



Shortly thereafter, on August 29, 2012, Special Referee Verenes heard Plaintiff's Motion to Reconsider the setting aside of default. Again, the parties were present or represented by counsel. Plaintiff's Motion to Reconsider was denied by Order dated October 3, 2012.

At the hearing on the merits in this matter, heard before Special Referee Richard B. Ness on November 13, 2013, Plaintiff again argued for reconsideration of the set aside of default. No formal motion was issued or filed between the denial of Reconsideration on October 3, 2012 and the merits hearing, and no new evidence was presented to support Plaintiff's reargument. To the extent Plaintiff's renewed motion for reconsideration can even be considered, the same is denied, and the matter considered on its merits.

#### **Findings of Facts**

At the hearing on the merits, Plaintiff and Defendant each submitted a number of documents into evidence, including, but not limited to, a certified copy of the insurance policy and declarations at issue in this matter, Plaintiff's premium payment history pertaining to this policy, and various correspondence to the Plaintiff. Additionally, both the Plaintiff and Hector Ortiz offered sworn testimony relevant to this matter. After considering the testimony and evidence presented, I hereby make the following findings of fact:

1. UAIC issued Policy number SCU 648367 (the "Policy") to the Plaintiff on December 23, 2010.
2. The Policy listed a 2001 Nissan Maxima GXE (the "Vehicle") as an insured vehicle, and provided for \$25,000 in uninsured motorist property damage coverage.
3. The Policy was cancelled briefly in January of 2011 for failure to pay a premium, and reinstated two days later upon receipt of Plaintiff's payment.

4. The Policy was cancelled again, effective March 23, 2011 at 12:01 a.m. due to Plaintiff's failure to make a timely premium payment. UAIC sent a notice of this cancellation to the address Plaintiff acknowledges she resided at that time.

5. The Vehicle was involved in a collision with another vehicle on April 11, 2011 (the "MVA") at approximately 7:30 a.m. while being driven by a permissive driver. The driver of the second vehicle involved in the MVA had no liability insurance.

6. At some time on the afternoon of April 11, 2011, following the MVA, the Plaintiff or someone on her behalf made a premium payment to UAIC.

7. The Policy was reinstated by UAIC as of 6:36 P.M. on April 11, 2011.

8. The Plaintiff testified that the Vehicle was totaled in the MVA. Although no documentary evidence was presented by the Plaintiff, by her testimony, the Vehicle was valued at approximately Four Thousand Two Hundred and 0/100 (\$4,200.00) Dollars at the time of the MVA.

9. The Plaintiff testified that she owed Flex-Pay Auto Sales ("Flex-Pay") Five Thousand Six Hundred Seventy-Four and 0/100 (\$5,674.00) Dollars for the Vehicle at the time of the MVA, and that she made no further payment to Flex-Pay following the MVA. She further testified that she has been sued by Flex-Pay for said amount, plus court costs, in a breach of contract action. Documents presented into evidence demonstrate the suit referred to has been dismissed, albeit without prejudice.

10. The Plaintiff testified to her belief that Defendant UAIC had an obligation to defend her in this suit with Flex-Pay. The Plaintiff also testified UAIC was not a party or signatory to her contract with Flex-Pay.

11. The Plaintiff testified that she owed Eleven Thousand Six Hundred Fifteen and 0/100s (\$11,615.00) Dollars for towing and storage of the Vehicle for approximately 455 days of storage following the MVA. The Plaintiff testified that the towing and storage was directed by Flex-Pay, and that she could have towed the vehicle out of storage earlier if she chose.

12. The Plaintiff presented evidence of a Form FR-4 issued by the South Carolina Department of Motor Vehicles ("SCDMV"). This Form, dated after the MVA, indicates that the SCDMV was satisfied that no lapse in required coverage occurred. The Plaintiff testified that this was the only correspondence she received from the SCDMV, and that there was no prior notice of a possible lapse. The notice does not provide any context as to when the alleged lapse or non-lapse referred to may have occurred.

13. The Policy provides that it may be cancelled for the following reasons: "2. You fail to pay the premium for the policy or any installment of the premium, whether payable to the insurance agent, or us, either directly or indirectly under any premium finance plan or extension of credit."

