

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ABBEVILLE)
)
)
)
 Robert Wayne Gary & Cynthia Gary)
) Plaintiff,)
)
) vs.)
)
)
)
 Laura B. Willis et al)
)
) Defendant.)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT
 CASE NO.: 2013_-CP-01-00066

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

| | |
|--|--|
| Plaintiff's Attorney: Thomas E. Hite, Bar No. _____ Address: P.O. Box 805, Abbeville, SC 29620 Phone: 864.366.5400 Fax _____ E-mail: tommyhite@hotmail.com Other: _____ | Defendant's Attorney: C. Mitchell Brown, Bar No. 012872 Address: P.O. Box 11070, Columbia, SC 29211 Phone: 803.255.9595 Fax 803.255.9025 E-mail: mitch.brown@nelsonmullins.com Other: _____ |
|--|--|

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Quash Subpoena
 Estimated Time Needed: 30 minutes Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.

 Signature of Attorney for Plaintiff / Defendant Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)

Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
 Other: _____

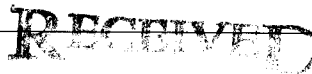
JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE CODE _____
 Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____



SC Court of Appeals

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE) EIGHTH JUDICIAL CIRCUIT

Robert Wayne Gary and Cynthia Gary,) Civil Action No. 2013-CP-01-00066
)
) Plaintiffs,)

vs.)

Laura B. Willis, individually, and as) MOTION OF DEFENDANTS FIRST
agent for Southern Risk Insurance) NATIONAL INSURANCE COMPANY
Services LLC, and First National) OF AMERICA, MONTGOMERY
Insurance Company of America,) INSURANCE COMPANY, AND
Montgomery Insurance Company, and) SAFECO INSURANCE COMPANY TO
Safeco Insurance Company,) QUASH SUBPOENA

and)

Jesse A. Dantice, individually and as)
broker/agent for Southern Risk)
Insurance Services LLC, First National)
Insurance Company of America,)
Montgomery Insurance Company, and)
Safeco Insurance Company,)

and)

First National Insurance Company of)
America, Montgomery Insurance)
Company and Safeco Insurance)
Company,)

Defendants.)

Pursuant to Rules 26(c) and 45 of the South Carolina Rules of Civil Procedure, Defendants Montgomery Insurance Company (“Montgomery”), Safeco Insurance Company (“Safeco”), and First National Insurance Company of America (“First National”) (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, B, and C).

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 Garys—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.¹ 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, B, and C.)

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

¹ 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.

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 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, Montgomery, Safeco, and First National 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: 

C. Mitchell Brown
SC Bar No. 012872
E-Mail: mitch.brown@nelsonmullins.com
William C. Wood, Jr.
SC Bar No. 015111
E-Mail: bill.wood@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Robert C. Calamari
SC Bar No. 064985
E-Mail: bob.calamari@nelsonmullins.com
3751 Robert M. Grissom Parkway / Suite 300
Post Office Box 3939 (29578-3939)
Myrtle Beach, SC 29577-6412
(843) 448-3500

Attorneys for First National Insurance Company of
America, Montgomery Insurance Company, and
Safeco 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

Robert Wayne Gary and Cynthia Gary,

Plaintiffs,

v.

SUBPOENA DUCES TECUM
IN A CIVIL CASE

Laura B. Willis, individually, and as Agent
for Southern Risk Insurance Services, LLC
and First National Insurance Company of
America, Montgomery Insurance Company,
and Safeco Insurance Company,

Case Number: 2013-CP-01-66

and

Jesse A. Dantice, individually and as
broker/agent for Southern Risk Insurance
Services, LLC, First National Insurance
Company of America, Montgomery
Insurance Company and Safeco Insurance
Company,

and

First National Insurance Company of
America, Montgomery Insurance Company
and Safeco Insurance Company and
Safeco Insurance Company,
Laurie Wilson Williams,

Defendants.

**TO: Montgomery Insurance Company
Attn: Records Custodian
13830 Ballantyne Corporate Pl #300
Charlotte, NC 28277**

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 insured's, Robert Wayne Gary and Cynthia D. Gary, (Address: 2507 Long Cane Road, Troy, SC 29848; Policy Number PLP W634837), multiple 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 Garys.

