

United Automobile Insurance Company,
Plaintiff(s)

CIVIL ACTION COVERSHEET

vs.

RECEIVED

2014-CP - 04 0850

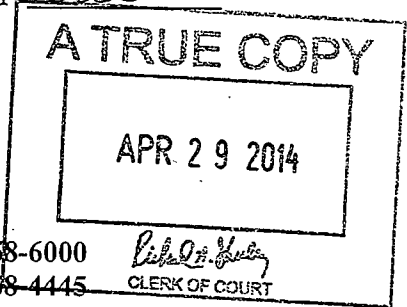
Willie Freeman, Michael Craft, Kimberly L. Sanford and Antonio Craft

JUL 13 2015

Defendants Court of Appeals

Submitted By: George V. Hanna, IV
Address: P.O. Box 12009
Columbia, SC 29211

SC Bar #: 15935
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Other:
E-mail: GHanna@HNBlaw.com



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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -CP- -, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Judgment: Inmate Petitions (PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)), Administrative Law/Relief (Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)), Judgments/Settlements (Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)), Appeals (Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999))
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature:

Date: April 23, 2014

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

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

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

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

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

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
C/A NUMBER: 14-CP-04-0850

United Auto Insurance Company,

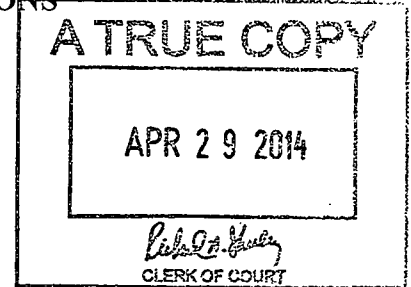
Plaintiff,

vs.

Willie Freeman, Michael Craft, Kimberly
L. Sanford and Antonio Craft,

Defendants.

SUMMONS

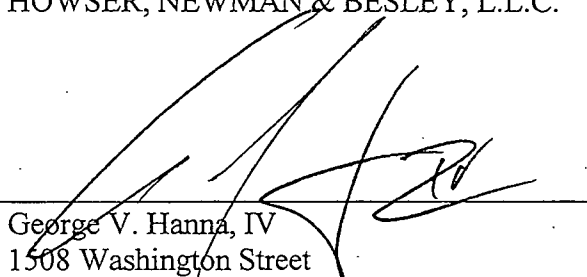


TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their offices, 1508 Washington Street, Columbia, South Carolina, 29201, within thirty (30) days after the service hereof, exclusive of the day of such service; in the event you fail to answer the Complaint in the time as aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

HOWSER, NEWMAN & BESLEY, L.L.C.

By


George V. Hanna, IV
1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29201
(803) 758-6000
Attorneys for the Plaintiff

April 23, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
C/A NUMBER: 14-CP-04- 0850

United Auto Insurance Company,

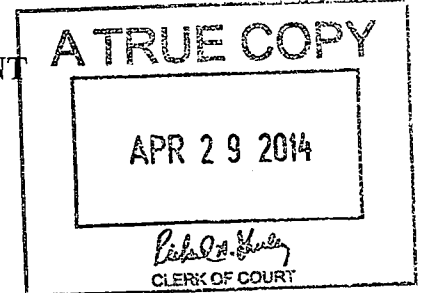
Plaintiff,

vs.

Willie Freeman, Michael Craft, Kimberly
L. Sanford and Antonio Craft,

Defendants.

COMPLAINT



The Plaintiff United Auto Insurance Company (“UAIC”), complaining of the Defendants herein, alleges:

1. That the Plaintiff, UAIC, is an insurance company organized and existing under the laws of one of the United States, and is authorized, and does conduct, business in Anderson County, South Carolina.
2. That the Defendant, Willie Freeman, is a resident of Anderson County, South Carolina.
3. That the Defendant, Michael Craft, is a resident of Anderson County, South Carolina.
4. That the Defendant, Kimberly Sanford, is a resident of Anderson County, South Carolina.
5. That the Defendant Antoine Craft, is a resident of Anderson County, South Carolina.
6. This action is one for declaratory judgment pursuant to Section 15-53-10 et seq. of the 1976 South Carolina Code as amended for the purpose of determining a question in controversy

between the parties as more fully appears herein.

5. The Plaintiff UAIC issued to Defendant Kimberly L. Sanford as named insured a policy of automobile liability insurance bearing policy number SCU 000693514 ("the Policy") with effective dates of January 3, 2013 to July 3, 2013 which provides bodily injury liability coverage for one (1) vehicle, including a 1997 Ford Crown Victoria, in the amount of \$25,000/\$50,000, and that reference to this policy is craved for its exact terms, provisions, insuring agreements, limitations and exclusions.

6. That Defendant Kimberly L. Sanford paid her first month's premium on January 3, 2013 at the time the Policy was issued.

7. That Defendant Kimberly L. Sanford failed to pay the premium for the second month before the due date of February 3, 2013, resulting in cancellation of the Policy as of February 3, 2013 at 12:01 AM.

8. That Policy was reinstated on February 14, 2013 at 11:21 AM after Defendant Kimberly L. Sanford made an additional payment.

9. That on or about February 13, 2013 Antonio Craft was operating the aforementioned 1997 Ford Crown Victoria on Tribble Street in the Anderson, South Carolina when his vehicle allegedly struck Defendants William F. Freeman and Michael Craft, who were pedestrians.

10. That at the time of the accident the Policy had been cancelled due to nonpayment of the premium.

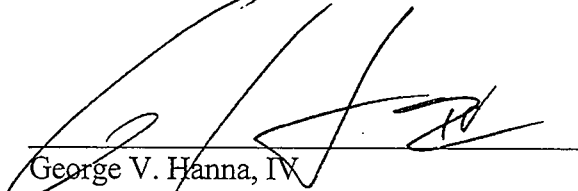
11. That heretofore William F. Freeman and Michael Craft instituted an action in the Court of Common Pleas for Anderson County against Kimberly Sanford and Antonio Craft for

injuries and damages allegedly received in the accident of February 13, 2013.

12. That a justiciable controversy exists as to whether the Plaintiff UAIC owes either a defense or indemnity under the liability provisions of the policy issued by the Plaintiff to Defendant Kimberly L. Sanford, this court should inquire into this matter, which is a proper subject for declaratory judgment under Section 15-53-10 *et seq.* of the 1976 South Carolina Code as amended, and issue its order declaring that the policy of UAIC does not provide liability insurance coverage for the accident referred to in this Complaint and the underlying Complaint which Antonio Craft had with William F. Freeman and Michael Craft on February 13, 2013, since the policy had been cancelled for nonpayment of premiums.

Wherefore, Plaintiff demands that the court inquire into this matter and issue its order and judgment declaring that the automobile liability insurance policy issued by Plaintiff UAIC does not provide liability insurance coverage to any person with a claim or potential claim arising out of the accident on February 13, 2013, and that Plaintiff UAIC owes no duty of defense and/or indemnity to the Defendants Kimberly L. Sanford and Antonio Craft as a result of any claim or action arising out of this accident, and that the court grant such other and further relief as may be just and proper.

HOWSER, NEWMAN & BESLEY, L.L.C.



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(803) 758-6000
Attorneys for Plaintiff United Auto Insurance Company

April 23, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
United Auto Insurance Company,)
Plaintiff,)
)
v.)
)
Willie Freeman, Michael Craft, Kimberly)
L. Sanford and Antonio Craft,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

ANSWER

C.A. NO.: 2014-CP-04-0850

Defendants Willie Freeman and Michael Craft, answering the Complaint of the Plaintiff herein, would show unto this Honorable Court that:

1. Defendants admit Paragraph 1.
2. Defendants admit Paragraphs 2 and 3.
3. Defendants admit Paragraphs 4, 5 and 6.
5. Defendants admit Paragraph 5 on Page 2 of the Complaint.
6. Defendants deny they have knowledge or information sufficient to form a belief

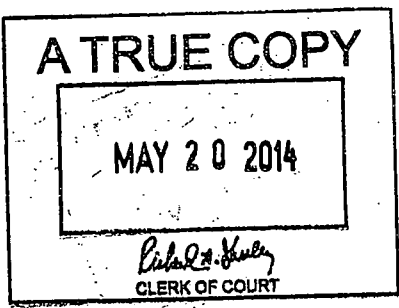
as to the allegations of Paragraphs 6, 7 and 8 on Page 2 of the Complaint, and therefore deny the same.

7. Defendants admit Paragraph 9.
8. Defendants deny they have knowledge or information sufficient to form a belief

as to the allegations of Paragraph 10, and therefore deny the same.

9. Defendants admit Paragraph 11.

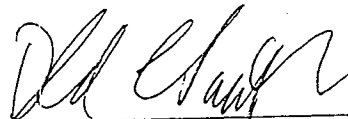
10. Defendants deny that the "justiciable controversy" alluded to in Paragraph 12 exists, and believe that Plaintiff owes Defendants indemnity under the liability provisions of the subject policy.



WHEREFORE, the Defendants Willie Freeman and Michael Craft pray for an

Order of this Honorable Court:

1. Dismissing the Plaintiff's Complaint;
2. Ordering Plaintiff to provide them indemnity; and
3. Granting them such other relief as is just and proper.



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Anderson, S.C. 29621
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Attorney for Plaintiff
attorneydonaldsmith@gmail.com

Anderson, South Carolina
Dated: May 10, 2014

MOTION FEE PAID



STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
C/A NUMBER: 14-CP-04-850

United Auto Insurance Company,

Plaintiff,

vs.

Willie Freeman, Michael Craft, Kimberly
L. Sanford and Antonio Craft,

Defendants.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

RECEIVED

JUL 13 2015

SC Court of Appeals

PLEASE TAKE NOTICE that the Plaintiff, by and through its undersigned attorneys, will move before the Presiding Judge of the Court of Common Pleas, Tenth Judicial Circuit, on the tenth (10th) day after service hereof or at such time and place as is convenient to the Court and counsel for an Order granting the Plaintiff's Motion for Summary Judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, as to the within action because there are no genuine issues of material facts and because this Defendant is entitled to judgment as a matter of law.

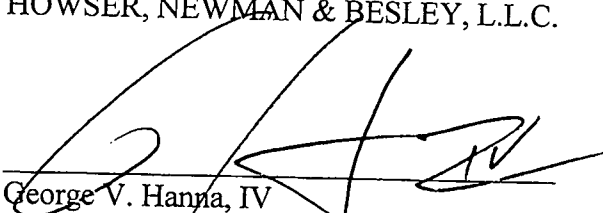
This motion is based upon the grounds that Plaintiff fully complied with the requirements of S.C. Code Ann. § 38-77-120 in cancelling Defendant Kimberly L. Sanford's policy of insurance and that the policy was not in effect on February 13, 2013. This motion is further based upon the pleadings, the discovery responses of the parties, the depositions taken in this case, the affidavit of Robert Gibbs and the memorandum of law to be filed by the Plaintiff.

A TRUE COPY
JAN 27 2015
Richard X. Wiley
CLERK OF COURT

FILED-CLERKS OFFICE
ANDERSON SC
2014 DEC -9 AM 10:50
COMMON PLEAS AND
GENERAL SESSIONS

Respectfully submitted,

HOWSER, NEWMAN & BESLEY, L.L.C.


George V. Hanna, IV
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(803) 758-6000

Attorneys for Plaintiff United Auto Insurance Company

December 4, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 United Auto Insurance Company,)
)
 Plaintiff,)
)
 v.)
)
 Willie Freeman, Michael Craft, Kimberly)
 L. Sanford and Antonio Craft,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 TENTH JUDICIAL CIRCUIT

DEFENDANT'S RETURN TO
 PLAINTIFF'S MOTION
 FOR DECLARATORY JUDGMENT

C.A. NO.: 2014-CP-04-0850

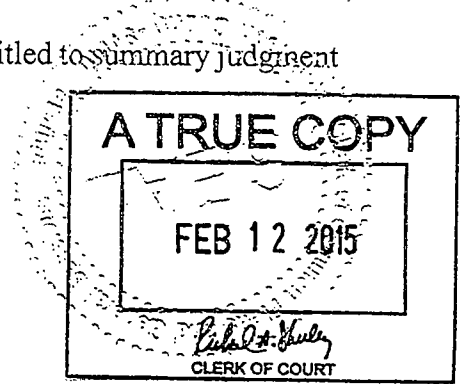
RETURN TO PLAINTIFF'S MOTION FOR DECLARATORY JUDGMENT

COMES NOW Defendants, Michael Craft and William Freeman, by and through undersigned counsel, and respectfully submits this memorandum in opposition to United Auto Insurance Company's ("Plaintiff" or "UAIC") Motion for Summary Judgment.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The threshold issue before this court is whether UAIC was statutorily required to provide insurance coverage to Kimberly Sanford and Antonio Craft at the time of their car accident. In support of its motion for summary judgment, Plaintiff UAIC relies solely upon S.C. Code Ann. § 38-77-120, which requires a 15-day notice for cancellation. However, the 15-day notice, and subsequent policy cancellation, was invalid because UAIC should *not* have issued a cancellation notice until after the insured failed to pay the premium. Here the legislative intent and public policy interests are clear—protect the public from the burden of compensating for injuries sustained as a result of uninsured drivers. Therefore, Plaintiff is not entitled to summary judgment as a matter of law.

