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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.

REPLY IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

For the reasons set forth in Lyndon's Petition for a Writ of Certiorari (the "Petition") and in this Reply, a grant of certiorari is warranted here. The Court of Appeals' Substituted Opinion erroneously failed to recognize that Lyndon filed a timely motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP. Consequently, the Court of Appeals refused to address the multiple errors of settled, black-letter law that infected the judgment against Lyndon.

I. Lyndon Did Not Waive Its Right to File a Motion to Alter or Amend the Judgment Pursuant to Rule 59(e), SCRCP

In opposing Lyndon's Petition, Respondents focus heavily on Lyndon's statement, "None from defendant," when the circuit court asked about post-trial motions *in the presence of the jury*. (R. 540.) Going a step further than the Court of Appeals in its Substituted Opinion, Respondents maintain that Lyndon affirmatively waived the right to make any post-trial motions at all, including a motion to alter or amend the verdict under Rule 59(e), SCRCP. (Return at 3, 5-6.)

As this Court has made clear, "a waiver analysis focuses on a party's 'unequivocal intent to relinquish a known right.'" *Strickland v. Strickland*, 375 S.C. 76, 85–86, 650 S.E.2d 465, 471 (2007) (quoting 7 S.C. Jur. *Estoppel and Waiver* § 17 (1991)). In various contexts, this state's appellate courts have recognized the importance of ensuring that waivers of important rights are clear and unambiguous. *Cf., e.g.*, *In re Mt. Hawley Ins. Co.*, 427 S.C. 159, 168, 829 S.E.2d 707, 712 (2019) (waiver of attorney-client privilege must be "distinct and unequivocal"); *City of Columbia v. Assa'ad-Faltas*, 420 S.C. 28, 45–46, 800 S.E.2d 782, 791 (2017) ("The particular requirement that a request for self-representation be clear and unequivocal is necessary to protect against an inadvertent waiver of the right to counsel by a defendant's occasional musings on the benefits of self-representation." (internal quotation marks omitted)); *cf. S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 94, 800 S.E.2d 488, 491 (Ct. App. 2017) ("We decline to presume a waiver occurred when any evidence supporting such is sparse and ambiguous.").

The transcript reflects that after the jury returned its verdict but before it was excused, the following brief colloquy occurred:

> THE COURT: The verdict appears to be in proper form. Any polling, individual polling of the jurors requested?
>
> MR. LAKE: None from the plaintiff, Your Honor.
>
> MR. HELMLY: None from defense, Your Honor.
>
> THE COURT: Any post-trial motions?
>
> MR. LAKE: None from the plaintiff, Your Honor.
>
> MR. HELMLY: None from defendant, Your Honor.
>
> THE COURT: All right.
>
> . . . .
>
> [THE COURT]: And I will come back and talk with the lawyers after speaking with the jury – jurors in case you all have any issue or question about anything.
>
> So, the jury is excused.
>
> (THE JURY EXITS AT 6:06 PM.)
>
> (OFF THE RECORD.)

(R. 540-542.) When the court returned, it engaged with Respondents' counsel in a discussion regarding a damages hearing against defaulting Defendant Jupiter Managing

General Agency, Inc. (R. 543-545.)[1] The discussion then returned to the verdict against Lyndon that had just been returned by the (now-excused) jury:

> MR. HELMLY: Your Honor, we, we obviously haven't adjourned. I just—I know you mentioned post-trial motions in, in front of the jury***. I didn't know if we were to hear those in front of the jury*** or—***I just want to renew my directed verdict motion***.
>
> THE COURT: Yes. ***We'll indicate that it was properly made, directed verdict motion***, but no post-trial motions were made.

(R. 547-548 (emphasis added).) It is not clear why the court stated that "no post-trial motions were made," since the renewal of a directed verdict motion is, in substance, a post-trial motion for judgment as a matter of law under Rule 50(b), SCRCP. *See Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006) ("[A] motion for JNOV under Rule 50(b), SCRCP is a renewal of a directed verdict motion."). Moreover, the circuit court clearly acknowledged that Lyndon's counsel was reasserting its position that Respondents' claims failed as a matter of law for all of the reasons asserted in the summary judgment arguments immediately preceding trial and in Lyndon's motion for a directed verdict made at the conclusion of Respondents' case.

Contrary to Respondents' contentions, the foregoing does not permit a finding that

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[1] The Substituted Opinion quotes a portion of this discussion, concluding with the circuit court's comment that "there's nothing pending before me." (R. 547.) This comment had nothing whatsoever to do with post-trial motions. Rather, it was in relation to the position taken by Respondents' counsel that they were entitled to $50,000 from the circuit court's "initial judgment" in addition to the full amount of the jury verdict. (R. 545.) The court stated that there was "nothing pending" before it regarding the legal question of whether this would constitute a double recovery. (R. 545-547.)

