IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
R. Keith Kelly, Circuit Court Judge

RECEIVED
JUN 19 2015
SC Court of Appeals

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

John Davis and Jane Davis, ...Respondents.

v.

James Travis Singleton, ...Appellant.[1]

RESPONDENTS JOHN AND JANE DAVIS'S RETURN TO UNITED SERVICES AUTOMOBILE ASSOCIATION'S PETITION FOR REHEARING OF ORDER DISMISSING APPELLANT JAMES TRAVIS SINGLETON'S APPEAL[2]

The Respondents, John and Jane Davis (hereinafter "Respondents"), by and through their undersigned counsel, hereby submit this Return to United Services Automobile Association's (hereinafter "UIM Carrier's") Petition for Rehearing of this Court's Order dismissing the above-captioned appeal.

This Court properly dismissed the above-captioned appeal because the underlying orders on appeal are not immediately appealable. This Court cited Waddell v. Kahdy, 309 S.C. 1, 419 S.E.2d 783 (1992), which holds that an order compelling a party to submit to discovery is interlocutory and not directly appealable. The Waddell case stands as one of many South Carolina cases ruling the same way, many of which are cited herein. Accordingly, for this

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[1] Please note that this caption has been changed from the caption atop UIM Carrier's Petition to reflect the proper caption in accordance with Rule 247, SCACR, and this Court's directive by letter dated April 21, 2015 and attached hereto as Exhibit A.

[2] The respondents are aware that a return to UIM Carrier's Petition for Rehearing is not required; however, Respondents feel compelled to respond to procedural deficiencies as well as certain points raised by UIM Carrier.

reason and for all of the reasoning and argument cited below, the Respondents respectfully request that this Court deny UIM Carrier's Petition for Rehearing.

STATEMENT OF ISSUES ON APPEAL

The issues involved in this appeal are ___-fold. UIM Carrier's Petition for Rehearing should be dismissed for at least the following reasons:

1. **This Petition for Rehearing should be dismissed because UIM Carrier is not a party to this action and does not have standing to appeal the lower court's order.**

2. **This Petition for Rehearing should be dismissed because UIM Carrier made no arguments in the lower court and as such has preserved none for appeal;**

3. **UIM Carrier has failed to file an Initial Appellate Brief within the time period prescribed by Rule 208, SCACR;**

4. **UIM Carrier does not state with particularity the points supposed to have been overlooked or misapprehended by this Court, as required by Rule 221, SCACR;**

5. **This Court's dismissal of the underlying appeal as not being immediately appealable does not have the effect of dismissing or finally deciding UIM Carrier's appeal;**

6. **This Court should deny UIM Carrier's Petition because South Carolina law holds that until UIM Carrier and/or Appellant James Travis Singleton have been held in contempt, the issue is not appealable; and**

7. **As a threshold matter, the Circuit Court's Order was a proper exercise of the Court's authority.**

LEGAL AUTHORITY

I. Initial Brief, Rule 208, SCACR

Within thirty (30) days after receiving the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal, appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service. Rule 208(a)(1), SCACR. Upon the failure of the appellant to file and serve his

brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal. *See* Rule 208(a)(4), SCACR.

II. Petitions for Rehearing, Rule 221, SCACR

A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court. Rule 221(a), SCACR. The appellate court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding an appeal. Rule 221(c).

III. Motions and Petitions Generally, Rule 240, SCACR

Rule 240, SCACR, governs all motions or petitions filed in the appellate court, including but not limited to … petitions for rehearing. *See* Rule 240(a), SCACR. All motions or petitions filed in an appellate court shall be in writing, shall state the grounds thereof, and shall comply with the requirements of Rule 267. Rule 240(c), SCACR. The pages of the motion or petition and all supporting documents shall be consecutively numbered. Id.

Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions. Rule 240(c)(3), SCACR.

Failure of the moving party to perform any act required by Rule 240, SCACR, may be deemed an abandonment of the motion or petition. *See* Rule 240(g), SCACR.

The Court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal. Rule 240(i), SCACR.

IV. Immediate Appealability

An order denying or compelling discovery is not directly appealable. *See* Lowndes Products, Inc. v. Brower, 262 S.C. 431, 433 (1974). An order compelling discovery does not ordinarily involve the merits of the case and may not be appealed. *See* Tucker v. Honda of South Carolina Mfg., Inc., 354 S.C. 574, 577 (2003) (*citing* Ex parte Whetstone, 289 S.C. 580 (1986)).

Since a contempt order is final in nature, an order compelling discovery may be appealed after the trial court holds a party in contempt. Id. (*citing* Hooper v. Rockwell, 334 S.C. 281 (1999)). Thus, a party may comply with the order and waive any right to challenge it on appeal or refuse to comply with the order, be cited for contempt, and appeal. Id. (*citing* Whetstone, *supra*).

An order compelling discovery is not immediately appealable even if it is challenged as violating the attorney-client privilege. *See* Weiters v. Bon-Secours-St. Francis Xavier Hosp., Inc., 381 S.C. 332, 332 (2009) (*citing* Tucker *supra*).

V. Preservation of Issues

It is "axiomatic that an issue cannot be raised for the first time on appeal." Herron v. Century BMW, 395 S.C. 461, 465 (2011) (*quoting* Wilder Corp. v. Wilke, 330 S.C. 71, 76 (1998)). Imposing such a requirement on the appellant "is meant to enable the lower court to rule properly after it has considered all relevant facts, law and arguments." Id. (*quoting* I'On, L.L.C. v. Town of Mt. Pleasant, 388 S.C. 406, 422 (2000).

Ordinarily, no point will be considered on appeal which is not set forth in the statement of the issues on appeal. Id. at 466 (*citing* Rule 208(b)(1)(B), SCACR). Similarly a petition for rehearing must "state with particularity the points supposed to have been overlooked or misapprehended by the court. Id. (*citing* Rule 221(a), SCACR). The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or

misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time. Herron, *supra*, at 466 (*citing* Kennedy v. S.C. Retirement Sys., 349 S.C. 531, 532 (2001)).

An appellant cannot bootstrap an issue for appeal by way of another party's objection. *See* Tupper v. Dorchester County, 326 S.C. 318, Fn. 3 (1997) (*citing* Brock v. Board of Adjustment, 308 S.C. 539 (1992).

ARGUMENT

At a minimum, for the same reasons noted in this Court's Order Dismissing the Appellant James Travis Singleton's Appeal, South Carolina law holds that UIM Carrier's Petition for Rehearing should similarly be dismissed. Moreover, the Respondents respectfully request that this Court dismiss UIM Carrier's Petition for Rehearing for the additional reasons and arguments made herein.

I. This Petition for Rehearing should be dismissed because UIM Carrier is not a party to this action and does not have standing to appeal the lower court's order.

UIM Carrier is not a party to this litigation and, as such, does not have standing to appeal the lower court's order. This Court has already recognized such in its April 21, 2015 directive to counsel removing UIM Carrier from the caption of this appeal.

UIM Carrier has filed its Petition for Rehearing under a non-existent caption, which has already been dismissed. However, simply placing UIM Carrier's name as the appellant does not grant them standing to lodge an appeal, especially when UIM Carrier was afforded the right to make arguments in the lower court and opted not to.

II. This Petition for Rehearing should be dismissed because UIM Carrier made no arguments in the lower court and as such has preserved none for appeal.

UIM Carrier made no arguments in the lower court, although represented by an attorney who was offered the opportunity to speak. Thus, UIM Carrier has no preserved arguments to raise on appeal. According to the law of South Carolina UIM Carrier cannot raise any of the issues contained in UIM Carrier's Petition for Rehearing because all were waived by virtue of not raising them in the lower court.

Thus, the Respondents would respectfully request that this Court dismiss UIM Carrier's Petition for Rehearing with prejudice.

III. The Petition for Rehearing should be dismissed because UIM Carrier has failed to file an Initial Appellate Brief within the time period prescribed by Rule 208, SCACR.

Regardless of the above bases for dismissing UIM Carrier's Petition for Rehearing, UIM Carrier has also never filed an Initial Appellate Brief in this appeal, and accordingly, UIM Carrier's appeal should be dismissed with prejudice pursuant to the clear language of Rule 208(a)(4), as cited above. However, to the extent that this Court's prior dismissal of UIM Carrier's Appeal tolled any time period for UIM Carrier to file an Initial Appellate Brief, the time period within which UIM Carrier was required to file their Initial Appellate Brief had already long since expired.

The underlying matter on appeal stems from a Motion to Compel filed by the Respondent, a hearing on which was held January 7, 2015. On March 6, 2015, the Circuit Court issued an order granting the Respondent's Motion to Compel. Appellant James Travis Singleton filed a Motion to Reconsider the Judge's ruling on March 13, 2015. (See Appellant James Travis Singleton's Motion to Reconsider, attached hereto as Exhibit B.)

Thereafter, on March 17, 2015, the Respondents filed and served their Response to the Appellant James Travis Singleton's Motion to Reconsider, and attached as Exhibit B the

transcript from the underlying January 7, 2015 hearing. (See Respondent's Response to Appellant James Travis Singleton's Motion to Reconsider, attached hereto as Exhibit C.) Thus, UIM Carrier received the transcript, marked "original", of the underlying hearing by electronic mail on March 17, 2015 and by U.S. Mail within days after.

Regardless of having possession of the transcript since March 17, 2015, UIM Carrier failed to file an initial appellate brief before April 16, 2015, thirty (30) days following UIM Carrier's receipt of the transcript, as required by Rule 208(a)(1). Accordingly, this appeal should be dismissed with prejudice.

Furthermore, regardless of having possession of the transcript, UIM Carrier requested that Court Reporter Margaret Woods send UIM Carrier an additional copy of the transcript, by letter dated April 6, 2015. (See Letter to Margaret Woods dated April 6, 2015, attached hereto as Exhibit D.) Respondent received a copy of UIM Carrier's letter by U.S. Mail and immediately forwarded another copy of the transcript, marked "original" to UIM Carrier by electronic mail on April 7, 2015. (See Email Correspondence dated April 7, 2015 attached hereto as Exhibit E.) Nevertheless, UIM Carrier failed to file an Initial Appellate Brief within thirty days, which or May 7, 2015.

Court reporter Margaret Woods mailed an additional copy of the transcript and signed Certificate Page to UIM Carrier on April 14, 2015, pursuant to UIM Carrier's request. (See Email Correspondence from Margaret Woods dated June 11, 2015, attached hereto as Exhibit F.) Regardless of UIM Carrier's having received several copies of the transcript within days after April 14, 2015, UIM Carrier failed to file an Initial Appellate Brief within thirty (30) days. Accordingly, this appeal should be dismissed with prejudice.

The Respondents are aware of no reason that UIM Carrier would not have had this final copy of the transcript and signed Certificate Page within days after April 14, 2015, contrary to UIM Carrier's letter to this Court claiming to have received the copy of the transcript on May 5, 2015. (See Letter to Court of Appeals dated May 15, 2015, attached hereto as Exhibit G.)

Accordingly, for all of these reasons, the Respondents respectfully requests that this Court dismiss UIM Carrier's petition, as well as its appeal with prejudice for failure to file an Initial Appellate Brief as required by Rule 208, SCACR.

IV. The Petition for Rehearing should be dismissed because UIM Carrier does not state with particularity the points supposed to have been overlooked or misapprehended by this Court, as required by Rule 221, SCACR.

UIM Carrier's Petition does not state with particularity the points supposed to have been overlooked or misapprehended by this Court. The Petition is merely a summary of certain arguments made by the Appellant James Travis Singleton in the trial court, and certain arguments which were not. UIM Carrier made no argument at all in the trial court. Furthermore, there is no mention of what points UIM Carrier believes that this Court has overlooked or misapprehended.

Of course, this is in large part due to the fact that: (1) there has never been a hearing on this appeal, (2) UIM Carrier failed to file an Initial Appellate Brief and (3) the appeal has been inappropriately filed raising a supposed immediately appealable interlocutory issue when, as this Court has already held, there is none.

Regardless, UIM Carrier's brief does not state with particularity the points supposed to have been overlooked or misapprehended by this Court, as is required by Rule 221(a) and accordingly should be dismissed in accordance with Rule 240(g) which holds that the failure of

the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition.

V. The Petition for Rehearing should be dismissed because this Court's dismissal of the underlying appeal as not being immediately appealable does not have the effect of dismissing or finally deciding UIM Carrier's appeal.

Contrary to UIM Carrier's assertions, this Court's dismissal of the appeal as not being immediately appealable does not have the effect of dismissing or finally deciding UIM Carrier's appeal.[3] UIM Carrier argues two specific exceptions to the general rule classifying discovery matters as interlocutory and not immediately appealable. However, neither exception applies in this matter, and neither was raised at any time before UIM Carrier's Petition for Rehearing.

a. "Involve the merits" exception.

The first exception which UIM Carrier presents this Court applies to issues that "involve the merits" of the litigation. However, UIM Carrier provides no reasoning as to why the production of the joint defense agreement would so "involve the merits" that it should rise to the level of being immediately appealable. UIM Carrier's reliance on the Blakely & Copeland case from 1878 is misplaced in that the Court was considering the substantial nature of a litigant's right to venue, not a simple discovery matter.

