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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

B. Alex Hyman, Circuit Court Judge

Lower Court Case No. 2020-CP-26-00808

A. Tebele & Sons, a South Carolina General Partnership, Appellant-Respondent,

v.

Certain Underwriters at Lloyd's, HDI Global Specialty SE, General Security Indemnity Company of Arizona, and Crescent Coast Insurance, LLC, Respondents,

Of which Crescent Coast Insurance, LLC is the Respondent-Appellant.

Appellate Case No. 2024-000705

APPELLANT-RESPONDENT'S
PETITION FOR REHEARING

On August 26, 2026, this Court affirmed the circuit court's ruling that the insurance policy at issue in this case was not ambiguous. This Court also affirmed the circuit court's denial of Tebele's motion for a new trial absolute or new trial nisi additur. *A. Tebele & Sons v. Certain Underwriters at Lloyds*, Op. No. 6162 (S.C. Ct. App. filed Aug. 26, 2026) (Howard Adv. Sh. No. 32 at 9). Pursuant to Rule 221(a), SCACR, Petitioner respectfully requests this Court rehear the matter considering the significant points overlooked and misapprehended by this Court discussed below.

Ambiguity

This Court concluded that the absence of the symbol "AS" on the schedule of values did not render the policy ambiguous as to which properties were required to have a sprinkler system because "[t]he Endorsement does not state that AS/sprinkler system must be maintained on properties as indicated 'by the symbol AS' on the schedule of values." This Court went on to conclude that "[t]he only reasonable interpretation of the policy is that the properties denoted as 100% sprinklered are the ones required to maintain a sprinkler system." *A. Tebele & Sons*, at 15.

Additionally, this Court concluded that the undefined terms in the policy—"maintain" and "control"—did not render the policy ambiguous because the sprinkler system was never operational. *Id*. at 15-16. Finally, this Court concluded that the "additions under construction" portion of the policy was likewise unambiguous and that "[e]ven if the sprinkler system was considered an 'addition' under the policy, the policy would only cover the destruction of the sprinkler system, not the building in which it was housed." *Id*. at 16.

A. The absence of the AS symbol from the schedule of values.

This Court recognized that the schedule of values "does not contain any AS symbols," *A. Tebele & Sons*, at 11, but found that the endorsement did not require the symbol AS because the endorsement did not use the phrase "by the symbol AS," *Id*. at 15. But the schedule on which the endorsement operates is a two-column table. The left column is captioned "Symbol(s)" and lists three entries—AS, AA, and OTHER. The right column is captioned "Location(s) Applicable," and the entry opposite each of these symbols reads "as indicated on the Schedule of Values on file with the Company." The sole function of pairing a symbol with a location is to identify where the safeguard denoted by that symbol is required. Construing the table so that the AS symbol need not appear on the schedule of values leaves the symbol column with no operative effect at all.

This Court also appears to have ignored the fact that the symbols "AA" (defined as "automatic fire alarm"), and "OTHER," (defined in part as "ansul systems . . . over all cooking surfaces," and "heating, ventilation, and air conditioning") also do not appear anywhere on the schedule of values despite the schedule purportedly requiring these additional safeguards at the locations "as indicated on the schedule of values." (R. 1658). Respectfully, this Court's interpretation of the schedule cannot be reconciled with the absence, not just of the symbol AS, but also the symbols AA and OTHER, from the schedule of values.

More importantly, the record contains direct evidence that the Insurers themselves did not regard the language in Tebele's policy as carrying the meaning this Court has now assigned to it. A protective safeguards endorsement appearing at page 114 of Plaintiff's Exhibit 2 replaces "as indicated on the Schedule of Values on file with the Company" with "All Covered Locations reported as sprinklered in the Schedule of Values on file with the Company." (R. 1680). The revised language states precisely what this Court has held to be the "only reasonable interpretation" of the original. If the original endorsement already said that, the revision accomplished nothing. This Court does not acknowledge this fact in its opinion and doing so would require the opposite result—the Insurers themselves acknowledged Tebele's policy to be ambiguous and subsequently changed the language to remove the ambiguity. That ambiguity requires this Court to find coverage as a matter of law. *See Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 639, 594 S.E.2d 455, 459 (2004) ("Where the words of an insurance policy are capable of two reasonable interpretations, the construction most favorable to the insured should be adopted."); *Poston v. National Fidelity Life Ins. Co.*, 303 S.C. 182, 187, 399 S.E.2d 770, 772 (1990) ("Where language used in an insurance contract is ambiguous, or where it is capable of two reasonable interpretations, that construction which is most favorable to the insured will be adopted"); *Hann v. Carolina Cas.*

Ins. Co., 252 S.C. 518, 525, 167 S.E.2d 420, 423 (1969) ("It is settled beyond cavil in this jurisdiction that the terms of an insurance policy should be construed most liberally in favor of the insured").

