm.

20 THE COURT: Did -- did -- was -- was the dec -- dec page
21 accurately reflect that on the other?

22 MS. MELLEN: I have not -- I -- I have not requested the
23 other dec pages to see that. It -- the reason they continue
24 this investigation in light of those facts is it'd be very
25 unusual to have a driver excluded on all but one of these

1 policies. So within about a month of the third-party
2 liability claims being opened and handled by State Farm,
3 underwriting discovered and realized there was an excluded
4 driver endorsement that had been received more than a year
5 before the accident, it just hadn't been processed.

6 Now, presumably given there was no dispute, it had been
7 signed and accepted by the insured and it did in fact exist.
8 This is not something that was fabricated. Underwriting
9 proceeded with processing the endorsement after the accident.
10 This processing was generated as if we just discussed the new
11 dec page -- the one that would ultimately be filed as an
12 attachment part of the policy with the dec action in federal
13 court.

14 Now, in addition to correcting that processing error and
15 completing that processing, State Farm's underwriting
16 department notified claims of the exclusion.

17 THE COURT: Oh, I'm sorry. I -- I'm so sorry to keep
18 you up.

19 MS. MELLEN: No.

20 THE COURT: It -- but this -- this is the kind of core
21 where I'm -- I'm a little confused. So how did they come --
22 how did they ultimately find out that there's something ---

23 MS. MELLEN: Yeah.

24 THE COURT: --- something that's been scanned that's out
25 there? I've -- I'm looking at the dec page. There's no

1 exclusion on that. Well, hold on a second. How does -- how
2 -- was that an internal discovery?

3 MS. MELLEEN: Right. I -- I don't know the answer to
4 that. I do know from looking at the underwriting records
5 that we produced in this case, you can see the receipt of
6 this and it -- it says "imaged" on this excluded driver
7 endorsement. I do not know, which, you know, maybe it was a
8 particular person who was going through the images. I don't
9 know what led to that discovery.

10 THE COURT: Okay. But at some point they discover that
11 they send it over to claims or whoever it is and say, oh,
12 there is a -- an exclusion right here. And then you say they
13 process that and the new dec page is -- generated that has
14 that exclusion?

15 MS. MELLEEN: Yes. These are two somewhat distinct paths
16 because the act of underwriting processing -- this imaged
17 excluded driver endorsement triggered a generation of a dec
18 page for I believe that the -- the processing occurred on
19 July 13, 2021, and the new dec page was automatically
20 generated on July 14, 2021, the very next day. Separate from
21 that act, underwriting, who had been in communication with
22 claims -- again, everyone was investigating this, they
23 thought it was strange, said there is in fact an excluded
24 driver endorsement and State Farm claim file reflects file
25 notes stating, that and we were originally told there was no

1 excluded driver endorsement. And now they're telling us
2 there is.

3 THE COURT: Where is this in relation to the -- and the
4 dec action was filed in federal court when?

5 MS. MELLEEN: August 16, 2021.

6 THE COURT: So the -- the next month.

7 MS. MELLEEN: Yes.

8 THE COURT: After -- after this was discovered?

9 MS. MELLEEN: Yes. Now, so getting to that, prior to the
10 point of claims learning of this excluded driver endorsement,
11 remember I said they were handling this as if there were
12 coverage. An attorney at Clawson & Staubes have been
13 retained by State Farm to represent the named insured and his
14 son in an attempt to reach a global settlement. There were
15 multiple injuries. There was a death in multiple property
16 damage claims on a minimum limits policy.

17 After learning of the excluded driver endorsement, State
18 Farm -- and there was a conflict -- conflict was discovered
19 with respect to the cost and installs. And after the
20 learning of that and the excluded driver endorsement, State
21 Farm retained Gallivan White Boyd to represent State Farm, it
22 hired separate defense counsel to represent the named
23 insured, and it hired separate defense counsel to represent
24 the insured's son, the driver.

25 After hiring Gallivan White Boyd, State Farm sent

1 reservation of rights letters out to its insured and his son
2 stating there may not be coverage because of the excluded
3 driver endorsement. This was a change in position
4 communicated by State Farm while the Plaintiffs in this case
5 were not State Farm's insureds, not recipients of State
6 Farm's communications with its insured on the underlying
7 claim. The Plaintiffs highlight in their allegations in this
8 lawsuit, at least as I understand them, that State Farm's
9 prior communications with its insured and its insured's son
10 had all suggested there was coverage, albeit only minimum
11 limits for this loss, the law says.

12 After hiring Gallivan White Boyd, then State Farm also
13 denied Tyger River demands from the Workman Estate and it
14 filed the dec action seeking to enforce the endorsement and
15 get a determination from the court that there was no duty to
16 defend or indemnify.

17 THE COURT: And so at that time when you filed the dec
18 action, you named the Estate, dad, son, and State Farm had
19 retained or retained outside -- separate counsel for dad,
20 separate counsel for the son.

21 MS. MELLEN: Yes. Now, they were retained to defend
22 them because there are liability claims pending against them
23 separate from these -- this dec action. And I cannot
24 remember right now if those attorneys retained were also the
25 ones that defended the insured and his son in the dec action.

1 THE COURT: But they were represented by ---

2 MS. MELLEN: Yes, at some point, I know for example, the
3 father, the insured did get his own personal counsel, and I'm
4 just not sure who represented him in the dec action now -- in
5 the dec action complaint, State Farm did not allege it
6 originally handled the claim as if there was no excluded
7 driver endorsement. It did not allege underwriting's
8 post-accident processing of this endorsement, albeit
9 certainly not required under any pleading standard. This was
10 in federal court, but it wouldn't have been required in state
11 court either.

12 Had State Farm alleged in the pleading every step it had
13 taken with respect to this endorsement, I don't believe we
14 would be sitting here today. The Workman Estate answered the
15 dec action complaint denying and contesting State Farm's
16 allegations and the litigation positions asserted in the dec
17 action. None of State Farm's position regarding the
18 endorsement or coverage were accepted or admitted by the
19 Workman Estate.

20 Now, in the six months that would follow the Workman
21 Estate, sought written discovery in a Rule 30(b)(6) of State
22 Farm was to be expected in a dec action on coverage. The
23 30(b)(6) topic served by Mr. Kahn focused on the
24 post-accident preparation of the dec page, what the dec page
25 looked like, or how -- what dec page existed at the time of

1 the accident, and whether or not the endorsement signed and
2 accepted by State Farm's insured had been approved by the
3 DOI.

4 THE COURT: And presumably, I -- I don't know this, but
5 presumably that question came up because the dec page had a
6 date on it that was after the accident.

7 MS. MELLEN: You know, it's interesting. I don't know
8 why that question would come up. I mean, in this state, all
9 insurers have to get forms approved before use. It would be
10 very uncommon. I mean, it happens. We see it in the case
11 law where something was not specifically approved by the DOI
12 and normally comes up to the court to say, okay, what's the
13 impact of this afterward?

14 THE COURT: Right.

15 MS. MELLEN: But as a general course ---

16 THE COURT: Well, I'm just -- I'm -- I'm just thinking
17 out loud because if -- if -- if a recitation of the -- the --
18 the -- the process that you've talked about already that
19 there -- you -- not that you were handling it not as an --
20 not with an exclusion, and then that changed, that wasn't
21 alleged in the dec action.

22 MS. MELLEN: Right.

23 THE COURT: But off the bat, there was some discovery
24 about the -- the declarations page and again the date that it
25 was generated is after the accident.

1 MS. MELLEN: Yes. And that date was published on the
2 lower right hand corner of the dec page that was filed. It
3 was not obscured in any way.

4 THE COURT: One -- one more question. I'm sorry. Did
5 -- prior to the filing of the dec action when State Farm was
6 handling those issues internally about whether it was imaged,
7 whether it was handled, initially it was handled as a -- as
8 no exclusion, it -- it -- the exclusion was found, the -- the
9 new dec page was generated. Was State Farm discussing that
10 with the insured at that time or prior to the dec action?
11 What did the insured know, if anything ---

12 MS. MELLEN: Well ---

13 THE COURT: --- about that issue.

14 MS. MELLEN: Right. The -- the insured knew that State
15 Farm was stating there was not an excluded driver endorsement
16 when he was in fact stating there was without having spoken
17 to him, I believe as reflected from the claim file that the
18 insured understood it was being investigated. That's based
19 on my review of the file notes that are entered during claim
20 handling.

21 And the initial letters that were sent to the insured
22 said, you know, it will -- they're -- the coverage may not be
23 enough here, and you face potential personal exposure. So by
24 stating that you are suggesting that there is coverage. So I
25 think there were communications of that. And then when it

1 was discovered, speaking to their retained counsel.

2 THE COURT: Right.

3 MS. MELLEN: Telling them what was going on, this is
4 documented in the claim file, the conversations from State
5 Farm to those attorneys, the phone calls out, and the
6 letters, the reservation of rights that had not been sent
7 before, but were sent after the discovery of the excluded
8 driver endorsement.

9 THE COURT: So dad and son's lawyers at least knew that
10 it had gone from being handled as no exclusion to being
11 handled with an exclusion prior to the dec action being filed
12 because of discussions with the State Farm folks and the
13 reservation of rights letter.

14 MS. MELLEN: Correct -- correct. Now, with respect to
15 the 30(b)(6) topic on whether or not this form had been
16 approved by the DOI, State Farm believed the form of the
17 endorsement was an approved form and its representative in
18 the 30(b)(6) deposition testified it was an approved form,
19 explained she had verified this with the actual -- actuarial
20 department in preparation for the 30(b)(6) deposition.
21 During the deposition though, the position of the Workman
22 Estate was laid out and that position was that the
23 endorsement was not an approved form.

24 State Farm had about a decade earlier submitted the
25 endorsed -- endorsement form to the DOI for approval. And

1 the DOI granted it -- approved -- it was approved. But
2 sometime thereafter, State Farm added three lines for the
3 policy holder's name, the policy number and the effective
4 date so that those could be filled in -- on the form. I wish
5 I had an image for you. It might be in -- I actually, I
6 believe it is snippet into the motion for judgment on the
7 pleadings, but it is quite literally policy holder name
8 blank, policy number, blank date, blank.

9 THE COURT: And that form was for?

10 MS. MELLEN: The -- the excluded driver endorsement.

11 THE COURT: Okay.

12 MS. MELLEN: Now, the substance of the approved form had
13 -- was never changed, and State Farm did not resubmit the
14 form to the DOI for approval of the addition of three lines.
15 Now, while this position proved as a surprise to State Farm
16 in the deposition, I don't believe it was a surprise to the
17 Workman Estate or Mr. Kahn, given the nature of his
18 questions, an undisclosed FOIA request to the DOI he
19 submitted prior to the deposition and documents he presented
20 to the 30(b)(6) witness in the deposition.

21 Now, after that deposition, that's really a very pivotal
22 point in claim handling here. State Farm considered the
23 totality of these circumstances, like the post-accident
24 processing of -- processing of the endorsement, which was a
25 -- a -- also a large focus of this 30(b)(6) deposition. The

1 Workman Estate's apparent position, the endorsement was not
2 enforceable at all.

3 The Tyger River demands that State Farm had denied on a
4 minimum limits policy involving a death, all of those things,
5 State Farm took a number of immediate steps at that point.
6 It retracted its reservation of rights, it extended coverage
7 to its named insured and his son. It sought dismissal of the
8 dec action. It mediated the Workman Estate's claims against
9 the insured and his son. And despite the policy's minimum
10 liability limits, it paid the Workman Estate \$10 million in
11 exchange for a release not of State Farm, but of State Farm's
12 insured and his son.

13 Despite these steps, the Workman Estate represented by
14 Mr. Kahn would not agree to dismiss the dec action and
15 instead filed a motion for sanctions against State Farm and
16 its counsel, Gallivan White Boyd. That Motion for Sanctions
17 alleged the same fraudulent scheme alleged in the current
18 suit, that to avoid coverage on a minimum limits policy,
19 State Farm filed a false forged bogus fake document among the
20 various ways Plaintiffs describe this declarations page.

21 And that its allegations in the dec action were false
22 and that State Farm and its counsel had committed fraud.
23 Now, the Motion for Sanctions was briefed in full by State
24 Farm and the Workman Estate in the district court with Judge
25 Seymour presiding. By that time, State Farm had retained my

1 law firm to advise it in connection with the alleged past
2 wrongdoings.

3 In an effort to be transparent, the optics painted by my
4 skilled opposing counsel were not good. In an effort to be
5 transparent, State Farm filed declarations with sworn witness
6 testimony as well as the transcript of the deposition Mr.
7 Kahn took detailing what had happened. Judge Seymour denied
8 the motion for sanctions and said she would not consider any
9 Rule 11 violations given the testimonial evidence presented
10 by State Farm. The case was dismissed -- the dec action was
11 dismissed over the Workman Estate's objection, and that was
12 in 2022.

13 In 2023, Plaintiffs, the heirs of the Workman Estate
14 brought this suit. Now, the claims against State Farm are
15 abusive process fraud, negligent misrepresentation, civil
16 conspiracy, and unfair trade practices, all of which are
17 premised on State Farm's filing of the dec action with the
18 post-accident declarations page and its allegations that the
19 endorsement was valid and enforceable. The very things over
20 which the district court would not issue sanctions over and
21 would not consider Rule 11 violations. State Farm is made
22 for judgment on the pleadings on each of these causes of
23 action, which I will now address in turn, unless you have any
24 questions, Your Honor.

25 THE COURT: No, please.

1 MS. MELLEN: Okay. So beginning with abuse process,
2 there are two essential elements to an abusive process claim.
3 First, which is going to be the one at issue in this motion,
4 an ulterior purpose for the process. The second element is a
5 willful act in the use of process, not proper in the regular
6 conduct. Dismissal is required here because the first
7 essential element, the ulterior motive, has not and cannot be
8 stated. Now, if we look at if we -- if we -- it's important
9 to consider what is an ulterior motive so that we know if
10 there are allegations that would meet this threshold in the
11 complaint.

12 And as stated by the Court of Appeals in Food Lion
13 versus Workers International Union, there is an abusive
14 process claim if the suit is brought not to recover on the
15 cause of action stated in the complaint, but instead to
16 accomplish a purpose for which the process was not designed.
17 Now, for example, in Polaris versus Seinar, S-E-I-N-A-R, the
18 -- the Supreme Court discussed an example of this. For
19 example, when a neighbor institutes commitment proceedings
20 against another neighbor, but was alleged to have the
21 ulterior motive of driving this neighbor from the
22 neighborhood, not commitment, that would be an abusive
23 process claim.

24 Here State Farm instituted the dec action seeking a
25 determination of no coverage based on its allegations and the

1 documents it attached to the complaint. The Plaintiffs here
2 in this suit vehemently argue that the use of the false
3 documents as attachments constitute an abuse of process and
4 that the ulterior motive was the use of these false
5 documents. Now, while these allegations are all denied, we
6 hear Plaintiffs loud and clear. They think State Farm filed
7 false bogus documents. While those allegations might meet
8 the second element of an abusive process claim, a willful act
9 that is not intended or that is improper in the course of
10 regular handling of the process, that does not constitute
11 ulterior motive. And this is really conflating the two
12 elements.

13 Now, a similar claim was addressed. I -- I should --
14 premise preface this with while I do think this is a creative
15 lawsuit and I -- I don't believe it is addressed in any
16 current South Carolina Court of Appeals or Supreme Court
17 cases; this is not the first time a suit like this has been
18 brought. So I --- I did look out at other jurisdictions and
19 I -- I found a decision Ivy versus Travelers Insurance
20 Company, which I've brought copies of if you would like. And
21 I think it's worth mentioning, despite it being an Indiana
22 decision, it's a District of Indiana decision.

23 There, the Defendants filed two false affidavits in
24 their response and opposition to a motion for summary
25 judgment. And the Defendant there was Travelers Insurance.

1 Based on the Defendant's filing of those false affidavits,
2 the Plaintiff in that case brought a separate suit alleging
3 abusive process and fraud. And with respect to abusive
4 process, the Plaintiff there made similar arguments to those
5 made here that the Defendants had committed an abuse of
6 process by perverting the legitimate purpose of the summary
7 judgment process by creating and filing using false
8 documents. The court granted the Defendant's motion for
9 judgment on the pleadings stating the filing of false
10 affidavits with an opposition to a motion for summary
11 judgment. If that allegation were accepted as true, it
12 couldn't give rise to a claim for abuse of process because
13 the purpose of a response is to oppose the motion for summary
14 judgment. It has not perverted the process into something
15 for which it is not otherwise intended.

16 So given the lack of any allegations of an ulterior
17 motive, but instead a motive that is expressly set forth in
18 the dec action, we do not feel an abuse of process claim can
19 lie and feel that it should be dismissed. Now, fraud and
20 negligent misrepresentation, I think we can address
21 collectively. Essential to both of those claims is the
22 Plaintiff's reasonable and detrimental reliance on a
23 misrepresentation. And boiling that down even further, it is
24 just reliance. You have to have reliance more so it needs to
25 be justified and detrimental. You have to have reliance; you

1 have to allege it.

2 It's an essential element. And while not addressed in
3 State Farm's motion, I did see Plaintiff's memo emailed to
4 the court last week, which states that Gallivan White Boyd's
5 argument, which is the same as ours, no reliance is a defense
6 and not to be considered on this motion. That is simply
7 false. The Court of Appeals and the Supreme Court have both
8 held that reliance, which is both justifiable and
9 detrimental, are essential elements. There is no decision
10 that removes those elements from these causes of action.

11 Now, interestingly, Plaintiff's memo emailed last week
12 does not reference any paragraphs in the complaint that
13 allege justifiable and detrimental reliance on false
14 statement. I don't believe there are any, but I would like
15 to know what those paragraph numbers are if they believe
16 they're there. Now, the complaint does not allege that the
17 Plaintiffs were in fact induced to act. It is silent as to
18 any action the Plaintiffs took or refrain to take in reliance
19 on the alleged false statements.

20 Now, in addition to the lack of allegations, we argue,
21 Your Honor, the court should take judicial notice of the
22 Workman Estate's answer to State Farm's complaint in the dec
23 action, as well as the Workman Estate's Rule 2603 responses
24 filed in the dec action, which show Plaintiffs were never --
25 they'll never be able to allege reliance. They did not

1 believe State Farm's statements. They contested these legal
2 positions from the get-go. Those are in the public record
3 and I have also brought copies of the dec action complaint,
4 the Workman Estate's answer, and the Workman Estate's 2603
5 responses that I think can be taken judicial notice of, if
6 you would like copies.

7 THE COURT: Please. If -- If you want to give those
8 too? If you want to find them. Okay. You got them.

9 MS. MELLEN: Okay.

10 THE COURT: Sorry. I got -- I'm sorry. I didn't mean
11 to interrupt your flow there, but that would be helpful.

12 MS. MELLEN: May I approach?

13 THE COURT: Yes.

14 MS. MELLEN: Okay. These are recorded. The complaint,
15 (inaudible) answer 3rd, 26 and three responses. If the
16 alleged false statements or misrepresentations had been
17 relied upon, they would've been admitted, not denied. This
18 would not have been contested litigation. And that is also,
19 in fact illustrated in the Ivy decision I was talking about
20 with respect to the abusive process claim.

21 Again, there was a fraud cause of action there in
22 addition to abuse of process. And when the court granted the
23 Defendant's motion for judgment on the pleadings based on the
24 Defendant's filing of false affidavits in another case, the
25 court explained that the Plaintiff failed to satisfy the

1 elements of fraud, which like those here require reliance
2 because he did not rely on the affidavits. Instead, the
3 Plaintiff in that underlying suit opposed the affidavits,
4 objected to them, raised their falsity to the court and
5 sought to have them stricken. Therefore, he could not have
6 relied on them.

7 Further with respect to fraud pursuant to Rule 9, the
8 Plaintiffs have to allege, and this doesn't apply to their
9 negligent misrepresentation claim, but the fraud claim, they
10 have to allege with specificity their justifiable --
11 justifiable, detrimental reliance, which they have not done.
12 All right, moving to the civil conspiracy claim, a principle
13 and an agent cannot conspire together in the scope of the
14 agency relationship. Here, the civil conspiracy claim has to
15 be dismissed because the alleged conspiracy was between
16 client and attorney. And attorney-client relationship is by
17 definition a principle agent relationship.

18 THE COURT: Is there -- is there any exception to that
19 or is that an absolute in your view?

20 MS. MELLEN: It is an absolute in my view if the
21 attorney is serving in his role as the client's attorney. I
22 suppose there could be a situation where you had two people
23 that had that relationship and maybe there were some other
24 relationship between the two of them as well. And maybe the
25 complaint of conduct fell not within the attorney-client

1 relationship, but personal friend or something else.

2 THE COURT: Right. And -- and -- and -- and again, I --
3 I understand that this issue's contested, but if the -- if
4 the Plaintiffs alleged that the lawyer and somebody from
5 State Farm sat down at a table and said, let's -- we don't
6 want to pay the minimum limits here. We want to create a --
7 a false and fraudulent dec page so that we can submit it to
8 the court. Do you agree with that? Yes, I agree with that.
9 You're my lawyer? Yes. And then they do that in -- in your
10 view, is that an exception?

11 MS. MELLEEN: No. It -- unless I guess there could be a
12 situation if they're not acting as a -- the attorneys are not
13 acting as client's counsel, but as -- as something else like
14 has a -- but if they are acting -- if the attorney is acting
15 as the client's counsel, all they can do is act on behalf of
16 the principal. Their actions are the principal's actions,
17 which is I think why, for example, (inaudible) describes a
18 civil conspiracy claim in this context as a "legal
19 impossibility."

20 THE COURT: Okay.

21 MS. MELLEEN: And the Supreme Court of South Carolina has
22 held that a civil conspiracy cannot exist when the alleged
23 act arises in that agent principal relationship. That's
24 McMillan versus Oconee Memorial Hospital. And here the --
25 the Defendants here, State Farm and its counsel are stating

1 this -- this was all an attorney-client relationship. I
2 don't believe that another party can somehow define the
3 relationship between them.

4 THE COURT: Is -- is there any allegation in the, in the
5 complaint that there was a relationship between State Farm
6 and Gallivan White other than attorney client?

7 MS. MELLEN: I don't believe so. If -- if -- if I hear
8 of that though, I would like to speak to it later. Now, in
9 addition, another basis for dismissing this civil conspiracy
10 claim is that there are no separate acts in furtherance of a
11 conspiracy alleged. Instead, the complaint merely relies on
12 the alleged wrongdoings that are the basis for the other
13 causes of action. And I -- I didn't see anything in the
14 brief submitted last week that contradicted that it -- it
15 simply just said, we've alleged acts in furtherance of a
16 civil conspiracy, but there was no distinction made between
17 those acts. And the fact that those are the very same acts
18 for the other causes of action.

19 The -- they must plead those additional acts in
20 furtherance of the conspiracy. They cannot charge a civil
21 conspiracy as civil conspiracy with the same acts as the
22 other causes of action. Now, moving to the last cause of
23 action, Unfair Trade Practices Act. This cause of action,
24 the (inaudible) claim must be dismissed because it clearly
25 alleges unfair or deceptive acts or practices in the business

1 of insurance. The Plaintiffs specifically allege State
2 Farm's unfair acts violated South Carolina's Insurance Code
3 in Title 38. Their individual allegations either quote from
4 the Insurance Claims Practices Act or set forth unfair acts
5 concerning "payment of insurance." And those can be found in
6 paragraphs 154 and 156 of the complaint.

7 Now, for nearly 30 years, courts interpreting South
8 Carolina law have consistently held that the South Carolina
9 Unfair Trade Rights Act does not apply to the business of
10 insurance. The insurance business is exempt from coverage
11 under that act. The -- and I'm quoting now, the Trustees of
12 Grace Reformed Episcopal Church versus Charleston Insurance
13 Company decision. But as District of South Carolina in 1994
14 868 Federal Supplement 128, by precluding unfair trade
15 practices covered and regulated under Chapter 57, the South
16 Carolina Unfair Trade Practices Act exempts from the coverage
17 of (inaudible) all unfair trade practices in the business of
18 insurance. And this is because the Insurance Trade Practices
19 Act governs any unfair deceptive acts in the conduct of
20 insurance. And the Insurance Trade Practices Act does not
21 create a private right of action for any alleged unfair acts.
22 For those reasons, and I'm -- I -- I have a feeling we might
23 need to address some points on reply under the Unfair Trade
24 Practices Act. I'm not quite sure where they're going to go
25 with this. For those reasons, the Unfair Trade Practices Act

1 claim should be dismissed.

2 And while not a cause of action, we do have one more
3 point in our motion for judgment on the pleadings, and that
4 would be the standing of the individual Plaintiffs in their
5 individual capacity, the Plaintiffs are heirs of Mr.
6 Workman's Estate who had no interaction with State Farm. The
7 individual Plaintiffs were not Defendants to the dec action.
8 They were not spoken to in writing or orally by State Farm.
9 They were not State Farm's insureds. If any of the claims I
10 have just argued survive, they should be available only to
11 the personal representative of Mr. Workman's Estate, not the
12 individual Plaintiffs, the adult children of Mr. Workman
13 presumed heirs of the Estate.

14 THE COURT: So you think that if there are any -- any --
15 any causes of action that go forward, the only proper parties
16 would be the Estate and the personal representative?

17 MS. MELLEN: Oh, I actually don't know the answer to
18 that. I would -- I'd have to look, but I don't think the
19 individual Plaintiffs would be proper parties. But I -- we
20 are not moving for judgment on the pleadings based on our
21 understanding of the personal representative of the Estate.
22 Thank you, Your Honor.

23 MR. KAHN: I had suggested to ---

24 THE COURT: Yeah. Before we start, would you mind if we
25 just took just a couple minute break.

1 MR. KAHN: Not at all. And I was going to confer with
2 opposing counsel to see if maybe I should go now. I mean
3 after the break.

4 THE COURT: Whatever you -- whatever, just whatever is
5 the most efficient way to do it.

6 MR. KAHN: Sure.

7 THE COURT: Whatever you all --

8 MR. KAHN: Let's look at -- we'll take a break and we'll
9 let you know.

10 THE COURT: Thank you. An excellent choice.

11 MR. KAHN: Not the Honorable Judge McGee.

12 MS. MELLEN: (Inaudible).

13 MR. KAHN: Oh, I did. So sorry.

14 THE COURT: I did -- I had to keep him from running out
15 the door. A couple of deputies had to tackle him this first
16 week and we're wearing them out here and ---

17 MR. KAHN: Brought a couple of stuff. Or maybe I'll do
18 them in the ---

19 THE COURT: I offered to be his easel for these.

20 MR. KAHN: Then I have to pay him.

21 MR. WILKERSON: Your Honor, just that -- just to ask he
22 go to -- go to next. And I have no problem (inaudible) I'll
23 end it in after he addresses the State Farm (inaudible).

24 THE COURT: Whatever you all agree to is fine.

25 MR. WILKERSON: Thank you, Your Honor.

1 MR. KAHN: Thank you. And I (inaudible) go ahead. May
2 I please the court. I've got a time line, (inaudible) that
3 first, let me say a couple things. One is, I think I have to
4 say this, that much of what was said was outside the
5 pleadings, therefore it shouldn't be considered. But subject
6 to that she went into a time line that also discussed what
7 was in the claims file. So to the extent we get to discovery
8 dispute, she's opened up the whole file, which is what I've
9 argued we're entitled to anyway, including conversations that
10 she mentioned with counsel and all these other things.

11 Now, to be clear, we -- I know we're not at the
12 discovery motion. I don't dispute that once State Farm got
13 in touch with Robbie's firm -- (inaudible) Robbie's firm,
14 that I'm not entitled to that because once they had the
15 problem and sought separate counsel, I'm not claiming I'm
16 entitled to that.

17 THE COURT: No, I'm not -- we're not dealing --

18 MR. KAHN: Sure. I understand. But I just want that
19 ---

20 THE COURT: Well, I mean, she may have responded to
21 questions that I have.

22 MR. KAHN: Sure.

23 THE COURT: I mean, that's not a waiver of attorney
24 client.

25 MR. KAHN: I understand.

1 THE COURT: As far as I'm concerned.

2 MR. KAHN: Okay.

3 THE COURT: So, but as far as the discovery, we'll ---

4 MR. KAHN: Sure.

5 THE COURT: Let's deal with that down the line. And I
6 do want to -- to -- to let you know again, I mean, I read --
7 read -- read everything. And so I -- I understand you all's
8 position and I think I'm understanding, and we can go through
9 this, but what I don't want to do is to spend too much time
10 on -- on both sides interpretation of the dec - I mean the --
11 the -- the dec page and -- and everything else. I -- I --
12 both of you all, or all three of you all briefed that very
13 well. And so I -- I -- I really, I -- I get your position on
14 that. Their position is that it was a -- an -- an honest
15 thing. And -- and you all's it's different. I don't want to
16 argue about that too much.

17 MR. KAHN: I understand.

18 THE COURT: I -- I understand you all's position on
19 that. So maybe we can streamline it and get right to the ---

20 MR. KAHN: Let me address something else that came up in
21 her argument about -- because I don't think it's -- I think
22 there's two documents at issue, Your Honor. This is
23 testimony -- I -- trying to mention the deposition testimony
24 of the court copy of deposition testimony of Shea Anderson,
25 who was the 36B representative. She mentioned the court has

1 to understand or I need to make clear, there are two
2 documents at issue. One is the form, the exclusion form,
3 which is excitingly called the 6023 DC form.

4 THE COURT: Is that the one that is sent to the dad for
5 him to sign and then return to State Farm that was imaged and
6 then we'll just leave it there?

7 MR. KAHN: Yes, sir.

8 THE COURT: Okay.

9 MR. KAHN: However, to be clear, that is a document that
10 is dated -- it was created in 2013. And that's important for
11 the next part of the discussion under South Carolina law fo
12 State Farm. You know, I've got part of these got blown up
13 with some of the -- we call false statements made in the
14 complaint against State Farm. Actually, I'm sorry, let me
15 get my friend here. One of the things State Farm -- or that
16 was pled by the Defendants in the complaint was that the form
17 that was attached complied with 38-77-340. They specifically
18 pled this form has been approved under the statute. That
19 statute requires that the form be submitted and approved by
20 the Department of Insurance before it can be used.

21 THE COURT: And that's the one where the -- the -- the
22 difference was the three lines, the policy holder, the -- the
23 -- the -- the insured, the policy holder, and the date.

24 MR. KAHN: And the policy number.

25 THE COURT: The -- excuse me, policy number, the

1 insured, the policy number and the date.

2 MR. KAHN: And there were some other things, but yes,
3 that's the part of the -- that matters.

4 THE COURT: Okay. So -- so -- so those three lines were
5 not approved by the Department of Insurance prior to the
6 father signing. And I'm sorry about this, but I'll just call
7 them father and son.

8 MR. KAHN: Sure.

9 THE COURT: From the father signing the 2013 exclusion.

10 MR. KAHN: Correct.

11 THE COURT: Okay.

12 MR. KAHN: All right. And the reason why that's
13 important to me is -- in -- because they -- my friend argues
14 that all we had to do is tell the truth and we wouldn't be
15 here. I'm like, that's right. That's what the fraudulent
16 conduct is. If you pled accident or you pled reformation, we
17 wouldn't be here. But that's not what they did. They pled
18 that the documents attached were true. They were the policy
19 in effect. For example, in the complaint, they specifically
20 state a copy of the policy as attached as Exhibit A. That
21 Exhibit A is the dec page. It was fraudulently in -- created
22 after the fact.

23 THE COURT: Well, and this is the dec -- this is for the
24 dec action.

25 MR. KAHN: Correct.

1 THE COURT: Okay. And ---

2 MR. KAHN: That's different than the form.

3 THE COURT: I -- I understand. And this is before --
4 well, go -- go ahead -- go ahead. I think you're getting --
5 I think you're getting there. So I'm not ---

6 MR. KAHN: So part of what's going on is now after the
7 fact they say, oh, well July 14th was there, what's the
8 problem? The problem is they didn't say this was created
9 after the fact, and we've added these things. They added the
10 excluded driver, they changed the policy number. One of the
11 things that's important factually in this case that my friend
12 skipped over, is this as a fact, when the father signed the
13 form that was not approved, a policy 40 was created. That's
14 just a fact. It was policy 40. That's what it ended in.

15 That policy was canceled. Oh, first of all, that policy
16 did not list him as an excluded driver. That policy was
17 canceled on August 23, 2020. And that's part of my time
18 line. On August 23, 2020, a new policy, 40A was created that
19 had a dec page, which also did not have the excluded driver.
20 State Farm did not get the father to sign a new unapproved
21 form.

22 THE COURT: Let -- let me ask you this is -- is --
23 there's no dispute, but that the -- the father signed the
24 exclusion form at some point, right? I mean, prior in what?
25 20, what was it? 2020?

1 MR. KAHN: The father in the answer in federal court,
2 the amended answer, denied signing it.

3 THE COURT: Is there -- is there a signed exclusion
4 page? Is there an exclusion form signed by the father
5 excluding the son from coverage that was sent to State Farm?

6 MR. KAHN: I believe ---

7 THE COURT: Yeah. I mean, is there -- has it been
8 produced? Have you seen it?

9 MR. KAHN: I have seen the form that they are saying the
10 father signed, Your Honor. What I'm telling you is the
11 father in his answer denied signing it. I didn't depose the
12 father. All these things are saying about what the father
13 did, we don't know as fact. That's all I'm saying. I'm not
14 -- it may be the facts may uncover that the father actually
15 signed it. It may be. But right now, the father -- the
16 amended answer in federal court, the father denied that. I'm
17 just letting you know that, that's just facts. That's -- I'm
18 not trying to dance in a mean way.

19 THE COURT: No.

20 MR. KAHN: But let's assume State Farm has produced a
21 document which they claim the father signed, for purposes of
22 argument, I'll spot him that, but it's still on the
23 unapproved form.

24 THE COURT: Okay. And so -- and the difference between
25 the approved and unapproved are three lines name, I mean

1 name, policy number, and the date.

2 MR. KAHN: Name, policy number and something. I don't
3 remember what it is. I don't remember. Oh, it -- I can't
4 remember if it's the date. No -- no, actually, Your Honor,
5 it's name. I'm sorry. It's -- it's policy number. It has
6 like, the amount of coverages, I think and something else.
7 They may have one of them, but whatever it is, I -- I don't
8 remember what it is. But this -- and just so the record is
9 clear, also, there are some other differences, but for our
10 purposes, it's not important. I just -- the reason why I'm
11 letting you know that is this, my friend had mentioned a
12 little while ago what Shea Anderson testified in her
13 deposition. She made it seem as if State Farm thought this
14 was not a big deal. So what I've handed up to the court is
15 her deposition testimony.

16 And if you turn to page 95 of the deposition testimony,
17 I asked her the question, this -- this -- and this relates to
18 the policy itself. They said, at no time from the inception
19 of the State Farm insurance policy concerning the top of --
20 through June 30th, which is a couple weeks after the
21 collision, was there ever a declarations page that showed
22 Melvin Lamb was an excluded driver? She says, "Correct."
23 And it said the same thing. There's no time that included
24 this 6023 DC as an endorsement. She agreed with that. And I
25 know the Court wants me to move on to the form part of it.

1 THE COURT: No, the -- the 6023 DC is?

2 MR. KAHN: That's the exclusion form.

3 THE COURT: Okay -- okay.

4 MR. KAHN: And what's going on is that -- and that's why
5 I look at the time line. What happens is, in 2009, and I
6 think my friend conceded that, State Farm submitted a form
7 for approval to the Department of Insurance under this
8 38-77-340 -- state -- the Insurance Department approved it in
9 2010. I don't think that's disputed. I believe based on a
10 date appearing on the form, which is a 2013 date, somebody at
11 State Farm came up with this form and just started using it
12 for years and nobody questioned it at State Farm.

13 THE COURT: I -- I -- I get the form issue. I'm not as
14 concerned about the addition of three lines about that as I
15 am about some of the other issues about the pleadings and the
16 allegations that may or may not state alleged sufficiently
17 the elements of all of the costs of action.

18 MR. KAHN: Sure. All right. I'll -- I hear -- let me
19 just -- in her deposition testimony, she said she agrees that
20 a performance's not approved. It can't be used. I have to
21 say that because State Farm, part of their argument is it's
22 no big deal. We just fixed an error. It's based on an
23 unapproved form that you can't use.

24 THE COURT: So what -- what -- so -- so for all the
25 forms that don't have those three lines that have been --

1 been used is there a prior right cause of action in the
2 insurance code for that?

3 MR. KAHN: It -- it's not a question of prior right
4 cause of action. Under South Carolina law, there's a case
5 that came out around 2021 in August. I think Progressive had
6 the case in which the South Carolina Supreme Court says, if
7 you've got one of these forms under 28 -- under 3877340 and
8 it's been approved, you can use it. I candidly think that
9 someone at State Farm saw this and said, here's a chance for
10 us to get our form approved. I'm not -- I'm not kidding. I
11 just -- I'm just telling the timing is fascinating because if
12 you look at the facts, Your Honor, which some of the things
13 she glossed over, remember State Farm sent us letters saying,
14 policy 40A provides coverage.

15 They sent those letters to their insured saying that we
16 relied on it by getting -- by them going to our underinsured
17 carrier and getting coverage. Then this lawsuit was filed
18 and I had to call up our carrier and say, timeout, I don't
19 think there's underinsured coverage now. Now, they're saying
20 there's no coverage. They actually stopped because of this
21 lawsuit, our ability to get the underinsured coverage. They
22 talk about no reliance.

23 This lawsuit boogered that up and they're acting like
24 it's not a big deal. And that's part of what was planned in
25 the complaint. That because of what they did, it did affect

1 us negatively because now it stopped us from Progressive. I
2 think their -- their client was also Progressive. Had -- I'm
3 sorry, their insurance. Our client's and trust carrier had
4 actually said, we'll pay you the 200,000, which was how much
5 the UIM was. And I have -- and I've already provided them
6 with the documents and discovery saying that. Then they
7 filed a lawsuit and I had to get in touch with the UIM
8 carrier and said, this is now UIM coverage. And it stopped
9 my clients from getting their money right away. They're
10 acting like this is no big deal. That is a problem. That is
11 one of the effects that this false lawsuit caused.

12 And I pled that. So that's part of it. The reason why
13 I'm going back to this 40, 40A and 40B is that Policy 40 was
14 canceled because State Farm added that line. It was
15 unapproved, it had the policy number on it. That line --
16 that unapproved line has 40 on it. Now, what State Farm did
17 was that policy was canceled, 40A comes into being, they
18 didn't get the father to sign a new form for 40A at all.
19 Forget the fact that it hadn't been approved.

20 What happened was after the collision, I believe
21 somebody at State Farm said, how -- and this is what we've
22 pled and based on our pleadings, that's enough to go forward.
23 Somebody at State Farm or State Farm got together and said,
24 let's go forward anyway. We're going to Frankenstein this.
25 We're going to take this unapproved form 40 that has been

1 signed by the father, cobble it together with a new document
2 we are creating that adds the exclusion and changes the
3 policy number to 40B, file a lawsuit and say, this is the
4 policy and we're going to sue all these people.

5 And they -- the -- this -- as they pointed out, this is
6 a minimum (inaudible) policy. Why would we do that? Because
7 that's exactly right. There were like eight people involved
8 in this collision. Why would they defend this? If an
9 insurance company says in federal court, this is the policy,
10 here's the dec page, here's the signed form. Who in their
11 right mind wouldn't believe them? The clients rightfully
12 hired me to deal with that. That's detrimental reliance.
13 Yes, I denied it.

14 But the reliance came in when they hired a lawyer to
15 deal with it. They relied on the pleadings as being true to
16 hire me. I then picked up on this scam. The fact that it's
17 denied in the pleadings doesn't mean there wasn't reliance on
18 the false statements. And I've cited case law in our reply
19 says, basically somebody who makes false statements doesn't
20 get to say later on, oh, you -- what were you thinking
21 believing this?

22 THE COURT: Well, the -- the -- the -- the whole thing
23 about the dec action is that I'm -- and I may be way off
24 base, but to me that seems like something that Judge Seymour
25 had the opportunity and jurisdiction and the capability to

1 deal with. And she did deal with it.

2 MR. KAHN: Okay, thank you. Very quick.

3 THE COURT: I -- you know, what -- what I don't want to
4 do is to -- is to -- is to say the pleadings that you filed
5 in federal court were defective. And I'm going to do A, if I
6 -- I assume, and -- and from what I understand, you all filed
7 a motion for sanctions Judge Seymour allowed that to be
8 briefed, heard arguments, and then denied it.

9 MR. KAHN: She allowed it to be briefed. There were no
10 arguments, but she did deny their motion for sanctions. And
11 let's talk about what happened in federal court for a moment.

12 THE COURT: Well, I don't want to get too much in the
13 weeds on that because again, if they said something false in
14 federal court, that's -- that's -- isn't that something for
15 Judge Seymour? I mean, if Judge Seymour thought that there
16 was some kind of fraud in the court, she certainly would've
17 dealt with it. I know that.

18 MR. KAHN: Judge Seymour chose not to deal with it
19 because she said the issue -- keep in mind, because I want to
20 answer your question why it's not res judicata or something
21 like that, which is what I have the sense that the court is
22 sort of suggesting. It was not res judicata because the
23 lawsuit itself brought against our clients was a DJ action to
24 determine whether or not there was coverage. That was the
25 scope of the lawsuit. I could not counterclaim for anything

1 for abuse of process, for example, until the judge dismissed
2 the lawsuit. That's when the abuse of process claim arises.
3 I can't have an abuse of process placed until we prevail. So
4 once Judge Seymour dismissed with prejudice, that's when the
5 cause of action arises in terms of the abuse of process.

6 THE COURT: Well did you all oppose the voluntary
7 dismissal of that?

8 MR. KAHN: Yes. Correct. But we could not
9 counterclaim, we -- we did not counterclaim because we
10 couldn't, we -- here's what happened.

11 THE COURT: You know, again, I -- I -- I want to get to
12 the -- to the claims and -- and the complaint. What I don't
13 want to do is rehash the federal case.

14 MR. KAHN: Sure.

15 THE COURT: And what you -- who said what in a pleading
16 in a -- in a separate federal case and what the judge decided
17 in was proper and improper before dismissing the case and
18 denying motion for sanctions. I -- I -- I -- I'm -- I -- I'm
19 not going to get in the middle of ---

20 MR. KAHN: Okay.

21 THE COURT: --- of that.

22 MR. KAHN: All right.

23 THE COURT: What I'd like to get to are the allegations
24 in your complaint that you believe ---

25 MR. KAHN: Sure.

1 THE COURT: --- satisfied 12(c).

2 MR. KAHN: Okay. Thank you. All right, so we pled in
3 terms of abuse of process, we can't give the Court a blow up
4 of false statements in the complaint. It must be the case
5 that intentionally pleading false statements and using forged
6 documents in a lawsuit cannot be the normal course of the
7 lawsuit. That can't be normal process.