II. FACTUAL HISTORY



On or about February 13, 2013, at approximately 11:00 a.m., Michael Craft and Willie Freeman having a conversation on the sidewalk in front of 1506 Tribble St., in Anderson, SC. Drew Order ¶ 2, September 9, 2014 (2013-CP-04-00771). Antonio Craft was driving Kimberly Sanford's automobile, 1997 Ford Crown Victoria. *Id.* at ¶ 4. Antonio Craft struck Michael Craft and Willie Freeman. *Id.* at ¶¶ 5-7. Antonio Craft fled the scene of the accident on foot after striking Michael Craft and Willie Freeman. *Id.* at ¶ 9. As a result of the accident, Michael Craft suffered blunt force trauma to the head, which necessitated the removal of part of his skull. *Id.* at ¶¶ 10-12. Michael Craft's medical bills totaled \$49,128.52 as a result of being struck by the vehicle. *Id.* at ¶ 15. In addition to Michael Craft's injuries, Antonio Freeman suffered a torn medial meniscus in his left knee and a tear in his left shoulder. *Id.* at ¶¶ 16-17. Antonio Freeman's medical bills relating to injuries sustained in the accident totaled \$12,295.50. Michael Craft and Antonio Freeman were awarded \$64,128.52 and \$24,295.50, respectively. *Id.* at ¶¶ 1-2.

On January 3, 2013, Kimberly Sanford paid her first month's premium on a new automobile insurance policy with UAIC. Gibbs Aff. at ¶ 2. This policy covered Ms. Sanford's 1997 Ford Crown Victoria and had bodily injury coverage of \$25,000/\$50,000. Gibbs Aff. at ¶ 1. Less than a week after Kimberly Sanford paid her first month's premium, UAIC sent her a bill for the second month's premium on January 9, 2013. Gibbs Aff. at ¶ 3. On January 22, 2013, while in the first month of Ms. Sanford's new policy, UAIC sent Ms. Sanford a cancellation notice of her policy. Gibbs Aff. at ¶ 4. Ms. Sanford's premium for the second month of the policy was not due until February 3, 2013. Gibbs Aff. at ¶ 5. The same day Ms. Sanford's second policy premium was due; UAIC cancelled the policy effective at February 3, 2013 at 12:01 AM. Gibbs Aff. at ¶ 5.

III. PROCEDURAL HISTORY

On April 4, 2013, Michael Craft and William Freeman timely filed a Summons and Complaint. (2013-CP-04-0071). Antonio Craft and Kimberly Sanford were properly served with the pleadings on September 21, 2013 and April 29, 2013, respectively. Drew Order, September 9, 2014 (2013-CP-04-00771). Neither defendant filed responsive pleadings. Id. On January 21, 2014, Plaintiff moved for an Order of Default and Order for Hearing to Ascertain Damages. Id. The hearing was set for April 28, 2014. Id. On April 24, 2014, UAIC filed a declaratory judgment action to discern responsibility for providing coverage. (14-CP-04-850). UAIC requested a continuance for the damages hearing based on its Declaratory Judgment action. Drew Order, September 9, 2014 (2013-CP-04-00771). On July 15, 2014, UAIC again requested a continuance in hopes that the declaratory judgment action could be addressed prior to the hearing on Damages. Id. On July 11, 2014, an Order Denying the Motion for Stay or for Continuance was issued. Id. The total award of damages ordered for Michael Craft and William Freeman were \$64,128.52 and \$24,295.50, respectively. Id.

The only issue now before the court is Defendant's Motion for Summary Judgment in its Declaratory Judgment action (14-CP-04-850).

IV. STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Here, the evidence shows that Defendant is not entitled to summary judgment. Accordingly, its motion for summary judgment should be denied.

V. LEGAL ARGUMENT

A. *UAIC failed to properly comply with S.C. Code Ann. § 38-77-120 and S.C. Code Ann. § 56-10-280*

In Plaintiff's Motion for Summary Judgment, Plaintiff asserts because it allegedly complied with S.C. Code Ann. § 38-77-120 ("§ 38-77-120") its motion should be granted. Plaintiff is wrong. Plaintiff neglects to acknowledge the plain meaning of § 38-77-120 and S.C. Code Ann. § 56-10-280 ("§ 56-10-280").¹ When read together these two statutes unequivocally require that an insured has 15-days *after* the payment due date to bring her balance current, which is exactly what occurred in this matter. Plaintiff ignored the legislative intent and plain meanings of these statutes.

Specifically, § 38-77-120 concerns the requirements for notice as it relates to renewal of a policy. It states:

SECTION 38-77-120. Requirements for notice of cancellation of or refusal to *renew* policy.

(a) No cancellation or refusal to renew by an insurer of a policy of automobile insurance is effective unless the insurer delivers or mails to the named insured at the address shown in the policy a written notice of the cancellation or refusal to renew. This notice:

(1) must be approved as to form by the director or his designee before use;

(2) *must state the date not less than fifteen days after the date of the mailing or delivering on which the cancellation or refusal to renew becomes effective;*

(3) must state the specific reason of the insurer for cancellation or refusal to renew and provide for the notification required by subsection (B) of Section 38-77-390. However, those notification requirements must not apply when the policy is being canceled or not renewed for the reason set forth in Section 38-77-123(B),

(4) must inform the insured of his right to request in writing within fifteen days of the receipt of notice that the director review the action of the insurer. The notice of

¹ Defendant also contends that §38-77-120 is inapplicable in this matter because it concerns a renewal policy, not a new policy.

cancellation or refusal to renew must contain the following statement to inform the insured of such right:

"IMPORTANT NOTICE

Within fifteen days of receiving this notice, you or your attorney may request in writing that the director review this action to determine whether the insurer has complied with South Carolina laws in canceling or nonrenewing your policy. If this insurer has failed to comply with the cancellation or nonrenewal laws, the director may require that your policy be reinstated. However, the director is prohibited from making underwriting judgments. If this insurer has complied with the cancellation or nonrenewal laws, the director does not have the authority to overturn this action.";

(5) must inform the insured of the possible availability of other insurance which may be obtained through his agent, through another insurer, or through the Associated Auto Insurers Plan. It must also state that the Department of Insurance has available an automobile insurance buyer's guide regarding automobile insurance shopping and availability, and provide applicable mailing addresses and telephone numbers, including a toll-free number, if available, for contacting the Department of Insurance.

Nothing in this subsection prohibits any insurer or agent from including in the notice of cancellation or refusal to renew, any additional disclosure statements required by state or federal laws, or any additional information relating to the availability of other insurance. The insurer must disclose in writing whether the insured is ceded to the facility.

(b) Subsection (a) does not apply if the:

(1) insurer has manifested to the insured its willingness to renew by actually issuing or offering to the insured to issue a renewal policy, certificate, or other evidence of renewal, or has manifested such intention to the insured by any other means;

(2) named insured has demonstrated by some overt action to the insurer or its agent that he expressly intends that the policy be canceled or that it not be renewed.

S.C. Code Ann. § 38-77-120 (emphasis added).

In contrast to § 38-77-120, § 56-10-280 concerns cancellation of automobile insurance policies within the first 60 days of coverage. §56-10-280 states:

SECTION 56-10-280. Insurance not to be issued for period less than six months; contract or policy valid for at least sixty days; cancellation within sixty days.

(A) Contracts or policies of insurance issued to meet the financial responsibility requirements prescribed in this chapter must be issued for not less than six months. A contract or policy of insurance remains in effect at least sixty days notwithstanding a power of attorney which may purport to give the attorney-in-fact the right to effect cancellation on behalf of the insured. However, a contract or policy may be canceled within the first sixty days only under one or more of the following circumstances:

(1) a check or bank draft tendered by the insured for payment to an agent, an insurance company, or a premium finance company is returned unpaid for insufficient funds or other reason by the insured's financial institution. If the check or draft is an initial payment made by an applicant for insurance or a payment made by an insured to renew a policy, the cancellation is effective as of the policy inception or renewal date;

(2) the insured produces satisfactory proof from the Department of Motor Vehicles that he has sold or otherwise disposed of the insured vehicle or surrendered its tags and registration;

(3) the insured has secured another policy that meets the financial responsibility requirements prescribed in this chapter;

(4) the insured fails to pay *when due* the premium for the policy, an installment of the premium, or an installment payment under a premium service contract. The contract or policy of insurance must remain in effect for at least thirty days.

(B) This section does not prohibit refunds to the insured for cancellations after sixty days resulting from causes other than nonpayment of premium. Where an insurance company or premium finance company cancels a contract or policy pursuant to this section for nonpayment of premium under the circumstances in subsection (A) which occurs within the first sixty days, the insurance company, premium finance company, or agent may charge and collect a fifteen-dollar penalty in addition to that otherwise provided by law, and the penalty charge is not a premium charge.

S.C. Code Ann. § 56-10-280 (emphasis added).

Again, Defendant maintains that § 38-77-120 is inapplicable because it concerns a renewal policy when the evidence clearly shows that Ms. Sanford was not a renewing customer, but a new

customer. Pl's MSJ Ex. 1, "Receipt of Payment—New Business." The issue of whether an insurer properly complied with the requirements of § 38-77-120 and § 56-10-280 as it relates to new policy cancellation has not been ruled upon by the South Carolina Supreme Court. However, the Ohio Supreme court in *Vietzen v. Victoria Auto. Ins. Co.* has ruled on this issue with similar facts as the present case. (2014-Ohio-749.)²

In *Vietzen v. Victoria Auto. Ins. Co.*, the insurer (Victoria Auto) sent the insured (Vietzen) a billing statement, which also included a cancellation notice. *Id.* at ¶ 9. Payment on the billing statement was due by September 5, 2009, and the cancellation of coverage, if unpaid, was scheduled for September 6, 2009 at 12:01 AM. *Id.* Vietzen had an accident on September 6, 2009 and had failed to pay her insurance premium by the due date (September 5, 2009). *Id.* at ¶ 10. In *Vietzen*, the insurer relied on an Ohio Statute, R. C. 3937.32, in its defense of cancelling Vietzen's policy. Similar to S.C. Code Ann. § 38-77-120, R.C. 3937.32 required a cancellation notice of 10-days, instead of 15-days. *Id.* at ¶ 12. Like here, the insured in *Vietzen* argued that it had met all requirements under the state statute. *Id.* at ¶ 13. The Ohio Supreme Court, however, disagreed with the insured. *Id.* at ¶ 15.

The Ohio Supreme Court reasoned that the insurers "nonpayment of premium" did not constitute grounds for cancellation when the time for payment had not yet passed. *Id.* at ¶ 17. According to the Ohio Supreme Court, if the statute permitted this then insurance companies could cancel an insured's policy on the grounds of anticipatory breach. *Id.* The court further reasoned that the state statute grants no authority to the insurer to cancel a policy on the belief that the insured will not pay her premium when due. *Id.* at 17.

² For the court's convenience, this case is attached.

Just as in *Vietzen*, the insurer here wants this court to read in § 38-77-120 an anticipatory breach clause, but there is none. On January 9, 2013, less than a week after Ms. Sanford paid her first month's premium, UAIC sent her a bill for her second month's premium, which required payment by January 18, 2013. Gibbs Aff. at ¶ 3. On or about January 22, 2013, UAIC sends Ms. Sanford a cancellation notice effective February 3, 2013 at 12:01AM if payment has not been received. Gibbs Aff. at ¶ 4. Ms. Sanford only had her new policy with UAIC for less than three weeks before UAIC sent her the premature cancellation notice, before her second payment was due (February 3, 2013).

UAIC believes that § 38-77-120 affords insurers an anticipatory breach clause. It does not. According to the § 38-77-120 there must first be a breach, and then a 15-day cancellation of notice, which means that Ms. Sanford would have been covered until February 18, 2013 at 12:01 AM. UAIC erroneously relies upon § 38-77-120 to shield it from liability. For this reason alone, UAIC's motion should be denied.

Furthermore, the statutory construction of § 56-10-280 lends added support to Defendants' legal argument. According to this statute, which is specifically for new coverage, the plain language of the statute specifically requires that from the time the payment is missed ("when due") may action be taken. Accordingly, § 38-77-120's cancellation notification requirements could not be taken until after Ms. Sanford's due date of February 3, 2013.

B. Plaintiff's Motion for Summary Judgment should be denied because Defendant maintained an active insurance policy based on the legislative intent of both § 38-77-120 and § 56-10-280.

The plain meaning of § 38-77-120 and § 56-10-280 espouses a public policy doctrine that demonstrates a clear legislative intent to avoid having uninsured motorists on South Carolina roads. See, e.g., *Bankers Trust of South Carolina v. Bruce*, 275 S.C. 35, 267 S.E. (2d) 424 (1980)

(the cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent wherever possible). According to S.C. Ann. § 38-77-10, one of the stated purposes of the Automobile Insurance statutes is that every automobile insurance risks that is insurable under the statute be insured and that evasion of coverage be penalized. Furthermore, S.C. Ann. § 38-77-20 specifically states under [Statutory] Construction that Chapter 77 as it relates to automobile insurance coverage be *liberally construed* to achieve its purposes.

Accordingly, the public policy purposes for a state's automobile insurance policies are clear—to protect the public from the burden of compensating for injuries sustained as a result of uninsured drivers. *Vietzen v. Victoria Auto. Ins. Co.*, 2014-Ohio-749, ¶ 19. Based on this public policy assumption, it is reasonable to read into the statute that an insurance company must wait until the insured has actually failed to pay her premium when due before mailing notice of cancellation of the policy which will take effect no fewer than fifteen days after the date of the mailing of the notice. For the foregoing reasons, Plaintiff's Motion for Summary Judgment should be denied.

VI. CONCLUSION

To grant summary judgment, Plaintiff must prove that there is no genuine issue of material fact. With all inferences drawn against the moving party (Plaintiff) and in favor of the non-moving party (Defendant), Plaintiff has not met its burden of proof.

