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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2012-CP-01-00306
Appellate Case No. 2014-00946

Richard Wilson, Michael J. Antoniak, Jr., Marsha L. Antoniak, Anita L. Belton, Prescott Darren Bosler, Johnny Calhoun, Sallie Calhoun, Cynthia Gary, Robert Wayne Gary, Eugene P. Lawton, Jr., Jeanette Norman, James Robert Shirley, Robert W. Spires, Crystal Spires Wiley, Lewis S. Williams, Janie Wiltshire, Benjamin Franklin Wofford, Jr., and Rebecca Hammond Wofford .. Respondents,

v.

LAURA B. WILLIS and JESSE A. DANTICE, individually, and as agents and/or brokers for Southern Risk Insurance Services LLC, Travelers Casualty Insurance Company of America, Allied Property and Casualty Insurance Company, Peerless Insurance Company, Montgomery Mutual Insurance Company, Safeco Insurance Company of America, and Foremost Insurance Company, SOUTHERN RISK INSURANCE SERVICES, LLC, TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA, ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY, PEERLESS INSURANCE COMPANY, MONTGOMERY MUTUAL INSURANCE COMPANY, SAFECO INSURANCE COMPANY OF AMERICA, AND FOREMOST INSURANCE COMPANY, and Laurie Williams Defendants,
Of Whom Peerless Insurance Company, Montgomery Mutual Insurance Company, and Safeco Insurance Company of America are, ... Appellants,
Of Whom Laurie Williams is, ... Respondent.

RECORD ON APPEAL – VOLUME III

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Certificate of Compliance January 7, 2015

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Certificate of Compliance January 23, 2015

State of South Carolina, County of Abbeville
In the Common Pleas Court, Eighth Judicial Circuit

Laurie Wilson Williams

Plaintiff,

vs.

Cynthia Gary

Defendant.

Case No. 2013-CP-01-00165

Consent Order

EMILY Y MCMAHAN
CLERK OF COURT

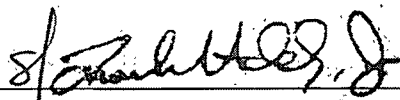
2014 JUL 22 AM 8:40

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

The parties, through counsel, have reached an agreement and requests the Court approve it and make it an Order of the Court.

1. This case has a companion case that is currently being appealed to the South Carolina Court of Appeals (Appellate Case No. 2014-000974). The appellate court's decision will directly affect the posture of this case.
2. This case will not be called to trial until the matter on appeal is resolved, including any appeals either party may make to the South Carolina Supreme Court after the South Carolina Court of Appeals makes its decision.

Wherefore, it is ordered the above captioned case be continued until the companion case on appeal is resolved.



Frank R. Addy, Jr.

Chief Administrative Judge, Common Pleas
Eighth Judicial Circuit

TRUE COPY
BY 
ABBEVILLE COUNTY CLERK OF COURT

July 18, 2014

Greenville, South Carolina

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of South Carolina

First National Insurance Company of America

Plaintiff(s)

v.

Robert Wayne Gary and Cynthia Gary, and Laurie
Wilson-Williams

Defendant(s)

Civil Action No. 8 : 12 - 3124 - GRA

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Robert Wayne Gary
2507 Long Cane Road
Troy, SC 29848-3636

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Shannon F. Bobertz, Esquire
Turner Padgett Graham & Laney, PA
P. O. Box 1473
Columbia, SC 29202
803-254-2200

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



CLERK OF COURT

Date: 10/30/12
10/29/2012

s/Angela Lewis, Deputy Clerk

Signature of Clerk or Deputy Clerk

ROA_0677

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of South Carolina

First National Insurance Company of America

Plaintiff(s)

v.

Robert Wayne Gary and Cynthia Gary, and Laurie
Wilson-Williams

Defendant(s)

Civil Action No. 8:12-3124-GRA

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Cynthia Gary
2507 Long Cane Road
Troy, SC 29848-3636

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Shannon F. Bobertz, Esquire
Turner Padgett Graham & Laney, PA
P. O. Box 1473
Columbia, SC 29202
803-254-2200

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

10/30/12

Date: 10/29/2012



CLERK OF COURT

s/Angela Lewis, Deputy Clerk

Signature of Clerk or Deputy Clerk

ROA_0679

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

First National Insurance Company of America

Plaintiff(s)

v.

Robert Wayne Gary and Cynthia Gary, and Laurie
Wilson-Williams

Defendant(s)

Civil Action No. 8:12-3124-GRA

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Laurie Wilson-Williams

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Shannon F. Bobertz, Esquire
Turner Padgett Graham & Laney, PA
P. O. Box 1473
Columbia, SC 29202
803-254-2200

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



10/30/12

Date: 10/29/2012

CLERK OF COURT

s/Angela Lewis, Deputy Clerk

Signature of Clerk or Deputy Clerk

ROA_0681

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ROA_0682

AO 441 (Rev. 07/10) Summons on Third-Party Complaint

UNITED STATES DISTRICT COURT

for the
District of South CarolinaFirst National Insurance Company of America*Plaintiff*

v.

Laurie Wilson-Williams, Robert Wayne Gary et al.*Defendant, Third-party plaintiff*

v.

Laura Willis, et al.*Third-party defendant*

Civil Action No. 8:12-3124-GRA

SUMMONS ON A THIRD-PARTY COMPLAINT

To: *(Third-party defendant's name and address)* Laura B. Willis
 c/o Billy Nicholson, Attorney
 Nicholson Meredith & Anderson
 109 West Court Avenue
 Greenwood, South Carolina 29646
 PLEASE SEE ATTACHED FOR ADDITIONAL THIRD PARTY DEFENDAN

A lawsuit has been filed against defendant Robert / Cynthia Gary, who as third-party plaintiff is making this claim against you to pay part or all of what the defendant may owe to the plaintiff First National Insurance Co.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff and on the defendant an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the defendant or defendant's attorney, whose name and address are:

Thomas E. Hite, Jr.
 PO BOX 805
 Abbeville, SC 29620.

It must also be served on the plaintiff or plaintiff's attorney, whose name and address are:

Shannon Furr Bobertz
 1901 Main St # 1700
 Columbia, SC 29201

If you fail to respond, judgment by default will be entered against you for the relief demanded in the third-party complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may — but are not required to — respond to it.

Date: December 19, 2012



CLERK OF COURT

Signature of Clerk or Deputy Clerk

ROA_0683

AO 441 (Rev 07/10) Summons on Third-Party Complaint (Page 2)

Civil Action No. 8:12-3124-GRA

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

THIRD PARTY DEFENDANTS CONTINUED:

First National Insurance Company of America,
SC Department of Insurance
Legal Division (Service of Process)
PO Box 100105 Columbia, SC 29202-3105

Montgomery Insurance Company
SC Department of Insurance
Legal Division (Service of Process)
PO Box 100105 Columbia, SC 29202-3105

Safeco Insurance Company
SC Department of Insurance
Legal Division (Service of Process)
PO Box 100105 Columbia, SC 29202-3105

Jesse A. Dantice,
1007 Crestview Rd.
Anderson, SC 29621

Southern Risk Insurance Services LLC,
1007 Crestview Rd.
Anderson, SC 29621

Or
SC Department of Insurance Legal Division (Service of Process)
PO Box 100105 Columbia, SC 29202-3105

AO 441 (Rev. 07/10) Summons on Third-Party Complaint

UNITED STATES DISTRICT COURT

for the

District of South Carolina

First National Insurance Company of America*Plaintiff*

v.

Laurie Wilson-Williams, Robert Wayne Gary et al.*Defendant, Third-party plaintiff*

v.

Laura Willis, et al.*Third-party defendant*

Civil Action No. 8:12-3124-GRA

SUMMONS ON A THIRD-PARTY COMPLAINT

To: *(Third-party defendant's name and address)* Laura B. Willis
 c/o Billy Nicholson, Attorney
 Nicholson Meredith & Anderson
 109 West Court Avenue
 Greenwood, South Carolina 29646
 PLEASE SEE ATTACHED FOR ADDITIONAL THIRD PARTY DEFENDAN

A lawsuit has been filed against defendant Laurie Wilson-Williams, who as third-party plaintiff is making this claim against you to pay part or all of what the defendant may owe to the plaintiff First National Insurance Co.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff and on the defendant an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the defendant or defendant's attorney, whose name and address are:

Jane H. Merrill, Federal ID No. 10777
 Post Office Box 1547
 Greenwood, SC 29648

It must also be served on the plaintiff or plaintiff's attorney, whose name and address are:
 Shannon Furr Bobertz
 1901 Main St # 1700
 Columbia, SC 29201.

If you fail to respond, judgment by default will be entered against you for the relief demanded in the third-party complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may — but are not required to — respond to it.

Date: December 19, 2012



CLERK OF COURT

Angela...
 Signature of Clerk or Deputy Clerk

ROA_0686

AO 441 (Rev. 07/10) Summons on Third-Party Complaint (Page 2)

Civil Action No. 8:12-3124-GRA

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ROA_0687

THIRD PARTY DEFENDANTS CONTINUED:

First National Insurance Company of America,
SC Department of Insurance
Legal Division (Service of Process)
PO Box 100105 Columbia, SC 29202-3105

Montgomery Insurance Company
SC Department of Insurance
Legal Division (Service of Process)
PO Box 100105 Columbia, SC 29202-3105

Safeco Insurance Company
SC Department of Insurance
Legal Division (Service of Process)
PO Box 100105 Columbia, SC 29202-3105

Jesse A. Dantice,
1007 Crestview Rd.
Anderson, SC 29621

Southern Risk Insurance Services LLC,
1007 Crestview Rd.
Anderson, SC 29621

Or
SC Department of Insurance Legal Division (Service of Process)
PO Box 100105 Columbia, SC 29202-3105

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION**

**First National Insurance
Company of America,**

PLAINTIFF,

VS.

