

RECEIVED

JUL 16 2014

S.C. Supreme Court

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Opinion No. 5231 (S.C. Ct. App. filed May 21, 2014)

Centennial Casualty Co., Inc. Petitioner

v.

Western Surety Co., d/b/a CNA Surety Respondent

Western Surety Co., d/b/a CNA Surety Defendant/Third-Party
Plaintiff

v.

Charleston Auto Auction, A3 Auto Center, LLC,
and Wylie Mickle..... Third-Party Defendants

**APPENDIX
IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI**

Ian S. Ford
FORD WALLACE THOMSON LLC
715 King Street
Charleston, SC 29403
T. 843.277.2011
E. Ian.Ford@FordWallace.com
Attorney for Petitioner

Other Counsel of Record:

S. Markey Stubbs

BAKER RAVENEL BENDER

3710 Landmark Drive, Suite 400

Columbia, SC 29204

(803) 799-9091

Attorney for Respondent

CONTENTS

1. Record on Appeal (ROA 1-120)
2. Brief of Appellant in the Court of Appeals (Oct. 23, 2013)
3. Brief of Respondent in the Court of Appeals (Oct. 30, 2013)
4. Order of the Court of Appeals (May 21, 2014)
5. Respondent's Petition for Rehearing (June 2, 2014)
6. Appellant's Opposition to Petition for Rehearing (June 3, 2014)
7. Court of Appeals Order denying Petition for Rehearing (June 25, 2014)

1

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-0013816577

Centennial Casualty Co., Inc. Respondent

v.

Western Surety Co., d/b/a CNA Surety Appellant

Western Surety Co., d/b/a CNA Surety Defendant/Third-Party Plaintiff

v.

Charleston Auto Auction, A3 Auto Center, LLC, and
Wylie Mickle, Third-Party Defendants

RECORD ON APPEAL

S. Markey Stubbs
Bar Number 7873
Baker Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, South Carolina 29204
T. 803.799.9091
Our File 7753.67
Attorney for Appellant

Ian Ford, Esquire
FORD & WALLACE LLC
715 King Street
Charleston, S.C. 29403
T. 843.608.1234
Attorney for Respondent

INDEX

Order of the Honorable Judge Nicholson denying motion for reconsideration dated 5/8/13. 2

Order of Summary Judgment with the Honorable Judge Nicholson filed March 4, 2013. 3

Complaint filed October 19, 2009. 12

Answer and Third-Party Complaint filed November 16, 2009. 22

Answer of Third-Party Defendant filed December 11, 2009. 27

Stipulation of Facts dated May 22, 2012. 32

Centennial Casualty and Charleston Auto Auction's Motion for Summary Judgment with attachments filed July 12, 2010. 34

Western Surety's Motion for Summary Judgment filed September 22, 2010. 70

Centennial Casualty Co., Inc.'s Supplemental Memorandum of Authorities dated May 29, 2012 with exhibits. 78

Proposed Order of Centennial Casualty Co., Inc. 85

Defendant Western Surety's Motion in Opposition to Centennial Casualty Co., Inc.'s brief dated May 29, 2012. 93

Proposed Order of Defendant Western Surety. 107

Western Surety's Notice of Motion and Motion for Reconsideration filed March 25, 2013. 110

Centennial Casualty Co., Inc.'s Opposition of Defendant's Motion for Reconsideration filed April 15, 2013. 116

Certificate of Counsel. 120

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-10-6577

Centennial Casualty
 PLAINTIFF(S)

Western Surety
 DEFENDANT(S)

Submitted by: _____

Attorney for: Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Motion for Reconsideration is Denied.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

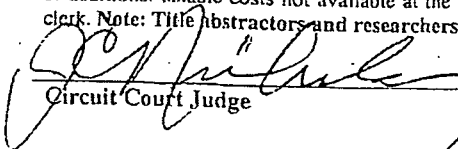
INFORMATION FOR THE JUDGMENT INDEX

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

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|--|--|--|
| N/A | | \$ |
| | | \$ |
| | | \$ |

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

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


 Circuit Court Judge

2117
 Judge Code

Date

5/07/13

FILED
 2013 MAY -8 PM 3:04
 JULIE J. ARMSTRONG
 CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CENTENNIAL CASUALTY CO., INC.,)
)
Plaintiffs,)

CASE NO.: 2009-CP-10-6577

vs.)

WESTERN SURETY COMPANY, d/b/a)
CNA SURETY,)

Defendant.)

WESTERN SURETY COMPANY,)
d/b/a CNA SURETY,)

Defendant/Third-Party Plaintiff,)

vs.)

CHARLESTON AUTO AUCTION, A3)
AUTO CENTER, LLC and WYLIE)
MICKLE,)

Third-Party Defendants.)

FILED
2009 MAR -4 AM 9:41
JULIE J. ARSHTORIG
CLERK OF COURT
BY _____

ORDER

The parties have submitted a stipulation of facts, legal memoranda, and exhibits in this action, and agree that the case is ripe for a decision. The Court has reviewed the briefs, exhibits, and relevant law, and rules as follows.

FINDINGS OF FACT

1. The Dealer Bond Statute


South Carolina's licensing statute for motor vehicle dealers requires a surety bond under S.C. Code § 56-15-320(B) (the "Dealer Bond Statute"). The Dealer Bond Statute

requires motor vehicle wholesalers or dealers to obtain a bond in order to, *inter alia*, indemnify:

for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter.

Id. (emphasis added). The statute allows that "An [automobile] owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter." *Id.*

2. Charleston Auto Auction and A3 Auto Center

The undisputed evidence shows that Charleston Auto Auction is a wholesale auctioneer that facilitates the sale and purchase of automobiles among dealers. Centennial and Charleston Auto Auction have submitted an affidavit and accompanying documents indicating that Charleston Auto Auction acts as the agent and legal representative for the dealerships in the transactions; collects and conveys the funds for the automobiles; and conveys (but does not assume) the title to the automobiles between the parties. *See* Pl. Mot. at Ex. 2 ¶ 3 (Affidavit of Laura Taylor).

That evidence shows that, before Charleston Auto Auction will facilitate the sale of an automobile to or from a dealer, dealers on both sides of the transaction must enter into a purchase and sale agreement with Charleston Auto Auction, which makes Charleston Auto Auction their legal representative in the transactions. *Id.* ¶ 4.

The undisputed evidence also shows that A3 Auto Center is an automobile dealer in South Carolina. In March 2008, A3 Auto Center purchased three automobiles using Charleston Auto Auction: a 2006 Dodge Magnum; a 2001 Oldsmobile Aurora; and a 2006 Ford F250 (collectively the "Vehicles"). A Plus Auto Sales, Priceless Automotive, and Automotive Rentals, Inc./ARI Fleet Ltd (collectively the "Selling Dealerships") each sold one of the Vehicles. *Id.* ¶ 5. Both the Selling Dealerships and A3 Auto Center made Charleston Auto Auction the "middle-man" auctioneer. *Id.* ¶ 6. Pursuant to the Dealer Bond Statute, A3 Auto Center obtained a Bond from CNA Surety under the Dealer Bond Statute. *See* Pl. Mot at Ex. 7.

A3 Auto Center paid for the Vehicles with worthless checks, causing at least \$35,305.00 in damage to the Selling Dealerships. Pl. Mot. at Ex. 2 ¶¶ 7-8 (Affidavit of Laura Taylor).

3. Charleston Auto Auction and Centennial's Dealer Bond claim

Charleston Auto Auction, as the Selling Dealerships' legal representative, seeks reimbursement under the Bond for A3 Auto Center's worthless checks. The undisputed evidence shows that Plaintiff Centennial insured Charleston Auto Auction against such losses, and has repaid Charleston Auto Auction on those claims. As the legal subrogee of Charleston Auto Auction, Centennial has the right to proceed in the place of Charleston Auto Auction in this matter. Centennial has made demands on Defendant for payment under the Bond, which CNA Surety has rejected. *See* Pl. Mot. at Ex. 8 (denial letter). CNA Surety's primary argument is that neither Centennial nor Charleston Auto Auction is the "owner" or "legal representative" as required by the Dealer Bond Statute. *See id.*

This is a legal issue of statutory interpretation, and is ripe for the Court to rule on as a matter of law.


CONCLUSIONS OF LAW

1. "Legal Representative" under the Dealer Bond Statute

The primary issue is whether Charleston Auto Auction (or Centennial as its subrogee) is a "legal representative" under the Dealer Bond Statute. The South Carolina Supreme Court has stated:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, or the owner's legal representative, with a cause of action against the surety on a bond issued pursuant to that statute.

Mid-State Auto Auction v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (emphasis added).



Each vehicle's Bill of Sale made Charleston Auto Auction the seller and buyer's "legal representative" by stating: "Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company. . . ." Pl. Mot. at Ex. 3 (terms of Purchase Agreement and Bill of Sale (p. 4, para. 2); emphasis added); Pl. Mot. at Ex. 4 (title clerk authorizations); *cf. McNeill v. Electric Storage Battery Co.*, 96 S.E. 134, 135 (S.C. 1918) (agency relationship may be created by contract); *Love v. Gamble*, 316 S.C. 203, 213, 448 S.E.2d 876, 881 (S.C. App. 1994) (citing *McNeill* for the legal rule that "If provisions of contract make it one of agency, it is immaterial by what names the parties call themselves in the contract"); *State ex rel. McLeod v. C & L Corp., Inc.*, 280 S.C. 519, 313 S.E.2d 334 (Ct. App. 1984) (an independent contractor can also be an agent; the two are not mutually exclusive.) The term "legal representative" is commonly understood to mean "one who


stands in place of, and represents the interests of, another. . . ." *Black's Law Dictionary* 896 (6th ed. 1990).

In this matter, the Court finds that Charleston Auto Auction (and Centennial as its subrogee¹) was the legal representative under the Dealer Bond Statute for the purposes of the transactions. In addition to its explicit designation as "legal representative" in the relevant contract (*see* Pl. Mot. at Exs. 3-4), Charleston Auto Auction acts as the dealerships' representative and agent in the transactions it facilitates by (among other things) collecting and conveying the funds for the automobiles, and by conveying (but not assuming) the title for the automobiles between the parties. Pl. Mot. at Ex. 2 ¶¶ 3-4, 6 (Affidavit of Laura Taylor). These facts qualify Charleston Auto Auction and its subrogee as a "legal representative" for purposes of the Dealer Bond Statute.

CNA Surety's primary argument is that the Dealer Bond Statute provision does not apply when fraud is committed in the purchase of a motor vehicle. *See* Def. Mot. at pp. 2-3. This argument is based on a sentence in *Connecticut Indemnity Co. v. Burdette Chrysler Dodge Corp.*, 317 S.C. 406, 453 S.E.2d 902 (Ct. App. 1994), *overruled*, *Mid-State Auto*, 476 S.C. 406, 453 S.E.2d 902. As an initial matter, *Burdette* has been overruled by the South Carolina Supreme Court. *See id.* Moreover, the sentence referred to by CNA Surety appears in the context of a discussion of the definition of "fraud"; in that discussion in *Burdette*, the Court of Appeals indicated there was no fraud because there was a pre-existing debt. *See id.* at 409, 453 S.E.2d at 904. In contrast, here there is no dispute that there is no pre-existing debt. *See* Pl. Mot. at Ex. 2 ¶ 7. Additionally, the

¹ *See, e.g.*, Am. Jur. *Subrog.* § 61 ("Subrogation contemplates full substitution and places the party subrogated in the shoes of the creditor. Generally speaking, the party subrogated acquires all the rights, securities, and remedies the creditor has against the debtor who is primarily liable.") (internal citations omitted).

Dealer Bond Statute's language is broad and includes fraud "in connection with the sale or transfer" of a motor vehicle, as well as "loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter." S.C. Code § 56-15-320. This language is expansive and covers situation such as this one, where a motor vehicle is being sold or transferred. There is no indication in the Dealer Bond Statute that the South Carolina Legislature intended to only cover fraud by the seller—but meant to exclude fraud by the purchaser—when it enacted the language in the Dealer Bond Statute.



CNA Surety also argues that "legal representative" under the Dealer Bond Statute does not include Charleston Auto Auction. The Dealer Bond Statute does not define the term "legal representative," and outside legal research shows that the definition of "legal representative" can vary depending on the context. As discussed above, the undisputed evidence here shows that both the selling and purchasing dealers made Charleston Auto Auction their "agent and legal representative." See Pl. Mot. at Ex. 3. In opposition, CNA Surety points to the use of "legal representatives" in other contexts, such as probate and bankruptcy. See Def. Mot. at pp. 5-6 (citing probate code § 62-3-703 and federal bankruptcy law). However, those examples are specific to specialized areas of law, and in those contexts the "legal representative" generally is created by a statutory definition for purposes of the specific probate or bankruptcy proceedings. There is no indication that the South Carolina Legislature intended to incorporate other statutes' specific definitions (such as probate or bankruptcy) into the Dealer Bond Statute. The undisputed evidence here shows that a purpose of the auction company is to transact business for the buying and selling dealers. See Pl. Mot. at Ex. 2 ¶¶ 3-6 (describing function of auction

company in these transactions).

Finally, CNA Surety points to a definition of "wholesaler motor vehicle auction" and statutory provisions stating that the auction is not the owner of a vehicle simply because it transfers the title. *See* Def. Mot. at p. 5. Those definitions and provisions do not prohibit an auction company from being the "legal representative" of a vehicle's owner, which is the crux of the argument here. Moreover, a primary purpose of those cited provisions is to prevent an auction company from being the owner of a motor vehicle for purposes of property taxation. There is no indication that those provisions affect whether an auction company is a "legal representative" under § 56-15-320.

2. The remaining elements of the Dealer Bond Statute are satisfied.

The remaining elements of the Statute also are satisfied. Section 56-15-320(B) requires:

- "*Loss or damage suffered*": The evidence establishes that the worthless checks caused loss or damage. *See* Pl. Mot. at Ex. 2 ¶¶ 7-8 (Affidavit of Laura Taylor).
- "*by reason of fraud practiced or fraudulent representation made*": The passing of worthless checks, which is undisputed here, constitutes fraud as a matter of law. *Cf.* S.C. Code § 34-11-60 (the giving of a check where the maker lacks sufficient funds to pay the check is *prima facie* evidence of fraud, except when, *inter alia*, the check is given in full or partial payment of a preexisting debt); *see also* Pl. Mot. at Ex. 5 (returned checks). There was no preexisting debt in this case. Pl. Mot. at Ex. 2 ¶ 7 (Affidavit of Laura Taylor).

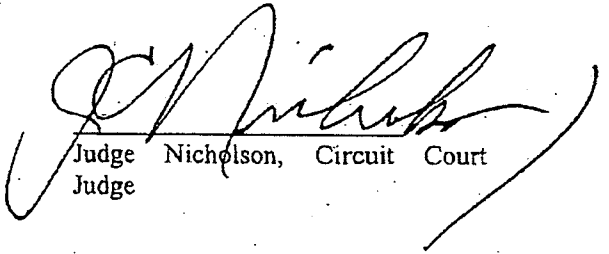
- *“made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer’s or wholesaler’s agent”*

These transactions were made in connection with the sale or transfer of the Vehicles. See Pl. Mot. at Ex. 2 ¶ 9 (Affidavit of Laura Taylor).

CONCLUSION

For these reasons, the Court finds in favor of Plaintiff Centennial Casualty Company and Charleston Auto Auction. Judgment is granted in favor of Plaintiff on the full amount of the bond at issue.

So ordered this 20 day of Feb. 2013.


Judge Nicholson, Circuit Court
Judge

Charleston, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-10-6577

Centennial Casualty
 PLAINTIFF(S)

Western Surety Company
 DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

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

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

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|--|--|--|
| N/A | | \$ |
| | | \$ |
| | | \$ |

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

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

[Signature]
 Circuit Court Judge

2117
 Judge Code

2/25/13
 Date

FILED
 JULIE J. ARMSTRONG
 CLERK OF COURT
 2013 MAR -4 AM 9:41

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-10-0577

CENTENNIAL CASUALTY CO.,)
INC.,)

Plaintiff,

vs.

WESTERN SURETY COMPANY,)
d/b/a. CNA SURETY,)

Defendant.

COMPLAINT

2009 OCT 19 PM 12:18
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Plaintiff Centennial Casualty Co., Inc. ("Centennial" or "Plaintiff"), brings this claim against defendant Western Surety Company d/b/a CNA Surety ("WSC" or "Defendant") based on the allegations set forth below.

PARTIES

1. Plaintiff Centennial is an Alabama corporation with its principal place of business in Birmingham, Alabama. Centennial is the subrogee of Charleston Auto Auction, Inc. ("Charleston Auto Auction").
2. Defendant Western Surety Company is a South Dakota corporation with its principal place of business in Sioux Falls, South Dakota.

JURISDICTION

3. This Court has subject matter jurisdiction over the claims in this lawsuit under, *inter alia*, Article V, § 11 of the South Carolina Constitution and South Carolina Code § 14-5-350 *et seq.*

4. This Court has personal jurisdiction over the Defendant under, *inter alia*, South Carolina Code § 36-2-803, because Defendant transacts business in the State of South Carolina.
5. Venue is proper in this circuit under, *inter alia*, South Carolina Code § 15-7-30 because, upon information and belief, Defendant does business in Charleston, South Carolina and does not reside in South Carolina.

FACTS

6. A3 Auto Center is a licensed dealer or wholesaler of automobiles in South Carolina.
7. In March 2008, A3 Auto Center purchased three automobiles: a 2006 Dodge Magnum; a 2001 Oldsmobile Aurora; and a 2006 Ford F250 (collectively the "Vehicles").
8. The selling dealerships were A Plus Auto Sales (for the 2001 Oldsmobile Aurora); Priceless Automotive (for the 2006 Ford F250); and Automotive Rentals, Inc. / ARI Fleet Ltd. (for the 2006 Dodge Magnum) (collectively the "Selling Dealerships").
9. At all relevant times, Charleston Auto Auction was acting as the legal representative of the Selling Dealerships for the sale of the Vehicles.
10. Pursuant to South Carolina Code § 56-15-10 *et seq.*, A3 Auto Center had obtained a surety Bond to indemnify any owner of a motor vehicle, or his legal representative, who may be aggrieved by any fraud, fraudulent representation, or other violations of § 56-15-10 *et seq.*, which is incorporated herein by reference.

11. A true and correct copy of the Bond is attached hereto as Exhibit A, and is incorporated herein by reference (the "Bond").
12. The Selling Dealerships made Charleston Auto Auction their legal representative for purposes of the sale of the Vehicles and the Bond. True and correct copies of certain documents evidencing this are attached hereto as Exhibit B and are incorporated herein by reference.
13. Defendant is the surety under the Bond.
14. The checks used by A3 Auto Center to purchase the Vehicles were returned as having insufficient funds.
15. Charleston Auto Auction was damaged in the amount of at least \$35,305 through the fraudulent writing of insufficient checks for the Vehicles.
16. Plaintiff insured Charleston Auto Auction against the loss, and has paid on the claim.
17. Plaintiff is the legal subrogee of Charleston Auto Auction, and has been assigned Charleston Auto Auction's rights in this matter.
18. The Bond gives Charleston Auto Auction, as the legal representative of the owner, the right to be indemnified and seek reimbursement under the Bond.
19. As the legal subrogee of Charleston Auto Auction, Plaintiff has the right to proceed in the place of Charleston Auto Auction in this matter.
20. Plaintiff has made demands on Defendant for payment under the Bond.
21. Defendant has refused to pay Plaintiff under the Bond.

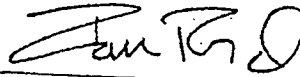
FIRST CAUSE OF ACTION
(Claim for payment on Bond pursuant to § 56-15-320 et seq.)

22. Plaintiff incorporates all allegations of the paragraphs above into this cause of action.
23. A purpose of the Bond is indemnification for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler.
24. An owner or his legal representative who suffered a loss or damage has a right of action against, *inter alia*, the dealer or wholesaler's surety upon the Bond and may recover damages as provided by the relevant statutory chapter.
25. Plaintiff has suffered actual loss or damage by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of motor vehicles.
26. This loss or damage falls under the Bond required by South Carolina Code § 56-15-320 *et seq.*
27. As the surety on the Bond, Defendant is obligated to pay Plaintiff for the loss for the vehicles under the Bond.

WHEREFORE, Plaintiff requests that a judgment be entered against Defendant on all causes of action and that Plaintiff be awarded actual damages under the Bond; consequential damages as permitted by law; any special damages permitted by law; any punitive damages permitted by law; pre- and post-judgment interest; attorneys' fees and costs; and such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

GREEN & FORD LLC



Ian S. Ford

ian.ford@greenandford.com

Dwayne M. Green

dwayne.green@greenandford.com

602 Rutledge Ave.

Charleston, SC 29403

(843) 266-2628; (843) 266-2627 (facsimile)

Web: www.greenandford.com

Attorneys for Plaintiff

Dated: October 19, 2009



South Carolina Department of Motor Vehicles
MOTOR VEHICLE DEALER AND WHOLESALE SURETY BOND

DLA-1B
(Rev. 2/04)

Dealer Number

Please read instructions on reverse side before executing bond.

COPY

BOND NUMBER 22887755 EFFECTIVE DATE July 21, 22006 TIME _____
A.M.
P.M.

KNOW ALL MEN BY THESE PRESENTS: that we A 3 Auto Center LLC
(Firm Name as Licensed)

Doing business at
2301 Main Street, Columbia, SC 29201

as Principal and WESTERN SURETY COMPANY as Surety

are duly authorized to do business within the State of South Carolina, as Surety, are held and firmly bound unto the people of the State of South Carolina to indemnify any owner of a motor vehicle, or his legal representative, who may be aggrieved by any fraud, fraudulent representation or violation by said Principal, salesman, or representatives acting for such Principal within the scope of employment of such salesman or representatives, of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, in the amount of Fifteen Thousand Dollars (\$15,000), lawful money of the United States of America, for which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, administrators, successors, and assigns, firmly by these presents; provided that the aggregate liability of the surety under this bond for any and all claims is limited to Fifteen Thousand Dollars (\$15,000) or to the amount of the actual loss incurred, whichever is less.

WHEREAS, the above bounden Principal desires that a motor vehicle dealer's or wholesaler's license be issued and thereafter renewed from time to time by South Carolina Department of Motor Vehicles;

WHEREAS, this bond executed by the said Principal and Surety is filed with the South Carolina Department of Motor Vehicles in compliance with S.C. Code Ann., 56-15-320, to enable said Principal to obtain a license from the Department under the provisions of that law.

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall well and truly observe and strictly and faithfully comply with the aforesaid requirements of law and shall save and keep harmless any owner of a motor vehicle or his legal representative made to him by such Principal, such Principal's salesman or representatives acting for the Principal or within the scope of the employment of such salesman or representatives, or from any loss or damage suffered by reason of the violation such Principal or any such salesman or representatives of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, then this obligation shall be null and void; otherwise it shall remain in full force and effect. It is understood that the injured party need not obtain a judgment against the Principal before making claim against the Surety on this bond.

This bond shall not automatically expire with the license for which it is initially issued, but shall continue indefinitely, from license year to license year, upon timely payment of the premium thereon. Before this bond may be cancelled, a thirty (30) day written notice must be given to the Department of Motor Vehicles. Such cancellation does not affect any liability incurred or accrued prior to cancellation.

A 3 Auto Center LLC

(Principal)

(Surety)

WESTERN SURETY COMPANY

By: _____
(Title)

By: Johanna Mc Masters
Johanna Mc Masters (Title) Attorney-In-Fact



COPY

Western Surety Company

POWER OF ATTORNEY - CERTIFIED COPY

Bond No. 22887755

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint Dale E. Clark, Brian A. Clark, Robert A. Jacobson, Diane Gibson, Wendy M. Lands, Heidi S. Sklenzdel, Johanna McMaster and Maria E. Zaccaro-Duyk its true and lawful attorneys-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, any surety or fidelity in an unlimited amount, and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorneys-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect.

'Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.'

The penal amount of the bond herein described may be increased if there is attached to this Power, written authority so authorizing in the form of an endorsement, letter or telegram signed by the Senior Underwriting Officer, Underwriting Officer, President, Vice President, Assistant Vice President, Treasurer, Secretary, or Assistant Secretary of Western Surety Company specifically authorizing said increase.

In Witness Whereof, Western Surety Company has caused these presents to be signed by its Senior Vice President, Paul T. Bruffat, and its corporate seal to be affixed this 21 day of JULY, 2006

STATE OF SOUTH DAKOTA }
COUNTY OF MINNEHAHA } SS

WESTERN SURETY COMPANY

Paul T. Bruffat
Paul T. Bruffat, Senior Vice President

On this 21 day of JULY in the year 2006, before me, a notary public, personally appeared Paul T. Bruffat, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.

D. KRELL
NOTARY PUBLIC
SOUTH DAKOTA
My Commission Expires 11-30-2006

D. Krell
Notary Public - South Dakota

I the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereunto set my hand and seal of Western Surety Company this 21 day of JULY, 2006

WESTERN SURETY COMPANY

Paul T. Bruffat
Paul T. Bruffat, Senior Vice President

Form F3525

AGENT COPY

STATE OF S. C.
COUNTY OF Horry

CAA DEALER # _____

TITLE CLERK AUTHORIZATION

I, Gregory J. Norris
(Consignor)

do hereby duly authorize Charleston Auto Auction and/or its employees to act as our Agent to sign all papers and documents that may be necessary pertaining to the sale and subsequent title transfer of the vehicles owned by consignor and consigned to Charleston Auto Auction for sale, including without limitation, any title, title transfer document, reassignment or odometer disclosure statements as required by federal or state law.

In consideration of Charleston Auto Auction's agreement to execute such documents on Consignor's behalf from time to time, Consignor shall indemnify, defend and hold harmless Charleston Auto Auction, its affiliates, subsidiaries, officers, directors, employees, successors and assigns from and against any and all loss, damages, liability, claims, causes of action, and expenses of whatever kind and nature, arising from the execution transfer of ownership of any consigned vehicle or from the execution by Charleston Auto Auction or its employees or agents of any certificate of title, odometer statement, bill of sale or other document necessary to transfer ownership of a consigned vehicle. Notwithstanding the foregoing, nothing contained herein shall be construed to require Consignor to indemnify Charleston Auto Auction from any loss resulting from any gross negligence or willful misconduct of Charleston Auto Auction or its employees or agents.

Consignor further agrees to guarantee and give the authorities of any state requested to process such transfer of title from all responsibility with respect to this Title Clerk Authorization.

A Plus Auto Sales - GREGORY J. NORRIS
(PRINT COMPANY/CONSIGNOR NAME)

[Signature]
(SIGNATURE OF CONSIGNOR)

Gregory J. Norris, Pres.
(PRINT NAME & TITLE OF PERSON SIGNING)

WITNESS MY HAND AND SEAL
affixed this 12 day of 05

[Signature]
(NOTARY PUBLIC)

My Commission Expires: Sept 25, 2010

STATE OF _____
COUNTY OF _____

CAA DEALER CODE: P00140

TITLE CLERK AUTHORIZATION

R. DALE MURER JR
(Consignor - owner)

do hereby duly authorize Charleston Auto Auction and/or its employees to act as our Agent to sign all papers and documents that may be necessary pertaining to the sale and subsequent title transfer of the vehicles owned by consignor and consigned to Charleston Auto Auction for sale, including without limitation, any title, title transfer document, reassignment or odometer disclosure statements as required by federal or state law.

In consideration of Charleston Auto Auction's agreement to execute such documents on Consignor's behalf from time to time, Consignor shall indemnify, defend and hold harmless Charleston Auto Auction, its affiliates, subsidiaries, officers, directors, employees, successors and assigns from and against any and all loss, damages, liability, claims, causes of action, and expenses of whatever kind and nature, arising from the execution transfer of ownership of any consigned vehicle or from the execution by Charleston Auto Auction or its employees or agents of any certificate of title, odometer statement, bill of sale or other document necessary to transfer ownership of a consigned vehicle. Notwithstanding the foregoing, nothing contained herein shall be construed to require Consignor to indemnify Charleston Auto Auction from any loss resulting from any gross negligence or willful misconduct of Charleston Auto Auction or its employees or agents.

Consignor further agrees to guarantee and save the authorities of any state requested to process such transfer of title from all responsibility with respect to this Title Clerk Authorization.

R. DALE MURER JR President Automobile
(PRINT COMPANY/CONSIGNOR NAME)

[Signature]
(SIGNATURE OF CONSIGNOR)

R. DALE MURER JR President
(PRINT NAME & TITLE OF PERSON SIGNING)

WITNESS MY HAND AND SEAL

Affixed this 13 day of 10, 2006

Laura Jara
(NOTARY PUBLIC)

My Commission Expires: Sept 25, 2010



Automotive Resources International

**POWER-OF-ATTORNEY
(AGENCY)
INDEMNITY AND HOLD HARMLESS AGREEMENT**

AUTOMOTIVE RENTALS INC. &/OR ARI FLEET LT, (HEREINAFTER CALLED CUSTOMER), WHOSE PRINCIPAL PLACE OF BUSINESS IS AT 9000 MIDLANTIC DRIVE, MT. LAUREL, NJ 08054, APPOINTS CHARLESTON AUTO AUCTION, 651 PRECAST LANE, MONCK'S CORNER, SOUTH CHARLESTON, SOUTH CAROLINA, 29461 AND ALL OF ITS SUBSIDIARY AUCTIONS (HEREINAFTER CALLED AUCTION) AS CUSTOMER'S AGENT WITH FULL AND COMPLETE AUTHORITY TO SIGN ODOMETER DISCLOSURE STATEMENT, TITLE DOCUMENTS AND AUCTION INVOICES, OR OTHER DOCUMENTS AS REQUIRED ON CUSTOMER'S BEHALF WITH REGARD TO ANY AND ALL MOTOR VEHICLES OWNED BY CUSTOMER WHICH ARE SOLD THROUGH THE AUCTION.

CUSTOMER WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS AUCTION FROM ALL LOSSES OR EXPENSE INCURRED BY AUCTION AS A RESULT OF AUCTION ACTING AS CUSTOMER'S AGENT PURSUANT TO THIS AGREEMENT, INCLUDING ALL EXPENSES AND ATTORNEY'S FEES INCURRED BY AUCTION, UNLESS CAUSED BY AUCTION'S OWN NEGLIGENCE.

AGREED TO AND ACCEPTED BY: **AUTOMOTIVE RENTALS, INC. &/OR
ARI FLEET LT**

SIGNATURE: Howard Graus
PRINT NAME: HOWARD GRAUS
TITLE: ASST. MGR.
DATE: 3/20/03

THE ABOVE IS SWORN AND SUBSCRIBED TO ME
THIS 20TH DAY OF MARCH, 2003.

Karen B. Heller
NOTARY PUBLIC
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires December 20, 2005

MY COMMISSION EXPIRES _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Centennial Casualty Co., Inc.)
Plaintiff,)

Civil Action No.: 2009-CP-10-6577

v.)

ANSWER AND THIRD-PARTY
COMPLAINT

Western Surety Company,)
d/b/a CNA Surety,)
Defendant.)

Western Surety Company,)
d/b/a CNA Surety,)
Defendant/Third-Party)
Plaintiff,)

v.)

Charleston Auto Auction, A3)
Auto Center, LLC. and Wylie)
Mickle,)

Third-Party Defendants.

2009 NOV 16 PM 4:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

TO: IAN S. FORD, ESQUIRE AND DWAYNE M. GREEN, ESQUIRE,
ATTORNEYS FOR PLAINTIFF AND TO PLAINTIFF ABOVE-NAMED:

The Defendant, Western Surety Company, d/b/a CNA Surety, answers the
complaint as follows:

1. Each and every allegation of the Complaint hereinafter not specifically admitted is denied and strict proof is demanded thereof.
2. Defendant Western Surety admits so much of the allegations of Paragraph 1 as alleges that Centennial Casualty Co., Inc. is a Alabama corporation with its principal place of business in Birmingham, Alabama. Defendant Western Surety lacks sufficient

information to form a belief as to the remaining allegations of Paragraph 1 and therefore denies the same.

