

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

D. Craig Brown, Circuit Court Judge

Circuit Case No. 2012-CP-07-1352
Appellate Case No. 2013-002578

Bruce R. Hoffman,

Appellant,

v.

Seneca Specialty Insurance Company; CRC Insurance
Company; CRC Insurance Services, Inc. d/b/a Southern Cross
Underwriters of Sumter; Adylette Services of Lowcountry, Inc.,
and Capstone ISG, Inc.,

Defendants,

Of whom Seneca Specialty Insurance Company is the Respondent.

**RESPONDENT'S REPLY IN SUPPORT OF ITS MOTION FOR
LEAVE TO FILE SUPPLEMENTAL RECORD ON APPEAL**

YOUNG CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Edward D. Buckley Jr. (SC Bar No. 994)
Joshua P. Cantwell (SC Bar No. 76368)
Russell G. Hines (SC Bar No. 72100)
Post Office Box 993
Charleston, South Carolina 29402
(843) 720-5488
Attorneys for Respondent

By and through its undersigned counsel, Respondent Seneca Specialty Insurance Company submits this reply in support of Respondent's Motion for Leave to File Supplemental Record on Appeal (hereinafter referred to as "Respondent's Motion") and also to rebut "Appellant's Objection/Opposition to Respondent's Motion dated 12/3/14 for Leave to File Supplemental Record on Appeal (and then Change Their Final Brief from their Initial Brief Substantively Based on Supplemented Record in Violation of Rules 210(c) and 211(b) and for Other Relief in Favor of Appellant Therefore" (hereinafter referred to as "Appellant's Objection").

ARGUMENT

As stated therein, Respondent's Motion sought leave from this Court to file a supplemental record on appeal (and to cite thereto in Respondent's final brief) containing but one (1) substantive matter; namely, a nine (9)-page insurance policy form entitled Causes of Loss – Special Form (hereinafter referred to as the "Causes of Loss Form").

Candidly, the undersigned had assumed that the Causes of Loss Form was omitted from the record on appeal—which was prepared by Appellant Bruce R. Hoffman in accordance with the duty imposed upon him as appellant under Rule 210(a), SCACR—on account of mere inadvertence. Rather than insist that Appellant fix this mistake, the undersigned believed

(and hoped—in vain, as it turns out) that a practical solution to the problem (minor as it was—or so the undersigned thought) would be to proceed as Respondent has, taking upon itself the task of preparing the short supplemental record and asking the Court for leave to file and cite to the same. Unfortunately, and for reasons that Respondent is still unable to understand, this approach did not suit Appellant.

Appellant's Objection charges as follows:

Appellant received on 12/5/14, service copies of bound final brief of Respondent and Respondent's Motion for Leave to File Supplemental Record on Appeal. What Respondent does not clearly tell the Court, is that their final brief differs **substantially** from their initial brief, embellishing an argument at pages 28-29 of their final brief, by now citing for their argument the entire Causes of Loss – Special Form portion of the insurance policy at issue, when Respondent did not designate this entire portion in their designation of record nor, to Appellant's recollection, was this entire Causes of Loss – Special Form ever part of the record in the trial court below, so that Respondent could not and cannot designate this entire portion or rely on it.

(Appellant's Objection at p. 2) (emphasis in original.)

The relief sought by Respondents' Motion would therefore, according to Appellant, violate the South Carolina Appellate Court Rules by including matter in the appellate record that was not presented to the lower court (contrary to Rule 210(c)) and by allowing undue deviation between

Respondent's initial and final briefs (contrary to Rule 211(b)), which deviation constitutes, "in essence," an impermissible response to Appellant's reply brief (contrary to Rule 207). (Id. at p. 2.)

Appellant's Objection is, however, plainly without merit, because (1) the Causes of Loss Form was presented to the lower court (by Appellant, in fact); (2) was properly cited in both Respondent's initial and final briefs, without any undue deviation between the two or embellishment of Respondent's final brief; and (3) was duly designated by Respondent for inclusion in the record on appeal, such that Appellant should have included it therein. Allowance of the supplemental record (provisionally submitted by Respondent previously) is warranted under the circumstances and will work no undue prejudice upon Appellant.

(1) The Causes of Loss Form was presented to the lower court.

In this regard, it appears that Appellant's reliance on his memory of the record is misplaced. (Appellant's Objection at p. 2 (stating, "nor, to **Appellant's recollection**, was this entire Causes of Loss – Special Form ever part of the record in the trial court below") (emphasis added).) A copy of Appellant's Notice of Motion and Motion for Summary Adjudication of Issue (Rule 56)/Injunctive Relief, filed May 4, 2012, is attached hereto as **Exhibit 1**, which is incorporated by reference. The

Causes of Loss Form was attached to—and filed of record—with this motion. Indeed, the body of the motion makes reference to the attachment of the Causes of Loss Form. (**Exhibit 1** at pp. 1-2 (stating, “Defendant Seneca denied Plaintiff’s claim by letter dated March 15, 2012 (**copy with pertinent portion of insurance policy attached**)”) (emphasis added); *see id.* at p. 4 (wherein the referenced March 15, 2012, letter provides: “We refer you to policy form entitled, CP 10 30 04 02 Causes of Loss – Special Form”).)

(2) The Causes of Loss form was properly cited in Respondent’s initial and final briefs, without undue deviation between the two or embellishment of Respondent’s final brief.