**Robert Wayne Gary and Cynthia
Gary and Laurie Wilson-Williams,**

DEFENDANTS,

and

**Robert Wayne Gary and
Cynthia Gary,**

**THIRD PARTY
PLAINTIFFS,**

VS.

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

and

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

and

**Montgomery Insurance Company,
and Safeco Insurance Company,
Southern Risk Insurance Services,**

**ANSWER, COUNTERCLAIM
AND THIRD PARTY COMPLAINT
8:12-3124-GRA**

JURY TRIAL DEMANDED

LLC)
)
 THIRD PARTY)
 DEFENDANTS.)
 _____)

Defendants Robert Wayne Gary and Cynthia Gary (hereinafter Garys), reserving their right to contest subject matter jurisdiction pursuant to lack of diversity, hereby Answer the Complaint, Counterclaim thereto, assert a Third Party Complaint against the Third Party Defendants and would respectfully show unto the Court.

FOR A FIRST DEFENSE

1. That each and every allegation of the complaint not hereinafter admitted, modified or explained is denied.
2. That the Garys do not have sufficient information to admit or deny Paragraph One and therefore deny the same.
3. That the Garys admit Paragraphs Two, Three, Four, Five, Six, Seven, Eight, Nine Ten, Eleven, Thirteen, and Sixteen.
4. That the Garys presently do not have sufficient information to admit or deny Paragraphs Twelve, Fourteen, Fifteen, Sixteen, Seventeen, Eighteen, Nineteen, and Twenty and therefore deny the same and demand strict proof thereof.

**FOR A SECOND DEFENSE AND COUNTERCLAIM
(PLAINTIFF ESTOPPED TO DENY LIABILITY INSURANCE COVERAGE)**

5. That the allegations of the First Defense are incorporated herein by reference.
6. That the Garys had a right to rely on written letters which they received from Montgomery Insurance Company and Safeco Insurance Company, prior to the expiration of their Peerless Insurance automobile policy, indicating that their automobiles would continue to be covered

under the Liberty Mutual Group and that "they were not required to take any action." That the Plaintiff is also under auspices of the Liberty Mutual Group and are a successor in interest to Montgomery Insurance Company and Safeco Insurance Company.

7. That the Garys are informed and believe that the Plaintiff should be estopped from denying liability coverage based upon the written representation of coverage made to the Garys.

**FOR A THIRD DEFENSE AND COUNTERCLAIM
(PLAINTIFF ESTOPPED BECAUSE AGENT BOUND LIABILITY COVERAGE)**

8. That the First Defense, and the Second Defense and Counterclaim are incorporated herein by reference.

9. That in addition to the written representations referred to above in the Second Defense and Counterclaim, the Plaintiff's insurance agent, Laura Willis, personally assured the Garys that they continued to be covered with liability insurance and would receive a bill for that coverage at a later date. That the Garys are informed and believe that Laura Willis, as the Plaintiff's duly authorized and acting agent can legally bind the Plaintiff to provide coverage to the Garys in this case.

10. That when requested by the Plaintiff's authorized and acting agent, Laura Willis, the Garys paid for their insurance coverage with a check made payable to Safeco in the amount of One Thousand and Ninety Four Dollars and 00/100 (\$1,094.00) dated August 10, 2012. This check was not backdated by the Garys, because there was no attempt to mislead anyone and absolutely no fraud or misrepresentation of any type on their part. Garys had no reason to mislead anyone because they had always been assured that their liability coverage was in force and effect.

**FOR A FOURTH DEFENSE, COUNTERCLAIM, AND THIRD PARTY CLAIM
(VIOLATIONS OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT
S.C. CODE ANN § 39-5-10, *et seq.*)**

11. That the allegations of the First Defense and Second and Third Defenses and

Counterclaims are incorporated herein by reference.

12. That the Third Party Defendant Laura B. Willis is a citizen and resident of the County of Abbeville, State of South Carolina and at the times mentioned herein was a licensed insurance agent and operated an insurance business under the direct supervision of her partner/broker Third Party Defendant Jesse A. Dantice, Third Party Defendant, Southern Risk Insurance Services LLC, Plaintiff, First National Insurance Company of America, Third Party Defendants Montgomery Insurance Company and Safeco Insurance Company.

13. That the Third Party Defendant Jesse A. Dantice, is on information and belief, a resident of the County of Anderson, State of South Carolina and at the times mentioned herein operated a insurance business in Abbeville County South Carolina wherein his agent/employee Laura B. Willis sold insurance policies under his direct supervision as well as the direct supervision of Third Party Defendant, Southern Risk Insurance Services LLC, Plaintiff, First National Insurance Company of America, Third Party Defendants Montgomery Insurance Company and Safeco Insurance Company.

14. That Third Party Defendant Southern Risk Insurance Services LLC is a corporation organized and existing under the laws of a state of the United States and at the time mentioned herein maintained a retail insurance office in Abbeville County, South Carolina wherein its authorized agents and servants sold insurance policies to the general public.

15. That the Plaintiff, First National Insurance Company of America, is a corporation organized and existing under the laws of a state of the United States and at the time mentioned herein maintained a retail insurance office in Abbeville County, South Carolina wherein its authorized agents and servants sold insurance policies to the general public.

16. That the Third Party Defendant, Montgomery Insurance Company, is a corporation

organized and existing under the laws of a state of the United States and at the time mentioned herein maintained a retail insurance office in Abbeville County, South Carolina wherein its authorized agents and servants sold insurance policies to the general public.

17. That Third Party Defendant, Safeco, is a corporation organized and existing under the laws of a state of the United States and at the time mentioned herein maintained a retail insurance office in Abbeville County, South Carolina wherein its' authorized agents and servants sold insurance policies to the general public.

18. That the Plaintiff, First National Insurance Company of America, and the Third Party Defendants Jesse A. Dantice, Southern Risk Insurance Services LLC, Montgomery Insurance Company and Safeco Insurance Company at all times have a legal duty to fully investigate any prospective insurance agent and/or employee as well as to the properly train and supervise Third Party Defendant Laura B. Willis both before and especially after she was fined, publicly reprimanded and placed on probation for dishonesty by the South Carolina Insurance Commission in October 2011.

19. That before the expiration of the Garys' Peerless Insurance automobile liability policy the Garys were contacted in writing by Third Party Defendants Montgomery Insurance Company and Safeco Insurance Company assuring them that their policy would be replaced and there was nothing that the Garys needed to do. That Third Party Defendant Laura B. Willis assured the Garys at all times that their liability insurance automobile policy was in full force and effect and all they needed to do was pay the premium when asked to do so. That the Garys paid their premium as requested, but now their automobile liability coverage has been denied by the Plaintiff and they are being accused of illegal and/or fraudulent acts by the Plaintiff.

20. South Carolina's Unfair Trade Practices Act (UTPA) creates a cause of action for those harmed by deceptive acts including "unfair or deceptive" acts or promises.

21. That the Plaintiff and Third Party Defendants by and through their acting agent and/or servant have made numerous misrepresentations to the Garys and the general public. These misrepresentations have an impact on the general public and this conduct is capable of repetition and in fact has been repeated numerous times.

22. That the Garys are informed and believe that among the many illegal and improper tactics used by the Plaintiff and Third Party Defendants to corner the retail insurance market in Abbeville County, South Carolina and destroy all competition, the Plaintiff and Third Party Defendants' authorized and acting agent and/or servant Third Party Defendant Laura B. Willis, with the express or implied permission of the Plaintiff and other Third Party Defendants committed the following acts:

- a. repeatedly changed insurance applications filled out by customers, without the knowledge or permission of customers, to omit facts which would have resulted in higher rates to gain an unfair advantage against her competition;
- b. repeatedly used her own personal driver's license number and social security number for new policy submissions;
- c. quoted severely reduced premiums in violation of state insurance regulations to capture more insurance business and destroy competition;
- d. took cash payments from the general public and gave no receipts making it difficult for customers to prove that they had in fact paid their insurance premiums;
- e. forged documents to confirm non-existent insurance coverage;

- f. issued bogus, and non-existent insurance policies to the general public;
- g. pretended insurance policies were in force when a loss to a customer occurred;
- h. unfairly adjusted claims made against the bogus insurance policies;
- i. when insurance customers of Third party Defendant, Laura B. Willis questioned whether or not they had insurance coverage and/or needed to go elsewhere to other insurance agents to obtain coverage they were emphatically discouraged from seeking other coverage and through misrepresentation, blatant lies and deceit were assured that everything was fine even though the customer's lienholder and/or state government agencies were telling the customers that they had no coverage;

All of which could have been discovered and should have been discovered and stopped by the Plaintiff and the Third Party Defendants through reasonable direct supervision of Third Party Defendant Laura B. Willis' activities as well and through auditing computer programs which reveal fraud and/or misconduct of agents and/or customers. That the sheer volume of new insurance business generated by Third Party Defendant Laura B. Willis, in such a short amount of time, should have put the Plaintiff and Third Party Defendants on notice that something was being done improperly.

23. That as a direct and proximate result of Plaintiff and Third Party Defendants' unlawful business practices, fraudulent acts, and false statements, Garys have suffered significant damages, including, but not limited to, exposure to a potential liability suit and/or possible potentially damaged credit, damaged standing in the insurance industry for the purpose of obtaining future insurance policies, actual lost money paid for insurance premiums, severe emotional distress and aggravation and will continue to suffer such damages in the future.

24. That the Garys are informed and believe that they are entitled to actual damages including, restitution, disgorgement, treble damages, injunctive relief, attorneys' fees and costs, and all other relief allowed under South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*

WHEREFORE, the Garys pray that the Complaint be dismissed with costs, and for judgment against the Plaintiff and Third Party Defendants for actual damages, trebled damages, punitive damages and attorneys fees to be determined by a jury and for such other and further relief as the Court deems just and proper.