3. Defendant Western Surety admits the allegations of Paragraph 2.

4. Defendant craves reference to the laws of South Carolina with respect to the allegations of Paragraph 3.

5. Defendant craves reference to the laws of South Carolina with respect to the allegations of Paragraph 4.

6. Defendant admits the allegations of Paragraph 5.

7. Defendant admits so much of the allegations of Paragraph 6 as alleges that A3 Auto Center is or was a licensed dealer upon information and belief.

8. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph 7 and demands strict proof thereof.

9. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph 8 and demands strict proof thereof.

10. Defendant would deny the allegations of Paragraph 9 and demands strict proof thereof.

11. Defendant craves reference to South Carolina Code 56-15-10 *et seq.* for their terms and conditions.

12. Defendant admits so much of the allegations of Paragraph 11 as alleges that Exhibit A is a copy of the Bond.

13. Defendant denies the allegations of Paragraph 12.

14. Defendant admits that it is the surety under the bond in response to Paragraph 13.

15. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph 14 and demands strict proof thereof.

16. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph 15 and demands strict proof thereof.

17. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph 16 and demands strict proof thereof.

18. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph 17 and demands strict proof thereof.

19. Defendant denies the allegations of Paragraph 18.

20. Defendant denies the allegations of Paragraph 19.

21. Defendant admits the allegations of Paragraph 20.

22. Defendant admits the allegations of Paragraph 21.

23. Defendant reincorporates its responses as set forth herein above in response to the allegations of Paragraph 22.

24. Defendant craves reference to the statute for its terms and conditions which control the bond in response to the allegations of Paragraph 23.

25. Defendant craves reference to the statute for its terms and conditions in response to the allegations of Paragraph 24.

26. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph 25 and therefore denies the same and demands strict proof thereof.

27. Defendant denies the allegations of Paragraph 26.

28. Defendant denies the allegations of Paragraph 27.

BY AND FOR A SECOND DEFENSE

29. The bond is limited to the penal sum of the bond and only for the actual damage suffered as set forth by the statute.

BY AND FOR A THIRD DEFENSE

30. The Plaintiff is not a proper party either individually or asserting by way of subrogation. The Plaintiff is not the owner or the owner's legal representative at the time of the loss in question.

**BY AND FOR A FOURTH DEFENSE AND BY WAY OF A
THIRD-PARTY COMPLAINT**

31. In this action, Plaintiff has asserted that it is acting as subrogees Charleston Auto Auction, Inc.

32. That Charleston Auto Auction, Inc. is the real party in interest in this litigation and has the rights, if any, of the Plaintiff were contingent upon the rights if any of Charleston Auto Auction, Inc.

33. That the bond is a statutory bond controlled by statute and a controversy exists as to whether or not Charleston Auto Auction, Inc. is or ever was the appropriate person to make a claim against the bond, which is the subject matter of this litigation.

34. Defendant prays the Court inquiries into the bond and inquire into ownership of the vehicle, title of the vehicle, and any and determine if Charleston Auto Auction, Inc. qualifies under the facts of this case to seek a claim under the bond.

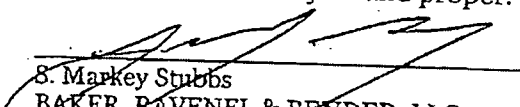
**BY AND FOR A FIFTH DEFENSE AND BY WAY OF A
THIRD-PARTY COMPLAINT AS AGAINST
A3 AUTO CENTER, LLC. AND WYLIE MICKLE**

35. That in applying for this bond, A3 Auto Center, LLC and Wylie Mickle individually did agree to indemnify and hold Defendant harmless of and from any and all claims arising out of the bond including attorneys fees and costs incurred in defending such claims.

36. This Defendant has now been sued as a result of the claim asserted to be as against the bond.

37. Defendant is entitled to judgment against A3 Auto Center, LLC and Wylie Mickle pursuant to contractual indemnity for all costs and fees associated with defense of this action including attorneys fees and further entitled to an award against Wylie Mickle and A3 Auto Center, LLC for any and all damages, if any, the court deems appropriate to be paid under the bond.

WHEREFORE, having answered and brought a Third-Party Complaint, Defendant prays for dismissal of the Complaint, a declaration that Charleston Auto Auction, Inc. is not an appropriate party to maintain a claim under the bond and to award judgment as against Wylie Mickle and A3 Auto Center, LLC as set forth herein above and for such other and further relief as this court deems just and proper.


S. Markey Stubbs
BAKER, RAVENEL & BENDER, LLC
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Telephone: (803) 799-9091
Facsimile: (803) 779-3423
Attorneys for Defendant Western Surety Company,
d/b/a CNA Surety
Our File No. 7753.67

November 13, 2009.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CENTENNIAL CASUALTY CO., INC.,)
)
Plaintiffs,)

CASE NO.: 2009-CP-10-6577

vs.)

**ANSWER OF THIRD-PARTY
DEFENDANT, CHARLESTON AUTO
AUCTION, INC.**

WESTERN SURETY COMPANY, d/b/a)
CNA SURETY,)
)
Defendant.)

WESTERN SURETY COMPANY,)
d/b/a CNA SURETY,)
)
Defendant/Third-Party Plaintiff,)

vs.)

CHARLESTON AUTO AUCTION, A3)
AUTO CENTER, LLC and WYLIE)
MICKLE,)
)
Third-Party Defendants.)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2009 DEC 11 AM 11:32

FILED

Third-Party Defendant Charleston Auto Auction, Inc. ("CAA" or "Defendant") answers the Third-Party Complaint of Western Surety Company d/b/a CNA Surety below. CAA denies each allegation that is not specifically admitted below.

1. In response to the allegations in Paragraph 31 of the Third-Party Complaint, CAA refers to and incorporates the allegations in the Complaint filed by Centennial Casualty Co., Inc. in this matter. To the extent a further response is required, CAA admits the allegations in Paragraph 31 to the extent that they are consistent

with the allegations in Centennial's Complaint. Any further characterizations or allegations in Paragraph 31 are denied, and strict proof is demanded.

2. In response to Paragraph 32 of the Third-Party Complaint, CAA states that the allegations in Paragraph 32 are legal conclusions to which no response is required. To the extent a response is required, CAA refers to the allegations in Centennial's Complaint in this action, and admits the allegations in Paragraph 32 to the extent they are consistent with the allegations in Centennial's Complaint. Any other allegations or characterizations are denied, and strict proof is demanded.
3. In response to Paragraph 33 of the Third-Party Complaint, the allegations in Paragraph 33 are legal conclusions and arguments to which no response is required. To the extent a response is required, CAA admits the allegations to the extent they are consistent with the allegations in Centennial's Complaint. To the extent there are any additional allegations or characterizations in Paragraph 33, Centennial denies those allegations and demands strict proof.
4. In response to Paragraph 34 of the Third-Party Complaint, the allegations in Paragraph 34 are legal conclusions and arguments to which no response is required. To the extent a response is required, CAA admits the allegations to the extent they are consistent with the allegations in Centennial's Complaint. To the extent there are any additional allegations or characterizations in Paragraph 34, Centennial denies those allegations and demands strict proof thereof.

5. In response to Paragraphs 35, 36, 37 and the paragraph beginning "WHEREFORE" of the Third-Party Complaint, CAA states that those allegations are against another party, not CAA, and no response is required from CAA. To the extent a response is required from CAA, CAA denies the allegations in those paragraphs and demands strict proof.

First Affirmative Defense
(Failure to State a Claim)

Third-Party Plaintiff's Complaint fails to state a claim against CAA.

Second Affirmative Defense(s)
(Statute of Limitations; Laches; Waiver)

Third-Party Plaintiff's claims are barred by the doctrines of laches and waiver, and are barred by the applicable statutes of limitations.

Third Affirmative Defense
(Failure to Establish Conditions Precedent)

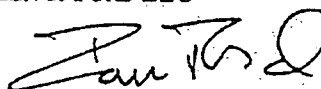
Third-Party Plaintiff has failed to establish conditions precedent as required by applicable law.

CAA denies all allegations not specifically admitted, and demands strict proof thereof. CAA reserves the right to supplement or amend this Answer as information becomes available.

CAA accordingly requests that the Third-Party Plaintiff's Complaint be dismissed, and that CAA be awarded attorneys' fees and costs and such other further relief as the Court may deem appropriate.

Respectfully submitted,

GREEN & FORD LLC



Ian S. Ford

Ian.Ford@greenandford.com

Dwayne M. Green

Dwayne.Green@greenandford.com

602 Rutledge Avenue

Charleston, SC 29403

(P.O. Box 20009, Charleston, SC 29413)

Tele.: (843) 266-2626

Fax: (843) 266-2627

Web: www.greenandford.com

*Attorneys for Third-Party Defendant Charleston
Auto Auction, Inc.*

December 10, 2009
Charleston, South Carolina

09-CP-10-6577

CERTIFICATE OF SERVICE

I, Susan Creel, Legal Assistant at Green & Ford LLC, hereby certify that I have this 10th day of December, 2009, served a copy of the foregoing Answer of Third-Party Defendant, Charleston Auto Auction, Inc. on counsel of record by depositing same in the U.S. Mail, via first class mail with sufficient postage prepaid, at the addressed as follows:

S. Markey Stubbs, Esquire
Baker, Ravenel & Bender, LLP
P.O. Box 8057
Columbia, SC 29202.

Susan Creel
Susan Creel

BY _____

JULIE J ARMSTRONG
CLERK OF COURT

2009 DEC 11 AM 11:32

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Centennial Casualty Co., Inc.)

THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Civil Action No.: 2009-CP-10-6577

Plaintiff,

v.

STIPULATION OF FACTS

Western Surety Company,
d/b/a CNA Surety,

Defendant.

Western Surety Company,
d/b/a CNA Surety,

Defendant/Third-Party
Plaintiff,

v.

Charleston Auto Auction,
A3 Auto Center, LLC. and
Wylie Mickle,

Third-Party Defendants.

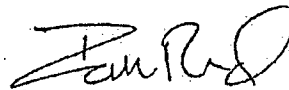
The parties to the above-referenced litigation stipulate as to the following:

1. The Plaintiff Centennial is an insurance company that insures certain transactions that are passed through Charleston Auto Auction, Inc. and maintains this suit as subrogee.
2. Defendant Western Surety is a corporation which issued a bond to A3 Auto Center. This is a thirty thousand and 00/100 (\$30,000.00) Dollar bond controlled by Statute 56-15-320.
3. That A3 Auto Center bought three vehicles through Charleston Auto Auction, Inc. from different dealers as set forth in the Complaint. Two of the checks had

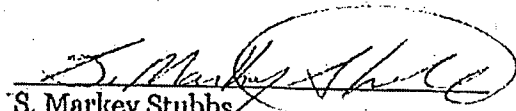
insufficient funds (NSF) and A3 Auto Center stopped payment on the third check. The amount lost due to insufficient funds exceeds the thirty thousand and 00/100 (\$30,000.00) cap on the bond and it is agreed that if the bond of A3 Auction Center is applicable, the maximum recovery is thirty thousand and 00/100 (\$30,000.00).

4. Certain documents outlining the transactions are as attached to the Plaintiff's complaint and contains documents entitled "Title Authorization" executed by both buyer and seller.

In addition to the pleadings, the cross motions previously filed by the parties, attached as Exhibits (a) Centennial Motion filed 7/12/10 (w/exhibits) and (b) Western Surety amended Motion filed 9/27/10, set forth the positions and each party has five (5) days to provide any correction or addition to the cases cited therein.



Ian S. Ford, Esquire
Green, Ford and Wallace
602 Rutledge Avenue
Charleston, South Carolina 29403
Attorneys for Plaintiff Centennial Casualty
Company, Inc.



S. Markey Stubbs
BAKER, RAVENEL & BENDER, LLC
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Telephone: (803) 799-9091
Facsimile: (803) 779-3423
Attorneys for Defendant Western Surety
Company, d/b/a CNA Surety
Our File No. 7753.67

May 22, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CENTENNIAL CASUALTY CO., INC.,)
)
Plaintiffs,)

CASE NO.: 2009-CP-10-6577

vs.)

WESTERN SURETY COMPANY, d/b/a)
CNA SURETY,)
)
Defendant.)

WESTERN SURETY COMPANY,)
d/b/a CNA SURETY,)
)
Defendant/Third-Party Plaintiff,)

vs.)

CHARLESTON AUTO AUCTION, A3)
AUTO CENTER, LLC and WYLIE)
MICKLE,)
)
Third-Party Defendants.)

FILED
2010 JUL 12 PM 4:17
JULIE J. ARMSTRONG
CLERK OF COURT

**MOTION FOR SUMMARY JUDGMENT OF
CENTENNIAL CASUALTY CO., INC. AND CHARLESTON AUTO AUCTION**

Plaintiff Centennial Casualty Co., Inc. ("Centennial") and Third-Party Defendant Charleston Auto Auction, by counsel and pursuant to South Carolina Rule of Civil Procedure 56, bring this Motion for Summary Judgment against Defendant and Third-Party Plaintiff Western Surety Company d/b/a CNA Surety ("CNA Surety"). As set forth below, no genuine issue of material fact exists as to the central issue in this action: that Centennial and/or Charleston Auto Auction are the "legal representative" of the relevant motor vehicle owner, and therefore are the beneficiary of the motor vehicle dealer bond

discussed in South Carolina Code § 56-15-320 *et seq.* The parties agree that the interpretation of "legal representative" is a matter of law. See Ex. 1 (CNA Surety's response to Interrogatory 15: "The Defendant's defense against the Plaintiff is based upon the statutory bond which is interpreted as a matter of law.")

STATEMENT OF MATERIAL FACTS

1. The Dealer Bond Statute

South Carolina's licensing statute for motor vehicle dealers requires a surety bond under S.C. Code § 56-15-320(B) (2009) (the "Dealer Bond Statute"). The Dealer Bond Statute requires motor vehicle wholesalers or dealers to obtain a bond in order to, *inter alia*, indemnify:

for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter.

Id. (emphasis added). "An [automobile] owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter." *Id.*

2. Charleston Auto Auction and A3 Auto Center

Charleston Auto Auction is a wholesale auctioneer that facilitates the sale and purchase of automobiles among dealers. Charleston Auto Auction acts as the agent and legal representative for the dealerships in the transactions; collects and conveys the funds

for the automobiles; and conveys (but does not assume) the title to the automobiles between the parties. Ex. 2 ¶ 3(Affidavit of Laura Taylor).

Before Charleston Auto Auction will facilitate the sale of an automobile to or from a dealer, dealers on both sides of the transaction must enter into a purchase and sale agreement with Charleston Auto Auction, which makes Charleston Auto Auction their legal representative in the transactions. *Id.* ¶ 4.

A3 Auto Center is an automobile dealer in South Carolina. In March 2008, A3 Auto Center purchased three automobiles using Charleston Auto Auction: a 2006 Dodge Magnum; a 2001 Oldsmobile Aurora; and a 2006 Ford F250 (collectively the "Vehicles"). A Plus Auto Sales, Priceless Automotive, and Automotive Rentals, Inc. / ARI Fleet Ltd (collectively the "Selling Dealerships") each sold one of the Vehicles. *Id.*

¶ 5. Both the Selling Dealerships and A3 Auto Center made Charleston Auto Auction the "middle-man" auctioneer, their agent and legal representative pursuant to the Dealer Bond Statute. *Id.* ¶ 6. Pursuant to the Dealer Bond Statute, A3 Auto Center obtained a Bond from CNA Surety under the Dealer Bond Statute. Ex. 7.

A3 Auto Center paid for the Vehicles with worthless checks, causing at least \$35,305.00 in damage to the Selling Dealerships. Ex. 2 ¶¶ 7-8 (Affidavit of Laura Taylor).

3. Charleston Auto Auction and Centennial's Dealer Bond claim

Charleston Auto Auction, as the Selling Dealerships' legal representative, seeks reimbursement under the Bond for A3 Auto Center's worthless checks. Plaintiff Centennial insured Charleston Auto Auction against such losses, and has repaid Charleston Auto Auction on those claims. As the legal subrogee of Charleston Auto

Auction, Centennial has the right to proceed in the place of Charleston Auto Auction in this matter. Centennial has made demands on Defendant for payment under the Bond, which CNA Surety has rejected. See Ex. 8 (denial letter). CNA Surety's sole contention is that neither Centennial nor Charleston Auto Auction is the "owner" or "legal representative" as required by the Dealer Bond Statute. See *id.* This is a pure legal issue of statutory interpretation, and is ripe for the Court to rule on as a matter of law.

LEGAL STANDARD

A motion for summary judgment shall be granted "if the pleading, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Standard Fire Co. v. Marine Contracting & Towing Co.*, 301 S.C. 418, 421, 392 S.E.2d 460, 462 (1990) (quoting SCRCP 56(c)). "Summary judgment can be granted when plain, palpable and indisputable facts exist on which reasonable minds cannot differ." *Byerly v. Conner*, 307 S.C. 441, 445, 415 S.E.2d 796, 799 (1992).

In rendering its decision, the Court will consider only material facts that support or disprove each claim, and must draw all inferences in favor of the non-moving party. However, "the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment." *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994). Furthermore,

the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial.

Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545 (1991)
(quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1990)).

ARGUMENT

1. "Legal Representative" under the Dealer Bond Statute

The only issue is whether Charleston Auto Auction (or Centennial as its subrogee) is a "legal representative" under the Dealer Bond Statute. The South Carolina Supreme Court has stated:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, or the owner's legal representative, with a cause of action against the surety on a bond issued pursuant to that statute.

Mid-State Auto Auction v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996)
(emphasis added).

Each vehicle's Bill of Sale explicitly made Charleston Auto Auction the seller and buyer's "legal representative" by stating: "Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company" Ex. 3 (terms of Purchase Agreement and Bill of Sale (p. 4, para. 2); emphasis added); Ex. 4 (title clerk authorizations); *cf. McNeill v. Electric Storage Battery Co.*, 96 S.E. 134, 135 (S.C. 1918) (agency relationship may be created by contract); *Love v. Gamble*, 316 S.C. 203, 213, 448 S.E.2d 876, 881 (S.C. App. 1994) (citing *McNeill* for the legal rule that "If provisions of contract make it one of agency, it is immaterial by what names the parties call themselves in the contract"); *State ex rel. McLeod v. C & L Corp., Inc.*, 280 S.C. 519, 313 S.E.2d 334 (Ct. App. 1984) (an independent contractor can also be an agent; the two are not mutually exclusive.) The term "legal representative" is commonly understood to mean "one who stands in place of,

and represents the interests of, another. . . ." *Black's Law Dictionary* 896 (6th ed. 1990).

In this matter, there can be no genuine issue of material fact that Charleston Auto Auction (and Centennial as its subrogee¹) was the legal representative under the Dealer Bond Statute for the purposes of the transactions. In addition to its explicit designation as "legal representative" in the relevant contract (Exs. 3-4), Charleston Auto Auction acts as the dealerships' agent in the transactions it facilitates by (among other things) collecting and conveying the funds for the automobiles, and by conveying (but not assuming) the title for the automobiles between the parties. Ex. 2 ¶¶ 3-4, 6 (Affidavit of Laura Taylor). These undisputed facts qualify Charleston Auto Auction and its subrogee as a "legal representative" for purposes of the Dealer Bond Statute.

2. The remaining elements of the Dealer Bond Statute are satisfied.

Once the Court makes a legal ruling on whether Charleston Auto Auction (or Centennial) is a "legal representative" under the Dealer Bond Statute, the remaining elements of the Statute are easily satisfied. Section 56-15-320(B) requires:

- "Loss or damage suffered": There is no genuine dispute of material fact that the worthless checks caused loss or damage. Ex. 2 ¶¶ 7-8 (Affidavit of Laura Taylor).
- "by reason of fraud practiced or fraudulent representation made": The passing of worthless checks, which is undisputed here, constitutes fraud as a matter of law. *Cf* S.C. Code § 34-11-60 (the giving of a check where the maker lacks sufficient funds to pay the check is *prima facie* evidence of

¹ See, e.g., Am. Jur. *Subrog.* § 61 ("Subrogation contemplates full substitution and places the party subrogated in the shoes of the creditor. Generally speaking, the party subrogated acquires all the rights, securities, and remedies the creditor has against the debtor who is primarily liable.") (internal citations omitted).

fraud, except when, *inter alia*, the check is given in full or partial payment of a preexisting debt); Ex. 5 (returned checks). There was no preexisting debt in this case. Ex. 2 ¶ 7 (Affidavit of Laura Taylor).

- “made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer’s or wholesaler’s agent”

These transactions were made in connection with the sale or transfer of the Vehicles. Ex. 2 ¶ 9 (Affidavit of Laura Taylor).

CONCLUSION

For these reasons, no genuine issue of material fact exists and the Court should enter a summary judgment in favor of Centennial Casualty Co., Inc. as subrogee, and Charleston Auto Auction.

Respectfully submitted,

GREEN FORD & WALLACE LLC



Ian S. Ford

ian.ford@greenfordwallace.com

Dwayne M. Green

dwayne.green@greenfordwallace.com

602 Rutledge Ave.

Charleston, SC 29403

(843) 266-2628; (843) 266-2627 (facsimile)

www.greenfordwallace.com

*Attorneys for Centennial Casualty Co., Inc. and
Charleston Auto Auction*

July 8, 2010
Charleston, South Carolina

INDEX TO EXHIBITS

**Motion for Summary Judgment of
Centennial Casualty Co., Inc. and Charleston Auto Auction**

Centennial Casualty Co., Inc. v. Western Surety Co. d/b/a CAN Surety et al.
2009-CP-10-6577

- Exhibit 1: Defendant/Third Party Plaintiff Western Surety Company d/b/a CAN Responses to the Interrogatories of Centennial Casualty Co., Inc.
- Exhibit 2: Affidavit of Laura Taylor
- Exhibit 3: Purchase Agreement and Bill of Sale, with terms
- Exhibit 4: Title clerk authorizations
- Exhibit 5: Bounced checks
- Exhibit 6: Subrogation receipt
- Exhibit 7: Bond
- Exhibit 8: Denial letter by CNA Surety

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
Centennial Casualty Co., Inc.) Civil Action No.: 2009-CP-10-6577

Plaintiff,

v.

DEFENDANT/THIRD-PARTY
PLAINTIFF WESTERN SURETY
COMPANY, D/B/A CNA RESPONSES
TO THE INTERROGATORIES OF
CENTENNIAL CASUALTY CO., INC.

Western Surety Company,
d/b/a CNA Surety,

Defendant.

Western Surety Company,
d/b/a CNA Surety,

Defendant/Third-Party
Plaintiff,

v.

Charleston Auto Auction, A3
Auto Center, LLC. and Wylie
Mickle,

Third-Party Defendants.

TO: IAN S. FORD, ESQUIRE AND DWAYNE M. GREEN, ESQUIRE,
ATTORNEYS FOR PLAINTIFF CENTENNIAL CASUALTY CO., INC.
AND TO PLAINTIFF CENTENNIAL CASUALTY CO., INC., ABOVE-
NAMED:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure,
Defendant/Third-Party Plaintiff Western Surety Company d/b/a CNA Surety hereby
responds to the Interrogatories of Plaintiff in accordance with the rules as follows:

INTERROGATORIES

1. Identify all persons who may be witnesses concerning the facts of this
case, indicate whether or not written or recorded statements have been taken from the

witnesses, and indicate who has possession of such statements.

ANSWER:

a) Agents and employees of Charleston Auto Auction

Agents and employees of Charleston Auto Auction are expected to testify as to the transaction of the business as an auto auction; that they do not take title to the vehicles, that they do not pay taxes on the vehicles, and they do not become the owner of the vehicles that are the subject matter of this litigation. They are further expected to testify as to their relationship with both the buyer and the seller and acting not as legal representative but as an auction house. They are further expected to testify as to their relationship with Centennial Casualty Co., Inc., which upon information and belief insures them for losses the auction house may suffer by guaranteeing payments in order to induce persons or entities to use the auction house. They are further expected to testify as to the procedures, if any, regarding deeds, titling, and handling of the sale of the vehicles.

b) Agents and employees of Plaintiff, Centennial Casualty Co., Inc.

Agents and employees of Centennial Casualty Co., Inc. are expected to testify that they are insurers of Charleston Auto Auction.

**c) Wylie Mickle
A3 Auto Center
312 Longpoint Drive, Suite 100
Columbia, South Carolina 29229**

Upon information and belief, the Plaintiff has alleged that they were involved in transactions which Plaintiff maintains has caused a loss.

d) Actual owners of the vehicles which Plaintiff claims has resulted in a loss.

2. For each person known to Defendant or its counsel to be a witness concerning the facts of this case, set forth either a summary sufficient to inform Plaintiff of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER:

No written or recorded statements.

3. Identify all photographs, plats, sketches, or other prepared documents in Defendant's or its attorneys' possession, custody, or control that relate to any claim or defense in this action.

ANSWER:

Defendant will rely upon all documents exchanged by and between the parties in discovery including any and all documents relating to the transfer of the vehicles which are the subject matter of this litigation. Defendant has only been provided what has been produced by the Plaintiffs as of this date. Defendant is in possession of the bond which is likewise in the possession of the Plaintiff.

4. Identify all insurance companies which may have insurance coverage related to any claim in this action and set forth the number or numbers of policies involved and the amount or amounts of coverage provided in each policy.

ANSWER:

This is a bond claim. There is no insurance coverage related to the

bond claim.

5. Identify all persons who have investigated the events underlying the claims in this action and describe their investigation(s).

ANSWER:

Upon information and belief, Jonathan Bowman on behalf of the Plaintiff performed the investigation in this matter, submitted documents to Western Surety Company which has denied the claim, first through Judith Randall and subsequently through its undersigned counsel.

6. Identify all persons whom Defendant will call as an expert witness at trial, and for each such person:

- (a) State the subject matter on which the expert is expected to testify;
- (b) State the substance of the facts and opinions to which the expert is expected to testify;
- (c) Provide a summary of the grounds for each such opinion; and
- (d) Identify all facts and evidence relied upon by each expert in making such opinion.

ANSWER:

Defendant has not determined a testifying expert as of this date.

7. If Defendant alleges that it has suffered any damages from the events underlying this action, identify and list (a) all such damages, and (b) how Defendant believes those injuries or damages arose, and (c) who Defendant believes is responsible for each of those injuries or damages.

ANSWER:

Defendant has brought a third-party complaint seeking recovery if the bond is found to allow recovery, if the claim is granted as against the person or entities who allegedly caused the loss.

8. Identify any payments made under the Bond at issue in this action (attached to the Complaint).

ANSWER:

Defendant will check, but at this time does not believe any payment has been made under this bond.

9. Identify and set forth in detail all reasons and evidence, including all legal support, for Defendant's claim that Plaintiff is not a "legal representative" under the South Carolina Code § 56-15-10 *et seq.*, including § 56-15-320.

ANSWER:

Defendant craves reference to the statute and the bond. Plaintiff has failed to established that it is a "legal representative." Defendant would object to the remainder of Interrogatory No. 9 on the grounds it seeks to invade the attorney work product privilege.

10. Identify and set forth in detail all reasons and evidence, including all legal support, for Defendant's denial of Paragraph 9 of the Complaint, that "At all relevant times, Charleston Auto Auction was acting as the legal representative of the Selling Dealerships for the sale of the Vehicles."

ANSWER:

Defendant craves reference to the bond and the common law of South Carolina in response to Interrogatory No. 10 and objects to further responding to the same on the grounds it seeks to invade the attorney work product privilege. The Plaintiff as of this date yet to provide any documentation that it is either an owner or legal representative as required in the bond.

11. Identify and set forth in detail all reasons and evidence, including all legal support, for Defendant's denial of Paragraph 12 of the Complaint, that "The Selling Dealerships made Charleston Auto Auction their legal representative for purposes of the sale of the Vehicles and the Bond."

ANSWER:

See response to Interrogatories 9 and 10.

12. Identify and set forth in detail all reasons and evidence, including all legal support, for Defendant's claim that Plaintiff is not the legal subrogee of Charleston Auto Auction.

ANSWER:

See response to Interrogatories 9, 10, and 11.

13. Set forth in detail all reasons and evidence, including all legal support, for Defendant's denial of Paragraph 19 of the Complaint, that "As the legal subrogee of Charleston Auto Auction, Plaintiff has the right to proceed in the place of Charleston Auto Auction in this matter."

ANSWER:

See response to Interrogatories Nos. 9, 10, 11, and 12. Defendant has demanded proof of said allegations.

14. Set forth in detail all reasons and evidence, including all legal support, for Defendant's denial of Paragraph 26 of the Complaint, that "This loss or damage falls under the Bond required by South Carolina Code § 56-15-320 *et seq.*"

ANSWER:


Defendant craves reference to the statute for its terms and conditions and reasserts its responses as set forth herein in response to the

Interrogatories Nos. 9, 10, and 11.

15. To the extent not already identified, identify all documents that support or otherwise relate to Defendant's claims against Plaintiff, or to any of the third-party claims in this action.

ANSWER:

Defendant's claim as it would relate to third-party claimants would have to rely upon documents produced by the Plaintiff. The Defendant's defense against the Plaintiff is based upon the statutory bond which is interpreted as a matter of law.


S. Markey Stubbs
BAKER, RAVENEL & BENDER, LLC
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Telephone: (803) 799-9091
Facsimile: (803) 779-3423
Attorneys for Defendant Western Surety Company,
d/b/a CNA Surety
Our File No. 7753.67

December 22, 2009

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Centennial Casualty Co., Inc.)

Plaintiff,)

v.)

Western Surety Company,
d/b/a CNA Surety,)

Defendant.)

Western Surety Company,
d/b/a CNA Surety,)

Defendant/Third-Party
Plaintiff,)

v.)

Charleston Auto Auction, Ag
Auto Center, LLC. and Wylie
Mickle,)

Third-Party Defendants.)

THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

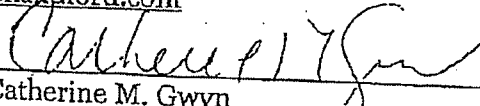
Civil Action No.: 2009-CP-10-6577

CERTIFICATE OF SERVICE

I, Catherine M. Gwyn, secretary to S. Markey Stubbs, of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on this 23rd day of December, 2009, served counsel below with **DEFENDANT/THIRD-PARTY PLAINTIFF'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION** to the following:

Plaintiff's Counsel:

Ian S. Ford, Esquire
Green & Ford, LLC
602 Rutledge Avenue
Charleston, South Carolina 29403
www.greenandford.com


Catherine M. Gwyn

Columbia, South Carolina
December 23, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CENTENNIAL CASUALTY CO., INC.,)
)
Plaintiffs,)

CASE NO.: 2009-CP-10-6577

vs.)

WESTERN SURETY COMPANY, d/b/a)
CNA SURETY,)
)
Defendant.)

WESTERN SURETY COMPANY,)
d/b/a CNA SURETY,)
)
Defendant/Third-Party Plaintiff,)

vs.)

CHARLESTON AUTO AUCTION, A3)
AUTO CENTER, LLC and WYLIE)
MICKLE,)
)
Third-Party Defendants.)

AFFIDAVIT OF LAURA TAYLOR

Laura Taylor, having been duly sworn, deposes and states as follows:

1. I am the general manager of Charleston Auto Auction. I am over the age of twenty-one, am competent to give the testimony herein, and make the statements in this Affidavit from my personal knowledge and in my capacity as general manager of Charleston Auto Auction.

2. I make the statements in this Affidavit in support of the Motion for Summary Judgment of Centennial Casualty Co., Inc. and Charleston Auto Auction.