8 THE COURT: No. And -- and look, I understand that's
9 your position, that they're forged documents, but that's not
10 that -- that -- that's not, I mean, you -- you've heard one
11 explanation for it. I know you don't believe it. And -- and
12 that's not -- you don't agree with it. Just like she doesn't
13 agree with -- with yours. But I mean, there's been no
14 judicial determination that there has been a fraud that's
15 occurred or that these are forged documents or was there a
16 determination of that in the federal action?

17 MR. KAHN: There was no determination. And that was not
18 brought up as a court determination or that wasn't ruled on
19 determination.

20 THE COURT: Well, I mean that would've been part of your
21 motion for sanctions, right?

22 MR. KAHN: No.

23 THE COURT: They put false information, they put
24 fraudulent information in there about -- in the complaint and
25 in the documents that were submitted to the court in support

1 of the dec action. Those were fraudulent, forged, all those
2 were raised with, I -- I presume with Judge Seymour. Is that
3 right?

4 MR. KAHN: I raised those in the context of a motion for
5 sanctions, not for cause of action.

6 THE COURT: I -- I -- I -- I know. I'm just saying were
7 those raised with Judge Seymour?

8 MR. KAHN: I'll say yes.

9 THE COURT: Okay.

10 MR. KAHN: Not -- not be -- just because I'm sure I did.
11 I'm not -- I would've raised that (inaudible) false and bogus
12 documents because I felt an obligation as an officer of the
13 federal court to bring to the attention of the Court what
14 happened. Not ---

15 THE COURT: What -- go -- go ahead. I'm sorry.

16 MR. KAHN: Not to have a determination about these other
17 causes of action. The -- the scope of the lawsuit in federal
18 court was a DJ action.

19 THE COURT: Uh-huh.

20 MR. KAHN: After the stuff came to light and after we
21 had our mediation, they moved to get -- let me get my time
22 line. At some point I moved for fraud on the court. I think
23 we sat down and resolved it. I opposed there that they moved
24 to dismissal. I think they moved to dismissal with
25 prejudice. I opposed it on the basis. I wanted the court to

1 hear this motion. They attached documents including
2 statements by people. I wanted to depose them. And Judge
3 says, look, this issue is moot. They are agreeing that the
4 policy provides coverage. There's no longer jurisdiction in
5 federal court.

6 So that's sort of the quick way to sort of say it's not
7 res judicata. The Judge, because it's a federal court, has
8 limited to jurisdiction. And she said, because the issue of
9 coverage, which is the only thing in front of me is gone.
10 Everything's moot. Goodbye, basically. So that's why I feel
11 like this isn't a res judicata thing, it's not a collateral
12 stop. I just felt as an officer up in federal court, had a
13 responsibility to bring this to the attention to the Judge in
14 the court. And she said the issue before me is that what I
15 was to address is done.

16 So let me get to if I've addressed that, I'll get to now
17 our complaint. So in terms of abusive process, we've cited a
18 case law that says, and it must be the case that she talks
19 about an ulterior purpose. An ulterior purpose is to have
20 their unapproved form declared valid when it wasn't. An
21 ulterior purpose was to have the court rule that this dec
22 page, which was created after the fact as being valid, that's
23 an ulterior purpose.

24 That's not proper in this course of litigation for a
25 party to create documents after the fact and then plead that

1 they existed at the time and try to use them. That cannot be
2 part of this normal course of litigation. And that's why I
3 mentioned the idea what they should have done if they were
4 going to do it the right way and not play these games, they
5 should have pled mistake and or reformation and lay it out.
6 That's not what they pled.

7 THE COURT: Well, what if -- what if the -- the correct
8 address for the insured was 123 Main Street and when they
9 looked at the dec page, it was misspelled and they corrected
10 that error after the fact. I mean, in this case, I know it's
11 not the same because they have the exclusion on there. But I
12 mean, are -- I -- I'm -- I'm -- I'm -- I'm trying to get to
13 the point. Are you saying that if it -- that -- that any
14 change is a fraud on the court? If it was done after the
15 fact?

16 MR. KAHN: I think.

17 THE COURT: What it was?

18 MR. KAHN: I think when one makes a material change to a
19 dec page in order to exclude coverage, and you plead that,
20 that is the dec page that was in existence at the time of
21 collision and had been for a year. That is fraud. That is
22 fraud. It's an abusive process. What they should have done,
23 it's -- they're good lawyers, plead reformation plead
24 mistake. You lay those facts out. State Farm mistakenly
25 received this form in 2020. A policy was canceled which that

1 form applied to. We created a new form policy 40A, then
2 there was this collision. After the collision, we realized
3 we forgot to ask the guy to sign one for 40A and we're asking
4 the court, because everybody agreed and lay that out. That's
5 not what they did.

6 THE COURT: So if they had done that, no abuse of
7 process claim?

8 MR. KAHN: Correct. Absolutely. And I've said that, I
9 mean, it's not because that's the truth and that's the proper
10 way to lay that out. What they did instead, which I'm
11 arguing is to use the process, is they frankensteined this
12 thing. They took a form that had not been approved that
13 applied specifically to policy 40, created a new dec page for
14 a non-existent policy 40B, and said, these things go together
15 and it forms the policy that applied to the collision. Okay.
16 Sorry.

17 All right. So that's part of the abusive process.
18 That's part of the ulterior motive is, like I said, you have
19 the part of the ulterior motive that we've pled is their
20 wanting a court to bless a form that had never been approved
21 by the Department of Insurance as being valid. That's an
22 ulterior purpose. It's not proper under the process.

23 THE COURT: Did you ask the representative 30(b)(6) if
24 that was why they did it?

25 MR. KAHN: I ---

1 THE COURT: Or do you have any evidence that the reason
2 that they submitted that -- that they changed that form and
3 the reason that they filed that form with the federal court
4 was to get a federal judge to bless a department of a form
5 that the Department of Insurance had not yet approved?

6 MR. KAHN: I do not have evidence. I think I've pled
7 something like that. And that certainly can be the motive
8 for it. Remember, an ulterior purpose can be a motive and it
9 could be state of mind. I don't have to prove it. I mean,
10 this is about the four corners of the pleadings. Have I pled
11 this sufficiently? The answer is yes. I'm glad to answer
12 all these questions, but what you're getting into is sort of
13 evidentiary things or things that may come up in a summary
14 judgement motion in my mind.

15 THE COURT: Well, I'm trying to -- I'm -- I'm -- I'm
16 asking questions that are coming up as you're presenting.

17 MR. KAHN: Sure.

18 THE COURT: Because I'm trying to figure out an ulterior
19 -- an ulterior motive. You said one of the ulterior motives
20 was that they wanted to get the federal judge to bless a
21 department of insurance form that had three new lines that
22 had not yet been approved by the Department of Insurance.
23 And I'm saying ---

24 MR. KAHN: Yes, that ---

25 THE COURT: Do you have evidence?

1 MR. KAHN: I do not yet have evidence of that. But that
2 can be an ulterior purpose. Remember, I haven't been able to
3 get the -- they've claimed has protected their files. So I
4 can't get to all this stuff and I haven't had a chance to
5 take a deposition. But I've pled that and that certainly
6 lines up with the case that came out in August of that year
7 right before this law. Actually, I do have some evidence of
8 that.

9 In this case, they provided to me a -- that decision I
10 talked about, and I'll try to remember the name of it. It
11 came out right before they filed a lawsuit by the South --
12 County Supreme Court in which it held that under title 38-77-
13 340, the form used by an insurance company. I think it was
14 Progressive, but I don't remember if it was okay to exclude,
15 I think it was UIM coverage, because the issue, I think at
16 the time the question was for these insurance companies, do
17 we get to use these forms or not under the statute?

18 And it's fascinating to me. So I would say yes, I do
19 have some evidence of it because they went from the end of
20 July telling us there was coverage in writing to filing, and
21 then that decision comes out saying under 3877340, an insurer
22 can exclude coverage. Then they're filing a lawsuit a week
23 or two later. And they've given me, well, one of the
24 documents in the privilege log from Gallivan White Boyd is
25 that case or the PDF of that case, or there's an email about

1 that case. And then I think State Farm actually gave me a
2 copy of that case. So yes, I think there is some evidence of
3 that.

4 THE COURT: Well, let's please go ahead. I'm sorry. I
5 -- I've sidetracked, I made a -- a cardinal mistake, which is
6 to -- to extend this longer than -- then and -- and to get
7 you sidetracked. So I apologize. Go please -- please.

8 MR. KAHN: No -- no worries. So -- and let me get to
9 the, okay. What I'm looking at is -- and I'll -- one of the
10 things that Judge Young had ordered last week was for the
11 parties to turn -- or I had ordered a couple weeks ago, was
12 for the parties to turn in memos to support their motions.
13 State Farm has never filed a memo in support of their motion.
14 So some of the stuff that's been raised, I'm trying to -- I
15 was trying to anticipate, I have for you the copy of Florida
16 for the court, a memo in opposition to Defendant State Farm's
17 motion that they did not -- that hands to the court
18 (inaudible) some, I think it addresses some of the issues
19 that you raised. I put a copy to, because I'm going to go
20 through some of this stuff in my argument.

21 THE COURT: Okay, yeah. Let's get to the ---

22 MR. KAHN: Sure.

23 THE COURT: To the claims and the ---

24 MR. KAHN: That's fine.

25 THE COURT: --- allegations that ---

1 MR. KAHN: Because I go through, I believe some of the
2 stuff. It's unlawful to use them (inaudible). I get to --
3 all right, abuse of process, false documents. Under page 14
4 of the memo, I've handed up to the court, I talk about the
5 essential elements. I say under -- on page 15, facts
6 supporting ulterior purpose. The primary objective was to
7 use false and fraudulent documents and have a court bless its
8 false documents in a legal form. And so I say that's part of
9 the ulterior purpose. And I argue that that is using the
10 process against another, primarily to accomplish a purpose
11 for which it is not designed.

12 Another thing that is taking place under the South
13 Carolina Insurance Law, she talked about Unfair Trade
14 Practices. And I'll be getting to that. An insurance
15 company is not to use practices as part of claims practices,
16 which would force somebody to litigate something when they
17 should otherwise pay it. That's what they did when they
18 filed this lawsuit. They -- they -- they violated South
19 Carolina Title 38 by making people litigate stuff when they
20 should have just paid the claim. So that's another ulterior
21 purpose that's not proper as part of the process.

22 I've got -- and I allege these various -- if you go
23 down, I'll talk about factual allegations pled to support the
24 cause of action. And I cite the paragraph numbers on pages
25 15 and 16 of my memo. I've handed up to the court a pursuit

1 of primary objective other than claimed in the lawsuit. And
2 I talked about -- and I concede that filing a DJ action is in
3 no -- and of itself non abusive process. No -- no doubt
4 about that. But it's -- they didn't merely just file a DJ
5 action. They created these documents and pled these things
6 that weren't true to force people who had a minimum limits
7 policy to deal with and would have to divide the pot up and
8 made them choose between litigating or not.

9 I think State Farm in this lawsuit move for default
10 against five or six people. That is evidence that people
11 just threw their hands up. And -- and part of the -- what I
12 think is one of the improper purposes of this lawsuit that
13 State Farm had in mind as motive is if they deny coverage,
14 then they don't have to pay. All of these people that sued,
15 including my client, would then have to go to their own
16 carrier and use their own coverage, their UIM coverage.

17 So all these people would lose out on getting the State
18 Farm coverage, even though it might be a small amount of
19 money. And their increased UIM coverage. And specifically
20 in our case, we had to jump through the hoops that I talked
21 about. So I talked about -- and I cite to -- on page 17 of
22 our memo *Polaris versus Seinar*, S-E-I-N-A-R, the South
23 Carolina case. The tort centers on events occurring outside
24 the process. The improper purpose usually takes the form of
25 coercion to obtain a collateral advantage, not properly

1 involved in the proceeding itself. That's what they were
2 doing.

3 They were taking advantage of forcing all of these
4 people to use their own coverage. All right, that's -- thank
5 you. I -- I -- I saw the head nod. So I'll move. And I'm
6 not saying that in a bad way. I just -- because I don't want
7 to.

8 THE COURT: No -- no, I was just seeing -- I was looking
9 for the case you cited.

10 MR. KAHN: Okay, I'm sorry. Page 17. So -- and I've
11 alleged all these things on paragraphs 46 through 49 and 99,
12 the use and reliance on false documents to make decisions
13 about available coverage, whether to litigate the matter and
14 to provide to its attorney to using this litigation. These
15 are all things that all these Defendants would have to do and
16 make decisions about. State Farm -- I mean, it -- it's sort
17 of like, I don't even know what the -- my father and I were
18 trying to come up with an analogy.

19 And I know you haven't sat, I don't think you've sat yet
20 in on criminal pleas, but it's like a criminal Defendant
21 who's caught robbing a bank and he says afterwards, you know,
22 about this note, that was just a misunderstanding. That was
23 for the loan officer. I wasn't here doing anything wrong.
24 All State Farm is doing is coming in after the fact and
25 saying, forget about our forgery. There's just a

1 misunderstanding. That's just jury -- that's for the jury
2 argument. All right.

3 Anyway, so ulterior motive, I think we've got that
4 covered. Fraud and negligent misrepresentation. Well, have
5 I answered questions about ulterior motive and abuse of
6 process because I'll go to fraud.

7 THE COURT: I mean, yeah, I -- I've gotten your ---

8 MR. KAHN: Okay. All right. In terms of fraud,
9 interestingly in South Carolina a cite -- first of all,
10 questions are -- I believe first of all, we have cited
11 throughout our complaint that's in this memo, I've handed up
12 the court paragraphs in the complaint talking about reliance.

13 THE COURT: Uh-huh.

14 MR. KAHN: To the extent that State Farm and to the
15 extent Galway board brings it up, talks about reliance that's
16 outside the pleadings that we've pled.

17 THE COURT: Well, I -- I think she's just saying under
18 --- under Rule 8 and -- and that -- that -- that you have to
19 allege and -- and just generally that you've got to allege
20 the elements of -- of fraud and negligent misrepresentation.
21 She's not talking about defense. Obviously that's a defense
22 as well. But you've got to sufficiently allege all of the
23 elements of each of your causes of action. And I -- I -- I
24 could be wrong, but I believe what they're saying is you have
25 failed to do that as far as is right to rely and -- and

1 whether there was reasonable reliance. Well, so if you, I
2 mean ---

3 MR. KAHN: Sure, yes.

4 THE COURT: Has that's been alleged in your complaint?

5 MR. KAHN: Yes, correct.

6 THE COURT: Tell me where?

7 MR. KAHN: And if we go to -- we've got paragraphs,
8 let's see. Paragraph 99, State Farm intended Plaintiffs and
9 others, I'm sorry to read so fast, I apologize. State Farm
10 intended Plaintiffs and others would rely on the documents as
11 being true to make decisions about Plaintiffs' own insurance.
12 The complaint, paragraph 99. Going down on page 19 in my
13 memo because of the reliance, Plaintiffs and others hired
14 counsel to defend them in the lawsuit brought by the
15 Defendants as well as address issues concerning their own
16 automobile policies.

17 And I talked about that with the court, with the idea
18 where we had to -- after we had resolved or thought we had a
19 resolution with our own underinsured carrier because State
20 Farm had represented to us that there was coverage, they then
21 filed this lawsuit, which stopped the settlement of the UIM
22 policy. So that's another part of reliance that -- where we
23 did rely on it. Again, we, my clients relied on the
24 representations to hire counsel. And -- and -- and keep in
25 mind, Your Honor, one of the other aspects of reliance is

1 that after the -- the -- the State Farm did not simply stop
2 at the lawsuit filed. They kept going and I'm -- in this
3 lawsuit, State Farm provided us with certifications that the
4 policy was in effect.

5 THE COURT: I --- I get it. I'm just looking at the
6 four corners of the complaint, whether you alleged reliance.

7 MR. KAHN: Sure.

8 THE COURT: Reasonable reliance, right to rely.

9 MR. KAHN: Yes, Your Honor.

10 THE COURT: So not because that's what they say is
11 defective. And --and they're entitled to judgment on
12 pleading 12th because you failed to do that.

13 MR. KAHN: Correct. All right. So we did allege that
14 ---

15 THE COURT: And you mentioned 99, it says intended, that
16 State Farm intended the Plaintiffs, the court and others
17 would rely on the documents as true.

18 MR. KAHN: Correct.

19 THE COURT: Is that the -- and -- and -- and -- and I'm
20 not saying it is -- that -- that you need more, I'm just
21 saying is -- is there any other place that you have in here
22 alleged ---

23 MR. KAHN: Yes.

24 THE COURT: --- right to rely and reasonable reliance?

25 MR. KAHN: Yes, Your Honor. If you look at paragraphs

1 101 and 102 as a result of the conduct, Plaintiffs and others
2 obtain counsel to defend them. That's Reliance 102 as a
3 result of the wrongful conduct, they obtained counsel to
4 address the issues, including those related to their own
5 automobile policies. And that's what I've talked about. So
6 they relied on these statements as being true in order to
7 deal with their own underinsured carrier instead of fighting
8 the lawsuit. So yes, we've alleged reliance.

9 Interestingly, and -- and I think I've got a couple
10 others, I say 101, 102. Oh, and then I -- and I alleged
11 throughout page 20 of our memo, basically, the Plaintiff
12 retained counsel to defend them and spent effort, time, and
13 money to address these issues related to their own automobile
14 policies. The other thing that took place was, if you look
15 on page 20, we -- we had to, it's -- it's not like she talks
16 about the fact that we denied it. It's not like once we
17 denied it, State Farm says, you're right, you got us, here's
18 the money. They kept going.

19 So we had to affirmatively then go about trying to prove
20 these statements as not being true. They didn't just roll
21 over and say, you got us. So part of what I allege is that
22 we were forced to file motions and otherwise we're forced to
23 litigate the matter. If you look at paragraphs 101 and --
24 through 103. So that's why I said it's not simply the filing
25 of the lawsuit alone. They kept going.

1 THE COURT: Well, the -- as far as the right to rely,
2 you're saying that -- that the reliance was that the -- that
3 -- that the documents that were filed in federal court were
4 true and accurate. That -- that you all -- that -- that the
5 reliance was that -- that --the, your client relied on those
6 documents as being true and accurate in order and -- and --
7 and that was not correct. Is that what you're saying?

8 MR. KAHN: You are correct about that not being correct.
9 That is -- my clients relied on it in order to get counsel.

10 THE COURT: Right.

11 MR. KAHN: As counsel, I denied them. They can't use
12 that against me to say my clients therefore had no reliance.

13 THE COURT: Okay. That -- well, that's what -- that's
14 the connection I was trying to make. The -- the -- the --
15 the statement or the existence of -- of the situation that --
16 that they were relying on, is your allegation that those
17 documents were false? You say they rightly relied,
18 reasonably relied that the documents were truth and therefore
19 it satisfies ---

20 MR. KAHN: Correct.

21 THE COURT: --- 12C because you -- because that's
22 sufficiently pled.

23 MR. KAHN: Correct.

24 THE COURT: Okay.

25 MR. KAHN: And in addition to that, because I think it's

1 important to understand, they're simply looking at the
2 initial filing of the complaint. I've pled that they
3 continued their misconduct and therefore we -- we had to keep
4 going, which created more harm. And it's not like we had to
5 keep -- we had to go about and try to prove these things. So
6 think of ---

7 THE COURT: No, I -- I understand -- I understand where
8 -- where you're going with -- I -- I just wanted to make sure
9 again, that -- that -- that I've covered that -- that I fully
10 understand, all the examples of reasonable reliance and right
11 to rely. And I just want to make sure that I've got those
12 from you.

13 MR. KAHN: Yes, Your Honor. And -- and -- but I want to
14 make clear that there are additional examples because we had
15 to keep litigating it. And I'm suggesting that that is
16 another example of reliance because we had to keep going
17 because State Farm didn't simply give up. We had to go about
18 affirmatively proving these things were not true. So we --
19 in essence, we were -- and candidly, as the court will know,
20 if an insurance company pleads, this is the policy, the judge
21 is going to say, what you got against this?

22 I mean, we -- we had to affirmatively take action. And
23 we had -- and that's why we had to take depositions. So we
24 relied on them for being true in order to move forward to
25 prove they were false. I -- I know that's sort of a weird

1 way to say that, but I don't know how else to say that we had
2 to keep litigating it because they didn't just give up. And
3 that's where I was going with this other document, that State
4 Farm, interestingly, I -- I noticed the deposition of the
5 30(b)(6) witness.

6 And just before that witness, we -- we had scheduled her
7 State Farm, created a certified -- let me back up before the
8 lawsuit was filed, but we pled this, then State Farm created
9 a certified policy record where somebody from State Farm said
10 this 40B was the policy in effect on the date of the loss.

11 THE COURT: I -- I -- I'm right there with you. I just
12 wanted to get the -- yeah, the -- the ---

13 MR. KAHN: So that's another reliance.

14 THE COURT: Yes.

15 MR. KAHN: Okay. And another example is that I was
16 talking about later on in litigation, they did another one on
17 November 22, 2021, right before I took the 30(b)(6), they
18 did another one. And I don't want to get into the reasons
19 why, but I believe they were nefarious. They're going to
20 dispute that. I don't want to get into it. Okay. And I
21 hope the court understand that, because I'm trying to move
22 along. But I just want to let you know that they kept making
23 things up. It wasn't like it just ended by filing the
24 lawsuit.

25 And I'll make what I just showed to the court an

1 exhibit, I'll provide it to my friends too. It's titled
2 State Farm False Certifications. And I'll give the court
3 copies to make an exhibit in a moment. So I think I've
4 handled the, oh, another thing that I think is of interest is
5 I argue that the statements by State Farm under South
6 Carolina law are fraud per se. Reliance is not necessary.
7 So if you go to page 22, I cite South Carolina code 30-55-530
8 D, where under the South Carolina Insurance Law, if you make
9 a false representation, it shall constitute fraud.

10 THE COURT: And -- and again, that may be determined at
11 a later time. I'm only looking at the complaint here, what
12 you alleged, and I think we've hit the paragraphs where you
13 have talked about the, again, it -- it's my understanding
14 that Ms. Mellen's -- her -- the basis for her 12C motion as
15 to these two causes of action, fraud, negligent -- and
16 negligent misrepresentation was reliance and whether that was
17 reasonable reliance. Have we addressed that?

18 Because I know that there's going to be arguments of
19 interpreting the facts and -- and what I'm not interested in
20 that if you, if you pled it, whether it's true or not,
21 doesn't matter to me at this point.

22 MR. KAHN: Okay, thank you.

23 THE COURT: I'm just looking at ---

24 MR. KAHN: I believe we've pled it.

25 THE COURT: Okay.

1 MR. KAHN: But what I'm also suggesting is that
2 reliance, interestingly in this matter, is not even a
3 necessary element under South Carolina Insurance Law. That's
4 all I'm -- that's the only reason I'm mentioning that. Okay.
5 So to the extent that it doesn't exist in the complaint,
6 which I think it does that under South Carolina Law, it is
7 fraud per se, without reliance. That -- that was my point
8 and reason for that, Your Honor. Okay?

9 THE COURT: Okay.

10 MR. KAHN: All right. So then in terms of negligent
11 misrepresentation, I go through the idea of that. I guess if
12 that's not what I don't know is what's going to be an issue,
13 I just want to let the court know that to the extent they're
14 limiting to reliance, then I guess I don't need to talk about
15 the -- they had a duty to speak the truth. Let's talk about
16 the civil conspiracy, I guess. Is that the next item?

17 THE COURT: Yes. 6.3 at page 26.

18 MR. KAHN: Thank you. It's a combination of two or more
19 people for the purpose to get together to accomplish
20 something bad. I believe my friend was quoting former South
21 Carolina Law under the idea that you have to show this
22 separate something. I think South Carolina Supreme Court
23 recently addressed that and changed the law about civil
24 conspiracy. And here we have pled -- pleaded -- pled that
25 Gallivan White Boyd acted in their own interests. Because

1 she mentioned the idea about you can't have a principle and
2 agent conspire. That to me, logically doesn't make any
3 sense.

4 It's two or more people who get together regardless of
5 the hats they wear. My recollection is the case they cited
6 was from the 18 somethings, 1840s or 50s or something. And I
7 think the law is not like that. I think lawyers have
8 responsibility to speak the truth. I think under South
9 Carolina current case law in a civil conspiracy, it's just
10 two people, two or more people who get together regardless of
11 whether they're principal agent or not, so.

12 THE COURT: Okay. And I see that you did plead that
13 Gallivan White was acting in its own interest.

14 MR. KAHN: Yes.

15 THE COURT: And -- and -- and so I -- I see that one,
16 one question I did write down though, is there any allegation
17 in the complaint that there was a relationship between
18 Gallivan White Boyd and State Farm other than attorney
19 client?

20 MR. KAHN: I did a word search. I don't see the word
21 attorney client in my complaint.

22 THE COURT: Okay.

23 MR. KAHN: And I could be wrong. So when my friend said
24 that I didn't do a word search, I didn't see that. So I
25 didn't ---

1 THE COURT: I'm not saying that -- I know you have to
2 have it or you don't have to have it.

3 MR. KAHN: Sure.

4 THE COURT: I'm -- I just want to clarify that.

5 MR. KAHN: So I -- I think the fact that you have an
6 attorney-client relationship doesn't change the fact that you
7 can still conspire together. The South Carolina Law is
8 clear, and I can't remember which brief I've got it in, where
9 the idea is that a lawyer it's -- it's with the Gallivan
10 White Boyd brief, where a lawyer can be held responsible if
11 they get together and do something with their client. So I
12 don't want to get to Gallivan White Boyd's argument yet, but
13 for purposes of State Farm, we sufficiently pled that two
14 more people got together. We specifically pled that in our
15 complaint. We have paragraphs about that.

16 THE COURT: Well, you also pled that while it may be
17 true that agents for a corporation acting in the scope of
18 their duties cannot conspire with the corporation, the law
19 doesn't prevent a civil conspiracy claim against one acting
20 in violations of duties -- acting outside the scope of their
21 duties or for their own interest.

22 MR. KAHN: Yes. Okay. In terms of the unfair trade --
23 well, have I handled the civil conspiracy?

24 THE COURT: Well, there was the overt act issue, I
25 think, and I think you addressed that on page 28?

1 MR. KAHN: Yes, sir. In -- in part of 29, but ---

2 THE COURT: Yes.

3 MR. KAHN: Yes. All right. Now, the interesting issue
4 to me, with this Unfair Trade Practice Act, my friend cites a
5 case from, I think it was Judge Curry, who in the, I don't
6 know, 20 or 30 years ago, held, I think what she says, but
7 that's not, I believe Judge Curry was both wrong and didn't
8 hold what she said. So let me explain. Under the Unfair
9 Trade Practices Act ---

10 THE COURT: Wait, are we talking about the overt act
11 pled and incorporated?

12 MR. KAHN: I'm sorry, I thought we had done that.

13 THE COURT: Okay. Well, yeah. Okay let's lead --

14 MR. KAHN: 29, page 29 under 6.4 under the South
15 Carolina Unfair Trade Practice Act. Interestingly, under
16 Title 38, which is the Insurance Code Section 77, which
17 relates to cars, it specifically states. So basically under
18 the insurance code section, it says it is a violation under
19 the South Carolina Unfair Trade Practices Act to do certain
20 things.

21 So contrary to what my friend and what Judge Curry may
22 have said, South Carolina Law doesn't support that District
23 Court decision to extend. It says that our South Carolina
24 code section specifically says in the insurance code section,
25 if you do these things, that is, if you knowingly and

1 willfully make a or cause to be made any false statement or
2 representation of a material fact, then that is a violation
3 of the Unfair Trade Practices Act.

4 So I don't know how they can say the Unfair Trade
5 Practices Act doesn't apply when our legislature has said, if
6 you do this as an insurance company or in the -- in this --
7 under the Title 38 insurance, it is a violation under Title
8 39. I don't know how much more I need to connect that up.
9 All right?

10 And I go through that analysis, and I think I even point
11 out where Judge -- why I think Judge Curry was wrong. I go
12 on page 30 ---

13 THE COURT: Uh-huh.

14 MR. KAHN: --- of my brief, I believe she was addressing
15 in that case, 3857, not 3877, which is the one I think
16 applies to automobile insurance companies. And that's a
17 distinction also that I would like to make to the extent
18 Judge Curry is right. She didn't address it under Title
19 3877, which relates to automobile insurance.

20 THE COURT: So she may or may not be right as far as 30
21 -- that 57 is concerned, but -- but not ---

22 MR. KAHN: Correct. Not under 77.

23 THE COURT: Okay.

24 MR. KAHN: And that's -- and again so to the extent that
25 that's an argument, I -- I think that it's there -- there's

1 no statute that says you can't sue an insurance company for
2 an unfair deceptive trade practice. There's none -- there is
3 none.

4 THE COURT: I just haven't -- I haven't come across this
5 issue before.

6 MR. KAHN: Sure, I understand.

7 THE COURT: And -- and so I'm interested to -- to read
8 that section that you're talking about of the insurance code.

9 MR. KAHN: Sure.

10 THE COURT: And Judge Curry's opinion, I'm going to need
11 to look at that.

12 MR. KAHN: Sure.

13 THE COURT: It's not familiar.

14 MR. KAHN: And I believe that she -- it was what was
15 presented to her, and I don't remember the -- I don't -- I --
16 I believe it related to 57, not 77, but if -- again, I think
17 the -- the law speaks for itself on the 3877, which is, if
18 you violate the section, it is per se a violation of the
19 Unfair Trade Practices Act, which means logically that the
20 legislature recognizes that an insurance company or people
21 who violate the section can be or actually are engaging in an
22 Unfair Trade practices Act under Title 39. All right. So
23 that's the unfair trade practices part of them.

24 THE COURT: Okay.

25 MR. KAHN: And to the extent we're doing the Unfair

1 Trade Practices Act under 39-5-40, they've got the burden of
2 showing exemption and they can't do it. So I put down to the
3 extent we need to -- we ask to amend the complaint, but I
4 want to address the standing issue. I think that was the one
5 she wrote.

6 THE COURT: Oh, the individual?

7 MR. KAHN: Yes, Your Honor.

8 THE COURT: Okay. Of -- of just the individuals not
9 personal representative or the entity or the state.

10 MR. KAHN: Correct -- correct, yes, sir. I mean, to --
11 to me. I mean and I have this in the -- I'll hand the court.
12 All right. Memorandum opposition to dismiss. I filed one
13 to, or I sent one to Judge Young on Wednesday. This one I'm
14 handing to the court, I'll file later. I've made a couple
15 typo changes. I just want to alert everybody to that. But
16 in this address, that standing issue, so that's why I'm
17 handing it to the court.

18 THE COURT: And this has not been filed yet?

19 MR. KAHN: That has not been filed. None of -- I have
20 not filed any of the memos I've handed to the court. I will
21 file them after our hearing.

22 THE COURT: Okay.

23 MR. KAHN: Correct. And I'm just letting the court and
24 the parties know what I sent to Judge Young on Wednesday last
25 week. This one has a couple of updates in terms of like a --

1 a picture. And I -- I found a typo. So things like -- I'm
2 just --- and I even put a footnote in there that -- that this
3 memo contains corrections to the one sent to the court and
4 parties on July 3rd. So anyway. So -- but in terms of the
5 issue that I wanted to get to for standing, I addressed it in
6 this matter and this brief on page 32.

7 The -- I -- the -- under South Carolina Law, the Estate
8 is the one that has the power to bring an action on behalf of
9 its beneficiaries. My argument is pretty simple, that the
10 Estate exists for the benefit of the children. That when
11 State Farm attempted to deprive the Estate of money, that
12 would affect their interest. And under South Carolina Law,
13 that's enough standing -- that's enough for them to have skin
14 in the game.

15 THE COURT: Are -- are the individual Plaintiffs in this
16 case, all the people that took under the -- or all -- all of
17 the folks that take under the will ---

18 MR. KAHN: It -- yeah, they are the three heirs.

19 THE COURT: Okay.

20 MR. KAHN: Under the Estate, they're the three children.

21 THE COURT: Okay. So -- so what's the difference if --
22 if -- if the Estate's -- if they're dismissed and the
23 Estate's in there, the Estate recovers, then it goes to them.
24 I mean, they're -- they're seeking the same.

25 MR. KAHN: I -- I understand. I've pled that it applies

1 to all children. The court can, I -- I -- I have to argue I
2 understand conceptually, but I -- I think that each child has
3 -- may -- the argument is that they may have experienced
4 different effects by the lawsuit being brought. So shortly
5 after their father's death, which affected them emotionally,
6 which they are allowed to argue to a jury about how State
7 Farm's conduct affected them, that they were first told there
8 was coverage, then -- then they were told there wasn't
9 coverage and they had to litigate it not knowing what would
10 happen. Now, I've pled that a jury may or may not buy it,
11 but I've pled that that's sufficiently in order to keep them
12 in.

13 THE COURT: Okay.

14 MR. KAHN: I don't -- I -- I -- did you have any
15 questions? And I want to make sure I've done a couple
16 things.

17 THE COURT: I've probably asked too many already.

18 MR. KAHN: No -- no -- no. I -- I just want to make
19 sure, because you've been -- I -- I want to hand up to the
20 court. I've been making reference to three blowups I want to
21 handle, make it part of the court record exhibit.

22 THE COURT: Okay, sure. Court exhibit or ---

23 MR. KAHN: So one is called State Farm False
24 certifications of (inaudible) one is called Policy
25 (inaudible), where I was referencing these statements,

1 (inaudible), the other one is, unnamed, was an example of
2 some of the actions South Carolina made, which we haven't
3 gotten to yet.

4 THE COURT: Okay.

5 MR. KAHN: I want to make sure I address your questions,
6 give my friends a copy. I -- I think I've covered all the
7 questions that you've had because I want to make sure it
8 seemed like there were specific things raised, and I want to
9 make sure I've addressed each one of them. I think I've
10 covered the ---

11 THE COURT: Well, you've answered all the questions that
12 I've -- I've had.

13 MR. KAHN: And I just want to make sure I've addressed
14 everything State Farm raised. I believe I have, I think I've
15 covered the reliance, the Standing Unfair Trade Practices
16 Act, the concept of abusive process. I think those are all
17 the things they raised. I think I've addressed them.

18 THE COURT: Okay.

19 MR. KAHN: And I guess also when I, while we're making
20 exhibits, a couple things, let's just make sure that what I
21 handed up to the court, Shea Anderson's deposition testimony
22 is an exhibit as well as the time line of highlights that
23 (inaudible) Okay?

24 THE COURT: Thank -- thank you. I -- I know it's
25 getting late. I don't know, I -- I'm going to have to talk

1 to Judge Young and see how he wants to handle the discovery
2 motions. I don't think we're going to be able to get to
3 those, but I -- I -- I want to make sure that I hear from,
4 from everybody on at least these matters.

5 MR. WILKERSON: And I'll be very brief, Your Honor.

6 THE COURT: Yes, sir. Take as much time as you want.

7 MR. WILKERSON: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 MR. WILKERSON: Given the hour and the extensive
10 argument that's already taken place, I'll be very brief
11 because many of the arguments that I would make on behalf of
12 Gallivan White Boyd have already been made on behalf of State
13 Farm with regard to some of the specific causes of action and
14 the -- and the deficiencies and the pleadings of those causes
15 of action.

16 But I would like to address, if I can, the overriding
17 issues relating to the ability of a third-party to sue a
18 lawyer, which is very well established in South Carolina.
19 First of all, it's not been alleged, nor can it be alleged
20 that Gallivan White Boyd created any of the documents that
21 they're challenging in this case. It's not been alleged, nor
22 could it be alleged that they knew that they were not created
23 in due course, and it has not been alleged, nor could it be
24 alleged that they participated in any scheme to which they
25 have attributed to State Farm.

1 Defendants by publication. So again, that to me is a
2 continuing act that they should have stopped. And it's
3 evidence of that for the court to consider. I -- I think
4 I've addressed everything. If there is anything I'll try to
5 do it briefly. Thank you. And again, we've got it on.

6 THE COURT: I want to get maybe part of the last
7 (inaudible). I don't want to ---

8 MS. MELLEN: Thank you. And I appreciate that. We are
9 here at 6:11. So if, you know, we were just handed a 32 page
10 brief, and ---

11 THE COURT: I understand.

12 MS. MELLEN: I'm happy.

13 THE COURT: I haven't -- I haven't been able to read it
14 either.

15 MS. MELLEN: Right.

16 THE COURT: So I'll -- I will check. What I'm thinking
17 is giving the parties an opportunity maybe to have a very
18 short limited response or something like that. I'll figure
19 that out. But I understand that ---

20 MS. MELLEN: Yeah.

21 THE COURT: --- you can't address all of those issues.

22 MS. MELLEN: And maybe we have, I just haven't reviewed
23 the brief. I am prepared to address an issue that was not
24 brought up in my motion argument, but instead was brought up
25 in response. And that is to the Unfair Trade Practices Act

1 and Plaintiff's reliance on section 38-77-31 -- 341 of the
2 insurance code, relying on that as enabling them to sue State
3 Farm under the Unfair Trade Practices Act for false
4 statements or representations of material fact.

5 I think it is extremely important that the court
6 understands that 38-77-341 prohibits insureds and third
7 parties from submitting inflated insurance claims. It does
8 not speak to insurance companies and what they can or cannot
9 do. And that is -- can be determined by looking at the plain
10 language of the statute, the preamble -- and the preamble to
11 the statute, and the fact that under the law of this state,
12 if the legislature has two statutes they should be
13 harmonious. They should not be read in a way that would
14 create a direct conflict between the two of them. And
15 Plaintiffs argument does exactly that.

16 It places 38-77-341 as a -- an opportunity to bring an
17 unfair trade practices that claim against an insurance
18 company, not third parties or claimants. Despite the fact
19 that the South Carolina code says in 39-5-40 subsection C
20 this article does not apply to unfair trade practices covered
21 and regulated under Title 38, chapter 57, sections 10 through
22 20, which are the sections complained of by Plaintiffs in
23 their complaint. And I -- I'm -- I'm going to leave it at
24 that. If we have an opportunity to -- to touch on that in a
25 brief.

1 I do want to close, I believe close the loop on Mr.
2 Wilkerson's remarks on reliance and consider Plaintiffs'
3 counsel's arguments with respect to reliance particularly
4 given the passing remark about a potential amended complaint.
5 We heard well not alleged in the complaint arguments that he
6 as Plaintiffs' counsel received communications from State
7 Farm prior to this dec action, and also that they received
8 confirmation of coverage prior to the dec action. It cannot
9 -- there is -- there would be no good faith basis for an
10 amendment of the pleading to state that counsel had to be
11 hired based on reliance of the truth of the statements in the
12 dec action, counsel had already been hired.

13 Let's see, I -- I didn't hear any ulterior motives with
14 respect to abusive process other than again, what we argued
15 that were conflating acts, wrongful acts with alleged
16 ulterior motives. And the last point with respect to
17 standing, I did -- the complaint does not allege that these
18 individual Plaintiffs had unique emotional distress damages
19 or anything like that. But I think it is -- I think it's a
20 matter of law.

21 We could say that an amendment to state that would be
22 futile based on what we know, which is these individual
23 Plaintiffs were not parties to the dec action. And there were
24 no direct interactions between them in State Farm. The
25 notion that they could seek emotional distress damages from

1 State Farm for having to litigate a lawsuit they were not a
2 party to is not recognized in this state. And the idea that
3 one, like State Farm would owe a duty to a stranger not to
4 cause them emotional distress for a lawsuit filed against
5 someone else is not recognized under the law of the state.
6 That's all, Your Honor. Thank you.

7 THE COURT: Plaintiffs?

8 MR. WILKERSON: Very briefly, Your Honor. Right. I
9 have if the Plaintiff can pursue this claim, that I've been
10 given by clients that advice for the last 45 years in
11 practice are civil because I -- I can tell you that it is
12 rare that I have a new client that I represented pending the
13 case that doesn't come to me and say, this complaint is all
14 lies, sue the bastard for sale. Okay? I want to sue that
15 lawyer and I want to sue them for saying these things.
16 Right? Calm down.

17 Every client I've ever had I help agree with limited
18 circumstances, which you can see on request. And those
19 really are the Privileged Proceedings Act we will have in
20 certain sanctions. And so the law is very clear on that.
21 And this is contrary to that higher body of law. And if --
22 if the court would -- would simply look at pages 8 and 9 of
23 my brief, it cites the -- the -- the -- the reasons why the
24 Plaintiff has not properly plead claims against my clients.
25 And I agree with you on it.

1 in litigation has no duty of care to the opposing party under
2 this section. It's no liability for lack of care, except in
3 unusual certain situations such as when a litigant is
4 provided an opinion letter from opposing counsel as part of a
5 settlement. Opposing such a duty could discourage vigorous
6 representation of the lawyer's own client through the fear of
7 liability to the opponent." This law is well established and
8 they have not pled sufficiently around these rules, thank
9 you, sir.

10 MR. KAHN: Okay. Well, I think that it is, like, if I
11 could, I swear it'll be less. I'll try to be less than a
12 minute. Literally just to, because you brought up some new
13 things and I have to address it.

14 THE COURT: One minute.

15 MR. KAHN: You can time me. Number one, UTPA doesn't
16 exclude insurance companies. So that's -- that's -- I want
17 to talk about that. Talked about not hired for the UIM
18 claim. I was hired for the -- to deal with the car wreck.
19 Then they had to -- they said I had already been hired. I
20 then had to deal with this lawsuit, which was not -- what I
21 was not initially hired to do. So that's not factually
22 right. I wasn't hired initially to defend them in a lawsuit
23 that had not yet been brought.

24 I believe we did include emotional damage. There's no
25 law that says you can't have it. It's a jury proof argument.

1 here to -- to have another lawyer. I'll have another judge
2 hear all this stuff. It might be good to have one of you
3 all, but I'll let that -- I'll let you --

4 THE COURT: Well, I'll -- I'll do whatever I'm asked,
5 but I'm not sure.

6 MR. KAHN: He's not coming back here.

7 MR. WILKERSON: (Inaudible) The Sion period. The
8 problem with this was sending him here his first week. He
9 isn't coming back voluntarily.

10 THE COURT: Come up to the nice cool climate in Columbia
11 ---

12 MR. KAHN: Yeah.

13 THE COURT: --- State. So but I will be in touch after
14 I review some of these things about how I want to proceed
15 with this because I may still have some questions, but I will
16 take this under advisement. I'll be in touch in the next
17 several days to let you know kind of where I am. Thank you.

18 MR. KAHN: Thank you.

19 MR. WILKERSON: Thank you, Your Honor.

20 MS. MELLEN: Thank you, Your Honor.

21 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
22 6:23 P.M.)