Thus, the statement quoted in the Substituted Opinion has no bearing on Lyndon's post-trial motions.

Lyndon knowingly and intelligently waived its right to file a motion to alter or amend the verdict under Rule 59(e) (or any other post-trial motion). Rather, it is clear that Lyndon's statement, "None from defendant," reflected Lyndon's concern that no post-trial motion should be made until after the jury was discharged. (R. 547 (Lyndon stating, "I didn't know if we were to hear those [post-trial motions] in front of the jury or—I just want to renew my directed verdict motion").)

II. Lyndon's Rule 59(e) Motion Was Timely

Respondents argue that the time to file a Rule 59(e) motion cannot be "extended." (Return at 8-9; *see also* Return at 5.)[2] But no "extension" was necessary because Lyndon's Rule 59(e) motion was timely filed according to Rule 6(a), SCRCP, which governs "computation"—not "extension"—of filing deadlines. As explained in the Petition, Lyndon's Rule 59(e) motion timely because*, **under the computation rules set forth in Rule 6(a)***, it was "served" on Respondents "not later than 10 days after receipt of written notice of entry of the order," as required by Rule 59(e), SCRCP. As further explained in the Petition, Lyndon's Rule 59(e) motion was timely regardless of whether the judgment was entered on June 22, 2023 (the date used in the Substituted Opinion) or on June 23, 2023 (the date used in the circuit court's Order):

- If the judgment was entered on June 22, 2023, the tenth day fell on Sunday, July 2, 2023. Under Rule 6(a), if the tenth day falls on a "Saturday, Sunday or a State or Federal holiday . . . the period runs until the end of the next day which is neither a Saturday, Sunday nor

[2] Respondents suggest that Lyndon has somehow "changed" its argument. (Return at 8.) Not so. Lyndon has always maintained that its Rule 59(e) motion was timely filed and that it is entitled to relief under Rule 59(e) as a matter of law.

such holiday." Therefore, the tenth day was Monday, July 3, 2023, and Lyndon's Rule 59(e) motion was timely filed.

- If the judgment was entered on June 23, 2023, the tenth day fell on Monday, July 3, 2023, and Lyndon's Rule 59(e) motion was timely filed.

III. Lyndon Was Not Required to File a Duplicative Rule 59(e) Motion After Entry of the Order of March 27, 2024

Retreading an argument made in their Court of Appeals brief, Respondents contend that Lyndon was required to file a second Rule 59(e) motion after the circuit court entered its order of March 27, 2024, denying Lyndon's first Rule 59(e) motion. (Return at 4, 12-14.) Such a motion, however, would have been improper because the circuit court's denial of Lyndon's post-trial motions, which included a request for relief under Rule 59(e), "[did] not result in a substantial alteration of the original judgment" entered in June 2023. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 20, 602 S.E.2d 772, 778 (2004). Accordingly, Lyndon was not required to file a successive Rule 59(e) motion. *See id.*

Rule 203(b)(1), SCACR, provides:

> A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. . . . .

As this Court explained in *Elam*, Rule 59(e) motions serve a critical role in ensuring that matters are properly presented on appeal:

> [O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. 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, 361 S.C. at 24, 602 S.E.2d at 780. "If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). "[T]his preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Id.* Raising an issue in a Rule 59(e) motion preserves it for appellate review even if the trial court does not explicitly address the issue in its order denying the motion:

> Once the issue has been properly raised by a Rule 59(e) motion, it appears that it is preserved and a second motion is not required if the trial court does not specifically rule on the issue so raised.

Coward Hund Constr. Co. v. Ball Corp., 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999) (quoting James F. Flanagan, SOUTH CAROLINA CIVIL PROCEDURE 475 (2d ed. 1996)).

Here, Lyndon filed post-trial motions seeking relief under, inter alia, Rule 59(e). (R. 109-121.) The circuit court denied Lyndon's motions in a lengthy written order. (R. 15-39.) The Order specifically addressed all of the arguments raised by Lyndon in its post-trial motions. Thus, Lyndon preserved its issues for appellate review by presenting them to the circuit court and obtaining a ruling on them.