HITE & STONE

BY: 

THOMAS E. HITE, JR.
FED. ID. NO. 1888
THOMAS E. HITE, III
FED. ID. NO. 10657
100 EAST PICKENS STREET
P. O. BOX 805
ABBEVILLE, SC 29620
(864) 366-5400 TELEPHONE
(864) 366-2638 FACSIMILE
Email: tommyhite@hotmail.com
ATTORNEY FOR THE DEFENDANT
and THIRD PARTY PLAINTIFFS
ROBERT WAYNE GARY AND
CYNTHIA GARY

ABBEVILLE, SOUTH CAROLINA
DECEMBER 18, 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF SOUTH CAROLINA

First National Insurance Company of
America,

Plaintiff,

vs.

Robert Wayne Gary and Cynthia
Gary, and Laurie Wilson Williams,

Defendants.

and

Laurie Wilson Williams

Third Party Plaintiff,

vs.

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

and

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

Civil Action No. 8-12-3124-GRA

ANSWER, COUNTERCLAIM, AND
THIRD PARTY COMPLAINT

JURY TRIAL DEMANDED

America, Safeco Insurance Company,
and Montgomery Insurance
Company,

and

Southern Risk Insurance Services,
LLC, Safeco Insurance Company, and
Montgomery Insurance Company,

Third Party Defendants.

Now comes Defendant, Laurie Wilson Williams, in the above styled and numbered cause of action, by and through her counsel, answers the Complaint, counterclaims, and brings third party claims as follows:

FIRST DEFENSE

Without waiving any defenses and specifically reserving the right to move for this action to be remanded to state court, Defendant Williams specifically answers the allegations of the Complaint and says:

1. Defendant Williams denies each and every allegation not herein specifically admitted, and answering further, says that Plaintiff has no cause of action and thus demands strict proof of same.
2. Upon information and belief, Defendant Williams admits paragraph 1.
3. Defendant Williams denies paragraphs 2 and 3.

4. Defendant Williams is without sufficient information to answer paragraphs 4, 5, 6, and 7; therefore, same are denied.
5. Defendant Williams admits the allegations of paragraphs 8 and 9.
6. Defendant Williams is without sufficient information to answer paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20; therefore, same are denied.

SECOND DEFENSE BY WAY OF COUNTERCLAIM AND THIRD PARTY COMPLAINT

7. The foregoing paragraphs are incorporated by reference.
8. Laurie Wilson Williams (Williams) is a citizen and resident of McCormick County, South Carolina.
9. Robert Wayne Gary and Cynthia Gary (Garys) are citizens and residents of the McCormick County, South Carolina.
10. First National Insurance Company of America (First National) is a company organized under the laws of the State of New Hampshire, with its principal place of business in Boston, Massachusetts. At the time mentioned herein, First National maintained a retail insurance office in Abbeville County, South Carolina where its authorized agent(s) and servant(s) sold insurance policies to the general public, including Williams and the Garys.
11. Laura B. Willis (Willis) is a citizen and resident of the Abbeville County, South Carolina. At all times mentioned herein Willis was a licensed insurance agent and operated an insurance business under the direct supervision of her

partner/broker, Jesse A. Dantice, Southern Risk Insurance, First National, Safeco, and Montgomery.

12. Jesse A. Dantice (Dantice) is a citizen and resident of the County of Anderson, State of South Carolina and at the times mentioned herein operated an insurance business in Abbeville County, South Carolina wherein his agent/employee Willis sold insurance policies under his direct supervision as well as the direct supervision of all other Third Party Defendants.
13. Southern Risk Insurance Services, LLC (Southern Risk) is a limited liability company organized and existing under the laws of the state of South Carolina with its principal location in Anderson County, South Carolina. At the times mentioned herein Southern Risk maintained a retail insurance office in Abbeville County, South Carolina wherein its authorized agents and servants sold insurance policies to the general public.
14. Montgomery Insurance Company (Montgomery) is a corporation organized and existing under the laws of a state of the United States and at the time mentioned herein maintained a retail insurance office in Abbeville County, South Carolina wherein its authorized agents and servants sold insurance policies to the general public.
15. Safeco Insurance Company (Safeco) is a corporation organized and existing under the laws of a state of the United States and at the time mentioned herein

maintained a retail insurance office in Abbeville County, South Carolina wherein its authorized agents and servants sold insurance policies to the general public.

**FIRST CAUSE OF ACTION
(Breach of Contract)**

16. The foregoing paragraphs are incorporated by reference.
17. At all times mentioned, First National, through its agents, servants, and/or employees sold Gary an auto insurance policy, number F2555459, with effective dates from July 10, 2012 through July 10, 2013, with total liability limits of \$250,000/\$500,000.
18. In the alternative, at all times mentioned, First National, through its agents, servants, and/or employees insured the Garys through Peerless Insurance Company policy number PLPW634837 that First National obtained from Peerless.
19. The Garys have paid their premiums when due.
20. Willis, Dantice, and Southern Risk were acting as agents for First National.
21. On July 26, 2012, Ms. Gary was operating her vehicle, which struck Williams, who suffered injuries and damages.
22. On August 5, 2012, Mr. Gary notified First National, through its agent Willis, of the July 26, 2012 collision.
23. Williams is a third party beneficiary of any and all of the Garys' insurance

policies effective on July 26, 2012.

24. First National owes a duty to indemnify the Garys either policy PLPW634837 or F2555459.
25. First National's assertion that it has no duty to indemnify the Garys breaches their contract to which Williams is a third party beneficiary.
26. Williams has actual damages in an amount to be determined, consequential damages as a result of First National's refusal to indemnify the Garys and the filing of its declaratory judgment action.
27. Williams is entitled to judgment against First National for an undetermined sum and certain consequential damages and reasonable attorney fees together with costs for this cause of action.

SECOND CAUSE OF ACTION
(Violations of the South Carolina Unfair Trade Practices Act,
S.C. Code Ann. § 39-5-10, *et. seq.*)

28. The foregoing paragraphs are incorporated by reference.
29. South Carolina's Unfair Trade Practices Act (UTPA) creates a cause of action for those harmed by deceptive acts including "unfair or deceptive" acts or promises.
30. First National and all Third Party Defendants, at all times, have a legal duty to fully investigate and research any prospective insurance agent and/or employee, particularly Willis.

31. First National and all Third Party Defendants, at all times, have a legal duty to properly train and supervise Willis' work and computer submissions, both before and especially after the South Carolina Insurance Commission, in October 2011, fined, publicly reprimanded, and placed Willis on probation for public dishonesty.
32. At all times, Willis was acting on behalf of First National and all Third Party Defendants.
33. As agent and/or servant, Willis, with the express or implied permission of First National and all Third Party Defendants, committed the following acts:
 - a. Repeatedly changed and altered insurance applications filled out by customers, without the knowledge or permission of customers;
 - b. Repeatedly used her own personal driver's license number and social security number for new policy submissions;
 - c. Took customers' cash payments and gave no receipts making it difficult for customers to prove payments of their insurance premiums;
 - d. Quoted severely reduced premiums in violation of state insurance regulations;
 - e. Forged documents to confirm non-existent insurance coverage;
 - f. Issued bogus, non-existent insurance policies to customers and the general public;

- g. Pretended insurance policies were in force when a loss to a customer occurred;
 - h. Unfairly adjusted claims made against the bogus insurance policies;
 - i. Repeatedly assured customers through misrepresentation, blatant lies, and deceit that their insurance policies were in effect when she had knowledge they were not in effect and even when a customer's lienholder and/or state government agencies informed customers they had no coverage;
34. All of the activities listed in paragraphs a. through i. adversely affected customers, particularly third party beneficiary Williams and the Garys.
35. All of the activities listed in paragraphs a. through i. could have and should have been discovered and stopped by First National and all Third Party Defendants through reasonable supervision of Willis' activities. Further, First National and all Third Party Defendants could have, should have, and/or failed to use proper auditing computer software that reveals fraud and/or misconduct of agents and/or customers.
36. Were First National and all Third Party Defendants acting properly, the sheer volume of Third Party Defendant Willis' business would have put them on notice that Willis' actions were improper.
37. As a direct and proximate result of First National and all Third Party

Defendants' unlawful business practices, fraudulent acts, and false statements, Williams is a third party beneficiary and has suffered significant damages, including, but not limited to, severe emotional distress and aggravation causing Williams further health problems. She will continue to suffer such damages in the future.

38. Williams is informed and believe that she is entitled to actual damages, personal injury damages, treble damages, injunctive relief, attorneys' fees and costs, and all other relief allowed under South Carolina Unfair Trade Practices Act, S.C. Code Ann. section 39-5-10, *et seq.* (1976, as amended).

**THIRD CAUSE OF ACTION
(Negligent Supervision)**

39. The foregoing paragraphs are incorporated by reference.
40. Willis' actions, detailed in paragraph 33, intentionally harmed others, particularly third party beneficiary Ms. Williams and the Garys.
41. First National and all Third Party Defendants knew or should have known that Willis was using its computer software, programs, and/or applications to commit the misdeeds listed in paragraph 34.
42. First National and all Third Party Defendants knew or should have known it had the means to control Willis' conduct by limiting, restricting, or forbidding her access to its computer software, programs, and/or applications to continue her misdeeds.

43. First National and all Third Party Defendants knew or should have known of its need to control Willis' conduct. South Carolina Insurance Commission, in October 2011, fined, publicly reprimanded, and placed Willis on probation for public dishonesty. The Insurance Commission's actions are published and available to the public. This public reprimand placed, or should have placed, First National and all Third Party Defendants on notice of Willis' misconduct such that First National and all Third Party Defendants knew the need to control Willis' conduct.
44. Williams is entitled to actual and punitive damages for First National and all Third Party Defendants' negligent supervision of Willis, individually and as an agent and/or servant of First National and all Third Party Defendants.

