



STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE	)	EIGHTH JUDICIAL CIRCUIT
JOHNNY CALHOUN and SALLIE	)	Civil Action No. 2012-CP-01-341
CALHOUN,	)	
	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>MOTION OF DEFENDANTS FIRST</u>
	)	<u>NATIONAL INSURANCE COMPANY</u>
LAURA B. WILLIS, individually, and	)	<u>OF AMERICA AND PEERLESS</u>
as agent for Southern Risk Insurance	)	<u>INSURANCE COMPANY TO QUASH</u>
Services, LLC, First National Insurance	)	<u>SUBPOENA</u>
Company of America, Peerless	)	
Insurance Company, JESSE A.	)	
DANTICE, individually and as	)	
broker/agent for Southern Risk	)	
Insurance Services, LLC, and First	)	
National Insurance Company of	)	
America, Peerless Insurance Company,	)	
SOUTHERN RISK INSURANCE	)	
SERVICES, LLC, FIRST NATIONAL	)	
INSURANCE COMPANY OF	)	
AMERICA, AND PEERLESS	)	
INSURANCE COMPANY,	)	
	)	
	)	
	)	
Defendants.	)	
	)	

Pursuant to Rules 26(c) and 45 of the South Carolina Rules of Civil Procedure, Defendants First National Insurance Company of America (“First National”) and Peerless Insurance Company (“Peerless”) (collectively “the Insurers”), by and through their undersigned attorneys, hereby move to quash the third-party subpoenas sent to the Insurers on or around May 14, 2014 (attached as Exhibits A and B).

As explained below, the grounds for this motion are that this Court no longer has jurisdiction over any claims against the Insurers due to the Insurers’ pending appeal of this Court’s prior motion refusing to compel arbitration, and all proceedings—including

discovery—against the Insurers in this suit are stayed pending the outcome of the aforementioned appeal. Accordingly, this Court should quash the subpoenas.

### **BACKGROUND**

The Insurers have been sued in several lawsuits filed in Abbeville County. In each of the Complaints filed by the Abbeville plaintiffs—including the Calhouns—they allege they were harmed by the tortious acts of Laura B. Willis, an insurance agent operating under the supervision of the Southern Risk Insurance Agency. The Abbeville Plaintiffs further allege that the Insurers had a duty to properly investigate, train, and supervise Willis, that they failed to detect and stop her wrongdoing, and that they engaged in unfair trade practices, civil conspiracy, conversion, fraud, and negligent misrepresentation.

In each pending lawsuit, the Insurers filed motions to compel arbitration of the various Abbeville Plaintiffs' claims against them, explaining that at the time of Willis' alleged wrongdoing, the Insurers' relationship with Willis and Southern Risk was established and governed by an Agency Agreement containing an arbitration agreement. The motions further explained that the Abbeville Plaintiffs' claims against the Insurers were premised on this contract, that in South Carolina and other jurisdictions a defendant may compel arbitration of the claims of a plaintiff who was not a signatory to the arbitration agreement, and that the Federal Arbitration Act requires arbitration of the claims against the Insurers.

This Court denied the motions to compel arbitration, and the Insurers filed motions to alter or amend that order. On April 21, 2014, this court denied the Insurers'

motion to alter or amend the prior order refusing to compel arbitration, and on April 25, 2014, the Insurers filed their notices of appeal with the Court of Appeals.

Only one of the Abbeville Plaintiffs served any discovery requests on the Insurers.<sup>1</sup> Montgomery responded to those requests, objecting to the requests on a variety of grounds including that Montgomery's appeal of the order denying its motion to compel arbitration divested the court of jurisdiction over the claims against it and brought further proceedings—including discovery—to a halt pending resolution of the appeal.

On May 14, 2014, Defendant Southern Risk Insurance Services served subpoenas duces tecum on the Insurers in each of the Abbeville lawsuits, demanding the production of "any and all records regarding" each Abbeville Plaintiff's insurance coverage, including but not limited to their entire insurance file, policies, payment logs, notes messages, invoices, past due correspondence, insurance suspension correspondence and any and all documents regarding that Abbeville Plaintiff. (*See* Ex. A and B.)

