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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-CP-40-0313

Appellate Case No. 2016-000192

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

v.

CAGC Insurance Company, In Liquidation, ... Respondent.

South Carolina Property and Casualty Insurance Guaranty Association, ... Appellant,

v.

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., ... Respondents.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

ARGUMENT 7

I. The Order improperly reverses a prior circuit court order 8

II. The three-year statute of limitations does not support dismissal of CompTrust 9

III. Dissolution does not insulate CompTrust from suit 10

IV. The Association's claims against CompTrust are not moot 13

V. CompTrust is a proper party because the Association has a statutory duty to investigate claims asserted against the Association and the statutory authority to bring suits to prevent collusion and fraud 14

CONCLUSION 16

TABLE OF AUTHORITIES

Page(s)

Cases

Broom v. Marshall,
284 S.C. 530, 328 S.E.2d 639 (Ct. App. 1984) 11

Buckner v. Preferred Mut. Ins. Co.,
255 S.C. 159, 177 S.E.2d 544 (1970) 8

Builders Transp. v. S.C. Prop. and Cas. Ins. Guar. Ass'n,
307 S.C. 398, 415 S.E.2d 419 (Ct. App. 1992) 2

Byrd v. Irmo H.S.,
321 S.C. 426, 468 S.E.2d 861 (1996) 13

Cook v. Taylor,
272 S.C. 536, 252 S.E.2d 923 (1979) 8

Cudd v. Williams,
39 S.C. 452, 18 S.E.3 (1893) 8

Dukes & Dukes v. Hygrade Food Products Corp.,
236 S.C. 69, 113 S.E.2d 254 (1960) 8

Ex Parte State,
263 S.C. 363, 210 S.E.2d 600 (1974) 8

Hudson v. Lancaster Convalescent Ctr.,
407 S.C. 112, 754 S.E.2d 486 (2014) 2, 3

Maher v. Tietex Corp.,
331 S.C. 371, 500 S.E.2d 204 (Ct.App. 1998) 9

Morris v. Tidewater Land & Timber, Inc.,
388 S.C. 317, 696 S.E.2d 599 (Ct. App. 2010) 12

Notios Corp. v. Hanvey,
256 S.C. 275, 182 S.E.2d 55 (1971) 9

PCS Nitrogen, Inc. v. Ross Dev. Corp.,
No. CIV.A. 2:09-3171-MBS, 2011 WL 3665335 (D.S.C. Aug. 19, 2011) 11, 12

S.C. Prop. and Cas. Ins. Guar. Ass'n v. Brock,
410 S.C. 361, 764 S.E.2d 920 (2014) 2

S.C. Prop. and Cas. Ins. Guar. Ass'n v. Carolinas Roofing and Sheet Metal Contractors Self-Insurance Fund,
315 S.C. 555, 446 S.E.2d 422 (1994) 2, 14

S.C. Prop. and Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.,
304 S.C. 210, 403 S.E.2d 625 (1991) 3

