

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Circuit Court Judge

Case No. 2024-CP-10-04796

Brecken Isben,..... Plaintiff,

v.

Ethel G. Nelson,..... Defendant

and

Progressive Direct Insurance Company,..... Third Party,

of which Progressive Direct Insurance Company is the Appellant.

NOTICE OF APPEAL

Appellant Progressive Direct Insurance Company, appeals the April 30, 2026 Order Denying Progressive Specialty Company’s Motion to Intervene and Motion for Protective Order and the July 20, 2026 Order Denying Progressive Direct Insurance Company’s Motion to Alter, Amend, and/or Reconsider. Appellant received written notice of entry of the July 20, 2026 Order on July 20, 2026.

[signature page attached]

MURPHY & GRANTLAND, P.A.

s/Jay Thompson

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Counsel for Defendant Ethel G. Nelson

August 10, 2026

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Brecken Isben,

Plaintiff,

v.

Ethel G. Nelson,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2024-CP-10-04796

**ORDER
DENYING PROGRESSIVE SPECIALTY
COMPANY'S MOTION TO INTERVENE
AND MOTION FOR PROTECTIVE
ORDER; and
CONTINUING PLAINTIFF MOTION TO
COMPEL**

On February 24, 2026, this matter came before the Court on Non-Party Progressive Specialty Insurance Company's Motion to Intervene and Motion for Protective Order and on Plaintiff Brecken Isben's Motion to Compel.¹ Present at the hearing via WebEx were Mary Linton (counsel for Plaintiff Brecken Isben), Samuel Carnwath III (counsel for Defendant Ethel Nelson), and Jay Thompson (counsel for Non-Party Progressive Specialty Insurance Company). After hearing from the parties and reviewing all available memoranda, the Court DENIES Non-Party Progressive Specialty Insurance Company's Motion to Intervene and Motion for Protective Order and CONTINUES Plaintiff's Motion to Compel.

SUMMARY OF THE CASE

This is a personal injury case arising from a collision that occurred on September 1, 2023; Plaintiff Brecken Isben alleges that Defendant Ethel Nelson's actions caused the collision.

On or around May 15, 2025, Plaintiff Isben served discovery requests on Defendant Nelson. Among other things, those discovery requests included Request for Production No. 31 addressed to Defendant Nelson, which called for "[c]omplete copies of any and all pre-litigation claim(s) and investigation files related to the incident that were created and/or maintained by your insurance companies and/or third-party administrators . . . pertaining to the incident until defense

¹ All findings of fact and conclusions of law indicated in this Order are made for the purpose of ruling on this motion only.

counsel was retained,” and included a limitation that it did not seek financial reserve amounts. Defendant Nelson objected to that request and did not provide a substantive response.

On September 25, 2025, Plaintiff filed a motion to compel discovery responses against Defendant Nelson, which is presently pending with this court.

On December 11, 2025, Non-Party Progressive Direct filed a motion to intervene and motion for protective order for the purpose of opposing Plaintiff’s Request for Production.

RULINGS AND ORDER OF THE COURT

The Court DENIES Non-Party Progressive Insurance Company’s Motion to Intervene and for Protective Order, and finds and orders the following:

I. Progressive’s Motion to Intervene is Inconsistent with Longstanding South Carolina Law.

The law in South Carolina is clear: the prelitigation claims file is discoverable and must be produced. Defendant’s Motion to Intervene, amounts to an improper attempt by would be party Progressive, to avoid discovery of a prelitigation claims file.

Rule 34, SCRCPP, requires the production not only of documents in a party’s possession, but within a party’s “custody or control.” Here, Progressive is playing a “shell-game” as to what Defendant Nelson has in her actual possession versus what Defendant’s agents have in their possession. Defendant’s counsel was hired by, is controlled and under direction of, and has been provided documents, all by Defendant’s insurance carrier. The South Carolina Supreme Court recently affirmed sanctions against a party attempting to play this game. *See Innovative Waste Management Inc., v. Crest Energy Partners, GP, LLC* 445 S.C. 19, 29, 911 S.E.2d 406, 411 (2025)

A tripartite and agency relationship exists among and between the Defendant, its insurance carriers, defense counsel, as well as any other third-parties acting as agents or on behalf of Defendant. They are one-in-the-same for purposes of discovery and responding to requests. Plaintiff is not required to guess and try to conduct discovery against the Defendant’s various agents to cobble together a complete set of documents. The Defendant cannot pick and choose which parts of the claims file are within their “custody and control” and also claim that the material is subject to the attorney-client, attorney work-product, or trial preparation privileges. Defendant’s duty to produce the requested information and documents within their actual and/or constructive possession, custody, or control is clear. Plaintiff is not required to indulge in or placate a false distinction between what Defendant “has” vs. what its agents “have”.

