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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2026-001559
Opinion No. 2026-UP-020 (S.C. Ct. App. Filed June 17, 2026)

Tasha Jones and Shaniqua Thompson, ... Respondents,

v.

Lyndon Southern Insurance Company, Safe Choice Insurance, LLC, and Jupiter Managing General Agency, Inc, Defendants,

Of which

Lyndon Southern Insurance Company is the ..... Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on June 17, 2026.

QUESTIONS PRESENTED

1. Did the Court of Appeals' Substitute Opinion err in failing to recognize that Lyndon's motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, was timely because—unlike motions under Rule 50(b) or Rule 59(a), SCRCP—the trial court's permission is not required to file a motion under Rule 59(e)?

2. Did Respondent Shaniqua Thompson lack standing to assert first-party bad faith and breach of contract claims against Lyndon, given that: (a) only the contracting party or a named insured can assert such claims; and (b) it is undisputed that Ms. Thompson was neither a contracting party nor a named insured?

3. Was Lyndon entitled to judgment in its favor as to Ms. Jones's breach of contract and bad faith claims where Lyndon (a) owed no statutory or contractual duty to defend the John Doe action; and (b) never had an opportunity to settle for policy limits?

STATEMENT OF THE CASE

This appeal arises out of a claim for uninsured motorist ("UM") benefits under an automobile insurance policy issued by Lyndon. Respondents are Tasha Jones, the contracting party and "named insured" under the policy, and Shaniqua Thompson, an "insured person" under the policy's UM provision. Respondents' claims for breach of contract and bad faith were tried to a jury on June 21-22, 2023, and the verdict was entered on the docket on June 23, 2023. (R. 17.) On July 3, 2023, Lyndon timely filed a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, as well as other post-trial motions.

I. FACTUAL BACKGROUND

A. Accident and Initial Above-Limits Demands

On June 15, 2017, a vehicle driven by Ms. Jones was rear-ended by an unknown driver who fled the scene. (R. 60.) At the time of the accident, Ms. Jones's vehicle was covered by an automobile insurance policy (the "Policy") issued by Lyndon, for which Ms. Jones had elected the statutory minimum UM coverage of $25,000 per person and $50,000 per accident. (R. 553.) Ms. Jones is the "named insured" on the Policy. (R. 558.) Ms. Jones and her passengers—Ms. Thompson and a third individual—were injured in the accident and incurred medical expenses. (R. 61, 238.) At trial, Ms. Jones testified that the parties to the insurance contract are "me and Lyndon." (R. 240.) She also agreed that the coverage limits for UM claims were "$25,000 per person for bodily injury" and "up to $50,000 total." (R. 241.) Ms. Thompson is neither a named insured nor is she otherwise a contracting party; according to her own testimony, she was "just a ride[r]" in the vehicle

at the time of the accident. (R. 287-288.)

Respondents and the third passenger initiated a claim for UM benefits under the Policy on June 16, 2017, the day after the accident. (R. 258-259.) That same day, Lyndon arranged a rental car for Ms. Jones and scheduled an appraisal and estimate of her vehicle. (R. 259.) By July 24, a mere 38 days after submission of the UM claim, Lyndon determined Ms. Jones's vehicle was a total loss and issued payment to her and the lienholder. (R. 260-261.)

Ms. Jones, Ms. Thompson, and the third individual were all injured in the accident and incurred medical expenses. (R. 238.) After the third individual accepted an offer of settlement from Lyndon, approximately $42,000 remained under the $50,000-per-accident coverage limit. (R. 312, 409.) On October 18, 2017, Respondents' counsel transmitted a demand letter and damages package to Lyndon via its claims administrator. (R. 715-716.) ***The demand letter was not a time-limited demand for policy limits.*** Rather, Ms. Jones (the policyholder) and Ms. Thompson (the passenger) demanded $130,000—$65,000.00 *each*—an amount far in excess of the remaining $42,000 UM coverage under the Policy. (R. 716.) Lyndon made a counteroffer, to which it received no response. (R. 245, 268-269.)

B. John Doe Action

On January 18, 2018, Respondents filed a "John Doe" action against the unknown

driver who had hit Ms. Jones's vehicle.[1] (R. 636-639.) Lyndon was served with the Summons and Complaint. (R. 78.) No appearance was made by the unknown driver. On September 28, 2018, the circuit court granted default judgment against John Doe. (R. 709, 645.)