State v. Harrelson,
211 S.C. 11, 43 S.E.2d 593 (1947) 8

Steele v. Charlotte, C&A R. Co.,
14 S.C. 324 (1879) 8

Webb v. Reames,
326 SC 444, 485 S.E.2d 384 (1997) 10

Rules

S.C. R. Civ. P. 12(b)(1) 6, 13

S.C. R. Civ. P. 21 ....6, 13

S.C. R. Civ. P. 52(b) 7

S.C. R. Civ. P. 59(e) 7

Statutes

S.C. Code Ann. § 15-3-20 9

S.C. Code Ann. § 15-3-530 9

S.C. Code Ann. § 15-5-90 11

S.C. Code Ann. § 15-53-70 ....9, 10

S.C. Code Ann. § 33-14-105 11

S.C. Code Ann. § 33-14-105(c)(5) 11

S.C. Code Ann. § 33-14-107 11

S.C. Code Ann. § 38-5-120(B) 4

S.C. Code Ann. § 38-31-10 et seq. 2, 14

S.C. Code Ann. § 38-31-20(8) 10, 14

S.C. Code Ann. § 38-31-20(11) 3

S.C. Code Ann. § 38-31-30 .... 2, 4

S.C. Code Ann. § 38-31-30(6) 15

S.C. Code Ann. § 38-31-40 3

S.C. Code Ann. § 38-31-60 .... 2, 10, 14

S.C. Code Ann. § 38-31-60(c) 3

S.C. Code Ann. § 38-31-60(d) 2, 15

S.C. Code Ann. § 38-31-60(j) 15

S.C. Code Ann. § 38-31-60(l) 15

S.C. Code Ann. § 38-31-140 14

S.C. Code Ann. § 38-73-920 .... 3, 14

S.C. Code Ann. § 42-5-10 .... 6, 14

Other Authorities

44 C.J.S. Insurance § 213 .... 2, 3

STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err by dismissing CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc. from the Association's declaratory judgment action because the Association is not statutorily liable for the purported "transferred" claims?

STATEMENT OF THE CASE

The sole issue before this Court is whether CompTrustAGC of South Carolina a/k/a CompTrustAGC of South Carolina, Inc. ("CompTrust") is a proper party to the declaratory judgment action brought by South Carolina Property and Casualty Insurance Guaranty Association ("Association") because CompTrust is liable for the transferred claims. The underlying facts are not in dispute.

The Association is a nonprofit unincorporated legal entity created by the South Carolina legislature pursuant to S.C. Code Ann. § 38-31-10, *et seq.* (the "Act" or "Guaranty Act"). *See S.C. Prop. and Cas. Ins. Guar. Ass'n v. Brock*, 410 S.C. 361, 365-66, 764 S.E.2d 920, 922 (2014); *Hudson v. Lancaster Convalescent Ctr.*, 407 S.C. 112, 754 S.E.2d 486 (2014); *S.C. Prop. and Cas. Ins. Guar. Ass'n v. Carolinas Roofing and Sheet Metal Contractors Self-Insurance Fund*, 315 S.C. 555, 557, 446 S.E.2d 422, 424 (1994); *Builders Transp. v. S.C. Prop. and Cas. Ins. Guar. Ass'n*, 307 S.C. 398, 406, 415 S.E.2d 419, 424 (Ct. App. 1992). Because the Association was created by statute, its duties, liabilities, and obligations are controlled by the terms and conditions set forth in the Act. S.C. Code Ann. §§ 38-31-30 and -60; *see also Brock*, 410 S.C. 361, 365-66, 764 S.E.2d 920, 922; *Builders Transp.*, 307 S.C. at 406, 415 S.E.2d at 424.[1] Pursuant to the statutory scheme, the Association must "pay covered claims to the extent of the association's obligation and deny all other claims." S.C. Code Ann. § 38-31-60(d).

As stated in *Brock*, *Hudson*, and *Carolinas Roofing*, the purpose of the Association is "to provide **some** protection" to insureds whose insurance companies become insolvent. 410 S.C. at 367-68, 764 S.E.2d at 923; 407 S.C. at 124, 754 S.E.2d at 492; 315 S.C. at 557, 446 S.E.2d at 424 (emphasis added). The Association is a "last resort" for payment when an insurance

[1] *See also* 44 C.J.S. Insurance § 213 ("The association is a statutory entity that depends on statutory law for its existence and for the definition of its powers, duties, and protections.").

company is declared insolvent. *Hudson*, 407 S.C. at 124, 754 S.E.2d at 492; *see also S.C. Prop. and Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 215, 403 S.E.2d 625, 628 (1991) (finding that it is not the intent of the Act to place the Association in the shoes of the insurer because the Association's rights and obligations are limited); 44 C.J.S. Insurance § 213 ("[T]he duties of an Insurance Guarantee Association are not co-extensive with the duties owed by the insolvent insurer under its policy. An Insurance Guarantee Association is a guarantor of last resort. . . . [A]n Insurers Insolvency Fund is not an insurer; rather, it is a statutorily mandated nonprofit association created to provide limited protection to insureds and claimants in the event of insolvency of an insurer. It is not itself an insurer and does not 'stand in the shoes' of the insolvent insurer for all purposes.").