For ease of reference, copies of the relevant pages of Respondent’s initial and final briefs (pages 29-31 of the initial brief, and pages 27-29 of the final brief) are attached hereto as **Exhibits 2** and **3**, respectively. A review of **Exhibits 2** and **3** makes plain that, in all material respects, the citations to the Causes of Loss Form in Respondent’s initial and final briefs are exactly the same, with both making exactly the same citations to pages 2, 3, and/or 9 of the Causes of Loss Form. The only difference—which, of course, is not only permissible, but mandatory under Rule 211(b)(1) (stating how references in the initial brief “shall be revised”)—is that the citations in the final brief were revised (in place of the initial references) to

indicate where the referenced material appears in the record on appeal—or, in this case, the supplemental record on appeal. (*See e.g.*, **Exhibit 2** at p. 29-30 (citing to “(‘Causes of Loss – Special Form’ at p. 3 (attached to Hoffman’s Motion for Summary Adjudication of Issue (Rule 56)/Injunctive Relief filed May 4, 2012) (emphasis in original)); **Exhibit 3** at p. 28 (citing to “Supp. R. p. 3) (emphasis in original).”

(3) The Causes of Loss Form was duly designated by Respondent for inclusion in the record on appeal, such that Appellant should have included it therein.

For ease of reference, a copy of Respondent’s designation of matters is attached hereto as **Exhibit 4**, which is incorporated herein by reference. Matter number 11 on Respondent’s designation of matter for inclusion in the record on appeal is “Hoffman’s Notice of Motion and Motion for Summary Adjudication of Issue (Rule 56)/Injunctive Relief filed May 4, 2012 (**with Attachments**),” which is, of course, referenced in the above-quoted citation to this material from Respondent’s initial brief. (*Compare* **Exhibit 3** at pp. 29-30 (emphasis added) and **Exhibit 4** at p. 1 (No. 11).) The citation in Respondent’s initial brief expressly indicated that the Causes of Loss Form was an “attachment” to the referenced motion filed by Appellant on May 4, 2012, and Respondent’s designation of matter expressly stated that the motion was to be included in the record “with Attachments.” (*Id.*) It is

simply beyond any reasonable dispute that the Causes of Loss Form was duly designated Respondent for inclusion in the record on appeal. For that matter, Appellant’s designation identifies the same May 4, 2012, motion to which the Causes of Loss Form was attached as a matter to be included in the appellate record. (See page 1 of Appellant’s designation of matter, the second matter under “I. PLEADINGS,” which begins, “2012, May 4;” for ease of reference, a copy of Appellant’s designation of matter is attached hereto as **Exhibit 5**, which is incorporated herein by reference.)

CONCLUSION

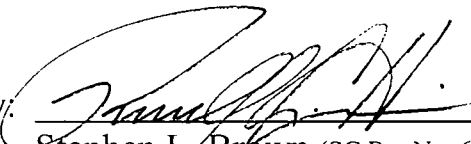
In the course of this appeal, Appellant has opposed—unsuccessfully—every motion Respondent has made. This includes Appellant’s opposition to Respondent’s requests for briefing extensions, wherein Appellant complained such extensions would unduly delay his appeal even though Appellant himself had already sought and obtained briefing extensions without any objection from Respondent.

Most respectfully, Respondent submits that Appellant’s Objection to Respondent’s Motion is without merit; indeed, Respondent submits it is simply without good ground to support it, even going so far as to rely solely on “Appellant’s recollection” as to what would appear to be the most significant question raised by Appellant’s Objection, i.e., whether the Causes

of Loss Form was presented to the lower court, when Appellant was readily capable of definitively answering this question—and perhaps avoiding the present dispute—by simply reviewing his own filings. Respondent asks the Court to grant its motion and also to grant it such other and further relief against Appellant as it may deem to be just and proper under the circumstances.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: 
Stephen L. Brown (SC Bar No. 66468)
Edward D. Buckley Jr. (SC Bar No. 994)
Joshua P. Cantwell (SC Bar No. 76368)
Russell G. Hines (SC Bar No. 72100)
Post Office Box 993
Charleston, South Carolina 29402
(843) 720-5488
Attorneys for the Respondent

Charleston, South Carolina

Dated: 12/15/14

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CASE NO. 12-CP-07-1352

BRUCE R. HOFFMAN,

Plaintiff,

v.

**NOTICE OF MOTION AND MOTION
FOR SUMMARY ADJUDICATION OF
ISSUE (Rule 56)/INJUNCTIVE RELIEF**

SENECA SPECIALTY INSURANCE
COMPANY, CRC INSURANCE SERVICES,
INC. d/b/a SOUTHERN CROSS UNDERWRITERS
OF SUMTER, AYDLETTE SERVICES OF
LOWCOUNTRY, INC., CAPSTONE ISG, INC.,

Defendants.

2012 MAY -4 PM 12:13
JENNIFER L. COOPER
CLERK OF COURT

TO ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that Plaintiff Bruce R. Hoffman, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will and does hereby move in the Courtroom of the Honorable Marvin L. Dukes III, at 102 Ribaut Road, Beaufort, South Carolina, on **May 22, 2012 at 8:30 a.m.**, for summary adjudication on the issue of coverage/injunctive relief against Defendants Seneca Specialty Insurance Company, CRC Insurance Services, Inc. d/b/a Southern Cross Underwriters of Sumter, Aydlette Services of Lowcountry, Inc. and Capstone ISG, Inc.