Following a hearing on damages, the circuit court entered judgment against John Doe. (R. 670-673.) The court found that Ms. Jones had incurred medical costs of $9,586.95 and that Ms. Thompson had incurred medical costs of $9,780.71. (R. 670.) The court further noted that both Ms. Jones and Ms. Thompson "testified how their quality of life was affected by this accident and that they still experience difficulties they associate with this accident." (R. 670-671.) With no further analysis of the evidence or discussion of the law, the court awarded Ms. Jones and Ms. Thompson $50,000 each against John Doe. (R. 672.) The total judgment amount of $100,000 was double the $50,000 per-incident coverage limit of Ms. Jones's UM policy. (R. 554.)

The following day, Respondents demanded payment of the entire John Doe judgment amount and threatened to bring a bad faith action if payment was not made within 15 days. (R. 674.) Because this demand exceeded policy limits, Lyndon declined to pay the judgment as demanded. (R. 9.)

[1] When a UM claim arises from a hit-and-run accident, the insured has a statutory cause of action against the unknown driver. *See* S.C. CODE ANN. § 38-77-180.

II. PROCEDURAL HISTORY

A. Circuit Court Proceedings

On August 22, 2019, Respondents filed a first-party breach of contract and bad faith action against Lyndon and two other defendants.[2] (R. 46-56.) Respondents alleged, in relevant part, that Lyndon breached its contractual obligations under the Policy and engaged in bad faith by (1) failing to appear and defend the John Doe action; (2) failing to exercise good faith and fair dealing in handling the UM claim; and (3) refusing, in bad faith and without reasonable basis, to pay the entire judgment awarded against John Doe. (R. 82, 87-88.)

The case was tried before a jury on June 21-22, 2023. (R. 212-549.) At the conclusion of Respondents' case-in-chief, the court directed a verdict in Respondents' favor on the breach of contract claim, despite the unambiguous terms of the Policy excluding Ms. Thompson as a named insured, and her own testimony that she was not a contracting party. (R. 487-488.) At the conclusion of the trial, the jury found in favor of Ms. Jones and Ms. Thompson on the bad faith claim. (R. 10-11.) The jury awarded damages for breach of contract for Ms. Jones in the amount of $50,300 and for Ms. Thompson in the amount of $50,000.[3] (R. 10.) The jury further awarded each $75,000 on the bad faith claim. (R. 11.)

[2] The other two defendants were Safe Choice Insurance LLC, the broker, and Jupiter Managing General Agency, Inc., the claims administrator. (R. 74-75.) Safe Choice settled with Respondents on June 19, 2023. (R. 108.) The circuit court entered a default judgment against Jupiter on March 18, 2022. (R. 97.) Jupiter moved to set aside the default. (R. 100-101.) It is not clear from the online docket whether this motion has been resolved.

[3] The additional $300 awarded to Ms. Jones resulted from Lyndon's admitted error in applying the incorrect deductible amount (the $500 deductible for liability claims instead of the $200 deductible for UM claims). (R. 361.)

Finally, the jury awarded Ms. Jones and Ms. Thompson $350,000 each in punitive damages. (*Id.*) The total judgment against Lyndon amounted to $950,300.

After the jury was discharged but before court adjourned, Lyndon renewed its directed verdict motion. (R. 547.) The circuit court responded, "We'll indicate that it was properly made, directed verdict motion[.]" (R. 547.)

On July 3, 2023, within 10 days of the jury's verdict, Lyndon filed consolidated post-trial motions seeking judgment notwithstanding the verdict, *see* Rule 50(b), SCRCP; a new trial, *see* Rule 59(a), SCRCP; and/or for reconsideration, *see* Rule 59(e), SCRCP. (R. 109-121.) Lyndon argued, as it had at summary judgment and at the close of Respondents' case, that Ms. Thompson was neither a contracting party nor a named insured and therefore lacked standing to bring a breach of contract or bad-faith claim against Lyndon because she was neither a contracting party nor a named insured. (R. 114-115.) Lyndon also re-asserted its arguments that the breach of contract and bad faith claims failed as a matter of law because its handling of Respondents' UM claims was objectively reasonable, it had no duty to appear in the John Doe action; and it never had an opportunity to settle within policy limits. (R. 115-117.) Lyndon alternatively sought a new trial *nisi remittitur* because the jury's award of damages for both the breach of contract claim and the bad faith claim constituted an impermissible double recovery and because the damages award on the breach of contract claim was plainly excessive. (R. 118-119.) Further, Lyndon sought a new trial absolute on the basis that Lyndon was prejudiced by Respondents' counsel's tactic of personally attacking Lyndon's counsel on irrelevant and improper grounds in full view of the jury. Additionally, Lyndon argued it was entitled

