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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Clifton B. Newman, Circuit Court Judge

Case No.: 2019-CP-40-04650

Appellate Case No.: 2026-001559

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.

RESPONDENTS RETURN TO PETITION

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COUNTER-STATMENTS TO QUESTIONS PRESENTED

1) The Court of Appeals did not err in affirming the Circuit Court's denial of the Petitioner's request for a new trial based upon the merits and based upon the Petitioner advising the trial court at the discharge of the jury that the Petitioner was not making any post-trial motions.

2) The Court of Appeals did not err in affirming the Circuit Court's denial of the Petitioner's request for a new trial based upon the Petitioner's argument that one of the Respondents lacked standing to assert her claims against the Petitioner as this issue was not preserved for appellate review due to the Petitioner failing to timely file its' post-trial motions.

3) The Court of Appeals did not err in affirming the Circuit Court's denial of the Petitioner's request for relief from the judgment regarding Respondent Jones as this issue was not preserved for review due to the Petitioner failing to timely file its' post-trial motions.

4) The Court of Appeals did not err in affirming the decisions of the Circuit Court so this Court should deny the Petitioner's writ of certiorari based upon any grounds appearing in the record.

STATEMENT OF THE CASE

This is an appeal that arises as a result of the South Carolina Court of Appeals second denial of the Petitioner's request for a new trial. The Court of Appeals denied the Petitioner's appeal on January 21, 2026; then, the Court of Appeals denied the Petitioner's Petition for Rehearing on June 17, 2026. The Court of Appeals denied the Petitioner's request for new trial for the exact same reason that the trial court denied the Petitioner's request for relief, that the Petitioner did not timely file its' post-trial motions for new trial. The Petitioner clearly and verbally stated to the trial court that it had no post-trial motions, yet the Petitioner has never addressed its' statement to the trial court in any of its' briefs to the appellate courts, including this Supreme Court. [R.p. 540, lines 19-21.]

A jury trial was held on the week of June 19, 2023. The Defendant Safe Choice settled all claims against it before trial and did not participate as a party at the call trial in this case; the Defendant Jupiter, the third-party claims administrator for the Petitioner, is currently in default in this matter. The Petitioner made a pre-trial motion for summary judgment alleging that as a matter of law that the Respondent Shaniqua Thompson could not bring a breach of contract and bad faith claim against the Petitioner; furthermore, the Petitioner alleged that as a matter of law that the Respondent Tasha Jones could not bring a bad faith and breach of contract action because the Petitioner had not acted in bad faith because it did not have an opportunity to settle the case within the policy limits. [R.p. 171, line 22 – p. 189, line 16.] The trial court heard the parties oral arguments, then denied the Petitioner's summary judgment motion. [R.p. 203, line 23 – p. 204, line 16.]

At the conclusion of the trial on June 23, 2023, the Respondents received a jury verdict as follows: Respondent Tasha Jones, fifty thousand, three hundred dollars ($50,300.00) in consequential damages for Breach of Contract; seventy-five thousand dollars ($75,000.00) for the bad faith refusal to pay the claim; and three hundred and fifty thousand ($350,000.00) in punitive damages. Respondent Shaniqua Thompson, fifty thousand dollars ($50,000.00) in consequential damages for

Breach of Contract; seventy-five thousand dollars ($75,000.00) for the bad faith refusal to pay the claim; and three hundred and fifty thousand ($350,000.00) in punitive damages. [R.pp. 10-14.]

The Petitioner verbally and voluntarily declined to poll the jurors about their verdict, the Petitioner <u>verbally</u> and <u>voluntarily</u> declined to make any post-trial motions before the jury was discharged; and, the Petitioner did not request (by way of motion) that the trial court grant it any additional time to make any post- trial motions after the conclusion of the trial. [R.p. 540, line 14 – p. 542, line 21.] The Petitioner filed its' motion for new trials on July 3, 2023, without any prior notice to the trial court. [R.pp. 109-122.]; the Petitioner notified the trial judge of its' post-trial motions by separate letter dated July 8, 2023. [R.p. 136.] The Petitioner prematurely filed and served its' Notice of Appeal on August 11, 2023, which was <u>before</u> the trial court had issued its' final order on the Petitioner's untimely post-trial motions. The Petitioner was appealing the jury verdict awards to the Respondents. [R.p. 165.] The Respondents filed a Motion with the appellate court to remand the Petitioner's appeal back to the lower court on August 21, 2023; the Petitioner conceded in its' response to the Court of Appeals that its' appeal was premature and concurred with the Respondent's request for a remand with its' filing to the appellate court on October 9, 2024. The Court of Appeals remanded the matter back to the lower court on January 2, 2024, for awaiting a <u>final order</u> on the Petitioner's post-trial motions. The trial court heard oral arguments from the Petitioner on its' attempt to get the trial court to consider its' post-trial motions on January 30, 2024; the trial court denied Lyndon Southern's post-trial motions pursuant to both its' Form 4 Order and an Order dated March 27, 2024.