3. Charleston Auto Auction is an auctioneer that facilitates the sale and purchase of automobiles among dealers. Charleston Auto Auction acts as the agent and legal representative for the dealerships in the transactions it facilitates; collects and conveys the funds for the automobiles; and conveys (but does not assume) the title for the automobiles between the parties.

4. Before Charleston Auto Auction will facilitate the sale of an automobile to or from a motor vehicle dealer, dealers on both sides of the transaction must enter into a purchase and sale agreement with Charleston Auto Auction, which makes Charleston Auto Auction the dealers' legal representative.

5. In March 2008, A3 Auto Center purchased three automobiles: a 2006 Dodge Magnum; a 2001 Oldsmobile Aurora; and a 2006 Ford F250 (collectively the "Vehicles"). Charleston Auto Auction facilitated the sale of those automobiles to A3 Auto Center. A Plus Auto Sales, Priceless Automotive, and Automotive Rentals, Inc. / ARI Fleet Ltd (collectively the "Selling Dealerships") sold the vehicles. True and correct copies of certain business record documents evidencing those transactions are attached as Exhibits 3-5.

6. As is customary in the motor vehicle auction business, the Selling Dealerships made Charleston Auto Auction their agent and legal representative. True and correct copies of certain business record documents evidencing this designation are attached as Exhibits 3-4.

7. The checks used by A3 Auto Center to purchase the Vehicles were returned as having insufficient funds. True and correct copies of those returned checks are attached as Exhibit 5. Those checks were not given in full or partial payment of a preexisting debt.

8. Charleston Auto Auction was damaged in the amount of at least \$35,305 through the fraudulent writing of insufficient checks for the Vehicles.

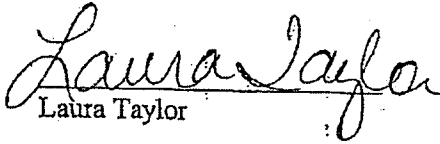
9. Charleston Auto Auction incurred damages and losses in connection with the sale or transfer of motor vehicles by a licensed dealer or wholesaler or the dealer's or wholesaler's agent, as required by South Carolina's Dealer Bond Statute.

10. Centennial Casualty Co., Inc. insured Charleston Auto Auction against the loss, and has paid on the claim. Centennial is the legal subrogee of Charleston Auto Auction, and Charleston Auto Auction assigned its rights in this matter to Centennial. Centennial may stand in Charleston Auto Auction's place in pursuit of payment under the Bond at issue. True and correct copies of certain business record documents showing that status are attached as Exhibit 6.

11. Charleston Auto Auction, through Centennial, has made demands on Western Surety Company for payment under the Bond, which Western Surety Company has refused to pay.

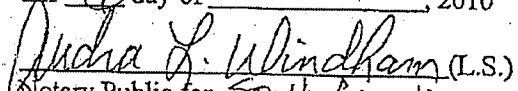
[SIGNATURE APPEARS ON NEXT PAGE]

So sworn under penalty of perjury.


Laura Taylor

SWORN to and subscribed before me

this 6 day of 7, 2010

 (L.S.)

Notary Public for South Carolina

My Commission Expires: March 6th 2018

1st Check

SALE

ON LEASE

4/4/07



"Count On Us"

651 Precast Lane
Moncks Corner S.C. 29461

Ph: 843-719-1900 • Fax: 843-719-1909

www.charlestonautoauction.net

ODOMETER MILEAGE STATEMENT:
Federal law and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

SELLER: A00101
A PLUS AUTO SALES
1507 HIGHWAY 9 EAST
LONGS, SC 29568

843-399-2121 SPECIAL ADDRESS
License: 08285

STATE THAT THE ODOMETER OF THE VEHICLE DESCRIBED TO THE RIGHT NOW READS 92110

TO THE BEST OF MY KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE LISTED TO THE RIGHT AND ABOVE UNLESS ONE OF THE FOLLOWING STATEMENTS IS CHECKED.

- (1) I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS.
- (2) I HEREBY CERTIFY THAT THE ODOMETER READING IS NOT THE ACTUAL MILEAGE.

WARNING: ODOMETER DISCREPANCY
I hereby declare under penalty of perjury that I am the owner of the vehicle and that I am not a dealer or a salesperson. I warrant that the odometer reading is correct to the best of my knowledge.

SPECIAL AUTHORIZED SIGNATURE: *[Signature]* PRINTED NAME OF SELLER: *John P. Stewart*
A PLUS AUTO SALES

BYR# A00193 Bid# 2872
A3 AUTO CENTER
2301 MAIN ST
COLUMBIA, SC 29201

803-779-2030
License: 33544

I warrant below under-lease purchase agreement with such terms of sale as set forth in a copy of the above odometer disclosure statement.

BUYER'S AUTHORIZED SIGNATURE: _____ PRINTED NAME OF TRANSFEREE: **WILL STEWART**

OFFICE COPY

| | | | | |
|-------------------|--------|------------|------------|---------|
| DATE | TIME | AUCTIONEER | CLOCK CLK. | CAR # |
| 2008 | 11:14 | TG | CHARLOTTE | A 0047 |
| VIN | | UNIT # | | STOCK # |
| 1G3GR62H414103216 | | | | |
| YEAR | MAKE | MODEL | BODY | COLOR |
| 2001 | OLDSMO | AURORA | 4 DR | WHT |
| | | | | CYL |
| | | | | 06 |

OPTIONS

SUN ROOF
AUTOMATIC AIR CONDITIONER
POWER STEERING
POWER BRAKES
ELECTRIC WINDOWS
ELECTRIC SEATS
CRUISE CONTROL
TILT WHEEL
COMPACT

HOW SOLD

| | | | | |
|--------------|------|--------|-------|------------|
| Green | Blue | Yellow | Red | White |
| Edge & Drive | *TA* | Custom | As Is | XX Auction |

ANNOUNCED CONDITIONS

10,100.00
81,400.00

Sale Price: 4,300.00
Buyer's Fee: 1,250.00
Total: 5,550.00

Other: \$4520.00
Total: 4,250.00

| | | | |
|--------------------|----------|---------------|--------|
| No. Sale | No. Bids | Acron | Change |
| | | | |
| AUCTION CK # | | DATE | |
| 77026013221450352 | | | |
| BUYER'S SIGNATURE | | CLIENT'S NAME | |
| <i>[Signature]</i> | | | |
| RECEIVED DATE | | RELEASE DATE | |
| | | | |
| VAL. DATE | | DEPOSIT DATE | |
| | | | |

INSPECTION

This inspection will be done for a FEE and will align with all auction lighting systems and arbitration rules. This FEE will be added to the purchase price or in the event of a No-Sale, will be added to the customer's account. Charleston Auto Auction makes no expressed warranties and assumes no liability regarding this inspection. Any vehicle that does not pass inspection will automatically be entered into arbitration.

Dealer Signature: _____

WARRANTY

This warranty will be done for a FEE and covers drive train only (engine, transmission, differential, four-wheel drive, and clutch, if manual). It is valid for a period of 7 days (end day to sale day) or 500 miles (whichever occurs first) and is non-transferable. Vehicle must be 5 years old or newer with less than 100,000 miles. Charleston Auto Auction reserves the right to repair the vehicle or purchase the vehicle, Transportation not included.

Dealer Signature: _____

PLAINTIFF'S EXHIBIT
3
MSJ

Aug-05-08 12:03pm From-

RE-SALE

T-337 P 001/001 F-362

1st Unit



651 Precast Lane
Moncks Corner S.C. 29461

Ph: 843-719-1900 • Fax: 843-719-1909

www.charlestonautoauction.net

ODOMETER MILEAGE STATEMENT
Federal and State law requires that you state the mileage in connection with the sale of ownership. Failure to complete or providing a false statement may result in a fine and/or imprisonment.

SELLER: A00193
A3 AUTO CENTER
2301 MAIN ST
COLUMBIA, SC 29201

803-779-2030
License: 33544

will 7/4/4
12:29

STATE THAT THE ODOMETER OF THE VEHICLE
ADJUSTED TO THE RIGHT NOW READS → 92648

TO THE BEST OF MY KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE
ADJUSTED TO THE RIGHT AND ABOVE UNLESS ONE OF THE FOLLOWING STATEMENTS IS CHECKED.

- (1) I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS.
- (2) I HEREBY CERTIFY THAT THE ODOMETER READING IS NOT THE ACTUAL MILEAGE.

WARNING: ODOMETER DISCREPANCY

Signature below acknowledges this agreement with such terms of sale and receipt of a copy of the above
odometer statement.

SELLER'S AUTHORIZED SIGNATURE: [Signature]
PRINTED NAME OF SELLER: A3 AUTO CENTER

TRANSFEREE: BYRN# T00129 Bid# 2520
TLC AUTO EXCHANGE LLC
1318 WILSON RD
NEWBERRY, SC 29108

803-276-1940
License: 33773

Signature below acknowledges purchase agreement with such terms of sale
and receipt of a copy of the above odometer statement.

TRANSFEREE'S AUTHORIZED SIGNATURE: [Signature]
PRINTED NAME OF TRANSFEREE: TIM COOK

OFFICE COPY

| | | | |
|----------------------------------|------------------|------------------------|----------------|
| DATE/TIME 08/28 2008 12:17 | AUCTIONEER RL | BLOCK CLK CHARLOTTE | CAR # A 006 |
| VIN 163GR62H414103216 | | UNIT # | |
| YEAR 2001 | MAKE OLDSMO | MODEL AURORA | BODY 4 DR |
| COLOR WHT | | STOCK # 21006 | |

OPTIONS

SUN ROOF
AUTOMATIC
AIR CONDITIONER
POWER STEERING
POWER BRAKES
ELECTRIC WINDOWS
ELECTRIC SEATS
CRUISE CONTROL
TILT WHEEL
COMPACT

HOW SOLD

| | | | | |
|--------------|---------------------|--------|-------|-------------------------|
| Green | Blue | Yellow | Red | White |
| Ride & Drive | *TA* The Auction | Cash | As Is | XX Auction Guarantee |

* IF IF IF IF IF IF *

Sold

| |
|-------------------------|
| Sale Price 4,000.00 |
| Buyer's Fee 125.00 |
| Buyer's Draft Fee 10 |
| Other 4135 |
| Total 4,125.00 |

| | | | |
|---------------------|----------|------------------|-------|
| No. Sale | No. Sale | Rev | Order |
| 1170260133274563/20 | | | |
| AUCTION CK # | | | |
| BUYER'S SIGNATURE | | CLIENT'S NAME | |
| RECEIVE DATE | | RELEASE DATE | |
| HANDWRITE F419 | | DEPOSIT DATE dup | |

INSPECTION

This inspection will be done for a FREE and will align with all auction lighting systems and arbitration rules. This FEE will be added to the purchase price or in the event of a No-Sale, will be added to the customer's account. Charleston Auto Auction makes no expressed warranties and assumes no liability regarding this inspection. Any vehicle that does not pass inspection will automatically be entered into arbitration.

Dealer Signature: _____

WARRANTY

This warranty will be done for a FREE and covers drive train only (engine, transmission, differential, four-wheel drive, and clutch, if manual). It is valid for a period of 7 days (sale day to sale day) or 500 miles (whichever occurs first) and is non-transferable. Vehicle must be 5 years old or newer with less than 100,000 miles. Charleston Auto Auction reserves the right to repair the vehicle or purchase the vehicle. Transportation not included.

Dealer Signature: _____

2ND UNIT

ON-LENE



"Count On Us"

651 Precast Lane
Moncks Corner S.C. 29461

Ph: 843-719-1900 • Fax: 843-719-1909

www.charlestonautoauction.net

ODOMETER MILEAGE STATEMENT
Federal law and State law requires that you state the mileage in connection with the sale or ownership. Failure to complete or providing a false statement may result in and/or imprisonment.

PRICELESS-AUTOMOTIVE
1306 SUNSET BLVD
W COLUMBIA, SC 29169

803-739-2770

License #: 22116

STATE THAT THE ODOMETER OF THE VEHICLE
RECORDED TO THE RIGHT NOW READS 81429

TO THE BEST OF MY KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE
RECORDED TO THE RIGHT AND ABOVE, UNLESS ONE OF THE FOLLOWING STATEMENTS IS CHECKED.

- (1) I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING
REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS.
- (2) I HEREBY CERTIFY THAT THE ODOMETER READING IS NOT THE ACTUAL MILEAGE.

WARNING: ODOMETER DISCREPANCY

Signatures below acknowledge purchase agreement with such terms of sale and receipt of a copy of the above
disclosure statement.

SELLER'S AUTHORIZED SIGNATURE

PRINTED NAME OF SELLER

PRICELESS-AUTOMOTIVE

TRANSFERS CENTER

2301 MAIN ST

COLUMBIA, SC 29201

803-779-2030

License #: 33544

Signatures below acknowledge purchase agreement with such terms of sale
and receipt of a copy of the above disclosure statement.

BUYER'S AUTHORIZED SIGNATURE

WILL STEWART

| | | | | |
|--------------------------|---------------|------------------|---------------------|-----------------|
| DATE 2008 | TIME 13:51 | AUCTIONEER BS | BLOCK CLK TERESA | CAR / LB0063 |
| VIN 1FTSW21P76EB49998 | | UNIT # | STOCK # | |
| 2006 | FORD | F250 | SUV 4DR | CBLR |

| OPTIONS | | HOW SOLD | | | | |
|-----------------|------------------|--|--------------|---------|-------|-------------------|
| HARD TOP | AUTOMATIC | Green XX | Blue *TA* | Yellow | Red | White |
| AIR CONDITIONER | POWER STEERING | Fds & Drive | Yes Attached | Car/Don | As Is | Auction Guarantee |
| POWER BRAKES | ELECTRIC WINDOWS | * IF ANNOUNCED CONDITIONS IF * | | | | |
| ELECTRIC SEATS | CRUISE CONTROL | AUCTION POLICY ALL DIESELS AS IS PER SELLER GRN LGHT | | | | |
| TILT WHEEL | COMPACT | | | | | |

| | | | | |
|----------------------------------|----------------------|-------------------------|-----------------|--------------------|
| Sale Price 24,500.00 | Buyer's Fee 55.00 | Buyer's Draft Fee 20 | Other 24,825 | Total 24,795.00 |
| No. Sals | No. Seler | Form. | Outs | |
| TITLE # 17032010097337 | | Auction Clerk | | |
| BUYER'S SIGNATURE [Signature] | | CLERK'S NAME | | |
| RECEIVE DATE | | RELEASE DATE | | |
| MAIL DATE | | DEPOSIT DATE | | |

INSPECTION

This inspection will be done for a FEE and will align with all auction lighting systems and arbitration rules. This FEE will be added to the purchase price or in the event of a No-Sale, will be added to the customer's account. Charleston Auto Auction makes no expressed warranties and assumes no liability regarding this inspection. Any vehicle that does not pass inspection will automatically be entered into arbitration.

Dealer Signature _____

WARRANTY

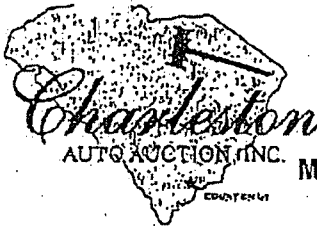
This warranty will be done for a FEE and covers drive train only (engine, transmission, differential, four-wheel drive, and clutch, if manual). It is valid for a period of 7 days (sale day to sale day) or 500 miles (whichever occurs first) and is non-transferable. Vehicle must be 5 years old or newer with less than 100,000 miles. Charleston Auto Auction reserves the right to repair the vehicle or purchase the vehicle. Transportation not included.

Dealer Signature _____

OFFICE COPY

Jun-05-08 10:55am From-

T-754 P 003/011 F-623



"Count On Us"

651 Precast Lane
Moncks Corner S.C. 29461

Ph: 843-719-1900 • Fax: 843-719-1909

www.charlestonautoauction.net

ODOMETER MILEAGE STATEMENT
Federal law and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

SELLER A00057
AUTOMOTIVE RENTALS INC
9000 MIDLANTIC DR
MT. LAUREL, NJ 08054

856-778-1500

License: LEASE

**TITLE THAT THE ODOMETER OF THE VEHICLE
DESCRIBED TO THE RIGHT NOW READS** →

88862

TO THE BEST OF MY KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE DESCRIBED TO THE RIGHT AND ABOVE UNLESS ONE OF THE FOLLOWING STATEMENTS IS CHECKED

- (1) I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE ODOMETER READING REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS.
- (2) I HEREBY CERTIFY THAT THE ODOMETER READING IS NOT THE ACTUAL MILEAGE.

WARNING: ODOMETER DISCREPANDY

Seller's signature below acknowledges sales agreement with each term of sale and receipt of a copy of the above seller's Odometer statement

SELLER'S AUTHORIZED SIGNATURE

PRINTED NAME OF SELLER

BYR# A00193 Bid# 1959
A3 AUTO CENTER
2301 MAIN ST
COLUMBIA, SC 29201

803-779-2030

License: 33544

Buyer's signature below acknowledges purchase agreement with each term of sale and receipt of a copy of the above seller's Odometer statement

BUYER'S AUTHORIZED SIGNATURE

PRINTED NAME OF TRANSFEREE

WILLIAM STEWART

OFFICE COPY

| | | | | |
|--------------|--------------------------|----------------------------|--------------|---------------------------|
| DATE 3/07 | TIME 12:09 | AUCTIONEER VANESSA | BLOCK CLK | CAR # L0215 STOCK # |
| 2008 | VIN 2D4FV47U1EH1E2327 | UNIT # DK74/06027/EH1E2 | | |
| YEAR 2008 | MAKE DODGE | MODEL MAGNUM | BODY 4 DR | COLOR SLV |
| | | | | CYL 06 |

OPTIONS

HOW SOLD

HARD TOP
AUTOMATIC
AIR CONDITIONER
POWER STEERING
POWER BRAKES
ELECTRIC WINDOWS
ELECTRIC SEATS
CRUISE CONTROL
TILT WHEEL
COMPACT

| | | | | |
|--------------|------------------|-----------|-------|----------------------|
| Group | Buy | Yellow | Red | White |
| Ride & Drive | Title Abstracted | Condition | As Is | W.Y. Assn. Guarantee |

ANNOUNCED CONDITIONS

| | | | |
|----------------------------|----------|--------|-------------|
| No Bid | No Offer | Return | Cancel |
| TITLE # 770570157582430 | | | STATE SC |

Sale Price

9,800.00

Buyer's Fee

195.00

Buyer's Draft Fee
1000 Late Fee
Other

\$10,095

2,995.00

| | | |
|---------------|--------------|--------------|
| AUCTION CK # | BUYER CK # | CLERK'S NAME |
| RECEIVED DATE | RELEASE DATE | |
| MAIL DATE | DEPOSIT DATE | dep |

INSPECTION

This inspection will be done for a FEE and will align with all auction lighting systems and arbitration rules. This FEE will be added to the purchase price or in the event of a No-Sale, will be added to the customer's account. Charleston Auto Auction makes no expressed warranties and assumes no liability regarding this inspection. Any vehicle that does not pass inspection will automatically be entered into arbitration.

Dealer Signature

WARRANTY

This warranty will be done for a FEE and covers drive train only (engine, transmission, differential, four-wheel drive, and clutch, if manual). It is valid for a period of 7 days (sale day to sale day) or 500 miles (whichever occurs first) and is non-transferable. Vehicle must be 5 years old or newer with less than 100,000 miles. Charleston Auto Auction reserves the right to repair the vehicle or purchase the vehicle. Transportation not included.

Dealer Signature

PURCHASE AGREEMENT AND BILL OF SALE

Seller and buyer agree to abide by all Auction Company policies, which are incorporated herein, and all decisions of management.

Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company, including transfer of title, however, they agree Auction is merely performing an auction service and Auction Company disclaims all express and implied warranties, including merchantability and fitness, except for the warranty of title described below.

Seller and buyer indemnify and hold Auction Company harmless from any liability, loss, costs, damage or expense, including attorney's fees which arise directly or indirectly from this transaction, including, but not limited to, all matters relating to odometer mileage, odometer mileage disclosure and vehicle history even if Seller and Buyer are not at fault.

Buyer agrees that he has examined the vehicle described on reverse side and accepts it in its present condition; he also agrees that the title and ownership of said vehicle, with all of its equipment, shall remain in Seller, or Auction Company if it has paid Seller, until any check or draft given for the Sale Price of said vehicle or any part of the same, has been honored and paid in full. However, on delivery of this vehicle to Buyer, he shall assume all liability of damage or destruction of the same. Buyer further agrees to honor payment of any check or draft immediately when presented to his bank for payment. And under no circumstances will stop payment for any reason whatsoever unless approved by authorized representative of Auction Company. Then if approved, Buyer is to return vehicle at his expense to place of purchase. Buyer agrees to hold Auction Company harmless for and to indemnify it against any loss, including attorney's fees, as a result of a Buyer's check or draft being dishonored by the bank upon which it is drawn for any reason whatsoever. Should Buyer's check or draft be dishonored, in addition to the above, Buyer shall pay Auction Company interest at a rate of 1.5% per month on any amount outstanding.

Auction Company, in accordance with the below terms and conditions, guarantees to Buyer that the vehicle described is not stolen or mortgaged at the time of this sale.

1. This warranty of title does not cover mere technical defects which can be removed by execution and delivery to buyer or prior owners, or legally required papers without the necessity of any monetary payment.

2. Auction company's liability under its warranty of title of the vehicle, the subject of this transaction, shall never exceed the sale price of said vehicle in this transaction, and the maximum amount of Auction Company's liability under its said warranty shall be reduced by deducting from said sale price 2% thereof on the first of each month following the date of this transaction, and all liability of Auction Company will expire and terminate on the first day of the forty-eighth month after the date of this transaction.

3. Auction Company's warranty of title is expressly limited to Buyer and said warranty is not negotiable or transferable.

4. Auction Company's warranty of title is void ab initio if the purchase price for the vehicle is not paid by Buyer.

5. This warranty of title does not protect against defects in the title known to Buyer whether listed as exceptions to the title on this instrument or not.

6. Whenever any claim is made by any person against the title of said vehicle, whether by suit or otherwise, Buyer shall within five days after becoming aware of said claim notify Auction Company, giving full particulars of the claim, and shall cooperate fully in defending any legal action and in taking any other steps to minimize possible loss.

7. On payment of any claim under this warranty of title, Buyer will execute all necessary papers relinquishing his right to recover against Seller, or others, to Auction Company.

8. Buyer shall not surrender possession of the vehicle, except as required by legal process, to any such claimant, nor shall it voluntarily pay or acknowledge the validity of any such claim, without the prior approval of Auction Company.

9. Time is of the essence of this agreement and any failure on the part of Buyer to notify Auction Company of such claim shall vitiate Auction Company's liability under this warranty of title. Likewise, failure of Buyer to cooperate in defending any such claim shall relieve Auction Company of liability under this warranty of title.

If Auction Company makes a claim as a result of this transaction against Seller, Buyer or their agents or employees, Auction Company shall recover reasonable attorney's fees in an amount not less than 25% of the amount of the claim, regardless of whether suit is filed, including appellate fees and costs.

INSPECTION

This inspection will be done for a FEE and will begin with all auction lighting systems and arbitration rules. This FEE will be added to the purchase price or in the event of a No Sale, will be added to the customer's account. Auction company makes no expressed warranties and assumes no liability regarding this inspection. Any vehicle that does not pass inspection will automatically be entered into arbitration.

Dealer Signature _____

WARRANTY

This warranty will be done for a FEE and covers drive train only (engine, transmission, differential, four-wheel drive, and clutch, if manual). It is valid for a period of 7 days (sale day to sale day) or 500 miles (whichever occurs first) and is non-transferable. Vehicle must be 5 years old or newer with less than 100,000 miles. Auction company reserves the right to repair the vehicle or purchase the vehicle. Transportation not included.

Dealer Signature _____

PURCHASE AGREEMENT AND BILL OF SALE

Seller and buyer agree to abide by all Auction Company policies, which are incorporated herein, and all decisions of management.

Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company, including transfer of title, however, they agree Auction is merely performing an auction service and Auction Company disclaims all express and implied warranties, including merchantability and fitness, except for the warranty of title described below.

Seller and buyer indemnify and hold Auction Company harmless from any liability, loss, costs, damage or expense, including attorney's fees which arise directly or indirectly from this transaction, including, but not limited to, all matters relating to odometer mileage, odometer mileage disclosure and vehicle history even if Seller and Buyer are not at fault.

Buyer agrees that he has examined the vehicle described on reverse side and accepts it in its present condition; he also agrees that the title and ownership of said vehicle, with all of its equipment, shall remain in Seller, or Auction Company if it has paid Seller, until any check or draft given for the Sale Price of said vehicle or any part of the same, has been honored and paid in full. However, on delivery of this vehicle to Buyer, he shall assume all liability of damage or destruction of the same. Buyer further agrees to honor payment of any check or draft immediately when presented to his bank for payment. And under no circumstances will stop payment for any reason whatsoever unless approved by authorized representative of Auction Company. Then if approved, Buyer is to return vehicle at his expense to place of purchase. Buyer agrees to hold Auction Company harmless for and to indemnify it against any loss, including attorney's fees, as a result of a Buyer's check or draft being dishonored by the bank upon which it is drawn for any reason whatsoever. Should Buyer's check or draft be dishonored, in addition to the above, Buyer shall pay Auction Company interest at a rate of 1.5% per month on any amount outstanding.

Auction Company, in accordance with the below terms and conditions, guarantees to Buyer that the vehicle described is not stolen or mortgaged at the time of this sale.

1. This warranty of title does not cover mere technical defects which can be removed by execution and delivery to buyer or prior owners, or legally required papers without the necessity of any monetary payment.

2. Auction company's liability under its warranty of title of the vehicle, the subject of this transaction, shall never exceed the sale price of said vehicle in this transaction, and the maximum amount of Auction Company's liability under its said warranty shall be reduced by deducting from said sale price 2% thereof on the first of each month following the date of this transaction, and all liability of Auction Company will expire and terminate on the first day of the forty-ninth month after the date of this transaction.

3. Auction Company's warranty of title is expressly limited to Buyer and said warranty is not negotiable or transferable.

4. Auction Company's warranty of title is void ab initio if the purchase price for the vehicle is not paid by Buyer.

5. This warranty of title does not protect against defects in the title known to Buyer whether listed as exceptions to the title on this instrument or not.

6. Whenever any claim is made by any person against the title of said vehicle, whether by suit or otherwise, Buyer shall within five days after becoming aware of said claim notify Auction Company, giving full particulars of the claim, and shall cooperate fully in defending any legal action and in taking any other steps to minimize possible loss.

7. On payment of any claim under this warranty of title, Buyer will execute all necessary papers relinquishing his right to recover against Seller, or others, to Auction Company.

8. Buyer shall not surrender possession of the vehicle, except as required by legal process, to any such claimant, nor shall it voluntarily pay or acknowledge the validity of any such claim, without the prior approval of Auction Company.

9. Time is of the essence of this agreement and any failure on the part of Buyer to notify Auction Company of such claim shall vitiate Auction Company's liability under this warranty of title. Likewise, failure of Buyer to cooperate in defending any such claim shall relieve Auction Company of liability under this warranty of title.

If Auction Company makes a claim as a result of this transaction against Seller, Buyer or their agents or employees, Auction Company shall recover reasonable attorney's fees in an amount not less than 25% of the amount of the claim, regardless of whether suit is filed, including appellate fees and costs.

INSPECTION

This inspection will be done for a FEE and will begin with all auction lighting systems and arbitration rules. This FEE will be added to the purchase price or in the event of a No Sale, will be added to the customer's account. Auction company makes no expressed warranties and assumes no liability regarding this inspection. Any vehicle that does not pass inspection will automatically be entered into arbitration.

Dealer Signature _____

WARRANTY

This warranty will be done for a FEE and covers drive train only (engine, transmission, differential, four-wheel drive, and clutch, if manual). It is valid for a period of 7 days (sale day to sale day) or 500 miles (whichever occurs first) and is non-transferable. Vehicle must be 5 years old or newer with less than 100,000 miles. Auction company reserves the right to repair the vehicle or purchase the vehicle. Transportation not included.

Dealer Signature _____

STATE OF SC
COUNTY OF RICHLAND

CAA DEALER CODE: _____

TITLE CLERK AUTHORIZATION

I, WILLIAM A STEWART
(Consignor - owner)

do hereby duly authorize Charleston Auto Auction and/or its employees to act as our Agent to sign all papers and documents that may be necessary pertaining to the sale and subsequent title transfer of the vehicles owned by consignor and consigned to Charleston Auto Auction for sale, including without limitation, any title, title transfer document, reassignment or odometer disclosure statements as required by federal or state law.

In consideration of Charleston Auto Auction's agreement to execute such documents on Consignor's behalf from time to time, Consignor shall indemnify, defend and hold harmless Charleston Auto Auction, its affiliates, subsidiaries, officers, directors, employees, successors and assigns from and against any and all loss, damages, liability, claims, causes of action, and expenses of whatever kind and nature, arising from the execution transfer of ownership of any consigned vehicle or from the execution by Charleston Auto Auction or its employees or agents of any certificate of title, odometer statement, bill of sale or other document necessary to transfer ownership of a consigned vehicle. Notwithstanding the foregoing, nothing contained herein shall be construed to require Consignor to indemnify Charleston Auto Auction from any loss resulting from any gross negligence or willful misconduct of Charleston Auto Auction or its employees or agents.

Consignor further agrees to guarantee and save the authorities of any state requested to process such transfer of title from all responsibility with respect to this Title Clerk Authorization.

A3 AUTO CENTER
(PRINT COMPANY/CONSIGNOR NAME)

[Signature]
(SIGNATURE OF CONSIGNOR)

WILLIAM A STEWART
(PRINT NAME & TITLE OF PERSON SIGNING)

WITNESS MY HAND AND SEAL

Affixed this 13 day of 10, 2006

[Signature]
(NOTARY PUBLIC)

My Commission Expires: Sept 25, 2010

PLAINTIFF'S
EXHIBIT
4

STATE OF S. C.
COUNTY OF Horry

CAA DEALER # _____

TITLE CLERK AUTHORIZATION

I, Gregory J. Norris
(Consignor)

do hereby duly authorize Charleston Auto Auction and/or its employees to act as our Agent to sign all papers and documents that may be necessary pertaining to the sale and subsequent title transfer of the vehicles owned by consignor and consigned to Charleston Auto Auction for sale, including without limitation, any title, title transfer document, reassignment or odometer disclosure statements as required by federal or state law.

In consideration of Charleston Auto Auction's agreement to execute such documents on Consignor's behalf from time to time, Consignor shall indemnify, defend and hold harmless Charleston Auto Auction, its affiliates, subsidiaries, officers, directors, employees, successors and assigns from and against any and all loss, damages, liability, claims, causes of action, and expenses of whatever kind and nature, arising from the execution transfer of ownership of any consigned vehicle or from the execution by Charleston Auto Auction or its employees or agents of any certificate of title, odometer statement, bill of sale or other document necessary to transfer ownership of a consigned vehicle. Notwithstanding the foregoing, nothing contained herein shall be construed to require Consignor to indemnify Charleston Auto Auction from any loss resulting from any gross negligence or willful misconduct of Charleston Auto Auction or its employees or agents.

Consignor further agrees to guarantee and save the authorities of any state requested to process such transfer of title from all responsibility with respect to this Title Clerk Authorization.