Plaintiff inexplicably attempts to justify the cancellation of Ms. Sanford's insurance policy by utilizing an irrelevant statute--§ 38-77-120. § 38-77-120 is specifically for renewal of motor vehicle policies, not new policy coverage. Simply put, Plaintiff is attempting to shield itself from liability by arguing that Ms. Sanford anticipatorily breached her contract, without providing Ms. Sanford the statutorily required 15-days to cure any breach after missing her payment deadline. If

Plaintiff had provided Ms. Sanford with the proper notice, Ms. Sanford would have been covered up and through the date of the accident until February 18, 2013.

WHEREFORE, the undersigned counsel respectfully requests that the plaintiff's motion be denied and that sanctions be issued for the bad faith denial of coverage in contravention of the law, as well its own underwriter's manual.

Date: 2/12/15



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ATTACHMENT

[Cite as *Vietzen v. Victoria Auto. Ins. Co.*, 2014-Ohio-749.]

STATE OF OHIO) IN THE COURT OF APPEALS
)ss: NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN)

ROBERT VIETZEN

Appellant

v.

VICTORIA AUTOMOBILE INSURANCE
COMPANY

Appellee

Dated: March 3, 2014

C.A. No. 13CA010390

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 12CV176322
DECISION AND JOURNAL ENTRY

CARR, Judge.

{¶1} Appellant Robert Vietzen appeals the judgment of the Lorain County Court of Common Pleas which granted summary judgment in favor of appellee Victoria Automobile Insurance Company. This Court reverses and remands.

I.

{¶2} On September 6, 2009, Mr. Vietzen was injured in an automobile accident when a car driven by Dean Mandell and owned by Paulette Henry collided with his vehicle. Victoria Automobile Insurance Company (“Victoria Insurance”) had issued an insurance policy for Ms. Henry’s vehicle. The parties agree that Mr. Vietzen obtained a judgment against Ms. Henry in the amount of \$97,000.00 in case number 10CV166122. Victoria Insurance refused to satisfy the judgment based on its claims that it had cancelled Ms. Henry’s policy at 12:01 a.m. on September 6, 2009, for nonpayment of the premium. Mr. Vietzen thereafter filed a supplemental complaint against Victoria Insurance. The clerk’s office assigned a new case number to the

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supplemental complaint, specifically 12CV176322, even though the supplemental complaint bore the prior case number. Victoria Insurance filed an answer, admitting that Mr. Vietzen had obtained a judgment against Ms. Henry and that the insurance company had not satisfied the judgment. It denied the remaining allegations in the complaint and raised two affirmative defenses: (1) that the trial court previously determined in case number 10CV166122 that Ms. Henry’s Victoria Insurance policy had been cancelled and was no longer in effect, and (2) that due to Ms. Henry’s filing for bankruptcy, the proceedings in case number 10CV166122, which encompassed the supplemental complaint, had been stayed.

{¶3} Victoria Insurance and Mr. Vietzen filed competing motions for summary judgment. Victoria Insurance filed a brief in opposition to Mr. Vietzen’s motion for summary judgment. The trial court denied Mr. Vietzen’s motion for summary judgment and granted the insurance company’s motion for summary judgment. Mr. Vietzen filed a timely appeal in which he raises one assignment of error for review. No party moved to supplement the record on

appeal with the record in case number 10CV166122. Accordingly, our review is constrained to the record in case number 12CV176322.

II.

ASSIGNMENT OF ERROR

WHETHER AN AUTOMOBILE INSURANCE COMPANY CAN LEGALLY COMBINE THE NOTICE OF CANCELLATION OF A POLICY WITH THE NOTICE OF NON-PAYMENT OF PREMIUM AND MEET THE REQUIR[E]MENTS OF [R.C. CHAPTER] 3937.

{¶4} Mr. Vietzen argues that the trial court erred by granting summary judgment in favor of Victoria Insurance and by denying his motion for summary judgment. This Court agrees.

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{¶5} This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). This Court applies the same standard as the trial court, viewing the facts in the case in the light most favorable to the non-moving party and resolving any doubt in favor of the non-moving party. *Viock v. Stowe-Woodward Co.*, 13 Ohio App.3d 7, 12 (6th Dist.1983).

{¶6} Pursuant to Civ.R. 56(C), summary judgment is proper if:

(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327 (1977).

{¶7} To prevail on a motion for summary judgment, the party moving for summary judgment must be able to point to evidentiary materials that show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.

Dresher v. Burt, 75 Ohio St.3d 280, 293 (1996). Once a moving party satisfies its burden of

supporting its motion for summary judgment with sufficient and acceptable evidence pursuant to Civ.R. 56(C), Civ.R. 56(E) provides that the non-moving party may not rest upon the mere allegations or denials of the moving party's pleadings. Rather, the non-moving party has a reciprocal burden of responding by setting forth specific facts, demonstrating that a "genuine triable issue" exists to be litigated for trial. *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449 (1996).

{¶8} No party objected to the trial court's consideration of any evidence appended to the competing motions for summary judgment. Despite the fact that the majority of the evidence appended to the motions did not comport with Civ.R. 56, the parties agreed that the evidence was

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proper because it had been obtained during discovery in case number 10CV166122 and, in some cases, considered in conjunction with motions for summary judgment in that case. This Court has recognized that the trial court may, in its discretion, consider improper Civ.R. 56 evidence if no party has objected to the evidence. *Wallner v. Thorne*, 189 Ohio App.3d 161, 2010-Ohio-2146, ¶ 18 (9th Dist.). As neither party objected to any evidence attached to the other's motion for summary judgment, and the trial court considered the evidence attached, this Court will also consider all evidence submitted for purposes of our review.

{¶9} The parties do not dispute that Victoria Insurance mailed a billing statement to Ms. Henry on August 24, 2009. The billing statement included an "Installment Payment Notice," indicating that a minimum payment of \$198.39 was due on September 5, 2009. The statement further included a "Cancellation Notice" which stated: "If the Minimum Due is not received by or on the Payment Due date, your policy cancels on the date and time shown above for nonpayment of premium." The "Cancellation Effective" date on the statement was September 6, 2009, at 12:01 a.m. The "Cancellation Notice" further expressly provided: "THIS SECTION DOES NOT APPLY TO YOU IF YOU PAY THIS BILL BY THE DUE DATE."

{¶10} The accident at issue occurred on September 6, 2009. The parties do not dispute that Ms. Henry had not paid the minimum due on her insurance policy as of the September 5, 2009 due date. Victoria Insurance attached a document to its motion for summary judgment which it asserted was Ms. Henry's answer to Mr. Vietzen's personal injury complaint in case

number 10CV166122. In her answer, Ms. Henry wrote that she had insurance at the time of the accident and that, although that insurance “ended” at 12:01 a.m. on September 6, 2009, she “was in [her] grace period” at that time.

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{¶11} The issue before the trial court was whether the cancellation notice sent to Ms. Henry by Victoria Insurance complied with the requirements of R.C. 3937.32. In other words, the trial court had to determine whether a notice of cancellation sent in advance of the premium due date, and therefore in advance of any failure to timely pay the premium, was effective to cancel the policy on the cancellation date identified in the billing statement. The issue implicates the meaning of the statute and, therefore, constitutes an issue of law. *Wetterman v. B.C.*, 9th Dist. Medina No. 12CA0021-M, 2013-Ohio-57, ¶ 8. In construing the statute, this Court’s primary goal is “to ascertain and give effect to the legislature’s intent in enacting the statute.” *Id.*, quoting *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, ¶ 9.

{¶12} The version of R.C. 3937.32 in effect at the relevant time read, in part:
No cancellation of an automobile policy is effective, unless it is pursuant to written notice to the insured of cancellation. Such notice shall contain:

- (A) The policy number;
- (B) The date of the notice;
- (C) The effective date of cancellation of the policy, which shall not be earlier than thirty days following the date of the notice;
- (D) An explanation of the reason for cancellation and the information upon which it is based, or a statement that such explanation will be furnished to the insured in writing within five days after receipt of his written request therefor to the insurer;
- (E) Where cancellation is for nonpayment of premium at least ten days notice from the date of mailing of cancellation accompanied by the reason therefor[] shall be given[.]

{¶13} Victoria Insurance argued in its motion for summary judgment, and the trial court apparently agreed, that its notice of cancellation to Ms. Henry complied with the requirements of R.C. 3937.32 and was, therefore, effective to cancel her policy at 12:01 a.m. on September 6,

2009. In support, the insurance company asserted that the cancellation notice contained the policy number, date of the notice, and the effective date of cancellation, as well as an explanation

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that the policy would be cancelled on that date if the premium payment was not received by the due date. In addition, the insurance company argued that the cancellation date identified was at least ten days subsequent to the date of mailing of the cancellation notice. Victoria Insurance argued that the notice of cancellation did not provide for a grace period in which Ms. Henry could maintain coverage despite a failure to pay the minimum due on time. In addition, the insurance company emphasized that its notice of cancellation would not apply if Ms. Henry paid the bill by its due date. It offered no legal support for the proposition that an insurance company may issue an effective notice of cancellation in advance of the insured's failure to timely pay the premium and in anticipation of the insured's failure to pay by a later due date.

{¶14} Mr. Vietzen argued in his motion for summary judgment that the insurance company must wait until the insured has failed to pay the premium when due before mailing the notice of cancellation. He premised his argument on legislative intent and public policy reasoning.

{¶15} This case presents an issue of first impression for this Court. Moreover, our research reveals that no other Ohio appellate court has had the opportunity to address the efficacy of a notice of cancellation based on nonpayment of the premium where the insured's payment is not yet delinquent. Upon due consideration, this Court is persuaded by Mr. Vietzen's arguments and concludes that Victoria Insurance's notice of cancellation was not effective to cancel Ms. Henry's insurance policy prior to the accident on September 6, 2009.

{¶16} Victoria Insurance and Mr. Vietzen present varying interpretations of the notice requirements in R.C. 3937.32. Accordingly, it is fair to say that the statute is ambiguous and must, therefore, be "construed to give effect to the legislative intent." *Wolfe v. Wolfe*, 88 Ohio St.3d 246, 248 (2000). In determining legislative intent, this Court must look at the language of

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the statute, the objective of the statute, and the consequences of various constructions of the statute. *Id.* at 248-249; *see also* R.C. 1.49.

{¶17} In this case, the statute requires that any notice of cancellation for nonpayment of premiums must include the reason for the cancellation. Reasonably, “nonpayment of premium” cannot constitute grounds for cancellation where the time for payment has not passed.

Construing the statute as Victoria Insurance suggests would allow an insurance company to cancel an insured’s policy on the grounds of anticipatory breach. R.C. 3937.31(A) sets forth the reasons for which an insurer may cancel an automobile insurance policy, including fraud, concealment, or misrepresentation by the insured; loss of driving privileges of a covered driver; change of residence by the insured to a state where the insurer is not authorized to write automobile coverage; and nonpayment of premium, “which means failure of the named insured to discharge when due any of the named insured’s obligations in connection with the payment of premiums on a policy * * *.” R.C. 3937.31(A)(1)-(4). Anticipatory breach is not listed as a valid reason for an insurer to cancel a policy. In other words, the statute grants no authority to the insurer to cancel a policy on the belief that the insured will not pay her premium when due.

{¶18} In addition, the Ohio Supreme Court recognized the public policy interests that the legislature intended to protect in enacting the statutory scheme regarding an insurer’s cancellation of automobile insurance. In *Wolfe, supra*, at 249-250, the high court wrote that “the statute is intended to protect insureds from unilaterally being left without the protections that automobile insurance coverage affords by requiring that insurers provide an adequate method of notification when canceling insurance policies. *See* R.C. 3937.31(A) (grounds for cancellation limited), 3937.31(B)(4) (cancellation permitted at end of any mandatory period), 3937.32 (notice of cancellation required), and 3937.33 (procedures for cancellation).” The *Wolfe* court

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concluded that “[i]t is clear that the public policy of this state, as gleaned through the Acts of the General Assembly, is to ensure that all motorists maintain some form of liability coverage on motor vehicles operated within Ohio. * * * It is beyond reasonable dispute that R.C. 3937.30 et seq. are primarily designed to protect the public from the dangers which uninsured motorists pose.” *Wolfe*, 88 Ohio St.3d at 250.

{¶19} Given the legislature's clear intent to protect the public from the burden of compensating for injuries sustained as a result of uninsured drivers, the reasonable interpretation of the notice requirements in R.C. 3937.32 is that the legislature intended to include a grace period of ten days in which an insured may pay a past-due premium before the insurance company may cancel the policy. This interpretation is bolstered by the common sense understanding that grounds must exist to support cancellation and the statutory scheme does not include anticipatory breach as grounds for cancellation. Accordingly, this Court holds that R.C. 3937.32(E) includes a grace period of ten days during which an insured may cure her failure to pay her premium by its due date before the insurance company may cancel her automobile insurance policy.

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Therefore, an insurance company must wait until the insured has actually failed to pay her premium when due before mailing notice of cancellation of the policy which will take effect no fewer than ten days after the date of mailing of the notice.

{¶20} In this case, Victoria Insurance included a notice of cancellation of the policy in its billing statement to Ms. Henry. The insurance company notified Ms. Henry in advance of the premium due date that her policy would be cancelled one minute after midnight on the day after her premium was due if she failed to make a timely payment. As Ms. Henry could only have failed to timely pay her premium as of September 6, 2009, Victoria Insurance could only assert

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As the issue is not before us, this Court does not render any conclusions regarding any lapse in coverage under the policy due to Ms. Henry's failure to timely pay her premium.

