

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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JUN 02 2014

**SC Court of Appeals**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-0013816577

Centennial Casualty Co., Inc. ....Respondent

v.

Western Surety Co., d/b/a CNA Surety .....Appellant

Western Surety Co., d/b/a CNA Surety .....Defendant/Third-Party Plaintiff

v.

Charleston Auto Auction, A3 Auto Center, LLC,  
and Wylie Mickle.....Third-Party Defendants

**PETITION FOR REHEARING  
BY RESPONDENT CENTENNIAL CASUALTY CO.**

Respondent Centennial Casualty Co., Inc., as subrogee to Charleston Auto Auction (CAA), hereby petitions this Court for rehearing, pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules, of its order filed May 21, 2014 (the "Order"). That Order reversed the order of the Circuit Court, which had found, *inter alia*, that CAA and Centennial were legal representatives of the Sellers. Respondent's

petition seeks rehearing and reconsideration of the Court's Order on the basis that the Order rests on an overly narrow, incorrect reading of the relevant statute, the associated case law, and the underlying evidence on which the Circuit Court based its ruling.

### FACTUAL AND PROCEDURAL BACKGROUND

This action involves a claim on a bond issued pursuant to the licensing statute for motor vehicle dealers, S.C. Code § 56-13-320 (the "Dealer Bond Statute"). The Circuit Court entered an order in favor of Respondent on March 4, 2013, holding that Respondent, as subrogee for CAA, was a "legal representative" under § 56-13-320. Appellant appealed. On May 21, 2014, this Court reversed the Circuit Court order, and held that Respondent, and CAA, did not qualify as a "legal representative" under the Dealer Bond Statute.

### ARGUMENT

**1. The Order is contrary to the language of the statute.**

The Court's Order is based on its conclusion that CAA and Centennial were not legal representatives of the Sellers. This is contrary to (a) the overwhelming evidence in the record, and (b) the clear language of the Dealer Bond Statute.<sup>1</sup>

The Order is based on the legal standard that the findings of fact of the trial judge will not be disturbed if there is evidence that reasonably supports the judge's findings. Order at p. 3 (citing *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)). Here, the undisputed evidence is that each vehicle's Bill of Sale explicitly made CAA the "legal representative" by stating: "Seller and Buyer each

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<sup>1</sup> Respondent will not repeat all of its arguments and citations set forth in its appeal briefing, but incorporates them by reference.

appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company ....” (R. p. 58 (terms of Purchase Agreement and Bill of Sale (p. 4, para. 2))); (R. pp. 59–62 (title clerk authorizations)). Appellant admits that Respondent is a legal representative. *See* App. Br. at p. 10 (“CAA was merely an agent or legal representative for facilitating the transaction . . . .”). There is no evidence in the record to the contrary. There is, accordingly, ample evidence to support the Circuit Court’s finding that Respondent was a legal representative.

The Circuit Court’s findings also were compelled by the Dealer Bond Statute, which states that an owner’s legal representative may recover under the bond:

An owner **or his legal representative** who suffers the loss or damage has a right of action . . . .

S.C. Code § 56-15-320(B) (emphasis added). The purpose of the bond is to, *inter alia*, indemnify:

for loss or damage suffered by an owner of a motor vehicle, **or his legal representative**, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle . . . .

*Id.* (emphasis added). The South Carolina Supreme Court has stated:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, **or the owner’s legal representative**, with a cause of action against the surety on a bond issued pursuant to that statute.

*Mid-State Auto Auction v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (emphasis added). Given the strong evidence establishing that Respondent is the legal representative, and the clear law holding that legal representatives are covered by the statute, it was error for the Order to rule otherwise.

**2. The Order improperly limits the statute.**

As stated above, Appellant admits that Respondent is a legal representative. *See* App. Br. at p. 10. The Order states that, even so, “unlike an executor or conservator, CAA acted only as a processor and did not stand in the shoes of the Sellers.” Order at p. 5. The Order appears to separate out some types of legal representatives from the Dealer Bond Statute, those that do not “stand in the shoes” of others. The Order does not define legal representative, and cites no law supporting its conclusion that a legal representative must “stand in the shoes” of another to be covered under the Dealer Bond Statute.