A Plus Auto Sales - GREGORY J. NORRIS
(PRINT COMPANY/CONSIGNOR NAME)

[Signature]
(SIGNATURE OF CONSIGNOR)

Gregory J. Norris, Pres.
(PRINT NAME & TITLE OF PERSON SIGNING)

WITNESS MY HAND AND SEAL

affixed this 12 day of 05

Laura Taylor
(NOTARY PUBLIC)

My Commission Expires: Sept 25, 2010

STATE OF _____
COUNTY OF _____

CAA DEALER CODE: 000140

TITLE CLERK AUTHORIZATION

I, R. DANE MAYER SR
(Consignor - owner)

do hereby duly authorize Charleston Auto Auction and/or its employees to act as our Agent to sign all papers and documents that may be necessary pertaining to the sale and subsequent title transfer of the vehicles owned by consignors and consigned to Charleston Auto Auction for sale, including without limitation, any title, title transfer document, reassignment or odometer disclosure statements as required by federal or state law.

In consideration of Charleston Auto Auction's agreement to execute such documents on Consignor's behalf from time to time, Consignor shall indemnify, defend and hold harmless Charleston Auto Auction, its affiliates, subsidiaries, officers, directors, employees, successors and assigns from and against any and all loss, damages, liability, claims, causes of action, and expenses of whatever kind and nature, arising from the execution transfer of ownership of any consigned vehicle or from the execution by Charleston Auto Auction or its employees or agents of any certificate of title, odometer statement, bill of sale or other document necessary to transfer ownership of a consigned vehicle. Notwithstanding the foregoing, nothing contained herein shall be construed to require Consignor to indemnify Charleston Auto Auction from any loss resulting from any gross negligence or willful misconduct of Charleston Auto Auction or its employees or agents.

Consignor further agrees to guarantee and have the authorities of any state requested to process such transfer of title from all responsibility with respect to this Title Clerk Authorization.

R. DANE MAYER SR
(PRINT COMPANY/CONSIGNOR NAME)

Process Automobile

[Signature]
(SIGNATURE OF CONSIGNOR)

R. DANE MAYER SR - President
(PRINT NAME & TITLE OF PERSON SIGNING)

WITNESS MY HAND AND SEAL
Affixed this 13 day of
10, 2006

Laura Jara
(NOTARY PUBLIC)

My Commission Expires: Sept 25, 2010



Automotive Renters International

POWER-OF-ATTORNEY
(AGENCY)
INDEMNITY AND HOLD HARMLESS AGREEMENT

AUTOMOTIVE RENTALS INC. &/OR ARI FLEET LT, (HEREINAFTER CALLED CUSTOMER), WHOSE PRINCIPAL PLACE OF BUSINESS IS AT 9000 MIDLANTIC DRIVE, MT. LAUREL, NJ 08054, APPOINTS CHARLESTON AUTO AUCTION, 651 PRECAST LANE, MONCK'S CORNER, SOUTH CHARLESTON, SOUTH CAROLINA, 29461 AND ALL OF ITS SUBSIDIARY AUCTIONS (HEREINAFTER CALLED AUCTION) AS CUSTOMER'S AGENT WITH FULL AND COMPLETE AUTHORITY TO SIGN ODOMETER DISCLOSURE STATEMENT, TITLE DOCUMENTS AND AUCTION INVOICES, OR OTHER DOCUMENTS AS REQUIRED ON CUSTOMER'S BEHALF WITH REGARD TO ANY AND ALL MOTOR VEHICLES OWNED BY CUSTOMER WHICH ARE SOLD THROUGH THE AUCTION.

CUSTOMER WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS AUCTION FROM ALL LOSSES OR EXPENSE INCURRED BY AUCTION AS A RESULT OF AUCTION ACTING AS CUSTOMER'S AGENT PURSUANT TO THIS AGREEMENT, INCLUDING ALL EXPENSES AND ATTORNEY'S FEES INCURRED BY AUCTION, UNLESS CAUSED BY AUCTION'S OWN NEGLIGENCE.

AGREED TO AND ACCEPTED BY: AUTOMOTIVE RENTALS, INC. &/OR
ARI FLEET LT

SIGNATURE: Howard Graus
PRINT NAME: HOWARD GRAUS
TITLE: ASST MGR.
DATE: 3/20/03

THE ABOVE IS SWORN AND SUBSCRIBED TO ME
THIS 20TH DAY OF MARCH, 2003.

Karin B. Miller
NOTARY PUBLIC
KARIN B. MILLER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires December 22, 2005
MY COMMISSION EXPIRES _____

9000 MIDLANTIC DRIVE, P.O. BOX 780, MT. LAUREL, NJ 08054 TELEPHONE (609) 281-1500 FAX (609) 281-0701

AS AUTO CENTER, LLC
 PH. 803-779-2030
 2301 MAIN ST
 COLUMBIA, SC, 29209

STOP PAYMENT APR 1 2008 3-31-08 1128
07-78812630

Pay to the Order of PALETTA CITIZENS \$ 10100.⁰⁰
 Dollars

For 06 MAGNUM

PALETTA CITIZENS
 FEDERAL CREDIT UNION



1-800-WACHOVIA (822-4684)
Date: Apr 3, 2008 Advice D=379801

WACHOVIA

Items associated with this service will be reflected in your current account analysis statement. The listed items are enclosed. You may obtain payment from the maker.

Acct:

A 193
V# 162327
LB154
317

| SEQ# | ITEM AMOUNT |
|-------|-------------|
| 35824 | 10,100.00 |

NORTH CHARLESTON AUTO AUCTION
ATTN: JANICE CAMPBELL
651 PRECAST LANE
MONCK'S CORNER, SC 29481

1 item charged totaling \$10,100.00

Advice Total \$10,100.00

PLAINTIFF'S
EXHIBIT
5

Aug-06-08 04:00pm From-

T-342 P.001/002 F-368

Att: Janice

A3 AUTO CENTER, LLO
 PH. 803-778-2030
 2301 MAIN ST
 COLUMBIA, SC 29201

1129
 07-7897/2539

4/10/08 Date

29,345

29,345 Dollars

WACHOVIA



1-800-WACHOVIA (922-4684)
 Date: Apr 10, 2008 Advice D=486090

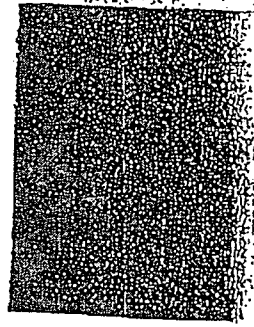
Acct: [Redacted]
 All fees associated with this service will be reflected in your current account analysis statement. The listed items are enclosed. You may obtain payment from the maker.

| SEQ# | ITEM AMOUNT |
|-------|-------------|
| 42500 | 29,346.00 |

NORTH CHARLESTON AUTO AUCTION
 ATTN: JANICE CAMPBELL
 651 PRECAST LANE
 MONCKS CORNER, SC 28461

1 Item charged totaling \$29,345.00

Advice Total \$29,345.00



Jonathan

SUBROGATION RECEIPT

RECEIVED OF Centennial Casualty Company (hereinafter referred to as "Company") the sum of Eight Thousand Nine Hundred Ninety-five and 50/100 DOLLARS, (\$8,995.50) being in full settlement, discharge and release of all claims and demands under the Automobile Auction Dealers Check and Title Policy issued to the undersigned by said "Company", for the check loss sustained by the undersigned arising out of the transaction where

2006 Dodge Magnum VIN 162327

was sold through the auction facilities of the undersigned on 3/7/2008 to A3 Auto Center, Purchaser.

In consideration of such payment, and in conformity with the provisions of said policy, the undersigned hereby assigns and transfers to the said "Company" any and all claims and demands against any person or persons, partnership, association, corporation or estate, arising from or connected with such loss and damage, and hereby subrogates said "Company" in place of the undersigned in respect of any such claims and demands.

The undersigned covenants that no settlement has been made by the undersigned with any such party against whom such claim may lie, and no release has been given to any such party, and that no such settlement will be made, nor release given without the written consent of the said "Company"; and the undersigned covenants and agrees to cooperate fully with the said "Company" to promptly present claim, and, if necessary, to commence, enter into and prosecute suit against any such party through whose legal fault the aforesaid loss was caused, or who may otherwise be responsible therefore, with all due diligence, in the name of the undersigned, or in the name of said "Company", at the election of the "Company". In connection with any such claim or suit, the undersigned does promise and agree to furnish to said "Company" all papers and information in possession of the undersigned, bearing upon or related to such loss, and will further provide any assistance by way of testimony of its personnel or any other aid or cooperation the "Company" may reasonably require in the prosecution of such claim or suit.

In further consideration of said payment and of these premises, the undersigned hereby appoints the managers, agents or attorneys of said "Company" and their successors, severally, the agents and attorneys-in-fact of the undersigned, with irrevocable power, to collect any such claim or claims, and to begin, prosecute, compromise or withdraw in the name of the undersigned, or of the "Company", any and all legal proceedings that the said "Company" may deem necessary to enforce such claim or claims, and to execute in the name of the undersigned, any documents that may be necessary to carry the same into effect for the purposes of this agreement. Any such legal proceedings are to be under the exclusive direction and control of said "Company" and at the expense of said "Company".

Dated at Charleston Auto Auction, this the 11 Day of 6, 2008

Charleston Auto Auction

BY: Laura Taylor

TITLE: Office Manager

WITNESS: [Signature]

PLAINTIFFS EXHIBIT
6

J.B. [unclear]
8/21/08

SUBROGATION RECEIPT

RECEIVED OF Centennial Casualty Company (hereinafter referred to as "Company") the sum of Twenty-two Thousand Six Hundred Ninety-eight and 00/100 DOLLARS, (\$22,698.00) being in full settlement, discharge and release of all claims and demands under the Automobile Auction Dealers Check and Title Policy issued to the undersigned by said "Company", for the check loss sustained by the undersigned arising out of the transaction where

2001 Oldsmobile Aurora VIN# 103216

2006 Ford F250 VIN# B49998

were sold through the auction facilities of the undersigned on 3/14 & 3/28/2008 to A3 Auto Center, Purchaser.

In consideration of such payment, and in conformity with the provisions of said policy, the undersigned hereby assigns and transfers to the said "Company" any and all claims and demands against any person or persons, partnership, association, corporation or estate, arising from or connected with such loss and damage, and hereby subrogates said "Company" in place of the undersigned in respect of any such claims and demands.

The undersigned covenants that no settlement has been made by the undersigned with any such party against whom such claim may lie, and no release has been given to any such party, and that no such settlement will be made, nor release given without the written consent of the said "Company"; and the undersigned covenants and agrees to cooperate fully with the said "Company" to promptly present claim, and, if necessary, to commence, enter into and prosecute suit against any such party through whose legal fault the aforesaid loss was caused, or who may otherwise be responsible therefore, with all due diligence, in the name of the undersigned, or in the name of said "Company", at the election of the "Company". In connection with any such claim or suit, the undersigned does promise and agree to furnish to said "Company" all papers and information in possession of the undersigned, bearing upon or related to such loss, and will further provide any assistance by way of testimony of its personnel or any other aid or cooperation the "Company" may reasonably require in the prosecution of such claim or suit.

In further consideration of said payment and of these premises, the undersigned hereby appoints the managers, agents or attorneys of said "Company" and their successors, severally, the agents and attorneys-in-fact of the undersigned, with irrevocable power, to collect any such claim or claims, and to begin, prosecute, compromise or withdraw in the name of the undersigned, or of the "Company", any and all legal proceedings that the said "Company" may deem necessary to enforce such claim or claims, and to execute in the name of the undersigned, any documents that may be necessary to carry the same into effect for the purposes of this agreement. Any such legal proceedings are to be under the exclusive direction and control of said "Company" and at the expense of said "Company".

Dated at 22, this the
August Day of August, 2008

Charleston Auto Auction

BY:

[Signature]

TITLE:

Office Manager

WITNESS:

[Signature]



South Carolina Department of Motor Vehicles

MOTOR VEHICLE DEALER AND WHOLESALER SURETY BOND

DLA-1B
(Rev. 2/04)

Dealer Number

Please read instructions on reverse side before executing bond.

COPY

BOND NUMBER 22887755 EFFECTIVE DATE JULY 21, 22005 TIME 3:47 P.M.

KNOW ALL MEN BY THESE PRESENTS: that we A B Auto Center LLC

(Firm Name as Licensed)

Doing business at

2301 Main Street, Columbia, SC 29201

as Principal and WESTERN SURETY COMPANY

as Surety

are duly authorized to do business within the State of South Carolina, as Surety, are held and firmly bound unto the people of the State of South Carolina to indemnify any owner of a motor vehicle, or his legal representative, who may be aggrieved by any fraud, fraudulent representation or violation by said Principal, salesman, or representative acting for such Principal within the scope of employment of such salesman or representative, of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, in the amount of Fifteen Thousand Dollars (\$15,000), lawful money of the United States of America, for which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, administrators, successors, and assigns, firmly by these presents; provided that the aggregate liability of the surety under this bond for any and all claims is limited to Fifteen Thousand Dollars (\$15,000) or to the amount of the actual loss incurred, whichever is less.

WHEREAS, the above bounden Principal desires that a motor vehicle dealer's or wholesaler's license be issued and thereafter renewed from time to time by South Carolina Department of Motor Vehicles;

WHEREAS, this bond executed by the said Principal and Surety is filed with the South Carolina Department of Motor Vehicles in compliance with S.C. Code Ann., 56-15-320, to enable said Principal to obtain a license from the Department under the provisions of that law.

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall well and truly observe and strictly and faithfully comply with the aforesaid requirements of law and shall save and keep harmless any owner of a motor vehicle or his legal representative made to him by such Principal, such Principal's salesman or representative acting for the Principal or within the scope of the employment of such salesman or representative, or from any loss or damage suffered by reason of the violation such Principal or any such salesman or representative of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, then this obligation shall be null and void; otherwise it shall remain in full force and effect. It is understood that the injured party need not obtain a judgment against the Principal before making claim against the Surety on this bond.

This bond shall not automatically expire with the license for which it is initially issued, but shall continue indefinitely, from license year to license year, upon timely payment of the premium thereon. Before this bond may be cancelled, a thirty (30) day written notice must be given to the Department of Motor Vehicles. Such cancellation does not affect any liability incurred or accrued prior to cancellation.

A. B. Auto Center LLC

(Principal)

(Surety)

WESTERN SURETY COMPANY

By: _____

(Title)

By: Johanna Mc Masters
Johanna Mc Masters (Title) Attorney-In-Fact

PLAINTIFF'S
EXHIBIT

7

MST

GNA SURETY

101 S. Phillips Avenue, Sioux Falls, SD 57104-6703
P.O. Box 5077, Sioux Falls, SD 57117-5077

Kenneth Randall
Claims Analyst
Telephone 605-330-2605
Facsimile 605-977-7724
Email: kenneth.randall@cnaSurety.com

March 19, 2009

Auction Insurance Agency
ATTN: Jonathan Bowman
2200 Woodcrest Place
Birmingham, AL 35253

RE: Principal: A3 Auto Center
Obligee: South Carolina Department of Motor Vehicles
Surety: Western Surety Company
Bond No.: 22887755
Claim No. 9A-319023 CI

Dear Mr. Bowman:

Western Surety Company issued a statutory motor vehicle dealer bond for A3 Auto Center pursuant to SC ST §56-15-320. The bond provides indemnity to an owner and/or an owner's legal representative for fraud, fraudulent misrepresentation and damages relating to violations of the statute.

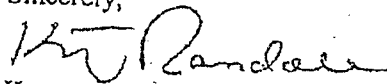
Auction Insurance Agency seeks to recover outstanding debt under the statutory motor vehicle bond. Based on the facts presented with your claims, ADESA Auto Auction and Charleston Auto Auction were not the actual "owners" of the vehicles in question. An owner of a vehicle generally means the party who is the record title owner.

The bond is not there to provide protection to an Auction. The risk of non-payment is part of the business risk associated with the extension of credit. Western Surety Company hereby declines payment based on the attached case law that determines only "an owner or an owner's legal representative" could recover under the bond. *Mid-State Auto Auction v. Altman*, 476 S.E. 2d. 690 (1996).
3rd CIR. NOT CORRECT AS STATED

For these reasons, unfortunately Auction Insurance Agency is not a covered party under the bond. Western Surety Company respectfully declines any further consideration of your claim. This will be our final correspondence regarding this claim.

Western Surety Company reserves all rights and defenses.

Sincerely,



Kenneth Randall
Authorized Representative
Western Surety Company

Enclosure

ROA 69



STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
Centennial Casualty Co., Inc.) Civil Action No.: 2009-CP-10-6577

Plaintiff,

v.

NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT IN
ACCORDANCE WITH RULE 56

Western Surety Company,
d/b/a CNA Surety,

Defendant.

Western Surety Company,
d/b/a CNA Surety,

Defendant/Third-Party
Plaintiff,

v.

Charleston Auto Auction,
A3 Auto Center, LLC. and
Wylie Mickle,

Third-Party Defendants.

FILED

SEP 22 2010

JULIE J. STRONG
CLERK, C.P. & G.S.

TO: IAN S. FORD, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND TO
THE PLAINTIFF, ABOVE-NAMED:

The Defendant, Western Surety Company, brings this Motion for Summary Judgment and in opposition to Plaintiff's Motion for Summary Judgment on the grounds that there is no material fact that the Plaintiff is not allowed to make recovery under the bond. This action involves a motor vehicle bond issued pursuant to 56-15-320. Pursuant to the provisions of the statute, the bond is made available for "loss or damage suffered by an owner of a motor vehicle or his legal representative, by reason of fraud practice or fraudulent representation made in connection with the sale or transfer of the motor vehicle by a licensed dealer or wholesaler." The Plaintiff must fail for

10-16347

numerous reasons as outlined herein below, there is no material fact the Plaintiff is not allowed to recover. In this action, the Plaintiff maintains that they are insurer of an auto auction and by this action by way of subrogation to the auto auction rights. They have alleged that A-3 Auto Center is an automobile dealer in South Carolina. They allege that A-3 Auto Center purchased three automobiles from others using the auto auction service. They allege A-3 Auto Center paid for the vehicles with worthless checks causing damage to the auto auction. It is undisputed that the seller "owner" of the vehicle was paid. Apparently, in the furtherance of the auto auction business, the auto auction guarantees funds to all sellers and Centennial Casualty Insurance Company insures any loss of funds from bad checks on the policy issued to the auto auction.

The statute 56-15-320 provided a penal sum of \$15,000 prior to May 31, 2006 and \$30,000 thereafter:

"... as indemnification for loss and damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representations made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesalers or the dealers or wholesalers' agents acting for the dealer or wholesaler or within the scope of the employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler of its agent of this chapter. The owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealers' or wholesalers' surety on the bond and may recover damages that are provided in this chapter. However, regardless of the number of years a bond remains in effect, the aggregate liability of a surety for claims is limited to \$30,000 on each bond and to the amount of the actual loss incurred...."

- A. **The facts alleged by the Plaintiff do not reflect that the alleged fraudulent acts were made in connection with the statutorily required "the sale or transfer of motor vehicle by a licensed dealer or wholesaler ..."**

In this action, it is alleged that A-3 Auto Center was the purchaser and provided bad checks in the purchasing of the vehicles. In Connecticut Indemnity v. Burdette Chrysler Dodge Corp., 453 S.E. 2d 92 (1994) at 904, the Court in a claim where a dealer Burdette sold vehicles to a dealer purchaser Eagle Auto and received insufficient funds checks held:

Burdette suffered no loss or damage by reason of a 'fraud practiced...In connection with the sale or transfer of a motor vehicle by a licensed dealer' Here, as we have indicated, Burdette, not Eagle Auto sold or transferred the motor vehicles for which the worthless checks were given Eagle Auto only purchased or received the transfer of these motor vehicles.

The court in Burdette remanded for a determination if recovery could be made by "any person" for a violation of the act. This contention has been rejected by our court in Mid-State Auto Auction of Lexington v. Altman, 476 S.E.2d 690 (1996). The allegations complained of are that the fraud was in the purchase not the sale and our courts do not recognize that as recoverable under the act. The plaintiff has put forward no other violation of the title to establish their claim.

B. Centennial Casualty Company, Inc. is not the owner or legal representatives so as to be entitled to recover under the bond.

Even if plaintiff alleges a different violation of the Chapter they are not an "owner or legal representative". In Mid-State Auto Auction of Lexington v. Altman, 476 S.E.2d 690 (1996), the Supreme Court of South Carolina held that the clear legislative intent behind section 56-15-320(b), was to provide "only the owner of a motor vehicle, or the owner's legal representative, with a cause of action against the surety. This was highlighting the fact that the statute in South Carolina distinguishes when they recover under the bond from other statutes that allow any person to recover under bonds. It

should be noted that these are limited bonds and the penal sums and regardless of the number of claims the aggregate amount is limited to the penal sum. It is therefore the Court's logic just as courts in numerous other jurisdictions have held the financiers and others involved in sophisticated deals with each other not sap the funds made available to the ordinary consumer, the owner of the vehicle. See, Price v. Piotrowski, 632 So 2d 1 (La.Ct. App. 1994), Casualty Company v. Acker, 541 NW2d 517 (Iowa 1995), Lawyer Surety Corp. v. Flowers, 66 SW3d 669 (Ark Ct. App. 2002), Southwestern Capital Investment, Inc. v. Pioneer G.E. Ins. Co., 24 P2d 1205 (Colo. Ct. App. 1996). Due to the limited nature of the bond and the wording of the statute, it is clear it was not intended to protect the insurance company of an auto auction.

The auto auction attempts to claim and create paper work to make it the "legal representative" of the owner however the statute is much stronger than some self created agency relationship. The cardinal rule of statutory interpretation is to determine the intent of the legislature. Bass v. Isochem, 365 S.C.454, 459, 617 S.E.2d 369, 377 (Ct. App. 2005). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Miller v. Aiken, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005). The words of a statute must be given their plain and ordinary meaning without resorting to forced construction. Durham v. United CLS. Fin. Corp., 331 S.C. 600, 604, 503 S.E.2d 465, 468 (1998).

The Auto Auction alleges the purchase agreement and bill of sale documents between the auto auction and the sellers and buyers made to facilitate the sale attached the Plaintiff's motion for Summary Judgment create the legal representative status. They allege the buyer and seller each appoint Auto Auction as their agent and legal

representative "for the purpose of processing this transaction through the auction company." The insurance carrier of the auto auction in hopes of attempting to scoop the limited funds made available to owners of motor vehicle attempted to frame language to recover under the bond. The document "bill of sale" using the "legal representative" language, presented was not signed, but even if signed would not be binding. The document that was signed, the authorizations on both the buyer and seller authorized the Auto Auction only "as our agent to sign all papers and documents that may be necessary pertaining to the sale and subsequent title transfer of the vehicle owned by the consigner and consigned to Charleston Auto Auction for sale..." The paperwork makes clear that the auto auction is not the owner or legal representative but an agent merely for execution of paperwork pertaining to the sale. See exhibits 3 and 4 of Plaintiff's exhibits attached to Plaintiff's Motion for Summary Judgment. In addition, statutory law provides under 56-15-510 :

"As used in this article:

- 1) "wholesaler motor vehicle auction" is an entity in the business of providing auction services and wholesale transactions at its established place of business, and which does not buy, sell, or own the motor vehicles it auctions in the ordinary course of its business...."

Further, under statute 56-15-520 the statute provides

"when a transfer of title is made as a result of a transaction at a wholesale motor vehicle auction, the reassignment of title or bill of sale must note the name and address of the wholesale motor vehicle auction. However, the wholesale motor vehicle auction is not deemed to be the owner, seller, transferer or assigner of title of the motor vehicle by reason of its name appearing on the reassignment of title or bill of sale or by reason of its payment or a guarantee of payment to the seller, receipt of payment from the purchaser, or the reservation of a lien or security interest for the purpose of securing payment from a purchaser.

The legal representative of the owner would be the personal representative or conservator a person who stand in the shoes of the Owner. Blacks law dictionary does not define the term "legal representative " but refers the reader to the term "lawful representative" and "personal representative.". Blacks Law Dictionary (8th Edition 2004). A personal representative is the equivalent of an executor or administrator. Plaintiff failed to complete the Black's earlier definition that defines the legal representative with the example "executer."

In this action, the most the Plaintiff can claim to be is the insurance company of an auction house who became the agent merely for furthering the business of the auction house of both the buyer and the seller. The terms "owner or owner's legal representative" must be strictly construed. It is clear from the paperwork and statute the auto auction does not and can not stand in the shoes of the Owner. At best the Auto Auction my claim they were "agents" with respect to processing the sale between two other entities to their auto auction. The terms "agent" and "legal representative" are not synonymous. For example, American Jurisprudence states that the term "legal representative" when used in an insurance policy generally means executor or administrator, but "may have other or secondary meanings – which include anyone who succeeds to the rights of another, such as an heir, next of kin, assignee, trustee, or receiver". 44 A.Am.Jur. 2d Insurance Section 1696: See also, 4 Couch on Ins., Section 59:22 (unless circumstances indicate otherwise, the term "legal representative" must be given its primary legal meaning of executor or administrator. 4 Couch on Ins., Section 59:24.

Another example of a legal representative is bankruptcy trustee. The 4th Circuit Court of Appeals held that a bankruptcy trustee is a bankruptcy estate's "legal

representative" for the purpose of a Rule 60(b) Motion and Fair Rules of Civil Procedure." Conversely, an attorney does not have standing to move under rule 60(b) as a legal representative as they are merely an agent. See W. Steele Erection Company v. U.S. 424 F2d 737, 739 (10th Circuit 1970) (citing Mobay Chem. Co. v. Hudson Foam Plastics Corp. 227 F2d 413, 416 (S.D.N.Y. 1967)). The term legal representative is a term of art that indicates more than simply an agency relationship. By law a legal representative has "... the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to his death." S.C. Code Am. Section 62-3-703(c) recently amended by 2010 Laws Acts 244(H.B. No. 3803). All legal representatives in South Carolina have much authority than the mere limit authority claimed by Auto Auction to have authorization to act as agent to facilitate the sale between the buyer and seller through the auto auction. The terms legal "owner or owner's legal representative" must be strictly construed. The Auction house attempted assertion of the unsigned document using the term "legal representative", in the bill of sale, but a resuscitation without the authority is not binding. See Beasley v. Kerr-McGee Chem. Corp., 273 S.C. 523, 526, 257 S.E.2d 726, 727, (1979), citing Hubbard v. Row, 192 S.C.12, 5 S.E.2d 187 (1939). The statute is to protect the Owner or those in the shoes of the Owner this is a hurdle the Auction House can not surpass by documents or statute.

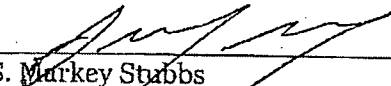
C. To the extent the Auction House is the legal representative of the buyer they are also the legal representative of the seller

The auto auction claim it is legal representative of buyer and seller to the extent they allege that they stand in the shoes of the purchaser, they have alleged the purchaser is the wrongdoer and therefore they stand in the shoes of A-3 Auto Center, they cannot

seek recovery for the acts of their own alleged principle. As stated in the Connecticut Indemnity Co., v. Burdette Chrysler Dodge Corp., 453 S.E2d 9:

"Burdette may not take advantage of its own conduct by taking assignments from innocent purchasers and recovering against Eagle Auto on its bond in action It is a well-founded policy of law that no person may be permitted to acquire right of action from their own unlawful act and when it participates in an unlawful act, cannot recover damages from the consequences of that act ..."

In this action, the facts as alleged by the complainant set forth clearly that the Plaintiff is not making a claim against A-3 Auto Center, LLC as a dealer who has practiced fraud in the sale or transfer of motor vehicle but in fact has alleged that they see A-3 Auto Center LLC was a purchaser and therefore they may not maintain the suit. Even assuming such a suit can be maintained, they are neither the owner or the owner's legal representative so as to maintain this suit. The claims must be dismissed as a matter of law.


S. Markey Stubbs
BAKER, RAVENEL & BENDER, LLC
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Telephone: (803) 799-9091
Facsimile: (803) 779-3423
Attorneys for Defendant Western Surety
Company, d/b/a CNA Surety
Our File No. 7753.72

September 17, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CENTENNIAL CASUALTY CO., INC.,)
)
Plaintiffs,)

CASE NO.: 2009-CP-10-6577

vs.)

WESTERN SURETY COMPANY, d/b/a)
CNA SURETY,)
)
Defendant.)

WESTERN SURETY COMPANY,)
d/b/a CNA SURETY,)
)
Defendant/Third-Party Plaintiff,)

vs.)

CHARLESTON AUTO AUCTION, A3)
AUTO CENTER, LLC and WYLIE)
MICKLE,)
)
Third-Party Defendants.)

**SUPPLEMENTAL MEMORANDUM OF AUTHORITIES OF
CENTENNIAL CASUALTY CO., INC. AND CHARLESTON AUTO AUCTION**

Pursuant to the parties' Stipulation of Facts dated May 22, 2012, Plaintiff Centennial Casualty Co., Inc. ("Centennial") and Third-Party Defendant Charleston Auto Auction, by counsel, submit the following additional citations. This Supplemental Memorandum is provided in support of the previous briefing, including Centennial's Motion for Summary Judgment docketed July 12, 2010 ("Centennial's Motion").

1. **Western Surety's primary case has been overruled.**

Western Surety's brief twice quotes, and relies in large part on, the case *Connecticut Indemnity v. Burdette Chrysler Dodge Corp.*, 317 S.C. 406, 453 S.E.2d 902 (1994). That case has been overruled by *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996), which held that:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, or the owner's legal representative, with a cause of action against the surety on a bond issued pursuant to that statute.

(emphasis added). Moreover, the *Burdette's* ruling was based on the understanding that the purchaser had not established "fraud" under the statute. In this action, there is no serious dispute that "fraud" was committed by (1) the two NSF checks (which were not for preexisting debts), and (2) the stop-payment placed on the third check.

2. **Western Surety's arguments contradict the clear language of the statute.**

Western Surety's brief argues that sophisticated dealers are not entitled to make claims under the bond. There is no evidence or South Carolina law to support this argument. Instead, the clear language of the statute is that the bond is to compensate for:

[L]oss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler

S.C. Code § 56-15-320(B) (emphasis added). The statute's clear language makes no mention of limiting the bond only to certain types of owners or certain types of legal representatives.

Similarly, Western Surety's brief argues that the statute limits "legal representative[s]" to executors or administrators, or perhaps to bankruptcy trustees. There is no such indication in the statute's clear language, and no law has been cited

providing such an interpretation of this statute. Instead, South Carolina law is clear that “When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” *Anderson v. South Carolina Election Commission*, ___ S.C. ___, 2012 WL 1530655, at *2 (S.C. Sup. Ct., May 1, 2012).

Moreover, Western Surety’s argument makes no sense under the statute. A cardinal rule of statutory construction is that a statute must receive a practical and fair interpretation, which harmonizes its subject matter. *See Jones v. State Farm Mut. Auto Ins. Co.*, 364 S.C. 222, 232, 612 S.E.2d 719, 724 (Ct. App. 2005). For example, the statute requires Charleston Auto Auction to obtain a bond. *See* S.C. Code § 56-15-320; Ex. A. Charleston Auto Auction only does business with sophisticated dealers. Individual consumers cannot purchase automobiles through a dealer auto auction. *See* Centennial Motion at Ex. 2 (Aff. of Laura Taylor). If Western Surety’s argument were correct, the bonds that Charleston Auto Auction and similar auctions must purchase under the statute would be worthless, because nobody could legally make a claim on those bonds. The only reasonable conclusion is that dealers and auction companies are permitted to make claims on the bond.

3. Western Surety’s arguments contradict the collateral source rule.

Western Surety’s brief argues that persons who are insured should not be able to make claims under the bond because they “sap the funds made available to the ordinary consumer.” As discussed above, this argument makes no sense when one understands that the statute requires entities such as auto auctions (who do no business with ordinary consumers) to buy these bonds. Additionally, there is no language in the statute that

limits claims to "ordinary consumers." Finally, there is no language in the statute that punishes entities that also choose to purchase insurance for such losses. The principle of the collateral source rule should be applied here: a wrongdoer should not be relieved of responsibility simply because the injured party received compensation from another source. *Cf. Covington v. George*, 359 S.C. 100, 103, 597 S.E.2d 142, 144 (2004) (summarizing collateral source rule). Here, Western Surety should not be relieved of its obligation under the bond simply because a "legal representative" under the statute also chose to purchase insurance.