This motion is made on the ground that there is coverage under the insurance policy for the damage to the office building at issue, proximately caused, Defendants claim, by raccoons. Plaintiff is thus entitled to judgment/injunctive relief as a matter of law on the same. This motion is based on the pleadings on file in this action, as well as such other testimony, evidence and authority as may be presented at the hearing on the motion.

Plaintiff was surprised given the prior representations, when Defendant Seneca denied Plaintiff's claim by letter dated March 15, 2012 (copy with pertinent portion of insurance policy attached), acknowledging that raccoons

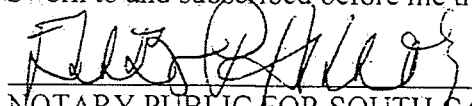
proximately caused all damage, but claiming that this cause is excluded from coverage by virtue of a provision in the policy that provides, "We will not pay for loss or damage caused by or resulting from any of the following ... Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals". This provision, and the policy as a whole, is ambiguous, and this ambiguity is construed (particularly with an exclusion) against the writer of the policy, Defendant Seneca - nowhere in the policy is damage caused by raccoons, or raccoons, specifically mentioned, and the provision of the policy cited could have, but doesn't say, all animals or even all other animals, and the only reasonable/logical interpretation is that "other animals" is other animals *like* insects, birds, rodents, i.e. vermin, not wild animals like raccoons, descended from bears, which den not nest, and one of which, as noted in the complaint, growled at Plaintiff when he confronted them (which vermin are not known to do). Under these circumstances, the burden to prove raccoon damage is excluded is on the insurer, not on the Plaintiff, and objectively here, their use of "other animals" is ambiguous on its face, and coverage and repair thus must occur.

Jones v. Equicredit Corp., 347 S.C. 535, 556 S.E.2d 713 states that "when there is no South Carolina case directly on point, our court may look to other jurisdictions for persuasive authority". In this regard, see, e.g., Umanoff v. Nationwide Mut. Fire Ins. Co., 442 N.Y.S.2d 892 (N.Y. Civ. Ct. 1981) where it was held that raccoons are not vermin and, as not named specifically as excluded in the policy, there was coverage for raccoon damage under a policy that excluded vermin damage. Also, in Marks v. Trinity Universal Ins. Co., 531 So.2d 516, 517 (La. Ct. App. 1988), the court concluded a similar exclusion in a policy was ambiguous, in a case involving a squirrel. In this regard it is generally accepted that raccoons, as a member of the bear family, fall outside any vermin-like exclusion in a policy, vermin coming from the Latin *vermis*, which means "worm", i.e. insect-like animals.

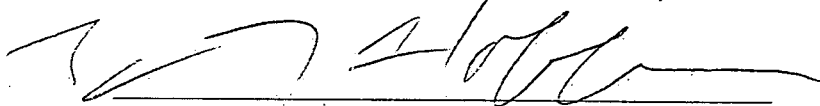
WHEREFORE, Plaintiff moves that the Court enter summary adjudication in their favor against Defendant Seneca Specialty Insurance Company, et. al., on the issue of insurance coverage for the losses claimed, and for

such other and further relief as the Court deems just and appropriate (including but not limited to injunctive relief to compel coverage and repair of the office building, roof, heating and air ducts, cleanup, etc).

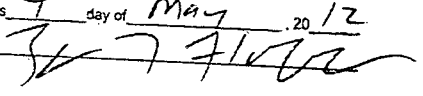
Sworn to and subscribed before me this 4th day of May, 2012

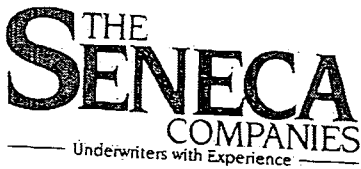

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 08/08/14

LAW OFFICE OF BRUCE R. HOFFMAN, LLC



BRUCE R. HOFFMAN, Attorney for Plaintiff
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843) 838-5290

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this pleading in the above entitled action upon all other parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties *for parties themselves*
This 4 day of May, 20 12
By: 



CERTIFIED MAIL/RRR
7010 0780 0001 8547 1355
COPY BY REGULAR MAIL

March 15, 2012

Bruce Hoffman
574 Sea Island Parkway
Saint Helena Island, SC 29920

INSURED: Bruce Hoffman
POLICY #: BAK 1002868
CLAIM #: 12BBN034
LOSS DATE: 2/3/2012

Dear Mr. Hoffman:

Seneca Specialty Insurance Company, Inc., ("Seneca"), has concluded its investigation into the facts and circumstances surrounding this claim with the assistance of independent adjuster Robert Dodd of Capstone ISG. Mr. Dodd has completed his inspection of the premises with you and Mr. Joe Maffo of Critter Management and advises there were multiple signs of raccoon and other animal activity widely observed around the risk. Raccoon tracks were observed on the handrails of the front porch and there were animal droppings observed in multiple locations. There was also pulled insulation within the HVAC duct work and also beneath the risk and in the surrounding heavily wooded area. Also there was insulation and debris observed on the interior surfaces, book cases and desks. Mr. Maffo stated that the raccoons were entering the crawlspace beneath the HVAC platform and also gaining access to the attic through the HVAC duct. Mr. Maffo also stated that the animals had free and easy access and were obviously using the attic for nesting. He stated the risk was also being infested by rats and squirrels due to the close proximity of the surrounding heavily wooded area. Mr. Maffo stated he believed the entire attic insulation and HVAC duct work would require replacement. This loss is not covered under the terms and conditions of the policy and therefore we must deny coverage to the insured for this loss.

