FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4000313

RECEIVED
FEB 02 2016
SC Court of Appeals

PLAINTIFF(S)	DEFENDANT(S)
Raymond G Farmer South Carolina Dept of Insurance	CAGC Insurance Company South Carolina Property and Casualty Insurance Guaranty Asso

Submitted by: ______________________ Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

2015 SEP 30 PM 3:08
JEANETTE W. McBRIDE
C.C.P., G.S.
RICHLAND COUNTY
FILED

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other ______

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other ______

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other ______

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : ______

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge ______________ **Judge Code** ______ **Date** ______

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _________, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 30 September 2015 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)	
Geoffrey Ross Bonham	Tara C Sullivan Michael A. Molony	Jeffrey A. Jacobs

Court Reporter ______________ **Clerk of Court** Jeanette W. McBride

SCRCP Form 4C (10/2011)

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EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-40-0313

RICHLAND COUNTY
FILED
SEP 30 PM 2:55
JEANETTE W. McBRIDE
C.C.P. & G.S.

Raymond G. Farmer, as Director of the South Carolina Department of Insurance,

Petitioner,

vs.

CAGC Insurance Company, in liquidation,

Respondent.

South Carolina Property and Casualty, Insurance Guaranty Association,

Intervenor-Petitioner,

vs.

CAGC Insurance Company, in liquidation, Raymond G. Farmer, in his capacity as Ancillary Receiver of CAGC Insurance Company, in liquidation, and CompTrustAGC of South Carolina, a/k/a CompTrustAGC of South Carolina, Inc.

Intervenor-Respondent.

ORDER GRANTING MOTION TO QUASH DISCOVERY AND MOTION TO DISMISS AND DENYING MOTION FOR SUMMARY JUDGMENT

This matter comes before me on the Motion to Quash and the Motion to Dismiss of Intervenor-Respondent, CompTrustAGC of South Carolina, a/k/a CompTrustAGC of South Carolina, Inc., ("**CompTrust**") as well as on the Motion for Summary Judgment of Intervenor-Petitioner Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association (the "**SC IGA**"). After hearing the arguments of the parties, it appears from the pleadings, supporting documentation, and affidavits on file in this case that CompTrust was

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improperly added as a party on June 9, 2015, and I grant CompTrust's motions pursuant to Rules 12(b)(6), 21, and 26 SCRCP. It further appears that workers compensation insurance claims filed against Respondent CAGC Insurance Company (**"CAGC"**) pursuant to CompTrust policies lawfully transferred to CAGC should be considered "covered claims" under § 38-31-20 (8), so I deny the SC IGA's Motion for Summary Judgment.

Factual Background

CompTrust was formed on May 14, 1982 in Charlotte, North Carolina as an unincorporated business trust. It transacted business solely in South Carolina before it voluntarily dissolved on March 31, 2011. While it existed, the sole purpose of CompTrust was to provide workers compensation coverage for its South Carolina employer members as a group self-insurance provider regulated by the South Carolina Workers Compensation Commission (**"SC WCC"**) under the authority granted to that agency in §§ 42-5-20, *et seq.* of the South Carolina Code.

Respondent CAGC Insurance Company (**"CAGC"**) was a North Carolina-domiciled workers compensation insurance company. The South Carolina Department of Insurance (**"SC DOI"**) authorized CAGC to transact business in this state on September 3, 2008. In 2010, CompTrust negotiated the transfer of its entire portfolio of workers compensation policies from July 1, 1982 through June 30, 2009 (the **"Transferred Policies"**) to CAGC through a loss portfolio transfer (**"LPT"**). Under the specific direction, guidance, supervision, and prior approval of both the SC WCC and the North Carolina Department of Insurance (**"NC DOI"**), CAGC's domestic regulator, CompTrust and CAGC entered into a Self-Insurance Loss Portfolio Transfer Assumption Agreement (the **"LPT Agreement"**) effective December 30, 2010. Under the LPT Agreement, CompTrust transferred to CAGC not only all of its past, present, and future

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workers compensation liabilities, but also over $3.5 million in loss reserves, essentially all CompTrust's assets, along with its books, and records. Having done this, on March 31, 2011, CompTrust underwent voluntarily dissolution and has transacted no business since.