4. **Western's Surety's citation of § 56-15-520 is misplaced.**

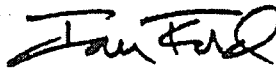
Western Surety's brief cites S.C. Code § 56-15-520 for the proposition that the statute does not make a motor vehicle auction the owner of a vehicle. That section's primary purpose is to prevent, among other things, motor vehicle auctions from being assessed property tax for owning the automobiles it auctions. It has no bearing on the interpretation of whether the auction is able to make a claim under the bond.

CONCLUSION

For these reasons, judgment should be granted in favor of Centennial Casualty Company and Charleston Auto Auction.

Respectfully submitted,

GREEN FORD & WALLACE LLC



Ian S. Ford

ian.ford@greenfordwallace.com

602 Rutledge Ave.

Charleston, SC 29403

(843) 266-2628; (843) 266-2627 (facsimile)

www.greenfordwallace.com

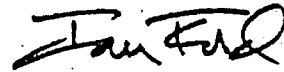
*Attorneys for Centennial Casualty Co., Inc. and
Charleston Auto Auction*

May 29, 2012
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies that on May 29, 2012, this document was served by
electronic mail and first class mail on all attorneys of record.

GREEN FORD & WALLACE LLC





Western Surety Company

CONTINUATION CERTIFICATE

Western Surety Company hereby continues in force Bond No. 69217391 briefly described as MOTOR VEHICLE DEALER

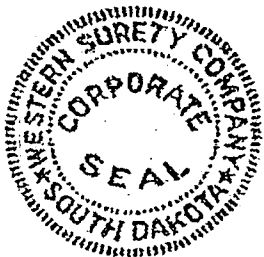
for CHARLESTON AUTO AUCTION, INC.

_____, as Principal,

in the sum of \$ FIFTEEN THOUSAND AND NO/100 Dollars, for the term beginning August 31, 2007, and ending August 31, 2010, subject to all the covenants and conditions of the original bond referred to above.

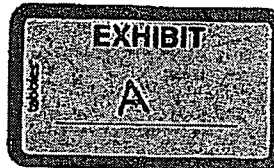
This continuation is issued upon the express condition that the liability of Western Surety Company under said Bond and this and all continuations thereof shall not be cumulative and shall in no event exceed the total sum above written.

Dated this 27 day of August, 2007.



WESTERN SURETY COMPANY

By Paul T. Bruflat
Paul T. Bruflat, Senior Vice President



THIS "Continuation Certificate" MUST BE FILED WITH THE ABOVE BOND.

Western Surety Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That WESTERN SURETY COMPANY, a corporation organized and existing under the laws of the State of South Dakota, and authorized and licensed to do business in the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the United States of America, does hereby make, constitute and appoint

Paul T. Bruflat of Sioux Falls
State of South Dakota, its regularly elected Senior Vice President
as Attorney-in-Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, the following bond:

One MOTOR VEHICLE DEALER

bond with bond number 69217391

for CHARLESTON AUTO AUCTION, INC.
as Principal in the penalty amount not to exceed: \$15,000.00

Western Surety Company further certifies that the following is a true and exact copy of Section 7 of the by-laws of Western Surety Company duly adopted and now in force, to-wit:

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys-in-Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

In Witness Whereof, the said WESTERN SURETY COMPANY has caused these presents to be executed by its Senior Vice President with the corporate seal affixed this 27 day of August, 2007.

ATTEST

L. Nelson
L. Nelson, Assistant Secretary

WESTERN SURETY COMPANY
By Paul T. Bruflat
Paul T. Bruflat, Senior Vice President



STATE OF SOUTH DAKOTA }
COUNTY OF MINNEHAHA } ss

On this 27 day of August, 2007, before me, a Notary Public, personally appeared Paul T. Bruflat and L. Nelson

who, being by me duly sworn, acknowledged that they signed the above Power of Attorney as Senior Vice President and Assistant Secretary, respectively, of the said WESTERN SURETY COMPANY, and acknowledged said instrument to be the voluntary act and deed of said Corporation.

D. KRELL
NOTARY PUBLIC
SOUTH DAKOTA

My Commission Expires November 30, 2012

D. Krell
Notary Public

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CENTENNIAL CASUALTY CO., INC.,)

CASE NO.: 2009-CP-10-6577

Plaintiffs,)

vs.)

WESTERN SURETY COMPANY, d/b/a)
CNA SURETY,)

Defendant.)

WESTERN SURETY COMPANY,)
d/b/a CNA SURETY,)

Defendant/Third-Party Plaintiff,)

vs.)

CHARLESTON AUTO AUCTION, A3)
AUTO CENTER, LLC and WYLIE)
MICKLE,)

Third-Party Defendants.)

ORDER

The parties have submitted a stipulation of facts, legal memoranda, and exhibits in this action, and agree that the case is ripe for a decision. The Court has reviewed the briefs, exhibits, and relevant law, and rules as follows.

FINDINGS OF FACT

1. The Dealer Bond Statute

South Carolina's licensing statute for motor vehicle dealers requires a surety bond under S.C. Code § 56-15-320(B) (the "Dealer Bond Statute"). The Dealer Bond Statute

requires motor vehicle wholesalers or dealers to obtain a bond in order to, *inter alia*, indemnify:

for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter.

Id. (emphasis added). The statute allows that "An [automobile] owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter." *Id.*

2. Charleston Auto Auction and A3 Auto Center

The undisputed evidence shows that Charleston Auto Auction is a wholesale auctioneer that facilitates the sale and purchase of automobiles among dealers. Centennial and Charleston Auto Auction have submitted an affidavit and accompanying documents indicating that Charleston Auto Auction acts as the agent and legal representative for the dealerships in the transactions; collects and conveys the funds for the automobiles; and conveys (but does not assume) the title to the automobiles between the parties. *See* Pl. Mot. at Ex. 2 ¶ 3 (Affidavit of Laura Taylor).

That evidence shows that, before Charleston Auto Auction will facilitate the sale of an automobile to or from a dealer, dealers on both sides of the transaction must enter into a purchase and sale agreement with Charleston Auto Auction, which makes Charleston Auto Auction their legal representative in the transactions. *Id.* ¶ 4.

The undisputed evidence also shows that A3 Auto Center is an automobile dealer in South Carolina. In March 2008, A3 Auto Center purchased three automobiles using Charleston Auto Auction: a 2006 Dodge Magnum; a 2001 Oldsmobile Aurora; and a 2006 Ford F250 (collectively the "Vehicles"). A Plus Auto Sales, Priceless Automotive, and Automotive Rentals, Inc./ARI Fleet Ltd (collectively the "Selling Dealerships") each sold one of the Vehicles. *Id.* ¶ 5. Both the Selling Dealerships and A3 Auto Center made Charleston Auto Auction the "middle-man" auctioneer. *Id.* ¶ 6. Pursuant to the Dealer Bond Statute, A3 Auto Center obtained a Bond from CNA Surety under the Dealer Bond Statute. *See* Pl. Mot at Ex. 7.

A3 Auto Center paid for the Vehicles with worthless checks, causing at least \$35,305.00 in damage to the Selling Dealerships. Pl. Mot. at Ex. 2 ¶¶ 7-8 (Affidavit of Laura Taylor).

3. Charleston Auto Auction and Centennial's Dealer Bond claim

Charleston Auto Auction, as the Selling Dealerships' legal representative, seeks reimbursement under the Bond for A3 Auto Center's worthless checks. The undisputed evidence shows that Plaintiff Centennial insured Charleston Auto Auction against such losses, and has repaid Charleston Auto Auction on those claims. As the legal subrogee of Charleston Auto Auction, Centennial has the right to proceed in the place of Charleston Auto Auction in this matter. Centennial has made demands on Defendant for payment under the Bond, which CNA Surety has rejected. *See* Pl. Mot. at Ex. 8 (denial letter). CNA Surety's primary argument is that neither Centennial nor Charleston Auto Auction is the "owner" or "legal representative" as required by the Dealer Bond Statute. *See id.*

This is a legal issue of statutory interpretation, and is ripe for the Court to rule on as a matter of law.

CONCLUSIONS OF LAW

1. "Legal Representative" under the Dealer Bond Statute

The primary issue is whether Charleston Auto Auction (or Centennial as its subrogee) is a "legal representative" under the Dealer Bond Statute. The South Carolina Supreme Court has stated:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, or the owner's legal representative, with a cause of action against the surety on a bond issued pursuant to that statute.

Mid-State Auto Auction v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (emphasis added).

Each vehicle's Bill of Sale made Charleston Auto Auction the seller and buyer's "legal representative" by stating: "Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company . . ." Pl. Mot. at Ex. 3 (terms of Purchase Agreement and Bill of Sale (p. 4, para. 2); emphasis added); Pl. Mot. at Ex. 4 (title clerk authorizations); *cf. McNeill v. Electric Storage Battery Co.*, 96 S.E. 134, 135 (S.C. 1918) (agency relationship may be created by contract); *Love v. Gamble*, 316 S.C. 203, 213, 448 S.E.2d 876, 881 (S.C. App. 1994) (citing *McNeill* for the legal rule that "If provisions of contract make it one of agency, it is immaterial by what names the parties call themselves in the contract"); *State ex rel. McLeod v. C & L Corp., Inc.*, 280 S.C. 519, 313 S.E.2d 334 (Ct. App. 1984) (an independent contractor can also be an agent; the two are not mutually exclusive.) The term "legal representative" is commonly understood to mean "one who

stands in place of, and represents the interests of, another. . . ." *Black's Law Dictionary* 896 (6th ed. 1990).

In this matter, the Court finds that Charleston Auto Auction (and Centennial as its subrogee¹) was the legal representative under the Dealer Bond Statute for the purposes of the transactions. In addition to its explicit designation as "legal representative" in the relevant contract (*see* Pl. Mot. at Exs. 3-4), Charleston Auto Auction acts as the dealerships' representative and agent in the transactions it facilitates by (among other things) collecting and conveying the funds for the automobiles, and by conveying (but not assuming) the title for the automobiles between the parties. Pl. Mot. at Ex. 2 ¶¶ 3-4, 6 (Affidavit of Laura Taylor). These facts qualify Charleston Auto Auction and its subrogee as a "legal representative" for purposes of the Dealer Bond Statute.

CNA Surety's primary argument is that the Dealer Bond Statute provision does not apply when fraud is committed in the purchase of a motor vehicle. *See* Def. Mot. at pp. 2-3. This argument is based on a sentence in *Connecticut Indemnity Co. v. Burdette Chrysler Dodge Corp.*, 317 S.C. 406, 453 S.E.2d 902 (Ct. App. 1994), *overruled*, *Mid-State Auto*, 476 S.C. 406, 453 S.E.2d 902. As an initial matter, *Burdette* has been overruled by the South Carolina Supreme Court. *See id.* Moreover, the sentence referred to by CNA Surety appears in the context of a discussion of the definition of "fraud"; in that discussion in *Burdette*, the Court of Appeals indicated there was no fraud because there was a pre-existing debt. *See id.* at 409, 453 S.E.2d at 904. In contrast, here there is no dispute that there is no pre-existing debt. *See* Pl. Mot. at Ex. 2 ¶ 7. Additionally, the

¹ *See, e.g.*, Am. Jur. *Subrog.* § 61 ("Subrogation contemplates full substitution and places the party subrogated in the shoes of the creditor. Generally speaking, the party subrogated acquires all the rights, securities, and remedies the creditor has against the debtor who is primarily liable.") (internal citations omitted).

Dealer Bond Statute's language is broad and includes fraud "in connection with the sale or transfer" of a motor vehicle, as well as "loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter." S.C. Code § 56-15-320. This language is expansive and covers situation such as this one, where a motor vehicle is being sold or transferred. There is no indication in the Dealer Bond Statute that the South Carolina Legislature intended to only cover fraud by the seller—but meant to exclude fraud by the purchaser—when it enacted the language in the Dealer Bond Statute.

CNA Surety also argues that "legal representative" under the Dealer Bond Statute does not include Charleston Auto Auction. The Dealer Bond Statute does not define the term "legal representative," and outside legal research shows that the definition of "legal representative" can vary depending on the context. As discussed above, the undisputed evidence here shows that both the selling and purchasing dealers made Charleston Auto Auction their "agent and legal representative." *See* Pl. Mot. at Ex. 3. In opposition, CNA Surety points to the use of "legal representatives" in other contexts, such as probate and bankruptcy. *See* Def. Mot. at pp. 5-6 (citing probate code § 62-3-703 and federal bankruptcy law). However, those examples are specific to specialized areas of law, and in those contexts the "legal representative" generally is created by a statutory definition for purposes of the specific probate or bankruptcy proceedings. There is no indication that the South Carolina Legislature intended to incorporate other statutes' specific definitions (such as probate or bankruptcy) into the Dealer Bond Statute. The undisputed evidence here shows that a purpose of the auction company is to transact business for the buying and selling dealers. *See* Pl. Mot. at Ex. 2 ¶¶ 3-6 (describing function of auction

company in these transactions).

Finally, CNA Surety points to a definition of “wholesaler motor vehicle auction” and statutory provisions stating that the auction is not the owner of a vehicle simply because it transfers the title. *See* Def. Mot. at p. 5. Those definitions and provisions do not prohibit an auction company from being the “legal representative” of a vehicle’s owner, which is the crux of the argument here. Moreover, a primary purpose of those cited provisions is to prevent an auction company from being the owner of a motor vehicle for purposes of property taxation. There is no indication that those provisions affect whether an auction company is a “legal representative” under § 56-15-320.

2. The remaining elements of the Dealer Bond Statute are satisfied.

The remaining elements of the Statute also are satisfied. Section 56-15-320(B) requires:

- “*Loss or damage suffered*”: The evidence establishes that the worthless checks caused loss or damage. *See* Pl. Mot. at Ex. 2 ¶¶ 7-8 (Affidavit of Laura Taylor).
- “*by reason of fraud practiced or fraudulent representation made*”: The passing of worthless checks, which is undisputed here, constitutes fraud as a matter of law. *Cf.* S.C. Code § 34-11-60 (the giving of a check where the maker lacks sufficient funds to pay the check is *prima facie* evidence of fraud, except when, *inter alia*, the check is given in full or partial payment of a preexisting debt); *see also* Pl. Mot. at Ex. 5 (returned checks). There was no preexisting debt in this case. Pl. Mot. at Ex. 2 ¶ 7 (Affidavit of Laura Taylor).

- *“made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer’s or wholesaler’s agent”*

These transactions were made in connection with the sale or transfer of the Vehicles. See Pl. Mot. at Ex. 2 ¶ 9 (Affidavit of Laura Taylor).

CONCLUSION

For these reasons, the Court finds in favor of Plaintiff Centennial Casualty Company and Charleston Auto Auction. Judgment is granted in favor of Plaintiff on the full amount of the bond at issue.

So ordered this ____ day of June, 2012.

Judge Nicholson, Circuit Court
Judge

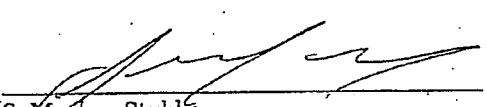
Charleston, South Carolina

| | | |
|-------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA |) | THE COURT OF COMMON PLEAS |
| COUNTY OF CHARLESTON |) | FOR THE NINTH JUDICIAL CIRCUIT |
| Centennial Casualty Co., Inc. |) | Civil Action No.: 2009-CP-10-6577 |
| Plaintiff, |) | |
| v. |) | |
| |) | DEFENDANT/THIRD-PARTY |
| |) | — PLAINTIFF WESTERN SURETY |
| |) | COMPANY, D/B/A CNA |
| |) | MEMORANDUM IN OPPOSITION TO |
| |) | PLAINTIFF'S SECOND BRIEF |
| Western Surety Company, |) | |
| d/b/a CNA Surety, |) | |
| Defendant. |) | |
| Western Surety Company, |) | |
| d/b/a CNA Surety, |) | |
| Defendant/Third-Party |) | |
| Plaintiff, |) | |
| v. |) | |
| Charleston Auto Auction, A3 |) | |
| Auto Center, LLC. and Wylie |) | |
| Mickle, |) | |
| Third-Party Defendants. |) | |

The Plaintiff asserts that Connecticut Indemnity v. Burdett Chrysler Dodge Corp., 453 S.E.2d 902 (1994) has been overruled. It notes that it was overruled by the Mid-State Auto Auction of Lexington, Inc. v. Altman, 476 S.E.2d 690 (1996). Plaintiff fails to note that it was overruled only to the extent that it mandated that any person could recover under the bond. The remainder of the case was not overruled. I was the attorney for prevailing party in Mid-State Auto Auction of Lexington, Inc. v. Altman,

The language of the statutes are clear. And the statutes clearly set forth that only an owner may recover under the bond and that a Auto Auction by statute cannot be an owner. The fact that they attach contractual obligations within the transfer of vehicles through the Auto Auction does not make them an owner of the vehicle or the legal representative such as a conservator or other person who is actually standing in the shoes of the owner.

Plaintiff for the first time argues the collateral source rule, which has no application to this case. The Defendant is not arguing that the Plaintiff does not have a claim against whoever allegedly gave them a bad check. Defendant is alleging that the Auction is not the appropriate person to claim under the bond. The claimant in this case is an insurance carrier who will provides a policy to protect business operations of an Auto Auction which is not the owner, nor can it be the owner or the owner's legal representative standing in the shoes of the owner by statute. By statute the Auto Auction is prohibited from being an owner. The Plaintiff likewise fails to acknowledge that that the fact that it is not liable for taxes or any other indicia of ownership is why it is not the owner for the purposes of the bond. For the reasons as set forth in the original brief, Defendant Western Surety prays for judgment in its favor and has attached a proposed Order.



S. Markey Stubbs
BAKER, RAVENEL & BENDER, LLC
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Telephone: (803) 799-9091
Facsimile: (803) 779-3423
Attorneys for Defendant Western Surety Company,
d/b/a CNA Surety
Our File No. 7753.67

May 29, 2012

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
Centennial Casualty Co., Inc.) Civil Action No.: 2009-CP-10-6577

Plaintiff,

v.

CERTIFICATE OF SERVICE

Western Surety Company,
d/b/a CNA Surety,

Defendant.

Western Surety Company,
d/b/a CNA Surety,

Defendant/Third-Party
Plaintiff,

v.

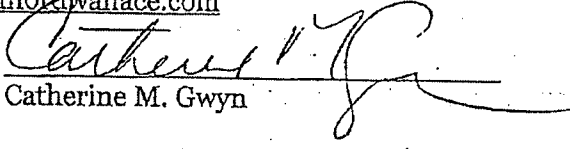
Charleston Auto Auction, A3
Auto Center, LLC. and Wylie
Mickle,

Third-Party Defendants.

I, Catherine M. Gwyn, secretary to S. Markey Stubbs, of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on this 29th day of May, 2012, served counsel below with **DEFENDANT WESTERN SURETY COMPANY'S MEMORANDUM IN OPPOSITION TO Plaintiff's SECOND BRIEF, AND AN PROPOSED ORDER** to the following via electronic transmission:

Plaintiff's Counsel:

Ian S. Ford, Esquire
Green Ford and Wallace
602 Rutledge Avenue
Charleston, South Carolina 29403
www.greenfordwallace.com


Catherine M. Gwyn

Columbia, South Carolina
May 29, 2012

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
Centennial Casualty Co., Inc.) Civil Action No.: 2009-CP-10-6577

Plaintiff,

v.

ORDER IN FAVOR OF WESTERN SURETY

Western Surety Company,
d/b/a CNA Surety,

Defendant.

Western Surety Company,
d/b/a CNA Surety,

Defendant/Third-Party
Plaintiff,

v.

Charleston Auto Auction, A3
Auto Center, LLC. and Wylie
Mickle,

Third-Party Defendants.

This matter comes before the court upon Briefs and Stipulation of Facts. This action involves a motor vehicle bond issued pursuant to 56-15-320. Pursuant to the provisions of the bond it is made available for "loss or damage suffered by an owner of a motor vehicle or his legal representative, by reason of fraud, practice, or fraudulent representations made in connection with the sale or transfer of the motor vehicle by a licensed dealer or wholesaler." In this action, the Plaintiff does not maintain that they are the owner of the motor vehicle, and in fact Statute 56-15-510 provides that a wholesale motor vehicle auction, by definition does not buy, sell, or own the motor

vehicles it auctions. The statute further provides pursuant to 56-15-520 that when a transfer of title is made, the transfer of title must note the name of the wholesaler auction, however, the wholesale motor vehicle auction is not deemed to be the owner, seller, transferor or signer of title of the motor vehicle. Clearly the statute provides that the Auto Auction is not the owner of the motor vehicle. The bond does provide remedy for the owners of the motor vehicle or their legal representatives. Their legal representatives would be guardians, conservators, and in some cases holders of a power of attorney. The power of attorney, however, would have to make the person stand fully in the shoes of the owner such as a durable power of attorney or a power of attorney issued providing a person with any and all rights and liabilities of the owner in handling the transaction. The Auto Auction in this action relies upon a power of attorney which is given to both the buyer and sellers at the auction authorizing the Auction to be the "legal representative" of both parties for a limited purpose, that purpose is identified "for the purpose of processing the transaction through the auction company." This limited purpose is insufficient to make an auction house the legal representative of the owner. In addition, under the plaintiff's provision, they would be legal representative of both the owner and the seller and therefore have caused the very fraud, i.e. bad check, which they are complaining of. In this action, the bond was not intended to protect auto auctions in the furtherance of their business.

The Court further notes that under Connecticut Indemnity v. Burdette Chrysler Dodge Corp., 453 S.E.2d 902 (1994) which was repealed to the extent the case could be interpreted as allowing any person to recover under the bond is still a valid law. Having reached determination that the auto auction is not the "owner" or legal representative" pursuant to the statute, the court does not reach the remaining arguments of Western

Surety as to the power of attorney issued to the alleged defrauding agency, any issue as to whether or not there was actual fraud in the transaction, and whether the transaction itself assuming the Auto Auction/Centennial Casualty Company, Inc. were the owner would give rise to a claim under the bond.

Judge J. C. Nicholson, Jr.

May 29, 2012

7753.72

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
 COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
)
 Centennial Casualty Co., Inc.) Civil Action No.: 2009-CP-10-6577
)
)
) Plaintiff,)
)
)

v.)
)
) **NOTICE OF MOTION AND MOTION**
) **FOR SUMMARY JUDGMENT**
) **RULE 56 (SCRCP)**
) **AMENDED**
)

Western Surety Company,)
 d/b/a CNA Surety,)
)
) Defendant.)
)
) Western Surety Company,)
) d/b/a CNA Surety,)
)
) Defendant/Third-Party)
) Plaintiff,)
)

v.)
)
) Charleston Auto Auction,)
) A3 Auto Center, LLC. and)
) Wylie Mickle,)
)
) Third-Party Defendants.)

FILED
 2010 SEP 27 PM 2:27
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

TO: IAN S. FORD, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND TO THE PLAINTIFF, ABOVE-NAMED:

The Defendant, Western Surety Company, brings this Motion for Summary Judgment and in opposition to Plaintiff's Motion for Summary Judgment on the grounds that there is no material fact that the Plaintiff is not allowed to make recovery under the bond. This action involves a motor vehicle bond issued pursuant to 56-15-320. Pursuant to the provisions of the statute, the bond is made available for "loss or damage suffered by an owner of a motor vehicle or his legal representative, by reason of fraud practice or fraudulent representation made in connection with the sale or transfer

of the motor vehicle by a licensed dealer or wholesaler." The Plaintiff must fail for numerous reasons as outlined herein below, there is no material fact the Plaintiff is not allowed to recover. In this action, the Plaintiff maintains that they are insurer of an auto auction and by this action by way of subrogation to the auto auction rights. They have alleged that A-3 Auto Center is an automobile dealer in South Carolina. They allege that A-3 Auto Center purchased three automobiles from others using the auto auction service. They allege A-3 Auto Center paid for the vehicles with worthless checks causing damage to the auto auction. It is undisputed that the seller "owner" of the vehicle was paid. Apparently, in the furtherance of the auto auction business, the auto auction guarantees funds to all sellers and Centennial Casualty Insurance Company insures any loss of funds from bad checks on the policy issued to the auto auction.

The statute 56-15-320 provided a penal sum of \$15,000 prior to May 31, 2006 and \$30,000 thereafter:

"... as indemnification for loss and damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representations made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesalers or the dealers or wholesalers' agents acting for the dealer or wholesaler or within the scope of the employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler of its agent of this chapter. The owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealers' or wholesalers' surety on the bond and may recover damages that are provided in this chapter. However, regardless of the number of years a bond remains in effect, the aggregate liability of a surety for claims is limited to \$30,000 on each bond and to the amount of the actual loss incurred...."

- A. The facts alleged by the Plaintiff do not reflect that the alleged fraudulent acts were made in connection with the statutorily required "the sale or transfer of motor vehicle by a licensed dealer or wholesaler ..."

In this action, it is alleged that A-3 Auto Center was the purchaser and provided bad checks in the purchasing of the vehicles. In Connecticut Indemnity v. Burdette Chrysler Dodge Corp., 453 S.E. 2d 902 (1994) at 904, overruled s to who could maintain a claim by Mid-State Auto Auction of Lexington v. Altman, 476 S.E.2d 690 (1996) the Court in a claim were a dealer Burdette sold vehicles to a dealer- purchaser Eagle Auto and received insufficient funds checks held:

Burdette suffered no loss or damage by reason of a 'fraud practiced...In connection with the sale or transfer of a motor vehicle by a licensed dealer' Here, as we have indicated, Burdette, not Eagle Auto sold or transferred the motor vehicles for which the worthless checks were given Eagle Auto only purchased or received the transfer of these motor vehicles.

The court in Burdette remanded for a determination if recovery could be made by "any person" for a violation of the act. The contention that anyone may bring a claim has been rejected by our court in Mid-State Auto Auction of Lexington v. Altman, 476 S.E.2d 690 (1996). The allegations complained of are that the fraud was in the purchase not the sale and our courts do not recognize that as recoverable under the act. The plaintiff has put forward no other violation of the title to establish their claim.

B. Centennial Casualty Company, Inc. is not the owner or legal representatives so as to be entitled to recover under the bond.

Even if plaintiff alleges a different violation of the Chapter they are not an "owner or legal representative". In Mid-State Auto Auction of Lexington v. Altman, 476 S.E.2d 690 (1996), the Supreme Court of South Carolina held that the clear legislative intent behind section 56-15-320(b), was to provide "only the owner of a motor vehicle, or the owner's legal representative, with a cause of action against the surety. This was highlighting the fact that the statute in South Carolina distinguishes when they recover

under the bond from other statutes that allow any person to recover under bonds. It should be noted that these are limited bonds and the penal sums and regardless of the number of claims the aggregate amount is limited to the penal sum. It is therefore the Court's logic just as courts in numerous other jurisdictions have held the financiers and others involved in sophisticated deals with each other not sap the funds made available to the ordinary consumer, the owner of the vehicle. See, Price v. Piotrowski, 632 So 2d 1 (La.Ct. App. 1994), Casualty Company v. Acker, 541 NW2d 517 (Iowa 1995), Lawyer Surety Corp. v. Flowers, 66 SW3d 669 (Ark Ct. App. 2002), Southwestern Capital Investment, Inc. v. Pioneer G.E. Ins. Co., 24 P2d 1205 (Colo. Ct. App. 1996). Due to the limited nature of the bond and the wording of the statute, it is clear it was not intended to protect the insurance company of an auto auction.

The auto auction attempts to claim and create paper work to make it the "legal representative" of the owner however the statute is much stronger than some self created agency relationship. The cardinal rule of statutory interpretation is to determine the intent of the legislature. Bass v. Isochem, 365 S.C.454, 459, 617 S.E.2d 369, 377 (Ct. App. 2005). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Miller v. Aiken, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005). The words of a statute must be given their plain and ordinary meaning without resorting to forced construction. Durham v. United CLS. Fin. Corp., 331 S.C. 600, 604, 503 S.E.2d 465, 468 (1998).

The Auto Auction alleges the purchase agreement and bill of sale documents between the auto auction and the sellers and buyers made to facilitate the sale attached the Plaintiff's motion for Summary Judgment create the legal representative status.

They allege the buyer and seller each appoint Auto Auction as their agent and legal representative "for the purpose of processing this transaction through the auction company." The insurance carrier of the auto auction in hopes of attempting to scoop the limited funds made available to owners of motor vehicle attempted to frame language to recover under the bond. The document "bill of sale" using the "legal representative" language, presented was not signed, but even if signed would not be binding. The document that was signed, the authorizations on both the buyer and seller authorized the Auto Auction only "as our agent to sign all papers and documents that may be necessary pertaining to the sale and subsequent title transfer of the vehicle owned by the consigner and consigned to Charleston Auto Auction for sale..." The paperwork makes clear that the auto auction is not the owner or legal representative but an agent merely for execution of paperwork pertaining to the sale. See exhibits 3 and 4 of Plaintiff's exhibits attached to Plaintiff's Motion for Summary Judgment. In addition, statutory law provides under 56-15-510 :

"As used in this article:

- 1) "wholesaler motor vehicle auction" is an entity in the business of providing auction services and wholesale transactions at its established place of business, and which does not buy, sell, or own the motor vehicles it auctions in the ordinary course of its business...."

Further, under statute 56-15-520 the statute provides

"when a transfer of title is made as a result of a transaction at a wholesale motor vehicle auction, the reassignment of title or bill of sale must note the name and address of the wholesale motor vehicle auction. However, the wholesale motor vehicle auction is not deemed to be the owner, seller, transferer or assigner of title of the motor vehicle by reason of its name appearing on the reassignment of title or bill of sale or by reason of its payment or a guarantee of payment to the seller, receipt of payment from the purchaser, or the reservation of a lien or security interest for the purpose of securing payment from a purchaser.

The legal representative of the owner would be the personal representative or conservator a person who stand in the shoes of the Owner. Blacks law dictionary does not define the term "legal representative " but refers the reader to the term "lawful representative" and "personal representative.". Blacks Law Dictionary (8th Edition 2004). A personal representative is the equivalent of an executor or administrator. Plaintiff failed to complete the Black's earlier definition that defines the legal representative with the example "executer."

In this action, the most the Plaintiff can claim to be is the insurance company of an auction house who became the agent merely for furthering the business of the auction house of both the buyer and the seller. The terms "owner or owner's legal representative" must be strictly construed. It is clear from the paperwork and statute the auto auction does not and can not stand in the shoes of the Owner. At best the Auto Auction my claim they were "agents" with respect to processing the sale between two other entities to their auto auction. The terms "agent" and "legal representative" are not synonymous. For example, American Jurisprudence states that the term "legal representative" when used in an insurance policy generally means executor or administrator, but "may have other or secondary meanings – which include anyone who succeeds to the rights of another, such as an heir, next of kin, assignee, trustee, or receiver". 44 A Am.Jur. 2d Insurance Section 1696: See also, 4 Couch on Ins., Section 59:22 (unless circumstances indicate otherwise, the term "legal representative" must be given its primary legal meaning of executor or administrator. 4 Couch on Ins., Section 59:24.