[R.pp. 15-45.] <u>The Petitioner did not file any other post-trial motions after the trial court's final Order of March 27, 2024, nor did the Petitioner move to reconsider any parts of the Order of March 27, 2024</u>.

The Court of Appeals affirmed the Circuit Court's decision in an unpublished *per curiam* opinion on January 21, 2026. The Petitioner filed its' Petition for Rehearing with the Court of Appeals on February 19, 2026. The Court of Appeals substituted its' opinion of January 21, 2026, with an unpublished *per curiam* opinion on June 17, 2026; the Court of Appeals denied the Petitioner's petition for rehearing and again affirmed the decision of the trial court. The Petitioner filed their Writ of Certiorari on August 6, 2026. The Petitioner does not claim in its' request for Writ of Certiorari to this Court that there was an error in the award and/or amount of punitive damages to the Respondents in this case; therefore, it appears that the Petitioner is no longer challenging a decision that is intrinsically linked with its' claims of error by either the trial court and/or Court of Appeals.

<u>AUGUMENTS</u>

I.

THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE CIRCUIT COURT'S DENIAL OF PETITIONER'S REQUEST FOR A NEW TRIAL BASED UPON THE PETITIONER ADVISING THE CIRCUIT COURT AT THE DISCHARGE OF THE JURY THAT THE PETITIONER WAS NOT MAKING ANY POST-TRIAL MOTIONS.

The Petitioner is not entitled to a new trial as the Petitioner advised the trial court at the discharge of the jury that the Petitioner was not making any post-trial motions. The Court of Appeals rightfully determined that the Petitioner advised the trial court that the Petitioner was not filing any post-trial motions at the discharge of the jury; therefore, there were no timely filed post-trial motions. The Petitioner, when asked by the trial court if it had any post-trial motions on behalf of the Petitioner, stated, "**None from the Defendant, Your Honor**." [R.p. 540, lines 19-22.] The Petitioner <u>clearly</u>, <u>explicitly</u>, and <u>verbally</u> stated that it did not have any post-trial motions. The Petitioner, in all of its' arguments to the trial court and its' briefs to these appellate courts, has failed to cite <u>any</u> statute <u>and/or</u> case law <u>and/or</u> rule that authorized the Petitioner to change its' mind at the last minute by filing post-trial motions eleven (11) days after first telling the trial court that it would not file any post-trial motions at the discharge of the jury. The Petitioner's arguments as a whole should fail because no statute or case law authority exists to allow the Petitioner to change its' mind at the "eleventh hour," which was eleven (11) days after the discharge of the jury.

The Petitioner has never addressed its' statement to the trial court that it did not have any post-trial motions in any of its' briefs and petitions to these appellate courts. Rule 3.3, RPC, Rule 407, SCACR, clearly imposes a duty of candor towards the court which was applicable in the Petitioner's communications with the trial court about whether the Petitioner was making any post-trial motions; the trial court clearly relied upon the Petitioner statement that it was not making any post-trial motions when the trial court stated that there were "**no post-trial motions**;" furthermore, the trial court stated that this was the "**final verdict**." [R.p. 540, line 22 – p. 542, line 21.] The Petitioner filed post-trial motions eleven (11) days after the discharge of the jury and provided the trial judge with a copy of its' post-trial motions sixteen (16) days after the discharge of the jury; it is clear from the Petitioner's conduct reflects that the Petitioner was not candid with the trial court at the time the jury was discharged from their jury duties. The record is clear that the Petitioner knowingly and voluntarily waived its' right to make any post-trial motions for a new trial after its' comment to the court that the Petitioner would not file any post-trial motions, yet the Petitioner did so anyway. The Petitioner arguments fail to give weight to the fact that the trial court's decision was also based upon the merits of the case, as recognized by Court of Appeals in its' unpublished opinion of June 17, 2026. This Court should give great deference to the trial court's decision to deny the Petitioner's motions based upon the merits and based upon the Petitioner's statement to the trial court that the Petitioner was not filing any post-trial motions for a new trial.