The Dealer Bond Statute makes no such distinction regarding “standing in the shoes” of another. Instead, it broadly covers “legal representative[s]” – a bright-line rule. Where a statute’s language is plain and unambiguous, a court may not impose another meaning. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *see also Anderson v. S. Carolina Election Comm'n*, 397 S.C. 551, 556-57, 725 S.E.2d 704, 707 (2012). There is no need to interpret, or authorization to limit, the statute’s coverage of “legal representatives” to certain types who “stand in the shoes” of others. Had the Legislature intended such a distinction, it would have defined “legal representative” to include some types, and exclude others. Accordingly, the Order improperly limits the statute.

3. **The Order misconstrues the application of S.C. Code § 56-15-520 to these issues.**

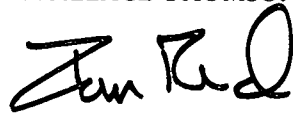
The Order states that S.C. Code § 56-15-520 does not convert an auto auction into an owner, seller, transferor, or assignor of the title of vehicles, and concludes that CAA's inclusion of the term "legal representative" in the purchase agreements did not give CAA the same rights as the Sellers. Order at p. 6. The Dealer Bond Statute, however, does not confine the right of recovery to owners (or sellers). The statute states that a motor vehicle owner, "or his legal representative", may recover under the bond. The Supreme Court has stated that a "legal representative" of an owner may recover under the bond. *Mid-State Auto Auction v. Altman*, 324 S.C. at 69, 476 S.E.2d at 692. Accordingly, even if the auction is not the owner, seller, transferor, or assignor under § 56-15-520, and even if the auction does not have the same rights as a seller § 56-15-520, the Dealer Bond Statute still provides a right to recovery to a legal representative of the owner.

**CONCLUSION**

For these reasons, Respondent requests that this Court grant its petition for rehearing and reconsideration of the issues presented in the instant appeal.

Respectfully submitted,

FORD WALLACE THOMSON LLC

A handwritten signature in black ink, appearing to read "Ian S. Ford", written in a cursive style.

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Ian S. Ford

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*Attorney for Respondent*

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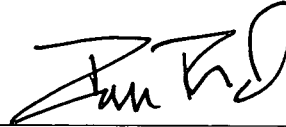
**PROOF OF SERVICE**

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I, Ian S. Ford, attorney for Respondent Centennial Casualty Co., Inc. do hereby certify that I have on this 30<sup>th</sup> day of May, 2014, served all counsel of record with copies of Petition for Rehearing by Respondent Centennial Casualty Co. and Proof of Service by mailing copies by United States Mail, first class postage pre-paid, to counsel at the following address:

APPELLANT'S COUNSEL OF RECORD:

S. Markey Stubbs, Esq.  
Baker, Ravenel & Bender, L.L.P.  
P.O. Box 8057  
Columbia, SC 29202

A handwritten signature in black ink, appearing to read "Ian S. Ford", written over a horizontal line.

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# FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

May 30, 2014

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

Re: *Centennial Casualty Co., Inc. vs. Western Surety Co., d/b/a/ CAN Surety vs. Charleston Auto Auction, A3 Auto Center, LLC and Wylie Mickle*  
Appellate Case No.: 2013-0013816577  
FWT File No.: 0066

Dear Ms. Kitchings:

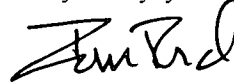
Please find enclosed for filing an original and six copies of Respondent's Petition For Rehearing By Respondent Centennial Casualty Co. and Proof of Service. If you would, please file and return the stamped copy to us in the self-addressed stamped envelope provided for your convenience.

By copy hereof, I am serving all counsel of record with the same.

Thank you in advance for your assistance with this matter.

With kind regards, I am,

Very truly yours,



Ian S. Ford

ISF/smb  
Enclosures: as stated

cc: S. Markey Stubbs, Esq.

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