All insurers who write any kind of insurance to which the Act applies are members of the Association as a condition of their authority to transact insurance in South Carolina. S.C. Code Ann. § 38-31-40 and § 38-31-20(11). The Association is funded by assessments paid by each member. S.C. Code Ann. § 38-31-60(c). These assessments are ultimately passed on to the consumer in the form of increased insurance rates. *See* S.C. Code Ann. § 38-73-920.

CompTrust was a South Carolina business trust and operated as an unincorporated workers' compensation self-insurance trust. CompTrust was never a licensed insurer in South Carolina and was never a member of the Association. From July 1, 1982, through December 28, 2010, CompTrust, as a self-insured organization, provided workers' compensation coverage to its self-insured members ("Self-Insurance Coverage").

In South Carolina, self-insured organizations are not subject to the Guaranty Act, are not members of the Association, and pay no assessments to the Association. *See* S.C. Code Ann. § 38-31-40 (requiring membership of Association as condition of transacting insurance business in

South Carolina); S.C. Code Ann. § 38-31-30 (omitting reference to self-insurance as types of insurance to which the Act applies). As a result, if the Association were to be responsible for any liabilities of CompTrust purportedly transferred to CAGC, licensed insurers and South Carolina insureds would be paying for the liabilities of a company that never paid into the Association for the protection it now seeks.

CAGC Insurance Company ("CAGC") is a North Carolina insurance company established on December 31, 2007. On or about October 27, 2008, CAGC became a licensed insurer in South Carolina. Thereafter, CAGC began issuing South Carolina workers' compensation liability insurance policies to prior participants in CompTrust. CAGC was a member of the Association and paid assessments to the Association based on the policies it issued after its licensing in South Carolina. Claims made subject to these licensed policies are not in dispute here.

On December 28, 2010, CompTrust and CAGC executed an agreement titled Self-Insurance Loss Portfolio Transfer Assumption Agreement (the "LPT Agreement"). Under the terms of the LPT Agreement, CompTrust paid $3,586,527.01 for CAGC to assume all of CompTrust's liabilities on workers' compensation claims arising out of the Self-Insured Coverage ("Transferred Claims"). CompTrust subsequently dissolved on April 1, 2011.

On November 30, 2011, less than a year after the execution of the LPT Agreement, a review by the South Carolina Department of Insurance (the "Department") determined that CAGC was financially unsound. On January 18, 2012, pursuant to its authority under S.C. Code § 38-5-120(B), the Department suspended CAGC's authority to transact insurance business in South Carolina. Also in January 2012, CAGC was placed into receivership in its state of domicile, North Carolina. CAGC was declared insolvent by a court on January 6, 2014.

On January 17, 2014, Raymond G. Farmer, Director of the South Carolina Department of Insurance, filed a petition to commence this ancillary receivership for CAGC in South Carolina. Farmer was appointed as the Ancillary Receiver of CAGC ("Receiver") by Order of this Court filed March 10, 2014.

As a result of CAGC's insolvency, claims made by South Carolina workers' compensation claimants against CAGC have now been asserted against the Association, including claimants covered pursuant to the Self-Insured Coverage previously provided by non-member CompTrust. The Association does not dispute its obligation to pay the South Carolina claims submitted as a result of policies actually issued by CAGC and has been paying these claims pursuant to the Guaranty Act. The Association disputes that it is obligated, under the plain language of the Guaranty Act, to pay the Transferred Claims,[2] which arose under the Self-Insured Coverage provided by CompTrust but purport to have become CAGC's responsibility based on the LPT Agreement.

The Association petitioned to intervene in the underlying receivership of CAGC and to join CAGC, the Receiver, and CompTrust for the purpose of asserting a declaratory judgment action against them, seeking a declaration that the Association is not liable for the Transferred Claims based on the Guaranty Act and its defining of the Association's obligations, not an agreement between CompTrust and CAGC. (Motion to Intervene, for Joinder of Intervenor-Respondents, and for Declaratory Judgment; R. 213.) On June 9, 2014, the circuit court allowed the Association to intervene in the ancillary receivership, joined CAGC, the Receiver, and CompTrust as parties, and authorized the Association to serve each of them with its summons and complaint for declaratory judgment. (Order Granting Motion to Intervene and for Joinder of

[2] The "Contested Claims" referred to in the Order and the "Transferred Claims" as referred to in the Association's papers are synonymous.