CAGC was declared insolvent and placed into liquidation under the supervision of the NC DOI on January 6, 2014. Thereafter, the SC IGA assumed responsibility for payment of CAGC's South Carolina "covered claims" under the South Carolina Property and Casualty Insurance Guaranty Association Act, S.C. Code Ann. §§ 38-31-10, *et seq*. (the "**SC Act**"). The SC IGA asserted at the time that it should not be statutorily liable for payment of claims filed against CAGC based on approximately 70 Transferred Policies (the "**Contested Claims**"), but agreed to pay the Contested Claims under reservation of rights at the insistence of the South Carolina Director of Insurance (the "**Director**"). On March 5, 2014 this Court named the Director as South Carolina Ancillary Receiver of CAGC under S.C. Code Ann. § 38-27-940 so that he could facilitate the payment of CAGC's claims in South Carolina and preserve and administer CAGC's assets in this state for the benefit of CAGC's South Carolina policyholders. A copy of the Complaint was served upon the North Carolina Attorney General, as legal representative of CAGC, which chose to allow CAGC to go into default.

CAGC's principal insurance obligations in South Carolina are the Contested Claims arising from the Transferred Policies. On June 9, 2014, the Court granted the SC IGA permission to intervene in the Director's Ancillary Receivership as envisioned by § 38-27-430 of the South Carolina Code to contest its liability for payment of the Contested Claims, and the Court also added CompTrust as a party. As legal representative of CAGC, the North Carolina Attorney General had been notified of the SC IGA's request, but chose not to participate in the hearing. On June 17, 2014 the SC IGA filed a Complaint requesting a Declaratory Judgment

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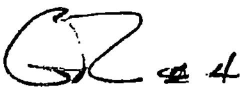
from the Court confirming that the Contested Claims are not "covered claims" as defined by § 38-31-20 (8) of the South Carolina Code because they are excluded from the SC Act under §38-31-30(6) so that the SC IGA had no statutory responsibility to pay the Contested Claims. A copy of the Complaint was served upon the North Carolina Attorney General, as legal representative of CAGC, which again went into default. A copy was also served upon one of CompTrust's former trustees. This was the first notice the CompTrust received that it had been formally added as a party to the Director's Ancillary Receivership. The CompTrust filed a Limited Answer on March 12, 2015, asserting among other things that the LPT Agreement accomplished a contractual novation under which the Transferred Policies should be considered CAGC policies *ab initio*, and that CompTrust itself is a dissolved, assetless entity immune from liability for the Contested Claims made under the Transferred Policies by virtue of South Carolina's statute of limitations.

The SC IGA served standard interrogatories on the CompTrust on May 22, 2015, and in response the CompTrust filed a Motion to Quash Discovery based on, and essentially reiterating, the allegations in its Limited Answer. On July 1, 2013, the SC IGA filed a Motion for Summary Judgment essentially reiterating the allegations and legal arguments in the Complaint. In light of the final results of CAGC's concurrent insolvency proceedings in its home state of North Carolina, the CompTrust filed a Motion to Dismiss on September 9, 2015. The Court ordered the parties to prepare legal memoranda supporting each of these motions and heard oral argument on all of them on September 18, 2015.

CAGC's liquidation also had been the subject of extensive litigation in North Carolina. There the North Carolina Property and Casualty Insurance Guaranty Association (**"NC IGA"**) contested its claims liability for insurance policies assumed by CAGC as a result of



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a corporate merger with a workers compensation group self-insurer (the "**NC Trust**"). The merger had occurred with the full review and approval of NC DOI. On December 18, 2012 the NC IGA had been allowed to intervene in the CAGC insolvency proceedings and to seek to establish that it was not statutorily responsible under the North Carolina Insurance Guaranty Association Act, *N.C. Gen. Stat.* §§ 58-48-1, *et seq.* (the "**NC Act**") for payment of claims which had arisen under policies underwritten by the NC Trust prior to its merger with CAGC. On January 20, 2015 the North Carolina Court of Appeals decided the NC IGA should be "estopped from denying that it is obligated under the [NC Act] for any of the pre-merger workers' compensation claims made or incurred against [the NC Trust]" because a contractual novation of the policies had occurred, and it was not relevant whether that novation "was achieved through the execution of an assumption reinsurance agreement, or though the execution of a merger agreement. The responsibility for paying the relevant workers compensation claims was removed from [NC Trust] and assumed by CAGC." On June 10, 2015, the North Carolina Supreme Court denied the NC IGA's request for an appeal and dismissed the remaining claims in the case as moot. Finally, on July 27, 2015 the North Carolina court with primary jurisdiction over the CAGC insolvency proceedings issued the judgment against NC IGA directed by the North Carolina Court of Appeals.