**FOURTH CAUSE OF ACTION
(Civil Conspiracy)**

45. The foregoing paragraphs are incorporated by reference.
46. Williams is informed and believes she is entitled to proceeds of any and all insurance policies effective on July 26, 2012 held by Mr. or Ms. Gary.
47. Willis and Dantice, individually and as agents and/or servants of First National and all Third Party Defendants, First National, and all Third Party Defendants worked together to coordinate their efforts with a common design and plan to misrepresent and defraud Williams and the Garys, among other customers, of their money and the benefits of their insurance policies which Willis, Dantice,

First National, and/or all Third Party Defendants knew to be lapsed or fraudulent while falsely representing they were effective and in force.

48. Williams is entitled to actual and punitive damages for the civil conspiracy of Willis and Dantice, individually and as agents and/or servants of First National and all Third Party Defendants, First National, and all Third Party Defendants.

THIRD DEFENSE BY WAY THIRD PARTY COMPLAINT
(UNIFORM DECLARATORY JUDGMENT ACT, S.C. CODE ANN. § 15-53-10, *ET SEQ.*)

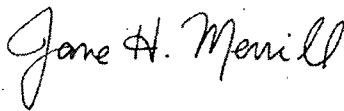
49. The foregoing paragraphs are incorporated by reference.
50. This claim is brought pursuant to South Carolina's Uniform Declaratory Judgment Act, S.C. Code Ann. section 15-53-10, *et seq.* (1976, as amended).
51. On or about July 16, 2012, for a premium paid, Montgomery Insurance issued to Williams an automobile policy number PLP W841911 covering at least one automobile owned by Williams insuring the automobile for liability coverage in the amount of \$25,000 for each person and \$50,000 for each accident. The policy of insurance was in full force and effect at the time of the below described collision.
52. Montgomery Insurance failed to make a meaningful offer of optional underinsured coverage up to the liability limits of the policies and further failed to offer other option coverage as required by S.C. Code Ann. section 38-77-160 (1976, as amended). Further, Montgomery Insurance did not use a form as provided for in S.C. Code Ann. section 38-77-350, *et seq.* (1976, as amended).

53. On July 26, 2012, Williams was struck by a vehicle and sustained a loss which likely far exceeds the liability limits of the at fault driver's liability coverage limits.
54. Southern Risk notified Williams, through the undersigned attorney, no waiver form exists.
55. Williams is entitled to a declaratory judgment that no reasonable or meaningful offer of optional underinsured coverage up to the policy's liability limit was made to Williams when the policy was issued.
56. Williams prays for a declaratory judgment stating that no meaningful offer, nor any offer as required by law, was made by Montgomery Insurance, or its agents, upon issuance of the automobile insurance policy; for reformation of the insurance contract granting Williams underinsured coverage up to the liability limits of her policy; for judgment declaring Williams is entitled to stack underinsured coverage on each of the automobiles which may have been insured under the aforesaid policy; for attorney's fees and costs in this action; and for such other and further relief that may be deemed just and proper.

Now having fully answered, Williams prays to be dismissed from Plaintiff First National's Complaint with costs and attorney fees. Williams further prays for a declaratory judgment against First National that it has a duty to indemnify the Garys. Williams further prays for judgment against First National and all Third Party

Defendants for actual and punitive damages to be determined by a jury. Williams further prays for a judgment stating that no meaningful offer, or any offer as required by law, was made by Montgomery Insurance, or its agents, upon issuance of the automobile insurance policy; for reformation of the insurance contract granting Williams underinsured coverage up to the liability limits of her policy; for judgment declaring Williams is entitled to stack underinsured coverage on each of the automobiles which may have been insured under the aforesaid policy; for attorney's fees and costs in this action; and for such other and further relief the Court deems proper and just.

MCDONALD PATRICK POSTON
HEMPHILL & ROPER, LLC

By: 

Jane H. Merrill, Federal ID No. 10777
414 Main Street (29646)
Post Office Box 1547
Greenwood, South Carolina 29648
(864) 229-2511
jmerrill@mcdonaldpatrick.com
Attorneys for Defendant and Third Party
Plaintiff Williams

December 19, 2012
Greenwood, South Carolina

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

Robert Wayne Gary and Cynthia
Gary

Case No. 2013-CP-01-66

Plaintiffs,

vs.

SUMMONS

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

and

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

and

First National Insurance Company of
America, Montgomery Mutual
Insurance Company, Safeco
Insurance Company of America,
Peerless Insurance Company,
Southern Risk Insurance Company,
LLC, and Laurie Wilson Williams,

Defendants.

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2013 MAY 28 PM 4:54
EMILY Y. MCMAHAN
CLERK OF COURT

TRUE COPY
BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT

To the above named Defendants and their attorneys, C. Mitchell Brown, William C. Wood, Jr., and Shannon F. Bobertz:

You are hereby summoned and required to answer Defendant Williams' Answer and Cross Claim to Defendants First National Insurance Company, Montgomery Mutual Insurance Company, Safeco Insurance Company of America, and Peerless Insurance Company's Cross Claim in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Defendant Williams' Cross Claim on the subscriber at her office at 410 Main Street, Greenwood, South Carolina, within **thirty (30) days**, exclusive of the day of such service; and if you fail to answer the Cross Claim within the time aforesaid, judgment by default will be rendered against you and Defendant Williams will apply to the Court for the relief demanded in her Cross Claim.

HAWTHORNE MERRILL LAW, LLC

A handwritten signature in cursive script, reading "Jane H. Merrill", is written over a horizontal line.

Jane H. Merrill
410 Main St. | Greenwood, SC 29646
864-229-1010 | jane@hawthornemerrilllaw.com
Attorney for Defendant Williams

May 28, 2013
Greenwood, SC

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

Robert Wayne Gary and Cynthia
Gary

Plaintiffs,

vs.

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

and

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

and

First National Insurance Company of
America, Montgomery Mutual
Insurance Company, Safeco
Insurance Company of America,
Peerless Insurance Company,
Southern Risk Insurance Company,
LLC, and Laurie Wilson Williams,

Defendants.

Case No. 2013-CP-01-66

DEFENDANT WILLIAMS' ANSWER
AND CROSS CLAIM TO DEFENDANTS
FIRST NATIONAL INSURANCE
COMPANY, MONTGOMERY MUTUAL
INSURANCE COMPANY, SAFECO
INSURANCE COMPANY OF AMERICA,
AND PEERLESS INSURANCE
COMPANY'S CROSS CLAIM

Jury Trial Demanded

TRUE COPY
BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT

EMILY Y MCMAHAN
CLERK OF COURT

2013 MAY 20 PM 4:55

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

Defendant Laurie Wilson Williams (Williams), answers Defendants First National Insurance Company, Montgomery Mutual Insurance Company, Safeco Insurance Company of America, and Peerless Insurance Company (Insurance Companies) Cross Claim as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not specifically admitted is hereby denied.
2. Defendant Williams admits, upon information and belief, the allegations of Paragraphs 45, 46, 47, 48, 49, 50, 51, 52, and 53.
3. Defendant Williams admits, upon information and belief, that Laura Willis (Willis) is a resident and citizen of Abbeville County, South Carolina. Defendant Williams lacks sufficient information to respond to the remaining allegations in paragraph 54 and therefore same is denied.
4. Defendant Williams admits, upon information and belief, that Jesse A. Dantice (Dantice) is a resident and citizen of Anderson County, South Carolina. Defendant Williams lacks sufficient information to respond to the remaining allegations in paragraph 55 and therefore denies same.
5. Defendant Williams admits, upon information and belief, the allegations of Paragraphs 56 and 57.
6. Defendant Williams lacks sufficient information to admit or deny the allegations in paragraphs 58, 59, 60, 61, 62, 63, 64, 65, 66, and 67 and therefore denies same.
7. Defendant Williams admits the allegations in Paragraph 68.
8. Defendant Williams lacks sufficient information to admit or deny the allegations in Paragraphs 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 and therefore denies same.
9. Defendant Williams admits the allegations of Paragraph 79.
10. Defendant Williams denies the allegations of Paragraph 80.
11. Defendant Williams admits the allegations of Paragraphs 81 and 82.

As to the First Cause of Action

12. Defendant Williams incorporates every answer set forth above.
13. Paragraph 83 is a procedural paragraph to which no response is required. To the extent any response may be necessary, Defendant Williams denies the allegations in Paragraph 83.

14. Defendant Williams lacks sufficient information to admit or deny the allegations in Paragraph 84 and therefore denies same.

As to the Second Cause of Action

15. Defendant Williams incorporates every answer set forth above.

16. Paragraph 85 is a procedural paragraph to which no response is required. To the extent any response may be necessary, Defendant Williams denies the allegations in Paragraph 85.

17. Defendant Williams lacks sufficient information to admit or deny the allegations in Paragraphs 86 and 87 and therefore denies same.

As to the Third Cause of Action

18. Defendant Williams incorporates every answer set forth above.

19. Paragraph 88 is a procedural paragraph to which no response is required. To the extent any response may be necessary, Defendant Williams denies the allegations in Paragraph 88.

20. Defendant Williams lacks sufficient information to admit or deny the allegations in Paragraphs 89, 90, and 91 and therefore denies same.

As to the Fourth Cause of Action

21. Defendant Williams incorporates every answer set forth above.

22. Paragraph 92 is a procedural paragraph to which no response is required. To the extent any response may be necessary, Defendant Williams denies the allegations in Paragraph 92.