Intervenor-Respondents; R. 5.)

The Association filed its Summons and Complaint for Declaratory Judgment on June 17, 2014. (Summons and Complaint for Declaratory Judgment; R. 90.) On March 12, 2015, CompTrust filed its Limited Answer and Affirmative Defenses, in which it asserted, among other things, that it is not a proper party to this lawsuit because it is dissolved and has no interest in the litigation. (Limited Answer and Affirmative Defenses of Intervenor-Respondent CompTrustAGC of SC; R. 143.) Nonetheless, CompTrust asserted multiple legal arguments contrary to the positions of the Association and specifically alleged that the Association is obligated for the Transferred Claims. (*Id.*) CompTrust asserted such position because it was responsible for providing the claimants with workers' compensation coverage and former members of CompTrust can become liable for the obligations of CompTrust if CompTrust refuses or is not able to pay the obligations. *See* S.C. Code Ann. § 42-5-10.

On May 20, 2015, the Association served CompTrust with discovery requests. (First Set of Interrogatories to CompTrust; R. 407; First Set of Requests for Production to CompTrust; R. 413.) In response, CompTrust filed a Motion to Quash these discovery requests on June 22, 2015. (Motion to Quash; R. 261.) On September 11, 2015, the Association filed its Memorandum in Opposition to the Motion to Quash. (Memorandum in Opposition to Motion to Quash; R. 286.)

On September 17, 2015, CompTrust filed a Motion to Dismiss pursuant to S.C. R. Civ. P. 12(b)(1) and S.C. R. Civ. P. 21, arguing under both rules that the Association's claim as to CompTrust is "moot." (Motion to Dismiss; R. 358.) CompTrust's Motion to Dismiss was largely duplicative of its Motion to Quash, and the two motions were essentially treated as one motion to dismiss by the parties and circuit court.

A hearing was held on the Motion to Quash and Motion to Dismiss on September 18, 2015, before Judge G. Thomas Cooper, Jr. (Transcript of Hearing; R. 427.) By Order filed September 30, 2015, the circuit court granted CompTrust's Motion to Quash and Motion to Dismiss ("Order"). (9/30/15 Order; R. 8.) The circuit court found that the prior circuit court order granting the Association's motion to join CompTrust as a party was improper and dismissed CompTrust from the case. (*Id.*) The circuit court reasoned that South Carolina's Business Corporation Act's ("Corporation Act") provisions regarding dissolution and windup do not apply to unincorporated business trusts such as CompTrust and, therefore, the general three-year statute of limitations would apply to any actions against CompTrust. (*Id.*) The circuit court further held that the three-year statute of limitations began to run, at the latest, at the time of the LPT Agreement in 2010 and, therefore, expired before the declaratory judgment action was brought. (*Id.*) Finally, the circuit court found that CompTrust's dissolution made relief against CompTrust "impossible" and, therefore, any action against it "would do no good, serve no purpose, or have any practical legal effect." (*Id.*)

The Association timely filed a Motion Pursuant to S.C. R. Civ. P. 52(b) and 59(e) Regarding Orders Filed September 30, 2015. (Motion Pursuant to S.C. R. Civ. P. 52(b) and 59(e) Regarding Orders Filed September 30, 2015; R. 398.) By Order filed January 26, 2016, the circuit court denied the Association's motion for reconsideration. (1/26/16 Order Denying Intervenor-Petitioner South Carolina Property and Casualty Insurance Guaranty Association's Motion to Reconsider; R. 58.)

The Association timely appealed from the circuit court's orders.

ARGUMENT

The circuit court committed reversible error when it dismissed CompTrust as a party to

this case. (9/30/15 Order; R. 8.) As set forth below, the circuit court's ruling improperly reverses a previous circuit court order and incorrectly relies on the three-year statute of limitations and CompTrust's dissolution to justify CompTrust's dismissal. This Court should reverse the circuit court's order and reinstate CompTrust as a party to the Association's declaratory judgment action to permit that action to proceed.