### ARGUMENT

This Court should quash Southern Risk's subpoenas because all proceedings against the Insurers, including discovery—compelled or otherwise—is stayed pending resolution of the Insurers' appeal. An order denying a motion to compel arbitration under the FAA is immediately appealable. *See* 9 U.S.C. § 16(a)(1)(C); *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013) (citing *Towles v. United HealthCare Corp.*, 338 S.C. 29, 34-35, 524 S.E.2d 839, 842 (Ct. App. 1999)). The appeal of such an order stays further proceedings in the trial court and divests it of

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<sup>1</sup> In *Spires v. Willis et al.*, No. 2012-CP-01-342. In the suit brought by Southern Risk Insurance Services, LLC against Safeco and others (No. 2013-CP-04-1287), Southern Risk served Requests to Produce and Interrogatories on Safeco. Safeco responded to these with the same objections noted above.

jurisdiction over the suit. *See* Rule 241, SCACR (“As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal.”); Rule 205, SCACR (“Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal.”). The South Carolina Court of Appeals has recognized that an appeal of an order denying arbitration deprived the trial court of further jurisdiction over the suit. *See MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 363, 588 S.E.2d 635 (Ct. App. 2003) (affirming trial court’s ruling that it could not grant an injunction because the pending appeal of an order denying arbitration divested the trial court of jurisdiction).

Discovery proceedings should not continue in the trial court once a notice of appeal of the denial of a motion to compel arbitration has been served and filed. *See, e.g., Levin v. Alms & Assocs.*, 634 F.3d 260-64 (4th Cir. 2011) (holding the appeal of an order denying arbitration automatically divests trial court of jurisdiction and thus halts discovery because “[d]iscovery is a vital part of the litigation process and permitting discovery constitutes permitting the continuation of the litigation, over which the district court lacks jurisdiction”); *Bradford-Scott Data Corp. v. Physician Computer Network*, 128 F.3d 504, 505-06 (7th Cir. 1997) (staying discovery pending appeal of an order denying arbitration, noting that “[c]ontinuation of proceedings in the district court largely defeats the point of the appeal and creates a risk of inconsistent handling of the case by two tribunals” and thus holding that “preparation for trial must be suspended until the court of appeals renders a decision”).

Because the Insurers have appealed the court’s denial of its motion to compel arbitration, the trial court lacks jurisdiction over this matter, and all litigation proceedings

including discovery must be suspended pending resolution of the appeal. Accordingly, this Court should quash the subpoenas and prevent any impermissible discovery pending resolution of the Insurers' appeal.

### CONCLUSION

For the foregoing reasons, First National and Peerless seek an Order Quashing the subpoenas duces tecum dated May 14, 2014 and providing such other and further relief as the Court deems just and proper. This motion is based on the South Carolina of Civil Procedure, the Federal Arbitration Act, applicable federal and state case law, and such other and further authorities and/or arguments as may be advanced in the memorandum in support of this motion and exhibits submitted to the Court prior to the hearing of this matter, and at any hearing.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:  \_\_\_\_\_

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Myrtle Beach, SC 29577-6412  
(843) 448-3500

Attorneys for First National Insurance Company of  
America and Peerless Insurance Company

Columbia, South Carolina

May 29, 2014

# *Exhibit A*

**STATE OF SOUTH CAROLINA**

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF ABBEVILLE

JOHNNY CALHOUN and SALLIE  
CALHOUN,

Plaintiffs,

v.

**SUBPOENA DUCES TECUM  
IN A CIVIL CASE**

LAURA B. WILLIS, individually, and as  
Agent for Southern Risk Insurance Services,  
LLC, First National Insurance Company of  
America, Peerless Insurance Company,  
JESSE A. DANTICE, individually and as  
broker/agent for Southern Risk Services,  
LLC Company, and First National Insurance  
Company of America, Peerless Insurance  
Company, SOUTHERN RISK  
INSURANCE SERVICES, LLC, FIRST  
NATIONAL INSURANCE COMPANY  
OF AMERICA AND PEERLESS  
INSURANCE COMPANY,

Case Number: 2012-CP-01-341

Defendants.

and

LAURA B. WILLIS,

Crossclaimant,

vs.

