

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE CLARENDON COUNTY
Court of Common Pleas

The Honorable George C. James, Jr.

Case No. 2010-CP-14- 0457
Appellate Case No. 2013-001452

RECEIVED

JUL - 7 2014

S.C. Supreme Court

STOKES-CRAVEN HOLDING CORP.,
d/b/a STOKES-CRAVEN FORD

Appellant,

v.

SCOTT L. ROBINSON and JOHNSON
McKENZIE & ROBINSON, LLC,

Respondents.

**RECORD ON APPEAL
VOLUME III**

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**Attorney for Respondent Johnson
McKenzie & Robinson, LLC**

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STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

STOKES-CRAVEN HOLDING CORP)
d/b/a STOKES-CRAVEN FORD)

Plaintiff)

vs.)

SCOTT L. ROBINSON and JOHNSON,)
McKENZIE & ROBINSON, LLC)

Defendants)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

CASE NO. 2010-CP-14-457

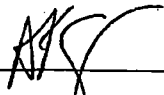
MOTION TO COMPEL

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2012 NOV -1 PM 4:01

Please take notice that the Plaintiff above will move to compel responses to the discovery attached as Exhibits A and B to this motion. The motion will be heard by the presiding judge for Clarendon County, at a time to be set by the Clerk of Court.

Please be present if summoned.

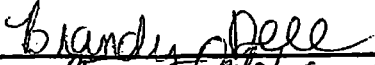
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DATED: October 25, 2012
Charleston, SC

ATTORNEYS FOR PLAINTIFF
CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) to this action in accord with the applicable Court Rules by electronic transmission or by hand delivery or by regular U.S. Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s).


Signed this 25 day of October, 2012 at
Charleston, South Carolina

226 A
174

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

STOKES-CRAVEN HOLDING CORP)
d/b/a STOKES-CRAVEN FORD)

CASE NO. 2010-CP-14-457

Plaintiff

PLAINTIFF'S SECOND SUPPLEMENTAL
REQUESTS FOR PRODUCTION TO
DEFENDANT SCOTT ROBINSON

vs.

SCOTT L. ROBINSON and JOHNSON,
McKENZIE & ROBINSON, LLC

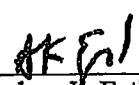
Defendants

TO: Susan T. Wall, Esquire, Attorney for Defendant Scott Robinson

The Plaintiff, Stokes-Craven Holding Corp d/b/a Stokes-Craven Ford, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, requests the Defendant Scott Robinson produce the following enumerated documents within thirty (30) days after service hereof:

1. Any and all correspondence (oral written or electronic), regarding the claim that gave rise to this matter, between you, your agents and/or attorneys acting on your behalf, and any adjuster or any other person acting on behalf of your malpractice insurance carrier.

ANDREW K. EPTING, JR., LLC

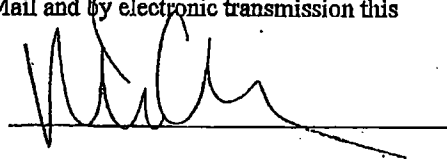

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DATED: 7/10
Charleston, SC

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned does certify that she has served the foregoing discovery requests upon the following parties by depositing same in the U.S. Mail and by electronic transmission this 12 day of July 2012.



Warren C. Powell, Jr., Esquire
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Attorneys for Defendant Scott L. Robinson

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

STOKES-CRAVEN HOLDING CORP)
d/b/a STOKES-CRAVEN FORD)

CASE NO. 2010-CP-14-457

Plaintiff)

vs.)

SCOTT L. ROBINSON and JOHNSON,)
McKENZIE & ROBINSON, LLC)

PLAINTIFF'S SECOND SUPPLEMENTAL
REQUESTS FOR PRODUCTION TO
DEFENDANT JOHNSON McKENZIE &
ROBINSON, LLC

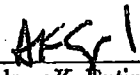
Defendants)

TO: Warren Powell, Esquire, Attorney for Defendant Johnson McKenzie & Robinson, LLC

The Plaintiff, Stokes-Craven Holding Corp d/b/a Stokes-Craven Ford, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, requests the Defendant Johnson McKenzie & Robinson, LLC produce the following enumerated documents within thirty (30) days after service hereof:

1. Any and all correspondence (oral written or electronic), regarding the claim that gave rise to this matter, between you, your agents and/or attorneys acting on your behalf, and any adjuster or any other person acting on behalf of your malpractice insurance carrier.

ANDREW K. EPTING, JR., LLC



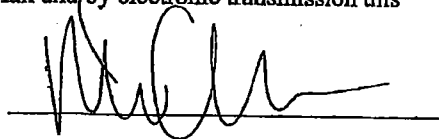
Andrew K. Epting, Jr., Esq.
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DATED: 7/10/12
Charleston, SC

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned does certify that she has served the foregoing discovery requests upon the following parties by depositing same in the U.S. Mail and by electronic transmission this 12 day of July 2012.



Warren C. Powell, Jr., Esquire
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Attorneys for Defendant Scott L. Robinson

Exh B
192

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

STOKES-CRAVEN HOLDING CORP)
d/b/a STOKES-CRAVEN FORD)

CASE NO. 2010-CP-14-457

Plaintiff)

vs.)

PLAINTIFF'S THIRD SUPPLEMENTAL
REQUESTS FOR PRODUCTION TO
DEFENDANTS

SCOTT L. ROBINSON and JOHNSON,)
McKENZIE & ROBINSON, LLC)

Defendants)

TO: Susan T. Wall, Esquire, Attorney for Defendant Scott Robinson
Warren C. Powell, Jr., Esquire Attorney for Defendant Johnson McKenzie & Robinson

The Plaintiff, Stokes-Craven Holding Corp d/b/a Stokes-Craven Ford, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, requests the Defendants produce the following documents within thirty (30) days after service hereof:

1. All applications for malpractice insurance for the period 2002 to the present.
2. All billings for computer research from any and all research service providers to Johnson McKenzie & Robinson for the period February 2003 through December 31, 2006.

ANDREW K. EPTING, JR., LLC

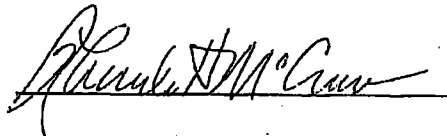
AK Epting
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DATED: Oct 15, 2012
Charleston, SC

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned does certify that she has served the foregoing discovery requests upon the following parties by depositing same in the U.S. Mail and by electronic transmission this 15th day of October, 2012.



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Attorneys for Defendant Scott L. Robinson

Michelle Endemann

From: Michelle Endemann
Sent: Tuesday, January 08, 2013 3:22 PM
To: Wall, Susan; WPowell@brunerpowell.com
Cc: Williams, Amanda; Ann Lee; Rhonda H. McCraw; Angela Gross
Subject: Stokes-Craven v. Robinson, et al
Attachments: Materials in Supprt of Motion to Compel.pdf

Counsel,

Attached please find the materials Stokes-Craven will use tomorrow in support of its motion to compel.

Best Regards,

Michelle N. Endemann, Esq.
ANDREW K. EPTING, JR., LLC
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mne@epting-law.com

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JAMES LAVANWAY,

Plaintiff,

vs.

STRICKLAND MARINE INSURANCE, INC.,
AND TRAVELERS CASUALTY CO. OF
CONNECTICUT,

Defendants. .

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A No.: 2008-CP-10-34

DEFENDANT STRICKLAND
MARINE INSURANCE, INC.'S
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL

2008 DEC -3 AM 10:09
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Defendant, Strickland Marine Insurance, Inc. ("Strickland Marine"), by and through its undersigned counsel, hereby respectfully submits this Memorandum in Opposition to Plaintiff's Motion to Compel pursuant to Rule 26 of the South Carolina Rules of Civil Procedure. Plaintiff James LaVanway ("Plaintiff" or "LaVanway") has filed a Motion to Compel seeking the production of documents protected by the attorney-client and/or work product privilege. For the reasons set forth below, Plaintiff's Motion to Compel should be denied in its entirety.

I. INTRODUCTION

Plaintiff brought the instant insurance agency negligence action against Strickland Marine claiming an alleged failure to procure proper marine insurance coverage. This lawsuit arises from an underlying lawsuit involving a boating accident that occurred aboard Plaintiff LaVanway's boat during a chartered fishing trip. LaVanway reported the accident to Travelers Casualty Co. of Connecticut ("Travelers"), his insurance carrier. Travelers denied the claim because the boat was insured under a pleasure lines boating policy, not a charter insurance policy.

PPAB 1504126v1

In this case, Plaintiff has requested that Strickland Marine produce correspondence between Strickland Marine, its agents and attorneys, and the Errors & Omissions carrier ("E & O carrier") for Strickland Marine. Strickland Marine has objected to these requests because Plaintiff is not entitled to such documents under the attorney-client privilege and the work product doctrine. Accordingly, Plaintiff's Motion to Compel should be denied.

Because Plaintiff failed to include in its Motion to Compel Strickland Marine's Responses to Plaintiff's discovery requests, Strickland Marine's responses and corresponding objections to the discovery requests at issue are attached hereto. (Def. Strickland Marine's Resp. to PL's Interrogs., Req. for Produc., and Supplemental Req. for Produc., Exh. A.)

II. ARGUMENT

A. The Information Plaintiff Seeks is not Discoverable as it is Protected by the Attorney-Client Privilege

Strickland Marine's correspondence with its attorneys and agents and its insurance carrier concerning the claims at issue in the lawsuit are protected by the attorney-client privilege and therefore, are not subject to discovery. Rule 26(b)(1), SCRCP, provides, in pertinent part, that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action."

As to the correspondence between Strickland Marine and its attorneys,

[t]he attorney-client privilege protects against disclosure of confidential communications by a client to his attorney. This privilege is based upon a wise policy that considers that the interests of society are best promoted by inviting the utmost confidence on the part of the client in disclosing his secrets to this professional advisor, under the pledge of the law that such confidence should not be abused by permitting disclosure of such communications.

State v. Owens, 309 S.C. 402, 407, 424 S.E.2d 473, 476-77 (1992) (internal citations omitted).

Under this well-settled privilege, Plaintiff is clearly barred from obtaining discovery of any correspondence between Strickland Marine and its attorneys.

The attorney-client privilege applies not only to communications between an attorney and the client, but it also applies to "communications to and from the client disclosed to persons who hire the lawyer as an incident of the lawyer's engagement." Restatement (Third) of Law Governing Lawyers § 70 cmt. f at 539 (1998). Though there is no South Carolina case on point as to the protection afforded communications by an insured to his insurer, the majority view is that:

[T]he attorney-client privilege applies to communications between an insured and its liability or indemnity insurer as to an incident possibly giving rise to liability covered by the policy, generally based on recognition of the fact that communications of this nature are predominantly intended to be transmitted to the insurer's attorney, or one assigned by it, to defend the ultimate claim against the insured flowing from the incident to which the communication related, since the insurer is contractually bound to defend the insured, and the insured is contractually bound to cooperate in that defense.

17A Couch on Insurance § 250:19 (3d ed. 2008).

In a similar case, *Asbury v. Beerbrower*, plaintiff sought discovery of a statement made by defendant to her liability insurance carrier before counsel had been retained for defendant and before a lawsuit had been filed. 589 S.W.2d 216, 216 (Ky. 1979). The court held that the insured's statements to her liability insurer were protected by the attorney-client privilege. *Id.* at 217. It reasoned that because the insured was required to cooperate with her insurer and the insurer was required to provide her counsel, the "communication [was] made to the insurer as an agent for the dominant purpose of transmitting it to an attorney for the protection of the interests of the insured." *Id.* (quoting *People v. Ryan*, 197 N.E.2d 15, 17 (Ill. 1964) (holding statements by an insured to his insurer are privileged communications)); see also *Taylor v. Temple & Cuñer*, 192 F.R.D. 552 (E.D. Mich. 1999) (holding attorney-client privilege and work product doctrine protected communications between legal malpractice insurer and its insureds); *Vann v. State*, 85 So. 2d 133, 138 (Fla. 1956) (holding statements between an insured and his attorney

were privileged communications, as being between attorney and client, since the company was required to defend the insured and the communication was intended for the assistance of the attorney in providing such defense); *Exline v. Exline*, 569 N.E.2d 407 (Ill. App. Ct. 1995) (holding insured's statement to insurer's representative was a privileged communication protected from discovery by the attorney-client privilege); *Richey v. Chappell*, 594 N.E.2d 443, 446-47 (Ind. 1992) (holding that "where the policy of insurance requires the insurer to defend claims against the insured, statements from the insured to the insurer concerning an occurrence which may be made the basis of a claim by a third party are protected from disclosure").

Like the insured in *Asbury*, Strickland Marine had a duty to report LaVanway's claim to its E & O carrier and the carrier in turn had a duty to defend Strickland Marine against the claims asserted. Thus, Strickland Marine assumed, as it had the right to do, that its insurer was serving as its agent and any communications transmitted to its insurer were made with the understanding that they would be transmitted to an attorney for the protection of Strickland Marine's interests. Accordingly, the communications between Strickland Marine and its E & O carrier are protected by the attorney-client privilege. To hold otherwise would discourage insureds from reporting their claims timely and honestly, which would ultimately effect the rationale behind the attorney-client privilege—the encouragement of open and honest communications between an attorney (or its agents) and the client. See S.C. Rules of Professional Conduct R. 1.6 cmt. 2 (stating "[c]onfidentiality contributes to the trust that is the hallmark of the client-lawyer relationship.")

B. The Information Plaintiff Seeks is not Discoverable as It is Also Protected by the Work Product Doctrine

Rule 26(b)(3), SCRCR, provides, in pertinent part:

[A] party may obtain discovery of documents and tangible things otherwise discoverable...and prepared in anticipation of litigation or for the trial by or for another party or by or for that other party's representative...only upon a showing that the party seeking discovery has substantial need of the materials in the

preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

Documents protected by the work product doctrine are not discoverable unless the party seeking discovery can show substantial need and undue hardship.

Plaintiff seeks to obtain copies of correspondence between Strickland Marine its attorneys and agents and its insurance carrier. These communications, however, are also protected by the work product doctrine. It is a well-settled principle that an attorney's mental impressions or legal conclusions are absolutely protected from discovery while other trial preparation materials, such as witness statements, are discoverable only upon a showing of substantial need or undue burden. See *Hickman v. Taylor*, 329 U.S. 495 (1947). Because any communications between Strickland Marine and its attorneys contain its attorneys' mental impressions and legal conclusions, these communications are absolutely protected and are not subject to discovery.

The communications between Strickland Marine and its insurer are also protected by the work product doctrine because they were made in the third party insurance context. A third party insurance claim is one in which an insurance company defends an insured from a claim brought by a third party. Thomas E. Spahn, *A Practitioner's Guide to the Attorney-Client Privilege and the Work Product Doctrine* § 8.402 (2001) [hereinafter Spahn, *Practitioner's Guide*]. Because the insurer can reasonably anticipate that the insured may be sued when he makes a third party insurance claim, courts have held that the statements made by the insured to its insurer are protected by the work product doctrine.¹ *Id.*; see also *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 190 F.R.D. 532 (S.D. Ind. 1999) (noting that "courts have found, at least with respect to third party claims, that an insurer's investigation of a claim should

¹ Third party claims are to be distinguished from first party insurance claims in which an insured seeks money directly from his own insurer for a loss suffered. Spahn, *Practitioner's Guide* § 8.401.

be deemed in anticipation of litigation once it is clear that an identifiable party is likely to assert specific claims" and holding that witness statements taken by an insurer were protected by work product doctrine because "it was facing an 'articulable claim likely to lead to litigation'"); *Ring v. Commercial Union Ins. Co.*, 159 F.R.D. 653, 656 n.1 (M.D.N.C. 1995) (noting the "situation is different in a third-party insurance case where a person other than the insured sues the insurance company. In the latter situation...litigation may be anticipated very early on in the investigation."); *Bredice v. Doctors Hosp., Inc.*, 50 F.R.D. 249, 251 (D.D.C. 1970) (holding, in a medical malpractice case, that reports made between a hospital and its malpractice carrier after the filing of a suit were part of attorney's work product and were protected from discovery); James F. Flanagan, *South Carolina Civil Procedure*, at 218 (2d ed. 1996) (noting that materials prepared by representatives of the party, such as an insurer or agent, are protected so long as they were prepared in anticipation of litigation. Thus, "[r]eports of insurance companies, statements obtained by claims agents and the like are protectable.")