This Court also distinguished *Westfield Ins. Co. v. Enter. 522, LLC*, 34 F. Supp. 3d 737 (E.D. Mich. July 29, 2014) because in that case the endorsement was identified only by a number and listed under "optional coverage," whereas here the endorsement is listed under "Forms Applicable to Common Forms" and was attached. This Court appears to have ignored the fact that none of these forms were ever given to Tebele until after the fire occurred. The only form given to Tebele prior to the fire was the binder which did not include the language of the protective safeguards endorsement. R. 1544, l. 12 – 1545, l. 13; R. 1962 – 1967. Instead, the binder included a code: "SRU-024 710 Protective Safeguards – Fire" as a "common form." The schedule of values was not listed as a "common form," nor was it referenced anywhere on the binder. *Id*. Melvin, an underwriter for Amwins, admitted that the binder did not indicate which of Tebele's properties were required to have a sprinkler system. R. 1544, l. 12 – 1545, l. 13.

Respectfully, this Court did not acknowledge how similar Tebele's case is to the situation in *Westfield*. The endorsement's provision requiring an automatic sprinkler system in *Westfield* was defined by a "P-1" symbol. 34 F. Supp. 3d at 744. The Court in *Westfield* found that because the exclusion and P-1 symbol were only defined in the endorsement, and that the P-1 symbol was not listed in the schedule referenced in the endorsement, the exclusion could not be used as a bar to coverage. *Id*. Just like the protective safeguards endorsement at issue in *Westfield*, the protective safeguards endorsement here is defined by a symbol: AS. The policy's declarations page neither defines the AS symbol nor directs Tebele, as the insured, to a policy provision which defines the AS symbol. Additionally, the AS symbol is not listed, depicted, or referenced in the schedule of values. Therefore, the endorsement is both ambiguous on its face and ambiguous when applied to the schedule of values.

Accordingly, Tebele respectfully requests that this Court grant this petition for rehearing and hold that Tebele was entitled to coverage as a matter of law. *See Brooklyn Bridge, Inc. v. S.C. Ins. Co.*, 309 S.C. 141, 420 S.E.2d 511 (Ct. App. 1992).

B. The undefined terms "maintain" and "control."

As an initial matter, this Court incorrectly referred to the Fourth Circuit's opinion in *Breton, LLC v. Graphic Arts Mut. Ins. Co.*, 446 Fed. App'x. 598 (4th Cir. 2011) as a district court opinion when it is a circuit court opinion. This Court also incorrectly stated that Tebele acknowledged that this Court "cannot rely on it." Tebele acknowledged that *citations* to unpublished *South Carolina* opinions are not permitted but also pointed out that the Federal Rules of Appellate Procedure explicitly prohibit court's from prohibiting citations to federal unpublished opinions. (Tebele's Opening Brief, p. 31 n. 3). More importantly, there is nothing prohibiting this court from *considering* an unpublished opinion, South Carolina or otherwise. In fact, this Court correctly considered an unpublished federal district court opinion in finding that an insurance agent can owe a fiduciary duty to an insured: "While *Smith*[*v. Universal Prop. & Cas. Ins. Co.*, 2017 U.S. Dist. LEXIS 134036 (D.S.C. Aug. 22, 2017)] is not controlling, we believe it represents an accurate observation regarding the state of the law on this issue." *A. Tebele & Sons*, at 19. While *Breton*, like *Smith*, is not controlling, this Court can and should consider it.

This Court went on to distinguish *Breton* on two grounds: that here the sprinkler system "was never in place or operable," and that "the failure of operation was clearly under the control of the owner of the building who was installing the system and not the tenant." *A. Tebele & Sons*, at 16. Tebele respectfully submits that the record establishes the opposite on both points.