In this appeal, UIM Carrier merely makes vague references to how the production of the joint defense agreement would violate UIM Carrier's work product privilege. However, it remains unclear how the production of the joint defense agreement would in any way expose some work product protected information. The Respondents merely seek information related to the relationship between the Appellant James Travis Singleton's lawyer and the Respondents'

[3] This point is raised as an aside to the fact that UIM Carrier (1) does not have standing to appeal at all, (2) made no arguments in the lower court and thus has none to preserve on appeal, and (3) never filed an initial appellate brief.

own insurance company, USAA. UIM Carrier continually fails to elucidate what information is included in the joint defense agreement that would be privileged or protected.

The Respondents would certainly consent to a confidentiality order, such that the documents might be sealed in order to ameliorate UIM Carrier's contention that the cat will be let out of the bag, although that argument has not been raised at any point prior to UIM Carrier's petition for rehearing.

b. Doe exception.

Whereas, the Doe exception has not been raised prior to UIM Carrier's Petition for Review, it is similarly inapplicable to the issues involved in this appeal. In order to apply, the question would have to be "independent of the merits of the litigation." Whereas, UIM Carrier argues that the trial court orders both do and do not "involve the merits" of the litigation on pages three (3) and four (4) of UIM Carrier's Petition, the Doe exception is inapplicable because the trial orders are effectively reviewable even after the subject information is produced.

As a threshold matter, the "letting the cat out of the bag" theory propounded by UIM Carrier for the first time in this Petition for Rehearing was not raised at the lower court level. Furthermore, this theory has never been brought up on the appellate level prior to this petition for rehearing for the simple reason that UIM Carrier never filed an Initial Appellate Brief.

Even so, UIM Carrier puts forth no reason that this simple discovery order would not be reviewable after the production of the documents ordered. The appeal of this order should naturally come when the issue becomes appealable, which is after the production of the documents or after an order holding UIM Carrier in contempt for the refusal to produce the documents. Accordingly, for these additional reasons, the Respondents respectfully request that this Court deny UIM Carrier's petition.

VI. The Petition for Rehearing should be dismissed because South Carolina law holds that until UIM Carrier has been held in contempt, the issue is not appealable.

As is discussed above, orders denying or compelling discovery are not immediately appealable. As is the typical scenario, the lower court's order does not involve the merits of this case; however, a contempt order is final in nature. Since a contempt order is final, an order compelling discovery may be appealed ***after*** the trial court holds a party in contempt.

UIM Carrier raises no compelling reason that the underlying discovery issue is of such a unique character that it should be granted immediate appealability. The proper order of events is for UIM Carrier to either produce the documents or refuse to; it is not to immediately appeal a discovery order. Should a court hold UIM Carrier in contempt, which has not been done yet, then an immediate appeal could be proper.

However, this proper order has not been followed in this case. Accordingly, the Respondents respectfully request that this Court dismiss UIM Carrier's Petition.

VII. The Petition for Rehearing should be dismissed because the Circuit Court's Order was a proper exercise of the Court's authority.

This Court should deny UIM Carrier's Petition because the trial court: (1) had the authority to issue the order, (2) properly exercised such authority, (3) the joint defense agreement is relevant to certain necessary discovery issues in this case and possibly future cases, and (4) the production of the joint defense agreement does not violate the Appellant James Travis Singleton's Attorney-Client Privilege or the Work Product Doctrine.

a. The trial court had the authority to issue an order compelling the production of the joint defense agreement between the Appellant James Travis Singleton and the Respondents' insurance carrier, USAA.

UIM Carrier did not raise any issue with the authority of the trial court to issue its order compelling discovery during the January 7, 2015 hearing, and does not raise any issue with the

trial court's authority in its Petition for Rehearing, thus waiving any argument with regards to this Court's authority. However, the issue was raised for the first time in UIM Carrier's Motion to Reconsider the lower court's decision and will be addressed by Respondents herein.

Indeed, Appellant James Travis Singleton cited in his own Motion to Reconsider the trial court's decision the precise law granting the trial court the authority to issue the Order in question, as follows:[4]

> "A lawyer may reveal information relating to the representation of a client to the extent necessary ... ***to comply with other law or a court order.***"

See S.C.App.Ct.R., Rule 407, RPC 1.6(b)(7).[5]

Moreover, in comment 16, the Rule clarifies as follows:

> "A lawyer may be ordered to reveal information related to the representation of a client by a Court."

S.C.App.Ct.R., Rule 407, RPC 1.6, Comment 16.

Accordingly, any reference to a lack of authority in the trial court to compel the discovery at issue should be disregarded as not properly raised or preserved, and not in accordance with the law of South Carolina.

b. The trial court properly exercised its authority by compelling the production of the joint defense agreement between the Appellant James Travis Singleton and the Respondents' insurance carrier, USAA.

UIM Carrier's Petition should not be misunderstood to be heralding the merits of the attorney-client privilege and the work product doctrine, but rather as the most recent indicia of the Appellant James Travis Singleton's and UIM Carrier's repetitive lack of regard for this case. The Underinsured Motorist (UIM) statute provides that UIM Carrier may appear and assist in the

[4] UIM Carrier did not file a Motion to Reconsider.

[5] UIM Carrier did not cite S.C.App.Ct.R., Rule 407, RPC 1.6 in the argument at the trial court level and should not be heard to raise it now. However, to the extent that the Rule could be understood broadly as to codify the attorney-client privilege, the Respondents reiterate that they seek no attorney-client communication.

defense of the case; however, it provides no protection against discovery of the communications between UIM carrier and the liability carrier. To the contrary, transparency in USAA's dealings on behalf of its own insured, the Planitiffs/Respondents, is to be expected.

i. The Respondents are entitled to the joint defense agreement.

It is John and Jane Davis's (Respondents') right to know who is funding the defense against them. Respondents seek no attorney-client communications or work product, but merely the rightful knowledge of how the premiums paid to the Respondents' own insurance company, USAA, have been spent in UIM Carrier's efforts to investigate the coverage owed in this case. UIM Carrier even admits that there exists no attorney-client relationship between the defendant in a motor vehicle accident case and UIM carrier. *See* Crawford v. Henderson, 356 S.C. 389 (Ct. App. 2003) (*cited* in UIM Carrier's petition on pages 6).

The Respondents are aware that a joint defense agreement exists because they have been made privy to a portion of it. The expert file of Dr. David Price includes a letter from the Respondents' UIM Carrier to Dr. Price, attached hereto as Exhibit H. This document is important in that it reveals that although Appellant James Travis Singleton's attorney identified Dr. Price as an expert on behalf of the Appellant James Travis Singleton, the funding for the Appellant Singleton's expert comes from the Respondents' very own insurance carrier, USAA.

This is critical information in assessing the credibility and bias of Dr. Price and all other witnesses who may be paid either by the Appellant James Travis Singleton or UIM carrier. But, most importantly, this document contains no reference to any information that deserves protection pursuant to the attorney-client privilege or work product doctrine. Certainly, the documents evidencing the joint defense agreement between the Appellant and UIM Carrier can

be produced without divulging confidential information to be protected by the attorney-client privilege.

ii. Timeline of events.

This case was filed on August 2, 2013. On November 11, 2013, the Respondents notified UIM Carrier of twelve (12) fact witnesses and fourteen (14) treating physicians. Thereafter, on July 30, 2014, the Respondents identified four (4) expert witnesses. To date, ***only two (2)*** fact witness depositions (the Respondents) have been noticed by the Appellant James Travis Singleton and UIM Carrier has noticed ***zero (0)*** expert witnesses for depositions. Uniquely, the Respondents have taken the depositions of four (4) of their own fact witnesses and one (1) of their own experts, simply in an effort to make some progress in the case.

With specific reference to the underlying order to compel, the Respondents served a third set of interrogatories on UIM Carrier on September 14, 2014 requesting the joint defense agreement between the Appellant James Travis Singleton and the Respondents' insurance carrier, USAA. To date, there has been no response. The Respondents sent no less than seven written emails prior to filing their motion to compel, requesting some information on when a response to the Third Set of Interrogatories could be expected. Not only was no joint defense agreement forthcoming, there was no response whatsoever to the Respondents' communications. **All communications were completely ignored.**

On November 10, 2014, the Respondents filed their Motion to Compel the joint defense agreement. **No objection or response was ever filed by the Appellant or UIM Carrier. There was simply no reaction.**

On January 7, 2015, the trial court conducted a hearing on the Motion to Compel and took the issue under advisement. On February 23, 2015, Judge R. Keith Kelly's law clerk asked

that the Respondents resubmit their motion to compel. That same day, the Respondents resubmitted the motion to the trial court and copied all counsel to the email. **The Appellant and UIM Carrier neither lodged a response nor an objection.**

On March 5, 2015, Judge Kelly's law clerk informed the parties that the Court had granted the Respondents' motion to compel, and a proposed order was requested. Accordingly, Respondents prepared an order and submitted it to the Court, with a copy to all counsel. **Again, the Appellant and UIM Carrier neither lodged a response nor an objection.**

On March 6, 2015, the trial court signed the Respondents' proposed order and filed it with the Clerk of Court. When it came to the attention of the Respondents, a copy was acquired from the Clerk's office and was distributed to all counsel on March 9, 2015. **Once again, the Appellant and UIM Carrier neither lodged a response nor an objection.**

Finally, on March 13, 2015, all counsel attended a status conference in front of the trial court for the purpose of setting a trial date and for considering any other ancillary matters that might exist. The issue of the order to compel came up. In fact, the trial court clarified that the joint defense agreement was due that same day and **the Appellant and UIM Carrier neither voiced a response nor an objection.**

After the hearing, the Appellant and UIM Carrier failed to comply, but instead mailed off a motion to reconsider with no request for a protective order, which might have served to toll their obligation to comply with the trial court's order. The Appellant James Travis Singleton's Motion to Reconsider, as well as the untimely appeal and this improperly filed Petition for Rehearing are simply the most recent events in a chronology of ignoring the Respondents' case. They are simply the latest actions taken by the Appellant and UIM Carrier, and are merely interposed for delay.

The trial court was well within its authority to order that the joint defense agreement be produced. So, for all of these additional reasons, the Respondents respectfully request that this Court deny UIM Carrier's appeal.

c. The joint defense agreement is relevant to certain necessary discovery issues in this case and possible future cases.

The joint defense agreement is relevant and should be divulged. Because a portion of the joint defense agreement was produced with Dr. Price's file, the Respondents now know that some degree of the defense being put forth by the Appellant James Travis Singleton is actually being funded by the Respondents' own insurance company, USAA. This is critical information in assessing the credibility and bias of all expert witnesses in this case. It is routine to inquire of experts how much they have been paid, and by whom, and without this letter the Respondents might not have been privy to such information.

Evidentiary requests need only be reasonably calculated to lead to the discovery of admissible evidence. Regardless of whether the joint defense agreement is in and of itself admissible, surely it is reasonably calculated to lead to the discovery of evidence which is. For these additional reasons, the Respondents respectfully request that this Court deny UIM Carrier's Petition.

d. The production of the joint defense agreement does not violate the Appellant James Travis Singleton's attorney-client privilege or the work product doctrine.

As has been repeatedly stated herein, the Respondents seek no attorney-client communications; however, attorney-attorney communications do not merit the same protection. If confidentiality is a concern, the Respondents will happily sign an appropriate confidentiality disorder. Like with all discovery, the Respondents only search for truth in order to make the trial

of the case an even playing field. It is not unfair to seek information regarding the structure of the defense that the Respondents face.

The work-product doctrine was not raised as an argument prior to this petition for rehearing on the appellate level. However, even so, such privileges and protections are further waived by producing the letter, attached as Exhibit H, to Dr. Price. Even if we are to assume that joint defense agreements are somehow intertwined with the attorney client privilege, surely such a privilege is waived when producing a portion of the agreement to a third party. Accordingly, any attorney client or work-product privilege that might attach to communications regarding the joint defense agreement must be considered waived.[6]

CONCLUSION

For all of the foregoing reasoning and arguments, the Respondents respectfully request that this Court deny UIM Carrier's Petition for Rehearing.

Respectfully submitted,

June 17, 2015

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[6] Any voluntary disclosure by a client to a third party to a third party waives the attorney-client privilege not only as to the specific communication disclosed, but also to all communications between the same attorney and the same client on the same subject. Marshall v. Marshall, 282 S.C. 534, 538 (Ct. App. 1984).

(9)

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JUN 23 2015
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the 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

John Davis and Jane Davis, ...Respondents.

v.

James Travis Singleton, ...Appellant.[1]

PROOF OF SERVICE

I certify that I have served United Services Automobile Association ***page 7 of*** Respondents John and Jane Davis's Return to United Services Automobile Association Petition for Rehearing of Order Dismissing Appellant James Travis Singleton's Appeal, ***which was inadvertently left out of the original filing of June 17, 2015,*** via United States Postal Service, on June 19, 2015, to his attorney of record, Ron Diegel, Esquire, at Murphy & Grantland, P.A., 4406-B Forest Drive, Columbia, SC 29206.