23

24

25

State Farm False Certifications

This policy was in effect on the
loss date of 06/12/2021



Certified Policy Record

I, the undersigned, do hereby confirm that I am custodian of the records pertaining to the issuance of policies by State Farm Mutual Automobile Insurance Company.

I certify that the attached documents represent a true and accurate record of the terms and conditions of Policy Number 632 3189-B07-40B including any endorsements, if applicable, for the policy term(s) 06/10/2021 to 06/13/2021 and insuring LAMB, MELVIN O JR based on available records.

It is State Farm's business practice to print a new Declarations Page only when a policy issuance transaction such as a change of coverage occurs. Therefore, the included Declarations Page which was in effect at the time of loss will indicate the policy period of the last policy issuance transaction.

The policy was in effect on the loss date of 06/12/2021.

190

Jessica Bass
Jessica Bass
Underwriter

Date: 08/05/2021



Certified Policy Record

I, the undersigned, do hereby confirm that I am custodian of the records pertaining to the issuance of policies by State Farm Mutual Automobile Insurance Company.

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It is State Farm's business practice to print a new Declarations Page only when a policy issuance transaction such as a change of coverage occurs. Therefore, the included Declarations Page which was in effect at the time of loss will indicate the policy period of the last policy issuance transaction.

The policy was in effect on the loss date of 06/12/2021.

Jessica Bass
Jessica Bass
Underwriter

Date: 11/22/2021

State Farm Mutual Automobile Insurance Company
PO Box 99000
Atlanta GA 30356-9900

NAMED INSURED 00166 40-1397-5 C A
000007 0058
LAMB, MELVIN O JR
1177 PLEASANT RIDGE RD
MT PLEASANT SC 29464-3722



06-00-193
ST-18-L

DO NOT
IF AN A

POLICY NUMBER 632 3189-B07-40B

POLICY PERIOD JUN 10 2021 to FEB 07 2022
12:01 A.M. Standard Time

TOUR CAR

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID. NUMBER	CLASS
2004	CHEVROLET	TAHOE	SPORT W/	1GNEK13Z54R235227	405H521000

SYMBOLS	COVERAGE & LIMITS	PREMIUMS
A	Liability Coverage	\$1250.77
	Bodily Injury Limits	
	Each Person, Each Accident	
	\$25,000 \$50,000	
	Property Damage Limit	
	Each Accident	
	\$25,000	
U	Uninsured Motor Vehicle Coverage	\$19.96
	Bodily Injury Limits	
	Each Person, Each Accident	
	\$25,000 \$50,000	
	Property Damage Limit	
	Each Accident	
	\$25,000	

* Total premium for JUN 10 2021 to FEB 07 2022 \$1,270.73 This is not a bill.

IMPORTANT MESSAGES

Replaced policy number 6323189-40A.

Replaced policy number 6323189-40A

Your total renewal premium for AUG 07 2021 to FEB 07 2022 is \$983.67.

* The total premium listed above reflects a recent change to your policy and the 6 month renewal premium.

State Farm works hard to offer you the best combination of price, service, and protection. The amount you pay for automobile insurance is determined by many factors such as the coverages you have, where you live, the kind of car you drive, how your car is used, who drives the car, and information from consumer reports.

You have the right to request, no more than once annually, that your policy be re-rated using a current credit-based insurance score. Re-rating could result in a lower rate, no change in rate, or a higher rate.

Notice of insurance information collection practices - personal, family, or household insurance transactions: We often collect personal information from persons other than the individual or individuals listed on the policy. Such information may be used for underwriting, rating, and other purposes. If you would like additional information concerning the collection and disclosure of personal information, and your right to see and correct any personal information in your files, it will be furnished upon request.

EXCEPTIONS: POLICY BOOKLET & ENDORSEMENTS (See policy booklet & individual endorsements for coverage details.)

YOUR POLICY CONSISTS OF THIS DECLARATIONS PAGE, THE POLICY BOOKLET, FORM 9840A, AND ANY ENDORSEMENTS THAT APPLY, INCLUDING THOSE ISSUED TO YOU WITH ANY SUBSEQUENT RENEWAL NOTICE. 6126MT AMENDATORY ENDORSEMENT. 92280P AMENDATORY ENDORSEMENT. 6023DC DRIVER EXCLUSION-MELVIN O LAMB III.

6023DC DRIVER EXCLUSION-MELVIN O LAMB III

Prepared JUL 14 2021

Agent: JACK TANKERSLEY

Telephone: (843)881-8888

Prepared JUL 14 2021

1397-B3A

Policy Forgeries After Collision

State Farm Mutual Automobile Insurance Company
PO Box 89000
Atlanta GA 30356-9900

2216 CY 02623 MBS Date Filed 08/16/21 Entry Number 1-1 Page 1 of 61
48738330 March 09/16/21 10:11 AM

DECLARATIONS PAGE

NAMED INSURED 00166 401367-5 C A
000007 0058
LAMB, MELVIN O JR
POLICY NUMBER 632 3189-B07-40B
POLICY PERIOD JUN 10 2021 to FEB 07 2022
12:01 A.M. Standard Time

POLICY NUMBER 632 3189-B07-40B

JACK TANKERSLEY
454 W COLEMAN BLVD
ATLANTA GA 30346-5663

POLICY PERIOD JUN 10 2021 to FEB 07 2022
12:01 A.M. Standard Time

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE
IF AN AMOUNT IS DUE, THEN A SEPARATE STATEMENT IS ENCLOSE D.

YOUR CAR

YEAR	MAKE	MODEL	TAHOE	BODY STYLE	VEHICLE ID. NUMBER	CLASS
2004	CHEVROLET	TAHOE		SPORT WG	1GNEK13Z54R235227	405H521000

SYMBOLS	COVERAGE & LIMITS	PREMIUMS
A	Liability Coverage Bodily Injury Limits Each Person, Each Accident \$25,000 \$50,000 Property Damage Limit Each Accident \$25,000	
U	Uninsured Motor Vehicle Coverage Bodily Injury Limits Each Person, Each Accident \$25,000 \$50,000 Property Damage Limit Each Accident \$25,000	
* Total premium for JUN 10 2021 to FEB 07 2022.		This is not a bill

IMPORTANT MESSAGES

Replaced policy number 6323189-40A.

Your total renewal premium for AUG 07 2021 to FEB 07 2022 is [REDACTED]

* The total premium listed above reflects a recent change to your policy and the 6 month renewal premium.

State Farm works hard to offer you the best combination of price, service, and protection. The amount you pay for automobile insurance is determined by many factors such as the coverages you have, where you live, the kind of car you drive, how your car is used, who drives the car, and information from consumer reports.

You have the right to request, no more than once annually, that your policy be re-rated using a current credit-based insurance score. Re-rating could result in a lower rate, no change in rate, or a higher rate.

Notice of insurance information collection practices - personal, family, or household insurance transactions:
We often collect personal information from persons other than the individual or individuals listed on the policy. Such information may, in certain circumstances, be disclosed to third parties for your administration. You have the right to see and correct any personal information in your files - it will be furnished upon request.

EXCEPTIONS, POLICY BOOKLET & ENDORSEMENTS (See policy booklet & individual endorsements for coverage details.)

YOUR POLICY CONSISTS OF THIS DECLARATIONS PAGE, THE POLICY BOOKLET, FORM 9840A, AND ANY ENDORSEMENTS THAT APPLY, INCLUDING THOSE ISSUED TO YOU BY ANY OTHER INSURANCE COMPANY.

61280P AMENDATORY ENDORSEMENT
6323189-40B AMENDATORY ENDORSEMENT
6023DC DRIVER EXCLUSION-MELVIN O LAMB III.

6023DC DRIVER EXCLUSION-MELVIN O LAMB III.

Prepared JUL 14 2021

Agent: JACK TANKERSLEY
Telephone: 5433851-8888
Prepared JUL 14 2021 1397-B3A

00599 04377
1397-B3A

False Statements in Complaint

EXHIBIT A

18. At all relevant times hereto, State Farm issued an automobile insurance policy (hereinafter "the Policy") to Father bearing policy number 632 3189-B07-40... A copy of the Policy is attached hereto as Exhibit A.

27. State Farm has investigated this matter and believes, based upon the Policy exclusion referenced herein and applicable South Carolina law, it has no duty to defend or indemnify...

29. Form 6023DC DRIVER EXCLUSION, for Policy 632-3189-B07-40 is an effective and valid endorsement excluding coverage ...

30. Father, as the named insured, signed an acknowledgment consistent with S.C. Code Ann. §38-77-340...

31. At the time of the subject accident, Son had been an excluded driver from the Policy for over a year.

State Farm forgeries following fatality

State Farm Mutual Automobile Insurance Company

PO Box 89000
Atlanta GA 30356-9900

NAMED INSURED 00166 40-1397-5 C A

000007 0058

LAMB, MELVIN O JR

48739-5-C MATCH 00166 MUTL VOL

DECLARATIONS PAGE

632 3189-B07-40B

POLICY NUMBER 632 3189-B07-40B

POLICY PERIOD JUN 10 2021 to FEB 07 2022
12:01 A.M. Standard Time

JUN 10 2021 to FEB 07 2022

AGENT

JACK TANKERSLEY
454 W COLEMAN BLVD
MT PLEASANT, SC 29464-5653

PHONE: (843)881-8888

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
IF AN AMOUNT IS DUE, THEN A SEPARATE STATEMENT IS ENCLOSED.

YOUR CAR

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID NUMBER	CLASS
2004	CHEVROLET	TAHOE	SPORT WG	1GNEK13Z54R235227	405H521000

SYMBOLS	COVERAGE & LIMITS	PREMIUMS
A	Liability Coverage	
	Bodily Injury Limits	
	Each Person, Each Accident	
	\$25,000 \$50,000	
	Property Damage Limit	
	Each Accident	
	\$25,000	
U	Uninsured Motor Vehicle Coverage	
	Bodily Injury Limits	
	Each Person, Each Accident	
	\$25,000 \$50,000	
	Property Damage Limit	
	Each Accident	
	\$25,000	

* Total premium for JUN 10 2021 to FEB 07 2022.

This is not a bill.

GWB
Redactions

IMPORTANT MESSAGES

Replaced policy number 6323189-40A.

Replaced policy number 6323189-40A.

Your total renewal premium for AUG 07 2021 to FEB 07 2022 is

* The total premium listed above reflects a recent change to your policy and the 6 month renewal premium.

State Farm works hard to offer you the best combination of price, service, and protection. The amount you pay for automobile insurance is determined by many factors such as the coverages you have, where you live, the kind of car you drive, how your car is used, who drives the car, and information from consumer reports.

You have the right to request, no more than once annually, that your policy be re-rated using a current credit-based insurance score. Re-rating could result in a lower rate, no change in rate, or a higher rate.

Notice of insurance information collection practices - personal, family, or household insurance transactions:

We often collect personal information from persons other than the individual or individuals listed on the policy. Such personal information may, in certain circumstances, be disclosed to third parties without your authorization. If you would like additional information concerning the collection and disclosure of personal information - and your right to see and correct any personal information in your files - it will be furnished upon request.

EXCEPTIONS, POLICY BOOKLET & ENDORSEMENTS (See policy booklet & individual endorsements for coverage details.)

YOUR POLICY CONSISTS OF THIS DECLARATIONS PAGE, THE POLICY BOOKLET - FORM 9840A, AND ANY ENDORSEMENTS THAT APPLY, INCLUDING THOSE ISSUED TO YOU WITH ANY SUBSEQUENT RENEWAL NOTICE.
6126MT AMENDATORY ENDORSEMENT.
6128DP AMENDATORY ENDORSEMENT.
6940A AMENDATORY ENDORSEMENT.
6023DC DRIVER EXCLUSION-MELVIN O LAMB III.

6023DC DRIVER EXCLUSION-MELVIN O LAMB III

Agent: JACK TANKERSLEY

Telephone: (843)881-8888

Prepared JUL 14 2021

1397-B3A

Prepared JUL 14 2021

00596/04377
155-5555 2 (A-2025) (r1a025hd)
(45XON) (r1a025le)

See Reverse Side

(r1a0254c)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE No. 23-CP-10-1832

**ROBERT C. WORKMAN, INDIVIDUALLY
AND AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF JAMES K. WORKMAN,
KELLY WORKMAN TICK AND
MATTHEW T. WORKMAN,**

PLAINTIFFS,

V.

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY AND
GALLIVAN, WHITE & BOYD, P.A.,**

DEFENDANTS.

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANT
STATE FARM'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

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State Farm failed to submit a memorandum in support of its motion as the Court directed by Wednesday July 3 at 5:00 p.m. As such, its motion should be denied. If needed, this memo applies to arguments it may make.

1. INTRODUCTION - SUMMARY

A month after a fatal multicar collision, State Farm forged a declarations page to exclude its insured, the at-fault driver, from coverage. Then, it collaborated with its lawyers to use the false policy and an insurance form never approved for use by the South Carolina Department of Insurance in court proceedings against those injured and its own insureds. The Estate of James K. Workman and his heirs, Robert C. Workman, Kelly Workman Tick, and Matthew T. Workman are suing

State Farm Mutual Automobile Insurance Company (State Farm) and Gallivan White & Boyd, P.A. (GWB) for their misconduct. Plaintiffs claim that State Farm and GWB engaged in numerous improper actions, including creating and using fake documents, both before and after filing the lawsuit, to hide the truth and compel them into unnecessary litigation. The forged Declarations Page used by the Defendants and attached to the Complaint they filed is reproduced below with call outs showing some of the changes made *after* the collision. Changes include:

- Adding Exclusion for insured driver;
- different policy number;
- different policy period;
- preparation date *a month after* the collision;
- statement that it replaced the actual policy; and
- Redactions by GWB to obscure information that would show differences in premiums from the actual policy.

1.1. Forged Declarations Page Used in Lawsuit Shown Below

State Farm Mutual Automobile Insurance Company
PO Box 89000
Atlanta GA 30356-9900

48739-5-C MATCH 00166 MUTL VOL

DECLARATIONS PAGE **632 3189-B07-40B**

NAMED INSURED 00166
000007 0058 40-1397-5 C A
LAMB, MELVIN O JR

POLICY NUMBER 632 3189-B07-40B
POLICY PERIOD JUN 10 2021 to FEB 07 2022
12:01 A.M. Standard Time

JUN 10 2021 to FEB 07 2022

AGENT
JACK TANKERSLEY
454 W COLEMAN BLVD
MT PLEASANT, SC 29464-5653

PHONE: (843)881-8888

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
IF AN AMOUNT IS DUE, THEN A SEPARATE STATEMENT IS ENCLOSED.

YOUR CAR

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID. NUMBER	CLASS
2004	CHEVROLET	TAHOE	SPORT WG	1GNEK13Z54R235227	405H521000

SYMBOLS	COVERAGE & LIMITS	PREMIUMS
A	Liability Coverage Bodily Injury Limits Each Person, Each Accident \$25,000 \$50,000 Property Damage Limit Each Accident \$25,000	
U	Uninsured Motor Vehicle Coverage Bodily Injury Limits Each Person, Each Accident \$25,000 \$50,000 Property Damage Limit Each Accident \$25,000	

GWB Redactions

* Total premium for JUN 10 2021 to FEB 07 2022. This is not a bill.

IMPORTANT MESSAGES

Replaced policy number 6323189-40A.

Your total renewal premium for AUG 07 2021 to FEB 07 2022 is

* The total premium listed above reflects a recent change to your policy and the 6 month renewal premium.

State Farm works hard to offer you the best combination of price, service, and protection. The amount you pay for automobile insurance is determined by many factors such as the coverages you have, where you live, the kind of car you drive, how your car is used, who drives the car, and information from consumer reports.

You have the right to request, no more than once annually, that your policy be re-rated using a current credit-based insurance score. Re-rating could result in a lower rate, no change in rate, or a higher rate.

Notice of insurance information collection practices - personal, family, or household insurance transactions:
We often collect personal information from persons other than the individual or individuals listed on the policy. Such personal information may, in certain circumstances, be disclosed to third parties without your authorization. If you would like additional information concerning the collection and disclosure of personal information - and your right to see and correct any personal information in your files - it will be furnished upon request.

EXCEPTIONS, POLICY BOOKLET & ENDORSEMENTS (See policy booklet & individual endorsements for coverage details.)

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6126MT AMENDATORY ENDORSEMENT
6128DP AMENDATORY ENDORSEMENT
6340A AMENDATORY ENDORSEMENT
6023DC DRIVER EXCLUSION-MELVIN O LAMB III.

6023DC DRIVER EXCLUSION-MELVIN O LAMB III

Agent: JACK TANKERSLEY
Telephone: (843)881-8888
Prepared JUL 14 2021 1397-B3A

Prepared JUL 14 2021

00596/04377
00596/04377 (10/10/2016)
00596/04377 (10/10/2016)

See Reverse Side

1.2. Summary of Facts Plead and Inferences Therefrom

State Farm made false documents after a collision to use in litigation to mislead and avoid paying legitimate claims of Plaintiffs and others. The documents include not only the forged declarations page but certified policy records falsely stating the bogus policy was in effect at the time of the collision. State Farm engaged in improper conduct including to force Plaintiffs and others to bow to its pressure or hire counsel and incur expense, and use their own uninsured coverage.

1.3. Dismissal Standard Not Met

State Farm moves is seeking a judgment on the pleadings. The law, facts plead and inferences from those facts do not support their motions.

A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment. A judgment on the pleadings is in the nature of a demurrer. ***All properly pleaded factual allegations are deemed admitted*** for purposes of the consideration of a demurrer. When a fact is well pleaded, ***any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced*** in the averment. Moreover, ***a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever***. Our courts have held that pleadings in a case ***should be construed liberally so that substantial justice is done between the parties***. Further, ***a judgment on the pleadings is considered to be a drastic procedure*** by our courts.

Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) (internal citations omitted) (emphasis added).

Facts outside of the pleadings and defenses like reasonable or detrimental reliance are not proper to consider. Plaintiffs adequately plead facts, and the inferences drawn from these facts substantiate each of the legal claims. If needed, Plaintiffs move to amend the pleadings. *See e.g. Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 179, 826 S.E.2d 585, 587 (2019).

2. FACTS PLEAD AND INFERENCES SUPPORT ALL CAUSES OF ACTION

Facts plead and the inferences support all causes of action, including Abuse of Process, Fraud, Misrepresentation, SCUTPA and Civil Conspiracy.

2.1. Multi Car Collision by State Farm Insured

On June 12, 2021, Plaintiffs' father Mr. James K. Workman suffered and died from injuries in a multi-car collision. The collision was caused by State Farm insureds Melvin O. Lamb, Jr., who owned and negligently entrusted his SUV to his son Melvin O. Lamb, III (Son). Compl. ¶¶ 2-3, 30-33.

2.2. State Farm Confirms Coverage Before Creating Forged Documents To Deny Coverage

First, State Farm confirmed coverage to Plaintiffs stating it "certifies that policy number **632318940A**, covering (a) 2004 Chevrolet TAHOE...was in effect on the accident date of June 12, 2021" (Compl. ¶¶ 4-6). State Farm also confirmed coverage to its insureds (Compl. ¶¶ 37-39).

2.3. Son Never Excluded and Form Never Approved As Required

Before the collision State Farm's Tahoe policy did not exclude Son who was driving the SUV or reference a Driver Exclusion Form 6023DC. Compl. ¶¶ 33-35.

2.4. State Farm Creates False Documents to Deny Coverage

About one month *after* the collision State Farm created a forged declarations page to make it look like Son was excluded from coverage. It used the forged document in a Declaratory Judgment lawsuit. This was wrong because, it breach duties owed to Plaintiffs and others to pay the claims and indemnify its insureds. This was done willfully so State Farm could avoid paying claims to Plaintiffs and others. *See e.g.* Compl. ¶¶ 7, 11-15, 40-43, 49, 57, 64-65, 72.

2.5. Creation of False Declaration Page is a Crime

To deny coverage, State Farm created a false declarations page in violation of its own rules to use with its lawyers in a lawsuit. *See e.g.* Compl. ¶¶ 7-14, 49, 83-91-100. Creating and using this document is the crime of forgery. S.C. Code Ann. § 16-13-10. Compl. ¶¶ 91-97. “Both under this statute and the common law a person may commit forgery by being present, and knowingly aiding and abetting another in the perpetration of the crime.” *Brown v. Bailey*, 215 S.C. 175, 185, 54 S.E.2d 769, 773 (1949).

2.6. Unlawful to Use Unapproved Insurance Forms

Before using forms, including one to exclude an insured driver from coverage, an insurer must submit it for approval to the S.C. Department of Insurance (SCDOI). S.C. Code Ann. § 38-77-340. State Farm knew the using an unapproved form, like the Form 6023DC attached to the Complaint was illegal and improper. Compl. ¶ 71, 91-93. State Farm falsely stated the form complied with the

law. Compl. ¶¶ 58-61. State Farm knew Plaintiffs, the Court and others would rely on and not know State Farm was using an unapproved form and believe it was real in making determinations about the applicability of their own insurance coverage. Compl. ¶¶ 99-100. (For example and by reasonable inference, Plaintiffs and others would need to use their own uninsured coverage instead of using the liability coverage and their own underinsured coverage.)

2.7. Violation of State Farm's Own Fraud Policies

State Farm violated its own fraud prevention policies by engaging in the illegal and improper conduct, including forging a dec page. Compl. ¶¶ 83-90.

2.8. Defendants Work Together in a Conspiracy By Using False Documents and Making False Statements

Defendants worked together to file the declaratory judgment action and use the forged declarations page and unapproved form to wrongfully deny coverage to Plaintiffs and others. Compl. ¶¶ 1, 12, 58-72, 77, 149-151. These actions represent at least one or more overt acts in furtherance of their conspiracy and agreement to deprive Plaintiffs and others of insurance benefits. GWB sought to benefit itself by getting paid and satisfying its client by working with State Farm without sufficient investigation. This action was part of an improper scheme aimed at gaining an

unfair advantage and deceitfully attempting to mislead the Plaintiffs, the Court, and others. *See e.g.* Compl. ¶¶ 62-82, 135 and Ex. A to Compl. Aff. Pendarvis.¹

2.9. Knowledge Plaintiffs and Others Would Rely on False Documents

State Farm knew plaintiffs and others would depend on and consider the documents as genuine and accurate for making decisions about hiring attorneys, litigating, and determining their own available coverage (uninsured coverage as opposed to underinsured coverage). Compl. ¶¶ 44-52. State Farm intended Plaintiffs and others to rely on the documents as being true and in making decisions about Plaintiffs' own automobile insurance policies. Compl. ¶ 99. After litigation began, State Farm created and provided a false Certified Policy Record to "certify that the attached documents represent a true and accurate record of the terms and conditions of Policy Number 632 3189-B07-40B including any endorsements..." that apply and that the "policy was in effect on the loss date of 06/12/2021." The statements were knowingly false. Compl. ¶¶ 54-56.

¹ In a recent 5th Circuit decision in an attorney malpractice matter, the Court held "In analyzing breach, courts hold lawyers "to the standard of care which would be exercised by a reasonably prudent attorney." *Cosgrove*, 774 S.W.2d at 664. "The standard is an objective exercise of professional judgment, not the subjective belief that his acts are in good faith." *Id.* at 665. Put simply, courts must consider whether the allegedly negligent attorney made "a reasonable inquiry in the legal and factual basis of the claim at the time the suit was filed." *Matter of Champion Printing & Copying, L.L.C.*, No. 21-51234, 2023 WL 179851, at *3 (5th Cir. Jan. 13, 2023). This shows that attorneys have duties to reasonably inquire into the legal and factual basis at the time suit is filed.

2.10. Plaintiffs Need Not Prove Fraud In Pleadings, Only Allege It

When pleading fraud, “the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.” SCRCP, Rule 9(b). Reliance is a condition of mind. Plaintiffs plead reliance on documents and statements made by Defendants. For example, Plaintiffs relied on the documents being true when:

- obtaining counsel to defend them in the lawsuit brought by Defendants using false documents;
- addressing issues concerning their own automobile policies like the applicability of uninsured coverage instead of underinsured coverage;
- negotiating coverage issues with their carrier like subrogation rights versus no subrogation rights; and
- Plaintiffs retained counsel to defend them in the lawsuit, spent effort, time, money for costs and expenses to address issues “related to their own automobile policies.”

(Compl. ¶¶ 15, 44, 47, 101-102, 105, 130):

A civil pleading based on fraud is sufficiently particular if it alleges all of the essential elements of actionable fraud.

the rules do not require a plaintiff to plead fraud with complete insight before discovery is complete. While the pleader need not allege evidentiary facts to comply with the rule setting forth the particularity required in all averments of fraud, the pleader must allege ultimate facts and cannot rely upon conclusions, and the fraud must

appear clearly from the facts alleged and be independent of conclusions.

71 C.J.S. Pleading § 72 (emphasis added).

As has been alleged, Plaintiffs relied on the statements contained in the lawsuit filed by State Farm to hire counsel *before* answering the lawsuit and during the litigation process. Plaintiffs were required to rely on the false documents and false statements made to continue to defend themselves, expend money, time and resources to investigate the statements made. Further, after Plaintiffs answered denying the material allegations, Defendants continued their misrepresentations by never correcting the false statements and assertions forcing Plaintiffs to continue to litigate. Compl. ¶¶ 101-103.

3. MOTION TO DISMISS STANDARD NOT MET

In the light most favorable to Plaintiffs, the Complaint sufficiently pleads facts, inferences from those facts and causes of action against the Defendants. Should the Court find otherwise, Plaintiffs request leave to amend the Complaint.

4. CONCISE SUMMARY OF THE NATURE OF THE CASE

Plaintiffs allege State Farm and GWB collaborated to deny insurance coverage by creating and using false documents in a court proceeding. After the scheme was exposed, State Farm dismissed its lawsuit and admitted to the falsified documents. Plaintiffs seek accountability for the Defendants' misconduct and the harm caused by their actions.

There was money paid to the Estate and heirs to settle the wrongful death claim. State Farm did not pay to settle claims involving its wrongful conduct, but rather to avoid a bad faith claim because it exposed its insureds to an excess verdict after refusing to resolve within policy limits before filing its bogus suit.² The settlement agreement made clear that payment was not to resolve the wrongful conduct of defendants for bringing and prosecuting a bogus lawsuit using false and fabricated documents.

5. CONCISE STATEMENT OF PERTINENT FACTS

This lawsuit was filed in South Carolina state court, removed and remanded. Motions to dismiss were filed. State Farm did not timely file a supporting memo.

6. ARGUMENT

6.1. Abuse of Process - Creation and Use of False Documents To Litigate

State Farm engaged in improper and willful acts not proper in the regular conduct of process and litigation. It had an ulterior motive other than to use the process for which it was intended – use the process to deny coverage by creating and using false documents and subjecting Plaintiffs to litigation using those materials. Unsurprisingly, State Farm cites no case holding that creating and using false papers to litigate and deprive coverage is a proper use of the process. Instead,

² State Farm created the false documents instead of properly and timely resolving the claim and protect its insureds pursuant to *Tyger River Pine Company v. Maryland Casualty Company*, 170 S.C. 286, 170 S.E. 346 (1933).

State Farm merely argues disingenuously that no abuse of process claim exists because a declaratory judgment action is a proper kind of case to file. Its arguments should be disregarded, and its motion denied.

6.1.1. Abuse of Process Elements

“The essential elements of abuse of process are (1) an ulterior purpose, and (2) a willful act in the use of the process that is not proper in the regular conduct of the proceeding.” *Pallares v. Seinar*, 407 S.C. 359, 370, 756 S.E.2d 128, 133 (2014). “The tort of abuse of process is intended to compensate a party for harm resulting from another party’s *misuse* of the legal system.” *Id.* (internal citations omitted and emphasis added). “Process,” as used in this context, has been interpreted broadly to include the entire range of procedures incident to the litigation process. *Id.* When “[o]ne who uses a legal process, whether criminal or civil, against another *primarily* to accomplish a purpose for which it is not designed, is subject to liability for harm caused by the abuse of process.” *Pallares v. Seinar*, 407 S.C. 359, 371, 756 S.E.2d 128, 133 (2014). The tort centers on events *occurring outside the process*; the improper purpose *usually takes the form* of coercion to obtain a collateral advantage, *not properly involved in the proceeding itself*, such as the surrender of property or the payment of money, by the use of the process as a threat or club. *Id.* at 134. *See also* RESTATEMENT

(SECOND) OF TORTS § 682 (1977) cmt. b. The proper purpose of the process is not designed to use false documents to try to declare rights as occurred here.

6.1.2. Facts Supporting Ulterior Purpose and Willful Acts Plead

State Farm's primary objective was to use false and fraudulent documents and have a Court bless its false documents and illegal form. Creating and using false documents to use as part of the process are not proper in the conduct of litigation nor aimed at a legitimate use of the process. Compl. ¶ 112. State Farm used the process "against another primarily to accomplish a purpose for which it is not designed." 1 AM. JUR. 2d Abuse of Process § 1.

Plaintiffs properly plead the elements and factual allegations to support an abuse of process cause of action. The ulterior purpose was to create and use false and forged documents in a legal proceeding and in discovery with their counsel. *See e.g.* Compl. ¶¶ 13 – 16. This conduct was willful. Using false documents specifically created for litigation is not proper in the regular conduct of a proceeding. Defendants cite no authority that holds such an absurd position is the law or is lawful.

Factual allegations are plead to support this cause of action.

- Creating and using a fake insurance declarations page for the purpose of using it in legal proceedings;
- Trying to pass off the forged declarations page as genuine and valid;

- Using bogus documents in litigation;
- Falsely asserting documents were part of actual insurance policy;
- Making false claims that a form attached to the Complaint complied with the law despite lack of approval by the Department of Insurance; and
- Other improper motives and purposes.

See, e.g. Compl. ¶¶ 49, 57, 64, 110-112, 146.

Combined with the other facts plead throughout the Complaint, Plaintiffs have sufficiently plead a cause of action and facts supporting abuse of process.

6.1.3. Pursuit of Primary Objective Other than Claimed in Lawsuit

Although a declaratory judgment action may be a valid cause of action, when a party files and pursues such a lawsuit using forged documents to obtain a result not possible without such documents, an abuse of process occurs. Using false documents in court is a coercive tactic that aims to manipulate and unfairly influence the legal process. State Farm's position that filing a declaratory judgment action is not an abuse of process standing alone may be correct. However, State Farm did not merely file a declaratory judgment action. It created false documents to have a court determine there was no coverage and that its unapproved form was valid. Using false documents exerts coercive and improper pressure on the opposing party, compelling them to accept false information or to concede their position. Not only does using false documents damage the credibility of the legal

system, it also puts the innocent party at a significant disadvantage. Unfair judgments, reputation damage, and a general sense of distrust can arise from this unethical practice, eroding the integrity of the entire legal system.

6.1.4. Ulterior Motive Actionable Because Pursued Course Using Forged Documents

State Farm created the false documents outside of the process to use in the lawsuit. “The tort centers on events occurring outside the process; the improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself...by the use of the process as a threat or club.” *Pallares v. Seinar*, 407 S.C. 359, 371, 756 S.E.2d 128, 134 (2014).

Ulterior motives for using false documents in court proceedings include gaining an unfair advantage and improperly manipulating the case’s outcome in favor of the party presenting these documents. Defendants brought the lawsuit for ulterior purposes, including coercing Plaintiffs into using their own coverage rather than for the sole purpose for which it was intended, to have the Court render a decision based on real and valid documents. *See e.g.* Compl. ¶¶ 46-49, 99 (use and rely on false documents to make decisions about available coverage, whether to litigate the matter, to provide to its attorney to use in litigation.)

6.2. Fraud and Negligent Misrepresentation – Reliance Plead and Duty to Disclose Facts, Not Hide Them

State Farm may argue Plaintiffs did not reasonably rely on the forged documents. That is a defense, and not to be considered for this motion. Additionally, one should not be given the opportunity to free himself from an allegation of fraud by claiming non-reliance.³ Such a finding “would leave swindlers free to extinguish their victims’ remedies” *Slack v. James*, 364 S.C. 609, 619, 614 S.E.2d 636, 641 (2005).

One who commits fraud is not free to immunize itself by claiming as a defense that the fraud was subsequently discovered so there is no wrong. By way of analogy, long ago, the United States Supreme Court held “concealing a fraud, or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead a defense to protect itself is to make the law which was designed to prevent fraud the means by which it is made successful and secure.” *Bailey v. Glover*, 88 U.S. 342, 349, 22 L. Ed. 636 (1874). In sum, it is not proper for one to claim lack of reasonable reliance as a bar when one creates and uses false documents for all to rely upon as being true. It is sufficient at this stage of the proceedings for Plaintiffs to plead reasonable reliance, not prove it.

³ “Courts around the country have reached similar conclusions on similar facts and have allowed claims of pre-contract fraudulent representations of potential income to survive integration clause challenges.” *Weaver v. Mega Life & Health Ins. Co.*, No. 1:06CV108, 2007 WL 9734422, at *5 (N.D. W. Va. Mar. 19, 2007).

Last, “[t]he general rule is that questions concerning reliance and its reasonableness are factual questions for the jury.” *Unlimited Servs., Inc. v. Macklen Enterprises, Inc.*, 303 S.C. 384, 387, 401 S.E.2d 153, 155 (1991); *Slack v. James*, 364 S.C. 609, 615, 614 S.E.2d 636, 639 (2005). As explained, Plaintiffs plead facts supporting reliance on the false statements made. It is for a jury to decide, not by way of Defendants’ motions.

Once State Farm undertook to speak in a court proceeding, it was required to do so completely and truthfully. The affirmative false disclosures made form the basis of the lawsuit, not the failure to disclose information. State Farm intended Plaintiffs and others would rely on the documents as being true to make decisions about Plaintiffs’ own insurance. Complaint ¶ 99.

Plaintiffs adequately plead reliance on the statements as being true. For example, because of the reliance on the documents as being true, Plaintiffs and others hired counsel to defend them in the lawsuit brought by Defendants as well as address the issues concerning their own automobile policies. Compl. ¶¶ 101-102. Plaintiffs did not know the documents were false at the time. Plaintiffs relied on the documents as being true when they needed to address issues such as the applicability of uninsured coverage instead of underinsured coverage with their carrier, negotiating and addressing coverage issues with their carrier because of the documents created by State Farm, as well as negotiate the subrogation rights of

their carrier. Because the documents attached to the Complaint were relied on as being true, Plaintiffs retained counsel to defend them in the lawsuit, and spent effort, time, and money to address issues “related to their own automobile policies.” Compl. ¶¶ 15, 44, 47, 101-102, 105.

6.2.1. Plaintiffs Relied on the Documents and Were Forced to Litigate Because They Would Be Assumed True

State Farm argues lack of reliance because at the time an answer was filed, Plaintiffs denied allegations. First, this is outside of the pleadings and should not be considered. Separately, Plaintiffs did rely on the truth of the documents. Plaintiffs hired counsel to address and deal with their own insurance coverage issues caused by Defendants’ assertion that there was no coverage, filed motions and otherwise were forced to litigate the matter. Compl. ¶¶ 101-103.

In any case, after Plaintiffs denied allegations, Defendants continued to assert the documents were true by not correcting the false statements or immediately ending the case. This forced Plaintiffs to file an answer, engage in discovery, and file a motion to compel discovery and take a deposition of State Farm with its associated costs and expenses.

Due to the wrongful conduct of the Defendants, Plaintiffs expended time, resources and expenses to expose the fraud. Compl. ¶¶ 15, 105, 116. Plaintiffs’ persistence and investigation of the facts claimed true by Defendants caused damage. This was not because Plaintiffs knew there was fraud from the moment

the suit began, but rather the work needed to counter the statements made by Defendants assumed to be based in truth.

The fact that Plaintiffs denied the allegations of the Complaint about 60 days after being served does not mean they did not, as factually plead, rely on or act as if the documents were true before answering. In any case, even after Plaintiffs denied the allegations, Defendants continued the ruse. This forced Plaintiffs to continue to address the veracity of the documents.

Quare: When Plaintiffs denied the allegations of the Complaint, did Defendants suddenly say, “Oh you’re right, these are false documents, sorry for the confusion and waste of time?” No, they kept moving forward with litigation, forcing Plaintiffs to continue defending the bogus lawsuit. Defendants even improperly relied on the bogus documents by seeking and obtaining the entry of default against five others they sued who did not answer the lawsuit. Compl. ¶115. Based on Defendants’ actions and representations that the policy was real and valid, the clerk entered default. *Id.*

Interestingly, had Plaintiffs not obtained counsel and not expended time, money and effort to question the documents, a Court would have granted State Farm’s declaratory relief. As a result, Defendants’ overt and fraudulent acts would have succeeded. If the Plaintiffs admitted the allegations of the Complaint as being

true, would State Farm say Plaintiffs are judicially estopped from asserting claims now? Such fast and loose conduct by the Defendants should not be rewarded.

6.2.2. Reliance Not Needed — Fraud Per Se

Separately, reliance is not needed under South Carolina law related to one who makes false statements or misrepresentations in connection with an insurance matter. It is fraud *per se* to engage in the conduct of making misrepresentations or false statements to deny payment to Plaintiffs. This is fraud under the Omnibus Insurance Fraud and Reporting Immunity Act which defines “False statement or misrepresentation.” S.C. Code Ann. § 38-55-530 (D).

“False statement or misrepresentation” means a statement or representation made by a person that is false, material, made with the person’s knowledge of the falsity of the statement and made with the intent of obtaining ... or attempting to obtain ... an undeserved economic advantage or benefit or made with the intent to deny ... any benefit or payment in connection with an insurance transaction, and ***such shall constitute fraud.***”

Thus, there is no need to plead or show reliance to prove fraud as to State Farm. The statute applies as State Farm made a representation with the intent to obtain an ***undeserved economic advantage*** (avoid paying insurance proceeds / not paying coverage due) with the intent to deny payment in ***connection with the insurance transaction*** (insurance claim / lawsuit). It was patently illegal for State Farm and its attorneys to assist in making false statements or misrepresentations in connection with insurance claims. S.C. Code Ann. § 38-55-540.

6.2.3. Duty To Disclose Because State Farm Chose to Speak

To the extent State Farm argues there was a lack of duty to speak the truth, this is incorrect because State Farm undertook to speak on the issue of coverage. When it did so, it assumed the duty to tell the whole truth and make a full and fair disclosure as to matters to which it chose to speak. 37 AM. JUR. 2d Fraud and Deceit § 203. Similarly,

A representation stating the truth so far as it goes but which the maker knows or believes to be materially misleading because of his failure to state additional or qualifying matter is a fraudulent misrepresentation. RESTATEMENT (SECOND) OF TORTS § 529 (1977).⁴

Tort law recognizes “that half-truths—representations that state the truth only so far as it goes, while omitting critical qualifying information—can be actionable misrepresentations.” *Universal Health Servs., Inc. v. United States*, 579 U.S. 176, 188 (2016). As stated in footnote 3 of the opinion:

This rule recurs throughout the common law. In tort law, for example, “if the defendant does speak, he must disclose enough to prevent his words from being misleading.” W. Keeton, D. Dobbs, R. Keeton, & D.

⁴ A “statement containing a half-truth may be as misleading as a statement wholly false. Thus, a statement that contains only favorable matters and omits all reference to unfavorable matters is as much a false representation as if all the facts stated were untrue.” Restatement (Second) of Torts § 529 (1977) (cmt. a). Further, the “recipient is entitled to know the undisclosed facts in so far as they are material and to form his own opinion of their effect.” Restatement (Second) of Torts § 529 (1977) (cmt. b).

Owen, Prosser and Keeton on Law of Torts § 106, p. 738 (5th ed. 1984).

State Farm is “subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation.”

RESTATEMENT (SECOND) OF TORTS § 525 (1977). State Farm made its fraudulent misrepresentations to induce Plaintiffs “to act or to refrain from action in reliance upon it...” *Id.* Thus, State Farm had a duty to speak the whole truth and is subject to liability for failing to do so.

6.2.4. Duties as Insurer to Third-Party Claimant

State Farm, as an insurance company dealing with a claimant, has duties to not hide or misrepresent but rather speak the truth or at least not to provide “deceptive or misleading information with respect to coverages.” S.C. Code Ann. § 38-59-20. By failing to disclose the existence of documents showing coverage was not excluded, State Farm, as an insurer, engaged in “unfairly competitive practices having as their purpose or effect evasion of the coverages as provided in this [Automobile Insurance] chapter.” S.C. Code Ann. § 38-77-10. *See e.g.* statutes cited under UTPA cause of action. Compl. ¶¶ 154-156.

State Farm’s conduct was deceptive or misleading in violation of various provisions of S.C. Code Ann. § 38-59-20. These include invoking policy defenses not in good faith and with a reasonable expectation of prevailing with the primary purpose of discouraging a third-party claim or “any other practice which

constitutes unreasonable delay in paying or an unreasonable failure to pay or settle in full claims, including third-party claims.” Although the UTPA does not apply to acts *permitted by law*, merely because an industry is regulated does not exempt it from the UTPA. *See e.g. State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 414 S.C. 33, 72, 777 S.E.2d 176, 196 (2015).

As to GWB, “[t]here is no question but what legal services come within the definition of this [UTPA] statute.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 338, 732 S.E.2d 166, 174 (2012). Citing *Pepper v. Routh Crabtree, APC*, 219 P.3d 1017, 1024–25 (Alaska 2009) (the legal profession is not exempt from UTPA coverage simply because a state supreme court has the authority to discipline attorneys for misconduct as the Rules of Civil Procedure and the Rules of Professional Conduct are not the type of ongoing, careful regulation required to trigger an exemption; the court concluded “that the attorney disciplinary system and consumer protection laws can coexist as long as the legislature does not purport to take away this court’s exclusive power to admit, suspend, discipline, or disbar” attorneys). The trial court erred in relying upon the regulated industries exception as to a law firm. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 338, 732 S.E.2d 166, 174 (2012).

The burden of proving exemption from the provisions of this article shall be on the one claiming the exemption. S.C. Code Ann. § 39-5-40. Here, at this stage

of the pleadings, Defendants do not meet their burden. Whether there was a UTPA violation is a question of fact, not a matter of law.

6.3. Civil Conspiracy

“A civil conspiracy is a combination of two or more persons to accomplish an unlawful purpose, or to accomplish a lawful purpose by unlawful means.” 15A C.J.S. Conspiracy § 1. This cause of action is plead properly.

