THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

D. Craig Brown, Presiding Judge, Fourteenth Judicial Circuit

Case No. 2013-002578/12-CP-07-1352

Bruce R. Hoffman, Appellant

v.

Seneca Specialty Insurance Company, Respondent

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE CASE

Plaintiff Bruce R. Hoffman (hereafter Plaintiff), a citizen and resident of Beaufort County, South Carolina, owns, and at all relevant times owned, a commercial office building at 574 Sea Island Parkway, Saint Helena Island, South Carolina. Defendant Seneca Specialty Insurance Company (hereafter Defendant), a New York (Wall Street) insurance company, is licensed, and at all relevant times was licensed, to conduct insurance business in South Carolina. Pursuant to this license, Defendant sold Plaintiff a commercial insurance policy on the aforementioned building effective from 6/12/11, through 6/12/12. Plaintiff paid all insurance premiums due for said policy, and in exchange thereof, Defendant agreed to cover losses to the building ( ).

During the winter of 2011/2012, Plaintiff's office building sustained substantial damage to the roof, attic, heating/cooling air ducts and system, as well as work spaces, proximately caused by raccoons, a North American wild animal, descended from bears, or by other cause that Plaintiff contends in this suit should have been covered and repaired ( ).

Plaintiff made a claim for this damage to Defendant on or about February 3, 2012. On or about February 8, 2012, Defendant sent an adjuster from Capstone ISG to investigate, evaluate, report and adjust said claim for Defendant. This adjuster confirmed for Plaintiff that the proximate cause of the damage to his office building was raccoons, and gave the impression to Plaintiff that the damage would be covered by the insurance policy and quickly repaired, even asking Plaintiff if there was somewhere he could relocate to while the repairs were taking place ( ).

But then to Plaintiff's great surprise, given the above representations, Defendant denied Plaintiff's claim by letter dated March 15, 2012 ( ). This letter, while also acknowledging that raccoons had proximately caused all the damage that was the subject of the claim, based it's denial on an exclusion in the policy that provides:

"We will not pay for loss or damage caused by or resulting from any of the following ...

Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals." ( )

In response to this denial of coverage, this lawsuit was filed on April 3, 2012 ( ). On October 2, 2013, the Honorable D. Craig Brown, Presiding Judge, 14th Judicial Circuit, heard Plaintiff's Motion for Summary Judgment, and Defendant's Motion for Summary Judgment, despite Plaintiff's objection that he had no jurisdiction to proceed due to a pending appeal involving another party to the case, and refusing Plaintiff's motion made in open court to file a supplement to his Complaint ( ).

On November 12, 2013, Plaintiff received notice that Judge Brown had signed, on October 24, 2013, proposed orders submitted by Defendant denying Plaintiff's Motion for Summary Judgment and granting Defendant's Motion for Summary Judgment, without Plaintiff having been offered an opportunity by the Judge to comment on or object to either of Defendant's proposed orders before they were signed ( ). Judge Brown made no changes whatsoever to the two proposed orders Defendant submitted, "rubber stamping" both of them exactly as Defendant had written them. This appeal of both orders followed on November 27, 2013 ( ).

STATEMENT OF ISSUES ON APPEAL

1. Did Judge Brown err in granting Defendant's Motion for Summary Judgment?
2. Did Judge Brown err in denying Plaintiff's Motion for Summary Judgment?
3. Did Judge Brown err in hearing and ruling on the Summary Judgment motions when there was a pending appeal involving another party to the case?
4. Did Judge Brown err in refusing to allow Plaintiff to file a supplement to his Complaint per motion made in open court on October 2, 2013?
5. Did Judge Brown err and/or deny Plaintiff due process by failing to offer Plaintiff an opportunity to comment on or object to either of Defendant's proposed orders before they were signed, and by making no changes whatsoever ("rubber stamping") to the two

proposed orders that Defendant had submitted?

6. Did Judge Brown err in deeming admitted Defendant's requests to admit in his October 24, 2013 Order though Plaintiff had timely responded in writing to all the requests.