Both Rule 50 and Rule 59, SCRCP address the methods for obtaining relief from a judgment and/or jury verdict. Rule 50(e) mandates the time frame for filing a Motion for Judgment Notwithstanding the verdict; it clearly that states that "the motion for judgment n.o.v. shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter..." The Note to the 1996 Amendment states that "post-trial motions are made promptly at the end of the trial, or at that time the court, **upon motion**, may grant an additional ten days to make them."

Rule 59, SCRCP, has similar language that addresses a request for a new trial and the time for filing such motions. Rule 59 states that "the motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter…" In Rule 59's Note to the 1986 Amendment, the comments state "in jury trials, post-trial motions are made promptly at the end of the trial, or at that time the court, **upon motion**, may grant an additional ten days to make them…" The ten (10) day requirement of Rule 50 and Rule 59 are rules of limitation and not one of jurisdiction. *In re Beard*, 359 S.C. 351, 597 S.E.2d 835 (S.C.App. 2004). The Petitioner's arguments not only fails to consider its' statement that it was not filing any post-trial motions but also fails to consider that both Rule 50 and Rule 59 placed additional limitations on what constitutes a timely filing of a post-trial motion; both Rule 50(e) and Rule 59(b) add the additional limitations that the post-trial motions pursuant to those rules must be "made promptly after the jury is discharged, **or** in the **<u>discretion of the court</u>** …;" this discretion by the trial court would consider whether the Petitioner made a motion to the trial court requesting additional time to submit its' post-trial motions. The general time limit for filing a post-trial motion pursuant to Rule 50 and Rule 59 is ten (10) days; however, the Petitioner fails to recognize that limit does not apply if the other limiting conditions laid out in the rules are not met. *Earle v. Owings*, 72 S.C. 362, 365, 51 S.E. 980, 982 (1905). The plain and unambiguous language of Rule 50 and Rule 59 clearly established that the Petitioner was required to file its' post-trial motion <u>either</u> promptly after the discharge of the jury <u>or</u> after the trial court exercised the trial court's discretion (pursuant to motion) to allow the Petitioner additional time to file its' post- trial motions within ten (10) days. Our Supreme Court has understood that "Post-trial motions such as a JNOV or new trial motion 'shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter.' Rules 50(e) and 59(b), SCRCP." *Elam v. SOUTH CAROLINA DEPT. OF TRANSP.*, 361 S.C. 9, 602 S.E.2d 772 (S.C. 2004). The language contemplated in *Elam* indicates that the motion must be made after discharge of the jury **or** at the <u>discretion</u> of the trial court not later than ten (10) days.

The Petitioner has changed its' argument to now say relief under Rule 59(e) should be granted because it was not only timely, but also "meritorious;" however, there is still a fatal flaw in the Petitioner's argument. Rule 59(e) motions are vehicles to allow a party to ask the trial court to either raise and rule upon issues raised at trial and/or to alter or amend a final judgment. The Petitioner has never addressed the issue of whether it believed that a final judgment had been issued at the time of its' Rule 59(e) motion in light of the fact that the Petitioner had also untimely filed a Motion for JNOV, motion for New Trial Absolute, motion pursuant to S.C. Ann. § 15-32-530(a), and motion for New Trial *nisi remittitur*. The Petitioner filed its Rule 59(e) motion on July 3, 2023; however, the court did not file the final judgment until March 27, 2024. The record is clear that the Petitioner never filed a Rule 59(e) motion to the trial court's final judgment Order dated March 27, 2024, therefore, not only was the Petitioner's Rule 59(e) motion premature, but the late-filed Rule 59(e) motion also did not preserve any issues from the actual final order for any appellate review.

Rule 6, SCRCP specifies the amount of time allowed to file motions. As it relates to motions filed pursuant to Rule 50 and Rule 59 SCRCP, Rule 6(b) states that "the time for taking any action under rules 50(b), 52(b), 59, and 60(b) may not be extended except to the extent and under the conditions stated in them." Rule 6 prohibits this appellate court from enlarging the time frame for the Petitioner to file post-trial motions when the Petitioner did not comply with the conditions as clearly stated in both rules. In other words, Rule 50(b) and Rule 59 motions for new trials required the Petitioner to either argue its' motion(s) for any new trial motions at the discharge of the jury or the Petitioner was required to request, pursuant to a motion, that the trial court grant additional time to file its' post-trial motions to preserve the Petitioner's right to be heard by the trial court on its' motions for a new trial; the Petitioner did neither. The Petitioner failed to adhere to the timing limitations for filing post- trial motions for new trials as promulgated in both Rule 50 and Rule 59.

