THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2012-CP-01-00306
Appellate Case No. 2014-00946

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 Company, Peerless Insurance Company, Montgomery Mutual Insurance Company, Safeco Insurance Company of America, and Foremost Insurance Company, SOUTHERN RISK INSURANCE SERVICES, LLC, TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA, ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY, PEERLESS INSURANCE COMPANY, MONTGOMERY MUTUAL INSURANCE COMPANY, SAFECO INSURANCE COMPANY OF AMERICA, AND FOREMOST INSURANCE COMPANY, and Laurie Williams ..... Defendants,

Of Whom Peerless Insurance Company, Montgomery Mutual Insurance Company, and Safeco Insurance Company of America are, ... Appellants,

Of Whom Laurie Williams is, ... Respondent.

APPELLANTS' RETURN IN OPPOSITION TO PETITIONS FOR REHEARING

This Court should deny the petitions for rehearing.[1] The Court's decision should stand as written. *See Wilson v. Willis*, Op. No. 5387 (S.C. Ct. App. filed March 2, 2016) (Shearouse Adv. Sh. No. 9 at 73-94) ("Opinion" and cited as "Op.").

The Respondents ask this Court to ignore the allegations of the operative Complaints in order to avoid arbitration. Respondents, as plaintiffs, are the masters of their Complaints, but they have chosen to put claims before South Carolina's courts that are squarely within the arbitration provisions based on their theory of liability. Without the agency relationship, the alleged harms Respondents complain of could not have allegedly arisen. Therefore, the Court correctly found the claims subject to the arbitration provision in the agency agreements based on the benefits the Respondents seek pursuant to those contracts.

Summary

This Court has not overlooked or misapprehended any points of law or point in the record. Instead, Respondents wish to distance themselves from their own pleadings and attempt to reargue many of the same grounds considered and previously rejected by this Court. Respondents also raise some new arguments for the first time on rehearing.

A motion to compel arbitration is necessarily dependent upon the claims raised in the Complaint. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 287, 733 S.E.2d 597, 600 (Ct. App. 2012) ("To decide whether an arbitration agreement encompasses a

[1] Undersigned files one response to the two Petitions for Rehearing. Roman numerals V and VI address the two enumerated grounds raised by Respondent Laurie Williams, but this combined Return in Opposition supports the denial of both Petitions in all respects.

dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim."). At issue in the underlying suits is whether the Insurers failed to adequately train and supervise their agents, thereby allegedly allowing the agents to wrongfully fail to procure insurance policies, or unlawfully accepted monies from Respondents without actually providing policies. The entire suit is premised on the essential claim that the insurance agents, while acting for Insurers, caused harm to Respondents in deceiving them into believing insurance coverage existed. The Court must accept these allegations, as it did in its March 2, 2016 Opinion, as true. *See, e.g., Schnabel v. Trilegiant Corp.*, 697 F.3d 110, 113 (2d Cir. 2012) (noting that in examining a motion to compel arbitration "[the Court] accept[s] as true . . . factual allegations in the plaintiffs' complaint that relate to the underlying dispute between the parties"); *cf. Clearwater Trust v. Bunting*, 367 S.C. 340, 351, 626 S.E.2d 334, 339 (2006) (noting that the court "must accept the complaint's allegations as true" when considering a Rule 12(b)(6) motion to dismiss). The Petitions for Rehearing should be rejected.

Law/Analysis

I. This Court's Opinion changes nothing about South Carolina law and is dependent upon the pleadings and allegations before this Court.

The opinion did nothing to change South Carolina law. Non-signatories can and are compelled to arbitration when they seek to benefit from an agreement, such as the one here, that has an arbitration provision. *See Thompson v. Pruitt Corp.*, Op. No. 5384 (S.C. Ct. App. filed March 2, 2016) (Shearouse Adv. Sh. No. 9 at 34-39); *Pearson,* 400 S.C. at 295-96, 733 S.E.2d at 604-05 (Ct. App. 2012). Therefore, Respondents' contention that this Court extended the "arbitration umbrella" further than any previous South Carolina

decision is without merit. This Court applied existing law in concluding that the arbitration agreement at issue in this matter could be enforced against the Respondents.