Contrary to Respondents' contention, there was no need for Lyndon to file a second Rule 59(e) motion seeking reconsideration of the circuit court's order denying, in a written order, Lyndon's first Rule 59(e) motion. In fact, multiple decisions make clear that such a motion is prohibited and, if filed, would not have tolled the time for Lyndon to file its notice of appeal. A second Rule 59(e) motion is permitted only for the purpose of "seek[ing] relief on issues coming to light as a result of an order following an initial post-trial motion that alters or amends the judgment." *Collins Music Co. v. IGT*, 353 S.C. 559, 564, 579 S.E.2d 524, 526 (Ct. App. 2002). Where the order denying a Rule 59(e) motion does not make a new ruling or otherwise change the judgment, a second Rule 59(e) motion is improper and will not toll the time for filing a notice of appeal under Rule 203(b)(1). *See Elam*, 361 S.C. at 20, 602 S.E.2d at 778; *Coward Hund*, 336 S.C. at 4, 518 S.E.2d at 58.

Collins Music illustrates the application of this rule in a procedural context similar to this case. Following the jury's verdict, the defendant IGT "timely filed and served post-trial motions pursuant to Rules 50(b) and 59, SCRCP." *Collins Music*, 353 S.C. at 560, 579 S.E.2d at 524. After the circuit court denied IGT's motions, IGT filed a Rule 59(e) motion that "restated the arguments it made in . . . its first post-trial motions and requested the circuit judge to 'make specific rulings . . . as to each ground raised' in the earlier motions." *Id.* at 561, 579 S.E.2d at 524. The circuit court denied the motion, noting in its order that IGT had "failed to raise any issue not already considered." *Id.* IGT filed its notice of appeal within 30 days of the entry of this order. This Court dismissed IGT's appeal as untimely, explaining that because the trial court's ruling on IGT's post-trial motions resolved all issues and made them ripe for appellate review, its subsequent Rule 59(e) motion did not toll the time to file a notice of appeal. *See id.* at 564-65, 579 S.E.2d at 526-27.

Like IGT in *Collins Music*, Lyndon filed post-trial motions pursuant to Rules 50 and 59, SCRCP following the jury's verdict. The circuit court's order denying Lyndon's post-trial motions addressed the issues raised in the post-trial motions and did not make any changes to the previously entered judgment. If Lyndon had filed a second Rule 59(e) motion, therefore, it would merely have been repeating arguments previously made to, and rejected by, the circuit court. *Collins Music* teaches that such a motion would be both unnecessary and improper. Accordingly, all of Lyndon's arguments have been preserved for appellate review.

IV. Lyndon Is Entitled to Relief Under Rule 59(e)

This Court has clearly held that as used in South Carolina, Rule 59(e) serves a broad purpose:

> [I]t 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. A motion under Rule 59(e) long has been viewed as "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.

Elam, 361 S.C. at 21–22, 602 S.E.2d at 778–79 (citations omitted). Of particular importance to this appeal, a Rule 59(e) motion is appropriate to "correct a clear error of law or prevent manifest injustice." *Collison v. Int'l Chem. Workers Union*, 34 F.3d 233, 236 (4th Cir. 1994) (applying Fed. R. Civ. P. 59(e), upon which the SC Rule 59(e) is modeled).

Lyndon is entitled to relief under Rule 59(e) due to significant errors of law by the circuit court.

A. Respondent Shaniqua Thompson Lacks Standing to Assert Claims Against Lyndon

Respondents contend that Ms. Thompson had standing to assert breach of contract and bad faith claims against Lyndon because she was entitled to benefits under the policy as an "insured." (Return at 12.) In other words, Respondents contend that because Ms. Thompson is *an* insured under Ms. Jones's policy, she is in the same position as Ms. Jones, who is the named insured. That is not the law of South Carolina. In this State, only a first party—a person in a "mutually binding contractual relationship" with the insurer—can bring a bad faith claim. *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 340, 306 S.E.2d 616, 619 (1983); *see Kleckley v. Nw. Nat'l Cas. Co.*, 330 S.C. 277, 286, 498 S.E.2d 669, 674 (Ct. App. 1998) ("South Carolina law does not recognize a cause of action by a third party for the tort of bad faith refusal to pay benefits."). Ms. Thompson testified under oath that she is *not* in a "mutually binding contractual relationship" with Lyndon. Under *Nichols*, therefore, she is a third party who cannot assert a claim for bad faith.

Ms. Thompson's sworn testimony that she does not have a contract with Lyndon is likewise fatal to her breach of contract claim. Except for circumstances not applicable here, "one not in privity of contract with another cannot maintain an action against him in breach of contract." *Fabian v. Lindsay*, 410 S.C. 475, 488, 765 S.E.2d 132, 139 (2014) (quoting *Windsor Green Owners Ass'n v. Allied Signal, Inc.*, 362 S.C. 12, 17, 605 S.E.2d 750, 752 (Ct. App. 2004)).

The circuit court committed an error of law denying Lyndon's Rule 59(e) motion as to Ms. Thompson's bad faith and breach of contract claims. The judgment in her favor should be vacated and her claims dismissed with prejudice.