Our Supreme Court has consistently held that "if a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary, and the stated meaning should be enforced." *Maxwell v. Genez*, 356 S.C. 617, 591 S.E.2d 26 (S.C. 2003). The court further stated in *Genez* that our courts should apply "the same rules of construction used to interpret statutes." Our courts have held that a South Carolina statute should be interpreted according to its' "clear meaning." *Nucor Steel, a Div. of Nucor Corp. v. South Carolina Public Service Com'n*, 426 S.E.2d 319, 310 S.C. 539 (S.C. 1992). The *Nucor* case limits the authority of this trial court to enlarge the time frame for the Petitioner to file any post-trial motions pursuant to Rule 50 and/or Rule 59 SCRCP, since the language of both rules is clear in its' requirement that a party has to argue its' post-trial motions either at the discharge of the jury or the party has to request additional time to file any post-trial motions pursuant to a motion to the court for additional time to file post-trial motions. *Nucor* goes on to hold that "The well settled rule in South Carolina is that, where possible, all provision of a statute must be given full force and effect." *Also* c*iting*, *Bradford v. Byrnes*, 221 S.C. 255, 70 S.E.2d 228 (1952).

Our courts have determined that abuse of discretion occurs <u>only</u> when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. Cross*, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019). The Petitioner's Writ of Certiorari does not address the trial court's decision and the Court of Appeals affirmation that the trial court denied the Petitioner's request for relief from the judgment based upon the Petitioner's statement to the trial court that the Petitioner was not filing any post-trial motions; in addition, both courts determined that the Petitioner's motions were not filed timely filed in light of the Petitioner's statement to the trial court. The Petitioner must address the issue of its' statement to the trial court rather than continuing to recycle its' same arguments that were asserted to and denied by both the trial court and a unanimous Court of Appeals.

The trial court did not abuse its' discretion and properly exercised its discretion in denying the Petitioner's request for a new trial based upon the merits and based upon the Petitioner advising the trial court that the Petitioner was not making any post-trial motions at the time of discharge of the jury; the trial court's decision was not controlled by an error of law when the trial court determined that the Petitioner was not entitled to a new trial because the Petitioner did not timely file its' post-trial motions pursuant to the mandatory time limitations of Rule 50 and Rule 59 SCRCP. The Petitioner ignores the rest of both rules that place additional limitations on timely filing a post-trial motion for new trial. The trial court exercised its' discretion on the merits and the time requirements for filing post-trial motions, then also rightly decided that the Petitioner's post-trial motions were not timely filed; therefore, all of the Petitioner's post-trial motions were properly denied. The record clearly shows that the Petitioner failed to meet its burden of proof in establishing that the trial court abused its' discretion in denying the Petitioner's post-trial motions.

The Court of Appeals did not err in affirming the trial court's denial of the Petitioner's request for a new trial based upon the Petitioner failing to make any timely post-trial motions; the trial court's decision was also based upon the merits of the trial court's discretionary decisions after its review of the record. The decision of the Court of Appeals does not conflict with any prior decisions of this Court; therefore, the Petitioner's request for a writ of certiorari should be denied.

II.

THAT THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE CIRCUIT COURT'S DENIAL OF THE PETITIONERS REQUEST FOR A NEW TRIAL BASED UPON THE PETITIONER'S ARGUMENT THAT ONE OF THE RESPONDENTS LACKED STANDING TO ASSERT HER CLAIMS AGAINST THE PETITIONER AS THIS ISSUE WAS NOT PRESERVED DUE TO THE PETITIONER FAILING TO TIMELY FILE ITS POST-TRIAL MOTIONS.