We refer you to policy form entitled, CP 10 30 04 02 Causes of Loss – Special Form, which reads in relevant part:

B. Exclusions

2. We will not pay for loss or damage caused by or resulting from any of the following:

d. (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

c. Faulty, inadequate or defective:

(4) Maintenance;

of part or all of any property on or off the described premises.

Unfortunately, the loss sustained by the insured is excluded from coverage under this form, therefore, Seneca, can not make any payments to the insured, or anyone on the insured's behalf with respect to this claim.

In denying coverage to the insured for the above captioned claim, Seneca does not waive, but rather, expressly reserves all of the rights and defenses to which it is entitled to under the terms and conditions of the policy, whether mentioned herein or not.

Should the insured possess documentation or information that it believes will impact Seneca's decision on this claim, we invite the insured to forward such documentation or information as soon as possible for our review. Should you wish to discuss this matter further, please feel free to call me at 212-277-3487.

In the event that the insured wishes to review this matter with the South Carolina Department of Insurance, you may write to them at The Capitol Center, 1201 Main Street, Suite 1000, Columbia SC 29201-3105 or P.O. Box 100105, Columbia, SC 29202-3105 or contact them at 803-737-6229.

Very truly yours,



Robert D'Alessandro

CC: Southern Cross Underwriters of Sumter

Exhibit 1

CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section F. – Definitions.

A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:

1. Excluded in Section B., Exclusions; or
2. Limited in Section C., Limitations; that follow.

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance Or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (1) An ordinance or law that is enforced even if the property has not been damaged; or
- (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in b.(1) through (4) above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

d. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

e. Utility Services

The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises. Failure includes lack of sufficient capacity and reduction in supply.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion does not apply to the Business Income coverage or to Extra Expense coverage. Instead, the Special Exclusion in Paragraph B.4.a.(1) applies to these coverages.

f. War And Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

g. Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows from a sewer, drain or sump; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
 - (a) Foundations, walls, floors or paved surfaces;
 - (b) Basements, whether paved or not; or
 - (c) Doors, windows or other openings.

But if Water, as described in g.(1) through g.(4) above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

h. "Fungus", Wet Rot, Dry Rot And Bacteria

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
2. To the extent that coverage is provided in the Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions B.1.a. through B.1.h. apply whether or not the loss event results in widespread damage or affects a substantial area.

2. We will not pay for loss or damage caused by or resulting from any of the following:
 - a. Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires.

But if artificially generated electrical current results in fire, we will pay for the loss or damage caused by that fire.
 - b. Delay, loss of use or loss of market.
 - c. Smoke, vapor or gas from agricultural smudging or industrial operations.
 - d.(1) Wear and tear;
 - (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
 - (3) Smog;
 - (4) Settling, cracking, shrinking or expansion;
 - (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

(6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

(7) The following causes of loss to personal property:

(a) Dampness or dryness of atmosphere;

(b) Changes in or extremes of temperature; or

(c) Marring or scratching.

But if an excluded cause of loss that is listed in 2.d.(1) through (7) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.

g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

(1) You do your best to maintain heat in the building or structure; or

(2) You drain the equipment and shut off the supply if the heat is not maintained.

h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

(1) Acting alone or in collusion with others; or

(2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.

i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

j. Rain, snow, ice or sleet to personal property in the open.

k. Collapse, except as provided below in the Additional Coverage for Collapse. But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

l. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion, l., does not apply to damage to glass caused by chemicals applied to the glass.

m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

- c. Faulty, inadequate or defective:
- (1) Planning, zoning, development, surveying, siting;
 - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (3) Materials used in repair, construction, renovation or remodeling; or
 - (4) Maintenance;
- of part or all of any property on or off the described premises.

4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form

We will not pay for:

- (1) Any loss caused directly or indirectly by the failure of power or other utility service supplied to the described premises, however caused, if the failure occurs outside of a covered building. Failure includes lack of sufficient capacity and reduction in supply.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss resulting from that Covered Cause of Loss.

- (2) Any loss caused by or resulting from:
 - (a) Damage or destruction of "finished stock"; or
 - (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

- (3) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (4) Any increase of loss caused by or resulting from:
 - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

- (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

- (5) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".
- (6) Any other consequential loss.

b. Leasehold Interest Coverage Form

- (1) Paragraph B.1.a. Ordinance Or Law, does not apply to insurance under this Coverage Form.

- (2) We will not pay for any loss caused by:
 - (a) Your cancelling the lease;
 - (b) The suspension, lapse or cancellation of any license; or
 - (c) Any other consequential loss.

c. Legal Liability Coverage Form

- (1) The following exclusions do not apply to insurance under this Coverage Form:

- (a) Paragraph B.1.a., Ordinance Or Law;
- (b) Paragraph B.1.c., Governmental Action;
- (c) Paragraph B.1.d., Nuclear Hazard;
- (d) Paragraph B.1.e., Utility Services; and
- (e) Paragraph B.1.f., War And Military Action.



(2) The following additional exclusions apply to insurance under this Coverage Form:

(a) Contractual Liability

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i) Your assumption of liability was executed prior to the accident; and
- (ii) The building is Covered Property under this Coverage Form.

(b) Nuclear Hazard

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

- a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.

c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
- (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

- (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
- (2) Business Income coverage or Extra Expense coverage.

e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.

f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.

