

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

RECEIVED

JUL 29 2015

SC Court of Appeals

Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

Dickie Shults Appellant,

Angela G. Miller Respondent.

Respondent's Reply Brief In Support of
Motion to Compel Appellant to Produce Complete Record on Appeal

Respondent moved for this Court to compel Appellant to comply with Rule 210, SCACR, by filing a Record on Appeal that contains "all matter designated to be included by any party." Both Appellant and Respondent designated the transcript of the February 7, 2013 hearing from which Appellant filed this appeal to be included in the Record on Appeal. Without the consent of Respondent or this Court, Appellant unilaterally decided to redact from the Record on Appeal

portions of Respondent's arguments to the trial court during a February 7, 2013 hearing.¹ (R. pp. 83 & 85)

Appellant has now responded to the motion by attempting to justify the failure to comply with the Appellate Court Rules with arguments that were never raised or ruled upon by the trial court. Appellant now claims that it unilaterally redacted information regarding a settlement reached in a separate lawsuit against the real at-fault party because it is somehow confidential. However, when the terms of the settlement were presented to the trial court in this case, Appellant raised no such argument and made no objection. (R. pp. 83 & 85) Furthermore, the terms of the settlement are NOT confidential.

"Preserving issues for appellate review is a fundamental component of appellate practice."
Jean H. Toal, Appellate Practice in South Carolina 65 (1999).

There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity.

Id. at 66.

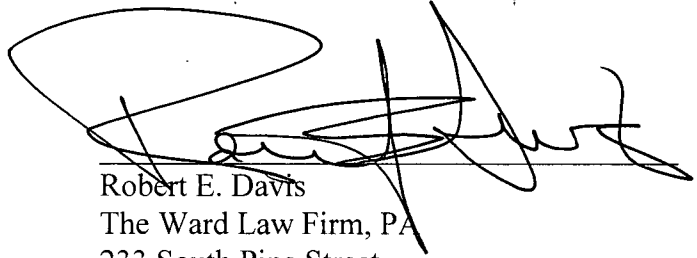
Appellant did not raise any issue about the settlement being confidential to the trial court, and there certainly was no ruling by the trial. For Appellant to simply decide when producing the record on appeal to redact information presented to the trial court without any attempt at preserving the issue is improper and unfair. Id.

¹ Appellant's redactions relate to Appellant's settlement with another party arising out of the same automobile accident. This relates to Respondent's arguments that Appellant suffered no prejudice from the trial court's decision to grant Respondent relief from the entry of default and that Respondent is not at fault for the subject accident. Appellant did not object to these arguments to the trial court.

Despite not having preserved any issues about settlement being presented to the trial court, Appellant now wants to argue that inclusion of the actual arguments presented to the trial court are moot and irrelevant. Appellant, however, is being totally disingenuous because Appellant actually designated the exact same information to be included in the record on appeal without any redaction. (Exhibit 1—additional emphasis added) It was only after receiving Respondent’s designation of matter and initial brief that Appellant unilaterally decided to redact information that Appellant had previously designated to be included in the record.

Regardless of the lack of issue preservation, the settlement terms are not confidential. Appellant has dreamed up an argument that the settlement with the real at-fault party is somehow confidential just because there was a mediation. The actual settlement agreements, which were not signed at the mediation, do not contain any confidentiality agreement. (Exhibit 2) Furthermore, Appellant must have forgotten that he has already filed information with portions of the settlement amount publicized. (Exhibit 3)

The bottom line is that Appellant has no justification for unilaterally redacting information in the record on appeal that (1) Appellant designated to be included, (2) that was presented to the trial court without objection, and (3) was never designated as being confidential. This Court should, therefore, compel Appellant to serve a Record on Appeal without the redactions contained on pages 83 and 85 of the current record and award Respondent such other costs, fees, and relief as this Court deems just.



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Attorney for Respondent

7/27, 2015.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2015-000359
Case No. 2011-CP-42-3951

Dickie Shults,Appellant,

v.