I. **The Order improperly reverses a prior circuit court order.**

The circuit court's Order improperly reversed a previous circuit court order issued by another judge in this case. Specifically, by Order filed June 9, 2014, Judge DeAndrea Benjamin joined CompTrust as a party to this action. CompTrust did not seek any reconsideration or appeal of this Order from Judge Benjamin.[3] Instead, CompTrust filed a Motion to Dismiss to be heard by a different circuit court judge. In ruling on CompTrust's Motion to Dismiss and Motion to Quash Discovery, the circuit court reversed Judge Benjamin's order, found that CompTrust was improperly added as a party, and dismissed CompTrust. (9/30/15 Order; R. 8.) However, a circuit court judge does not have the power to set aside another circuit court judge's order. *Cook v. Taylor*, 272 S.C. 536, 252 S.E.2d 923 (1979) (*citing Steele v. Charlotte, C&A R. Co.*, 14 S.C. 324 (1879); *Cudd v. Williams*, 39 S.C. 452, 18 S.E.3 (1893); *State v. Harrelson*, 211 S.C. 11, 43 S.E.2d 593 (1947); *Dukes & Dukes v. Hygrade Food Products Corp.*, 236 S.C. 69, 113 S.E.2d 254 (1960); *Ex Parte State*, 263 S.C. 363, 210 S.E.2d 600 (1974)). As set forth in Judge Benjamin's order, CompTrust was properly added as an Intervenor-Respondent in the declaratory judgment action.

The second circuit court judge improperly set aside the order of another circuit court

[3] Failure to seek relief of the Order of Judge Benjamin makes the ruling the "law of the case." *See Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 160-61, 177 S.E.2d 544, 544 (1970) (holding that an unappealed ruling, "right or wrong," is the law of the case).

judge on the same issue. This was in error. Accordingly, the Order should be reversed and CompTrust should be reinstated as a party.

II. **The three-year statute of limitations does not support dismissal of CompTrust.**

The circuit court erroneously relied on the three-year statute of limitations found in S.C. Code Ann. § 15-3-530 to find that CompTrust "could not lawfully be made liable for the Contested Claims, because the latest of the Transferred Policies was underwritten in 2009, and they were lawfully transferred to CAGC in 2010." (9/30/15 Order at p. 7; R. 15.) However, Section 15-3-20 provides that "[c]ivil actions may only be commenced within the periods prescribed in this title *after the cause of action has accrued . . . ."* (emphasis added). Moreover, South Carolina applies the "discovery rule" to contract actions, under which the action accrues on the date the aggrieved party knew or could have discovered the breach through the exercise of reasonable diligence. *Maher v. Tietex Corp.*, 331 S.C. 371, 376–77, 500 S.E.2d 204, 207 (Ct.App. 1998). The circuit court did not analyze the time when the Transferred Claims accrued or applicability of the discovery rule from the Association's perspective, nor did it consider the case or controversy requirement of South Carolina's Uniform Declaratory Judgment Act. *See* S.C. Code Ann. § 15-53-70; *Notios Corp. v. Hanvey*, 256 S.C. 275, 280, 182 S.E.2d 55, 57 (1971) (finding that the requirement of a "real and substantial controversy between the parties as to their respective rights and duties" is met where "there is nothing contingent, hypothetical, or abstract about the dispute").

In this case, the Association's Declaratory Judgment action was properly filed within six months of the case or controversy arising—the first instance any claimant could assert the Association was liable for the obligations of CompTrust, a non-member of the Association. A declaratory judgment action may only be filed when a case or controversy exists. *See* S.C. Code

Ann. § 15-53-70; *see also Webb v. Reames*, 326 SC 444, 447, 485 S.E.2d 384, 386 (1997) (holding declaratory judgment cause of action did not accrue until party notified of competing property interest). The Guaranty Act provides that the Association is only responsible for "covered claims," which are, with limitations, unpaid claims of an insolvent insurer. *See* S.C. Code Ann. §§ 38-31-20(8) (defining covered claim) and -60 (limiting duty of Association to payment of covered claims). As such, no case or controversy with regard to the Association's obligation to pay the Transferred Claims could have existed, and no cause of action could have accrued, until CAGC became insolvent on January 6, 2014, and it was <u>first</u> asserted the Association should pay the claims CompTrust was obligated to pay. (9/30/15 Order at p. 3; R. 11.) Moreover, it is undisputed that the Association did not know, and could not have known, of the Transferred Claims until after January 6, 2014, when the claims were presented to the Association for payment. (*Id.*).

