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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

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-21-26-00808

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

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

RESPONDENT,

versus

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

DEFENDANTS,

Of which Crescent Coast Insurance, LLC is the

PETITIONER.

**PETITION FOR WRIT OF CERTIORARI OF
CRESCENT COAST INSURANCE, LLC**

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QUESTIONS PRESENTED FOR REVIEW

- I. Did the Court of Appeals err in holding that Crescent Coast as an insurance agent owed a fiduciary duty to A. Tebele & Sons in assisting it with the procurement of insurance coverage based upon only a prior relationship between a representative of Crescent Coast and the manager of A. Tebele & Sons in a non-insurance related capacity and the solicitation of A. Tebele & Sons for business?
- II. Whether, if this Court determines in the primary appeal of A. Tebele & Sons that insurance coverage exists for the fire loss claim, the jury's verdict against Crescent Coast for negligence and breach of fiduciary duty for failure to procure coverage should be reversed as a matter of law?

INTRODUCTION

Under longstanding South Carolina precedent, fiduciary relationships are based on a high degree of care and founded upon special trust and confidence reposed by one person in the integrity and fidelity of another. As such, fiduciary duties are not inherent in arm's-length commercial transactions and only arise when one party to a relationship is unable to fully protect its interests and the unprotected party has placed its trust and confidence in the other.

The plaintiff in this case is A. Tebele & Sons which is managed by Abraham Tebele, a sophisticated insurance buyer who has managed millions of dollars of commercial property over the past twenty-five (25) to thirty (30) years and is highly experienced in procuring insurance coverage for these properties. In this action, A. Tebele & Sons alleged that Crescent Coast Insurance, LLC ("Crescent Coast") breached a fiduciary duty owed to A. Tebele & Sons arising out of an alleged failure to procure certain insurance coverage.

At trial, Crescent Coast disputed that it owed any fiduciary duty to A. Tebele & Sons because it has never been held under South Carolina law that an insurance agent owes a fiduciary duty to a purchaser of insurance. Further, in this particular case, no evidence was presented at trial

which suggested the commercial transaction between A. Tebele & Sons and Crescent Coast was not at arm's length or that the two parties had any relationship beyond that of insurance agent and insurance purchaser. There was also no evidence presented that A. Tebele & Sons placed any special trust in Crescent Coast.

The Court of Appeals nevertheless held that the Trial Court correctly denied Crescent Coast's motion for directed verdict that it did not owe any fiduciary duty to A. Tebele & Sons. The Court of Appeals cited only two facts for its holding: that Crescent Coast's agent had known Mr. Tebele of A. Tebele & Sons for years in a non-insurance related capacity and had solicited A. Tebele & Sons' business for some time. The Opinion of the Court of Appeals radically departs from South Carolina jurisprudence on the creation of a fiduciary duty. By holding that a fiduciary relationship may be based upon solely the length of time two parties have known each other and the solicitation of business by one party of another, the Court of Appeals disregards the fundamental requirement that a fiduciary relationship be based upon special trust and confidence.

The Court of Appeals' Opinion not only imposes a fiduciary duty on insurance agents toward insurance applicants, but also potentially expands the scope of fiduciary obligations in manner that could encompass a broad range of arm's-length commercial relationships. Such an expansion of the doctrine is unnecessary because insurance applicants who receive deficient advice have an adequate remedy under a negligence cause of action.

The Court of Appeals' broadening of the doctrine of fiduciary duty warrants review by this Court. Therefore, pursuant to Rule 242(b) of the South Carolina Appellate Court Rules, Crescent Coast requests this Court to grant its Petition for Writ of Certiorari to review and correct the Opinion of the Court of Appeals.

STATEMENT OF THE CASE

This litigation stems from certain insurers' denial of an insurance claim submitted by A. Tebele & Sons for real property damaged in a fire. The insurers denied the claim under a Protective Safeguards – Fire Endorsement which the insurers contend required the damaged property to contain an operational automatic sprinkler system. A. Tebele & Sons brought a lawsuit not only against the insurers seeking coverage, but also claims in the alternative against Crescent Coast for the purported failure to procure insurance coverage.

On February 3, 2020, A Tebele & Sons filed a Complaint in the Court of Common Pleas for Horry County against Insurers Certain Underwriters at Lloyd's, HDI Global Specialty SE, and General Security Indemnity Company of Arizona (collectively, the “Insurers”) for breach of contract and bad faith. [R.pp. 15-25.] In the alternative, A. Tebele & Sons alleged claims of negligence and breach of fiduciary duty against Crescent Coast. [R.pp. 25-28.]

On March 30, 2020, the Insurers answered the Complaint. [R.pp. 29-106.] On May 8, 2020, Crescent Coast also answered the Complaint, denying its general allegations. [R.pp. 107-113.]

On December 4, 2023, the case proceeded to trial before The Honorable B. Alex Hyman and a jury. [R.p. 330.] Crescent Coast moved for a directed verdict on A. Tebele & Sons' causes of action for negligence and breach of fiduciary duty, including that it owed no fiduciary duty, at the close of the plaintiff's case and renewed its motion for a directed verdict at the close of the evidence presented in defense. [R.pp. 1262, l. 24 – 1276, l. 4; 1353, ll. 13-19.] In support of its motion for directed verdict, Crescent Coast incorporated its previously filed motion for summary judgment and memorandum of law in support of the same. [R.pp. 1263, ll. 8-10; 215-19; 220-28.]

The Trial Court denied the motions for directed verdict. [R.pp. 1271, ll. 7-9; 1275, l. 22 – 1276, l. 4; 1353, ll. 18-19.]

