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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY  
Court of Common Pleas

RECEIVED

Eugene C. Griffith, Jr., Circuit Court Judge MAR 30 2016

SC Court of Appeals

Case No. 2012-CP-01-00306  
Appellate Case No. 2014-000946

Richard Wilson, Michael J. Antoniak, Jr., Marsha L. Antoniak, Anita L. Belton, Prescott Darren Bosler, Johnny Calhoun, Sallie Calhoun, Cynthia Gary, Robert Wayne Gary, Eugene P. Lawton, Jr., Jeanette Norman, James Robert Shirley, Robert W. Spires, Crystal Spires Wiley, Lewis S. Williams, Janie Wiltshire, Benjamin Franklin Wofford, Jr., and Rebecca Hammond Wofford,.....Respondents,

v.

Laura B. Willis and Jesse A. Dantice, individually, and as agents and/or brokers for Southern Risk Insurance Services LLC, Travelers Casualty Insurance Company of America, Allied Property and Casualty Insurance Co., Peerless Insurance Co., Montgomery Mutual Insurance Co., Safeco Insurance Co. of America, and Foremost Insurance Co., Southern Risk Insurance Services, LLC, Travelers Casualty Insurance Co. of America, Allied Property and Casualty Insurance Co., Peerless Insurance Co., Montgomery Mutual Insurance Co., Safeco Insurance Co. of America, and Foremost Insurance Co., and Laurie Williams,.....Defendants,

Of whom Peerless Insurance Co., Montgomery Mutual Insurance Co., and Safeco Insurance Co. of America are.....Appellants,

and

Of whom Laurie Williams is a .....Respondent.

RESPONDENT LAURIE WILLIAMS' PETITION FOR REHEARING

This petition is filed pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules. Rule 221 governs petitions for rehearing, and Rule 240 governs motions and petitions generally.

Respondent Laurie Williams moves this Honorable Court to reconsider its opinion dated March 2, 2016. Op. No. 5387 (Shearouse Adv. Sh. No. 9 at 73). The Court granted Respondent Laurie Williams' Motion for Extension, and extended the time to file until April 1, 2016. This petition for rehearing is therefore timely under Rule 221(a) of the South Carolina Appellate Court Rules.

Respondent Laurie Williams resubmits the arguments from her Final Brief on the merits and additionally submits that the court may have overlooked or misapprehended the following points in its decision:

**1. The Court overlooked or misapprehended the facts when it found Respondent Williams' claim is not one of an "insured or beneficiary under any insurance policy" that would exempt her action from arbitration pursuant to subsection 15-48-10(b)(4).**

Respondent Laurie Williams (Ms. Williams) would not be a party to this matter but for the Insurers filing suit against her twice. On October 30, 2012, one of the Insurers filed suit, making no mention of arbitration, against Wayne Gary and Cynthia Gary (the Garys) and Ms. Williams in the United States District Court of South Carolina. (R. pp. 22-77). Only after Ms. Williams and the Garys answered and counterclaimed, did the Insurer stipulate to dismiss the federal court action. (R. pp. 98-103).

Insurers then sued Ms. Williams a second time when they brought a cross-claim against her in their answer to the Garys' suit against Insurers. (R. pp. 205-313). Again, Insurers made no mention of an

arbitration clause. (R. pp. 216-226, ¶¶ 45-112, pp. 227-228, ¶¶ a – h). From this defensive posture, Ms. Williams answered and filed a cross-claim as an affirmative defense. (R. pp. 710-722).

The Court found Respondent Williams' claim was not one of "any insured or beneficiary under any insurance policy" that would exempt this action from arbitration pursuant to subsection 15-48-10(b)(4)." South Carolina recognizes "a written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable," but specifically excludes "[a]ny claim arising out of personal injury, based on contract or tort, or to any insured or beneficiary under any insurance policy or annuity contract." S.C. Code Ann. § 15-48-10(b)(4).

Ms. Williams' claims arise out of personal injury, and she is a beneficiary under an insurance policy. Ms. Williams sustained serious injuries after Cynthia Gary, driving her sports utility vehicle, struck Ms. Williams while she walked along a rural road on July 26, 2012. Ms. Williams subsequently filed a negligence action. (R. pp. 723-726).

But for the insurance policy, Ms. Williams would not be before this Court. The Court found the Insureds had no knowledge of the alleged Agency Agreements when they filed suit, but further found the 2010 Agency Agreement is the contract "at issue." Therefore, since the Agency Agreement is not an insurance policy, the Insureds' claims are not the claims of "any insured or beneficiary under any insurance policy" that

would exempt this action from arbitration pursuant to subsection 15-48-10(b)(4).

In essence, the Court found the alleged 2010 Agency Agreement was the basis for the Insureds' causes of action even though the Insureds didn't know it existed until many months after filing suit. While the Court may correctly state the alleged 2010 Agency Agreement is not an insurance policy, it is incorrect that it is the contract on which the Insureds based their causes of action.

The *Walden* case is distinguishable. In *Walden*, the Plaintiff sued a car dealership based on its failure to purchase credit life insurance in connection with a car lease. *Walden v. Harrelson Nissan, Inc.*, 399 S.C. 205, 207, 731 S.E.2d 324, 325 (Ct. App. 2012). The Court found the lease agreement was not an insurance policy, and therefore not exempt from arbitration. *Id.* at 210; 731 S.E.2d at 327.

In the present matter, the Insureds purchased insurance policies from Insurers, and the Insurers admitted in their various answers that the Insureds were purchasers of insurance policies. Throughout their pleadings, briefs, and memorandum, Appellants call them Insureds. However, the Court ignored this undisputed fact. Unlike the car lease "that only [had] a tangential relationship to an insurance policy" in *Walden*, the insurance policies in the present matter are the source for the Insureds' causes of action. *Walden*, 399 at 210, 731 S.E.2d at 326.