B. Lyndon Neither Breached the Insurance Contract with Ms. Jones nor Acted in Bad Faith

Respondents contend that this case is factually similar to *Cock-N-Bull Steak House, Inc. v. Generali Insurance Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996). (Return at 18.) In *Cock-N-Bull*, the insurer denied coverage for certain items based on "short-hand terms" on the Declarations page, even though the items were clearly covered by the actual policy definitions. *Id.* at 4-5, 466 S.E.2d at 729. This Court held that the insurer breached the insurance contract and committed bad faith by "attempt[ing] . . . to avoid payment by limiting the policy to the short-hand descriptions . . . used in the Declarations, while ignoring the detailed language of the contract which set forth the scope of the coverage." *Id.* at 6, 466 S.E.2d at 729-30.

Cock-N-Bull is nothing like this case. There is no allegation here that Lyndon denied coverage based on a blatant misreading of the policy (the conduct that supported the finding of bad faith in *Cock-N-Bull*). Indeed, Lyndon has never disputed that coverage exists, and it has paid out benefits under the policy to both Ms. Jones and Ms. Thompson, as well as to the other passenger.

Respondents' claim that Lyndon failed to pay "any" benefits to Respondents is simply false. (Return at 16.) Lyndon paid benefits under the policy, and it paid them promptly. Ms. Jones herself testified that on the same day she submitted her claim, Lyndon arranged a rental car and scheduled an appraisal and estimate of her insured vehicle. (R. 259.) A mere 38 days later, Lyndon had determined the vehicle was a total loss and issued checks for its value to Ms. Jones and the lienholder. (R. 261.) Likewise, Lyndon promptly and fully paid $1,000.00 each for Ms. Jones's and Ms. Thompson's MedPay claims. (R. 276, 287.) Additionally, Lyndon promptly reached a settlement with the third occupant of the vehicle and paid those benefits, as well.

Finally, Lyndon neither denied nor refused to pay bodily injury coverage under the policy. Within two weeks of receiving the October 18, 2017 demand letter and damages package from Respondents' counsel, Lyndon had completed its review of the medical records and made a reasonable settlement offer of nearly the entire amount of Respondents' medical costs. (R. 552.) Lyndon is entitled to make a reasonable offer to settle an insurance claim based upon its assessment of the value of the claim. *See Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 360, 415 S.E.2d 393, 397 (1992) ("If there is a reasonable ground for contesting a claim, there is no bad faith." (citing *Nichols*)). Even if this assessment was wrong, that does not mean it was in bad faith. *Cf. Bishop of Charleston v. Century Indem. Co.*, 225 F. Supp. 3d 554 (D.S.C. 2016) (holding that it is not bad faith "for the insurer to make any decision (regarding its own money) contrary to the insured's preferences").

It is undisputed that following its evaluation of the medical records, Lyndon offered to settle Ms. Jones's and Ms. Thompson's claims for an amount slightly less than their total medical bills. Beyond speculation, there is no support for a conclusion that these offers reflected anything other than Lyndon's reasonable assessment of the claims' value. *See, e.g.*, *Henry v. Gov't Emps. Ins. Co.*, 275 F. Supp. 3d 750, 754 (D.S.C. 2017) (where insurer evaluates a demand and denies the demand based on its own reasonable valuation or makes a settlement offer based on its own reasonable valuation, the insurer will not be found liable for bad faith); *see also Snyder v. State Farm Mut. Auto. Ins. Co.*, 586 F. Supp. 2d 453, 458 (D.S.C. 2008) (duty to deal in good faith does not necessarily entail a duty to make a settlement offer).

It is also undisputed that Respondents rejected Lyndon's offer and that they would have rejected any offer within policy limits. According to the testimony of Respondents' own expert, the opportunity to settle within policy limits is a critical component of a bad faith claim. (*E.g.*, R. 441 (testifying that insurers may be liable for a judgment in excess of policy limits when "they fail to offer the insured the [policy] limits *when they have an opportunity to do that*" (emphasis added)); R. 442 ("*When you have an opportunity* to settle a case within the limits and you don't do it, you're liable for the excess judgment" (emphasis added)).)

Here, every demand made by Respondents was above policy limits. Even if Lyndon were obligated to offer policy limits (it was not), it cannot be held liable for failing to make an offer that Respondents would have rejected. *See Founders Ins. Co. v. Richard Ruth's Bar & Grill LLC*, 2016 WL 3219538, at *7 (D.S.C. June 8, 2016) (no bad faith where insured's demands were always above policy limits); *Snyder*, 586 F. Supp. 2d at 459-60 (no bad faith where insured would not have accepted a within-policy-limits offer of settlement).

CONCLUSION

For the reasons set forth herein, Lyndon respectfully asks the Court to grant certiorari.

Respectfully submitted,

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