As to whether the system was in place, Dover, the Crawford employee who handled the project, testified that by August 31, 2018—nearly six months before the fire—the sprinkler system "was pretty much completed in the building." (R. 482, l. 24 – 483, l. 7). Every component had been fabricated and installed. The single remaining step was the connection to the City of Myrtle Beach's water supply. Crawford and Carolina Tap & Bore met at 1901 North Kings on February 13, 2019, determined how the connection would be made, and agreed to gather materials and return the following week to complete it. (R. 485, ll. 9 – 25). The difference between *Breton*, where a physically complete system was inoperable because a valve was closed, and this case, where a physically complete system was inoperable because the water tap had not yet been connected through no fault of Tebele, is insignificant when construing the terms "maintain" and "control."

Specifically, as to control, Tebele's contract with Crawford provided that until Crawford "has completely installed the system and has conducted the hydrostatic test, performance has not been completed," and that "[u]nder no circumstances is anyone else permitted or authorized to place the system in service or perform a test upon it." (R. 1683; R. 1094, ll. 5 – 23). The final connection depended on a subcontractor, Carolina Tap & Bore, and on the City of Myrtle Beach. (R. 475, l. 2 – 476, l. 1). Dover testified he was aware of nothing Mr. Tebele could have done to speed up the process. (R. 487, l. 23 – 488, l. 8). Mr. Tebele had paid $226,468.82 toward the system and had emailed the subcontractor, copying the City, to press for completion. (R. 487, ll. 13 – 22; R. 1003, l. 10 – 1004, l. 25; R. 1788 – 1791). And the premises were occupied by a tenant, to whom a lessor surrenders possession and control. *Byerly v. Connor*, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992). Whatever "control" means in the endorsement, it cannot mean control held by a party contractually forbidden from touching the equipment.

Tebele does not ask this Court to construe the endorsement in "some third way." Tebele simply asks this Court to do what our jurisprudence has demanded for decades: apply the ambiguous terms to favor coverage. *See Hann v. Carolina Cas. Ins. Co.*, 252 S.C. 518, 525, 167 S.E.2d 420, 423 (1969) ("It is settled beyond cavil in this jurisdiction that the terms of an insurance policy should be construed most liberally in favor of the insured"). Accordingly, Tebele respectfully requests that this Court grant this petition for rehearing and hold that Tebele was entitled to coverage as a matter of law. *See Brooklyn Bridge, Inc. v. S.C. Ins. Co.*, 309 S.C. 141, 420 S.E.2d 511 (Ct. App. 1992).

C. Additions under construction.

This Court held that even if the sprinkler system were an "addition," "the policy would only cover the destruction of the sprinkler system, not the building in which it was housed." *A. Tebele & Sons*, at 16. Tebele's argument was that the policy's definition of covered property, which reaches "additions under construction, alterations and repairs to the building or structure" that are "not covered by other insurance," cannot be reconciled with an endorsement construed to void all fire coverage on the building precisely because an addition was still under construction. (R. 1596).

That is an internal-inconsistency argument. "Where an internal inconsistency in an insurance policy renders it ambiguous, and the policy is susceptible of more than one reasonable interpretation, one of which provides coverage, coverage must be found as a matter of law." *Brooklyn Bridge, Inc. v. S.C. Ins. Co.*, 309 S.C. 141, 145, 420 S.E.2d 511, 513 (Ct. App. 1992). An exclusion that bars coverage for claims arising out of the very risk the policy was purchased to insure renders the policy ambiguous. *Isle of Palms Pest Control Co. v. Monticello Ins. Co.*, 319 S.C. 12, 19, 459 S.E.2d 318, 321 (Ct. App. 1994). Finkel gave the only expert testimony on this provision, explaining that the phrase "if not covered by other insurance" makes the covered-property definition an exception to the endorsement's exclusion. (R. 613, l. 18 – 614, l. 4; R. 628, ll. 19 – 24). The Insurers' expert offered no opinion on the question. (R. 825, ll. 3 – 24).

Accordingly, Tebele respectfully requests that this Court grant this petition for rehearing and hold that Tebele was entitled to coverage as a matter of law. *See Brooklyn Bridge, Inc. v. S.C. Ins. Co.*, 309 S.C. 141, 420 S.E.2d 511 (Ct. App. 1992).