to a new trial because the jury's verdict was wholly unsupported by the evidence and was fatally inconsistent. (R. 120.) Finally, Lyndon argued that the punitive damages award violated the statutory cap on punitive damages and must be reformed. (R. 121.) The same day it filed its post-trial motions, Lyndon wrote to the court enclosing a copy of the motions and requesting a hearing. (R. 109.)

On July 8, 2023, Lyndon again wrote to the court, enclosing a clocked copy of its post-trial motions and again requesting a hearing. (R. 136.) Without responding to this request, on July 14, 2023, the circuit court entered an electronic Form 4 Order. (R. 12.) The Form 4 Order contained checkmarks in the box for "jury verdict" and the box for "See attached order (formal order to follow)," and it contained the following additional text:

> The Court directed verdict in favor of the Plaintiffs as to Breach of Contract and submitted to the jury the issue of the amount of actual damages as to Breach of Contract.
>
> The jury awarded the following relief:
>
> As to Breach of Contract, the jury awarded actual damages to Plaintiff Jones in the amount of $50,300 and to Plaintiff Thompson in the amount of $50,000.
>
> As to Bad Faith Refusal to Pay, the jury awarded consequential damages to Plaintiff Jones in the amount of $75,000 and to Plaintiff Thompson in the amount of $75,000.
>
> As to Punitive Damages, the jury awarded punitive damages in the sum of $350,000 to Plaintiff Jones and $350,000 to Plaintiff Thompson.

(*Id.*) The Form 4 Order also contained a checkmark in the box for "This order ends the case." (*Id.*). However, the Order did not refer to or resolve Lyndon's pending post-trial motions.

B. Court of Appeals Proceedings

Lyndon filed its Notice of Appeal on July 11, 2023, less than 30 days after entry of the Form 4 Order. (R. 165.) On Respondents' motion, the Court of Appeals remanded to the circuit court for a ruling, if necessary, on Lyndon's post-trial motions. The circuit court denied Lyndon's post-trial motions on March 27, 2024. (R. 15-39.) The parties then proceeded to briefing. By order entered on January 21, 2026, the Court of Appeals dismissed the appeal on the grounds that Lyndon had not filed an amended notice of appeal after the circuit court's entry of its order on remand. Lyndon timely petitioned for rehearing. On June 17, 2026, the Court of Appeals denied rehearing and issued a substituted opinion affirming the circuit court (the "Substituted Opinion").

Although Lyndon made post-trial motions under Rules 50(b), 59(a), and 59(e), the Substituted Opinion refers only to Lyndon's motion for JNOV under Rule 50(b) and its motion for new trial under Rule 59(a). Lyndon plainly sought relief under Rule 59(e); the "Legal Standards" section of the motion contains a lengthy paragraph headed "Rule 59(e)," and the phrase "Rule 59(e)" appears ***18 times*** in a 13-page filing. However, the Substituted Opinion references only the motions under Rules 50(b) and 59(a), and it concludes that those motions were untimely because they were filed "eleven days after the conclusion of trial" (Subs. Op. at 3), even though the date of filing—July 3, 2023—was actually the tenth day by operation of law.[4] The Substituted Opinion also states, again

[4] According to the Substituted Opinion, the verdict was returned on June 22, 2023, such that the tenth day was Sunday July 2, 2023. (Subs. Op. at 2-3 & n.2; *but cf.* R. 17 (circuit court order stating Lyndon's post-trial motions were filed "on July 3, 2023 which was ten (10) days after the jury was discharged on June 23, 2023").) Under Rule 6(a), SCRCP, July

without considering Lyndon's motion under Rule 59(e), that Lyndon's post-trial motions were untimely because Lyndon did not seek the circuit court's permission to file them up to ten days after the jury was discharged. (Subs. Op. at 3).

