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Feb 17 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 9
COUNTY OF BERKELEY) DOCKET NO. 2025-CP-08-00820

RICARD K. WEATHERFORD,)
Plaintiff,)
versus)
TIMOTHY J. DAVIDSON,)
Defendant.)

H E A R I N G

DATE: August 20, 2025
LOCATION: South Carolina Circuit Court 9
JUDGE: Charles J. McCutchen
TRANSCRIBED BY: Jeanne Meldrim

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1 THE COURT: All right. Let's get to the next one.
2 Next one's Kenneth Weatherford versus Timothy James
3 Davidson. 2025-CP-08-00820. Mr. Riesen, Mr. Stover, Mr.
4 Turner.

5 MULTIPLE SPEAKERS: Morning, Your Honor.

6 THE COURT: Morning.

7 MR. MCDONALD: And Your Honor, this is John McDonald
8 appearing on behalf of Ray Turner this morning.

9 THE COURT: Okay. All right. Let's see. This is a
10 motion/rule to show cause. I guess, Mr. Riesen, this is
11 your motion?

12 MR. RIESEN III: Yes, it is, Your Honor.

13 THE COURT: All right. I'll be glad to hear from
14 you.

15 MR. RIESEN III: Thank you, Your Honor. This is a
16 straightforward discovery issue. Progressive is
17 withholding claim file notes by claiming they became work
18 product the moment we sent a Tyger River demand. That's
19 not the law in South Carolina and this same firm has
20 already lost the same exact argument for the same
21 insurer, yet they continue to raise it.

22 Here are the facts: On November 22nd, of '24, my
23 client, Mr. Weatherford, was a victim of a hit-and-run by
24 a silver Mercedes registered to Progressive-insured
25 Timothy Davidson. My client himself tracked down the

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1 car, saw the front-end damage, and spoke with Mr.
2 Davidson's son who admitted his father had a drinking
3 problem and just moved to Moncks Corner.

4 We turned this information over to Progressive.
5 They later gave a different explanation that he had a
6 quote: Medical emergency.

7 Our background check then revealed three prior DUI
8 convictions for Mr. Davidson and a fourth reduced to
9 reckless driving.

10 So why does this matter? We sent a --- a subpoena.
11 Progressive continued negotiating after our demand on
12 March 6th, April 4th, and April 7th. These were routine
13 claim handling activities, not litigation preparation.
14 Two of these e-mails are included as exhibits to my
15 memorandum in the rule to show cause. They're Exhibits E
16 and F and they say specifically we're continuing
17 settlement negotiations.

18 Under South Carolina law, it's not when a demand is
19 received. The dividing line is typically when counsel is
20 retained. Until then, adjusters are still investigating,
21 valuing, and negotiating the claim.

22 The claim notes may reveal what Progressive knew
23 about Davidson's history, his conflicting medical
24 emergency versus drinking problem explanation, to why
25 they changed their valuation.

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1 Most importantly, the standard is relevance, not
2 admissibility, which is a very loose standard. And here
3 is a concrete example in this case why this is important:
4 Progressive initially refused to tender the property
5 damage limits because it's a punitive damage case when we
6 made our offer, forcing us to file suit. Then less than
7 a month later, on April 4th, without receiving any new
8 medicals, they reversed course and offered the full
9 property damage limits. That's Exhibit F, e-mail from
10 Jennifer Taylor --- okay --- after the demand. What
11 changed? That sudden change about face suggests the
12 claim notes, coverage questions, reserves contain highly
13 relevant information about their investigation and their
14 evaluation.

15 The law is clear, Judge Kinlaw --- this is very
16 important, Your Honor --- Judge Kinlaw in Brown versus
17 Owens rejected the same exact Progressive Murphy
18 Grantland argument, finding their work product cutoff was
19 arbitrarily and contradicted by their own actions ---
20 Progressive's own actions. He ordered production of the
21 entire file through the date the suit was filed.