2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:

a. Animals, and then only if they are killed or their destruction is made necessary.

b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:

- (1) Glass; or
- (2) Containers of property held for sale.

c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

- (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
 - (2) To Business Income coverage or to Extra Expense coverage.
3. The special limit shown for each category, a. through d., is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:
- a. \$2,500 for furs, fur garments and garments trimmed with fur.
 - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
 - c. \$2,500 for patterns, dies, molds and forms.
 - d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

This limitation, C.3., does not apply to Business Income coverage or to Extra Expense coverage.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:
- a. Results in discharge of any substance from an automatic fire protection system; or
 - b. Is directly caused by freezing.

However, this limitation does not apply to Business Income coverage or to Extra Expense coverage.

D. Additional Coverage – Collapse

The term Covered Cause of Loss includes the Additional Coverage – Collapse as described and limited in D.1. through D.5. below.

1. With respect to buildings:

- a. Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose;
- b. A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse;
- c. A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building;
- d. A building that is standing or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

2. We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if the collapse is caused by one or more of the following:

- a. The "specified causes of loss" or breakage of building glass, all only as insured against in this Coverage Part;
- b. Decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- c. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- d. Weight of people or personal property;
- e. Weight of rain that collects on a roof;

- f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in 2.a. through 2.e., we will pay for the loss or damage even if use of defective material or methods, in construction, remodeling or renovation, contributes to the collapse.

The criteria set forth in 1.a. through 1.d. do not limit the coverage otherwise provided under this Causes of Loss Form for the causes of loss listed in 2.a., 2.d. and 2.e.

3. With respect to the following property:
- a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
 - b. Awnings, gutters and downspouts;
 - c. Yard fixtures;
 - d. Outdoor swimming pools;
 - e. Fences;
 - f. Piers, wharves and docks;
 - g. Beach or diving platforms or appurtenances;
 - h. Retaining walls; and
 - i. Walks, roadways and other paved surfaces;
- if the collapse is caused by a cause of loss listed in 2.b. through 2.f., we will pay for loss or damage to that property only if:
- a. Such loss or damage is a direct result of the collapse of a building insured under this Coverage Form; and
 - b. The property is Covered Property under this Coverage Form.
4. If personal property abruptly falls down or caves in and such collapse is not the result of collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
- a. The collapse was caused by a Cause of Loss listed in 2.a. through 2.f. above;
 - b. The personal property which collapses is inside a building; and
 - c. The property which collapses is not of a kind listed in 3. above, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph 4. does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

Collapse of personal property does not mean cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

5. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Part.

E. Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria

1. The coverage described in E.2. and E.6. only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
- a. A "specified cause of loss" other than fire or lightning; or
 - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.
2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
- a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
 - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
 - c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.
3. The coverage described under E.2. of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.

4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph F.2. (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss Form or under the Additional Coverage – Collapse.

6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense coverage form.

a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.

b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

F. Additional Coverage Extensions

1. Property In Transit

This Extension applies only to your personal property to which this form applies.

a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.

b. Loss or damage must be caused by or result from one of the following causes of loss:

(1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.

(2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the road bed.

(3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.

c. The most we will pay for loss or damage under this Extension is \$5,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

2. Water Damage, Other Liquids, Powder Or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

3. Glass

a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.

- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension, F.3., does not increase the Limit of Insurance.

G. Definitions

- 1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
- 2. "Specified Causes of Loss" means the following: Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
 - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
 - (1) The cost of filling sinkholes; or

- (2) Sinking or collapse of land into man-made underground cavities.
- b. Falling objects does not include loss or damage to:
 - (1) Personal property in the open; or
 - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
- c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam.

granted.”).

H. Hoffman’s argument based on the applicability or potential applicability of an ensuing loss exception to the subject exclusion¹⁶ is unavailing.

Nowhere in the circuit court’s order granting summary judgment in favor of Seneca is this argument addressed, and Hoffman did not make a Rule 59(e) to obtain a ruling thereon. (Order of the Circuit Court (Judge Brown) filed November 12, 2013). Accordingly, it is not preserved for appellate review. Elam, 361 S.C. at 23, 602 S.E.2d at 779-80; Noisette, 304 S.C. at 58, 403 S.E.2d at 124; *see also* Floyd, 365 S.C. at 73, 615 S.E.2d at 474.

Also, Hoffman’s brief is patently conclusory on this point—citing no legal authority and undertaking no substantive legal analysis at all—and it is rightfully deemed abandoned. McLean, 314 S.C. 361, 444 S.E.2d 513.

Moreover, the policy language that Hoffman cites as being “the relevant provision in the insurance policy that would allow coverage even with an exclusion,” is irrelevant. The language Hoffman cites is under section “B.3” on the policy’s “Causes of Loss – Special Loss” and has applicability only to “an excluded cause of loss that is listed in 3.a through 3.c. . . .” (“Causes of Loss – Special Form” at p. 3 (attached to Hoffman’s

¹⁶ (App’s Br. p. 10.)

Motion for Summary Adjudication of Issue (Rule 56)/Injunctive Relief filed May 4, 2012) (emphasis in original.) By its own terms, section “**B.3**” has no impact upon the subject exclusion, which is set forth in section “**B.2**.” (Id. at pp. 2-3) (emphasis in original.)