The Petitioner is not entitled to a new trial based upon the issue of standing for the Respondent Thompson as the Petitioner advised the trial court at the discharge of the jury that it was not making any post-trial motions. The Court of Appeals rightfully determined that the Petitioner advised the trial court that the Petitioner was not filing any post-trial motions at the discharge of the jury; therefore, there were no timely filed post-trial motions. The Petitioner, when asked by the trial court if it had any post-trial motions on behalf of the Petitioner, stated, "**None from the Defendant, Your Honor**." [R.p. 540, lines 19-22.] The Petitioner <u>clearly</u> and <u>verbally</u> stated that it did not have any post-trial motions. The Petitioner, in all of its' arguments to the trial court and its' briefs to these appellate courts, has failed to cite <u>any</u> statute <u>and/or</u> case law <u>and/or</u> rule that authorized it to "have a do over" by filing post-trial motions eleven (11) days after first telling the trial court that it would not file any post-trial motions at the discharge of the jury. The Petitioner's argument regarding the standing of Respondent Thompson should fail as no such authority exists for a "do over" regarding the Petitioner's candor towards the trial court on not filing any post-trial motions nor is this issue preserved for appellate review.

The Respondent Thompson was entitled to benefits under the Petitioner's policy pursuant to a valid judgement, Civil Action No.: 2018-CP-40-00337; the Petitioner never appealed the June 19, 2019, Order of Judgment. Our Supreme Court has addressed the issue of what an insured is entitled to recover under a breach of contract and bad faith action for failure of an insurer to pay first party benefits under an enforceable insurance agreement. *Nichols v. State Farm Mut. Auto Ins. Co.*,306 S.E.2d. 616, 279 S.C. 336 (S.C. 1983) clearly holds "that if an **insured** can demonstrate bad faith or unreasonable action by the insurer in processing a claim under their mutually binding insurance contract, he can recover consequential damages in a tort action. Actual damages are not limited by the contract. Further, if he can demonstrate the insurer's actions were willful or in reckless disregard of the **insured's** rights, he can recover punitive damages." The case law makes no distinction between named insured or insured person; *Nichols* uses only the term "insured," and that term is clear and unambiguous.

The Petitioner did not seek reconsideration of the Respondent Thompson's standing ruling by the trial court in the trial Court's Order of March 27, 2024; therefore, the Petitioner's failure to address this ruling in the final order is fatal to the Petitioner's Writ of Certiorari. The Petitioner did not preserve this issue for this Court's review and cannot now challenge the trial court's decision that the Respondent Thompson was entitled to make a bad faith claim against the Petitioner.

Our courts have consistently and clearly held that for an issue to be properly preserved for an appeal, the issue must have been both raised and ruled upon by the trial court. *State v. Smith*, 383 S.C. 159, 679 S.E.2d 176 (S.C. 2009); Also s*ee*, *Elam.* Furthermore, our courts have held that arguments cannot be presented on appeal unless the arguments have been “fairly and properly raised at the trial court and ruled upon by that trial court. *State v. Oxner*, 391 S.C.132, 705 S.E2d 51 (2011). South Carolina law requires the losing party to try and convince the trial court that it ruled in error; if unsuccessful, then move to convince the appellate court that the trial court erred in a ruling as a matter of law. *I’On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). Furthermore, the Petitioner was required to see reconsideration of the final court Order of March 27, 2024, at the trial court before filing its’ appeal. Our Courts have determined that Rule 59(e) provides the mechanism by which the losing party can preserve its’ argument for appellate review by requesting that the trial court reconsider the trial court’s final decision. *Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C 56, 427 S.E.2d 673 (1993). The losing party is required to file a motion to alter or amend the judgment to preserve an issue for appellate review when the losing party raised an issue in the lower court, but the lower court failed to rule upon the issue. *Id*.; *See also*, *I’On*.

The Petitioner does not argue in its’ briefs that the trial court’s entry of the final order was done before July 3, 2023, because the Petitioner knows the final order was filed be the trial court on March 27, 2026; therefore, the Petitioner had ten (10) days from March 27, 2024, to file its' Rule 59(e) motion to preserve this standing issue and all other issues for this Court's review. The Petitioner failed to file a Rule 59(e) motion after March 27, 2024. The Petitioner cannot excuse its' failure to seek a Rule 59(e) motion for reconsideration on the standing issue for Respondent Thompson nor can the Petitioner excuse its' failure to file a motion to alter or amend the judgment because it lacked time and/or opportunity to do so after the final order on March 27, 2024. Our appellate courts have repeatedly stressed that the losing party <u>must</u> seek a Rule 59(e) reconsideration from the trial court after a final order to preserve its' issues for appellate review. See *Caldwell*. This appellate court in *Caldwell* held that the appellant did not preserve her issues and arguments for appellate review; therefore, the appellant was barred from making such arguments because she had failed to seek reconsideration under Rule 59(e). Likewise, the Petitioner cannot ignore the fact that filing a Rule 59(e) motion after the Order of March 27, 2024, would have provided the Petitioner with the method and path to challenge the trial court ruling that the Respondent Thompson could assert a bad faith claim against the Petitioner. The Petitioner failed to timely file its' post-trial motions and failed to file a motion to reconsider; therefore, the Petitioner's arguments concerning the Respondent Thompson's standing to assert a bad faith claim is not preserved for this Court's review.