6.3.1. Conspiracy Exists As State Farm Did Not Conspire With Itself But Rather With Law Firm

To the extent Defendants argue an attorney and client cannot engage in a civil conspiracy because the relationship is one of attorney-client or agent-principal, this is incorrect. The assumption argued by State Farm is that the attorney agent is working solely for the interests of the principal and does not have separate duties. Here, it was plead that GWB acted in its own interests and had duties separate from State Farm. *See e.g. Compl. ¶¶ 68-73 and Pendarvis’ Affidavit citing RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §110(1), Rule 11 and other duties of candor to third-parties and the tribunal. Compl. including ¶¶ 42-45.* The lawyers with GWB had and breached “their independent duties to Plaintiffs to investigate and confirm the evidence they submitted in support of State Farm’s claims in the Federal Lawsuit provided a non-frivolous basis to support the claims before filing the Federal Lawsuit. The lawyers at the Law Firm apparently either did not conduct a reasonable investigation to

evaluate the evidence that State Farm provided to support the claim, or they may have proceeded with the Federal Lawsuit to maintain their relationship with State Farm, notwithstanding whether the evidence appeared to support a meritorious claim.” *Id.* See also RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §98 (2000):

A lawyer communicating on behalf of a client with a nonclient may not:

- (1) knowingly make a false statement of material fact or law to the nonclient;
- (2) make other statements prohibited by law; or
- (3) fail to make a disclosure of information required by law.

While it may be true that “agents for a corporation acting in the scope of their duties cannot conspire with the corporation...”⁵, the law does not prevent a civil conspiracy claim against one acting in violation of duties owed, acting outside the scope of their duties or for their own interests as has been alleged here. “If two people conspire to commit fraud, for example, but the actual fraudulent conduct is carried out by only one of them, the injured plaintiff should be able to sue both of

⁵ *McMillan v. Oconee Mem’l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 887 (2006), *overruled by Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021).

them.” *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 579, 861 S.E.2d 774, 783 (2021), *reh’g denied* (Aug. 18, 2021) (Few, J. Concur).

In breach of these and other duties owed to Plaintiffs and others, GWB substantially assisted State Farm in the litigation, in part, by negligently, recklessly and/or knowingly using and continuing to use bogus documents against Plaintiffs and others without adequately or reasonably investigating the validity and/or propriety of those documents. Compl. ¶ 69 and Pendarvis Aff.

6.3.2. Overt Acts Plead and Incorporated in Civil Conspiracy

Rule 8 allows a short and plain statement of the facts showing that the pleader is entitled to relief. Rule 1 requires pleadings be construed to secure the just, speedy and inexpensive determination of every action. Defendants’ overt acts are plead. These include:

- Creating, filing and pursuing litigation using bogus documents for improper purposes including to try to make the Plaintiffs and others abandon claims made for coverage available under the actual State Farm policy, to improperly deny coverage, and to avoid paying legitimate claims. Compl. ¶ 72;
- Working together creating and filing false documents in a coordinated effort to deny Plaintiffs and others coverage; Compl. ¶ 1;
- Attaching false declarations page to the Complaint; Compl. ¶ 77;
- Claiming false declarations page “remained in effect”; Compl. ¶ 78;
- Redacting declarations page to hide information. Compl. ¶ 79; and

- Asserting “State Farm has investigated this matter and believes, based upon the Policy exclusion referenced herein and applicable South Carolina law, it has no duty to defend or indemnify Father or Son [Melvin O. Lamb, Jr. and Melvin O. Lamb, III] from any claim arising out of the accident described herein, and seeks a declaration from this Court concerning the same.” (Emphasis added). Compl. ¶ 75.

Plaintiffs plead overt acts in furtherance of the conspiracy.

6.4. SCUTPA Applies to Automobile Insurers Like State Farm

This Court must presume the General Assembly knew what it meant and intended when it specifically stated that the South Carolina Unfair and Deceptive Trade Practices Act (SCUTPA) applies to automobile insurance matters. S.C. Code Ann. § 38-77-341 (1) specifically states SCUTPA applies to insurance companies.

It is an unfair trade practice as defined in Section 39-5-20 [SCUTPA] to:

(1) knowingly and wilfully make or cause to be made any *false statement or representation of a material fact* for use in an application *for payment or for use in determining the right to payment under this chapter*;

S.C. Code Ann. § 38-77-341 (1) (emphasis added).

Despite the clear language that the SCUTPA applies in automobile insurance matters, State Farm claims SCUTPA does not apply to it as an automobile insurance company. This is incorrect.

State Farm, it is alleged, knowingly and willfully made or caused to be made false statements or representations of material fact for use in determining Plaintiffs' right to payment of insurance proceeds. Compl. ¶ 156.

Further, despite State Farm knowing it was unlawful to use a form until it had been filed with and approved by the Director of the Department of Insurance, it chose to use and assert that the unapproved form was a basis to deny coverage to Plaintiffs and others. Compl. ¶¶ 58-61.

The application, powers and remedies of SCUPTA "shall be cumulative and supplementary to all powers and remedies otherwise provided by law." S.C. Code Ann. § 39-5-160. It applies to trade and commerce. S.C. Code Ann. § 39-5-10 (b).

There are few specific limited exceptions of the applicability of SCUPTA. One such exemption is stated in S.C. Code Ann. § 39-5-40 which addresses very limited portions of the insurance code to which it does not apply. Those limited portions are stated in subsection (c).

(c) This article does not supersede or apply to unfair trade practices covered and regulated under Title 38, **Chapter 57, Sections 38-57-10 through 38-55-320.**

Those are limited only to S.C. Code Ann. 38-57. However, the section related to S.C. Code Ann. § 38-77-341 is not included in this exclusion.

Regulated industries are not automatically exempt from the application of SCUTPA. If there is a regulation which permits certain acts, those will not be a

violation of SCUTPA. SCUTPA expressly provides it is inapplicable to “[a]ctions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States.” S.C. Code § 39–5–40(a) (1985). “This exception exempts an entity from liability where its actions are lawful or where it does something required by law, or does something that would otherwise be a violation of the Act, but which is allowed under other statutes or regulations.” *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 777 S.E.2d 176, 196–97 (2015).

6.4.1. Defendants Have Burden of Proving Exemption

“For the purpose of this section, the burden of proving exemption from the provisions of this article shall be upon the person claiming the exemption.” S.C. Code Ann. § 39-5-40. State Farm cannot meet its burden showing exemption. There is a district court decision⁶ that does not address the application of S.C. Code Ann. § 38-77-341 (1) to automobile insurers like State Farm. Thus, it fails to meet its burden of proving exemption.

6.5. Right to Amend

To the extent needed Plaintiffs request the right to amend the Complaint should the Court determine there are any parts that are inadequate.

⁶ *Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F. Supp. 128, 130 (D.S.C. 1994).

7. CONCLUSION

Plaintiffs' 36-page Complaint contains 161 separate paragraphs and incorporates the affidavit of a legal expert stating duties were owed by the law firm and were breached. Should the Court not remand the matter, the motions to dismiss should be denied. To the extent it is necessary to file an amended complaint to address the purported pleading deficiencies, Plaintiffs request this right.

Respectfully submitted,

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From: McGee, Thomas W., III

Sent: Friday, July 19, 2024 3:08:39 PM

To: jwilkerson@turnerpadget.com; wallison@kahnlawfirm.com; jskahn@kahnlawfirm.com; lbehnke@turnerpadget.com; Katie Mellen

Cc: McGee, Thomas W., III Young, Roger Law Clerk (Max J. Mazurek); McGee, Thomas W., III Secretary (Jessica Dominick)

Subject: Workman v. State Farm, et al.

Sensitivity: Normal

All,

As you know, I heard the separate motions for judgment on the pleadings filed by Defendants State Farm and Gallivan White & Boyd last week in Charleston. I have reviewed the extensive briefing in this matter and – since last week – looked back at several cases and other documents properly before me at this stage in the proceedings. Because of the several grounds, defenses, and issues involved in these two motions – and because I may grant/deny parts of one or both motions – I would ask that the parties to each of them submit separate proposed orders for my review.

I am not looking for anything nearly as long as the briefs; however, I would like a concise breakout of the grounds presented in the motions and why each should be granted/denied. Also, please address why the individual Defendants involved in each motion should/should not be dismissed. Lastly, please include whether each claim/Defendant you argue should be dismissed should be done with/without prejudice and legal bases for same.

If you could have these to me within 14 days, I would greatly appreciate it – I know there is much to do and I don't want to be a speed bump in the case. However, I also know that each of you have very busy practices, so if something comes up and you need a little more time, please just let me know and copy all other counsel so we can each adjust our calendars.

Thank you very much for the excellent briefing and arguments,

Best,

Billy McGee

Ps – I copied everyone identified on the roster, but if anyone has been left off, please forward to them and let me know whom I need to include in any future emails.

Judge Billy McGee

Circuit Court At-Large

Richland County Courthouse

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**Subject:** Workman v. State Farm, et al.

**Sensitivity:** Normal

**Attachments:**

2024.08.02 Workman Additional Submission.pdf;2024.08.02 Workman Additional Submission Requested by Court.docx ;

---

Judge McGee

Pursuant to the Court's request of July 19, attached is Plaintiffs' submission as a PDF and a Word document.

Respectfully,

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On Jul 19, 2024, at 2:07 PM, McGee, Thomas W., III wrote:

All,

As you know, I heard the separate motions for judgment on the pleadings filed by Defendants State Farm and Gallivan White & Boyd last week in Charleston. I have reviewed the extensive briefing in this matter and ♦ since last week ♦ looked back at several cases and other documents properly before me at this stage in the proceedings. Because of the several grounds, defenses, and issues involved in these two motions ♦ and because I may grant/deny parts of one or both motions ♦ I would ask that the parties to each of them submit separate proposed orders for my review.

I am not looking for anything nearly as long as the briefs; however, I would like a concise breakout of the grounds presented in the motions and why each should be granted/denied. Also, please address why the individual Defendants involved in each motion should/should not be dismissed. Lastly, please include whether each claim/Defendant you argue should be dismissed should be done with/without prejudice and legal bases for same.

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Thank you very much for the excellent briefing and arguments,  
Best,  
Billy McGee

Ps ♦ I copied everyone identified on the roster, but if anyone has been left off, please forward to them and let me know whom I need to include in any future emails.

Judge Billy McGee  
Circuit Court At-Large

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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS  
CASE NO. 23-CP-10-1832

**ROBERT C. WORKMAN, INDIVIDUALLY AND  
AS PERSONAL REPRESENTATIVE OF THE  
ESTATE OF JAMES K. WORKMAN, KELLY  
WORKMAN TICK AND MATTHEW T.  
WORKMAN,**

**PLAINTIFFS,**

**V.**

**STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY AND  
GALLIVAN, WHITE & BOYD, P.A.,**

**DEFENDANTS.**

**PLAINTIFFS’  
SUPPLEMENTAL SUBMISSION  
AS REQUESTED BY THE COURT**

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Plaintiffs respectfully submit, at the direction of the Court, responses to the grounds presented in the motions filed by State Farm<sup>1</sup> and Gallivan, White & Boyd, PA (GWB).

**1. The Court Should Deny the Motions for Judgment on Pleadings**

Plaintiffs plead sufficient facts for each cause of action and the reasonable inferences are such that a judgment on the pleadings is not proper.

A judgment on the pleadings is not proper if the complaint raises a factual issue that, if resolved in favor of the plaintiff, would entitle him to judgment. All properly pleaded factual allegations are admitted. When a fact is well pleaded, any legal or factual inferences therefrom are considered. A complaint is sufficient if it states a cause of action or appears that the plaintiff is entitled to relief. Our courts construe pleadings liberally to ensure substantial justice between parties. Judgments on the pleadings are considered drastic procedures. *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) (internal citations omitted) (emphasis added).

Further, the Court should deny the motions because discovery has not been fully and fairly conducted and defendants improperly seek consideration of matters outside the Complaint, including defenses like immunity, lack of reliance, and consideration of documents in a different proceeding. At this stage, the Court is not to look beyond the Complaint. Because of this and the reasons argued, it is not proper to grant a judgment in favor of Defendants.

**2. Concise Grounds Presented in Motion by State Farm**

**2.1. State Farm Concise Grounds**

In its motion, State Farm claims that Plaintiffs “fail to state a legally cognizable claim against State Farm” for reasons listed in the headers below. For the reasons stated herein and argued at the hearing, the motion should be denied.

---

<sup>1</sup> State Farm did not submit a memorandum in support of its motion as requested by the Court.

## **2.2. Abuse of Process – Ulterior Purpose Element Lacking.**

**Court Should Deny** – Plaintiffs plead sufficient ulterior purposes and inferences

therefrom in various paragraphs in the Complaint including:

- ¶ 7 To avoid duties it owed to plaintiffs and others to pay claims;
- ¶¶ 49-51 create false documents to provide to their counsel to use in litigation, and “for many other improper reasons and purposes, including to avoid paying Plaintiffs and others.”;
- ¶¶ 62-64 improperly avoid having to indemnify, defend or pay for damages all to further its unlawful purposes;
- ¶¶ 111 perverting justice and the process by creating and using false documents in litigation, have a court determine the bogus documents were real and valid in compliance with the law when they were not and were a forgery; and seek to have a form approved by the court when the form had never been submitted and approved by the Department of Insurance as the law requires so it could use that decision to deny others; and
- ¶ 112 State Farm’s intentional actions in using the process, filing and pursuing the lawsuit were neither proper in the regular conduct of litigation nor aimed at an objective that was a legitimate use of the process.

Although a declaratory judgment action can be a valid legal process, creating, forging and using false documents in a court proceeding to obtain relief is never an appropriate use of the legal process. Plaintiffs sufficiently allege facts and inferences from those facts to deny State Farm’s motion.

## **2.3. Fraud and Negligent Misrepresentation – No Factual Allegations of Reasonable, Detrimental Reliance.**

**Court Should deny** – Reasonable and detrimental reliance are sufficiently plead:

- ¶ 15 Plaintiffs expended time, effort and expense defending lawsuit.
- ¶ 46 Plaintiffs relied on false documents to make decisions about available coverage;
- ¶ 47 Plaintiffs relied on false documents to make decisions and determinations about their own insurance coverage, uninsured or underinsured;
- ¶ 48 Plaintiffs relied on the documents to make decisions and determinations about litigation.

State Farm improperly seeks consideration of defenses, including the Answer filed by the Estate. The Court is to focus on the allegations in the Complaint. Even if the Court were

to consider the Answer, Plaintiffs plead sufficient reliance on the lawsuit filed to obtain counsel and respond. Plaintiffs plead reliance on the allegations and forged documents to effect their own insurance issues, to obtain counsel and to litigate. *See e.g.* ¶¶ 46-48.

The issue of reliance is reasonableness, a factual question for a jury, not a determination as a matter of law for the Court. Thus, dismissal is not proper.

#### **2.4. Plaintiffs Argue Fraud Per Se – Reliance Not Needed**

Reliance is not needed as to one who makes false statements or misrepresentations in connection with an insurance matter. It is fraud *per se* to deny payment to Plaintiffs as alleged. Fraud is defined as a “false statement or misrepresentation.” S.C. Code Ann. § 38-55-530 (D). This is made by a person with the person’s knowledge of the falsity of the statement and with the intent of obtaining...or attempting to obtain...an undeserved economic advantage or benefit or made with the intent to deny...any benefit or payment in connection with an insurance transaction, and ***such shall constitute fraud.***” State Farm made a representation with the intent to obtain an ***undeserved economic advantage*** (avoid paying insurance proceeds / not paying coverage due) with the intent to deny payment in ***connection with the insurance transaction*** (insurance claim / lawsuit). State Farm illegally participated in making false statements or misrepresentations in connection with insurance claims. S.C. Code Ann. § 38-55-540. This conduct is fraud *per se*.

#### **2.5. Fraudulent Nondisclosure – No Duty to Disclose False Statements**

**Court Should deny** - One who chooses to speak has a duty to do so truthfully. State Farm asserts nondisclosure becomes fraudulent only when a party has a duty to disclose to the other party. Plaintiffs allege an insurance company dealing with a claimant has duties to not hide or misrepresent but rather to speak the truth or at least not to provide “deceptive or

misleading information with respect to coverages.” S.C. Code Ann. § 38-59-20. *See also* 2.7 below. State Farm chose to speak and did so falsely.

Because Plaintiffs sufficiently plead State Farm had duties to speak the truth and not misrepresent or provide deceptive or misleading information with respect to coverage, its motion for a judgment on the pleadings as to fraud and misrepresentation should be denied.

**2.6. Civil Conspiracy – Attorney and Client Can’t as to Third Party**

**Court Should deny** - Two or more persons who work together to commit an improper act, regardless of their status with each other is sufficient to plead civil conspiracy.

*Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021).

(“Plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.”)

State Farm asserts as a defense, not to be considered at this time, that a “civil conspiracy could not exist between client and attorney given Plaintiffs’ allegations GWB was at all times acting as State Farm’s attorney.” State Farm Motion, p. 2. First, the allegation that GWB was “at all times” acting as State Farm’s attorney does not appear in the Complaint. Second, there is no law that holds an attorney and client cannot engage in a civil conspiracy. Third, State Farm asserting that GWB “was at all times” acting as its attorney is not a defense to be considered at this stage of the proceedings.

Last, State Farm asserts that Plaintiffs are required to and have failed to plead additional facts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint. State Farm Motion, p. 3. For support, State Farm cites

a 2009 Court of Appeals decision<sup>2</sup> overruled by the Supreme Court in 2021. Further, Plaintiffs sufficiently plead facts that the Defendants' wrongful acts are independent. *See e.g.* Complaint ¶¶ 43, 72-73, 75, 77-82. Plaintiffs sufficiently plead Defendants together created, filed and pursued the lawsuit using false documents and improper redactions, including hiding information on documents that would have shown differences with the real policy. ¶¶ 12-14, 149-151. The motion should be denied.

## **2.7. SCUTPA - Does not Apply to Insurance Companies**

**Court Should deny** as Plaintiffs sufficiently plead SCUTPA. State Farm asserts as a defense SCUTPA does not apply to it as an insurance company. State Farm Mot. p. 3. Merely because an industry is regulated does not exempt it from SCUTPA. *See e.g. State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 414 S.C. 33, 72, 777 S.E.2d 176, 196 (2015). The burden of proving exemption from the provisions of this article shall be on the one claiming the exemption. S.C. Code Ann. § 39-5-40. At this stage, State Farm's defense is not to be considered. Because Plaintiffs have sufficiently plead SCUTPA applies, State Farm's motion for judgment on the pleadings should be denied.

Plaintiffs also allege State Farm, as an insurance company dealing with a claimant, has duties to not hide or misrepresent but rather speak the truth and not provide "deceptive or misleading information with respect to coverages." S.C. Code Ann. § 38-59-20. By failing to disclose documents showing coverage was not excluded, State Farm, as an insurer, engaged in "unfairly competitive practices having as their purpose or effect evasion of the coverages

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<sup>2</sup> *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct. App. 2009), *overruled by Paradis v. Chas. Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021).

as provided in this [Automobile Insurance] chapter.” S.C. Code Ann. § 38-77-10. *See e.g.* statutes cited under SCUTPA cause of action. Compl. ¶¶ 154-156.

It was alleged State Farm’s conduct was deceptive or misleading in violation of the law. This includes invoking policy defenses not in good faith and with a reasonable expectation of prevailing with the primary purpose of discouraging a third-party claim or “any other practice which constitutes unreasonable delay in paying or an unreasonable failure to pay or settle in full claims, including third-party claims.” State Farm was using a form never approved by the SC Department of Insurance. ¶¶ 58-61. SCUPTA has specific limited exceptions. *See e.g.* S.C. Code Ann. § 39-5-40 (c).

This article does not supersede or apply to unfair trade practices covered and regulated under Title 38, Chapter 57, Sections 38-57-10 through 38-55-320.

The exceptions do not apply to S.C. Code Ann. § 38-77-341 which lists as unfair trade practices under 39-5-20 (SCUPTA). Plaintiffs have adequately alleged violations to withstand dismissing the SCUPTA cause of action. Last, whether there was a SCUTPA violation is a question of fact, not a matter of law.

## **2.8. Standing – Plaintiffs in their individual capacity lack standing**

**Court Should deny** dismissing individual Plaintiffs Mathew Workman and Kelly Workman Tick as they have sufficiently plead standing and interest as more argued below. There is no dispute that Estate and Personal Representative have standing.

## **3. Concise Grounds Presented by GWB**

In its motion, GWB claims it is absolutely immune, owed no duty and there is no issue of fact raised as a matter of law as to the following causes of action: aiding and abetting abuse of process, negligent misrepresentation, negligence, and conspiracy. GWB asserts

individual Plaintiffs do not have standing. GWB's motion should be denied as causes of action are properly plead and Plaintiffs have standing.

### **3.1. Attorneys are Absolutely Immune**

**Court should deny** Attorneys are not absolutely immune. Plaintiffs sufficiently plead allegations to deny GWB's motion. GWB argues there was at all times an attorney-client relationship. Plaintiffs did not plead at all times.

An "attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client" *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). "Even if the attorney who initiates civil proceedings for his client has no probable cause to do so, he is still not liable if he acts primarily for the purpose of aiding his client in obtaining a *proper adjudication of the client's claim*." *Stiles v. Onorato*, 318 S.C. 297, 299, 457 S.E.2d 601, 602 (1995). It was plead GWB's actions were not for a proper adjudication of the client's claim and it acted improperly. For example:

- ¶12 Used and attached forged document in lawsuit in an improper attempt to deny coverage;
- ¶ 13 Provided forged and false records in the discovery process to misrepresent and mislead actual terms of the insurance policy;
- ¶ 14 Affirmatively represented the documents created after the collision were truthful when they were false or forged;
- ¶17 Improper actions and conduct in creating and using false documents as part of scheme to harm plaintiffs;
- ¶ 43-44 Used redacted document to hide information from Plaintiffs;
- ¶¶ 65, 72 GWB participated with State Farm in the improper use of documents, litigation and proceedings when such were improper and unlawful;
- ¶ 75 – 76 Falsely stated State Farm has investigated this matter and believes the policy exclusion applies;
- ¶¶ 77-78 Attached and used the false documents when they knew they were not true;
- ¶¶ 79-82 Breached various duties, including intentionally hiding actual facts and their misconduct by redacting documents to obscure and mislead the real

information and for other improper purposes by redacting information that would have shown the documents were fraudulent.

Allegations of manipulating and using false documents are such that “an attorney may be held liable where he acts in bad faith or for his own personal motivations.” *Nautilus Ins. Co. v. Murdaugh*, No. CV 2:22-1307-RMG, 2022 WL 3648458, at \*2 (D.S.C. Aug. 23, 2022). An attorney can be liable when committing fraud or malfeasance or tortious acts. It is recognized that an attorney may be held liable where he acts in bad faith or for his own personal motivations. *See generally Annotation* 97 ALR 3rd 688 (attorney’s liability for abuse of process); *Annotation* 46 ALR 4th 249 (attorney’s liability for malicious prosecution). *See also* RESTATEMENT (SECOND) OF TORTS § 674, comment d (attorney who acts without probable cause for an improper purpose is subject to same liability for the wrongful use of civil proceedings as any other person).

Sufficient facts have been plead showing GWB breached various duties owed to third parties, including not to misrepresent or affirmatively participate in illegal or improper conduct. Because of GWB’s alleged conduct, the motion should be denied.

### **3.2. Aiding and Abetting Abuse of Process – Attorneys Can’t**

GWB’s motion should be denied as it was sufficiently plead that GWB knowingly participated, aided or abetted. *See e.g.*

- ¶ 1 Defendants worked together in various ways, including creating and filing false documents in a coordinated effort to deny Plaintiffs and others the benefit of insurance coverage;
- ¶ 69 GWB knowingly assisted, used and continued to use bogus documents;
- ¶ 79 Intentionally tried to hide facts and redacted information;
- ¶ 115 GWB participated in and continued to assist in the abuse of process including by drafting and filing the complaint, perpetuating litigation including obtaining defaults against parties who did not file answers by using the fake documents, failing to affirmatively disassociate from lawsuit, amend the complaint or alert the court or parties about the false documents, illegal actions and conduct of State Farm.



“As a general rule, liability for an abuse of process extends to all who knowingly participate, aid, or abet in the abuse. *See generally* 1 Am.Jur.2d Abuse of Process § 17; 72 C.J.S. Process § 112. Those who advise or consent to the unlawful acts, or subsequently ratify them, are liable as joint tort-feasors. *See, e.g., Woodring v. Jennings State Bank*, 603 F.Supp. 1060 (D.Neb. 1985); *Alexander v. Unification Church*, 634 F.2d 673 (2d Cir. 1980); *Ingo v. Koch*, 127 F.2d 667 (2d Cir. 1942). Where there is any evidence of aiding or abetting, the question is one for the jury.” *Broadmoor Apartments of Charleston v. Horwitz*, 306 S.C. 482, 486, 413 S.E.2d 9, 11 (1991). GWB’s motion should be denied.

### **3.3. Negligent Misrepresentation**

Plaintiffs properly plead GWB’s negligent misrepresentation including reliance. Succinctly, as has been plead and argued herein, GWB had a pecuniary interest (Complaint ¶ 135) in satisfying and keeping its client State Farm. As discussed herein, GWB had duties to properly investigate and otherwise act in relation to Plaintiffs as nonclients. It has been sufficiently plead that GWB breached these duties, and as a result, Plaintiffs were harmed.

To the extent GWB claims lack of reliance, that is a defense, and not to be considered for this motion. Further, “[t]he general rule is that questions concerning reliance and its reasonableness are factual questions for the jury.” *Unlimited Servs., Inc. v. Macklen Enterprises, Inc.*, 303 S.C. 384, 387, 401 S.E.2d 153, 155 (1991); *Slack v. James*, 364 S.C. 609, 615, 614 S.E.2d 636, 639 (2005). Plaintiffs plead facts supporting reliance on the false statements made. Reasonableness is for a jury to decide.

### **3.4. Negligence and Civil Conspiracy**

The Complaint alleges sufficient facts and is properly supported by the affidavit and expert opinion identifying the duties and breaches by GWB to support negligence and civil conspiracy claims which are both argued herein.

It was plead that GWB acted in its own interests and had duties separate from State Farm. *See e.g.* Compl., ¶¶ 68-73, 137, 146, pp. 42-45 and Ex. A Pendarvis' Affidavit citing RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §110(1), Rule 11 and other duties of candor to third parties and the tribunal. Lawyers have a duty to make reasonable inquiry to determine whether there is evidence supporting their factual allegations before filing a lawsuit, not manipulate documents to create new facts.

To the extent Defendants argue an attorney and client cannot engage in a civil conspiracy because the relationship is one of attorney-client or agent-principal, this is incorrect. The assumption argued by State Farm is that the attorney agent is working solely for the interests of the principal and does not have separate duties. Here, it was plead that GWB acted in its own interests and had duties separate from State Farm. *See e.g.* Compl. ¶¶ 68-73 and Pendarvis Aff. citing RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §110(1), Rule 11 and other duties of candor to third parties and the tribunal. Compl. including ¶¶ 42-45.

The GWB lawyers breached “their independent duties to Plaintiffs to investigate and confirm the evidence they submitted in support of State Farm’s claims in the Federal Lawsuit provided a non-frivolous basis to support the claims before filing the Federal Lawsuit. The lawyers at the Law Firm apparently either did not conduct a reasonable investigation to evaluate the evidence that State Farm provided to support the claim, or they may have proceeded with the Federal Lawsuit to maintain their relationship with State Farm, notwithstanding whether the evidence appeared to support a meritorious claim.” *Id. See also* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §98 (2000):

A lawyer communicating on behalf of a client with a nonclient  
may not:

- (1) knowingly make a false statement of material fact or law to the nonclient;
- (2) make other statements prohibited by law; or
- (3) fail to make a disclosure of information required by law.

The law does not preclude suing a lawyer or law firm for acting in violation of duties owed, acting outside the scope of their duties or for their own interests. GWB had duties to correct prior misstatements and not make false ones. Plaintiffs attached an affidavit and expert opinion identifying the duties and breaches by GWB. *See e.g. Compl.*, ¶¶ 137, 146, Ex. A Aff. Pendarvis. Failing to correct statements and documents even after the fraud became apparent required Plaintiffs to continue to defend, file motions and resulted in damage. *Compl.*, ¶¶ 101-103. The other factual allegations and inferences from them are sufficient to deny the motions to dismiss.

While it may be true that “agents for a corporation acting in the scope of their duties cannot conspire with the corporation...”<sup>3</sup>, the law does not prevent a civil conspiracy claim against one acting in violation of duties owed, acting outside the scope of their duties or for their own interests as has been alleged here. “If two people conspire to commit fraud, for example, but the actual fraudulent conduct is carried out by only one of them, the injured plaintiff should be able to sue both of them.” *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 579, 861 S.E.2d 774, 783 (2021), *reh’g denied* (Aug. 18, 2021) (Few, J. Concur).

In breach duties owed to Plaintiffs, GWB substantially assisted State Farm in the litigation, in part, by negligently, recklessly and/or knowingly using and continuing to use

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<sup>3</sup> *McMillan v. Oconee Mem’l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 887 (2006), *overruled by Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021).

bogus documents against Plaintiffs and others without adequately or reasonably investigating the validity and/or propriety of those documents. Compl. ¶ 69 and Pendarvis Aff.

### **3.5. Kelly Tick and Matthew Workman Do Not Have Standing**

Defendants motion to dismiss Plaintiffs Kelly Workman Tick and Matthew Workman should be denied. South Carolina merely requires that one have a real, material or substantial interest in the outcome of the litigation. “Generally, a party must be a real party in interest to the litigation to have standing. *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006) (A real party in interest is a party with a real, material, or substantial interest in the outcome of the litigation.) The siblings had an interest in the policy proceeds and were harmed by Defendants. Complaint ¶ 101-102, 105. Standing requires no more.

GWB concedes the Estate and Personal Representative have standing to bring the causes of action stated in the Complaint. *See e.g.* GWB Motion p. 2. It is believed that State Farm concedes standing of the Estate and Personal Representative as well. As an Estate must act through the personal representative, the Estate and Robert Workman have standing.

In asserting that the individuals do not have standing, State Farm cites an irrelevant case *Est. of Corley*, 299 S.C. 525, 386 S.E.2d 264 (Ct. App. 1989). In that case, heirs of an estate sued the administrator of the estate for failing to file a claim against other heirs of the estate to collect an alleged asset of the estate. That case does not hold that an heir of an estate does not have standing to bring a lawsuit against a third party when that third party causes harm to them individually.

The children are the beneficiaries of the Estate. They are entitled under the statute of intestate succession to the property of a decedent. S.C. Code Ann. § 62-1-201(20). Further, they are interested persons who have a property right in or claim against the estate which may be affected by this proceeding. S.C. Code Ann. § 62-1-201(23). The Estate was sued to

deprive it and the beneficiaries of proceeds. This caused them to pay to defend. The children have standing and losses. Complaint ¶ 105.

**4. Amend Complaint if Needed**

If the court determines something is lacking, Plaintiffs move and request the right to amend their Complaint. If there is a dismissal, it should be without prejudice.

**5. Conclusion**

For the reasons stated in the filings and oral argument, the motions for judgment on the pleadings should be denied. All plaintiffs have standing. To the extent needed, Plaintiffs move and should be allowed to amend the Complaint. If any claims are dismissed, they should be without prejudice.

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**From:** Katie Mellen

**Sent:** Friday, August 2, 2024 5:08:20 PM

**To:** McGee, Thomas W., III

**Cc:** McGee, Thomas W., III; Young, Roger Law Clerk (Max J. Mazurek); Robbie Whelan; McGee, Thomas W., III Secretary (Jessica Dominick); jwilkerson@turnerpadget.com; wallison@kahnlawfirm.com; jskahn@kahnlawfirm.com; lbehnke@turnerpadget.com; Sean Kelsey Claggett; Ellis I. Kahn

**Subject:** RE: Workman v. State Farm, et al.

**Sensitivity:** Normal

**Attachments:**

Workman v. SFMAIC, GWB - State Farm's Proposed Order on Mot. J. on Pleadings.docx ;

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Judge McGee,

Attached for your review and consideration is State Farm's proposed Order on its Motion for Judgment on the Pleadings. Thank you for your time,

Katie Mellen



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**Subject:** Workman v. State Farm, et al.

All,

As you know, I heard the separate motions for judgment on the pleadings filed by Defendants State Farm and Gallivan White & Boyd last week in Charleston. I have reviewed the extensive briefing in this matter and – since last week – looked back at several cases and other documents properly before me at this stage in the proceedings. Because of the several grounds, defenses, and issues involved in these two motions – and because I may grant/deny parts of one or both motions – I would ask that the parties to each of them submit separate proposed orders for my review.

I am not looking for anything nearly as long as the briefs; however, I would like a concise breakout of the grounds presented in the motions and why each should be granted/denied. Also, please address why the individual Defendants involved in each motion should/should not be dismissed. Lastly, please include whether each claim/Defendant you argue should be dismissed should be done with/without prejudice and legal bases for same.

If you could have these to me within 14 days, I would greatly appreciate it – I know there is much to do and I don't want to be a speed bump in the case. However, I also know that each of you have very busy practices, so if something comes up and you need a little more time, please just let me know and copy all other counsel so we can each adjust our calendars.

Thank you very much for the excellent briefing and arguments,  
Best,  
Billy McGee

Ps – I copied everyone identified on the roster, but if anyone has been left off, please forward to them and let me know whom I need to include in any future emails.

Judge Billy McGee  
Circuit Court At-Large

Richland County Courthouse  
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

Case No. 2023-CP-10-01832

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

Plaintiffs,

vs.

State Farm Mutual Automobile Insurance
 Company and Gallivan, White & Boyd,
 P.A.,

Defendants.

ORDER

BEFORE THE COURT is Defendant State Farm Mutual Automobile Insurance Company's ("State Farm") Motion for Judgment on the Pleadings ("Motion") seeking dismissal of Plaintiffs' abuse of process, fraud, negligent misrepresentation, fraudulent nondisclosure, civil conspiracy, and violation of South Carolina Unfair Trade Practices Act ("SCUTPA") causes of action. For the reasons set forth herein, the Court GRANTS the Motion.

Plaintiffs' Allegations

As set forth in Plaintiffs' Complaint, Melvin O. Lamb, III was driving a Tahoe owned by his father, Melvin O. Lamb, Jr., and insured by State Farm when he caused a fatal multicar collision on June 12, 2021 (the "Accident"). Compl. ¶¶ 2-3, 30, 31, 32. Plaintiffs do not allege they were individually involved in the Accident or that they owned and insured any of the vehicles involved in the Accident. They allege their father, James K. Workman, was involved in the Accident, that Melvin O. Lamb, III drove the Tahoe into their father's vehicle, and their father died because of the injuries from the crash. Compl. ¶¶ 3, 30-32. Plaintiffs allege Robert Workman is the Personal Representative of the Workman Estate and that he, in his individual capacity, along with Kelly

Tick and Matthew Workman (collectively referred to as the “*Individual Plaintiffs*”) are heirs of the Workman Estate. Compl. ¶¶ 20-22.

Plaintiffs are not insureds of State Farm, but Plaintiffs allege Melvin O. Lamb, Jr. and Melvin O. Lamb III were State Farm’s insureds under an automobile liability insurance policy covering the Tahoe (the “Policy”). Compl. ¶¶ 33-35. Plaintiffs allege the Policy was not subject to an excluded driver endorsement at the time of the Accident and State Farm initially represented to them, through a “Confirmation of Coverage,” the Policy covering the Tahoe on the date of the Accident was “policy number 632318940A”. Compl. ¶¶ 5-6, 34-35.

Plaintiffs allege State Farm created a new declarations page for the Policy a month after the accident (the “New Declarations Page”) to exclude coverage and avoid payment for claims arising from the Accident. Compl. ¶¶ 7, 40-42, 50. The New Declarations Page identified the Policy’s number as 632 3189-B07-40B and stated it “[r]eplaced policy number 632189-40A,” the Policy number provided to them in the earlier “Confirmation of Coverage.” Compl. ¶¶ 5-6, 51-52. Plaintiffs also allege the New Declarations Page materially misrepresented Melvin O. Lamb, III was an excluded driver and referenced an excluded driver endorsement, Form 6023DC, that was not approved by the South Carolina Department of Insurance and was not previously referenced on the Policy’s prior declarations pages (the “Unapproved Form”). Compl. ¶¶ 51, 58-60. According to Plaintiffs, State Farm wanted them to rely upon the New Declarations Page as being true when it was not and State Farm knew Plaintiffs would use it to make decisions about what coverage may be available via “their own automobile insurance policies” and decisions about litigation. Compl. ¶¶ 44, 46-48, 96-97, 99. Plaintiffs allege State Farm then created a certified copy of the Policy using the New Declarations Page, with the certification falsely stating the Policy, including the New Declarations Page, was a true and accurate record of the terms and conditions of the Policy in effect at the time of the Accident (“Certified Policy”). Compl. ¶¶ 54-56.

State Farm provided the New Declarations Page and Certified Policy to Defendant Gallivan, White & Boyd, P.A. (“GWB”), its counsel, to use in litigation. Compl. ¶ 64. The New Declarations Page and the Unapproved Form were attached to a lawsuit State Farm, through its counsel GWB, filed on August 16, 2021 to deny coverage for claims arising from the Accident (the “Underlying Suit”). Compl. ¶¶ 12, 77.

Plaintiffs allege State Farm falsely stated in the Underlying Suit’s Complaint it had no duty to defend or indemnify Melvin O. Lamb, Jr. or Melvin O. Lamb, III based on the excluded driver endorsement. ¶¶ 75-76. According to Plaintiffs, “State Farm wanted a determination by a court that [it] had no duty to indemnify, defend or pay for damages that occurred because of the collision...to try to make the Plaintiffs and others abandon claims made for coverage available under the actual State Farm policy, to improperly deny coverage, and to avoid paying legitimate claims.” Compl. ¶¶ 63, 72; see also, Compl. ¶ 73. In addition to filing the New Declarations Page as an attachment to its Complaint in the Underlying Suit and making false allegations in the Complaint, Plaintiffs allege Defendants “provided” the Certified Policy in the Underlying Suit’s “discovery process.” Compl. ¶ 13.

State Farm’s Underlying Suit was filed against the Estate of James K. Workman (“Workman Estate”), Melvin O. Lamb, III, Melvin O. Lamb Jr., and others who had personal injury or property damage liability claims arising from the Accident. Compl. ¶ 74. The *Individual* Plaintiffs were not parties to the Underlying Suit and there are no allegations the *Individual* Plaintiffs had personal injury or property damage liability claims arising from the Accident *See* Compl. ¶ 74; *see also*, Complaint (Declaratory Judgment), *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-cv-2623 at ECF No. 1 (Aug. 16, 2021, D.S.C.).¹ Plaintiffs nonetheless allege they

¹ At the July 10, 2024 hearing on this Motion, State Farm requested the Court take judicial notice of its Complaint, the Workman Estate’s Answer, and the Workman Estate’s Rule 26.03 Responses filed in the Underlying Suit, Civil Action No. 2:21-cv-2623-MBS in the United States District Court for the District of South Carolina and provided the Court with file-stamped copies of the same. The court must take judicial notice “if requested by a party and supplied with the necessary information.” S.C. R. Evid. 201(d).

“obtained counsel to defend them” in the Underlying Suit “[a]s a result of Defendants’ wrongful conduct.” Compl. ¶ 101. Plaintiffs further allege they “obtained counsel to address issues, including those related to their own automobile policies,” “[a]s a result of Defendants’ wrongful conduct.” Compl. ¶ 102.

According to Plaintiffs, they filed a motion in the Underlying Suit when they discovered the Policy documents filed with State Farm’s Complaint were “fraudulent and created after the [Accident]”. Compl. ¶ 103. Plaintiffs allege State Farm then immediately sought dismissal of the Underlying Suit, “[a]dmitt[ed] coverage,” and “[r]emov[ed] all limits on coverage.” Compl. ¶¶ 103-104. The Underlying Suit was eventually dismissed with prejudice. Compl. ¶ 107.

Plaintiffs thereafter filed this action against State Farm and GWB. Plaintiffs allege State Farm’s filing of the Underlying Suit was an abuse of process and that the New Declarations Page filed with the Underlying Suit constitutes actionable fraud. Compl. ¶¶ 110-112, 121-124. With respect to fraud, Plaintiffs further allege State Farm had a duty to disclose to them there was a declarations page to the Policy existing at the time of the Accident that did not show Melvin O. Lamb, III was an excluded driver and that the excluded driver endorsement it sought to enforce through the Underlying Suit was not approved by the SCDOI. Compl. ¶¶ 93, 118. Plaintiffs allege State Farm negligently misrepresented the New Declarations Page was “real” and that the excluded driver endorsement State Farm sought to enforce through the Underlying Suit complied with South Carolina law. Compl. ¶ 133. Plaintiffs also assert a claim for civil conspiracy, alleging State Farm “acted together in combination or by agreement” with GWB, its counsel, and that State Farm and GWB “acted together and committed one or more overt acts in furtherance of that agreement.” Compl. ¶¶ 149, 151. Finally, the *Individual* Plaintiffs assert State Farm engaged in conduct actionable under SCUTPA. Compl. ¶¶ 153-161. Plaintiffs allege “Defendants’ wrongful conduct” caused Plaintiffs to suffer losses, “including attorney’s fees, costs, and expenses including to

defend the [Underlying Suit],” and resulted in them being damaged in “various ways.” Compl. ¶ 105, 108, 113, 131.

Standard of Law

The Court must regard all properly pleaded factual allegations as true and admitted when reviewing a Rule 12(c) motion for judgment on the pleadings. *Falk v. Sadler*, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000). Absent particularized facts in support, conclusory allegations and bald assertions are not properly pleaded and need not be accepted as true. *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 455, 814 S.E.2d 643, 656 n.9 (Ct. App. 2018) (“[T]he circuit court did not err in dismissing [plaintiff]’s SCUTPA claim because [plaintiff] merely stated [the defendants’] conduct satisfied the public interest requirement of SCUTPA without alleging any particularized facts.”) (citing *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986) (holding conclusory allegations are demurrable)).

While the Court may, under Rule 201,² take judicial notice of facts the accuracy of which are “capable of verification by reference to readily available sources of indisputable reliability,” *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 255, 321 S.E.2d 194, 196 (Ct. App. 1984), the Court may not otherwise consider matters outside the pleadings when considering judgment on the pleadings, *Falk*, 341 S.C. at 286, 533 S.E.2d at 353. *See also, Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 497, n.2 (2014) (noting reliance on existence and contents of court filings does not convert a motion for judgment on the pleadings to one for summary judgment).

Analysis and Holdings

Considering the properly pleaded factual allegations in the Plaintiffs’ Complaint—which are deemed admitted and true for purposes of ruling on the Motion—together with judicially

² “A judicially noticed fact must be one not subject to reasonable dispute in that it is ... capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” S.C. R. Evid. 201(b). Judicial notice may be taken at any stage of the proceeding. S.C. R. Evid. 201 (f).

noticeable facts, Plaintiffs are not entitled to relief against State Farm for abuse of process, fraud, negligent misrepresentation, civil conspiracy, or violation of SCUTPA.

