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IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Case No. 2013-CP-42-3055
Appellate Case No.: 2015-000653

United Services Automobile Association, appearing and defending
in the name of James Travis Singleton as underinsured motorist
carrier pursuant to Section 38-77-160 of the South Carolina Code,.....Appellant,

v.

John Davis and Jane Davis, Respondents.

**APPELLANT USAA'S
PETITION FOR REHEARING
OF ORDER OF DISMISSAL**

Appellant United Services Automobile Association, appearing and defending in
the name of James Travis Singleton as underinsured motorist carrier pursuant to Section
38-77-160 of the South Carolina Code, hereby petitions for rehearing of this Court's
Order dismissing the above-captioned appeal. The Order was filed on May 28, 2015.
This petition is made pursuant to Rule 221, SCACR.

This Court dismissed USAA's appeal based upon the general rule that orders
compelling discovery are interlocutory and not appealable. Waddell v. Kahdy, 309 S.C.

1, 4, 419 S.E.2d 783, 785 (1992) (holding that an order requiring a party to submit to a deposition is not directly appealable); Patterson v. Specter Broadcasting Corp., 287 S.C. 249, 335 S.E.2d 803 (1985) (holding that an order compelling discovery is interlocutory and not directly appealable). However, there is an exception for interlocutory orders that “involve the merits.” Wallace v. Interamerican Trust Co., 246 S.C. 563, 568, 144 S.E.2d 813, 816 (1965); S.C. Code Ann. § 14-3-330(1).

Long ago, the Supreme Court construed the phrase “involve the merits” for purposes of appellate jurisdiction to embrace more than simply the questions of law or fact constituting the causes of action and defenses in the case. Blakely & Copeland v. Frazier, 11 S.C. 122, 134 (1878). “The word ‘merits’ naturally bears the sense of including all that the party may claim of right in reference to his case.” Id. The court concluded that “whenever a substantial right of the party to an action material to obtaining a judgment in such action is denied, a right of appeal lies” Id. at 135.

In particular, courts have held that orders requiring the disclosure of protected information involve the merits and are therefore immediately appealable. The Supreme Court recently held that an order unsealing a court record was immediately appealable under Section 14-3-330(1). Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 7-8, 630 S.E.2d 464, 467-68 (2006). The court recognized that the order compelling disclosure finally determined the parties’ rights with respect to the protected information, even though the order was interlocutory in nature. Id. at 7-8, 630 S.E.2d at 468. This Court has also held that an order denying a plaintiff’s motion to proceed anonymously was immediately appealable. Doe v. Howe, 362 S.C. 212, 607 S.E.2d 354 (Ct. App. 2004).

In both cases, the court focused on the fact that denial of interlocutory review would prejudice the party seeking protection of the information by “letting the cat out of the bag.” Ex parte Capital U-Drive-It, 369 S.C. at 8, 630 S.E.2d at 468; Doe, 362 S.C. at 217, 607 S.E.2d at 356. Once the protected information has been produced, there is no effective way of recapturing it. Id.

In Doe, this Court outlined the criteria for interlocutory appellate review when protected material is at stake. An order is appealable under Section 14-3-330(1) if: (a) the order conclusively determines the question at issue, (b) the question is independent of the merits of the litigation, and (c) the order is effectively unreviewable on final appeal because the protected information would have already been revealed. Doe, 362 S.C. at 217, 607 S.E.2d at 356.

The orders appealed from in this case meet all of these criteria. The two orders had the effect of compelling production of “any and all joint defense agreements that exist between the law offices of Marcus K. McGarr and Murphy & Grantland, P.A.” (See Orders, attached as Exh. C.) As USAA will demonstrate in its briefing in this appeal, the orders compelled production of documents that are protected by the work product privilege as to USAA and the attorney-client privilege as to Singleton. Thus, the trial court orders “involve the merits” for purposes of Section 14-3-330(1) because they finally determine USAA’ substantial rights by compelling production of privileged documents. See Blakely & Copeland, 11 S.C. at 134-35.

The trial court orders also satisfy the Doe factors. The question as to whether or not USAA must produce the requested documents is independent of the merits in that no question of law or fact at trial will turn on whether production of the privileged

documents is compelled. As a result, the trial court's orders conclusively determine the question, and the orders have the result of "letting the cat out of the bag" because the damage will have already been done by the time an appeal is filed after judgment.