On December 13, 2023, the jury rendered its verdict. The jury found for the Insurers on the breach of contract and bad faith claims. [R.pp. 7-13; 1454, l. 24 – 1455, l. 12.] On the negligence claim against Crescent Coast, the jury found Crescent Coast was negligent and that such negligence proximately caused the injuries of A. Tebele & Sons, but also found that A. Tebele & Sons was sixty percent (60%) negligent. Therefore, A. Tebele & Sons was barred from recovering damages from Crescent Coast on its negligence claim. [R.pp. 7-13; 1455, ll. 3-25.] On the breach of fiduciary duty claim against Crescent Coast, the jury found for A. Tebele & Sons and awarded \$15,000.00 in actual damages. [R.pp. 7-13; 1455, l. 25 – 1456, l. 8.]

On December 21, 2023, A. Tebele & Sons filed post-trial motions against the Insurers and Crescent Coast. [R.pp. 238-74.] As to Crescent Coast, A. Tebele & Sons moved for a new trial absolute on the negligence¹ and breach of fiduciary duty causes of action or, in the alternative, a new trial *nisi additur* on the breach of fiduciary duty cause of action. [R.pp. 238-49.] Crescent Coast filed an opposition to the post-trial motion on January 10, 2024. [R.pp. 316-29.] The Trial Court denied A. Tebele & Sons' post-trial motions as to both the Insurers and Crescent Coast on April 8, 2024. [R.pp. 1-6.]

A. Tebele & Sons appealed to the Court of Appeals on April 29, 2024. Crescent Coast filed a cross-appeal to the Court of Appeals on the jury's verdict as to the breach of fiduciary duty claim

¹ In its motion for a new trial absolute, A. Tebele & Sons made no argument that the jury's determination as to the merits of the negligence claim should be disturbed by the Trial Court. A. Tebele & Sons limited its motion to the basic argument that the damages awarded under the breach of fiduciary duty cause of action were insufficient. [R.pp. 238-49.]

on May 6, 2024. After hearing argument on May 13, 2026, the Court of Appeals issued its Opinion on August 26, 2026 affirming the jury's verdict. As to the appeals between A. Tebele & Sons and Crescent Coast, the Court of Appeals held the Trial Court did not err in denying A. Tebele & Sons' motion for new trial absolute or new trial *nisi additur* as to the jury's award of damages against Crescent Coast on the breach of fiduciary duty claim. See Opinion No. 6162, pp. 8-10.

The Court of Appeals, however, held the Trial Court did not err in denying Crescent Coast's motion for a direct verdict made on the grounds that an insurance agent does not owe a fiduciary duty to an insurance applicant as a matter of law. Id. at pp. 10-11.

Both A. Tebele & Sons and Crescent Coast petitioned the Court of Appeals for rehearing on September 10, 2026, which the Court of Appeals denied on September 16, 2026.

Crescent Coast now files this Petition for Writ of Certiorari with this Court seeking review of the Court of Appeals' holding that Crescent Coast, as an insurance agent, owed a fiduciary duty to A. Tebele & Sons.

STATEMENT OF FACTS RELATING TO CRESCENT COAST

A. Tebele & Sons is a South Carolina general partnership which oversees the leasing and management of twenty-three (23) commercial properties valued at approximately \$22 million. [R.pp. 895, ll. 1-4; 1011, ll. 22-24; 1014, ll. 21-25; 1060, ll. 3-10.] It has been in the business for twenty-five (25) to thirty (30) years. [R.p. 1014, ll. 21-24.] Abraham Tebele operates and manages the day-to-day business for A. Tebele & Sons, including making decisions regarding the insurance for the commercial properties he manages. [R.pp. 1015, ll. 8-16; 1016, ll. 1-6.] The property at issue in this litigation which is leased and managed by A. Tebele & Sons is located at 1901 North

Kings Highway, Myrtle Beach, South Carolina (“1901 North Kings Property”) and is titled in the name of Kings Realty, LP. [R.pp. 16; 1010, ll. 22-24.]

Mr. Tebele is a sophisticated insurance buyer who has managed millions of dollars of property over the past twenty-five (25) to thirty (30) years. Mr. Tebele, who has had to renew insurance coverage for his commercial properties each year, is well experienced in procuring insurance coverage. [R.pp. 653, l. 22 – 654, l. 9; 739, ll. 12-23; 925, l. 12 – 926, l. 4; 1016, l. 21 – 1018, l. 15; 1059, l. 9 – 1060, l. 8.]

Mr. Tebele met Joey Sutherland through the restaurant business. [R.pp. 715, ll. 4-15; 958, l. 24 – 959, l. 16.] Mr. Sutherland had previously worked for a restaurant tenant of Mr. Tebele’s who occupied the 1901 North Kings Property. [R.p. 713, ll. 1016.] Mr. Sutherland also began working in the insurance retail business in 2010, initially with an agency called Global Risk Partners. [R.p. 733, ll. 9-25.] Mr. Sutherland, being an insurance agent, would contact Mr. Tebele from time to time offering to help Mr. Tebele secure insurance for his commercial properties. [R.pp. 715, ll. 16-23; 716, ll. 15-23; 719, ll. 17-25; 958, ll. 1-3; 960, ll. 14-18.]

Mr. Sutherland joined Crescent Coast in March 2018. [R.pp. 710, l. 22 – 711, l. 7; 715, l. 24 – 716, l. 5.] Crescent Coast is a retail property and casualty insurance agency co-owned by David Egan. [R.p. 847, ll. 7-24.] As a retail insurance agency, Crescent Coast does not write insurance policies, does not underwrite policy requests, or put together insurance policies. [R.pp. 737, ll. 5-18; 888, l. 21 – 889, l. 2.] Likewise, a retail agency does not make coverage decisions. [R.p. 889, ll. 3-4.]