June 19, 2015

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[1] Please note that this caption has been changed from the caption atop the Appellant's Petition to reflect the proper caption in accordance with Rule 247, SCACR, and this Court's directive by letter dated April 21, 2015.

Exhibit A

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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April 21, 2015

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Re: **John Davis v. James Singleton**
Appellate Case No. 2015-000653

Dear Counsel:

This Court has received your notices of appeal and has chosen to consolidate them under one appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2014-04-15-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

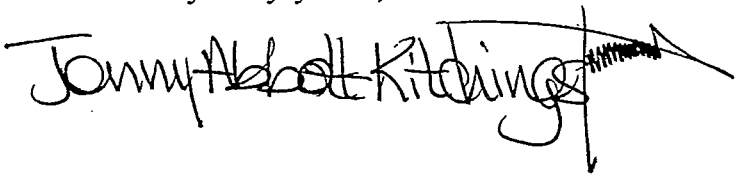
John Davis and Jane Davis, Respondents,

v.

James Travis Singleton, Appellant.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,



CLERK

cc: Michael Eugene Spears, Esquire

Exhibit B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	C.A. NO.: 2013-CP-42-3055
	)	
John Davis and Jane Davis,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**NOTICE OF MOTION AND MOTION TO RECONSIDER THE COURT'S MARCH 6, 2015 ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL**
	)	
James Travis Singleton,	)	
	)	
Defendant.	)	
	)	

TO: The Plaintiffs, John and Jane Davis, and their attorney, E. Grey Wicker, Esq.,

PLEASE TAKE NOTICE that the undersigned shall move, ten (10) days from the date hereof, or soon thereafter as this matter can be heard for an Order reconsidering the Court's March 6, 2015 Order. (See attached.)

In particular, that Order requires the undersigned to produce any and all joint defense agreements that exist between the law offices of Marcus K. McGarr, Esq. and Murphy & Grantland, P.A., pertaining to the above captioned case.

Factually, the Court's Order would require the undersigned to violate Rule 407 (Rule 1.6) of the Rules of Professional Conduct. In particular, Rule 407 (Rule 1.6), subsection (a) states "A lawyer shall not reveal information related to the representation of a client, unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b)."

The action before the Court, arises as a result of an automobile accident wherein the defendant has admitted that he was negligent in causing the same. The only issues at trial are proximate cause and damages. As a result, a joint defense agreement is of no relevance and, in fact, would lead to nothing relevant with regard to this matter.

Despite the above, the Court has Ordered the disclosure of the joint defense agreement, which would eviscerate the confidentiality rules as set forth above. By implication, the undersigned's client

does not consent to such an Order. As such, the Court must review the notes and comments associated with Rule 407 (Rule 1.6). In particular, the Court must review comment number 14. The pertinent portions of that comment are as follows: "A lawyer may be Ordered to reveal information related to the representation of a client by a Court, or by another tribunal or governmental entity claiming authority pursuant to other law, to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert, on behalf of the client, all non-frivolous claims that the Order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law.

The undersigned can find no South Carolina law which allows a Court to Order the invasion of the attorney-client privilege when the case before the Court is one of negligence and the only issues, to be presented to the jury, are proximate cause and damages. As such, this matter needs to be reconsidered because the undersigned is prevented, by law, and under these circumstances, from invading or disclosing matters covered by the attorney-client privilege.

Pursuant to Rule 11, the undersigned has attempted to resolve this matter by an email dated March 13, 2015. That email has been to no avail. (Email attached.)

The undersigned respectfully so moves.

Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
S.C. Bar No.: 011885
108 Whitsett Street
Greenville, S.C. 29601
Telephone (864) 298-0089
Facsimile (864) 235-0503
ATTORNEY FOR THE DEFENDANT

Greenville, South Carolina
March 13, 2015

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	**ORDER GRANTING**
John Davis and Jane Davis,)	**PLAINTIFFS' MOTION TO COMPEL**
)	
Plaintiff,)	
)	
vs.)	C.A.No. 13-CP-42-3055
)	
James Travis Singleton,)	
)	
Defendant.)	

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.

1062 PKK

IT IS HEREBY **ORDERED**.

March 6th, 2015

Spartanburg, SC

The Honorable R. Keith Kelly
Circuit Court Judge
Seventh Circuit

Davis v. Singleton

Marc McGarr

Sent: Friday, March 13, 2015 12:02 PM

To: GWicker@mikespearspa.com

Cc: RBDiegel@murphygrantland.com; SROBERTS@murphygrantland.com; ADannert@mikespearspa.com; LRussell@mikespearspa.com; attyspears@charter.net

Dear Mr. Wicker:

This morning, you were kind enough to inform me that the Court's recent order requires me to provide you with a joint defense agreement by today.

This places me in the position of violating the attorney-client privilege, and/or filing a motion to reconsider.

Please advise, immediately, if you can agree to ask the Court to nullify that order, as time is of the essence.

Sincerely,

Marcus K. McGarr
Marcus K. McGarr, P.A.
864-298-0089
864-235-0503 fax
marc@mcgarrlaw.net

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF Spartanburg	)	C.A. NO.: 2013-CP-42-3055
	)	
John Davis and Jane Davis,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
James Travis Singleton,	)	
	)	
Defendant.	)	
	)	

The undersigned hereby certifies that on the 13th day of March, 2015, she served the Defendant's Motion Slip, Notice of Motion and Motion to Reconsider, and a corresponding Certificate of Service upon the individuals/entities named below, by depositing the same in the United States Mail, postage prepaid, and properly addressed as follows:

E. Grey Wicker, Esq.
Michael E. Spears, P.A.
PO Box 5806
Spartanburg, SC 29304

Ronald B. Diegel, Esq.
Murphy & Grantland, P.A.
PO Box 6648
Columbia, SC 29260

Megan Goudy, Legal Assistant
Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
108 Whitsett Street
Greenville, South Carolina 29601
Telephone (864) 298-0089
Facsimile (864) 235-0503
Attorney for the Defendant

Greenville, South Carolina
March 13, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF Spartanburg	)	C.A. NO.: 2013-CP-42-3055
	)	
John Davis and Jane Davis,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
James Travis Singleton,	)	
	)	
Defendant.	)	
	)	

The undersigned hereby certifies that on the 13th day of March, 2015, she served the Defendant's Motion Slip, Notice of Motion and Motion to Compel, and a corresponding Certificate of Service upon the individuals/entities named below, by depositing the same in the United States Mail, postage prepaid, and properly addressed as follows:

E. Grey Wicker, Esq.
Michael E. Spears, P.A.
PO Box 5806
Spartanburg, SC 29304

Ronald B. Diegel, Esq.
Murphy & Grantland, P.A.
PO Box 6648
Columbia, SC 29260

Megan Goudy, Legal Assistant
Marcus K. McGarr, Esq.
MARCUS K. MCGARR, P.A.
108 Whitsett Street
Greenville, South Carolina 29601
Telephone (864) 298-0089
Facsimile (864) 235-0503
Attorney for the Defendant

Greenville, South Carolina
March 13, 2015

MARCUS K. MCGARR, P.A.
Attorney at Law
A Professional Association
108 Whitsett Street
Greenville, South Carolina 29601

Marcus K. McGarr, Attorney
Amanda Garland, Paralegal
Megan Goudy, Legal Assistant

Bar No.: 011885
Telephone: (864) 298 - 0089
Facsimile: (864) 235 - 0503

March 13, 2015

The Honorable Hope Blackley
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, SC 29304-3483

RE: Case Name: John Davis and Jane Davis v. James Travis Singleton
CA No.: 2013-CP-42-3055
Claim No.: 40-0D11-803
MKM No.: 200.1132

Dear Ms. Blackley:

Please find enclosed an original and one copy of the Defendant's Motion Slip, Notice of Motion and Motion to Reconsider, and a corresponding Certificate of Service regarding the above referenced action.

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

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

Also, please note, that by copy of this letter we are 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 of the help and assistance that you repeatedly provide with regard to these matters.

Sincerely,

MARCUS K. MCGARR, P.A.

Marcus K. McGarr

MKM/meg
Enclosures
cc: E. Grey Wicker, Esq.
Ronald B. Diegel, Esq.
James Travis Singleton
Natalie Patz

MARCUS K. MCGARR, P.A.
Attorney at Law
A Professional Association
108 Whitsett Street
Greenville, South Carolina 29601

Marcus K. McGarr, Attorney
Amanda Garland, Paralegal
Megan Goudy, Legal Assistant

Bar No.: 011885
Telephone: (864) 298 - 0089
Facsimile: (864) 235 - 0503

March 13, 2015

The Honorable R. Keith Kelly
125 E. Floyd Baker Blvd.
Gaffney, SC 29340

RE: Case Name: John Davis and Jane Davis v. James Travis Singleton
CA No.: 2013-CP-42-3055
Claim No.: 40-0D11-803
MKM No.: 200.1132

Dear Mr. Kelly:

Please find enclosed a copy of the following documents:

a) Our transmittal letter to the Clerk;
b) Our transmittal letter to all counsel of record;
c) Motion Slip;
d) Notice of Motion and Motion to Reconsider; and,
e) A corresponding Certificate of Service.

These documents are being sent to you pursuant to the Rules.

By copy of this letter I am placing all parties on notice that I have notified you of the filing of the Motion.

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

Sincerely,

MARCUS K. MCGARR, P.A.

Marcus K. McGarr

MKM/meg
Enclosures
cc: E. Grey Wicker, Esq.
Ronald B. Diegel, Esq.
James Travis Singleton
Natalie Patz

Exhibit C

SPEARS & WICKER, P.A.

ATTORNEYS AT LAW

MICHAEL E. SPEARS
E. GREY WICKER

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SPARTANBURG, SC 29306
AND
24 BROAD STREET
CHARLESTON, SC 29401

mspears@spearswicker.com
gwicker@spearswicker.com

March 17, 2015

Via E-mail and U.S. Mail
The Honorable R. Keith Kelly
Circuit Court Judge
Seventh Judicial Circuit
125 E. Floyd Baker Blvd
Gaffney, SC 29340
kkellyj@sccourts.org

Re: Davis v. Singleton, C.A.No.: 13-CP-42-3055

Dear Judge,

In response to Defendant Singleton's Motion to Reconsider, please find attached the Plaintiffs' Response to said Motion. The Plaintiffs' response has been filed with the Clerk of Court, and a copy is hereby being served upon all counsel of record.

Should there be any questions or concerns, or if I may be of any further assistance, I await your instruction.

With kind regards, I am

Sincerely yours,

E. Grey Wicker

Cc: Marcus K. McGarr, Esquire
Ronald B. Diegel, Esquire

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	**PLAINTIFFS' MEMORANDUM IN**
John Davis and Jane Davis,)	**OPPOSITION TO DEFENDANT'S MOTION**
)	**TO RECONSIDER**
Plaintiffs,)	
)	
vs.)	C.A.No. 13-CP-42-3055
)	
James Travis Singleton,)	
)	
Defendant.)	
)	

The Plaintiffs, John and Jane Davis, by and through their undersigned counsel, hereby come before this Court respectfully requesting that this Court deny Defendant James Travis Singleton's Motion to Reconsider. This Court should deny the Defendant's Motion for a number of reasons, but specifically:

1. **This Court had the authority to issue an order compelling the production of the Defendant's Joint Defense Agreement with the Plaintiffs' Insurance Carrier, USAA;**

2. **This Court properly exercised its authority by compelling the production of the Defendant's Joint Defense Agreement with the Plaintiffs' Insurance Carrier, USAA;**

3. **The Joint Defense Agreement is relevant to certain necessary discovery issues in this case and possible future cases; and**

4. **The Production of the Joint Defense Agreement does not violate the Defendant's Attorney-Client Privilege.**

The Defendant, James Travis Singleton, only provides one ground on which he bases his Motion for Reconsideration; namely, that this Court's Order would infringe on his attorney-client privilege. Notably, USAA has not raised any issue with the Court's order compelling production of the Joint Defense Agreement. Furthermore, no entity has moved for a protective

order to toll the time within which this Court ordered that the Joint Defense Agreement be produced.

To be clear, the Plaintiffs ***do not*** seek any information which would violate the Attorney-Client privilege in any way. Thus, Defendant raises no reason that this Court should reconsider its order compelling the production of the Joint Defense Agreement.

ISSUES PRESENTED

The issues presented to this Court are four-fold. This Court should deny Defendant's Motion to Reconsider because:

1. **This Court had the authority to issue an order compelling the production of the Defendant's Joint Defense Agreement with the Plaintiffs' Insurance Carrier, USAA;**

2. **This Court properly exercised its authority by compelling the production of the Defendant's Joint Defense Agreement with the Plaintiffs' Insurance Carrier, USAA;**

3. **The Joint Defense Agreement is relevant to certain necessary issues in this case and possible future cases; and**

4. **The Production of the Joint Defense Agreement does not violate the Defendant's Attorney-Client Privilege.**

LEGAL AUTHORITY

The purpose of Rule 59(e), SCRCP, to alter or amend the judgment, is to request the trial judge to "reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172-173 (1992). A party cannot use a motion to alter or amend a judgment to present to the lower court an issue the party could have raised prior to judgment but did not. Gartside v. Gartside, 383 S.C. 35, 44 (Ct. App. 2009).