1. Abuse of Process

In South Carolina, there are two “essential elements of an abuse of process claim,” the first being “an ulterior purpose” for the process, the second being “a willful act in the use of process not proper in the regular conduct of the proceeding.” *First Union Mortg. Corp. v. Thomas*, 317 S.C. 63, 73, 451 S.E.2d 907, 914 (Ct. App. 1994). State Farm moves for judgment because there are no well pleaded factual allegations in the Complaint as to the first, ulterior purpose element. Mot. ¶ 1. State Farm also contends the *Individual* Plaintiffs lack standing to assert an abuse of process claim. Mot. ¶ 6. The Court agrees.

A. No Primary, Ulterior Purpose Outside the Litigation

In terms of the “ulterior purpose” element, a claim for abuse of process lies if the suit is brought not to recover on the cause of action stated in the complaint, but to “primarily” accomplish some other purpose for which the process was not designed. *Food Lion, Inc. v. United Food & Com. Workers Int’l Union*, 351 S.C. 65, 75, 567 S.E.2d 251, 255-56 (Ct. App. 2002); *see also Pallaes v. Seinar*, 407 S.C. 359, 371, 756 S.E.2d 128, 133-34 (2014). Liability for abuse of process “exists not because a party merely seeks to gain a collateral advantage by using some legal process, but because the collateral objective was its sole or paramount reason for acting.” *Food Lion*, 351 S.C. at 75, 567 S.E.2d at 256. Thus, there is no abuse of process if the party has an “incidental or concurrent” motive outside of the litigation or even seeks “to gain a collateral advantage” outside of the litigation. *Pallaes*, 407 S.C. at 371, 756 S.E.2d at 133.

In their Complaint, Plaintiffs only allege “State Farm had an ulterior purpose in filing the lawsuit.” Compl. ¶ 110. Accordingly, the “process” at issue was the filing of the Underlying Suit and, to be entitled to any relief for abuse of process, Plaintiffs “must allege facts sufficient to show” the Underlying Suit was brought *primarily* for an ulterior purpose—that is, collateral reasons.

Food Lion, 351 S.C. at 74, 567 S.E.2d at 255. Plaintiffs have not alleged such facts. Instead, Plaintiffs allege State Farm “filed the Underlying Suit using the bogus documents seeking a Declaratory Judgment that [the Policy] did not provide coverage, including a duty to defend or indemnify Melvin O. Lamb, III or Melvin O. Lamb, Jr. for the personal injury or property damages arising from the collision.” Compl. ¶ 73. The cause of action brought by State Farm in the Underlying Suit was for a declaratory judgment that there was no coverage under the Policy for the liability claims arising out of the Accident. Complaint (Declaratory Judgment), *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-cv-2623 at ECF No. 1 (Aug. 16, 2021, D.S.C.) (“State Farm seeks a declaratory judgment that it has no obligation or duty to defend or indemnify [Melvin O. Lamb, III] or [Melvin O. Lamb, Jr.] for any claims arising out of the [Accident].”). Thus, there are no allegations of a primary, ulterior purpose of the Underlying Suit. In fact, Plaintiffs’ Complaint acknowledges the Underlying Suit was brought to obtain a declaration State Farm owed no coverage, which is precisely the relief sought in the Underlying Suit.

Plaintiffs argued the Underlying Suit was also brought for the ulterior purpose of getting the Plaintiffs to use their own automobile insurance policies for coverage. There are no such allegations in the Complaint, nor have Plaintiffs alleged they had any vehicles involved in the Accident for which they could seek coverage under their own insurance policies. In any event, such allegation, if made, would not save Plaintiffs’ abuse of process claim because the Underlying Suit was brought to obtain a declaratory judgment that there was no coverage—that is, it was brought to recover on the cause of action stated therein. A claim for abuse of process lies if the suit is brought not to recover on the cause of action stated in the complaint, and there is no abuse of process if the party has an “incidental or concurrent” motive outside of the litigation or even seeks “to gain a collateral advantage” outside of the litigation by bringing such action. *Pallares*, 407 S.C. at 371, 756 S.E.2d at 133; *Food Lion*, 351 S.C. at 75, 567 S.E.2d at 255-56.

For the above reasons, Plaintiffs’ properly pleaded allegations of fact do not create a possibility of relief for abuse of process and amendment of the Complaint to allege the Underlying Suit was also brought for purposes of getting the Plaintiffs to use their own automobile insurance policies for coverage would be futile. Accordingly, the Court grants State Farm’s Motion, dismissing Plaintiffs’ abuse of process claim with prejudice.

B. No Standing as to *Individual* Plaintiffs

As to the standing of the *Individual* Plaintiffs, the abuse of process claim additionally fails because they were not parties to the Underlying Suit. In this regard, “[t]he tort of abuse of process is intended to compensate *a party* for harm resulting from *another party’s* misuse of the legal system.” *Pallares*, 407 S.C. at 370, 756 S.E.2d at 133 (emphasis added); *see also, e.g., Swanson v. Bixler*, 750 F.2d 810, 814 (10th Cir. 1984) (dismissing abuse of process claims of stepson arising from conservatorship proceedings against stepfather because he had “no standing to complain about the institution of these processes”); *Gurman v. Metro Hous. & Redevelopment Auth.*, 884 F. Supp. 2d 895, 901-02 (D. Minn. 2012) (finding the position that plaintiffs could sue for abuse of process when they were not part of underlying litigation unreasonable); *Martel v. City of Newton, Kan.*, 6 F. Supp. 2d 1243, 1247 (D. Kan. 1998) (“The tort of abuse of process does not provide or implicate an indiscriminate right of third persons, indirectly affected by a prosecution, to separately advance an abuse of process claim.”).

2. Fraud and Negligent Misrepresentation

As to Plaintiffs’ fraud and negligent misrepresentation claims, State Farm argues it is entitled to judgment because there are no well pleaded factual allegations regarding reliance on the truth of the alleged fraudulent and negligent misrepresentations and injury caused by such reliance; and, as a judicially noticeable fact, the Workman Estate, which was a party to the Underlying Suit, did not rely on the alleged misrepresentations. Mot. ¶ 2. State Farm also argues

the Individual Plaintiffs, to whom the alleged misrepresentations were not made, lack standing. Mot. ¶ 6. The Court agrees.

A. No Detrimental Reliance

Reliance on the truth of a false representation and pecuniary loss proximately caused by such reliance are two essential elements of Plaintiffs' fraud and negligent misrepresentation causes of action. *Carter v. Boyd Const. Co.*, 255 S.C. 274, 280–81, 178 S.E.2d 536, 539 (1971) (holding reliance on the truth of the false representation and consequent and proximate injury are essential elements to fraud); *AMA Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992) (holding plaintiff must allege justifiable reliance on the alleged negligent misrepresentation as well as pecuniary loss he suffered as a proximate result of his reliance). With respect to their fraud cause of action, pursuant to Rule 9, Plaintiffs must allege with specificity their detrimental reliance on false representations.

Plaintiffs cite the following paragraphs of their Complaint as sufficiently alleging reliance:

- ¶ 15 – “After Plaintiffs expended effort, time and expense in defending the lawsuit, including taking the deposition of a State Farm corporate representative, Defendants’ scheme was exposed.”
- ¶ 44 – “State Farm created that declarations page because it wanted Plaintiffs, the Court, and others to rely upon it as being true when it was not.”
- ¶ 46 – “State Farm knew or should have known that Plaintiffs, others harmed by the collision and their automobile insurance carriers would use the false documents to make decisions about available automobile coverage.”
- ¶ 47 – “State Farm knew or should have known Plaintiffs and others involved in the June 12, 2021 collision, including their automobile insurance carriers, would rely on State Farm’s false declarations page in making decisions and determinations about what coverage may be available via their own automobile insurance policies.”
- ¶ 48 – “State Farm knew or should have known that Plaintiffs and others involved in the June 12, 2021 collision, including their automobile insurance carriers, would rely on the State Farm’s false declarations page in making decisions and determinations about litigation.”

- ¶ 101 – “As a result of Defendants’ wrongful conduct, Plaintiffs and others obtained counsel to defend them in the lawsuit brought by Defendants.”
- ¶ 102 – “As a result of Defendants’ wrongful conduct, Plaintiffs and others obtained counsel to address issues, including those related to their own automobile policies.”
- ¶ 105 – “As a direct and proximate result of Defendants’ wrongful conduct, Plaintiffs suffered losses, including attorney’s fees, costs, and expenses including to defend the lawsuit brought by Defendants...”
- ¶ 130 – “Plaintiffs and others had a right to rely on documents State Farm represented as being true.”

Neither the above nor any other allegations in Plaintiffs’ Complaint allege, much less with any specificity, Plaintiffs in fact relied on any false representation made to them by State Farm as being true, or that they suffered pecuniary loss as a result of such reliance. The absence of these allegations is fatal to Plaintiffs’ fraud and negligent misrepresentation claims.

In addition, the Court can take judicial notice of the Workman Estate’s Answer to State Farm’s Complaint for Declaratory Judgment Action (the “Answer”) as well as its Local Rule 26.03 Responses, both publicly filed court documents in the Underlying Suit. In its Answer, the Workman Estate **denied** State Farm’s coverage position it now claims was fraudulent, and, in fact, affirmatively averred both that State Farm had previously represented there was coverage, and that the Unapproved Form was inapplicable, ineffective, and invalid. *See* Answer ¶¶ 9, 16, 17, *State Farm Mut. Auto. Ins. Co. v. Workman*, C.A. No. 2:21-cv-02623-MBS, ECF No. 35 (D.S.C., Oct. 26, 2021). Likewise, the Workman Estate’s Local Rule 26.03 Responses stated a State Farm representative would “testify that coverage applies or at least that State Farm cannot show the exclusion applies based on the allegations of the Complaint and documents it has produced.” *See* Rule 26.01 Responses ¶ 2, *State Farm Mut. Auto. Ins. Co. v. Workman*, C.A. No. 2:21-cv-02623-MBS, ECF No. 39 (D.S.C., Oct. 26, 2021) (emphasis added). If the alleged misrepresentations were relied upon as true, the Workman Estate would have admitted instead of denied State Farm’s coverage position, and it would not have challenged the position through its averments. Consequently, Plaintiffs cannot establish the necessary allegations to support their fraud and

negligent misrepresentation claims, and State Farm’s Motion must be granted. *See Ivy v. Travelers Ins. Co.*, No. 1:22-cv-01228-TWP-MG, 2023 WL 3225690, at *1 (S.D. Ind. 2023) (granting motion for judgment on the pleadings where lawsuit alleged abuse of process and fraud based on the defendant’s filing, in another lawsuit, false affidavits with a response in opposition to a motion for summary judgment based on lack of reliance because the plaintiff opposed the affidavits and raised their falsity to the court in the underlying action); *Alvarado v. Rainbow Inn, Inc.*, 312 F.R.D. 23, 31 (D.D.C. 2015) (noting a party asserting fraud must allege reliance and finding defendant’s counterclaim, which asserted plaintiff’s complaint constituted actionable fraud, failed because defendant did not allege reliance and its answer “reveal[ed] ... it at no time believed the representations plaintiff made”).

The Court has also considered Plaintiffs’ arguments made under Rule 9(b), S.C. R. Civ. P., *Bailey v. Glover*, 88 U.S. 342, 349 (1874), *Slack v. James*, 364 S.C. 609, 614 S.E.2d 636, 641 (2005), and the Omnibus Insurance Fraud and Reporting Immunity Act and finds them unpersuasive. First, Plaintiffs argue reliance is a condition of mind that need not be stated with particularity under Rule 9(b). This position is without legal support. *Cf. Truauto MC, LLC v. Textron Specialized Vehicles, Inc.*, No. 2:19-CV-1381-RMG, 2020 WL 438310, at *4 (D.S.C. Jan. 28, 2020) (applying South Carolina law and stating, under analogous Rule 9, FRCP, reliance must be pleaded with particularity and finding plaintiffs’ fraud-based claims subject to dismissal because they did not allege reliance with particularity), *appeal dismissed and remanded*, No. 20-1341, 2020 WL 5642025 (4th Cir. Sept. 18, 2020).

Second, Plaintiffs argue, under *Bailey*, State Farm may not claim lack of reliance as a bar to their claims. *Bailey* concerned the two-year statute of limitations in the Bankruptcy Act of 1867 and whether it could protect “persons fraudulently obtaining property from the bankrupt, in the enjoyment of the fruits of their fraud, if they are able to conceal from the assignee the knowledge of their fraud for two years.” 88 U.S. at 345. The Supreme Court answered that question in the

negative, noting the statute of limitations should not begin to accrue on a fraud claim until the fraud is or should have been discovered, and “[t]o hold that by concealing a fraud, or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was designed to prevent fraud the means by which it is made successful and secure.” 88 U.S. at 349. *Bailey* has no application to the Court’s ruling as no statute of limitations defense has been asserted by State Farm, and *Bailey* in no way dispenses of the requirement of detrimental reliance in claims of fraud and negligent misrepresentation.

Third, Plaintiffs argue, under *Slack*, their claims cannot be dismissed for lack of reliance. Reliance, however, is an essential element of every negligent misrepresentation and fraud cause of action which must be sufficiently alleged in the plaintiff’s pleading, and *Slack* states nothing to the contrary. *Slack* held a general non-reliance clause in a contract did not prevent parties to the contract from suing for pre-contract negligent misrepresentation and fraud. 364 S.C. at 618, 614 S.E.2d at 641. There are no allegations of a contract between State Farm and any of the Plaintiffs and there is no non-reliance clause at issue in the allegations or the affirmative defenses. In short, *Slack* has no bearing on whether Plaintiffs have stated an actionable claim for fraud or negligent misrepresentation.

Fourth, based on the definition of “false statement or misrepresentation” in the Omnibus Insurance Fraud and Reporting Immunity Act,³ S.C. Code § 38-55-530(D), Plaintiffs argue there is no need to plead or show reliance because it is “fraud per se.” Plaintiffs cite no case law

³ There is no private right of action under the Act. “The purpose of [the Act] is to confront aggressively the problem of insurance fraud in South Carolina by facilitating the detection of insurance fraud; to allow reporting of suspected insurance fraud; to grant immunity for reporting suspected insurance fraud; to prescribe penalties for insurance fraud; to require restitution for victims of insurance fraud; to establish a division within the Office of the Attorney General to prosecute insurance fraud; and to require the investigation of alleged insurance fraud by State Law Enforcement Division.” S.C. Code Ann. § 38-55-520. In addition to criminal liability, the Act provides a civil penalty that must be paid to the director of the Insurance Fraud Division, who may also be awarded attorneys’ fees and costs.

recognizing a “fraud per se” cause of action and no case law citing the Act as eliminating reliance as an element to common law fraud or negligent misrepresentation claims. Plaintiffs are not the first to assert fraud and negligent misrepresentation against an insurer in South Carolina, and there appears to be no Supreme Court, Court of Appeals, and District Court cases of South Carolina modifying or reducing the necessary elements of these causes of action in such suits based on the Omnibus Insurance Fraud and Reporting Immunity Act’s definition of “false statement or misrepresentation.” The Court rejects Plaintiffs’ attempt to circumvent the requirement they sufficiently allege detrimental reliance for both their fraud and negligent misrepresentation claims and finds the Act has no application to Plaintiffs’ common law claims.

For the above reasons, the Court grants State Farm’s Motion as to the fraud and negligent misrepresentation claims, which are dismissed with prejudice.

A. No Standing as to *Individual* Plaintiffs

The fraud and negligent misrepresentation claims, as brought by the *Individual* Plaintiffs additionally and separately require dismissal based on lack of standing because the alleged fraudulent and negligent misrepresentations were made in the Underlying Suit, to which the *Individual* Plaintiffs were not parties. Both fraud and negligent misrepresentation require a false representation of fact be made by the defendant to the plaintiff. In the Complaint, Plaintiffs allege the false representations were contained in the New Declarations Page, which was filed as an attachment to State Farm’s Complaint in the Underlying Suit. Compl. ¶¶ 12, 121, 122. The *Individual* Plaintiffs were not parties to the Underlying Suit and there are no allegations the New Declarations Page was given to them directly or published in any other setting. *See gen.* Compl.

3. Fraudulent Nondisclosure

In addition to fraudulent misrepresentations, Plaintiffs, under their fraud cause of action, allege State Farm had a duty but failed to disclose certain facts and information to them. Compl. ¶¶ 118-119. Nondisclosure becomes fraudulent only when a party having knowledge of the facts

has a duty to disclose them to the other party, which occurs in three instances: (1) where it arises from a pre-existing definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in which the nondisclosure occurred; and (3) where the parties are involved in a contract or transaction that is itself intrinsically fiduciary in nature and necessarily calls for perfect good faith and full disclosure. *See, e.g., Jacobson v. Yaschik*, 155 S.E.2d 601, 605 (S.C. 1967). State Farm argues none of these instances is alleged in Plaintiffs' Complaint, nor are they implicated by the nature of the claims. Mot. ¶ 3. Plaintiff, on the other hand, argues State Farm undertook to speak on the issue of coverage and thereby assumed a duty to tell the whole truth and make a full disclosure as to matters on which it chose to speak. The Court disagrees with Plaintiffs' argument.

The filing of a declaratory judgment action on coverage, an inherently adversarial litigation proceeding, is not an undertaking to speak on the issue of coverage and it does not create on the part of the insurer a duty of full disclosure owed to non-insured claimants named in and served with the action nor any other person who might come across the action. Even if the filing of a declaratory judgment action did give rise to a duty of disclosure, State Farm's filing of the Underlying Suit would not give rise to a duty of disclosure owed to the *Individual* Plaintiffs because they were not parties to the Underlying Suit. In sum, because there are three distinct instances where a party having knowledge of a fact may commit actionable fraud by failing to disclose that fact to another, none of those instances are alleged in or implicated by the Complaint, and such allegations could not be included in an amended pleading given the nature of the alleged undertaking, and separately because the *Individual* Plaintiffs were not parties to the Underlying Suit, the Court grants State Farm's Motion and dismisses any claim for fraudulent nondisclosure with prejudice.

4. Civil Conspiracy

Plaintiffs assert a civil conspiracy existed between State Farm and GWB. To assert an actionable claim for civil conspiracy, Plaintiffs must allege “(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to [them].” *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021).

State Farm argues it is entitled to judgment because civil conspiracy between State Farm and GWB is impossible based on the allegations in Plaintiffs’ Complaint and, in any event, Plaintiffs have failed to plead additional facts in furtherance of the conspiracy separate and independent from the other wrongful acts alleged in the Complaint. Mot. ¶ 4. State Farm also argues the civil conspiracy claim must be dismissed as to the Individual Plaintiffs for lack of standing. Mot. ¶ 6. The Court agrees.

A. State Farm and GWB Acted Together in an Attorney-Client, Principal-Agent Relationship

With respect to the first element of Plaintiffs’ claim, “a civil conspiracy cannot exist when the alleged acts arise in the context of a principal-agent relationship because by virtue of the relationship such acts do not involve separate entities.” *McMillan v. Oconee Mem’l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886–87 (2006), *overruled on other grounds by Paradis*, 433 S.C. at 574, 861 S.E.2d at 780 (overruling prior precedent, like *McMillan*, “to the extent they impose or appear to impose a requirement of pleading (and proving) special damages” in a civil conspiracy claim); *see also*, 15A C.J.S. Conspiracy § 10 (“Because acts of agent are considered in law to be acts of principal, a conspiracy cannot exist between a principal and an agent. In other words, the identity between an agent and principal leads to a legal impossibility in the context of conspiracy.”). Significant to this case, the attorney-client relationship is a principal-agent relationship. *State v. Goettie*, 41 S.C.L. 126, 128 (S.C. App. L. 1854) (“That the relations of

attorney and client, and principal and agent, are identical...are propositions that will scarcely be questioned.”).

As alleged by Plaintiffs in their Complaint, the Defendants were acting together in an attorney-client relationship. Compl. ¶¶ 8, 10, 12, 13. Citing paragraphs 68 through 73 of their Complaint, Plaintiffs argue the Complaint alleges GWB acted in its own interests and owed separate duties and, therefore, GWB and State Farm could conspire together. Paragraphs 68 through 73 of the Complaint do not allege GWB was acting as anything other than State Farm’s counsel. To the contrary, those allegations are premised on GWB acting as State Farm’s counsel. Because a civil conspiracy cannot exist when the alleged act arises in an agent-principal relationship, a civil conspiracy between Defendants, as alleged in Plaintiffs’ Complaint, cannot exist. *See Myrtle Beach Lumber Co. v. Globe Int’l Corp.*, 315 S.E.2d 142, 143 (S.C. Ct. App. 1984) (“One of the significant features of our whole judicial system is that parties ... may be, and usually are, represented by attorneys learned in the law, and these attorneys by virtue of the very name of their office stand for and in place of their clients. An attorney is the alter ego of his client.”). For this reason, the Court grants State Farm’s Motion with respect to the civil conspiracy claim, which is dismissed with prejudice.

B. No Separate, Overt Acts

Plaintiffs’ failure to plead separate, additional acts in furtherance of the alleged conspiracy is another basis for dismissal. With respect to the third, “overt act” element of civil conspiracy, the Supreme Court of South Carolina has recently affirmed a plaintiff’s repetition of the same acts that serve as the basis for other claims is insufficient. *See Paradis*, 433 S.C. at 573, 861 S.E.2d at 779–80 (noting prior precedent, other grounds of which were overruled by the Court, “correctly concluded the civil conspiracy claim failed as a matter of law” because “the only wrongful acts alleged were those for which damages had already been sought” and “the plaintiff’s repetition of the same acts as the prior claims was insufficient to salvage the claim”). Instead, “[i]n a civil

conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim.” *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct. App. 2009), *overruled on other grounds by Paradis*, 433 S.C. at 574, 861 S.E.2d at 780 (overruling prior precedent, like *Hackworth*, “to the extent they impose or appear to impose a requirement of pleading (and proving) special damages” in a civil conspiracy claim, while affirming pleading requirement for separate overt act in furtherance of conspiracy). Plaintiffs’ Complaint alleges no “additional acts” “separate and independent from other wrongful acts alleged in the Complaint” and under *Hackworth* and *Paradis*, the civil conspiracy claim fails as a matter of law.

A. No Standing as to *Individual* Plaintiffs

Given the civil conspiracy claim merely incorporates by reference the alleged wrongful acts that serve as the bases for the other claims, the *Individual* Plaintiffs, through the civil conspiracy claim, seek to recover for the same acts that serve as the basis for their other claims. They face the same obstacle to standing as they do with the other claims discussed herein, and the *Individual* Plaintiffs lack of standing serves as an additional basis for dismissal of the civil conspiracy claim.

5. SCUTPA

Finally, construing the Complaint liberally, the *Individual* Plaintiffs’ claim under SCUTPA must be dismissed. Under SCUTPA, “Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 [of SCUTPA] may bring an action individually, but not in a representative capacity, to recover actual damages.” S.C. Code Ann. § 39-5-140. However, “[n]othing in [SCUTPA] shall apply to ... unfair trade practices covered and regulated under Title 38, Chapter 57, Sections 38-57-10 through 38-5[7]-320,” South

Carolina’s Insurance Trade Practices Act. S.C. Code Ann. § 39-5-40(c). Thus, courts interpreting South Carolina law have consistently held “all unfair trade practices regarding the insurance business...are exempt from the coverage of SCUTPA.” *Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F. Supp. 128, 130–31 (D.S.C. 1994); *see also*, *Cleveland Ridge Homeowner's Ass'n, Inc. v. State Farm Fire & Cas. Co.*, No. 2006-UP-295, 2006 WL 7286092, at *3 (S.C. Ct. App. June 26, 2006) (“Clearly, the legislature intended SCUTPA to exempt cases of unfair trade practices regarding the insurance business....”). Indeed, “by precluding unfair trade practices covered and regulated under Chapter 57,” the Insurance Trade Practices Act, Section 39-5-40(c) “exempts from the coverage of SCUTPA *all unfair trade practices in the business of insurance.*” *Id.* This is because the Insurance Trade Practices Act governs any “unfair or deceptive act or practice in the business of insurance.” *Id.*; *see also e.g.*, *Lewis v. Omni Indem. Co.*, 970 F. Supp. 2d 437, 451 (D.S.C. 2013).

The *Individual* Plaintiffs allege State Farm engaged in improper claim practices under Sections 38-59-20 and 38-77-341 of the South Carolina Code, and that such conduct is declared unlawful and recoverable under SCUTPA. Compl. ¶¶ 154-158. The Court finds no support in the law for the *Individual* Plaintiffs’ arguments.

Section 38-59-20 is part of the Insurance Claims Practices Act, S.C. Code Ann. §§ 38-59-10, *et seq.*, which “provides relief for a third party victim of an improper claims practice” in the form of administrative review before the Chief Insurance Commissioner. *Masterclean, Inc. v. Star Ins. Co.*, 347 S.C. 405, 415, 556 S.E.2d 371, 377 (2001); *see also*, *Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 673, 541 S.E.2d 269, 272 (Ct. App. 2000) (“Section 38–59–20 declares that a third party may pursue *administrative action* before the Chief Insurance Commissioner if an insurer *inter alia* ‘[k]nowingly misrepresent[s] to insureds or third-party claimants pertinent facts or policy provisions relating to coverages at issue or providing deceptive or misleading information with respect to coverages.’”), *aff’d as modified*, 354 S.C. 416, 581 S.E.2d 169 (2003). “This relief

is important because South Carolina does not recognize a third party action for bad faith refusal to pay insurance benefits” and “[t]hird parties do not have a private right of action under S.C. Code Ann. § 38–59–20.” *Id.*

Based on the allegations of their Complaint, it is well settled under the law, the *Individual* Plaintiffs are third parties with no standing to sue State Farm for bad faith and no private right of action for State Farm’s alleged violation of the Insurance Claims Practices Act. It also cannot be disputed the *Individual* Plaintiffs’ SCUTPA claim alleges State Farm engaged in unfair trade practices in the business of insurance, and all unfair trade practices in the business of insurance are exempt from SCUTPA’s reach. Accordingly, the Court finds no legal support for the *Individual* Plaintiffs’ attempt to use SCUTPA as a means of pursuing these otherwise unavailable claims.

Section 38-77-341, the other statute the *Individual* Plaintiffs assert State Farm violated, prohibits insureds and third-parties from submitting inflated insurance claims to insurance companies and provides such conduct is unlawful under SCUTPA. *See* S.C. Code § 38-77-341(1). State Farm argues the plain language, subject matter, and preamble of Section 38-77-341 reveals the legislature did not intend to subject automobile insurers to SCUTPA, and the Court agrees.

A cardinal rule of statutory construction is that a court must ascertain and effectuate the actual intent of the legislature. *Burns v. State Farm Mut. Auto Ins. Co.*, 377 S.E. 2d 569 (S.C. 1989). The legislative intent undergirding Section 38-77-341 is demonstrated by the statute’s plain language—it applies to persons *seeking* payment from insurance companies. Notably, subsection 1, upon which Plaintiffs rely, concerns “a false statement or representation of a material fact for use in an application **for payment** or for use in determining the right **to payment** under this chapter.” (emphasis added). Thus, its plain language was meant to apply to claimants seeking to be paid, not insurance companies. This is further demonstrated by the totality of the statute which is concerned entirely with reducing fraudulent or inflated claims: through submitting bills in excess of customary charges (subsection 2); through charging more for work covered by insurance

(subsection 3); through bill inflation to cover deductibles (subsection 4); through excessive healthcare provider billing (subsection 5); or through exaggeration or false statements when seeking payment (subsection 1). Plaintiffs’ interpretation—in which Section 38-77-341 would allow insurance companies subject to SCUTPA—is at odds with the plain language and subject matter of the statute. *See Mun. Ass’n of S.C. v. AT&T Comm. of S. States, Inc.*, 606 S.E.2d 468, 471 (S.C. 2004) (noting a court should effect legislative intent through “giving the words [of the statute] their ordinary meaning and harmonizing the language with [the statute’s] subject matter”).

Any doubt concerning the legislature’s intent is resolved through the statute’s preamble, which underscores the statute’s purpose was to reduce fraudulent or exaggerated claims. Courts often look to the preamble as an indicator of legislative intent. *S.C. Pipeline Corp. v. Lone Star Steel Co.*, 546 S.E.2d 654, 656 (S.C. 2001). The entirety of the preamble enacting section 341 states: “Whereas, it is the purpose and intent of the General Assembly in enacting this legislation to reduce insurance losses, including those of the Reinsurance Facility, and, consequently, the cost of mandatory automobile insurance.” 1989 S.C. Acts 148, Page 440. This “purpose and intent” would be advanced by reducing inflated claims, but would not be advanced by removing the insurance industry’s exemption from SCUTPA.

Further evidencing Section 38-77-341(1) is inapplicable to insurers, Chapter 57 and Chapter 59 of the insurance code governs precisely that conduct and charges the Insurance Commissioner with regulating it. *See, e.g.*, S.C. Code § 38-57-40 (“No person may make ... [a] statement misrepresenting the terms of a policy issued....”); S.C. Code § 38-59-40 (prohibiting insurers from “Knowingly misrepresenting to insureds or third-party claimants’ pertinent facts or policy provisions relating to coverages at issue”); *see also, Masterclean, Inc.*, 556 S.E.2d at 377 (“The Insurance Trade Practices Act prohibits insurers from misrepresenting an insurance policy with the intent to settle the claim ‘on less favorable terms than those provided in and contemplated by the contract or policy.’”) (quoting S.C. Code § 38-57-70 (1989)).

In short Section 38-77-341(1) does not govern policy representations made by insurance companies, and the portions of the insurance code that do speak to such policy representations charge the insurance commissioner with addressing that conduct and do not serve as the grounds for private rights of action. As *Masterclean Inc.*, *Trustees of Grace*, and their progeny confirm, this regulated conduct—indeed the entire “insurance business”—is not subject to SCUTPA. Based on Plaintiffs’ allegations and the law of South Carolina, Plaintiffs have not and cannot state a claim against State Farm under SCUTPA. State Farm’s Motion is granted, and the SCUTPA claim is dismissed with prejudice.

AND IT IS SO ORDERED.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

Case No. 2023-CP-10-01832

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

Plaintiffs,

vs.

State Farm Mutual Automobile Insurance
 Company and Gallivan, White & Boyd,
 P.A.,

Defendants.

**ORDER AS TO DEFENDANT STATE
 FARM'S RULE 12(c) MOTION FOR
 JUDGMENT ON THE PLEADINGS**

BEFORE THE COURT is Defendant State Farm Mutual Automobile Insurance Company's ("State Farm") Motion for Judgment on the Pleadings ("Motion") seeking dismissal of Plaintiffs' abuse of process, fraud, negligent misrepresentation, fraudulent nondisclosure, civil conspiracy, and violation of South Carolina Unfair Trade Practices Act ("SCUTPA") causes of action. For the reasons set forth herein, the Court GRANTS the Motion without prejudice as to some claims and with prejudice as to other claims, and as to Robert C. Workman Individually, Kelly Workman Tick, and Matthew T. Workman (the "Individual Plaintiffs").

Plaintiffs' Allegations

As set forth in Plaintiffs' Complaint, Melvin O. Lamb, III was driving a Tahoe owned by his father, Melvin O. Lamb, Jr., and insured by State Farm when he caused a fatal multicar collision on June 12, 2021 (the "Accident"). Compl. ¶¶ 2-3, 30, 31, 32. Plaintiffs do not allege they were individually involved in the Accident or that they owned and insured any of the vehicles involved in the Accident. They allege their father, James K. Workman, was involved in the Accident, that Melvin O. Lamb, III drove the Tahoe into their father's vehicle, and their father died because of

the injuries from the crash. Compl. ¶¶ 3, 30-32. Plaintiffs allege Robert Workman is the Personal Representative of the Workman Estate and that he, in his individual capacity, along with Kelly Tick and Matthew Workman (collectively referred to as the “Individual Plaintiffs”) are heirs of the Workman Estate. Compl. ¶¶ 20-22.

Plaintiffs are not insureds of State Farm, but Plaintiffs allege Melvin O. Lamb, Jr. and Melvin O. Lamb III were State Farm’s insureds under an automobile liability insurance policy covering the Tahoe (the “Policy”). Compl. ¶¶ 33-35. Plaintiffs allege the Policy was not subject to an excluded driver endorsement at the time of the Accident and State Farm initially represented to them, through a “Confirmation of Coverage,” the Policy covering the Tahoe on the date of the Accident was “policy number 632318940A”. Compl. ¶¶ 5-6, 34-35.

Plaintiffs allege State Farm created a new declarations page for the Policy a month after the accident (the “New Declarations Page”) to exclude coverage and avoid payment for claims arising from the Accident. Compl. ¶¶ 7, 40-42, 50. The New Declarations Page identified the Policy’s number as 632 3189-B07-40B and stated it “[r]eplaced policy number 632189-40A,” the Policy number provided to them in the earlier “Confirmation of Coverage.” Compl. ¶¶ 5-6, 51-52. Plaintiffs also allege the New Declarations Page materially misrepresented Melvin O. Lamb, III was an excluded driver and referenced an excluded driver endorsement, Form 6023DC, that was not approved by the South Carolina Department of Insurance and was not previously referenced on the Policy’s prior declarations pages (the “Unapproved Form”). Compl. ¶¶ 51, 58-60. According to Plaintiffs, State Farm wanted them to rely upon the New Declarations Page as being true when it was not and State Farm knew Plaintiffs would use it to make decisions about what coverage may be available via “their own automobile insurance policies” and decisions about litigation. Compl. ¶¶ 44, 46-48, 96-97, 99. Plaintiffs allege State Farm then created a certified copy of the Policy using the New Declarations Page, with the certification falsely stating the Policy,

including the New Declarations Page, was a true and accurate record of the terms and conditions of the Policy in effect at the time of the Accident (“Certified Policy”). Compl. ¶¶ 54-56.

State Farm provided the New Declarations Page and Certified Policy to Defendant Gallivan, White & Boyd, P.A. (“GWB”), its counsel, to use in litigation. Compl. ¶ 64. The New Declarations Page and the Unapproved Form were attached to a lawsuit State Farm, through its counsel GWB, filed on August 16, 2021 to deny coverage for claims arising from the Accident (the “Underlying Suit”). Compl. ¶¶ 12, 77.

Plaintiffs allege State Farm falsely stated in the Underlying Suit’s Complaint it had no duty to defend or indemnify Melvin O. Lamb, Jr. or Melvin O. Lamb, III based on the excluded driver endorsement. ¶¶ 75-76. According to Plaintiffs, “State Farm wanted a determination by a court that [it] had no duty to indemnify, defend or pay for damages that occurred because of the collision... to try to make the Plaintiffs and others abandon claims made for coverage available under the actual State Farm policy, to improperly deny coverage, and to avoid paying legitimate claims.” Compl. ¶¶ 63, 72; see also, Compl. ¶ 73. In addition to filing the New Declarations Page as an attachment to its Complaint in the Underlying Suit and making false allegations in the Complaint, Plaintiffs allege Defendants “provided” the Certified Policy in the Underlying Suit’s “discovery process.” Compl. ¶ 13.

State Farm’s Underlying Suit was filed against the Estate of James K. Workman (“Workman Estate”), Melvin O. Lamb, III, Melvin O. Lamb Jr., and others who had personal injury or property damage liability claims arising from the Accident. Compl. ¶ 74. The Individual Plaintiffs were not parties to the Underlying Suit and there are no allegations the Individual Plaintiffs had personal injury or property damage liability claims arising from the Accident *See* Compl. ¶ 74; *see also*, Complaint (Declaratory Judgment), *State Farm Mut. Auto. Ins. Co. v. Lamb*,

C.A. No. 2:21-cv-2623 at ECF No. 1 (Aug. 16, 2021, D.S.C.).¹ Plaintiffs nonetheless allege they “obtained counsel to defend them” in the Underlying Suit “[a]s a result of Defendants’ wrongful conduct.” Compl. ¶ 101. Plaintiffs further allege they “obtained counsel to address issues, including those related to their own automobile policies,” “[a]s a result of Defendants’ wrongful conduct.” Compl. ¶ 102.

According to Plaintiffs, they filed a motion in the Underlying Suit when they discovered the Policy documents filed with State Farm’s Complaint were “fraudulent and created after the [Accident]”. Compl. ¶ 103. Plaintiffs allege State Farm then immediately sought dismissal of the Underlying Suit, “[a]dmitted coverage,” and “[r]emoved all limits on coverage.” Compl. ¶¶ 103-104. The Underlying Suit was eventually dismissed with prejudice. Compl. ¶ 107.

Plaintiffs thereafter filed this action against State Farm and GWB. Plaintiffs allege State Farm’s filing of the Underlying Suit was an abuse of process and that the New Declarations Page filed with the Underlying Suit constitutes actionable fraud. Compl. ¶¶ 110-112, 121-124. With respect to fraud, Plaintiffs further allege State Farm had a duty to disclose to them there was a declarations page to the Policy existing at the time of the Accident which did not show that Melvin O. Lamb, III was an excluded driver and that the excluded driver endorsement it sought to enforce through the Underlying Suit was not approved by the SCDOL. Compl. ¶¶ 93, 118. Plaintiffs allege State Farm negligently misrepresented that the New Declarations Page was “real” and that the excluded driver endorsement State Farm sought to enforce through the Underlying Suit complied with South Carolina law. Compl. ¶ 133. Plaintiffs also assert a claim for civil conspiracy, alleging State Farm “acted together in combination or by agreement” with GWB, its counsel, and that State Farm and GWB “acted together and committed one or more overt acts in furtherance of that

¹ At the July 10, 2024 hearing on this Motion, State Farm requested the Court take judicial notice of its Complaint, the Workman Estate’s Answer, and the Workman Estate’s Rule 26.03 Responses filed in the Underlying Suit, Civil Action No. 2:21-cv-2623-MBS in the United States District Court for the District of South Carolina and provided the Court with file-stamped copies of the same. The court must take judicial notice “if requested by a party and supplied with the necessary information.” S.C. R. Evid. 201(d).

agreement.” Compl. ¶¶ 149, 151. Finally, the Individual Plaintiffs assert State Farm engaged in conduct actionable under SCUTPA. Compl. ¶¶ 153-161. Plaintiffs allege “Defendants’ wrongful conduct” caused Plaintiffs to suffer losses, “including attorney’s fees, costs, and expenses including to defend the [Underlying Suit],” and resulted in them being damaged in “various ways.” Compl. ¶ 105, 108, 113, 131.

Standard of Law

The Court must regard all properly pleaded factual allegations as true and admitted when reviewing a Rule 12(c) motion for judgment on the pleadings. *Falk v. Sadler*, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000). Absent particularized facts in support, conclusory allegations and bald assertions are not properly pleaded and need not be accepted as true. *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 455, 814 S.E.2d 643, 656 n.9 (Ct. App. 2018) (“[T]he circuit court did not err in dismissing [plaintiff]’s SCUTPA claim because [plaintiff] merely stated [the defendants’] conduct satisfied the public interest requirement of SCUTPA without alleging any particularized facts.”) (citing *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986) (holding conclusory allegations are demurrable)).

While the Court may, under Rule 201,² take judicial notice of facts the accuracy of which are “capable of verification by reference to readily available sources of indisputable reliability,” *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 255, 321 S.E.2d 194, 196 (Ct. App. 1984), the Court may not otherwise consider matters outside the pleadings when considering judgment on the pleadings, *Falk*, 341 S.C. at 286, 533 S.E.2d at 353. *See also, Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 497, n.2 (2014) (noting that reliance on the existence and contents of court filings does not convert a motion for judgment on the pleadings to one for summary judgment).

² “A judicially noticed fact must be one not subject to reasonable dispute in that it is ... capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” S.C. R. Evid. 201(b). Judicial notice may be taken at any stage of the proceeding. S.C. R. Evid. 201 (f).

Analysis and Holdings

Considering the properly pleaded factual allegations in the Plaintiffs' Complaint—which are deemed admitted and true for purposes of ruling on the Motion—together with judicially noticeable facts, the Court grants State Farm's Motion (1) without prejudice as to Plaintiffs' claims of abuse of process, fraud, and negligent misrepresentation; (2) with prejudice as to Plaintiffs' claims of civil conspiracy and violation of the SCUPTA; and (3) as to the individual Plaintiffs for lack of standing and failure to state viable claims.

1. Abuse of Process

In South Carolina, there are two “essential elements of an abuse of process claim,” the first being “an ulterior purpose” for the process, the second being “a willful act in the use of process not proper in the regular conduct of the proceeding.” *First Union Mortg. Corp. v. Thomas*, 317 S.C. 63, 73, 451 S.E.2d 907, 914 (Ct. App. 1994). State Farm moves for judgment because there are no well pleaded factual allegations in the Complaint as to the first, ulterior purpose element. Mot. ¶ 1. State Farm also contends the Individual Plaintiffs lack standing to assert an abuse of process claim. Mot. ¶ 6. The Court agrees.

A. No Primary, Ulterior Purpose Outside the Litigation

In terms of the “ulterior purpose” element, a claim for abuse of process lies if the suit is brought not to recover on the cause of action stated in the complaint, but to “primarily” accomplish some other purpose for which the process was not designed. *Food Lion, Inc. v. United Food & Com. Workers Int'l Union*, 351 S.C. 65, 75, 567 S.E.2d 251, 255-56 (Ct. App. 2002); *see also Pallaes v. Seinar*, 407 S.C. 359, 371, 756 S.E.2d 128, 133-34 (2014). Liability for abuse of process “exists not because a party merely seeks to gain a collateral advantage by using some legal process, but because the collateral objective was its sole or paramount reason for acting.” *Food Lion*, 351 S.C. at 75, 567 S.E.2d at 256. Thus, there is no abuse of process if the party has an “incidental or

concurrent” motive outside of the litigation or even seeks “to gain a collateral advantage” outside of the litigation. *Pallares*, 407 S.C. at 371, 756 S.E.2d at 133.

In their Complaint, Plaintiffs only allege “State Farm had an ulterior purpose in filing the lawsuit.” Compl. ¶ 110. Accordingly, the “process” at issue was the filing of the Underlying Suit and, to be entitled to any relief for abuse of process, Plaintiffs “must allege facts sufficient to show” the Underlying Suit was brought *primarily* for an ulterior purpose—that is, collateral reasons. *Food Lion*, 351 S.C. at 74, 567 S.E.2d at 255. Plaintiffs have not alleged such facts. Instead, Plaintiffs allege State Farm “filed the Underlying Suit using the bogus documents seeking a Declaratory Judgment that [the Policy] did not provide coverage, including a duty to defend or indemnify Melvin O. Lamb, III or Melvin O. Lamb, Jr. for the personal injury or property damages arising from the collision.” Compl. ¶ 73. The cause of action brought by State Farm in the Underlying Suit was for a declaratory judgment that there was no coverage under the Policy for the liability claims arising out of the Accident. Complaint (Declaratory Judgment), *State Farm Mut. Auto. Ins. Co. v. Lamb*, C.A. No. 2:21-cv-2623 at ECF No. 1 (Aug. 16, 2021, D.S.C.) (“State Farm seeks a declaratory judgment that it has no obligation or duty to defend or indemnify [Melvin O. Lamb, III] or [Melvin O. Lamb, Jr.] for any claims arising out of the [Accident].”). Thus, there are no allegations of a primary, ulterior purpose of the Underlying Suit. In fact, Plaintiffs’ Complaint acknowledges the Underlying Suit was brought to obtain a declaration that State Farm owed no coverage, which is precisely the relief sought in the Underlying Suit.