Conclusions of Law

Section 38-27-60 of the South Carolina Code gives exclusive jurisdiction over South Carolina proceedings regarding the insolvency of insurance companies to the Richland County Court of Common Pleas. As stated above, § 38-27-430 grants the SC IGA the ability to intervene in these proceedings to present claim liability issues. Sections 33-53-40 and 33-53-50 confirm that unincorporated business trusts may sue and be sued in South Carolina and that

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service of process may be made on unincorporated business trusts in the same manner that domestic or foreign corporations are served. I therefore have full and proper jurisdiction over each of the parties and the subject matter in this case.

Motions to Quash and to Dismiss

These motions are best taken together, because the underlying legal arguments are very similar. In fact, at oral argument counsel for CompTrust asserted the Motion to Quash, though styled as a discovery motion, was best interpreted as a Motion to Dismiss.

South Carolina's statutory law on unincorporated business trusts is sparse, only five sections: S.C. Code Ann. §§ 33-53-10 through 33-53-50. There appears to be no South Carolina case law involving one, so the nature and structure of the CompTrust presents some novel issues to the Court. An unincorporated business trust is created by the voluntary act of the parties. 12A C.J.S. Business Trusts § 12. A written declaration of trust is often necessary; however there is no special form or language that is required to form a business trust other than the parties' intention to create a trust or by showing the intention to beneficially own another party's property. *Id.* South Carolina's Business Corporation Act of 1988 (the "**Corporation Act,**" S.C. Code Ann. §§ 33-1-101, *et seq.*), passed after the CompTrust was created, acknowledges the existence and operation of unincorporated business trusts in the state, but does not set any requirements for an unincorporated business trust's foundational trust agreement. Similarly, while the Corporation Act provides for suits and service of process on unincorporated business trusts, it is silent regarding the dissolution notice, liability timeline, or any other aspects of the dissolution of unincorporated business trusts. One important thing the Corporation Act does specify is that the declaration of trust may limit the individual liability of shareholders and trustees. S.C. Code Ann § 33-51-40. Article VI § 8 of the CompTrust's Declaration of Trust

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contains such a provision, and the CompTrust's Articles of Dissolution reiterate those limitations of shareholder and trustee liability.

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. Mitchell v. City of Greenville, 411 S.C. 632, 770 S.E.2d 391 (2015). Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect. Spectre, LLC v. South Carolina Dept. of Health and Environmental Control, 386 S.C. 357, 688 S.E.2d 844 (2010). Similarly, in the absence of a statute specifically applying South Carolina's corporate filing, dissolution or statute of limitation requirements to an unincorporated business trust, the Court should avoid the application of statutes by analogy and default instead to a specific statute that can be applied to achieve the intent of the General Assembly. Title 15, Chapter 3, of the South Carolina Code outlines and lists the time limits by which civil actions must be commenced in this state. Section 15-3-530 specifically requires "an action upon a contract, obligation, or liability, express or implied," like the LPT Agreement, to be brought with 3 years. The CompTrust is therefore correct in asserting that it could not lawfully be made liable for the Contested Claims, since the latest of the Transferred Policies was underwritten in 2009, and they were lawfully transferred to CAGC in 2010.

The Complaint makes no allegations against the CompTrust; it merely sets forth the facts outlined herein. The Complaint asserts no cause of action against the CompTrust and does not reference the CompTrust in its prayer for relief. Several affidavits attest that all of CompTrust's relevant books and records were transferred to CAGC. When CAGC became the subject of insolvency proceedings, those books and records were transferred to the NC DOI, which

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presumably transferred copies to the SC IGA when CAGC was declared insolvent so the SC IGA could begin paying claims under the SC Act.