In the instant lawsuit, Strickland Marine's E & O carrier is defending Strickland Marine from the claims asserted against it by LaVanway. Strickland Marine received notice of these potential claims by LaVanway and by his counsel in the underlying lawsuit, which ultimately became the basis of LaVanway's action against Strickland Marine. Because Strickland Marine's E & O carrier reasonably anticipated that the claims could give rise to an action against its insured, any statements given by Strickland Marine to its carrier are protected by the work-product doctrine.

C. Strickland Marine is not Required to Provide a Privilege Log for the Documents Requested by Plaintiff

Rule 26(b)(5), SCRCP, provides:

When a party withholds information *otherwise discoverable* under these rules by claiming that it is privileged or subject to protection as trial preparation material,

the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege.

(emphasis added).

It is clear from the language of the statute that "[a] party is required to file a log only if the information is 'otherwise discoverable.'" *Royal Caribbean Cruises, Ltd. v. Doe*, 964 So. 2d 713, 718 (Fla. Dist. Ct. App. 2007). Accordingly, when a party raises a reasonable objection to a request for production, there is no obligation to file a privilege log because the documents are not "otherwise discoverable" until the objection has been ruled upon. *Id.*

Plaintiff contends the following discovery requests entitle him to communications and/or statements between Strickland Marine and its attorneys and agents, and its insurance carrier, or in the alternative, a privilege log:

Interrogatory No. 1: Identify by full name, address and telephone number of each person known to the parties or counsel to be witnesses concerning the facts of the case. Indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements and whether you will produce the statements without the necessity of a motion. Describe the issues to which their testimony will relate; and provide a summary of their testimony.

Request No. 1: Any statements (oral, written or electronic) together with any summaries of statements concerning Plaintiff's claim.

Supplemental Request No. 6: Any and all correspondence (oral, written or electronic), regarding the claim that gave rise to this matter, between you, your agents and attorneys acting on your behalf, and any adjuster or any other person acting on behalf of your E & O insurance carrier.

In his letters to Strickland Marine's counsel, Plaintiff's counsel argues that Strickland Marine's discovery responses to these requests are deficient because they fail to identify any statements or reports made by Strickland Marine to its E & O carrier. (See Pl.'s Exh. 3.) Neither Interrogatory No. 1 nor Request No. 1, however, asks for this information. Interrogatory No. 1 requests an identification of witnesses. Strickland Marine's attorneys, agents, and insurer are not

witnesses in this case. As to Request No. 1, Strickland Marine has advised Plaintiff in its response to this request that it "has not taken any statements from any witness." (Def. Strickland Marine's Resp. to PL's Req. for Produc., Exh. A.) Thus, Strickland Marine has no documents responsive to this request and thus can have no obligation to provide a privilege log.

Supplemental Request No. 6 is the only discovery request wherein Plaintiff clearly requests the production of communications between Strickland Marine and its attorneys, E & O carrier, and agents. As set forth above, all communications between Strickland Marine and its attorneys, E & O carrier, and agents are protected by the attorney-client privilege. The attorney-client privilege protects against disclosure of confidential communications by a client to his attorney. *Owens*, 309 S.C. at 407, 424 S.E.2d at 476-77. It also protects communications between an insured and insurer because the communications are "made to the insurer as an agent for the dominant purpose of transmitting it to an attorney for the protection of the interests of the insured." *Asbury*, 589 S.W.2d at 216. Because *all* communications between an attorney and a client and an insurer and its insured or agent are protected by the attorney-client privilege and the work product doctrine, these communications are not "otherwise discoverable" and Plaintiff is not entitled to review any of these communications. Strickland Marine, therefore, is not required to file a privilege log because such communications are not subject to discovery. *See Royal Caribbean Cruises, Ltd. v. Doe*, 964 So. 2d at 718.

D. Plaintiff is not Entitled to Sanctions

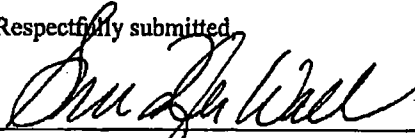
Rule 37(a), SCRPC, provides that sanctions are improper if the opposition to a motion to compel is "substantially justified or...other circumstances make an award of expenses unjust." Plaintiff's request for sanctions is improper in this instance because Strickland Marine's opposition to Plaintiff's Motion to Compel is substantially justified. As stated above, Strickland Marine has a reasonable basis under both the attorney-client privilege and the work product

doctrine for withholding any statements made to its attorneys, E & O carrier, or agents. Thus, Strickland Marine has acted in good faith and in accordance with the South Carolina Rules of Civil Procedure in responding to Plaintiff's discovery requests and sanctions are inapplicable.

III. CONCLUSION

For all of the foregoing reasons, and any others that may be presented to the Court at the hearing on this matter, this Court should deny Plaintiff's Motion to Compel in its entirety, including sanctions, on the grounds that Plaintiff has no basis for obtaining discovery of any statements made by Strickland Marine to its attorneys, E & O carrier, or agents, and Strickland Marine is not required to file a privilege log.

Respectfully submitted,



Susan Taylor Wall

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Kristina Y. Cook

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ATTORNEYS FOR DEFENDANT
STRICKLAND MARINE INSURANCE, INC.

December 2, 2008

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JAMES LAVANWAY,
Plaintiff,

vs.

STRICKLAND MARINE INSURANCE, INC.,
AND TRAVELERS CASUALTY CO. OF
CONNECTICUT,
Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A No.: 2008-CP-10-3488

CERTIFICATE OF SERVICE

FILED
2008 DEC -3 AM 10:09
JULIE ARMSTRONG
CLERK OF COURT

I certify that a copy of the foregoing **DEFENDANT STRICKLAND MARINE INSURANCE, INC.'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL** has been served upon the following counsel of record by emailing a copy of the same to them this 2nd day of December, 2008 and by hand delivery on December 3, 2008:

Attorney for Plaintiff

George J. Kefalos, Esq.
George J. Kefalos, P.A.
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Attorney for Defendant Travelers Casualty Co.
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Charleston, South Carolina 29401
Phone: 843-727-2650

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

JAMES LAVANWAY,

Plaintiff,

vs.

STRICKLAND MARINE INSURANCE, INC.,
AND TRAVELERS CASUALTY CO. OF
CONNECTICUT,

Defendants.

C/A No.: 2008-CP-10-3488

DEFENDANT STRICKLAND
MARINE INSURANCE, INC.'S
RESPONSES TO PLAINTIFF'S
INTERROGATORIES

TO: GEORGE J. KEFALOS, ESQUIRE, ATTORNEY FOR PLAINTIFF JAMES
LAVANWAY

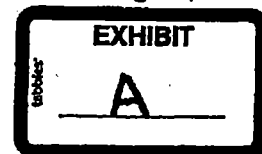
Defendant Strickland Marine Insurance, Inc. ("Strickland Marine"), by and through its undersigned counsel, hereby responds to Plaintiff's Interrogatories pursuant to the provisions of Rules 26 and 33 of the South Carolina Rules of Civil Procedure. Strickland Marine reserves the right to object to future discovery on the same or related matters and does not waive any objections by providing the information reflected in these responses. Strickland Marine objects and further reserves the right to object to the admissibility of any of these answers, in whole or in part, at trial in this action, on any grounds, including, but not limited to, materiality, relevancy, and privilege.

GENERAL OBJECTIONS

To the extent applicable, the following are incorporated in the answer to each interrogatory response:

A. All objections as to the competency, relevancy, materiality, privilege and admissibility as evidence for any purpose of any of the documents referred to or answers given, or

PPAB 1468713v1



the subject matter thereof, in any subsequent proceeding, or in the trial of this action or any other action or proceeding.

B. The right to object to other discovery procedures involving and relating to the subject matter of the questions responded to herein.

C. Strickland Marine objects to each of the following interrogatories to the extent that the interrogatories seek the discovery of privileged communications, work product, and/or information or materials prepared in anticipation of litigation or for trial.

D. Strickland Marine objects to any interrogatory to the extent that the information sought is in the public domain or otherwise equally available to the Plaintiff.

E. Strickland Marine objects to each interrogatory to the extent it purports to require Strickland Marine to provide any information other than that which is properly discoverable under the South Carolina Rules of Civil Procedure.

F. Strickland Marine's objections and answers are based on information and facts presently known. Discovery and case investigation in this matter may yield further information affecting these responses. Strickland Marine will supplement their responses as required by Rule 26.

G. With each objection that a request is overly broad and unduly burdensome and/or not within the scope of discovery allowed under the South Carolina Rules of Civil Procedure, Strickland Marine notes and adds to that objection that Rule 26 provides that only matter relevant to the current lawsuit may be subject to discovery. Interpreting Rule 26, upon which the South Carolina rule is wholly derived, the United States Supreme Court has specifically stated that "discovery, like all matters of procedure, has ultimate and necessary boundaries." Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351-52 (1978); Hickman v. Taylor, 329 U.S. 495, 507 (1947).

H. Pursuant to South Carolina Rule of Civil Procedure 33, Strickland Marine objects to responding to specific requests for identification of information where Strickland Marine has produced and/or is producing documents to Plaintiff from which relevant information can be ascertained at substantially the same burden as it could be by Strickland Marine.

I. Strickland Marine objects to any interrogatory to the extent that the term "all" is used. Strickland Marine will conduct a reasonable search of their business records for relevant information that is not otherwise objectionable.

INTERROGATORIES

1. Identify by full name, address and telephone number of each person known to the parties or counsel to be witnesses concerning the facts of the case. Indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements and whether you will produce the statements without the necessity of a motion. Describe the issues to which their testimony will relate; and provide a summary of their testimony.

ANSWER:

- a. James LaVanway
c/o George J. Kefalos, Esq.

James LaVanway is the plaintiff in this case and is expected to testify regarding the facts and circumstances surrounding the Complaint. Strickland Marine is in possession of the transcript from Mr. LaVanway's October 10, 2007 deposition in the underlying case. Strickland Marine has not taken a written or recorded statement from Mr. LaVanway concerning the claims at issue.

- b. Dawn LaVanway
c/o George J. Kefalos, Esq.

Dawn LaVanway is the plaintiff's wife and is expected to testify regarding the facts and circumstances surrounding the Complaint. Strickland Marine has not taken a written or recorded statement from Ms. LaVanway concerning the claims at issue.

- c. Anthony Snelwar

Anthony Snelwar was the plaintiff in the underlying case and is expected to testify regarding the facts and circumstances surrounding the Complaint. Strickland Marine is in possession of the transcript from Mr. Snelwar's October 10, 2007 deposition in the underlying case. Strickland Marine has not taken a written or recorded statement from Mr. Snelwar concerning the claims at issue.

- d. Joyce Miles
Strickland Marine Insurance Agency, Inc.
c/o Susan Taylor Wall, Esq.

Joyce Miles is a Commercial Insurance Customer Service Representative and former Small Boat Customer Service Representative at Strickland Marine. Ms. Miles is expected to testify as to her knowledge of the allegations of the Complaint and defenses thereto and all other relevant matters of which she has personal knowledge. Strickland Marine has not taken a written or recorded statement from Ms. Miles concerning the claims at issue, nor is it in possession of such a statement.

- e. Diane Chard
2749-2 Jobee Drive
Charleston, SC 29412

Diane Chard is a former Yacht Boat Customer Service Representative at Strickland Marine. Ms. Chard is expected to testify as to her knowledge of the allegations of the Complaint and defenses thereto and all other relevant matters of which she has personal knowledge. Strickland Marine has not taken a written or recorded statement from Ms. Chard concerning the claims at issue, nor is it in possession of such a statement.

- f. Vance Barker
Strickland Marine Insurance Agency, Inc.
c/o Susan Taylor Wall, Esq.

Vance Barker is the Underwriting Manager at Strickland Marine. Mr. Barker is expected to testify as to his knowledge of the allegations of the Complaint and defenses thereto and all other relevant matters of which he

has personal knowledge. Strickland Marine has not taken a written or recorded statement from Mr. Barker concerning the claims at issue, nor is it in possession of such a statement.

- g. Jimmy Hortman
Hanckel Marine

Mr. Hortman is expected to testify regarding the facts surrounding the sale of the subject boat to the plaintiff. Strickland Marine has not taken a written or recorded statement from Mr. Hortman concerning the claims at issue, nor is it in possession of such a statement.

- h. Hope Hanckel
Hanckel Marine

Ms. Hanckel is expected to testify regarding the facts surrounding the sale of the subject boat to the plaintiff. Strickland Marine has not taken a written or recorded statement from Ms. Hanckel concerning the claims at issue, nor is it in possession of such a statement.

- i. Representative(s) of Travelers Casualty Co. of Connecticut
c/o Bruce Wallace, Esq.

One or more representatives of Travelers Casualty Co. of Connecticut is expected to testify as to the allegations of the Complaint and defenses thereto. Strickland Marine has not taken a written or recorded statement from such a representative concerning the claims at issue, nor is it in possession of such a statement.

All witnesses named by any other party.

Discovery is ongoing and therefore Strickland Marine will supplement this Answer, if necessary.

2. List by full name, address and telephone number each person whom you expect to call as an expert witness at the trial of this case, and, as to each expert so identified, state the issues on which he is expected to testify, the facts on which he is expected to testify, the facts on which he bases his opinions, and a summary of his testimony. Alternatively provide a report of his opinions together with the facts upon which he bases his opinions.

ANSWER:

Strickland Marine has not yet retained an expert witness; Strickland Marine reserves the right to supplement its response once it retains said witness.

3. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER:

Strickland Marine is not in possession of such photographs, plats, sketches or other prepared documents. Strickland Marine will supplement this Answer as necessary.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy, and the named insured in the same.

ANSWER:

Strickland Marine objects to any characterization of coverage. Without waiving the foregoing objection, Strickland Marine will make the declaration page of such policy available for inspection at a mutually convenient time at the law offices of Parker, Poe, Adams & Bernstein, LLP, located at 200 Meeting Street, Suite 301, Charleston, SC 29401.

5. Furnish a detailed factual basis for the defenses you assert in the Answer. In particular, identify the facts and documents upon which you rely to base your defense of:
- Estoppel and Waiver
 - Unclean Hands/collusion
 - Comparative Negligence
 - Negligence of Third Parties
 - Failure to Mitigate
 - Intervening/Superseding Acts

ANSWER:

Strickland Marine objects to this interrogatory because it requests information subject to the attorney-client privilege and/or work product doctrine. Discovery is ongoing and this Answer may be supplemented as appropriate.

6. Describe in detail all laws, acts having the force and effect of law, codes, regulations and legal principles, standards, and customs or usages, which you contend are applicable to this action.

ANSWER:

Strickland Marine objects to this interrogatory because it requests information subject to the attorney work product doctrine. Strickland Marine further objects to this interrogatory on the grounds that it seeks information contained in the public domain, and thus is just as readily available to Plaintiff as it is to Strickland Marine.

7. Identify and produce all articles or learned treatises the defendant intends to introduce or publish at trial or use in cross examination.

ANSWER:

Strickland Marine objects to this interrogatory because it requests information subject to the attorney work product doctrine. Without waiving the foregoing objection, Strickland Marine has not determined what articles or learned treatises it will introduce or publish at trial or use in cross examination.