Further still, Hoffman’s reference to the page from the PLRB manual is unavailing. While section “**B.2**” is where the subject animal exclusion is contained, in pertinent part, that sections provides as follows: “[b]ut if an excluded cause of loss that is listed in **2.d.(1)** through **(7)** results in a ‘specified cause of loss’ or building glass breakage, we will pay for the loss or damage caused by that ‘specified cause of loss’ or building glass breakage.” (Id. at 3) (emphasis in original.) In keeping with the conclusory nature of his argument, Hoffman provides no analysis as to how this provision helps his position. Indeed, Hoffman does not at all address the following (particularly pertinent) language from the very PLRB page that he cites: “[h]owever, keep in mind that the resulting loss provision that applies to the nesting, infestation, etc., of insects, birds, rodents or other animals, only covers those resulting losses caused by the ‘specified causes of loss’ or building glass breakage, not any covered loss.” (“PLRB CP Annotations” at p. 4 of 5 (attached to Hoffman’s Supplement to Motion for Summary Judgment, etc. dated April 15, 2013).) Hoffman has offered no analysis to

show that any “specified causes of loss” or building glass breakage are involved here—and, indeed, a review of the policy in this regard does show any relevance to this case. (“Causes of Loss – Special Form” at p. 9 [defining “Specified Causes of Loss”] (attached to Hoffman’s Motion for Summary Adjudication of Issue (Rule 56)/Injunctive Relief filed May 4, 2012).)

I. Hoffman’s argument about unjust enrichment¹⁷ is unavailing.

Hoffman’s brief includes a reference to a claim of unjust enrichment. As an initial matter, no such claim has been pleaded by Hoffman. (Complaint filed April 3, 2012.) Not surprisingly, nowhere in the circuit court’s order granting summary judgment in favor of Seneca is this argument addressed, and Hoffman did not make a Rule 59(e) to obtain a ruling thereon. (Order of the Circuit Court (Judge Brown) filed November 12, 2013). Accordingly, it is not preserved for appellate review. Elam, 361 S.C. at 23, 602 S.E.2d at 779-80; Noisette, 304 S.C. at 58, 403 S.E.2d at 124; *see also* Floyd, 365 S.C. at 73, 615 S.E.2d at 474. Also, Hoffman’s brief is patently conclusory on this point—citing no legal authority and undertaking no substantive legal analysis at all—and it is rightfully deemed abandoned. McLean, 314 S.C. 361, 444 S.E.2d 513.

the cause of the damage to the property.” (R. p. 28.) There is no reasonable question as to whether Seneca had a reasonable basis for denial of Hoffman’s claim. See Rife v. Hitachi Constr. Mach. Co. Ltd., 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005) (“[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.”).

H. Hoffman’s argument based on the applicability or potential applicability of an ensuing loss exception to the subject exclusion¹⁶ is unavailing.

Nowhere in the circuit court’s order granting summary judgment in favor of Seneca is this argument addressed, and Hoffman did not make a Rule 59(e) to obtain a ruling thereon. (R. pp. 22-32). Accordingly, it is not preserved for appellate review. Elam, 361 S.C. at 23, 602 S.E.2d at 779-80; Noisette, 304 S.C. at 58, 403 S.E.2d at 124; see also Floyd, 365 S.C. at 73, 615 S.E.2d at 474.

Also, Hoffman’s brief is patently conclusory on this point—citing no legal authority and undertaking no substantive legal analysis at all—and it is rightfully deemed abandoned. McLean, 314 S.C. 361, 444 S.E.2d 513.

Moreover, the policy language that Hoffman cites as being “the relevant provision in the insurance policy that would allow coverage even

¹⁶ (App’s Br. p. 10.)

with an exclusion,” is irrelevant. The language Hoffman cites is under section “**B.3**” on the policy’s “Causes of Loss – Special Loss” and has applicability only to “an excluded cause of loss that is listed in **3.a** through **3.c. . . .**” (Supp. R. p. 3) (emphasis in original.) By its own terms, section “**B.3**” has no impact upon the subject exclusion, which is set forth in section “**B.2.**” (Supp. R. pp. 2-3) (emphasis in original.)

Further still, Hoffman’s reference to the page from the PLRB manual is unavailing. While section “**B.2**” is where the subject animal exclusion is contained, in pertinent part, that sections provides as follows: “[b]ut if an excluded cause of loss that is listed in **2.d.(1)** through **(7)** results in a ‘specified cause of loss’ or building glass breakage, we will pay for the loss or damage caused by that ‘specified cause of loss’ or building glass breakage.” (Supp. R. p. 3) (emphasis in original.) In keeping with the conclusory nature of his argument, Hoffman provides no analysis as to how this provision helps his position. Indeed, Hoffman does not at all address the following (particularly pertinent) language from the very PLRB page that he cites: “[h]owever, keep in mind that the resulting loss provision that applies to the nesting, infestation, etc., of insects, birds, rodents or other animals, only covers those resulting losses caused by the ‘specified causes of loss’ or building glass breakage, not any covered loss.” (R. p. 50.) Hoffman has

offered no analysis to show that any “specified causes of loss” or building glass breakage are involved here—and, indeed, a review of the policy in this regard does show any relevance to this case. (Supp. R. p. 9.)

I. Hoffman’s argument about unjust enrichment¹⁷ is unavailing.

Hoffman’s brief includes a reference to a claim of unjust enrichment. As an initial matter, no such claim has been pleaded by Hoffman. (R. pp. 37-43.) Not surprisingly, nowhere in the circuit court’s order granting summary judgment in favor of Seneca is this argument addressed, and Hoffman did not make a Rule 59(e) to obtain a ruling thereon. (R. pp. 22-32). Accordingly, it is not preserved for appellate review. Elam, 361 S.C. at 23, 602 S.E.2d at 779-80; Noisette, 304 S.C. at 58, 403 S.E.2d at 124; *see also* Floyd, 365 S.C. at 73, 615 S.E.2d at 474. Also, Hoffman’s brief is patently conclusory on this point—citing no legal authority and undertaking no substantive legal analysis at all—and it is rightfully deemed abandoned. McLean, 314 S.C. 361, 444 S.E.2d 513.