A Rule 59(e) motion to alter or amend a judgment is available to a losing party to allow that party to obtain a ruling by the trial court on an issue which was raised by the party but not

ruled on by the Court. Murphy v. Jefferson Pilot Communication Co., 2007 WL 5844103 (Trial Order Denying Defendant's 59(e) Motion, S.C. Ct. Com. Pl., Charleston County, Dec. 10, 2007), attached as Exhibit A. A party may not raise an issue for the first time in a motion to reconsider, alter or amend a judgment. Peterson v. Porter, 389 S.C. 148, 152 (Ct. App. 2010) (*citing see* McClurg v. Deaton, 380 S.C. 563, 579-580 (Ct. App. 2008)).

Our rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24 (2003). "A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Id. (Emphasis in original). "A party *must* file such a motion when an issue has been raised, but not ruled on, in order to preserve it for appellate review." Id. (Emphasis in original).

Under Rule 59(f), SCRCP, a Rule 59(e) motion may in the discretion of the Court be determined on the briefs filed by the parties, without oral argument. Pollard v. County of Florence, 314 S.C. 397, 402 (Ct. App. 1994) (*quoting* SCRCP, Rule 59(e)).

ARGUMENT

I. This Court need not reconsider its Order because this Court had the authority to issue such an order.

As a threshold matter, Defendant did not raise any issue with the authority of this Court to issue its Order to Compel at the hearing, thus waiving any argument with regards to this Court's authority. A review of the hearing transcript, attached hereto as Exhibit B, reveals that neither the Defendant nor USAA raised any issue with regards to this Court's authority. Accordingly, any issue with this Court's authority cannot be raised at this late point, and does not form a basis to reconsider this Court's Order.

Even so, Defendant cites in its own brief the precise South Carolina law granting the Court authority to issue the order in question, as follows:

> "A lawyer may reveal information relating to the representation of a client to the extent necessary ... ***to comply with other law or a court order.***"

See S.C. App. Ct. R., Rule 407, RPC 1.6(b)(7).[1]

Moreover, in comment 16, the Rule clarifies as follows:

> "A lawyer may be ordered to reveal information related to the representation of a client by a court."

S.C. App. Ct. R., Rule 407, RPC 1.6, Comment 16.

Finally, Defendant's Motion simply fails to include the necessary arguments for a Motion to Reconsider. The Elam decision, *supra*, makes it clear that a Motion to Reconsider is based upon a party's belief that the Court has (1) misunderstood, (2) failed to fully consider, or (3) failed to rule on an argument or issue. Defendant's Motion fails to illuminate what it feels that the Court misunderstood, failed to consider, or failed to rule upon. Accordingly, for all of these reasons, this Court should deny Defendant's Motion to Reconsider.

II. This Court need not reconsider its Order because this Court properly exercised its authority.

The Defendant's motion should not be misunderstood to be heralding the merits of attorney-client privilege, but rather as the most recent indicia of the Defendant and USAA's repetitive lack of regard for the import of this case. The Underinsured Motorist (UIM) statute provides that the UIM carrier may appear and assist in the defense of the case; however, it provides no protection against discovery of the communications between the UIM carrier and the

[1] Defendant did not cite S.C. App. Ct. R., Rule 407, RPC 1.6 in the argument before this Court prior to judgment, and should not be heard to raise it now. However, to the extent that the Rule could be understand broadly as to codify the attorney-client privilege, the Plaintiffs reiterate that they seek no attorney-client communications.

liability carrier. To the contrary, transparency in USAA's dealings on behalf of its insured, the Plaintiffs, is to be expected.

A. The Plaintiffs are entitled to the joint defense agreement.

It is John and Jane Davis's right to know who is funding the defense against them. We seek no attorney-client communications, but merely the rightful knowledge of how the premiums we pay to our own insurance carrier, USAA, have been spent in their efforts to investigate our due coverage in this case. It is critical to note that Defendant did not raise a work product privilege argument in its Motion to Reconsider, and as such, has waived that argument at this stage.

The Plaintiffs are aware that a Joint Defense Agreement exists because they have been made privy to a portion of it. The expert file of Dr. David Price includes a letter from the Plaintiffs' UIM carrier to Dr. Price, attached hereto as Exhibit C. This document is important in that it reveals that although Defendant's attorney Mr. McGarr has identified Dr. Price on behalf of the Defendant, the funding for the Defendant's expert comes from the Plaintiffs' own insurance carrier, USAA, represented by Mr. Diegel.

This is critical information in assessing the credibility and bias of Dr. Price and all other witnesses who may be paid by either the Defendant or the UIM carrier. But, most importantly, this document contains no reference to any information that deserves protection pursuant to the attorney-client privilege. Certainly, the documents evidencing the joint defense agreement between the Defendant and USAA can be produced without divulging confidential information to be protected by the attorney-client privilege.

B. Timeline of events.

This case was filed on August 2, 2013. On November 11, 2013, the Plaintiffs notified the Defendant of 12 fact witnesses and 14 treating physicians. Thereafter, on July 30, 2014, the Plaintiffs identified 4 expert witnesses. To date, ***only two (2)*** fact depositions (the Plaintiffs) have been noticed by the Defendant and they have noticed ***zero (0)*** expert witnesses for deposition. Uniquely, the Plaintiffs have taken four (4) of their own fact witnesses and one (1) of their own experts, simply in an effort to make some progress in the case.

With specific reference to the subject of the Order to Compel, the Plaintiffs served a third set of interrogatories on the defendants on September 14, 2014 requesting the Defendant's Joint Defense Agreement with the Plaintiffs' Insurance Carrier, USAA. To date, there has been no response. The Plaintiffs sent no less than seven written emails prior to filing their Motion to Compel, requesting some information on when a response to the Third Set of Interrogatories could be expected. Not only was no Joint Defense Agreement forthcoming, there was no response whatsoever to the Plaintiffs' communications. **They simply went completely ignored.**

On November 10, 2014, the Plaintiffs filed their Motion to Compel the Joint Defense Agreement. **No objection or response was ever filed by the Defendant or USAA. There was simply no reaction.**

On January 7, 2015, this Court conducted a hearing on the Motion to Compel and took the issue under advisement. On February 23, 2015, law clerk Adrienne Barry asked that I resubmit the Plaintiffs' Motion to Compel. That same day, I resubmitted it to this Court and copied all counsel to the email. **The Defendant and USAA neither lodged a response nor an objection.**

On March 5, 2015, law clerk Adrienne Barry informed the parties that this Court had granted the Plaintiffs' Motion to Compel, and a proposed order was requested. Accordingly, I prepared an order and submitted to this Court, with a copy sent to all counsel. **Again, the Defendant and USAA neither lodged a response nor an objection.**

On March 6th, 2015, this Court signed the Plaintiffs' proposed order and filed it with the Clerk of Court. When it came to the attention of the Plaintiffs, a copy was acquired from the Clerk's office and was distributed to all counsel on March 9th, 2013. **Once again, the Defendant and USAA neither lodged a response nor an objection.**

Finally, on March 13th, 2015, all counsel attended a status conference in front of this Court for the purposes of setting a trial date and for considering any other ancillary matters that might exist. The issue of the Order to Compel came up. In fact, this Court clarified that the Joint Defense Agreement was due that same day and **the Defendant and USAA neither voiced a response nor an objection.**

Until the Defendant's Motion to Reconsider, there has been little to no acknowledgment that the Plaintiffs had ever requested the Joint Defense Agreement at all. Rather, the Defendant and USAA expressed that they apparently didn't know that March 13th was the due date. After clarification, there was still no mention of an objection. Even after the hearing, the Defendant and USAA still did not comply, but simply mailed off a motion with no request for a protective order, which might have served to toll their obligation to comply with this Court's order.

The Defendant's recent Motion to Compel is merely the most recent event in a chronology of ignoring the Plaintiffs' case. This Court was well within its authority to order that the Joint Defense Agreement be produced, and for all of these additional reasons, the Plaintiffs respectfully request that this Court deny the Defendant's Motion to Compel.

III. This Court need not reconsider its Order because the Joint Defense Agreement is relevant to certain necessary discovery issues in this case and possible future cases.

As is briefly discussed above, the joint defense agreement is relevant and should be divulged. Because a portion of the joint defense agreement was produced with Dr. Price's file, the Plaintiffs now know that some degree of the defense being put forth by the Defendant is actually being funded by the Plaintiffs' own insurance company, USAA. This is critical information in assessing the credibility and bias of all expert witnesses in the case. It is routine to inquire of experts how much they have been paid, and by whom, and without this letter the Plaintiffs might not have been privy to such information.

Evidentiary requests need only be reasonably calculated to lead to the discovery of admissible evidence. Regardless of whether the joint defense agreement is in and of itself admissible, surely it is reasonably calculated to the discovery of evidence which is.

For these additional reasons, the Plaintiffs respectfully request that this Court deny the Defendant's Motion to Reconsider.

IV. This Court need not reconsider its Order because the Production of the Joint Defense Agreement does not violate the Defendant's Attorney-Client Privilege.

As has been repeatedly stated, the Plaintiffs seek no attorney-client communications; however, attorney-attorney communications do not merit the same protection, especially in a case such as this. The Defendant's Motion to Reconsider does not raise a work-product objection, so he should not be heard to argue that attorney-attorney communications, such as these, merit protection.

If confidentiality is a concern, the Plaintiffs will happily sign any appropriate confidentiality order. Like with all discovery, the Plaintiffs only search for the truth in order to make the trial of the case an even playing field. It is not unfair to seek information regarding the structure of the defense that the Plaintiffs face.

The work-product doctrine is not raised as an argument in the motion to reconsider (and thus waived), but such privileges and protections are further waived by producing the letter, attached as Attachment C, to Dr. Price. Even if we are to assume that joint defense agreements are somehow intertwined with the attorney client privilege, surely such a privilege is waived when producing a portion of the agreement to a third party. Accordingly, any attorney client privilege that might attach to communications regarding the joint defense agreement must be considered waived.[2]

Nonetheless, the Defendant has yet to explain why the production of documents related to the arrangement between two law firms would have any impact on the attorney-client privilege. The only document we've been provided that sheds some light on the arrangement between the Defendant's attorney and USAA includes zero information regarding communications made from James Travis Singleton to his attorney, Mr. McGarr.

Accordingly, for these reasons also, the Plaintiffs respectfully request that this Court deny the Defendant's Motion to Reconsider.

CONCLUSION

For all of the foregoing reasoning and argument, the Plaintiffs respectfully request that this Court deny the Defendant's Motion for Reconsideration on the briefs, without the need for oral argument.

[2] Any voluntary disclosure by a client to a third party waives the attorney-client privilege not only as to the specific communication disclosed but also to all communications between the same attorney and the same client on the same subject. Marshall v. Marshall, 282 S.C. 534, 538 (Ct. App. 1984).

March 17, 2015

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 MAR 17 AM 10:56
M. HOPE BLACKLEY

SPEARS & WICKER, PA
Michael E. Spears, Esquire
E. Grey Wicker, Esquire
122 South Liberty Street
Spartanburg, SC 29306

Exhibit A

2007 WL 5844103 (S.C.Com.Pl.) (Trial Order)
Court of Common Pleas of South Carolina.
Charleston County

Elizabeth MURPHY, Plaintiff,
v.
JEFFERSON PILOT COMMUNICATIONS COMPANY, d/b/a WCSC News Channel 5, and Donald M. Feldman, Defendants;
Christopher L. Murphy, Plaintiff,
v.
Jefferson Pilot Communications Company, WCSC, Inc. d/b/a WCSC Channel 5, and Donald M. Feldman, Defendants.

Nos. 01-CP-10-1115, 01-CP-10-2161.
December 10, 2007.

Order

Rm Markly Dennis, Jr., Presiding Judge.

This matter comes before me on the motion of the defendants pursuant to SCRCP Rule 59(e) for an order altering or amending the judgment which was entered in this case on September 18, 2007.

On September 18, 2007, the jury returned a verdict in favor of Elizabeth Murphy in the amount of $1,264,782.00 actual damages, and $2,460,000.00 punitive damages. The jury also returned a verdict of $250,000.00 actual damages in favor of Christopher Murphy. The defendants did not make any post-trial motions except as discussed herein. The court has conducted a post-trial review of the punitive damages award.

The defendants in their Rule 59(e) requested a post-trial review of the punitive damages award pursuant to *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (S.C. 1991), and pursuant to the constitutional requirements for a post-trial review of punitive damages as set forth by the United States Supreme Court in *B.M.W. of North America, Inc. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589.

The court has reviewed the punitive damages award pursuant to the state and federal requirements and finds that the award of punitive damages set by the jury is supported by the evidence and is proper.

