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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Carmen T. Mullen, Presiding Judge

TONIA D. WILLIAMS, MARION B.)
SMALLS, TYAWUAN WILLIAMS,)
By his Guardians ad Litem, TONIA D.)
WILLIAMS and CHARLES WILLIAMS,)
And SHAQUILLA SHAW, by her)
Guardian ad Litem, RITA SHAW,)
Appellants.)

Case Number: 09-CP-27-00639

APPELLATE CASE NUMBER
2013-002645

v.)

GEICO CASUALTY COMPANY,)
GEICO INDEMNITY COMPANY,)
GOVERNMENT EMPLOYEES)
INSURANCE COMPANY, GEICO)
GENERAL INSURANCE COMPANY,)
Respondents.)

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SC Court of Appeals

APPELLANT'S FINAL REPLY BRIEF

Law Office of R. Thayer Rivers, Jr.

A handwritten signature in black ink, appearing to read "R. Thayer Rivers, Jr.", written over a horizontal line.

R. THAYER RIVERS, JR.

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Ridgeland, South Carolina,

January 14, 2015.

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TABLE OF AUTHORITIES

1. Hannah v. Heater, 213 W.Va. 704, 504 SE2d 560 (W. Virginia 2003)
2. Cole Vision

ARGUMENTS

I. Is there substantial evidence in the record of a contractual agreement between the Respondent Geico and attorney for the Plaintiff Williams as to preservation of the vehicle?

Both Circuit Judge's Order (Page 2) and the Brief of the Respondent continue to consistently ignore the facts in the case that the attorney for the injured party, Williams, met with Geico Adjuster, Buck Abele, on October 5 (see office memorandum of Abele - TR 281) and letter of attorney Brown to Abele, and the agreement (emphasis added) made between the attorney and the adjuster on October 5.) Only after the Geico representative had agreed to preserve the vehicle was an offer made to the husband of the policy holder to settle the claim. Thus the policy of insurance by and between Geico and the Appellant was in effect during this time period. It is further agreed through the testimony of the adjuster and of his superior, Ms. Stone, that once an attorney appears representing a policy holder there should be no further contact with the policy holder.

It was only after that agreement did the adjuster reach a deal with the husband (emphasis added) of the insured (who was gravely injured in the hospital) to settle the property damage case. Further, it was uncontroverted from the record that her name was forged on the various documents used to transfer title.

For the foregoing, the Appellant would respectfully submit that there was a viable policy of insurance by and between the

Appellant Williams and the Defendant Geico when the non-spoilation agreement was made. That is the contract that has been breached by the actions of the Respondent Geico.

II. Was the issue of the Respondent Geico's actions rising to the level of intentional tort raised by the pleadings and the matters brought before the circuit Judge?

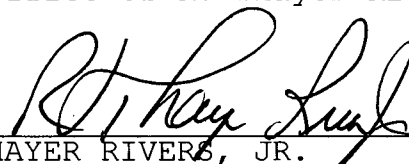
The Plaintiff in Paragraph 5 of the Complaint specifically alleges "willful, wanton...conduct". It was thereafter brought in through depositions, discovery and production that in fact, while the contract of insurance was in effect, the adjuster for Geico agreed to preserve the vehicle and in violation of that inveigled the husband of the insured to settle the case and dispose of the vehicle without ever notifying the attorney for the policy holder, with whom he had made the agreement to not dispose of the vehicle. Both the wording of the pleadings and the basically undisputed evidence before the court shows intentional conduct. As Hannah v. Heater, 213 W.Va. 704, 504 SE2d 560 (W. Virginia 2003) was not adopted by the South Carolina Supreme Court and in fact was carefully distinguished and in the Cole Vision case, the Appellants certainly saw no reason to waste the court's time by going through the motions of proving the requisites of a cause of action recognized by West Virginia but not at that time by South Carolina.

CONCLUSION

The Appellant respectfully submits that the lower court's finding of lack of contractual relationship was based on the incorrect determination that the property damage was settled prior (emphasis added) to the non-spoilation letter of the attorney for the Appellant. The record as a whole reflects that non-spoilation was requested and agreed to prior to any settlement of the property damage case and severing of the contractual relationship

Respectfully submitted,

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January 26, 2015.

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PROOF OF SERVICE

I certify that I have served the Appellants' Final Reply Brief on the Respondents, by depositing a copy of same in the United States Mail, postage prepaid, on Feb. 3, 2015, addressed to their attorney of record, E. Mitchell Griffith, Esquire, Griffith, Sadler & Sharp, Post Office Box 570, Beaufort, South Carolina 29901-1570.

Feb. 2, 2015

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CERTIFICATE OF COUNSEL

This is to certify that the Appellant's Final Reply Brief complies with Rule 21(b), SCACR.

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