**2. The Court failed to recognize facts in the record that contradict its holding that the Insurers did not waive their right to compel arbitration, particularly ignoring that Ms. Williams has engaged in significant discovery and been significantly prejudiced.**

In determining whether a party has waived its right to compel arbitration, our courts have looked to the following factors: 1) the length of time between commencement of the action and the filing of the motion to compel, 2) if the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and 3) the prejudice on the non-moving party by the moving party's delay in seeking arbitration. *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 126, 647 S.E.2d 249, 251 (Ct. App. 2007).

Regarding the first factor, the Court found "the complicated nature of this action rendered" the time lapse, one year after the Insurers filed their first suit against Ms. Williams, "even more reasonable under the circumstances." Op. No. 5387 (Shearouse Adv. Sh. No. 9 at 92). This is internally inconsistent with the court's finding earlier in its opinion that "such tort claims are rather commonplace." Op. No. 5387 (Shearouse Adv. Sh. No. 9 at 88).

In analyzing the second factor, the Court ignored that Ms. Williams, a potential beneficiary of an insurance policy, has engaged in significant discovery, and is in fact ready for trial, in her companion negligence case, but cannot move forward because of this appeal. (R. p. 676; R. pp. 723-726).

Looking at the third factor, the Court ignored the significant prejudice to Ms. Williams when it held that the Insurer's actions do "not

rise to the level of prejudice necessary to waive the right right to compel arbitration against...Williams in particular." Almost four years have passed since Ms. Williams suffered serious injuries that required surgeries and a lengthy hospital stay, but the Court inexplicably implies that Ms. Williams is somehow the least prejudiced.

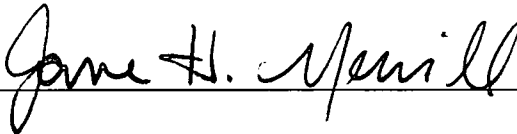
**3. Respondent Williams adopts and incorporates into this Petition the Respondents' arguments, in their entirety, presented in the Petition for Rehearing filed by Hite and Stone. Rule 208(b)(6), SCACR. This adoption includes the law and documents to which Respondents cite.**

### CONCLUSION

Respondent Laurie Williams respectfully requests the Court reconsider its opinion and affirm the holding of the lower court. The Motions to Compel Arbitration were appropriately denied by the trial court and the appeal in this matter should be dismissed with costs.

Respectfully Submitted,

HAWTHORNE MERRILL LAW, LLC



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March 29, 2016

Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ABBEVILLE COUNTY  
Court of Common Pleas

MAR 30 2016

Eugene C. Griffith, Jr., Circuit Court Judge

SC Court of Appeals

Case No. 2012-CP-01-00306  
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Darren Bosler, Johnny Calhoun, Sallie Calhoun, Cynthia Gary, Robert Wayne Gary,  
Eugene P. Lawton, Jr., Jeanette Norman, James Robert Shirley, Robert W. Spires, Crystal  
Spires Wiley, Lewis S. Williams, Janie Wiltshire, Benjamin Franklin Wofford, Jr., and  
Rebecca Hammond Wofford,.....Respondents,

v.

Laura B. Willis and Jesse A. Dantice, individually, and as agents and/or brokers for  
Southern Risk Insurance Services LLC, Travelers Casualty Insurance Company of  
America, Allied Property and Casualty Insurance Co., Peerless Insurance Co.,  
Montgomery Mutual Insurance Co., Safeco Insurance Co. of America, and Foremost  
Insurance Co., Southern Risk Insurance Services, LLC, Travelers Casualty Insurance Co.  
of America, Allied Property and Casualty Insurance Co., Peerless Insurance Co.,  
Montgomery Mutual Insurance Co., Safeco Insurance Co. of America, and Foremost  
Insurance Co., and Laurie Williams,.....Defendants,

Of whom Peerless Insurance Co., Montgomery Mutual Insurance  
Co., and Safeco Insurance Co. of America are.....Appellants,

and

Of whom Laurie Williams is a .....Respondent.

CERTIFICATE OF SERVICE

I, the undersigned attorney, certify I have served all counsel of record with a copy of the pleading(s) listed below by mailing same by United States Mail, postage prepaid, to the following:

**Pleadings:**

Respondent Laurie Williams' Petition for Rehearing  
Certificate of Service

**Counsel Served:**

Thomas E. Hite, Jr., Esquire  
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Respectfully Submitted,  
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March 29, 2016  
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March 29, 2016

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
The South Carolina Court of Appeals  
1015 Sumter Street, 5<sup>th</sup> Floor  
Columbia, SC 29201

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MAR 30 2016

SC Court of Appeals

RE: Richard W. Wilson v. Laura B. Willis  
Civil Action No. 2012-CP-01-306  
Appellate Case No. 2014-000946

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Respondent Laurie Williams' Petition for Rehearing. I have also enclosed a certificate of service upon counsel of record, and a check of \$25.00 for the motion filing fee. Please return the additional filed copy to me via our courier.

By copy of this letter to counsel of record, I am serving them with same. Thank you for your attention to this matter. If you need anything further, please do not hesitate to contact me.

Sincerely,

HAWTHORNE MERRILL LAW, LLC

Jane H. Merrill

JMH/  
Enclosures

cc: Laurie Williams  
Thomas E. Hite, Jr., Esquire  
Anne Marie Hempy, Esquire  
C. Mitchell Brown, Esquire  
William C. Wood, Esquire  
Miles E. Coleman, Esquire  
Robert C. Calamari, Esquire  
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