Furthermore, the opinion is not far-reaching, as it depends necessarily on the facts and record of ***this*** case. Here, the Respondents seek to hold the Insurers directly responsible for the alleged acts of the insurance agents. That relationship is governed by an agreement, and Respondents seek relief based on it. Nothing about the decision expands the law. Non-signatories are compelled to arbitration in this manner, and arbitration is viewed as an acceptable means of adjudicating a dispute. Moreover, it is well established that a party can waive its right to a jury trial by contract. *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 63, 566 S.E.2d 863, 866 (Ct. App. 2002). Our courts have long held the FAA applies when a transaction involves interstate commerce, and the Respondents do no dispute these matters touch upon interstate commerce. Op. at 79-80 n.8. Hence, the decision should stand.

II. The Court's decision to compel the claims to arbitration is properly founded upon common law estoppel.

"Well-established common law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties." Op. at 85 (quoting *Person v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012)). "Equitable estoppel precludes a party from asserting rights 'he otherwise would have had against another' when his own conduct renders assertion of those rights contrary to equity." *Id.* "In the arbitration context, the doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration

clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him." *Id.*

The Opinion is also consistent with *Thompson v. Pruitt Corporation*, Op. No. 5384 (S.C. Ct. App. filed March 2, 2016) (Shearouse Adv. Sh. No. 9 at 34-39). As in *Thompson*, the Court here determined the contract was valid. The Court likewise found that Respondents intended to benefit from the agency agreements. Thus, the decisions issued the same day are entirely consistent.

The Court's Opinion in this case precisely captured the law as it exists and applied it to the allegations raised by Respondents and the relief (*i.e.*, benefits) sought in the complaints. The Court properly found that the 2010 Agency Agreement establishing the Insurers' relationship with, and the rights and obligations toward, Southern Risk, Jesse Dantice, and Laura Willis was a valid, binding contract relied upon by the agents. *See* Op. 79-81. Even if that agreement were not operative, there still existed a prior, signed agency agreement that was in force during the time of Willis' alleged wrongdoing and which also contained arbitration provisions. *Id.* at 80 n. 9.

A. The agents agreed to arbitrate disputes with the Insurers.

The Record contains ample support that the arbitration agreements existed. In each of the 14 motions to compel arbitration, the Insurers relied on the agency agreements relevant to that particular plaintiff's claims.[2] For example, in lawsuits where the alleged wrongdoing occurred in or before early 2010, the Insurers' motion to compel

[2] Respondents, without support, contend the Opinion relies upon statements of counsel. This is not accurate and nowhere in the Opinion does the Court cite to counsel for Insurers as evidence. Thus, the ground at No. 4 at p. 10 of the Respondents' Petition is without merit. The arbitration agreements are in the Record. The Court considered the agreements. The agreements are the basis for the Court's decision. Importantly, Dantice and Willis do not dispute selling insurance on behalf of Insurers. Op. at 80.

relied on both the 2007 agency agreements and the 2010 agency agreement. *See, e.g.*, Motion to Compel Arbitration in *Wilson v. Willis* (R. 559); Motion to Compel Arbitration in *Lawton v. Willis* (R. 591-92); *see also* Hearing Transcript at 7, 15, and 32 (relying on and discussing a 2007 agency agreement) (R. 405, 413, 429, 439-49).[3] Similarly, in instances where Safeco, but not Montgomery, was named as a defendant, the motion relied on the 2007 and 2010 agency agreements between Safeco and Southern Risk, but not on agreements between Montgomery and Southern Risk. *See, e.g.*, Motion to Compel Arbitration in *Wofford v. Willis* (R. 570-71). Hence, the Insurers' reliance on multiple agency agreements is significant because, as explained on appeal, even assuming *arguendo* that the unsigned 2010 Agency Agreement is not binding, the prior binding agreements also compel arbitration. *See* App.'s Brief at 11-12.