This case is distinguishable from the discovery orders in the line of cases cited in this Court's Order. In Wallace, the court emphasized that the discovery order related to pre-trial production of books and records deemed necessary to a proper and expeditious trial on the merits. Wallace, 246 S.C. at 568, 144 S.E.2d at 816; see also Lowndes Prods., Inc. v. Brower, 262 S.C. 431, 433-34, 205 S.E.2d 184, 185 (1974) (explaining that the discovery order related only to the evidence that might be elicited at trial); Waddell, 309 S.C. at 4, 419 S.E.2d at 785 (holding that an order requiring a party to submit to a deposition is not immediately appealable).

The discovery subject to the trial court's orders has nothing to do with the issues at trial. The Complaint in this action seeks recovery for bodily injury and loss of consortium arising from a motor vehicle accident. (See Complaint, attached as Exh. A.) USAA appeared to defend in the name of Singleton pursuant to Section 38-77-160 of the South Carolina Code. (See Notice of Appearance, attached as Exh. B.) The trial court has granted summary judgment as to liability, leaving proximate cause and damages as the only issues remaining for trial. (See Order granting partial summary judgment, attached as Exh. D.)

USAA's good faith in handling the claim is not an issue that can be joined in this action. Moreover, USAA has produced documents sufficient for Respondents to evaluate the credibility and bias of the defense expert. Respondents have cited no authority for their contention that they are entitled to defense work product and/or attorney-client

privileged material in order to evaluate the credibility and bias of defense experts. Such an exception would swallow the rule that privileged material is protected.

As a result, the trial court's orders were final with respect to the issues at stake in this appeal. Ex parte Capital U-Drive-It, 369 S.C. at 7-8, 630 S.E.2d at 468 ("No further action is required in the family court to determine the parties' rights; therefore, the order is immediately appealable."). Once the privileged material at issue has been produced, any further review will be pointless. Furthermore, there is no danger of piecemeal litigation where the rights of the parties have not been substantially impacted. See Watson v. Underwood, 407 S.C. 443, 458, 756 S.E.2d 155, 163 (Ct. App. 2014) (explaining the basic policy behind the general prohibition of interlocutory appeals). The question of whether defense work product must be produced is independent of the merits of the case, which involve proximate cause and damages in a negligence action arising from a motor vehicle accident.

Substantial rights of both Singleton and USAA are at stake, and these rights will be irreparably lost if an interlocutory appeal is not allowed. USAA must contest the trial court's ruling at this juncture because if it does not, all other work product protected material, and also potentially attorney-client privileged material, could also be subject to production through the waiver doctrine.

Courts in other jurisdictions have recognized the need for immediate review of orders compelling production of joint defense agreements and other work product protected documents. North Carolina courts have held that orders compelling production of documents protected by the attorney-client privilege affect a substantial right and are therefore subject to interlocutory review. Evans v. USAA, 541 S.E.2d 782, 786 (N.C. Ct.

App. 2001). Moreover, the Supreme Court of Connecticut has held that orders compelling production of material protected by the “common interest” or “joint defense” privileges are immediately appealable. Metropolitan Life Ins. Co. v. Aetna Cas. & Sur. Co., 730 A.2d 51 (Conn. 1999). Tennessee courts have also allowed interlocutory appeals on this basis. Boyd v. Comdata Network, Inc., 88 S.W.3d 203, 211 (Tenn. Ct. App. 2002). In each case, the courts recognized the important concern that delaying review of orders compelling production of protected material would prejudice the interests of the party seeking protection.

Finally, the Supreme Court has indicated that the presentation of a novel question of law and the opportunity to provide guidance to the bench and bar in the interest of judicial economy are factors weighing in favor of allowing interlocutory appeals. Salmonsens v. CGD, Inc., 377 S.C. 442, 452, 661 S.E.2d 81, 87 (2008). Both of these factors are present in this appeal. This Court has held that counsel appearing and defending in the name of the underinsured motorist carrier does not have an attorney-client relationship with the defendant in motor vehicle accident cases. Crawford v. Henderson, 356 S.C. 389, 589 S.E.2d 204 (Ct. App. 2003). However, Crawford does not address the work product privilege or the effect of the common interest doctrine. See Tobaccoville USA, Inc. v. McMaster, 387 S.C. 287, 692 S.E.2d 526 (2010).