8. If you contend that some other person or legal entity is, in whole or in part, liable to the Plaintiff or Defendant in this matter, state their full name, address, and telephone number and describe in detail the basis of said liability.

ANSWER:

Strickland Marine does not so contend at this time. Discovery is ongoing and Strickland Marine will supplement this response as appropriate.

9. Identify and produce all information of which you are aware, that is inconsistent with, contradictory of, or otherwise capable of being used for impeachment of the testimony or position of any witnesses in this case.

ANSWER:

Strickland Marine objects to this interrogatory on the grounds that it is overbroad and unduly burdensome. Strickland Marine further objects to this interrogatory to the extent it seeks discovery of privileged communications, work product, materials prepared in anticipation of litigation, or documents containing mental impressions of counsel.

Respectfully submitted,



Susan Taylor Wall

susanwall@parkerpoe.com

Kristina Y. Cook

kristinacook@parkerpoe.com

PARKER POE ADAMS & BERNSTEIN LLP

200 Meeting Street, Suite 301

Charleston, SC 29401

Phone: 843-727-2650

Fax: 843-727-2680

ATTORNEYS FOR DEFENDANT

STRICKLAND MARINE INSURANCE, INC.

October 17, 2008

Charleston, South Carolina

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A No.: 2008-CP-10-3488

VS.

CERTIFICATE OF SERVICE

Defendants.

**Attorneys for Defendant Travelers Casualty
Co. of Connecticut**

Deborah Harvey
PARKER POE ADAMS & BERNSTEIN L.L.P.
200 Meeting Street, Suite 301
Post Office Box 160
Charleston, South Carolina 29401
Phone: 843-727-2650

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

James LaVanway)

Plaintiff,)

v.)

Strickland Marine Insurance, Inc.
and Travelers Casualty Co. of
Connecticut)

Defendants.)

IN THE COURT OF COMMONS PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C.A. No. 08-CP-10-3488

ORDER

FILED
2009 FEB 26 AM 8:51
JULIE J. ARMSTRONG
CLERK OF COURT
BY: [Signature]

INTRODUCTION

The present matter comes to be heard before the court on Plaintiff's motion to compel disclosure of documents. The matter arises in a negligence action against an insurance company and agent for the failure to provide proper insurance.

Pursuant to SCRCP 33 (b) (1) and 34 (a), Plaintiff requested the identification and production of all statements or correspondence by or on behalf of Defendant Strickland¹.

¹ Interrogatory #1 reads as follows:

1. Identify by full name, address and telephone number of each person known to the parties or counsel to be witnesses concerning the facts of the case. Indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements and whether you will produce the statements without the necessity of a motion. Describe the issues to which their testimony will relate; and provide a summary of their testimony.

Request to Produce #1 reads as follows:

1. Any statements (oral written or electronic) together with any summaries of statements concerning Plaintiff's claim.

Request to Produce # 6 (in Plaintiff's Supplemental Requests for Production) reads as follows:

~~6. Any and all correspondence (oral written or electronic) regarding the claim that gave rise to this matter, between you, your agents and attorneys acting on your behalf, and any adjuster or any other person acting on behalf of your E&O insurance carrier.~~

On October 23, 2008, after Defendant failed to identify or produce any documents responsive to these requests, Plaintiff's counsel inquired specifically about the existence of any statements given to Defendant's liability insurance company². On October 27, 2008, Defendant responded, not by identifying any documents, but by claiming Plaintiff was "not entitled" to any such documents³.

On November 10, 2008 Plaintiff filed a motion seeking an order compelling Defendant to identify and produce such documents. Defendant responded by asserting the documents were privileged and because of that, need not be identified.

Hearing was held before me on December 4, 2008, at which time I held that the claim of privilege does not exempt a document from identification on a privilege log and directed Defendant to create a privilege log and produce the documents to the court for an *in camera* review. I have now reviewed the documents.

LEGAL ANALYSIS

1. THE BURDEN IS ON THE PARTY ASSERTING THE PRIVILEGE

The party asserting the ~~attorney-client or work-product privilege~~ bears the burden of showing such privilege *Wilson v. Preston*, 662 S.E.2d 580, 585 (S.C. 2008). Whether a communication is privileged is for the trial judge to decide after a preliminary inquiry into all of the facts and circumstances. *State v. Love*, 271 S.E.2d 110 (S.C. 1980). ~~Challenges to the assertion of attorney-client or work-product privilege are usually decided after an in camera inspection of the materials by the court.~~ Comment to Rule 26, S.C.R.C.P.

² "Are there really no documents or records of communications with the E&O carrier?"

³ "Under the facts alleged in the Complaint and under South Carolina law, Plaintiff has no standing to assert any claim against the insurer for the Strickland Agency and has no right to related documents."

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2. ATTORNEY CLIENT PRIVILEGE

The scope of discovery in South Carolina is broad. *Samples v. Mitchell*, 495 S.E.2d 213, 215 (S.C. App. 1997). ~~There is no insured-insurer privilege protecting communications between an insured and its liability or indemnity insurer.~~ The only privilege normally protective of such communications is the attorney-client privilege. 55 A.L.R. 4th 336 (1987) "The test to determine whether the attorney-client privilege applies to a communication between an insured and his or her liability or indemnity insurer is whether the dominant purpose of the communication was for the insured's defense and whether the insured had a reasonable expectation of confidentiality." 81 Am. Jur. 2nd Witnesses § 413.

~~In South Carolina, the attorney-client privilege is strictly construed to protect only confidences disclosed within the relationship. See *State v. Owens*, 424 S.E.2d 473, 477 (S.C., 1992) citing *State v. Doster*, 284 S.E.2d 218 (1981).~~ The South Carolina District Court addressed this issue in *Floe v. Plowden*, 10 F.R.D. 504 (E.D.S.C. 1950) a case involving a car where the Plaintiff sought to depose an adjuster who worked for the defendant's insurer. The Floe court stated "that undoubtedly any information gathered by [the adjuster/investigator] will not be considered as privileged under the attorney-client theory, and knowledge which the witness has acquired cannot be withheld on that ground." *Id.* at 506.

The Court of Appeals for the Fourth Circuit has considered the attorney-client privilege in the insurance context. ~~The Court reasoned that any report or statement made by or to a party's agent (other than to an attorney acting in the role of counselor), which has not been requested by, nor prepared for an attorney, nor which otherwise reflects the~~

RW/3

employment of an attorney's legal expertise must be conclusively presumed to have been made in the ordinary course of business and thus not privileged. *McDougall v. Dunn*, 468 F. 2d 468, 473 (4th Circ. 1972) citing *Thomas Organ Co. v. Jadranska Slobodna Plovidba*, 54 F.R.D. 367, 372 (D.C.Ill.1972).

This court has conducted an *in camera* review of the documents and finds the documents hereinafter ordered to be produced were not a communication between an attorney and client, were not made in anticipation of litigation or outside the ordinary course of the business of an insurance company and therefore not privileged. The documents themselves make clear that the insurance adjuster is neither an attorney nor client and there is nothing in the documents themselves that suggest the adjuster was acting at the behest of an attorney.

Accordingly, Defendant's assertion of the attorney-client privilege is not valid.

3. WORK PRODUCT PRIVILEGE

South Carolina Rules Civ. Proc. 26(b)(3), protects documents prepared in anticipation of litigation. Documents prepared in the ordinary course of the insurance business are not protected by the work-product privilege. *McDougall v. Dunn*, 468 F. 2d 468 (4th Circ. 1972).

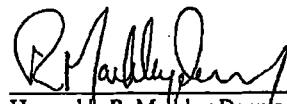
The Court of Appeals for the Fourth Circuit reasoned that the nature of the insurance business requires an investigation prior to the determination of the insured's claim, and that therefore, statements taken by an insurance adjustor in the course of a claim are made during the regular course of the insurer's business, not in anticipation of a trial, and are therefore discoverable. *Id.* at 473. See also *Harper v. Auto-Ovwners Inc. Co.*, 138 F.R.D. 655, 662 (S.D. Ind. 1991).

In the present case the documents themselves show that they represent a factual review of the events giving rise to the law suit. They do not suggest they were prepared at the behest of an attorney or were prepared outside the ordinary course of the business of an insurance company.

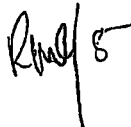
CONCLUSION

The defendant has failed to meet its burden. The attorney-client privilege does not apply because an insurance adjuster is neither an attorney nor a client, and the work-product privilege does not apply because the Defendant has failed to demonstrate that the documents were prepared outside the ordinary course of the insurance business. Further, recognizing a blanket privilege for third party insurance cases is inconsistent with South Carolina law. Therefore, it is

ORDERED, that within ten (10) days of the date of this order, the defendant shall provide complete answers to Interrogatories Number 5, 6 and 9 and shall produce all documents listed in Defendant Strickland's Privilege Log be produced with the exception of "Strickland 000001- Transaction Report for James LaVanway" and "Strickland 000004 - Notes for James LaVanway".


Honorable R. Markley Dennis, Jr.
Presiding Judge

On this ^{24th} day of February 2009
Moncks Corner, SC



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JAMES LAVANWAY,

Plaintiff,

vs.

STRICKLAND MARINE INSURANCE, INC.,
AND TRAVELERS CASUALTY CO. OF
CONNECTICUT,

Defendants.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) Case No.: 2008-CP-10-3488

) DEFENDANT STRICKLAND
) MARINE INSURANCE, INC.'S
) MOTION FOR RECONSIDERATION
) AND/OR TO ALTER OR AMEND

TO: GEORGE J. KEFALOS, ESQUIRE, ATTORNEY FOR PLAINTIFF JAMES
LAVANWAY:

Defendant Strickland Marine Insurance, Inc. ("Strickland Marine"), by and through its undersigned counsel, hereby moves the Court, pursuant to Rule 59(e), SCRCF, to reconsider and/or to alter or amend the Order of the Honorable R. Markley Dennis, Jr., entered on February 26, 2009 (the "Order"). Counsel for Strickland Marine received written notice of entry of the Order on March 5, 2009. Strickland Marine bases this motion on the following grounds:

1. The Court erred in ruling upon the application of the attorney-client privilege and the work-product doctrine without allowing a full hearing to address all facts and circumstances of the communications and documents identified on the subject privilege log. A trial court "should not require the disclosure of attorney client communications to other parties without first determining whether the communications are privileged *by inquiring into all the facts and circumstances of the communication.*" See *Tucker v. Honda of South Carolina Mfg., Inc.*, 354 S.C. 574, 578, 582 S.E.2d 405, 407 (2003) (emphasis added). The Court held an initial hearing on December 4, 2008, pursuant to which Strickland Marine was required and did produce a privilege log to Plaintiff's counsel and the Court. See Letter of December 11, 2008,

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with attached privilege log, attached as Exhibit "A" hereto. However, the Court did not permit a full hearing on the attorney-client privilege or work product issues in conjunction with, or subsequent to, the production of the subject documents for *in camera* inspection.

2. The Court erred in finding that the attorney-client privilege did not attach to the documents and communications on the privilege log. Though the Court stated that the test for determining the applicability of the attorney-client privilege involves a determination of whether the dominant purpose of the communication was for the insured's defense, the Court did not consider the facts demonstrating that the dominant purpose of the subject communications *was* for the insured's defense. The Court further erred to the extent that it ruled, or used as a premise for its ruling, that the documents were prepared by the insurer, when in fact the majority of the subject documents were prepared by the insured, Strickland Marine.

3. The Court erred in finding that the subject documents were not protected from disclosure by the work product doctrine. The Court correctly noted that the work product doctrine protects documents prepared in anticipation of litigation, but did not consider the facts demonstrating that the subject documents were, in fact, prepared in anticipation of litigation. Further, the Court overlooked the fact that the doctrine applies to documents prepared both "by" or "for" a "party," and not necessarily by an attorney or at the behest of an attorney. *See* Rule 26(b)(3), SCRCF. In addition, the doctrine applies to documents prepared by or for a party's representative, expressly including an "insurer," though the majority of the subject documents were prepared by the party, Strickland Marine. *See id.*

4. The Order does not provide the basis for distinguishing between the documents on the privilege log that were required to be produced and those that were not required to be produced.

5. The Order relies on cases that are factually dissimilar and distinguishable from the instant case.

6. Strickland Marine further incorporates by reference and relies upon its correspondence to Court of January 12, 2009 (attached as Exhibit "B" hereto) and February 5, 2009 (attached as Exhibit "C" hereto).

Based on the forgoing and any additional memoranda or materials that may be submitted to the Court before or at the hearing on this motion, Defendant Strickland Marine respectfully requests that this Court alter, amend or vacate its previous Order and reconsider the above rulings.

Respectfully submitted,



Susan Taylor Wall

susanwall@parkerpoe.com

J.W. Nelson Chandler

nelsonchandler@parkerpoe.com

Kristina Y. Cook

kristinacook@parkerpoe.com

PARKER POE ADAMS & BERNSTEIN LLP

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Phone: 843-727-2650

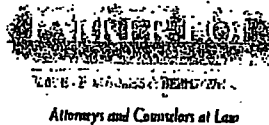
Fax: 843-727-2680

ATTORNEYS FOR DEFENDANT
STRICKLAND MARINE INSURANCE, INC.

March 9, 2009

Charleston, South Carolina

Susan Taylor Wall
Partner
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December 11, 2008

VIA REGULAR MAIL

The Honorable R. Markely Dennis, Jr.
P.O. Box 1800
300 B California Avenue
Moncks Corner, SC 29461-1800

Re: *James LaVanway vs. Strickland Marine Insurance, Inc., and Travelers Casualty
Co. of Connecticut*
Case No. 2008-CP-10-3488

Dear Judge Dennis:

Pursuant to the Court's instruction at the hearing on Plaintiff's Motion to Compel, enclosed is a copy of Defendant Strickland Marine Insurance, Inc.'s Privilege Log prepared in connection with the above-referenced case. Further enclosed in a sealed envelope for the Court's *in camera* review, please find a copy of the documents referenced in Defendant's Privilege Log. For the documents that have been redacted, a copy of the unredacted document is located immediately behind its redacted counterpart.

By copy of this letter, we are serving a copy of the privilege log only on all counsel of record.

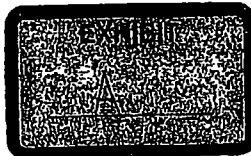
Thank you and with highest professional regards, I remain

Very truly yours,

Susan Taylor Wall

Enclosures

cc: George J. Kefalos, Esq. (w/encl. - only log)
R. Bruce Wallace, Esq. (w/encl. - only log)
Kristina Y. Cook, Esq.



PPAB 1512001v1

CHARLOTTE, NC
COLUMBIA, SC
MYRTLE BEACH, SC
RALEIGH, NC
SPARTANBURG, SC

JAMES LAVANWAY
vs.
STRICKLAND MARINE INSURANCE, INC. and
TRAVELERS CASUALTY CO. OF CONNECTICUT

Case No.: 08-CP-10-3488

**DEFENDANT STRICKLAND MARINE INSURANCE, INC.'S
PRIVILEGE LOG OF DOCUMENTS**

<u>BATE NUMBER</u>	<u>DOCUMENT</u>	<u>BASIS FOR PRIVILEGE</u>	<u>PRODUCED</u>
	Letter dated September 11, 2006 from Vance Barker to Strickland Marine's E & O Carrier, Swiss Re (Westport Insurance Company)	Attorney-Client Privilege and Work Product Doctrine.*	No.
	Facsimile dated February 5, 2007 from Vance Barker to Strickland Marine's E & O Carrier, Swiss Re (Westport Insurance Company) with attachments	Attorney-Client Privilege and Work Product Doctrine.	No.
	Facsimile dated September 14, 2006 from Diane Chard to Strickland Marine's E & O Carrier, Swiss Re (Westport Insurance Company) with attachments	Attorney-Client Privilege and Work Product Doctrine.	No.
Strickland 000001	Transaction Report for LaVanway, James	Attorney-Client Privilege and Work Product Doctrine.	Yes. Redacted Two Entries Dated September 10, 2007 Regarding Communication between Strickland Marine and its E&O Carrier.
Strickland 000002	Transaction Report for LaVanway, James	Attorney-Client Privilege and Work Product Doctrine.	Yes. Redacted Portion of One Entry Dated September 14, 2006 Regarding Communication between Strickland Marine and its E&O Carrier.
Strickland 000004	Notes for LaVanway, James	Attorney-Client Privilege and Work Product Doctrine.	Yes. Redacted One Entry Dated September 10, 2007 Regarding Communication between Strickland Marine and its E&O Carrier.