Instead, Crescent Coast, as a retail insurance agency, assists in gathering information from prospective clients and compiling such information into applications to send to carriers and brokers

for the purpose of seeking insurance coverage on behalf of the prospective clients. [R.pp. 848, ll. 3-10; 889, ll. 5-25.] In that sense, Crescent Coast acts as a liaison between persons seeking insurance coverage and the carriers and brokers. [R.p. 848, ll. 5-6.]

In the summer of 2018, Mr. Tebele decided to seek insurance quotes for his twenty-three (23) commercial properties which were under policies that would expire on January 15, 2019 and would need to be renewed. With that in mind, Mr. Tebele agreed to meet with Crescent Coast to give it “a shot” to see if it could save him money. [R.pp. 720, l. 1 – 721, l. 1; 890, l. 17 – 891, l. 4; 960, ll. 19-25; 957, ll. 5-13.] Mr. Tebele began meeting with Mr. Sutherland and Mr. Egan in August of 2018 to prepare the initial Acord applications to be used in obtaining the insurance quotes. [R.pp. 739, l. 24 – 740, l. 1; 890, ll. 10-16; 891, ll. 14-24.] An Acord form is a standard independent agent form which retail agencies use to gather underwriting information from prospective clients to send to insurance carriers and brokers so that such carriers and brokers can assess whether they can undertake the risk and provide a quote for coverage. [R.pp. 669, ll. 20-23; 891, ll. 8-13.]

When Mr. Egan and Mr. Sutherland met with Mr. Tebele in August of 2018, they reviewed the information needed regarding Mr. Tebele’s twenty-three (23) commercial properties. Mr. Sutherland testified that they went through each property with Mr. Tebele and verified information for each one, including, as relevant for this case, whether a particular building was sprinklered or not. [R.pp. 721, ll. 3-9; 744, l. 1 – 745, l. 7.] Mr. Tebele agreed at trial that he, Mr. Egan, and Mr. Sutherland thoroughly went through each piece of property. [R.p. 1035, ll. 2-12.] Crescent Coast had no interest, financial or otherwise, in whether a building was sprinklered or not; it simply

wanted to gather accurate information from Mr. Tebele to obtain proper quotes from the carriers. [R.pp. 745, ll. 14-24; 924, l. 25 – 925, l. 3.]

Mr. Egan and Mr. Sutherland both testified that Mr. Tebele informed them a sprinkler system was being installed at the 1901 North Kings Property, that the system covered 100% of the property, and the sprinkler system was expected to be fully functioning well before the policy renewal date of January 15, 2019. As such, Mr. Egan and Mr. Sutherland testified Mr. Tebele instructed them to mark the 1901 North Kings Property as being 100% sprinklered on the Acord application. [R.pp. 746, l. 11 – 747, l. 1; 892, ll. 6-18; 1065, l. 26 – 1067, l. 17; 1696.] In total, five (5) of the twenty-three (23) properties were marked on the Acord form as sprinklered. [R.pp. 745, l. 25 – 746, l. 4; 891, l. 25 – 892, l. 5.]

Crescent Coast relied upon the information given by Mr. Tebele in marking the 1901 North King Property as 100% sprinklered on the Acord Form. [R.p. 737, ll. 24-25.] Mr. Egan testified that Crescent Coast is not in a position to verify every single piece of information given by a prospective client and that it would be virtually impossible to do so given the number of Crescent Coast clients and prospective clients which nears almost 2,500. [R.pp. 893, l. 15 – 894, l. 12.] Terry Tadlock, Crescent Coast's standard of care expert, confirmed at trial that it is the normal practice of insurance agents to rely upon the information given to them by prospective clients as accurate without following up on such information. [R.pp. 1284, l. 24 – 1285, l. 8; 1292, l. 21 – 1294, l. 13.]

Mr. Egan further testified that a property owner is more knowledgeable about a piece of its property and its features, such as its value, square footage, and safety features, than Crescent Coast.

[R.p. 894, ll. 13-25.] Mr. Tebele also never had any questions of Mr. Egan or Mr. Sutherland about coverage or any exclusions or endorsements. [R.pp. 749, l. 25 – 750, l. 2; 925, ll. 4-6.]

It is undisputed that Mr. Tebele never updated or otherwise informed Crescent Coast of the status of the sprinkler installation at any point in time after that August 2018 meeting. [R.pp. 749, ll. 5-8; 893, ll. 8-14; 926, l. 23 – 927, l. 10.] Mr. Tebele himself confirmed that he never updated Crescent Coast as to the status of the sprinkler system after August 2018. [R.p. 1093, ll. 8-11.]

On August 20, 2018, Mr. Egan initially submitted the Acord forms for A. Tebele & Sons' properties, including the 1901 North Kings Property, via e-mail to Whitney Gurtzweiler n/k/a Whitney Northcutt, an underwriter with AmWins Access Insurance, seeking a quote for property, excess, and general liability coverage. [R.pp. 662, l. 5 – 664, l. 2; 668, l. 1 – 669, l. 20; 740, l. 2 – 742, l. 20; 896, ll. 5-14; 1684-1709.] The properties were too large for AmWins Access to handle, so Ms. Northcutt referred the risk to Barrett Sellers of AmWins Brokerage of the Carolinas ("AmWins Brokerage") to see if he could quote coverage. [R.pp. 671, ll. 10-21; 697, ll. 5-10; 896, ll. 15-25; 1710.]