ARGUMENT

OTHER ANIMALS IN POLICY IS NOT ALL ANIMALS OR ALL OTHER ANIMALS. INSTEAD IS OTHER ANIMALS LIKE THOSE SPECIFICALLY LISTED AND RACCOONS ARE NOT VERMIN LIKE THE OTHER ANIMALS SPECIFICALLY LISTED. SUBSTANTIAL BURDEN ON INSURANCE COMPANY TO PROVE EXCLUSION, HERE EXCLUSION IS AMBIGUOUS AS TO RACCOON DAMAGE, SO RACCOON DAMAGE NOT EXCLUDED, IS COVERED

Obviously, the phrase "or other animals" in the exclusion at issue (this exclusion being the only defense Defendant has raised against coverage in two years of litigation) is vague and ambiguous. It does not say "all other animals", or "all animals" (it could and should have said "all", if that's what they meant, but it doesn't, and they had the obligation to be clear one way or the other). It merely says "or other animals." What "other animals" are we talking about?

In Hansen ex rel. Hansen v. United Services Auto Ass'n, 565 SE2d 114 (2002) it was held that, "a contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business." Further, a contract is ambiguous when it may fairly and reasonably be understood in more ways than one. *Id.* at 117. 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. *Id.* As noted in Black's Law Dictionary 5th, "following an enumeration of particular classes, "other" must be read as "other

such like," and includes ONLY others of like kind and character." The enumerated class in the exclusion at issue here was "insects, birds and rodents,"

and raccoons are objectively not of like kind and character as insects, birds and rodents, so raccoon damage is not excluded by that exclusion, and thus is covered.

ONLY with the application of the ejusdem generis rule, and the record contains the relevant pages from Couch on Insurance ( ) discussing this rule of nationwide insurance policy application, does this objectively ambiguous exclusion become clear, the specific controls the general, "Other animals," like insects, birds and rodents, and raccoons are certainly NOT of that same kind as those specifically enumerated in the exclusion.

Again, it is the ejusdem generis rule that cures what would otherwise be an ambiguity (what other animals?) in the exclusion at issue here. The ***ejusdem generis*** (or *eiusdem generis*, Latin for "of the same kind") rule applies to resolve the problem of giving meaning to groups of words where one of the words is ambiguous or inherently unclear. The rule results that where "general words follow enumerations of particular classes or persons or things, the general words shall be construed as applicable only to persons or things of the same general nature or kind as those enumerated." 49 F Supp 846, 859 *Ejusdem generis* ("of the same kinds, class, or nature"). When a list of two or more specific descriptors is followed by more general descriptors, the otherwise wide meaning of the general descriptors must be restricted to the same class, if any, of the specific words that precede them. For example, where "cars, motor bikes, motor powered vehicles" are mentioned, the word "vehicles" would be interpreted in a limited sense (therefore vehicles cannot be interpreted as including airplanes). Likewise in this case, with insects, birds, rodents and other animals, the ejusdem generis rule requires that other animals in such a clause be limited to those animals like insects, birds and rodents, and objectively raccoons are not in that category.

There are myriad writings, on the Internet and otherwise, demonstrating that the phrase "other

animals", as in the policy at issue here, is commonly considered, by the average person, to mean "and the like", in other words, "other animals" like the "insects, birds, rodents" specifically listed just before the phrase "other animals" in the exclusion. It does not mean "all other animals", if that was the intention (and the policy is supposed to be construed against the insurance company, not against the insured), it would have said "all other animals." As raccoons are not specifically listed, and are not an animal like insects, birds and rodents, then either damage from raccoons is not excluded, or it is ambiguous whether damage from raccoons is excluded or not – either way the damage in this case, which the insurance company and their adjuster say was caused by raccoons, is covered.

For just one example, attached to a pleading in the record and incorporated herein by reference ( ) is an article from the Boston College Environmental Affairs Law Review, Volume 14, Issue 4, Article 3, which, referencing primarily Couch on Insurance, states in pertinent part: "Where a contract's terms are ambiguous, courts favor a reasonable construction that supports coverage. When a court construes ambiguities in favor of coverage it prevents frustration of the basic purpose for purchasing insurance: the indemnification of losses. Provisions in a contract are ambiguous if particular words are reasonably susceptible to more than one interpretation. Courts require those phrases that create exceptions to the basic coverage provisions – "exclusions" – to clearly exclude coverage in order to prevent the elimination of more coverage than intended by the insured. Courts will not honor the insurer's intention to limit coverage of certain risks if this intention is ambiguously expressed. Instead, courts look for both parties' objectively-manifested intent, as implied by the words of the contract. One principle of contract interpretation that courts will use to imply the parties' intent is that of *ejusdem generis (latin for "of the same kind")*. This principle allows a court to infer that specific words restrict the meaning of general terms when the specific terms precede the general terms in a particular phrase. Thus, in a phrase

"cattle, hogs and other animals," "animals" may not refer to much more than farm animals, because the specific animals mentioned before the general word are hogs and cattle.

