

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM JASPER COUNTY  
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

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Case No. 2013-CP-27-577

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Mary Wiggins, as Personal  
Representative of Kelvin  
Marquise Wiggins,

Appellant,

v.

Enterprise Leasing Company –  
South East, LLC

Respondent.

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REPLY BRIEF OF APPELLANT

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Warren Paul Johnson  
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## STATEMENT OF THE CASE

Appellant (hereinafter, “Ms. Wiggins”) adopts and incorporates by reference the Statement of the Case and Facts presented in her Initial Brief. The factual history discussed below is limited to reply to the issues raised in Respondent Enterprise’s (hereinafter, “Enterprise”) Statement of the Case and Facts.

In the counter Statement of the Case, Enterprise characterizes Ms. Wiggins as seeking to “repudiate a longstanding principle of South Carolina’s common law.” This comes as a surprise to Ms. Wiggins, who views the case as one of construing the interplay of statutes and adhesion contracts with public policy considerations. “At common law,” as the phrase is most often used, rental car insurance exclusions and financial responsibility statutes did not yet exist.

## ARGUMENT

The general financial responsibility requirements governing automobile insurance policies were intended by the General Assembly to protect the public. Pursuant to S.C. Code Ann. § 38-77-150, all automobile insurance contracts must include uninsured motorist coverage. This requirement was imposed not to indemnify the negligent motorist or provide coverage for the uninsured, but to further public policy aimed at providing “benefits and protection against the peril of injury or death by an uninsured motorist to an insured motorist, his family, and the permissive users of his vehicle.” *Ferguson v. State Farm*, 261 S.C. 96, 100, 198 S.E.2d 522, 524 (1973); *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 134 S.E.2d 206 (1964).

The Legislature addressed the issue of permissive use in the *In Rem* context in S.C. Code Ann. § 29-15-20, by making the absence of permission equate to the felonious taking of the vehicle by the driver. That statute provides that a lien may exist on a motor vehicle if it is “operated in violation of the provisions of law or negligently, carelessly, recklessly, willfully or wanton,” and

causes personal injury or property damage, unless “the motor vehicle was stolen.” By contrast, Enterprise seeks to have permissive use converted to a talismanic incantation, generally disfavored by the Courts of this State. The circumstances in the present case raise an inference of permission, at the very least making it an issue of fact for the jury.

As discussed in further detail in Initial Brief of Appellant, the circuit court erred in ruling upon the issue of whether Mr. Wiggins’ death arose out of the use of the vehicle, because this issue was not addressed by the Circuit Court during oral arguments on the Motion, or at any time until it was written in the Order. In a footnote, Enterprise states that the “[a]ppellant was on notice of Respondent’s defenses for over a year.” This is irrelevant to the narrow scope of the motion. It is basic to motion practice to segment a case, dealing with specific issues of law or fact pertinent to that motion. Because Enterprise did not raise the issue at oral argument and the Circuit Court failed to address the issue, it was improper for the Court to address the issue in its Order.

However, even if the Court’s ruling on the issue was proper, the Court erred in holding that Ms. Wiggins failed to establish that Mr. Wiggins’ death arose out of the use of the subject automobile. Enterprise acknowledges as part of the record the police report, which indicates that Mr. Wiggins was driving southbound on Deerfield road when a John Doe was driving northbound and fired at least one round at Mr. Wiggins in his moving vehicle, fatally striking him in the head. To hold against Ms. Wiggins in this issue, this Court has to simply overrule *Wausau Underwriters Ins. Co. v. Howser*, 309 S.C. 269, 422 S.E.2d 106, (1992). Enterprise accurately cites cases and dicta that are taken out of context and are equally inconsistent with *Howser*, but the holding in that case has never been overruled. This case is eerily similar to *Howser* in that both cases involve instances wherein the assailant and victim were in moving vehicles and a gunshot wound ensued.

Essentially, the cases are factually indistinguishable. Enterprise has not moved to argue against precedent and is bound by the holding in *Howser*.

#### CONCLUSION

For the reasons stated above, this Court should reverse the judgment of the Circuit Court.

Respectfully Submitted,

/s/ Darrell Thomas Johnson, Jr.

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APPEAL FROM JASPER COUNTY  
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

CIVIL ACTION NO.: 2013-CP-27-00577  
Appellate Tracking No.: 2016-000041

Mary Wiggins, as Personal Representative of Kelvin Marquise Wiggins,.....Appellant,

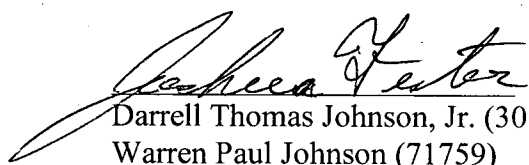
v.

Enterprise Leasing Company-SouthEast, LLC.....Respondents.

**PROOF OF SERVICE**

I certify that I have served the Appellant's Initial Reply Brief on Enterprise Leasing Company – SouthEast, LLC by depositing a copy of it in the United States Mail, postage prepaid, on July 15, 2016, addressed to the attorneys of record, Ms. Brittany F. Boykin, Esquire, TURNER PADGET GRAHAM & LANEY, P.A., 40 Calhoun Street, Suite 200, Post Office Box 22129, Charleston, SC 29413

July 15, 2016

  
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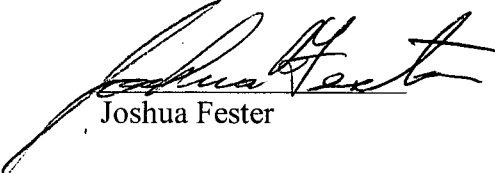
**RE: Mary Wiggins, as Personal Representative of Kelvin Wiggins vs. Enterprise  
Leasing Company-SouthEast, LLC**  
Civil Action Case No.: 2013-CP-27-00577  
Appellate Tracking No.: 2016-000041

Dear Ms. Kitchings:

Enclosed for filing is the Appellant's Reply Brief and Matter to be Included in Record on Appeal, along with Proof of Service which I have served this day to Respondent's Counsel of Record.

Thanking you in advance, I am

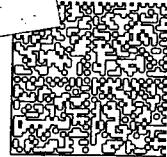
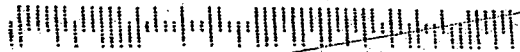
Sincerely,  
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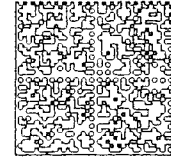
JF/tc  
Enclosures


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