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



ATTORNEY FOR DEFENDANT(S)

DATE: 5/19/14

Signature

(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

Robert Wayne Gary and Cynthia Gary,

Plaintiffs,

v.

**SUBPOENA DUCES TECUM
IN A CIVIL CASE**

Laura B. Willis, individually, and as Agent
for Southern Risk Insurance Services, LLC
and First National Insurance Company of
America, Montgomery Insurance Company,
and Safeco Insurance Company,

Case Number: 2013-CP-01-66

and

Jesse A. Dantice, individually and as
broker/agent for Southern Risk Insurance
Services, LLC, First National Insurance
Company of America, Montgomery
Insurance Company and Safeco Insurance
Company,

and

First National Insurance Company of
America, Montgomery Insurance Company
and Safeco Insurance Company and
Safeco Insurance Company,
Laurie Wilson Williams,

Defendants.

**TO: Safeco Insurance Company
Attn: Records Custodian
1001 4th Ave # 800
Seattle, WA 98154**

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 insured's, Robert Wayne Gary and Cynthia D. Gary, (Address: 2507 Long Cane Road, Troy, SC 29848; Policy Number F2555459), multiple 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 Garys.

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

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Issuing Officer's Name, Address and Telephone Number:

James C. Cox, III., Esquire

Danielle F. Payne, Esquire

Grier, Cox & Cranshaw, LLC

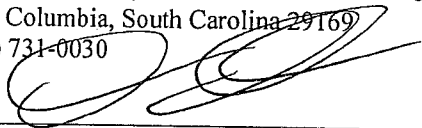
2999 Sunset Blvd, Suite 200

West Columbia, South Carolina 29169

(803) 731-0030

or P.O. Box 2823

Columbia, SC 29202



ATTORNEY FOR DEFENDANT(S)

DATE: 5/19/14

Signature

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

Exhibit C

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF ABBEVILLE

Robert Wayne Gary and Cynthia Gary,

Plaintiffs,

v.

**SUBPOENA DUCES TECUM
IN A CIVIL CASE**

Laura B. Willis, individually, and as Agent
for Southern Risk Insurance Services, LLC
and First National Insurance Company of
America, Montgomery Insurance Company,
and Safeco Insurance Company,

Case Number: 2013-CP-01-66

and

Jesse A. Dantice, individually and as
broker/agent for Southern Risk Insurance
Services, LLC, First National Insurance
Company of America, Montgomery
Insurance Company and Safeco Insurance
Company,

and

First National Insurance Company of
America, Montgomery Insurance Company
and Safeco Insurance Company and
Safeco Insurance Company,
Laurie Wilson Williams,

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 insured's, Robert Wayne Gary and Cynthia D. Gary, (Address: 2507 Long Cane Road, Troy, SC 29848; Policy Number F2555459), multiple auto and home owners insurance coverage, including but not limited to their entire insurance file, policies, payment logs, notes, messages, invoices, past due

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, Safeco Insurance Company and Montgomery Mutual 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 Montgomery Insurance Company, Safeco Insurance Company and First National Insurance Company of America 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

RECEIVED
SC Court of Appeals

Attorneys for Defendant Laura Willis

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

Lisa P. Whitehurst
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
Tel: 803.799.2000 Fax: 803.256.7500
www.nelsonmullins.com

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

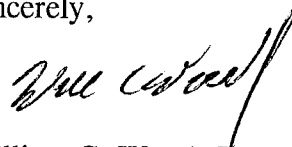
RE: Robert Wayne Gary and Cynthia Gary v. Laura B. Willis, et al.
Civil Action No. 2013-CP-01-00066
Appellate Case No. 2014-000974
Our File No.: 00350.01682

Dear Ms. McMahan:

Enclosed please find the original and one copy of the Motion of Defendants First National Insurance Company, Montgomery Mutual Insurance Company, Safeco Insurance Company, and Peerless Insurance Company to Quash Subpoena. 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
Jane H. Merrill, Esquire
James C. Cox III, Esquire
William H. Nicholson III, Esquire

RECEIVED

SC Court of Appeals

S

Nelson Mullins

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

00350/01679

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MAY 14 2014

SC Court of Appeals

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