THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2007-CP-23-6453

Douglas Earl Stiltner and
Christine Rene Stiltner, ... Appellants,

v.

USAA Casualty Insurance Company, ... Respondent.

PETITION FOR REHEARING

This petition is filed pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules. Rule 221 governs rehearing. Rule 240 governs motions and petitions generally.

This Court issued the decision in this matter on March 5, 2014. See Op. No. 2014-UP-084. This petition is therefore timely. See Rule 221(a), SCACR.

This petition's principal purpose is to preserve Doug and Rene Stiltner's ability to request further review of the arguments that they offered this Court on the merits. To that end, the Stiltners wish to completely incorporate the arguments from their principal and reply briefs by reference. The Stiltners understand and appreciate that this Court has reviewed this

matter and rendered its decision, but as the Court must surely have suspected, the Stiltners have strong but respectful disagreement with the decision to affirm.

As this Court will recall, USAA's theory of the case was that Rene Stiltner possessed the authority to reject Underinsured Motorist (UIM) coverage on Doug Stiltner's insurance policy as long as two conditions were present. The first of these conditions was that Rene's rejection could not have changed the coverage on Doug's policy.

The Court will also recall that the only evidence with respect to Doug having *carried* UIM coverage was a declaration page dated October 6, 1998. This page described that from October of 1998 to April of 1999, Doug's policy contained UM coverage, UIM coverage, and liability coverage; all at the same policy limits. See (R.p.138).

The circuit court's reasoning was not lengthy. We know that UIM had been dropped from Doug's policy by October of 2001, and the circuit court said that between April of 1999 and October of 2001, the Stiltners got married, moved to Easley, and purchased two vehicles. The court also noted that Doug raised the liability limits on his policy, and the court reasoned that these events "could" have affected the policy's premium and caused Doug to drop UIM. This is it. This is the analysis on whether USAA *proved*, by the greater weight of the evidence, that Rene's actions did not drop UIM from Doug's policy. (R.p.13-14).

It is difficult to see how this reasoning withstands legitimate scrutiny.

The point about the Stiltners' marriage is factually inaccurate. The Stiltners got married in October of 1998; not between April of 1999 and October of 2001.

The underlying point is also difficult to follow. Adding Rene to Doug's policy would presumably allow Rene to cancel the automobile coverage that she carried while she was

single. Thus, although Doug's premium would rise, the family's combined insurance bill may well have decreased relative to the family's combined income.

The point about the Stiltners' move from the city of Liberty to the city of Easley is flawed because it has no basis in the evidence. At no point during the trial was there any suggestion that moving from Liberty to Easley would cause a change in Doug's insurance premium. See (R.p.46-128). It is hard to see how this point does not qualify as a complete fabrication. The circuit court might just as well have reasoned that Doug's premium could have increased because he got older. These statements have equal support in the evidence, which is to say that they both have none.

The point about purchasing two additional vehicles has the same flaw. In October of 1998, there were three vehicles on Doug's policy. See (R.p.138). After Rene's rejection, Doug's policy still covered only three vehicles. See (R.p.142). There was no evidence at trial about whether the three vehicles the policy covered after Rene's rejection were more expensive to insure than the three vehicles the policy covered in 1998. Here again, this seems more like a guess and less like deductive reasoning that is grounded in evidence.

Finally, there is no evidence that Doug decided to drop UIM coverage when he raised his liability coverage limits. The only evidence on this point is Doug's testimony, and Doug adamantly maintained that he never dropped or reduced his coverage. See (R.pp.71, 74-75). It is possible that Doug was lying, but the circuit court did not make that finding. And even if Doug *was* bending the truth (he is not), USAA still has to produce evidence in order to carry its burden. USAA must *prove*—affirmatively—that when Rene rejected UIM, she was confirming something that Doug had already done. On this record, the evidence is not there.

This is an unusual case because the typical roles are reversed. In this case, the defendant—not the plaintiff—bears the burden of proof. See *Floyd v. Nationwide Mut. Ins. Co.*, 367 S.C. 253, 264, 626 S.E.2d 6, 12 (2005) (noting that the insurance company has the burden of proof and persuasion in meaningful offer cases).

A fact finder could not reasonably conclude that USAA has carried that burden in this record. There must be more to fact-finding than making a guess.

There are several causes of this controversy, but foremost among them is the fact that USAA has adopted a business practice that does not conform to South Carolina law. USAA has openly admitted that it routinely allows the named insured's spouse to conduct business on the named insured's insurance policy. (Brief of Respondent, p.10 n.4). This openly defies this Court's decision in *Allstate v. Estate of Hancock* and the Fourth Circuit's decision in *Nationwide v. Powell*.[1] Rather than affirm, the Court should tell USAA to follow the law.

USAA had never dealt with Rene Stiltner before the transaction in question, and it does not appear that USAA would ever deal with her again. There is no apparent agency or reasonable reliance here. The law of this State generally requires that an insurance company insist on dealing with the named insured, and the law also requires an insurance company to add UM and UIM to an insurance policy *unless* the company receives a signed rejection from the named insured within 30 days of the company making a meaningful offer. See S.C. Code Ann. § 38-77-350(E). USAA does not conduct business this way. That is why this case exists, and that is why this same sort of situation will probably happen again.

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[1] *Allstate Ins. Co. v. Estate of Hancock*, 345 S.C. 81, 545 S.E.2d 845 (Ct. App. 2001) and *Nationwide Mut. Ins. Co. v. Powell*, 292 F.3d 201 (4th Cir. 2002) (applying South Carolina law).

It is respectfully submitted that the Court may have overlooked or misapprehended these points, along with the other points the Stiltners raised in their briefing, in the course of making its decision. The Stiltners therefore respectfully request that the Court withdraw its previous decision and issue a decision that reverses the circuit court and reforms Doug Stiltner's insurance policy.

Respectfully submitted,

March 12, 2014

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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondent with a copy of the *Petition for Rehearing* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

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March 12, 2014

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March 12, 2014

VIA HAND DELIVERY
The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Stiltner v. USAA Casualty Insurance Co.
Case Tracking No: 2012-212493

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of the *Petition for Rehearing* in regards to this case. I have also enclosed a proof of service of this document upon counsel for Respondent and a check in the amount of $25.00 for filing this motion. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you need any additional information, please to not hesitate to contact me.

Sincerely,

Erin Bridges
Paralegal to Blake A. Hewitt
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

/emb
Enclosures
cc: J.R. Murphy, Esquire
Bryan D. Ramey, Esquire

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