The South Carolina Supreme Court in *Gamble v. Stevenson, supra* held that the trial court should consider the following factors in reviewing an award of punitive damages to make sure the award is proper: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and (8) other factors deemed appropriate. *Gamble*, 305 S.C. at 112-13, 406 S.E.2d at 354.

In *Gore* the United States Supreme Court held that a court reviewing a punitive damage award to determine if the award is consistent with due process should consider three criteria: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the harm (or potential harm) suffered by the plaintiff and the punitive damage award, and (3) the difference between the punitive damage awarded by the jury and the civil penalties authorized or imposed in comparable cases.

The court finds that the conduct of Donald Feldman, the agent and officer of the defendants who defamed Elizabeth Murphy, was highly reprehensible. Mr. Feldman admitted at trial that he knew that Elizabeth Murphy did not engage in the conduct he

falsely accused her of engaging in and despite this knowledge he published the libelous statements about Elizabeth Murphy. The evidence of the defamation was uncontroverted, and the court granted the plaintiffs a directed verdict on the issue of defamation. The plaintiffs' motion for a directed verdict on the issue of defamation was not opposed by the defendants.

The defendants contend that they should not be liable for punitive damages as a result of the conduct of Feldman. The cases are too numerous to cite which hold that punitive damages are proper based on vicarious liability. In *Gamble v. Stevenson, supra* the punitive damage award was based on the vicarious liability of a cable repairman. In *Brown v. American Telephone and Telegraph Co.*, 82 S.C. 173, 63 S.E. 744, our Supreme Court held that a principal is liable for the fraud of an employee without any showing of the principal's knowledge. *In Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1,111 S. Ct. 1032 (1991), the United States Supreme Court held that a corporation may be held liable for compensatory and punitive damages for the fraud of its employee acting within the scope of the employee's employment without violating the due process clause of the Fourteenth Amendment. The court found that the rule holding a corporation liable for the fraud of its employee advances the state's interest in minimizing fraud.

The evidence in this case supports the inference that after Mr. Feldman made his defamatory statements, the defendants ratified his actions by defending his position that the defamatory statements were true. The defendants defended his conduct even after they learned that Mr. Feldman was untruthful about having corroborating evidence about Mrs. Murphy's presence on a supposed flight to Atlanta.

The court finds the degree of culpability of the defendants and their agent warrants the jury's award of punitive damages. The court also finds that the conduct of Mr. Feldman and the defendants is sufficiently reprehensible to support the jury's award of punitive damages.

The defendants conduct took place over a substantial period of time. Mr. Feldman's defamatory letter was written in late July of 1999, and he persisted in vouching for the truth of his defamatory statement. The defendants continued to back Mr. Feldman's position until he was arrested in the fall of 2000. Mr. Feldman was aware of the falsity of his statements but persistently insisted that the statements were true.

There was no testimony as to whether or not Mr. Feldman had engaged in similar past conduct, but there was evidence that it was known at WCSC that Mr. Feldman was not truthful and that he would make untruthful statements to advance his goals.

The court finds that the award of punitive damages will serve as a deterrent to deter like conduct by others and to cause employers such as the defendants to carefully select and retain competent and honest officers and agents.

The court also finds that the punitive damage award is reasonably related to the harm likely to result for such conduct. The serious harm which Mr. Feldman's conduct caused Mr. and Mrs. Murphy is reflected in the jury's award of actual damages. The court further finds under *Gore's* second criteria that the ratio between the size of the punitive damage award and the harm caused by the tortious conduct is appropriate. In *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513, the Supreme Court stated that few awards in excess of a single-digit ratio of actual to punitive damages will satisfy due process. The court further stated that single-digit multipliers are more likely to comport with due process while still achieving the state's goals of deterrence and retribution. The ratio of approximately two to one comports with due process under the facts of this case.

The court has also considered the defendants' ability to pay. The evidence established that the defendants have the ability to pay the punitive damage award without incurring substantial financial difficulty. The defendants contend that it was inappropriate to introduce evidence based on Jefferson Pilot's national net worth. This objection to net worth evidence was not raised during the trial, nor in a motion for new trial, and is therefore not properly preserved. Our court has made the ability to pay a relevant consideration in punitive damage cases. In *State Farm*, 123 S. Ct. at p. 1528, the court recognized that introducing the net worth of a defendant is not unlawful or inappropriate. The court finds that even though this issue was not properly preserved, the evidence of the defendants' net worth was properly introduced and considered by the jury in making its award of punitive damages.

The third *Gore* guidepost requires review of the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. The court is unaware of any civil penalties for defamation, and thus there is no risk of double or unfair punishment for this conduct. The court finds that punitive damages are appropriate considering the third *Gore* guidepost. The court in reviewing the factors which state and federal law require in a post-trial review of punitive damages finds that the verdict for punitive damages is proper in all respects.

The defendants contend in their motion and argument that the jury awarded punitive damages in an amount equal to the amount of money which Mr. Feldman embezzled from WCSC. Mr. Feldman embezzled $2,469,450.00. The jury's verdict for punitive damages was $2,460,000.00. The jury's verdict was also approximately twice the actual damages award. The court cannot speculate that the jury's verdict was influenced at all by the amount of money Mr. Feldman embezzled and finds that this ground is without merit. Further the defendants waived this issue because the issue was not raised at trial. This issue should have been raised before the jury was discharged or at a minimum in a motion for new trial. *Gray v. Bryant,* 296 S.C. 285, 379 S.E. 2d 894 (1989).

The defendants in their Rule 59(e) motion also contend that the court erred in not granting a judgment notwithstanding the verdict to the defendants on the issue of whether or not Mr. Feldman was an employee of Jefferson Pilot. The defendants contend there was insufficient evidence to support the jury's determination that Mr. Feldman was an employee of Jefferson Pilot. If this ground for altering or amending the judgment has been properly preserved, the court finds there is no merit to the contention. Mr. Feldman testified that he was employed by Jefferson Pilot and a number of other documents introducedat trial listed Mr. Feldman as an employee and agent of Jefferson Pilot. The evidence presented at trial required submission of this issue to the jury.

The defendants also contend that they are entitled to a new trial on a number of grounds. As mentioned above, the defendants failed to make any post-trial motions at the trial, nor did the defendants request additional time for the making of a motion for a new trial as provided in Rule 59(b), SCRCP. The defendants' failure to timely make a motion for a new trial prevents the court from considering the grounds for a new trial which are being presented to the court on a Rule 59(e) motion to alter or amend the judgment. *Boone v. Goodwin,* 314 S.C. 374, 444 S.E.2d 524 (S.C. 1994).

A Rule 59(e) motion to alter or amend a judgment is available to a losing party to allow that party to obtain a ruling by the trial court on an issue which was raised by the party but not ruled on by the court. The court finds that the grounds for a new trial raised by the defendants are not properly before the court, but if these issues had been properly preserved, they are without merit. *I'on, L.L.C. v. Town of Mt. Pleasant,* 338 S.C. 406, 526 S.E.2d 716 (S.C. 2000).

The defendants contend that evidence of the net worth of Jefferson Pilot was improperly admitted into evidence. For the reasons set forth above, the court finds this ground for a new trial is without merit.

The defendants next contend they are entitled to a new trial because they were precluded from offering evidence that a treating psychiatrist should not testify as an expert witness. They contend that this violates the code of conduct of that profession. The proffered evidence was that under the code of conduct for forensic psychiatrists, a forensic psychiatrist should not testify as both a treating psychiatrist and an expert witness. The two psychiatrists who testified were not forensic psychiatrists, and even if they were, the court does not find the proffered evidence relevant. Rule 402, S.C.R.E. Even if the evidence had some slight probative value, the court finds that the probative value of the evidence is substantially outweighed by the unfair prejudice and confusion of the issue. Rule 403, S.C.R.E.

The court has considered all of the arguments and issues raised by the defendants in their Rule 59(e) motion and has reviewed the evidence, as if conducting a *de novo* review, on the issue of punitive damages. After this review, the court determines that the jury's verdict was proper in all respects and for this reason, it is,

Ordered that the defendants' motion to alter or amend the judgment in this case is denied.

<<signature>>

R. Markly Dennis, Jr.

Presiding Judge

Ninth Judicial Circuit

Moncks Corner, SC

December 10, 2007

End of Document

Exhibit B

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

John and Jane Davis,)
) TRANSCRIPT OF RECORD
Plaintiffs,) 2013-CP-42-3055
-vs-)
)
James Travis Singleton,)
) January 7, 2015
Defendant.) Spartanburg, South Carolina

B E F O R E:

HONORABLE R. KEITH KELLY, JUDGE

A P P E A R A N C E S:

E. GREY WICKER, ESQUIRE
Attorney for the Plaintiffs

JASON PHILLIP LUTHER, ESQUIRE
MARCUS KIRK MCGARR, ESQUIRE
Attorneys for the Defendant

Margaret A. Woods
Circuit Court Reporter

ORIGINAL

THE COURT: Let's go back to the top up here, uh, John Davis, uh, vs. James Travis Singleton, is everybody here on that?

MR. WICKER: Yes, Your Honor, thank you.

THE COURT: Okay, uh, 3055. Good morning.

MR. MCGARR: Sorry.

THE COURT: Okay.

MR. LUTHER: Your Honor.

THE COURT: We get started on time though.

MR. MCGARR: I know you did, I didn't. Uh, I got diverted.

THE COURT: Okay.

MR. WICKER: Your Honor, uh, Greg Wicker for the plaintiff, ---

THE COURT: Yes.

MR. WICKER: --- office of Michael E. Spears, uh, I can go ahead and lay a groundwork for ---

THE COURT: Okay.

MR. WICKER: --- there's several motions that we're here for today, one of them I believe has been taken care of although the defense counsel may wish to speak to it, there was a motion to compel, uh, raw data from the clinical neuropsychologist. We we have signed that release and it is now in possession of defendant. Marc, I don't think you got a copy.

MR. MCGARR: Yes, I did.

MR. WICKER: --- that's from a Dr. Rebecca Wagner. Uh, do ya'll also consider that motion to be resolved?

MR. LUTHER: Uh, Your Honor, just one one comment, this is Jason Luther with Murphy & Grantland, uh, I represent USAA which is the UIM carrier, uh, we have, we had, uh, requested a it's it's been partially resolved, uh, we requested raw data from, uh, some of the neuropsychology testing or psychological testing. Uh, this a car accident case, uh, plaintiff is claiming traumatic brain injury. She's seen at least two neuro, uh, doctors and has had some testing and what -- all we wanted was the raw data from the test for, uh, our consulting expert and for us to be able to, well for the expert actually to be able to look at. Uh, my understanding that they have, uh, I have been given, uh, the authorization as to one of the doctors but not a signed authorization as to the second and my understanding is from plaintiffs' counsel that he just doesn't have any data, uh, but what, if if it's okay I'd I'd like for the Court to to require the plaintiff to sign authorization as to both doctors and if that doctor then wants to say, I don't have anything, that's fine, uh, but just for purposes of -- on record.

THE COURT: Any problem with that?

MR. WICKER: Well, Your Honor, just briefly this is a request for, uh, raw data from the clinical

neuropsychologist, the doctor that he's speaking of is not a clinical neuropsychologist, there, ipso facto, there is nothing there. Uh, there have been several subpoenas for medical records to doctors we've never seen, uh, patien -- you know, facilities we've never visited, it's fine, we'll, we will sign it but there's nothing there.

THE COURT: Okay, well sign, give it to him and ---

MR. MCGARR: That's fine.

THE COURT: Okay.

MR. MCGARR: If we could, if we could do this, Your Honor, 'cause I I'm afraid we're gonna run into to a situation where this data doesn't exist with regard to a Dr. Schmechel or the Dr. Wagner, that I pro -- I would propose that not only that we issue an order saying that releases be signed to give that information but then if the parties being the two people who who might have had that information don't have it that they must affirmatively say, We have it or we don't have it and if we have it we send it forward, that make sense? You see what I'm saying?

MR. WICKER: If they have it they'll give it to ya?

MR. MCGARR: If they have it they'll send -- no, 'cause this is somethin' that can't go to us, Your Honor, this has to ---

THE COURT: Right.

MR. MCGARR: --- go from doctor to doctor, uh, and we

don't need to go into that, I think everybody agrees it must go from doctor to doctor, not doctor to -- not doctor to lawyer to doctor.

THE COURT: Okay.

MR. MCGARR: Um, all I'm saying is that I think the order would be better if it says, Please have Wagner and Schmechel, uh, uh, si -- sign releases telling Wagner and Schmechel to sent it to Dr. Price, uh, if they don't have the information then they need to affirmatively say, We don't have the information.

MR. WICKER: Your Honor, any way you wanna do it is fine, uh, i -- that is what the releases say is that it's from ---

THE COURT: Okay, that's fine, put that language in, that's fine.

MR. WICKER: Uh, ---

THE COURT: Okay, that matter's resolved, what else ---

MR. WICKER: Okay.

THE COURT: --- we got?