In short, there does not appear to have been any legal or practical reason to add the CompTrust as a party to the Director's Ancillary Receivership. More specifically, neither the argument nor the resolution of the legal question presented in the Complaint would be prejudiced if the CompTrust were dismissed as a party. Misjoinder of parties is not ground for dismissal of an action. Rule 21, SCRCP. However, the windup and dissolution of CompTrust in 2010-2011 renders any grant of effectual relief impossible from either the CompTrust or its former trustees or shareholders in this case. Mere service does not create a proper cause of action. Even if the allegations in the Complaint are presumed true, any action by the Court against CompTrust would do no good, serve no purpose, or have any practical legal effect because CompTrust has not existed in over three years, has no assets, and was properly dissolved under the Corporation Act.

Motion for Summary Judgment

At oral argument, Counsel for the SC IGA essentially waived factual questions, such as whether the LPT Agreement constituted a contractual novation, which counsel the CompTrust raised in the attempt to show the Motion for Summary Judgment was premature. Instead, the SC IGA's argument relies solely on a strict statutory construction of provisions of the SC Act and supporting South Carolina case law establishing rules of statutory construction. Section § 38-31-30 of the SC Act limits its application, and consequently liability of the SC IGA, to a specific set of direct insurance situations. Subsection (6) specifically prohibits "insurance written on a retroactive basis to cover known losses which have resulted from an event with

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respect to which a claim has already been made, and the claim is known to the insurer at the time the insurance is bound." The language in this exception broadly describes the LPT.

When it existed, CompTrust was a qualified, registered group self-insurer under the South Carolina's Workers Compensation Act, effectively issued "insurance" policies, as defined by § 38-1-20 (25) of the South Carolina Code, and lawfully transferred those policies to CAGC via a contractual novation under the LPT Agreement. Accordingly, under South Carolina contract law the SC IGA should be required to consider the CompTrust's former group self-insurance policies as CAGC policies ab initio and evaluate claims made under those policies as "covered claims." S.C. Code Ann. § 38-31-20 (8) (Supp. 2015).

The South Carolina Supreme Court has distinguished workers compensation self-insurance programs like CompTrust's based on the effective transfer of risk and determined that such a self-insurer may be considered an "insurer" that issues a "policy" under S.C. Code Ann. § 38-1-33 based on factual findings regarding the program's operation and structure. South Carolina Prop. and Cas. Ins. Guar. Ass'n. v. Carolinas Roofing and Sheet Metal Contractors Self-Ins. Fund, 315 S.C. 555, 446 S.E.2d 442 (1994).

The cardinal rule of statutory construction is to discern and give effect to the intent of the legislature. Hodges v. Rainey, 341 S.C. 79 at 85, 533 S.E.2d 578 at 581. "In the absence of ambiguity and absurdity, a statute must be applied according to the clear meaning of its language." Insurance Services Office v. South Carolina Ins. Commission, 267 S.C. 54 at 62, 26 S.E.2d 33 at 36 (1976) quoting Boyd v. State Farm Mutual Automobile Insurance Company, 260 S.C. 316, 195 S.E.2d 706 (1973). If a statute is susceptible to two reasonable interpretations, though, it is ambiguous. South Carolina Dept. of Social Services v. Lisa C., 380 S.C. 406, 669 S.E.2d 647 (Ct. App. 2008).

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At oral argument it became clear that S.C. Code Ann. § 38-31-30 (6) can have multiple interpretations. The strict construction proposed by SC IGA would allow the court to declare the LPT to not be covered by the SC Act. A valid alternative interpretation, though, is to proscribe SC IGA coverage for underwriting fraud and other such matters that unfortunately become common as an insurance company veers into insolvency. Moreover, counsel for both the Director and CompTrust pointed out that the SC IGA's clear-cut interpretation would improperly reach the absurd result of preventing the SC IGA from covering claims for any policies lawfully transferred between insurance companies when that practice is so prevalent in the insurance industry. It also would lead to the tragic result of the loss of workers compensation benefits by at least 70 South Carolina policyholders despite the regulatory prior review and approval of the SC WCC and NC DOI and the express intentions of the parties and regulators in the LPT Agreement. Whatever the General Assembly may have intended in drafting § 38-31-30 (6) of the SC Act, it certainly was not to deprive innocent South Carolina policyholders of workers compensation benefits. The clear and unambiguous purpose of the SC Act is to ensure continuation of that coverage, particularly since insurance policies can only be transferred to a different insurer after prior regulatory review and approval by multiple state regulators.

