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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2011-CP-23-03347

B. Gibbs Leaphart, Jr., ...Appellant,

v.

J.B. Watts Company, Inc. and
J.B. Watts,.....Respondents.

NOTICE OF APPEAL

B. Gibbs Leaphart, Jr. appeals the Order granting Defendants J.B. Watts Company, Inc. and J.B. Watts' Motion for Summary Judgment issued by the Honorable Letitia H. Verdin dated April 11, 2012 and filed April 12, 2012, and the Form 4 Order denying Plaintiff's Motion for Reconsideration issued by the Honorable Letitia H. Verdin dated April 26, 2012 and filed April 27, 2012. Appellant received written notice of the entry of the final order on May 1, 2012. A copy of each of the Orders is attached hereto.

[Signature page follows]

SOWELL GRAY STEPP & LAFFITTE, LLC

By: _____

Thornwell F. Sowell
David C. Dick
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Appellant

Columbia, South Carolina
May 2, 2012

Other Counsel of Record:

Susan Taylor Wall
McNair Law Firm, P.A.
P.O. Box 1431
Charleston, South Carolina 29402

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
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Letitia H. Verdin, Circuit Court Judge

Case No. 2011-CP-23-03347

B. Gibbs Leaphart, Jr., ...Appellant,

v.

J.B. Watts Company, Inc. and
J.B. Watts,.....Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal upon Respondents J.B. Watts Company, Inc. and J.B. Watts by depositing a copy of it in the United States Mail, postage prepaid, on May 2, 2012, addressed to their attorney of record, Susan Taylor Wall, Esquire, McNair Law Firm, PA, P.O. Box 1431, Charleston, South Carolina 29402.

David C. Dick
SOWELL GRAY STEPP & LAFFITTE, LLC
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorney for Appellant

May 2, 2012

SOWELL SG GRAY

DAVID DICK
Direct Dial 803 255.8036
Direct Fax 803 231.7867
Email ddick@sowellgray.com

May 2, 2012

VIA HAND DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RE: B. Gibbs Leaphart, Jr. vs. J. B. Watts Company, Inc. and J. B. Watts
Civil Action No.: 2011-CP-23-03347
Our File No.: 6238/1500

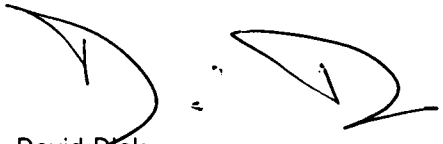
Dear Ms. Kitchings:

Enclosed for filing is the original and one copy of our Notice of Appeal in the above-referenced matter. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondents (attached to Notice of Appeal);
2. A copy of the orders which are to be challenged on appeal (attached to the Notice of Appeal);
3. Our Firm's check in the amount of One Hundred and 00/100 Dollars ($100.00) representative of the filing fee.

I would appreciate your filing as appropriate and returning a clocked-in copy via our courier. By copy of this letter and as evidenced by the Proof of Service, I am serving same upon counsel for the Respondents.

Very truly yours,



David Dick
DCD:ksa
Enclosures
cc: Susan Taylor Wall, Esquire
The Honorable Paul B. Wickensimer

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2012 APR 27 P 12:17

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP2303347

B Gibbs Leaphart Jr	J B Watts Company Inc J B Watts
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: Court	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE 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 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:
This matter comes before the Court on Plaintiff's Motion to Reconsider pursuant to SCRCP Rule 59(e). Plaintiff's Motion to Reconsider is denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

CPFORM4M
SCCA SCRCP Form 4C (Revised 10/2011)

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge | **2162** **Judge Code** | 4/26/2012 **Date**

For Clerk of Court Office Use Only

This judgment was entered on 4/27/12, and a copy mailed first class or placed in the appropriate attorney's box on 4/27/12, to attorneys of record or to parties (when appearing pro se) as follows:

Thornwell F. Sowell III Sowell Gray Stepp & Laffitte, LLC P.O. Box 11449 Columbia, SC 29211
David C Dick Jr Sowell Gray Stepp & Laffitte, L.L.C. P.O. Box 11449 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