In this regard, *Ejusdem generis* is only one aspect of a broader doctrine holding that general phrases may be restricted in meaning by being grouped with specific terms regardless of the ordering. Thus, as in the above example, the term "animals" in the phrase "animals, cattle and hogs" may be limited to farm animals under this broader doctrine [with "other animals" in the policy at issue having to be limited the same way]. In applying construction doctrines, courts look to the ordinary meanings of the words used in a phrase to discern the intent of the parties. Closely related to a court's attempt to find the objective intent of the parties is the court's attempt to discern the reasonable expectations of the insured as to coverage. Since the insurer drafts and controls the wording of the insurance policy, the expectations of a reasonably prudent person buying the insurance is given more weight than the expectations of the insurer. The known character of the insured's business [in a rural office as here] affects the assumed expectations of both parties to the contract. **When a risk is one that a prudent person in the position of the insured would reasonably expect to be covered, an exclusion clause must clearly bar coverage to be effective.** Insurers have the burden of establishing that an exclusion clause clearly denies coverage (it is hornbook law that issue of coverage and policy generally must be strictly construed in favor of insured and against insurer who wrote the policy, a point the lower Court seems to have missed).

In this regard, again, the exclusion in the policy for damage from nesting, infestation or release of waste products by *insects, birds, rodents or other animals*, does not apply here. The ejusdem generis doctrine (as discussed in Couch on Insurance, Latin for "of the same kind") holds that in interpreting an exclusion in an insurance policy, the specific controls the general, i.e. the other animals here would not be all animals, but instead other animals like insects, birds or rodents, and objectively, the raccoons that caused the damage at issue here are not animals like insects,

birds or rodents. They den, not nest. They are North American wild animals (furbearing and protected in South Carolina) descended from bears. They have been held to not be vermin. They growled at Plaintiff as noted in the Complaint, which vermin are not known to do.

Under these circumstances, the burden to prove raccoon damage is excluded is on the insurer, not on the Plaintiff, and objectively here, their use of "other animals" is ambiguous on its face, and coverage and repair thus must occur. Jones v. Equicredit Corp., 347 S.C. 535, 556 S.E.2d 713 states that "when there is no South Carolina case directly on point, our court may look to other jurisdictions for persuasive authority." In this regard, see, e.g., Umanoff v. Nationwide Mut. Fire Ins. Co., 442 N.Y.S.2d 892 (N.Y. Civ. Ct. 1981) where it was held that raccoons are not vermin and, as not named specifically as excluded in the policy, there was coverage for raccoon damage under a policy that excluded vermin damage. Also, in Marks v. Trinity Universal Ins. Co., 531 So.2d 516, 517 (La. Ct. App. 1988), the court concluded a similar exclusion in a policy was ambiguous, in a case involving a squirrel. In this regard it is generally accepted that raccoons, as a member of the bear family, fall outside any vermin-like exclusion in a policy, vermin coming from the Latin *vermis*, which means "worm", i.e. insect-like animals. The only actual defense that Defendant has raised in two years of time consuming, expensive litigation is this exclusion, and I have proven why this exclusion does not apply, so summary judgment should have been entered for Plaintiff.

But if somehow there is not coverage for raccoon damage despite the foregoing, then I was sold an inappropriate policy by Defendant's agents, and induced not to cancel same, and a triable issue existed whether the repairs should have been paid for by the insurance company on this basis also ( ). The supplement to complaint which Plaintiff moved to file, but the Court would not let Plaintiff file, on October 2, 2013, though no one would have been prejudiced thereby, elaborated on this claim and other claims that raised triable issues, but Judge Brown refused to

consider it, and wrongfully so ( ).

Further, in discovery Seneca produced pages from the Property Loss Research Bureau (PRLB), obviously a resource they rely on in making coverage determinations. Included was the attached definition of "rodents" which notes that **"Animals frequently mistaken for rodents are opossums, moles and hedgehogs, and raccoons and skunks.** ( ) By having produced this page in discovery, Seneca admitted that raccoons are not rodents, and they are certainly not birds nor insects, so the lower Court could not possibly find that the exclusion included raccoons, and barring that, it should have been found to be ambiguous.