ARGUMENT

This Court should grant certiorari because the Court of Appeals' Substituted Opinion, and the underlying judgment, conflict with the law as set forth in the South Carolina Rules of Civil Procedure and decisions of this Court. For the reasons set forth in its Court of Appeals briefs, Lyndon firmly maintains that its post-trial motions under Rules 50(b) and 59(a) were timely made because nothing in the text of either rule requires a formal motion to obtain the discretionary ten-day filing period. Nevertheless, this Petition focuses on Lyndon's motion to alter or amend the judgment pursuant to Rule 59(e). Lyndon's Rule 59(e) motion was made; it was timely; and it is meritorious. The Court should grant certiorari and relieve Lyndon from the onerous and unfair judgment against it.

I. Lyndon Timely Moved to Alter or Amend the Judgment Pursuant to Rule 59(e), SCRCP

The Court of Appeals and the circuit court both refused to consider the merits of Lyndon's Rule 59(e) motion. According to the circuit court, Lyndon made a Rule 59(e) motion but it was untimely. According to the Substituted Opinion, the Court of Appeals

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2 was excluded from the time computation and the tenth day was Monday, July 3, 2023. Thus, under either the circuit court's computation or under the Court of Appeals', Lydon's Rule 59(e) motion met the ten-day deadline.

appears to have believed that no Rule 59(e) motion was ever made. The record and the law, however, are both clear: Lyndon made a Rule 59(e) motion, and it did so timely.

First, Lyndon unquestionably moved for relief under Rule 59(e), as is clear from the caption and first paragraph of the motion:

> **DEFENDANT LYNDON SOUTHERN INSURANCE COMPANY'S POST-TRIAL MOTION PURSUANT TO RULES 50(b) AND/OR 59(a) and 59(e), AND FOR OTHER RELIEF PURSUANT TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE**
>
> TO: THE HONORABLE CLIFTON NEWMAN, PRESIDING CIRCUIT COURT JUDGE, and DIETRICH A. LAKE, ESQUIRE, ATTORNEY FOR PLAINTIFFS
>
> Defendant Lyndon Southern Insurance Company ("Lyndon") moves the Court for judgment notwithstanding the verdict pursuant to Rule 50(b), SCRCP, or in the alternative, for a new trial absolute or a new trial *nisi remittitur* pursuant to Rule 59(a), SCRCP; or in the alternative, to alter or amend the judgment pursuant to Rule 59(e), SCRCP; and for such other and further relief as may be authorized under the South Carolina Rules of Civil Procedure.

(R. 109 (highlighting added).) Lyndon also directly addressed the legal standard applicable to a Rule 59(e) motion (R. 112), and specifically asked for relief under Rule 59(e) on each key issue. (R. 115, 116, 118, 120, and 121.)

Second, Lyndon's motion was clearly made timely, *i.e.*, it was "served" on Respondents "not later than 10 days after receipt of written notice of entry of the order," Rule 59(e), SCRCP, which is all that Rule 59(e) requires. In finding that all of Lyndon's post-trial motions were untimely, it appears that the Substituted Opinion made the same error as the circuit court, importing the court's-permission requirement found in Rules 50(b) and 59(b) into Rule 59(e), where it does not exist.

For the avoidance of doubt, Lyndon reiterates that its Rule 59(e) motion was timely under either the circuit court's or the Court of Appeals' computations. According to the

Richland County Public Index and the circuit court's Order of March 27, 2024 (R. 17), the jury's verdict was returned on June 23, 2023. Ten days from June 23 is July 3, so Lyndon's Rule 59(e) motion was timely. According to the Substituted Opinion, the jury's verdict was returned on June 22, 2023. (Subs. Op. at 2.) Ten days from June 22 is *Sunday*, July 2. Since the last day of a period computed under the Rules of Civil Procedure cannot be a Sunday, *see* Rule 6(a), SCRCP, the "tenth day" automatically became Monday, July 3, 2023—the day Lyndon filed its post-trial motions, including its Rule 59(e) motion.

The Court of Appeals erred in refusing to consider the merits of Lyndon's appeal from the denial of its actually made and timely filed motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP. And, for the reasons set forth herein and in Lyndon's Court of Appeals briefs, the judgment against Lyndon resulted from multiple legal errors that are properly corrected through relief under Rule 59(e). *See Tisdale v. State*, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (holding that a Rule 59(e) motion may be used to call the trial court's attention to errors of law).