1. The pre-2010 agency agreements are binding on Southern Risk, Dantice, and Willis.

As explained above, the Insurers' arguments seeking to compel arbitration relied on multiple agency agreements in force between 2003 and 2012. *See* App.'s Brief at 5-7, 11-12. The Respondents, however, wrongly argue that these agreements are ineffective because none of these prior agreements are signed by Southern Risk and the Insurers have failed to establish any relationship between Assure Alliance and Southern Risk. *See* Resp. Petit. at 7. This is incorrect.

The absence of Dantice's signature on the 2010 Agency Agreement is inconsequential here. In any event, prior agency agreements with arbitration provisions were binding on Southern Risk, even if signed by someone under whom Dantice and

[3] When the alleged wrongdoing complained of in plaintiffs' pleadings arose in 2012, the motion to compel cited the 2010 Agency Agreement. *See, e.g.*, Motion to Compel Arbitration in *Spires v. Willis* (R. 580-82).

Southern Risk were operating as opposed to by Dantice himself. *See, e.g.*, Hearing Transcript at 15-16, 32 (R. 413-14, 429); App.'s Brief at 11-12. In the absence of those agreements, there would be no relationship and Southern Risk, Dantice, and Willis would have been unable to sell the Insurers' products. But for those agreements, there would be no basis upon which Respondents could claim the Insurers had an obligation to train, supervise, audit, and investigate Willis. Op. at 84.

Further, the Record shows Southern Risk, Dantice, and Willis acted upon the 2010 Agreement and sold insurance policies on behalf of Insurers—a fact not disputed. Hence, these agreements provided the sole source for the alleged sale of insurance. South Carolina law does not require both parties to a contract to sign it for it to be effective. *Pedder, Inc. v. Rikard*, 266 S.C. 28, 32, 221 S.E.2d 115, 117 (1975) (stating to give validity to a contract, it is not always necessary that it be signed by both parties, but rather it may be sufficient if one party signed the contract and the other party accepted, held, and acted upon it).

2. The apparent retroactive effective date of the 2010 Agency Agreement has no effect on its validity and enforceability.

The Respondents argue that the 2010 Agency Agreement is dated for signature two years after its effective date. Resp. Petit. at 8. However, South Carolina law establishes that contracts may be made retroactively effective. *See Dixon v. W. Assur. Co.*, 251 S.C. 511, 521, 164 S.E.2d 214, 219 (1968) ("It is a general rule that the parties to an insurance contract may, by the terms of their contract, make it effective as of the time of the issuance, as of an earlier time, or as of a later time.") (citation omitted). Hence, the Respondents' argument should be rejected.

B. The Statute of Frauds does not bar application of the arbitration provision in the agency agreements.

The Respondents continue to argue that a contract with an indefinite term cannot be performed within one year's time, and thus the statute of frauds required that the agreement be signed by Southern Risk. The Respondent's argument is contrary to South Carolina law, which clearly states that an indefinite contract terminable at will does not fall within the statute of frauds. *See Weber v. Perry*, 201 S.C. 8, 21 S.E.2d 193 (1942) ("A permanent employment contract is not within the Statute of Frauds, for it is deemed possible of performance within one year.") (citations omitted); *Cline v. Southern R. Co.*, 110 S.C. 534, 554, 96 S.E. 532, 538 (1918) ("The period of its performance was left uncertain. . . . The contract pleaded does not fall within the statute."); *see also Center State Farms v. Campbell Soup Co.*, 58 F.3d 1030, 1032 (4th Cir. 1995) ("The contract claimed by Center State Farms was indefinite in time and was to continue so long as Center State Farms performed satisfactorily. Under South Carolina law, such an arrangement is terminable at will, subject to reasonable notice. [] A contract terminable at will does not fall under South Carolina's statute of frauds."). The critical question is whether performance is ***possible*** within a year, and even where "performance within a year is highly improbable or not expected by the parties," it "does not bring a contract within the scope" of the statute of frauds. *Springbob v. Univ. of S.C.*, 407 S.C. 490, 496, 757 S.E.2d 384, 387 (2014). Accordingly, because the 2010 agency agreement could have been performed within a year, it does not fall within the statute of frauds.