Also received in discovery was the attached page from the report of Robert Dodd, adjuster for Seneca, noting in "recommendations" that **"Per the instructions received from your office on 2/12/12, raccoons are considered rodents and are excluded from coverage. As such, we recommend denial of this claim and closing the file without payment."** ( ) Besides Mr. Dodd clearly not being the independent adjuster he claimed to be 1) that Seneca was pondering whether raccoons are rodents, shows that even they know the policy exclusion at issue does not exclude all other animals, but only other animals like rodents, of that same kind; and 2) if they were telling Dodd to say that raccoons are rodents, when raccoons, which are wild animals descended from bears that den and do not nest, are objectively not rodents, and their own PLRB research material says raccoons are not rodents (and certainly not birds nor insects), then they are trying to apply an exclusion that they know did not apply here, to limit coverage when there should clearly have been coverage. This was a clear bad faith denial of a claim, or at least a triable issue that would not allow for the granting of Defendant's all or nothing summary judgment motion. If their own PLRB research said raccoons are not rodents, but they are telling the adjuster to say raccoons are rodents to deny coverage, this was clearly evidence of a bad faith denial of a claim, but Judge Brown ignored this.

Either the exclusion is ambiguous or raccoons are not part of the exclusion, but either way, there

is coverage here for the losses claimed, and the Court must so order (as well as compel the repair of the office building, roof, heating and air ducts, cleanup, etc). In determining whether any triable issues of fact exist on a Motion for Summary Judgment (not who will prevail, but just whether a single disputed material fact exists), the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. All ambiguities, conclusions and inferences arising in and from the evidence must be considered in a light most favorable to the non-moving party. Tom Jenkins Realty v. Hilton, 300 SE2d 594 (1983). Additionally, even if the Court did find the exclusion applied here with raccoon damage (though the words raccoon or raccoons appear nowhere in any exclusion, or in the policy otherwise), there was an exception to the exclusion in the policy itself for ensuing damage, and there would be liability under the insurance contract for such ensuing damage, or at least a triable issue as to the scope of same (called resulting loss in commercial policies, like to the HVAC system here. Even the Order granting Defendant summary judgment being appealed here, references the relevant provision in the insurance policy that would allow coverage even with an exclusion, "But if an excluded cause of loss that is listed in 3.a through 3.c results in a Covered Cause of Loss, we will pay for the loss or damage caused by the Covered Cause of Loss," an argument Plaintiff made both in his papers ( ) and at the hearing ( ). So if Judge Brown had actually read the proposed order he signed, there was no way summary judgment could be granted based on the exclusion alone, as even if the exclusion did apply, there may have been resulting loss that was covered, and Plaintiff was contractually entitled to the opportunity to prove what resulting loss should be covered (a fact question for trial).

And even if the Court did find that raccoon damage was excluded under this policy, an impossibility given the foregoing, also another page produced by Defendant Seneca from their PLRB manual, says that the exclusion could be subject to an ENSUING LOSS EXCEPTION,

that "Recovery has been allowed for losses that resulted from damage caused by creatures which are subject to similar exclusions and resulting loss provisions." The resource notes that ensuing loss is called resulting loss in commercial policies, and that as any ensuing or resulting loss not excluded is covered, all ensuing losses here, e.g. all the damage to the HVAC system, etc. would be covered ( ). The point was and remains that even if the lower Court somehow found that the exclusion did apply here (that raccoons are animals like insects, birds and rodents), then the exception to the exclusion for ensuing losses would apply, and these ensuing losses would be covered. So any way you look at it, the all or nothing summary judgment motion of Seneca had to be denied.

If somehow this Court finds that the exclusion above does apply here, and none of the resulting losses are covered either, again, an impossibility given the foregoing, then Plaintiff was sold a completely inappropriate policy given the known location of this particular office building on Saint Helena Island, in very close proximity to and surrounded by heavily wooded areas with lots of animals, including raccoons, and Defendant must be held responsible therefore for the malfeasance of their agents, who only cared about getting and keeping their commissions. This evidence to support the unfair trade practice and other causes of action, including causes that Judge Brown would not permit when he would not allow the supplement to complaint to be filed, was another reason a summary judgment for Defendant was in error. See Rickborn v. Liberty Life Insurance Company, 468 SE2d 292 (1996).