II. Progressive Motion for Protective Order

The materials sought by Plaintiff are discoverable. Plaintiff placed appropriate limitations on its request. Therefore, Progressive is not entitled to a Protective Order.

III. Plaintiff's Motion to Compel

Defendant provided Plaintiff with supplemental responses the day before this hearing, which did not afford sufficient time for Plaintiff to review the responses. Accordingly, the Court Continues Plaintiff's Motion to Compel Supplemental Responses to allow Plaintiff (and the Court if necessary) time to review responses for completeness.

CONCLUSION

For the reasons stated herein, Progressive's Motion to Intervene and Motion for Protective Order are DENIED and Plaintiff's Motion to Compel is CONTINUED to the next term of court.

AND IT IS SO ORDERED.

The Honorable Dale Van Slambrook
Presiding Judge

April 29, 2026
Charleston County, South Carolina



Charleston Common Pleas

Case Caption: Brecken Isben VS Ethel G Nelson

Case Number: 2024CP1004796

Type: Order/Other

And It Is So Ordered!

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

Electronically signed on 2026-04-30 13:18:49 page 4 of 4

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024 CP-1004796

Brecken Isben

Ethel G. Nelson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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:

This matter came before the Court on the Non Party Progressive Direct insurance Company's Motion to Alter, Amend, and/or Reconsider, filed on May 8, 2026. Non Party Progressive Direct Insurance Company asks the Court to Reconsider its Order, filed on April 30, 2026. The Court timely received a copy of the Motion for Reconsideration; a Memorandum in Opposition was filed by Plaintiff. This motion is disposed of without the necessity of a hearing and decided on the record and briefs.

Non-Party Progressive Direct Insurance Company correctly points out that the non-party was improperly identified as Non-Party 'Progressive Specialty Insurance Company' throughout the Order entered on April 30, 2026. This error does not substantively affect any finding, ruling, or analysis of the Court.

"The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised but not ruled on, in order to preserve it for appellate review." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did

not." *Anderson Memorial Hosp., Inc., v. Hagen*, 313 S.C. 389, 434S.E.2d 268 (1993; See also *Arnold v. State*, 309 S.C. 157, 172-173, 420 S.E.2d 834,842 (1992).

The Court finds no basis for the reconsideration of its Order. The Motion to Reconsider makes no new or novel arguments which were not considered and ruled upon by this Court.

Therefore, after consideration of the record, as well as the various interests balanced by the Court at the time of the ruling, Non Party Progressive Direct Insurance Company's Motion to Alter, Amend, and/or Reconsider is heard and on the basis of the rationale set forth in the Plaintiff Memorandum in Opposition is respectfully **DENIED** as to all arguments, findings, rulings, and analysis which shall be wholly undisturbed; however, as to the Scriveners error identified in the Motion to Reconsider, the April 30, 2026, Order shall be corrected to substitute Non Party 'Progressive Direct Insurance Company' throughout.

AND IT IS SO ORDERED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

ELECTRONICALLY FILED - 2026 Aug 10 2:26 PM - CHARLESTON - COMMON PLEAS - CASE#2024CP1004796
ELECTRONICALLY FILED - 2026 Jul 20 11:41 AM - CHARLESTON - COMMON PLEAS - CASE#2024CP1004796

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter:

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.**

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.



Charleston Common Pleas

Case Caption: Brecken Isben VS Ethel G Nelson
Case Number: 2024CP1004796
Type: Order/Form 4

And It Is So Ordered!

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

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Circuit Court Judge

Case No. 2024-CP-10-04796

Brecken Isben,..... Plaintiff,
v.
Ethel G. Nelson,..... Defendant
and
Progressive Direct Insurance Company,..... Third Party,
of which Progressive Direct Insurance Company is the Appellant.

PROOF OF SERVICE

I certify that I served Appellant Progressive Direct Insurance Company's Notice of Appeal via email and by U.S. Mail to all counsel of record, as well as via Electronic Filing System to the Charleston County Clerk of Court on August 10, 2026:

Mark J. Bringardner, SC Bar No. 102465 Mary K. Linton, SC Bar No. 102815 BRINGARDNER INJURY LAW FIRM 41 Broad Street Charleston, SC 29401 mark@bringardner.com mlinton@bringardner.com <i>Counsel for Respondent Brecken Isben</i>	Jeffrey T. Ammons, SC Bar No. 12419 S. Wallace Carnwath, III, SC Bar No. 81297 WALKER ALLEN GRICE AMMONS & FOY, LLP PO Box 1068 Mt. Pleasant, SC 29465 jeff@walkerallenlaw.com wallace@walkerallenlaw.com <i>Counsel for Defendant Ethel G. Nelson</i>
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[signature page attached]

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

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August 10, 2026