* See *Asbury v. Beerbrower*, 589 S.W.2d 216, 216 (Ky. 1979); *Exline v. Exline*, 569 N.E.2d 407 (Ill. App. Ct. 1995); and *Richey v. Chappell*, 594 N.E.2d 443, 446-47 (Ind. 1992). See also Defendant Strickland Marine Insurance, Inc.'s Memorandum in Opposition to Plaintiff's Motion to Compel, dated December 3, 2008.

PPAB 1494437v1

FORM 4
STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Case No.: 2008-CP-10-003488

Versus

James Lavanway

Strickland Marine Insurance Inc.

PLAINTIFF(S)

DEFENDANT(S)

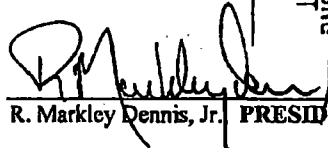
CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. nonsuit)
☐ Rule 43(k), SCRCP (Settled); ☐ Other -
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING THE LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

Defendant's Motion to Reconsider is DENIED.

Dated at Charleston, South Carolina, this 17 day of April, 2009.


R. Markley Dennis, Jr. PRESIDING JUDGE

FILED
2009 APR 23 AM 9:59
JULIE J. ARMSTRONG
CLERK OF COURT

This judgment was entered on the ____ Day of _____, 20____, and a copy mailed first class this ____ Day of _____, 20____, to attorneys of record or to parties (when appearing pro-se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

James R. Henry,

v.

Natasha R. Harris,

Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No.: 00-CP-23-6494

FILED
CLERK OF COURT
GREENVILLE, S.C.
JAN 11 2001

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**ORDER COMPELLING DISCOVERY
OF INSURANCE ADJUSTER'S INFORMATION / FILE**

This case arises out of an automobile wreck which occurred on April 28, 2000. Plaintiff filed suit and served the defendant with Interrogatories and a Request for the Production of Documents. The defendant asserted the attorney-client privilege, work-product privilege, or lack of relevance for Interrogatory Number 22 ("Please identify any and all insurance adjusters who have participated in the handling of any and all claims arising from this accident and specify by which insurance company(ies) such adjusters are employed, each adjuster's current mailing address, and phone number."), Interrogatory Number 23 ("Please list the name, current mailing address, and phone number(s) of each person or entity to which the insurance adjuster responsible this case has spoken or written while investigating the matters set forth in plaintiff's complaint."), Interrogatory Number 24 ("Please list each document, electronic or otherwise, which mentions or refers to the adjuster's contact or the content thereof with each person identified in response to the previous Interrogatory."), Interrogatory Number 25 ("Please state the date on which the adjuster(s) responsible for the file rejected the Plaintiff's settlement demand and/or assigned the file to an attorney for the insured's defense."), and Request for the Production

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of Documents Number 3 ("Any and all documents, electronic or otherwise, created or modified by any adjuster who handled or supervised this case/claim."). Plaintiff filed a motion to compel the defendant to answer the Interrogatories and to produce the documents requested in the Request for the Production of Documents. Defendant did not provide the court with a Rule 26(b)(5) privilege log. A hearing on the motion to compel was heard on April 18, 2001. Samuel D. Harms, of The Joel Bieber Firm, LLC, was counsel for the plaintiff and Robert D. Moseley, of Leather Walker Todd & Mann, P.C., was counsel for the defendant. Allstate Insurance Company insured the defendant. For the reasons stated below, plaintiff's motion to compel is GRANTED.

LEGAL ANALYSIS

I. THE BURDEN IS ON THE PARTY ASSERTING THE PRIVILEGE.

In a motion to compel, the burden is on the party asserting the attorney-client or work-product privilege. *State v. Love*, 271 S.E.2d 110 (1980). The burden is not on the moving party. Challenges to the assertion of attorney-client or work-product privilege are usually decided after an *in camera* inspection of the materials by the court. Comment to Rule 26, SCRPC. However, in this case, the defendant did not provide the court with a privilege log or the documents she claims are privileged. If the non-moving party fails to meet its burden, then the communication or document is not privileged. *Burroughs Wellcome Co. v. Barr Lab., Inc.*, 143 F.R.D. 611, 619 (E.D.N.C. 1992). The scope of discovery in South Carolina is broad. *Samples v. Mitchell*, 495 S.E.2d 213, 215 (S.C. App. 1997).

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II. THE IDENTITY OF WITNESSES ARE NOT PRIVILEGED.

Interrogatories number 22 & 23 ask for the identity of any witnesses, including insurance adjusters, who have knowledge about this wreck. Defendant refused to answer the Interrogatories claiming the identity of the witnesses are not relevant or protected by a privilege. Rule 33(b)(1), SCRCF, requires a party to reveal the identity of all witnesses. The identity of witnesses are not protected by any privilege and the defendant is required to reveal the identity of the witnesses. There is one South Carolina federal court decision which addresses this issue. *Floe v. Plowden*, 10 F.R.D. 504 (E.D.S.C. 1950). In *Floe*, the court required the insurance company to reveal the identities of the witnesses.

III. ATTORNEY-CLIENT PRIVILEGE.

In this case, the attorney-client privilege does not prevent discovery of the requested information and documents. There are no South Carolina state court cases on point, however, there is a South Carolina federal court decision which addresses the issue. *Floe v. Plowden*, 10 F.R.D. 504 (E.D.S.C. 1950). In *Floe*, the plaintiff in a wrongful death wreck case sought to depose an adjuster who worked for the defendant's insurer. The *Floe* court stated "that undoubtedly any information gathered by [the adjuster/investigator] will not be considered as privileged under the attorney-client theory and knowledge which the witness has acquired cannot be withheld on that ground." *Id.* at 506. This court will follow the decision in *Floe*, and rule that the attorney-client privilege does not apply in this case for the following reasons:

First, the attorney client privilege does not apply to the insurance file because the insurance adjuster is neither an attorney nor a client. Also, the presence of a 3rd party to a

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conversation or transfer of information between an attorney and a client negates the attorney-client privilege. *Marshall v. Marshall*, 320 S.E.2d 44, 47 (S.C. App. 1984)(presence of the father of the client). Second, several courts have held that statements between and insured and an insurer are not protected by the attorney-client privilege. *Langdon v. Champion*, 752 P.2d 999, 1003 (Alaska 1988); John P. Ludington, Annotation, Insured-Insurer Communications as Privileged, 55 A.L.R. 4th at 340-341. Third, statements made to an insurance adjuster are not subject to the privilege because the information can be used by the insurance company against the insured, for example, to deny coverage. *Phillips v. Dallas Carriers Corp.*, 133 F.R.D. 475, 478-79 (M.D.N.C. 1990). Fourth, South Carolina Courts strictly construe the attorney-client privilege. *State v. Owens*, 424 S.E.2d 473, 477 (S.C. 1992), *U.S. cert. denied* 507 U.S. 1036 (1993). As a practical matter, since the defendant refused to answer Interrogatory number 25, which asks for the date the insurance adjuster assigned the case to an attorney for litigation, the defendant can not meet its burden of proving when the attorney-client privilege began. For these reasons, the defendant's assertion of the attorney-client privilege is not valid.

IV. WORK-PRODUCT PRIVILEGE.

The defendant asserted the work-product privilege for Interrogatory Number 23 and Request for the Production of Documents Number 3. For the work-product privilege, the court needs to distinguish between documents prepared in the ordinary course of the insurance business and documents prepared in anticipation of litigation. Documents prepared in the ordinary course of the insurance business are not protected by the work-product privilege. Rule 26(b)(3), SCRCRCP, protects documents prepared in anticipation of litigation. For the following

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reasons, the court holds that the defendant's claim of work-product privilege is not valid:

First, an insurance company cannot reasonably argue that "the entirety of its claims file was accumulated in anticipation of litigation." *Ring v. Commercial Union Ins. Co.*, 159 F.R.D. 653, 656 (M.D.N.C. 1995). Most cases are settled without the need for litigation. Insurance companies are expected to attempt to settle a case in good faith without the need for litigation.

Second, the Seventh Circuit has stated:

[w]hile much of the paperwork generated by insurance companies is prepared with an eye toward a possible legal dispute over a claim, it is important to distinguish between an investigative report developed in the ordinary course of business ... and materials prepared because of some articulable claim, likely to lead to litigation[,] has arisen.

Logan v. Commercial Union Ins. Co., 96 F.3d 971, 977 (7th Cir. 1996)(quoting *Binks Mfg. Co. v. National Presto Indus., Inc.*, 709 F.2d 1109, 1118 (7th Cir. 1983))(citations omitted). Third, the mere possibility of litigation is insufficient. Instead, there must be a substantial probability of imminent litigation or a lawsuit must already have been filed. *Ledgin v. Blue Cross & Blue Shield of Kansas City*, 166 F.R.D 496, 498 (D.Kan. 1996). Fourth, "Most courts have held that documents constituting any part of a factual inquiry into or evaluation of a claim, undertaken in order to arrive at a claim decision, are produced in the ordinary course of an insurer's business and not work product." *Harper v. Auto-Owners Inc. Co.*, 138 F.R.D. 655, 662 (S.D. Ind. 1991).

A guidepost used by other courts to determine when a document is prepared in anticipation of litigation is the date the insurance adjuster assigned the file to an attorney for the insured's defense. *Langdon v. Champion*, 752 P.2d 999, 1005-06 (Alaska 1988); *State v. Pavlin*,

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494 A.2d 834, 838 (N.J. Super. A.D. 1985). Since the defendant refused to answer Interrogatory number 25, which asks for the date the insurance adjuster assigned the case to an attorney for litigation, the defendant did not meet its burden of establishing the work-product privilege. Also, the defendant has failed to show that the documents the plaintiff seeks were created in anticipation of litigation. Therefore, the defendant has failed to establish the existence of the work-product privilege.

CONCLUSION

The defendant has failed to meet her burden. The identity of witnesses are not protected by any privilege and Rule 33, SCRCP requires a party to reveal the identity of witnesses. The defendant refused to answer Interrogatory number 25, which asks for the date the file was assigned to an attorney, so the defendant has failed to meet its burden of showing either privilege applies. Also, the defendant failed to provide the court with a Rule 26(b)(5) privilege log. The attorney-client privilege does not apply because an insurance adjuster is neither an attorney nor a client. The work-product privilege does not apply because the documents were prepared in the ordinary course of the insurance business. Documents created after the file had been assigned to an attorney for litigation would be prepared in anticipation of litigation, however, the defendant has refused to reveal this date, therefore, the defendant has not met her burden of establishing the privilege.

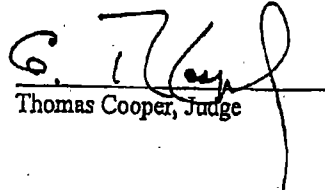
IT IS HEREBY ORDERED, that within ten (10) days of the date of this order, the defendant shall provide complete answers to Interrogatories Number 22, 23, 24 and 25 and shall produce the documents requested in Plaintiff's Request for the Production of Documents Number

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3 and provide a supplemental response to Plaintiff's Request for the Production of Documents Number 1 ("Any and all documents identified in Defendants Response to Plaintiff's first Set of Interrogatories.") since the defendant is now ordered to answer the additional interrogatories.

4-19-01
DATE

Greenville, South Carolina


Thomas Cooper, Judge

A Certified Copy
Paul B. Wickens
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 4-19-2001

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	Civil Action No. 2010-CP-14-457
Stokes-Craven Holding Corp, d/b/a	)	
Stokes-Craven Ford,	)	
	)	
Plaintiff,	)	
	)	Defendants' Joint Memorandum in
v.	)	Opposition to Plaintiff's Motion to Compel
	)	
Scott L. Robinson and Johnson	)	
McKenzie & Robinson, LLC,	)	
	)	
Defendants.	)	

Defendant Johnson McKenzie & Robinson, LLC ("JMR") and Defendant Scott L. Robinson ("Robinson") submit this Joint Memorandum in Opposition to Plaintiff's Motion to Compel dated October 25, 2012 ("Motion to Compel") in the above-captioned action. Plaintiff's Motion to Compel should be denied for any one of the following five reasons: (1) the motion seeks disclosure of documents that are protected by the attorney-client privilege, work product doctrine, the common interest doctrine and/or the joint defense doctrine; (2) the motion seeks disclosure of communications made in anticipation of litigation; (3) the motion seeks documents outside the scope of discovery as set forth in Rule 26(b)(1) and (3), SCRCF; (4) the motion seeks documents which are protected on the grounds of public policy; and, (5) the motion violates Rule 11, SCRCF.

FACTUAL/PROCEDURAL BACKGROUND

This legal malpractice action arises out of a 2004 case in Clarendon County ("Underlying Case") that involved the sale by Stokes-Craven Ford of a pickup truck the purchaser later discovered had been in an accident. Robinson, then an attorney with JMR, defended Stokes-Craven in the Underlying Case.

Currently before the Court is Plaintiff's Motion to Compel, which is based upon Plaintiff's Second Supplemental Requests for Production to Defendants ("Second Supplemental Requests") and Third Supplemental Requests for Production to Defendants ("Third Supplemental Requests") which were served July 10, 2012 and October 15, 2012, twenty-three and twenty-six months, respectively, after this suit was commenced. JMR timely served its responses, attached hereto as Exhibit A, on August 9, 2012 and November 12, 2012, respectively. Robinson timely served his responses, attached hereto as Exhibit B, on August 13, 2012 and November 14, 2012, respectively.

For the reasons set forth herein Defendants urge this Honorable Court to deny Plaintiff's Motion to Compel seeking to discover communications to/from Defendants' attorneys and insurance carrier.

Discussion

1. Plaintiff's Second Supplemental Requests, dated July 10, 2012, seek:

"Any and all correspondence (oral (*sic*) written or electronic), regarding the claim that gave rise to this matter, between you, your agents and/or attorneys acting on your behalf, and any adjuster or any other person acting on behalf of your malpractice carrier."
2. Plaintiff's Third Supplemental Requests for Production, dated October 15, 2012, seek:

(1) All applications for malpractice insurance for the period 2002 to present; and, (2) All billing for computer research from any and all research service providers to Johnson McKenzie & Robinson for the period of 2003 through December 31, 2006.

Both JMR and Robinson timely answered Plaintiff's discovery as set forth in Exhibit A (Responses of JMR dated August 9 and November 12, 2012) and Exhibit B (Robinson's responses dated August 13 and November 14, 2012); however, before the time had

expired for Defendants to respond to the third set of discovery Plaintiff, without complying with the mandates of Rule 11, moved for an order compelling Defendants to turn over communications to and from Defendants' insurance carrier and Defendants' counsel.

Rule 26(c) of the South Carolina Rules of Civil Procedure allows a court in which an action is pending to, "make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense, including . . . that the discovery not be had" Rule 26(c), SCRPC. "The rules of civil procedure allow the trial judge broad latitude in limiting the scope of discovery when the discovery process threatens to become abusive." Gattison v. South Carolina State College, 318 S.C. 148, 150, 456 S.E.2d 414, 415 (Ct. App. 1995) (citing Hamm v. South Carolina Public Service Comm'n., 312 S.C. 238, 439 S.E.2d 852 (1994)).