MR. WICKER: Okay. Uh, we have a motion, the plaintiffs have a motion to compel the joint defense agreement of the defendant. Uh, in this case we we served a third set of interrogatories on September the 14th two thousand -- S -- I'm sorry, September 19th 2014, uh, to date there's been no response. Uh, I have sent no less than seven written communications requesting a response, no, not only has a joint

defense agreement not been divulged, uh, the existence or non-existence of one hasn't been confirmed or denied, my communications have gone without response completely. At this point, uh, the plaintiff has been stripped bare of all of her privacy and she -- we've gone back to medical records fifteen years ago, very sensitive psychological records, we only ask that the same transparency be offered to us. We think it's critical to the case who is actually defending against us, is it in fact State Farm represented by Mr. McGarr or is it in fact USAA who is our own insurance company. I think we have a right to know if there's a joint defense agreement so that we can know where our premiums are being paid to the extent that there may be some bad faith element to the case thus, Your Honor, I believe we've properly filed the request, it's gone completely unresponded to for several months and we think it's a proper request, we would ask that you compel them to disclose it or at least to put on the record that one does not exist.

THE COURT: Who wants to address that, both of ya ---

(Cough.)

MR. MCGARR: Um, I need to address that first and foremost, Your Honor. Uh, the reason we have not responded to this and I'm gonna be careful when I, when I address it, uh, this i -- this is the equivalent, uh, let's say that, uh, you have, uh, two co-defendant, two criminal co-defendants and,

uh, one lawyer is representing one co-defendant, one lawyer is representing the other co-defendant and they decide to wor -- uh, en -- engage in a joint defense agreement or joint defense doctrine, um, um, uh, they can do that and that is a part of their work product, it is covered by the attorney-client privilege and more important it's completely irrelevant to the case, uh, what does it matter, uh, what the two defendants were doing among their lawyers? Uh, it's perfectly acceptable for co-defendants to work together to defend against a, uh, uh, the State, for example, uh, uh, and it's done every day but you've probably never seen a request by the State saying, We wanna see your agreement as to how you're working together because (a) it would violate the work product of, uh, privilege, (b) it would violate the ac -- attorney-client privilege and (c) it's totally irrelevant, what does that have to do with the case? Who is defending this case is obvious and apparent, it's being defended by Marc McGarr, um, because I represent Mr. Singleton and it's being defended by Murphy & Grantland because they represent USAA as the underinsured carriers, that's obvious from the pleadings are in the file and that's obvious from what has been sent to, uh, Mr. Wicker, uh, so with regard to the specifics of what we discussed among one another, uh, what does that have to do with this case in any way, shape or form? What I'm just saying to co-counsel today, uh, it pursuant to a joint defense

agreement has no relevance to the case whatsoever. Uh, it's different if they were saying, We want you to produce, uh, documents that, uh, I'll make this up, uh, w -- uh, we think your client, uh, was talking on the phone, uh, on XYZ date, we want you to produce, uh, his, uh, the the name of his telephone company, uh, the account number and the telephone number and the address where he pays his bills so that we can subpoena his, uh, his phone records, uh, totally relevant to the case or maybe not, may be, may be totally irrelevant because we may know that our client was not talking on the phone but just because we know it doesn't mean they don't have the right to independently check to see if that's correct. Uh, when those types of things have been done in this case, we've given it to them, uh, we've given them releases to that effect, but I can't respond formally or otherwise to a motion requesting my privileged information because the moment I do that the next thing I'm gonna get is, We want everything you have that's work product and privileged, because I've now opened that door, uh, more important, why in the world do ya need it? Uh, what these two people are doing as co-defendants has no relevance to the case, it would never be anything that a jury could hear about and it would never be anything that is relevant in the sense that, okay, were you talkin' on the phone or not, I mean, what I'm saying to co-counsel is just that, what I'm saying to co-counsel. We're not gonna be on

the stand, uh, uh, testifying and so (a) it's irrelevant, (b) it violates the work product, uh, uh, it it violates our work product, uh, privilege and (c) it would invade into the attorney-client privileged area, uh, and open doors that shouldn't be opened, uh, that's why you probably never heard of a motion like this before because I've never seen one in my career, uh, where they're asking for communications between co-counsel. Uh, if they're curious as to who's defending the case, they shouldn't be because if you look in the file you saw there's an answer, uh, on behalf of me with my name signed on it and I'm signing as attorney for Mr. Singleton, uh, because I am his attorney, he has insurance through State Farm but he has personal liability, uh, and then you'll see in the, in the file an answer from USAA and their answer will say USAA the underinsured carrier, uh, answering the complaint of the defendant, I mean, answer the complaint of the plaintiff. They know who's defending this case: Marc McGarr and in this case Murphy & Grantland, I'm just, I'm by myself, uh, the lawyers from Murphy & Grantland, uh, so what else are they going to get other than to open doors that shouldn't be opened. Uh, if they wanna know who's defending, look at the answers 'cause that's who's defending.

MR. WICKER: Your Honor, very briefly. None of these objections have been brought up until today. We requested this information in September of last year. This is a far

different case than what Mr. McGarr describes 'cause these are not co-defendants, this is one defendant and this is our insurance company who has a right to deal with us and in a, an obligation good faith and fair dealing. We believe that certainly it is important because often motions are filed by the defendant himself, sometimes motions are filed by USA [sic] independently, sometimes they're filed together, sometimes they're hiring experts not jointly, it it's it's a very complex and arduous task to figure out who it is that we're against, that's why this is relevant in this case. It may very well be that there exists some bad faith in this case and to that extent this does lead to admissible evidence and therefore we would request, uh, that the Court grant our motion.

MR. MCGARR: Your Honor, this is a automobile accident case where my client bumped into the rear of the plaintiff, uh, and it is a suit for damages as a result of that, it is not a bad faith claim and to wonder who is defending when you have the complaints, you have a complaint that you served on the two different defendants and you have an answer that says I'm defending and I'm defending and you still don't know who's defending, uh, and you want to in -- invade the attorney-client privilege and go into irrelevant information, there's nothing relevant that can come from this, that's why I haven't responded to it and that's why I haven't even conceded

that there was anything other than what you've seen on the record which is that there are two answers out there, it's totally irrelevant, it has nothing to do with this case, it would not lead to relevant evidence because it's not going to be some situation where you have two lawyers getting on the witness stand and it's a little bit disingenuous to say that there's one defendant because on more than one occasion we've taken depositions and plaintiffs' counsel has co -- specifically said that defense counsel being for USAA cannot ask questions independently because they were two separate and distinct parties, uh, and until I'm gone he can't speak so they know who we are and they know who's defending, they don't need anything beyond that, you file a bad faith claim then you may have that issue but until that happens this is totally irrelevant in this case.

THE COURT: Okay, gentlemen, watch your email.

MR. WICKER: Okay.

MR. MCGARR: Your Honor, we have, we hadn't finished, ---

THE COURT: Okay.

MR. MCGARR: --- I apologize. Uh, I and maybe we because again, there are two different law firms with, uh, that are defending two different entities, uh, I think maybe we have filed a motion, uh, for an independent medical evaluation, uh, the motion is pursuant to Rule 35 which is the IME, uh, uh, rule. Uh, the way we did this is we ask that, uh, the

plaintiff go to see Dr. Price, uh, and pursuant to the rule and, Your Honor, if you may I'm half blind, can I sit for this one and read?

THE COURT: Yes.

MR. MCGARR: Uh, uh, we we pursuant to Rule 35 we requested by letter, uh, that the plaintiff, uh, go to see Dr. Price which is what the rule requires, it says tell us who you want to s -- who you want to to go see, uh, you're supposed to say where it is and we told 'em where it was which is the Foren -- Forensic Network in Greenville, uh, we do not -- we ask them to give us a date that would be convenient for, uh, the plaintiff to go see Dr. Price, uh, we did state the time that it would have to start at 9:30 and go 'til 5, we then also put in that she would need to bring her glasses, her medications and any hearing devices if applicable and they must be work -- they must be in working order and that she had to be tested by herself, she could have people with her to go to lunch and to take her there and bring here back but the test needs to be her solo. Uh, that is what the rule requires, it says to list all these specifics so you know what you're up, what you're gonna be doing, where you're going to be going, when you're gonna go there, what you need bring. Uh, the response was no response so we filed a motion to ask that, uh, the plaintiff being Jane Davis, not her husband, uh, who's also a co-plaintiff, uh, go to see Dr. Price at the

Forensic Network, uh, from 9:30 to 5 on a date that's convenient for her, uh, and that she bring her glasses, her medications, any hearing devices all working order and that she be tested solo, uh, there will be breaks and there will be lunch breaks, formal lunch breaks and all of this including travel expenses, uh, and, uh, meal expenses will be picked up by me, uh, and so that's what the rule requires and yet we haven't done that at this point, we would ask for an order that says that, uh, that this be accomplished because this case is not a case we're asking for, uh, and I'm gonna be, make everybody feel stupid, a a intimate medical examination cannot be done in any case in South Carolina unless you're, the mo -- the amount in controversy is in excess of a hundred thousand dollars, in this case the amount a controversy -- in controversy is well in excess of a million dollars, uh, I forgot to say that, just put it on the record though, so it's not as if we're asking for an independent med -- medical evaluation on a ten thousand dollar case or even a hundred thousand dollar case, we're asking for it because it's a multi-million dollar case at least according to plaintiffs, uh, and we we followed the rule to a tee with regard to what is required to do, uh, all we're asking for now since they won't voluntarily do it is that the Court order that it be done. The only thing that we would ask the Court to leave blank is the date because we would have to find times that are

convenient for Mrs. Davis, uh, uh, and would work for the doctor, so that would be the only, the only issue would be, uh, okay, ca -- when can we fit the doctor in for a day, when can we fit her in for a day, uh, and that we can't do in advance because we would have to talk to her but we are in that sense adults and I'm sure everybody can work out a time where it's convenient for the doctor or it works for the doctor's schedule and it's convenient for Ms. Davis.

THE COURT: Okay. Yes, sir.

MR. WICKER: Your Honor, this is very simple, this is not an independent medical examination by any means, the -- not only that, the request does not satisfy the rule, it does, the rule allows that Ms. Davis's physician be present, they've excluded that from the rule, uh, it also requires that we consent to who it is, they've excluded that from their request. This is a hired expert by the defendants and I'm gonna hand around a case *Fairchild* for South, uh, Car -- *vs.* the *SCDOT* which is the controlling authority on the fact that the defendants cannot compel plaintiff to be examined by their expert. Your Honor, this is, this is clearly a hired gun by the defendants and that's all fine and well and he can certainly be their expert but he's by no means an independent medical examiner. He writes largely for Claims Magazine articles such as, uh, *Fraudulent Claims of Psychological Injury, Managing Psychological Injury Claims, Identification*

of Fictitious Closed Head Injury Claims, these are all -- that he is clearly, uh, biased in this case and and that's not a frivolous objection. That case *Fairchild* that I handed up if I could draw your attention to page 109 and it's actually on page 11 of the packet I've given ya, it says, Under the plain language of Rule 35(a), the defendant clearly does not have the right to unilaterally select the examining physician; rather, the Court alone has that right. The rule contemplates that the parties will confer on this point to make objections. A reasonable objection in this context simply means the reason for the objection must not be frivolous. Your Honor, not only does he write exclusively for insurance companies and exclusively give, uh, talks to defense bars, we've requested that we be able to see his file, we'd like to see what preliminary work he's done, they've denied that, in fact they've moved to quash it. This is clearly not independent. It would, it would certainly be inappropriate at this point to require her to go see their expert. We have -- the the issue earlier about the release of the raw data that's to their expert. We're we're being transparent. They can see all of our medical records, we do not object to that, what we do object to is forcing our client to go under examination that does not comport with the rule with a defense expert that we can't see his file; secondly, though, Your Honor, I think it's very important to note that an independent medical examination

has already been done in this case. The very raw data that we've allowed them to see today, uh, is from Roger C. Peace from a clinical neuropsycho -- uh, neuropsychologist, this same study of Dr. David Price whom they'd like to compel us to go see. Uh, we did not hire Dr. Wagner, Dr. Wagner whose ul -- whose records we've released to their expert, uh, was hired well before the the clients ever came to our office, it was a referral from her neurologist, that's already an independent medical examination so, Your Honor, those are the, those are the main points here, it is by no means independent, it's already been done and it would be improper based on the clear rules and for that, Your Honor, we would, we do certainly object to the motion to compel.

THE COURT: Okay. Yes.