#### Conclusions of Law

As an initial matter, I find that the Plaintiff has failed to meet her burden of showing how the debt- or storage fee-related damages alleged by her would be owed by Defendant UAIC, even assuming coverage exists. The Plaintiff has presented no Policy provision or case, statute, or public policy which would require UAIC to defend her in a breach of contract action against a third party, or would have any obligation to cover a debt owed by the Plaintiff to a third-party. Moreover, given the current status of the third-party litigation, these alleged damages are speculative, and will not be considered. The Plaintiff similarly presents no theory upon which the

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storage fees would be owed by UAIC, and I specifically find that the Plaintiff has failed to mitigate these damages by leaving her vehicle in storage for over a year.

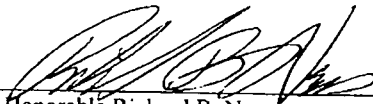
As to the principal matter at issue, I find that the Plaintiff has failed to meet her burden of showing that insurance coverage flowed from the Policy in question under the facts and circumstances in this case. It is clear that South Carolina law permits an insurer to limit its liability, provided it does not contravene a statutory provision, or public policy. Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 523, 377 S.E.2d 569, 570 (1989). Insurers are permitted to include provisions cancelling coverage for non-payment of premiums. See, e.g., Government Emp. Ins. Co. v. Mackey 260 S.C. 306, 195 S.E.2d 830 (1973). The Policy language in this case clearly provides for cancellation of the Policy for failure to pay the Policy premium. The evidence in the record is clear the Policy was cancelled on March 23, 2011 for failure to pay a premium, and that UAIC issued a notice of the cancellation to the Plaintiff at her residence. The evidence is equally clear that the Plaintiff next paid a premium to UAIC on the day of the accident, several hours after the loss occurred. The Plaintiff's Policy coverage lapsed between 12:01 a.m. on March 23, 2011, and 6:36 P.M. on April 11, 2011.

The Plaintiff reliance on the Form FR-4 to demonstrate that no lapse occurred is misplaced. The SCDMV was not a party to the contract of insurance between the Plaintiff and UAIC, and cannot create coverage obligations where none would otherwise exist. Moreover, the document provided by the Plaintiff contains no context in which it can be properly understood. To the extent that it refers to a period of alleged lapse in the Policy, the document could as easily refer to the two day cancellation of the Policy in January of 2011 as to the lapse of coverage which is at issue in this matter. In short, the Form FR-4 is does not convincingly demonstrate that a lapse in coverage, which is clearly documented elsewhere in the record, did not occur.

Policies of insurance are subject to the general rules of contract law, and policy language will not be tortured to create coverage where none was intended. See, e.g., S.C. Farm Bureau Mut. Ins. Co. v. Dawsey, 371 S.C. 353, 357, 638 S.E.2d 103, 105 (Ct. App. 2006). In this case, the Policy clearly provides for cancellation under conditions which did occur. No Policy provision, statute, or case law has been cited by the Plaintiff which would require that the Policy in this matter, having been reinstated *after* the accident which is the subject of this suit, should retroactively afford coverage to the Plaintiff for a loss that occurred during the period of lapse. Nor does a denial of coverage under these circumstances violate public policy. To the contrary, *finding* coverage for the Plaintiff under these facts would raise serious public policy concerns, encouraging willful lapses in automobile liability policies which are only redressed by consumers following a loss that would otherwise have been covered.

Based on the foregoing, Plaintiff's Petition for Declaratory Judgment finding coverage under the Policy is **DENIED**.

It is so Ordered.

  
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The Honorable Richard B. Ness  
Special Referee

December 17, 2013

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO. 2011 CP-02-02529

Sadarea Pruitt,

UAIC and Flex Pay Auto Sales,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Richard B. Ness, Special Referee

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

12.20.13

*J. H. Gardner*  
12/18/13

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property. If any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
UAIC	Sadarea Pruitt	\$
Flex Pay Auto Sales		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

*Richard B. Ness*  
Circuit Court Judge

Judge Code

Date

12/18/13

For Clerk of Court Office Use Only

This judgment was entered on the 20 day of Dec, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 20 day of Dec, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Jasom McDowell

Caroline H. Raines

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)  
S. B. Godard by [Signature]  
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[Lined area for additional information]