The ultimate question to be decided in this case is whether the scope of the SC Act requires the SC IGA to evaluate as "covered claims" those claims arising under insurance policies which an insolvent insurance company had contractually acquired with the prior review and approval of its domestic regulator from a workers compensation group self-insurance entity. That question has not been addressed by a court in in South Carolina. Accordingly, the most persuasive authority to look to in this case is Bowles v. BCJ Trucking Servs. Inc., 172 N.C. App. 149, 615 S.E.2d 724 (Ct. App. 2005).

GrC #10

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In *Bowles*, the North Carolina Court of Appeals addressed whether a plaintiff's claim for insurance coverage rested within the statutory obligations of the NC IGA under the NC Act. The plaintiff was injured in the course of his employment and subsequently was awarded disability benefits from his employer's workers' compensation insurance company, North Carolina Selective. *Id.* at 151. Selective was comprised of various employers who pooled their workers' compensation liabilities to create a licensed self-insured group. Selective began experiencing financial trouble and entered into a NC DOI-approved assumption reinsurance agreement with another company, Reliance. *Id.* Selective transferred and Reliance assumed all of Selective's workers' compensation liability claims and obligations. Reliance was a member of the NC IGA by virtue of its licensure by NC DOI. Reliance became insolvent and, following liquidation, the NC IGA assumed payments of plaintiff's benefits. *Id.* at 152. The NC IGA commenced an action with the NC DOI requesting a determination of its responsibility for paying plaintiff's claim. The NC DOI held the NC IGA was responsible, and NC IGA appealed.

On appeal, the North Carolina Court of Appeals rejected the NC IGA's argument that the plaintiff's claim did not meet the definition of a "covered claim" per N.C. Gen. Stat. §58-48-20. *Id.* at 153. The court affirmed the NC DOI's conclusion that the NC IGA's liability for plaintiff's claim arose when Reliance assumed Selective's obligations, relying on the law of novation.[1] The North Carolina Court of Appeals found Reliance, through novation, became the employer's insurance company. When Reliance became insolvent, the NC IGA became liable for all covered claims issued as an insolvent direct insurer. Accordingly, the NC Court of

[1] *Id.*, noting:

> It is well established that '[t]he essential requisites of a novation are a previous valid obligation, the agreement of all the parties to the new contract, the extinguishment of the old contract, and the validity of the new contract'..... 'Ordinarily ... in order to constitute a novation the transaction must have been so intended by the parties.'"

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Appeals found the NC DOI correctly concluded plaintiff's claim met the definition of a "covered claim" under N.C. Gen. Stat. § 58-48-20 and held IGA was liable for plaintiff's claim. *Id.* at 155. The issue of whether the *Bowles* workers compensation policy transfer itself should have been excluded from the statutory scope of the NC Act appears to never have been even questioned.

Factually, this case closely resembles *Bowles*. A workers compensation self-insurer (CompTrust) entered into the LPT Agreement with an insurance company that became insolvent (CAGC). In *Bowles*, a workers compensation self-insurer entered into an assumption agreement with an insurance company that became insolvent. As in *Bowles*, the CompTrust transferred, and the CAGC assumed, all of its group workers' compensation self-insurance liability policies and obligations.

Perhaps most significantly, though, the statutory scope, definitions, and other provisions of the NC Act that the *Bowles* court relied upon in analyzing whether the plaintiff's claim was a "covered claim" are substantially similar to those under the SC Act. This is because the NC Act and the SC Act are based on the same model law developed by the National Association of Insurance Commissioners. For example, like the SC Act, the scope of the NC Act prohibits its application to:

> Insurance written on a retroactive basis to cover known or unknown losses which have resulted from an event with respect to which a claim has already been made, and the claim is known to the insurer at the time the insurance is bound."
>
> N.C. Gen. Stat. § 58-48-10 (10).