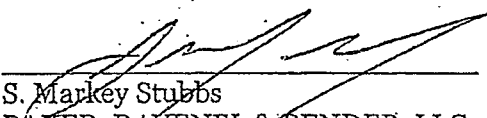
Another example of a legal representative is bankruptcy trustee. The 4th Circuit Court of Appeals held that a bankruptcy trustee is a bankruptcy estate's "legal representative" for the purpose of a Rule 60(b) Motion and Fair Rules of Civil Procedure." Conversely, an attorney does not have standing to move under rule 60(b) as a legal representative as they are merely an agent. See W. Steele Erection Company v. U.S., 424 F2d 737, 739 (10th Circuit 1970) (citing Mobay Chem. Co. v. Hudson Foam Plastics Corp., 227 F2d 413, 416 (S.D.N.Y. 1967)). The term legal representative is a term of art that indicates more than simply an agency relationship. By law a legal representative has "... the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to his death." S.C. Code Am. Section 62-3-703(c) recently amended by 2010 Laws Acts 244(H.B. No. 3803). All legal representatives in South Carolina have much authority than the mere limit authority claimed by Auto Auction to have authorization to act as agent to facilitate the sale between the buyer and seller through the auto auction. The terms legal "owner or owner's legal representative" must be strictly construed. The Auction house attempted assertion of the unsigned document using the term "legal representative", in the bill of sale, but a resuscitation without the authority is not binding. See Beasley v. Kerr-McGee Chem. Corp., 273 S.C. 523, 526, 257 S.E.2d 726, 727, (1979), citing Hubbard v. Row, 192 S.C.12, 5 S.E.2d 187 (1939). The statute is to protect the Owner or those in the shoes of the Owner this is a hurdle the Auction House can not surpass by documents or statute.

C. To the extent the Auction House is the legal representative of the buyer they are also the legal representative of the seller.

The auto auction claim it is legal representative of buyer and seller to the extent they allege that they stand in the shoes of the purchaser, they have alleged the purchaser is the wrongdoer and therefore they stand in the shoes of A-3 Auto Center, they cannot seek recovery for the acts of their own alleged principle. As stated in the Connecticut Indemnity Co., v. Burdette Chrysler Dodge Corp., 453 S.E2d 99²!

"Burdette may not take advantage of its own conduct by taking assignments from innocent purchasers and recovering against Eagle Auto on its bond in action It is a well-founded policy of law that no person may be permitted to acquire right of action from their own unlawful act and when it participates in an unlawful act, cannot recover damages from the consequences of that act ..."

In this action, the facts as alleged by the complainant set forth clearly that the Plaintiff is not making a claim against A-3 Auto Center, LLC as a dealer who has practiced fraud in the sale or transfer of motor vehicle but in fact has alleged that they see A-3 Auto Center LLC was a purchaser and therefore they may not maintain the suit. Even assuming such a suit can be maintained, they are neither the owner nor the owner's legal representative so as to maintain this suit. The claims must be dismissed as a matter of law.


S. Markey Stubbs
BAKER, RAVENEL & BENDER, LLC
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Telephone: (803) 799-9091
Facsimile: (803) 779-3423
Attorneys for Defendant Western Surety
Company, d/b/a CNA Surety
Our File No. 7753-72

September 17, 2010

| | | |
|--------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA |) | THE COURT OF COMMON PLEAS |
| COUNTY OF CHARLESTON |) | FOR THE NINTH JUDICIAL CIRCUIT |
| Centennial Casualty Co., Inc. |) | Civil Action No.: 2009-CP-10-6577 |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | ORDER IN FAVOR OF WESTERN |
| |) | SURETY |
| |) | |
| |) | |
| Western Surety Company, |) | |
| d/b/a CNA Surety, |) | |
| |) | |
| Defendant. |) | |
| <u>Western Surety Company,</u> |) | |
| <u>d/b/a CNA Surety,</u> |) | |
| |) | |
| Defendant/Third-Party |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| Charleston Auto Auction, A3 |) | |
| Auto Center, LLC. and Wylie |) | |
| Mickle, |) | |
| |) | |
| <u>Third-Party Defendants.</u> |) | |

This matter comes before the court upon Briefs and Stipulation of Facts. This action involves a motor vehicle bond issued pursuant to 56-15-320. Pursuant to the provisions of the bond it is made available for "loss or damage suffered by an owner of a motor vehicle or his legal representative, by reason of fraud, practice, or fraudulent representations made in connection with the sale or transfer of the motor vehicle by a licensed dealer or wholesaler." In this action, the Plaintiff does not maintain that they are the owner of the motor vehicle, and in fact Statute 56-15-510 provides that a wholesale motor vehicle auction, by definition does not buy, sell, or own the motor

vehicles it auctions. The statute further provides pursuant to 56-15-520 that when a transfer of title is made, the transfer of title must note the name of the wholesaler auction, however, the wholesale motor vehicle auction is not deemed to be the owner, seller, transferor or signer of title of the motor vehicle. Clearly the statute provides that the Auto Auction is not the owner of the motor vehicle. The bond does provide remedy for the owners of the motor vehicle or their legal representatives. Their legal representatives would be guardians, conservators, and in some cases holders of a power of attorney. The power of attorney, however, would have to make the person stand fully in the shoes of the owner such as a durable power of attorney or a power of attorney issued providing a person with any and all rights and liabilities of the owner in handling the transaction. The Auto Auction in this action relies upon a power of attorney which is given to both the buyer and sellers at the auction authorizing the Auction to be the "legal representative" of both parties for a limited purpose, that purpose is identified "for the purpose of processing the transaction through the auction company." This limited purpose is insufficient to make an auction house the legal representative of the owner. In addition, under the plaintiff's provision, they would be legal representative of both the owner and the seller and therefore have caused the very fraud, i.e. bad check, which they are complaining of. In this action, the bond was not intended to protect auto auctions in the furtherance of their business.

The Court further notes that under Connecticut Indemnity v. Burdette Chrysler Dodge Corp., 453 S.E.2d 902 (1994) which was repealed to the extent the case could be interpreted as allowing any person to recover under the bond is still a valid law. Having reached determination that the auto auction is not the "owner" or legal representative" pursuant to the statute, the court does not reach the remaining arguments of Western

Surety as to the power of attorney issued to the alleged defrauding agency, any issue as to whether or not there was actual fraud in the transaction, and whether the transaction itself assuming the Auto Auction/Centennial Casualty Company, Inc. were the owner would give rise to a claim under the bond.

Judge J. C. Nicholson, Jr.

May 29, 2012

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT

Centennial Casualty Co., Inc.) Civil Action No.: 2009-CP-10-6577

Plaintiff,)

v.)

NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION
59(e) SCRCP

Western Surety Company,
d/b/a CNA Surety,)

Defendant.)

Western Surety Company,
d/b/a CNA Surety,)

Defendant/Third-Party
Plaintiff,)

v.)

Charleston Auto Auction,
A3 Auto Center, LLC. and
Wylie Mickle,)

Third-Party Defendants.

The Defendant, Western Surety Company d/b/a CNA Surety hereby moves the Court to reconsider its order by the Honorable judge Nicholson, filed March 4, 2013 notice of which was received by the Defendant March 11th, 2013.

The South Carolina licensing statute for motor vehicle dealers requires a surety bond under S.C. Code Section 56-15-320(b). The statute requires a motor vehicle wholesaler dealer to obtain a bond:

“For loss or damage suffered by an owner of a motor vehicle, or his legal representative ...

The Court erred in finding that the Auction Company is entitled to recovery under the bond. The purchasers in this action undisputedly received their vehicles. The

[Handwritten Signature]

2013 MAR 25 PM 2:43
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

sellers undisputedly received their cars. The Court failed to address the fact that the only injury was to the insurance company of an auction company . The Auction Company made a business decision to guarantee funds and obtained insurance for that guarantee. The Auction Company did not stand in the shoes of the buyer or seller but as the court found, they merely "facilitates sales" it is not a party to the sale not as a purchaser, seller, owner.

The court omitted from the quoted affidavit on page one of the order Laura Taylor item #3 the word agent or legal representative to "facilitate" sales. The Auction Company does not assert nor does their agreement provide it is the legal representative or agent to enter into sales, make sales or make purchases. The affidavit was not a stipulated fact. The agreements were stipulated the affidavit is only an opinion. The court failed to look at the language of the agreement and the totality of stipulated facts to reach its conclusion. The unsigned Purchase Agreement and Bill of Sale provides in boiler plate in part :

"Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through the Auction Company, including processing of title, however, they agree Auction is merely performing a service and Auction Company disclaims all express and implied warranties..."

The agreement goes on to require Seller and Buyer to indemnify the Auction Company. The court is in error in finding that this agency meets the statutorily required " owner or his legal representative" who has suffered a loss. The document was stipulated and is attached the affidavit is just a persons opinion of the language of the document.

The statutes are not intended to protect auto auctions from failing to require cashier's checks or otherwise securing funds when they make transfers of the vehicles.

As noted by the Court, The Auto Auction claims to be the agent for both the buyer and the seller for the purpose, "of processing this transaction through Auction Company." The Auction Company does not stand in the shoes as the owner or claim to have the rights of the owner of a motor vehicle, nor as noted above has the owner suffered any loss or damage. The owner has received his vehicle. The prior owner has received his funds. The Auto Auction is standing solely in the shoes of The Auto Auction. The result of the court's interpretation would deplete the limited fund provided to protect the buying public, whether they are buying themselves or buying through a legal representative such as a conservator.

The Court was in error at page 3 of the Order when it found that the bad checks caused \$35,305.00 in loss to the seller Dealership. The undisputed facts are the loss was to the Auction Company not the dealership. The Auction house made a business decision to guarantee checks and not require certified or secure funds. This decision was for the Action Company not as anyone's agent but a business enhancer for the Auction Company.

The Court erred in finding that Connecticut Indemity Co. v. Burdette Chrysler Dodge Corp. 317 S.C. 406, 453 S.E.2d 902 (Ct. App. 1994), was entirely overruled by Mid-State Auto-Auction v. Altman, 324 S.C. 65, 476 S.E.2d 690 (1996) in that it was only overruled to the extent it held that "any person" could recover under the bond as set forth in footnote 4. The case was specifically overruled only to the extent that it mandated that any person could recover under the bond. The remainder of the case was not overruled. The Court, therefore, erred in disregarding Connecticut Indemity Co. v. Chrysler Dodge Corp. . In Burdette court noted

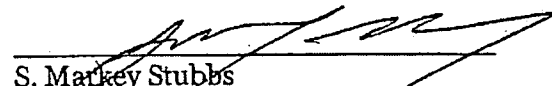
"Burdette suffered no loss or damage by reason of a "fraud practice" ...in connection with the sale and transfer of a motor vehicle by a licensed dealer." Here as we have indicated, Burdette not Eagle Auto sold or transferred the motor vehicles for which the worthless checks were given to Eagle Auto only purchased or received the transfer of these motor vehicles.

This portion of the case has not been overruled. In this case, it is clear that neither the purchaser nor the seller suffered a loss, only the auction house's insurer's company, suffered a loss.

The Court erred in finding that Statute 56-15-510 fails to support the Bonding Company's position. The statute specifically holds that the wholesale motor vehicle auction is not the owner, seller, transferor or assignor of the title of the motor vehicle by reason of its name appearing in the paperwork. To be an owner, an auction would actually have to buy vehicles, not merely have vehicles transferred through its organization. The Court erred in disregarding the statute and in finding the statute did not prohibit the auto auction from being an owner.

The Court erred in not addressing the fact that the Auction Company maintains it is the agent and legal representative for both the buyer and the seller. In doing so, they are claiming that they stand in the shoes of both parties. As noted in Connecticut Indemnity Co. v. Burdette, they cannot recover since they stand in the shoes of the party that gave the bad checks. If they are, in fact, the agent for both such that they could be an owner, they cannot recover for their own wrongful conduct. Defendant therefore requests the Court reconsider its findings and find that in the facts of this case, that the bond is not applicable to this action as there has not been a loss or damage suffered by an owner of a motor vehicle or his legal representative as intended by the statute.

The defendant therefore requests the court to reverse its findings and execute the proposed order of the Defendant.



S. Markey Stubbs
BAKER, RAVENEL & BENDER, LLC
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Telephone: (803) 799-9091
Facsimile: (803) 779-3423
Attorneys for Defendant Western Surety
Company, d/b/a CNA Surety
Our File No. 7753.67

March 21, 2013

PURCHASE AGREEMENT AND BILL OF SALE

Seller and buyer agree to abide by all Auction Company policies, which are incorporated herein, and all decisions of management.

Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company, including transfer of title, however, they agree Auction is merely performing an auction service and Auction Company disclaims all express and implied warranties, including merchantability and fitness, except for the warranty of title described below.

Seller and buyer indemnify and hold Auction Company harmless from any liability, loss, cost, damage or expense, including attorney's fees which arise directly or indirectly from this transaction, including, but not limited to, all matters relating to odometer mileage, odometer mileage disclosure and vehicle history even if Seller and Buyer are not at fault.

Buyer agrees that he has examined the vehicle described on reverse side and accepts it in its present condition; he also agrees that the title and ownership of said vehicle, with all of its equipment, shall remain in Seller, or Auction Company if it has paid Seller, until any check or draft given for the Sale Price of said vehicle or any part of the same, has been honored and paid in full. However, on delivery of this vehicle to Buyer, he shall assume all liability of damage or destruction of the same. Buyer further agrees to honor payment of any check or draft immediately when presented to his bank for payment. And under no circumstances will stop payment for any reason whatsoever unless approved by authorized representative of Auction Company. Then if approved, Buyer is to return vehicle at his expense to place of purchase. Buyer agrees to hold Auction Company harmless for and to indemnify it against any loss, including attorney's fees, as a result of a Buyer's check or draft being dishonored by the bank upon which it is drawn for any reason whatsoever. Should Buyer's check or draft be dishonored, in addition to the above, Buyer shall pay Auction Company interest at a rate of 1.5% per month on any amount outstanding.

Auction Company, in accordance with the below terms and conditions, guarantees to Buyer that the vehicle described is not stolen or mortgaged at the time of this sale.

1. This warranty of title does not cover mere technical defects which can be removed by execution and delivery to buyer or prior owners, or legally required papers without the necessity of any monetary payment.

2. Auction Company's liability under its warranty of title of the vehicle, the subject of this transaction, shall never exceed the sale price of said vehicle in this transaction, and the maximum amount of Auction Company's liability under its said warranty shall be reduced by deducting from said sale price 2% thereof on the first of each month following the date of this transaction, and all liability of Auction Company will expire and terminate on the first day of the forty-eighth month after the date of this transaction.

PURCHASE AGREEMENT AND BILL OF SALE

Seller and buyer agree to abide by all Auction Company policies, which are incorporated herein, and all decisions of management.

Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company, including transfer of title, however, they agree Auction is merely performing an auction service and Auction Company disclaims all express and implied warranties, including merchantability and fitness, except for the warranty of title described below.

Seller and buyer indemnify and hold Auction Company harmless from any liability, loss, cost, damage or expense, including attorney's fees which arise directly or indirectly from this transaction, including, but not limited to, all matters relating to odometer mileage, odometer mileage disclosure and vehicle history even if Seller and Buyer are not at fault.

Buyer agrees that he has examined the vehicle described on reverse side and accepts it in its present condition; he also agrees that the title and ownership of said vehicle, with all of its equipment, shall remain in Seller, or Auction Company if it has paid Seller, until any check or draft given for the Sale Price of said vehicle or any part of the same, has been honored and paid in full. However, on delivery of the vehicle to Buyer, he shall assume all liability of damage or destruction of the same. Buyer further agrees to honor payment of any check or draft immediately when presented to his bank for payment. And under no circumstances will stop payment for any reason whatsoever unless approved by authorized representative of Auction Company. Then if approved, Buyer is to return vehicle at his expense to place of purchase. Buyer agrees to hold Auction Company harmless for and to indemnify it against any loss, including attorney's fees, as a result of a Buyer's check or draft being dishonored by the bank upon which it is drawn for any reason whatsoever. Should Buyer's check or draft be dishonored, in addition to the above, Buyer shall pay Auction Company interest at a rate of 1.5% per month on any amount outstanding.

Auction Company, in accordance with the below terms and conditions, guarantees to Buyer that the vehicle described is not stolen or mortgaged at the time of this sale.

1. This warranty of title does not cover mere technical defects which can be removed by execution and delivery to buyer or prior owners, or legally required papers without the necessity of any monetary payment.

2. Auction Company's liability under its warranty of title of the vehicle, the subject of this transaction, shall never exceed the sale price of said vehicle in this transaction, and the maximum amount of Auction Company's liability under its said warranty shall be reduced by deducting from said sale price 2% thereof on the first of each month following the date of this transaction, and all liability of Auction Company will expire and terminate on the first day of the forty-eighth month after the date of this transaction.

3. Auction Company's warranty of title is expressly limited to Buyer and said warranty is not negotiable or transferable.

4. Auction Company's warranty of title is void ab initio if the purchase price for the vehicle is not paid by Buyer.

5. This warranty of title does not protect against defects in the title known to Buyer whether listed as exceptions to the title on this instrument or not.

6. Whenever any claim is made by any person against the title of said vehicle, whether by suit or otherwise, Buyer shall within five days after becoming aware of said claim notify Auction Company, giving full particulars of the claim, and shall cooperate fully in defending any legal action and in taking any other steps to minimize possible loss.

7. On payment of any claim under this warranty of title, Buyer will execute all necessary papers relinquishing his right to recover against Seller, or others, to Auction Company.

8. Buyer shall not surrender possession of the vehicle, except as required by legal process, to any such claimant, nor shall it voluntarily pay or acknowledge the validity of any such claim, without the prior approval of Auction Company.

9. Time is of the essence of this agreement and any failure on the part of Buyer to notify Auction Company of such claim shall vitiate Auction Company's liability under this warranty of title. Likewise, failure of Buyer to cooperate in defending any such claim shall relieve Auction Company of liability under this warranty of title.

If Auction Company makes a claim as a result of this transaction against Seller, Buyer or their agents or employees, Auction Company shall recover reasonable attorney's fees in an amount not less than 25% of the amount of the claim, regardless of whether suit is filed, including appellate fees and costs.

INSPECTION

This inspection will be done for a FEE and will align with all auction lighting systems and arbitration rules. This FEE will be added to the purchase price or in the event of a No Sale, will be added to the customer's account. Auction Company makes no expressed warranties and assumes no liability regarding this inspection. Any vehicle that does not pass inspection will automatically be returned into arbitration.

Dealer Signature _____

WARRANTY

This warranty will be done for a FEE and covers drive train only (engine, transmission, differential, four-wheel drive, and clutch, 3 manual). It is valid for a period of 7 days (sale day to sale day) or 500 miles (whichever occurs first) and is non-transferable. Vehicle must be 5 years old or newer with less than 100,000 miles. Auction Company reserves the right to repair the vehicle or purchase the vehicle. Transportation not included.

Dealer Signature _____

3. Auction Company's warranty of title is expressly limited to Buyer and said warranty is not negotiable or transferable.

4. Auction Company's warranty of title is void ab initio if the purchase price for the vehicle is not paid by Buyer.

5. This warranty of title does not protect against defects in the title known to Buyer whether listed as exceptions to the title on this instrument or not.

6. Whenever any claim is made by any person against the title of said vehicle, whether by suit or otherwise, Buyer shall within five days after becoming aware of said claim notify Auction Company, giving full particulars of the claim, and shall cooperate fully in defending any legal action and in taking any other steps to minimize possible loss.

7. On payment of any claim under this warranty of title, Buyer will execute all necessary papers relinquishing his right to recover against Seller, or others, to Auction Company.

8. Buyer shall not surrender possession of the vehicle, except as required by legal process, to any such claimant, nor shall it voluntarily pay or acknowledge the validity of any such claim, without the prior approval of Auction Company.

9. Time is of the essence of this agreement and any failure on the part of Buyer to notify Auction Company of such claim shall vitiate Auction Company's liability under this warranty of title. Likewise, failure of Buyer to cooperate in defending any such claim shall relieve Auction Company of liability under this warranty of title.

If Auction Company makes a claim as a result of this transaction against Seller, Buyer or their agents or employees, Auction Company shall recover reasonable attorney's fees in an amount not less than 25% of the amount of the claim, regardless of whether suit is filed, including appellate fees and costs.

INSPECTION

This inspection will be done for a FEE and will align with all auction lighting systems and arbitration rules. This FEE will be added to the purchase price or in the event of a No Sale, will be added to the customer's account. Auction Company makes no expressed warranties and assumes no liability regarding this inspection. Any vehicle that does not pass inspection will automatically be returned into arbitration.

Dealer Signature _____

WARRANTY

This warranty will be done for a FEE and covers drive train only (engine, transmission, differential, four-wheel drive, and clutch, 3 manual). It is valid for a period of 7 days (sale day to sale day) or 500 miles (whichever occurs first) and is non-transferable. Vehicle must be 5 years old or newer with less than 100,000 miles. Auction Company reserves the right to repair the vehicle or purchase the vehicle. Transportation not included.

Dealer Signature _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Centennial Casualty Co., Inc.,

Plaintiff,

vs.

Western Surety Co., d/b/a CNA
Surety,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No. 2009-CP-10-6577

Plaintiff's Opposition to Defendant's
Motion for Reconsideration

2013 APR -5 PM 1:13
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Plaintiff Centennial Casualty Co., Inc. respectfully opposes defendant Western Surety Co.'s Motion for Reconsideration (the "Motion"), which seeks to have the Court reverse its Order filed March 4, 2013 (the "Order"). As discussed below, the Motion raises no new issues and cites no new law. It is a repetition of the arguments made earlier in this lawsuit, which have been considered and rejected by the Court based on solid facts and legal precedent.

1. The Motion's arguments contradict the clear language of the statute and the South Carolina Supreme Court.

The Motion argues that the Court committed error because some of the parties had insurance (page 2), because the auction company is not an owner (page 3), and because an auction house at times serves multiple parties in certain automobile transactions (page 4). The Motion cites no applicable law in support of these arguments, which contradict the clear language of the Dealer Bond Statute:

[L]oss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler

S.C. Code § 56-15-320(B) (emphasis added). The statute's language makes no mention of limiting the bond only to certain types of owners or certain types of legal representatives. The statute does not exclude parties who have insurance, or parties that in certain instances may serve multiple parties. Instead, the statute allows owners or their legal representatives to make claims under the bond. The South Carolina Supreme Court has reinforced this conclusion in *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996), which held that:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, or the owner's legal representative, with a cause of action against the surety on a bond issued pursuant to that statute.

(emphasis added). Here, there is no serious dispute that the Purchase Agreement and Bill of Sale appointed the auction company as the "agent and legal representative," therefore falling squarely under the statute. The Motion's arguments, if accepted, would require this Court ignore the language of the statute and to contradict the clear instruction of both the South Carolina Legislature and the South Carolina Supreme Court.

2. The Motion's only supporting case has been overruled.

The Motion cites only one case in support of its arguments, *Connecticut Indemnity v. Burdette Chrysler Dodge Corp.*, 317 S.C. 406, 453 S.E.2d 902 (1994),

which the Motion argues is good law. There is no serious dispute that *Burdette*, as it applies to this lawsuit, has been overruled by *Mid-State Auto Auction*, 324 S.C. at 69, 476 S.E.2d at 692. *Mid-State Auto Auction* reinforces the holding applicable here:

Further, when referring to loss or damage suffered as the result of fraud or a violation of Chapter 15 on the part of a motor vehicle dealer, the statute specifically states that "[a]n owner or his legal representative who suffers the loss or damage has a right of action against the ... dealer's ... surety upon the bond." (emphasis added). We therefore reverse the grant of summary judgment and remand this case for further proceedings not inconsistent with this opinion.

Id. (italics in original; bolding added).

Moreover, *Burdette* is distinguishable because its ruling was based on the understanding that the purchaser had not established "fraud" under the statute.

In this action, there is no serious dispute that "fraud" was committed by (1) the two NSF checks (which were not for preexisting debts), and (2) the stop-payment placed on the third check.

3. The Motion's citation of § 56-15-520 is misplaced.

The Motion (at page 4) cites S.C. Code § 56-15-520 for the proposition that the statute does not make a motor vehicle auction the owner of a vehicle. That section's primary purpose is to prevent, among other things, motor vehicle auctions from being assessed property tax for owning the automobiles it auctions. It has no bearing on the interpretation of whether the auction is able to make a claim under the relevant statute or the bond.

CONCLUSION

For these reasons, the Motion for Reconsideration should be denied.

Respectfully submitted,

FORD & WALLACE LLC

By: 

Ian S. Ford
715 King Street
Charleston, South Carolina 29403
Telephone: (843) 608-1234
Facsimile: (843) 410-5634
E-mail: Ian.Ford@FordWallace.com
Web: www.FordWallace.com

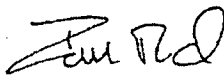
*Attorneys for Centennial Casualty Co., Inc. and
Charleston Auto Auction*

April 3, 2013
Charleston, South Carolina

CERTIFICATE OF SERVICE

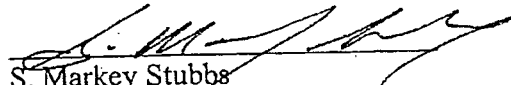
The undersigned certifies that on April 3, 2013, this document was served by electronic mail and first class mail on all attorneys of record.

FORD & WALLACE LLC



CERTIFICATE OF COUNSEL

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



S. Markey Stubbs
BAKER, RAVENEL & BENDER,
L.L.P.
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Attorneys for Appellant

October 2, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-0013816577

Centennial Casualty Co., Inc. Respondent

v.

Western Surety Co., d/b/a CNA Surety Appellant

Western Surety Co., d/b/a CNA Surety Defendant/Third-Party Plaintiff

v.

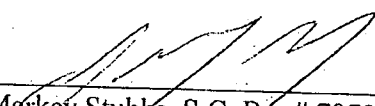
Charleston Auto Auction, A3 Auto Center, LLC, and Wylie Mickle, Third-Party Defendants

PROOF OF SERVICE

I, S. Markey Stubbs, attorney for Appellant Western Surety Co., d/b/a CNA Surety, do hereby certify that I have this 10th day of October, 2013 served counsel of record with the Record On Appeal by mailing said copies by United States Mail, first class postage pre-paid, to said counsel at the following addresses:

APPELLANT'S COUNSEL OF RECORD:

Ian S. Ford
FORD & WALLACE LLC
715 King Street
Charleston, S.C. 29403



S. Markey Stubbs, S.C. Bar # 7973

Baker, Ravenel & Bender, L.L.P.

3710 Landmark Drive, Suite 400

P. O. Box 8057

Columbia, South Carolina 29202

(803) 799-9091

Our File No.: 7753.67

Attorneys for Appellant Western Surety

October 10, 2013

2

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-0013816577

Centennial Casualty Co., Inc. Respondent

v.

Western Surety Co., d/b/a CNA Surety Appellant

Western Surety Co., d/b/a CNA Surety Defendant/Third Party Plaintiff

v.

Charleston Auto Auction, A3 Auto Center, LLC, and
Wylie Mickle, Third-Party Defendants

FINAL BRIEF OF APPELLANT

S. Markey Stubbs
Bar Number 7873
Baker Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, South Carolina 29204
T. 803.799.9091
Our File 7753.67
Attorney for Appellant

Ian Ford, Esquire
FORD & WALLACE LLC
715 King Street
Charleston, S.C. 29403
T. 843.608.1234
Attorney for Respondent

RECEIVED

OCT 23 2013

SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
STATEMENT OF ISSUES ON APPEAL 1
STATEMENT OF THE CASE 1
ARGUMENT 6
CONCLUSION 14

TABLE OF AUTHORITIES

CASES

| | |
|---|-----------------|
| <u>Andrews & Kurth, L.L.P. v. Wright Killen & Co.</u> , 37 F.3d 230, 234 (5th Cir.1994) . . . | 10 |
| <u>Connecticut Indem. v. Burdette Chrysler Dodge Corp.</u> , 317 S.C. 406, 453 S.E.2d 902 (1994) | 4, 5, 8, 12, 13 |
| <u>Creech v. South Carolina Public Service Authority</u> , 200 S.C. 127, 20 S.E.2d 545 (1942) | 8 |
| <u>Gilstrap v. South Carolina Budget and Control Board</u> , 310 S.C. 210 423 S.E.2d 101 (1992) | 8 |
| <u>Heyman v. M.L. Marketing Co.</u> , 116 F.3d 91, 95 (4th Cir. 1997) | 9 |
| <u>Jackson v. Bi-Lo Stores, Inc.</u> , 437 S.E.2d 168, 170 (Ct.App.1993) | 13 |
| <u>Lawyer Surety Corp. v. Flowers</u> , 66 S.W.3d 669 (Ark Ct. App. 1996) | 9 |
| <u>Mid-State Auto Auction of Lexington, Inc. v. Altman</u> , 324 S.C. 65, 69 476 S.E.2d 690 (1996) | 4, 5, 8, 12 |
| <u>Mobay Chemical Co. v. Hudson Foam Plastics Corp.</u> , 277 F. Supp. 413, 416 (S.D.N.Y. 1967) | 10 |
| <u>Price v. Piotrowski</u> , 632 So.2d 1 (La. Ct. App 1994), | 9 |
| <u>Southwest Capital Investments, Inc. v. Pioneer General Ins. Co.</u> , 24 P.2d 1205 (Colo. Ct. App. 1996) | 9 |
| <u>United Fire & Cas. Co. v. Acker</u> , 541 N.W.2d 517 (Iowa 1995) | 9 |
| <u>Western Steel Erection Co. v. United States</u> , 424 F.2d 737, 739 (10th Cir. 1970) | 10 |

STATUTES

| | |
|---|------------------------|
| S.C. Code Ann. § 8-11-620(A)(1) | 9 |
| S.C. Code Ann. § 17-25-530 | 9 |
| S.C. Code Ann. § 56-15-320 | 2, 3, 6, 8, 11, 12, 14 |
| S.C. Code Ann. § 56-15-320(B) | 2, 6, 12 |

S.C. Code Ann. § 56-15-510 4, 10
S.C. Code Ann § 56-15-520..... 4, 10, 11
S.C. Code Ann. § 62-3-730(c)10

OTHER AUTHORITIES

44A Am. Jur. 2d, Insurance § 1696 9
Couch on Insurance 3d, § 59:22 9

STATEMENT OF ISSUES ON APPEAL

- I. DID THE LOWER COURT ERR BELOW AND IN DENYING THE RULE 59(e) SCRPC MOTION BY DETERMINING THAT THE INSURANCE CARRIER OF AN AUTOMOBILE AUCTIONEER IS A "LEGAL REPRESENTATIVE" AND SUFFERED AN "ACTUAL LOSS" AS CONTEMPLATED BY S.C. CODE §56-15-320.
- A. When the auto auction is not the legal representative as contemplated by the statute.
- B. When no buyer or seller suffered a loss and S.C. Code §56-15-510 and §56-15-520 directs that the auction company is not to be deemed an owner.
- II. DID THE LOWER COURT ERR BELOW AND IN DENYING THE RULE 59(e) MOTION BY FAILING TO FIND THAT THE FRAUDULENT TRANSACTION WAS IN THE PURCHASE NOT THE SALE OF A MOTOR VEHICLE PROHIBITING RECOVERY UNDER S.C. CODE §56-15-320.
- III. DID THE LOWER COURT ERR BELOW AND IN DENYING THE RULE 59(e) MOTION BY FAILING TO FIND THAT IF CENTENNIAL CASUALTY /CAA WERE THE LEGAL REPRESENTATIVES OF THE SELLER THEY WERE ALSO THE LEGAL REPRESENTATIVE OF THE BUYER CAUSING THE LOSS; THEREBY BARRING THE CLAIM.

STATEMENT OF THE CASE

This case was commenced by Respondent Centennial Casualty Co., Inc., (hereinafter "Centennial") by the filing of a Summons and Complaint on October 19, 2009. (R. pp. 12-16). Western Surety Co., d/b/a CNA Surety (hereinafter "Western Surety") filed its answer and filed a Third-Party Complaint against Charleston Auto Auction, A3 Auto Center, LLC, and Wylie Mickle. (R. pp. 22-26). A3 Auto Auction and Wylie Mickle never appeared.