Damages

This Court also concluded that the circuit court did not err in denying Tebele's motion for a new trial absolute or new trial nisi additur. This Court concluded that the jury's determination on general negligence "barred Tebele's recovery against Crescent Coast for its negligence in procuring the policy." *A. Tebele & Sons*, at 17-18. This Court found that an award for the policy amount for Crescent Coast's breach of fiduciary duty "when it had not awarded damages for general negligence would be inconsistent." *Id*. Instead, this Court found that "a reasonable amount of damages to Tebele for Crescent Coast's failure could be something in line with what Crescent Coast earned in performing its duties." *Id*. at 18.

A. The measure of damages is the loss Tebele suffered from the failure to procure the coverage it purchased, not the commission Crescent Coast earned.

The measure of damages is compensatory and is valued by what the plaintiff lost rather than by what the defendant gained. Damages are "the amount needed to compensate the plaintiff for the losses proximately caused by the defendant's wrong so that the plaintiff will be in the same position he would have been in if there had been no wrongful injury." *Turpin v. Lowther*, 404 S.C. 581, 592, 745 S.E.2d 397, 403 (Ct. App. 2013) (quoting *Austin v. Specialty Transp. Servs.*, 358 S.C. 298, 312, 594 S.E.2d 867, 874 (Ct. App. 2004)). In *Turpin*, this Court affirmed an increase in an award for breach of fiduciary duty because "the correct measure of damages in this case is the amount that will compensate the beneficiaries for the loss proximately caused by [the fiduciary's] failure to disclose." *Turpin*, 404 S.C. at 593, 745 S.E.2d at 403. Respectfully, this Court failed to address *the loss* to Tebele and in turn failed to accurately assess the measure of its damages.

Accurate application of the measure of damages shows that the loss proximately caused by Crescent Coast's breach of its fiduciary duty was the coverage Tebele did not receive. The record establishes that Egan, the managing member of Crescent Coast, was the person who entered the data on the schedule of values, including the entry that 1901 North Kings was 100% sprinklered. (R. 862, ll. 5 – 14). Sutherland and Egan marked the property as sprinklered on the application. (R. 746, ll. 11 – 22). That representation was the sole basis on which the Insurers denied coverage. (R. 801, ll. 14 – 23; R. 1784 – 1786).

Tebele was never given the schedule of values, (R. 931, ll. 1 – 17; R. 989, ll. 10 – 15), and the binder—the only document Tebele received before the fire—did not identify which properties were required to have a sprinkler system. (R. 1544, l. 12 – 1545, l. 13; R. 928, l. 15 – 929, l. 17). Egan never mentioned the protective safeguards endorsement to Mr. Tebele during the application process. (R. 986, ll. 12 – 16). Egan received the full policy on February 7, 2019, did not forward it, and handed it to Mr. Tebele for the first time while the two of them stood in front of the burnt down building. (R. 873, ll. 11 – 18; R. 874, ll. 1 – 21).

Crescent Coast therefore procured a policy limited by a representation Crescent Coast itself supplied, and never told Tebele this limitation existed. What Tebele lost when the Insurers invoked that limitation was the fire coverage it had contracted and paid a premium of $170,997.08 to obtain. That is the injury a compensatory award must repair. *See Republic Textile Equip. Co. v. Aetna Ins. Co.*, 293 S.C. 381, 388, 360 S.E.2d 540, 544 (Ct. App. 1987) (recognizing, in cases involving the failure of an agent or broker to procure insurance, it is the insured's prerogative to rely on the expert knowledge of the agent or broker).

Accordingly, if this Court denies the petition for rehearing on the grounds that the policy was ambiguous entitling Tebele to coverage as a matter of law, Tebele respectfully requests that this Court grant this petition for rehearing and find that the trial judge erred in denying Tebele's motion for a new trial absolute or a new trial nisi additur.

B. Finding a breach of fiduciary duty by Crescent Coast coupled with an award measured by the agent's commission is inconsistent.

This Court reasoned that "[f]or the jury to award the policy amount for breaching a fiduciary duty when it had not awarded damages for general negligence would be inconsistent." *A. Tebele & Sons*, at 17-18. Tebele respectfully submits that the inconsistency lies in the verdict that was returned. The jury found that Crescent Coast owed Tebele a fiduciary duty and that Crescent Coast breached it. The only harm that breach caused is the harm Tebele actually suffered—an uncovered loss on a building insured for $2.85 million. An award of $15,000 does not compensate that harm.

