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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
THE HONORABLE B. ALEX HYMAN
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2024-000705
CIVIL ACTION NO. 2021-CP-26-00808

Opinion No. 6162 (S.C. Ct. App. filed August 26, 2026)

A. Tebele & Sons, a South Carolina General Partnership,

APPELLANT-RESPONDENT,

versus

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

RESPONDENTS,

Of which Crescent Coast Insurance, LLC is the

RESPONDENT-APPELLANT.

PETITION FOR REHEARING

The Respondent-Appellant, Cresent Coast Insurance, LLC ("Crescent Coast"), respectfully petitions the Court for a rehearing of its Opinion No. 6162 pursuant to Rule 221(a), SCACR based upon the following points overlooked or misapprehended by the Court:

<u>Procedural and Factual Background</u>

This litigation stems from the Respondent Insurers' denial of an insurance claim submitted by Appellant-Respondent A. Tebele & Sons ("Tebele") for real property damaged in a fire. Tebele brought claims against Crescent Coast for the purported failure to procure insurance coverage. A jury found, in part, that Crescent Coast breached a fiduciary duty owed to Tebele and awarded $15,000.00 in actual damages.

Crecent Coast appealed the jury's verdict on the breach of fiduciary claim, arguing that the issue of duty was a question of law for the court and further that as a matter of law, Crescent Coast owed no fiduciary duty to Tebele in assisting it with the procurement of insurance coverage. The Court heard the matter on May 13, 2026. On August 26, 2026, the Court issued its Opinion[1] affirming the circuit court' denial of Crescent Coast's directed verdict motion made on the grounds that an insurance agent does not owe a fiduciary duty to an insured as a matter of law. Crecent Coast now petitions the Court for a rehearing of its holding as to the denial of the directed verdict on the breach of fiduciary duty claim.

<u>Argument</u>

I. The existence of a fiduciary relationship is a question of law for the court.

As an initial matter, the Court's Opinion does not address that the existence of a fiduciary relationship is not a jury issue, but a question of law for the court to determine. "[W]hether [a fiduciary relationship] should be imposed between two classes of people is a question for the court." <u>Hendricks v. Clemson Univ.</u>, 353 S.C. 449, 459, 578 S.E.2d 711,

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[1] This Court's Opinion also affirmed Tebele's appeal of the jury verdict finding in favor of the Insurers as to breach of contract and bad faith, as well as Tebele's appeal against Crescent Coast as to the circuit court's denial of its motion for new trial absolute or new trial *nisi additur* on the breach of fiduciary duty claim.

715 (2003); see also Spence v. Wingate, 395 S.C. 148, 160, 716 S.E.2d 920, 926 (2011) (observing that whether the law recognizes a particular duty is an issue of law to be decided by the court). The jury in this case should not have been charged and asked to determine whether a fiduciary relationship existed between Tebele and Crescent Coast. Instead, the court should have decided the issue of duty.

II. The Court's Opinion expands the concept of breach of fiduciary duty beyond that established by precedent and now permits a party to base a breach of fiduciary duty claim upon an arm's length commercial sales transaction.

Prior to the Court's Opinion, there has been no South Carolina case which establishes a fiduciary duty between an insurance agent and an insurance purchaser. The South Carolina Supreme Court has previously found that an applicant for an insurance policy does not stand in a fiduciary relationship with an insurer or the insurance agent. Gordon v. Fidelity & Cas. Co. of N.Y., 238 S.C. 438, 451, 120 S.E.2d 509, 515 (1961) (finding no relationship of trust and confidence existed between the insurance applicant and the insurance agent); O'Connor v. Bhd. of R.R. Trainmen, 217 S.C. 442, 448-49, 60 S.E.2d 884, 886 (1950) (holding no relation of trust and confidence existed between the insurance applicant and the soliciting agent where the agent did nothing to prevent the applicant from reading the application).

Subsequently, in Pitts v. Jackson Nat'l Life Ins. Co., 357 S.C. 319, 574 S.E.2d 502 (Ct. App. 2002), this Court recognized that "the sale of insurance is an arm's length transaction, which does not give rise to a fiduciary relationship." Id. at 332, 574 S.E.2d at 508. This Court further observed that no heightened duty attaches because the "applicant is still operating in the marketplace at the point of purchase." Id.

The Court's Opinion issued in this case now allows a court to find the existence of a fiduciary duty based simply upon an arm's length sales transaction between parties. Fiduciary relationships are to be based upon a high degree of care and trust and confidence reposed by one person in the integrity and fidelity of another. Steele v. Victory Sav. Bank, 295 S.C. 290, 293, 368 S.E.2d 91, 93 (Ct. App. 1988).