II. The Judgment Against Lyndon Is the Result of Multiple Errors of Law

The errors of law asserted in Lyndon's post-trial motions are proper subjects of relief on a Rule 59(e) motion. *See Tisdale*, 357 S.C. at 476, 594 S.E.2d at 167. Under South Carolina law, "it is proper to view a rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend the judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21–22, 602 S.E.2d 772, 778 (2004). "There is nothing inherently unfair in allowing a party one final chance to revisit

a previously raised argument. It is inherently unfair to disallow such an opportunity." *Id.* at 22, 602 S.E. 2d at 779. Thus, a Rule 59(e) motion is appropriate when a litigant "believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue." *Id.* at 24, 602 S.E.2d at 780. The legal errors asserted in Lyndon's Rule 59(e) motion, therefore, are proper subjects of relief under that Rule. Moreover, Lyndon is entitled to relief from part or all of the verdict as a matter of law.

A. Ms. Thompson Lacks Standing to Assert Claims Against Lyndon

There is no dispute that Ms. Thompson is neither a contracting party nor a "named insured" under the Policy; she is merely an "insured person" under the Policy's UM coverage. The settled law of South Carolina is that "a third person not in privity of contract with the contracting parties does not have a right to enforce the contract." *Hardaway Concrete Co. v. Hall Contracting Corp.*, 374 S.C. 216, 225, 647 S.E.2d 488, 492 (Ct. App. 2007). This fundamental principle applies equally to first-party claims for breach of contract and bad faith in the insurance context. South Carolina recognizes that a named insured has a cause of action for "bad faith refusal to pay first party benefits due under an insurance contract." *Carter v. Am. Mut. Fire Ins. Co.*, 279 S.C. 368, 370, 307 S.E.2d 227, 227 (1983) (citing *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 306 S.E.2d 616 (1983)). However, "this cause of action does not extend to a person who is not a party to or a named insured under the insurance contract." *Id.*; *see also Hill v. Canal Ins. Co.*, No. 7:12-cv-330-TMC, 2012 WL 3135402, at *2 (D.S.C. Aug. 1, 2012) ("The South Carolina Supreme Court and the South Carolina Court of Appeals 'have repeatedly denied actions for bad faith refusal to pay claims to third parties who are not named insureds.'")

(quoting *Kleckley v. Northwestern Nat'l Cas. Co.*, 338 S.C. 131, 135, 526 S.E.2d 218, 219 (2000); citing numerous additional cases).

In its order denying Lyndon's post-trial motions, the circuit court rejected the challenge to Ms. Thompson's standing on the basis that Lyndon "[did] not offer any evidence" to show that Ms. Thompson was not a named insured entitled to directly enforce the terms of the Policy. (R. 19.) This is simply incorrect; in fact, the uncontradicted evidence shows beyond a doubt that Ms. Thompson is not a contracting party or a "named insured."

1. *The Unambiguous Policy Language Excludes Ms. Thompson as a Named Insured*

First, the terms of the Policy establish that Ms. Thompson is not a named insured. "Insurance policies are subject to the general rules of contract construction." *Auto Owners Ins. Co. v. Benjamin*, 415 S.C. 137, 143, 781 S.E.2d 137, 141 (Ct. App. 2015) (internal quotation marks omitted). "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Id.* "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning." *Id.*

The Policy begins by describing the nature of the agreement:

> The Personal Auto Policy is a binding contract between **You** and **us**. **Your** policy consists of the Personal Auto Policy contract, **Your** insurance application, the **Declarations**, and all endorsements and attachments to this policy. …

(R. 558 (emphasis in original).) The Policy goes on to define certain terms, including "You and Your" and "named insured":

1. **You** and **Your** refer to:
    a. the **named insured** shown in the **Declarations**; and
    b. the spouse of the **named insured** shown in the **Declarations**, if a **resident** of the same household, unless the spouse is an excluded driver.

…

10. **Named insured** means the person or persons listed in the **Declarations** as insured.

(R. 558-559 (emphasis in original).) The Declarations page identifies "Tasha Jones"—and *only* Tasha Jones—as the named insured. (R. 553.) Ms. Thompson's name does not appear on the Declarations page, or for that matter, anywhere else in the Policy. Additionally, it is undisputed that Ms. Thompson is not Ms. Jones's spouse. Because Ms. Thompson is neither "the person … listed in the Declarations as insured" nor "the spouse of the named insured," under the plain and unambiguous language of the Policy, she is not a "named insured."