Angela G. Miller,Respondent.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

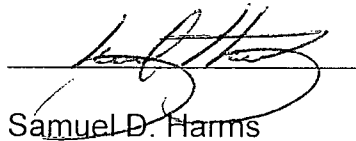
Appellant proposes the following be included in the Record on Appeal:

1. Summons and Complaint (filed 09/13/2011)
2. Motion for Entry of Default by the Clerk of Court and Attachments: Affidavit of Counsel Supporting Motion for Entry of Default and Attachment (filed 10/20/2011)
3. Entry of Default and Setting Case for a Damages Hearing (filed 10/20/2011)
4. Motion to Set Aside the Entry of Default (served October 26, 2011)
5. Answer to Complaint (served October 26, 2011)
6. Affidavit of Frank Miller (filed 11/29/2011)
7. Affidavit of Angela Miller (filed 11/29/11)
8. Affidavit of Chris Mace (filed 12/21/11)
9. S.C. Uniform Collision Report
10. Defendant's Brief in Support of her Motion to Set Aside Entry of Default and attached Exhibits: Affidavit of Frank Miller, Affidavit of Angela Miller, Affidavit of Chris Mace, S.C. Uniform Collision Report (exhibits previously included)
11. Transcript of January 3, 2012 Hearing on Defendant's Motion to Set Aside Entry of Default
12. Order Setting Aside Entry of Default (filed 07/11/2012)

13. Motion to Reconsider, Alter or Amend the Order Setting Aside Entry of Default (served July 18, 2012)
14. Deposition of Angela Miller (entire deposition)
15. Deposition of Dickie Shults (entire deposition)
16. Defendant's Motion for Summary Judgment (served 10/31/12)
17. Defendant's Brief in Support of Motion for Summary Judgment with Attached Exhibits: Affidavit of Chris Mace, S.C. Uniform Collision Report, Deposition of Dickie Shults (title page, p. 48)(exhibits previously included)
18. Transcript of February 7, 2013 Hearing on Plaintiff's Motion to Reconsider Order Setting Entry of Default and Defendant's Motion for Summary Judgment
19. Order dated March 18, 2013 denying Plaintiff's Motion to Reconsider and granting the Defendant's Motion for Summary Judgment
20. Plaintiff's Motion to Reconsider, Alter or Amend the Order Granting Defendant's Motion for Summary Judgment. (served 03/22/13)
21. Transcript of October 31, 2013 Hearing on Plaintiff's Motion to Reconsider Order Granting Defendant's Motion for Summary Judgment
22. Form 4 Order filed January 27, 2015 denying Plaintiff's Motion to Reconsider
23. Notice of Appeal and Proof of Service

I certify that this designation contains no matter which is irrelevant to this appeal.

May 1, 2015



Samuel D. Harms
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Greenville, SC 29607
(864) 277-0102
Attorney for Appellant

accident of July 22, 2009 may exceed the liability limits of the insurance policy of Covenantees, and the Covenantor is desirous of protecting his right to proceed to suit against Lisa A. Seay, the Estate of Philip M. Seay and Angela G. Miller or others for purposes of collecting additional liability coverage and/or underinsured and/or uninsured benefits;

NOW, FOR AND IN CONSIDERATION OF the payment of the Covenantor of the sum of Seven Thousand Four Hundred Twenty-two and 46/100ths Dollars (\$7,422.46) by the Covenantees, this being the remaining liability insurance coverage available for this accident under Policy number 64086 issued by Southern Farm Bureau Casualty Insurance Company, the sufficiency and receipt of which is hereby acknowledged, the Covenantor and Covenantees agree as follows:


1. That in the event Covenantor is unable to resolve by agreement and settlement his claims with any additional liability insurance carrier or the underinsured and/or uninsured carrier, the Covenantor shall have the right to bring suit against Lisa A. Seay and the Estate of Philip M. Seay and prosecute the same to final judgment.
2. Notwithstanding any judgment that may be rendered in said suit, it is the express intent of the parties that Lisa A. Seay and the Estate of Philip M. Seay, their heirs, successors and assigns, shall never at any time, be liable to the Covenantor, his subrogees, heirs, or assigns, beyond the consideration expressed herein, by reason of the damages or injuries on which such judgment may be based except as herein stated. In consideration of the payment to Covenantor of the sum of Seven Thousand Four Hundred Twenty-two and 46/100ths Dollars (\$7,422.46) Covenantor, his subrogees, heirs, or assigns, shall not at any time, nor shall anyone for them or in their behalf, enforce against Lisa A. Seay or the Estate of Philip M. Seay, by execution or otherwise, any judgment that may be rendered in the above-mentioned lawsuit except as herein stated. Upon reduction to judgment of the aforementioned lawsuit, Covenantor, his subrogees, heirs, or assigns will immediately provide Lisa A. Seay and the Estate of Philip M. Seay with an executed Satisfaction of Judgment in any case presented by Covenantor against Covenantees for the accident of July 22, 2009 unless such Satisfaction of Judgment will impede collection or pursuit of additional liability coverage or underinsured and/or uninsured motorist coverage. If a Satisfaction of Judgment will impede collection or pursuit of additional liability coverage or underinsured and/or uninsured motorist coverage, Covenantor, his subrogees, heirs, or assigns will provide Lisa A. Seay and the Estate of Philip M. Seay a Satisfaction of Judgment upon the earlier of following events: (a) payment of said judgment by any other liability coverage and/or underinsured and/or uninsured motorist carrier or (b) final resolution of any additional liability coverage and/or underinsured and/or uninsured motorist coverage claim. If immediate satisfaction of the judgment is not filed after either payment of the judgment or final resolution of any other liability or underinsured and/or

uninsured motorist claim, this Covenant may be recorded as a Satisfaction of Judgment.