SOUTHERN RISK INSURANCE  
SERVICES LLC, FIRST NATIONAL  
INSURANCE COMPANY OF  
AMERICA and PEERLESS  
INSURANCE COMPANY,

Defendants.

**TO: First National Insurance Company of America  
Attn: Records Custodian  
175 Berkeley Street  
Boston, MA 02116**

[ ] YOU ARE COMMANDED to appear in the Court of Common Pleas at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

DATE AND TIME

YOU ARE COMMANDED to produce: Any and all records regarding your former insureds, Johnny J. Calhoun and Sallie Calhoun, (Address: 1820 Old Landfield Road, Iva, SC 29655 or 1820 Old Landfill Road, Iva, SC 29655, Policy Number: F2583798 (Auto) OF2207070 (Home), auto and home owners insurance coverage, including but not limited to their entire insurance file, policies, payment logs, notes, messages, invoices, past due correspondence, insurance suspension correspondence and any and all documents regarding the Calhouns.

Grier, Cox & Cranshaw, LLC  
P.O. Box 2823  
Columbia, SC 29202

DATE AND TIME

TO BE DELIVERED BY:  
May 29, 2014 by 5:00 PM

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ANY ORGANIZATION NOT A PARTY TO THIS SUIT THAT IS SUBPOENAED FOR THE TAKING OF A DEPOSITION SHALL DESIGNATE ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND MAY SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH THE PERSON WILL TESTIFY. FEDERAL RULES OF CIVIL PROCEDURE, 30(b)(6).

Issuing Officer's Name, Address and Telephone Number:

James C. Cox, III., Esquire

Danielle F. Payne, Esquire

Grier, Cox & Cranshaw, LLC

2999 Sunset Blvd, Suite 200

West Columbia, South Carolina 29169

(803) 731-0030

or P.O. Box 2823

Columbia, SC 29202

Signature

ATTORNEY FOR DEFENDANT(S)

DATE:

5/14/14

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

# ***Exhibit B***

**STATE OF SOUTH CAROLINA**

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF ABBEVILLE

JOHNNY CALHOUN and SALLIE  
CALHOUN

Plaintiffs,

v.

**SUBPOENA DUCES TECUM  
IN A CIVIL CASE**

LAURA B. WILLIS, individually, and as  
Agent for Southern Risk Insurance Services,  
LLC, First National Insurance Company of  
America, Peerless Insurance Company,  
JESSE A. DANTICE, individually and as  
broker/agent for Southern Risk Services,  
LLC Company, and First National Insurance  
Company of America, Peerless Insurance  
Company, SOUTHERN RISK  
INSURANCE SERVICES, LLC, FIRST  
NATIONAL INSURANCE COMPANY  
OF AMERICA AND PEERLESS  
INSURANCE COMPANY,

Case Number: 2012-CP-01-341

Defendants.

and

LAURA B. WILLIS,

Crossclaimant,

vs.

SOUTHERN RISK INSURANCE  
SERVICES LLC, FIRST NATIONAL  
INSURANCE COMPANY OF  
AMERICA and PEERLESS  
INSURANCE COMPANY,

Defendants.

**TO: Peerless Insurance Company  
Attn: Records Custodian  
62 Maple Avenue  
Keene, NH 03431**

YOU ARE COMMANDED to appear in the Court of Common Pleas at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition

in the above case.

DATE AND TIME

YOU ARE COMMANDED to produce: Any and all records regarding your former insureds, Johnny J. Calhoun and Sallie Calhoun, (Address: 1820 Old Landfield Road, Iva, SC 29655 or 1820 Old Landfill Road, Iva, SC 29655, Policy Number: F2583798 (Auto) OF2207070 (Home), auto and home owners insurance coverage, including but not limited to their entire insurance file, policies, payment logs, notes, messages, invoices, past due correspondence, insurance suspension correspondence and any and all documents regarding the Calhouns.