22 I --- I'm going to read to you exactly what Judge
23 Kinlaw said. He said, quote: This Court finds
24 Progressive's selection date of August 4, 2022, which was
25 the demand, as the date upon which its claim file became

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1 protected is arbitrary and contradicted by Progressive's
2 own actions and words. Progressive did not reject the
3 demand on August 4th, and did not retain defense counsel
4 for seven months --- several months. After receiving the
5 time demand letter, Progressive continued to investigate
6 the claim, gather information, and negotiate with
7 plaintiff's counsel.

8 That is exactly, Your Honor, what's going on in this
9 case. Judge Van Slambrook, in Moulton versus Lowe's, did
10 the same exact compiling authority from Judges Addy,
11 Newman, McIntosh, and Murphy, and the consistent rule
12 continues: Settlement activity is claims handling, not
13 litigation. That is --- that case and that order is
14 included in my rule to show cause memorandum.

15 Progressive has been derided these cases, yet they
16 ignored Brown, their own case, in their opposition and
17 instead rely on two unexplained Form 4s with no analysis
18 in Federal cases that aren't controlling.

19 So what have they produced? They highlight in their
20 memorandum that they produced 715 pages. However, the
21 vast majority, 554 pages, were plaintiff's own documents,
22 many of which were his medicals they produced in
23 triplicate. Page 2 of their memorandum admits they're
24 withholding claim log notes concerning coverage and/or
25 reserves, and claim log notes --- excuse me --- claim log

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1 notes after Progressive received plaintiff's demand
2 letter.

3 So we've asked for fees. And why are they
4 appropriate? It's not a gray area. Progressive and its
5 counsel made this argument before. They've lost and
6 still keep raising it to delay production. That forces
7 needless hearings like today that prejudice plaintiffs
8 that are entitled to know how their claims are handled.
9 Without sanctions, Progressive --- Progressive and its
10 counsel have no incentive to stop recycling this
11 position. They can continue to bill for the hearings.
12 We ask the Court to order production of the entire file
13 and notes through the date of counsel's retention, no
14 carve outs, and award attorney's fees and costs for
15 having to relitigate this issue that's already been
16 decided.

17 I assume that the --- I don't know when they
18 were --- retained counsel, but I assume it was on
19 April 8th, the day that they filed the answer, because
20 the day before, their attorney reached out to me to try
21 to offer the limits. And we spoke about it, and I
22 rejected it at that point.

23 In conclusion, if every Tyger River demand
24 automatically transforms routine claims activity into
25 work product, settlement negotiations could never happen.

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1 That's not the law and it's not common sense. If the
2 Court is so inclined, I have included a affidavit
3 attorney's fees showing all the wasted time I had to
4 spend on this --- this motion. Thank you, Your Honor.

5 THE COURT: All right. Thank you. Mr. Stover, Mr.
6 McDonald.

7 MR. STOVER: Thank you, Your Honor. I'm Tradd
8 Stover, I'm with Murphy & Grantland. We represent
9 Progressive Northern --- excuse me, Progressive Direct
10 with respect to plaintiff's subpoena and with respect to
11 their rule to show cause today.

12 I want to note first, the law is not unanimous on
13 this issue in South Carolina. Progressive is not bound
14 by one Circuit Court order in the state. And we've
15 also --- as we attached to our brief in this case,
16 there's been orders that expressly adopted the exact
17 position that Progressive is taking in this case. So
18 there --- there's a split amongst Circuit Court judges in
19 this state. That doesn't mean automatically that a
20 position that Progressive is taking now is unfounded or
21 taken in bad faith. This --- this position has been
22 acknowledged and adopted by courts across the country,
23 and it's been acknowledged and adopted in --- by several
24 judges within the state.

25 With that said, I want to go through some background

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1 too to give you some perspective on what's going on here.
2 On March 18th of 2025, plaintiff served a subpoena on
3 Progressive Direct. And it requests for all intents and
4 purposes, everything in its --- in Progressive's file up
5 until suit was filed which was on March 10, 2025.

6 In response, Progressive produced over 700 documents
7 and yes, many of those were recycled documents that
8 Progressive had received from plaintiff's counsel, but it
9 was over 700 documents --- pages of documents that were
10 stored in Progressive's claims file. It also produced
11 several pages of log notes entered by its adjusters.
12 Progressive withheld several documents in the file that
13 were created or retained after suit was filed.