This Court should determine that there was no error by the trial court in denying the Petitioner's motion for a new trial based upon the Respondent Thompson's sustained bad faith claim. The decision of the Court of Appeals does not conflict with any prior decisions of this Court; therefore, the Petitioner's request for a writ of certiorari should be denied.

III.

THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE CIRCUIT COURT'S DENIAL OF THE PETITIONER'S REQUEST FOR RELIEF FROM THE JUDGMENT REGARDING RESPONDENT JONES AS THIS ISSUE WAS NOT PRESERVED FOR REVIEW DUE TO THE PETITIONER FAILING TO TIMELY FILE ITS' POST-TRIAL MOTIONS.

The Petitioner is not entitled to a new trial based upon the issue of whether the Petitioner acted in bad faith towards Respondent Jones as the Petitioner advised the trial court at the discharge of the jury that it was not making any post-trial motions. The Court of Appeals rightfully determined that the Petitioner advised the trial court that the Petitioner was not filing any post-trial motions at the discharge of the jury; therefore, there were no timely filed post-trial motions. The Petitioner, when asked by the trial court if it had any post-trial motions on behalf of the Petitioner, stated, "**None from the Defendant, Your Honor**." [R.p. 540, lines 19-22.] The Petitioner <u>clearly</u>, <u>explicitly</u>, and <u>verbally</u> stated that it did not have any post-trial motions. The Petitioner, in all of its' arguments to the trial court and its' briefs to these appellate courts, has failed to cite <u>any</u> statute <u>and/or</u> case law <u>and/or</u> rule that authorized it to "have a do over" by filing post-trial motions eleven (11) days after first telling the trial court that it would not file any post-trial motions at the discharge of the jury. The Petitioner's argument regarding whether it committed bad faith against the Respondent Jones should fail as no such authority exists for a "do over" regarding the Petitioner's candor towards the trial court on not filing any post-trial motions nor is this issue preserved for appellate review.

In addition, our Supreme Court has addressed the issue of what a <u>first party insured</u> is entitled to recover under a breach of contract and bad faith action for failure of an insurer to pay first party benefits under an enforceable insurance agreement. *Nichols* clearly holds "that if an **insured** can demonstrate bad faith or unreasonable action by the insurer in processing a claim under their mutually binding insurance contract, he can recover consequential damages in a tort action. Actual damages are not limited by the contract. Further, if he can demonstrate the insurer's actions were willful or in reckless disregard of the **insured's** rights, he can recover punitive damages."

The Respondent Jones presented evidence of the mutually binding insurance agreement, they presented evidence of the judgment, they presented evidence that the Petitioner failed to pay any benefits after written request by the Respondents, and they presented evidence that they sustained damages as a result of the Petitioner's failure to pay any uninsured motorist bodily injury benefits to the Respondents under the agreement. The Respondent's experts testified as to the evidence of the Petitioner's breach of contract and bad faith; Professor Constance Anastopoulo, an insurance expert, provided her expert opinion about breach of contract and bad faith; she further provided her legal opinion about the acts and/or omissions of the Petitioner which was evidence of breach of contract and bad faith. Professor Anastopoulo provided her expert opinion that the Petitioner's failure to respond to the Respondents' demand for payment of the judgment, and she testified that the Petitioner's requiring the Respondent Jones to file suit to recover under policy was evidence of breach of contract with bad faith. Professor Anastopoulo testified that she did not find any reasonable basis to support the Petitioner's decision not to pay any first-party benefits under the insurance agreement after reviewing the facts of the case. Both Professor Anastopoulo and Stanley L. Lipshultz (another insurance expert) provided testimony that assisted the jury in understanding the facts of the case. [R.p. 432, line 18 – p. 484, line 24.]