Susan Taylor Wall Mcnair Law Firm P O Box 1431 Charleston, SC 29402
Jennifer Dunlap Parker Poe Adams & Bernstein Llp 200 Meeting Street Suite 301 Charleston, SC 29401

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA 2012 APR 12 AM 9:10 **JUDGMENT IN A CIVIL CASE**

COUNTY OF GREENVILLE FILED-CLERK OF CO GREENVILLE CO S C. PAUL B. WICKENSIMER **CASE NO: 2011CP2303347**

IN THE COURT OF COMMON PLEAS

B Gibbs Leaphart Jr *vs.* **J B Watts Company Inc**

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE 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 LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 12th day of April, 2012, and a copy mailed first class this 12th day of April, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Thornwell F. Sowell III Sowell Gray Stepp & Laffitte, LLC P.O. Box 11449 Columbia, SC 29211
David C Dick Jr Sowell Gray Stepp & Laffitte, L.L.C. P.O. Box 11449 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

Susan Taylor Wall Mcnair Law Firm P O Box 1431 Charleston, SC 29402
Jennifer Dunlap Parker Poe Adams & Bernstein Llp 200 Meeting Street Suite 301 Charleston, SC 29401

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	THIRTEENTH JUDICIAL CIRCUIT
B. GIBBS LEAPHART, JR.,	C/A No.: 2011-CP-23-03347
Plaintiff,	
vs.	**ORDER**
J.B. WATTS COMPANY, INC., AND J.B. WATTS,	
Defendants.	

This matter comes before the Court on Defendants J.B. Watts Company, Inc. and J.B. Watts' Motion for Summary Judgment. A hearing on this motion was held on February 15, 2012. Present at the hearing were counsel for Plaintiff, David Dick, Esq. and Thornwell Sowell, Esq. Also present at the hearing was Susan Taylor Wall, Esq., counsel for Defendants. After considering the law, the briefs filed by both parties, the arguments of counsel, and all matters submitted in support of and in opposition to Defendants' Motion, this Court GRANTS Defendants' motion on all causes of action.

FACTS PRESENTED

This case arises out of an insurance coverage dispute concerning a policy covering the Plaintiff's Father and procured by the Defendants. The Plaintiff's father, Ben Leaphart, has a long-standing relationship with the Defendants, having purchased numerous insurance policies through them. For much of his life, the Plaintiff was covered under his father's automobile insurance policy. Plaintiff, at the time of the following events, was a resident of Columbia, South Carolina.

On May 5, 2004, Plaintiff was a passenger in a vehicle driven by Tara Louise Austin and owned by her father. This vehicle was involved in an accident in Jasper County, South Carolina and Plaintiff was injured as a result. The Plaintiff and Ms. Austin's provider, State Farm, settled the matter. On October 26, 2004, the Plaintiff signed a "Covenant Not to Execute" ("Covenant") as part of this settlement with State Farm. This document allowed Plaintiff to retain his rights to proceed against Ms. Austin in the event that the Plaintiff could not recover by agreement or settlement against the underinsured motorist carrier. (Def. Ex. 4, ¶ 1). After settling with State Farm, the Plaintiff sought Underinsured Motorist ("UIM") coverage through his father's policy with State Auto. Suit was filed in Circuit Court in Jasper County, South Carolina to recover and State Auto answered on September 28, 2007, reserving its rights to deny coverage and arguing that he was not a "named insured," the "spouse" of a named insured, nor a "family member." At some point during this litigation, and for reasons not presented to the Court, the case was transferred to Richland County, South Carolina. On October 20, 2008, the Richland County Circuit Court held that Plaintiff was not entitled to UIM benefits under his father's policy with State Auto because he did not meet any of the applicable covered categories[1], and therefore that State Auto was not required to provide UIM benefits to Plaintiff for the injuries sustained in the accident.[2]

On October 13, 2010, Plaintiff filed this action in Richland County against the Defendants, who had procured the policy with State Auto for the Plaintiff's father, alleging breach of implied contract, negligence, breach of fiduciary duty, and violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"). Defendants answered on January 7, 2011

[1] The Richland County Circuit Court also noted that, while the Plaintiff was a listed driver on the policy, this was insufficient to provide coverage under the Policy. This Court only references this finding in the Richland County Order to provide context of the underlying litigation.