Respondents have raised a novel question of law by demanding production of the joint defense agreement and any related documents between defense counsel and counsel appearing and defending in the name of the underinsured motorist carrier. This question is independent from the issues at trial, which involve proximate cause and damages arising from a motor vehicle accident. Moreover, the need for guidance for the bench

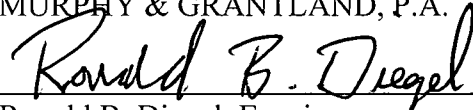
and bar as to the contours of attorney-client and work product protection in cases involving underinsured motorist (UIM) coverage is great. These types of cases are very common and important issues are at stake.

Accordingly, this Court has jurisdiction to hear this appeal pursuant to Section 14-3-330(1) of the South Carolina Code. At the very least, this Court should allow the parties to brief the issues before making a final ruling on this basis. Appellant USAA therefore requests that this Court grant its petition for rehearing and reinstate its appeal.

June ^{11th} , 2015

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



Ronald B. Diegel, Esquire

Timothy J. Newton, Esquire

P.O. Box 6648

Columbia, SC 29260

(803) 782-4100

Attorneys for Appellant USAA

Other Counsel of Record:

Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
108 Whitsett Street
Greenville, S.C. 29601
(864) 298-0089
Attorney for James Travis Singleton

E. Grey Wicker, Esq.
Michael Spears, Esq.
MICHAEL SPEARS, P.A.
Post Office Box 5806
Spartanburg, SC 29304
(864)583-3535
Attorneys for Respondents

Exhibit A

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

John Davis and Jane Davis)

Plaintiff(s))

vs.)

James Travis Singleton)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP-42-3055

Submitted By: E. Grey Wicker
Address: Michael E. Spears, PA
122 South Liberty Street
Spartanburg, SC 29306

SC Bar #: 76382
Telephone #: (864) 583-3535
Fax #: (864) 583-3525
Other:
E-mail: gwicker@mikespearspa.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case # <u>20-CP-</u> <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input checked="" type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input checked="" type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) | | | |

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Submitting Party Signature: EGW

Date: August 2, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

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FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
John Davis and Jane Davis,)
)
)
Plaintiff,)
)
vs.)
)
James Travis Singleton,)
)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

SUMMONS

2013-CP-42-3055
C.A. No. B-CP-42

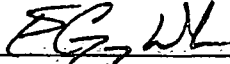
(NEGLIGENCE)

(JURY TRIAL DEMANDED)

TO THE DEFENDANT ABOVE NAMED:

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 said Complaint on the Plaintiffs or their attorneys, Michael E. Spears, P.A., at 122 South Liberty Street, Spartanburg, SC 29306, Post Office Box 5806 (29304), within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

Spartanburg, South Carolina
August 2, 2013


Michael E. Spears, PA
Michael E. Spears, Esquire
E. Grey Wicker, Esquire
Post Office Box 5806
Spartanburg, SC 29304-5806

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M. HOPE BLACKLEY

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
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John Davis and Jane Davis,)
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Plaintiff,)
)
vs.)
)
James Travis Singleton,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

COMPLAINT

2013-CP-42-3055

C.A.No. 13-CP-42-_____

(NEGLIGENCE)

(JURY TRIAL DEMANDED)

The Plaintiffs, complaining of the Defendant, would respectfully show unto this Honorable Court as follows:

JURISDICTION AND VENUE

1. That Plaintiffs, John and Jane Davis, a married couple, were, at all times mentioned herein, citizens and residents of the County of Spartanburg, State of South Carolina.
2. That, upon information and belief, Defendant James Travis Singleton, was at all times mentioned herein, a citizen and resident of Spartanburg County, South Carolina, residing at 201 East Blackstock Road, Apt. B12, Spartanburg, South Carolina, 29301.
3. That all injuries, breaches, acts and damages complained of herein occurred in the County of Spartanburg, State of South Carolina.

GENERAL ALLEGATIONS

4. That before or around 4:05 PM on June 17, 2011, in the County of Spartanburg, State of South Carolina, Plaintiff Jane Davis had been traveling in her 2005 Chevrolet Impala southbound on East Blackstock Road towards John B. White Sr. Blvd, whereupon she properly come to a complete stop at the red light governing the intersection of the two roads.