At the very least, as Plaintiff also argued, Defendant has been unjustly enriched by lying and acting in bad faith (directly or through agents), and by not having been ordered to return the premium Plaintiff paid, which money Plaintiff could use towards repairing his office, which still has no central heat in the winter and no central air conditioning in the summer. Whether Defendant has been unjustly enriched is another triable issue that made summary judgment for Defendant in this case impossible.

As the Defendant, directly and through their agents, lied to Plaintiff repeatedly, Defendant is additionally liable to Plaintiff for bad faith, unfair trade practices or otherwise, or at least there were triable issues in this regard, *on a case that Defendant could have just fixed the building for no doubt a fraction of what they have spent litigating* ( ). For example, as to the insurance agent Aydlette, they undertook a duty to give good advice when Plaintiff asked them if he should switch from the Seneca policy to the Harleysville policy he now has, and breached this duty, by giving bad advice (not to switch to a policy that provided more coverage for less cost), and by failing to disclose that they did not do business with Harleysville and would thus lose their commission if Plaintiff did switch, so they were self-interested in convincing Plaintiff not to switch. Whether or not the Harleysville policy contains the same exclusion noted above is irrelevant, as, again, objectively that exclusion does not apply here, and/or Aydlette cannot say how Harleysville would have handled the same claim ( ). Similar malfeasance on the part of underwriter CRC (e.g. retaliatory notice of non-renewal) and adjuster Capstone (e.g. lying in their report that raccoons are rodents because Seneca told them to, and falsely representing to Plaintiff that the office would be fixed and Plaintiff should make plans to relocate), Defendant Seneca's agents, likewise should have been attributed to Defendant Seneca, and mandated a trial ( ).

BOTH OCTOBER 24, 2013 ORDERS ARE VOID FOR LACK OF JURISDICTION

The lower Court had no jurisdiction to proceed with any hearings in this case on October 2, 2013, including the hearing on summary judgment motions, with the summary judgment previously granted to Defendant underwriter CRC, ***by a Judge who later recused herself for bias in the case*** ( ), then on appeal (Appellate Case No. 2013-001068). ( ) The instant lawsuit sought to have all Defendants held liable for breach of an insurance contract and otherwise (it was alleged that all Defendants did the same wrongful things, and did the same wrongful things

together). ( ) That pending appeal, later withdrawn due to lack of time and resources, to focus on this appeal, was of a summary judgment granted to Defendant CRC by a Judge that later recused herself, that they are not liable for breach of this insurance contract and otherwise, the same exact issues that are raised on this appeal and on the motions that Judge Brown heard. With a pending appeal, the lower court only has jurisdiction over matters completely unaffected by the appeal, and that was not the case with these motions that Judge Brown heard on October 2, 2013. Rule 205(a) SCACR, Andrick Dev. Corp. v Maccaro, 311 SE2d 95 (1984), Jackson v. Speed, 486 SE2d 750 (1997).

With the risk of acting without jurisdiction to do so, and the inconsistent decisions and multiplicity of litigation that could result, respectfully, the lower Court should have found the case totally stayed by that pending appeal, and should not have proceeded with any hearings in the case, until that appeal was decided, including the October 2, 2013 hearing on the summary judgment motions. The Order Judge Brown rubber stamped references Metts v. Mims, 682 SE2d 813 (2009) and SCACR, Rule 205 as justification for the October 2, 2013 hearing proceeding despite that pending appeal, but the Metts decision is completely inapplicable – there the Court could hear a summary judgment motion while a discovery order was on appeal, here with one summary judgment ruling involving a related party (underwriter) and the same issues on appeal (insurance contract), Judge Brown proceeded to hear another summary judgment motion likewise involving the same insurance contract, and the insurance company with whom the underwriter worked. A decision on the pending appeal would have affected all parties to the case, and all issues in the case. Judge Brown had no jurisdiction to hear the motions he heard on October 2, 2013, and rule on them, and without jurisdiction, the orders he subsequently issued, which are the subject of this appeal, were and are void. McDaniel v. U.S. Fid. & Guar. Co., 478 SE2d 868 (1996).