MR. MCGARR: Your Honor, in response, uh, uh, Dr. Price, uh, has not even given an opinion with regard to this case whatsoever; in fact, he's still looking for the raw data, uh, to even come up with no opinion but in in in anticipation of doing an IME, uh, so to say that he is, uh, biased and against her and a hired gun is just false. He is hired and has been hired because he can do the testing 'cause what's gonna turn out is the tests to determine whether you're validly having problems or not, that's why I ask for that other order, is going to, is going to prove that it it's never been done, nobody's ever done it, uh, so that raw data that they're

willing to give doesn't exist, uh, I know it doesn't exist through Dr. Schmechel and it won't exist through Roger C. Peace. This doctor will do the raw data that should have been done if you're truly gonna have an independent medical evaluation, uh, and at that point he can ascer -- he can then make an opinion as to what's happened, he can't do that unless he's run the raw data, done and independent medical evaluation and then he can come up with an opinion. He doesn't have an opinion at this point, uh, and he shouldn't have an opinion this point, he do -- he's never seen her and he doesn't have the raw data. The raw data actually says, Okay, are ya faking, are ya not, uh, how bad is your injury, how good is it, uh, is it going to get better, is it going to get worse, uh, and it's it's not, it's not like a a a a yes-no questionnaire, uh, it's sor -- a computer-generated, uh, thing, uh, and I can tell you, uh, and I didn't bring the record but I can tell you unequivocally that, uh, Roger C. Peace will not have that because their notes say that when they were gonna do that test their computer systems went down, uh, so they don't have it. Uh, the only way we're gonna get this raw data and to get what the standard is with regard to whether someone has an injury, the degree of that injury, whether it's gonna get better, whether it's gonna get worse or whether they're faking the injury is from that raw data and we're asking for a me -- independent medical evaluation

because I can promise you that this raw data that we've been asking for isn't gonna be produced from this doctor or Dr. Schmechel 'cause they don't, they never did it.

THE COURT: Well let must ask you this, you you said it correctly earlier, Mr. McGarr, and and we've all known each other long time but is there somebody that we cannot agree -- is there somebody we can agree on? I mean, if there's objection to that, we're all adults here, can we agree on somebody?

MR. WICKER: Your Honor, I'm sure that we can agree on somebody, the fact of the matter is it can't be Dr. Price, he's ---

THE COURT: Okay, ---

MR. WICKER: --- their expert.

THE COURT: --- alright, is there somebody beside Dr. Price we can agree on?

MR. WICKER: I don't know that we're gonna be able to do that today, ---

MR. MCGARR: That would be ---

MR. WICKER: --- we will confer. I don't know of another neuropsychologist standing here today that we would be able to confer on but I I certainly would be willing to work with Mr. McGarr.

MR. MCGARR: And and in all fairness, Your Honor, neither do I.

THE COURT: Okay. Alright, well ---

MR. MCGARR: We can, we can work through that and we can hold this in abeyance until we work through that.

THE COURT: Alright, well that's held in abeyance until Friday afternoon by four o'clock then I'm gonna fin -- I'm gonna pick somebody if that's what the Court decide to do, okay.

MR. WICKER: Thank you.

THE COURT: Four four o'clock Friday, ---

MR. WICKER: Four o'clock Friday.

THE COURT: --- that might -- that -- what ya need?

MR. MCGARR: Uh, I'm I'm I'm bouncing from here and everywhere, uh, can we move it to say Tuesday?

THE COURT: Be Tuesday?

MR. WICKER: That's fine.

THE COURT: I'll be back here in an -- anyway next week. Alright, four o'clock next Tuesday, let my law clerk know. Ya'll need to do Dr. Price or I'll pick somebody.

MR. MCGARR: And Doc -- and and, Your Honor, if, uh, uh, there there is also and it's not on your calendar but I think it probably needs to be addressed, uh, uh, the, uh, plaintiffs have asked for the records that Dr., uh, Price has to date and we've moved to quash that subpoena because Dr. Price is a consulting physician at this point, he's not a named expert who's going to testify and if we're not going to use him, if

he's not going to be used, uh, and and this may answer but but I'll I'll tell what we mean on this, if he, if if we're not gonna use him as the independent medical examiner, uh, then we move to quash the documents that we've given to him because he's not an expert that we have listed as as someone who's gonna be testifying. Uh, if he is ca -- if he's going to be the independent medical examiner, uh, by the Court saying he's gonna be then at that point this motion to quash is moot because they have the right, uh, before the examination ever begins to have every shred of evidence and documents that that man has, uh, uh, so my point with the motion to quash is right now if he's not a player in this whatsoever, we move to quash and maintain that mo -- that motion to quash. If he is going to be the doctor who's going to do the med -- independent medical evaluation, we withdraw the motion to quash and he needs to give everything to them prior to that IME taking place, uh, and I mean every shred of record that he might have needs to be given to them, uh, and so it's a contingent motion to quash based upon what his role is actually going to be.

THE COURT: Okay.

MR. WICKER: Your Honor, we don't, we don't have a problem if he's not the the witness but this is clearly the independence issue, they've given him information and we can't see it and that's why again we ask that that motion compel be denied but if he's not gonna be the witness, we don't need to

see it.

THE COURT: Okay. Alright, anything else?

MR. MCGARR: Uh, do, orders you want us -- me to -- can can can we hold off on the orders until Tuesday?

THE COURT: Yeah, and we'll address all issues, uh, in one ---

MR. MCGARR: One one 'cause we're -- yes, Your Honor.

THE COURT: Yeah, yeah, ---

MR. MCGARR: Okay, thank you.

THE COURT: --- and and and and we we do that by email, ---

MR. MCGARR: Yes.

THE COURT: --- okay, so watch your email but let me know somethin' about, uh, an independent investigator by Tuesday four o'clock.

MR. MCGARR: Yes.

MR. WICKER: Thank you.

MR. LUTHER: Thank Your Honor.

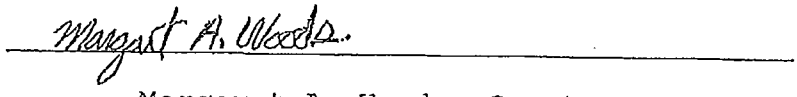
THE COURT: Thank you.

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on January 7, 2015 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 21, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

February 8, 2015



Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

Exhibit C

M & G
MURPHY & GRANTLAND, P.A.

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

July 22, 2014

Dr. David Price
1040 Thousand Oaks Blvd.
Greenville, SC 29607

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

Dear Dr. Price:

Thank you for agreeing to serve as a consulting expert in the above matter. As indicated, I represent USAA and along with attorney Marcus McGarr we are providing a defense to the Defendant James D. Singleton. This matter arises out of an automobile accident on June 17, 2011.

Please find enclosed copies of Plaintiff Jane Davis' medical records from the following providers:

1. Allergy Partners of the Foothills
2. CVS Pharmacy
3. Devore Dermatology
4. Gastroenterology Associates
5. Greenville Health System – Division of General Surgery
6. Greenville Health System
7. Greenville Memorial Hospital
8. Greenville OB/GYN
9. Internal Medicine Associates of Greenville
10. Lexington Medical Center
11. Mary Black Minor Care
12. MD360
13. Piedmont Internal Medicine
14. Piedmont Surgery Center
15. Proaxis Therapy
16. Procedural Pain Management
17. Quality Home Medical
18. Regional Urology
19. Respiratory Diagnostics, LLC
20. Southeast Regional Sleep Disorders Center
21. Southeatern Neurology and Memory Clinic
22. Southeastern Neurology and Spine
23. Spartanburg EMS
24. Spartanburg ENT

25. Spartanburg Regional Medical Center
26. St. Francis Eastside
27. St. Francis Hospital
28. Steadman Hawkins
29. The Center for Advanced Eye Care
30. Walgreens
31. Westgate Family Physicians
32. YMCA
33. Sherbondy's Psychiatric Services
34. Greenville Radiology
35. Internal Medicine Associates
36. Carolina Women's Health
37. Duke Spine Center
38. Apria Healthcare
39. Piedmont Sleep Center, Inc.
40. Midlands Orthopaedics, PA
41. Mark S. Keisler, MD
42. Caldwell Memorial Hospital
43. The Falls Neurology & Memory Center
44. Regional Rehabilitation Services –YMCA
45. Life Care Plan for Jane Davis by Bruce Holt, RN
46. Report from Dr. Schmechel dated April 2, 2014
47. Future life care needs report from Charles L. Ashford, Ph.D.

Also enclosed please find the deposition transcripts of Jane Davis, John Davis and James Travis Singleton, along with the exhibits to those depositions. I have also enclosed the Complaint, Answer, and pertinent discovery responses of the parties. The thrust of Mrs. Davis' claim is that she has sustained a traumatic brain injury.

Ms. Davis' medical records have been requested from several other providers and will forward those to you upon receipt. I am also including a medical summary for Mrs. Davis for your review.

Please review these medical records and deposition transcripts and call me when you are ready to discuss your findings. A written report is not required at this time.

Please let me know what else you need. I look forward to hearing from you.

Sincerely yours,

Ronald B. Diegel

RBD\acg
Enclosures

DATE: August 14, 2014

TO: Ronald B. Diegel, Esquire
Murphy & Grantland, P.A.
PO Box 6648
Columbia, South Carolina 29260

FROM: David R. Price, Ph.D.
Licensed Clinical Psychologist
The Forensic Network

RE: John Davis and Jane Davis vs. James Travis Singleton
Civil Action No.: 2013-CP-42-3055
Claim No.: 1194455; ALIS #: 2013-10791
Date of Loss: 06/17/11
Your File No.: 3250-0693

INVOICE FOR PROFESSIONAL SERVICES RENDERED @ $315.^{00}$ / hour

DATE	SERVICE	HOURS	TOTAL
08/11/14	ANALYZE RECORDS	5.0 hrs	$1,575.00
08/12/14	ANALYZE RECORDS	4.5 hrs	$1,417.50
08/13/14	PREP/TELE CONSULT w/RBD	1.5 hrs	$ 472.50
		STATEMENT TOTAL:	**$3,465.00**

REMIT PAYMENT TO: DAVID R. PRICE, Ph.D.
THE FORENSIC NETWORK PA
PO BOX 27161
GREENVILLE, SC 29616

FED ID # 27-1471949

OVERDUE INVOICES (PAST 30 DAYS) ARE SUBJECT TO A FINANCE CHARGE OF 1.5% INTEREST PER MONTH

Exhibit D

M&G
MURPHY & GRANTLAND, P.A.

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

April 6, 2015

Margaret A. Woods
Circuit Court Reporter
Seventh Judicial Circuit
P.O. Box 4305
Greenville, SC 29608

Re: John Davis and Jane Davis vs. James Travis Singleton
Civil Action No.: 2013-CP-42-3055
Appellate CA Nos.: 2015-000653, 2015-0006___
Claim No.: 1194455; ALIS #: 2013-10791
Date of Loss: June 17, 2011
Our File No.: 3250-0693

Dear Ms. Woods:

I am writing to request that you provide me with the original transcript of the hearing with regard to the above-referenced matter. The hearing took place on January 7, 2015 before the Honorable R. Keith Kelly at the Spartanburg County Courthouse.

Please be advised that we will gladly pay the costs associated with the transcript and its delivery.

Furthermore, please note that by copy of this letter we are placing the Clerk of Court for the Court of Appeals, as well as all counsel of record on notice that we have made this request.

I appreciate your assistance in this matter, and if you have any questions or need any further information from me, please do not hesitate to call.

Sincerely yours,

Ronald B. Diegel

RBD\smr
Enclosure
cc: E. Grey Wicker, Esq., Michael E. Spears, Esq.
Marcus K. McGarr, 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

M & G
MURPHY & GRANTLAND, P.A.

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

April 6, 2015

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

Re: John Davis and Jane Davis vs. James Travis Singleton
Civil Action No.: 2013-CP-42-3055
Appellate CA Nos.: 2015-000653, 2015-0006___
Claim No.: 1194455; ALIS #: 2013-10791
Date of Loss: June 17, 2011
Our File No.: 3250-0693

Dear Ms. Kitchings:

Please find enclosed two duplicate originals and two copies of my letter requesting the original transcript of record from Margaret A. Woods, Circuit Court Reporter, and corresponding Proof of Service. I would appreciate your filing an original in each of the above respective case files, clocking the two copies, and returning the same to me in the pre-addressed stamped envelope provided for your convenience.

Furthermore, 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 office.

I appreciate your assistance in this matter, and if you have any questions or need any further information from me, please do not hesitate to call.

Sincerely yours,

Ronald B. Diegel

RBD\smr
Enclosure
cc: E. Grey Wicker, Esq., Michael E. Spears, Esq.
Marcus K. McGarr, 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

J. R. Murphy John M. Grantland Ron B. Diegel* Brent M. Boyd E. Ray Moore, III Anthony W. Livoti Adam J. Neil Jeff C. Kull Peter E. Farr
Alice P. Adams Tim J. Newton Chris A. Majure J. Ryan Oates Wesley B. Sawyer Jason P. Luther Elliott B. Daniels Hannah D. Stetson
*Member-American Board of Trial Advocates

Exhibit E

Grey Wicker

From: Grey Wicker
Sent: Tuesday, April 07, 2015 3:00 PM
To: marc@mcgarrlaw.net; amanda@mcgarrlaw.net
Cc: rdiegel@murphygrantland.com; STEPHANIE M. ROBERTS (SROBERTS@murphygrantland.com); Spears, Mike; Alison Dannert; Lindsey Erbe
Subject: Transcript - Davis Singleton
Attachments: Transcript - 1-7-15.pdf

Tracking:

Recipient	Read
marc@mcgarrlaw.net	
amanda@mcgarrlaw.net	
rdiegel@murphygrantland.com	
STEPHANIE M. ROBERTS (SROBERTS@murphygrantland.com)	
Spears, Mike	
Alison Dannert	
Lindsey Erbe	Read: 4/7/2015 3:04 PM

Marc,

I'm in receipt of your April 3, 2015 letter requesting a copy of the transcript for the January 7, 2015 hearing before Judge Kelly. You can find a copy of that transcript attached as Exhibit B to the Plaintiffs' Response in Opposition to Defendant's Motion to Reconsider. However, for ease of reference and to hopefully save you some time and expense, it is also attached to this email.