III. The Court did not overlook the alleged duties owed by the insurance agents as the Court correctly viewed the allegations of the Complaints in determining whether the claims fell within the scope of the arbitration provision in the agency agreements.

The Opinion correctly holds that Respondents' allegations against the Insurers are premised on the Insurers' alleged rights or duties that would not exist but for the Agency Agreements. *See* Op. at 84-85. In response, the Respondents now, for the first time on rehearing, argue their claims are premised on apparent authority of the agents. An argument cannot be raised for the first time on rehearing. *See Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) ("The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." (quoting Jean H. Toal, Shahin Vafai & Robert Muckenfuss, *Appellate Practice in South Carolina* 309 (1999))).

Previously, the Respondents stated that they "ground[ed] their Complaints *exclusively* on South Carolina Code § 38-43-10, *et. seq.*, and § 38-51-10 to establish the Insurers' liability for the acts of agents Laura Willis and Jesse Dantice as producers of insurance." Resp. Br. at 17 (emphasis added). This was not correct. Not one of the Respondents' complaints cites these statutes or makes any claim or suggestion that the Insurers are vicariously liable for Willis' tortious acts. Rather, the complaints clearly allege that the Insurers are liable for their *own* alleged failure to supervise, train, investigate, audit, etc. *See* App.'s Brief at 13-17. These are alleged obligations, rights, and duties that only exist because of the agency agreements. Now that the Court has rejected such an argument, Respondents seek to paint their claims in yet another light (*i.e.*, apparent agency). This new effort to avoid arbitration should also be rejected.

The Respondents' also previously argued that their claims were dependent upon the definition of "agent" supposedly found in S.C. Code Ann. § 38-51-10. *See* Resp.

Brief at 17. Specifically, the Respondents noted that "Willis and Dantice were producers of insurance" pursuant to section 38-43-10, but then proceeded to argue that "pursuant to § 38-51-10(b) Willis and Dantice were agents of the Insurers." *Id.* The quoted material found in Respondent's brief, however, no longer appears in section 38-51-10 or anywhere in the Code, and thus Willis' status as an "agent" is not established by statute. After realizing this, Respondents now seek to change direction yet again on rehearing to avoid what is pled in their Complaints.

Further, Respondents argued that under these supposed statutory definitions, the Insurers "are liable for the wrongful acts of their agents under the doctrine of *respondeat superior*." Resp. Brief at 17. None of the complaints assert any claim, theory, or cause of action based on vicarious liability or *respondeat superior*. Moreover, none of the Complaints claim or allege that the Insurers are responsible for ***Willis'*** wrongful acts. Rather, they allege the Insurers are liable for their ***own*** supposed failings to perform adequate background checks, properly train and supervise her, conduct computerized audits, and the like. These duties would only arise under the agency agreement.