The claims at issue in this case therefore did not accrue and were not known by the Association until, at the earliest, January 6, 2014, when CAGC became insolvent. No case or controversy existed prior to this time. The Association timely filed this action on June 17, 2014, approximately six months after the claims accrued and became known to the Association.

Accordingly, the Order dismissing CompTrust based on the statute of limitations should be reversed and CompTrust reinstated as a party.

III. <u>Dissolution does not insulate CompTrust from suit.</u>

The circuit court also improperly cited CompTrust's dissolution as the basis for its finding that CompTrust should be dismissed. The circuit court's Order is internally inconsistent in that it finds that CompTrust properly dissolved pursuant to the Corporation Act but refuses to apply the Corporation Act's provision regarding liability following dissolution. (9/30/15 Order

at pp. 6-8; R. 14-16.) The circuit court did not identify any limitations on a business trust's liability following its dissolution and specifically recognized that the Corporation Act provides for suits on unincorporated business trusts. (*Id.*) Accordingly, CompTrust's dissolution is not a proper ground for its dismissal from this action as it still has liability as provided by the Corporation Act in S.C. Code Ann. §§ 33-14-105 and 33-14-107, and as recognized in CompTrust's Articles of Dissolution.

Specifically, the Corporation Act provides that a business entity may still be sued after its dissolution. *See* S.C. Code § 33-14-105(c)(5) ("Dissolution of a corporation does not . . . prevent commencement of a proceeding by or against the corporation in its corporate name."); *see also* S.C. Code Ann. § 33-14-105, Official Comments (stating that the statute "expressly reserves all . . . common law attributes of dissolution and makes clear that the rights, powers, and duties of shareholders, the directors, and the registered agent are not affected by dissolution and that suits by or against the corporation are not affected in any way"); S.C. Code § 15-5-90 ("Causes of action for and in respect to any and all injuries . . . shall survive both to and against . . . the legal representative of . . . a defunct or insolvent corporation.").

Cases also demonstrate that the circuit court should not have dismissed CompTrust based on its dissolution because dissolved entities are routinely sued in South Carolina courts. *See,* *PCS Nitrogen, Inc. v. Ross Dev. Corp.*, No. CIV.A. 2:09-3171-MBS, 2011 WL 3665335, at *3 (D.S.C. Aug. 19, 2011) (recognizing the ability to sue a dissolved entity under South Carolina law). In *PCS Nitrogen*, the District Court of South Carolina, applying South Carolina law, expressly stated that "South Carolina law permits a dissolved corporation to be sued." *Id.* at *4; *see also Broom v. Marshall*, 284 S.C. 530, 535, 328 S.E.2d 639, 643 (Ct. App. 1984) (recognizing the ability to enforce obligations binding a partnership even after the partnership

has dissolved); *Morris v. Tidewater Land & Timber, Inc.*, 388 S.C. 317, 325, 696 S.E.2d 599, 603 (Ct. App. 2010) (evaluating former shareholders' potential recovery available from a dissolved entity). The *PCS Nitrogen* court went on to conclude that because a dissolved corporation remains subject to suit, dissolved corporations may continue to assert the attorney-client privilege under certain circumstances. 2011 WL 3665335, at *4. The circuit court failed to recognize the well-established principle in South Carolina law that entities remain subject to suit even after their dissolution.