From August 2018 to January 2019, Crescent Coast continued to gather quotes for Mr. Tebele for insurance coverage. Mr. Tebele also continued to seek quotes from his current insurance agency at the time, McGriff Insurance, to see who could obtain him the most favorable insurance premiums. [R.pp. 751, ll. 2-6, 19-22; 882, ll. 6-13; 897, ll. 1-7; 899, l. 21 – 900, l. 4; 967, ll. 3-7; 1032, ll. 1-14.]

Crescent Coast received a quote for coverage from AmWins Special Risk Underwriters. [R.pp. 2088.] The quote indicated that the policy would require a Protective Safeguards

Endorsement, including an automatic sprinkler system for the properties that were indicated as sprinklered on the Acord form. [R.pp. 900, l. 5 – 902, l. 15; 2088.]

On Friday, January 11, 2019, Mr. Egan sent Mr. Tebele the insurance quote and the Acord application for Mr. Tebele to sign through DocuSign. Mr. Tebele responded that he had printed it out, but needed until Monday to review. [R.pp. 897, l. 10 - 899, l. 17; 902, ll. 4-7.] Mr. Tebele also indicated in his responses to Mr. Egan that he was still working with his current agency and had not fully committed to Crescent Coast yet. [R.pp. 899, l. 16 – 900, l. 4.] At trial, Mr. Tebele testified that he had initially informed Mr. Egan that he was “going to stick with [his] existing broker.” [R.p. 982, ll. 4-9.]

On January 14, 2019, Mr. Tebele ultimately chose Crescent Coast over his current agent because Crescent Coast was able to give him an overall better premium. [R.pp. 751, ll. 10-18; 904, ll. 13-24; 982, l. 12 – 984, l. 10; 1085, l. 16 – 1088, l. 7.] On January 14, 2019, Mr. Tebele executed a signed Acord application, which was submitted to AmWins Brokerage. [R.pp. 1744-78.]

It is uncontroverted that the application noted the 1901 North Kings Property was “100%” sprinklered. [R.pp. 1009, ll. 8-24; 1764.] It is also undisputed Mr. Tebele, after having three days to review the application, acknowledged by his signature that the information contained on the application was true and accurate to the best of his knowledge. [R.pp. 738, ll. 1-3; 902, l. 17 – 904, l. 8; 1035, l. 25 – 1036, l. 6; 1755.] Also, the application, containing the information supplied by Mr. Tebele, indicated the value of the 1901 North Kings Property was \$2,500,000. [R.p. 1764.]

The total amount of commission to be earned by Crescent Coast was approximately \$17,000² – which was determined as 10% percentage of the total premium for all three policies (property, excess and general liability) obtained by Crescent Coast for Mr. Tebele. [R.p. 727, ll. 16-24.]

The policy was bound on January 15, 2019. Once the policy was bound, A. Tebele & Sons became a client of Crescent Coast. [R.pp. 750, l. 14 – 751, l. 1; see also id. at p. 1298, ll. 9-14 (testimony of Terry Tadlock, Crescent Coast’s expert, corroborating that a prospective insured is not a client of a retail insurance agency during the negotiation period and only becomes a client once the policy is bound).]

A commercial property insurance binder, which is proof of insurance, was provided to Mr. Tebele by Mr. Egan on January 17, 2019. [R.pp. 906, l. 2 – 907, l. 17; 1962-67; 1971-72.] The binder indicated which coverage forms were included with the policy, including the Protective Safeguard Endorsement requiring an automatic sprinkler system. The property insurance coverage for the subject property was \$2,500,000 (based on Mr. Tebele’s information). The policy likewise contained coverage for lost business income with limits of \$100,000 and coverage for internal contents of \$250,000. Thus, the total policy amount relevant to this case was \$2,850,000. [R.pp. 1962-67.]

Mr. Tebele never asked Mr. Egan any questions about any of the provisions of the binder. [R.p. 907, ll. 18-25.] Mr. Tebele, however, did request several revisions post-binding, including the correction of certain property addresses that Mr. Tebele had left off the application. [R.pp. 908,

² Notably, Crescent Coast waived the commissions for the excess and general liability policies prior to Mr. Tebele agreeing to go with Crescent Coast for his 2019 insurance policies. [R.pp. 767, l. 21 – 768, l. 7; 923, l. 14 – 924, l. 24.]

l. 1 – 909, l. 23; 910, ll. 20-22; 2090.] Mr. Egan immediately had those properties added and submitted to the underwriter. [R.pp. 910, l. 23 – 911, l. 1.] To handle the requested changes, the carrier had to issue endorsements to the policy. [R.p. 913, ll. 3-13.]

After the policy was bound, Mr. Egan was waiting on the completed policy, including all endorsements, before he delivered a hard copy to Mr. Tebele. A retail insurance agency, such as Crescent Coast, does not deliver the insurance policy to the insured until the entirety of the policy is received by the agency complete with all endorsements. [R.pp. 912, l. 25 – 915, l. 2.] Crescent Coast received most of the policy on February 7, 2019, but was still waiting for the endorsements. [R.pp. 914, ll. 12-24; 2078.]

Crescent Coast's expert, Mr. Tadlock, made clear to the jury that it is appropriate for an insurance agent to ensure all policy documents are received, organized, and reviewed for accuracy before production to the client. [R.pp. 1290, l. 5 – 1292, l. 4.] Mark Melvin, an underwriter with AmWins Special Risk Underwriters, also confirmed that a policy is not complete until all endorsements are issued and received. [R.pp. 1465, ll. 21-22; 1520 l. 9 – 1521, l. 18.] Even though a hard copy of the entire policy had not yet been delivered to Mr. Tebele, the twenty-three (23) properties were covered by the policy, subject to its terms and conditions. [R.pp. 917, l. 24 – 918, l. 1.]