14 And it also withheld two categories of log notes
15 that plaintiff's counsel just mentioned to you. First,
16 it withheld notes that were entered after February 18,
17 2025, the date that Progressive received plaintiff's
18 Tyger River demand letter. They withheld those notes on
19 grounds that they were created in anticipation of
20 litigation and that they constitute work product under
21 Rule 26(b)(3).

22 Secondly, it produced notes that were entered before
23 that date, but it redacted notes in that batch that
24 relate the only to coverage or reserves on grounds that
25 those items are outside the scope of discovery under Rule

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1 26(b) (1) as this matter relates to an automobile
2 collision, not insurance coverage, not bad faith, or the
3 like.

4 And Progressive produced the privilege log,
5 explaining and identifying those documents that were
6 withheld.

7 Our position in this case is that Progressive
8 properly withheld these log notes. And we'd ask the
9 Court to --- for an order ruling that Progressive need
10 not produce anything further. First and foremost, Your
11 Honor, log notes entered after February 18th were
12 prepared in anticipation of litigation, and they're
13 protected work product as a result.

14 February 18th is significant in this case, because
15 on that day, Progressive received a strongly worded Tyger
16 River demand letter from plaintiff's counsel. And as
17 they typically do, that demand letter made it abundantly
18 clear that plaintiff's next course of action was to file
19 a lawsuit against Progressive's insured unless that
20 demand was met. The letter noted that there would be
21 subsequent proceedings.

22 The letter noted that there --- there might be an
23 excess judgment against Mr. Davidson. And after it
24 received that letter, naturally the theme of
25 Progressive's claims log notes --- which by the way

1 are --- are mental impressions entered about a claim by
2 Progressive's adjusters --- but the theme of those notes
3 shifted away from general investigation and claims
4 handling like they would do in every case, to responding
5 to the demand and preparing for the consequences of what
6 might happen if they don't accept the terms of
7 plaintiff's demand.

8 Notably, plaintiff in this case --- and this is
9 important --- in this case, plaintiff's counsel followed
10 through with a warning immediately. They filed this
11 lawsuit on March 10th of this year, which was the very
12 day that his demand expired. So it turned out
13 Progressive was right to think that litigation was on the
14 horizon. That demand letter created an objectively
15 reasonable anticipation of litigation, and notes entered
16 after that point are protected.

17 And Your Honor, to be clear, Progressive's position
18 is not outlandish. Its position is rooted in the plain
19 text of Rule 26(b)(3). And in reading that rule two
20 points become clear from its face. Number one, work
21 product protection applies to liability insurance
22 carriers. The rule states explicitly that protection
23 extends to tangible items prepared by a party or that
24 party's representative. It goes on to expressly name
25 insurers as a type of representative.

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1 So the notion that insurance companies are not
2 entitled to invoke work product protection because
3 they're in the business of claims handling when other
4 defendants or entities are not in the business of claims
5 handling is simply at odds with the rule. According to
6 the rule, Progressive is a representative of a named
7 defendant and it's entitled to invoke the work product
8 doctrine.

9 Secondly, Your Honor, the rule confirms that the
10 protection must kick in at some point prior to suit being
11 filed. The key phrase of course in that is that in
12 anticipation of litigation. The rule does not state that
13 it applies after litigation is certain to occur, it
14 doesn't state that it applies after suit has been filed.
15 Doesn't state that it only applies after defense counsel
16 has been retained. It states in anticipation of
17 litigation.

18 And this language has clear meaning colloquially and
19 based on how our courts have interpreted it. Supreme
20 Court to Vacaville confirmed that what's required is the
21 prospect of litigation, a reasonable threat of
22 litigation.

23 To give the rule any meaning, Your Honor, work
24 product protection must apply at some point prior to the
25 filing of a summons and complaint. Respectfully,

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1 litigation is no longer just anticipated or prospective
2 after it happens. In this case Progressive received a
3 demand letter that plainly threatened to sue its insured
4 if that --- if its demand was not met. At that point
5 Progressive subjectively anticipated litigation and that
6 feeling was objectively reasonable as is evidenced by the
7 fact that plaintiff in fact did file suit the day that
8 demand expired.