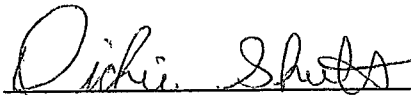
3. Covenantor and Covenantees expressly reserve all rights of action, claims, demands or other legal remedies against all firms and persons except as modified by the terms of this Covenant. This Covenant is not a release, nor shall it be construed as a release of any party person, firm or corporation.
4. Covenantor expressly represents that he has been represented by counsel, and has been fully advised of all facets of any potential lawsuit, and all claims arising out of or in relation thereto, and are aware and fully advised that the execution of this instrument will fully and forever prevent and bar the collection of any additional payments of any kind, nature or description against Lisa A. Seay and the Estate of Philip M. Seay and their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys, except as herein stated.
5. In executing this agreement, Covenantor represents and warrants that he has relied on his investigation, and on the investigation and advice of his attorney, Samuel D. Harms, III, and has not relied on any statement, representation, or commitment of any kind made by Covenantees, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.
6. All provisions and recitals in this Covenant are intended to be and are Covenants of the parties and are a material part of this agreement and binding on the parties hereto, their personal representatives, successors, assigns, heirs, officers, employees, agents, servants or attorneys.
7. The Covenantor agrees that if there exists any subrogation, assignment, Medicare lien, Medicaid lien, Blue Cross/Blue Shield lien, or any other lien or interest, whether created by contract, statute or otherwise, that he will obtain a release from the person or entity holding such interest and that the Covenantor will protect, save, defend, hold harmless, and indemnify the Covenantees from any such subrogation, assignment, claims or interests.
8. The Covenantor and the Covenantor's attorney, expressly agree to keep Covenantees abreast of developments in their attempts to collect additional liability coverage and/or underinsured and/or uninsured motorist benefits, including specific notice as to the date of trial, the amount of verdict, status of and whether a settlement has been obtained.
9. Covenantees agree that this Covenant Not to Execute shall not limit or restrict in any manner the Covenantor's right to pursue underinsured and/or uninsured motorist coverage claims any applicable insurance policies.

10. The parties expressly recognize that the payment made herein in this agreement is in partial settlement and satisfaction of a doubtful and disputed claim, that the Covenantee Lisa A. Seay and the Estate of Philip M. Seay deny any liability to the Covenantor and that this agreement and payment is not intended as, nor should it be construed as, an admission of liability.
11. All parties agree that this Covenant is a product of negotiation and agreement among parties.
12. The provisions and stipulations hereof shall inure to the benefit of, and shall be binding upon, the heirs, executors, administrators, assigns and successors in interest of the parties hereto.
13. This Covenant Not to Execute is being executed by the Covenantor in the State of South Carolina and shall be construed pursuant to South Carolina law.

IN WITNESS WHEREOF, the parties have executed this agreement on the day, month and year first above written.



Witness



DICKIE SHULTS, Covenantor

**Southern Farm Bureau
Casualty Insurance Company**

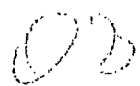
By: _____
Its: _____

Witness

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

POLICY RELEASE

KNOW ALL MEN BY THESE PRESENTS, that we, Dickie Shults and Becky Homan, individually and as husband and wife, for the consideration of Two Hundred Twenty-Five Thousand and 00/100 Dollars (\$225,000.00) to us in hand paid by Amerisure Insurance Company, the receipt whereof is hereby acknowledged, do release and discharge, and by these presents do for ourselves, our heirs, executors, personal representatives, administrators, successors and assigns, release and forever discharge Amerisure Insurance Company and their heirs, executors, administrators, personal representatives, successors, assigns, employer, employees, bailees, subsidiary corporations, parent corporations, affiliate corporations, adjusting firms, adjusters, agents and servants of and from all and all manner of actions, causes of actions, suits, debts, accounts, judgments, claims and demands whatsoever in law or equity as a result of, growing out of, or in any way connected with any and all claims made by us for any and all injuries and damages of any type whatsoever and any and all insurance benefits of any type whatsoever, provided or alleged to be provided, under the terms of policies of insurance issued by Amerisure Insurance Company to McMillan-Carter, Inc., which policies bear numbers CA 20621940001 and CU 2062196 00 02, arising out of any and all injuries, both to persons and/or damages to property resulting or to result or which might result in the future from an accident which occurred on or about July 22, 2009, on South Carolina Highway 292 in Spartanburg County, South Carolina for which injuries, damages and benefits we have claimed the said Amerisure Insurance Company to be legally liable, which liability was and is expressly denied.