Ms. Thompson's status under the UM/UIM provisions of the Policy is that of an "insured person," which the Policy defines as follows:

I. **Insured person** means:
    a. **You**, any **family member** or any other person listed as an additional driver in the **Declarations**;
    b. Any other person while occupying **Your covered auto**, provided the actual use thereof is with the permission of the **named insured**; and
    c. Any person entitled to recover damages for **bodily injury** covered under Part C of this policy sustained by a person meeting the definition of an insured person in I.a. or I.b. above.

(R. 564 (emphasis in original).) Under this definition, Ms. Thompson is an "insured person" because she was occupying Ms. Jones's vehicle with her permission at the time

of the accident.

2. The Amended Complaint Alleges that Ms. Jones, Not Ms. Thompson, Is the Contracting Party

Second, the Amended Complaint repeatedly alleges that Ms. Jones is the person with whom Lyndon entered into a contract for insurance:

> The Defendants entered into an insurance contract with the Plaintiff Tasha Jones under Policy Number CH4154345-00 ... .
>
> The Plaintiff Tasha Jones' insurance agreement also provided for physical damage coverage to her 2006 Kia Sedona LX … .
>
> The Plaintiff Tasha Jones paid a premium of over $2200.00 for this insurance agreement plus a fee for the policy.

(R. 75-76.) Similar allegations appear throughout the Amended Complaint. (R. 80, 82.) In contrast, the Amended Complaint never describes Ms. Thompson as having "entered into a contract with" Lyndon or as having any "agreement" with Lyndon. Rather, the Amended Complaint alleges that Ms. Thompson "is defined as an insured under the policy as she was a passenger in [Ms. Jones's] vehicle at the time of the accident which gives rise to this action." (R. 80; *see* R. 564 (defining "insured person").) Thus, Respondents' own factual allegations in their Amended Complaint establish that Ms. Thompson is neither a party to the contract nor a named insured.

3. Ms. Thompson Testified She Is Not a Named Insured

Finally, Ms. Thompson's own testimony establishes that she is not a contracting party or the named insured under the Policy:

> Q. … Did you ever go to SafeCo and, and get a contract for a policy of insurance?
>
> A. No, sir.

Q. So, you don't have a contract of insurance with Lyndon Southern?

A. I don't.

Q. That, that contract, that policy is, is Ms. Jones's policy, correct?

A. Correct. I was just a ride[r].

(R. 287-288.)

In short, everything in the record demonstrates that Ms. Thompson is not a party to the insurance contract with Lyndon and does not otherwise qualify as a "named insured." Because she is not a contracting party, Ms. Thompson cannot seek to enforce the Policy through a breach of contract action. And, because she is not a named insured, Ms. Thompson cannot assert a claim for bad faith. *See Kleckley*, 338 S.C. at 134-35, 526 S.E.2d at 219 ("A tort action for bad faith refusal to pay benefits does not extend to third parties who are not named insureds."). Accordingly, Lyndon is entitled to reversal of the judgment in Ms. Thompson's favor.

B. As a Matter of Law, Lyndon Neither Breached the Policy Nor Acted in Bad Faith as to Ms. Jones

Ms. Jones, as the contracting party and the named insured under the Policy, had standing to assert claims for breach of contract and bad faith. *See Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 502-03, 473 S.E.2d 52, 54-55 (1996). Nevertheless, the judgment must be reversed. As a matter of law, Lyndon's conduct with respect to Ms. Jones's UM claim did not breach the terms of the Policy and did not constitute bad faith.[5]

[5] This Petition focuses on the purely legal errors that infect the judgment against Lyndon. However, Lyndon hereby preserves and does not abandon its argument that the

"The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach." *Johnson v. Little*, 426 S.C. 423, 428, 827 S.E.2d 207, 210 (Ct. App. 2019). Insurance policies are subject to general rules of contract construction. *See Auto Owners Ins.*, 415 S.C. at 143, 781 S.E.2d at 141. In adjudicating claims for breach of insurance contracts, courts "must give policy language its plain, ordinary and popular meaning" and must not "torture the meaning of policy language in order to extend or defeat coverage that was never intended by the parties." *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 579, 757 S.E.2d 399, 406 (2014) (quoting *Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 70, 310 S.E.2d 814, 816 (1983)). "To be clear, the insurer's duty under a policy of insurance is set forth by the terms of the policy and cannot be enlarged by judicial construction." *State Farm Fire & Cas. Co. v. Morningstar Consultants, Inc.*, No. 6:16-cv-01685-MGL, 2017 WL 2265919, at *2 (D.S.C. May 24, 2017) (citing *S.C. Ins. Co. v. White*, 390 S.E.2d 471, 474 (S.C. 1990)).