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5. That, before or around 4:05 pm on June 17, 2011, a 2001 Ford truck, owned and operated by Defendant James Travis Singleton, was also traveling southbound on the same road behind Plaintiff Jane Davis.
6. That, as Defendant approached the intersection where Plaintiff Jane Davis was stopped, Defendant failed to stop his vehicle for the red light governing the intersection.
7. That the Ford Explorer driven by Defendant forcefully and suddenly struck Plaintiff Jane Davis's car causing grave injury to Plaintiff Jane Davis inside.
8. That Defendant was cited for following too closely and for contributing to the collision, whereas Plaintiff Jane Davis was noted not to have contributed to the collision.
9. That as a result of this accident, Plaintiff Jane Davis suffered severe and painful personal injuries to her body and mind, from which she suffered, now suffers and will continue to suffer, including but not limited to the following particulars, to wit:
 - a. Postconcussion Syndrome,
 - b. Brain injury, and associated:
 - i. Memory loss,
 - ii. Hearing and vision changes,
 - iii. Ataxia,
 - iv. Depression,
 - v. Sleep Disturbance,
 - vi. Mood swings,
 - vii. Diminished Attention Span,
 - viii. Loss of balance,
 - ix. Diminished Concentration,

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- x. Diffuse cognitive impairment,
 - c. Bodily injuries, including but not limited to, her neck, upper, mid, and lower back,
 - d. Physical pain,
 - e. Permanent impairment,
 - f. Suffering,
 - g. Mental Anguish,
 - h. Emotional Distress,
 - i. Shock and injury to Plaintiff Jane Davis's nerves and nervous system,
 - j. Past and future medical expenses and other economic losses,
 - k. Loss of personal services, and
 - l. Loss of enjoyment of life.
10. That, as a direct and proximate result of the serious physical and emotional injury suffered by Plaintiff Jane Davis, Plaintiff John Davis has suffered the loss of service, society and companionship of his spouse, all to his own injury and damage, as detailed in Plaintiffs' Third Cause of Action for Loss of Consortium.
11. That Defendant's negligent acts and omissions proximately caused these damages to Plaintiffs and that Defendant is liable for the injuries and damages complained of herein.

FOR A FIRST CAUSE OF ACTION

(On Behalf of Plaintiff Jane Davis)

Negligence Per Se

12. That all acts and omissions alleged hereinabove are repeated as if fully set forth here in their entirety.
13. That South Carolina Code, 1976, § 56-5-950(a), provides that "[t]he driver of any vehicle

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- shall obey the instructions of any official traffic-control device[.]”
14. That South Carolina Code, 1976, § 56-5-1930(a), provides that “[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.”
 15. That South Carolina Code, 1976, § 56-5-730, provides that “[i]t is unlawful ... for any person to do any act forbidden or to fail to perform any act required in this chapter.”
 16. That South Carolina Code, 1976, § 56-4-1250(a), provides that “[a] person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Speed must be so controlled as to avoid colliding with a person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of a person to use due care.”
 17. That Defendant violated state statutes and regulations, including but not limited to South Carolina Code, 1976, §§ 56-5-950(a), 1930(a), 730 and 1250(a), in at least the following particulars, to wit:
 - a. In the negligent and careless operation of Defendant’s vehicle, which led to the aforementioned accident;
 - b. In failing to exercise ordinary care and failing to avoid placing others in danger;
 - c. In failing to exercise due care and maintain a proper and prudent lookout so as to avoid striking Plaintiff Jane Davis;
 - d. In failing to steer Defendant’s vehicle or stop so as to avoid colliding with Plaintiff Jane Davis’s vehicle;
 - e. In failing to keep vehicle under control

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- f. In failing to properly respond
 - g. In following Plaintiff Jane Davis's vehicle too closely;
 - h. In failing to stop at a stop light as required by law; and
 - i. In driving too fast for conditions.
18. That Defendant is negligent per se based on his violation of these statutory and regulatory violations.
19. That these negligent acts and omissions directly and proximately caused Plaintiff Jane Davis personal injury, past and future physical disfigurement, past and future pain and suffering, the cost of past and future medical bills, past and future loss of enjoyment of life, past and future extreme emotional upset, past and future embarrassment, and past and future psychological distress, and have caused her to be unable to function at her previous cognitive level.