23. Defendant Williams lacks sufficient information to admit or deny the allegations in Paragraphs 93, 94, 95, 96, 97, 98, 99, 100 and 101 and therefore denies same.

As to the Fifth Cause of Action

24. Defendant Williams incorporates every answer set forth above.

25. Paragraph 102 is a procedural paragraph to which no response is required. To the extent any response may be necessary, Defendant Williams denies the allegations in Paragraph 102.

26. Defendant Williams lacks sufficient information to admit or deny the allegations in Paragraphs 103 and 104 and therefore denies same.

As to the Sixth Cause of Action

27. Defendant Williams incorporates every answer set forth above.

28. Paragraph 105 is a procedural paragraph to which no response is required. To the extent any response may be necessary, Defendant Williams denies the allegations in Paragraph 105.

29. Defendant Williams lacks sufficient information to admit or deny the allegations in Paragraph 106 and therefore denies same.

30. Paragraphs 107 and 108 contain conclusions of law to which no response is required. To the extent any response may be necessary, Defendant Williams denies the allegations in Paragraphs 107 and 108.

As to the Defendants Insurance Companies

Cross Claim Against Defendant Williams

31. Defendant Williams incorporates every answer set forth above.

32. Paragraph 109 is a procedural paragraph to which no response is required. To the extent any response may be necessary, Defendant Williams denies the allegations in Paragraph 109.

33. In response to Paragraph 110, Defendant Williams admits her Peerless automobile policy in effect on July 26, 2012 does not show that it includes underinsured motorist coverage; however, Defendant Williams denies rejecting such coverage and demands strict proof of same.

34. Defendant Williams denies the allegations in Paragraphs 111 and 112 and demands strict proof of same.

35. Responding to the "Wherefore" clause, Defendant Williams denies Defendants Insurance Companies are entitled to the relief sought in their Cross Claim and demands strict proof thereof.

FOR A SECOND DEFENSE

36. The Counterclaims of Defendants should be barred by the doctrines of waiver, estoppel and/or laches.

FOR A THIRD DEFENSE

37. Defendant Williams reserves her right to any additional and/or affirmative defenses as may be available or revealed to them during the course of the investigation and/or discovery in this case.

FOR A FOURTH DEFENSE BY WAY OF CROSS CLAIM

38. The foregoing paragraphs are incorporated by reference.

39. Laurie Wilson Williams (Williams) is a citizen and resident of McCormick County, South Carolina.

40. Robert Wayne Gary and Cynthia Gary (Garys) are citizens and residents of the McCormick County, South Carolina.

41. First National Insurance Company of America (First National) is an insurance company organized and existing under the laws of one of the states of the United State of America and licensed to sell insurance policies in South Carolina. At the time mentioned herein, First National maintained a retail insurance office in Abbeville County, South Carolina where its authorized agent(s) and servant(s) sold insurance policies to the general public, including Williams and the Garys.

42. Montgomery Mutual Insurance Company (Montgomery) is an insurance company organized and existing under the laws of one of the states of the United State of America and licensed to sell insurance policies in South Carolina. At the time mentioned herein Montgomery maintained a retail insurance office in Abbeville County, South Carolina wherein its authorized agents and servants sold insurance policies to the general public.

43. Safeco Insurance Company of America (Safeco) is an insurance company organized and existing under the laws of one of the states of the United State of America and licensed to sell insurance policies in South Carolina. At the time mentioned herein Safeco maintained a retail insurance office in Abbeville County, South Carolina wherein its authorized agents and servants sold insurance policies to the general public.

44. Peerless Insurance Company (Peerless) is an insurance company organized and existing under the laws of one of the states of the United State of America and licensed to sell insurance policies in South Carolina. At the time mentioned herein Peerless maintained a retail insurance office in Abbeville County, South Carolina wherein its authorized agents and servants sold insurance policies to the general public, including Williams and the Garys.

45. Laura B. Willis (Willis) is a citizen and resident of the Abbeville County, South Carolina. At all times mentioned herein Willis was a licensed insurance agent and operated an insurance business under the direct supervision of her partner/broker, Jesse A. Dantice, Southern Risk Insurance, First National, Safeco, and Montgomery.

46. Jesse A. Dantice (Dantice) is a citizen and resident of the County of Anderson, State of South Carolina and at the times

mentioned herein operated an insurance business in Abbeville County, South Carolina wherein his agent/employee Willis sold insurance policies under his direct supervision as well as the direct supervision of all other Third Party Defendants.

47. Southern Risk Insurance Services, LLC (Southern Risk) is a limited liability company organized and existing under the laws of the state of South Carolina with its principal location in Anderson County, South Carolina. At the times mentioned herein Southern Risk maintained a retail insurance office in Abbeville County, South Carolina wherein its authorized agents and servants sold insurance policies to the general public.

**First Cause of Action
(Breach of Contract)**

48. The foregoing paragraphs are incorporated by reference.

49. At all times mentioned, First National, through its agents, servants, and/or employees sold the Garys an auto insurance policy, number F2555459, with effective dates from July 10, 2012 through July 10, 2013, with total liability limits of \$250,000/\$500,000.

50. In the alternative, at all times mentioned, First National, through its agents, servants, and/or employees insured the Garys through Peerless Insurance Company policy number PLPW634837 that First National obtained from Peerless.

51. The Garys have paid their premiums when due.

52. Willis, Dantice, and Southern Risk were acting as agents for First National.

53. On July 26, 2012, Ms. Gary was operating her vehicle, which struck Williams, who suffered injuries and damages.

54. On August 5, 2012, Mr. Gary notified First National, through its agent Willis, of the July 26, 2012 collision.

55. Williams is a third party beneficiary of any and all of the Garys' insurance policies effective on July 26, 2012.

56. First National owes a duty to indemnify the Garys either policy PLPW634837 or F2555459.

57. First National's assertion that it has no duty to indemnify the Garys breaches their contract to which Williams is a third party beneficiary.

58. Williams has actual damages in an amount to be determined, consequential damages as a result of First National's

refusal to indemnify the Garys and the filing of its declaratory judgment action.

59. Williams is entitled to judgment against First National for an undetermined sum and certain consequential damages and reasonable attorney fees together with costs for this cause of action.

Second Cause of Action

(Violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et. seq.*)

60. The foregoing paragraphs are incorporated by reference.

61. South Carolina's Unfair Trade Practices Act (UTPA) creates a cause of action for those harmed by deceptive acts including "unfair or deceptive" acts or promises.

62. First National, Montgomery, Safeco, Peerless, Dantice, and Southern Risk (collectively, Insurance Companies and Agents), and Willis, at all times, have a legal duty to fully investigate and research any prospective insurance agent and/or employee, particularly Willis.

63. Insurance Companies and Agents, at all times, have a legal duty to properly train and supervise Willis' work and computer submissions, both before and especially after the South Carolina Insurance Commission, in October 2011, fined, publicly reprimanded, and placed Willis on probation for public dishonesty.

64. At all times, Willis was acting on behalf of Insurance Companies and Agents.

65. As agent and/or servant, Willis, with the express or implied permission of Insurance Companies and Agents, committed the following acts:

- a. Repeatedly changed and altered insurance applications filled out by customers, without the knowledge or permission of customers;
- b. Repeatedly used her own personal driver's license number and social security number for new policy submissions;
- c. Took customers' cash payments and gave no receipts making it difficult for customers to prove payments of their insurance premiums;
- d. Quoted severely reduced premiums in violation of state insurance regulations;
- e. Forged documents to confirm non-existent insurance coverage;

- f. Issued bogus, non-existent insurance policies to customers and the general public;
- g. Pretended insurance policies were in force when a loss to a customer occurred;
- h. Unfairly adjusted claims made against the bogus insurance policies;
- i. Repeatedly assured customers through misrepresentation, blatant lies, and deceit that their insurance policies were in effect when she had knowledge they were not in effect and even when a customer's lienholder and/or state government agencies informed customers they had no coverage;

66. All of the activities listed in paragraphs a. through i. adversely affected customers, particularly third party beneficiary Williams and the Garys.

67. All of the activities listed in paragraphs a. through i. could have and should have been discovered and stopped by Insurance Companies and Agents through reasonable supervision of Willis' activities. Further, Insurance Companies and Agents could have, should have, and/or failed to use proper auditing computer software that reveals fraud and/or misconduct of agents and/or customers.

68. Were Insurance Companies and Agents acting properly, the sheer volume of Third Party Defendant Willis' business would have put them on notice that Willis' actions were improper.

69. As a direct and proximate result of Insurance Companies and Agents' unlawful business practices, fraudulent acts, and false statements, Williams is a third party beneficiary and has suffered significant damages, including, but not limited to, severe emotional distress and aggravation causing Williams further health problems. She will continue to suffer such damages in the future.

70. Williams is informed and believe that she is entitled to actual damages, personal injury damages, treble damages, injunctive relief, attorneys' fees and costs, and all other relief allowed under South Carolina Unfair Trade Practices Act, S.C. Code Ann. section 39-5-10, *et seq.* (1976, as amended).

**Third Cause of Action
(Negligent Supervision)**

71. The foregoing paragraphs are incorporated by reference.

72. Willis' actions, detailed in paragraph 33, intentionally harmed others, particularly third party beneficiary Williams and the Garys.

73. Insurance Companies and Agents knew or should have known that Willis was using its computer software, programs, and/or applications to commit the misdeeds listed in paragraph 34.

74. Insurance Companies and Agents knew or should have known it had the means to control Willis' conduct by limiting, restricting, or forbidding her access to its computer software, programs, and/or applications to continue her misdeeds.

75. Insurance Companies and Agents knew or should have known of its need to control Willis' conduct. South Carolina Insurance Commission, in October 2011, fined, publicly reprimanded, and placed Willis on probation for public dishonesty. The Insurance Commission's actions are published and available to the public. This public reprimand placed, or should have placed, First National and all Third Party Defendants on notice of Willis' misconduct such that First National and all Third Party Defendants knew the need to control Willis' conduct.