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nonpayment grounds at that time. The insurance company's notice of cancellation mailed on August 24, 2009, was ineffective to give Ms. Henry the requisite notice of cancellation pursuant to R.C. 3937.32. Accordingly, the trial court erred by granting summary judgment in favor of Victoria Insurance and by denying Mr. Vietzen's motion for summary judgment. Mr. Vietzen's assignment of error is sustained.

III.

{¶21} Mr. Vietzen's sole assignment of error is sustained. The judgment of the Lorain County Court of Common Pleas is reversed and the cause remanded for further proceedings consistent with this opinion.

There were reasonable grounds for this appeal.

Judgment reversed,
and cause remanded.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

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DONNA J. CARR
FOR THE COURT

WHITMORE, J.
CONCURS.

BELFANCE, P. J.
CONCURRING IN JUDGMENT ONLY.

{¶22} I concur in the majority's judgment. The version of R.C. 3937.31 in effect in 2009 provided that:

No insurer may cancel any such policy except pursuant to the terms of the policy, and in accordance with sections 3937.30 to 3937.39 of the Revised Code, and for one or more of the following reasons:

- (1) Misrepresentation by the insured to the insurer of any material fact in the procurement or renewal of the insurance or in the submission of claims thereunder;
 - (2) Loss of driving privileges through suspension or expiration of the driver's or commercial driver's license of the named insured or any member of the named insured's family covered as a driver; provided that the insurer shall continue the policy in effect but exclude by endorsement all coverage as to the person whose driver's license has been suspended or has expired, if the person is other than the named insured or the principal operator;
 - (3) *Nonpayment of premium, which means failure of the named insured to discharge when due any of the named insured's obligations in connection with the payment of premiums on a policy, or any installment of such premiums, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;*
 - (4) The place of residence of the insured or the state of registration or license of the insured automobile is changed to a state or country in which the insurer is not authorized to write automobile coverage.
- (Emphasis added.)

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{¶23} Thus, in order to cancel a policy, the insurer must comply with the provisions of the policy, R.C. 3937.30 to 3937.39, and have a reason to cancel the policy as enumerated in R.C. 3937.31. *See* former R.C. 3937.31. Victoria Insurance asserts that Ms. Henry's payment

was due September 5, 2009, and that her policy was cancelled September 6, 2009, after she failed to make the required payment. Victoria Insurance relies upon former R.C. 3937.31 in isolation. However, former R.C. 3937.32 must also be taken into account given that it governs when cancellation of an automobile policy is effective. See former R.C. 3937.31. It provided that

No cancellation of an automobile insurance policy is effective, unless it is pursuant to written notice to the insured of cancellation. Such notice shall contain:

- (A) The policy number;
- (B) The date of the notice;
- (C) The effective date of cancellation of the policy, which shall not be earlier than thirty days following the date of the notice;
- (D) An explanation of the reason for cancellation and the information upon which it is based, or a statement that such explanation will be furnished to the insured in writing within five days after receipt of his written request therefor to the insurer;
- (E) *Where cancellation is for nonpayment of premium at least ten days notice from the date of mailing of cancellation accompanied by the reason therefore shall be given;*
- (F) A statement that if there is cause to believe such cancellation is based on erroneous information, or is contrary to law or the terms of the policy, the insured is entitled to have the matter reviewed by the superintendent of insurance, upon written application to the superintendent made not later than the effective date of cancellation of the policy, and that if a hearing is held by the superintendent of insurance, a deposit of five dollars shall be made, and that such deposit shall be returned to the insured if the finding is in his favor.

(Emphasis added.) Former R.C. 3937.32.

{¶24} Thus, in attempting to cancel Ms. Henry's insurance for nonpayment, Victoria Insurance had to provide notice of the cancellation ten days before the cancellation could be

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deemed effective. See former R.C. 3937.32(E). It asserts that it did so because it notified Ms.

Henry in late August that her policy would be cancelled if she failed to make her payment on or before September 5, 2009. However, only cancellation of the policy *when due* is permissible. Thus, cancellation is permissible for nonpayment of the policy only when there is nonpayment of the premium on September 5th. Cancellation is not permissible prior to that. Moreover, cancellation is not effective for 10 days from the date of notice of the cancellation. Victoria Insurance's argument that it could provide for preemptive notification of cancellation for nonpayment before cancellation is actually permissible under the statutes does not comport with the language of former R.C. 3937.31 and 3937.32, nor a common sense reading of the statutes in *pari materia*.

{¶25} Under Victoria Insurance's view, it could provide notice of cancellation months before the bill was due and still satisfy the statutes. Considering the two provisions together, the event of nonpayment of the premium when due must occur first, followed by providing a notice to the insured of the cancellation of the policy for nonpayment. In other words, it is apparent that the legislature intended that the insured have ten days *after* the insured failed to make payments when due before the policy would be cancelled.

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Accordingly, the only reasonable interpretation of those two provisions is that "effective notice of cancellation for nonpayment of premiums cannot be given until the time for making payment of the premium has expired." 2 Plitt, Maldonado, Rogers, and Plitt, *Couch on Ins.*, Section 31:6 (3d Ed.2013). To interpret the provisions otherwise would essentially eviscerate the legislature's creation of a notice

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As noted by a California appellate court, "[r]eceipt of a notice of cancellation of automobile insurance should be an unanticipated event; something that spurs the insured into action to protect against the potentially catastrophic consequences associated with being an uninsured motorist-not something that is received routinely with each month's bill." *Mackey v. Bristol West Ins. Servs. Of Cal., Inc.*, 105 Cal.App.4th 1247, 1262 (2003).

requirement, thus thwarting the ultimate policy behind the provision, namely to ensure that Ohio motorists have insurance so as to avoid shifting the substantial burden that is created when motorists who are at fault are uninsured. *See Wolfe v. Wolfe*, 88 Ohio St.3d 246, 249-250 (2000), *superseded by statute on other grounds* (noting that the statutory provisions are “primarily designed to protect the public from the dangers which uninsured motorists pose[.]” and also are “intended to protect insureds from unilaterally being left without the protections that automobile insurance coverage affords by requiring that insurers provide an adequate method of notification when canceling insurance policies[.]”). Therefore, I concur in the majority’s judgment.

APPEARANCES:

JONATHAN E. ROSENBAUM, Attorney at Law, for Appellant.

RONALD V. RAWLIN and STEPHANIE L. SIMON, Attorneys at Law, for Appellee.

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

MICHAEL CRAFT AND WILLIAM FREEMAN,)
)
) PLAINTIFFS,)
)
) VS)
)
) ANTONIO CRAFT AND KIMBERLY SANFORD,)
)
) DEFENDANTS.)
)

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2015-07-14
SC Court of Appeals

ANDERSON, SC
JULY 15, 2014

TRANSCRIPT OF TESTIMONY

BEFORE THE HONORABLE ELLIS B. DREW, JR.
MASTER IN EQUITY FOR THE TENTH JUDICIAL CIRCUIT

APPEARANCES

FOR PLAINTIFFS: DONALD L. SMITH, ESQ.
122 N MAIN ST.
ANDERSON, SC 29621
864.642.9284

FOR DEFENDANTS: NO ONE

FOR UNITED AUTO
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COURT REPORTER: KAREN T. SENN
CIRCUIT COURT REPORTER
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ANDERSON, SC 29621
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I N D E X

| <u>WITNESSES:</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|---------------------------|---------------|--------------|-----------------|----------------|
| WILLIAM FREDERICK FREEMAN | | | | |
| MR. SMITH | 4 | | 16 | |
| MR. HANNA | | 13 | | |
| MICHAEL JEROME CRAFT | | | | |
| MR. SMITH | 17 | | 27 | |
| MR. HANNA | | 23 | | |

EXHIBITS

| <u>FOR PLAINTIFF FREEMAN:</u> | <u>ID</u> | <u>IN EVID</u> |
|-------------------------------|-----------|----------------|
| 1. MEDSHORE INVOICE | 7 | 29 |
| 2. ANMED INVOICE | 9 | 29 |
| 3. ANMED INVOICE | 9 | 29 |
| 4. ANMED INVOICE | 9 | 29 |
| 5. CAROLINA HEALTH INVOICE | 9 | 29 |

FOR PLAINTIFF CRAFT:

| | | |
|---------------------|----|----|
| 1. MEDSHORE INVOICE | 20 | 29 |
| 2. ANMED INVOICE | 21 | 29 |
| 3. ANMED INVOICE | 22 | 29 |
| 4. ANMED INVOICE | 22 | 29 |
| 5. ANMED INVOICE | 22 | 29 |

FOR DEFENDANTS:

NONE

1 THE COURT: THIS IS CASE 2013-CP-04-771
2 ENTITLED WILLIAM FREEMAN AND MICHAEL CRAFT, PLAINTIFFS,
3 VERSUS ANTONIO CRAFT AND KIMBERLY SANFORD, DEFENDANTS.

4 THIS MATTER WAS REFERRED TO ME BY AN ORDER OF
5 THE PRESIDING JUDGE OF THE COURT OF COMMON PLEAS ON APRIL
6 8, 2014. ACCORDING TO THE ORDER OF REFERENCE THIS IS A
7 HEARING TO ASCERTAIN DAMAGES AND THE DEFENDANTS ANTONIO
8 CRAFT AND KIMBERLY SANFORD ARE IN DEFAULT.

9 APPEARING AT THE HEARING IN THIS MATTER IS
10 ATTORNEY DONALD L. SMITH ON BEHALF OF THE PLAINTIFFS.
11 AND YOU ARE MR. GEORGE HANNA?

12 MR. HANNA: YES, SIR, GEORGE HANNA.

13 THE COURT: ALL RIGHT.

14 MR. HANNA: I'M HERE ON BEHALF OF UNITED
15 AUTO INSURANCE COMPANY.

16 THE COURT: BUT YOU DO NOT REPRESENT THESE
17 DEFENDANTS?

18 MR. HANNA: NO, I'M HERE FOR THE INSURANCE
19 COMPANY.

20 THE COURT: ALL RIGHT. FOR THE RECORD, I'LL
21 NOTE THAT MR. HANNA HAS FILED SEVERAL MOTIONS FOR A
22 CONTINUANCE OF THIS MATTER, WAITING FOR THE OUTCOME, --
23 APPARENTLY TO DETERMINE THE TERMINATION OF SOME COVERAGE
24 IN THE MATTER AND I'VE GRANTED SEVERAL STAYS. HOWEVER,
25 FOR THE LAST MOTION FILED BY MR. HANNA I DENIED THE

1 MOTION FOR CONTINUANCE.

2 ALL RIGHT, ARE YOU READY TO PROCEED NOW, MR.
3 SMITH?

4 MR. SMITH: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 MR. SMITH: THE PLAINTIFF CALLS WILLIAM
7 FREEMAN.

8 WILLIAM FREDERICK FREEMAN, PLAINTIFFS' WITNESS,
9 SWORN:

10 THE COURT: SPEAK UP NOW, MR. FREEMAN, SO WE
11 CAN HEAR YOU.

12 THE WITNESS: YES, SIR.

13 THE COURT: THANK YOU. YOU MAY PROCEED.

14 DIRECT EXAMINATION

15 BY MR. SMITH:

16 Q. MR. FREEMAN, WOULD YOU STATE YOUR FULL NAME, PLEASE?

17 A. WILLIAM FREDERICK FREEMAN.

18 Q. WHAT COUNTY DID THIS ACCIDENT OCCUR IN?

19 A. ANDERSON COUNTY.

20 Q. ALL RIGHT. CAN YOU TELL US WHAT YOU WERE DOING ON
21 THE MORNING OF FEBRUARY 13, 2013?

22 A. YEAH, I WAS WALKING TO THE STORE AND THEN I RAN INTO
23 MICHAEL CRAFT AND WE WAS JUST STANDING ON THE SIDEWALK
24 TALKING.

25 Q. WHAT HAPPENED THEN?

1 A. WELL, HIS BROTHER CAME AND JUMPED UP ON THE SIDEWALK
2 AND RUN US DOWN.

3 Q. WHEN YOU SAY RUN YOU DOWN, ---

4 A. HE RAN US OVER IN THE CAR.

5 Q. ALL RIGHT. SO THAT'S A LITERAL STATEMENT, RIGHT?

6 A. UH-HUH (AFFIRMATIVE).

7 Q. YES OR NO.

8 A. YES, SIR.

9 Q. WHAT DID YOU FEEL DIRECTLY AFTER OR IMMEDIATELY
10 AFTER THE ACCIDENT?

11 A. WELL, IT KNOCKED ME OUT AND WHEN I CAME TO HE WAS
12 STANDING OVER ME.

13 Q. DID HE SAY ANYTHING?

14 A. YEAH, HE WAS TELLING ME TO GET UP OFF THE GROUND. I
15 CAN'T GET UP BECAUSE MY LEG, MY SHOULDER -- I MEAN I'M
16 HURTING. THEN HE WENT BACK TO TRY TO GET IN THE CAR TO
17 MOVE THE CAR BUT HE COULDN'T. THE CAR WAS STUCK. HE
18 COULDN'T MOVE THE CAR SO HE JUST TOOK OFF RUNNING UP THE
19 ROAD.