Meanwhile, the sprinkler system for the 1901 North King Property was never fully completed. Around 2017, Mr. Tebele retained Crawford Sprinkler Company ("Crawford Sprinkler") to install the sprinkler system for the property. [R.pp. 461, ll. 19-25; 467, ll. 8-15; 468, ll. 13-16; 472, l. 23 – 473, l. 23; 1021, l. 24 – 1022, l. 3.] Mike Dover, who was employed with Crawford Sprinkler, testified at trial that after all the piping for the sprinkler system was installed

inside the building, a service line was needed to be brought into the building to connect the interior pipe to the city's main line for the water supply. [R.pp. 461, ll. 1-18; 464, l. 13 – 465, l. 2.] Crawford Sprinkler did not actually perform this type of work. Therefore, Mr. Tebele retained Carolina Tap & Bore (“Carolina Tap”), a utility contractor, to conduct this work. [R.pp. 474, l. 24 – 476, l. 1; 497, ll. 18-20.]

Carolina Tap installed most of the line that was to connect the city's water supply to the interior pipes, but still had ten (10) to fifteen (15) feet remaining that needed to be installed to reach the building. Carolina Tap needed to bring the line to the building and bring it through the wall to connect to the interior pipes. [R.pp. 476, l. 21 – 477, l. 6.] Mr. Dover testified that in August 2018, Crawford Sprinkler's work was about ninety (90) to ninety-five (95) percent complete, but it would have to install the riser that would connect to the underground once Carolina Tap was finished bringing the line inside the building. [R.pp. 481, ll. 101-16; 482, l. 24 – 483, l. 7.]

On February 13, 2019, Mr. Dover, Mr. Tebele, and a representative from Carolina Tap met at the 1901 North King Property. Carolina Tap's work had not been completed. The main line from the city's water supply still had not been brought inside the building. Mr. Dover testified that Mr. Tebele saw at this meeting that the sprinkler system was not connected. [R.pp. 485, ll. 9-25; 490, l. 16 – 491, l. 2; 499, ll. 18-20; 1023, ll. 3-6.] Mr. Dover further testified he kept Mr. Tebele informed throughout the sprinkler system installation process and that Mr. Tebele knew in August 2018, January 2019, and February 2019 that the sprinkler system had not been completely installed. [R.pp. 494, ll. 5-8; 498, ll. 2-26.] At trial, Mr. Tebele admitted he never informed Crescent Coast, even after the February 13, 2019 meeting, that the sprinkler system was not actually connected even though he was aware of that fact. [R.pp. 1023, ll. 3-21; 1052, ll. 10-13.]

The 1901 North Kings Property was severely damaged by fire on February 24, 2019. When the fire occurred, the sprinkler system was still not completed or operational. [R.pp. 444, ll. 15-20; 486, l. 25 – 487, l. 4; 491, ll. 3-17.] Mr. Dover testified that at the time of the fire, there was still construction that had to be done to finish making the connection inside the building to the city’s water supply and that a fire alarm also needed to be completed and connected as well. [R.p. 488, ll. 16-22.] At trial, Mr. Tebele acknowledged the sprinkler system was still under construction at the time of the fire. [R.pp. 970, ll. 22-24; 972, l. 2 – 973, l. 14.]

After the fire, Mr. Tebele retained James Twaddell, a public insurance adjuster, to assist with his insurance claim under the policy issued by the Insurers. [R.pp. 504, ll. 1-18; 507, ll. 11-22.] On March 8, 2019, approximately two weeks after the fire, Mr. Tebele exchanged e-mail correspondence with Mr. Twaddell in which he theorized that storms may have delayed the completion of the sprinkler work and noted “[t]here was no way to have foreseen that it would not be connected by the time this policy was binded.” [R.pp. 564, l. 19 – 565, l. 22; 566, ll. 1-12; 1050, ll. 3-14; 2087.]

On April 5, 2019, Mr. Tebele again wrote in an e-mail to Mr. Twaddell with regard to the sprinkler system that “[t]here may have been delays that were beyond anyone’s control. Don’t forget at the time the broker [Crescent Coast] filled out the application and obtained the final quote the full expectation was that the connection work would take a week to two weeks which would have been well in advance of the loss and made all of this a moot issue.” [R.pp. 570, l. 8 – 571, l. 23; 1050, ll. 15-20; 2085-86.]

Mr. Tebele’s statements in the March 8 and April 5 e-mails were consistent with what he told Mr. Egan and Mr. Sutherland in August 2018 about the status of the sprinkler system – that

the completion of the system would be done well before the January 2019 policy renewal. [R.pp. 747, l. 10 – 749, l. 4; 892, l. 19 – 893, l. 7; 1067, l. 18 – 1070, l. 16.]

On August 6, 2019, the Insurers denied coverage for the insurance claim under the policy, citing the language of the Protective Safeguards - Fire Endorsement which required a functioning sprinkler system. [R.pp. 2081-84.]

At trial, in the plaintiff's case-in-chief, Mr. Tebele presented testimony from his independent adjuster, James Twaddell, and expert Gerald Finkel. Neither offered any testimony that Crescent Coast breached any applicable standard or duty of care or owed any duties to A. Tebele & Sons or Mr. Tebele.