76. Williams is entitled to actual and punitive damages for Insurance Companies and Agents' negligent supervision of Willis, individually and as an agent and/or servant of Insurance Companies and Agents.

Fourth Cause of Action (Civil Conspiracy)

77. The foregoing paragraphs are incorporated by reference.

78. Williams is informed and believes she is entitled to proceeds of any and all insurance policies effective on July 26, 2012 held by Mr. or Ms. Gary.

79. Willis and Dantice, individually and as agents and/or servants of Insurance Companies and Agents, Insurance Companies and Agents worked together to coordinate their efforts with a common design and plan to misrepresent and defraud Williams and the Garys, among other customers, of their money and the benefits of their insurance policies which Willis, Dantice, First National, Montgomery, Safeco, Peerless, and/or all Southern Risk knew to be lapsed or fraudulent while falsely representing they were effective and in force.

80. Williams is entitled to actual and punitive damages for the civil conspiracy of Willis and Dantice, individually and as agents

and/or servants of First National, Montgomery, Safeco, Peerless, and/or all Southern Risk, First National, Montgomery, Safeco, Peerless, and/or all Southern Risk.

Fifth Cause of Action

(Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, *et seq.*)

81. The foregoing paragraphs are incorporated by reference.

82. This claim is brought pursuant to South Carolina's Uniform Declaratory Judgment Act, S.C. Code Ann. section 15-53-10, *et seq.* (1976, as amended).

83. On or about July 16, 2012, for a premium paid, Montgomery Insurance issued to Williams an automobile policy number PLP W841911 covering at least one automobile owned by Williams insuring the automobile for liability coverage in the amount of \$25,000 for each person and \$50,000 for each accident. The policy of insurance was in full force and effect at the time of the below described collision.

84. Montgomery Insurance failed to make a meaningful offer of optional underinsured coverage up to the liability limits of the policies and further failed to offer other option coverage as required by S.C. Code Ann. section 38-77-160 (1976, as amended). Further, Montgomery Insurance did not use a form as provided for in S.C. Code Ann. section 38-77-350, *et seq.* (1976, as amended).

85. On July 26, 2012, Williams was struck by a vehicle and sustained a loss which likely far exceeds the liability limits of the at fault driver's liability coverage limits.

86. Southern Risk notified Williams, through her undersigned attorney, no waiver form exists.

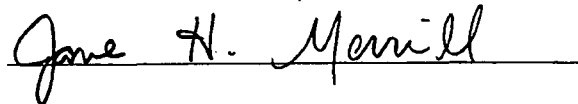
87. Williams is entitled to a declaratory judgment that no reasonable or meaningful offer of optional underinsured coverage up to the policy's liability limit was made to Williams when the policy was issued.

88. Williams prays for a declaratory judgment stating that no meaningful offer, nor any offer as required by law, was made by Montgomery Insurance, or its agents, upon issuance of the automobile insurance policy; for reformation of the insurance contract granting Williams underinsured coverage up to the liability limits of her policy; for judgment declaring Williams is entitled to stack underinsured coverage on each of the automobiles which may have been insured under the aforesaid policy; for attorney's fees and costs in this action;

and for such other and further relief that may be deemed just and proper.

Wherefore, Williams prays to be dismissed from Defendants Insurance Companies' Cross Claim with costs and attorney fees. Williams further prays for a judgment to be issued for Defendant Williams in the underlying action for actual damages, trebled damages, punitive damages and attorneys' fees to determined by a jury. Williams further prays for a declaratory judgment against First National that it has a duty to indemnify the Garys. Williams further prays for judgment against Willis and Dantice, individually and as agents and/or servants of First National, Montgomery, Safeco, Peerless, and/or Southern Risk, First National, Montgomery, Safeco, Peerless, and/or Southern Risk for actual and punitive damages to be determined by a jury. Williams further prays for a judgment stating that no meaningful offer, or any offer as required by law, was made by Montgomery Insurance, or its agents, upon issuance of the automobile insurance policy; for reformation of the insurance contract granting Williams underinsured coverage up to the liability limits of her policy; for judgment declaring Williams is entitled to stack underinsured coverage on each of the automobiles which may have been insured under the aforesaid policy; for attorney's fees and costs in this action; and for such other and further relief the Court deems proper and just.

HAWTHORNE MERRILL LAW, LLC

A handwritten signature in cursive script, reading "Jane H. Merrill", is written over a horizontal line.

Jane H. Merrill

410 Main St. | Greenwood, SC 29646

864-229-1010 | jane@hawthornemerrilllaw.com

Attorney for Defendant Williams

May 28, 2013
Greenwood, SC

State of South Carolina, County of Abbeville
In the Court of Common Pleas, Eighth Judicial Circuit

Laurie Wilson Williams

Plaintiff,

vs.

Cynthia Gary

Defendant.

Case No. 2013-CP-01-165

Summons

EMILY Y MCMAHAN
CLERK OF COURT

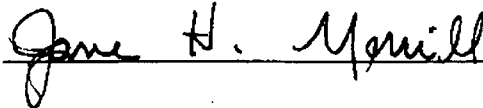
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FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

To the above named Defendant:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their offices at 410 Main Street, Greenwood, South Carolina, **within thirty (30) days**, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you and the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

HAWTHORNE MERRILL LAW, LLC



Jane H. Merrill

410 Main St. | Greenwood, SC 29646

864-229-1010 | jane@hawthornemerrilllaw.com

Attorney for Defendant Williams

May 28, 2013
Greenwood, SC

State of South Carolina, Abbeville County
In the Court of Common Pleas, Eighth Judicial Circuit

Laurie Wilson Williams
Plaintiff,

vs.

Cynthia Gary
Defendant.

Case No. 2013-CP-01-165

Complaint

EMILY Y MCMAHAN
CLERK OF COURT

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FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

Plaintiff, complaining of Defendant Cynthia Gary, alleges as follows:

1. Laurie Wilson Williams, Plaintiff, resides in McCormick County, South Carolina. At the time of the collision detailed below, Plaintiff resided in McCormick County, South Carolina.
2. Upon information and belief, Defendant resides in McCormick County, South Carolina.
3. Upon information and belief, all acts and/or omissions complained of occurred in McCormick County, South Carolina.
4. Civil Action 2013-CP-01-66 is currently pending in Abbeville County. This present action involves facts about the collision in which insurance coverage involved in 2013-CP-01-66 applies. For judicial economy and parties' convenience, Plaintiff files this action in Abbeville County.
5. This Court has jurisdiction over all subject matter alleged herein, has jurisdiction over all parties named herein, and venue is proper in Abbeville County, South Carolina.
6. In the evening on July 26, 2012, Plaintiff was walking on the shoulder of Long Cane Road, near her home. Defendant Cynthia Gary negligently, gross negligently, recklessly and carelessly operated her vehicle while traveling down Long Cane Road and struck the Plaintiff Laurie Wilson Williams. Plaintiff was not at fault in any way.
7. As a result of the collision, Plaintiff suffered severe bodily injuries, permanent injuries, experienced severe pain, experienced a lengthy recovery and incurred significant medical expenses. Additionally, Plaintiff missed work because of the severity of her injuries which caused her to incur lost wages.
8. As an operator of a vehicle on the roads of South Carolina,

Defendant owed a duty to the Plaintiff to operate her vehicle in a safe and proper manner and to obey all applicable traffic laws.

9. Notwithstanding this duty, Defendant Cynthia Gary negligently, carelessly, willfully, wantonly and recklessly breached her duty of care to the Plaintiff in each of the following particulars:

- a. By failing to exercise a proper lookout and attentiveness for others upon the road and Defendant knew or should have known that such failure would result in damage to others upon the road, and particularly to Plaintiff;
- b. By failing to exercise a proper lookout and attentiveness for others upon the road and Defendant knew or should have known that such failure would result in damage to others upon the road, and particularly to Plaintiff;
- c. By failing to exercise adequate control of their vehicles at all times in view of the circumstances then and there existing;
- d. By failing to devote Defendant's full attention to the street the Defendant was traveling and to the operation of the Defendant's vehicle, when Defendant knew, or should have known, that to failing to do so would result in damage to others traveling upon said road, and particularly to Plaintiff;
- e. By failing to properly observe the road, other vehicles, pedestrians and all surrounding conditions; by otherwise failing to exercise due and adequate care under the circumstances; and by not being mentally and physically alert to the impending dangers.

10. As a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Defendant Cynthia Gary, Plaintiff sustained numerous painful bodily injuries, permanent injuries, incurred significant medical expenses, and lost wages.

Wherefore, Plaintiff respectfully requests an award of actual, consequential, special damages that adequately compensates the Plaintiff for all property damages, past, present, and future medical expenses; personal injury; pain and suffering; mental anguish; emotional distress; lost wages and loss of enjoyment of life, punitive damages, and for such other and further relief as this Court may deem appropriate.

HAWTHORNE MERRILL LAW, LLC

Jane H. Merrill

Jane H. Merrill

410 Main St. | Greenwood, SC 29646

864-229-1010 | jane@hawthornemerrilllaw.com

Attorney for Defendant Williams

May 28, 2013
Greenwood, SC

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

Robert Wayne Gary and Cynthia) Civil Action No. 2013-CP-01-66
Gary,)

Plaintiffs,)

vs.)

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

and)

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

and)

First National Insurance Company of)
America, Montgomery Insurance)
Company, Safeco Insurance)
Company, Peerless Insurance)
Company, and Laurie Wilson-)
Williams.)

Defendants.)