Plaintiffs argued the Underlying Suit was also brought for the ulterior purpose of getting the Plaintiffs to use their own automobile insurance policies for coverage. There are no such allegations in the Complaint, nor have Plaintiffs alleged they had any vehicles involved in the Accident for which they could seek coverage under their own insurance policies. In any event, such allegation, if made, would not save Plaintiffs’ abuse of process claim because the Underlying Suit was brought to obtain a declaratory judgment that there was no coverage—that is, it was

brought to recover on the cause of action stated therein. A claim for abuse of process lies if the suit is brought not to recover on the cause of action stated in the complaint, and there is no abuse of process if the party has an “incidental or concurrent” motive outside of the litigation or even seeks “to gain a collateral advantage” outside of the litigation by bringing such action. *Pallares*, 407 S.C. at 371, 756 S.E.2d at 133; *Food Lion*, 351 S.C. at 75, 567 S.E.2d at 255-56.

For the above reasons, Plaintiffs’ properly pleaded allegations of fact do not sufficiently plead a cause of action for abuse of process as required by Rule 12(c). While such a claim may or may not ultimately be remedied by amending the complaint, the Court dismisses this claim without prejudice so the remaining Plaintiff will have another opportunity to plead an abuse of process cause of action.

B. No Standing as to Individual Plaintiffs

As to the standing of the Individual Plaintiffs, the abuse of process claim additionally fails because they were not parties to the Underlying Suit. In this regard, “[t]he tort of abuse of process is intended to compensate *a party* for harm resulting from *another party’s* misuse of the legal system.” *Pallares*, 407 S.C. at 370, 756 S.E.2d at 133 (emphasis added); *see also, e.g., Swanson v. Bixler*, 750 F.2d 810, 814 (10th Cir. 1984) (dismissing abuse of process claims of stepson arising from conservatorship proceedings against stepfather because he had “no standing to complain about the institution of these processes”); *Gurman v. Metro Hous. & Redevelopment Auth.*, 884 F. Supp. 2d 895, 901-02 (D. Minn. 2012) (finding the position that plaintiffs could sue for abuse of process when they were not part of underlying litigation unreasonable); *Martel v. City of Newton, Kan.*, 6 F. Supp. 2d 1243, 1247 (D. Kan. 1998) (“The tort of abuse of process does not provide or implicate an indiscriminate right of third persons, indirectly affected by a prosecution, to separately advance an abuse of process claim.”).

2. Fraud and Negligent Misrepresentation

As to Plaintiffs' fraud and negligent misrepresentation claims, State Farm argues it is entitled to judgment because there are no well-pleaded factual allegations regarding reliance on the truth of the alleged fraudulent and negligent misrepresentations and injury caused by such reliance and, as a judicially noticeable fact, the Workman Estate, which was a party to the Underlying Suit, did not rely on the alleged misrepresentations. Mot. ¶ 2. State Farm also argues the Individual Plaintiffs, to whom the alleged misrepresentations were not made, lack standing. Mot. ¶ 6. The Court agrees.

A. No Detrimental Reliance

Reliance on the truth of a false representation and pecuniary loss proximately caused by such reliance are two essential elements of Plaintiffs' fraud and negligent misrepresentation causes of action. *Carter v. Boyd Const. Co.*, 255 S.C. 274, 280–81, 178 S.E.2d 536, 539 (1971) (holding reliance on the truth of the false representation and consequent and proximate injury are essential elements to fraud); *AMA Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992) (holding plaintiff must allege justifiable reliance on the alleged negligent misrepresentation as well as pecuniary loss he suffered as a proximate result of his reliance). With respect to their fraud cause of action, pursuant to Rule 9, Plaintiffs must allege with specificity their detrimental reliance on false representations.

Plaintiffs cite the following paragraphs of their Complaint as sufficiently alleging reliance:

- ¶ 15 – “After Plaintiffs expended effort, time and expense in defending the lawsuit, including taking the deposition of a State Farm corporate representative, Defendants’ scheme was exposed.”
- ¶ 44 – “State Farm created that declarations page because it wanted Plaintiffs, the Court, and others to rely upon it as being true when it was not.”
- ¶ 46 – “State Farm knew or should have known that Plaintiffs, others harmed by the collision and their automobile insurance carriers would use the false documents to make decisions about available automobile coverage.”

- ¶ 47 – “State Farm knew or should have known Plaintiffs and others involved in the June 12, 2021 collision, including their automobile insurance carriers, would rely on State Farm’s false declarations page in making decisions and determinations about what coverage may be available via their own automobile insurance policies.”
- ¶ 48 – “State Farm knew or should have known that Plaintiffs and others involved in the June 12, 2021 collision, including their automobile insurance carriers, would rely on the State Farm’s false declarations page in making decisions and determinations about litigation.”
- ¶ 101 – “As a result of Defendants’ wrongful conduct, Plaintiffs and others obtained counsel to defend them in the lawsuit brought by Defendants.”
- ¶ 102 – “As a result of Defendants’ wrongful conduct, Plaintiffs and others obtained counsel to address issues, including those related to their own automobile policies.”
- ¶ 105 – “As a direct and proximate result of Defendants’ wrongful conduct, Plaintiffs suffered losses, including attorney’s fees, costs, and expenses including to defend the lawsuit brought by Defendants...”
- ¶ 130 – “Plaintiffs and others had a right to rely on documents State Farm represented as being true.”

Neither the above nor any other allegations in Plaintiffs’ Complaint allege with specificity that Plaintiffs in fact relied on any false representation made to them by State Farm as being true, or that they suffered pecuniary loss as a result of such reliance. The absence of these allegations is fatal to Plaintiffs’ fraud and negligent misrepresentation claims.

In addition, the Court can take judicial notice of the Workman Estate’s Answer to State Farm’s Complaint for Declaratory Judgment Action (the “Answer”) as well as its Local Rule 26.03 Responses, both publicly filed court documents in the Underlying Suit. *See Sun v. Matyushevsky*, No. 2015–UP–146, 2015 WL 1249074, at *1 (S.C. Court App. March 18, 2015); *see also Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n. 2, 754 S.E.2d 494, 497 n. 2 (2014) (recognizing a circuit court may take judicial notice of previously entered, related court orders and consider them when ruling on a Rule 12(b)(6), SCRCR, motion to dismiss); Rule 201(f), SCRE (“Judicial notice may be taken at any stage of the proceeding.”).

In its Answer, the Workman Estate **denied** State Farm's coverage position it now claims was fraudulent, and, in fact, affirmatively averred both that State Farm had previously represented there was coverage, and that the Unapproved Form was inapplicable, ineffective, and invalid. *See* Answer ¶¶ 9, 16, 17, *State Farm Mut. Auto. Ins. Co. v. Workman*, C.A. No. 2:21-cv-02623-MBS, ECF No. 35 (D.S.C., Oct. 26, 2021). Likewise, the Workman Estate's Local Rule 26.03 Responses stated a State Farm representative would "testify that coverage applies or at least that State Farm cannot show the exclusion applies based on the allegations of the Complaint and documents it has produced." *See* Rule 26.01 Responses ¶ 2, *State Farm Mut. Auto. Ins. Co. v. Workman*, C.A. No. 2:21-cv-02623-MBS, ECF No. 39 (D.S.C., Oct. 26, 2021) (emphasis added). If the alleged misrepresentations were relied upon as true, the Workman Estate would have admitted instead of denied State Farm's coverage position, and it would not have challenged the position through its averments. Consequently, Plaintiffs cannot establish the necessary allegations to support their fraud and negligent misrepresentation claims, and State Farm's Motion must be granted. *See Ivy v. Travelers Ins. Co.*, No. 1:22-cv-01228-TWP-MG, 2023 WL 3225690, at *1 (S.D. Ind. 2023) (granting motion for judgment on the pleadings where lawsuit alleged abuse of process and fraud based on the defendant's filing, in another lawsuit, false affidavits with a response in opposition to a motion for summary judgment based on lack of reliance because the plaintiff opposed the affidavits and raised their falsity to the court in the underlying action); *Alvarado v. Rainbow Inn, Inc.*, 312 F.R.D. 23, 31 (D.D.C. 2015) (noting a party asserting fraud must allege reliance and finding defendant's counterclaim, which asserted plaintiff's complaint constituted actionable fraud, failed because defendant did not allege reliance and its answer "reveal[ed] ... it at no time believed the representations plaintiff made").

The Court has also considered Plaintiffs' arguments made under Rule 9(b), S.C. R. Civ. P., *Bailey v. Glover*, 88 U.S. 342, 349 (1874), *Slack v. James*, 364 S.C. 609, 614 S.E.2d 636, 641 (2005), and the Omnibus Insurance Fraud and Reporting Immunity Act and finds them

unpersuasive. First, Plaintiffs argue reliance is a condition of mind that need not be stated with particularity under Rule 9(b). This position is without legal support. *Cf. Truauto MC, LLC v. Textron Specialized Vehicles, Inc.*, No. 2:19-CV-1381-RMG, 2020 WL 438310, at *4 (D.S.C. Jan. 28, 2020) (applying South Carolina law and stating, under analogous Rule 9, FRCP, reliance must be pleaded with particularity and finding plaintiffs' fraud-based claims subject to dismissal because they did not allege reliance with particularity), *appeal dismissed and remanded*, No. 20-1341, 2020 WL 5642025 (4th Cir. Sept. 18, 2020).

Second, Plaintiffs argue, under *Bailey*, State Farm may not claim lack of reliance as a bar to their claims. *Bailey* concerned the two-year statute of limitations in the Bankruptcy Act of 1867 and whether it could protect "persons fraudulently obtaining property from the bankrupt party, in the enjoyment of the fruits of their fraud, if they are able to conceal from the assignee the knowledge of their fraud for two years." 88 U.S. at 345. The Supreme Court answered that question in the negative, noting the statute of limitations should not begin to accrue on a fraud claim until the fraud is or should have been discovered, and "[t]o hold that by concealing a fraud, or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was designed to prevent fraud the means by which it is made successful and secure." 88 U.S. at 349. *Bailey* has no application to the Court's ruling as no statute of limitations defense has been asserted by State Farm, and *Bailey* in no way dispenses of the requirement of detrimental reliance in claims of fraud and negligent misrepresentation.

Third, Plaintiffs argue, under *Slack*, their claims cannot be dismissed for lack of reliance. Reliance, however, is an essential element of every negligent misrepresentation and fraud cause of action which must be sufficiently alleged in the plaintiff's pleading, and *Slack* states nothing to the contrary. *Slack* held that general non-reliance clause in a contract did not prevent parties to the contract from suing for pre-contract negligent misrepresentation and fraud. 364 S.C. at 618, 614

S.E.2d at 641. There are no allegations of a contract between State Farm and any of the Plaintiffs and there is no non-reliance clause at issue in the allegations or the affirmative defenses. In short, *Slack* has no bearing on whether Plaintiffs have stated an actionable claim for fraud or negligent misrepresentation.

Fourth, based on the definition of “false statement or misrepresentation” in the Omnibus Insurance Fraud and Reporting Immunity Act,³ S.C. Code § 38-55-530(D), Plaintiffs argue there is no need to plead or show reliance because it is “fraud per se.” Plaintiffs cite no case law recognizing a “fraud per se” cause of action and no case law citing the Act as eliminating reliance as an element to common law fraud or negligent misrepresentation claims. Plaintiffs are not the first to assert fraud and negligent misrepresentation against an insurer in South Carolina, and there appears to be no Supreme Court, Court of Appeals, and/or District Court cases of South Carolina modifying or reducing the necessary elements of these causes of action in such suits based on the Omnibus Insurance Fraud and Reporting Immunity Act’s definition of “false statement or misrepresentation.” The Court rejects Plaintiffs’ attempt to circumvent the requirement they sufficiently allege detrimental reliance for both their fraud and negligent misrepresentation claims and finds the Act has no application to Plaintiffs’ common law claims.

For the above reasons, the Court grants State Farm’s Motion as to the fraud and negligent misrepresentation claims. While such claims may or may not ultimately be remedied by amending

³ There is no private right of action under the Act. “The purpose of [the Act] is to confront aggressively the problem of insurance fraud in South Carolina by facilitating the detection of insurance fraud; to allow reporting of suspected insurance fraud; to grant immunity for reporting suspected insurance fraud; to prescribe penalties for insurance fraud; to require restitution for victims of insurance fraud; to establish a division within the Office of the Attorney General to prosecute insurance fraud; and to require the investigation of alleged insurance fraud by State Law Enforcement Division.” S.C. Code Ann. § 38-55-520. In addition to criminal liability, the Act provides a civil penalty that must be paid to the director of the Insurance Fraud Division, who may also be awarded attorneys’ fees and costs.

the Complaint, the Court dismisses these claims without prejudice so the remaining Plaintiff will have another opportunity to plead fraud and negligent misrepresentation causes of action.

A. No Standing as to Individual Plaintiffs

The fraud and negligent misrepresentation claims, as brought by the Individual Plaintiffs additionally and separately require dismissal based on lack of standing because the alleged fraudulent and negligent misrepresentations were made in the Underlying Suit, to which the Individual Plaintiffs were not parties. Both fraud and negligent misrepresentation require that false representation of fact be made by the defendant to the plaintiff. In the Complaint, Plaintiffs allege the false representations were contained in the New Declarations Page, which was filed as an attachment to State Farm's Complaint in the Underlying Suit. Compl. ¶¶ 12, 121, 122. The Individual Plaintiffs were not parties to the Underlying Suit and there are no allegations that New Declarations Page was given to them directly or published in any other setting. *See gen.* Compl.

3. Fraudulent Nondisclosure

In addition to fraudulent misrepresentations, Plaintiffs, under their fraud cause of action, allege State Farm had a duty but failed to disclose certain facts and information to them. Compl. ¶¶ 118-119. Nondisclosure becomes fraudulent only when a party having knowledge of the facts has a duty to disclose them to the other party, which occurs in three instances: (1) where it arises from a pre-existing definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in which the nondisclosure occurred; and (3) where the parties are involved in a contract or transaction that is itself intrinsically fiduciary in nature and necessarily calls for perfect good faith and full disclosure. *See, e.g., Jacobson v. Yaschik*, 155 S.E.2d 601, 605 (S.C. 1967). State Farm argues none of these instances is alleged in Plaintiffs' Complaint, nor are they implicated by the nature of the claims. Mot. ¶ 3.

The filing of a declaratory judgment action on coverage, an inherently adversarial litigation proceeding, is not an undertaking to speak on the issue of coverage and it does not create on the part of the insurer a duty of full disclosure owed to non-insured claimants named in and served with the action nor any other person who might come across the action. Even if the filing of a declaratory judgment action did give rise to a duty of disclosure, State Farm's filing of the Underlying Suit would not give rise to a duty of disclosure owed to the Individual Plaintiffs because they were not parties to the Underlying Suit. In sum, because there are three distinct instances where a party having knowledge of a fact may commit actionable fraud by failing to disclose that fact to another, none of those instances are alleged in or implicated by the Complaint, and separately because the Individual Plaintiffs were not parties to the Underlying Suit, the Court grants State Farm's Motion as to these Plaintiffs. While such a claim may or may not ultimately be remedied by amending the Complaint, the Court dismisses this claim without prejudice so the remaining Plaintiff will have another opportunity to plead a fraudulent nondisclosure cause of action.

4. Civil Conspiracy

Plaintiffs assert a civil conspiracy existed between State Farm and GWB. To assert an actionable claim for civil conspiracy, Plaintiffs must allege "(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to [them]." *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021).

State Farm argues it is entitled to judgment because civil conspiracy between State Farm and GWB is impossible based on the allegations in Plaintiffs' Complaint and, in any event, Plaintiffs have failed to plead additional facts in furtherance of the conspiracy separate and independent from the other wrongful acts alleged in the Complaint. Mot. ¶ 4. State Farm also

argues the civil conspiracy claim must be dismissed as to the Individual Plaintiffs for lack of standing. Mot. ¶ 6. The Court agrees.

A. State Farm and GWB Acted Together in an Attorney-Client, Principal-Agent Relationship

With respect to the first element of Plaintiffs' claim, "a civil conspiracy cannot exist when the alleged acts arise in the context of a principal-agent relationship because by virtue of the relationship such acts do not involve separate entities." *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886–87 (2006), *overruled on other grounds by Paradis*, 433 S.C. at 574, 861 S.E.2d at 780 (overruling prior precedent, like *McMillan*, "to the extent they impose or appear to impose a requirement of pleading (and proving) special damages" in a civil conspiracy claim); *see also*, 15A C.J.S. Conspiracy § 10 ("Because acts of agent are considered in law to be acts of principal, a conspiracy cannot exist between a principal and an agent. In other words, the identity between an agent and principal leads to a legal impossibility in the context of conspiracy."). Significant to this case, the attorney-client relationship is a principal-agent relationship. *State v. Goettie*, 41 S.C.L. 126, 128 (S.C. App. L. 1854) ("That the relations of attorney and client, and principal and agent, are identical...are propositions that will scarcely be questioned.").

As alleged by Plaintiffs in their Complaint, the Defendants were acting together in an attorney-client relationship. Compl. ¶¶ 8, 10, 12, 13. Citing Paragraphs 68 through 73 of their Complaint, Plaintiffs argue the Complaint alleges GWB acted in its own interests and owed separate duties and, therefore, GWB and State Farm could conspire together. Paragraphs 68 through 73 of the Complaint do not allege GWB was acting as anything other than State Farm's counsel. To the contrary, those allegations are premised on GWB acting as State Farm's counsel, as was the Plaintiff's motion for sanctions that was heard and denied in the earlier federal court action. Because a civil conspiracy cannot exist when the alleged act arises in an agent-principal relationship, a civil conspiracy between Defendants, as alleged in Plaintiffs' Complaint, cannot

exist. *See Myrtle Beach Lumber Co. v. Globe Int'l Corp.*, 315 S.E.2d 142, 143 (S.C. Ct. App. 1984) (“One of the significant features of our whole judicial system is that parties ... may be, and usually are, represented by attorneys learned in the law, and these attorneys by virtue of the very name of their office stand for and in place of their clients. An attorney is the alter ego of his client.”). For this reason, the Court grants State Farm’s Motion with respect to the civil conspiracy claim, which is dismissed with prejudice because any amendment of the Complaint would not change the well-settled law regarding principal-agent issues addressed herein.

B. No Separate, Overt Acts

Plaintiffs’ failure to plead separate, additional acts in furtherance of the alleged conspiracy is another basis for dismissal. With respect to the third, “overt act” element of civil conspiracy, the Supreme Court of South Carolina has recently affirmed a plaintiff’s repetition of the same acts that serve as the basis for other claims is insufficient. *See Paradis*, 433 S.C. at 573, 861 S.E.2d at 779–80 (noting prior precedent, other grounds of which were overruled by the Court, “correctly concluded the civil conspiracy claim failed as a matter of law” because “the only wrongful acts alleged were those for which damages had already been sought” and “the plaintiff’s repetition of the same acts as the prior claims was insufficient to salvage the claim”). Instead, “[i]n a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim.” *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct. App. 2009), *overruled on other grounds by Paradis*, 433 S.C. at 574, 861 S.E.2d at 780 (overruling prior precedent, like *Hackworth*, “to the extent they impose or appear to impose a requirement of pleading (and proving) special damages” in a civil conspiracy claim, while affirming pleading requirement for separate overt act in furtherance of conspiracy). Plaintiffs’ Complaint alleges no “additional acts” “separate and independent from

other wrongful acts alleged in the Complaint” and under *Hackworth* and *Paradis*, the civil conspiracy claim fails as a matter of law.

A. No Standing as to Individual Plaintiffs

Given the civil conspiracy claim merely incorporates by reference the alleged wrongful acts that serve as the bases for the other claims, the Individual Plaintiffs, through the civil conspiracy claim, seek to recover for the same acts that serve as the basis for their other claims. They face the same obstacle to standing as they do with the other claims discussed herein, and the Individual Plaintiffs’ lack of standing serves as an additional basis for dismissal of the civil conspiracy claim.

5. SCUTPA

Finally, construing the Complaint liberally, the Individual Plaintiffs’ claim under SCUTPA must be dismissed. Under SCUTPA, “Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 [of SCUTPA] may bring an action individually, but not in a representative capacity, to recover actual damages.” S.C. Code Ann. § 39-5-140. However, “[n]othing in [SCUTPA] shall apply to ... unfair trade practices covered and regulated under Title 38, Chapter 57, Sections 38-57-10 through 38-5[7]-320,” South Carolina’s Insurance Trade Practices Act. S.C. Code Ann. § 39-5-40(c). Thus, courts interpreting South Carolina law have consistently held “all unfair trade practices regarding the insurance business...are exempt from the coverage of SCUTPA.” *Trustees of Grace Reformed Episcopal Church v. Charleston Ins. Co.*, 868 F. Supp. 128, 130–31 (D.S.C. 1994); *see also*, *Cleveland Ridge Homeowner's Ass'n, Inc. v. State Farm Fire & Cas. Co.*, No. 2006-UP-295, 2006 WL 7286092, at *3 (S.C. Ct. App. June 26, 2006) (“Clearly, the legislature intended SCUTPA to exempt cases of unfair trade practices regarding the insurance business . . .”). Indeed, “by precluding unfair trade practices covered and regulated under Chapter 57,” the Insurance Trade Practices Act, Section 39-

5-40(c) “exempts from the coverage of SCUTPA *all unfair trade practices in the business of insurance.*” *Id.* This is because the Insurance Trade Practices Act governs any “unfair or deceptive act or practice in the business of insurance.” *Id.*; *see also e.g., Lewis v. Omni Indem. Co.*, 970 F. Supp. 2d 437, 451 (D.S.C. 2013).

The Individual Plaintiffs allege State Farm engaged in improper claim practices under Sections 38-59-20 and 38-77-341 of the South Carolina Code, and that such conduct is declared unlawful and recoverable under SCUTPA. Compl. ¶¶ 154-158. The Court finds no support in the law for the Individual Plaintiffs’ arguments.

Section 38-59-20 is part of the Insurance Claims Practices Act, S.C. Code Ann. §§ 38-59-10, *et seq.*, which “provides relief for a third party victim of an improper claims practice” in the form of administrative review before the Chief Insurance Commissioner. *Masterclean, Inc. v. Star Ins. Co.*, 347 S.C. 405, 415, 556 S.E.2d 371, 377 (2001); *see also, Gaskins v. S. Farm Bureau Cas. Ins. Co.*, 343 S.C. 666, 673, 541 S.E.2d 269, 272 (Ct. App. 2000) (“Section 38–59–20 declares that a third party may pursue *administrative action* before the Chief Insurance Commissioner if an insurer *inter alia* ‘[k]nowingly misrepresent[s] to insureds or third-party claimants pertinent facts or policy provisions relating to coverages at issue or providing deceptive or misleading information with respect to coverages.’”), *aff’d as modified*, 354 S.C. 416, 581 S.E.2d 169 (2003). “This relief is important because South Carolina does not recognize a third party action for bad faith refusal to pay insurance benefits” and “[t]hird parties do not have a private right of action under S.C. Code Ann. § 38–59–20.” *Id.*

Based on the allegations of their Complaint, it is well settled under the law that Individual Plaintiffs are third parties with no standing to sue State Farm for bad faith and no private right of action for State Farm’s alleged violation of the Insurance Claims Practices Act. It also cannot be disputed the Individual Plaintiffs’ SCUTPA claim alleges State Farm engaged in unfair trade practices in the business of insurance, and all unfair trade practices in the business of insurance

are exempt from SCUTPA's reach. Accordingly, the Court finds no legal support for the Individual Plaintiffs' attempt to use SCUTPA as a means of pursuing these otherwise unavailable claims.

Section 38-77-341, the other statute the Individual Plaintiffs assert State Farm violated, prohibits insureds and third-parties from submitting inflated insurance claims to insurance companies and provides such conduct is unlawful under SCUTPA. *See* S.C. Code § 38-77-341(1). State Farm argues the plain language, subject matter, and preamble of Section 38-77-341 reveals the legislature did not intend to subject automobile insurers to SCUTPA, and the Court agrees.

A cardinal rule of statutory construction is that a court must ascertain and effectuate the actual intent of the legislature. *Burns v. State Farm Mut. Auto Ins. Co.*, 377 S.E. 2d 569 (S.C. 1989). The legislative intent undergirding Section 38-77-341 is demonstrated by the statute's plain language—it applies to persons *seeking* payment from insurance companies. Notably, subsection 1, upon which Plaintiffs rely, concerns “a false statement or representation of a material fact for use in an application **for payment** or for use in determining the right **to payment** under this chapter.” (emphasis added). Thus, its plain language was meant to apply to claimants seeking to be paid, not insurance companies. This is further demonstrated by the totality of the statute which is concerned entirely with reducing fraudulent or inflated claims: through submitting bills in excess of customary charges (subsection 2); through charging more for work covered by insurance (subsection 3); through bill inflation to cover deductibles (subsection 4); through excessive healthcare provider billing (subsection 5); or through exaggeration or false statements when seeking payment (subsection 1). Plaintiffs' interpretation—in which Section 38-77-341 would allow insurance companies subject to SCUTPA—is at odds with the plain language and subject matter of the statute. *See Mun. Ass'n of S.C. v. AT&T Comm. of S. States, Inc.*, 606 S.E.2d 468, 471 (S.C. 2004) (noting a court should effect legislative intent through “giving the words [of the statute] their ordinary meaning and harmonizing the language with [the statute's] subject matter”).

Any doubt concerning the legislature’s intent is resolved through the statute’s preamble, which underscores the statute’s purpose was to reduce fraudulent or exaggerated claims. Courts often look to the preamble as an indicator of legislative intent. *S.C. Pipeline Corp. v. Lone Star Steel Co.*, 546 S.E.2d 654, 656 (S.C. 2001). The entirety of the preamble enacting Section 38-77-341 states: “Whereas, it is the purpose and intent of the General Assembly in enacting this legislation to reduce insurance losses, including those of the Reinsurance Facility, and, consequently, the cost of mandatory automobile insurance.” 1989 S.C. Acts 148, Page 440. This “purpose and intent” would be advanced by reducing inflated claims, but would not be advanced by removing the insurance industry’s exemption from SCUTPA.

Further evidencing Section 38-77-341(1) is inapplicable to insurers, Chapter 57 and Chapter 59 of the insurance code governs precisely that conduct and charges the Insurance Commissioner with regulating it. *See, e.g.*, S.C. Code § 38-57-40 (“No person may make ... [a] statement misrepresenting the terms of a policy issued....”); S.C. Code § 38-59-40 (prohibiting insurers from “Knowingly misrepresenting to insureds or third-party claimants’ pertinent facts or policy provisions relating to coverages at issue”); *see also, Masterclean, Inc.*, 556 S.E.2d at 377 (“The Insurance Trade Practices Act prohibits insurers from misrepresenting an insurance policy with the intent to settle the claim ‘on less favorable terms than those provided in and contemplated by the contract or policy.’”) (quoting S.C. Code § 38-57-70 (1989)).

In short, Section 38-77-341(1) does not govern policy representations made by insurance companies, and the portions of the insurance code that do speak to such policy representations charge the insurance commissioner with addressing that conduct and do not serve as the grounds for private rights of action. As *Masterclean Inc.*, *Trustees of Grace*, and their progeny confirm, this regulated conduct—indeed the entire “insurance business”—is not subject to SCUTPA. Based on Plaintiffs’ allegations and the law of South Carolina, Plaintiffs have not and cannot state a claim against State Farm under SCUTPA. State Farm’s Motion is granted, and the SCUTPA claim is

dismissed with prejudice because any amendment of the Complaint would not change the well-settled law regarding the inapplicability of the SCUTPA to “the insurance business.”

Conclusion

In sum, the Court grants State Farm’s Rule 12(c) Motion for Judgment on the Pleadings: (1) without prejudice as to Plaintiffs’ claims of abuse of process, fraud, and negligent misrepresentation, such that the remaining Plaintiff may file an amended pleading to address the issues discussed herein; (2) with prejudice as to Plaintiffs’ claims of civil conspiracy and violation of the SCUTPA; and (3) as to the Individual Plaintiffs because they lack standing and have failed to assert any claims sufficient to withstand the Motion. Accordingly, the sole remaining Plaintiff in this matter is Robert C. Workman as Personal Representative of the Estate of James K. Workman.

AND IT IS SO ORDERED.



Charleston Common Pleas

Case Caption: Robert C Workman , plaintiff, et al VS State Farm Mutual
Automobile Insurance Company , defendant, et al

Case Number: 2023CP1001832

Type: Order/Other

So Ordered

s/ Thomas W. McGee III, Judge Code 2786

Electronically signed on 2024-09-20 11:17:02 page 23 of 23

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
CASE No. 23-CP-10-1832

**ROBERT C. WORKMAN, INDIVIDUALLY AND
AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF JAMES K. WORKMAN, KELLY
WORKMAN TICK AND MATTHEW T.
WORKMAN,**

PLAINTIFFS,

v.

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY AND
GALLIVAN, WHITE & BOYD, P.A.,**

DEFENDANTS.

**PLAINTIFFS’
SUPPLEMENTAL SUBMISSION
AS REQUESTED BY THE COURT**

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Plaintiffs respectfully submit, at the direction of the Court, responses to the grounds presented in the motions filed by State Farm¹ and Gallivan, White & Boyd, PA (GWB).

1. The Court Should Deny the Motions for Judgment on Pleadings

Plaintiffs plead sufficient facts for each cause of action and the reasonable inferences are such that a judgment on the pleadings is not proper.

A judgment on the pleadings is not proper if the complaint raises a factual issue that, if resolved in favor of the plaintiff, would entitle him to judgment. All properly pleaded factual allegations are admitted. When a fact is well pleaded, any legal or factual inferences therefrom are considered. A complaint is sufficient if it states a cause of action or appears that the plaintiff is entitled to relief. Our courts construe pleadings liberally to ensure substantial justice between parties. Judgments on the pleadings are considered drastic procedures. *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) (internal citations omitted) (emphasis added).

Further, the Court should deny the motions because discovery has not been fully and fairly conducted and defendants improperly seek consideration of matters outside the Complaint, including defenses like immunity, lack of reliance, and consideration of documents in a different proceeding. At this stage, the Court is not to look beyond the Complaint. Because of this and the reasons argued, it is not proper to grant a judgment in favor of Defendants.

2. Concise Grounds Presented in Motion by State Farm

2.1. State Farm Concise Grounds

In its motion, State Farm claims that Plaintiffs “fail to state a legally cognizable claim against State Farm” for reasons listed in the headers below. For the reasons stated herein and argued at the hearing, the motion should be denied.

¹ State Farm did not submit a memorandum in support of its motion as requested by the Court.

2.2. Abuse of Process – Ulterior Purpose Element Lacking.

Court Should Deny – Plaintiffs plead sufficient ulterior purposes and inferences

therefrom in various paragraphs in the Complaint including:

- ¶ 7 To avoid duties it owed to plaintiffs and others to pay claims;
- ¶¶ 49-51 create false documents to provide to their counsel to use in litigation, and “for many other improper reasons and purposes, including to avoid paying Plaintiffs and others.”;
- ¶¶ 62-64 improperly avoid having to indemnify, defend or pay for damages all to further its unlawful purposes;
- ¶¶ 111 perverting justice and the process by creating and using false documents in litigation, have a court determine the bogus documents were real and valid in compliance with the law when they were not and were a forgery; and seek to have a form approved by the court when the form had never been submitted and approved by the Department of Insurance as the law requires so it could use that decision to deny others; and
- ¶ 112 State Farm’s intentional actions in using the process, filing and pursuing the lawsuit were neither proper in the regular conduct of litigation nor aimed at an objective that was a legitimate use of the process.

Although a declaratory judgment action can be a valid legal process, creating, forging and using false documents in a court proceeding to obtain relief is never an appropriate use of the legal process. Plaintiffs sufficiently allege facts and inferences from those facts to deny State Farm’s motion.

2.3. Fraud and Negligent Misrepresentation – No Factual Allegations of Reasonable, Detrimental Reliance.

Court Should deny – Reasonable and detrimental reliance are sufficiently plead:

- ¶ 15 Plaintiffs expended time, effort and expense defending lawsuit.
- ¶ 46 Plaintiffs relied on false documents to make decisions about available coverage;
- ¶ 47 Plaintiffs relied on false documents to make decisions and determinations about their own insurance coverage, uninsured or underinsured;
- ¶ 48 Plaintiffs relied on the documents to make decisions and determinations about litigation.

State Farm improperly seeks consideration of defenses, including the Answer filed by the Estate. The Court is to focus on the allegations in the Complaint. Even if the Court were

to consider the Answer, Plaintiffs plead sufficient reliance on the lawsuit filed to obtain counsel and respond. Plaintiffs plead reliance on the allegations and forged documents to effect their own insurance issues, to obtain counsel and to litigate. *See e.g.* ¶¶ 46-48.

The issue of reliance is reasonableness, a factual question for a jury, not a determination as a matter of law for the Court. Thus, dismissal is not proper.

2.4. Plaintiffs Argue Fraud Per Se – Reliance Not Needed

Reliance is not needed as to one who makes false statements or misrepresentations in connection with an insurance matter. It is fraud *per se* to deny payment to Plaintiffs as alleged. Fraud is defined as a “false statement or misrepresentation.” S.C. Code Ann. § 38-55-530 (D). This is made by a person with the person’s knowledge of the falsity of the statement and with the intent of obtaining...or attempting to obtain...an undeserved economic advantage or benefit or made with the intent to deny...any benefit or payment in connection with an insurance transaction, and ***such shall constitute fraud.***” State Farm made a representation with the intent to obtain an ***undeserved economic advantage*** (avoid paying insurance proceeds / not paying coverage due) with the intent to deny payment in ***connection with the insurance transaction*** (insurance claim / lawsuit). State Farm illegally participated in making false statements or misrepresentations in connection with insurance claims. S.C. Code Ann. § 38-55-540. This conduct is fraud *per se*.

2.5. Fraudulent Nondisclosure – No Duty to Disclose False Statements

Court Should deny - One who chooses to speak has a duty to do so truthfully. State Farm asserts nondisclosure becomes fraudulent only when a party has a duty to disclose to the other party. Plaintiffs allege an insurance company dealing with a claimant has duties to not hide or misrepresent but rather to speak the truth or at least not to provide “deceptive or

misleading information with respect to coverages.” S.C. Code Ann. § 38-59-20. *See also* 2.7 below. State Farm chose to speak and did so falsely.

Because Plaintiffs sufficiently plead State Farm had duties to speak the truth and not misrepresent or provide deceptive or misleading information with respect to coverage, its motion for a judgment on the pleadings as to fraud and misrepresentation should be denied.

2.6. Civil Conspiracy – Attorney and Client Can’t as to Third Party

Court Should deny - Two or more persons who work together to commit an improper act, regardless of their status with each other is sufficient to plead civil conspiracy. *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021). (“Plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.”)

State Farm asserts as a defense, not to be considered at this time, that a “civil conspiracy could not exist between client and attorney given Plaintiffs’ allegations GWB was at all times acting as State Farm’s attorney.” State Farm Motion, p. 2. First, the allegation that GWB was “at all times” acting as State Farm’s attorney does not appear in the Complaint. Second, there is no law that holds an attorney and client cannot engage in a civil conspiracy. Third, State Farm asserting that GWB “was at all times” acting as its attorney is not a defense to be considered at this stage of the proceedings.

Last, State Farm asserts that Plaintiffs are required to and have failed to plead additional facts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint. State Farm Motion, p. 3. For support, State Farm cites

a 2009 Court of Appeals decision² overruled by the Supreme Court in 2021. Further, Plaintiffs sufficiently plead facts that the Defendants' wrongful acts are independent. *See e.g.* Complaint ¶¶ 43, 72-73, 75, 77-82. Plaintiffs sufficiently plead Defendants together created, filed and pursued the lawsuit using false documents and improper redactions, including hiding information on documents that would have shown differences with the real policy. ¶¶ 12-14, 149-151. The motion should be denied.

2.7. SCUTPA - Does not Apply to Insurance Companies

Court Should deny as Plaintiffs sufficiently plead SCUTPA. State Farm asserts as a defense SCUTPA does not apply to it as an insurance company. State Farm Mot. p. 3. Merely because an industry is regulated does not exempt it from SCUTPA. *See e.g. State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 414 S.C. 33, 72, 777 S.E.2d 176, 196 (2015). The burden of proving exemption from the provisions of this article shall be on the one claiming the exemption. S.C. Code Ann. § 39-5-40. At this stage, State Farm's defense is not to be considered. Because Plaintiffs have sufficiently plead SCUTPA applies, State Farm's motion for judgment on the pleadings should be denied.

Plaintiffs also allege State Farm, as an insurance company dealing with a claimant, has duties to not hide or misrepresent but rather speak the truth and not provide "deceptive or misleading information with respect to coverages." S.C. Code Ann. § 38-59-20. By failing to disclose documents showing coverage was not excluded, State Farm, as an insurer, engaged in "unfairly competitive practices having as their purpose or effect evasion of the coverages

² *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct. App. 2009), *overruled by Paradis v. Chas. Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021).

as provided in this [Automobile Insurance] chapter.” S.C. Code Ann. § 38-77-10. *See e.g.* statutes cited under SCUTPA cause of action. Compl. ¶¶ 154-156.

It was alleged State Farm’s conduct was deceptive or misleading in violation of the law. This includes invoking policy defenses not in good faith and with a reasonable expectation of prevailing with the primary purpose of discouraging a third-party claim or “any other practice which constitutes unreasonable delay in paying or an unreasonable failure to pay or settle in full claims, including third-party claims.” State Farm was using a form never approved by the SC Department of Insurance. ¶¶ 58-61. SCUPTA has specific limited exceptions. *See e.g.* S.C. Code Ann. § 39-5-40 (c).

This article does not supersede or apply to unfair trade practices covered and regulated under Title 38, Chapter 57, Sections 38-57-10 through 38-55-320.

The exceptions do not apply to S.C. Code Ann. § 38-77-341 which lists as unfair trade practices under 39-5-20 (SCUPTA). Plaintiffs have adequately alleged violations to withstand dismissing the SCUPTA cause of action. Last, whether there was a SCUTPA violation is a question of fact, not a matter of law.

2.8. Standing – Plaintiffs in their individual capacity lack standing

Court Should deny dismissing individual Plaintiffs Mathew Workman and Kelly Workman Tick as they have sufficiently plead standing and interest as more argued below. There is no dispute that Estate and Personal Representative have standing.

3. Concise Grounds Presented by GWB

In its motion, GWB claims it is absolutely immune, owed no duty and there is no issue of fact raised as a matter of law as to the following causes of action: aiding and abetting abuse of process, negligent misrepresentation, negligence, and conspiracy. GWB asserts

individual Plaintiffs do not have standing. GWB's motion should be denied as causes of action are properly plead and Plaintiffs have standing.

3.1. Attorneys are Absolutely Immune

Court should deny Attorneys are not absolutely immune. Plaintiffs sufficiently plead allegations to deny GWB's motion. GWB argues there was at all times an attorney-client relationship. Plaintiffs did not plead at all times.

An "attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client" *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). "Even if the attorney who initiates civil proceedings for his client has no probable cause to do so, he is still not liable if he acts primarily for the purpose of aiding his client in obtaining a *proper adjudication of the client's claim*." *Stiles v. Onorato*, 318 S.C. 297, 299, 457 S.E.2d 601, 602 (1995). It was plead GWB's actions were not for a proper adjudication of the client's claim and it acted improperly. For example:

- ¶12 Used and attached forged document in lawsuit in an improper attempt to deny coverage;
- ¶ 13 Provided forged and false records in the discovery process to misrepresent and mislead actual terms of the insurance policy;
- ¶ 14 Affirmatively represented the documents created after the collision were truthful when they were false or forged;
- ¶17 Improper actions and conduct in creating and using false documents as part of scheme to harm plaintiffs;
- ¶ 43-44 Used redacted document to hide information from Plaintiffs;
- ¶¶ 65, 72 GWB participated with State Farm in the improper use of documents, litigation and proceedings when such were improper and unlawful;
- ¶ 75 – 76 Falsely stated State Farm has investigated this matter and believes the policy exclusion applies;
- ¶¶ 77-78 Attached and used the false documents when they knew they were not true;
- ¶¶ 79-82 Breached various duties, including intentionally hiding actual facts and their misconduct by redacting documents to obscure and mislead the real

information and for other improper purposes by redacting information that would have shown the documents were fraudulent.

Allegations of manipulating and using false documents are such that “an attorney may be held liable where he acts in bad faith or for his own personal motivations.” *Nautilus Ins. Co. v. Murdaugh*, No. CV 2:22-1307-RMG, 2022 WL 3648458, at *2 (D.S.C. Aug. 23, 2022). An attorney can be liable when committing fraud or malfeasance or tortious acts. It is recognized that an attorney may be held liable where he acts in bad faith or for his own personal motivations. *See generally Annotation* 97 ALR 3rd 688 (attorney’s liability for abuse of process); *Annotation* 46 ALR 4th 249 (attorney’s liability for malicious prosecution). *See also* RESTATEMENT (SECOND) OF TORTS § 674, comment d (attorney who acts without probable cause for an improper purpose is subject to same liability for the wrongful use of civil proceedings as any other person).

Sufficient facts have been plead showing GWB breached various duties owed to third parties, including not to misrepresent or affirmatively participate in illegal or improper conduct. Because of GWB’s alleged conduct, the motion should be denied.

3.2. Aiding and Abetting Abuse of Process – Attorneys Can’t

GWB’s motion should be denied as it was sufficiently plead that GWB knowingly participated, aided or abetted. *See e.g.*

- ¶ 1 Defendants worked together in various ways, including creating and filing false documents in a coordinated effort to deny Plaintiffs and others the benefit of insurance coverage;
- ¶ 69 GWB knowingly assisted, used and continued to use bogus documents;
- ¶ 79 Intentionally tried to hide facts and redacted information;
- ¶ 115 GWB participated in and continued to assist in the abuse of process including by drafting and filing the complaint, perpetuating litigation including obtaining defaults against parties who did not file answers by using the fake documents, failing to affirmatively disassociate from lawsuit, amend the complaint or alert the court or parties about the false documents, illegal actions and conduct of State Farm.