Mr. Tebele admitted at trial that Crescent Coast had no role in his companies and had no role in the decisions concerning the sprinkler system at the 1901 North Kings Property. He also conceded that no one at Crescent Coast ever informed him they were experts in sprinkler system installation. He acknowledged he was not asking anything more of Crescent Coast than he was from his current insurance agent. [R.pp. 1060, l. 17 – 1061, l. 22.] Mr. Dover also testified that Crawford Sprinkler had never dealt with Crescent Coast during the work performed on the 1901 North Kings Property. [R.p. 500, ll. 1-4.]

At trial, Mr. Tebele repeatedly referenced a January 11, 2019 email from Crescent Coast to Whitney Northcutt of AmWins Access. Crescent Coast had also acted as the retail agent for Melissa Garcia, a tenant of the 1901 North Kings Property who operated the La Casona Restaurant. AmWins Access was the underwriter for the tenant insurance policy. [R.pp. 849, ll. 1-18; 851, ll. 19-25.] On January 10, 2019, Ms. Garcia telephoned Mr. Sutherland and advised that an inspector had come to the building and told her that there was no water connected to the sprinkler. Mr.

Sutherland asked the customer service representative of Crescent Coast, Sandra Nenna, what he should do and Ms. Nenna advised that she would notify AmWins Access, the broker for that insurance policy. Therefore, Ms. Nenna e-mailed Ms. Northcutt on January 11, 2019 and advised that the sprinklers were installed, but that the landlord had not turned the water on for the sprinklers. [R.pp. 751, l. 23 – 753, l. 15; 1742.]

Mr. Sutherland testified he thought the sprinkler system could be made fully functional by simply turning on the water. [R.p. 752, ll. 11-22.] Mr. Tebele never informed Mr. Sutherland or anyone at Crescent Coast after August 2018 that there was any issue with the sprinkler system. [R.pp. 753, ll. 16-19; 920, ll. 12-15; 926, l. 23 – 927, l. 13.] And three days after the January 11, 2019 e-mail was sent, Mr. Tebele verified and signed the Acord application which indicated that the 1901 North Kings Property was 100% sprinklered. [R.pp. 1744-78.]

ARGUMENT

I. The Court of Appeals erred in holding that Crescent Coast as an insurance agent owed a fiduciary duty to A. Tebele & Sons in assisting it with the procurement of insurance coverage based upon only a prior relationship between a representative of Crescent Coast and the manager of A. Tebele & Sons in a non-insurance related capacity and the solicitation of A. Tebele & Sons for business.

The Court of Appeals erred in holding that Crescent Coast, as an insurance agent, owed a fiduciary duty to A. Tebele & Sons, an insurance purchaser, and thus allowing the jury's award of damages on the breach of fiduciary duty cause of action to stand. To establish a claim for breach of fiduciary duty, the plaintiff must prove "(1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant." RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012).

To succeed on its cause of action for breach of fiduciary duty, A. Tebele & Sons must therefore establish, as a matter of law, the existence of a fiduciary relationship giving rise to such a duty. “[W]hether [a fiduciary relationship] should be imposed between two classes of people is a question for the court.” Hendricks v. Clemson Univ., 353 S.C. 449, 459, 578 S.E.2d 711, 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 existence of a fiduciary relationship is therefore not a question of fact for the jury, but a question of law for the court to determine.

A fiduciary relationship is “founded on 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). Under South Carolina law, “[a] confidential or fiduciary relationship exists 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).

“A fiduciary relationship cannot be established by the unilateral action of one party. The other party must have actually accepted or induced the confidence placed in him.” Steele, 295 S.C. at 295, 368 S.E.2d at 94. Furthermore, mere respect for another's judgment or trust in his character is usually not sufficient to establish such a relationship. Burwell v. South Carolina Nat'l Bank, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986).

Because the fiduciary duty is one which requires a high degree of care and consideration due the person to whom the duty is owed, only certain relationships carry with them this type of duty. For example, South Carolina courts have found that lawyers owe a special duty to their

clients. See e.g., Hotz v. Minyard, 304 S.C. 225, 230, 403 S.E.2d 634, 637 (1991). The courts have also found special duties owed by real estate brokers to their clients, see e.g., Darby v. Furman Co., 334 S.C. 343, 346-47, 513 S.E.2d 848, 849-50 (1999), by partners to other partners, see e.g., Lawson v. Rogers, 312 S.C. 492, 499, 435 S.E.2d 853, 857 (1993), by officers of a corporation to its shareholders, see e.g., Talbot v. James, 259 S.C. 73, 82, 190 S.E.2d 759, 764 (1972), and, in very limited circumstances, between a bank and a depositor only if the bank undertakes to advise the depositor as part of the services offered by the bank and places funds in a special account. Rush v. S.C. Nat. Bank, 288 S.C. 560, 562, 343 S.E.2d 667, 668 (Ct. App. 1986).

Prior to the Court of Appeals' Opinion in this case, there has been no South Carolina case which establishes a fiduciary duty between an insurance agent and an insurance purchaser. This 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), the Court of Appeals recognized "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. The Court of Appeals further observed that no heightened duty attaches because the "applicant is still operating in the marketplace at the point of purchase." Id. The relationship is no different from other

customers and sellers negotiating sales and contracts. Id. at 332, 574 S.E.2d at 508; see also Beverly v. Grand Strand Reg'l Med. Ctr., LLC, 429 S.C. 502, 513-14, 839 S.E.2d 468, 473-74 (Ct. App. 2020) (finding no fiduciary relationship existed between hospital and patient with respect to a hospital's contractual duty to submit insurance claims because the relationship arose out of a normal creditor-debtor transaction).