[2] For reference, the Richland County Action was B. Gibbs Leaphart, Jr. v. Tara Lee Louise Austin, C/A #: 2008-CP-40-00010.

with a denial of all of the Plaintiff's causes of action and raised the affirmative defense of statute of limitations on all causes of action. On April 19, 2011 and by consent order, this case was transferred to Greenville County for adjudication. Defendants filed this Motion for Summary Judgment on October 10, 2011 claiming that summary judgment should be granted because the statute of limitations has run and for other reasons. Because this Court finds that the statute of limitations on all of Plaintiff's causes of action has run, we do not reach Defendants' other arguments.

LEGAL STANDARD

In ruling on a summary judgment motion, this Court must determine whether a genuine issue of material fact exists. S.C. R. Civ. P. 56. A party seeking summary judgment bears the burden of identifying those portions of the pleadings, depositions, answers to interrogatories, any admissions on file, together with the affidavits, if any, which show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Bravis v. Dunbar, 316 S.C. 263, 449 S.E.2d 495 (Ct. App. 1994).

Although the burden is on the party seeking summary judgment, the non-moving party must point to specific facts showing that there is a genuine issue for trial, rather than resting on the assertions of its pleadings. Id. Thus, a court must grant summary judgment if the non-movant fails to make a showing sufficient to establish there is a genuine issue of material fact for trial. Dickert v. Metropolitan Life Ins. Co., 306 S.C. 311, 411 S.E.2d 672 (Ct. App. 1991) *Rev. 'd* in part on other grounds 311 S.C. 218, 428 S.E.2d. 700 (1992). A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for the purposes of resisting summary judgment. German v. New York Life Ins. Co., 286 S.C. 34, 331 S.E.2d. 385 (Ct.App. 1985); Shupe v. Settle, 315 S.C. 510, 445 S.E.2d 651 (Ct.App. 1994). "In cases

applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hutchinson v. Liberty Life Ins. Co., 393 S.C. 19, 24, 709 S.E.2d 130, 133 (S.C. Ct. App. 2011).

CONCLUSIONS OF LAW

The applicable duration of the statute of limitations for all Plaintiff's claims is three years. *See* S.C. Code §15-3-530(5) and S.C. Code §15-3-535 (as to breach of implied contract, negligence and breach of fiduciary duty) ; S.C. Code § 39-5-150 (as to SCUTPA actions). Plaintiff's cause of action for breach of implied contract, negligence and breach of fiduciary duty are subject to the "discovery rule", as explained *infra*. *See* Holy Loch Distributors, Inc. v. Hitchcock, 332 S.C. 247, 503 S.E.2d 787 (S.C. Ct. App. 1998); Witt v. American Trucking Associations, 860 F. Supp. 295 (D. S.C. 1994); S.C. Code § 15-3-535. The statute of limitations for Plaintiff's SCUTPA cause of action begins to run "after discovery of the unlawful conduct which is the subject of the suit." S.C. Code § 39-5-150. The question presented before this Court is when the causes of action above begin to accrue against an Insurance Agent where the coverage the Agent purported to convey is denied by the Insurance Company. Because there is no genuine issue of material fact as to the dates mentioned above, the time when the statute of limitations began to run is a question of law for the court. For the following reasons, this Court finds that the statute of limitations began to run when the insurance company answered with a denial of coverage in the Richland County action.

I. Plaintiff's Breach of Implied Contract, Negligence and Breach of Fiduciary Duty Claims

Under the discovery rule, the statute begins to run on the date "the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from

the wrongful conduct [of another]." S.C. Code § 15-3-535; Kimmer v. Wright, 396 S.C. 53, 58, 719 S.E.2d 265, 268 (S.C. Ct. App. 2011). "Reasonable diligence", as explained by the supreme court, means that an injured party "must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some rights of his have been invaded or that some claim against another party might exist." Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (S.C. 2005). The statute of limitations is triggered "not merely by knowledge of an injury, but by facts, diligently acquired, sufficient to put an injured person on *notice* of the existence of a cause of action against another." Id. (emphasis added). The standard as to when the limitations period begins to run is objective, rather than subjective. Kreutner v. David, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995).

