

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No. 2015-000637

RECEIVED

MAY 20 2015

SC Court of Appeals

Home Benefits, Inc. and the
American Traveler Motor
Club, Inc.,

Respondents/Appellants,

v.

South Carolina Department of
Consumer Affairs,

Appellant/Respondent.

MOTION TO WITHDRAW APPEAL

Appellant/Respondent South Carolina Department of Consumer Affairs (“Department”) hereby respectfully moves to withdraw its appeal pursuant to Rule 260(c), SCACR. The Department has thoroughly considered the issues on appeal as well as the benefit, if any, of a favorable outcome on these issues. As a result, the Department has reached the conclusion that it would not only be in the interest of judicial economy but also would preserve the time and resources of the Department, Home Benefits, Inc., and the American Traveler Motor Club, Inc., if the Department withdraws its appeal and issues a new declaratory ruling.

On October 1, 1976, the Department issued Declaratory Ruling 3.202-7608 (“1976 Ruling”), allowing non-credit insurance—such as single premium accidental death and dismemberment insurance—to be sold in licensed locations of finance

companies if the sale is not made in connection with a loan and the sale complies with certain procedures set forth in the ruling. On October 30, 2008, the Department issued a declaratory ruling ("2008 Ruling") withdrawing the 1976 Ruling.

In January 2009, Home Benefits/American Traveler filed an appeal at the Administrative Law Court. On November 1, 2010, while the appeal was pending before the Administrative Law Court, the Department issued a revised ruling ("2010 Ruling") withdrawing the 1976 Ruling and substituting the 2010 Ruling for the 1976 Ruling as well as any opinions previously issued by the Department that are inconsistent with the 2010 Ruling. In June 2012, all parties agreed to dismiss the case at the Administrative Law Court and seek review of the issue in circuit court.

On September 21, 2012, Home Benefits/American Traveler filed an action for declaratory relief in the Richland County Court of Common Pleas. Home Benefits/American Traveler subsequently filed a Motion for Summary Judgment. On April 30, 2014, the circuit court issued an Order Granting Plaintiffs' Partial Summary Judgment. The court framed the core issue as whether the Department acted in an arbitrary or capricious manner in repealing a longstanding administrative interpretation and declaratory ruling when there had been no change by the General Assembly to the underlying code section. The court found that the Department failed in its duty and responsibility by attempting to rescind a longstanding construction of law without providing a reasoned analysis for the change beyond that which may be required when the Department did not previously have such longstanding official state interpretation. The court concluded it could not grant summary judgment for Home Benefits/American Traveler on the issue of notice as it is a contested question of fact.

The Department filed and served a Rule 59(e) Motion asserting nine grounds as the basis for the court to alter or amend the Order Granting Plaintiffs' Partial Summary Judgment. On February 20, 2015, the court issued a Form 4 Order denying the Department's "first seven grounds," granting the Department's "seventh ground," ordering Home Benefits/American Traveler to bear the cost of their attorneys' fees, and ending the case. On March 20, 2015, the Department filed its Notice of Appeal and served it on Home Benefits/American Traveler. On March 23, 2015, the circuit court issued an Amended Form 4 Order, denying the Department's first seven grounds, granting the Department's "eighth ground," ordering Home Benefits/American Traveler to bear the cost of their attorneys' fees, and ending the case. The court acknowledged there was a typographical error in the original Form 4 Order, which the court intended to correct by issuing the Amended Form 4 Order.¹

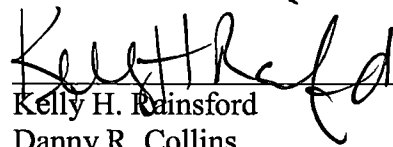
The Department believes that there are several issues on appeal on which the Department likely could prevail. For example, the Department asserts the court erred in applying the wrong standard of review. The Department also asserts the court erred in reviewing only the 2008 Ruling and never addressing the 2010 Ruling even after this error was brought to the court's attention in the motion to alter or amend. If the Department proceeds with its appeal, the end result likely will be that the Department issues a new declaratory ruling in accordance with instructions from the circuit court or this Court. The Department, therefore, has decided to preserve the resources of the

¹ The Department asserts the circuit court was divested of jurisdiction prior to issuing the Amended Form 4 Order. The Department filed its notice of appeal to the Court of Appeals on March 20 without knowledge that counsel for Home Benefits/American Traveler had contacted the court requesting an amended order. The Department asserts that as of March 20, the Court of Appeals had exclusive jurisdiction to hear the appeal of the Order Granting Partial Summary Judgment and the Form 4 Order denying the Department's Motion to Alter or Amend. See Rule 205, SCACR.

courts, Home Benefits/American Traveler, and the Department. The Department instead will issue a new declaratory ruling providing a reasoned analysis and following procedures to ensure due process is afforded to affected persons.

WHEREFORE Appellant/Respondent South Carolina Department of Consumer Affairs requests this Court enter an order dismissing the Department's appeal without prejudice and without cost to any party.

Respectfully submitted,



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May 20, 2015

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PROOF OF SERVICE

I certify that I have served Appellant/Respondent's Motion to Withdraw Appeal on Home Benefits, Inc., and the American Traveler Motor Club, Inc., by depositing a copy of it in the United States Mail, postage prepaid, on May 20, 2015, addressed to their attorneys of record, Steven W. Hamm and C. Jo Anne Wessinger Hill, Richardson Plowden & Robinson, P.A., Post Office Drawer 7788, Columbia, South Carolina 29202.

May 20, 2015



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