Even assuming the Respondents had properly raised this new theory of apparent agency they now proffer, the Court has previously considered conduct similar to Willis' alleged conduct and has held the insurer was not vicariously liable for it. *See Vereen v. Liberty Life Ins. Co.*, 306 S.C. 423, 412 S.E.2d 425 (Ct. App. 1991). In *Vereen*, an insurance agent procured an insurance policy "by lying on the application" and subsequently assisted the beneficiary in making "a fraudulent claim for benefits." *Id.* at 428, 412 S.E.2d at 429. The court held such conduct was outside the scope of the agent's authority, and thus rejected the plaintiff's claim that the doctrine of *respondeat superior*

made the insurer liable for the agent's acts. The court noted that the agent was not acting in furtherance of the insurer's business as evidenced by the fact that he lied about his conduct, falsified the application for insurance, never attempted to deliver the policy to the insured, and personally profited financially from his wrongdoing. *Id.* at 429, 412 S.E.2d at 429. Here, Willis is alleged to have engaged in the same type of wrongful acts as the agent in *Vereen*. Therefore, Insurers cannot be held liable for the acts Willis took outside the scope of her authority. Any duties owed to Respondents under South Carolina law would necessarily be based on the agency agreements.

Respondents also wrongly contend the Court overlooked (or overturned) *Malloy v. Thompson*, 409 S.C. 557, 762 S.E.2d 690 (2014). Respondents raised this case to the Court and the Court correctly rejected this assertion. *Malloy* was based on duties to all persons owed generally. As stated, the claims here are based on the Insurers' alleged failures in training and supervising the agents. Here, the duty owed, if it exists at all, is only one owed as a result of the agency agreements. It is not a duty at large. Therefore, as the Court correctly determined, *Malloy* is inapposite.

Finally, the Respondents argue they cannot be compelled to arbitration because they have not sought to enforce the provisions of the agency agreement to their benefit. Here, yet again, the Respondents ignore the difference between their claims against Willis and their claims against the Insurers. No one alleges that the Insurers' stole, misappropriated funds, or committed fraud or forgery, and the Respondents are not seeking to recover from the Insurers for those acts. Rather, as explained above, the Respondents are seeking to enforce contractual provisions relating to hiring, training, supervising, auditing, and the like. *See also* App.'s Brief at 20-21. They are relying on

contractual duties owed pursuant to the agency agreements to establish the existence of a duty, and are therefore necessarily seeking to benefit from the agreements. Because they rely on and seek to benefit from right and duties in the agency agreements, the Respondents cannot avoid those agreements' arbitration provisions.

IV. The Record establishes the arbitration agreements are valid and encompass the claims raised by Respondents.

A. The claims are within the scope of the broadly worded arbitration provision.

Based on existing precedent, the arbitration agreements at issue here are worded broadly enough to encompass the claims here and to compel those claims to arbitration. Op. at 82-83. Indeed, our courts have held that "[t]he phrase 'arising out of' should be broadly construed in a clause of inclusion." *Town of Duncan v. State Budget & Control Bd., Div. of Ins. Servs.*, 326 S.C. 6, 13, 482 S.E.2d 768, 772 (1997) (citation omitted); *see also Howard v. State Farm. Mut. Auto. Ins. Co.*, 316 S.C. 445, 450, 450 S.E.2d 582, 585 (1994) (requiring "clauses of inclusion to be broadly construed" and noting a "broad construction of 'arising from' includes 'causal relation to,' 'incident to,' 'flowing from,' or 'having connection with'") (citations omitted).

As rightly found by this Court, the claims against the Insurers undoubtedly arise out of the performance or nonperformance of rights and duties that would not exist but for the Agency Agreements. Accordingly, these claims fall squarely within the scope of the arbitration agreements.

B. The claims are not of the variety that rise to the level of outrage.

The complaints allege the Insurers are liable for their ***own*** alleged failure to supervise, train, investigate, and audit. No South Carolina case has held an insurer's

allegedly inadequate training, supervision, investigation, or auditing was conduct so outrageous and unforeseeable that it could not be subject to arbitration, and the trial court erred by holding otherwise. This Court correctly rejected the invitation to adopt such a novel position in this case. Respondents admit they seek to hold the Insurers directly liable. Resp. Petit. at 13. This is the very point seized upon by the Court in finding that the claims are commonplace and do not rise to the level of those unforeseen claims in *Aiken.*

Moreover, in *Landers v. FDIC*, 402 S.C. 100, 739 S.E.2d 209 (2013), the Supreme Court held a claim involving intentional infliction of emotional distress—the very definition of an "outrage" claim—can be subject to arbitration in an employment setting, which is the same relationship Respondents rely upon here for their claims. The Court should thus not rehear this case.