Three important dates were presented to the Court by the parties: October 26, 2004, the date the Plaintiff signed the Covenant, September 28, 2007, the date that State Auto answered with a denial in the Richland County action, and October 20, 2008, the date the Richland County action found for State Auto and denied Plaintiff UIM coverage.

This Court finds that State Auto's answer of September 28, 2007 in the Richland County action was sufficient to put Plaintiff Leaphart on notice that "a cause of action arose from the [alleged] wrongful conduct" of J.B. Watts Co., Inc. Kimmer, 396 S.C. at 58, 719 S.E.2d at 268. In its answer, State Auto unequivocally reserved its right to deny coverage and stated its reasons for doing so. At that point, through the exercise of reasonable diligence, the Plaintiff should have been aware that the causes of action above may exist against the Defendants for failing to obtain the UIM coverage which the Plaintiff and his father thought they had.

Plaintiff argues that his claims against the Defendants were not ripe prior to the final adjudication of the coverage dispute in Richland County on October 20, 2008. As support for this argument, Plaintiff cites Webb v. Greenwood County, 229 S.C. 267, 279, 92 S.E.2d 688, 693 (1956), a takings case, where it was held that "[t]he Statute of Limitations begins to run from the time of the first injury or damage." As such, Plaintiff argues that until final adjudication of the Richland County action, no injury had occurred for the Plaintiff to seek redress again the Defendants.

This Court agrees that the Plaintiff must have an injury to be discovered for the statute to run, but the Court finds that Plaintiff's alleged injury occurred even before the UIM suit was filed. Viewing the facts alleged by the Plaintiff in a light most-favorable to the non-moving party, Plaintiff's injury occurred when he moved from his father's home, he was no longer covered under his father's insurance policy, the Defendants knew the Plaintiff's residence and failed to apprise the Plaintiff and his father that he was no longer covered, and the Plaintiff was injured in an accident. At this point, Plaintiff had no insurance to cover the full extent of his damages resulting from the accident and he was injured by the Defendants' alleged negligence.

This position is supported by Riddle-Duckworth, Inc. v. Sullivan, 253 S.C. 411, 171 S.E.2d 486 (S.C. 1969). In Sullivan, the Respondent, Riddle-Duckworth, Inc., was a home and auto appliance business. Sullivan, 253 S.C. at 417, 171 S.E.2d at 488. The Appellant was an insurance agency who procured an insurance policy on behalf of the Respondent covering an elevator in the Respondent's place of business. Id. This policy was renewed yearly through the insurance agency. Id. When there was a change in conditions at the Respondent's place of business, they would notify the Appellant, and the appellant would report the changes to the insurance company. Sullivan, 253 S.C. at 418, 171 S.E.2d at 488. The Respondent also asked

the Appellant upon each change if the elevator maintained coverage after the change in conditions. Id. This continued from 1956 until 1962, when a change in the policy language led the Respondent to doubt that he had coverage. Id. The Appellant stated that the Respondent was still covered, and nothing further was done. Id. Subsequently, the elevator fell and injured a passenger. Sullivan, 253 S.C. at 419, 171 S.E.2d at 488. The injured passenger sued the Respondent for negligence in maintaining the elevator and was awarded damages in the amount of $7,500.00. Id. The Respondent then filed suit against the Appellant for negligent procurement of the insurance policy. Id. The jury found for the Respondent and awarded damages as a result. Id.

On appeal, the Appellant argued, in addition to other points, that the trial court erred in failing to hold that Respondent's claim was barred by the six-year statute of limitations that was applicable at the time. Sullivan, 253 S.C. at 424-25, 171 S.E.2d at 492. Specifically, Appellant argued that the time at which the Respondent's cause of action arose was 1956, when the policy was first procured.. Id. The supreme court rejected this argument on the basis that the Respondent filed suit for negligent procurement of the specific 1962 policy and also because the loss was sustained when the elevator fell. Sullivan, 253 S.C. at 425, 171 S.E.2d at 492-93. Since the lawsuit against the Appellant was filed within the same year as the policy was procured, the court held the suit was timely. Id.