S.C. Code Ann. § 38-31-10 defines "covered claim" as:

> [A]n unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer is an insolvent

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insurer and (a) the claimant or insured is a resident of this State at the time of the insured event, if for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event or (b) the claim is for first-party benefits for damage to property permanently located in this State.

The definition of "covered claim" under North Carolina insurance law is in N.C. Gen. Stat. § 58-48-20(4):

> [A]n unpaid claim, including one of unearned premiums, which is in excess of fifty dollars ($50.00) and arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Article applies as issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this Article and (i) the claimant or insured is a resident of this State at the time of the insured event; or (ii) the property from which the claim arises is permanently located in this State.

Similarly, S.C. Code Ann. § 38-31-10 (9) defines of an "insolvent insurer" as:

> [A]n insurer (a) licensed to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (b) determined to be insolvent by a court of competent jurisdiction in the insurer's state of domicile or of this State and which the director or his designee has found fails to meet its obligation to policyholders in this State.

And the definition of "insolvent insurer" in North Carolina in N.C. Gen. Stat. § 58-48-20(5) is:

> "Insolvent insurer" means (i) an insurer licensed and authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (ii) against whom an order of liquidation with a finding of insolvency has been entered after the effective date of this Article by a court of competent jurisdiction in the insurer's state of domicile or of this State under the provisions of Article 30 of this Chapter, and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.

Therefore, *Bowles* establishes a strong, very persuasive precedent in the liquidation of CAGC in South Carolina. CAGC, through novation, became the insurance company for the Transferred Policies *ab itinitio.* When CAGC was declared insolvent, the SC IGA became liable for all of CAGC's South Carolina claims, including Contested Claims made under the Transferred Policies.

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In addition to *Bowles*, there exists strong precedent in the recent North Carolina judicial decisions regarding CAGC. In reading South Carolina statutes regarding ancillary proceedings on insolvent, foreign insurance companies, S.C. Code Ann. §§ 38-27-910, *et seq.*, it is clear that this Court should give great deference and weight to the company's domestic regulator and judicial proceedings and to the Director as court-appointed Ancillary Receiver. The underlying facts and parties to the CAGC litigation in North Carolina are virtually identical to the one at hand. The NC IGA and SC IGA are represented by the same law firm, which presented essentially the same arguments against liability for pre-transfer CAGC policy claims at trial and on appeal. Like the NC IGA, the SC IGA is denying that it is statutorily obligated for any CAGC claims in South Carolina based on the CompTrust's worker compensation liabilities prior to their transfer to CAGC. The jurisdiction has changed, but little else. In short, the principal issues underlying the Complaint have been reviewed and decided by the court of final authority over the liquidation of CAGC in its state of domicile and principal regulation.

Order

The SC IGA's allegations in its Complaint have been effectively resolved by recent decisions of both the North Carolina Court of Appeals and the North Carolina Supreme Court. There is also very persuasive factual and legal precedent in *Bowles* to determine that Transferred Policies are properly CAGC policies by virtue of contractual novation and that the Contested Claims are properly "covered claims" under the SC Act. Therefore, SC IGA's Motion for Summary Judgment is hereby **DENIED**.

While SC IGA's Petition to Intervene may have been properly granted, its concurrent motion to add an extra, non-existent entity as a party to this case was not. It appearing that SCP&CIGA's claims against CompTrust are effectively moot, and the rights and obligations of

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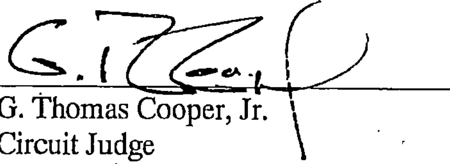
the parties would not be prejudiced if the CompTrust were dismissed, the Comp Trust is hereby **DISMISSED** as a party from this action under Rules 12(b)(6) and 21, SCRCP.

And it is so ordered.



G. Thomas Cooper, Jr.
Circuit Judge

Columbia, South Carolina

Dated: September 30, 2015

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