It is mutually understood and agree that this Policy Release is not intended as a release or discharge, nor as an accord and satisfaction with Angela Miller or any other person whatsoever, but only as a Policy Release for policy numbers CA 20621940001 and CU 2062196 00 02 issued by Amerisure Insurance Company. The undersigned hereby expressly reserves the right to prosecute a legal action in court against Angela Miller, or any other person, for the purpose of establishing a claim under any insurance policy applicable to this accident including, but not limited to, all additional liability, underinsured, uninsured, excess coverage, personal injury protection, medical payment or other policies (except as to policy numbers CA 20621940001 and CU 2062196 00 02 issued by Amerisure Insurance Company). Also, the undersigned hereby expressly reserves the right to prosecute a legal action in court against any other defendant who may be liable to the undersigned. This Policy Release does not intend to release any person, firm, or corporation, other than policy numbers CA 20621940001 and CU 2062196 00 02 issued by Amerisure Insurance Company, who is liable, or may be liable, to the undersigned for any injuries and/or damages that may have been suffered from the above referenced accident.

We further agree, as a consideration and inducement for this compromise settlement, that all sums set forth herein constitute damages on account of personal injuries and sickness within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

We further agree, as a consideration and inducement for this compromise settlement, that it shall apply to any and all unknown and unanticipated claims resulting from any injuries or damages of any type whatsoever arising out of this accident as well as to those now disclosed.

We further agree, as a consideration and inducement for this compromise settlement, that it shall apply to any and all damages of any type whatsoever, whether known or unknown, anticipated

or unanticipated, arising out of the handling of our claim by Amerisure Insurance Company as well as to all other damages as set forth hereinabove.

We further agree, as a consideration and inducement for this compromise settlement, that it shall apply to any and all types of insurance benefits provided or alleged to have been provided under the terms of the policy set forth hereinabove and that upon the execution of this document, we will have no further claims arising out of this accident against Amerisure Insurance Company and their heirs, successors and assigns for any other type of insurance benefits whatsoever.

We further agree, as a consideration and inducement for this compromise settlement, that it is our express intent in executing this document to fully and completely release and absolve from any and all liability the said Amerisure Insurance Company in any respect whatsoever in connection with the accident set forth above and the subsequent handling of all claims arising therefrom including but not limited to any and all policy claims, contract claims, extra-contractual claims, bad faith claims, any claims made or which could be made in accord with South Carolina Code Sections 38-77-150, 160, 170 and/or 180, tort claims, loss of consortium claims and other claims of any type whatsoever with the full understanding that upon the execution of this document, which is contractual in nature and not a mere recital, any and all manner of actions, causes of action, suits, debts, claims, accounts, judgments and demands whatsoever in law or equity arising out of this accident and the subsequent handling of these claims by Amerisure Insurance Company will be forever barred and we will have no further claims for any sort of injuries, damages or benefits of any type whatsoever against the said Amerisure Insurance Company, their heirs, successors and assigns.

We further agree, as a consideration and inducement for this compromise settlement, that we have the sole right and exclusive authority to execute this release and to receive the sums specified herein and that we have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to herein and also agree to defend, hold harmless and indemnify the said Amerisure Insurance Company and their heirs, successors and assigns from any and all claims, demands, actions, causes of action or judgments of any type whatsoever which have been or may be brought by any party asserting an interest in the settlement proceeds paid hereunder including, but not limited to, any action brought by any party asserting any sort of medical lien, Medicare lien, Medicaid lien, medical assignment, Medicare assignment, subrogation claim or other lien, assignment or claim of any type whatsoever and we agree that we will fully and completely indemnify the said Amerisure Insurance Company and their heirs, successors and assigns for any amounts paid by them in connection with the assertion of any such third party claims whether these amounts are paid for settlement, verdict, defense costs, including attorneys' fees, or otherwise.