20 Q. WHAT DID YOU FEEL LIKE THE NEXT DAY?

21 A. MY KNEE, MY SHOULDER AND MY NECK WAS HURTING.

22 Q. ALL RIGHT. AND DID YOU GET SOME TREATMENT AFTER
23 GOING TO THE ER?

24 A. YES, SIR. I WENT TO THE ER AND I HAD STARTED GOING
25 TO A DOCTOR UP IN GREENVILLE BUT I COULDN'T AFFORD TO PAY

1 THE BILL.

2 Q. DO YOU HAVE DIFFICULTIES TODAY?

3 A. YES, SIR, MY KNEE AND SHOULDER STILL GIVE ME
4 PROBLEMS.

5 Q. DID YOU GET MRI'S ON BOTH OF THOSE INJURIES?

6 A. YES, SIR.

7 Q. DID YOU HAVE THE OPPORTUNITY TO REVIEW THE MRI'S
8 WITH YOUR DOCTOR?

9 A. YES, SIR.

10 Q. AND YOUR SHOULDER, DID YOU SEE THE TEAR IN THE
11 TENDON?

12 A. YES, SIR, I SEEN IT.

13 Q. DID YOU SEE THE DISLOCATION OF YOUR BICEPS?

14 A. YES, SIR.

15 Q. DID YOU SEE THE TEAR IN THE MEDIAL MENISCUS OF YOUR
16 LEFT KNEE?

17 A. YES, SIR.

18 Q. HAVE YOU HAD REPAIRS DONE ON THESE INJURIES?

19 A. NO, SIR. I CAN'T AFFORD IT.

20 Q. HOW OLD ARE YOU?

21 A. 49.

22 Q. SO YOU HAVE A LIFE EXPECTANCY OF ROUGHLY 28 YEARS?

23 A. YES, SIR.

24 Q. DO YOU HAVE OUTSTANDING BILLS WITH THE PROVIDERS
25 FROM THIS ACCIDENT?

1 A. YES, SIR.

2 Q. DO YOU HAVE A BILL WITH MEDSHORE?

3 A. YES, SIR.

4 Q. DO YOU RECALL WHAT THAT WAS FOR?

5 A. NO, IT MUST BE FOR THE RIDE IN THE AMBULANCE, I
6 GUESS.

7 MR. SMITH: MAY I APPROACH THE WITNESS, YOUR
8 HONOR?

9 THE COURT: YES, SIR.

10 Q. DOES THAT REFRESH YOUR MEMORY?

11 A. YES, SIR.

12 Q. HOW MUCH IS THAT?

13 A. \$352.50.

14 MR. SMITH: I'D LIKE TO HAVE THIS MARKED AS
15 A PLAINTIFFS' EXHIBIT.

16 (PLAINTIFF FREEMAN'S EXHIBIT 1 FOR
17 IDENTIFICATION)

18 Q. HOW MANY TIMES DID YOU GO TO ANMED?

19 A. WELL, I WENT TWICE. I MEAN, I WENT TWICE. LIKE THE
20 SECOND TIME WHEN I WENT UP THERE MY KNEE HAD GAVE OUT ON
21 ME AND I WENT BACK UP THERE AND I SEEN THE DOCTOR, I
22 MEAN, THE NURSE, BUT THEY DIDN'T DO TOO MUCH FOR ME
23 BECAUSE, LIKE I SAY, I CAN'T AFFORD TO PAY THE BILL.

24 Q. DO YOU HAVE OUTSTANDING BALANCES THEN FOR THOSE TWO
25 VISITS?

1 A. YES, SIR.

2 Q. AND DO YOU REMEMBER WHAT THEY ARE?

3 A. NO, SIR.

4 MR. SMITH: MAY I APPROACH THE WITNESS, YOUR
5 HONOR?

6 THE COURT: YES, SIR.

7 Q. HOW MUCH IS THAT BILL?

8 A. \$6,753.00.

9 Q. AND THE FOLLOWING DAY'S VISIT?

10 A. \$1,718.00.

11 Q. WERE YOU FORCED TO GO BACK AGAIN?

12 A. YES, SIR.

13 Q. 10 DAYS LATER?

14 A. UH-HUH (AFFIRMATIVE).

15 Q. AND WHAT WAS THE BILL THERE?

16 A. \$1,137.00.

17 Q. THE MRI'S THAT YOU GOT, YOU GOT THOSE AT ANMED, IS
18 THAT CORRECT?

19 A. UH-HUH (AFFIRMATIVE).

20 Q. WOULD THAT BE IT?

21 A. YES, SIR, THIS IS IT.

22 MR. HANNA: THE COURT REPORTER IS MARKING
23 THE THREE EXHIBITS FROM ANMED AS PLAINTIFFS' 2, 3 AND 4
24 AND PLAINTIFFS' 5 WILL BE THE TWO MRI'S FROM ANMED IN
25 DUNCAN.

1 (PLAINTIFF FREEMAN'S 2, 3, 4 & 5 FOR
2 IDENTIFICATION)

3 MR. HANNA: FOR THE RECORD, ARE YOU PUTTING
4 IN BILLS OR THE RECORDS THEMSELVES?

5 MR. SMITH: BILLS.

6 MR. HANNA: OKAY.

7 THE COURT: ALL RIGHT. DO YOU HAVE ANY
8 OTHER EXHIBITS?

9 MR. SMITH: NO MORE EXHIBITS.

10 THE COURT: WHEN THE COURT REPORTER FINISHES
11 MARKING THOSE LET ME LOOK AT THEM AND I'LL LET MR. HANNA
12 LOOK AT THEM. ALL RIGHT, PROCEED WITH YOUR QUESTIONS.

13 MR. SMITH: YES, SIR.

14 Q. WHAT ARE YOU SEEKING TODAY?

15 A. I NEED HELP PAYING THESE BILLS AND FOR FUTURE --

16 Q. SO YOU'RE ASKING TO HAVE THE BILLS PAID?

17 A. UH-HUH (AFFIRMATIVE).

18 Q. WITH REGARDS TO YOUR INJURIES DO YOU WISH TO HAVE
19 MONIES SO YOU CAN GET THEM REPAIRED?

20 A. YEAH, YEAH.

21 Q. DO YOU WISH TO BE COMPENSATED FOR THE PERMANENCY OF
22 YOUR INJURIES?

23 A. YES, SIR.

24 Q. DO YOU HAVE ANY SCARS?

25 MR. HANNA: YOUR HONOR, I WOULD OBJECT AS TO

1 THIS. THERE IS NO FOUNDATION THAT'S BEEN LAID FOR ANY
2 SORT OF FUTURE INJURIES. THERE IS NO EVIDENCE AT ALL
3 THAT THERE IS EVEN SOMETHING ABOUT FUTURE INJURIES. HE
4 IS LEADING THE WITNESS. WITHOUT EVIDENCE TO SUPPORT SUCH
5 A CLAIM, I WOULD OBJECT TO ANY QUESTIONS ALONG THOSE
6 LINES WITHOUT A DOCTOR COMING IN HERE AND SAYING WHAT IT
7 IS THAT THIS GUY NEEDS, WHAT SPECIFIC SURGERY REQUIRES
8 EXACTLY -- ALL THAT STUFF. THIS IS MASSIVE RANK
9 SPECULATION COMING FROM THEM BASED UPON THE RECORD BEFORE
10 THE COURT THAT THE FOUNDATION HAS BEEN LAID TODAY.

11 MR. SMITH: MR. FREEMAN TESTIFIED TO SEEING
12 THE TEARS IN HIS SHOULDER AND HIS KNEE.

13 MR. HANNA: AGAIN, I'LL CROSS HIM ON THAT
14 BUT HE IS NOT A DOCTOR AND IS NOT CAPABLE, I BELIEVE, OF
15 READING AN MRI OR ---

16 THE COURT: ALL RIGHT. I'M GOING TO LET HIM
17 ANSWER BRIEFLY BUT IT'S UP TO THE COURT TO WEIGH HIS
18 TESTIMONY UNDER THESE CIRCUMSTANCES. GO AHEAD.

19 MR. SMITH: YES, SIR.

20 THE COURT: HERE ARE THESE EXHIBITS, MR.
21 HANNA ---

22 MR. HANNA: THANK YOU, SIR.

23 THE COURT: --- IF YOU'D LIKE TO REVIEW
24 THOSE. ALL RIGHT, SIR. EXCUSE ME, GO AHEAD.

25 Q. WAS THERE EVER ANY JUSTIFICATION FOR THIS ACT?

1 THE COURT: EVER ANY WHAT?

2 MR. SMITH: JUSTIFICATION.

3 Q. DID HE DO THIS ON PURPOSE?

4 A. YES, SIR.

5 THE COURT: WHO DID IT? I HAVEN'T HEARD OR
6 HE MAY HAVE SAID AND I MISSED IT.

7 MR. SMITH: ANTONIO CRAFT.

8 THE COURT: OKAY. WHAT'S KIMBERLY SANFORD'S
9 INVOLVEMENT?

10 MR. SMITH: THE GIRLFRIEND OF ANTONIO CRAFT.

11 THE COURT: SHE WAS RIDING WITH ANTONIO?

12 MR. HANNA: SHE OWNED THE VEHICLE. SHE WAS
13 NOT INVOLVED IN THE ACCIDENT.

14 THE COURT: SHE WAS AN OCCUPANT?

15 MR. HANNA: I DON'T BELIEVE SHE WAS EVEN IN
16 THE CAR, TO MY KNOWLEDGE.

17 MR. SMITH: SHE PROVIDED THE CAR TO MR.
18 CRAFT.

19 THE COURT: OKAY. ALL RIGHT, GO AHEAD.

20 Q. AND SO ARE YOU SEEKING PUNITIVE DAMAGES AS A RESULT
21 OF THAT?

22 A. YES, SIR.

23 MR. SMITH: I HAVE NOTHING ELSE AT THIS
24 TIME, YOUR HONOR.

25 THE COURT: NOW, THEY ARE IN DEFAULT AND I

1 KNOW YOU DON'T REPRESENT THE DEFENDANTS BUT YOU DO
2 REPRESENT SOME POSSIBLE OTHER COMPANY. WOULD YOU LIKE TO
3 QUESTION THIS WITNESS ON HIS CLAIMS?

4 MR. HANNA: YES, SIR, YOUR HONOR. JUST SO
5 THE RECORD IS CLEAR, I REPRESENT UNITED AUTO INSURANCE
6 COMPANY WHO, IF THERE IS COVERAGE THAT'S APPLICABLE TO
7 THIS LOSS, THEY WOULD HOLD THAT POLICY. THEY, OF COURSE,
8 DENY THAT THAT IS TRUE. THEY BELIEVE THE POLICY LAPSED
9 PRIOR TO THE ACCIDENT AND THERE WAS NO COVERAGE IN FORCE
10 BUT THAT'S THE BASIS UPON WHICH I'M HERE. I WANT THE
11 RECORD CLEAR THAT I'M NOT APPEARING ON BEHALF OF EITHER
12 OF THOSE INDIVIDUALS.

13 THE COURT: YES, I UNDERSTAND.

14 MR. SMITH: YOUR HONOR, WITH THAT IN MIND,
15 WE WOULD OBJECT TO HIS PARTICIPATION. HE SAYS HE'S NOT
16 PART OF THIS CASE, YET HE WANTS TO COME IN AND HAVE A
17 BEARING ON THE CASE.

18 THE COURT: WELL, HE JUST MIGHT WANT TO ASK
19 THE WITNESS SOME QUESTIONS ABOUT -- HE OBJECTED TO ANY
20 TESTIMONY ABOUT FUTURE CLAIMS OR WHATEVER.

21 MR. HANNA: UNDERSTOOD. AGAIN, I BELIEVE
22 THE RELEVANCE IS THAT OUR POLICY POTENTIALLY DOES HAVE AN
23 INTEREST IN THIS MATTER. WE DON'T BELIEVE WE DO BUT THAT
24 DOESN'T -- YOU KNOW, SINCE WE'RE PUTTING THE CART BEFORE
25 THE HORSE HERE, WE THINK THAT WE DO HAVE THE RIGHT, FOR

1 WHAT THE RECORD IS WORTH.

2 CROSS EXAMINATION

3 BY MR. HANNA:

4 Q. MR. FREEMAN, ON THE DATE OF THIS ACCIDENT YOU WERE
5 TAKEN BY AMBULANCE TO THE EMERGENCY ROOM, IS THAT
6 CORRECT?

7 A. YES, SIR.

8 Q. AND YOU HAD A FULL BATTERY OF X-RAYS AND VARIOUS
9 TESTS DONE WHEN YOU WERE AT THE HOSPITAL, ISN'T THAT
10 CORRECT?

11 A. YES, SIR.

12 Q. AND WOULD YOU AGREE WITH ME THAT NONE OF THE X-RAYS
13 OR ANY OF THE DIAGNOSTIC TESTS PERFORMED ON THE DATE OF
14 THE ACCIDENT SHOWED THAT YOU HAD ANY BROKEN BONES OR ANY
15 INJURIES OF THAT NATURE ON THE DATE OF THE ACCIDENT,
16 CORRECT?