Should you have any questions or concerns, please don't hesitate to contact me.

Thanks,
Grey

E. Grey Wicker, Esquire

Spears & Wicker, P.A.
122 South Liberty Street
Spartanburg, SC 29306
T: (864) 583-3535
F: (864) 583-3525

Exhibit F

Grey Wicker

From: Woods, Margaret <mwoods@sccourts.org>
Sent: Wednesday, June 17, 2015 12:01 PM
To: Grey Wicker
Subject: RE: Davis v. Singleton

Grey,

I mailed a copy of the transcript to Mr. Diegel on 4/14/15 and, no, I never sent him another caption page. Please let me know if you need anything else.

Maggie

Maggie Woods
Circuit Court Reporter
Seventh Judicial Circuit At-Large

From: Grey Wicker <GWicker@spearswicker.com>
Sent: Wednesday, June 17, 2015 9:17 AM
To: Woods, Margaret
Subject: RE: Davis v. Singleton

Maggie,

Have you had a chance to look at when you sent the transcript in the case of Davis v. Singleton, C.A.No.: 13-CP-42-3055 to attorney Ron Diegel with Murphy & Grantland, P.A.? If you could let me know that date and whether you sent him another caption page later, I'd greatly appreciate it.

Thanks and take care,
Grey

-----Original Message-----
From: Grey Wicker
Sent: Friday, June 12, 2015 11:18 AM
To: 'Woods, Margaret'
Subject: RE: Davis v. Singleton

Could I ask you one more favor in the case of Davis v. Singleton, C.A.No.: 13-CP-42-3055?

1. Can you let me know when you sent the transcript to attorney Ron Diegel with Murphy & Grantland, P.A.?

2. Thereafter, did he ask you to email him another cover page?

3. If he did, could you let me know when you emailed that to him?

Thanks so much for everything. This should be my last favor.

Take care,
Grey

-----Original Message-----
From: Woods, Margaret [mailto:mwoods@sccourts.org]
Sent: Thursday, June 11, 2015 4:03 PM
To: Grey Wicker
Subject: RE: Davis v. Singleton

You're welcome!

Maggie Woods
Circuit Court Reporter
Seventh Judicial Circuit At-Large

From: Grey Wicker <GWicker@spearswicker.com>
Sent: Thursday, June 11, 2015 3:44 PM
To: Woods, Margaret
Subject: RE: Davis v. Singleton

Maggie,

Thank you very much. You've been so helpful.

Take care,
Grey

-----Original Message-----
From: Woods, Margaret [mailto:mwoods@sccourts.org]
Sent: Thursday, June 11, 2015 3:40 PM
To: Grey Wicker
Subject: RE: Davis v. Singleton

Mr. Wicker,

1. I mailed a copy of the transcript John & Jane Davis vs. James Travis Singleton to Mr. McGarr on April 9, 2015.

2. I emailed Mr. McGarr another caption page of the same transcript on May 5, 2015.

3. Mr. McGarr should have received the transcript (with the signed certificate page) a day or so after I mailed it to him on April 9, 2015.

Hope this clarifies things. Thanks.

Maggie Woods
Circuit Court Reporter
Seventh Judicial Circuit At-Large

From: Grey Wicker <GWicker@spearswicker.com>
Sent: Thursday, June 11, 2015 1:10 PM
To: Woods, Margaret
Cc: Lindsey Erbe
Subject: Davis v. Singleton

Margaret,

Thank you so much for assisting us in understanding the timeline of the transcript production in the case of Davis v. Singleton, C.A.No. 2013-CP-42-3055.

Would you be so kind as to confirm whether I have appropriately chronicled the following dates and events:

1. On March 9, 2015, you mailed attorney Marcus McGarr a copy of the transcript of the January 7, 2015 hearing in front of Judge Kelly.

2. Thereafter, at Mr. McGarr's request, you merely mailed him a different cover page for the same transcript some time before May 5, 2015; however, a copy of the transcript of the January 7, 2015 hearing was sent to Mr. McGarr on March 9, 2015 and received by him before May 5, 2015.

We appreciate all of your time. Should there be any questions or concerns, please do not hesitate to contact me.

Sincerely,
Grey

E. Grey Wicker, Esquire

Spears & Wicker, P.A.
122 South Liberty Street
Spartanburg, SC 29306
T: (864) 583-3535
F: (864) 583-3525

transcript from the underlying January 7, 2015 hearing. (See Respondent's Response to Appellant James Travis Singleton's Motion to Reconsider, attached hereto as Exhibit C.) Thus, UIM Carrier received the transcript, marked "original", of the underlying hearing by electronic mail on March 17, 2015 and by U.S. Mail within days after.

Regardless of having possession of the transcript since March 17, 2015, UIM Carrier failed to file an initial appellate brief before April 16, 2015, thirty (30) days following UIM Carrier's receipt of the transcript, as required by Rule 208(a)(1). Accordingly, this appeal should be dismissed with prejudice.

Furthermore, regardless of having possession of the transcript, UIM Carrier requested that Court Reporter Margaret Woods send UIM Carrier an additional copy of the transcript, by letter dated April 6, 2015. (See Letter to Margaret Woods dated April 6, 2015, attached hereto as Exhibit D.) Respondent received a copy of UIM Carrier's letter by U.S. Mail and immediately forwarded another copy of the transcript, marked "original" to UIM Carrier by electronic mail on April 7, 2015. (See Email Correspondence dated April 7, 2015 attached hereto as Exhibit E.) Nevertheless, UIM Carrier failed to file an Initial Appellate Brief within thirty days, which or May 7, 2015.

Court reporter Margaret Woods mailed an additional copy of the transcript and signed Certificate Page to UIM Carrier on April 14, 2015, pursuant to UIM Carrier's request. (See Email Correspondence from Margaret Woods dated June 11, 2015, attached hereto as Exhibit F.) Regardless of UIM Carrier's having received several copies of the transcript within days after April 14, 2015, UIM Carrier failed to file an Initial Appellate Brief within thirty (30) days. Accordingly, this appeal should be dismissed with prejudice.

Exhibit G

M&G
MURPHY & GRANTLAND, P.A.

COPY

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

May 15, 2015

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

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 be advised that Appellant USAA received the original transcript from the Circuit Court's Court Reporter on May 5, 2015.

By copy of this letter, I am placing all counsel of record on notice that this letter has been forwarded to you.

Furthermore, I would appreciate your filing the original of this letter with your office, clocking the enclosed copy, and returning the same to me in the enclosed, pre-addressed stamped envelope provided for your convenience.

I appreciate your assistance in this matter, and if you have any questions or need any further information from me, please do not hesitate to call.

Sincerely yours,

Ronald B. Diegel

RBD\smr
Enclosure
cc: E. Grey Wicker, Esq., Michael E. Spears, Esq.
Marcus K. McGarr, 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

Exhibit H

M & G
MURPHY & GRANTLAND, P.A.

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

July 22, 2014

Dr. David Price
1040 Thousand Oaks Blvd.
Greenville, SC 29607

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

Dear Dr. Price:

Thank you for agreeing to serve as a consulting expert in the above matter. As indicated, I represent USAA and along with attorney Marcus McGarr we are providing a defense to the Defendant James D. Singleton. This matter arises out of an automobile accident on June 17, 2011.

Please find enclosed copies of Plaintiff Jane Davis' medical records from the following providers:

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2. CVS Pharmacy
3. Devore Dermatology
4. Gastroenterology Associates
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6. Greenville Health System
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21. Southeatern Neurology and Memory Clinic
22. Southeastern Neurology and Spine
23. Spartanburg EMS
24. Spartanburg ENT

25. Spartanburg Regional Medical Center
26. St. Francis Eastside
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29. The Center for Advanced Eye Care
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34. Greenville Radiology
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36. Carolina Women's Health
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38. Apria Healthcare
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40. Midlands Orthopaedics, PA
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44. Regional Rehabilitation Services –YMCA
45. Life Care Plan for Jane Davis by Bruce Holt, RN
46. Report from Dr. Schmechel dated April 2, 2014
47. Future life care needs report from Charles L. Ashford, Ph.D.

Also enclosed please find the deposition transcripts of Jane Davis, John Davis and James Travis Singleton, along with the exhibits to those depositions. I have also enclosed the Complaint, Answer, and pertinent discovery responses of the parties. The thrust of Mrs. Davis' claim is that she has sustained a traumatic brain injury.

Ms. Davis' medical records have been requested from several other providers and will forward those to you upon receipt. I am also including a medical summary for Mrs. Davis for your review.

Please review these medical records and deposition transcripts and call me when you are ready to discuss your findings. A written report is not required at this time.

Please let me know what else you need. I look forward to hearing from you.

Sincerely yours,

Ronald B. Diegel

RBD\acg
Enclosures

DATE: August 14, 2014

TO: Ronald B. Diegel, Esquire
Murphy & Grantland, P.A.
PO Box 6648
Columbia, South Carolina 29260

FROM: David R. Price, Ph.D.
Licensed Clinical Psychologist
The Forensic Network

RE: John Davis and Jane Davis vs. James Travis Singleton
Civil Action No.: 2013-CP-42-3055
Claim No.: 1194455; ALIS #: 2013-10791
Date of Loss: 06/17/11
Your File No.: 3250-0693

INVOICE FOR PROFESSIONAL SERVICES RENDERED @ $315.^{00}$ / hour

DATE	SERVICE	HOURS	TOTAL
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08/12/14	ANALYZE RECORDS	4.5 hrs	$1,417.50
08/13/14	PREP/TELE CONSULT w/RBD	1.5 hrs	$ 472.50
		STATEMENT TOTAL:	**$3,465.00**

REMIT PAYMENT TO: DAVID R. PRICE, Ph.D.
THE FORENSIC NETWORK PA
PO BOX 27161
GREENVILLE, SC 29616

FED ID # 27-1471949

OVERDUE INVOICES (PAST 30 DAYS) ARE SUBJECT TO A FINANCE CHARGE OF 1.5% INTEREST PER MONTH

IN THE STATE OF SOUTH CAROLINA
In the 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

John Davis and Jane Davis, ...Respondents.

v.

James Travis Singleton, ...Appellant.[1]

PROOF OF SERVICE

I certify that I have served United Services Automobile Association Respondents John and Jane Davis's Return to United Services Automobile Association's Petition for Rehearing of Order Dismissing Appellant James Travis Singleton's Appeal via United States Postal Service, on June 17, 2015, to their attorney of record, Ron Diegel, Esquire, at Murphy & Grantland, P.A., 4406-B Forest Drive, Columbia, SC 29206

June 17, 2015

SPEARS & WICKER, PA
Michael E. Spears, Esquire, Bar No. 5204
E. Grey Wicker, Esquire, Bar No. 76382
122 South Liberty Street
Spartanburg, SC 29306
T: (864) 583-3535
F: (864) 583-3525

[1] Please note that this caption has been changed from the caption atop the Appellant's Petition to reflect the proper caption in accordance with Rule 247, SCACR, and this Court's directive by letter dated April 21, 2015.

SPEARS & WICKER, P.A.

ATTORNEYS AT LAW

MICHAEL E. SPEARS
E. GREY WICKER

TELEPHONE
(864) 583-3535
TOLL FREE
(888) 583-3588
FACSIMILE
(864) 583-3525

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P.O. BOX 5806
SPARTANBURG, SOUTH CAROLINA 29304

OFFICE LOCATIONS:
122 SOUTH LIBERTY STREET
SPARTANBURG, SC 29306
AND
24 BROAD STREET
CHARLESTON, SC 29401

mspears@spearswicker.com
gwicker@spearswicker.com

June 17, 2015

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

Re: John Davis and Jane Davis vs. James Travis Singleton
Civil Action No. 2013-CP-42-3055
Appellate Case No. 2015-000653

Dear Ms. Kitchings:

With regards to the above-captioned matter, please find enclosed the original and six (6) copies of the Respondents John and Jane Davis's Return to United Services Automobile Association's Petition for Rehearing of Order Dismissing its Appeal.

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 note that by copy of this letter, that I am placing counsel for the UIM Carrier, USAA, and James Travis Singleton on notice that the originals of these documents have been filed with your Court.

Should there be any questions or concerns, or if I may be of any further assistance, I await your instruction.

With kind regards, I am

Sincerely yours,

E. Grey Wicker

Cc: Ron Diegel, Esquire
Marcus K. McGarr, Esquire