ANSWER OF FIRST NATIONAL
INSURANCE COMPANY, MONTGOMERY
MUTUAL INSURANCE COMPANY, SAFECO
INSURANCE COMPANY OF AMERICA, AND
PEERLESS INSURANCE COMPANY TO THE
CROSSCLAIMS OF LAURIE WILSON-
WILLIAMS

Jury Trial Requested

First National Insurance Company of America ("First National"), Montgomery
Mutual Insurance Company ("Montgomery"), incorrectly identified in the complaint as
Montgomery Insurance Company, Safeco Insurance Company of America ("Safeco"),

incorrectly identified as Safeco Insurance Company, and Peerless Insurance Company ("Peerless") (collectively "the Insurers") answer the crossclaim of Laurie Wilson-Williams as follows. First National, Montgomery, Safeco, and Peerless deny every allegation of the crossclaim unless it is specifically and expressly admitted below.

FOR A FIRST DEFENSE

1. Paragraphs 1 through 38 of William's pleading are responses to the allegations of the crossclaims asserted by the Insurers and require no response. To the extent some further response is required, the Insurers reassert the allegations of their Answer, Counterclaim and Crossclaim.

2. The Insurers admit the allegations of paragraphs 39 and 40 on information and belief.

3. The Insurers admit the allegations of the first sentence of paragraphs 41, 42, 43, and 44. The Insurers deny the remaining allegations of paragraphs 41, 42, 43, and 44.

4. The Insurers admit the allegations of the first sentence of paragraph 45 on information and belief and further admit that Willis was, at one time, a licensed insurance agent and operated in affiliation with Dantice and Southern Risk. The Insurers deny all remaining allegations of paragraph 45.

5. The Insurers admit the allegations of the first sentence of paragraph 46 on information and belief and further admit that Dantice operated his business in affiliation Willis. The Insurers deny all remaining allegations of paragraph 46.

6. The Insurers admit the allegations of the first sentence of paragraph 47 on information and belief the Insurers are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and deny them on that basis

As to the First Cause of Action for Alleged Breach of Contract

7. The Insurers incorporate by reference their responses to paragraphs 1-47 into this paragraph as their response to paragraph 48.

8. The Insurers deny the allegations of paragraphs 49, 50, 51, and 52.

9. The Insurers admit the allegations of paragraph 53 on information and belief.

10. The Insurers deny the allegations of paragraphs 54, 55, 56, 57, 58, and 59.

As to the Second Cause of Action for Alleged Violations of the SCUPTA

11. The Insurers incorporate by reference their responses to paragraphs 1-59 into this paragraph as their response to paragraph 60.

12. The Insurers respond that the text of the South Carolina Unfair Trade Practices Act ("SCUPTA") sets forth the elements and requirements necessary to maintain a cause of action pursuant to that act and the limitations on such actions. The Insurers deny all allegations of paragraph 61 that are inconsistent with or an incomplete statement of the elements, requirements, and limitations under the Act.

13. The Insurers deny the allegations of paragraphs 62, 63, and 64.

14. The Insurers deny the allegations of paragraph 65, including each subpart.

15. The Insurers deny the allegations of paragraph 66, 67, 68, 69, and 70.

As to the Third Cause of Action for Alleged Negligent Supervision

16. The Insurers incorporate by reference their responses to paragraphs 1-70, as their response to paragraph 71.

17. The Insurers are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 72 and deny them on that basis.

18. The Insurers deny the allegations of paragraph 73, 74, 75, and 76.

As to the Fourth Cause of Action for Alleged Civil Conspiracy

19. The Insurers incorporate by reference their responses to paragraphs 1-76, above, into this paragraph as their response to paragraph 77.

20. The Insurers deny the allegations of paragraph 78, 79, and 80.

As to the Fifth Cause of Action for Declaratory Relief

21. The Insurers incorporate by reference their responses to paragraphs 1-80, above, into this paragraph as their response to paragraph 81.

22. The Insurers admit the allegations of paragraphs 82 and 83.

23. The Insurers deny the allegations of paragraph 84.

24. The Insurers admit that on or about July 26, 2012, Williams was struck by a vehicle while in the roadway, but is without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 85 and denies them on that basis.

25. The Insurers are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 86 and denies them on that basis.

26. The Insurers deny the allegations of paragraphs 87 and 88.

27. The Insurers deny that Williams is entitled to any of the relief requested in the prayer for relief against them.

**FOR A SECOND DEFENSE
(Failure to State a Claim)**

28. Williams' crossclaims fail to state a claim for relief against the Insurers.

**FOR A THIRD DEFENSE
(Statutory Bar)**

29. Williams' second crossclaim is barred by S.C. Code Ann. § 39-5-40(c).

**FOR A FOURTH DEFENSE
(Comparative Fault)**

30. Williams' claims are barred by the comparative negligence/recklessness of Williams which was the proximate cause of any claimed injuries on her part, and was greater in proportion than any alleged wrongdoing of the Insurers, all of which is denied.

**FOR A FIFTH DEFENSE
(Intervening Actions of Third Party)**

31. The Insurers would show that any injury or damage suffered by Williams, if any, was due to or caused by or occasioned by the intervening actions or omissions of a third party or parties for whom the Insurers are not responsible and therefore, Williams' claims should be barred or reduced accordingly.

**FOR A SIXTH DEFENSE
(Scope of Agency)**

32. The Insurers would show that any actions taken by any alleged agent of the Insurers which caused any injury to Williams, which is expressly denied, were

taken while said alleged agent or agents were acting outside the scope of any alleged agency relationship, and, therefore, the Insurers are not responsible.

**FOR A SEVENTH DEFENSE
(Set-Off)**

33. The Insurers assert that they are entitled to a set-off based on any recovery by Williams from any of the other Defendants.

**FOR A EIGHTH DEFENSE
(Failure to Properly Allege Special Damages)**

34. The Insurers would show that Williams has failed to allege special damages with the specificity required by Rule 9(g), SCRPC

**FOR A NINTH DEFENSE
(Unconstitutionality of Punitive Damages)**

35. The Insurers would show that an award of punitive damages would violate the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

a. the judiciary's ability to correct a punitive damages award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

b. any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

c. any award of punitive damages based upon the wealth of the Defendants violates due process guarantees;

d. the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

e. an excessive award of punitive damages violates the due process guarantees of the Defendants;

f. an award of punitive damages that is neither reasonable nor proportionate to the alleged wrong committed is irrational, arbitrary, furthers no legitimate purpose, and is an unconstitutional deprivation of the property of the Defendants;

g. an award of punitive damages that is grossly disproportionate to any compensatory damages awarded violates the Defendants' due process guarantees;

h. an award of punitive damages based solely on vicarious liability or the doctrine of respondeat superior is violative of due process guarantees;

i. due to the lack of standards for determining punitive damages, the Defendants lack fair notice of the punishment to which they could be subjected;

j. even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness;

k. an award of punitive damages that does not comport with the three guideposts articulated in *State Farm Mutual Automobile Insurance Company v. Campbell* fails to satisfy constitutional due process guarantees; and

l. the Plaintiff's claim for punitive damages violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendants.

36. To the extent Williams asserts or has a claim for punitive damages, and the same is expressly denied, Williams' claim is subject to any and all standards and limitations regarding the determination and/or enforceability of punitive damage awards contained in the decisions of BMW of No. America v. Gore, 517 U.S. 559 (1996), Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001), State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408 (2003), Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47 (2007) and Philip Morris USA v. Williams, 549 U.S. 346 (2007) and South Carolina case law and statutory provisions.

**FOR A TENTH DEFENSE
(Limitation on Punitive Damages)**

37. a) To the extent Williams is entitled to and is awarded punitive damages, and the Insurers deny that she is entitled to or should be awarded any such damages, such damages are limited as provided by S.C. Code Ann. § 15-32-530.

b) Williams' claim for punitive damages is barred as to the Insurers for failure to meet the requirements for imposition of such damages based on the actions of a purported agent as set forth in Restatement (Second) Torts § 909.

Reservation

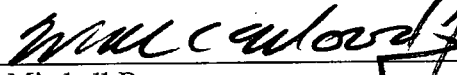
38. The Insurers reserve the right to assert any and all other defenses to Williams' claims, both factual and legal, as may be justified by information subsequently obtained.

WHEREFORE, having fully answered all allegations of Williams' crossclaims and requested declarations, the Insurers pray as follows:

- (a) For a declaration setting forth the rights and obligations of the parties to this action;
- (b) For a declaration that the Peerless policy was cancelled on May 4, 2012 and no rights and/or obligations exist for any event taking place after May 4, 2012, under that policy;
- (c) For a declaration that no Safeco or Montgomery policy was ever issued and no party to this action has any rights against Safeco or Montgomery;
- (d) For a declaration that the First National Policy was not issued until August 10, 2012; that the policy period of the First National Policy is August 10, 2012 through the earlier of August 10, 2013 or cancellation due to non-payment; and that no rights or obligations exist under the First National policy for events, occurrences, accidents, claims or other taking place outside of the policy period of August 10, 2012 through the earlier of August 10, 2013 or cancellation date;

- (e) For a declaration that First National, Montgomery, Safeco, and Peerless have no duty to defend or indemnify the Garys for any claim arising out of the automobile accident between Cynthia Gary and Laurie Wilson-Williams taking place on July 26, 2012.
- (f) For a declaration that Wilson-Williams has no underinsured motorist coverage for the accident of July 26, 2012, or alternatively, that if Wilson-Williams is entitled to underinsured motorist coverage under her policy with Peerless, the coverage limited is a maximum of \$25,000.00 subject to the terms, conditions, limitations, and exclusions of the policy and South Carolina law.
- (g) For the costs of this action; and
- (h) For any other and further relief the Court deems just and proper.

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

June 28, 2013

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

First National Insurance
Company of America,

PLAINTIFF,

VS.