The Court's Opinion permitted this high standard to be met in this case merely because Sutherland, Crescent Coast's agent, had known Tebele for many years and had solicited his business for some time. Allowing a fiduciary relationship to exist based upon the solicitation of business and the fact that two parties have known each other for some amount of time greatly expands the types of relationships subject to a fiduciary duty and opens the doors for any and all kinds of sales transactions to be transformed into fiduciary relationships.

The Court's Opinion diminishes the requirement that a confidential or fiduciary relationship should only exist "when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interest of the one imposing the confidence." Brown v. Pearson, 326 S.C. 409, 422, 483 S.E.2d 477, 484 (Ct. App. 1997). Fiduciary relationships should be reserved for only those relationships requiring a high degree of care, trust, and confidence and not for any type of sales transaction merely because the parties have known each other for a period of time and one desires the solicitation of another's business.

In addition, the evidence in this case established that Tebele was a sophisticated insurance purchaser familiar with the yearly purchase of insurance for the millions of dollars of property he managed. Tebele was shopping the marketplace for insurance quotes with both Crescent Coast and another insurance agency simultaneously. The record contains no evidence transforming the relationship between Crescent Coast and Tebele from an arm's length commercial sales transaction to a relationship involving special trust and confidence as required for a breach of fiduciary duty claim.

Finally, purchasers of insurance are not without a remedy if the insurance procured is not what was expected. Negligence remains a viable cause of action, which in this case the jury considered and determined Tebele was not entitled to recovery due to its greater negligence. There is no sound reason to expand the doctrine of fiduciary duty under the facts of this case.

III. If this Court concludes on rehearing in the primary appeal of Tebele that insurance coverage exists for the fire loss claim, then the jury's verdict against Crescent Coast for negligence and breach of fiduciary duty for failure to procure coverage must be reversed as a matter of law.

Tebele has petitioned the Court of Appeals to reconsider its opinion as to coverage under the policy at issue. Should the Court determine that there is coverage under the policy issued by the Insurers for the fire loss sustained by Tebele, then Crescent Coast cannot be liable for failing to obtain insurance coverage and the jury's findings that Crescent Coast was negligent and breached its fiduciary duty in failing to procure coverage must be reversed as a matter of law.

CONCLUSION

For the reasons set forth herein, Respondent-Appellant Crescent Coast Insurance, LLC respectfully requests that the Court grant its Petition for Rehearing and reverse that portion of its Opinion affirming the circuit court's denial of the motion for directed verdict on the fiduciary duty claim. Furthermore, should the Court conclude on rehearing in the primary appeal of A. Tebele & Sons that coverage for its fire loss exists under the Policy issued by the Insurers, then Crescent Coast as a matter of law cannot be liable for negligence and breach of fiduciary duty for the failure to procure insurance coverage and the jury's verdict should be reversed.

Respectfully submitted,

/s Carmen V. Ganjehsani

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September 10, 2026.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Respondent-Appellant, Crescent Coast Insurance, LLC, do hereby certify that I have this date served the foregoing Petition for Rehearing, dated September 10, 2026, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Amended Order dated April 24, 2024, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

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Dated: September 10, 2026.

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Cc: Caleb Riser; Hunter Adams
Subject: Appellate Case No. 2024-000705 Tebele v. Certain Underwriters et al.
Date: Thursday, September 10, 2026 2:32:00 PM
Attachments: 2024-000705 Tebele v. Crescent Coast (Crescent Coast PFR) (4321877).pdf

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Please find served upon you the Petition for Rehearing on behalf of Respondent-Appellant Crescent Coast Insurance, LLC in the above-referenced appeal.

Thank you,
Carmen Ganjehsani

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HOME VCARD LOCATION

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September 10, 2026

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SC Court of Appeals

Filed via e-mail (ctappfilings@sccourts.org) and hand delivery
The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: A. Tebele & Sons v. Certain Underwriters et al.
Appellate Case No. 2024-000705
RPR File No.: 09681-00001

Dear Ms. Kitchings:

Enclosed for filing is the Petition for Rehearing on behalf of Respondent-Appellant Crescent Coast Insurance, LLC in the above-referenced case, along with our Certificate of Service. We are also filing this Petition electronically with the Court of Appeals via e-mail at ctappfilings@sccourts.org pursuant to Section (b)(2) of the Supreme Court's April 24, 2024 Order.

Also enclosed is our firm's check in the amount of $50.00 for the filing fee in this matter.

We have served this Petition for Rehearing on counsel of record upon their primary email addresses listed in the Attorney Information System.

Should you have any questions regarding this matter, please do not hesitate to call.

Sincerely,

/s Carmen V. Ganjehsani

Carmen V. Ganjehsani

Encs.

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