9 Various courts have acknowledged and adopted this
10 position. The district of South Carolina has chimed in
11 on a similar issue and noted the nature --- the unique
12 nature of liability carriers claims file. The Court
13 stated quote: Insurance claims files generated in
14 relation to investigating and defending third-party
15 claims, are generally considered work product, because
16 they were clearly prepared for purposes of the underlying
17 litigation rather than just in the insured's ---
18 insurer's order business. That's Molar Company Inc.
19 (Phonetic) versus State Farm Fire and Casualty Company.
20 It's 2019 Westlaw 2419016.

21 And the type of insurance is important here. This
22 isn't a first-party property damage claim, it's a
23 liability claim. And plaintiff's demand confirmed where
24 the case was headed.

25 Your Honor, numerous courts in other jurisdictions

1 have reached similar conclusions holding that post demand
2 letter log notes are protected work product. We've
3 cited --- we string cited a lot of those cases on pages 4
4 and 5 of our brief in opposition to the rule to show
5 cause.

6 And again, we acknowledge that South Carolina trial
7 courts have historically been split on this issue.
8 Plaintiff's counsel cites several cases, even a recent
9 case. And I'll acknowledge that a lot of those cases
10 involved similar facts. There's no South Carolina
11 Appellate decisions on this issue. And there are circuit
12 splits across the country on this issue. I'll also note
13 that in several of the cases cited by plaintiff's
14 counsel, Moulton for example, Barnes as well, there's no
15 demand letter involved in those cases. Instead in those
16 cases, the insurance companies tried to withhold their
17 entire file from the date that the claim was --- was set
18 up in their system. That is not what Progressive is
19 trying to do in this case.

20 This Court has held several times that post demand
21 log notes are protected work product. We've attached two
22 of --- two orders to our brief. And our firm handled
23 both of their --- those cases. One is Siddons v Cox
24 (phonetic), 2018-CP-26-00396. It's out of or Horry
25 County. The other is Frierson v Hodge (phonetic), it's

1 2022-CP-14-00061. That's out of Clarendon County.

2 And Your Honor, frankly, we propose that those
3 orders represent the better reasoned rule. And we'd ask
4 the Court to follow the plain text of Rule 26(b)(3) and
5 apply the work product doctrine to log notes that are
6 entered after a Tyger River demands.

7 I want to briefly note too, Your Honor, if I may,
8 the redacted portions of the log notes that Progressive
9 produced in this matter. Rule 26(b)(1) expressly limits
10 the scope of discovery to matter which is relevant to the
11 subject matter of the pending action. This is not an
12 insurance coverage case. This is not a bad faith case.
13 There are no claims or defenses in this case that relate
14 in any way to Progressive's coverage decision to the
15 reserve amounts that Progressive might have set for this
16 claim. This case pertains only to an automobile
17 accident, thus notes concerning only coverage, or
18 reserve, were properly produced with redactions.

19 Lastly, Your Honor, we'd ask that you deny
20 plaintiff's request for attorney's fees in this case.
21 Progressive is not the first party to advance these
22 positions. And Your Honor would not be the first judge
23 in South Carolina and certainly not across the country,
24 to adopt these positions.

25 Progressive produced hundreds of documents in

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1 response to plaintiff's subpoena that had a good faith
2 basis for its withholdings which it stated clearly in
3 its --- in its letter and in its privilege log to
4 plaintiff's counsel.

5 Progressive has not intended to --- to stall or
6 delay this case in any way. It simply wanted judicial
7 determination on a disputed issue, which it hopes its
8 entitled to today.

9 And for all these reasons Progressive respectfully
10 requests that the Court deny plaintiff's motion and hold
11 that Progressive need not produce anything further. And
12 also that the Court rejects plaintiff's request for fees
13 and costs in this case. Thank you so much.

14 THE COURT: All right. Thank you. Mr. McDonald,
15 you got anything to add?

16 MR. MCDONALD: I don't, Your Honor. We represent
17 the defendant, Mr. Davidson. And we're just here
18 observing this hearing.

