THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

The Honorable Paul M. Burch, Circuit Court Judge

Case No. 2013-001321

Auto-Owners Insurance Company,.....Appellant,

v.

Elouise Woody Benjamin, Melvin Benjamin, Joshua Lee Cail, Naida L. Singleton and Pee Dee Heating and Cooling Specialists, Inc., Defendants,

Of Whom Elouise Woody Benjamin and Melvin Benjamin are the Respondents.

APPELLANT'S FINAL REPLY BRIEF

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ARGUMENT IN REPLY

I. The CGL Policy Plus Endorsement is not illusory and has a specific purpose.

Respondents incorrectly argue that the CGL Policy Plus Endorsement ("the Endorsement") found in Pee Dee's CGL Policy is "illusory" and that it "could never apply." Respondents' Amended Initial Brief, p. 4. In fact, the insurance protections put in place by the policies Pee Dee purchased serve a very specific function in controlling a commercial entity's risk. The situation presented by the facts of this case are in keeping with the express purpose of the Endorsement as it relates to the Auto Policy.

In answering Respondents' argument, it is critical to note that the Auto Policy insures Pee Dee for auto liability for occurrences involving specifically listed drivers or specifically listed autos. In this case, as noted in Respondents' Amended Initial Brief, the Toyota Tacoma was a listed car under the Auto Policy. This fact triggered the Auto Policy and all of the bargained-for protections it provides, including $300,000 of liability coverage. This is the only coverage applicable to the accident at issue in this case. The Endorsement is neither supplemental nor excess coverage to the Auto Policy. Instead, it provides coverage to Pee Dee for a different set of facts.

Consider that Company A has an Auto Policy specifically covering Automobile X and Automobile Y. Company A has also purchased a CGL Policy with Endorsement identical to the one at issue in this case. Automobiles X and Y are typically used in the ordinary course of Company A's business. At lunch one day, Company A calls Employee and asks her to stop at the office supply store to pick up various office supplies on her way back. Employee drove her car, Automobile Z, to lunch, a vehicle not insured under the Auto Policy. Employee crashes into another car when leaving the office supply store. At this point, Company A's Auto Policy

has not been triggered because the occurrence did not include a listed driver or a listed vehicle under the Auto Policy. In this situation, Company A does not have "the same or similar coverage" available to it for this loss. The CGL Plus Endorsement is now triggered and steps behind the Employee's own auto insurance to protect Company A in the event of a claim involving Company A that is not covered by its Auto Policy, but still exposes it to liability.

Additionally, Company A may be a business that does not have drivers (such as an accounting office, for example). As such, Company A has no Auto Policy, but only the CGL Policy Plus Endorsement. In the same accident hypothetical, the Endorsement would provide coverage if Company A is named in a lawsuit resulting from Employee's negligence.

As shown by the above hypotheticals, there are very specific risks being controlled by the Endorsement. These policies are not designed to overlap. The Endorsement is not intended to function as a mirror image of an Auto Policy or as an addition to the Auto Policy that can be tacked on to the $300,000 of coverage. If such were the intent, the parties could have agreed to an Auto Policy with $1.3 Million in coverage. Instead, the Endorsement exists to provide a bonus risk protection to Pee Dee in the event that an auto loss arises that is not covered by the Auto Policy.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

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April 29, 2014

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.

May 5, 2014

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PROOF OF SERVICE

I certify that I have served the Final Brief of Appellant and Final Reply Brief of Appellant on counsel for Respondents, by depositing a copy of it in the United States Mail, postage prepaid, on the 30th day of April, 2014 addressed to their attorney of record,

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April 30, 2014

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