I. **Rule 26(b)(3) incorporates the work product doctrine and protects from disclosure documents and materials prepared by or for the parties' insurer and attorney should be; therefore, Plaintiff's Motion to Compel should be denied.**

A. Rule 26(b)(3), SCRPC and the Work Product Doctrine.

The examination of the work product doctrine assumes the matter sought satisfies the scope of discovery requirement set forth in Rule 26(b)(1), SCRPC, which states in pertinent part: "Parties may obtain discovery regarding any matter, **not privileged**, which is relevant to the subject matter involved in the pending action..." (Emphasis added). The plaintiff offers no reason why communications to or from the defendants' attorneys and insurance carrier are not privileged.

Aside from the privilege protection of Rule 26(b)(1), the work product doctrine also shields disclosure of the requested matter. Although there are no reported South

Carolina cases concerning the discoverability of a liability carrier's claims file, the issue has been unambiguously addressed in the South Carolina Rules of Civil Procedure. Rule 26, which incorporates the work product doctrine, reads, in pertinent part:

Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation . . . *by or for that other party's representative (including his attorney. . . insurer . . .) only* upon a showing that the party seeking discovery has *substantial need* of the materials in the preparation of his case *and* that he is unable without *undue hardship* to obtain the substantial equivalent of the materials by other means.

Rule 26(b)(3), SCRPC (emphasis added).

Rule 26 makes it clear that absent a showing of a substantial need AND a showing that the substantial equivalent of the materials cannot be obtained by other means without undue hardship, documents prepared by or for the other party's insurer in anticipation of litigation are NOT discoverable. Rule 26(b)(3), SCRPC.

"The Supreme Court first recognized the work-product doctrine protection in Hickman v. Taylor, 329 U.S. 495, 67 S. Ct. 385, 91 L. Ed. 451 (1947)." Taylor v. Temple & Cutler, 192 F.R.D. 552, 556 (E.D. Mich. 1999). In 1975, the Supreme Court reaffirmed the work product protection and further explained the protection afforded by the work product doctrine was more extensive than that of the attorney-client privilege. Id. (citing United States v. Nobles, 422 U.S. 225 (1975)). In Taylor, the court cited Nobles which acknowledged the necessity of a broad protection being available in the modern litigation process:

But the doctrine is an intensely practical one, grounded in the realities of litigation in our adversary system. One of those realities is that attorneys often must rely on the assistance of investigators and other agents in the compilation of materials in

preparation for trial. It is therefore necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself.

Id. (citing Nobles at 238-39) (footnote omitted in original) (emphasis added).

“Federal Rule of Civil Procedure 26(b)(3) incorporates in large part the Hickman work product doctrine” Id.

The language of South Carolina Rule of Civil Procedure 26(b)(3) is that of the federal rule. See notes to Rule 26(b)(3), SCRPC. Although no court has addressed the issue of discoverability of a claims file under the South Carolina rules, several courts have addressed this question under the federal rules since the Hickman doctrine has been incorporated into the rules. In Underwriters Insurance Company v. Atlanta Gas Light Company, 248 F.R.D. 663, 665 (N.D. Ga. 2008), an insurance company attempted to assert various privileges to prevent discovery of its claims file in a subsequent bad faith claim. Underwriters Insurance Company (“Underwriters”) had previously represented Atlanta Gas Light Company (“AGLC”) in a tort claim, but after a settlement was reached in the tort claim, Underwriters disputed coverage under its policy with AGLC. Id. After bringing a bad faith claim against Underwriters, AGLC attempted to compel discovery of Underwriters’ claim file for the tort case. Id. Underwriters argued that all such documents were protected by the work-product doctrine as outlined under Rule 26(b)(3) of the Federal Rules of Civil Procedure. Id. at 667. The court held that since all documents were prepared by a liability insurer concerning a third-party claim, those documents were prepared in anticipation of litigation and protected under the work-product doctrine. Id. at 668. Those documents would only be discoverable by a showing of substantial need or undue hardship on the part of AGLC. Id. Whether an insurer’s claims file is prepared “in anticipation of litigation” often depends on what type of claim

is being asserted: a first-party claim or a third-party claim. The United States District Court for the District of Colorado has explained the difference between first-party and third-party insurance claims and how these differences impact a work product determination:

When an insured presents a *first party claim*, he is asking for payment under the terms of the insurance contract between him and the insurance company, and the insurance company owes him a duty to adjust the claim in good faith. *There is no initial contemplation of litigation*. By contrast, when a liability insurer investigates a *third party claim*, the investigation is made in *anticipation of claims which, if denied, likely will lead to litigation*. See Janicker v. George Washington University, 94 F.R.D. 648, 650 (D.D.C. 1982).

Weitzman v. Blazing Pedals, Inc., 151 F.R.D. 125, 126 (D. Colo. 1993) (emphasis added).

A number of courts have adopted the approach that claims files generated in response to first-party claims are made in the ordinary course of business and are not protected by the work product doctrine, while claims files generated in response to third-party claims are made in anticipation of litigation and are protected by the work product doctrine. See Id. The present action is a third-party claim.

Other courts have allowed claims files to remain protected by the work-product doctrine, even in the face of more complicated situations than a simple third-party complaint. In Taylor v. Temple & Cutler, Supra, the plaintiffs brought suit against their former attorney who had represented them in a personal injury action. Id. at 554. Following the dismissal of the underlying personal injury action, the plaintiffs notified the defendant law firm of an intention to file a legal malpractice claim and sent a letter stating, "Please place your insurance carrier on notice of this claim immediately." Id. The law firm maintained legal malpractice insurance with Coregis Insurance Company

("Coregis"). Id. Coregis filed a declaratory judgment action against the law firm asking that the court declare the insurance policy provided no coverage for the claim. Id. Ultimately, the court determined that the insurance company was obligated under its policy to defend the law firm. Id. at 555. Coregis then began providing representation to the law firm. Id.

In the legal malpractice action, the plaintiffs sought the "discovery of documents created by: (1) defendants, and sent to Coregis, (2) defendants/Coregis' counsel, and sent to third parties, and (3) Coregis, and sent to defendants." Id. The Taylor court concluded that "[t]he protections of the attorney-client privilege and the work-product doctrine extend to private communications between Coregis and Defendant attorneys and their counsel, and to documents created in anticipation of *this* litigation, including those created during the adversarial period between Coregis and Cutler" Id. at 558 (emphasis in original). Despite an adversarial posture between the insurance carrier and the insured at one point during the on-going litigation, the court still allowed the claims file to be protected under both the work product doctrine and attorney-client privilege, because all of the documents in question were generated in response to a possible third-party claim. Id.

The Taylor court also applied the Fifth Circuit's undue hardship/substantial need test. Id. at 557; see In re International Systems and Controls Corp., 693 F.2d 1235 (5th Cir. 1982). The court explained that the trial court should determine if the information sought "can be discovered without the work product—,i.e. by deposition testimony" Id. at 558 (citing In re International Systems and Controls Corp.). The court in Taylor also noted that this was the same undue hardship/substantial need test adopted by the

Sixth Circuit. Id.; see e.g., In re Dayco Corp. Derivative Securities Litigation, 99 F.R.D. 616 (S.D. Ohio 1983). In denying plaintiffs' motion to compel, the Taylor court relied heavily on the fact that discovery in the case was still ongoing which gave plaintiffs an opportunity to pursue the information they sought through normal discovery procedures without invading the defendants' and Coregis' work product files. Id.

The current dispute over the production of documents is a textbook example of the application of the work-product doctrine within the context of a third-party claim. Robinson and JMR were threatened with litigation for legal malpractice; naturally, the attorneys contacted their legal malpractice insurer. From the moment Robinson and JMR notified their insurance carrier of a possible malpractice claim, all documents, including the carriers' claims file were prepared in anticipation of the current litigation or for the litigation itself and thus are protected from disclosure under Rule 26. There is not now, nor does any party contend that there has ever been, an adversarial relationship between the insureds and their carrier. From the beginning, all documents were prepared in anticipation of or for *this* litigation which resulted from a third-party claim.

Like Taylor, discovery in this case has been extensive and Plaintiff was fully able to obtain the information it needs through the normal channels of discovery. Plaintiff simply cannot show undue hardship or a substantial need and up until this time Plaintiff has not even suggested any substantial need to obtain the communications between Defendants and their attorneys and insurance carrier.

Although the plaintiffs in Underwriters were able to overcome the undue hardship/substantial need test, the factual situation in that case is fully distinguishable from the one at hand. Underwriters was an insurance bad faith case. (Underwriters at p.

665). The court in Underwriters followed the reasoning of many state and federal courts that “a claim file is so integral to proving bad faith that an insured can meet the ‘substantial need’ burden.” Id. at 668. The instant case, however, is a claim made by a stranger to the insurance contract between JMR/Robinson and ALPS, not a bad faith case. In a bad faith claim, the disputed issue is how the insurance company handled the insured’s case, so it is natural the insurance company’s claims file is a vital part of the case. How ALPS has handled JMR’s case is not in dispute, so Plaintiff has no “substantial need” for ALPS’s claims file. To compel disclosure of the claims file would disclose the mental impressions of Defendants, their defense counsel and Defendants’ insurer. South Carolina Rule of Civil Procedure 26(b)(3) makes it clear that “the court *shall* protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation” (emphasis added). Based upon Rule 26(b)(3) and the work product doctrine, Plaintiff’s motion to compel discovery of Defendants’ communications to/from their attorneys and insurance carrier should be denied.

II. The attorney-client privilege and the common interest doctrine protect from disclosure documents, materials and communications by and between a defendant, his insurance carrier, and defense counsel, therefore, Plaintiff’s Motion to Compel should be denied.

Attorney-Client Privilege and the Common Interest Doctrine

To establish the attorney-client privilege and shield a document or communication from discovery requires a showing that the relationship between the parties was that of attorney and client and that the communications were meant to be confidential. See Robert L. Reibold, Cutting the Fishing Trip Short: Protecting an Adjuster’s Claims File, 12-AUG.S.C. Law. 33, 34 (2000) (citing State v. Love, 275 S.C.

55, 59, 271 S.E.2d 110, 112 (1980), cert. denied, 449 U.S. 901 (1980)). “Furthermore, the communication involved must relate to a fact of which the attorney was informed by his or her client without the presence of strangers primarily for the purpose of securing either an opinion on law, legal services or assistance in some legal proceeding.” Id. (citing Marshall v. Marshall, 282 S.C. 534, 538, 320 S.E.2d 44, 47 (Ct. App. 1984)). Outside of documents generated internally that are covered by the work product doctrine outlined above, ALPS’s claims file can be expected to contain documents and communications that fall into one of three categories: 1) Documents and communications between JMR/Robinson and ALPS; 2) Documents and communications between JMR/Robinson and counsel hired by ALPS to represent JMR/Robinson; and 3) Documents and communications between ALPS and counsel hired by ALPS to represent JMR/Robinson. Although South Carolina has no recorded cases addressing the attorney-client privilege in connection with these types of communications, the prevailing law in other jurisdictions has found all three categories of communications to be privileged. Id.

At the heart of the privilege of these documents is the common interest doctrine, also referred to as the joint defense doctrine or the common defense doctrine. This tripartite relationship, between an insurer, an insured, and an attorney, is exactly the type of situation for which many courts have carved out this extension of the attorney-client privilege. Id.; see Pittston Co. v. Allianz Ins. Co., 143 F.R.D. 66, 71 (D.N.J. 1992). The South Carolina appellate courts have not yet addressed the common interest rule. See Warren Moise, Just Between Us: The Common-Interest Rule, July, 2004, S.C. Law at 11, 12. However, many state and federal courts, including the Fourth Circuit, have already

addressed this issue, and the common interest doctrine is established in their common law. See, e.g., In re Grand Jury Subpoenas, 902 F.2d 244, 250 (4th Cir. 1990).

In In re Grand Jury Subpoenas, two corporations, one a formerly-owned subsidiary of the other, were engaged in litigation against the United States Army for breach of a contract. In re Grand Jury Subpoenas, at 245-46. The Army sought disclosure of certain documents and communications held by the former parent corporation and the former subsidiary, to which both objected. Id. at 246. The corporations resisted and the Army subpoenaed the documents on two grounds: 1) the Army contended that the former subsidiary had waived attorney-client and work-product protection; and 2) the Army contended that certain communications and documents between the two corporations, after the two corporations became independent, were not privileged communications because the former subsidiary was not a party to the suit. Id. at 246-47.

In rendering its decision, the Fourth Circuit outlined the history and policy goals behind the common interest doctrine.

The concept of a joint defense privilege first arose in the context of criminal co-defendants whose attorneys shared information in the course of devising a joint strategy for their clients' defense. See, e.g., Chahoon v. Commonwealth, 62 Va. (21 Gratt.) 822 (1871). An exception to the general rule that disclosure to a third party of privileged information thereby waives the privilege, a joint defense privilege cannot be waived without the consent of all parties who share the privilege. Chahoon, 62 Va. at 842.

Because "[t]he need to protect the free flow of information from client to attorney logically exists whenever multiple clients share a common interest about a legal matter," United States v. Schwimmer, 892 F.2d 237, 243-44 (2d Cir.1989), courts have extended the joint defense privilege to civil co-defendants, Western Fuels Ass'n, Inc. v. Burlington Northern R.R. Co., 102 F.R.D. 201 (D.Wyo.1984); companies that had been individually summoned before a grand jury who shared information before any

indictment was returned, Continental Oil Co. v. United States, 330 F.2d 347 (9th Cir.1964); potential co-parties to prospective litigation, In Re LTV Securities Litigation, 89 F.R.D. 595 (N.D.Tex.1981); plaintiffs who were pursuing separate actions in different states, Schachar v. American Academy of Ophthalmology, 106 F.R.D. 187 (N.D.Ill.1985); and civil defendants who were sued in separate actions, Transmirra Products Corp. v. Monsanto Chemical Co., 26 F.R.D. 572 (S.D.N.Y.1960). Thus, as the cases cited above indicate, today the joint defense privilege is "more properly identified as the 'common interest rule.'" Schwimmer, 892 F.2d at 243. Finally, as an exception to waiver, the joint defense or common interest rule presupposes the existence of an otherwise valid privilege, and the rule applies not only to communications subject to the attorney-client privilege, but also to communications protected by the work-product doctrine. Transmirra, 26 F.R.D. at 578.

In re Grand Jury Subpoenas, 902 F.2d 244, 248 -249 (4th Cir. 1990).

The Fourth Circuit adhered to the national trend of expanding the common interest doctrine in logical situations by providing that an entity did not have to be a named party in the civil case to fall within the common interest doctrine. See id. The court held that even though the former subsidiary was not a named party in the action and was an independent corporation, it shared a common interest with the other corporation involved, so communications between the two that were protected under the work product doctrine or attorney-client privilege could not be discovered. See id. In its reasoning, the Fourth Circuit stated:

Whether an action is ongoing or contemplated, whether the jointly interested persons are defendants or plaintiffs, and whether the litigation or potential litigation is civil or criminal, the rationale for the joint defense rule remains unchanged: persons who share a *common interest in litigation* should be able to communicate with their respective attorneys and with each other to more effectively prosecute or defend their claims.

Id. (emphasis added).

The United States District Court for the District of South Carolina has also adopted the reasoning of the Fourth Circuit. See Fort v. Leonard, 2007 WL 518593 (D.S.C. 2007). The court in Fort v. Leonard denied a motion to compel the disclosure of

documents and communications shared among a corporation's employees and its counsel, a court appointed receiver for another corporation, and the receivers' counsel. *Id.* The District Court explained, "[T]he privilege has been applicable in virtually any litigation-related setting, provided the parties share a common interest, and that confidential information was exchanged to facilitate their legal representation." *Id.* (quoting John Freeman, The Common Interest Rule, 6-JUN S.C. Law. 12 (1995) (internal citations omitted in original)).