V. S.C. Code Ann. § 15-48-10(b)(4) does not prohibit arbitration of the claims before the Court.

S.C. Code Ann. § 15-48-10 does not prohibit the enforcement of the arbitration agreements in this case. This Court and the federal district court have interpreted this provision as invalidating arbitration agreements found *in insurance policies. See Am. Health & Life Ins. Co. v. Heyward*, 272 F. Supp. 2d 578, 582 (D.S.C. 2003) (holding that section 15-48-10(b)(4) "prohibits the enforcement of arbitration clauses *in insurance policies* governed by South Carolina law") (emphasis added); *Walden v. Harrelson Nissan, Inc.*, 399 S.C. 205, 210, 731 S.E.2d 324, 326 (Ct. App. 2012) (holding that section 15-48-10(b) "was instead intended to apply directly to an insurance contract"); *Cox v. Woodmen of World Ins. Co.*, 347 S.C. 460, 468, 556 S.E.2d 397, 401 (Ct. App.

2001) (noting that section 15-48-10(b) "expressly invalidates a provision contained *in an insurance policy*") (emphasis added).

Here, the arbitration agreement is not found in an insurance policy and thus section 15-48-10(b) does not apply. The claims are not personal injury claims arising under insurance policies. The focus of the Complaints is based on the conduct of the insurance agents. This Court has previously held that this statute does ***not*** apply to arbitration agreements found in documents other than insurance policies, even if the document has some tangential relationship to insurance. *See Walden v. Harrelson Nissan, Inc.*, 399 S.C. 205, 209, 731 S.E.2d 324, 326 (Ct. App. 2012) ("The contract in dispute here is not an insurance contract, and the provision in the lease did not create an insurance policy or a duty to insure. Therefore, Mary's causes of action against Harrelson are not the claims of 'any insured or beneficiary under any insurance policy' that would exempt this action from arbitration."). The *Walden* court expressly held that this statute was ***not*** intended to apply to "agreements that only have a tangential relationship to an insurance policy, but was instead intended to apply directly to an insurance contract." *Id.* at 210, 731 S.E.2d at 326.

The arbitration agreements at issue in this case are not found in insurance policies. Therefore, the statutory exemption does not apply. Hence, this Court correctly rejected the argument offered by Respondents.

VI. Appellants did not waive their right to compel the claims to arbitration.

Insurers did not waive their right to compel arbitration. The arguments of both the Respondents and Ms. Williams are without support. The Court correctly applied

Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 126, 647 S.E.2d 249, 251 (Ct. App. 2007).

A. The passage of time and discovery do not justify a court finding the right to arbitration was waived.

Insurers waited only six or seven months after the complaints were filed (and in one case 11 months) before moving to compel arbitration. The Court correctly held this was consistent with similar cases compelling arbitration. *See Toler's Cove Homeowners Ass'n, Inc.*, 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003) (limited discovery and the passage of thirteen month did not waive arbitration); *Rich v. Walsh*, 357 S.C. 64, 67, 590 S.E.2d 506, 507 (Ct. App. 2003) (thirteen months before moving to compel arbitration with limited discovery not a waiver of the right to arbitration); *Gen. Equip. & Supply Co., Inc. v. Keller Rigging & Constr., SC, Inc.*, 344 S.C. 553, 556, 544 S.E.2d 643, 645 (Ct. App. 2001) (eight months and participation in limited discovery and administrative matters did not waive the right to arbitration).