In its Opinion in this case, the Court of Appeals departed from longstanding precedent and now permits the imposition of fiduciary duties in the absence of anything more than an ordinary commercial arm's-length transaction. The Court of Appeals' Opinion disregards that fiduciary relationships are premised upon a high degree of care and trust and confidence reposed by one person in the integrity and fidelity of another. Steele, 295 S.C. at 293, 368 S.E.2d at 93. Instead, the Court of Appeals' Opinion found a fiduciary relationship in this case based upon only the fact that Mr. Sutherland, Crescent Coast's representative, had known Mr. Tebele for years in a non-insurance related capacity and had solicited A. Tebele & Sons' business for some time.

The Court of Appeals' reasoning threatens to expand fiduciary duties into virtually any commercial relationship, blurring the distinction between ordinary arm's-length dealings and those relationships that give rise to fiduciary obligations. Fiduciary relationships should be reserved for only those relationships requiring a peculiar confidence and trust placed by one party in the integrity and faithfulness of another and not for any sales transaction merely because the parties have known each other for a period of time and one party solicited the other's business. The Court of Appeals' Opinion effectively relaxes the standard for finding the existence of a fiduciary duty.

In reaching its holding, the Court of Appeals relied upon an unreported decision by the United States District Court for the District of South Carolina, Smith v. Universal Prop. & Cas.

Ins. Co., No. 5:16-CV-03905-JMC, 2017 WL 3599590 (D.S.C. Aug. 22, 2017). In Smith, the District Court held a party might be able to show the existence of a fiduciary relationship with its insurance agent *if* the party could show something more than a relationship involving only the sale of insurance:

Neither *Pitts* nor cases following it state that, as a categorical matter, a fiduciary relationship can never arise between an insurance agent and an insured. Thus, they implicitly leave open the possibility that a fiduciary relationship might arise between an agent and an insured *if*, for instance, the transaction was not truly at arm's length or other factors demonstrate that the parties' relationship goes beyond the mere sale of insurance.

Id. at *4 (emphasis added).

In making this observation, the Smith court cited the South Carolina District Court decision in Great Am. Ins. Co. v. Mills, No. 4:06-cv-01971-RBH, 2008 WL 2250256, at *10 (D.S.C. May 29, 2008). In Mills, the District Court recognized “at the time of initial purchase of the [] insurance policy, no fiduciary relationship existed between Mills and the insurance company or its agent.”

Id. The District Court found a more difficult question was presented by the situation present in that case in which Mills did business with the company and its agent for *over fifteen years*. Id. The District Court in Mills, however, was reluctant to recognize a fiduciary relationship between an insurance company and an insured where South Carolina courts had not done so. Id. The District Court thus dismissed the breach of fiduciary duty claim in that case. Id.

Absent at trial was evidence demonstrating the characteristic features of a fiduciary relationship between A. Tebele & Sons and Crescent Coast. The evidence showed that Mr. Tebele, who operated and managed the day-to-day business for A. Tebele & Sons, is a sophisticated insurance buyer who has managed millions of dollars of property over the past twenty-five (25) to

thirty (30) years. Mr. Tebele is highly experienced in procuring insurance coverage for these commercial properties. [R.pp. 653, l. 22 – 654, l. 9; 739, ll. 12-23; 925, l. 12 – 926, l. 4; 1015, ll. 8-16; 1016, l. 1 – 1018, l. 15; 1059, l. 9 – 1060, l. 8.] Mr. Tebele’s own expert at trial, Gerald Finkel, acknowledged that Mr. Tebele was not a novice by any means in procuring insurance coverage. [R.pp. 653, l. 22 – 654, l. 9.]

Mr. Sutherland and Mr. Tebele, who met each other through the restaurant business, had a typical relationship of a salesman and potential customer when Mr. Sutherland solicited Mr. Tebele for his insurance business, and no evidence was presented at trial suggesting that Mr. Tebele imposed any special confidence in Mr. Sutherland. [R.pp. 715, ll. 4-5; 958, l. 24 – 959, l. 16.] Rather, Mr. Tebele was giving Mr. Sutherland and Crescent Coast “a shot” at getting him a better deal on insurance coverage. [R.pp. 960, ll. 19-25; 975, ll. 5-13.] In addition, even though Mr. Tebele had known Mr. Sutherland for several years and even though Mr. Sutherland had solicited Mr. Tebele for the sale of insurance, the had not actually done business together for multiple years as the parties in Mills had done (and in which the District Court still found no fiduciary relationship).

When Mr. Tebele agreed to meet with Crescent Coast in August 2018, Crescent Coast simply acted as a liaison between A. Tebele & Sons and insurance carriers and brokers. The role performed by Crescent Coast was to gather information from A. Tebele & Sons and compile such information into applications to send to carriers and brokers for the purpose of seeking insurance quotes and coverage. [R.pp. 848, ll. 3-10; 888, ll. 5-25.]

Crescent Coast used and properly relied upon the information provided by Mr. Tebele, including that the 1901 North Kings Property would be 100 percent sprinklered by the January 15,

2019 policy renewal date, in completing the Acord application which would ultimately be submitted to secure insurance coverage. [R.pp. 737, ll. 24-25; 893, l. 15 – 894, l. 12; 1284, l. 24 – 1285, l. 8; 1292, l. 21 – 1294, l. 13.] Crescent Coast, in its role as a retail insurance agency, had no interest, financial or otherwise, in whether the property was sprinklered or not; it simply wanted to gather accurate information from Mr. Tebele to secure coverage for A. Tebele & Sons. [R.pp. 745, ll. 14-24; 924, l. 25 – 925, l. 3.] Mr. Tebele had the opportunity to review the application before it was sent to the broker for coverage, and he verified by his signature that all information in the application was true and accurate. [R.pp. 738, ll. 1-3; 902, l. 17 – 904, l. 8; 1035, l. 25 – 1036, l. 6; 1747.]

