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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2012-CP-42-00346
Appellate Case No. 2013-001454

RECEIVED
DEC 01 2014
SC Court of Appeals

James Luther Plemmons and Wanda Sue Clark Plemmons, Appellants,

v.

State Farm Mutual Automobile Insurance Company, Plaza Insurance Company,
The Stover Company, Inc., and Howard E. Newton, III, Defendants,

Of whom,

State Farm Mutual Automobile Insurance Company is Respondent.

PETITION FOR REHEARING

The Court of Appeals filed its opinion in this matter on November 12, 2014. Appellants now petition the Court pursuant Rule 221, SCACR, for rehearing on the grounds that the Court overlooked or misapprehended the following points:

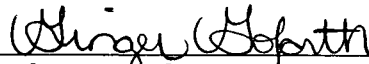
- (1) The case of Hite v. Hartford Accident & Indemnity Co., 288 S.C. 616, 344 S.E.2d 173 (Ct. App. 1986) is not controlling under the facts of this case because James Plemmons's injuries were not directly caused by some independent or intervening cause wholly disassociated from, independent of, or remote to the

operation of his tow truck, which encompassed the use of the vehicles being towed by his tow truck, including the Carson vehicle;

(2) In other words, the Court misapprehended the application of Hite, which involved a driver's actions and behavior that occurred at quite some distance from the insured vehicle and did not involve the insured vehicle at all. James Plemmons was not injured remotely from the Carson vehicle, but was injured while performing a towing operation that directly involved the Carson vehicle that was being towed by his tow truck at the time of the accident. The tow truck was idling, Mr. Plemmons was performing a towing operation, and the Carson vehicle was involved in and damaged by the accident. A towed vehicle is a vehicle being used. American Fire & Cas. Co. v. Allstate, (4th Cir. 1954) (it would violate the rule of liberal interpretation of insurance contracts in favor of insureds to hold that a car being towed is not actually in use); Hartford Acc. & Indem. Co. v. Travelers Ins. Co., 400 A.2d 862 (N.J. 1979) (the act of towing a vehicle is use of the vehicle, even when the towed vehicle did not contribute to, nor was involved in, the actual impact); Dairyland Ins. Co. v. Drum, 568 P.2d 459 (Colo. 1977) (the towing of a vehicle is neither rare nor unforeseeable);

(3) If the causal connection test applies, then a causal connection existed between the Carson vehicle and Mr. Plemmons's injuries because the Carson vehicle was involved in the towing operation and was therefore being used by Mr. Plemmons as the tow truck operator;

(4) Mr. Plemmons therefore qualifies as an insured under the State Farm policy covering the Carson vehicle and is entitled to coverage under the State Farm policy.



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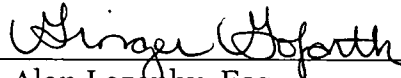
Of whom,

State Farm Mutual Automobile Insurance Company is Respondent.

PROOF OF SERVICE

I, the undersigned, hereby certify that the Petition for Rehearing in the above referenced matter was mailed, postage prepaid, to Respondent's Attorney, Charles Norris, by sending to Nelson Mullins Riley & Scarborough, LLP, PO Box 1806, Charleston, SC 29402, on November 26, 2014.

SIGNATURE PAGE TO FOLLOW



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