There are six requirements of the basic test for the common interest doctrine to uphold a privilege: 1) Documents or communications are at issue; 2) that are already protected by a valid privilege such as the work product doctrine or attorney-client privilege; 3) the party to whom disclosure is made shares a recognized common interest in pending or possible litigation; 4) the information was purposely disclosed during a common effort in the litigation to further that effort; 5) the common interest concerns a legitimate legal matter; and 6) the disclosure was made with the reasonable expectations that the communication would remain in confidence. *Moise, supra*, at 11-12; *see also U.S. v. Aramony*, 88 F.3d 1369 (4th Cir. 1996); Sheet Metal Workers Int'l Ass'n v. Sweeney, 29 F.3d 120 (4th Cir. 1994).

The common interest doctrine does not create a new privilege; it simply extends an already existing privilege. *Moise, supra*, at 11. The central focus of the rule is that the disclosure of the information between entities has a beneficial purpose in furtherance of the entities' common interest in the outcome of the litigation. *Id.* Robinson, JMR and ALPS obviously share a common interest in the outcome of this litigation, not the least of which is avoiding an adverse verdict. These entities would need to engage in open

communication between themselves and with their counsel from the time each received notice of a potential claim against the attorneys in order to determine how best to proceed.

Only a minority of courts refuse to allow the attorney-client privilege to apply to communications between an insurer and an insured before counsel is hired, arguing the insurer can use the information for purposes that are adverse to the interests of the insured. *See, Reibold, supra*, at 34. The majority of courts reject the argument due to the fact that the common interest doctrine does not require the complete absence of some adverse interests. *See, Moise, supra*, at 11. Rather, the rule merely requires a common, shared interest in the outcome of the litigation. *Id.*

The professional malpractice carrier, to promote the best defense for its insureds, would in the normal course of business share the information it has gathered from its insureds with counsel and counsel would have shared its legal conclusions and opinions with the insured/client and the carrier in order to provide the most effective representation possible. Although the carrier is not a party to this litigation, it still maintains a high level of interest in the outcome as well as a high level of involvement. Counsel serves to protect these interests and, accordingly, this presents a classic example for the protection of documents and communications under the common interest doctrine. Based upon the attorney-client privilege and the common interest doctrine, Plaintiff's Motion to Compel should be denied.

III. Public policy favors the free exchange of information, requiring that Plaintiff's Motion to Compel be denied.

The common interest doctrine, as well as the other privileges discussed hereinabove, fosters open communication among jointly interested entities to pool

information and resources to provide the most effective defense or prosecution possible. *See, Moise, supra* at 11. Should this Court allow intrusion into the tripartite relationship of insured, insurance carrier, and defense counsel, the order would have a chilling affect on communications between these commonly interested parties and would undermine the public policies that underlie the work-product doctrine, the attorney-client privilege and the common interest doctrine. Such a ruling would be contrary to closely held principles of law.

Counsel must be allowed to freely communicate with the insured client to gain all of the facts of the case as well as any documents to aid counsel in its defense. Counsel must also be allowed to freely communicate findings, opinions, analysis and recommendations, not only to the insured against whom liability is sought, but also to the insurance carrier. The insured, likewise, must be able to freely communicate to its insurance carrier in order to provide information necessary to evaluate the claim, not to mention in order to fulfill its contractual obligations to fully cooperate with its insurance carrier.

If these communications are not privileged, the entire tripartite relationship is defeated. Attorneys could no longer provide detailed analysis to insurance carriers for fear that such mental impressions would be discoverable. Insurance carriers could not conduct any internal analysis of claims and their potential value as these settlement evaluations would find themselves in the hands of claimants' lawyers. Of perhaps greatest significance, insureds would find themselves in a position in which their contractual duties to the insurance carrier to cooperate with the carrier's investigation would be in direct conflict with their need to protect from disclosure confidential

information. Simply stated, such a situation is unworkable. For those public policy reasons, Plaintiff's Motion to Compel should be denied.

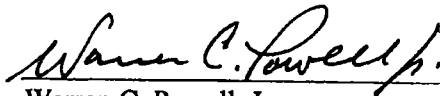
IV. Plaintiff's filing of its Motion to Compel is outside the mandates of Rule 11, SCRCP, therefore, Plaintiff's Motion to Compel should be denied.

It is clear that Plaintiff violated Rule 11 SCRCP by filing the subject Motion to Compel on October 25, 2012, twenty-one (21) days prior to the time Defendants' responses to the Third Supplemental Requests were due to be served. Moreover, Plaintiff violated Rule 11 by not communicating with Defendants' counsel regarding its responses to the Second Supplemental Requests prior to filing the Motion to Compel or providing in the Motion to Compel an affirmation that it attempted in good faith to resolve the matter contained in the motion or certifying that such consultation would serve no useful purpose or could not be timely held. Plaintiff's Motion to Compel should be denied for this reason alone.

CONCLUSION

Based upon the above, Defendants Johnson McKenzie & Robinson, LLC and Scott L. Robinson respectfully request that this Honorable Court deny Plaintiff's Motion to Compel.

Respectfully submitted,



Warren C. Powell, Jr.
BRUNER, POWELL, WALL & MULLINS, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260-1110
803-252-7693
Attorneys for Defendant Johnson McKenzie & Robinson, LLC

Columbia, South Carolina
January 4, 2013

A handwritten signature in cursive script, reading "Susan Taylor Wall / wcllp".

Susan Taylor Wall
McNair Law Firm, P.A.
Suite 400
100 Calhoun Street
Charleston, South Carolina 29401
(843) 723-7831
Attorneys for Defendant Scott L. Robinson

Charleston, South Carolina
January 4, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
Civil Action No. 2010-CP-14-457

Stokes-Craven Holding Corp, d/b/a)
Stokes-Craven Ford,)
Plaintiff,)

v.)

Scott L. Robinson and Johnson)
McKenzie & Robinson, LLC,)
Defendants.)

Defendant Johnson McKenzie & Robinson
LLC's Response to Plaintiff's Second
Supplemental Requests for Production to
Defendant Johnson McKenzie & Robinson,
LLC

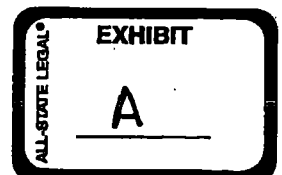
TO: ANDREW K. EPTING, JR., ESQUIRE: ATTORNEY FOR PLAINTIFF STOKES-
CRAVEN HOLDING CORP, d/b/a STOKES-CRAVEN FORD:

Defendant Johnson McKenzie & Robinson, LLC ("Johnson McKenzie") by and
through its undersigned counsel pursuant to Rule 34 of the South Carolina Rules of Civil
Procedure hereby responds to Plaintiff's Second Supplemental Requests for Production to
Defendant Johnson McKenzie & Robinson, LLC as follows:

GENERAL OBJECTIONS TO DISCOVERY REQUEST

This Defendant objects to Plaintiff's discovery requests to the extent that:

- a. They call for information or for the production of documents that are
subject to the attorney-client privilege, the work product doctrine or any
other applicable privilege or doctrine; or
- b. They call for a response that would require disclosure of the mental
impressions, conclusions, or legal theories of its attorneys and other
representatives concerning this litigation; or



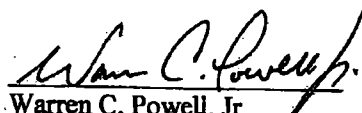
- c. Whether standing alone or in conjunction with any other interrogatory or request, is vague, or would operate to annoy, embarrass, oppress, unduly burden or unduly cause expense to this Defendant on the grounds that said interrogatory or request exceeds the permissible scope of discovery under the South Carolina Rules of Civil Procedure; or
- d. They require this Defendant to provide answers or to produce documents not in its possession, custody or control on the ground that said request exceeds the permissible scope of discovery under the South Carolina Rules of Civil Procedure; or
- e. They seek information or documents that are not relevant to the claim or defense of any party, thereby exceeding the permissible scope of discovery under the South Carolina Rules of Civil Procedure; or
- f. They seek production of "all" documents in this Defendant's possession, custody or control in that the responses herein are based upon reasonable and diligent searches and inquiries to locate and identify responsive non-privileged documents in this Defendant's possession, custody or control; or
- g. They are repetitive and duplicative and therefore exceed the permissible scope of discovery under the South Carolina Rules of Civil Procedure; or
- h. They call for the production of publicly available documents to which the Plaintiff has access; or
- i. They call for the production of documents that are already in the Plaintiff's possession or are available from third parties.

REQUEST FOR PRODUCTION

1. Any and all correspondence (oral written or electronic), regarding the claim that gave rise to this matter, between you, your agents and/or attorneys acting on your behalf, and any adjuster or any other person acting on behalf of your malpractice insurance carrier.

Response:

Defendant Johnson McKenzie objects to this request for production on the grounds that it calls for disclosure of documents that are protected by the attorney-client privilege, work product doctrine, the common interest doctrine and protected on grounds of public policy. Furthermore, Defendant Johnson McKenzie objects to this request for production on the grounds that this request seeks documents outside the scope of discovery as set forth in Rule 26(b)(3), SCRCP.



Warren C. Powell, Jr.

Bruner Powell Wall & Mullins, LLC

PO Box 61110

Columbia SC 29260

803-252-7693

*Attorneys for Defendant Johnson McKenzie
& Robinson, LLC*

Columbia, South Carolina
August 9, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
Civil Action No. 2010-CP-14-457

Stokes-Craven Holding Corp, d/b/a)
Stokes-Craven Ford,)

Plaintiff,)

v.)

Certificate of Service

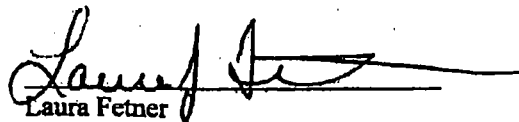
Scott L. Robinson and, Johnson)
McKenzie & Robinson, LLC,)

Defendants.)

I, Laura J. Fetner, a legal assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Defendant, Johnson McKenzie & Robinson, LLC, do hereby certify that on this 9th day of August 2012, I served *Defendant Johnson McKenzie & Robinson LLC's Response to Plaintiff's Second Supplemental Request for Production to Defendant Johnson McKenzie & Robinson LLC* by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Andrew K. Epting, Jr., Esquire
Michelle N. Endemann, Esquire
Andrew K. Epting, LLC
46a State St.
Charleston, SC 29401
Attorneys for Plaintiff

Susan Taylor Wall, Esquire
Amanda C. Williams, Esquire
McNair Law Firm, PA
PO Box 1431
Charleston, South Carolina 29402
Attorneys for Defendant Scott L. Robinson


Laura Fetner

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
Civil Action No. 2010-CP-14-457

Stokes-Craven Holding Corp, d/b/a)
Stokes-Craven Ford,)

Plaintiff,)

v.)

Scott L. Robinson and, Johnson)
McKenzie & Robinson, LLC,)

Defendants.)

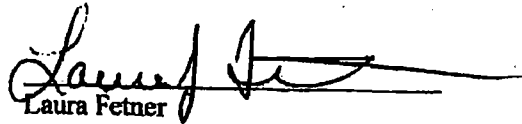
Certificate of Service

I, Laura J. Fetner, a legal assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Defendant, Johnson McKenzie & Robinson, LLC, do hereby certify that on this 9th day of August 2012, I served *Defendant Johnson McKenzie & Robinson LLC's Response to Plaintiff's Second Supplemental Request for Production to Defendant Johnson McKenzie & Robinson LLC* by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Andrew K. Epting, Jr., Esquire
Michelle N. Endemann, Esquire
Andrew K. Epting, LLC
46a State St.
Charleston, SC 29401
Attorneys for Plaintiff

Susan Taylor Wall, Esquire
Amanda C. Williams, Esquire
McNair Law Firm, PA
PO Box 1431
Charleston, South Carolina 29402
Attorneys for Defendant Scott L. Robinson

Columbia, South Carolina


Laura Fetner

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	Civil Action No. 2010-CP-14-457
Stokes-Craven Holding Corp, d/b/a	)	
Stokes-Craven Ford,	)	
	)	
Plaintiff,	)	Defendant Johnson McKenzie & Robinson
	)	LLC's Response to Plaintiff's Third
v.	)	Supplemental Requests for Production to
	)	Defendants
Scott L. Robinson and Johnson	)	
McKenzie & Robinson, LLC,	)	
	)	
Defendants.	)	

TO: ANDREW K. EPTING, JR., ESQUIRE: ATTORNEY FOR PLAINTIFF STOKES-CRAVEN HOLDING CORP, d/b/a STOKES-CRAVEN FORD:

Defendant Johnson McKenzie & Robinson, LLC ("Johnson McKenzie") by and through its undersigned counsel pursuant to Rule 34 of the South Carolina Rules of Civil Procedure hereby responds to Plaintiff's Third Supplemental Requests for Production to Defendants as follows:

GENERAL OBJECTIONS TO DISCOVERY REQUEST

This Defendant objects to Plaintiff's discovery requests to the extent that:

- a. They call for information or for the production of documents that are subject to the attorney-client privilege, the work product doctrine or any other applicable privilege or doctrine; or
- b. They call for a response that would require disclosure of the mental impressions, conclusions, or legal theories of its attorneys and other representatives concerning this litigation; or

- c. Whether standing alone or in conjunction with any other interrogatory or request, is vague, or would operate to annoy, embarrass, oppress, unduly burden or unduly cause expense to this Defendant on the grounds that said interrogatory or request exceeds the permissible scope of discovery under the South Carolina Rules of Civil Procedure; or
- d. They require this Defendant to provide answers or to produce documents not in its possession, custody or control on the ground that said request exceeds the permissible scope of discovery under the South Carolina Rules of Civil Procedure; or
- e. They seek information or documents that are not relevant to the claim or defense of any party, thereby exceeding the permissible scope of discovery under the South Carolina Rules of Civil Procedure; or
- f. They seek production of "all" documents in this Defendant's possession, custody or control in that the responses herein are based upon reasonable and diligent searches and inquiries to locate and identify responsive non-privileged documents in this Defendant's possession, custody or control; or
- g. They are repetitive and duplicative and therefore exceed the permissible scope of discovery under the South Carolina Rules of Civil Procedure; or
- h. They call for the production of publicly available documents to which the Plaintiff has access; or
- i. They call for the production of documents that are already in the Plaintiff's possession or are available from third parties.

REQUEST FOR PRODUCTION

1. All applications for malpractice insurance for the period 2002 to the present.

Response:

Defendant Johnson McKenzie objects to this request for production on the ground that it seeks documents outside the scope of discovery in accordance with Rule 26(b) SCRPC, it seeks disclosure of documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, and/or the joint defense doctrine, it seeks disclosure of communications made in anticipation of litigation and it seeks documents protected on grounds of public policy.

2. All billings for computer research from any and all research service providers to Johnson McKenzie & Robinson for the period February 2003- December 31, 2006.

Response:

Johnson McKenzie is not in possession of any such billings responsive to this request. Its research service provider during the requested time period was Loislaw. Loislaw charged a standard fee to Johnson McKenzie for unlimited usage; therefore, the firm did not pass any cost for research on to its clients.



Warren C. Powell, Jr.

Bruner Powell Wall & Mullins, LLC

PO Box 61110

Columbia SC 29260

803-252-7693

*Attorneys for Defendant Johnson McKenzie
& Robinson, LLC*

Columbia, South Carolina
November 12, 2012

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

STOKES-CRAVEN HOLDING CORP.
D/B/A STOKES-CRAVEN FORD,

C/A No.: 2010-CP-14-457

Plaintiff,

vs.

SCOTT L. ROBINSON AND JOHNSON
MCKENZIE & ROBINSON, LLC,

Defendants.