“As a general rule, liability for an abuse of process extends to all who knowingly participate, aid, or abet in the abuse. *See generally* 1 Am.Jur.2d Abuse of Process § 17; 72 C.J.S. Process § 112. Those who advise or consent to the unlawful acts, or subsequently ratify them, are liable as joint tort-feasors. *See, e.g., Woodring v. Jennings State Bank*, 603 F.Supp. 1060 (D.Neb. 1985); *Alexander v. Unification Church*, 634 F.2d 673 (2d Cir. 1980); *Ingo v. Koch*, 127 F.2d 667 (2d Cir. 1942). Where there is any evidence of aiding or abetting, the question is one for the jury.” *Broadmoor Apartments of Charleston v. Horwitz*, 306 S.C. 482, 486, 413 S.E.2d 9, 11 (1991). GWB’s motion should be denied.

3.3. Negligent Misrepresentation

Plaintiffs properly plead GWB’s negligent misrepresentation including reliance. Succinctly, as has been plead and argued herein, GWB had a pecuniary interest (Complaint ¶ 135) in satisfying and keeping its client State Farm. As discussed herein, GWB had duties to properly investigate and otherwise act in relation to Plaintiffs as nonclients. It has been sufficiently plead that GWB breached these duties, and as a result, Plaintiffs were harmed.

To the extent GWB claims lack of reliance, that is a defense, and not to be considered for this motion. Further, “[t]he general rule is that questions concerning reliance and its reasonableness are factual questions for the jury.” *Unlimited Servs., Inc. v. Macklen Enterprises, Inc.*, 303 S.C. 384, 387, 401 S.E.2d 153, 155 (1991); *Slack v. James*, 364 S.C. 609, 615, 614 S.E.2d 636, 639 (2005). Plaintiffs plead facts supporting reliance on the false statements made. Reasonableness is for a jury to decide.

3.4. Negligence and Civil Conspiracy

The Complaint alleges sufficient facts and is properly supported by the affidavit and expert opinion identifying the duties and breaches by GWB to support negligence and civil conspiracy claims which are both argued herein.

It was plead that GWB acted in its own interests and had duties separate from State Farm. *See e.g.* Compl., ¶¶ 68-73, 137, 146, pp. 42-45 and Ex. A Pendarvis' Affidavit citing RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §110(1), Rule 11 and other duties of candor to third parties and the tribunal. Lawyers have a duty to make reasonable inquiry to determine whether there is evidence supporting their factual allegations before filing a lawsuit, not manipulate documents to create new facts.

To the extent Defendants argue an attorney and client cannot engage in a civil conspiracy because the relationship is one of attorney-client or agent-principal, this is incorrect. The assumption argued by State Farm is that the attorney agent is working solely for the interests of the principal and does not have separate duties. Here, it was plead that GWB acted in its own interests and had duties separate from State Farm. *See e.g.* Compl. ¶¶ 68-73 and Pendarvis Aff. citing RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §110(1), Rule 11 and other duties of candor to third parties and the tribunal. Compl. including ¶¶ 42-45.

The GWB lawyers breached “their independent duties to Plaintiffs to investigate and confirm the evidence they submitted in support of State Farm’s claims in the Federal Lawsuit provided a non-frivolous basis to support the claims before filing the Federal Lawsuit. The lawyers at the Law Firm apparently either did not conduct a reasonable investigation to evaluate the evidence that State Farm provided to support the claim, or they may have proceeded with the Federal Lawsuit to maintain their relationship with State Farm, notwithstanding whether the evidence appeared to support a meritorious claim.” *Id. See also* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §98 (2000):

A lawyer communicating on behalf of a client with a nonclient may not:

- (1) knowingly make a false statement of material fact or law to the nonclient;
- (2) make other statements prohibited by law; or
- (3) fail to make a disclosure of information required by law.

The law does not preclude suing a lawyer or law firm for acting in violation of duties owed, acting outside the scope of their duties or for their own interests. GWB had duties to correct prior misstatements and not make false ones. Plaintiffs attached an affidavit and expert opinion identifying the duties and breaches by GWB. *See e.g. Compl.*, ¶¶ 137, 146, Ex. A Aff. Pendarvis. Failing to correct statements and documents even after the fraud became apparent required Plaintiffs to continue to defend, file motions and resulted in damage. *Compl.*, ¶¶ 101-103. The other factual allegations and inferences from them are sufficient to deny the motions to dismiss.

While it may be true that “agents for a corporation acting in the scope of their duties cannot conspire with the corporation...”³, the law does not prevent a civil conspiracy claim against one acting in violation of duties owed, acting outside the scope of their duties or for their own interests as has been alleged here. “If two people conspire to commit fraud, for example, but the actual fraudulent conduct is carried out by only one of them, the injured plaintiff should be able to sue both of them.” *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 579, 861 S.E.2d 774, 783 (2021), *reh’g denied* (Aug. 18, 2021) (Few, J. Concur).

In breach duties owed to Plaintiffs, GWB substantially assisted State Farm in the litigation, in part, by negligently, recklessly and/or knowingly using and continuing to use

³ *McMillan v. Oconee Mem’l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 887 (2006), *overruled by Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021).

bogus documents against Plaintiffs and others without adequately or reasonably investigating the validity and/or propriety of those documents. Compl. ¶ 69 and Pendarvis Aff.

3.5. Kelly Tick and Matthew Workman Do Not Have Standing

Defendants motion to dismiss Plaintiffs Kelly Workman Tick and Matthew Workman should be denied. South Carolina merely requires that one have a real, material or substantial interest in the outcome of the litigation. “Generally, a party must be a real party in interest to the litigation to have standing. *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006) (A real party in interest is a party with a real, material, or substantial interest in the outcome of the litigation.) The siblings had an interest in the policy proceeds and were harmed by Defendants. Complaint ¶ 101-102, 105. Standing requires no more.

GWB concedes the Estate and Personal Representative have standing to bring the causes of action stated in the Complaint. *See e.g.* GWB Motion p. 2. It is believed that State Farm concedes standing of the Estate and Personal Representative as well. As an Estate must act through the personal representative, the Estate and Robert Workman have standing.

In asserting that the individuals do not have standing, State Farm cites an irrelevant case *Est. of Corley*, 299 S.C. 525, 386 S.E.2d 264 (Ct. App. 1989). In that case, heirs of an estate sued the administrator of the estate for failing to file a claim against other heirs of the estate to collect an alleged asset of the estate. That case does not hold that an heir of an estate does not have standing to bring a lawsuit against a third party when that third party causes harm to them individually.

The children are the beneficiaries of the Estate. They are entitled under the statute of intestate succession to the property of a decedent. S.C. Code Ann. § 62-1-201(20). Further, they are interested persons who have a property right in or claim against the estate which may be affected by this proceeding. S.C. Code Ann. § 62-1-201(23). The Estate was sued to

deprive it and the beneficiaries of proceeds. This caused them to pay to defend. The children have standing and losses. Complaint ¶ 105.

4. Amend Complaint if Needed

If the court determines something is lacking, Plaintiffs move and request the right to amend their Complaint. If there is a dismissal, it should be without prejudice.

5. Conclusion

For the reasons stated in the filings and oral argument, the motions for judgment on the pleadings should be denied. All plaintiffs have standing. To the extent needed, Plaintiffs move and should be allowed to amend the Complaint. If any claims are dismissed, they should be without prejudice.

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
CASE No. 23-CP-10-1832

ROBERT C. WORKMAN, INDIVIDUALLY AND
AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF JAMES K. WORKMAN, KELLY
WORKMAN TICK AND MATTHEW T.
WORKMAN,

PLAINTIFFS,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY AND
GALLIVAN, WHITE & BOYD, P.A.,

DEFENDANTS.

PLAINTIFFS'
NOTICE AND MOTION
TO RECONSIDER AND
ALTER OR AMEND
THE JUDGMENT
DISMISSING
STATE FARM
AND
MEMORANDUM IN SUPPORT

PLEASE TAKE NOTICE that at such time and place as may be set by the Court, no sooner than 10 days from the date hereof, Plaintiffs will move pursuant to SCRCP Rule 59(e) and other law, for the Court to alter or amend the September 20, 2024 Order Granting Defendant State Farm's Rule 12(c) Motion for Judgment on the Pleadings and such other and further relief as is proper, as set forth in the attached memorandum which is incorporated herein.

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This memorandum is submitted on behalf of Plaintiffs in support of their motion to reconsider the September 20, 2024 Court Order granting Defendant State Farm’s Motion for Judgment on the Pleadings with the right to amend.

1. Concise Reasons for Altering / Amending the Order

The Court’s decision contains legal and factual errors, including the misapplication of standards under Rule 12(c), disregarding well-pleaded allegations, and erroneous conclusions on claims of abuse of process, fraud, negligent misrepresentation, civil conspiracy, and SCUTPA applicability. The Court failed to properly address the use of falsified documents and misapplied legal standards regarding standing and reliance. Plaintiffs respectfully request the Court vacate the Order, deny the motion for judgment on the pleadings, or alternatively, permit amendment of the Complaint.

2. Wrong Standard 12(b)(6) v. 12(c)

The Court erred in concluding there were “bald” allegations, ignoring the numerous specific facts pleaded by Plaintiffs to support each cause of action. The Court improperly disregarded paragraphs cited by Plaintiffs, which support denial of the motion (Workman Additional Submission pp. 3-5)¹ (2024.07.11 Plaintiff Memo in Opposition). Moreover, the Court conflated Rule 12(b)(6) and Rule 12(c) standards. Rule 12(c) evaluates the sufficiency of the pleadings in light of admitted facts, not whether the claims would survive dismissal under Rule 12(b)(6) (Order, p. 8) (2024.09.20 Workman Order). The Court’s ruling erroneously incorporated Rule 12(b)(6) principles, which were neither argued nor contended by State Farm. The error requires reconsideration and amendment of the Order.

3. Failure to Address Plaintiffs' Arguments Regarding the Ulterior Purpose in Abuse of Process Claim

The Court’s ruling dismissed the Plaintiffs’ abuse of process claim on the basis that there was no ulterior purpose beyond the litigation. This conclusion overlooks well-pleaded factual allegations and the inferences that arise therefrom. Plaintiffs pleaded that State Farm created and used forged and false documents in litigation to avoid coverage, coerce Plaintiffs into using their own

¹ The submission was sent to the Court previously as requested and is attached as an Exhibit for filing.

insurance policies, and engage in litigation (Complaint ¶¶ 46-48). This improper use of forged documents, for reasons beyond properly resolving the underlying claims, constitutes abuse of process under South Carolina law (Plaintiff Memo, pp. 7-11; Workman Additional Submission, pp. 3-4).

The Court also failed to properly assess the criminal nature of forgery in this context. Using unapproved forms and forged documents to deny coverage cannot be construed as a legitimate use of process (Complaint ¶¶ 91-100). The use of forged documents in litigation inherently constitutes abuse of process, and the Court erred in ruling otherwise.

4. Erroneous Findings - Fraud - Negligent Misrepresentation Claims

The Court's conclusion that Plaintiffs did not adequately plead reliance on State Farm's fraudulent misrepresentations is error. Plaintiffs alleged that they relied on the allegations and were forced to retain counsel, incur legal fees, and make critical decisions regarding their own insurance coverage based on the false declarations page created by State Farm. (Complaint ¶¶ 46-48, 101-105) These facts were clearly plead and are sufficient to support the causes of action. This was argued, including in the Memorandum in Opposition (pp. 18-22). Plaintiffs also addressed these issues in their Supplemental Submission, yet the Court disregarded these allegations (Workman Additional Submission, pp. 3-4).

The Court's conclusion that there was an absence of reliance by Plaintiffs in the prior litigation is misplaced. This defense by State Farm should not be considered as part of the 12(c) motion which is to focus solely on the allegations made by Plaintiffs.

The law supports that reliance is not required when fraud is *per se* is alleged, particularly in the context of insurance fraud under South Carolina law. The statute defining insurance fraud makes clear that reliance is not necessary when the fraudulent actions are intended to deny coverage or payment under an insurance policy (Workman Additional Submission, pp. 4-5). Reliance is a fact question for the jury, not a matter of law to be determined by the Court. (Motion for Reconsideration, pp. 2-3).

Further, as argued, State Farm had a duty to speak truthfully and did not. S.C. Code Ann. § 38-59-20 required State Farm disclose information, which it failed to do as alleged. (*See e.g.* Workman Additional Submission, pp. 4-5.)

By ignoring these arguments, the Court failed to apply the correct legal standard to Plaintiffs' fraud and negligent misrepresentation claims. Plaintiffs adequately pleaded their reliance, and the Court's ruling should be amended to allow these claims to proceed. The order should be amended to allow Plaintiffs to move forward or at least amend the Complaint without dismissal.

5. Civil Conspiracy – Misapplication of the Attorney-Client Relationship Argument

The Court's dismissal of the civil conspiracy claim also reflects a misunderstanding of the law. The Court concluded that a conspiracy could not exist between State Farm and Gallivan, White & Boyd, P.A. (GWB), as they were in an attorney-client relationship. However, this argument was addressed by the Plaintiffs in their opposition, wherein they explained that an attorney-client relationship does not preclude a conspiracy claim when the attorney acts beyond the scope of representation or in their own personal interest (Plaintiff Memo, pp. 26-28). The Plaintiffs specifically alleged State Farm and GWB had independent duties and that its actions were taken in bad faith, which satisfies the requirements for civil conspiracy.

Moreover, the recent case law, including *Paradis v. Charleston County School District*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021), overrules the precedent cited by the Court regarding civil conspiracy and has no applicability to attorney-client relationships. This was not considered in the Court's analysis (Workman Additional Submission, pp. 5-6). *State v. Doster*, 276 S.C. 647, 651, 284 S.E.2d 218, 220 (1981) similarly supports the idea that the public interest in the proper administration of justice should not extend to conduct that is in furtherance of criminal, tortious or fraudulent conduct. Plaintiffs have plead

sufficient facts that the wrongful acts were independent. Thus, the motion should be denied.

6. Failure to Consider SCUTPA Applicability

The Court incorrectly concluded that the South Carolina Unfair Trade Practices Act (SCUTPA) did not apply to State Farm as an insurance company. SCUTPA is applicable unless specifically exempted by law, and Plaintiffs sufficiently pleaded that State Farm engaged in deceptive practices not covered by the statutory exemptions under S.C. Code Ann. § 38-77-341. This issue was raised both in Plaintiffs' opposition memorandum (pp. 29-31) and supplemental submission (pp. 6-7), but the Court failed to address this argument. Further, S.C. Code Ann. § 38-59-20 required State Farm disclose information, which it failed to do as alleged. Compl. ¶¶ 154-156. As argued, S.C. Code Ann. § 38-77-341 makes State Farm's alleged conduct an unfair trade practice under SCUTPA as a matter of law. Plaintiffs Additional Submission Aug. 2, 2024, pp. 6-7. The Court's failure to address this and find accordingly, is error.

7. Erroneous Application of Judicial Notice

The Court erred in taking judicial notice of an Answer filed by the Workman Estate, which the Plaintiffs argued should not have been a consideration in evaluating the motion for judgment on the pleadings. The Court improperly focused on this Answer, while disregarding the well-pleaded

facts regarding the creation and use of fraudulent documents by State Farm in the underlying litigation. As plead, Plaintiffs relied on the allegations made in the Complaint to hire counsel and continue defending the lawsuit. Just because the allegations of the Complaint were denied by Plaintiffs does not mean that they were not relied on and acted upon to hire counsel and continue defending the bogus lawsuit. The Court should have accepted as true the Plaintiffs' allegations that State Farm committed a crime by creating forged documents, and that Plaintiffs relied on these false documents to their detriment, including by hiring counsel and invoking their uninsured motorist coverage. *See e.g.* Compl. ¶¶ 15, 46-48 as argued pp. 3-4 Workman Additional Submission. If the Court is to take judicial notice, then the converse is true as to the filing by State Farm. The Court should find that State Farm filed a lawsuit using forged documents which is itself an abuse of process.

Judicial notice has no place in the Court's determination of a Rule 12(c) motion which is confined to consideration to the four corners of the Complaint.

8. Standing

The Court erred in determining that because the parties individually were not named in the lawsuit that they lacked standing. South Carolina merely requires that one have a real, material or substantial interest in the outcome of the litigation. Generally, a party must be a real party in interest to the litigation

to have standing. *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006) (A real party in interest is a party with a real, material, or substantial interest in the outcome of the litigation.) The siblings had an interest in the policy proceeds and were harmed by State Farm by paying for counsel and defending the lawsuit. Complaint ¶¶ 101-102, 105. Standing requires no more. The Court erred in concluding otherwise.

9. Conclusion:

For the reasons outlined above, the Plaintiffs respectfully request that the Court reconsider its Order dated September 20, 2024. The Court's decision failed to properly consider the factual allegations and legal arguments regarding the abuse of process, fraud, negligent misrepresentation, civil conspiracy, and SCUTPA and standing claims. The Plaintiffs further request that the Court vacate the order granting judgment on the pleadings and allow these claims to proceed for determination on the merits or at least allow an amendment as opposed to a dismissal with prejudice.

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	Case No. 2023-CP-10-01832
Robert C. Workman, Individually and as	)	
Personal Representative of the Estate of	)	
James K. Workman, Kelly Workman	)	
Tick and Matthew T. Workman,	)	
	)	
	)	<u>DEFENDANT STATE FARM</u>
	)	<u>MUTUAL AUTOMOBILE</u>
	)	<u>INSURANCE COMPANY'S</u>
vs.	)	<u>MEMORANDUM IN OPPOSITION TO</u>
	)	<u>PLAINTIFFS' MOTION TO</u>
State Farm Mutual Automobile Insurance	)	<u>RECONSIDER AND ALTER OR</u>
Company and Gallivan, White & Boyd,	)	<u>AMEND THE JUDGMENT</u>
P.A.,	)	<u>DISMISSING STATE FARM</u>
	)	
Defendants.	)	
	)	

Defendant State Farm Mutual Automobile Insurance Company (“State Farm”) submits this memorandum in opposition to *Plaintiffs’ Notice and Motion to Reconsider and Alter or Amend the Judgment Dismissing State Farm and Memorandum in Support* (“Motion”). Plaintiffs’ arguments for reconsideration of the *Order as to Defendant State Farm’s Rule 12(c) Motion for Judgment on the Pleadings* (the “Order”) are addressed in turn.

1. The Court applied the correct standard.

Plaintiffs argue the Court conflated Rule 12(b)(6) and Rule 12(c) standards and, therefore, applied the wrong standard deciding State Farm’s Motion for Judgment on the Pleadings (“MJOP”). (Mot. § 2, p. 3.) Specifically, Plaintiffs point to the part of the Order which states, “Plaintiffs’ properly pleaded allegations of fact do not sufficiently plead a cause of action for abuse of process as required by Rule 12(c).” (Mot. § 2, p. 3 (citing page 8 of the Order); Order 8.) Plaintiffs argue this is error because Rule 12(c) evaluates the sufficiency of the pleadings in light of admitted facts, not whether the claims would survive a Rule 12(b)(6) motion, and the Order

“erroneously incorporated Rule 12(b)(6) principles, which were neither argued nor contended by State Farm.” (Mot. § 2, p. 3.) Plaintiffs are incorrect in both respects.

As an initial matter, Plaintiffs’ failure to state a claim is the bedrock of State Farm’s MJOP, which was brought “[p]ursuant to Rule 12(c) and Rule 12(h)(2) of the South Carolina Rules of Civil Procedure.” (Mot. J. on Pleadings 1, Sep. 1, 2023). Pursuant to Rule 12(h)(2), SCRCRCP, “[a] defense of failure to state a cause of action upon which relief can be granted ... may be made ... by motion for judgment on the pleadings.” Accordingly, State Farm, in its MJOP, argued “Plaintiffs fail[ed] to state a legally cognizable claim against State Farm.” (Mot. J. on Pleadings at 1.)

Moreover, motions for judgment on the pleadings under Rule 12(c) and motions to dismiss for failure to state a claim under Rule 12(b)(6) are decided under the same standard. *Compare Sapp v. Ford Motor Co.*, 687 S.E.2d 47, 49 (S.C. 2009) (“A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff’s favor.”), with *Doe v. Marion*, 645 S.E.2d 245, 247 (S.C. 2007) (dismissal under Rule 12(b)(6) is proper “[i]f the facts alleged and inferences reasonably deducible therefrom ... would [not] entitle the plaintiff to relief on any theory”); *see also, Burbach Broad. Co. of Delaware v. Elkins Radio Corp.*, 278 F.3d 401, 405–06 (4th Cir. 2002) (noting whether a motion seeks dismissal for failure to state a claim under Rule 12(b)(6) or judgment on the pleadings under Rule 12(c) is a “distinction ... without a difference” because “the same standard for Rule 12(c) motions” is applied to “motions made pursuant to Rule 12(b)(6)”); *United States Northstar Foundations, Inc. v. Satterfield & Pontikes Constr., Inc.*, No. 3:13-CV-2, 2013 WL 12137650, at *3 (N.D.W. Va. June 19, 2013) (“The standard of review for entry of judgment on the pleadings under Rule 12(c) is indistinguishable from the standard of review for dismissals based on failure to state a claim under Rule 12(b)(6); the difference between the two rules is simply the timing of the motion to dismiss.”);

Lord Corp. v. S&B Tech. Prod., Inc., No. 5:09-CV-205-D, 2011 WL 13152459, at *4 (E.D.N.C. Jan. 5, 2011), *report and recommendation adopted sub nom.*, 2011 WL 13152489 (E.D.N.C. Feb. 2, 2011) (“In reviewing a motion for judgment on the pleadings under Rule 12(c), the court applies the same standard as is applied to a Rule 12(b)(6) motion for dismissal of claims for failure to state a claim upon which relief can be granted.”).¹

Accordingly, the Court did not “erroneously incorporate[] Rule 12(b)(6) principles” nor did it apply the incorrect standard in deciding State Farm’s MJOP. Plaintiffs’ Motion should be denied for these reasons.

2. The Court correctly dismissed the abuse of process claim.

Plaintiffs seek reconsideration of the Court’s dismissal without prejudice of the abuse of process claim based on the following arguments: (a) the Court overlooked factual allegations supporting the necessary “ulterior purpose” element of the claim, and (b) the Court failed to properly assess the criminal nature of alleged forgery. (Mot. § 3, pp. 3-4.)

a. The Court did not overlook allegations supporting the “ulterior purpose” element; there were none.

Plaintiffs, citing the following paragraphs of their Complaint, assert the Court ignored their allegations “State Farm created and used forged and false documents in litigation to avoid coverage, coerce Plaintiffs into using their own insurance policies, and engage in litigation”:

¹ Given the substantial similarity of state and federal Rules 12(c) and 12(b)(6), federal jurisprudence may be persuasive. *See e.g., Senate by & through Leatherman v. McMaster*, 821 S.E.2d 908, 912 (S.C. 2018) (surveying federal jurisprudence on an issue involving a provision of the state constitution which contained similar language to the United States Constitution and was enacted in the same spirit and for the same purpose as its federal counterpart).

- 46) **STATE FARM** knew or should have known that Plaintiffs, others harmed by the collision and their automobile insurance carriers would use the false documents to make decisions about available automobile coverage.
- 47) **STATE FARM** knew or should have known Plaintiffs and others involved in the June 12, 2021 collision, including their automobile insurance carriers, would rely on **STATE FARM**'s false declarations page in making decisions and determinations about what coverage may be available via their own automobile insurance policies.
- 48) **STATE FARM** knew or should have known that Plaintiffs and others involved in the June 12, 2021 collision, including their automobile insurance carriers, would rely on the **STATE FARM**'s false declarations page in making decisions and determinations about litigation.

(Mot. § 3, pp. 3-4.) These paragraphs do not allege “State Farm created and used forged and false documents in litigation to avoid coverage, coerce Plaintiffs into using their own insurance policies, and engage in litigation” as Plaintiffs claim in their Motion.

In any event, the “ulterior purpose” element of abuse of process would require allegations the declaratory judgment action brought by State Farm (the “Underlying Suit”) against the Estate of James K. Workman (the “Workman Estate”) and other, non-parties was not brought to recover on the cause of action stated—a declaratory judgment on coverage—but instead to primarily accomplish some other purpose for which a declaratory judgment action was not designed.² *See e.g., Food Lion, Inc. v. United Food & Com. Workers Int'l Union*, 567 S.E.2d 251, 255-56 (S.C. Ct. App. 2002). The Complaint is devoid of such allegations. While Plaintiffs allege “State Farm had an ulterior purpose in filing the [Underlying] [L]awsuit,” (Compl. ¶ 110), “[a]n allegation that

² The “process” at issue was State Farm’s filing of the Underlying Suit. (*See* Compl. ¶ 110 (alleging “State Farm had an ulterior purpose in filing the lawsuit.”).)

a party had ... an ‘ulterior purpose’ in bringing an action, standing alone, is insufficient to sustain an abuse of process claim.” *Pallares v. Seinar*, 756 S.E.2d 128, 133 (S.C. 2014). Accordingly, the Court correctly dismissed the abuse of process claim and the Motion should be denied.

b. Allegations State Farm committed forgery are not allegations of an “ulterior purpose” of the Underlying Suit.

Plaintiffs also seek reconsideration of the dismissal of their abuse of process claim based on their argument the Court “failed to properly assess the criminal nature of forgery in this context” and “[t]he use of forged documents in litigation inherently constitutes abuse of process.” (Mot. § 3, p. 4). This argument completely overlooks there are two separate and essential elements of an abuse of process claim: first, “an ulterior purpose,” second “a willful act in the use of process not proper in the regular conduct of the proceeding.” *First Union Mortg. Corp. v. Thomas*, 451 S.E.2d 907, 914 (S.C. Ct. App. 1994). Whether or not Plaintiffs alleged “willful act[s] in the use of process not proper in the regular conduct” of a declaratory judgment action, Plaintiffs do not allege a primary ulterior purpose of the Underlying Suit. Regardless of allegations State Farm attached a “forged” document to its Complaint in the Underlying Suit, the Order is correct and the Motion should be denied.

3. The Court correctly dismissed the fraud and negligent misrepresentation claims.

Plaintiffs ask the Court to reconsider its dismissal without prejudice of the fraud and negligent misrepresentation claims based on the following arguments: (a) reliance was adequately alleged, (b) reliance was not required, (c) State Farm had a duty to speak truthfully, and (d) judicial notice “has no place.” (Mot. § 4, pp. 4-5; Mot. § 7, pp. 7-8.)

a. The Court did not disregard allegations of detrimental reliance; there were none.

Plaintiffs incorrectly contend “the Court disregarded the[] allegations” of fraud in paragraphs 46 through 48 and 101 through 105 of their Complaint. (Mot. § 4, p. 4.) Except for

paragraphs 103 through 105, the Order expressly addresses each of these paragraphs (among others), none of which allege Plaintiffs in fact relied on the truth of any alleged false representation made by State Farm, or that they suffered pecuniary loss as a result of such reliance. (Order 9-10.)

While the Order does not expressly address paragraphs 103 through 105 of the Complaint, neither do those paragraphs allege Plaintiffs relied upon the truth of false representations, much less to their detriment:

- 103) When Plaintiffs discovered that the policy the Defendants filed in the declaratory judgment was fraudulent and created after the car accident, Plaintiffs filed a motion.
- 104) In response, **STATE FARM** immediately:
- a) Sought to dismiss its own declaratory judgment;
 - b) Admitted coverage when it previously claimed it did not owe it;
 - c) Removed all limits on coverage, ultimately paying on a claim it previously asserted was “excluded” using false documents; and
 - d) Claimed that the documents it filed were merely “mistakes” resulting from a series of improbable errors that no one with **STATE FARM** thought were improper.
- 105) As a direct and proximate result of Defendants’ wrongful conduct, Plaintiffs suffered losses, including incurring attorney’s fees, costs, and expenses including to defend the lawsuit brought by Defendants and against Melvin O. Lamb, Jr. and Melvin O. Lamb, III.

(Compl. ¶¶ 103-105.) Given the absence of reliance allegations, the Court’s Order is correct and the Motion should be denied.

b. Reliance is a necessary element.

According to Plaintiffs, another reason the Court should reconsider dismissal without prejudice of the fraud and negligent misrepresentation claims is “[r]eliance is not required when

fraud [] per se is alleged, particularly in the context of insurance fraud under South Carolina law.” (Mot. § 4, p. 5.) Plaintiffs’ argument relies on the Omnibus Insurance Fraud and Reporting Immunity Act, S.C. Code § 38-55-510, *et al.*, which states insurance fraud covered by the Act is committed when a person makes “a statement or representation that is false, material, made with the person’s knowledge of the falsity of the statement and made with the intent of obtaining or causing another to obtain or attempting to obtain or causing another to obtain an undeserved economic advantage or benefit or made with the intent to deny or cause another to deny any benefit or payment in connect with an insurance transaction.” S.C. Code § 38-55-530(D). While the Motion states the Court “ignore[ed]” this argument, (Mot. § 4, p. 5), the Court soundly rejected it in the Order, which should stand. (*See* Order 13.)

Neither in opposing State Farm’s MJOP nor in seeking reconsideration of the Order have Plaintiffs cited any legal support for their apparent assumption Section 28-55-530(D) gives them a private right of action for “fraud *per se*”³ under which, in derogation of the common law, there

³ Plaintiffs appear to have coined the phrase “fraud *per se*” in this context. Historically, fraud *per se* was used to describe legal fraud the intent of which was presumed: “*Ex vi termini*, [the phrase fraud *per se*, or legal fraud] would seem to import such an evidence of fraud, as, in law, supersedes inquiry into the intention; embracing all of what are commonly called the badges of fraud. ... The idea of a badge of fraud is, that it furnishes a *legal* presumption of a fraudulent intention, which supersedes inquiry into the *actual* intention; and every badge of fraud is therefore evidence of a legal fraud, or fraud *per se*.” *Smith v. Henry*, 18 S.C.L. 118, 127 (S.C. App. L. & Eq. 1831). The phrase, which has not been used substantively by the South Carolina Supreme Court or Court of Appeals since the end of the 19th century, appears to have been used in the limited context of a fraudulent sale or transaction. *See, e.g., Cox v. McBee & Henning*, 28 S.C.L. 195, 206 (S.C. Err. 1842) (discussing a vendor’s post-sale possession as fraud *per se*). Just like fraud *per se* eliminated inquiry of intent in the context of fraudulent sales, constructive fraud, which was defined by the South Carolina Supreme Court in *Greene v. Brown*, 19 S.E.2d 114, 116 (1942), eliminates inquiry of intent in the context of fraudulent representations. Both actual fraud and constructive fraud, however, require the plaintiff both plead and prove detrimental reliance. *O’Quinn v. Beach Assocs.*, 249 S.E.2d 734, 738 (S.C. 1978) (“To establish constructive fraud all elements of actual fraud except the element of intent must be established.”); *Warr v. Carolina Power & Light Co.*, 115 S.E.2d 799, 802 (S.C. 1960) (holding a plaintiff, “in order to state a good cause of action [for fraud], must allege (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker’s

is no element of reliance. The language of the statute compels the conclusion the legislature did *not* create or intend to create a private right of action for “fraud *per se*” in Section 28-55-530(D) of the Omnibus Insurance Fraud and Reporting Immunity Act. *See State v. Hudson*, 519 S.E.2d 577, 581 (S.C. Ct. App. 1999) (“The legislature’s intent should be ascertained primarily from the plain language of the statute.”).

The Omnibus Insurance Fraud and Reporting Immunity Act empowers the Insurance Fraud Division of the Office of the Attorney General to criminally prosecute persons who have committed insurance fraud and collect fines, civil penalties, and restitution ordered by the court in which the case is prosecuted. S.C. Code Ann. § 38-55-560(A)-(B); C. Code Ann. § 38-55-550(A)-(B). The civil penalties contemplated by the Act are payable only to the director of the Insurance Fraud Division and must be used by it to fund the costs of enforcing and administering the provisions of the Act. S.C. Code Ann. § 38-55-550(A)-(B). Because it contemplates civil *penalties* as opposed to civil *damages*, and because it empowers only the Insurance Fraud Division of the Office of the Attorney General to pursue and collect those penalties, the Act does not afford Plaintiffs a private right of action for “fraud *per se*” against State Farm under which detrimental reliance on a false statement of material fact is not an element for recovery.

There is no authority, in the Omnibus Insurance Fraud and Reporting Immunity Act or elsewhere,⁴ eliminating the necessary elements of detrimental reliance for fraud and negligent misrepresentation causes of action. Accordingly, the Court correctly dismissed these claims for want of detrimental reliance allegations and Plaintiffs’ Motion should be denied.

knowledge of its falsity; (5) his intent that it should be acted upon by the person; (6) the hearer's ignorance of its falsity; (7) his reliance on its truth; (8) his right to rely thereon; (9) and his consequent and proximate injury.”).

⁴ (*See* Order 11-13.)

c. The Claims Practices Act has no bearing on Plaintiffs' claims.

Plaintiffs seek reconsideration of the Order because “S.C. Code Ann. § 38-59-20 required State Farm disclose information, which it failed to do...” and, therefore, “State Farm had a duty to speak truthfully and did not.” (Mot. § 4, p. 5.) According to Plaintiffs, “[b]y ignoring th[is] argument[], the Court failed to apply the correct legal standard to Plaintiffs’ fraud and negligent misrepresentation claims.” (Mot. § 4, p. 5.)

As an initial matter, S.C. Code Ann. § 38-59-20, referred to as the Claims Practices Act, does not itself require disclosures by an insurer to a third-party liability claimant. To the contrary, the Claims Practices Act identifies actions from which insurers should refrain; it contains a list of acts which constitute improper claim practices if unjustifiably committed by an insurer with such frequency as to indicate a general business practice. S.C. Code § 38-59-20(1)-(8). In any event, the Court dismissed the fraud and negligent misrepresentation claims because there are no well-pleaded factual allegations of reliance on the truth of any false representations, not because of the absence or presence of any “duty to speak truthfully.” (Order 9.)

To the extent Plaintiffs intended this argument to apply to the Court’s dismissal of a fraudulent concealment claim,⁵ which itself is not addressed in their Motion, this argument was not made in Plaintiffs’ Memo in Opposition to State Farm’s MJOP, it was not made at the hearing, and it is improper for Plaintiffs to make it now in a Rule 59 motion for reconsideration. Moreover, the Claims Practices Act should have no bearing on the Court’s decision to dismiss without prejudice the fraudulent nondisclosure claim.

⁵ Plaintiffs, under their fraud cause of action, allege State Farm had a duty but failed to disclose certain facts to them. (Compl. ¶¶ 118-119.) This was treated as a fraudulent nondisclosure claim in the Court’s Order. (Order 14.)

Nondisclosure, as opposed to affirmative misrepresentation, becomes fraudulent only when a party having knowledge of the facts has a duty to disclose them to the other party, which occurs in only three instances under South Carolina law: (1) where it arises from a pre-existing definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in which the nondisclosure occurred; and (3) where the parties are involved in a contract or transaction that is itself intrinsically fiduciary in nature and necessarily calls for perfect good faith and full disclosure. *See, e.g., Jacobson v. Yaschik*, 155 S.E.2d 601, 605 (S.C. 1967). As correctly noted by the Court, Plaintiffs' allegations in the Complaint implicate none of these situations (a fact they have not disputed). (Order 14.)

To the extent Plaintiffs now argue the Claims Practices Act creates an affirmative duty of disclosure owed to them by State Farm, the violation of which is actionable as fraudulent nondisclosure or concealment, there is no authority backing it up. As noted above, the Claims Practices Act itself does not call for certain disclosures by an insurer to a third-party liability claimant, it identifies actions from which insurers should refrain. S.C. Code § 38-59-20(1)-(8). Even if the Claims Practices Act did call for disclosure of certain facts to third-party liability claimants, nondisclosure in violation thereof would not be actionable as fraudulent nondisclosure. To hold otherwise would be contrary to the long-settled South Carolina law that the Claims Practices Act does not give rise to a private cause of action. *Masterclean, Inc. v. Star Ins. Co.*, 556 S.E.2d 371, 377 (S.C. 2001).

In sum, the Claims Practices Act has no bearing on the Court's decision to dismiss the fraud, fraudulent nondisclosure, and negligent misrepresentation claims. Plaintiffs' Motion should be denied.

d. Judicial notice of a court filing is proper.

Plaintiffs argue the Court “should have accepted as true the Plaintiffs’ allegations that ... [they] relied on the[] false documents to their detriment, including by hiring counsel and invoking their underinsured motorist coverage,” and it was “erroneous” for the Court to take judicial notice of the Answer filed by the Workman Estate in the Underlying Suit. (Mot. § 7, p. 8.) As discussed above and correctly determined in the Order, there are no allegations of detrimental reliance for the Court to accept as true. Further, the Workman Estate’s denials in its Answer, a pleading filed in the Underlying Suit, are judicially noticeable facts under Rule 201. S.C. R. Evid. 201(b). While Plaintiffs baldly assert “[j]udicial notice has no place in the Court’s determination of a Rule 12(c) motion,” (Mot. § 7, p. 8), under South Carolina law, “[j]udicial notice may be taken at any stage of the proceeding,” S.C. R. Evid. 201(f). Plaintiffs’ other arguments as to judicial notice are equally misplaced.

First, Plaintiffs contend “[j]ust because the allegations of [State Farm’s] Complaint [in the Underlying Suit] were denied by Plaintiffs⁶ does not mean that they were not relied on and acted upon to hire counsel and continue defending the bogus lawsuit.” (Mot. § 7, p. 8.) Under Plaintiffs’ theory of the case, State Farm is liable for fraud or negligent misrepresentation because allegations in and documents attached to its Complaint in the Underlying Suit were false. To state a cause of action under this theory, there must have been, among other things,⁷ reliance on the truth of the

⁶ The individual Plaintiffs were not parties to and made no appearance in the Underlying Suit, which was brought by State Farm against the Workman Estate and others.

⁷ It is elemental both fraud and negligent misrepresentation require, in the first instance, a false representation of fact made by the defendant to the plaintiff. Plaintiffs allege false representations were made by State Farm in its filing of the Complaint in the Underlying Suit. (Compl. ¶¶ 12, 121, 122.) There are no allegations State Farm made any false representation outside the Underlying Suit, to which Plaintiffs in their individual capacity were not parties and in which they made no appearance. (*See gen.* Compl.) Thus, as correctly determined by the Court and further discussed in

allegations and documents. *See, e.g., Warr*, 115 S.E.2d at 802. If the Workman Estate believed the allegations and documents to be true, then it was required to admit the same. *See United States v. \$34,918 United States Currency*, No. 2:22-CV-2063, 2022 WL 2703956, at *1 (W.D. Ark. July 12, 2022) (explaining, in federal court, “a responsive pleader must make a good faith effort to admit allegations it believes to be true and to deny allegations it believes to be false; and where it lacks sufficient knowledge or information to form a belief one way or another, it must say so”). The fact that the Workman Estate did not, and instead denied the truth of State Farm’s allegations and documents are judicially noticeable facts in this suit, in which Plaintiff Robert Workman as the Workman Estate’s Personal Representative asserts fraud and negligence misrepresentation.

Next, Plaintiffs reason, “[i]f the Court is to take judicial notice, then the converse is true as to the filing by State Farm” and “[t]he Court should find that State Farm filed a lawsuit using forged documents which is itself an abuse of process.” (Mot. § 7, p. 8.) Of course, the Court, if asked, can take judicial notice of the fact the Underlying Suit was filed, the fact certain allegations were made by State Farm in its Complaint, and the fact documents were attached to the Complaint. This is because “[a] judicially noticed fact ... is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” S.C. R. Evid. 201(b). While it should go without saying, the Court cannot, under the guise of judicial notice, find State Farm “filed a lawsuit using forged documents” as Plaintiffs posit.

Given judicial notice may be taken at any stage of the proceeding and the Workman Estate’s denial of the truth of State Farm’s allegations in the Underlying Suit is capable of accurate and

section 6 *infra*, Plaintiffs in their individual capacity cannot assert fraud and negligent misrepresentation against State Farm.

ready determination based on its filed Answer, the Court did not err in taking judicial notice, and the Motion should be denied in this respect.

4. The Court correctly dismissed the civil conspiracy claim.

Plaintiffs ask for reconsideration of the dismissal with prejudice of their civil conspiracy claim based on the following arguments: (a) an attorney-client relationship does not preclude a conspiracy claim when the attorney acts beyond the scope of representation or in their own personal interest, and (b) the Court cited overruled precedent. (Mot. § 5, pp. 6-7.)

a. A civil conspiracy cannot exist given the agent-principal relationship between State Farm and GWB.

Plaintiffs argue dismissal of their civil conspiracy claim was error because “an attorney-client relationship does not preclude a conspiracy claim when the attorney acts beyond the scope of representation or in their own personal interest.” (Mot. § 5, p. 6.) Plaintiffs, however, did not allege State Farm’s counsel in the Underlying Suit, Gallivan, White & Boyd, P.A. (“GWB”) acted outside of its attorney-client relationship with State Farm to further some interest of its own. To the contrary, Plaintiffs allege State Farm and GWB acted together in an attorney-client relationship. (Compl. ¶¶ 8, 10, 12, 13.) This is fatal to their claim because a civil conspiracy cannot exist when the alleged act arises in an agent-principal relationship, and the relations of attorney and client and principal and agent are identical. *McMillan v. Oconee Mem’l Hosp., Inc.*, 626 S.E.2d 884, 886–87 (S.C. 2006) (holding “a civil conspiracy cannot exist when the alleged acts arise in the context of a principal-agent relationship because by virtue of the relationship such acts do not involve separate entities”); 15A C.J.S. Conspiracy § 10 (“Because acts of agent are considered in law to be acts of principal, a conspiracy cannot exist between a principal and an agent. In other words, the identity between an agent and principal leads to a legal impossibility in the context of conspiracy.”); *State v. Goettie*, 41 S.C.L. 126, 128 (S.C. App. L. 1854) (“That the relations of

attorney and client, and principal and agent, are identical...are propositions that will scarcely be questioned.”).

Plaintiffs assert they “alleged State Farm and GWB had independent duties and that its actions were taken in bad faith, which satisfies the requirements for civil conspiracy.” (Mot. § 5, p. 6.) Plaintiffs cite no support for this contention, whether in their Complaint or in the law of this state, nor do they offer an explanation behind the assertion. In any event, Plaintiffs allege GWB was acting as State Farm’s counsel at all relevant times, which is dispositive of the issue. Because a civil conspiracy cannot exist in the agent-principal relationship that was alleged (and did in fact exist) between State Farm and GWB, the Court correctly dismissed the claim with prejudice and the Motion should be denied.

b. Separate overt acts in furtherance of the alleged conspiracy remain a necessary element of civil conspiracy in the wake of *Paradis*.