While not specifically on point with the facts of this case, this Court believes that Sullivan provides guidance on the issue of when an injury is sustained by an insured where a policy that is negligently procured does not provide coverage. Sullivan also involved an action for the negligent procurement of an insurance policy by an insurance agent. The supreme court clearly held that the Respondent's claim could not have been brought until the issuance of the

policy, a representation of coverage that did not exist had been made, and a loss had been sustained. Sullivan, 253 S.C. at 425, 171 S.E.2d at 493. In the present case, Plaintiff's argument is that no loss was sustained as a result of the alleged negligent procurement of his UIM policy until the Richland County action was resolved in favor of the provider of the UIM policy. However, Plaintiff's loss as a result of the negligent procurement occurred on the date he sustained injury and damage that was not covered by his policy, May 5, 2004.

The primary distinction between the present case and Sullivan is that the Court did not have an issue involving the discovery rule due to the remarkable rapidity of the claim. Here, though the Plaintiff's causes of action arose at the date of the accident, it was not discovered until September 28, 2007, when State Auto answered with a general denial of UIM coverage. At this point, Plaintiff should have known through the exercise of reasonable diligence that he had a claim for recovery due to the alleged wrongful conduct of the Defendants. Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (S.C. 2005). This is so even though the suit against the insurance company had not been resolved. While Plaintiff may not have known if the Circuit Court would find in his favor and therefore know the extent of his injury, that is immaterial to a cause of action against the insurance agent. "[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial." Dean v. Ruscon Corp., 321 S.C. 360, 364, 468 S.E.2d 645, 648 (S.C. 1996).

This Court briefly addresses Defendants' argument that the Plaintiff's signing of the Covenant as part of a settlement with Ms. Austin's insurance company is the date the statute began to run on all of Plaintiff's causes of action. Defendant argues that this document acts as an acknowledgement that the Plaintiff knew his UIM coverage would be contested, and therefore proves that Plaintiff knew he had no coverage, and should have known of a cause of action

against the Defendants'. This Court does not interpret the document as an acknowledgement that the Plaintiff knew his coverage was likely to be contested. The Court notes that the Plaintiff reserved his rights to proceed against Ms. Austin in the event of a failure to settle or to agree on UIM benefits. However, this Court finds this reservation of rights is insufficient to show that the Plaintiff affirmatively knew of the contested coverage at that date. The Court stands on its determination that State Auto's answer in the Richland County action was the applicable date when the Plaintiff "knew or should have known through the exercise of reasonable diligence that a cause of action arose from the wrongful conduct of another." Epstein, 363 S.C. at 376, 610 S.E.2d at 818. Therefore, September 28, 2007 is the date when the statute of limitation began to run on Plaintiff's causes of action for breach of implied contract, negligence, and breach of fiduciary duty.

II. Plaintiff's SCUTPA Action

This Court also finds that the Plaintiff's SCUTPA action is barred by the statute of limitations. A SCUTPA action must be brought within three years of the Plaintiff's discovery of the unlawful conduct which was the subject of the suit. S.C. Code § 39-5-150.

Much like Plaintiff's other causes of action, this Court finds that State Auto's answer on September 28, 2007 triggered the statute of limitations on Plaintiff's SCUTPA claim. At that point, the alleged unlawful misrepresentations of coverage highlighted in the complaint clearly became known to the Defendants, as State Auto unequivocally denied coverage and stated the reasons therefore. As a result, Plaintiff's claim is also barred by a three-year statute of limitations imposed on SCUTPA claims. S.C. Code § 39-5-150.

Conclusion

For the foregoing reasons, this Court finds as a matter of law that the statute of limitations on all of Plaintiff's causes of action began to run on September 28, 2007. This action was filed on October 13, 2010, outside of the applicable three-year statute of limitations for each claim. There is no genuine issue of material fact as to the dates metioned above. Therefore, Defendants' motion for summary judgment is GRANTED as to all causes of action.

IT IS SO ORDERED.

LETITIA H. VERDIN
Presiding Judge

Greenville, South Carolina
April 11, 2012