Centennial alleged in its complaint that it was entitled to payment under a surety

bond issued by Western Surety for a loss suffered by its insured, Charleston Auto Auction (hereinafter CAA), for which Centennial provided coverage and reimbursed CAA pursuant to the terms of the insurance policy. CAA is an automobile auction house. A3 Auto Center bought three vehicles using CAA from different dealers. (R. p. 32, ¶3). CAA paid the seller dealers and delivered the cars to A3 Auto Center, the purchaser. In payment for those vehicles A3 Auto Center, the bonded dealer, issued three separate checks to CAA. (R. pp. 32-33, ¶3). Two of the checks were returned for insufficient funds (NSF) and A3 Auto Center stopped payment on the third check. (R. pp. 32-33, ¶3).

CAA carries insurance to cover bad checks. CAA made a claim under its insurance policy. Centennial paid CAA's claim in the amount of \$35,305.00. Centennial then instituted the underlying action seeking reimbursement as subrogee of CAA from A3 Auto Center's surety bond. (R. pp. 15-16). A3 Auto Center maintained a bond, as required by S.C. Code §56-15-320, the "Dealer Bond Statute," with Appellant Western Surety. §56-15-320(B). (R. pp. 17-18).

Centennial alleged in the complaint that it was subrogated to the rights of CAA and that CAA was "an owner or his legal representative who suffered a loss or damage" and was entitled to payment under the terms of the bond. (R. p. 15, ¶¶23-24).

In its Answer Western Surety admitted that it was the surety for the bond at issue in this case but denied that Centennial was the proper party to seek indemnification or that the loss was covered under S.C. Code Ann. §56-15-320. (R. pp. 23-24). Appellant filed a third-party complaint against CAA alleging that CAA was the real party in interest, but denying that CAA was entitled to seek reimbursement under the bond pursuant to the provisions of §56-15-320. (R. p. 25).

Centennial and CAA filed a motions for summary judgment against Western Surety on July 8, 2010. (R. pp. 34-40). Western Surety filed a cross motion for summary judgment against Centennial on September 22, 2010. (R. pp. 70-77). These motions were heard on February 17, 2011 by the Honorable Kristi L. Harrington. The Court entered an order dated March 28, 2011 denying both motions for summary judgment. Appellant filed a motion for reconsideration on April 12, 2011 which was denied by the Court in an order dated May 18, 2011.

Thereafter, Appellant and Respondent agreed to a joint stipulation of facts which was supplied to the Court. (R. pp. 32-33). Both Appellant and Respondent stipulated that pursuant to the statutory cap in §56-15-320 the maximum amount in controversy is \$30,000.00. (R. p. 33, ¶3). The parties submitted the stipulation, legal briefs, and proposed orders to the court in lieu of oral arguments.

The most recent brief filed by Centennial and CAA dated July 12, 2010 was supplied to the Court along with exhibits including checks and purchase agreements. (R. pp. 34-69). The checks issued to CAA were returned insufficient funds. (R. pp. 63-65). The motion of Respondent alleged that pursuant to these documents, it is the owner's "legal representative" for the purpose of satisfying the statute. (R. pp. 38-39).

Appellant's most recent motion for summary judgment dated September 22, 2010 was provided to the court. (R. pp. 70-77). In its brief, the Appellant noted that it was undisputed that the sellers of the vehicle were paid and the purchaser of the vehicle received the vehicles. (R. p. 71). The loss or damage was suffered by the auction house that Centennial Casualty Company is not the legal representative as contemplated by the statute such as a guardian, conservator, durable power of attorney holder. Appellant's

motion further alleged that S.C. Code Ann §56-15-510 and §56-15-520 prevented the auction from being deemed an owner, seller, transferor or assigner of title of a motor vehicle. (R. pp. 74-75). Finally, Appellant's motion that if Centennial/CAA were deemed to be a legal representative of the seller, then they also by the same paperwork are legal representative of the purchaser who did the wrongdoing, thereby barring their recovery and that the loss did not arise from the sale of the motor vehicle, but rather from the purchase. (R. pp. 76-77).

The Plaintiff filed a Supplemental Memorandum of Authorities alleging that Connecticut Indem. Co. v. Burdette Chrysler Dodge Corp., 317 S.C. 406, 453 S.E. 2d 902 (1994) had been overruled by Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). (R. p. 79). They further argued against Western Surety's use of §56-15-520. Defendant Western Surety filed their brief in opposition to Plaintiff's second brief dated May 29, 2012. The brief noted in part that Mid-State, *supra*, only overruled Burdette, *supra*, to the extent Burdette held that "any person" could recover under the bond.

The court's order, from which this appeal follows, was entered in favor of the Respondent on March 4, 2013 by the Honorable J.C. Nicholson, Jr. (R. pp. 3-10). In that order the court found that Charleston Auto Auction was the legal representative of the sellers of the vehicles and as such both Charleston Auto Auction and Centennial, as its subrogee, were entitled to reimbursement under the Dealer Bond Statute. (R. pp. 6-9).

On March 21, 2013, Western Surety timely served its Motion for Reconsideration including grounds that:

- (1) The court erred in finding that Charleston Auto Auction was entitled to recovery pursuant to the terms of the bond as Charleston Auto Auction was not a required "owner or his legal representative;"
- (2) The court erred in finding that the \$35,305.00 loss in this case was realized by the seller Dealership rather than the auction company; and
- (3) The court erred in finding that Connecticut Indem. Co. v. Burdette Chrysler Dodge Corp., 317 S.C. 406, 453 S.E.2d 902 (Ct. App. 1994), was entirely overruled by Mid-State Auto Auction v. Altman, 324 S.C. 65, 476 S.E.2d 690 (1996), and that Burdette was not controlling in this case as to this issue of this being a purchase not a sale, and CAA being the legal representative of the fraudulent dealer.

Appellant's Motion for Reconsideration was denied by the Court without a hearing in an order dated May 8, 2013. (R. p. 2). Western Surety timely filed its Notice of Appeal.

ARGUMENT

I. DID THE LOWER COURT ERR IN DENYING THE RULE 59(e) SCRPC MOTIONS AND IN DETERMINING THAT THE INSURANCE CARRIER OF AN AUTOMOBILE AUCTIONEER IS A "LEGAL REPRESENTATIVE" AND SUFFERED AN "ACTUAL LOSS" AS CONTEMPLATED BY S.C. CODE §56-15-320

A. When the auto auction is not the legal representative as contemplated by the statute.

This action is controlled by S.C. Code of Laws §56-15-320(B) which provides:

Each applicant for licensure as a dealer or wholesaler shall furnish a surety bond in the penal amount of thirty thousand dollars on a form prescribed by the director of the department. The bond must be given to the department and executed by the applicant, as principal, and by a corporate surety company authorized to do business in this State, as surety. The bond must be conditioned upon the applicant or licensee complying with the statutes applicable to the license and as indemnification for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or Transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter. *An owner or his legal representative* who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter. However, regardless of the number of years a bond remains in effect, the aggregate liability of the surety for claims is limited to thirty thousand and 00/100 (\$30,000.00) Dollars and to the amount of the **actual loss** incurred.

S.C. Code Ann. §56-15-320(B) (emphasis added). In this action, it is undisputed that two dealers sold vehicles using the auction to the bonded principle, A3 Auto Center. CAA paid the dealers and delivered the cars to A3 Auto Center. A3 Auto Center issued checks to CAA, two of which were returned for insufficient funds, one was stopped payment. It is undisputed that the issuance of these checks were fraudulent. CAA carries insurance

to protect it from, amongst other things, bad checks. Centennial paid CAA and instituted this action. It is undisputed that the buyers got their vehicles and the sellers received their funds. The loss in this action was suffered originally by CAA and subsequently its insurer. (R. p. 52, ¶10). In processing a transfer through the auto auction, the auto auction has the buyer and seller execute a purchase agreement (R. p. 51, ¶4). On the back of this agreement there appears language relied upon by the CAA to assert their claims in this action. (R. p. 57-58). The language states in part:

Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company, including transfer of title. However, they agree auction is merely performing an auction service and Auction Company disclaims all express and implied warranties, including merchantability and fitness, except for the warranty of title described below.

Seller and Buyer indemnify and hold auction company harmless from any liability, loss, costs, damages or expenses, including attorney's fees which arise directly or indirectly from this transaction, including, but not limited to, all matters relating to odometer mileage, odometer mileage disclosure, and vehicle history even if Seller and Buyer are not at fault.

(R. p. 58) (emphasis added). This boilerplate language on the back of the agreement has no signature line or initials. It has no notary. The front of the agreement clearly sets forth that the seller is Automotive Retailers, Inc. and the buyer is A3 Auto Center and that the seller is Priceless Automotive and the buyer is A3 Auto Center. (R. p. 56-57). That the buyer is A+ Auto Sales and the buyer is A3 Auto Center. (R. p. 54). Each party also executes a title clerk authorization which authorizes CAA and/or its employees to act as their agent to sign any and all papers and documents that may be necessary pertaining to

the sale and subsequent title Transfer of the vehicles owned by the consignor and consigned to CAA for sale, including without limitation, any title, transfer document, reassignment, odometer disclosure statements as required by federal or state law. The agreement thereafter requires the signor to personally indemnify the Auction house.

In Connecticut Indem. Co. v. Burdette Chrysler Dodge Corporation, 317 S.C. 406, 453 S.E.2d 902 (Ct.App. 1994), overruled in part by Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 476 S.E.2d 690 (Ct.App. 1996) the Court held that any person could recover under the dealer bond who had been injured by the acts of the bonded dealer in violation of the statute. In Mid-State the Court overruled Burdette:

...to the extent it recites that the latter part of §56-15-320 allows for recovery by anyone, not just motor vehicle owners, for loss or damage suffered as a result of the dealer violating any of the provisions in the Chapter 15 of Title 56.

324 S.C. 65, 476 S.E.2d 690, FN 4. That footnote makes no reference to legal representative as a separate entity. The statute does not state "owner and legal representative." It is clear the term is used as the legal representative standing in the shoes of the owner and is designed to protect the owner from fraudulent acts by a dealer who sells him a vehicle. The Court noted that:

The primary rule of statutory construction is to ascertain and give effect of the intent of the legislature. Gilstrap v. South Carolina Budget and Control Board, 310 S.C. 210, 423 S.E.2d 101 (1992). In ascertaining the intentions of the legislature, a court should not focus on any single section or provision, but consider the language of the statute as a whole. Creech v. South Carolina Public Service Authority, 200 S.C. 127, 20 S.E.2d 545 (1942).

Mid-State, 324 S.C. at 69, 476 S.E.2d at 692. There are bonds in other states that allow any person to recover under a bond. In South Carolina these are limited bonds and the penal sum, regardless of the number of claims, is limited. It is logical that such a limited

bond be strictly construed to protect the target "owner." Numerous jurisdictions have held under their statutes that financiers and others involved in sophisticated deals not be allowed to reach such funds. See Price v. Piotrowski, 632 So.2d 1 (La.Ct.App 1994); United Fire & Cas. Co. v. Acker, 541 N.W.2d 517 (Iowa 1995); Lawyer Surety Corp. v. Flowers, 66 S.W.3d 669 (Ark.Ct.App. 1996); Southwest Capital Investments, Inc. v. Pioneer General Ins. Co., 924 P.2d 1205 (Colo.Ct.App. 1996).

The statute at issue does not define legal representative. It is the position of Appellant that legal representatives would be one who truly stands in the shoes of the owner. While not defined by statute, the term "legal representative," while occasionally used to mean counsel, within statutes is most frequently used to mean executor, conservator, or others who stand fully in the shoes of the person or entity being addressed. For example, South Carolina Code §17-25-530 provides that a victim may seek a civil action against an offender or the legal representative of the defender. Similarly, South Carolina Code §8-11-620(A)(1) provides that if an employee dies, the employee's legal representative is entitled to a lump sum payment from the employee's unused leave. American Jurisprudence states that the term "legal representatives" when used in an insurance policy generally means executor or administrator, but "may have other secondary meanings." 44A Am. Jur. 2d, Insurance §1696. Couch on Insurance provides that "the term 'legal representative' must be given its primary legal meaning of executor or administrator." Couch on Insurance 3d, §59:22. Other persons who have been deemed legal trustees are bankruptcy trustees. The Fourth Circuit Court of Appeals held that a bankruptcy trustee is a bankrupt estate's "legal representative" for the purpose of a Rule 60(b) motion in under the Federal Rules of Civil Procedure. Heyman v. M.L.

Marketing Co., 116 F.3d 91, 95 (4th Cir. 1997). Conversely, an attorney does not have standing to move under Rule 60(b) as a "legal representative" as they are merely an agent. Id. citing Andrews & Kurth, L.L.P. v. Wright Killen & Co., 37 F.3d 230, 234 (5th Cir.1994); see also Western Steel Erection Co. v. U.S., 424 F.2d 737, 739 (10th Cir. 1970) (citing Mobay Chemical Co. v. Hudson Foam Plastics Corp., 277 F. Supp. 413, 416 (S.D.N.Y. 1967)). Moreover, under the Probate Code §62-3-730(c) the "legal representative" has standing to sue and be sued in the courts of this state and any courts or any other jurisdiction as his decedent had immediately prior to his death.

In this action, reviewing the documents, it is clear that the auction house did not stand in the shoes of the owner. The buyers and sellers of the vehicles maintain their status. The auction house only acted as their agent in processing the transactions through the auction. (R. p. 51, ¶3). Had the legislature meant to include auction houses, they would have done so. CAA was merely an agent or legal representative for facilitating the transactions; bringing the buyer and seller together. It did not stand in the shoes or receive the rights of the owner.

B. When no buyer or seller suffered a loss and S.C. Code §56-15-510 and §56-15-520 directs that the auction company is not to be deemed an owner.

Pursuant to statutory law, the actions of the auto auction do not give rise to converting CAA into an owner, seller, transferor or assigner of title of the motor vehicle. The lower court held that as a "legal representative," CAA could recover for its own loss. (R. p. 89). It is clear the statute contemplates a loss by the owner or a legal representative who stands in the shoes of the owner, for the sale such as a conservator. CAA made a business decision to guarantee the

checks of purchasers and then insured itself against that business decision. The auction house could have required certified checks, could have required cash, or otherwise protected its interests in facilitating sales. It is undisputed that it was only CAA that lost funds. (R. p. 52, ¶8). The statutory law recognizes motor vehicle auctions and did not include them as persons entitled to recover under S.C. Code §56-15-320. The statute did not include "facilitators," "financiers," or "lienholders" as entities entitled to recover. The statutory law provides that the actions of CAA in facilitating the sales cannot be viewed as converting CAA into an owner, seller, transferor or assigner of title of a motor vehicle. S.C. Code §56-15-520 provides:

As used in this article:

- 1) "wholesale motor vehicle auction" is an entity in the business of providing auction services and wholesale transactions at its established place of business, and which does not buy, sell, or own the motor vehicles it auctions in the ordinary course of its business....

Further, §56-15-520 provides that:

when a transfer of title is made as a result of a transaction at a wholesale motor vehicle auction, the reassignment of title or bill of sale must note the name and address of the wholesale motor vehicle auction. **However, the wholesale motor vehicle auction is not deemed to be the owner, seller, transferor or assigner of title of the motor vehicle by reason of its name appearing on the reassignment of title or bill of sale or by reason of its payment or a guarantee of payment to the seller, receipt of payment from the purchaser, or the reservation of a lien or security interest for the purpose of securing payment from a purchaser. (emphasis added).**

In this action, it is undisputed that the buyer received the cars and sellers received their money. The only loss is based on a business decision of the auction house on how it conducts its business. The trial court in its order specifically held that there were

damages to the selling dealership. (Order on Page 3 of 8). However, this was a misstatement of fact as the Affidavit referenced and checks show the only entity that suffered a loss was CAA (R. p. 52, ¶8; R. p. 63; R. p. 65).

II. DID THE LOWER COURT ERR BELOW AND IN DENYING THE RULE 59(e) MOTION BY FAILING TO FIND THAT THE FRAUDULENT TRANSACTION WAS IN THE PURCHASE NOT THE SALE OF A MOTOR VEHICLE PROHIBITING RECOVERY UNDER S.C. CODE §56-15-320.

In Mid-State Auto Auction of Lexington, Inc. v. Altman the Court overruled Connecticut Indem. Co. v. Burdette Chrysler Dodge Corp., 317 S.C. 406, 453 S.E.2d 902 (Ct. App. 1994).

The Court held:

We now over rule Burdette to the extent it recites that the latter part of §56-15-320 allows recovery by anyone, not just motor vehicle owners, for loss or damage suffered as a result of the dealer violation of any provision in Chapter 15 of Title 56.

Mid-State, 324 S.C. 65, 467 S.E.2d 69 at FN 4. The limited overruling of Burdette highlights the Court's apparent view that legal representative and owner were synonymous. The Court did not overrule the remaining findings of Burdette. The statute specifically provides that the loss or damage suffered by the owner or his legal representative must be by reason of fraud practice or fraudulent representations made "...in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler." S.C. Code §56-15-320(B) (emphasis added). As in Burdette, in this action, A3 Auto Center, LLC, was not the seller nor the transferor of the vehicles, but was the purchaser. The Court erred in disregarding the case law and the language of the statute and extending claims to fraud by a purchaser. The statute clearly is designed to prevent fraud in the sale or transfer by its plain terms. As noted in Burdette:

Burdette suffered no loss or damage by reason of a "fraud practice... in

connection with the sale or transfer of a motor vehicle by a licensed dealer.” Here, as we indicated, Burdette, not Eagle Auto, sold or transferred the motor vehicles for which the worthless checks were given. Eagle Auto only purchased or received the Transfer of these motor vehicles.

Burdette, 317 S.C. at 409, 453 S.E.2d at 904.

Just as in Burdette, the bonded dealer in this case was the entity who received the vehicles for which the bad checks were given and was not the seller of the vehicles since A3 Auto Company, LLC, gave bad checks to purchase the vehicles.

III. DID THE LOWER COURT ERR BELOW AND IN DENYING THE RULE 59(e) MOTION BY FAILING TO FIND THAT IF CENTENNIAL CASUALTY /CAA WERE THE LEGAL REPRESENTATIVES OF THE SELLER THEY WERE ALSO THE LEGAL REPRESENTATIVE OF THE BUYER CAUSING THE LOSS THEREBY BARRING THE CLAIM.

The lower court found that by subrogation, Centennial was allowed to pursue this claim in the shoes of CAA as the legal representative of the seller. (R. p. 88-91). The court, however, failed to address in its order or on Appellant’s Motion for Reconsideration the fact that CAA was also the legal representative (to the extent it applies to the bond statute) for the purchasing dealer, the bonded principle A3 Auto Center, LLC. Therefore, in its act as legal representative, it provided the fraudulent checks for this transaction. In Connecticut Indem. Co. v. Burdette Chrysler Dodge Corp.

The Court held:

Burdette may not take advantage of its own conduct by taking assignments from one innocent purchaser and recovering against Eagle Auto on its bond in this action....

Burdette, 317 S.C. at 410, 453 S.E.2d at 905 (quoting Jackson v. Bi-Lo Stores, Inc., 437 S.E.2d 168, 170 (Ct.App.1993) (“it is a well-founded policy of law that no person may be permitted to

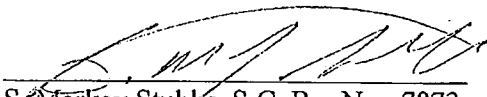
acquire the right of action from their own unlawful act and when it participates in an unlawful act, it cannot recover damages from the consequences of that act).

To the extent CAA is the legal representative, it is the legal representative on both sides of the transaction and therefore participated in the use of fraudulent checks in the transaction, thereby causing its own loss and therefore it cannot recover.

CONCLUSION

The bond provided by S.C. Code §56-15-320 was clearly designed to protect purchasers of vehicles when a bonded dealer commits fraud in the sale of the vehicle to the buyer. It is a limited bond designed to protect the buying public and allowing the owner of the vehicle to sue the dealer for fraud or other violations of the chapter arising out of the sale of the motor vehicle. The use of the term "legal representative" was merely to expand upon and recognize that the owner may be in a representative capacity, such as a conservator or personal representative. The bond was not designed to protect an auction house from its business decisions. The auction house was free to protect itself by requiring cash or requiring certified checks. The auction house protected itself by obtaining insurance. The auction house, however, does not stand in the shoes of the owner for the purpose of the sale. They are neither the buyer nor the seller. They are not an owner nor the owner's "legal representative." By statute and by the paperwork executed, CAA was merely acting as agent for facilitating the sale of the vehicle, not a party to the transaction. In this case, the only loss suffered was by the insurance company, a loss that it received a premium to cover. The insurance company is subrogated to the right of the auction house as against A3 Auto Center, LLC, but is not entitled to claim against this limited statutory bond.

Respectfully Submitted,



S. Markey Stubbs, S.C. Bar No.: 7873

Baker, Ravenel & Bender, L.L.P.

3710 Landmark Drive, Suite 400

Post Office Box 8057

Columbia, South Carolina 29202

Phone: (803) 799-9091 Facsimile: (803) 779-3423

E-Mail: mstubbs@brblegal.com

File No.: 7753.67

*Attorneys for Appellant Western Surety Co. d/b/a
CNA Surety*

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-0013816577

Centennial Casualty Co., Inc. Respondent

v.

Western Surety Co., d/b/a CNA Surety Appellant

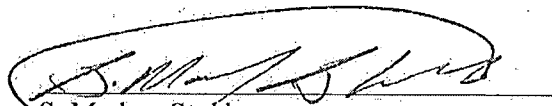
Western Surety Co., d/b/a CNA Surety Defendant/Third-Party Plaintiff

v.

Charleston Auto Auction, A3 Auto Center, LLC, and
Wylie Mickle, Third-Party Defendants

CERTIFICATE OF COUNSEL

The undersigned counsel affirms that the final brief complies with SCRAP 211(b).


S. Markey Stubbs
Bar Number 7873

October 23, 2013

RECEIVED
OCT 23 2013
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-0013816577

Centennial Casualty Co., Inc. Respondent

v.

Western Surety Co., d/b/a CNA Surety Appellant

Western Surety Co., d/b/a CNA Surety Defendant/Third-Party Plaintiff

v.

Charleston Auto Auction, A3 Auto Center, LLC, and
Wylie Mickle, Third-Party Defendants

CERTIFICATE OF SERVICE

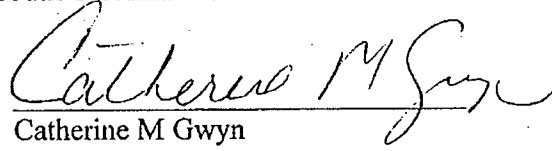
I, Catherine M. Gwyn, Legal Assistant to S. Markey Stubbs, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on the date indicated below, served counsel below with Appellant's Final Brief by mailing a copy of same via United States Mail, Postage Pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

RECEIVED

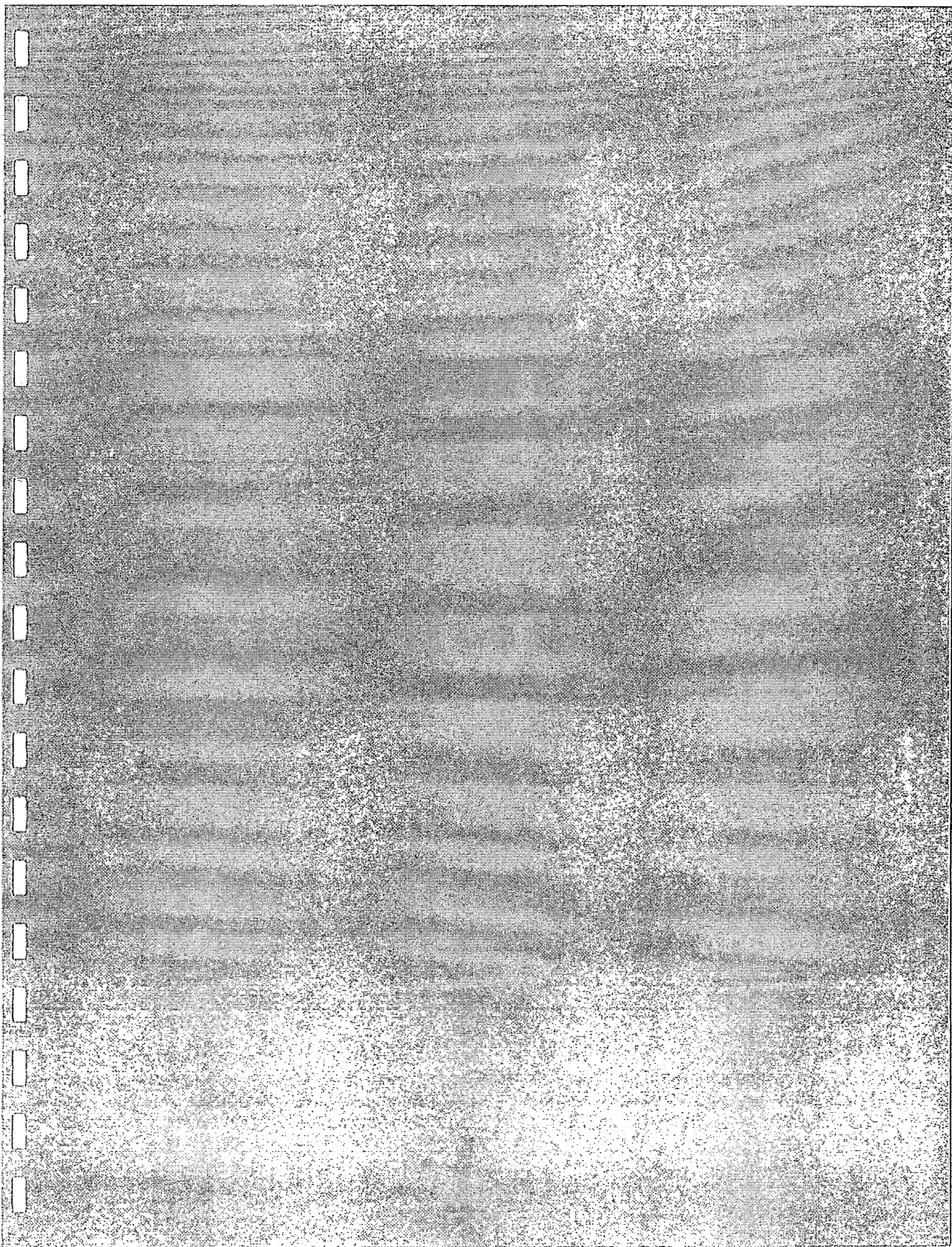
OCT 23 2013

SC Court of Appeals

Ian Ford, Esquire
Ford and Wallace
715 King Street
Charleston, South Carolina 29403


Catherine M Gwyn

October 23, 2013



3

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-0013816577

Centennial Casualty Co., Inc. Respondent

v.

Western Surety Co., d/b/a CNA Surety Appellant

Western Surety Co., d/b/a CNA Surety Defendant/Third-Party Plaintiff

v.

Charleston Auto Auction, A3 Auto Center, LLC,
and Wylie Mickle Third-Party Defendants

FINAL BRIEF OF RESPONDENT

Ian S. Ford
Bar no. 12463
FORD WALLACE THOMSON LLC
715 King Street
Charleston, SC 29403
T. 843.277.2011
E. Ian.Ford@FordWallace.com

Attorney for Respondent

RECEIVED

OCT 30 2013

SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... iii

STATEMENT OF ISSUES ON APPEAL..... iv

STATEMENT OF THE CASE / FACTS..... 1

ARGUMENT..... 4

I. DID THE LOWER COURT ERR IN DETERMINING THAT CHARLESTON AUTO AUCTION IS A "LEGAL REPRESENTATIVE" UNDER S.C. CODE § 56-15-320?..... 4

 A. The statute is clear that an "owner or his legal representative" may recover damages under the bond. 4

 i. The statute and evidence are clear and support the Circuit Court's ruling..... 4

 ii. Appellant's primary argument is that the statute does not mean legal representative when it specifies "legal representative"..... 5

 B. Section 56-15-520 does not negate Respondent's status as a legal representative under the statute..... 7

II. DID THE LOWER COURT ERR WHEN IT REFUSED TO REWRITE THE STATUTE TO EXCLUDE FRAUD IN THE PURCHASE OF MOTOR VEHICLES?..... 8

III. DID THE LOWER COURT ERR IN FAILING TO INTERPRET THE STATUTE TO EXCLUDE PARTIES THAT SOMETIMES ACT AS REPRESENTATIVES FOR BUYERS AND SELLERS?..... 10

CONCLUSION..... 11

TABLE OF AUTHORITIES

CASES

| | |
|---|---------|
| <i>Anderson v. S. Carolina Election Comm'n</i> , 397 S.C. 551, 725 S.E.2d 704 (2012)..... | 4 |
| <i>Bryant Motors, Inc. v. Am. States Ins. Companies</i> , 118 Idaho 796, 800 P.2d 683 (Ct. App. 1990)..... | 6, 8 |
| <i>Connecticut Indemnity v. Burdette Chrysler Dodge Corp.</i> , 317 S.C. 406, 453 S.E.2d 902 (1994)..... | 9, 10 |
| <i>Grier v. AMISUB of S. Carolina, Inc.</i> , 397 S.C. 532, 725 S.E.2d 693 (2012)..... | 7 |
| <i>Hodges v. Rainey</i> , 341 S.C. 79, 533 S.E.2d 578 (2000)..... | 4 |
| <i>Jones v. State Farm Mut. Auto Ins. Co.</i> , 364 S.C. 222, 612 S.E.2d 719 (Ct. App. 2005)..... | 9 |
| <i>Lawrence v. Ward</i> , 5 Utah 2d 257, 300 P.2d 619 (1956)..... | 6-7 |
| <i>Massachusetts Bonding & Ins. Co. v. Cent. Fin. Corp.</i> , 124 Colo. 379, 237 P.2d 1079 (1951)..... | 6 |
| <i>Mid-State Auto Auction v. Altman</i> , 324 S.C. 65, 476 S.E.2d 690 (1996)..... | 5, 8-10 |
| <i>Pye v. Estate of Fox</i> , 369 S.C. 555, 633 S.E.2d 505 (2006)..... | 10 |
| <i>State v. General Ins. Co. of America</i> , 179 N.W.2d 123 (N.D. 1970)..... | 6 |
| <i>Sun Ins. Co. v. Aetna Ins. Co.</i> , 169 Neb. 94, 98 N.W.2d 692 (1959)..... | 6 |

STATUTES

| | |
|----------------------------|------------------|
| S.C. Code § 8-11-620..... | 6 |
| S.C. Code § 17-25-530..... | 6 |
| S.C. Code § 56-15-320..... | 1, 4, 5, 7, 8, 9 |
| S.C. Code § 56-15-520..... | 7 |
| S.C. Code § 56-19-360..... | 10 |

STATEMENT OF ISSUES ON APPEAL

- I. DID THE LOWER COURT ERR IN DETERMINING THAT CHARLESTON AUTO AUCTION IS A "LEGAL REPRESENTATIVE" UNDER S.C. CODE § 56-15-320?
 - A. The statute is clear that an "owner or his legal representative" may recover damages under the bond.
 - i. The statute and evidence are clear and support the Circuit Court's ruling.
 - ii. Appellant's primary argument is that the statute does not mean legal representative when it specifies "legal representative".
 - B. Section 56-15-520 does not negate Respondent's status as a legal representative under the statute.
- II. DID THE LOWER COURT ERR WHEN IT REFUSED TO REWRITE THE STATUTE TO EXCLUDE FRAUD IN THE PURCHASE OF MOTOR VEHICLES?
- III. DID THE LOWER COURT ERR IN FAILING TO INTERPRET THE STATUTE TO EXCLUDE PARTIES THAT SOMETIMES ACT AS REPRESENTATIVES FOR BUYERS AND SELLERS?