Plaintiffs also ask the Court to reconsider dismissal of the civil conspiracy claim because *Paradis v. Charleston County School District*, 861 S.E.2d 774, 780 (S.C. 2021), “overrules the precedent cited by the Court regarding civil conspiracy and has no applicability to attorney-client relationships.” (Mot. § 5, p. 6.) *Paradis* did no such thing. *Paradis* overruled past precedent on civil conspiracy claims only “to the extent they impose or appear to impose a requirement of pleading (and proving) special damages.” The Supreme Court’s discussion of its past decisions, including *Todd v. South Carolina Farm Bureau Mutual Insurance Co.*, 278 S.E.2d 607 (S.C. 1981), which it noted correctly dismissed a civil conspiracy claim that merely repeated the same acts complained of in the plaintiff’s other claims, confirms the still-standing pleading requirement of a separate overt act in furtherance of the conspiracy:

In *Todd* the Court ... held a plaintiff in a civil conspiracy action must allege acts in furtherance of the conspiracy. The Court noted the only wrongful acts alleged were those for which damages had already been sought, so the claim failed as a matter of law. ... The plaintiff

in *Todd* failed to plead any overt acts in furtherance of the conspiracy. Thus, the Court correctly concluded the civil conspiracy claim failed as a matter of law. ... [T]he plaintiff's repetition of the same acts as the prior claims was insufficient to salvage the claim.

861 S.E. 2d at 779-80. Accordingly, the Court's Order noting this requirement—and Plaintiffs failure to satisfy it—is correct.

Plaintiffs also argue they alleged “sufficient facts that the wrongful acts were independent.” (Mot. § 5, pp. 6-7.) They do not point to any such allegations of fact in their Complaint, nor do they identify which alleged wrongful acts were committed in furtherance of a conspiracy and are not the same acts upon which their other claims are premised. There are none. Plaintiffs' civil conspiracy claim merely incorporates by reference the same acts as the prior claims:

- XI. SIXTH CAUSE OF ACTION: CONSPIRACY**
- 148) Plaintiffs incorporate the above by reference.
 - 149) Defendants acted together in combination or by agreement.
 - 150) Defendants committed at least one unlawful act or a lawful act by unlawful means.
 - 151) Defendants acted together and committed one or more overt acts in furtherance of that agreement.
 - 152) As a proximate result of Defendants' civil conspiracy, Plaintiffs were injured and damaged.

As stated in *Todd*, agreed upon by *Paradis*, and correctly decided in the Court's Order, Plaintiffs' repetition of the same acts as the prior claims is insufficient to salvage the civil conspiracy claim. Plaintiffs' Motion should be denied on this ground.

5. The Court correctly dismissed the SCUTPA claim.

Plaintiffs ask the Court to reconsider its dismissal with prejudice of their claim for violation of South Carolina Unfair Trade Practices Act (“SCUTPA”) based on their contention the Court

failed to address their argument State Farm engaged in deceptive practices under S.C. Code Ann. § 38-77-341 and § 38-59-20 which they claim are not covered by the statutory exemptions of SCUTPA. (Mot. § 6, p. 7.) In fact, this argument was fully addressed and soundly rejected by the Court. (Order 19-22.) Plaintiffs' Motion cites no other basis for reconsideration of the Court's dismissal of the SCUTPA claim; the Motion should be denied.

6. The Court correctly dismissed Plaintiffs in their individual capacity.

Finally, Plaintiffs seek reconsideration of the Court's dismissal with prejudice of the Plaintiffs in their individual capacity. Plaintiffs argue they have standing because they "had an interest in the policy proceeds and were harmed by State Farm by paying for counsel and defending the [Underlying Suit]." (Mot. § 8, pp. 8-9.) Plaintiffs Kelly Workman Tick, Matthew T. Workman, and Robert C. Workman, in his individual capacity, were not parties to the Underlying Suit and, therefore, at no time were they "defending" it. (Compl. ¶ 74.) The Court correctly determined this inescapable fact was fatal to standing.

Further, neither any claimed indirect impact of the Underlying Suit on the Plaintiffs in their individual capacity nor their interest in the outcome of the Underlying Suit gives rise to standing. For example, "[t]he tort of abuse of process is intended to compensate *a party* for harm resulting from *another party's* misuse of the legal system," *Pallares v. Seinar*, 756 S.E.2d 128, 133 (S.C. 2014) (emphasis added), yet Plaintiffs, in their individual capacities, were not parties to the Underlying Suit which is the subject of their abuse of process claim. Similarly, both fraud and negligent misrepresentation require a false representation of fact be made by the defendant to the plaintiff, however Plaintiffs, in their individual capacity, allege fraudulent and negligent misrepresentations were made in the Underlying Suit, to which they were not parties and in which they made no appearance.

In sum, Plaintiffs, in their individual capacity, are heirs of the Workman Estate, a third-party liability claimant against a policy issued by State Farm to an insured who was involved in a car wreck that killed James K. Workman. They had no direct interactions with State Farm and they allege no direct interactions with State Farm. Their interest in the Workman Estate's assets does not give rise to standing for the claims advanced in this suit. The Court's Order is correct and Plaintiffs' Motion for reconsideration should be denied.

CONCLUSION

For the reasons set forth above, the reasons discussed in the Court's Order, and the reasons argued by State Farm in connection with its MJOP, the Court's Order is correct, and Plaintiffs' Motion should be denied.

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October 11, 2024

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP1001832

Robert C Workman et al
PLAINTIFF(S)

State Farm Mutual Automobile Insurance Company et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

A hearing on Plaintiff's two Motions to Alter or Amend was held via WebEx on 10/31/24. Plaintiff's separate Motions to Alter or Amend the 8/29/24 and 9/20/24 Orders regarding Defendants' Rule 12(c) Motions are GRANTED in part and DENIED in part. Separate formal orders will follow.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/31/2024 .

James K Workman Estate
James K Workman
Robert C Workman Personal Representative

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Robert C Workman , plaintiff, et al VS State Farm Mutual
Automobile Insurance Company , defendant, et al

Case Number: 2023CP1001832

Type: Order/Electronic Form 4

So Ordered

s/ Thomas W. McGee III, Judge Code 2786

Electronically signed on 2024-10-31 12:06:00 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

}

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 23-CP-10-01832

ESTATE OF JAMES K. WORKMAN BY
AND THROUGH ROBERT C.
WORKMAN AS PERSONAL
REPRESENTATIVE,

PLAINTIFF,

V.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, ET AL.

DEFENDANT.

}

AMENDED
COMPLAINT

Jury Trial Requested

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Plaintiff, complaining of Defendant, alleges:

I. INTRODUCTION

- 1) The Estate of James K. Workman brings this lawsuit via the personal representative, Robert C. Workman, alleging State Farm Mutual Automobile Insurance Company (“**STATE FARM**”) engaged in a scheme to create, file, and use false and unapproved documents for improper purposes, including to intimidate, coerce, and harm Plaintiff and others involved in a fatal collision, as set forth herein.
- 2) At all relevant times, **STATE FARM** conducted insurance business in South Carolina, including providing automobile liability insurance to South Carolina residents.
- 3) On June 12, 2021, James K. Workman was fatally injured in a multi-car collision caused by Melvin O. Lamb, III (“Lamb”) who was driving a 2004 Chevrolet Tahoe.
- 4) The Tahoe was owned by Lamb’s father Melvin O. Lamb, Sr. and insured by **STATE FARM** Policy Number 632 3189-B07-40A.
- 5) After the collision, **STATE FARM** represented to Plaintiff and others, including those involved in the collision, that liability coverage pursuant to Policy Number 632 3189-B07-40A applied to damages caused by Lamb.

- 6) That representation, in part shown below, stated: “This certifies that policy number 632318940A, covering a(n) 2004 Chevrolet TAHOE, 1GNEK13Z54R235227, was issued to Melvin O Lamb Jr and was in effect on the accident date of June 12, 2021. The coverages and limits of liability for this policy on that date were: A 25/50/25, U 25/50/25”

		Confirmation of Coverage		40-21B2-49D Claim Number	
This policy is issued by:					
☒	State Farm Mutual Automobile Insurance Company				
☐	State Farm County Mutual Insurance Company of Texas				
☐	State Farm Fire and Casualty Company				
☐	State Farm Lloyds				
☐	State Farm Indemnity Company				
☐	State Farm Guaranty Insurance Company				
☐	State Farm Florida Insurance Company				
☐					
(Write in the name of the appropriate State Farm® affiliate)					
This certifies that policy number 632318940A, covering a(n) 2004 Chevrolet TAHOE, 1GNEK13Z54R235227, was issued to Melvin O Lamb Jr and was in effect on the accident date of June 12, 2021. The coverages and limits of liability for this policy on that date were:					
A 25/50/25, U 25/50/25					

- 7) **STATE FARM** represented that there was a \$25,000/\$50,000 minimum limits liability policy in place for Lamb.
- 8) Relying on **STATE FARM**’s representations about the existence of liability coverage, Plaintiff negotiated with its underinsured motorist carrier which agreed to pay the full \$200,000 in underinsured (“UIM”) benefits.
- 9) After representing to Plaintiff and others that there was liability coverage, **STATE FARM** created a bogus declarations page and used an unapproved exclusion form to improperly exclude Lamb and others from coverage or the benefits of the coverage.

- 10) After expending time, effort and expense, Plaintiff exposed **STATE FARM**'s fraudulent scheme.
- 11) It was only then that **STATE FARM** sought to dismiss its own lawsuit, resulting in Plaintiff prevailing as the relief sought by **STATE FARM** was not granted.
- 12) A purpose of this lawsuit is to hold **STATE FARM** responsible for its improper actions and conduct in the creation and use of false documents as part of a scheme to intentionally harm Plaintiff and others, including those involved in the collision.
- 13) **STATE FARM**'s misconduct violated the law, its legal obligations, its duties to Plaintiff, and caused harm to Plaintiff and others involved in the collision.

II. PARTIES

- 14) Plaintiff Estate of James K. Workman (the "Estate") was created following the death of James K. Workman in Charleston County, South Carolina on June 12, 2021. At all relevant times, Robert C. Workman was and is the Personal Representative of the Estate and a legal heir of James K. Workman.
- 15) Defendant **STATE FARM** is authorized to conduct insurance business in South Carolina and is one of the largest automobile insurers in the country.

- 16) On information and belief, the net worth of **STATE FARM** ended the year 2023 at \$134.8 billion.¹

III. JURISDICTION - SUBJECT MATTER AND PERSONAL

- 17) This Court has subject matter jurisdiction of this action.
- 18) This Court has personal jurisdiction over **STATE FARM** because it does business in South Carolina and the wrongful actions and conduct alleged occurred or had effects in Charleston County.

IV. VENUE

- 19) Venue is proper in this Court as the wrongful conduct alleged herein occurred and had material effects in Charleston County, South Carolina.

V. FACTUAL ALLEGATIONS

A. THE COLLISION AND INITIAL REPRESENTATIONS

- 20) On June 12, 2021, Lamb caused a multi-car collision while driving a 2004 Chevrolet Tahoe, resulting in fatal injuries to James K. Workman.
- 21) At the time of the collision, the Tahoe was insured by **STATE FARM** under State Farm Policy Number 632 3189-B07-40A effective Feb. 07, 2021 – Aug. 07, 2021.

¹ See **STATE FARM** announces 2023 financial results. <https://newsroom.statefarm.com/2023-financial-results/> and <https://content.presspage.com/uploads/1441/b027fa8b-0bb3-423f-b1bb-7f48739c6015/2023yearendresults-final-.pdf?10000> last visited Dec. 1, 2024.

- 22) Before the collision and claims made, Lamb was never excluded by **STATE FARM** as a driver of the Tahoe.²
- 23) At the time of the collision, as to the Tahoe, no **STATE FARM** policy referred to a Driver Exclusion Form 6023DC.
- 24) **STATE FARM** confirmed in writing that liability coverage under the policy was in effect on the date of the collision.
- 25) On information and belief, the **STATE FARM** insurance policy related to the Tahoe was cancelled effective June 13, 2021, one day after the crash.
- 26) Plaintiff, relying on this representation, settled with its underinsured (UIM) carrier based on the belief that liability coverage existed as discussed herein.

B. FABRICATION AND USE OF FALSE DOCUMENTS

- 27) After affirmatively representing to Plaintiff and others that there was coverage, **STATE FARM** fabricated a declarations page by:
 - i) Creating policy number 632 3189-B07-40B, when that policy number did not exist at the time of the collision;

POLICY NUMBER 632 3189-B07-40B

²See e.g. Deposition of State Farm 30(b)(6) Representative Shay Anderson, p. 95. Q. ... At no time from the inception of the State Farm insurance policy concerning the Tahoe, through June 30th, 2021, was there ever a Declarations Page that showed Melvin O Lamb, III was an excluded driver? **A. Correct.**

- ii) Changing the policy period to two days before the collision beginning June 10, 2021 to February 7, 2022 when no such policy period existed at the time of the collision;

POLICY PERIOD JUN 10 2021 to FEB 07 2022
12:01 A.M. Standard Time

- iii) Under **IMPORTANT MESSAGES**, State Farm stated “Replaced policy number 6323189-40A” when that was false because the policy was cancelled June 13, 2021;

Replaced policy number 6323189-40A.

- iv) Listed a driver exclusion for Melvin O. Lamb, III when there was never any such exclusion on the declarations page that applied to the collision;

6023DC DRIVER EXCLUSION-MELVIN O LAMB III.

- 28) When **STATE FARM** created and used these documents, it committed the crime of forgery because **STATE FARM** represented that the false policy was the real policy. S.C. Code Ann. § 16-13-10.
- 29) Using these documents to further its criminal and improper conduct, **STATE FARM** falsely stated as fact that “[a]t the time of the subject accident, Son

[Lamb] had been an excluded driver from the Policy for over a year.”

Complaint ¶ 31.³

- 30) **STATE FARM** also falsely stated as fact that an exclusion form (6023DC) complied with S.C. Code Ann. § 38-77-340 and was valid, when it had never been submitted to or approved as required by the law it cited, and State Farm knew that as fact. *See e.g.* Complaint ¶19 “Pursuant to S.C. Code Ann. § 38-77-340, the exclusion was signed...” and State Farm designee testimony.⁴
- 31) At all times relevant, **STATE FARM** knew it was unlawful for an insurer doing business in South Carolina to issue or sell a policy, contract, or certificate of insurance until the Driver Exclusion form had been filed with and approved by the Director of the Department of Insurance (SCDOI). S.C. Code Ann. §38-61-20.

³ *See e.g.* Deposition of State Farm 30(b)(6) Representative Shay Anderson, pp. 92-93. Q. And the policy up through June 12th, 2021, which would include the Declarations Pages in existence concerning the Tahoe, never showed Melvin O Lamb, III as an excluded driver, correct? ... A. Correct.

⁴ *See e.g.* Deposition of State Farm 30(b)(6) Representative Shay Anderson, p. 182. Q. And sitting here today, State Farm has evidence that Defense Exhibit 3 [Exclusion Form 6023DC] was ever submitted to the South Carolina Department of Insurance for approval, right? **A. As that appears there, yes.** Q. And State Farm has zero evidence that Defense Exhibit number 3 [Exclusion Form 6023DC] was ever approved by the South Carolina Department of Insurance as required by 38- 77-340, right? **A. Speaking of Exhibit 3, yes.**

- 32) **STATE FARM** knew a form not approved by the SCDOI should not be used with its insureds.⁵
- 33) **STATE FARM** falsely stated that the documents attached to the Complaint represented the terms of the policy at the time of the collision.
- 34) **STATE FARM** presented these false documents to the court, to Plaintiff and others knowing they would be relied upon.

C. SYSTEMIC MISCONDUCT AND INTENT

- 35) In this case, to improperly avoid paying liability coverage and justify its creation of forged and false documents, **STATE FARM** claims there was a processing error resulting in the failure to list Lamb as an excluded driver.
- 36) **STATE FARM** has been repeatedly found to engage in practices designed to delay, deny, or underpay claims, including using unapproved forms.
- 37) Department of Insurance Market Conduct Reports from various states show **STATE FARM** has a pattern of delaying, denying, or underpaying claims through improper practices, including using unapproved forms in violation of the law. *See e.g.* Report on Market Conduct Examination of the State Farm Mutual Automobile Insurance Company by Representatives of the North

⁵ *See e.g.* Deposition of State Farm 30(b)(6) Representative Shay Anderson, p. 56. Q. ... If State Farm did not get the approval from the South Carolina Department of Insurance director or his designee, then State Farm should not be using that form with its insureds. **A. Correct.**

Carolina Department of Insurance May 2, 2014, listing multiple violations for failing to file and obtain the approval of the Department of Insurance.

- 38) In New Mexico, **STATE FARM** engaged in similar misconduct to deny coverage, when after its insured purchased a \$1,000,000 policy, following a collision it misrepresented the policy limits were \$25,000.
- 39) As part of its pattern to avoid paying money in the New Mexico case, **STATE FARM** claimed the increased liability limits stated on the declarations page was “in error” and the policy “was issued by mistake.” *See Lopez v. Estate of Andrea Lovato and State Farm Mutual Automobile Insurance Company* D-101-CV-2020-01092 State Farm’s Opposition to Plaintiffs’ Motion for Summary Judgment, dated Sept. 26, 2022 pp. 5-6.
- 40) In Montana in 2024, **STATE FARM** was investigated by the Montana Commissioner of Securities and Insurance for its claim handling practices that revealed **STATE FARM** was underpaying drivers who were in accidents with **STATE FARM** insureds from November 1, 2018 through April 15, 2022. As a result, **STATE FARM** agreed to pay a \$2 million dollar fine and be subject to an additional suspended fine of \$2 million that will be discharged upon State Farm satisfactorily implementing corrective actions. *See Montana Market Conduct Press Release* Feb. 6, 2024. Further, State Farm did not

attempt in good faith to effectuate fair and equitable settlements of claims in which liability had become reasonably clear, refused to pay claims without conducting a reasonable investigation, and otherwise failed to properly resolve claims. See Market Conduct Examination Report of State Farm Mutual Automobile Insurance Company April 15, 2022.

- 41) In Delaware, State Farm claimed a “programming error” resulted in PIP claims being underpaid. *See e.g.* Delaware Department of Insurance Market Conduct Examination Report April 30, 2017.
- 42) **STATE FARM**’s conduct in this case is consistent with its broader strategy of using improper practices, misrepresentations or claims of errors to deny claims, delay payments and avoid paying money owed to make an undeserved profit.

D. STATE FARM VIOLATED ITS CODE OF CONDUCT

- 43) **STATE FARM** created a Code of Conduct⁶ setting forth various duties **STATE FARM** and its employees have when dealing with customers and others like Plaintiff. Relevant portions attached as **Exhibit A**.
- 44) In part, **STATE FARM**’s Code of Conduct stated:

⁶ Available at <https://www.statefarm.com/content/dam/sf-library/en-us/secure/legacy/pdf/V-code-of-conduct.pdf>. Last checked December 2, 2024.

The Code of Conduct applies to all State Farm Mutual Automobile Insurance Company directors, officers and employees, as well as to directors, officers and employees of each affiliate of State Farm Mutual Automobile Insurance Company.

Exhibit A, p. 5.

- 45) In part, this Code of Conduct stated:

We must follow our policies, rules and guidelines, and comply with all laws and regulations applicable to Company business.

Exhibit A, p. 5

- 46) **STATE FARM**, including its Chairman, President and CEO Michael L.

Tipsord, stated:

The Code of Conduct is a resource that helps us live our shared values and sets the expectation for appropriate behavior.

We hold ourselves to the highest standards of ethics and integrity. When representing our Company, apply good judgment, be honest and treat others with respect.

We also have a responsibility – and an obligation – to question any practice or business behavior that doesn't measure up. If you see something that falls outside the boundaries of appropriate behavior, I want you to speak up. No matter what the issue is, no matter who is involved. We must have the courage and confidence to act.

Exhibit A, p. 4.

- 47) **STATE FARM** defined fraud in its Code of Conduct as follows:

Fraud is intentional or reckless conduct that deceives or is intended to deceive someone. This includes fraudulent, illegal, unauthorized or dishonest acts.

Exhibit A, p. 17 (shown below).

Preventing Fraud

Fraud is intentional or reckless conduct that deceives or is intended to deceive someone. This includes fraudulent, illegal, unauthorized or dishonest acts. We manage the risk of fraud through our shared value of integrity, utilizing our business processes, controls and the standards in this Code.

- 48) **STATE FARM** stated duties it, its employees and agents owed to Plaintiff and others to include:

We all have a duty to follow established procedures and report suspected fraud, misconduct or dishonesty to your supervisor, another member of leadership, Human Resources & Development, the Open Door policy or contact the Compliance & Ethics Hotline.

Exhibit A, p. 17 (shown below).

We all have a duty to follow established procedures and report suspected fraud, misconduct or dishonesty to your supervisor, another member of leadership, Human Resources & Development, the Open Door policy or contact the Compliance & Ethics Hotline.

- 49) **STATE FARM** required its employees to complete and submit the Code of Conduct Form annually with its annual Code of Conduct training course.

Exhibit A, p. 28.

- 50) The Code of Conduct Form is to be filled out any time an actual or potential violation of this Code occurs and consists of an acknowledgment to adhere to the Code of Conduct. **Exhibit A**, p. 28.

VI. CAUSES OF ACTION

COUNT I: ABUSE OF PROCESS

- 51) Plaintiff incorporates all relevant paragraphs above as if fully stated herein.
- 52) On information and belief, before filing the lawsuit at issue, **STATE FARM** considered and drafted an interpleader action to properly deposit the funds owed under the policy into court for the benefit of Plaintiff and others.
- 53) **STATE FARM** improperly initiated and pursued process in the form of a declaratory judgment action using fabricated and unapproved documents, with the primary or paramount purpose of achieving improper and ulterior objectives unrelated to the legitimate function of the legal process by using the lawsuit to coerce, intimidate and delay payment as stated herein.
- 54) State Farm filed the declaratory judgment action not to resolve a legitimate coverage dispute but to manipulate the court into validating fabricated documents, including a backdated declarations page and an unapproved exclusion form. These documents were central to State Farm's scheme to mislead the Court and others about the terms of the policy.

- 55) **STATE FARM**'S pattern of misconduct and its attempt to validate fabricated documents in this case are consistent with its broader corporate policy to avoid proper payments and minimize payouts, as reflected in market conduct investigations and other litigation.
- 56) **STATE FARM**'S stated purpose was to have a judicial declaration that the policy it attached to the complaint existed at the time of the collision, was enforceable and that the driver exclusion form it used complied with S.C. Code Ann. § 38-77-340 when that was not the primary or proper purpose. *See e.g.* Complaint ¶ 18 "At all relevant times hereto, State Farm issued an automobile insurance policy (hereinafter "the Policy") ... A copy of this Policy is attached hereto as Exhibit A..." and Complaint ¶ 19 "A copy of the endorsement, which remained in effect...is included in Exhibit A."
- 57) The legal process was willfully misused by **STATE FARM** through one or more of the following wrongful intentional acts including:
- i) **Fabricating and Backdating Documents:** **STATE FARM** intentionally created a false declarations page after the collision, backdating it and to include exclusions that did not exist to make Plaintiff and others accept that there was no coverage based on false documents.

- ii) **Using False Documents in Legal Proceedings:** STATE FARM knowingly attached the fabricated declarations page and an unapproved exclusion form (6023DC) to its declaratory judgment to make Plaintiff and others accept that there was no coverage based on false documents.
- iii) **Redacting Information to Conceal Misconduct:** STATE FARM redacted key portions of the fabricated declarations page as in part shown below, falsely claiming the redactions were to protect premium information, but were intended to obscure premium amounts that were never actually charged to avoid exposing the fabrication and make it impossible for Plaintiff and others to challenge it.

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID. NUMBER	CLASS
2004	CHEVROLET	TAHOE	SPORT WG	1GNEK13Z54R235227	405H521000
SYMBOLS					
COVERAGE & LIMITS					
PREMIUMS					
A	Liability Coverage				
	Bodily Injury Limits				
	Each Person, Each Accident				
	\$25,000 \$50,000				
	Property Damage Limit				
	Each Accident				
	\$25,000				
U	Uninsured Motor Vehicle Coverage				
	Bodily Injury Limits				
	Each Person, Each Accident				
	\$25,000 \$50,000				
	Property Damage Limit				
	Each Accident				
	\$25,000				
* Total premium for JUN 10 2021 to FEB 07 2022.					This is not a bill.

- iv) **Creating and Presenting False “Certified Policy Records”:** STATE FARM fabricated a Certified Policy Record that incorporated the false declarations page and unapproved exclusion form, presenting it as an

authentic document to make Plaintiff and others accept that there was no coverage based on false documents.

- 58) The “Certified Policy Record” is, in part, shown below.



Certified Policy Record

I, the undersigned, do hereby confirm that I am custodian of the records pertaining to the issuance of policies by State Farm Mutual Automobile Insurance Company.

I certify that the attached documents represent a true and accurate record of the terms and conditions of Policy Number 632 3189-B07-40B including any endorsements, if applicable, for the policy term(s) 06/10/2021 to 06/13/2021 and insuring LAMB, MELVIN O JR based on available records.

It is State Farm's business practice to print a new Declarations Page only when a policy issuance transaction such as a change of coverage occurs. Therefore, the included Declarations Page which was in effect at the time of loss will indicate the policy period of the last policy issuance transaction.

The policy was in effect on the loss date of 06/12/2021.



 Jessica Bass
 Underwriter
 Date: 08/05/2021

- 59) STATE FARM’s “Certified Policy Record” made false statements to make Plaintiff and others to accept that there was no coverage, including:
- i) “the attached documents represent a true and accurate record of the terms and conditions of Policy...”;
 - ii) “the included Declarations Page which was in effect at the time of the loss will indicate the policy period of the last policy issuance transaction.”;

iii) “The policy [referenced] was in effect on the loss date of 06/12/2021”;
and

iv) The “attached documents represent a true and accurate record of the terms and conditions of Policy Number 632 3189-B07-40B including any endorsements ...”

60) **STATE FARM**’s had one or more primary or ulterior motives for filing and pursuing the declaratory judgment action including, but not limited to:

i) **Coercion and Intimidation:** Attempting to pressure Plaintiff and others into abandoning or reducing their valid claims by creating financial and procedural burdens.

ii) **Shifting Liability:** Forcing Plaintiff to rely on Plaintiff’s uninsured motorist (UM) coverage instead of **STATE FARM**’s liability coverage, thereby transferring financial obligations to Plaintiff and its insurer.

iii) **Delay:** Prolonging Plaintiff’s recovery to impose financial strain and increase the cost of litigation. **STATE FARM** pursued the declaratory judgment action with the deliberate intent to delay Plaintiff’s recovery by imposing financial burdens and prolonging litigation, knowing that the cost and time required to defend the action would strain Plaintiff’s resources and force reliance on Plaintiff’s own UM coverage.

- iv) **Setting a Precedent to Deter Future Claims:** STATE FARM fabricated a declarations page and used an unapproved exclusion form to establish a precedent by obtaining a judicial declaration that fabricated and unapproved documents, such as the 6023DC exclusion form, were valid and enforceable, thereby enabling State Farm to rely on similar documents in future coverage disputes and deter other policyholders from challenging denials of similar claims in South Carolina and beyond.
 - v) **Financial Gain:** Avoiding payment of valid claims to improperly protect STATE FARM's financial interests, consistent with its broader corporate strategy of claim denials.
 - vi) **Declare Forged Documents Were Valid:** Having a court declare the forged and false document was in effect at the time of the collision, valid and otherwise enforceable. The use of fabricated and unapproved forms was part of an effort to establish the acceptability of using such documents without regulatory approval, thereby avoiding stricter compliance requirements in South Carolina and other jurisdictions.
- 61) STATE FARM willfully misused the declaratory judgment process, filing a lawsuit that was neither proper in the regular conduct of litigation nor aimed at resolving a legitimate coverage dispute and to have a court:

- i) issue a decision and establish a precedent to deny coverage to policy holders and others when that form was never submitted and approved by the SCDOI as required; and
 - ii) declare that the forged and fabricated set of documents were valid and enforceable.
- 62) By misusing the legal process, **STATE FARM** caused Plaintiff and others to suffer damages, including:
 - i) Financial harm, including delays in receiving insurance benefits;
 - ii) Expenses and attorney's fees; and
 - iii) Additional time and effort to negotiate with the Plaintiff's own carrier after liability coverage was falsely denied, increased attorney's fees, losing subrogation rights and the benefit of obtaining the UIM proceeds sooner.
- 63) **STATE FARM** used legal process for purposes primarily unrelated to its legitimate function, including coercion, delay, and improper financial gain.
- 64) As a direct and proximate result of **STATE FARM**'s actions, Plaintiff suffered damages, including attorney's fees, litigation costs, delayed access to insurance proceeds, and otherwise.

COUNT II: FRAUD

- 65) Plaintiff incorporates all relevant preceding paragraphs.

- 66) In July and August of 2021, **STATE FARM** fabricated a policy, including a declarations page and used an unapproved exclusion form to falsely claim there was no liability coverage.
- 67) In August of 2021 and thereafter, **STATE FARM** made and continued to make **representations** of fact to Plaintiff and others that the forged and false documents were the actual liability policy, when they were not. *See e.g.* ¶¶ 29, 30, 33, 56 herein.
- 68) **STATE FARM**'s representations to Plaintiff and others about the policy, including that Lamb was an excluded driver, were **false**.
- 69) The false representations included that the declarations page and Certified Policy Record accurately reflected the terms of the policy at the time of the collision and otherwise stated herein.
- 70) **STATE FARM** knowingly made these false statements despite knowing these documents were created after the fact and included material alterations and statements that were not present on the actual policy.
- 71) The representations **STATE FARM** made to Plaintiff and others were **material** in that the representations directly influenced and caused Plaintiff to report to its UIM carrier what State Farm was claiming, lose or delay the payment of underinsured proceeds that its carrier had already agreed to

tender, to pursue UM coverage, have counsel defend it in a lawsuit filed against it by **STATE FARM** and otherwise expend time, effort and money.

- 72) **STATE FARM** acted with **knowledge of falsity or reckless disregard for its truth** as **STATE FARM** was aware that the exclusion form it used was never submitted nor approved for use by the SCDOI and that the Declarations Page and “policy” was fabricated after the collision but nonetheless stated or represented to Plaintiff and others that the documents were true.
- 73) **STATE FARM intended** for Plaintiff and others to act upon the false statements and forged documents with the intent to deceive Plaintiff and others into believing liability coverage did not exist, thereby forcing Plaintiff and others to bear financial responsibility for the collision or to rely on alternative insurance coverage.
- 74) Plaintiff was **ignorant of the falsity** of **STATE FARM**’s representations and reasonably believed liability coverage was not available under the policy and acted accordingly, including dealing its UM carrier as if there was no coverage.
- 75) Plaintiff reasonably **relied on the truth** of **STATE FARM**’s representation that there was no liability coverage in various ways, including by negotiating with its own insurance carrier. This resulted in delayed payment of the

agreed upon underinsured coverage and the need to invoke the uninsured coverage.

- 76) **STATE FARM** knowingly provided fabricated documents to Plaintiff and others, representing them as accurate records of the policy terms, including a false declarations page and an unapproved exclusion form.
- 77) Plaintiff, relying on these documents, had legal counsel review the policy terms and representations made by **STATE FARM**.
- 78) Plaintiff detrimentally relied on **STATE FARM**'s false assertion that there was no liability coverage under the policy for the at-fault driver.
- 79) As a result of **STATE FARM**'s false statements and actions, Plaintiff contacted its UIM carrier, which had already agreed to pay the UIM benefits not subject to subrogation, to notify it of **STATE FARM**'s denial of liability coverage.
- 80) Plaintiff informed its UIM carrier about **STATE FARM**'s documents, which falsely claimed that there was no liability coverage for the at-fault driver.
- 81) In reliance on **STATE FARM**'s conduct and false statements that there was no liability coverage, Plaintiff expended significant effort, time, and expense to forgo the UIM coverage that was to be paid and to pursue UM benefits instead.

- 82) In reliance on the existence of no liability coverage, to secure the UM benefits, Plaintiff was required to assign the first \$200,000 of any funds that may be collected from the at-fault driver to the UM carrier, thereby losing valuable and substantial financial rights.
- 83) As a direct result of **STATE FARM**'s false statements and actions and in reliance on the statements, Plaintiff had to retain and pay attorney's fees to defend it in the declaratory judgment action filed by **STATE FARM**, which included conducting discovery and taking the deposition of a **STATE FARM** corporate representative to uncover the fabricated nature of the documents.
- 84) Plaintiff had a **right to rely on the representation** as **STATE FARM** was the issuer of the policy and the party responsible for stating truthful and accurate information about coverage and through its advertisements wants people to believe "Like a good neighbor, State Farm is there[®]" and should be trusted.
- 85) Further, **STATE FARM**'s false statements and actions is insurance fraud or fraud *per se* in violation of S.C. Code Ann. § 38-55-530(D) because it knowingly created and presented fabricated and unapproved documents to Plaintiff and others. The false statements materially misrepresented the terms of the policy and affected the handling of Plaintiff's claims. The

actions were deliberate and intended to mislead Plaintiff into forgoing UIM benefits and pursuing alternative recovery avenues.

- 86) As a result of **STATE FARM**'s fraud, Plaintiff reasonably relied on these false representations to its detriment as set forth herein and as a result incurred financial harm, attorney's fees, legal expenses, interest, and the loss of other valuable rights or harms.

COUNT III: NEGLIGENT MISREPRESENTATION

- 87) Plaintiff incorporates all preceding paragraphs to the extent needed.
- 88) **STATE FARM** negligently misrepresented that the fabricated declarations page and unapproved exclusion form were genuine and valid.
- 89) **STATE FARM** negligently and/or intentionally made misrepresentations to the Plaintiff, including that the bogus declarations page was real and that the Exclusion form complied with South Carolina law.
- 90) **STATE FARM** affirmatively failed to disclose material statements and/or truthful facts even though possessing expertise or special knowledge that would ordinarily make it reasonable for another to rely on such statements.
- 91) **STATE FARM** had a pecuniary interest in making these representations.
- 92) **STATE FARM** acted negligently to protect its pecuniary interests by avoiding liability for claims arising from the collision, knowing that the fabricated documents would shift financial responsibility to Plaintiff or others,

including Plaintiff's UM carrier and reduce **STATE FARM**'s financial exposure.

- 93) **STATE FARM** was in a superior position to Plaintiff, the Court and others as **STATE FARM** knew of the falsity of the documents and statements therein.
- 94) **STATE FARM** owed a duty to communicate truthful information to the Plaintiff and others. As the issuer of the policy and the one who undertook to speak, **STATE FARM** had a duty to Plaintiff and others to provide truthful and accurate information regarding the terms of coverage, particularly when Plaintiff relied on those terms in negotiating with its own insurance carrier to obtain benefits.
- 95) **STATE FARM** breached its duties by failing to exercise due or reasonable care.
- 96) Plaintiff and others justifiably relied on **STATE FARM**'s false representations in multiple ways.
- 97) This reliance caused harm to Plaintiff, including to forgo timely UIM payment, interest on those funds, requiring additional negotiations with the UM carrier to secure coverage and give up certain subrogation rights.

- 98) Plaintiff also incurred substantial attorney's fees and litigation costs to investigate and challenge the fabricated documents presented by **STATE FARM**, all of which resulted in financial harm and delayed payment of funds.

VII. RELIEF

WHEREFORE, Plaintiff prays for a judgment against **STATE FARM** in such amount of damages, including actual, punitive, whether statutory or otherwise, as may be determined by the trier of fact and/or the Court, costs, pre-judgment interest and for such other and further relief as is deemed just and proper.

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ATTORNEYS FOR PLAINTIFF

December 2, 2024



DOING THE RIGHT THING

Code of Conduct

Exhibit A



1

Our Commitment

- 4 A Message from Michael Tipsord
- 5 What You Should Do
- 6 Leading by Example
- 6 Making Good Decisions
- 7 Sharing Concerns
- 7 How to Use the Compliance & Ethics Hotline
- 8 Zero Tolerance for Retaliation

2

Mutual Trust

- 10 A Respectful Workplace
- 11 Discrimination and Harassment
- 12 Workplace Safety and Security
- 13 Drugs and Alcohol

3

Integrity

- 15 Gifts, Gratuities and Improper Incentives
- 16 Conflicts of Interest
- 17 Preventing Fraud
- 17 Improper Payments
- 18 Anti-Money Laundering and Terrorist Financing
- 18 Restrictions on Employment

4

Financial Strength

- 20 Intellectual Property and Confidential Information
- 22 Company Resources and Information Systems
- 23 Information Retention
- 23 Accurate Record Keeping and Reporting
- 23 Protecting Inside Information

5

Quality Service and Relationships

- 25 Fair Dealing
- 26 Fair Competition
- 27 Speaking on Behalf of Our Company
- 27 Environmental Protection

6

Code of Conduct Form Completion

A Message from Michael Tipsord



As a team, we help people live life confidently. This is our mission, simply stated.

We have thousands of opportunities to build confidence with customers – and each other – every day. This starts with each of us consistently demonstrating our shared values of quality service and relationships, mutual trust, integrity and financial strength.

The Code of Conduct is a resource that helps us live our shared values and sets the expectation for appropriate behavior.

We hold ourselves to the highest standards of ethics and integrity. When representing our Company, apply good judgment, be honest and treat others with respect.

We also have a responsibility – and an obligation – to question any practice or business behavior that doesn't measure up. If you see something that falls outside the boundaries of appropriate behavior, I want you to speak up. No matter what the issue is, no matter who is involved. We must have the courage and confidence to act.

Leaders have an additional role – you help create an environment where we can talk openly about how we do business. Our Company will not tolerate retaliation against any employee who raises issues of potential concern, and we expect all leaders to model this commitment.

Our customers expect us to do the right thing.

We depend on each other to do the right thing.

Please look to our Code for guidance if you need to raise concerns or need help on a matter of ethics or compliance.

We define our Company through our actions and how we interact with each other, our customers and our communities. We have built a trusted brand by living our values and keeping our promises. By protecting our brand, we will continue to be there for our customers, helping more people in more ways.

A handwritten signature in black ink, reading "Michael L. Tipsord".

Michael L. Tipsord

Chairman, President and CEO
State Farm Mutual Automobile Insurance Company

Scope

The Code of Conduct applies to all State Farm Mutual Automobile Insurance Company directors, officers and employees, as well as to directors, officers and employees of each affiliate of State Farm Mutual Automobile Insurance Company. State Farm Mutual Automobile Insurance Company and its affiliates are referred to herein collectively as “Company.”

What You Should Do

This Code of Conduct, or “Code,” is based around our mission, our vision and our shared values of mutual trust, integrity, financial strength and quality service and relationships.

As employees, we are accountable for our own actions. We must follow our policies, rules and guidelines, and comply with all laws and regulations applicable to Company business. This Code does not cover every situation. Additional information that complements the Code can be found in the resources at the end of this document. In some instances, you may need additional information and guidance from your supervisor, another member of leadership or Human Resources & Development. You may also use the Open Door policy, or contact the Compliance & Ethics Hotline.

We have an obligation to raise our concerns if we know of or suspect improper conduct or a breakdown of business or security controls. This includes situations where we believe we have observed or have been instructed to do something that is illegal or unethical or violates Company policy. Remember that resources are available to help, including those listed in this Code. You are expected to cooperate fully with any investigative efforts.

Generally, people try to do the right thing, but for those unfortunate situations where employees do not follow Company expectations, disciplinary action may result.

Doing the Right Thing:

- Exemplify our mission, vision and shared values.
- Act in an honest, legal and ethical manner. Be aware that your behavior reflects on the Company.
- Adhere to the Sales Practices Philosophy and Principles.
- Be familiar with the information contained in this Code and Company policies.
- Remember, pressures or demands due to business or personal conditions are not an excuse for violating the law, our Code or any Company policy.

Preventing Fraud

Fraud is intentional or reckless conduct that deceives or is intended to deceive someone. This includes fraudulent, illegal, unauthorized or dishonest acts. We manage the risk of fraud through our shared value of integrity, utilizing our business processes, controls and the standards in this Code.

We all have a duty to follow established procedures and report suspected fraud, misconduct or dishonesty to your supervisor, another member of leadership, Human Resources & Development, the Open Door policy or contact the Compliance & Ethics Hotline.

Improper Payments

Acts of bribery or corruption are designed to influence, obtain or retain an unethical business advantage. We select supplies, materials and services objectively and ethically, without gaining any advantage for the Company or for us personally. Corruption, bribery and kickbacks are contrary to our business standards. We comply with all applicable laws that forbid bribery both of public officials and within the private sector. We also comply fully with the Foreign Corrupt Practices Act, which is intended to prevent corrupt practices in international business transactions, prohibiting bribery of officials and employees who work for foreign governments.

There can be severe consequences if an employee violates anti-bribery or anti-corruption laws. Even the perception by others that we may have acted illegally can be damaging. For this reason, be aware of how our actions might be viewed by others.



Code of Conduct Form Completion

We believe in following all applicable laws and regulations, and in behaving ethically and honestly. In accordance with these principles, we all must complete and submit the Code of Conduct Form annually, alongside the annual Code of Conduct training course. The form should also be filled out any time an actual or potential violation of this Code or conflict of interest arises.

The form includes two parts: an acknowledgement to adhere to the Code of Conduct and its underlying policies, and a disclosure, which is an opportunity to disclose any actual or potential violation of this Code or conflict of interest. Submitting the form indicates that you have read and understood the Code of Conduct and:

- Have considered possible conflicts of interest.
- Have disclosed information about convictions for certain offenses.
- Have complied with the Code of Conduct to the best of your knowledge, with the exception of any situations described on the Code of Conduct Form.
- Will inform your immediate supervisor, or Human Resources & Development of any changes to any of these listed items.
- Will contact leadership, Human Resources & Development, use the Open Door policy or contact the Compliance & Ethics Hotline if you have concerns related to employee or business conduct.

Our company supports our employees' rights to speak out about matters of public concern or engage in certain activities related to the terms and conditions of their employment. Nothing in this Code or in any of our policies is intended to limit or interfere with the right to engage in activities protected under Section 7 of the U.S. National Labor Relations Act, such as discussions related to wages, hours, working conditions, health hazards and safety issues.

The existence and content of this Code of Conduct will be disclosed to policyholders and will be available on the company website.

The provisions of this Code are in addition to, and do not modify, replace or supersede the company's other policies or procedures.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

RECEIVED

Aug 25 2025

SC Court of Appeals

KAHN LAW FIRM, LLP

S/ JUSTIN S. KAHN

JUSTIN S. KAHN

SC BAR NO. 65100

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