J. Hoffman’s challenge to the circuit court’s grant of summary judgment to Seneca on his cause of action for violation of SCUTPA¹⁸ is unavailing.

In granting Seneca summary judgment on Hoffman’s SCUTPA claim,

¹⁷ (App’s Br. p. 10.)

¹⁸ (App’s Br. p. 10.)

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 13 2014

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

D. Craig Brown, Circuit Court Judge

Circuit Case No. 2012-CP-07-1352
Appellate Case No. 2013-002578

Bruce R. Hoffman,

Appellant,

v.

Seneca Specialty Insurance Company; CRC Insurance
Company; CRC Insurance Services, Inc. d/b/a Southern Cross
Underwriters of Sumter; Adyette Services of Lowcountry, Inc.,
and Capstone ISG, Inc.,

Defendants,

Of whom Seneca Specialty Insurance Company is the Respondent.

RESPONDENT'S DESIGNATION OF MATTER

YOUNG CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Edward D. Buckley Jr. (SC Bar No. 994)
Joshua P. Cantwell (SC Bar No. 76368)
Russell G. Hines (SC Bar No. 72100)
Post Office Box 993
Charleston, South Carolina 29402
(843) 720-5488
Attorneys for Respondent

Exhibit 4

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA
COURT OF APPEALS

Respondent proposes the following to be included in the Record on

Appeal:

1. Order of the Circuit Court (Judge Dukes) filed May 30, 2012
2. Order of the Circuit Court (Judge Dukes) filed January 7, 2013
3. Order of the Circuit Court (Judge Mullen) filed April 8, 2013
4. Order of the Circuit Court (Judge Mullen) filed April 24, 2013
5. Order of the Circuit Court (Judge Brown) filed November 12, 2013, granting Seneca summary judgment
6. Order of the Circuit Court (Judge Brown) filed November 12, 2013, denying Hoffman summary judgment
7. Order of the Circuit Court (Judge Brown) filed October 31, 2013, granting summary judgment in favor of Aydlette
8. Order dismissing Hoffman's appeal of CRC's summary judgment filed December 20, 2013
9. Summons and Complaint filed April 3, 2012
10. Seneca's Answer filed May 15, 2012
11. Hoffman's Notice of Motion and Motion for Summary Adjudication of Issue (Rule 56)/Injunctive Relief filed May 4, 2012 (with Attachments)
12. Hoffman's Motion for Reconsideration (of May 30, 2012, Order) filed June 28, 2012
13. Hoffman's Motion for Pre-Trial Hearing/Status Conference (Rule 16) and for Summary Judgment (Rule 56) filed May 6,

2013

14. Seneca/Capstone's Motion for Summary Judgment filed May 6, 2013
15. Seneca/Capstone's Memorandum of Law in Support of Motion for Summary Judgment dated May 6, 2013 (with all Exhibits, including color photographs attached to Dodd affidavit)
16. Hoffman's Notice of Appeal of CRC's summary judgment dated May 6, 2013
17. Hoffman's Notice of Appeal of Orders Granting Seneca Summary Judgment and Denying Hoffman Summary Judgment dated November 27, 2013
18. Remittitur of Hoffman's appeal of CRC's summary judgment filed January 14, 2014
19. Transcript of Record from October 2, 2013 (before Judge Brown)
20. Transcript of Record from June 24, 2013 (before Judge Mullen)
21. Letter from Judge Mullen dated August 14, 2013, regarding recusal

I certify that this Designation of Matters contains no matter which is irrelevant to this appeal.

SIGNATURE ON NEXT PAGE

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: 

Stephen L. Brown (SC Bar No. 66468)

Edward D. Buckley Jr. (SC Bar No. 994)

Joshua P. Cantwell (SC Bar No. 76368)

Russell G. Hines (SC Bar No. 72100)

Post Office Box 993

Charleston, South Carolina 29402

(843) 720-5488

Attorneys for the Respondent

Charleston, South Carolina

Dated: 8/11/14

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

DEC 17 2014

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

SC Court of Appeals

D. Craig Brown, Presiding Judge, Fourteenth Judicial Circuit

Case No. 2013-002578/12-CP-07-1352

Bruce R. Hoffman, Appellant

v.

Seneca Specialty Insurance Company, Respondent

APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

The Appellant, Bruce R. Hoffman, hereby serves on all parties to the above appeal his Designation of Matter to be included in the Record on Appeal. The Appellant proposes that the following be included in the Record on Appeal:

I. PLEADINGS

2012, April 3 – [Plaintiff's] Complaint

2012, May 4 – [Plaintiff's] Notice of Motion and Motion for Summary Adjudication of Issue (Rule 56)/Injunctive Relief

2012, June 28 – [Plaintiff's] Notice of Motion and Motion for Reconsideration of 05/30/12 Order

2012, September 12 – [Plaintiff's] Supplement to Motion for Summary Adjudication of Issue (Reconsideration of Same)

2013, January 17 – [Plaintiff's] Notice of Motion and Motion for Reconsideration of 01/07/13 Order Granting Partial Summary Judgment to Defendant Aydlette Services of Lowcountry, Inc.