17 A. I DIDN'T HAVE NO BROKEN BONES BUT I HAD TEARS AND A
18 DISLOCATION ON MY ARM.

19 Q. WOULD YOU AGREE WITH ME THAT THE ONLY EVIDENCE OF
20 THIS ALLEGED TEAR IS FROM THE MRI, CORRECT?

21 A. YES, SIR.

22 Q. OKAY. THAT WAS NOT TAKEN FOR LIKE THREE OR FOUR
23 WEEKS AFTER THE ACCIDENT, ISN'T THAT RIGHT?

24 A. NO, SIR. I DON'T THINK.

25 Q. I THINK EARLIER ON DIRECT YOU TESTIFIED THAT IT WAS

1 THIS PLACE CALLED -- WHERE YOU HAD THE MRI'S DONE ---

2 MR. HANNA: MAY I APPROACH THE WITNESS,
3 PLEASE?

4 THE COURT: ALL RIGHT.

5 MR. HANNA: THANK YOU.

6 Q. I'M JUST GOING TO HAND YOU BACK THE BILL TO REFRESH
7 YOUR MEMORY. WHAT DATE DOES IT SAY THAT YOU HAD THOSE
8 DONE?

9 A. FEBRUARY 26.

10 Q. AND THE DATE OF THE ACCIDENT WAS THE 13TH, CORRECT?

11 A. UH-HUH (AFFIRMATIVE). YES, SIR.

12 Q. GETTING BACK TO MY QUESTION, THE EVIDENCE OF THE
13 ALLEGED TEAR CAME WHEN YOU HAD THAT MRI, CORRECT?

14 A. I MEAN, YEAH, BECAUSE WHEN I WENT TO THIS PLACE THEY
15 RAN TESTS ON ME THAT THEY DIDN'T DO AT THE HOSPITAL.

16 Q. UNDERSTOOD. ALL I'M TRYING TO ESTABLISH IS THAT
17 WHATEVER TESTS WERE DONE AT THE HOSPITAL, THEY COULDN'T
18 FIND ANY INJURIES, ANY TEARS OR ANY BROKEN BONES OR
19 NOTHING, CORRECT, THAT WERE DONE AT THE HOSPITAL?

20 A. YEAH, THEY WAS DONE AT THE HOSPITAL BUT I TOLD THEM
21 I WAS STILL HURTING.

22 Q. UNDERSTOOD. OKAY, ALL RIGHT. NOW IT LOOKS LIKE YOU
23 RETURNED TO THE ER A COUPLE OF DAYS LATER, CORRECT?
24 ACTUALLY, LET ME GO BACK. YOU WERE RELEASED THE SAME DAY
25 OF THE ACCIDENT, WERE YOU NOT?

1 A. YES, SIR.

2 Q. AND YOU LEFT -- THE RECORD REFLECTS YOU LEFT
3 AMBULATING WHICH, BASED ON MY UNDERSTANDING, THAT MEANS
4 YOU WALKED OUT OF THE EMERGENCY ROOM, ISN'T THAT CORRECT?

5 A. YES, SIR.

6 Q. OKAY. THEN YOU CAME BACK TO THE EMERGENCY ROOM A
7 COUPLE OF DAYS LATER ON THE 18TH AND WERE SEEN BY THE
8 PEOPLE AT THE FRONT DESK AND THEN YOU ACTUALLY LEFT
9 WITHOUT EVEN BEING SEEN BY THE DOCTOR, ISN'T THAT RIGHT?

10 A. NO, SIR.

11 Q. YOU DENY THAT YOU ARE WILLIAM FREDERICK FREEMAN?

12 A. YEAH, I'M WILLIAM FREDERICK FREEMAN.

13 Q. YES, SIR.

14 A. BUT EVERYTIME I WENT WITH DEALING WITH THIS ACCIDENT
15 I AIN'T NEVER WALKED OUT OF NO HOSPITAL BECAUSE I WAS IN
16 PAIN.

17 Q. THIS RECORD THAT YOUR LAWYER PROVIDED TO ME THAT
18 SAYS THAT --"DISPOSITION, LEFT WITHOUT BEING SEEN". IS
19 THAT NOT ACCURATE?

20 A. NO, THAT AIN'T ACCURATE.

21 THE COURT: ALL RIGHT. I THINK THAT'S
22 SUFFICIENT. NOW I'VE GOT FOUR EXHIBITS, WAS THERE A
23 FIFTH?

24 MR. HANNA: HE IS HOLDING ONE. I HAD TAKEN
25 ONE. I APOLOGIZE.

1 THE COURT: ALL RIGHT. ANY FURTHER
2 QUESTIONS OF THIS WITNESS, MR. SMITH?

3 MR. SMITH: YES, SIR, IN RESPONSE.

4 REDIRECT EXAMINATION

5 BY MR. SMITH:

6 Q. YOU WENT TO ANMED BECAUSE -- DO YOU HAVE A FAMILY
7 DOCTOR?

8 A. NO, SIR.

9 Q. DID YOU HAVE INSURANCE?

10 A. NO, SIR.

11 Q. OPPOSING COUNSEL SAYS THAT THERE WAS A GAP BETWEEN
12 THE ACCIDENT AND YOUR VISIT TO THE EMERGENCY ROOM AND
13 YOUR MRI'S. IS THERE ANY INTERVENING CAUSE OR ANY OTHER
14 ACCIDENT THAT YOU HAD BETWEEN THAT TIME?

15 A. NO, SIR.

16 Q. WERE THE INJURIES THAT YOU SUSTAINED RELATED TO THE
17 ACCIDENT?

18 A. YES, SIR.

19 Q. AND THERE'S NO DOUBT THAT YOU SAW THE TEARS ON THE
20 MRI?

21 A. YES, SIR.

22 Q. I HAVE NOTHING FURTHER.

23 THE COURT: WHAT TIME OF DAY OR NIGHT DID
24 THIS ACCIDENT HAPPEN, MR. FREEMAN?

25 THE WITNESS: IT WAS THAT MORNING.

1 THE COURT: WHAT TIME?

2 THE WITNESS: I WANT TO SAY AROUND 10.
3 BETWEEN 10 AND 11.

4 THE COURT: 10 OR 11:00 O'CLOCK IN THE
5 MORNING?

6 THE WITNESS: YES, SIR.

7 THE COURT: IT WAS DAYLIGHT.

8 THE WITNESS: YES, SIR.

9 THE COURT: THANK YOU. YOU MAY STEP DOWN,
10 MR. FREEMAN.

11 THE WITNESS: THANK YOU.

12 THE COURT: NOW DOES MR. CRAFT NEED TO
13 TESTIFY?

14 MR. SMITH: YES, SIR.

15 THE COURT: ALL RIGHT. I CAN HEAR HIM
16 THERE. DO YOU SEE THAT BLACK MICROPHONE? PULL IT OVER
17 TO THE WITNESS. RAISE YOUR RIGHT HAND AND BE SWORN,
18 PLEASE.

19 MICHAEL JEROME CRAFT, PLAINTIFFS' WITNESS,
20 SWORN:

21 DIRECT EXAMINATION

22 BY MR. SMITH:

23 Q. MR. CRAFT, WOULD YOU STATE YOUR NAME FOR THE RECORD,
24 PLEASE?

25 A. MICHAEL JEROME CRAFT.

1 Q. WHERE DID THIS ACCIDENT OCCUR?

2 A. ON THE NORTH SIDE OF ANDERSON COUNTY.

3 Q. WHAT WERE YOU DOING ON THE MORNING OF FEBRUARY 13TH,
4 2013?

5 A. ME AND MR. WILLIAM WAS WALKING TO THE STORE AND WE
6 STOPPED TO CHAT FOR A MINUTE AND THAT'S WHEN THE CAR CAME
7 AROUND THE CURVE AND HIT BOTH OF US.

8 Q. WHAT DO YOU RECALL IMMEDIATELY FOLLOWING THE
9 ACCIDENT?

10 A. WELL, I WAS OUT. I GOT UP AND I SPIT BLOOD AND I
11 FELL BACK DOWN ON THE GROUND AND WHEN I CAME TO I WAS AT
12 THE HOSPITAL.

13 Q. DID YOU NOTICE ANY INJURIES?

14 A. ALL I KNOW IS MY HEAD WAS BLEEDING.

15 Q. DID YOU HAVE ANY PAIN IMMEDIATELY FOLLOWING THE
16 ACCIDENT?

17 A. MY HEAD WAS HURTING, LEGS, BACK.

18 Q. WERE YOU BLEEDING AT ALL?

19 A. YES, SIR, ON MY HEAD.

20 Q. WHAT DID YOU FEEL LIKE THE NEXT DAY?

21 A. LIKE I HAD BEEN HIT BY A CAR.

22 Q. HOW LONG WERE YOU IN THE HOSPITAL?

23 A. I THINK ABOUT SEVEN OR EIGHT DAYS.

24 Q. DO YOU HAVE ANY AFTEREFFECTS FROM THE ACCIDENT?

25 A. YES, SIR. SOMETIMES MY MEMORY COMES AND GOES. I

1 CAN REMEMBER SOME THINGS AND SOME THINGS I CAN'T BUT I'M
2 CONSTANTLY IN PAIN ALL THE TIME.

3 Q. WHERE IS THAT PAIN AT?

4 A. IN MY HEAD.

5 Q. IS IT SPECIFICALLY IN A SPOT?

6 A. WELL, WHEN THEY HAD TO SEW ME UP THAT'S MOSTLY WHERE
7 IT IS, IN THE FOREHEAD AREA.

8 Q. SO THIS SCARRING THAT GOES FROM THE MIDDLE OF YOUR
9 FOREHEAD TO THE SIDE, LEFT SIDE OF YOUR HEAD, IS THAT
10 WHERE IT IS?

11 A. YES, SIR.

12 Q. DO YOU HAVE ANY METAL IN YOUR HEAD?

13 A. I HAVE A PLATE IN MY HEAD.

14 Q. DID YOU GET ANY CARE OR ANY FOLLOW-UP TREATMENT?

15 A. WELL, I WANT BACK TO THE HOSPITAL A COUPLE OF TIMES
16 BECAUSE I WAS IN PAIN. LIKE I SAY, I DON'T HAVE ANY
17 INSURANCE OR NOTHING LIKE THAT.

18 Q. WHAT INJURIES -- BESIDES YOUR HEAD, DID YOU HAVE ANY
19 OTHER INJURIES?

20 A. JUST MY BACK AND NECK. MY BACK HASN'T BEEN RIGHT
21 SINCE.

22 Q. DO YOU HAVE ANY SCARRING BESIDES THE SCAR ON YOUR
23 FOREHEAD?

24 A. NO, SIR, THAT'S THE ONLY ONE.

25 Q. DO YOU HAVE ANY DIFFICULTIES -- YOU SAY YOU HAVE

1 DIFFICULTIES REMEMBERING?

2 A. YES, SIR.

3 Q. HOW OLD ARE YOU?

4 A. 47.

5 Q. HAS THE SCARRING GONE AWAY SINCE THE ACCIDENT?

6 A. I DON'T THINK IT'S GOING TO EVER GO AWAY.

7 Q. WITH REGARD TO WHAT YOU SEEK FROM THE JUDGE TODAY --

8 NO, HOLD ON A SECOND. DO YOU HAVE BILLS AS A RESULT OF
9 THE ACCIDENT?

10 A. YES, SIR.

11 Q. DID YOU GO TO THE HOSPITAL BY MEDSHORE?

12 A. YES, SIR.

13 Q. IS THIS THE BILL THAT YOU RECEIVED?

14 A. YES, SIR.

15 Q. HOW MUCH WAS THAT FOR?

16 A. \$445.00.

17 Q. AND YOU USED ANMED FOR TREATMENT?

18 A. YES, SIR.

19 Q. YOU WENT ON SEVERAL OCCASIONS?

20 A. YES, SIR.

21 MR. SMITH: WE'LL MARK MEDSHORE'S BILL AS
22 PLAINTIFFS' EXHIBIT 1.

23 (PLAINTIFF CRAFT'S EXHIBIT 1 FOR
24 IDENTIFICATION)

25 MR. SMITH: WE'RE GOING TO LABEL THE FIRST

1 VISIT TO ANMED THE DAY OF THE ACCIDENT AS PLAINTIFFS'
2 EXHIBIT 2.

3 (PLAINTIFF CRAFT'S EXHIBIT 2 FOR
4 IDENTIFICATION)

5 Q. AND HOW MUCH IS THAT BILL FOR?

6 A. WHAT'S THAT? FOUR THOUSAND?

7 Q. 43.

8 A. \$43,117.00, IT LOOKS LIKE.

9 Q. \$43,117.00?

10 A. YES, SIR.

11 Q. THE SECOND ADMISSION WAS THE 22ND OF FEBRUARY?

12 A. YES, SIR.

13 Q. AND THIS BILL CAME FROM THAT VISIT?

14 A. YES, SIR.

15 Q. AND HOW MUCH WAS THAT BILL?

16 A. 13 THOUSAND ---

17 Q. \$1,389.52?

18 A. YES, SIR.

19 Q. DID YOU GO ON THE 25TH AS WELL?

20 A. YES, SIR.

21 Q. AND WHAT IS THE BILL FOR THAT?

22 A. \$3,586.00.

23 Q. \$3,586.00?

24 A. YES, SIR.

25 Q. AND ONE LAST TIME ON THE 27TH?

- 1 A. YES, SIR.
- 2 Q. AND THAT IS THE BILL FROM THAT DATE?
- 3 A. YES, SIR.
- 4 Q. HOW MUCH IS THAT?
- 5 A. \$566.00.
- 6 Q. \$566.00?
- 7 A. YES, SIR.
- 8 Q. THANK YOU, SIR. WOULD THAT BE THE EXTENT OF YOUR
9 BILLS?
- 10 A. YES, SIR.
- 11 MR. SMITH: WE'VE MARKED THE THREE BILLS AS
12 PLAINTIFF 3, 4 AND 5.
13 (PLAINTIFF CRAFT'S EXHIBITS 3,4 & 5 FOR
14 IDENTIFICATION)
- 15 Q. THOSE BILLS TOTAL \$49,000.00?
- 16 A. YES, SIR.
- 17 Q. WITH REGARD TO WHAT YOU SEEK TODAY, DO YOU SEEK THE
18 MONEY TO PAY THOSE BILLS?
- 19 A. YES, SIR, AND I'D LIKE TO HAVE SOME FOR PAIN AND
20 SUFFERING.
- 21 Q. AND I BELIEVE THE SCARRING IS PERMANENT?
- 22 A. YES, IT WON'T NEVER GO AWAY.
- 23 Q. IS THERE ANY PLAN TO TAKE THE PLATE OUT OF YOUR
24 HEAD?
- 25 A. NO, SIR.