STATEMENT OF THE CASE/FACTS

Appellant's brief summarizes the procedural chronology of this action. The action centers on South Carolina's licensing statute for motor vehicle dealers, which requires a surety bond under S.C. Code § 56-15-320(B) (2009) (the "Dealer Bond Statute"). The Dealer Bond Statute requires motor vehicle wholesalers or dealers to obtain a bond in order to, *inter alia*, indemnify:

for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter.

Id. (emphasis added). "An owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter." *Id.*

Charleston Auto Auction is a wholesale auctioneer that facilitates the sale and purchase of automobiles among dealers. Charleston Auto Auction acts as the agent and legal representative for dealerships in the transactions; collects and conveys the funds for the automobiles; and conveys (but does not assume) the title to the automobiles between the parties. (R. p. 51 (Affidavit of Laura Taylor ¶ 3)).

Before Charleston Auto Auction will facilitate the sale of an automobile, dealers must enter into an agreement with Charleston Auto Auction, which makes Charleston

Auto Auction their legal representative in the transaction. (R. p. 51 (Affidavit of Laura Taylor ¶ 4)).

A3 Auto Center is an automobile dealer in South Carolina. In March 2008, A3 Auto Center purchased three automobiles using Charleston Auto Auction (the "Vehicles"). A Plus Auto Sales, Priceless Automotive, and Automotive Rentals, Inc. / ARI Fleet Ltd (collectively the "Selling Dealerships") each sold one of the Vehicles. (R. p. 51 (Affidavit of Laura Taylor ¶ 5)). Charleston Auto Auction was the auctioneer, the agent and legal representative pursuant to the Dealer Bond Statute. (R. p. 51 (Affidavit of Laura Taylor ¶ 6)). Pursuant to the Dealer Bond Statute, A3 Auto Center obtained a Bond from CNA Surety under the Dealer Bond Statute. (R. p. 68 (Ex. 7 to motion for summary judgment)).

A3 Auto Center paid for the Vehicles with worthless checks, causing at least \$35,305.00 in damage. (R. pp. 51-52 (Affidavit of Laura Taylor ¶¶ 7-8)).

In the case below, Charleston Auto Auction, as the legal representative, sought reimbursement under the Bond for A3 Auto Center's worthless checks. Centennial has repaid Charleston Auto Auction on those claims. As the legal subrogee of Charleston Auto Auction, Centennial has the right to proceed in the place of Charleston Auto Auction in this matter. Centennial made demands on Appellant for payment under the Bond, which CNA Surety has rejected. (R. p. 69 (Ex. 8 to motion to summary judgment)). CNA Surety's primary contention is that neither Centennial nor Charleston Auto Auction is the "owner" or "legal representative" as required by the Dealer Bond Statute. The Circuit Court ruled in Respondent's favor, holding that Respondent

qualified as a "legal representative" under the Dealer Bond Statute. (R. p. 3). Appellant has appealed that issue of statutory interpretation.

ARGUMENT

I. DID THE LOWER COURT ERR IN DETERMINING THAT CHARLESTON AUTO AUCTION IS A "LEGAL REPRESENTATIVE" UNDER S.C. CODE § 56-15-320?

A. The statute is clear that an "owner or his legal representative" may recover damages under the bond.

i. The statute and evidence are clear and support the Circuit Court's ruling.

The core issue is whether Charleston Auto Auction (or Centennial as its subrogee) is a "legal representative" under the Dealer Bond Statute. Where a statute's language is plain and unambiguous, the rules of statutory interpretation are not needed and a court may not impose another meaning. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *see also Anderson v. S. Carolina Election Comm'n*, 397 S.C. 551, 556-57, 725 S.E.2d 704, 707 (2012) ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.")

The Dealer Bond Statute is clear that an owner's legal representative may recover under the bond:

An owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter. . . .

S.C. Code § 56-15-320(B) (emphasis added). The purpose of the bond is to, *inter alia*, indemnify:

for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a

licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter.

Id. (emphasis added). The South Carolina Supreme Court has stated:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, **or the owner's legal representative**, with a cause of action against the surety on a bond issued pursuant to that statute.

Mid-State Auto Auction v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (emphasis added). The undisputed evidence before the Circuit Court was that each vehicle's Bill of Sale explicitly made Charleston Auto Auction the "legal representative" by stating: "Seller and Buyer each appoint Auction Company as their **agent and legal representative** for the purpose of processing this transaction through Auction Company" (R. p. 58 (terms of Purchase Agreement and Bill of Sale (p. 4, para. 2); emphasis added)); (R. pp. 59-62 (title clerk authorizations)).

Based on this clear language and evidence, the Circuit Court correctly found that Respondent was a "legal representative" under the statute.

ii. **Appellant's primary argument is that the statute does not mean legal representative when it specifies "legal representative".**

Appellant admits that Respondent is a legal representative. *See* App. Initial Br. at p. 10 ("CAA was merely an agent or legal representative for facilitating the transaction . . ."). Appellant's primary argument is that, in the statute, "legal representative" does not mean legal representative. Instead, Appellant argues, "legal representative" has a different, narrow meaning that excludes some legal representatives and includes other legal representatives, depending on the circumstances and context, which are not

specified in the statute. Appellant would have this Court create a new, separate, complex definition of "legal representative" that apparently would apply only in certain situations.

For example, Appellant argues that the Court should construe the statute to apply to legal representatives of criminal offenders (under S.C. Code § 17-25-530, which allows victims to sue criminal offenders), and to legal representatives who seek unpaid leave of deceased state employees (under S.C. Code § 8-11-620), and to bankruptcy trustees, and to executors, and to administrators, and under the Probate Code.

Appellant acknowledges that the term "legal representative" may have other meanings. See App. Initial Br. at p. 9. Other states' courts have construed dealer bond statutes to apply to persons beyond those argued by Appellant here. Cf. *Bryant Motors, Inc. v. Am. States Ins. Companies*, 118 Idaho 796, 799, 800 P.2d 683, 686 (Ct. App. 1990) (joint venturer allowed to recover under dealer bond statute: "We note, however, that the statute draws no such distinction between the consuming public and business merchants; the legislature did not limit the scope of the statute to buyers or consumers, nor did it exclude creditors, joint venturers, or other non-consumer classes."); *Massachusetts Bonding & Ins. Co. v. Cent. Fin. Corp.*, 124 Colo. 379, 381, 237 P.2d 1079, 1080 (1951) (finance company could recover under dealer bond statute); *Sun Ins. Co. v. Aetna Ins. Co.*, 169 Neb. 94, 109-112, 98 N.W.2d 692 (1959) (statutory motor vehicle dealer's bond was not limited to protecting buyers only, and the coverage afforded by bond extended to dealer's creditors as well); *State v. General Ins. Co. of America*, 179 N.W.2d 123, 125-27 (N.D. 1970) (dealer bond statute covered lending bank); *Lawrence v.*

Ward, 5 Utah 2d 257, 260-62, 300 P.2d 619 (1956) (mortgagee was entitled to recover under bond).

Appellant's interpretation of "legal representative" under the statute is not supported by the statutory language, or the legislative history, or the relevant case law. Instead, "[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Grier v. AMISUB of S. Carolina, Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) ("Thus, we must follow the plain and unambiguous language in a statute and have 'no right to impose another meaning.'" (internal citations omitted)). The Circuit Court correctly ruled that a legal representative was a "legal representative" under the statute.

B. Section 56-15-520 does not negate Respondent's status as a legal representative under the statute.

Appellant argues that S.C. Code § 56-15-520 excludes Respondent from the statute because that section states that wholesale motor vehicle auctions are not the owner, seller, transferor or assigner of the vehicle by reason of their name appearing on the title for the purpose of a transaction. The Circuit Court correctly pointed out that the statute's definitions and provisions do not prohibit an auction company from being the "legal representative" of a vehicle's owner. Moreover, the Circuit Court noted that a primary purpose of that provision is to prevent an auction company from being an owner of a vehicle for purposes of property taxation. (R. p. 9) There is no indication that

§ 56-15-520 changes whether an auction company is a "legal representative" under § 56-15-320.¹

II. DID THE LOWER COURT ERR WHEN IT REFUSED TO REWRITE THE STATUTE TO EXCLUDE FRAUD IN THE PURCHASE OF MOTOR VEHICLES?

Appellant next argues that the statute only protects against fraud in the sale of motor vehicles, but excludes fraud in the purchase of motor vehicles. The language of the statute has no such limitation. Instead, the statute is deliberately broad and includes fraud "made in connection with the sale or transfer of a motor vehicle" S.C. Code § 56-15-320(B) (emphasis added). The language "in connection with" the "transfer" of a motor vehicle does not, under any reasonable interpretation, exclude purchases. It would be a significant, unfounded change for the Court to now limit the statute, as suggested by the Appellant. Such a change would require rewriting of the entire statutory section.

Appellant is incorrect in arguing that the Court so limited the statute in *Mid-State Auto Auction*, 324 S.C. at 69-70, 476 S.E.2d at 692. In *Mid-State*, the issue presented was whether a person other than an "owner or his legal representative" may recover under

¹ In its brief, Appellant also argues otherwise that Charleston Auto Auction made a business decision, and could have required cash or protected its interests. Appellant does not cite to the Record on Appeal in support of this assertion. See App. Initial Br. at pp. 10-11. Regardless, this assertion does not change Charleston Auto Auction's position as a "legal representative" under the statute. Cf. *Bryant Motors, Inc.*, 118 Idaho at 799, 800 P.2d at 686 ("American States further maintains that merchants have better means available for protection against non-payment than does an individual member of the general public. Such argument, however, is misplaced. The bond required by statute is not a bond against insolvency, but a bond conditioned against fraud. A merchant is in no better position to protect against the deception of a dealer than is the general public.").

the bond. The Court held that the statute allowed a cause of action only to "the owner of a motor vehicle, or the owner's legal representative." *Id.* There is no indication in the ruling that the Court was limiting the statute to exclude fraud in the purchase of a vehicle.

Appellant also is incorrect in arguing that *Connecticut Indemnity v. Burdette Chrysler Dodge Corp.*, 317 S.C. 406, 453 S.E.2d 902 (1994), limited the statute. As an initial matter, *Burdette* was overruled by *Mid-State*, 324 S.C. at 69-70, 476 S.E.2d at 692. Moreover, the ruling in *Burdette* was based on the understanding that the purchaser had not established "fraud" under the statute. In this action, there is no serious dispute that "fraud" was committed by (1) the two NSF checks (which were not for preexisting debts), and (2) the stop-payment placed on the third check. (R. pp. 51-52, 63-65)

Moreover, Appellant's argument makes no sense under the statute. A cardinal rule of statutory construction is that a statute must receive a practical and fair interpretation, which harmonizes its subject matter. *See Jones v. State Farm Mut. Auto Ins. Co.*, 364 S.C. 222, 232, 612 S.E.2d 719, 724 (Ct. App. 2005). For example, the statute requires Charleston Auto Auction to obtain a bond. *See* S.C. Code § 56-15-320; (R. pp. 83-84 (Ex. A to Supp. Memo. of Authorities)); (R. p. 50 (Respondent Motion at Ex. 2 (Aff. of Laura Taylor))). If Appellant's arguments were correct—that because the auction is "neither the buyer nor the seller"² the statute and bond do not apply—the bonds that Charleston Auto Auction and similar auctions must purchase under the statute would be worthless, and nobody could legally make a claim on those bonds. The only

² App. Initial Br. at p. 14.

reasonable interpretation is that dealers and auction companies are permitted to make claims on the bond "in connection" with the "transfer" of an automobile.

III. DID THE LOWER COURT ERR IN FAILING TO INTERPRET THE STATUTE TO EXCLUDE PARTIES THAT SOMETIMES ACT AS REPRESENTATIVES FOR BUYERS AND SELLERS?

Appellant argues that the Circuit Court should be reversed because, at times, an automobile auction acts as a representative for buyers and sellers. As an initial matter, it is not clear that this issue has been preserved for appeal. *See Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("[A]n issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved.").

Moreover, Appellant's argument here is based on a different situation in a case that has been overruled. *See Mid-State*, 324 S.C. at 65, 476 S.E.2d at 690 (overruling *Burdette*, 317 S.C. at 406, 453 S.E.2d at 902, and holding that only motor vehicle owner or his legal representative could recover under statutory dealer's bond). The conduct referred to in *Burdette* was very different from what occurred here: in *Burdette*, the dealer (*Burdette*) had failed to transfer title to Eagle Auto, in violation of a different statutory requirement (S.C. Code § 56-19-360). *Burdette* then transferred the titles to the ultimate consumer purchasers in exchange for those consumers' claims against Eagle Auto. *See Burdette*, 317 S.C. at 410, 453 S.E.2d at 904. The court refused to allow *Burdette* to recover for the unlawful act of failing to transfer the titles to Eagle Auto. In contrast, in this action there is no allegation that Respondent engaged in any sort of unlawful act. And Appellant provides no law or evidence that Respondent is somehow barred under

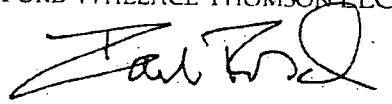
the statute because, at times, automobile auctions may serve as legal representatives for buyers and sellers in transactions.

CONCLUSION

For these reasons, the rulings of the Circuit Court should be affirmed.

Respectfully submitted,

FORD WALLACE THOMSON LLC



Ian S. Ford

Bar no. 12463

715 King Street

Charleston, SC 29403

T. 843.277.2011

E. Ian.Ford@FordWallace.com

Attorney for Respondent

4

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Centennial Casualty Co., Inc., Respondent,

v.

Western Surety Company, d/b/a CNA Surety, Appellant.

Western Surety Company, d/b/a CNA Surety, Defendant/
Third-Party Plaintiff,

v.

Charleston Auto Auction, A3 Auto Center, LLC, and
Wylie Mickle, Third-Party Defendants.

Appellate Case No. 2013-001381

Appeal From Charleston County
J. C. Nicholson, Jr., Circuit Court Judge

Opinion No. 5231
Heard May 7, 2014 – Filed May 21, 2014

REVERSED

S. Markey Stubbs, of Baker Ravenel & Bender, LLP, of
Columbia, for Appellant.

Ian S. Ford, of Ford Wallace Thomson LLC, of
Charleston, for Respondent.

LOCKEMY, J.: Western Surety Co., d/b/a CNA Surety, argues the circuit court erred in (1) finding Charleston Auto Auction (CAA) and its insurance carrier, Centennial Casualty Co. (Centennial), were "legal representatives" pursuant to section 56-15-320(B) of the South Carolina Code; (2) finding section 56-15-320(B) applies when fraud is committed by either the seller or the purchaser of a motor vehicle; and (3) failing to address whether CAA was also the legal representative for the purchasing dealer, and if so, was a participant in the fraud. We reverse.

FACTS/PROCEDURAL BACKGROUND

CAA is a wholesale auctioneer that facilitates the sale and purchase of automobiles among dealers. According to its general manager, CAA (1) acts as the agent and legal representative for dealerships in the transactions; (2) collects and conveys the funds for the automobiles; and (3) conveys, but does not assume, the title to the automobiles between the parties. Section 56-15-320(B) of the South Carolina Code requires motor vehicle wholesalers and dealers to obtain a bond in order to indemnify

for loss or damage suffered by an owner of a motor vehicle, *or his legal representative*, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter.

S.C. Code Ann. § 56-15-320(B) (Supp. 2013) (emphasis added). Before CAA will facilitate sales of automobiles, dealers must enter into an agreement with CAA stating CAA is their legal representative in the transaction.

In March 2008, A3 Auto Center (A3), an automobile dealer, purchased three vehicles using CAA. Each vehicle's bill of sale stated: "Seller and Buyer each appoint [CAA] as their agent and legal representative for the purpose of processing this transaction through [CAA]" Pursuant to the requirements of section 56-15-320(B), A3 obtained a surety bond from CNA Surety.

A3 paid for the vehicles with three checks, all of which were returned for insufficient funds. CAA sought reimbursement from Centennial, its insurance carrier, for A3's bad checks. Centennial paid CAA's claim in the amount of \$35,305. Centennial subsequently demanded payment from CNA Surety under the bond. CNA Surety refused to pay, arguing neither Centennial nor CAA were the owner or legal representative who suffered a loss or damage pursuant to section 56-15-320(B).

Centennial filed a summons and complaint against CNA Surety on October 19, 2009. In its complaint, Centennial alleged: (1) it was subrogated to the rights of CAA; (2) CAA was an owner or legal representative who suffered a loss or damage; and (3) Centennial was entitled to payment under the terms of the bond. In its answer, CNA Surety admitted it was the surety for the bond at issue, but denied that Centennial was the proper party to seek indemnification, or that the loss was covered under section 56-15-320(B). CNA Surety filed a third-party complaint against CAA alleging CAA was the real party in interest, but denying CAA was entitled to seek reimbursement under the bond pursuant to section 56-15-320(B).

On July 8, 2010, Centennial and CAA filed a motion for summary judgment. CNA Surety filed a cross-motion for summary judgment on September 22, 2010. The circuit court denied both motions. Thereafter, CNA Surety and Centennial agreed to a joint stipulation of facts. Both parties stipulated that pursuant to the statutory cap in section 56-15-320(B), the maximum amount in controversy was \$30,000. The parties submitted the stipulation, legal briefs, and proposed orders to the circuit court in lieu of oral arguments.

The circuit court ruled in Centennial's favor, holding CAA was the legal representative of the sellers, and thus, CAA and Centennial, as CAA's subrogee, were entitled to reimbursement under section 56-15-320(B). The circuit court subsequently denied CNA Surety's motion to reconsider. This appeal followed.

STANDARD OF REVIEW

"In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

LAW/ANALYSIS

CNA Surety argues the circuit court erred in finding CAA and Centennial, as CAA's subrogee, were legal representatives pursuant to section 56-15-320(B) of the South Carolina Code. We agree.

Pursuant to section 56-15-320(B):

Each applicant for licensure as a dealer or wholesaler shall furnish a surety bond in the penal amount of thirty thousand dollars The bond must be conditioned upon the applicant or licensee complying with the statutes applicable to the license and as indemnification for loss or damage suffered by an owner of a motor vehicle, *or his legal representative*, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter.

S.C. Code Ann. § 56-15-320(B) (Supp. 2013) (emphasis added). "An owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter." *Id.* Pursuant to *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996), "when [section] 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, or the owner's legal representative, with a cause of action against the surety on a bond issued pursuant to that statute."

Here, three dealers (the Sellers) sold vehicles to A3 using CAA. The Sellers and A3 signed purchase agreements which stated:

Seller and Buyer each appoint [CAA] as their agent and *legal representative for the purpose of processing this transaction through Auction Company, including transfer of title*. However, they agree [CAA] is merely performing an auction service and [CAA] disclaims all

express and implied warranties, including merchantability and fitness, except for the warranty of title described below.

Seller and Buyer indemnify and hold [CAA] harmless from any liability, loss, costs, damages or expenses, including attorney's fees which arise directly or indirectly from this transaction, including, but not limited to, all matters relating to odometer mileage, odometer mileage disclosure, and vehicle history even if Seller and Buyer are not at fault.

(emphasis added).

CNA Surety argues CAA was merely an agent or legal representative for facilitating the transactions and did not stand in the shoes of the Sellers. It contends that if the legislature intended to include auction houses in section 56-15-320(B), it would have done so. Centennial argues each of the purchase agreements explicitly made CAA the Sellers' legal representative. Centennial contends CNA Surety incorrectly argues the term "legal representative" has a different, narrow meaning that excludes some legal representatives and includes other legal representatives, depending on the circumstances.

We find CAA and Centennial were not legal representatives of the Sellers. According to the purchase agreements signed by the parties, CAA was tasked with "processing [the] transaction[s]" through CAA. Therefore, unlike an executor or conservator, CAA acted only as a processor and did not stand in the shoes of the Sellers.

Section 56-15-520 of the South Carolina Code specifically addresses vehicle auction houses:

When a transfer of title is made as a result of a transaction at a wholesale motor vehicle auction, the reassignment of title or bill of sale must note the name and address of the wholesale motor vehicle auction. However, *the wholesale motor vehicle auction is not deemed to be the owner, seller, transferor, or assignor of title of a motor vehicle* by reason of its name appearing on a reassignment of title or bill of sale or by reason of its

payment of a guarantee of payment to a seller, receipt of payment from a purchaser, or the reservation of a lien or security interest for the purpose of securing payment from a purchaser.

S.C. Code Ann. § 56-15-520 (2006) (emphasis added). Section 56-15-520 clearly states an auto auction's actions do not convert it into an owner, seller, transferor, or assignor of title of vehicles. Here, the Sellers maintained their status as owners and CAA acted only as their agent in processing the vehicles through the auction. We find CAA's inclusion of the term "legal representative" in the purchase agreements did not give CAA the same rights as the Sellers.

Based upon our decision to reverse the circuit court as to this issue, we need not address the remaining issues on appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address any remaining issues if the disposition of a prior issue is dispositive).

CONCLUSION

We reverse the circuit court's finding that CAA and Centennial were legal representatives of the Sellers.

REVERSED.

WILLIAMS and KONDUROS, JJ., concur.

5

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

JUN 02 2014

SC Court of Appeals

Appellate Case No. 2013-0013816577

Centennial Casualty Co., Inc. Respondent

v.

Western Surety Co., d/b/a CNA Surety Appellant

Western Surety Co., d/b/a CNA Surety Defendant/Third-Party Plaintiff

v.

Charleston Auto Auction, A3 Auto Center, LLC,
and Wylie Mickle..... Third-Party Defendants

**PETITION FOR REHEARING
BY RESPONDENT CENTENNIAL CASUALTY CO.**

Respondent Centennial Casualty Co., Inc., as subrogee to Charleston Auto Auction (CAA), hereby petitions this Court for rehearing, pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules, of its order filed May 21, 2014 (the "Order"). That Order reversed the order of the Circuit Court, which had found, *inter alia*, that CAA and Centennial were legal representatives of the Sellers. Respondent's

petition seeks rehearing and reconsideration of the Court's Order on the basis that the Order rests on an overly narrow, incorrect reading of the relevant statute, the associated case law, and the underlying evidence on which the Circuit Court based its ruling.

FACTUAL AND PROCEDURAL BACKGROUND

This action involves a claim on a bond issued pursuant to the licensing statute for motor vehicle dealers, S.C. Code § 56-13-320 (the "Dealer Bond Statute"). The Circuit Court entered an order in favor of Respondent on March 4, 2013, holding that Respondent, as subrogee for CAA, was a "legal representative" under § 56-13-320. Appellant appealed. On May 21, 2014, this Court reversed the Circuit Court order, and held that Respondent, and CAA, did not qualify as a "legal representative" under the Dealer Bond Statute.

ARGUMENT

1. The Order is contrary to the language of the statute.

The Court's Order is based on its conclusion that CAA and Centennial were not legal representatives of the Sellers. This is contrary to (a) the overwhelming evidence in the record, and (b) the clear language of the Dealer Bond Statute.¹

The Order is based on the legal standard that the findings of fact of the trial judge will not be disturbed if there is evidence that reasonably supports the judge's findings. Order at p. 3 (citing *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)). Here, the undisputed evidence is that each vehicle's Bill of Sale explicitly made CAA the "legal representative" by stating: "Seller and Buyer each

¹ Respondent will not repeat all of its arguments and citations set forth in its appeal briefing, but incorporates them by reference.

appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company” (R. p. 58 (terms of Purchase Agreement and Bill of Sale (p. 4, para. 2))); (R. pp. 59-62 (title clerk authorizations)). Appellant admits that Respondent is a legal representative. *See* App. Br. at p. 10 (“CAA was merely an agent or legal representative for facilitating the transaction”). There is no evidence in the record to the contrary. There is, accordingly, ample evidence to support the Circuit Court’s finding that Respondent was a legal representative.

The Circuit Court’s findings also were compelled by the Dealer Bond Statute, which states that an owner’s legal representative may recover under the bond:

An owner or his legal representative who suffers the loss or damage has a right of action

S.C. Code § 56-15-320(B) (emphasis added). The purpose of the bond is to, *inter alia*, indemnify:

for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle

Id. (emphasis added). The South Carolina Supreme Court has stated:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, or the owner’s legal representative, with a cause of action against the surety on a bond issued pursuant to that statute.

Mid-State Auto Auction v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (emphasis added). Given the strong evidence establishing that Respondent is the legal representative, and the clear law holding that legal representatives are covered by the statute, it was error for the Order to rule otherwise.

2. The Order improperly limits the statute.

As stated above, Appellant admits that Respondent is a legal representative. *See* App. Br. at p. 10. The Order states that, even so, “unlike an executor or conservator, CAA acted only as a processor and did not stand in the shoes of the Sellers.” Order at p. 5. The Order appears to separate out some types of legal representatives from the Dealer Bond Statute, those that do not “stand in the shoes” of others. The Order does not define legal representative, and cites no law supporting its conclusion that a legal representative must “stand in the shoes” of another to be covered under the Dealer Bond Statute.

The Dealer Bond Statute makes no such distinction regarding “standing in the shoes” of another. Instead, it broadly covers “legal representative[s]”—a bright-line rule. Where a statute’s language is plain and unambiguous, a court may not impose another meaning. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *see also Anderson v. S. Carolina Election Comm'n*, 397 S.C. 551, 556-57, 725 S.E.2d 704, 707 (2012). There is no need to interpret, or authorization to limit, the statute’s coverage of “legal representatives” to certain types who “stand in the shoes” of others. Had the Legislature intended such a distinction, it would have defined “legal representative” to include some types, and exclude others. Accordingly, the Order improperly limits the statute.

3. The Order misconstrues the application of S.C. Code § 56-15-520 to these issues.

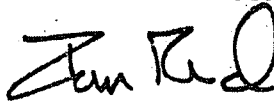
The Order states that S.C. Code § 56-15-520 does not convert an auto auction into an owner, seller, transferor, or assignor of the title of vehicles, and concludes that CAA's inclusion of the term "legal representative" in the purchase agreements did not give CAA the same rights as the Sellers. Order at p. 6. The Dealer Bond Statute, however, does not confine the right of recovery to owners (or sellers). The statute states that a motor vehicle owner, "or his legal representative", may recover under the bond. The Supreme Court has stated that a "legal representative" of an owner may recover under the bond. *Mid-State Auto Auction v. Altman*, 324 S.C. at 69, 476 S.E.2d at 692. Accordingly, even if the auction is not the owner, seller, transferor, or assignor under § 56-15-520, and even if the auction does not have the same rights as a seller § 56-15-520, the Dealer Bond Statute still provides a right to recovery to a legal representative of the owner.

CONCLUSION

For these reasons, Respondent requests that this Court grant its petition for rehearing and reconsideration of the issues presented in the instant appeal.

Respectfully submitted,

FORD WALLACE THOMSON LLC



Ian S. Ford

Bar no. 12463

715 King Street

Charleston, SC 29403

T. 843.277.2011

E. Ian.Ford@FordWallace.com

Attorney for Respondent

6

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-0013816577

Centennial Casualty Co., Inc. Respondent

v.

Western Surety Co., d/b/a CNA Surety Appellant

Western Surety Co., d/b/a CNA Surety Defendant/Third-Party Plaintiff

v.

Charleston Auto Auction, A3 Auto Center, LLC, and
Wylie Mickle, Third-Party Defendants

**RETURN TO PETITION FOR REHEARING BY
WESTERN SURETY CO., D/B/A CNA SURETY**

S. Markey Stubbs
Bar Number 7873
Baker Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, South Carolina 29204
T. 803.799.9091
Our File 7753.67
Attorney for Appellant

Ian Ford, Esquire
FORD & WALLACE LLC
715 King Street
Charleston, S.C. 29403
T. 843.608.1234
Attorney for Respondent

The Appellant, Western Surety Company, d/b/a CNA Surety files this return in accordance with Rule 240 and 221 of the SCACR.

FACTUAL AND PROCEDURAL BACKGROUND

This action involves a claim on a bond issued pursuant to the licensing statute for motor vehicles, S.C. Code §56-13-320. The Circuit Court entered an order in favor of Petitioner March 4, 2013. This order was timely appealed based on numerous grounds as set forth in the briefing below. The Appellate Court on May 21, 2014, reversed the Circuit Court order and held that the Petitioner did not qualify as a “legal representative” under the terms of the statute.

ARGUMENT I

Pursuant to Rule 221, the parties are required to state with particularity the points supposed to have been overlooked or misapprehended by the Court. In this action, the Petitioner does not state any point overlooked or misapprehended but argues again the matters previously briefed and argued. The petition for rehearing provides no guidance, case law, or anything else that would disturb the findings of the Appellate Court. The Appellate Court by Order of May 21, 2014 correctly found that the document relied on by Petitioner was solely to facilitate the transaction through the auction and did not make the insurance company or Auction House a legal representative as contemplated by the statute. The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Gilstrat v. SC Budget and Control Board, 310 S.C. 210, 423 S.E.2d 101 (1992).

ARGUMENT II

The Court correctly found that §56-15-520 SCRCF prevents the Auction House from being considered an owner simply by a vehicle being transferred at the Auction House.

cc:

Sidney Markey Stubbs, Esquire

Ian S. Ford, Esquire

The Honorable J. C. Nicholson, Jr.

The South Carolina Court of Appeals

Centennial Casualty Co., Inc., Respondent,

v.

Western Surety Company, d/b/a CNA Surety, Appellant.

Western Surety Company, d/b/a CNA Surety,
Defendant/Third-Party Plaintiff,

v.

Charleston Auto Auction, A3 Auto Center, LLC, and
Wylie Mickle, Third-Party Defendants.

Appellate Case No. 2013-001381

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. B. Wilson
_____ J.

[Signature]
_____ J.

[Signature]
_____ J.

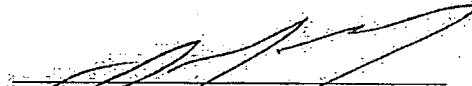
Columbia, South Carolina

FILED
June 25, 2014

7

CONCLUSION

The arguments raised by Petitioner are the same as the arguments already raised and addressed by the Court. For the reasons set forth in the Order of the Court of Appeals as well as the additional sustaining grounds asserted by Appellant below, the Petition for Rehearing should be denied.



S. Markey Stubbs

Bar Number 7873

Baker Ravenel & Bender, LLP

3710 Landmark Drive, Suite 400

Columbia, South Carolina 29204

T. 803.799.9091

Our File 7753.67

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-0013816577

Centennial Casualty Co., Inc. Respondent

v.

Western Surety Co., d/b/a CNA Surety Appellant

Western Surety Co., d/b/a CNA Surety Defendant/Third-Party Plaintiff

v.

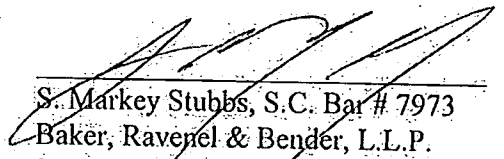
Charleston Auto Auction, A3 Auto Center, LLC, and Wylie Mickle, Third-Party Defendants

PROOF OF SERVICE

I, S. Markey Stubbs, attorney for Appellant Western Surety Co., d/b/a CNA Surety, do hereby certify that I have this 3rd day of June, 2014 served counsel of record with the Record On Appeal by mailing said copies by United States Mail, first class postage pre-paid, to said counsel at the following addresses:

APPELLANT'S COUNSEL OF RECORD:

Ian S. Ford
FORD, WALLACE THOMPSON LLC
715 King Street
Charleston, S.C. 29403



S. Markey Stubbs, S.C. Bar # 7973
Baker, Ravenel & Bender, L.L.P.
3710 Landmark Drive, Suite 400
P. O. Box: 8057
Columbia, South Carolina 29202
(803) 799-9091
Our File No.: 7753:67
Attorneys for Appellant Western Surety

June 3rd, 2014