Further, discovery was not extensive in any regard. Written discovery *requests* had been served by the Respondents on the Insurers and vice versa, but depositions of the Insurers have not been taken and the Insurers have taken no depositions. Once the Insurers moved to compel arbitration, the Insurers alerted Respondents in writing that the Respondents need not respond to the Insurers' written discovery. Hence, the Court decision is in line with the above cited cases.

Finally, no prejudice resulted from the passage of seven months prior to Insurers moving to compel arbitration. Respondents now claim alleged prejudice because the only agreement signed by Dantice with Southern Risk does not have an arbitration provision. This overlooks all of the Record evidence and the language of the agreements,

in addition to the fact that Dantice does not deny selling insurance for Insurers. No prejudice exists on this record. The Court properly determined that the Respondents failed to show anything beyond "mere inconvenience," and that this, coupled with the complexity of this matter, weighed against finding sufficient prejudice.

B. There is no delay or prejudice relating to the motion to compel arbitration of Ms. Williams' counterclaims that creates waiver.

Ms. Williams incorrectly argues that the Insurers' supposed delay in moving to compel arbitration involves a greater length of time (12 months) in her case than in others. *See* Williams' Petit at 4. She reaches this year long time period by measuring the lapse in time between the date First National filed a subsequently-dismissed federal declaratory judgment suit[4] and the date the Insurers filed their motions to compel arbitration in the state court action giving rise to this appeal. As the Court noted, the relevant calculation is the lapse of time from when the complaint was filed in this lawsuit (February 22, 2013) to the date the Insurers filed the motion to compel arbitration (November 1, 2013)—a delay of only eight months. As explained above and as found by the Court, South Carolina courts have not previously held that such a short time period, especially in these kinds of circumstances, waives the right to compel arbitration.

In addition, Ms. Williams argues that the Insurers' motion to compel arbitration resulted in greater prejudice to her specifically than to others. This alleged prejudice is tied to her underlying suit which is stayed at present. This is not, however, the result of the Insurers' moving for arbitration. *See Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 126, 647 S.E.2d 249, 251 (Ct. App. 2007) (noting that waiver may be found if "the non-moving party was prejudiced by the delay in seeking arbitration"). Ms.

[4] This action was dismissed ***without prejudice*** pursuant to stipulation of dismissal.

Williams cites no case law in support of the proposition that when a motion to compel arbitration in one suit results in the stay of another suit, the movant has thereby waived his right to compel arbitration. While Ms. Williams undoubtedly desires an expeditious resolution to her negligence suit, its stay is not a result of the Insurers' delay, thus the stay in ***that*** suit is not the type of prejudice that results in waiver of the right to compel arbitration in ***this*** suit.

Conclusion

This Court should deny the Petitions for Rehearing. The Opinion is consistent with existing law, and the result is dictated by the claims raised in the Complaints and the benefits sought by the Respondents directly arising out of the operative agency agreements.

Respectfully submitted,

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Columbia, South Carolina
April 20, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
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Appellate Case No. 2014-009468

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,

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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 Company, Peerless Insurance Company, Montgomery Mutual Insurance Company, Safeco Insurance Company of America, and Foremost Insurance Company, SOUTHERN RISK INSURANCE SERVICES, LLC, TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA, ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY, PEERLESS INSURANCE COMPANY, MONTGOMERY MUTUAL INSURANCE COMPANY, SAFECO INSURANCE COMPANY OF AMERICA, AND FOREMOST INSURANCE COMPANY, and Laurie Williams..... Defendants,

Of Whom Peerless Insurance Company, Montgomery Mutual Insurance Company, and Safeco Insurance Company of America are ..... Appellants,

Of Whom Laurie Williams is a ..... Respondent.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Montgomery Mutual Insurance Company, Peerless Insurance Company, and Safeco Insurance Company of America, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Appellants' Joint Return in Opposition to Respondents' Petition for Rehearing

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April 20, 2016