Robert Wayne Gary and Cynthia
Gary and Laurie Wilson-Williams,

DEFENDANTS,

and

Robert Wayne Gary and
Cynthia Gary,

THIRD PARTY
PLAINTIFFS,

VS.

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

and

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

and

Montgomery Insurance Company,
and Safeco Insurance Company,
Southern Risk Insurance Services,
LLC

THIRD PARTY

DEFENDANTS.

MOTION TO REMAND TO STATE COURT
FOR LACK OF DIVERSITY / SUBJECT
MATTER JURISDICTION

8:12-3124-GRA

To: The Plaintiff and Third Party Defendants:

The Defendants and Third Party Plaintiffs, Robert Wayne Gary and Cynthia Gary by and through their undersigned counsel, hereby move the Court for an Order pursuant to 28 U.S.C. Sections 1332 and 1441 remanding this action to the South Carolina Court of Common Pleas for Abbeville County, because the United States District Court lacks subject matter jurisdiction.

The United States District Court has subject matter jurisdiction when the amount in controversy is more than \$75,000.00, exclusive of interest and costs, and all parties have diverse citizenship. 28 U.S.C. §1332. The complete diversity rule requires that citizenship of each plaintiff be different from the citizenship of each defendant. *Athena Automotive, Inc. v. DiGregorio*, 166 F.3d 288, 290 (4th Cir. 1999). Defendants and Third Party Plaintiffs, Robert Wayne Gary and Cynthia Gary, citizens and residents of the State of South Carolina, have named necessary parties to this action who are citizens of the County of Abbeville and County of Anderson, State of South Carolina. Therefore, complete diversity does not exist and this court does not have subject matter jurisdiction.

For the foregoing reasons, Defendants and Third Party Plaintiffs, Robert Wayne Gary and Cynthia Gary respectfully requests this Court issue an Order remanding this action to the South Carolina Court of Common Pleas in Abbeville County.

Respectfully submitted:



Thomas E. Hite, Jr. (Fed ID 1888)

PO Box 805

Abbeville, SC 29620

(864) 366-5400 (Telephone)

(864) 366-2638 (Facsimile)

Attorneys for Defendants and Third Party Plaintiffs

December 19, 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF SOUTH CAROLINA

First National Insurance Company of
America,

Plaintiff,

vs.

Robert Wayne Gary and Cynthia
Gary, and Laurie Wilson Williams,

Defendants.

and

Laurie Wilson Williams

Third Party Plaintiff,

vs.

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

and

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

Civil Action No. 8-12-3124-GRA

MOTION TO REMAND TO SOUTH
CAROLINA COURT OF COMMON PLEAS

America, Safeco Insurance Company,
and Montgomery Insurance
Company,

and

Southern Risk Insurance Services,
LLC, Safeco Insurance Company, and
Montgomery Insurance Company,

Third Party Defendants.

To: The above named Plaintiff and Third Party Defendants:

The Defendant and Third Party Plaintiff, Laurie Wilson Williams (Williams), by and through her undersigned counsel, hereby moves the Court for an Order pursuant to 28 U.S.C. sections 1332 and 1441 remanding this action to the South Carolina Court of Common Pleas for Abbeville County because the United State District Court lacks subject matter jurisdiction.

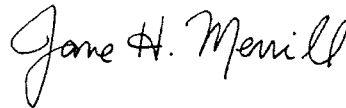
The United States District Court has subject matter jurisdiction when the amount in controversy is more than \$75,000.00, exclusive of interest and costs, and all parties have diverse citizenship. 28 U.S.C. §1332. The complete diversity rule requires that citizenship of each plaintiff be different from the citizenship of each defendant. *Athena Automotive, Inc. v. DiGregorio*, 166 F.3d 288, 290 (4th Cir. 1999). Williams, a South Carolina citizen, has named necessary parties to this action who are South Carolina

citizens. Complete diversity does not exist; therefore, this court lacks subject matter jurisdiction.

For the foregoing reasons, Williams respectfully requests this Court issue an Order remanding this action to the South Carolina Court of Common Pleas in Abbeville County.

MCDONALD PATRICK POSTON
HEMPHILL & ROPER, LLC

By:



Jane H. Merrill, Federal ID No. 10777
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Attorneys for Defendant and Third Party
Plaintiff Williams

December 19, 2012
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2012-CP-01-00306
Appellate Case No. 2014-00946

Richard Wilson, Michael J. Antoniak, Jr., Marsha L.
Antoniak, Anita L. Belton, Prescott Darren Bosler,
Johnny Calhoun, Sallie Calhoun, Cynthia Gary,
Robert Wayne Gary, Eugene P. Lawton, Jr., Jeanette
Norman, James Robert Shirley, Robert W. Spires,
Crystal Spires Wiley, Lewis S. Williams, Janie
Wiltshire, Benjamin Franklin Wofford, Jr., and
Rebecca Hammond Wofford..... Respondents,

v.

LAURA B. WILLIS and JESSE A. DANTICE,
individually, and as agents and/or brokers for
Southern Risk Insurance Services LLC, Travelers
Casualty Insurance Company of America, Allied
Property and Casualty Insurance Company, Peerless
Insurance Company, Montgomery Mutual Insurance
Company, Safeco Insurance Company of America,
and Foremost Insurance Company, SOUTHERN
RISK INSURANCE SERVICES, LLC, TRAVELERS
CASUALTY INSURANCE COMPANY OF
AMERICA, ALLIED PROPERTY AND
CASUALTY INSURANCE COMPANY, PEERLESS
INSURANCE COMPANY, MONTGOMERY
MUTUAL INSURANCE COMPANY, SAFECO
INSURANCE COMPANY OF AMERICA, AND
FOREMOST INSURANCE COMPANY, and Laurie
Williams Defendants,

Of Whom Peerless Insurance Company, Montgomery
Mutual Insurance Company, and Safeco Insurance
Company of America are..... Appellants,

Of Whom Laurie Williams is a..... Respondent.

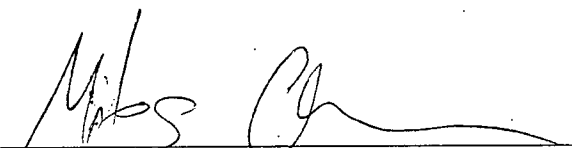
JAN 27 2015

SC Court of Appeals

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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Montgomery Mutual Insurance Company, and Safeco
Insurance Company of America.

January 23 2015

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
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Eugene C. Griffith, Jr., Circuit Court Judge

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Robert Wayne Gary, Eugene P. Lawton, Jr., Jeanette
Norman, James Robert Shirley, Robert W. Spires,
Crystal Spires Wiley, Lewis S. Williams, Janie
Wiltshire, Benjamin Franklin Wofford, Jr., and
Rebecca Hammond Wofford..... Respondents,

v.

LAURA B. WILLIS and JESSE A. DANTICE,
individually, and as agents and/or brokers for
Southern Risk Insurance Services LLC, Travelers
Casualty Insurance Company of America, Allied
Property and Casualty Insurance Company, Peerless
Insurance Company, Montgomery Mutual Insurance
Company, Safeco Insurance Company of America,
and Foremost Insurance Company, SOUTHERN
RISK INSURANCE SERVICES, LLC, TRAVELERS
CASUALTY INSURANCE COMPANY OF
AMERICA, ALLIED PROPERTY AND
CASUALTY INSURANCE COMPANY, PEERLESS
INSURANCE COMPANY, MONTGOMERY
MUTUAL INSURANCE COMPANY, SAFECO
INSURANCE COMPANY OF AMERICA, AND
FOREMOST INSURANCE COMPANY, and Laurie
Williams Defendants,

Of Whom Peerless Insurance Company, Montgomery
Mutual Insurance Company, and Safeco Insurance
Company of America are..... Appellants,

Of Whom Laurie Williams is a..... Respondent.

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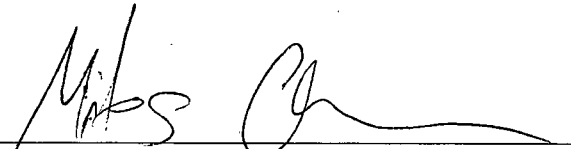
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SC Court of Appeals

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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Attorneys for Appellants Peerless Insurance Company,
Montgomery Mutual Insurance Company, and Safeco
Insurance Company of America.

January 23 2015
Columbia, South Carolina

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JAN 27 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
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Respondents,

v.

LAURA B. WILLIS and JESSE A. DANTICE, individually, and as agents and/or brokers for Southern Risk Insurance Services LLC, Travelers Casualty Insurance Company of America, Allied Property and Casualty Insurance Company, Peerless Insurance Company, Montgomery Mutual Insurance Company, Safeco Insurance Company of America, and Foremost Insurance Company, SOUTHERN RISK INSURANCE SERVICES, LLC, TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA, ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY, PEERLESS INSURANCE COMPANY, MONTGOMERY MUTUAL INSURANCE COMPANY, SAFECO INSURANCE COMPANY OF AMERICA, AND FOREMOST INSURANCE COMPANY, and Laurie Williams

Of Whom Peerless Insurance Company, Montgomery Mutual Insurance Company, and Safeco Insurance Company of America are.....
Of Whom Laurie Williams is a.....

Defendants,

Appellants,

Respondent.

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JAN 26 2015

SC Court of Appeals

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Montgomery Mutual Insurance Company, Peerless Insurance Company, and Safeco Insurance Company of America, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es) and via electronic mail:

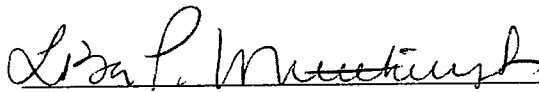
Pleadings:

Record on Appeal – Volume III

Counsel Served:

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Lisa P. Whitehurst
Administrative Assistant

January 23, 2015