Mr. Tebele never had any questions for Crescent Coast regarding any policy endorsements or exclusions. [R.pp. 749, l. 25 – 750, l. 2; 925, ll. 4-6.] Mr. Tebele acknowledged at trial that Crescent Coast had no role in his properties or any role in the decisions concerning the sprinkler system at the 1901 North Kings Property. He further acknowledged that no one at Crescent Coast held themselves out to him as experts in sprinkler systems installation. [R.pp. 1060, l. 17 – 1061, l. 22.]

During the same time period that Crescent Coast was seeking insurance quotes for A. Tebele & Sons, Mr. Tebele, on behalf of A. Tebele & Sons, was also continuing to work with its current insurance agency, McGriff Insurance, in seeking insurance quotes for the January 2019 policy renewal to see which agency could obtain the most favorable premium. [R.pp. 751, ll. 2-6, 19-22; 882, ll. 6-13; 897, ll. 1-7; 899, l. 21 – 900, l. 4; 967, ll. 3-7; 1032, ll. 1-14.] Shortly before Mr. Tebele chose Crescent Coast, Mr. Tebele had informed Mr. Egan that he was “going to stick with [his] existing broker.” [R.p. 982, ll. 4-9.] Mr. Tebele did not actually choose Crescent Coast

over his current insurance agency until he signed the January 14, 2019 application, the day before the policies were to renew. Prior to that, he was shopping the market to find the most competitive insurance quote.

Crescent Coast did not owe A. Tebele & Sons a fiduciary duty on these facts. Crescent Coast and A. Tebele & Sons engaged in an arm's-length transaction for only the sale of insurance. The relationship between the two parties was that of insurance agent and insurance purchaser. Gerald Finkel, the expert testifying at trial on behalf of A. Tebele & Sons, described the relationship of prospective insured and the retail insurance agency as one in which the agency will let the prospective insured know what options are available for coverage and will assist in placing coverage. [R.pp. 598, ll. 10-22; 602, l. 14 – 603, l. 2.] This is exactly the type of relationship that existed between Crescent Coast and A. Tebele & Sons which does not carry with it any special or heightened duty because it is an ordinary relationship between a seller and a customer. Neither of the experts testifying at trial on behalf of A. Tebele & Sons, Mr. Finkel or James Twaddell, offered any testimony that Crescent Coast owed A. Tebele & Sons a fiduciary or otherwise heightened duty of care.

There is further no evidence that A. Tebele & Sons placed any special trust in Crescent Coast. It was simply using Crescent Coast, in addition to its current agent, to shop insurance quotes on the competitive market. Mr. Tebele, on behalf of A. Tebele & Sons, is an experienced insurance purchaser who sought no advice from Crescent Coast as to the sprinkler system at the 1901 North Kings Property. He had superior knowledge of the property and the status of the sprinkler system, which the evidence at trial showed that he knew was not completed when he signed the insurance application on January 14, 2019 and verified all information therein was true and accurate,

including that the 1901 North Kings Property was 100% sprinklered. [R.pp. 494, ll. 6-8; 498, ll. 2-16; 894, ll. 13-25; 1747.] Indubitably, no fiduciary relationship was created in this case.

Notably, purchasers of insurance are not without a remedy if the insurance procured is not what was expected. Negligence remains a viable cause of action. See Trotter v. State Farm Mut. Auto. Ins. Co., 297 S.C. 465, 471, 377 S.E.2d 343, 347 (Ct. App. 1988) (holding insurance agent who undertakes to advise the insured “must exercise due care”). The jury considered A. Tebele & Sons’ cause of action for negligence and determined it 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.

In the absence of a fiduciary duty, no cause of action exists for its alleged breach. Accordingly, Crescent Coast was entitled to a directed verdict on the breach of fiduciary duty claim.

II. If this Court determines in the primary appeal of A. Tebele & Sons 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 should be reversed as a matter of law.

A. Tebele & Sons brought its claims against Crescent Coast for negligence and breach of fiduciary duty for failure to procure insurance coverage in the alternative to its breach of contract and bad faith claims against the Insurers. [R.pp. 15; 25-26; 1368, l. 12 – 1369, l. 25.] If this Court should determine that there is coverage under the policy issued by the Insurers for the fire loss sustained by A. Tebele & Sons, then Crescent Coast cannot be liable for failing to obtain insurance coverage. Accordingly, in the event this Court finds coverage under the policy in the primary appeal of A. Tebele & Sons, the jury’s findings that Crescent Coast was negligent and breached

its fiduciary duty in failing to procure coverage should be reversed as a matter of law. See Save Charleston Foundation v. Murray, 286 S.C. 170, 175, 333 S.E.2d 60, 64 (Ct. App. 1985) (observing a party is entitled to plead alternative theories of relief, but simply may not recover for both); see also Greenburgh Eleven Union Free Sch. Dist. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA, 304 A.D.2d 334, 336, 758 N.Y.S.2d 291, 294 (2003) (holding claim against brokers for failure to obtain proper insurance coverage was correctly dismissed since coverage was obtained under policy).

CONCLUSION

For the reasons set forth herein, Crescent Coast respectfully requests the Court grant its Petition for Writ of Certiorari and hold that a fiduciary duty did not exist between Crescent Coast and A. Tebele & Sons. Further, should this Court conclude in the primary appeal of A. Tebele & Sons that coverage for its fire loss exists under the policy, then the jury's verdict against Crescent Coast for negligence and breach of fiduciary duty should be reversed.

Respectfully submitted,

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