Moreover, CompTrust's own Articles of Dissolution recognized that CompTrust remains subject to suit after its dissolution:

> [T]he Trustees now desire to terminate and dissolve CompTrustAGC-SC by entering into these Articles of Dissolution (hereinafter "Articles") and to hold the Trustees harmless **for any claims, liabilities, or obligations of CompTrustAGC-SC that may arise following the termination and dissolution of CompTrustAGC-SC**.
>
> . . .
>
> The Trustees are hereby indemnified against and held harmless **for any alleged debts, liabilities or obligations asserted against CompTrustAGC-SC after the effective date of these Articles. . .**

(Motion to Quash at Ex. B pp. 1-2; R. 278-279.) (emphasis added). Because CompTrust's obligation to indemnify its trustees continues following CompTrust's dissolution for any of CompTrust's liability arising thereafter, it necessarily follows that CompTrust continues to exist for certain purposes after its dissolution. Despite CompTrust's dissolution, it may have liabilities or obligations arising thereafter for which it may be responsible and to which it must respond in court.

Also, contrary to its own assertion that it cannot sue or be sued, CompTrust sought affirmative relief from the circuit court by requesting its own declaratory ruling in its Limited

Answer and by filing the Motion to Quash. (Limited Answer, Prayer for Relief at p. 10; R. 152.) Pursuant to South Carolina law, and as recognized by CompTrust itself at dissolution and during the underlying litigation, claims may still be asserted against CompTrust in South Carolina courts even after its dissolution. CompTrust's dissolution does not insulate it from the Association's declaratory judgment action—to hold otherwise would invite any corporation to simply dissolve any time it faced a substantial liability. This Court should, therefore, reverse the Order and reinstate CompTrust as a party to the declaratory judgment action.

IV. <u>The Association's claims against CompTrust are not moot.</u>

CompTrust moved for dismissal under S.C. R. Civ. P 12(b)(1) and Rule 21, arguing that the Association's claims are moot because CompTrust has dissolved. (CompTrust Mot. Dis. p. 1-2; R. 326-327.) The circuit court erred by reaching the conclusion that the Association's claims against CompTrust "are effectively moot." (9/30/15 Order p. 14; R. 22.) "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy." *Byrd v. Irmo H.S.*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). In this case, judgment by the circuit court could have significant consequences for CompTrust and its members, leaving the case against CompTrust ripe for adjudication because of the above-cited provisions of the Corporation Act that provide for liability after dissolution and the Workers' Compensation Act provisions placing the obligation to provide workers' compensation coverage on employers.

Here, CompTrust's participation in the case is necessary to grant effectual relief because questions remain regarding whether the Transferred Claims were ever properly transferred from CompTrust to CAGC at all. (Compl. ¶¶ 10-11 and 30-35, R. 97, 100-101; Hearing Trans. 13:24 – 15:22; R. 439-441.) If the claims were not properly transferred from CompTrust to CAGC,

CompTrust and its members may become liable for the costs of these claims pursuant to the Worker's Compensation Act, which requires all employers to "secure the payment of compensation to his employees in the manner provided in this chapter." S.C. Code Ann. § 42-5-10. Further, the Association would not be liable for these claims if they were not transferred from CompTrust to CAGC. The validity of the transfer from CompTrust to CAGC has not been resolved and, therefore, the Association's claims are not moot. The Order therefore should be reversed and CompTrust reinstated as a party to this matter.

V. CompTrust is a proper party because the Association has a statutory duty to investigate claims asserted against the Association and the statutory authority to bring suits to prevent collusion and fraud.

The Association exists to provide some measure of protection to insureds of insolvent member insurers. *Carolinas Roofing*, 315 S.C. at 557, 446 S.E.2d at 424. To pay these sums, the Association is funded by assessments paid by its members who write property and casualty coverage in South Carolina, which in turn are used to pay "covered claims" in accordance with the Act. S.C. Code Ann. § 38-31-10 *et seq.* The assessments paid by insurers are ultimately passed on to the consumer in the form of increased insurance rates. S.C. Code Ann. § 38-31-140; *see also* S.C. Code Ann. § 38-73-920 ("Rate changes proposed where the sole factor for the change is the impact of a revised assessment does not constitute a rate increase for purposes of this section.").