1 Q. DID MR. CRAFT DO THIS ON PURPOSE, TO YOUR KNOWLEDGE?

2 A. I THINK HE DID.

3 Q. WERE YOU OFF THE ROAD WHEN YOU WERE STRUCK?

4 A. I WAS ON THE SIDEWALK.

5 Q. AND WAS IT RAINING OR DARK OR ANYTHING?

6 A. IT WAS LIGHT.

7 Q. SO YOU SEEK PUNITIVE DAMAGES FROM HIM?

8 A. YES, SIR.

9 MR. SMITH: I HAVE NOTHING FURTHER, YOUR
10 HONOR.

11 THE COURT: WOULD YOU LIKE TO LOOK AT THESE
12 MEDICAL BILLS?

13 MR. HANNA: THEY MATCH WHAT WAS PREVIOUSLY
14 PRODUCED. I WAS FOLLOWING HIM BECAUSE I HAVE HAD THESE
15 SO I DON'T NEED TO SEE THOSE.

16 THE COURT: ALL RIGHT.

17 MR. HANNA: MAY I QUESTION THE WITNESS, YOUR
18 HONOR?

19 THE COURT: ALL RIGHT.

20 CROSS EXAMINATION

21 BY MR. HANNA:

22 Q. MR. CRAFT, IS THAT CORRECT?

23 A. YES, SIR.

24 Q. HAVE YOU BEEN TO THE DOCTOR RELATED TO THIS SINCE
25 FEBRUARY 27, 2013?

1 A. I'VE BEEN INCARCERATED SINCE THEN.

2 Q. OKAY. AND WHAT ARE YOU INCARCERATED FOR?

3 A. SIR?

4 Q. WHAT ARE YOU INCARCERATED FOR?

5 A. SECOND DEGREE BURGLARY.

6 Q. OKAY. AND WHAT WAS THE OFFENSE DATE?

7 A. I CAN'T RECALL.

8 Q. IS IT SOMETHING THAT YOU DID AFTER THIS ACCIDENT?

9 A. YES.

10 Q. OKAY. SO SUBSEQUENT TO THE ACCIDENT ON FEBRUARY
11 13TH -- YOU GOT OUT OF THE HOSPITAL ON FEBRUARY 27TH AND
12 SHORTLY THEREAFTER YOU COMMITTED A BURGLARY AND HAVE BEEN
13 INCARCERATED EVER SINCE, IS THAT WHAT YOU'RE TELLING US?

14 A. YES, IT WASN'T SHORTLY AFTER THAT. IT WAS A WHILE.
15 THE ACCIDENT HAPPENED IN FEBRUARY, 2013.

16 MR. HANNA: YOUR HONOR, I HAVE COPIES OF MR.
17 CRAFT'S CRIMINAL RECORD WHICH I'D LIKE TO HAND UP.

18 MR. SMITH: I WOULD OBJECT.

19 MR. HANNA: I THINK IT'S RELEVANT TO HIS
20 DAMAGES AND HOW BAD HE WAS HURT AND WHAT HE WAS UP TO
21 SHORTLY AFTER THE ACCIDENT.

22 MR. SMITH: THEN IF THAT'S THE CASE HE
23 SHOULD HAVE HAD A WITNESS HERE.

24 THE COURT: WELL, I BELIEVE HE ADMITTED THAT
25 THE ---

1 MR. HANNA: HE JUST ADMITTED IT.

2 THE COURT: --- BURGLARY OCCURRED --

3 MR. HANNA: ALL WE'RE DOING NOW IS JUST
4 TRYING TO FIGURE OUT WHEN IT HAPPENED.

5 THE COURT: YES, I THINK THAT'S WHAT HE
6 SAID.

7 MR. HANNA: IT'S NOT FOR THE PURPOSES OF
8 ANYTHING OTHER THAN TO THE EXTENT OF HIS DAMAGES.

9 MR. SMITH: HE CAN CROSS HIM ON THAT.

10 MR. HANNA: I AM TRYING TO CROSS.

11 MR. SMITH: HE'S ADMITTED ---

12 Q. WOULD YOU AGREE THAT YOU WERE ARRESTED FOR BURGLARY
13 ON THE OFFENSE DATE OF MARCH THE 28TH OF 2013, LESS THAN
14 A MONTH AFTER YOU WERE RELEASED FROM THE HOSPITAL?

15 A. I DON'T RECALL THE DATE.

16 THE COURT: ALL RIGHT. IF THAT'S WHAT THE
17 RECORD SHOWS, THAT'S WHAT THE RECORD SHOWS.

18 MR. HANNA: OKAY, UNDERSTOOD, YOUR HONOR.
19 THANK YOU.

20 Q. AND IS IT MY UNDERSTANDING THAT THE PERSON THAT HIT
21 YOU IS YOUR BROTHER?

22 A. SIR?

23 Q. IS YOUR BROTHER THE ONE THAT HIT YOU?

24 A. YES.

25 Q. OKAY. AND WHY DO YOU THINK HE HIT YOU?

1 MR. SMITH: OBJECTION. THAT CALLS FOR
2 SPECULATION.

3 A. YOU'LL HAVE TO ASK HIM THAT, SIR.

4 Q. YOU'RE THE ONE WHO TESTIFIED ON DIRECT THAT YOU
5 THOUGHT IT WAS PURPOSEFUL AND I WANT TO KNOW WHY YOU
6 BELIEVE THAT?

7 A. IF ANYBODY IS WALKING ON THE SIDEWALK AND THEY RUN
8 UP THE SIDEWALK AND HIT YOU, THAT'S PURPOSEFUL IN MY
9 OPINION.

10 Q. THAT'S WHAT I'M ASKING YOU. IN OTHER WORDS, TELL ME
11 WHAT HAPPENED. HOW DO YOU KNOW THAT HE RAN UP ON THE
12 SIDEWALK AND HIT YOU?

13 A. HOW ---

14 Q. HOW DO YOU KNOW HE DIDN'T LOSE CONTROL? HOW DO YOU
15 KNOW A CAT DIDN'T RUN IN FRONT OF HIM ON THE ROAD?

16 THE COURT: ALL RIGHT. THAT'S NOT PROPER.

17 MR. HANNA: OKAY, SIR.

18 THE COURT: WHAT ELSE?

19 MR. HANNA: I HAVE NO FURTHER QUESTIONS,
20 YOUR HONOR.

21 THE COURT: ALL RIGHT. I'M STILL LOOKING
22 FOR EXHIBIT 5 FOR MR. FREEMAN.

23 MR. HANNA: I THINK IT'S STILL SITTING UP
24 THERE.

25 THE COURT: ALL RIGHT. LET ME HAVE THAT AND

1 THEN THOSE OTHERS, KAREN. THANK YOU. ALL RIGHT, MR.
2 SMITH, WHAT ELSE?

3 MR. SMITH: IN RESPONSE TO MR. HANNA.

4 REDIRECT EXAMINATION

5 BY MR. SMITH:

6 Q. THE MARCH 28TH ALLEGATION THAT WAS MADE, IN FACT WE
7 WENT TO TRIAL WITH THAT AND YOU WERE FOUND NOT GUILTY OF
8 THAT, RIGHT?

9 A. YES, SIR.

10 Q. THANK YOU, SIR.

11 THE COURT: WELL, IF HE WAS FOUND NOT GUILTY
12 ON THAT WHY THE RECORD.

13 MR. HANNA: I MUST HAVE THE WRONG OFFENSE.
14 SOMETHING ELSE HAPPENED.

15 THE COURT: OKAY.

16 THE WITNESS: I WAS FOUND NOT GUILTY OF THE
17 OFFENSE WHICH YOU JUST SPOKE OF.

18 THE COURT: ALL RIGHT.

19 MR. HANNA: THE ONE YOU DIDN'T KNOW ABOUT?

20 THE COURT: MR. SMITH, HAVE YOU TOTALED
21 THESE BILLS ON BEHALF OF EACH OF YOUR CLIENTS?

22 MR. SMITH: YES, I HAVE. THE BILLS FOR MR.
23 FREEMAN ARE \$12,295.50.

24 THE COURT: ALL RIGHT, LET ME SEE THAT.
25 WELL, GO AHEAD AND PUT IT IN THE RECORD.

1 MR. SMITH: \$12,295.50. MR. CRAFT'S BILLS
2 TOTAL \$49,128.52.

3 THE COURT: ALL RIGHT, WOULD YOU SUBMIT A
4 COPY OF THAT TO THE COURT? MR. HANNA, HAVE YOU SEEN THIS
5 COMPILATION ALSO?

6 MR. HANNA: I DON'T KNOW IF I HAVE SEEN THAT
7 ONE BUT I HAVE IN FACT SEEN -- AS FAR AS THE -- I HAVE
8 NO OBJECTION TO THE COMPILATION ITSELF. I DO HAVE AN
9 OBJECTION TO THE LETTER WHICH IT IS ATTACHED TO.

10 THE COURT: TO THE LETTER? I HAVEN'T SEEN A
11 LETTER.

12 MR. HANNA: IN OTHER WORDS, WHAT HE IS GOING
13 TO HAND TO YOU IS A LETTER THAT HE WROTE TO THE INSURANCE
14 COMPANY DEMANDING TO SETTLE THE CASE.

15 THE COURT: I THOUGHT HE HAD A COMPILATION
16 OF EACH OF HIS CLIENTS' INJURIES.

17 MR. HANNA: I HAVE NO PROBLEM WITH THE
18 COMPILATION.

19 THE COURT: ALL RIGHT. HAVE YOU GOT A
20 COMPILATION JUST FOR THE INJURIES?

21 MR. SMITH: ALL I HAVE IS WHAT I COMPILED
22 FOR PURPOSES OF SETTLEMENT.

23 THE COURT: WELL, LET ME SEE WHAT YOU HAVE.
24 I'M NOT GOING TO ADMIT THE LETTER BUT I WILL ADMIT THE
25 BILLS YOU MARKED FOR EACH OF YOUR CLIENTS. I BELIEVE

1 THERE ARE FIVE EXHIBITS FOR EACH ONE.

2 (PLAINTIFF FREEMAN'S EXHIBITS 1-5 IN EVIDENCE)

3 (PLAINTIFF CRAFT'S EXHIBITS 1-5 IN EVIDENCE)

4 MR. SMITH: UNDERSTOOD. THANK YOU.

5 THE COURT: ALL RIGHT. ACCORDING TO THIS

6 MR. FREEMAN HAS \$12,295.50. MR. CRAFT HAS \$49,128.52.

7 ALL RIGHT. I'LL GIVE YOU THIS BACK.

8 MR. SMITH: YES, SIR.

9 THE COURT: MR. HANNA, THIS IS YOUR PAPER.

10 MR. HANNA: YES, SIR, THANK YOU.

11 THE COURT: WELL, IT'S NOT FOR ME TO WONDER

12 WHY OR HOW IT HAPPENED. I BELIEVE THEY SAID THIS ANTONIO

13 CRAFT WAS THE BROTHER OF MICHAEL CRAFT. BUT ANYWAY,

14 ACCORDING TO THE PLAINTIFFS, THEY GOT HIT AND THEY WERE

15 INJURED. MR. CRAFT HAD ACTUAL DAMAGES OR HOSPITAL

16 DAMAGES OF \$49,285.52. WAS THAT WHAT IT WAS? NO, IT'S

17 \$49,128.52. MR. FREEMAN HAD \$12,295.50.

18 ALL RIGHT, IN THE CASE OF MICHAEL CRAFT,

19 APPARENTLY HE WAS THE MORE SERIOUSLY INJURED OF THE TWO,

20 ACCORDING TO THE HOSPITAL RECORDS. ONE OF THE BILLS WAS

21 VERY, VERY HIGH. I'M GOING TO ALLOW THE ACTUAL HOSPITAL

22 BILL OF THAT AMOUNT AND I'M GOING TO ALLOW THE SUM OF

23 \$15,000.00 ACTUAL DAMAGES.

24 IN THE MATTER OF MR. FREEMAN, \$12,295.50, I'LL

25 ALLOW \$12,000.00 IN THAT CASE.

1 NOW I DON'T HAVE A FOUNDATION, MR. SMITH, FOR
2 ANY PUNITIVE DAMAGES. AS I UNDERSTAND IT, YOU'VE GOT TO
3 LAY SOME FOUNDATION, THAT THE DEFENDANTS CAN RESPOND AND
4 ALL SUCH AS THAT.

5 NOW THIS JUDGMENT WILL BE AGAINST ANTONIO
6 CRAFT. KIMBERLY SANFORD, I BELIEVE MR. SMITH SAID THAT
7 SHE JUST LOANED HIM HER CAR BUT I'M NOT GOING TO IMPUTE
8 ANY DAMAGES FOR HER. I DON'T THINK THERE ARE ANY
9 ALLEGATIONS OF NEGLIGENT ENTRUSTMENT OR SUCH AS THAT.

10 NOW I THINK THAT'S PRETTY REASONABLE DAMAGES
11 UNDER THE CIRCUMSTANCES. CERTAINLY, MR. CRAFT, AS I
12 SAID, IS PROBABLY THE MORE SERIOUSLY INJURED.

13 ALL RIGHT, MR. SMITH, IF YOU WILL PREPARE A
14 PROPOSED ORDER AND ALLOWING THE DAMAGES AS I'VE SAID,
15 \$12,000.00 FOR PAIN AND SUFFERING OR ACTUAL DAMAGES AND
16 \$15,000.00 FOR MR. CRAFT, PLUS THE HOSPITAL BILLS.