It should be noted that the Petitioner did not offer <u>any</u> evidence into the trial record about why it failed to pay <u>any</u> first-party benefits to the Respondents under the mutually binding insurance agreement. The failure on the Petitioner's part to pay any amounts on the judgment had the effect of being a denial of the Respondents' claim for benefits under their uninsured motorist bodily injury claim under the insurance policy. The Petitioner offered no evidence that there was a reasonable ground for its' offer of less than the medicals to the Respondents, the Petitioner offered no evidence as to why it lacked policies and procedures for claims handling, the Petitioner offered no evidence as to why it required the Respondents to file suit to recover the uninsured motorist benefits under the policy, the Petitioner offered no evidence as to why it failed to adopt or implement reasonable standards for the settlement of these claims, and the Petitioner offered no evidence as to why no uninsured motorist bodily injury benefits had been paid to the Respondents in six (6) years. In fact, all of the evidence presented at trial indicated that there was no adjuster assigned to this case for the majority of time during this litigation; there is no record of an adjuster and/or any notes from any adjuster handling the case since January 21, 2019. [R.p. 579.] The Petitioner continues to make the meritless argument that it never had an opportunity to settle the case within the policy limits; however, the Petitioner has not advised this court nor the Court of Appeals how it could settle the Respondents' claims when there was no claims representative available and/or authorized to settle the case after January 21, 2019; none of the Petitioner's briefs to the appellate courts provide the name of any person who was handling the Respondents' claims and/or the name of any person who had authority to settle the Respondents' claims.

This Supreme Court, in *Cock-N-Bull*, *Steak House, Inc. v. Generali Ins. Co.*, 466 S.E.2d 727, 321 S.C. 1 (S.C. 1995) affirmed the decision by the trial court to direct verdict to the Plaintiff in a breach of contract and bad faith action. As in this case, the Supreme Court in *Cock-N-Bull* determined that the language of the insurance contract set forth the scope of coverage under a mutually enforceable agreement. The Supreme Court in *Cock-N-Bull* further determined that the Defendant's refusal to pay benefits under the mutually enforceable agreement "constituted breach of contract," and that the Defendant acted in "bad faith." The actions of the Petitioner are similar to the actions of the Defendant in *Cock-N-Bull*; therefore, a directed verdict in the Respondents' favor was proper as the evidence, when viewed in the light most favorable to the Petitioner, yields only one inference … that inference is that the Petitioner breached its' mutually enforceable agreement with the Respondent Jones and acted in bad faith as there was no reasonable basis for not paying the judgment. This decision by the trial court warranted the issue of damages to go to the jury.

The Court of Appeals did not err in affirming the trial court's denial of the Petitioner's request for a new trial based upon the Petitioner failing to make any timely post-trial motions; the trial court's decision was also based upon the merits after its review of the record. There was overwhelming evidence of the Petitioner's breach of contract and bad faith in handling the Respondents' case and in the Petitioner's failure to pay any uninsured motorist bodily injury benefits to either of the

Respondents. The decision of the Court of Appeals does not conflict with any prior decisions of this Court; therefore, the Petitioner's request for a writ of certiorari should be denied.

IV.

THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE DECISIONS OF THE CIRCUIT COURT SO THIS COURT SHOULD DENY THE PETITIONER'S WRIT OF CERTIORARI BASED UPON ANY GROUNDS APPEARING IN THE RECORD.

Pursuant to Rule 220(c), SCACR, the Respondents request that this Supreme Court affirm the trial court's decisions and deny the Petitioner's writ of certiorari based upon any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.

CONCLUSION

The Petitioner's writ of certiorari contains no novel questions of law nor does it contain any substantial constitutional issues or raise any federal questions. The Court of Appeals affirmation of the Circuit Court's decision was unanimous and did not conflict with any prior decisions of this Court or with a decision of the United States Supreme Court. The Court of Appeals did not err in either of the following: 1) in affirming the Circuit Court's decision not to grant a new trial based upon the Petitioner's untimely filed post-trial motion; and/or 2) in affirming the Circuit Court's decision to deny the Petitioner's request for a new trial based upon the standing of Respondent Thompson; and/or 3) in affirming the Circuit Court's decision to exercise its discretion in determining that the Petitioner had breached the insurance agreement and acted in bad faith towards the Respondents; and/or 4) in affirming the Circuit Court's decision based upon any grounds in the record.

For the reasons stated above, this Court should deny the Petitioners' request for a writ of certiorari.

Respectfully submitted,

August 24, 2026.

s/*Dietrich A. Lake*

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