19 THE COURT: Okay.

20 MR. RIESEN III: Your Honor, may I just make one,
21 two points really quick on that?

22 THE COURT: Yeah. And I was going to come back to
23 you. Go ahead and make your points, but if you would
24 briefly specifically address, I guess, the issue of what
25 Mr. Stover brought up about the reserves and the

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1 coverage. But go ahead, brief response.

2 MR. RIESEN III: Well, first of all, nowhere in
3 their --- in their brief, did they even mention --- let
4 me say this: I don't ask for attorney's fees lightly.
5 When you've got the same exact issue by the same firm
6 with the same company, with the same facts, I think it
7 speaks for itself. Why this is important is they are
8 trying to allege that by sending a Tyger River demand,
9 everything after that becomes work product.

10 I would submit after 25 years of doing this, if
11 lawyers aren't sending Tyger River demands, they're
12 almost committing malpractice. These insurance companies
13 deal with them on a daily basis. And what's different
14 and what shows that it's not anticipation of litigation
15 is they are contacting me after the demand and making
16 counter offers and talking about the case. If that were
17 work product, they should have basically ceased the
18 discussions and either hired counsel or waited till the
19 lawsuit was filed. But yet they're continually
20 negotiating which is exactly what Judge Kinlaw found
21 happened in that case.

22 Now, as to the reserves and --- and --- I forgot
23 what else it was. I think it was just the reserves and
24 coverage ---

25 THE COURT: Yeah.

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1 MR. RIESEN III: --- typically, no, but in this
2 situation, there is a potential bad faith obviously.
3 They did an about face change and I need to understand
4 why that is. Right? They went from not offering but
5 2500 in property damage to the full limits. And so that
6 coverage changed. Was that because of their discussions
7 with the --- the -- the defendant about his quote,
8 medical emergency versus DUI? Was that relevant because
9 they did background checks to see that he had prior DUIs?
10 I don't know. They're just saying trust us.

11 I don't know. I've done everything to try to avoid
12 this hearing, but this case is a factual investigation
13 inquiry. And they reversed course with no additional
14 medicals or anything. So the fact that they withheld
15 everything allegedly after --- let me take that back.
16 They did turn over some stuff after the demand, so they
17 want it both ways. They're saying after the demand, it
18 becomes anticipation of litigation, but we are going to
19 give you this but not that. They're trying to have it
20 both ways. I think in this situation, where you've got a
21 guy giving different stories and you've got an insurance
22 company reversing course, we need to understand why that
23 happened.

24 MR. STOVER: Your Honor, may I respond?

25 MR. RIESEN III: And lastly, I think it's important

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1 for impeachment purposes, because I'm going to be taking
2 his deposition soon. And I want to know what they
3 discovered, what changed, why the change with the
4 reserves, that kind of stuff.

5 THE COURT: All right. Yeah. Brief response.

6 MR. STOVER: Progressive Direct, Your Honor, is not
7 a party to this lawsuit. And they're the basis for their
8 alleged change in coverage position is not at issue in a
9 case involving an automobile accident. And I'd also note
10 that lawyers and parties to cases continue
11 negotiating --- they negotiate presuit, during suit, at
12 mediation, after mediation, on the courthouse steps. But
13 the idea that parties negotiating somehow obliterates
14 work product protection flies in --- in the face of the
15 rule. Thank you.

16 THE COURT: All right. Thank you. Gentleman, if
17 y'all would --- I'm without a law clerk right now. So if
18 y'all would propose --- send me proposed orders if I can
19 get the words out of my mouth. I'll be glad to go back
20 and review everything. But if each of you would send me
21 a proposed order, I would certainly appreciate it. How
22 long do y'all need to do them? Ten days? Twenty days?

23 MR. RIESEN III: Ten days is fine for me.

24 MR. MCDONALD: Ten is --- is good with us, Your
25 Honor. Thank you.

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1 THE COURT: Okay. All right. Thank you gentleman.

2 MR. RIESEN III: All right. Thank you Your Honor.

3 MR. MCDONALD: Thank you, sir.

4 (PROCEEDINGS CONCLUDED)

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CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 9 for BERKELEY COUNTY, South Carolina, on the 20th Day of August, 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 6, 2026

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a prominent dot above the 'i' in "Meldrim".

Jeanne Meldrim

Transcriber