17 MR. SMITH: THANK YOU, YOUR HONOR.

18 THE COURT: THANK YOU, GENTLEMEN.

19 END OF HEARING.
20
21
22
23
24
25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF ANDERSON)

3

4

C E R T I F I C A T I O N

5

6

I, KAREN T. SENN, CERTIFIED COURT REPORTER FOR
7 THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
8 FOREGOING PAGES CONSTITUTE A TRUE, ACCURATE AND COMPLETE
9 TRANSCRIPT OF THE HEARING HELD ON JULY 15, 2014, BEFORE
10 THE HONORABLE ELLIS B. DREW, JR., MASTER IN EQUITY FOR
11 THE TENTH JUDICIAL CIRCUIT, IN THE CASE OF MICHAEL CRAFT
12 AND WILLIAM FREEMAN VERSUS ANTONIO CRAFT AND KIMBERLY
13 SANFORD, CIVIL ACTION 2013-CP-04-00771.

14

15

16



17 ANDERSON, SOUTH CAROLINA

18 SEPTEMBER 29, 2014

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A TRUE COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT
MAR 6 2015 C/A NUMBER: 14-CP-04-850



United Auto Insurance Company, *Richard S. Bivley*
CLERK OF COURT

Plaintiff,

vs.

Willie Freeman, Michael Craft, Kimberly
L. Sanford and Antonio Craft,

Defendants.

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

COMMON PLEAS AND
GENERAL SESSIONS

2015 MAR 16 A 9:09

FILED - CLERK'S OFFICE
ANDERSON SC

I. INTRODUCTION

This matter came before the Court on Plaintiff's Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure during the February 2, 2015 Anderson County Non-Jury term of Court. Attorney George V. Hanna, IV appeared on behalf of United Auto Insurance Company ("UAIC"). Attorney Donald L. Smith appeared on behalf of Defendants Willie Freeman and Michael Craft. Defendants Kimberly Sanford and Antonio Craft are in default and did not make an appearance. After carefully considering the arguments of counsel for UAIC, the arguments of counsel for Willie Freeman and Michael Craft, the affidavit of Robert Gibbs, the exhibits presented at trial, the various pleadings filed in the case, the submissions of both parties and the relevant case law, I hereby GRANT Plaintiff's Motion for Summary Judgment.

II. STATEMENT OF FACTS

At oral argument the parties stipulated to the following pertinent facts:

1. UAIC issued policy # SCU 000693514 ("the Policy") to Defendant Kimberly L. Sanford as named insured a policy of automobile liability insurance with effective dates of January

R/S

3, 2013 to July 3, 2013, which provided bodily injury liability coverage for one (1) vehicle, a 1997 Ford Crown Victoria, in the amount of \$25,000/\$50,000.

2. That Defendant Kimberly L. Sanford paid her first month's premium on January 3, 2013 at the time the Policy was issued.

3. UAIC sent a bill to Defendant Kimberly L. Sanford for the second month's premium on January 9, 2013.

4. UAIC then sent a cancellation notice to Defendant Kimberly L. Sanford on January 22, 2013, stating that the policy would be cancelled if the premium was not received on or before February 3, 2013.

5. That Defendant Kimberly L. Sanford failed to pay the premium for the second month before the due date of February 3, 2013.

6. That on February 13, 2013 Antonio Craft was operating the aforementioned 1997 Ford Crown Victoria on Tribble Street in the Anderson, South Carolina when his vehicle allegedly struck Defendants William F. Freeman and Michael Craft, who were pedestrians.

7. That Defendant Kimberly L. Sanford made an additional payment on February 14, 2013 at 11:21 AM.

III. CONCLUSIONS OF LAW

Plaintiff presented evidence at the motion hearing that the notice of cancellation mailed on January 22, 2013 met all the requirements of South Carolina Code § 38-77-120 and Defendants Willie Freeman and Michael Craft did not challenge this evidence. Therefore, as a threshold matter, I find as a matter of law that Plaintiff's notice of cancellation dated January 22, 2013 met all the requirements of South Carolina Code § 38-77-120.

In addition, Plaintiff contends that it was permissible to cancel the policy within the first 60 days because this cancellation met the requirements of South Carolina Code § 56-10-

RCS

280(A)(4). Specifically, the policy had remained in effect for at least 30 days and was being cancelled for nonpayment of premium. Defendants Willie Freeman and Michael Craft challenged this contention at the hearing, arguing that South Carolina Code § 56-10-280(A)(4) prohibits an insurance carrier from cancelling an insurance policy within the first 60 days for nonpayment of premiums for at least 30 days after the premium is due. Under the Plaintiff's interpretation of the statute the policy was cancelled for nonpayment on February 3, 2013 at 12:01 AM. Under Defendants Willie Freeman and Michael Craft's interpretation of the statute the policy could not be cancelled until March 5, 2013 at 12:01 AM. Therefore, the issue presented to the court is to interpret the meaning of South Carolina Code § 56-10-280(A)(4) and then apply that meaning to the undisputed facts of the case. The specific statutory language at issue is as follows:

(A) Contracts or policies of insurance issued to meet the financial responsibility requirements prescribed in this chapter must be issued for not less than six months. A contract or policy of insurance remains in effect at least sixty days notwithstanding a power of attorney which may purport to give the attorney-in-fact the right to effect cancellation on behalf of the insured. However, a contract or policy may be canceled within the first sixty days only under one or more of the following circumstances: (4) the insured fails to pay when due the premium for the policy, an installment of the premium, or an installment payment under a premium service contract. The contract or policy of insurance must remain in effect for at least thirty days.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election*

Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992).

The court finds that the language of South Carolina Code § 56-10-280(A)(4) is plain and unambiguous. This section clearly evidences the legislature's intent that a policy of automobile insurance issued in compliance with the Financial Responsibility Act can only be cancelled during the first 60 days for four enumerated reasons, including the nonpayment of premiums when due. A policy that is cancelled for nonpayment of premiums must remain in effect for at least 30 days. The Court finds that the plain and unambiguous meaning of this provision is that a policy of automobile insurance can be cancelled for nonpayment of premium on the 31st day. This is exactly what happened in this case.

The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd. *Ray Bell Constr. Co. v. School Dist. of Greenville Co.*, 331 S.C. 19, 501 S.E.2d 725 (1998).

However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention. If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect.

Id. (citing *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 440 S.E.2d 364 (1994)). The interpretation urged by Defendants Willie Freeman and Michael Craft leads to a result that is plainly absurd. Based on the undisputed facts, the policy was issued on January 3, 2013. The premium for the second months had to be received on or before February 3, 2013. Therefore, according to Defendants Willie Freeman and Michael Craft's interpretation of the

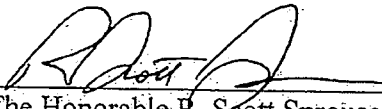


statute, the policy could not be cancelled until March 5, 2013 at 12:01 AM. In other words, they are urging this court to hold that the statute prohibits an insurer from cancelling a policy for nonpayment of premiums for a period of 60 days. This result is plainly absurd in that it requires the court ignore the fact that a cancellation for nonpayment of premiums is one of the four enumerated reasons listed in the statute wherein it is permissible for an insurer to cancel a policy within the first 60 days. If the legislature had intended the result urged by Defendants Willie Freeman and Michael Craft, it would have listed only the first three reasons and not ever mentioned nonpayment of premiums as an exception.

CONCLUSION

The court finds that the Plaintiff properly cancelled the Policy on February 3, 2013 at 12:01 AM and that the Policy was not reinstated until February 14, 2013 at 11:21 AM. Therefore, there is no coverage available for the accident of February 13, 2013. For the foregoing reasons, the Plaintiff's Motion for Summary Judgment is hereby GRANTED.

AND IT IS SO ORDERED.



 The Honorable R. Scott Sprouse
 Presiding Judge

Walshella, SC

3-6, 2015

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 2015 MAR 16 A 9:09
 COMMON PLEAS AND
 GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

COUNTY OF ANDERSON)

CASE NO.: 2013-CP-04-0077

Willie Freeman and Michael Craft,)
Plaintiff,)

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.)

Antonio Craft and Kimberly Sanford,)
Defendant.)

| | |
|--|--|
| Plaintiff's Attorney: Donald L. Smith, Bar No. 6699 Address: 122 N. Main Street Anderson SC 29621 Phone: 864-642-9284 Fax 864-642-9285 E-mail: attorneydonaldsmith@gmail.com Other: | Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____ |
|--|--|

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider
Estimated Time Needed: 15 Minutes Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Donald L. Smith
 _____ 03/30/15
 Signature of Attorney for Plaintiff / Defendant Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ _____
- EXEMPT: (check reason)
 - Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRCP)
 - Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: _____
- Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other: _____
- JUDGE CODE _____
- Date: _____

CLERK'S VERIFICATION

Collected by: TSG Date Filed: 4-7-15
 MOTION FEE COLLECTED: \$ 25.00
 CONTESTED - AMOUNT DUE: \$ _____

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APR - 7 2015

Richard A. Huley
CLERK OF COURT

(4) the insured fails to pay when due the premium for the policy, an installment of the premium, or an installment payment under a premium service contract. The contract or policy of insurance must remain in effect for at least thirty days.

Since public policy demands that drivers be insured, there are specific requirements for a carrier to take advantage of the ability to cancel a policy within the initial sixty (60) days. Paragraph (4) relates specifically to the facts in this case. Paragraph (4) forms the basis of the defendants' argument that the insured was covered at the time of the accident.

It is undisputed that Kimberly L. Sanford's policy with UAIC was new business pursuant to the materials submitted into evidence by the plaintiff. Additionally, she paid \$79.00 in cash for her first installment of a six month policy which cost \$369.00. Argument by counsel for the plaintiff was that the next installment would be required on February 3, 2013. Pursuant to paragraph (4), February 3, 2013 was date for which the next installment of the premium was due. Therefore, based on the fact that Ms. Sanford failed to pay the next installment on February 3, 2013, the policy would remain in effect for at least thirty (30) days. Since the accident occurred on February 13, 2013, Kimberly L. Sanford had coverage through UAIC.

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Here, the evidence shows that Defendant is not entitled to summary judgment. Accordingly, its motion for summary judgment should be denied.

PUBLIC POLICY CONSIDERATION

§ 56-10-280 espouses a public policy doctrine that demonstrates a clear legislative intent to avoid having uninsured motorists on South Carolina roads. See, e.g., *Bankers Trust of South Carolina v. Bruce*, 275 S.C. 35, 267 S.E. (2d) 424 (1980) (the cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent wherever possible). According to S.C. Ann. § 38-77-10, one of the stated purposes of the Automobile Insurance statutes is that every automobile insurance risks that is insurable under the statute be insured and that evasion of coverage be penalized. Furthermore, S.C. Ann. § 38-77-20 specifically states under [Statutory] Construction that Chapter 77 as it relates to automobile insurance coverage be *liberally construed* to achieve its purposes. United Automobile Insurance Company has intentionally violated this statute in contradiction of the public policy requiring coverage.

CONCLUSION

To grant summary judgment, Plaintiff must prove that there is no genuine issue of material fact. With all inferences drawn against the moving party (Plaintiff) and in favor of the non-moving party (Defendant), Plaintiff has not met its burden of proof.

Plaintiff inexplicably attempts to justify the cancellation of Ms. Sanford's insurance policy by utilizing an irrelevant statute--§ 38-77-120. § 38-77-120 is specifically for renewal of motor vehicle policies, not new policy coverage. Simply put, Plaintiff is attempting to shield itself from liability by arguing that Ms. Sanford anticipatorily breached her contract, without providing Ms. Sanford the statutorily required 15-days to cure any breach after missing her payment deadline. If Plaintiff had provided Ms. Sanford with the proper notice, Ms. Sanford would have been covered up and through the date of the accident until February 18, 2013.

WHEREFORE, the undersigned counsel respectfully requests that this Honorable Court reconsider the Order previously issued in this matter, and render a decision denying the plaintiff's

quest for Summary Judgment; and, that sanctions be issued for the bad faith denial of coverage in contravention of the law, as well its own underwriter's manual.

Date: 3/30/15



Donald L. Smith
Attorney for Defendants
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Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

LCB

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

CLERK'S OFFICE OF THE COURT OF COMMON PLEAS
ANDERSON SC

2015 APR - 7 A 11: 06

United Auto Insurance Company,
Plaintiffs,

COMMON PLEAS AND
GENERAL SESSIONS

CASE NO.: 2014-CP-04-0850

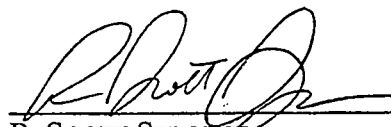
v.

ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION

Willie Freeman, Michael Craft,
Kimberly L. Sanford, and Antonio Craft,
Defendants.

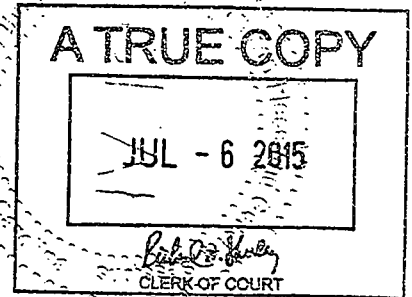
After careful consideration of the record and the able argument and filings of Counsel, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Plaintiff's Motion, pursuant to Rule 59, SCRCP,¹ is DENIED.

AND, IT IS SO ORDERED.



R. SCOTT SPROUSE
Judge, Tenth Judicial Circuit

Anderson, South Carolina
April 6, 2015



¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.