FOR A SECOND CAUSE OF ACTION

(On behalf of Plaintiff Jane Davis)

Negligence, Gross Negligence, Recklessness, Willfulness, Wantonness

20. That all acts and omissions alleged hereinabove are repeated as if fully set forth hereinafter in their entirety.
21. That Defendant was negligent, grossly negligent, willful, wanton and reckless in his acts and omissions, in at least the following particulars, to wit:
- a. In the negligent and careless operation of Defendant's vehicle, which led to the aforementioned accident;
 - b. In failing to exercise ordinary care and failing to avoid placing others in danger;
 - c. In failing to exercise due care and maintain a proper and prudent lookout so as to

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avoid striking Plaintiff Jane Davis;

- d. In failing to steer Defendant's vehicle or stop so as to avoid colliding with Plaintiff Jane Davis's vehicle;
 - e. In failing to keep vehicle under control;
 - f. In failing to properly respond;
 - g. In following Plaintiff Jane Davis's vehicle too closely;
 - h. In failing to stop at a stop light as required by law; and
 - i. In driving too fast for conditions.
22. That these negligent acts and omissions directly and proximately caused Plaintiff Jane Davis personal injury, past and future physical disfigurement, past and future pain and suffering, the cost of past and future medical bills, past and future loss of enjoyment of life, past and future extreme emotional upset, past and future embarrassment, and past and future psychological distress, and have caused her to be unable to function at her previous cognitive level.

FOR A THIRD CAUSE OF ACTION

(On Behalf of Plaintiff John Davis)

Loss of Consortium

- 23. That all acts and omissions alleged hereinabove are repeated as if fully set forth here in their entirety.
- 24. That Defendant owed a duty of care to both Plaintiffs.
- 25. That Defendant breached such duty of care to both Plaintiffs.
- 26. As a direct, foreseeable and proximate result of the aforesaid negligent, grossly negligent, willful, wanton and reckless acts and omissions of Defendant, Plaintiff John Davis has been

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forced to endure substantial losses of the marital rights to company, society, cooperation affection, assistance, fellowship, aid and relations with his spouse.

27. Further, as a direct, foreseeable and proximate result of the aforesaid negligent, grossly negligent, willful, wanton and reckless acts and omissions of Defendant, Plaintiff John Davis has been required to become a caregiver for his wife, which has necessitated a reduction in time he can work, resulting in lost wages.
28. That due to the negligent, grossly negligent, willful, wanton and reckless acts and omissions of Defendant, the Defendant is liable to Plaintiff John Davis.

THEREFORE, because of the above, the Plaintiffs seek recovery from Defendant in a reasonable amount of actual damages as well as an exemplary amount of punitive damages.


WHEREFORE, the Plaintiffs pray for judgment against the Defendants as follows:

1. As to Plaintiff Jane Davis's First Cause of Action, Negligence Per Se of Defendant:
 - a. For a reasonable amount of actual damages;
 - b. For an exemplary amount of punitive damages;
2. As to Plaintiff Jane Davis's Second Cause of Action, Negligence of Defendant:
 - a. For a reasonable amount of actual damages;
 - b. For an exemplary amount of punitive damages;
3. As to Plaintiff John Davis's Third Cause of Action, Loss of Consortium against Defendant:
 - a. For a reasonable amount of actual damages; and
 - b. For an exemplary amount of punitive damages;

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CLERK OF SUPERIOR COURT
GRAND DUKES COUNTY

4. For the costs and disbursements of this action; and
5. For such other relief as the Court may deem just and proper.

August 2, 2013



MICHAEL E. SPEARS, PA
Michael E. Spears, Esquire
E. Grey Wicker, Esquire
122 South Liberty Street
Spartanburg, SC 29306
Post Office Box 5806 (29304)

Attorneys for the Plaintiffs

M. HOPE BLACKLEY

2013 AUG -2 AM 11:43

FILED
U.S. DISTRICT COURT
SPARTANBURG, SOUTH CAROLINA

Exhibit B



MURPHY & GRANTLAND, P.A.