A claim for bad faith rises out of the implied covenant of good faith and fair dealing inherent in every contract. *See Founders Ins. Co. v. Richard Ruth's Bar & Grill LLC*, No. 2:13-cv-03035-DCN, 2016 WL 3219538, at *5 (D.S.C. June 8, 2016). To establish a claim for bad faith failure to pay benefits under the UM provision of the Policy, Ms. Jones was required to prove:

> (1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting

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evidence utterly fails to support the verdict, even when viewed in the light most favorable to Ms. Jones.

> from the insurer's bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing arising on the contract; (4) causing damage to the insured.

Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 359-60, 415 S.E.2d 393, 396–97 (1992). "[A]n insurer acts in bad faith when there is no reasonable basis to support the insurer's decision [for contesting a claim]." *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 645, 594 S.E.2d 455, 462 (2004). However, where an insurer has a reasonable ground for contesting a claim, there is no bad faith. *Id.*

The circuit court ruled that Lyndon breached its contract with Ms. Jones and acted in bad faith by, *inter alia*, "requir[ing] Ms. Jones "to file suit [*i.e.*, the John Doe action] to recover benefits," and then by refusing to pay the entire amount of the John Doe judgment upon Ms. Jones's demand. (R. 24; *see* R. 21.)[6] As a matter of law, however, neither of these alleged actions either breached the Policy or constituted bad faith.

1. The John Doe Action Was a Statutory Prerequisite to UM Coverage Under the Policy

The circuit court held that Lyndon breached the Policy and acted in bad faith by requiring Ms. Jones to file suit and obtain a judgment against the unknown driver who caused the accident. (R. 22.) But the law of South Carolina is clear that an insurer does not have a contractual obligation to pay UM benefits until the insured has obtained a

[6] The circuit court also noted Lyndon's purported failure to establish policies for the prompt resolution of claims. (R. 21.) However, there was no evidence to show any causal connection between the supposed lack of policies and any damages claimed by Ms. Jones. To the contrary, Ms. Jones testified that Lyndon arranged a rental car for her on the same day she reported the accident and "immediately" arranged for an evaluation of the damage to her vehicle. (R. 259.) Ms. Jones also testified that her property damage claim was fully resolved within 40 days of notifying Lyndon of the claim. (R. 261.)

judgment against the unknown driver in a statutory "John Doe" action. *See* S.C. CODE ANN. § 38-77-180 (providing for claim against unknown driver); *Lawson v. Porter*, 256 S.C. 65, 68-69, 180 S.E.2d 643, 644 (1971).

> In order for an insured to recover his/her UM coverage for a claim in a hit-and-run or miss-and-run accident, the claimant is required to establish, as in all UM cases, the legal liability of the uninsured motorist, and the amount of his damages. *South Carolina requires the insured to file an action against the defendant as "John Doe"* and service of process may be made by delivery of a copy of the summons and complaint or other pleadings to the clerk of the court in which the action is brought.

The Law of Automobile Insurance in South Carolina at 157 (Constance A. Anastopoulo *et al.*, eds. 8th ed. 2024) (footnotes omitted) (emphasis added) (citing S.C. CODE ANN. § 38-77-180). This requirement is echoed in the Policy, which provides that Lyndon is responsible only for "damages an **insured person** is *legally entitled* to recover from the owner or operator of an **uninsured motor vehicle** because of **bodily injury**" sustained in an accident. (R. 563 (bold emphasis in original; italics emphasis added).) This Court has held that:

> the phrase "legally entitled to recover" is wholly unambiguous: it means a plaintiff has a viable claim that is able to be reduced to judgment against an at-fault defendant after overcoming any defenses the defendant may have presented. After all, it is only then that the plaintiff becomes legally entitled to recover against that defendant.