2013, March 25 – [Plaintiff's] Notice of Motion and Motion for Summary Judgment or Summary Adjudication of Issues (Rule 56)/Injunctive Relief

2013, May 6 – Plaintiff's Motion for Pre-Trial Hearing/Status Conference (Rule 16) and for Summary Judgment (Rule 56)

2013, May 6 – [Plaintiff's] Supplement to Motion for Summary Judgment, etc.

2013, May 16 – Plaintiff's Response to Defendant Seneca's Requests to Admit

2013, June 24 – [Plaintiff's] Opposition to Motions for Summary Judgment of Seneca, Capstone, Aydlette

2013, June 28 – [Plaintiff's] Supplement Regarding Plaintiff/Defendants' Motions for Summary Judgment

2013, October 2 – Plaintiff's Supplement to Complaint

II. ORDERS

2012, May 30 – Order [regarding Plaintiff's Motion for Summary Judgment]

2013, January 7 – Order [regarding Plaintiff Bruce Hoffman's Motion to Reconsider this Court's prior ruling denying Plaintiff's Motion for Summary Judgment; and Defendant Aydlette Services of Lowcountry's Motion for Summary Judgment]

2013, April 24 – Order [regarding Plaintiff's Motion for Summary Judgment]

2013, May 6 – Order of Protection [for Plaintiff]

2013, August 30 – Order of Recusal [for Judge Mullen]

2013, November 12 – Order [regarding Plaintiff's Motion for Summary Judgment]

2013, November 12 – Order [regarding Seneca's Motion for Summary Judgment]

III. TRANSCRIPTS

October 2, 2013 – Transcript of Hearing

CERTIFICATION OF COUNSEL

I, Bruce R. Hoffman, counsel for the Appellant, hereby certify that the Designation of Matter to be included in the

Record on Appeal does not, to the best of my knowledge, contain matter that is irrelevant to the appeal.

Respectfully submitted,



LAW OFFICE OF BRUCE R. HOFFMAN, LLC
BRUCE R. HOFFMAN,
Attorney for Plaintiff/Appellant Bruce R. Hoffman
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843) 838-5290

Dated: April 30, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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DEC 17 2014

D. Craig Brown, Circuit Court Judge
SC Court of Appeals

Circuit Case No. 2012-CP-07-1352
Appellate Case No. 2013-002578

Bruce R. Hoffman,

Appellant,

v.

Seneca Specialty Insurance Company; CRC Insurance
Company; CRC Insurance Services, Inc. d/b/a Southern Cross
Underwriters of Sumter; Adylette Services of Lowcountry, Inc.,
and Capstone ISG, Inc.,

Defendants,

Of whom Seneca Specialty Insurance Company is the Respondent.

PROOF OF SERVICE

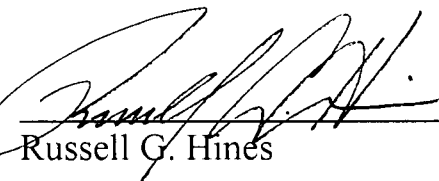
YOUNG CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
Edward D. Buckley Jr. (SC Bar No. 994)
Joshua P. Cantwell (SC Bar No. 76368)
Russell G. Hines (SC Bar No. 72100)
Post Office Box 993
Charleston, South Carolina 29402
(843) 720-5488
Attorneys for the Respondent

I, Russell G. Hines, of Young Clement Rivers, LLP, counsel for Respondent above named, do hereby certify that I have served the **Respondent's Reply in Support of its Motion for Leave to File Supplemental Record on Appeal** on all other parties to this appeal by depositing a copy of the same in the United States Mail, postage prepaid, on December 15, 2014, addressed as follows to said parties or their counsel of record:

Bruce R. Hoffman, Esquire
Law Office of Bruce R. Hoffman, LLC
574 Sea Island Parkway
Saint Helena Island, SC 29920
Appellant/Attorney for Appellant

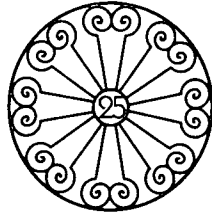
Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: 
Russell G. Hines

Charleston, South Carolina

Dated: 12/15/14



YCR LAW
Young Clement Rivers, LLP

Aimee M. Justman
Legal Assistant

Direct Dial: (843) 720-5460
Direct Fax: (843) 579-1385
E-mail: Ajustman@ycrlaw.com

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SC Court of Appeals

December 15, 2014

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Bruce R. Hoffman v. Seneca Specialty Insurance Company; CRC Insurance Services, Inc. d/b/a Southern Cross Underwriters of Sumter; Aydlette Services of Lowcountry, Inc.; and Capstone ISG, Inc.
Appellate Case No.: 2013-002578
Case No.: 2012-CP-07-01352
Claim No.: 12BBN034
Date of Loss: 2/3/2012
YCR File: 7811-20120293

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter, please find the original and seven (7) copies of Respondent's Reply in Support of its Motion for Leave to File Supplemental Record on Appeal. Also enclosed is the original and one (1) copy of a proof of service regarding the same. Kindly file the originals and return one court-stamped copy of each document to me using the pre-stamped envelope provided.

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

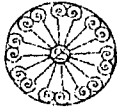
Aimee M. Justman
Legal Assistant

/amj

Enclosures

cc: Bruce R. Hoffman, Esquire

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YCRLAW 25 Calhoun Street, Suite 400
P.O. Box 993
Charleston, SC 29402-0993

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7811-
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Court
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