Ronald B. Diegel*
Direct dial - 803-454-1207
rbdiegel@murphygrantland.com

June 11, 2015

VIA HAND DELIVERY

The Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
JUN 11 2015
SC Court of Appeals

Re: John Davis and Jane Davis vs. James Travis Singleton
Civil Action No.: 2013-CP-42-3055
Appellate Case No.: 2015-000653
Claim No.: 1194455; ALIS #: 2013-10791
Date of Loss: June 17, 2011
Our File No.: 3250-0693

Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of Appellant USAA's Petition for Rehearing of Order of Dismissal and corresponding Certificate of Service.

I would appreciate your filing the originals of these documents, clocking the copies, and returning the same to me in the enclosed, self-addressed, stamped envelope provided for your convenience.

Furthermore, please find enclosed a check in the amount of \$25.00 which represents the filing fee with regard to this matter.

Also, please note that by copy of this letter, I am placing all counsel of record on notice that the originals of these documents have been filed with your Court.

As always, I thank you and your staff for all the help and assistance you repeatedly provide with regard to these matters.

Sincerely yours,

Ronald B. Diegel

RBD\anh
Enclosures

cc: E. Grey Wicker, Esq.,
Michael E. Spears, Esq.
Marcus K. McGarr, Esq.
Timothy J. Newton, Esq.

Telephone 803-782-4100 • Facsimile 803-782-4140 / 803-454-1258
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Case No. 2013-CP-42-3055
Appellate Case No.: 2015-000653

United Services Automobile Association, appearing and defending in
the name of James Travis Singleton as underinsured motorist carrier
pursuant to Section 38-77-160 of the South Carolina Code,

Appellant,

v.


John Davis and Jane Davis

Respondents.

PROOF OF SERVICE

I certify the I have served the Appellant USAA's Petition for Rehearing of Order of Dismissal upon John Davis and Jane Davis, via regular mail, on June 11, 2015, to their attorneys of record, E. Grey Wicker, Esq., and Michael E. Spears, Esq., of Michael Spears, P.A., P.O. Box 5806, Spartanburg, SC 29304. I further certify that I have served the Appellant USAA's Petition for Rehearing of Order of Dismissal upon Defendant Singleton, via regular mail, on June 11, 2015, via his attorney of record, Marcus K. McGarr, Esq., 108 Whitsett Street, Greenville, SC 29601.

June 11, 2015



Ronald B. Diegel, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
803-782-4100 phone
803-782-4140 fax
Attorney for Appellant USAA

RECEIVED
JUN 11 2015
SC Court of Appeals

COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

CIVIL ACTION NO: 2013-CP-42-3055

John Davis and Jane Davis,

Plaintiffs,

NOTICE OF APPEARANCE

v.

James Singleton,

Defendant.

TO: MICHAEL E. SPEARS AND E. GARY WICKER, ESQUIRES, ATTORNEYS FOR PLAINTIFFS AND TO THE PLAINTIFFS ABOVE NAMED:

The undersigned, as attorney for USAA , hereby notify and advise this Court, the parties above-named and their attorneys, that they are appearing on behalf of USAA, an insurance carrier which is alleged to provide underinsured motorist coverage to one or more parties to this action and that, in making this appearance, USAA specifically preserves and does not waive any rights pursuant to its policy of insurance including, but not limited to, the applicability of underinsured motorist coverage to this action and further intends to preserve all rights which it may have pursuant to Code Section 38-77-160 (1976 as amended).

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 3:01
M. HOPE BLACKLEY

(Signature on following page)

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



Ronald B. Diegel, Esquire
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for USAA

Columbia, South Carolina
September 5, 2013

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19 PM 3:01
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

John Davis and Jane Davis,

Plaintiff,

v.

James Travis Singleton,

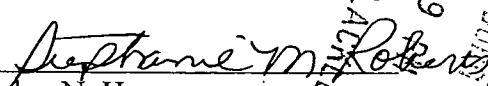
Defendant.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2013-CP-42-3055

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., attorneys for **United Services Automobile Association** do hereby certify that I have served a copy of the foregoing **1) Plaintiff's Notice of Appearance** in connection with the above-referenced case placing same in the U.S. mail, postage paid to:

Michael E. Spears, Esquire
E. Grey Wicker, Esquire
Michael E. Spears, P.A.
Post Office Box 5806
122 South Liberty Street (29306)
Spartanburg, SC 29304