Connelly v. Main St. Am. Grp., 439 S.C. 81, 92, 886 S.E.2d 196, 202 (2023). Importantly, § 38-77-180 gives the insurer the right, but not the obligation, to appear in the action and "defend in the name of John Doe." S.C. CODE ANN. § 38-77-180.

Likewise, the Policy contains no "duty to defend" a John Doe action. The Policy

imposes a contractual duty to appear and defend only if there is a claim of liability *against an insured*. (R. 563.) The obligation to defend the insured from liability under Part A (liability coverage) of the Policy does not establish or even imply the existence of a duty under Part C (UM/UIM coverage) to defend an action against a John Doe under § 38-77-180. Because no statutory or contractual obligation to appear and defend the John Doe action existed, as a matter of law Lyndon's purported "failure" to do so cannot amount to a breach of contract or bad faith.

2. Lyndon Never Had an Opportunity to Settle for Policy Limits

Finally, as a matter of law, Lyndon did not act in bad faith by refusing to pay the entire amount of the John Doe judgment upon Respondents' demand.

Respondents' expert testified without contradiction that an insurer acts in bad faith when it ***has an opportunity*** to settle a claim within policy limits but fails to do so. (*E.g.*, R. 441, 442.) Indeed, this is the settled law of South Carolina. *See Nichols*, 279 S.C. at 340, 306 S.E.2d at 619; *Tyger River Pine Co. v. Maryland Cas. Co.*, 170 S.C. 286, 170 S.E. 346, 349 (1933).

South Carolina law is abundantly clear, however, that there can be no bad faith where an insurer does not have a reasonable opportunity to settle for policy limits. For example, the court in *Founders* held that South Carolina law did not support a bad-faith claim where the evidence did not show that "Founders ever had a reasonable opportunity to settle within the policy limits" because the insured's demands were always *above* policy limits. *Founders*, 2016 WL 3219538, at *7. *Accord Snyder v. State Farm Mut. Auto. Ins. Co.*, 586 F. Supp. 2d 453, 459-60 (D.S.C. 2008) (no bad faith where plaintiff would not have

accepted a within-policy-limits offer of settlement). The rule in South Carolina is the same as the nationwide standard for bad-faith claims, which requires a showing that the insurer had a reasonable opportunity to settle within policy limits. *See, e.g.*, *Kropilak v. 21st Cent. Ins. Co.*, 806 F.3d 1062, 1068-69 (11th Cir. 2015); *Whiting-Turner Contracting Co. v. Liberty Mut. Ins. Co.*, 912 F. Supp. 2d 321, 342-43 (D. Md. 2012).

The undisputed evidence in the record is that Lyndon never had a reasonable opportunity to settle within policy limits because Respondents would not have accepted such an offer. Respondents' very first demand to Lyndon was for $65,000 each, an amount far in excess of the approximately $42,000 in UM coverage remaining after payment of the third passenger's claim. (R. 715-716.) On the eve of the damages hearing in the John Doe action, Respondents' counsel indicated that if Lyndon would offer his clients $30,000—again, an amount substantially more than policy limits—he would try to persuade them to accept it. (R. 653.) Following entry of the John Doe judgment, Respondents demanded payment of the full amount of that judgment, *i.e.*, $100,000. (R. 674.) Finally, Ms. Jones testified at the trial in this matter that she would not have settled for policy limits. (R. 273.) At no time did Respondents ever make a demand for policy limits.

Simply put, Lyndon could not have acted in bad faith for "failing" to offer a settlement within policy limits when Respondents' own actions and sworn testimony made clear that they never would have accepted such an offer. The Policy obliged Lyndon to pay a *maximum* of $42,000 (the amount of UM coverage remaining after settlement with the third passenger). Every demand made by Respondents was for substantially more

than this amount. Therefore, Lyndon never had a reasonable opportunity to settle within policy limits, and as a matter of law it did not act in bad faith.

CONCLUSION

For the reasons set forth herein, Lyndon respectfully asks the Court to grant certiorari, consider the merits of Lyndon's Rule 59(e) motion to alter or amend the judgment, and vacate the judgment in its entirety, or at the very least as to Ms. Thompson, whose own testimony established her lack of standing to pursue any claim against Lyndon.[7]

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[7] This would hardly let Lyndon off the hook, as it would still be liable to Ms. Jones for $475,000 plus post-judgment interest. But in that scenario, Lyndon's liability would at least run to a party in privity of contract with it.

Respectfully submitted,

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