DEFENDANT SCOTT L. ROBINSON'S
RESPONSES TO PLAINTIFF'S
SECOND SUPPLEMENTAL REQUEST
FOR PRODUCTION

TO: ANDREW K. EPTING, JR., ESQ. AND MICHELLE N. ENDEMANN, ESQ.,
COUNSEL FOR PLAINTIFF

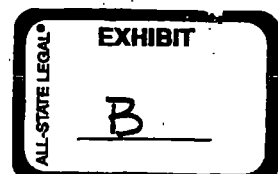
Defendant Scott L. Robinson ("Robinson"), by and through his undersigned counsel,
hereby supplements his responses to Plaintiff's Second Supplemental Requests for Production as
follows:

GENERAL OBJECTIONS

In setting forth responses thereto, Robinson does not waive the attorney-client, work product, or any other privilege or immunity from disclosure which may attach to information called for herein or be responsive to the Requests for Production. Robinson does not concede the relevance or materiality of the Requests for Production, and the subject matter to which the Requests for Production refer. These responses are submitted by Robinson subject to, and without in any way waiving or intending to waive, but on the contrary, intending to reserve and reserving:

1. All questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose of any of the documents referred to or responses given, or the

CHARLESTON 339278v1



subject matter thereof and any subsequent proceeding regarding the trial of this action or any other action or proceeding;

2. The right to object to other discovery procedures involving or relating to the subject matters of the Requests herein responded to; and

3. The right at any time to revise, correct, add to or clarify any of the responses set forth herein or documents referred to herein.

Further, to the extent applicable to each request, Robinson objects to each and every document request and the definitions used therein as follows:

- (a) All responses to Plaintiff's Requests for Production are subject to Robinson's General Objections as set forth herein, as well as Robinson's objections to Interrogatories upon which any Requests for Production are based, in addition to any other objection which might be set forth in the actual response to the specific discovery request.
- (b) Robinson objects to each request to the extent it seeks discovery of privileged communications. Robinson further objects to each request to the extent it seeks work product information or materials.
- (c) Robinson objects to each request to the extent it purports to require Robinson to produce any documents or do any act other than that which is properly required under the South Carolina Rules of Civil Procedure.
- (d) Robinson objects to the extent the requests propounded by Plaintiff are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant, admissible evidence.
- (e) Where Robinson indicates that he will produce responsive documents, he is representing that he will do so to the extent responsive documents exist and are located within his files. Robinson makes no representation concerning documents that might be located in

third-party files. Robinson states that his search for responsive documents is ongoing, and any indication that responsive documents will be produced should not be construed as an acknowledgment that responsive documents exist.

- (f) Pursuant to South Carolina Rule of Civil Procedure 33(c), Robinson objects to responding to specific requests for identification of information where Robinson has produced and/or is producing documents to Plaintiff from which relevant information can be ascertained by Plaintiff at substantially the same burden as it could be by Robinson.
- (g) Robinson objects to any request to the extent that the term "all" is used. Robinson conducted reasonable searches of his business records for relevant information that is not otherwise objectionable.
- (h) Robinson is not required to produce information that is equally accessible to Plaintiff. Furthermore, Robinson is only required to produce documents within his possession or control. To the extent that any such documents may exist responsive to these requests, they will be produced in accordance with the scope of discovery allowed under the South Carolina Rules of Civil Procedure.

REQUESTS FOR PRODUCTION

1. Any and all correspondence (oral or written or electronic), regarding the claim that gave rise to this matter, between you, your agents and/or attorneys acting on your behalf, and any adjuster or any other person acting on behalf of your malpractice insurance carrier.

RESPONSE:

Robinson objects to this Request on the grounds that it seeks discovery of privileged communications, work product, materials prepared in anticipation of litigation, or documents containing mental impressions of counsel. Robinson further objects to this Request on the grounds that it seeks documents protected by the common interest doctrine and documents that are protected on grounds of public policy. Finally, Robinson objects to this Request on the grounds that it seeks documents outside the scope of discovery as set forth in Rule 26(b)(3), SCRCP.

Respectfully submitted,



Susan Taylor Wall

Email: swall@mcnair.net

Amanda C. Williams

Email: awilliams@mcnair.net

MCNAIR LAW FIRM, P.A.

100 Calhoun Street, Suite 400

Charleston, SC 29401

Phone: 843-723-7831

Fax: 843-722-3227

ATTORNEYS FOR DEFENDANT
SCOTT L. ROBINSON

August 13, 2012

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

STOKES-CRAVEN HOLDING CORP.
D/B/A STOKES-CRAVEN FORD,

Plaintiff,

vs.

SCOTT L. ROBINSON AND JOHNSON
MCKENZIE & ROBINSON, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

C/A No.: 2010-CP-14-457

CERTIFICATE OF SERVICE

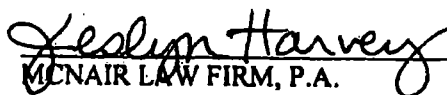
I certify that a copy of the foregoing **DEFENDANT SCOTT L. ROBINSON'S RESPONSES TO PLAINTIFF'S SECOND SUPPLEMENTAL REQUESTS FOR PRODUCTION** has been served upon the following counsel of record by mailing a copy of the same to them, postage prepaid, in the United States Mail, addressed as shown below this 13 day of August 2012:

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
Andrew K. Epting, Jr., LLC
46 State Street
Charleston, SC 29401

Attorneys for Plaintiffs

Warren C. Powell, Jr., Esq.
Bruner, Powell, Robbins, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260

Attorney for Defendant Johnson McKenzie
Robinson, LLC


MCNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 723-7831

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

STOKES-CRAVEN HOLDING CORP.
D/B/A STOKES-CRAVEN FORD,

Plaintiff,

vs.

SCOTT L. ROBINSON AND JOHNSON
MCKENZIE & ROBINSON, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

C/A No.: 2010-CP-14-457

**DEFENDANT SCOTT L. ROBINSON'S
RESPONSES TO PLAINTIFF'S THIRD
SUPPLEMENTAL REQUESTS FOR
PRODUCTION**

TO: ANDREW K. EPTING, JR., ESQ. AND MICHELLE N. ENDEMANN, ESQ.,
COUNSEL FOR PLAINTIFF

Defendant Scott L. Robinson ("Robinson"), by and through his undersigned counsel,
hereby supplements his responses to Plaintiff's Third Supplemental Requests for Production as
follows:

GENERAL OBJECTIONS

In setting forth responses thereto, Robinson does not waive the attorney-client, work product, or any other privilege or immunity from disclosure which may attach to information called for herein or be responsive to the Requests for Production. Robinson does not concede the relevance or materiality of the Requests for Production, and the subject matter to which the Requests for Production refer. These responses are submitted by Robinson subject to, and without in any way waiving or intending to waive, but on the contrary, intending to reserve and reserving:

1. All questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose of any of the documents referred to or responses given, or the

third-party files. Robinson states that his search for responsive documents is ongoing, and any indication that responsive documents will be produced should not be construed as an acknowledgment that responsive documents exist.

- (f) Pursuant to South Carolina Rule of Civil Procedure 33(c), Robinson objects to responding to specific requests for identification of information where Robinson has produced and/or is producing documents to Plaintiff from which relevant information can be ascertained by Plaintiff at substantially the same burden as it could be by Robinson.
- (g) Robinson objects to any request to the extent that the term "all" is used. Robinson conducted reasonable searches of his business records for relevant information that is not otherwise objectionable.
- (h) Robinson is not required to produce information that is equally accessible to Plaintiff. Furthermore, Robinson is only required to produce documents within his possession or control. To the extent that any such documents may exist responsive to these requests, they will be produced in accordance with the scope of discovery allowed under the South Carolina Rules of Civil Procedure.

REQUESTS FOR PRODUCTION

1. All applications for malpractice insurance for the period 2002 to the present.

RESPONSE:

Defendant Robinson objects to this Request on the grounds that it seeks documents outside the scope of discovery in accordance with Rule 26(b) SCRCP. Robinson further objects to this request on the grounds that it seeks disclosure of documents protected by the attorney-client privilege, the work product doctrine, the common interest doctrine, and/or the joint defense doctrine. Finally, Robinson objects to this Request on the grounds that it seeks disclosure of communications made in anticipation of litigation and seeks documents protected on grounds of public policy.

2. All billings for computer research for any and all research service providers to Johnson McKenzie & Robinson for the period February 2003 through December 21, 2006.

RESPONSE:

**Defendant Robinson is not in possession of the documents responsive to this request.
Please see Defendant Johnson McKenzie & Robinson's response to Request No. 2.**

Respectfully submitted,



Susan Taylor Wall

Email: swall@mcnair.net

Amanda C. Williams

Email: awilliams@mcnair.net

MCNAIR LAW FIRM, P.A.

100 Calhoun Street, Suite 400

Charleston, SC 29401

Phone: 843-723-7831

Fax: 843-722-3227

ATTORNEYS FOR DEFENDANT
SCOTT L. ROBINSON

November 14, 2012

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

STOKES-CRAVEN HOLDING CORP.
D/B/A STOKES-CRAVEN FORD,

Plaintiff,

vs.

SCOTT L. ROBINSON AND JOHNSON
MCKENZIE & ROBINSON, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

C/A No.: 2010-CP-14-457

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DEFENDANT SCOTT L. ROBINSON'S**
RESPONSES TO PLAINTIFF'S THIRD SUPPLEMENTAL REQUESTS FOR
PRODUCTION has been served upon the following counsel of record by mailing a copy of the
same to them, postage prepaid, in the United States Mail, addressed as shown below this 14th
day of November 2012:

Andrew K. Epting, Jr., Esq.
Michelle N. Endemann, Esq.
Andrew K. Epting, Jr., LLC
46 State Street
Charleston, SC 29401

Attorneys for Plaintiffs

Warren C. Powell, Jr., Esq.
Bruner, Powell, Robbins, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260

Attorney for Defendant Johnson McKenzie
Robinson, LLC


MCNAIR LAW FIRM, P.A.
100 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 723-7831

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

STOKES-CRAVEN HOLDING CORP.
D/B/A STOKES-CRAVEN FORD,

Plaintiff,

vs.

SCOTT L. ROBINSON AND JOHNSON
MCKENZIE & ROBINSON, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

C/A No.: 2010-CP-14-457

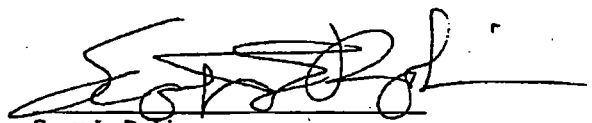
AFFIDAVIT OF SCOTT L. ROBINSON

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2013 JAN -3 11:12:02

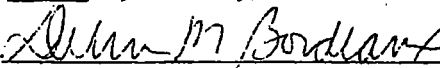
PERSONALLY appeared before me, Scott L. Robinson, who first being duly sworn,
deposes and states as follows:

1. I am over the age of eighteen (18) and make this Affidavit based on my personal knowledge.
2. My first communication with my professional liability carrier, Attorneys Liability Protection Society (ALPS), in any way about this matter, was after receiving Mr. Craven's April 15, 2010 letter, attached. I put my insurance carrier on notice in anticipation of litigation, that is, a potential claim by Stokes-Craven.

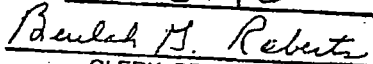
FURTHER AFFIANT SAYETH NOT.


Scott L. Robinson

SWORN TO before me this
3rd day of January, 2013.

 (Seal)
Notary Public for South Carolina
My Commission Expires: 6-20-22

CHARLESTON 342671v1

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 1-3-13

CLERK OF COURT
CLARENDON COUNTY, SC

2501 Paxville Hwy.
Manning, S.C. 29102

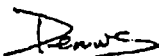


(803) 433-5400
FAX (803) 433-3425

April, 15th, 2010

Scott, I am likely going to lose my business because of this verdict. In good times I could have stood up to the verdict and without the verdict I could stand the bad times in the economy. I cannot pay this verdict at this time as my business will not allow it. I am going to go ahead and get bankruptcy counsel so I will be ready if the last ditch effort does not work. I ask that you and your firm pay this or have your insurance pay it. I regret that I have to do this, but my lawyer has told me that because of some evidence failures on your part I have a verdict against me in a very large amount. I am hoping that you will admit to the mistake and help me save my business. This has been my love and livelihood for many years. You need to act fast though. I don't know if this is proper, but if you have insurance can I see the policy?

Regards,


Dennis

Craven 0001

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
Civil Action No. 2010-CP-14-457

Stokes-Craven Holding Corp, d/b/a)
Stokes-Craven Ford,)

Plaintiff,)

v.)

Scott L. Robinson and, Johnson)
McKenzie & Robinson, LLC,)

Defendants.)

Affidavit of William H. Johnson, Esquire

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 1/3/13

Beulah G. Roberts

CLERK OF COURT
CLARENDON COUNTY, SC

The undersigned, being duly sworn, deposes and says:

1. That I am over the age of 18 and competent to testify to the facts herein;
2. That I know the facts stated herein to be true of my own knowledge,
except as to those matters stated on information or belief, and as to those matters,
believe them to be true;
3. That I am and have been for 22 years a member of the South
Carolina Bar;
4. That I was a member in and the registered agent of the former law firm,
Johnson McKenzie & Robinson, LLC ("JMR"), the defendant named above;
5. That any communications JMR had with employees of Attorneys Liability
Protection Society, Inc., the professional liability insurance carrier for JMR, regarding
any matter related, directly or indirectly, to the case styled *Donald C. Austin v. Stokes-
Craven Holding Corp., d/b/a Stokes- Craven Ford*, Civil Action No. 2004-CP-14-135,
filed in Clarendon County, South Carolina were made subsequent to Dennis Craven's

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2013 JAN -3 PM 2:51

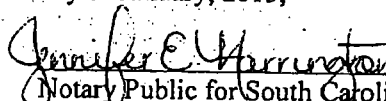
April 15, 2010 letter to Scott Robinson, Esquire, (attached hereto as Exhibit "A") and
were made in anticipation of litigation.

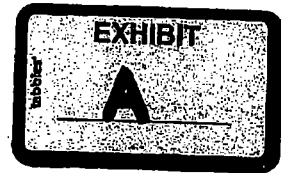


William H. Johnson

Manning, South Carolina
January 3, 2013

SWORN to before me this 3
day of January, 2013,

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 10/29/2018



2601 Paxville Hwy,
Manning, S.C. 29102

(803) 433-5400
FAX (803) 433-3425

April, 15th, 2010

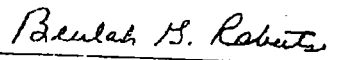
Scott, I am likely going to lose my business because of this verdict. In good times I could have stood up to the verdict and without the verdict I could stand the bad times in the economy. I cannot pay this verdict at this time as my business will not allow it. I am going to go ahead and get bankruptcy counsel so I will be ready if the last ditch effort does not work. I ask that you and your firm pay this or have your insurance pay it. I regret that I have to do this, but my lawyer has told me that because of some evidence failures on your part I have a verdict against me in a very large amount. I am hoping that you will admit to the mistake and help me save my business. This has been my love and livelihood for many years. You need to act fast though. I don't know if this is proper, but if you have insurance can I see the policy?

Regards,


Dennis

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 1/3/13


CLERK OF COURT
CLARENDON COUNTY, SC

BEULAH B. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2013 JAN -3 PM 2:51

JMR000017

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

STOKES-CRAVEN HOLDING CORP)
d/b/a STOKES-CRAVEN FORD)

CASE NO. 2010-CP-14-457

Plaintiff)

vs.)

SCOTT L. ROBINSON and JOHNSON)
McKENZIE & ROBINSON, LLC)

STOKES-CRAVEN HOLDING CORP
d/b/a STOKES-CRAVEN FORD'S
ANSWERS TO DEFENDANT
SCOTT L. ROBINSON'S FIRST SET
OF INTERROGATORIES

Defendants)

TO: Susan Taylor Wall, Esquire
Amanda C. Williams, Esquire
PARKER POE ADAMS & BERNSTEIN, LLP
Attorneys for Defendant Scott L. Robinson

The Plaintiff responding to the First Set of Interrogatories of Defendant Scott L.