Amber N. Hogan
Assistant to Ron B. Diegel, Esquire

Columbia, South Carolina
September 5, 2013

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 19
M. HOPE BLANCHETT

Exhibit C

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
John Davis and Jane Davis,)
)
Plaintiff,)
)
vs.)
)
James Travis Singleton,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER
3/6/15 ORDER GRANTING
PLAINTIFFS' MOTION TO COMPEL**

C.A.No. 13-CP-42-3055

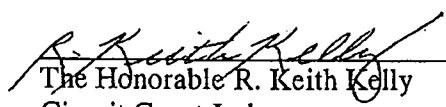
2015 MAR 24 AM 10:06
CLERK OF COURT
SEVENTH JUDICIAL CIRCUIT

The Defendant's March 13, 2015 Motion to Reconsider this Court's March 6, 2015 Order Granting Plaintiff's Motion to Compel is hereby **DENIED**. The original order is reinstated, except that the new deadline for the Defendant to comply with the ordered production is Friday, March 27th by noon, 12:00 PM.

IT IS HEREBY ORDERED.

March 24, 2015

Spartanburg, SC


The Honorable R. Keith Kelly
Circuit Court Judge
Seventh Circuit

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
John Davis and Jane Davis,)
)
)
Plaintiff,)
)
vs.)
)
James Travis Singleton,)
)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

**ORDER GRANTING
PLAINTIFFS' MOTION TO COMPEL**

C.A.No. 13-CP-42-3055

CLERK OF COURT
JAMES ALBINO
2015 MAR -6 PM 4:39
M. ROSE ALABURNEY

This matter came before this Court by way of the Plaintiffs' Motion to Compel, filed November 10, 2014. The Plaintiffs sought to seek certain responses to the Plaintiff's Second Set of Requests for Production served upon the defendants upon September 19, 2014, to which no responses have been received. In due course, the Plaintiffs followed up with Defendants regarding the lack of responses, but to no avail, therefore discharging its duty to resolve this matter without court involvement.

Specifically, the Plaintiffs' Second Set of Interrogatories requests as follows:

"Produce any and all joint defense agreements that exist between the law offices of Marcus K. McGarr, Esquire and Murphy & Grantland, P.A., pertaining to the above-captioned case."

This matter was heard before this Court, with all parties present, on January 7, 2015. This Court hereby GRANTS the Plaintiff's Motion and COMPELS the Defendants to respond to Plaintiff's Second Set of Requests for Production by March 13, 2015. Specifically, the Defendants are hereby compelled to produce to the Plaintiffs all such documents and/or written communications which serve to establish a "joint defense agreement", or any other agreement to defend this case jointly, between the law firms of Marcus K. McGarr, Esquire and Murphy & Grantland, P.A.

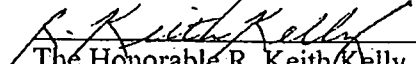
SCANNED 03

1062
RKK

IT IS HEREBY ORDERED.

March ¹⁴ 12, 2015

Spartanburg, SC


The Honorable R. Keith Kelly
Circuit Court Judge
Seventh Circuit

FILED
CLERK OF COURT
SPARTANBURG, SC 29010
2015 MAR -6 PM 4:39
M. HOPE SHAWNEEY

Exhibit D

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP4203055

John Davis

Jane Davis

James Travis Singleton

Usaa

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

Partial summary judgment is granted to the Plaintiff as to the Defendant's negligence. See next pg.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2168

Judge Code

Date

4/8/14

For Clerk of Court Office Use Only

This judgment was entered on 8 of April ¹⁴ and a copy mailed first class or placed in the appropriate attorney's box on 8 of April ₂₀₁₄ to attorneys of record or to parties (when appearing pro se) as follows:

Edwin Grey Wicker 122 S. Liberty St. Spartanburg, SC 29306

Ronald Barton Diegel PO Box 6648 Columbia, SC 29260
Marcus Kirk McGarr Marcus K. McGarr, P.A. 108 Whitsett Street Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

M. Hope Blackley / Maudel M. Maudel
M Hope Blackley - Clerk of Court DC

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Liability is an issue for the jury and ^{partial} summary judgment is denied as to that. Case shall proceed to jury trial.

FILED
CLERK OF COURT
SPARTANBURG, SOUTH CAROLINA
2014 APR - 8 PM 4:49
M. HOPE BLACKLEY