THE "RUBBER STAMP" ORDERS OF OCTOBER 24, 2013 ARE VOID FOR LACK OF DUE PROCESS

At the conclusion of the hearing on October 2, 2013, Judge Brown asked Defendant to submit proposed orders denying Plaintiff's Motion for Summary Judgment and granting Defendant's Motion for Summary Judgment. Judge Brown did not offer Plaintiff an opportunity to comment on or object to either of Defendant's proposed orders before they were signed ( ). Further, Judge Brown made no changes whatsoever to the two proposed orders Defendant submitted, effectively "rubber stamping" both of them exactly as Defendant had written them ( ).

While to date Plaintiff has found no South Carolina cases on point, Florida, for one example, has repeatedly found there to be due process problems where proposed orders are signed with the Judge inviting neither comments on nor objections to the proposed orders before they are signed, and also with orders being "rubber stamped," signed by the Judge exactly as the submitting party has prepared them (when there is no South Carolina case on point, decisions in other jurisdictions may be relied upon, Jones v. Equicredit Corp., supra).

For example, in Huff v State, 622 So.2d 982 (1993) and Rose v State, 601 So.2d 1181 (1992) the Florida Appellate Court rejected a proposed order signed where no opportunity to comment on or file objections to the proposed Order had been given. As Judge Brown did not allow comments on, or objections to, Defendant's proposed orders before he signed them, Plaintiff had no notice and opportunity to be heard regarding these orders. Further, as noted in Valle v. State, 22 Fla. L. Weekly 751 (1997) another Florida Appellate Court decision, by Judge Brown signing without reading Defendant's proposed orders exactly as Defendant wrote them, "rubber stamping" them, it is obvious he had little concern for Plaintiff, Plaintiff's case, or any of the arguments Plaintiff made at the hearing (that he had no jurisdiction to conduct in the first place). *While Plaintiff understands that Judges are busy, in rubber stamping exactly what Defendant submitted to him, he did not give the matter the meaningful attention or consideration that his oath of office and*

due process requires, and the Orders are void as a result. SC Dept of Soc. Servs. v. Holden, 459 SE2d 846 (1995).

REQUESTS TO ADMIT THAT WERE TIMELY RESPONDED TO COULD NOT BE DEEMED ADMITTED

Even though, without dispute, a timely written answer to the requests to admit, signed "Bruce R. Hoffman", on law office letterhead, was submitted on May 16, 2013, all that is required by SCRCP, Rule 36, Judge Brown inexplicably signed an Order (inviting no comment, nor objection, beforehand) deeming all the requests admitted, without any sort of written motion regarding the request for admissions having ever been served ( ). As Defendant admitted below, a timely written answer to the requests to admit, signed "Bruce R. Hoffman," on law office letterhead, was served, advising that all the requests for admission were denied ( ). Whether Bruce R. Hoffman himself signed it "Bruce R. Hoffman," or it was signed "Bruce R. Hoffman" at his direction because he was out of town that day and had court ordered protection that day, is irrelevant, a non-issue which Defendant has seized upon to cloud the simple fact that a response was made ( ). Either way it contained the signed name of the party or his attorney, and was timely transmitted by same ( ). If Defendant did not consider the response sufficient, it had a remedy, a noticed motion to compel further responses, but not to have the requests deemed admitted without even a written motion being served to that effect to give Plaintiff notice. And that Judge Brown rubber stamped an Order allowing this to occur shows either that he did not even bother reading the proposed Order Defendant submitted to him, or just did not care despite the harshness of the remedy he was providing Defendant. See e.g., Collins Entertainment, Inc. v White , 611 SE2d 262 (2005). Either way, due process required notice and an opportunity to be heard on the issue, such was not given - the Order that the requests be deemed admitted, though they were timely and properly responded to in writing, is therefore void. Even if it had been legitimate to deem the requests admitted (without at the bare minimum allowing for a further

response, or relief from the deemed admissions, because an attempt to respond in writing had obviously been made and Defendant would not be prejudiced thereby), all that is basically admitted is that a raccoon is an animal, but that still does not mean a raccoon is an animal described in the exclusion, which is not for all the reasons stated above, so any such admissions, if any, certainly did not justify summary judgment for Defendant in the case.

CONCLUSION

For all the foregoing reasons, the summary judgment entered in favor of Defendant Seneca must be reversed, summary judgment in favor of Plaintiff entered instead, or such other and further relief provided as this Honorable Court deems just and proper.

Respectfully submitted,

Dated: April 30, 2014

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