Robinson dated October 20, 2010, would answer as follows:

INTERROGATORY 1: Give the full name, address, and telephone number of all persons known to Plaintiff to be witnesses and/or to have knowledge concerning the facts, events, circumstances, claims, or allegations surrounding this case and indicate whether or not written or recorded statements have been taken from each person and, if so, indicate who has possession of such statements and, if not, set forth a specific summary sufficient to inform Robinson of the important facts known to or observed by the witness(es).

ANSWER:

- a. Dennis Craven
c/o Andrew K. Epting, Jr., Esquire

Dennis Craven is expected to testify to his knowledge of the circumstances surrounding the case Austin v. Stokes-Craven Holding Corp ("underlying action") and in accordance with testimony given in same.

- b. Scott Robinson
c/o Susan L. Wall, Esquire
Scott Robinson is expected to testify to his knowledge of the circumstances surrounding his handling of the underlying action.

- c. Steve McKenzie, Esquire
Coffey Chandler & Kent
8 South Brooks Street
Manning SC 29102

Mr. McKenzie is expected to testify to his knowledge of the underlying action, the appeal, and the current litigation. No statement has been taken.

- d. William Johnson, Esquire
Formerly of Johnson McKenzie & Robinson
1438 Lakeshore Drive
Manning SC 29102

Mr. Johnson is expected to testify to his knowledge of the underlying action, the appeal, and current litigation. No statement has been taken.

- e. Stephen L. Brown, Esquire
Russell G. Hines, Esquire
Edward D. Buckley, Esquire
Young Clement Rivers
28 Broad Street
Charleston SC 29401

These witnesses are expected to testify to their knowledge of the handling of the appeal of the underlying action.

- f. Donald Austin
1041 Dehayville Drive
Pinopolis SC 29469
843-753-2719

Mr. Austin is expected to testify to his knowledge of the circumstances surrounding the underlying action and in accordance with his testimony given at the trial of same.

- g. John Flack
Stokes-Craven Ford
2601 Paxville Highway
Manning SC 29102

Mr. Flack is the CFO of Stokes-Craven Holding Corp. and is expected to testify to his knowledge of the underlying action, the appeal, and the current action. No statement has been taken.

- h. William G. Frierson

Current address unknown

Mr. Frierson was the salesman at Stokes-Craven Ford that assisted Plaintiff in the purchase of the truck in the underlying action and is expected to testify to his knowledge of the circumstances surrounding the underlying action and in accordance with his testimony given at trial of same.

- i. Kenny Craven
1643 Central Avenue
Summerville SC

Mr. Craven was the salesman who worked with Mr. Bailey in the trade-in of the truck in the underlying action and is expected to testify to his knowledge of the circumstances surrounding the underlying action and in accordance with his testimony given at trial of same.

- j. C. Steven Moskos, Esquire
535 Stinson Drive
Charleston SC 29407

Mr. Moskos represented Plaintiff in the underlying action and is expected to testify to his knowledge of the circumstances surrounding the prosecution of the underlying action and appeal. No statement has been taken.

No statements have been taken other than testimony given at trial of the underlying case.

Plaintiff reserves the right to call in its case any witness named by any other party to this action.

INTERROGATORY 2: Give the full name, address and telephone number for each person (apart from counsel) with whom YOU have communicated about the facts of this case and/or the status of this case.

ANSWER: John Flack
Chief Financial Officer
Stokes-Craven Ford

INTERROGATORY 3: Set forth a list of photographs, plats, sketches, exhibits, or other documents, whether in written, electronic, computerized, or audit form, in possession of YOU or YOUR counsel that relate to YOUR claims in this case and/or that YOU may seek to introduce, whether as evidence or otherwise, at any deposition, hearing, or trial of this action.

ANSWER: Plaintiff objects to this interrogatory as overly broad and premature. At this stage of discovery Plaintiff has not determined what documents it intends to use at various phases of the prosecution of this case. Plaintiff further objects to this request as it pertains to documents that are protected by attorney work product and attorney-client privilege. Notwithstanding the objections Plaintiff identifies the following documents and will supplement as additional information is obtained.

- a. April 15, 2010 letter from Dennis Craven to Scott Robinson; (Craven 001)
- b. May 25, 2010 letter from Dennis Craven to Scott Robinson at Coffey, Chandler & Kent PA; (Craven 002)
- c. May 25, 2010 letter from Dennis Craven to Scott Robinson at Johnson & Robinson LLC; (Craven 003)
- d. April 21, 2010 Opinion of SC Supreme Court, Austin v. Stokes-Craven, 387 S.C. 22, 691 S.E.2d 135; (Craven 004-043)
- e. Affidavit of Ronald L. Richter, Jr. dated 08/04/10; (Craven 044-047)
- f. Billing from Johnson McKenzie & Robinson LLC for underlying action; (Craven 061-063)
- g. Johnson, McKenzie & Robinson unsigned Defendant's First Set of Interrogatories to Plaintiff and Defendant's First Requests for Production to the Plaintiff dated June 29, 2004, from underlying action; (Craven 2224-2228)
- h. Copy of original file received from Scott Robinson pursuant to 05/25/10 request from Craven; (Craven 1703-2216)
- i. Insurance Policies; (Craven 064-292)

- j. Billings from Young Clement Rivers relating to Appeal; (Craven 293-331, 2216-2223)
- k. Record on Appeal; (Craven 584-1702)
- l. Complete copy of YCR file, subject to all applicable privileges, as produced to Defendants Scott L. Robinson and Johnson McKenzie & Robinson, a copy of which is hereby requested.

INTERROGATORY 4: List and describe each and every document, drawing, map, diagram, model, or other documentary material or tangible object which YOU intend to rely on to support YOUR claims in this case, which YOU intend to offer into evidence, or which YOU intend to use as an exhibit at the time of trial.

ANSWER: See answer to Interrogatory 3 above.

INTERROGATORY 5: List the name(s), address(es) and telephone numbers of any expert witness who YOU propose to use as a witness at the trial of this case, describe his/her qualifications as an expert, state the subject matter upon which he/she is expected to testify, state the substance of the facts and opinions to which he/she is expected to testify, give a summary of the grounds for each of his/her opinions; and the amount and manner in which he/she is being compensated.

ANSWER:

- a. Ronald L. Richter, Jr., Esquire
Bland & Richter, LLP
18 Broad Street
Charleston SC 29401

See attached August 04, 2010, Affidavit of Ronald L. Richter, Esquire. CV will be supplemented.

- b. C. Steven Moskos, Esquire
535 Stinson Drive
Charleston SC 29407

To the extent that Mr. Moskos' testimony of his handling of the underlying matter requires him to testify using his professional judgment and if this be held to be expert testimony, then Plaintiff reserves the right to use Mr. Moskos as an expert.

- c. Scott L. Robinson, Esquire

c/o Susan Wall, Esquire

To the extent that Mr. Robinson's testimony of his handling of the underlying matter requires him to testify using his professional judgment and if this be held to be expert testimony, then Plaintiff reserves the right to use Mr. Robinson as an expert.

d. William Johnson, Esquire

To the extent that Mr. Johnson's testimony of his knowledge of the underlying matter requires him to testify using his professional judgment and if this be held to be expert testimony, then Plaintiff reserves the right to use Mr. Johnson as an expert.

e. Steve McKenzie, Esquire

To the extent that Mr. McKenzie's testimony of his knowledge of the underlying matter requires him to testify using his professional judgment and if this be held to be expert testimony, then Plaintiff reserves the right to use Mr. Johnson as an expert.

f. Stephen L. Brown, Esquire
Young Clement Rivers

To the extent that Mr. Brown's testimony of his knowledge of the underlying case and appeal requires him to testify using his professional judgment and if this be held to be expert testimony, then Plaintiff reserves the right to use Mr. Brown as an expert.

g. Edward D. Buckley, Esquire
Young Clement Rivers

To the extent that Mr. Buckley's testimony of his knowledge of the underlying case and appeal requires him to testify using his professional judgment and if this be held to be expert testimony, then Plaintiff reserves the right to use Mr. Buckley as an expert.

h. Russell G. Hines, Esquire
Young Clement Rivers

To the extent that Mr. Hines' testimony of his knowledge of the underlying case and appeal requires him to testify using his professional judgment and if this be held to be expert testimony, then Plaintiff reserves the right to use Mr. Hines as an expert.

INTERROGATORY 6: Set forth a list of every lawsuit that YOU have been involved in as a plaintiff or defendant. In YOUR response, please set forth the name of the case, the case number, the county in which the case was filed, and the disposition of the case.

ANSWER: Plaintiff objects to this interrogatory as overly broad as it does not establish a time frame, it is irrelevant, and unduly burdensome. Notwithstanding this objection, Plaintiff answers as follows:

- a. Heron, et al versus Dick Dyer & Associate, et al Case No. 06-CP-02-1230 and Howard Adams, et al versus Action Ford, et al Case No, 07-CP-02-1232. These cases are pending in Aiken County Common Pleas and allege that administrative fees charged on all car deals are illegal. Every franchise dealer in the state was initially named in the case. Case is still pending.

Attorney for Defendants
Bradford Neil Marton, Esquire
Bradford Neil Martin & Associates
201 West McBee Avenue, Suite 302
Post Office Box 10410
Greenville SC 29601

- b. Stephanie P. Weeks

Ms. Weeks alleged an incident in which she claimed an instance of inappropriate behavior had occurred. The US Equal Employment Opportunity Commission investigated and concluded that if Stokes-Craven would conduct a sexual harassment course for their employees then they would close their case with no further action. "EEOC will seek no further relief on behalf of the person claiming to be aggrieved..."

Attorney for Defendant
Robert Reibold, Esquire
Walker & Reibold, LLC
Post Office Box 61140
Columbia SC 29260

INTERROGATORY 7: Set forth a list of every attorney who provided legal services to YOU, whether litigation or real estate, over the last fifteen years.

ANSWER: Plaintiff objects to this Interrogatory on the grounds that the information sought is overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of evidence relative to the issues being litigated in this matter.

- a. William Jenkinson, Kingstree handled sale of Stokes-Craven store in Darlington SC, approximately 2000;
- b. Scott Robinson handled purchase of Stokes-Craven Manning property at 2601 Paxville Highway, Manning SC, approximately 2000;
- c. Steve McKenzie, Esquire, Manning handled the sale of Dennis Craven's home at 1771 Goat Island Road, Summerton, approximately 2010;
- d. Scott Robinson, Esquire handled the purchase of Dennis Craven's home at 1709 Goat Island Road, Summerton, approximately 2001;
- e. Scott Robinson, Esquire handled the purchase of Dennis Craven's property at 1711 Goat Island Road, Summerton, approximately 2003.

INTERROGATORY 8: Set forth a specific itemized statement of all damages claimed to have been suffered by YOU, including, but not limited to, the actual damages, consequential damages, and other damages alleged in the Complaint. For each item of damage, state the specific method used in calculating each amount. If any payment has been made toward YOUR claimed damages, set forth the amount of payment and date of payment.

ANSWER:

- a. Young Clement Rivers Attorneys fees to appeal the verdict in Austin v. Stokes-Craven: Approximately \$60,000;

- b. Verdict award in Austin v. Stokes-Craven: \$26,371.10 actual damages and \$216,600 punitive damages, plus post-trial interest. See 05/13/10 letter from Moskos to Buckley, Brown, and Robinson; (YoungClementRivers 27)
- c. Bankruptcy counsel – fees unknown;
- d. Future costs of present malpractice case Stokes-Craven v. Robinson, et al.

INTERROGATORY 9: Describe in detail the corporate structure of YOUR company, including, but not limited to, the date of incorporation, list of addresses for all places of business, registered agent and registered office of Stokes-Craven Holding Corp. d/b/a Stokes-Craven Ford.

ANSWER:

Stokes-Craven Holding Corp. d/b/a Stokes-Craven Ford

Date of Incorporation 12/11/96

Places of Business – 2601 Paxville Highway, Manning SC

Registered Agent – Dennis N. Craven

Registered Office of Stokes-Craven Holding Corp. d/b/a Stokes-Craven Ford at 2601 Paxville Highway, Manning SC 29102

INTERROGATORY 10: Set forth a list of all YOUR officers and directors from 2000 through the present, including the name, address and telephone number of each individual listed, as well as his or her specific job title.

ANSWER:

President – Edward Stokes, 8650 Rivers Avenue, North Charleston SC 29418

Vice President – Jerry Stokes, 3557 Trask Parkway, Beaufort SC 29906

Secretary – Dennis Craven, 2601 Paxville Highway, Manning SC 29102

In 2002 Stokes-Craven holding Corp was changed to an S-Corp with the current officers.

INTERROGATORY 11: Set forth a list of all YOUR shareholders and the percentage of ownership held by each.

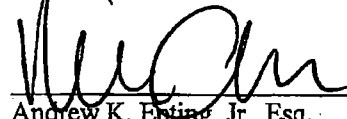
ANSWER: Each of the above officers holds a 33.33% ownership in Stokes-Craven Holding Corp.

INTERROGATORY 12: Set forth a list of all YOUR affiliates, sister companies, and/or pertinent companies.

ANSWER: Plaintiff objects as the question is ambiguous and uncertain, notwithstanding this objection Regal Auto Sales in Manning is owned by Stokes-Craven Holding Corp.

Plaintiff reserves the right to supplement and/or amend its answers to these Interrogatories as additional information is obtained.

ANDREW K. EPTING, JR., LLC



Andrew K. Epting, Jr., Esq.

Michelle N. Endemann, Esq.

3 State Street, Charleston, SC 29401

P: 843.377.1871

F: 843.377.1310

ake@epting-law.com

mne@epting-law.com

DATED: January 6th 2011
Charleston, SC

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

STOKES-CRAVEN HOLDING CORP)
d/b/a STOKES-CRAVEN FORD)

CASE NO. 2010-CP-14-457

Plaintiff)

vs.)

SCOTT L. ROBINSON and JOHNSON,)
McKENZIE & ROBINSON, LLC)

CERTIFICATE OF SERVICE

Defendants)

The undersigned does certify that she has served Stokes-Craven Holding Corp d/b/a Stokes-Craven Ford Answers to Defendant Scott L. Robinson's First Set of Interrogatories upon the following parties by depositing same in the U.S. Mail, facsimile, or electronic transmission this 6th day of January, 2011.

Rhonda Burt

Warren C. Powell, Jr., Esquire
Bruner Powell Wall & Mullins, LC
Post office Box 61110
1735 St. Julian Place, Suite 200
Columbia SC 29260
803-254-5719 fax
wpowell@brunerpowell.com
Attorneys for Defendant Johnson McKenzie & Robinson

Susan Taylor Wall, Esquire
Amanda C. Williams, Esquire
Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston SC 29401
843-727-2680 fax
susanwall@parkerpoe.com
amandawilliams@parkerpoe.com
Attorneys for Defendant Scott L. Robinson

THE SUPREME COURT OF SOUTH CAROLIA

APPEAL FROM THE CLARENDON COUNTY
Court of Common Pleas

The Honorable George C. James, Jr.

Appellate Case No. 2013-001452

STOKES-CRAVEN HOLDING CORP.,
d/b/a STOKES-CRAVEN FORD,

Appellants,

v.

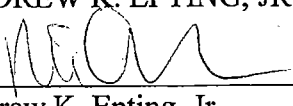
SCOTT L. ROBINSON AND JOHNSON
MCKENZIE & ROBINSON, LLC,

Respondents.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g) SCRAP, the undersigned Counsel for Appellant certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

ANDREW K. EPTING, JR., LLC

By 

Andrew K. Epting, Jr.

Michelle N. Endemann

46A State Street, Charleston, SC 29401

843-377-1871; Fax: 843-377-1310

*Attorneys for Appellant Stokes-Craven Holding
Corp., d/b/a Stokes-Craven Ford*