We further understand, acknowledge and agree that the consideration paid hereunder by the said Amerisure Insurance Company in settlement of our claims includes payment for any and all of our future accident-related medical care, if any. We hereby agree, warrant and certify that we have not received any Medicare or Medicaid benefits for any damages or claims being released under the terms of this release, and further agree that we shall use such portions of the consideration being paid hereunder as is necessary to pay for our future medical care related to the accident giving rise to this case. To the extent that Medicare and/or the Centers for Medicare and Medicaid Services ("CMS") ever determine that a specified allocation out of the

consideration paid pursuant to this release for future accident-related medical care should have been set-aside in a designated account approved by CMS, and Medicare or CMS have been adversely affected by their inability to determine and approve the set-aside of funds for future medical care, we agree to accept personal responsibility for the payment of any and all medical expenses that Medicare and/or CMS seek to recover and agree that we shall indemnify and hold harmless the said Amerisure Insurance Company and their heirs, agents, servants, legal representatives, employees, successors and assigns from payment of the same. We further agree to hold the said Amerisure Insurance Company and their heirs, agents, servants, legal representatives, employees, successors and assigns harmless from any and all adverse consequences in the event this settlement results in the loss of our rights to Social Security and/or Medicare benefits to the extent we would have been entitled to those benefits in the absence of this release.

We further agree, as a consideration and inducement for this compromise settlement, that this release, which is a general release, shall be a fully binding and complete settlement among us, Amerisure Insurance Company and our heirs, successors and assigns and shall also apply to any and all past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors-in-interest and assigns of the said Amerisure Insurance Company and to all other persons, firms or corporations with whom any of the former have been, are now or may hereafter be affiliated.

We finally agree that no agreements or understandings have been made between the parties except as expressed herein, that they shall be binding upon our heirs, successors and assigns and that this agreement shall be interpreted with and construed under the laws of the State of South Carolina.

IN WITNESS WHEREOF we hereunto set our hands and seals this 27 day of July, 2012.

WITNESSES:

[Signature]

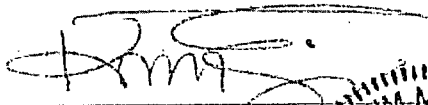
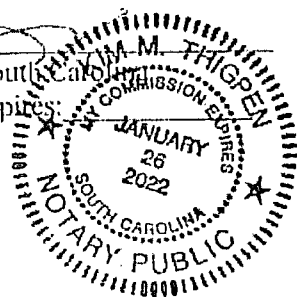
[Signature]

[Signature]
Dickie Shults, individually and as husband
of Becky Homan

[Signature]
Becky Homan, individually and as wife
of Dickie Shults

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

On this 27 day of July, 2012, before me personally came Dickie Shults and Becky Homan, individually and as husband and wife, to me known and known to me to be the persons who are described herein and who executed the foregoing instrument, and acknowledged to me that they executed the same, and that the same is their free act and deed.


Notary Public for South Carolina
My Commission Expires: 

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Dickie Shults,)
)
Plaintiff,)

NOTICE OF DISTRIBUTION OF THIRD-PARTY
SETTLEMENT PROCEEDS

vs.)
)
)

Philip M. Seay, the Estate of)
Philip M. Seay, and Lisa A.)
Seay, Individually, and as the)
Personal Representative of the)
Estate of Philip M. Seay,)
)
Defendants.)

C. A. No.: 2011-CP-42-3081

In accordance with Rule 67-805 of the Regulations of the South Carolina Workers' Compensation Commission, notice is hereby given regarding the distribution of Third-Party settlement proceeds in the above matter.

The claim of the Plaintiff/Employee settled for Seven Thousand Four Hundred Twenty-two and 46/100ths (\$7,422.46) Dollars which was the full amount of the liability insurance coverage available, The Plaintiff/Employee received all of the proceeds in that the Third Party carrier waived its rights to any of the proceeds of the settlement.

RECEIVED

AUG 27 2012

Division of Claims
Claims Administrator
S.C. Workers' Comp. Comm.

August 20, 2012



SAMUEL D. HARMS, III
Attorney for Plaintiff



REGINALD L. FOSTER
Attorney for Defendant



RYAN S. MONTGOMERY
Attorney for Employer/Carrier

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
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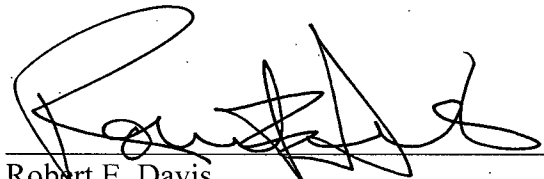
Dickie Shults Appellant,

Angela G. Miller Respondent.

PROOF OF SERVICE

I certify that I have served Respondent's Reply Brief in Support of Motion to Compel Appellant to Produce Complete Record on Appeal by US Mail, on July 27, 2015, addressed to Appellant's attorney of record, Samuel D. Harms, Harms Law Firm, PA, 33 Market Point Drive, Greenville, SC 29607.

July 27, 2015.



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