The Association does not protect non-member insolvent workers' compensation self-insurers like CompTrust; the statutory regime for workers' compensation provides that protection. *See* S.C. Code Ann. § 42-5-10. The Association does not provide any protection to insureds of non-members nor does it provide any protection for claims transferred by a non-member to a member insurer. S.C. Code Ann. § 38-31-60 (defining Association's obligation on

"covered claims"); S.C. Code Ann. § 38-31-20(8) (defining "covered claim" as being limited to coverage provided by member insurers); and S.C. Code § 38-31-30(6) (excluding transferred claims from Association's obligation). CompTrust improperly attempted to shift its liabilities to CAGC and, by extension, the Association.

The Association has a duty to prevent self-insured claims from being shifted to its members and South Carolina insureds. Indeed, the Association has a statutory duty to "investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which these settlements, releases, and judgments may be properly contested." S.C. Code Ann. § 38-31-60(d). Likewise, the Association is authorized to bring suit or take any other action necessary to carry out its purpose. S.C. Code Ann. §§ 38-31-60(j) and (l). In attempting to comply with its statutory obligation to investigate claims brought against it, the Association filed the underlying declaratory judgment action to determine its liability for the Transferred Claims. The circuit court has ignored the Association's statutory duty to sue and its role as an investigatory body in dismissing CompTrust from this suit, when a viable and plausible claim has been stated, thereby defeating the purpose of Sections 38-31-60(j) and (l) by erroneously ending this action as to CompTrust before depositions and discovery into the purported "transfer." The Association should be allowed to continue with that action with CompTrust reinstated as a party so that the Association may fulfill its statutory obligation to fully investigate the claims CompTrust attempted to transfer to CAGC and then to the Association.

In this case, CompTrust transferred millions of dollars of claims to an affiliated insurer without any notice to the Association and without ever having paid a dime of assessments to the Association for those claims. (Hearing Trans. 14:23–15:22; R. 440-441.) Self-insured employers cannot be permitted to make such end-runs around their individual liability for workers' compensation claims by dissolving and transferring them to failing insurance companies so that South Carolina insurers and insureds have to pay for the claims through the Association. CompTrust hopes to accomplish this without even being subject to judicial review. This is precisely what the trial court order allows and, therefore, it cannot be allowed to stand. CompTrust is a proper party to this action. The Order should be reversed so that the Association can conduct the discovery necessary to determine whether the transfer, which appears collusive on its face, was proper. Accordingly, the circuit court's dismissal of CompTrust should be reversed.

CONCLUSION

For the foregoing reasons, the Association respectfully requests this Court reverse the circuit court's dismissal of CompTrust and allow this declaratory judgment action to proceed with CompTrust as a party.

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Columbia, South Carolina
August 25, 2016.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED
AUG 25 2016
SC Court of Appeals

Case No. 2014-CP-40-0313

Appellate Case No. 2016-000192

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

v.

CAGC Insurance Company, In Liquidation, ... Respondent.

South Carolina Property and Casualty Insurance Guaranty Association, ... Appellant,

v.

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., ... Respondents.

CERTIFICATE OF SERVICE

I certify that I have served the Final Brief of Appellant, Final Reply Brief of Appellant and the Record on Appeal by depositing a copy of it in the United States Mail, postage prepaid, on August 25, 2016, addressed to the following attorneys:

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August 25, 2016

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AUG 25 2016
SC Court of Appeals

Hand Delivered
The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1015 Sumter Street - 5th Floor
Columbia, SC 29201

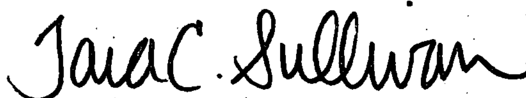
RE: Raymond G. Farmer, etc. v. CACG Insurance Company in Liquidation
Civil Action No. 2014-CP-40-0313
Appellate Case No. 2016-000192
Our File No. 00163/01649

Dear Ms. Kitchings:

Enclosed please find the original and sixteen copies each of the Final Brief of Appellant, Final Reply Brief of Appellant and the Record on Appeal in regard to the above-referenced matter. We would ask that you file the original of each and return clocked-in copies to us via our courier.

By copy of this letter to counsel of record, we are serving them with a copy of the Final Brief of Appellant, Final Reply Brief of Appellant and the Record on Appeal.

Very truly yours,



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