Grier, Cox & Cranshaw, LLC  
P.O. Box 2823  
Columbia, SC 29202

DATE AND TIME  
TO BE DELIVERED BY:  
May 29, 2014 by 5:00 PM

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

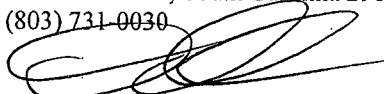
PREMISES

DATE AND TIME

ANY ORGANIZATION NOT A PARTY TO THIS SUIT THAT IS SUBPOENAED FOR THE TAKING OF A DEPOSITION SHALL DESIGNATE ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND MAY SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH THE PERSON WILL TESTIFY. FEDERAL RULES OF CIVIL PROCEDURE, 30(b)(6).

Issuing Officer's Name, Address and Telephone Number:

James C. Cox, III., Esquire  
Danielle F. Payne, Esquire  
Grier, Cox & Cranshaw, LLC  
2999 Sunset Blvd, Suite 200 or P.O. Box 2823  
West Columbia, South Carolina 29169 Columbia, SC 29202  
(803) 731-0030



ATTORNEY FOR DEFENDANT(S)

DATE: 5/14/14

Signature

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for First National Insurance Company of America and Peerless Insurance Company, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Motion of Defendants First National Insurance Company of America and Peerless Insurance Company to Quash Subpoena

Counsel Served:

*Attorneys for Plaintiffs*

Thomas E. Hite, Jr., Esquire  
Hite & Stone  
Post Office Box 805  
Abbeville, SC 29620

*Attorneys for Defendant Laurie Wilson Williams*

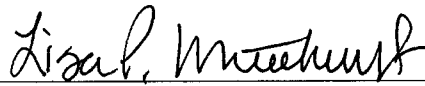
Jane H. Merrill, Esquire  
Hawthorne Merrill Law, LLC  
410 Main Street  
Greenwood, SC 29646

*Attorneys for Defendant Jesse A. Dantice and Southern Risk Insurance Services LLC*

James C. (Trey) Cox III, Esquire  
Grier Cox & Cranshaw LLC  
Post Office Box 2823  
Columbia SC 29202-2823

*Attorneys for Defendant Laura Willis*

William H. Nicholson III, Esquire  
Nicholson & Anderson  
Post Office Box 457  
Greenwood SC 29648



---

Lisa P. Whitehurst  
Administrative Assistant

May 29, 2014

# Nelson Mullins

Nelson Mullins Riley & Scarborough LLP  
Attorneys and Counselors at Law  
1320 Main Street / 17th Floor / Columbia, SC 29201  
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William C. Wood, Jr.  
Tel: 803.255.9534  
bill.wood@nelsonmullins.com

May 29, 2014

The Honorable Emily Yeargin McMahan  
Clerk of Court  
Abbeville County Courthouse  
Post Office Box 99  
Abbeville, SC 29620-0099

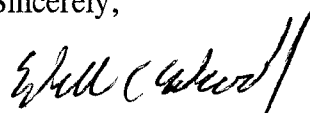
RE: Johnny and Sallie Calhoun v. Laura B. Willis, et al.  
Civil Action No.: 2012-CP-01-341  
Appellate Case No. 2014-000985  
Our File No.: 00350.01686

Dear Ms. McMahan:

Enclosed please find the original and one copy of the Motion of Defendants First National Insurance Company of America and Peerless Insurance Company to Quash Subpoena in regard to the above-referenced matter. We would ask that you file the original and return a clocked-in copy to us in the envelope provided for your convenience. Also enclosed is our check in the amount of \$25.00 as the required filing fee.

By copy of this letter to counsel of record, we are serving them with a copy of this pleading.

Sincerely,



William C. Wood, Jr.

WCWJR:lpw

Enclosures

cc: The Honorable Jenny Abbott Kitchings  
Thomas E. Hite, Jr., Esquire  
James C. (Trey) Cox III, Esquire  
William H. Nicholson III, Esquire  
Jane H. Merrill, Esquire

POST OFFICE BOX 11070  
COLUMBIA, SOUTH CAROLINA 29211-1070

**FIRST CLASS**

**Nelson  
Mullins**

Nelson Mullins Riley & Scarborough LLP  
Attorneys and Counselors at Law  
Post Office Box 11070  
Columbia, SC 29211-1070

00350/01679

**RECEIVED**

MAY 26 2014

**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
Post Office Box 11629  
Columbia, SC 29201