No witness testified that Tebele's loss was $15,000 or anything close to that. The damages evidence was undisputed and ran in a single direction: $2.85 million in insured value, approximately $4.5 million to replace the building in 2019, and approximately $8.4 million to rebuild in 2023. (R. 508, l. 22 – 509, l. 2; R. 558, l. 17 – 559, l. 9; R. 1202, l. 20 – 1203, l. 3; R. 1798 – 1799). This Court's only citation supporting its conclusion that "a reasonable amount of damages to Tebele for Crescent Coast's failure could be something in line with what Crescent Coast earned in performing its duties" is this Court's opinion from *Williamson v. Middleton*, 374 S.C. 419, 649 S.E.2d 57 (Ct. App. 2007). *Williamson* was a case in which an employee sued his ex-employer to recover a commission of $906.92. 374 S.C. at 422, 649 S.E.2d at 59. The lawsuit that followed generated more than $100,000 in attorneys' fees. *Id*. at 425, 649 S.E.2d at 60. The trial judge awarded just $35,000 in attorneys' fees and the ex-employer appealed, arguing, in part, that the attorneys' fees were not justified in a dispute over an unpaid commission of $906.92. *Id*. at 426, 649 S.E.2d at 61. This Court affirmed the attorneys' fees award because "there was evidence in the record supporting the trial judge's finding that $ 35,000 was a reasonable amount to award." *Id*. at 431, 649 S.E.2d at 64.

Respectfully, *Williamson* has no application to this case unless used to show that a monetary award must find support in the record below. The jury's verdict of $15,000 is not supported by the record and this Court should reverse the circuit court's denial of Tebele's motion for a new trial. *See Allstate Ins. Co. v. Durham*, 314 S.C. 529, 531, 431 S.E.2d 557, 557 (1993) (reversing the denial of a new trial absolute where undisputed evidence established damages of $35,651.74 and the jury returned $160.20).

C. The Valued Policy Statute supplies the measure and was raised below.

This Court found that Tebele's reliance on the Valued Policy Statute found in section 38-75-20 of the South Carolina Code was "raised for the first time on appeal and therefore is not preserved for our review." *A. Tebele & Sons*, at 17 n.2. However, Tebele raised this statute in its memorandum in opposition to the Insurers' motion for summary judgment, (R. 148), and again in its post-trial motion for a new trial absolute or a new trial nisi additur, (R. 243). Furthermore, Tebele invoked the statute as the benchmark against which the adequacy of the jury's verdict should be measured, and Tebele could not complain of the inadequacy of the verdict before the it was returned. Post-trial motions are the proper vehicle for issues that could not have been raised at trial. Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 189 (3d ed. 2016).

The statute fixes what Tebele would have received had Crescent Coast procured the coverage it undertook to procure. "In case of total loss by fire the insured is entitled to recover the full amount of insurance." S.C. Code § 38-75-20; see *Averill v. Preferred Mut. Ins. Co.*, 314 S.C.

49, 52, 441 S.E.2d 632, 633 (1994). That provision forms part of every fire policy issued in this State. *Tedder v. Hartford Fire Ins. Co.*, 246 S.C. 163, 166, 143 S.E.2d 122, 123 (1965). But for Crescent Coast's breach, the fire would have produced a payment of $2.85 million. That figure, and not Crescent Coast's commission, is the floor of Tebele's loss.

Conclusion

Tebele respectfully requests this Court grant this petition for rehearing and hold that Tebele was entitled to coverage as a matter of law because the policy was ambiguous. Alternatively, Tebele respectfully requests that this Court grant this petition for rehearing and reverse the circuit court's denial of Tebele's motion for a new trial based on the insufficiency of the damages award.

Respectfully submitted,

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This 10th day of September 2026.

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PROOF OF SERVICE

Pursuant to Rule 262(c)(3), SCACR, undersigned counsel hereby certifies that a true copy of the appellant-respondent's petition for rehearing in the above-referenced case have been served upon Roman Harper, Dominic Starr, Andrew Watson, Mihaela Cabulea, Caleb Riser, Hunter Adams, and Carmen Ganjehsani, at their primary e-mail addresses listed in the Attorney Information System (AIS), this 10th day of September 2026.

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